Through Her Eyes: The Harms of Abortion Criminalisation and the Need for Reform

A report developed and produced by **Women and Law in Southern Africa Research and Educational Trust—Malawi** and **Godfrey Dalitso Kangaude** (a Reproductive and Sexual Health Law Fellow (University of Toronto)) in collaboration with the **International Women's Human Rights Clinic** at Georgetown Law.

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This report was prepared for the Parliamentary Taskforce on SRHR and the SRHR civil society partners in order to inform their meetings about termination of pregnancy law reform.

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This report was adapted from a full human rights report authored by four law students in the IWHRC: Asees Bhasin, DaNia Henry, Eric Holleran, and Jade Yulin Zhong, under the supervision of Professor Susan Deller Ross (the Founder and Director of the IWHRC), Godfrey Dalitso Kangaude (a member of the Coalition to Prevent Unsafe Abortion ("COPUA")), and Michelle Liu (the Supervising Attorney & Teaching Fellow in the IWHRC from 2018 to 2020).

In addition to this report, WLSA Malawi, Godfrey Dalitso Kangaude, and the IWHRC have also proposed amendments to the draft TOP Bill currently under consideration. These proposed amendments are meant to better protect women and girls from unsafe abortion, especially in a covid-19 context, and they reflect recent developments in international law on the rights of girls and women to access safe abortion since the 2015 TOP Bill was drafted.

Methodology

The collaborators of this report (the "researchers") conducted extensive research on the rights guaranteed by Malawi's Constitution, as well as the rights enshrined in various international and regional treaties to which Malawi is a State Party. To supplement their understanding of the global trends in legislation, the IWHRC faculty and students also researched numerous comparative jurisdictions.

From the 9th to the 13th of March 2020, the IWHRC team travelled to Malawi to conduct an intensive fact-finding investigation in Lilongwe, Blantyre, and Zomba. Lawyers and paralegals from WLSA Malawi, as well as from Women Lawyers Association—Malawi, accompanied the IWHRC team and provided cultural support and translation services where needed. IWHRC faculty and students interviewed over 70 stakeholders, including: religious leaders; traditional chiefs; members of the executive, legislative, and judicial branches; women's and youth rights advocates; school teachers; academics; medical practitioners from public hospitals and private clinics; leaders of non-governmental organisations ("NGOs") and international organisations; and other experts on the subject.

The fact-finding investigation was conducted in accordance with the International Human Rights Fact-Finding Guidelines (The Lund-London Guidelines) that were developed by the International Bar Association's Human Rights Institute and the Raoul Wallenberg Institute.[1] The research protocol was approved by the Georgetown University Institutional Review Board ("IRB") and the Malawi National Committee on Research Ethics in Social Sciences and Humanities ("NCRSH").

To protect the rights of interviewees, the researchers implemented an extensive informed consent process. Interviewees were informed that no direct benefit would arise from their participation in the interview and no harm would come to them if they chose not to participate. Additionally, all interviews were conducted in private locations. Interview notes and audio recordings were stored on secured devices, separate from any identifying information about the interviewee. References to interviewees in this report comply with the precise descriptor approved by the interviewee, including some instances where the interviewee chose to be referred to by a pseudonym or "anonymous" rather than any specific identifier. References also comply with the NCRSH's request that no interviewee's name or identifying job title be used in the report. For those interviewees who requested during the informed consent process that researchers contact them prior to use in the final report, that approval was sought and received prior to researchers' use herein.

Introduction

Our country has one of the world's most restrictive abortion laws in the world—abortion is illegal in nearly every circumstance. Yet, the law has not stopped women and girls from ending their pregnancies; as many as 141,000 abortions were performed in the year 2015 alone.[2] What the law has done, however, is force pregnant women and girls to seek out clandestine and oftentimes dangerous or life-threatening methods. "If a woman doesn't want a pregnancy…, they will terminate it…, and they will use all means and, mostly, unsafe means of terminating this pregnancy,"[3] said a sexual and reproductive health specialist at the University of Malawi College of Medicine.

EVERYDAY, IT'S HAPPENING.

Health researchers estimated that in 2015, "51,693 abortions resulted in complications requiring post-abortion care;"[4] and unsafe abortion contributed to 18% of maternal mortality, making it one of the top five "direct causes."[5]

These deaths are needless and preventable.

According to a 2011 study conducted by Ipas researchers, "the 82 countries with the most restrictive abortion legislation are also those with the highest incidence of unsafe abortions and abortion mortality ratios."[6] Before South Africa reformed its own restrictive laws on abortion, there was nearly 33 deaths per every 1,000 abortions.[7] In just two years after the Choice on Termination of Pregnancy Act was enacted, permitting abortion in the first trimester upon request and for specific grounds after that, the rate dropped precipitously to just 0.80 deaths for every 1,000 abortions.[8] By making access to abortion legal in the early weeks of pregnancy and in many circumstances after that, South Africa was able to achieve a dramatic decline in abortion-related maternal deaths.

UNSAFE ABORTION IS ONE OF THE TOP 5 CAUSES OF MATERNAL MORTALITY

Criminalising abortion does not prevent women and girls from getting abortions—it only forces them to get ***unsafe*** abortions.

To ensure the same drop in Malawi women's and girls' deaths and severe health injuries from unsafe abortion, it will be necessary to modify the Termination of Pregnancy ("TOP") Bill proposed by the Malawi Law Commission in 2015. Since then, both the Human Rights

Committee and the Committee on the Elimination of Discrimination against Women ("CEDAW Committee") have made their positions clear. Criminal abortion provisions violate women's right to life, their right to health, their right to privacy, their right to choose whether to have more children, when to have them, and how many to have, their right to equality, and their right to dignity and to be free from cruel treatment. The TOP Bill does not comply with this standard.

Moreover, abortion law reform is more critical now than ever before. Since March 2020, all of Malawi's schools have been closed due to the threat of covid-19. As a result of these closures, students across the country have been out of the classroom. The rate of teenage pregnancy has soared. Parliament must address the restrictive abortion law urgently in order to prevent a surge in unsafe abortion and the deaths and serious health consequences that will surely follow.

The Current Law, Its Implementation, and Its History

Abortion is a felony according to Penal Code sections 149 to 151.[9] Under these sections, a pregnant woman who procures her own miscarriage using poison, force, or any other means may face seven years imprisonment. A person who, intending to procure a miscarriage, gives to or who causes any woman to take any poison or who uses force or any other means may face fourteen years imprisonment. And a person who supplies any thing to a pregnant woman or any other person, knowing that the thing is intended to be used for abortion, may face three years imprisonment.

ABORTION IS ILLEGAL IN NEARLY EVERY CIRCUMSTANCE

The sole legal exception to this criminalisation lies in section 243, which says, "A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation . . . upon an unborn child for the preservation of the mother's life . . . ."[10]

The criminalisation of abortion in nearly all circumstances imposes a wide threat of prosecution. This threat drives women and girls to seek desperate and unsafe measures to terminate a pregnancy in secret, oftentimes risking their health and even their lives.

In reality, however, abortion arrests and prosecutions have been and are exceedingly rare.[11] In an interview with a High Court judge, the judge said that there had been no prosecutions at the Zomba High Court under sections 149, 150, or 151 in the judge's six years on the bench.[12] Where there have been abortion-related arrests, it is usually of traditional healers using unsafe methods (methods that are not supported by medical professionals) to help a girl or woman of lesser means,[13] and not of certified medical doctors operating in private clinics. The government is nonetheless aware of private clinics that offer safe abortion services; but, to date, there has been no known attempt by the Ministry of Justice to prosecute or otherwise stop these clinics from performing what the government recognises as a criminal act.

As the Malawi Law Commission noted in 2015, "The provisions of the Penal Code dealing with abortion are based on the Offences Against the Person Act, 1861 of England."[14] While the United Kingdom permitted abortion in England, Scotland, and Wales starting in 1967, sections 58-59 of the 1861 Act remained in effect in Northern Ireland. In 2018, the CEDAW Committee issued a Report against the United Kingdom, finding that sections 58-59 constituted grave and systemic violations of women's human rights under CEDAW.[15] The CEDAW Committee urged the U.K. to "[r]epeal sections 58 and 59 of the Offences against the Person Act, 1861 so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion."[16] In 2019, the United Kingdom did so, and it then enacted

regulations permitting women to have an abortion on request in the first trimester, with specific grounds after that.[17] These regulations entered into force on 30 March 2020.

In the face of so many maternal deaths caused by the restrictive laws, together with what seems like a government focus on thwarting unsafe abortion (and not on preventing the termination of foetal life wherever it might occur), we must reform the laws to better meet the realities of our women's and girls' circumstances and uphold their rights to life, health, privacy, control over when and whether to have children, equality, and dignity and freedom from cruel treatment.

Just as the United Kingdom complied with its obligations under CEDAW, so too should Malawi. By permitting abortion in the first trimester upon request, it can dramatically reduce the deaths and injuries women and girls suffer, just as South Africa did.

Harmful Consequences of Abortion Criminalisation

Maternal Mortality and Other Serious Health Effects

The criminalisation of abortion drives women and girls to seek termination secretively, sometimes with help from individuals who lack medical training and/or through unsafe ways that put their lives at risk. The methods for unsafe abortion can include: drinking detergent, taking an abortion concoction from a traditional healer, taking dangerous herbs or pills, and piercing the uterus with objects such as a cassava stem or a bicycle spoke. Many of these methods can lead to severe bleeding or illness, trauma to one's organs, permanent infertility, and even death. One OB/GYN stated that "the worst of the worst is when there is injury. Just behind the vagina there, that's where the intestine is. So, if you overdid it, and you pierce the large intestine, that's certain death."[18]

"IF YOU OVERDID IT, AND YOU PIERCE THE LARGE INTESTINE, THAT'S CERTAIN DEATH."

– an OB/GYN

It is estimated that 51,693 abortions in 2015 resulted in complications that required post-abortion care;[19] however, only about one third of those incidences received medical treatment.[20] From 2015 to 2016, the maternal mortality rate was 439 deaths per 100,000 live births.[21] Unsafe abortion accounted for up to 18% of those maternal deaths.[22] At about 525 deaths per year, that adds up to thousands of deaths over the years.[23]

Abuse, Abandonment, and Infanticide of Unwanted Children

Unsafe abortion can sometimes result in a failed attempt at termination or a fear of death leading to an unwanted birth. A child who is the product of an unwanted pregnancy may face abuse, abandonment, or even death. In some instances, the pregnancy was unwanted because of pre-existing or anticipated financial or emotional strains, which can compromise the girl or woman's fitness to care for a child. A High Court judge said that "children have been abused because they belong to parents who didn't want them."[24] Some unwanted children have been left by roadsides; others have been abandoned in markets.[25] Still others have been delivered into toilets and left to die.[26]

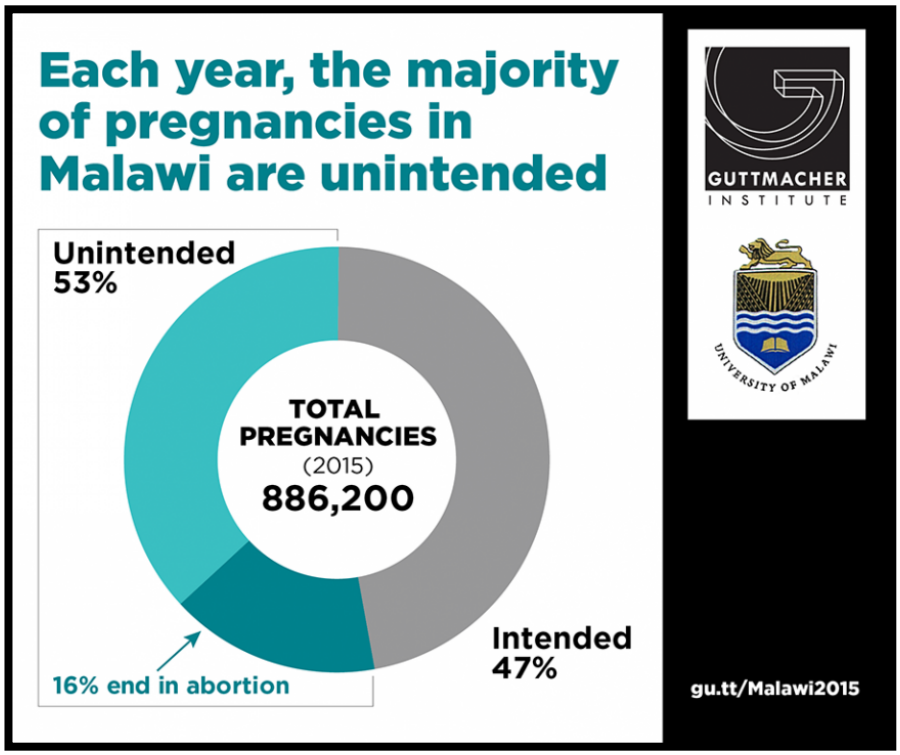
A Catholic Reverend said that he came around to supporting legal access to safe abortion after imagining the pain felt by a "little dumped baby" compared to that of a foetus that "was terminated at three months."[27] "I think it would have been better," said a women's rights lawyer in Lilongwe, "if someone is allowed to terminate before that point."[28]

"YOU HAVE CHILDREN WHO DO NOT FEEL PART OF SOCIETY BECAUSE THEY ARE NOT WANTED."

– a High Court judge

The Underlying Reasons for Unintended Pregnancies

Globally and in our country, "the vast majority of abortions occur in response to unintended pregnancies."[29] According to a Guttmacher Institute study in Malawi, around 53% of all pregnancies in 2015 were unintended and 16% of the total pregnancies during that year were ended by abortion.[30]



The lack of universal access to family planning services throughout the country is one factor, but there are many other reasons why the percentage of unintended pregnancies is so high. Some of these other reasons include: a lack of privacy and confidentiality in accessing contraceptives, the refusal by some men to allow their partners to use contraceptives, the failure rates of contraceptives, harmful cultural practices that encourage unprotected sex, pregnancy as a result of rape, sexual abuse, or sexual exploitation, and the prevalence of myths and misinformation about certain contraceptive methods.

Intrinsic to nearly all of these underlying reasons is the absence of control that women and girls have over their bodies and reproductive decisions. That they are prohibited by law to exercise their right to reproductive choice after they become pregnant is merely one link in a long chain of lack of control over a woman or girl's body—a link that can turn a situation from bad to fatal.

Lack of Access to Family Planning Services and Methods

Girls and women face real hurdles in accessing contraception. According to the 2015-2016 Demographic and Health Survey, 51.7% of sexually active unmarried girls between the ages of 15 and 19, 39.8% of sexually active unmarried women, and 15.1% of all women overall expressed an unmet need for contraceptives.[31] This means that although they want to avoid pregnancy, they are not using any contraceptive method.[32]

> **"WE NEED TO MAKE AVAILABLE CONTRACEPTIVE METHODS WHERE THE PEOPLE ARE, SO THEY DO NOT HAVE TO WALK."**
>
> – a sexual and reproductive health specialist

Although the Ministry of Health had hoped to make a free package of health services (including modern family planning products) to be accessible within 5 km to everyone in the country as part of its strategic vision for improving the health system by 2020,[33] this vision has not been fully realised. According to a sexual and reproductive health specialist at the University of Malawi College of Medicine, "facilities sometimes are 10 km, 15 km, even 25 km away."[34] Besides the physical distance, sometimes the contraceptive method is out of stock.[35] Furthermore, while community-based distribution of contraceptives has worked well in the sites where they operate,[36] not all communities throughout the country have community-based distribution agents.[37]

In the face of these hurdles, adolescent girls face a very high risk of unintended pregnancy. Coupled with the fact that there is little for young people to do, especially in the more rural parts of the country, "Sex becomes the only form of entertainment,"[38] said a social science researcher at Chancellor College. "[T]hat's a major driver of unplanned pregnancies."[39]

Lack of Privacy and Confidentiality in Accessing Contraceptives

> **"EVERYONE IN MY FAMILY WOULD KNOW."**
>
> – a program officer at Every Girl in School Alliance

A lack of privacy and confidentiality in spaces where family planning services are offered also serves as a big disincentive to acquiring them, especially for younger women or girls. As a program officer in the Every Girl in School Alliance explained, "This is a small community. For me to go and get the contraceptive, . . . if I knew those people or they knew my parents, everyone in my family would know."[40] Because extra-marital sex and pre-marital sex are highly stigmatised, girls and young women may rather risk becoming pregnant than to be found out for having sex. In addition, many parents and adults (including sexual and reproductive health nurses) do not believe that youth under

the age of 18 should be having sex at all, and therefore they may deny or restrict sexually active teens access to contraceptives.[41]

Myths and Misinformation Surrounding Contraceptive Methods

Myths and misinformation about the dangers of contraceptive methods are prevalent. A safe motherhood advocate at The White Ribbon Alliance, an NGO working to advance reproductive, maternal, and newborn health and rights, explained that some people think certain contraceptives will make a man lose his sexual virility or cause a woman to be barren.[42] A common belief amongst women is that their use of contraceptives can affect their partner's reproductive organs, causing men to become impotent.[43] Each of these myths has been debunked by medical professionals, but the prevalence of these beliefs creates a suspicion surrounding the safety of certain contraceptives and may discourage their use.

Refusal by Some Men to Allow Their Partners to Use Contraceptives

"IF ONE IS MARRIED, SHE SHOULD EXPECT TO HAVE MORE CHILDREN."

– a female participant in a family planning study

The decision whether or not to use contraceptives usually rests with the husband; and, according to a 2006 family planning study conducted in Mangochi district, most women reported that, even though they wanted to, "they could not use family planning because their husbands wanted more children . . . ."[44] "If one is married, she should expect to have more children,"[45] said a female participant in the family planning study. Some women indicated that they were afraid to even bring up the subject of family planning with their husbands because they might be beaten.[46] Most of the men surveyed also said that discussing family planning is "a waste of time."[47]

Failure Rates of Contraceptives

Even if the partners use contraceptives, no method of family planning is always effective. In a study of seven methods used in 43 countries, including Malawi, researchers found implants had the lowest failure rate and periodic abstinence the highest.[48] For every 100 uses in the first and third years, they found the following median rates of failure:

- Implants: 0.6 to 1.1
- Intrauterine Devices: 1.4 to 2.1
- Injectables: 1.7 to 5.5;
- Oral Contraceptive Pills: 5.5 to 15.1
- Male Condoms: 5.4 to 16.0
- Withdrawal: 13.4 to 35.7

- Periodic Abstinence: 13.9 to 32.4[49]

Thus, even when the partners are using a method, there will be some unplanned and unwanted pregnancies.

Harmful Cultural Practices that Encourage Unprotected Sex

In certain villages around the country, young girls are forced to undergo initiation ceremonies in which they are taught about sex and may sometimes be encouraged to have sex with adult men.[50] This practice of *kusasa fumbi* ("removing the dust"), i.e., losing one's virginity, oftentimes takes place without modern contraceptive protection and can lead to teenage pregnancy.[51] This is what happened to a 13 year old girl in Mulanje, after she went through the initiation ceremony to become an adult.[52] According to a professional at an international organisation working on women's and children's rights, "You can't talk about teen pregnancy without talking about . . . initiation . . . . [I]t's all interlinked."[53]

There are efforts on the ground now to revise the curriculum and make the ceremonies more age appropriate or to ban the practice of encouraging sex after the ceremony.[54] However, "[t]his is a traditional cultural thing that people believe in,"[55] said MacBain Mkandawire, the Executive Director of Youth Net and Counselling. "[I]t will be very difficult to just say let us end initiation ceremonies."[56]

> **"THIS IS A TRADITIONAL CULTURAL THING THAT PEOPLE BELIEVE IN."**
>
> – MacBain Mkandawire, Executive Director of YONECO

Pregnancy as a Result of Sexual Abuse or Exploitation

Sexual violence is prevalent throughout the country and the risk of pregnancy is high for survivors.[57] In a 2013 survey on violence against children and young women, the Ministry of Gender, Children, Disability and Social Welfare reported that one out of five females between the ages of 18 and 24 experienced at least one incident of sexual abuse before turning 18 years old.[58] Sexual abuse in this report included, among other things: physically forced sex, pressured sex, and sexual exploitation (i.e., exchanging sex for food, gifts, money, or favours).[59]

Numerous interviewees spoke about the prevalence of rape culture and the vulnerability of girls or women to exploitative sex. A coordinator at the Centre for Alternatives for Victimised Women and Children explained that men with money can and do entice girls to have sex, oftentimes giving them more money to have unprotected sex than protected sex.[60] Similarly, there have been news stories of women trading unprotected sex for fish in order to feed themselves and their children.[61] A 2014 study on unintended pregnancies

in Malawi found that, indeed, "[w]omen from poor households are more likely to have unwanted pregnancy than their rich counterparts."[62]

Economic poverty and the subordination of women and girls because of their sex make them doubly vulnerable to such sexual abuse or exploitation. Having to face an unwanted pregnancy on top of the other burdens they carry only exacerbates their economic and social vulnerability.

Rights Violations under International Law and the Constitution

The Right to Life

The current law on termination of pregnancy drives women and girls to seek unsafe abortion methods in secret, risking their lives by drinking poison or sticking crude objects into their bodies.

18% OF ALL MATERNAL DEATHS ARE FROM ABORTION-RELATED COMPLICATIONS.

– Emily Jackson et al., *A strategic assessment of unsafe abortion in Malawi*, Reproductive Health Matters 133, 134 (2011).

International human rights treaty bodies agree that restrictive criminal abortion laws that prevent women and girls from seeking abortion safely and legally are a violation of their right to life. This right is guaranteed by the ICCPR,[63] the African (Banjul) Charter,[64] the Maputo Protocol,[65] the African Children's Charter,[66] and the Convention on the Rights of the Child ("CRC").[67] The right to life is also guaranteed by Section 16 of the Constitution.[68]

In its 2018 General Comment No. 36 on the right to life, the U.N. Human Rights Committee, which is the treaty monitoring body for the ICCPR, urged States Parties to repeal their criminal abortion laws to comply with the duty to respect women and girls' right to life.[69]

"States Parties may not regulate . . . abortion . . . in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and they should revise their abortion laws accordingly."

— U.N. Human Rights Committee

Thus, the Committee emphasised that States Parties should not "apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion."[70]

Furthermore, no treaty or treaty monitoring body states or recognises that life begins at conception. During the negotiations for the drafting of the ICCPR, an amendment to recognise that life begins at conception was rejected; and the current article 6 (right to life) as well as subsequent commentary by the Human Rights Committee indicates that its position is clear: maternal mortality caused by overly restrictive abortion laws violates women's and girls' right to life.[71] Indeed, this premise was clear from the beginning of the human rights

era, as the Universal Declaration of Human Rights ("UDHR") made clear in its first article: "All human beings are ***born*** free and equal in dignity and rights."[72]

The African Union human rights treaties cite the UDHR in their Preambles and also recognise that every born female child and woman has a right to life and that every girl and woman has the "right to decide whether to have children, the number of children, and the spacing of children.[73] These rights to life and to decide on whether to have a child—which are guaranteed by the African Children's Charter, the Maputo Protocol, and CEDAW—when read together, strongly indicate that a child's right to life begins at birth and does not apply to a foetus because it would contravene a woman's right to terminate her pregnancy.

"THE UNBORN HAVE NEVER BEEN RECOGNIZED IN THE LAW AS PERSONS IN THE WHOLE SENSE."

– *Roe v. Wade*, 410 U.S. 113 (1973)

Our law on abortion must be reformed urgently so that women and girls can make the difficult choice of terminating their pregnancies using safe and reliable methods that do not put their lives at risk.

The Right to Health

The criminalisation of abortion in nearly all cases has serious negative impacts on women's and girls' physical and mental health. The right to health—including reproductive health and family planning services and choosing whether to have children—is protected by the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW")[74] and the Maputo Protocol,[75] as well as by the Constitution.[76] In its General Recommendation No. 24 on women and health, the CEDAW Committee stated that "laws that criminalise medical procedures only needed by women [and that] punish women who undergo those procedures are barriers to women's access to health care."[77]

Furthermore, the Maputo Protocol and CEDAW guarantee a woman or a girl the right to decide whether to have children, as well as the number and spacing of children.[78] As mentioned above, the right to decide whether, when, and the number of children to have is an explicit right guaranteed by the Maputo Protocol under its right to health; this right can only be fully realised when any pregnant person can reject having a child that she does not want at this time by having an early abortion. In addition, specific additional rights to have abortion in certain cases are also

"ADDRESSING UNSAFE ABORTION IS AN URGENT PUBLIC HEALTH PRIORITY."

– Dr. Chisale Mhango, senior lecturer at the University of Malawi College of Medicine and former director of the National Reproductive Health Service.

Guttmacher Institute, *Clandestine and Unsafe Abortion Common in Malawi* (4 Apr. 2017), https://www.guttmacher.org/news-release/2017/clandestine-and-unsafe-abortion-common-malawi

specified in the same right to health.[79]

"The right to be free from discrimination also means that women must not be subjected to criminal proceedings . . . for having benefited from health services . . . such as abortion . . . ."

— African Commission on Human and Peoples' Rights

General Comment No. 2 on Article 14.1(a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (55th Sess., 2014), ¶ 32 (2014), https://www.achpr.org/legalinstruments/detail?id=13.

The CEDAW Committee has repeatedly expressed concern over our country's high maternal mortality rate and criminalisation of abortion. In its 2006 Concluding Observations on the status of our implementation of CEDAW, the CEDAW Committee noted that death resulting from unsafe abortion contributed to the "consistently high maternal mortality rate."[80] In its 2015 Concluding Observation, the Committee again noted that the criminalisation of abortion compelled women to resort to unsafe abortions and recommended that our law be amended to legally allow abortion at least in specified circumstances.[81]

Other countries that have drawn the attention of the CEDAW Committee for their restrictive abortion laws have since liberalised their laws on abortion. For example, in a 2018 CEDAW Committee opinion on the United Kingdom of Great Britain and Northern Ireland's Offences against the Person Act, 1861, which remained in effect in Northern Ireland—an Act that is the source of and nearly identical to our current Penal Code law on abortions—the CEDAW Committee recognised that "abortion is a service that only women require;" and it concluded by recommend[ing] that the State party urgently:

> a) Repeal sections 58 and 59 of the Offences against the Person Act, 1861 so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion . . . .[82]

The Committee stated that the U.K. law negatively impacted women's right to health in Northern Ireland, and the United Kingdom had committed "grave" and "systematic" violations of women's right to health.[83] As a result of the CEDAW Committee's finding, the United Kingdom enacted a new law that repealed Sections 58 and 59 of the 1861 Act and enacted regulations that allow abortion upon request in the first 12 weeks as well as on several other legal grounds in Northern Ireland, the only country not covered by the original U.K. Abortion Act of 1967.[84]

Reforming the law on abortion to emulate the U.K.'s action would prevent women and girls from needlessly suffering abortion-related complications such as severe bleeding, sepsis, uterine removal, infertility, or emotional trauma, among other harmful health consequences.

The Right to Privacy

A woman or girl's right to privacy is violated when the state forces her to carry an unwanted pregnancy to term. The right to privacy for Malawian women and girls is guaranteed by section 21 of the Constitution as well as article 17(1) of the ICCPR.

In the seminal case on the right to privacy vis-à-vis abortion—*Roe v. Wade*—the United States Supreme Court stated that criminal abortion laws like the one in place in Texas in 1973 violated the U.S. constitutional right to privacy.[85] The Texas law at the heart of the case is substantially similar to our current law, as it legally permitted abortion only to save the life of the pregnant woman.[86] As a result of the *Roe* decision, the Supreme Court of the United States recognised a constitutional privacy right to the safe and legal termination of pregnancy.

Similarly, the Human Rights Committee also found a violation of the right to privacy in *Mellet v. Ireland*, a case involving a woman who was forced either to carry a non-viable pregnancy to term or to travel abroad in order to terminate her pregnancy legally.[87] The law in question in *Mellet* imposed a total ban on abortion, even in cases where the life of the pregnant woman was at risk; like Malawi's and Northern Ireland's criminal abortion statutes, Ireland's laws also came from the Offences against the Person Act, 1861.[88] Furthermore, the Irish Constitution also recognised specifically that an unborn foetus has a right to life.[89] Nevertheless, the Human Rights Committee noted that Ireland has an obligation under article 2 of the ICCPR to "ensure to all individuals within its territory . . . the rights recognized in the Covenant" and stated that Ireland "should amend its law on voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant . . . ."[90] As a result of the view taken by the Human Rights Committee, Ireland amended its Constitution in 2018 to permit the regulation of termination of pregnancy and passed a new law that allows medical abortion during the first 12 weeks of gestation, as well as on several other grounds thereafter.[91]

Reforming the law on abortion would enable a woman and girl to make the deeply personal choice about whether to terminate her pregnancy without the Penal Code state interference and the terrible health injuries that come from unsafe abortion.

The Rights to Equality and Non-discrimination

The rights to equality and non-discrimination are violated when the law denies women and girls a health service that only they need. The right to equality is guaranteed by sections 20(1) and 24(1) of the Constitution, as well as by CEDAW,[92] ICCPR,[93] the Banjul Charter,[94] the Maputo Protocol,[95] and the African Children's Charter.[96] In 2014, the African

Commission adopted General Comment No. 2, which interprets the rights to family planning and safe abortion under articles 14.1(a)-(c) and (f) and 14.2(a) and (c) of the Maputo Protocol. In this General Comment, the African Commission noted the commitment by the African Union "to promote gender equality and the need to eliminate all forms of discrimination against women," including "the principle of equality in health."[97] The Commission also stated that "[t]he right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved to them such as abortion . . . ."[98] Similarly, in its General Recommendation No. 24 on women and health, the CEDAW Committee stated, "it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women."[99] De-criminalising abortion would grant women the legal ability to access the reproductive health services they need without discrimination on the basis of sex.

The Right to Dignity and Freedom from Cruel, Inhuman, and Degrading Treatment

The criminalisation of abortion violates the right to dignity and the right to be free from cruel, inhuman, and degrading treatment, as both the Constitution and the ICCPR provide; indeed, the Human Rights Committee in *Mellet* also found that the Irish law violated women's right to freedom from cruel treatment.[100] The Law Commission also recognised that "the dangerous substances and objects used in procuring abortion in places where there is no skill, hygiene and anaesthesia speak to how unsafe abortion is so dehumanising for women."[101] The dangerous environment in which unsafe abortion occurs in our country can be avoided if abortion were to be made legal.

Recommended Changes to the TOP Bill

While passing the TOP Bill would be a significant move forward in preventing unnecessary deaths, there are substantial gaps and restrictions in the current draft that would still disqualify countless women and girls from accessing safe and legal abortion. Many girls and women would still die. Many others would suffer severe health injuries. The researchers of this report believe that the below recommended changes to the draft TOP Bill better address the lived realities of women and girls in Malawi and better reflect our human rights commitments under the Constitution and international law.

TEENAGE PREGNANCIES ARE SURGING BECAUSE OF COVID-19.

In addition, many of the recommended changes are supported by an overwhelming majority of interviewees who were surveyed as part of the fact-finding mission in March of 2020, including chiefs, religious leaders, lawmakers, and other leaders of the SRHR advocacy movement.

Finally, these changes are needed urgently to address the surge in teenage and unintended pregnancies as a result of covid-19.

Allow Pregnancy on Request in the First Trimester

The new law should allow for termination on request in the first trimester if the government is serious about preventing the largest number of deaths from unsafe abortion. While the TOP Bill provides several specific grounds for legalised abortion, an OB/GYN at the College of Medicine noted that "there will still be a significant proportion of women who will not qualify to get an abortion."[102] "The whole idea is we want to reduce the volume of abortion-related death,"[103] he added. "We may, but only to a point."[104]

The Law Commission noted that, "[f]or a long time, Government has bemoaned the high prevalence of maternal mortality in Malawi and has identified unsafe abortion as one of the major contributing factors to this problem."[105] Nevertheless, the Law Commission specifically rejected abortion on request based on two main reasons. The researchers respectfully assert that the Law Commission's reasoning is misguided and not evidence-based.

First, the Law Commission's view was that abortion on request does not align with Malawi's moral values and aspirations. However, the overwhelming majority of interviewees surveyed by the researchers on whether abortion on request should be allowed in the first trimester said "yes." Out of 55 interviewees surveyed,

"WHAT MAKES ABORTION SAFE IS SIMPLE AND IRREFUTABLE—WHEN IT IS AVAILABLE ON THE WOMAN'S REQUEST AND IS UNIVERSALLY AFFORDABLE AND ACCESSIBLE."

34 people supported abortion on request in the first trimester. Ten people did not respond to the question; and only 11 people said they would not support it. The individuals who supported abortion on request included a Senior Chief, a reverend, two medical doctors, a psychosocial counsellor, a High Court judge, a Senior Reproductive Health Officer at the Ministry of Health, and representatives of numerous women's and reproductive health rights NGOs. Moreover, it is difficult to reconcile the assertion that abortion is against morals with the fact that 141,000 abortions took place in 2015 and the government does not enforce the existing Penal Code sections. In any event, CEDAW requires that Malawi "repeal all national penal provisions that discriminate against women,"[106] and the Human Rights Committee has stated that States parties should "ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law."[107]

THE IMPETUS FOR REFORM ON THE LAW OF ABORTION IS TO PREVENT MATERNAL DEATHS FROM UNSAFE ABORTION.

Furthermore, 30 out of 37 interviewees—including religious leaders—believed that one's individual religious views and beliefs should not govern the law on abortion that would be applicable to all Malawian women and girls. They believed it was not right to impose their religious views on those who do not share them.

Second, the Law Commission felt that abortion on request was not the best solution to address the problem of unintended and teenage pregnancies. However, abortion law reform is not meant to address the underlying reasons for unintended and teenage pregnancies; rather, it is meant to avoid the severe consequences to a person's life or health as a result of the failures or shortcomings in a country's family planning services and restrictive abortion laws. According to the World Health Organisation (or "WHO"), unsafe abortions "are a result of unmet need for family planning, contraceptive failure, a lack of information about contraception, and restricted access to safe abortion services."[108] And, "as a preventable cause of maternal mortality and morbidity, unsafe abortion must be dealt with as part of the MDG on improving maternal health . . . ."[109] Thus, the impetus for reform on the law on abortion is ***to prevent maternal deaths from unsafe abortion***—which is caused by systemic failures or shortcomings in family planning services—and not to address directly the problem of unintended or teenage pregnancies.

Globally, the vast majority of terminations occur in the first trimester of pregnancy.[110] In addition, 59% of the world's women of reproductive age live in countries that permit termination of pregnancy on a wide range of legal grounds, including abortion on request in the first trimester.[111] "What makes abortion safe is simple and irrefutable—when it is available on the woman's request and is universally affordable and accessible."[112] In order to reduce the most deaths from unsafe abortion, women and girls must have legal access to safe abortion on request in the first trimester.

Allow Certified Health Service Providers to Consider *All* Necessary Factors in Their Mental Health Assessments

The TOP Bill allows for termination if a certified health service provider determines, through a psychiatric assessment, that termination is needed to prevent injury to a woman's mental health. In making such psychiatric assessment, however, the provider is not permitted to take into account the socio-economic circumstances of the pregnant woman. The Law Commission's stated reasoning for the restriction is "for fear that when implementing the law it could be interpreted as providing for abortion on demand."[113] However, this restriction on a provider's medical determination is vague and impractical, unethical, and out of alignment with global trends and international health guidance. In addition, the restriction corrupts the purpose of the legal ground—to guard against a pregnancy's harmful impacts to a woman's mental health—and weakens the protections intended to be accorded to women who might suffer mental health consequences as a result of their pregnancy.

The TOP Bill offers no guidance on what factors are considered socio-economic or not. In the absence of clear guidance and criteria, this restriction is likely to cause the same issue of providers being hamstrung for fear of prosecution because of vagueness in the law—a key issue that is meant to be resolved by the law reform effort in the first place.

The draft law also assumes that it is possible to conduct a comprehensive and accurate psychiatric assessment using sound medical practices while wearing blinders to all "socio-economic" factors in a woman's life. However, the TOP Bill does not instruct on how providers should parse out the mental health impact caused by one factor vis-à-vis another factor; and one can imagine the difficulties in conducting such an assessment.

In addition, the restriction could force providers, such as those who might be faced with a woman on the verge of self-harm or suicide because her pregnancy would make her and her family destitute, to choose between violating the law or violating their medical code of ethics.[114]

WHO defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[115] WHO's technical and policy guidance for safe abortion specifically instructs that "[a] woman's social circumstances are also taken into account to assess health risk."[116]

Restricting certified health service providers from considering socio-economic factors in a psychiatric assessment muddies the purpose of this legal ground and significantly weakens the protections against injury to mental health that is intended to be accorded to pregnant women. A health provider must have the freedom to make an autonomous medical determination free from such interference by the state in order for this legal ground to be meaningful.

These considerations are likely part of the reason why no other African country with the same health or mental health ground for legal abortion has such a carve-out or restriction.[117] The researchers strongly advocate for the deletion of section 3(2) of the draft TOP Bill.

Allow Abortion in Cases of Severe Foetal Impairment, Which May Include Fatal Foetal Abnormality

The current TOP Bill allows for abortion in cases where there is severe malformation of the foetus which will affect its viability or compatibility with life. The law should be expanded so that women and girls who are pregnant with a foetus that has a severe physical or mental impairment can have access to safe and legal abortion, if that is their freely-informed choice. This expanded provision aligns with what the CEDAW Committee recommends as the "least" that States parties should allow with respect to this ground.[118] The Committee also recommends that in order to avoid perpetuating stereotypes about persons with disabilities, women who freely and voluntarily choose to carry such pregnancies to term should also be ensured appropriate services.[119] Accordingly, the TOP Bill's section 6(2)(a) requirement for counselling the pregnant person should be amended to require that the pregnant person be told the available options for obtaining financial and social support for raising the child if the woman chooses to continue the pregnancy.

With these suggested changes, the researchers therefore recommend an expansion of the current TOP Bill on this ground to avoid the deaths and injuries that some pregnant women or girls will risk rather than being compelled to give birth. The United Kingdom complied with this recommendation, as should Malawi.[120]

Clarify that "Defilement" Includes All Girl Children Who Become Pregnant as a Result of this Kind of Sexual Abuse

The TOP Bill's inclusion of a legal ground for pregnancy as a result of rape, incest, or defilement is timely and necessary in the face of pervasive sexual abuse against women and girls. However, a definition must be added for "defilement" that includes girls up to the age of 18 for the purposes of accessing safe and legal abortion under the TOP Bill. Currently, the Penal Code offence of defilement covers only girls up to the age of 16—yet the Constitution has been changed to define a child as any person under the age of 18, and many 16 and 17 year old girls suffer from sexual abuse, exploitation, and violence committed by adult men.[121]

Like younger children, 16 and 17 year old girls who get pregnant will also experience a negative impact on their education and well-being. And like younger children, most 16 and 17 year old girls lack the emotional maturity and financial stability required to bear and raise a child. For these and other reasons, our Parliament also passed the Marriage, Divorce and Family Relations Act in 2015, which prohibits marriage between persons who are under the age of 18 without exception.[122]

In order to protect all girl children from unsafe abortion as a consequence of sexual abuse,[123] the TOP Bill should include a definition of "defilement" that clarifies that, for the purposes of accessing safe and legal abortion, any girl child (i.e. a girl who is under the age of 18) can qualify for abortion on the ground of defilement if she becomes pregnant.

Delete the 16-week Time Limit for Termination based on Rape, Incest, or Defilement

The TOP Bill imposes a 16-week gestational limit on the ground of rape, incest, or defilement. The 16-week gestational limit is problematic for each of the three sexual offences listed and must be deleted in order for this legal ground to be meaningful. The researchers support deleting this limit in recognition of the cultural barriers that prevent many women from seeking medical attention as a result of sexual abuse, as well as the lack of awareness amongst very young girls about what may be happening in their bodies as a result of defilement or early sex.

Rape is highly stigmatised in our culture and women who have been raped may be afraid, embarrassed, or too traumatised to seek help immediately. The Law Commission stated that it "felt that sixteen weeks is enough time for [women] to make a decision of whether or not to terminate the pregnancy." In addition, the Law Commission noted that quickening starts between 16 and 18 weeks and thereafter, "bonding with the mother starts and abortion at this stage would sometimes result in emotional problems." Both of these reasons ignore the emotional and physical challenges that a woman might face after being raped. In fact, the Law Commission also noted in the same report the argument that "forcing women to carry a pregnancy to term which is a result of sexual assault such as rape or incest is a form of cruel and degrading treatment."[124]

The Law Commission noted that abortion should be allowed in cases of incest because stakeholders "bemoaned the practice of grown up men having sexual relations with . . . women or young girls who are within the prohibited degrees of consanguinity."[125] However, the effort to address this concern is undercut by having the 16-week limit. Women and especially young girls are vulnerable to sexual abuse by a male family member because of their subordinate position in society generally, as well as their financial vulnerability and dependency in the home. By limiting their ability to terminate a pregnancy caused by a family member, the proposed law forces them to choose between undergoing an unsafe abortion or further entrenching their subordinate position by shouldering the burden of raising an unwanted child.

Pregnancies from defilement would be especially impacted by the 16-week limit. Since March 2020, schools throughout the country have been closed due to covid-19. According to news reports, teen pregnancies are surging around the country.[126] Over 7,000 girls have become pregnant from January to June of this year in Mangochi; and 5,000 cases have been reported in Phalombe.[127] There are many reasons why a young pregnant girl might seek medical help late. For very young girls, she might not understand the changes to her body or fail to recognise pregnancy symptoms. And because sex and conception are not taught in schools, she might not even know that she can become pregnant from having sex. A young girl may also be afraid to tell her parents and some adults only find out about their daughter's pregnancy when the girl begins to show. By the time a young girl reports being defiled and goes for a health exam, she may already be past the deadline to decide whether to

terminate the pregnancy. Between the surge in pregnancies as a result of covid-19 and the fact that many girls seek help for pregnancy late, this gestational time limit would block thousands of young girls from accessing safe and legal abortion.

Remove the Police Reporting Requirement for Termination based on Rape, Incest, or Defilement

The researchers support removing the police reporting requirement in cases of rape, incest, or defilement because it is an onerous barrier to seeking safe abortion and because the vast majority of interviewees are against the requirement. It is also a violation of women's right to privacy, as the African Commission on Human and Peoples' Rights explained in its General Comment No. 2: "For women who have a right to therapeutic abortion services, being subjected by health care providers, police and/or judicial authorities to an interrogation on the reasons why they want to interrupt a pregnancy that meets the criteria listed in Article 14(2)(c) . . . constitutes a violation of their rights to privacy and confidentiality."[128]

The researchers note that the Law Commission considered two options in its drafting of the TOP Bill. One was to adopt a "strict" medical examination requirement in order to reduce the risk of falsification of rape. The other was to adopt a "lenient" law without a medical examination requirement in order to facilitate access to a needed health service. The Law Commission rejected both options and proposed a provision that would require a woman seeking abortion as a result of a sexual offence to first file a police report—such a report would suffice as evidence of rape, etc. for purposes of seeking an abortion on this ground.

YOUNG GIRLS WHO HAVE BEEN FORCED INTO SEX BY FAMILY MEMBERS UPON WHOM THEY DEPEND FINANCIALLY MAY BE ESPECIALLY RELUCTANT TO FILE A POLICE REPORT.

This requirement that a woman or girl file a police report in order to qualify for safe and legal abortion is problematic for three main reasons. One, having to file a police report will necessarily delay or even block the provision of a highly time-sensitive health service, especially because there is also a 16 week gestational limit on this legal ground. "The problem is the delay,"[129] said a sexual and reproductive health specialist at the Centre for Reproductive Health at the University of Malawi College of Medicine. "The first [step] should be to access health care, and then the police processes can follow so that there are no delays."[130] A women's rights lawyer and member of COPUA added, "It's very important to get the medical service as quickly as possible . . . . Then, after, they can report if they have to."[131]

Second, having to report a sexual offence could subject women and girls to re-victimisation. A program officer at Every Girl in School Alliance recounted how a young girl

"WE SHOULD BELIEVE WHAT SHE SAYS."

– A high ranking official at the Center for Advancement of Human Rights and Development in Malawi

went to report being defiled and was laughed at by police officers. "They made a joke about it,"[132] she said. "So that really sums up how the police take rape."[133]

Third, many cases of rape, incest, and defilement go unreported entirely—as the Law Commission itself has noted[134]—due to the severe shame and stigma associated with such crimes or a decision on the part of the woman or girl to not involve the criminal justice system. "Women tend to want justice in different manners,"[135] said a High Court judge. "They might want to just get counselling and be done with it; they might not want to deal with the legal aspect. Forcing a woman to report it and have it as a record is problematic for me,"[136] the judge said. Young girls who have been forced into sex by family members upon whom they depend financially may be especially reluctant to file a police report against the perpetrator.

Out of 45 interviewees surveyed, 31 individuals—including a Senior Chief, a reverend, medical doctors, a High Court judge, a Chief Resident Magistrate, and a high ranking official in the Ministry of Gender—did not support having a police reporting requirement to access safe and legal abortion. This procedural reporting requirement complicates a woman or girl's access to a critical health service. The researchers strongly recommend deleting this reporting requirement in section 3(1)(d) as well as the corresponding evidence requirement in section 8.

Remove Imprisonment as a Penalty for Violating the Law on Termination

The researchers support removing the penalty of criminal imprisonment for violations of the TOP Act. The current TOP Bill would subject violators to imprisonment for between 3 and 14 years. However, the CEDAW Committee, as well as the Human Rights Committee and the African Commission on Human and Peoples' Rights, have urged State parties to decriminalise abortion specifically by removing the possibility of imprisonment. In its Report issued against the United Kingdom, the CEDAW Committee recommended that sections 58 and 59 of the law be repealed "so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion."[137] As a result, the 2020 regulations that were adopted for Northern Ireland stipulate that a fine may be imposed but not imprisonment.[138] In order to comply with our international human rights obligations, the TOP Bill should not include imprisonment as a penalty in sections 7(6), 12(1), and 13-16.

Clarify that 12 Weeks Gestation Refers to the First 12 Weeks of a Pregnancy After Conception

The TOP Bill has a number of references to twelve (12) weeks gestation but it does not define when gestation begins. The researchers propose replacing "twelve (12) weeks gestation" with "first trimester" and adding a defined term for "First Trimester" and "Date of Conception" so that this time period is made more clear. The researchers propose that "Date of Conception" be defined as the 14 days after the first day of the pregnant woman's last menstrual period and "First Trimester" be defined as the first 12 weeks of a pregnancy after that date.

Conclusion

In conclusion, abortion law reform is needed to better protect women and girls from unsafe abortion and uphold their rights under the Constitution and international law. In addition, change is needed ***urgently*** to address the devastatingly high rate of teenage and unintended pregnancy as a result of covid-19. The TOP Bill proposed by the special Law Commission on the law on abortion, while a significant step towards making abortion safe and more accessible, still contains substantial gaps and restrictions that would make safe abortion unavailable to many women and girls.

The researchers recommend that the following changes be made to the TOP Bill:

- Allow pregnancy termination on request in the first trimester
- Allow certified health service providers to consider all necessary factors in their mental health assessments
- Allow abortion in cases of severe foetal impairment, which may include fatal foetal abnormality, and require counselling to include information about financial and social supports for raising such a child
- Allow all girl children who suffer the sexual abuse of defilement to access safe and legal abortion
- Delete the 16-week time limit for termination based on rape, incest, or defilement
- Remove the police reporting requirement for termination based on rape, incest, or defilement
- Remove imprisonment as a penalty for violating the law on termination
- Clarify that 12 weeks gestation refers to the first 12 weeks of a pregnancy after conception

Endnotes

[1] *See generally* Raoul Wallenberg Institute, *The Lund-London Guidelines* (2009), https://www.ibanet.org/Fact_Finding_Guidelines.aspx.

[2] Wanangwa Chimwaza et al., *Incidence of Induced Abortion in Malawi, 2015,* 12 PLOS One 1, 1 (2017),https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0173639.

[3] Interview with a sexual and reproductive health specialist at the University of Malawi College of Medicine in Blantyre, Malawi (12 Mar. 2020).

[4] Judith Daire et al., *Political Priority for Abortion Law Reform in Malawi: Transnational and National Influences*, 20 HEALTH & HUM. RTS. J. 225, 226 (2018).

[5] National Statistical Office of Malawi, Malawi MDG endline survey (MES) 2014 report (Zomba: National Statistical Office, 2015) *cited in* Judith Daire et al., *Political Priority for Abortion Law Reform in Malawi: Transnational and National Influences*, 20 HEALTH & HUM. RTS. J. 225, 226 (2018).

[6] Janie Benson et al., *Reductions in Abortion-Related Mortality Following Policy Reform: Evidence from Romania, South Africa and Bangladesh*, 8 REPROD. HEALTH 1, 1 (2011), https://reproductive-health-journal.biomedcentral.com/articles/10.1186/1742-4755-8-39.

[7] *Id.* at 7.

[8] *Id.*

[9] PENAL CODE, §§ 149-151 (2012) (Malawi).

[10] *Id.,* § 243.

[11] Daire, *supra* note 4, at 226.

[12] Interview with a High Court judge in Zomba, Malawi (12 Mar. 2020).

[13] *See e.g.*, *Traditional Doctor, Woman Arrested Over Abortion*, Malawi 24 (18 Dec. 2018), https://malawi24.com/2018/12/18/traditional-doctor-woman-arrested-over-abortion/ (The traditional doctor was arrested under section 151 and the 21 year old pregnant woman was arrested for concealing her birth under section 232 of the Penal Code.).

[14] Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, 14 (June 2015).

[15] Committee on the Elimination of Discrimination against Women, *Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/OP.8/GBR/1 (23 Feb. 2018), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf.

[16] *Id.*, ¶ 85(a).

[17] Northern Ireland (Executive Formation etc) Act 2019 (UK for N. Ir.), § 9(2) ("Sections 58 and 59 of the Offences Against the Person Act 1861 (attempts to procure abortion) are repealed under the law of Northern Ireland."). See also *id.* §§ 9(3) (banning all criminal investigations and proceedings under the repealed sections), 9(1) and 9(4)-9(6) (requiring the Secretary of State to ensure compliance with the CEDAW Committee recommendations and to issue regulations providing for the right to abortion in Northern Ireland to go into effect by 31 March 2020). The Secretary of State subsequently issued these regulations: The Abortion (Northern Ireland) Regulations 2020, SI 2020/345 (UK for N. Ir.). They permit abortion on request in the first trimester, *id.* reg. 3, and on grounds after that date, *id.* regs. 4-7.

[18] Interview with an OB/GYN in Mponela, Malawi (9 Mar. 2020).

[19] Daire, *supra* note 4, at 226.

[20] Guttmacher Institute, *Abortion and Postabortion Care in Malawi,* (Apr. 2017), https://www.guttmacher.org/fact-sheet/abortion-malawi.

[21] National Statistical Office (NSO) [Malawi] and ICF, *Malawi Demographic & Health Survey 2015-2016* 248 (2017), https://dhsprogram.com/pubs/pdf/FR319/FR319.pdf.

[22] Chisale Mhango & Godfrey Dalitso Kangaude, *The Duty to Make Abortion Law Transparent: A Malawi Case Study*, 143 INT'L J. GYNECOLOGY & OBSTETRICS 409, 409 (2018).

[23] This number is calculated by dividing 665,000 (the total number of births in 2015) by 100,000 to get a multiplier of 6.65. In 2015-2016, the maternal mortality rate was 439 deaths per 100,000 live births. Thus, 439 multiplied by 6.65 equals 2,919.35 total maternal deaths in that period. 18% of 2,919.35 equals around 525 maternal deaths due to abortion complications.

[24] Interview with a High Court judge in Malawi (12 Mar. 2020).

[25] Interview with a doctor in the Nurses and Midwives Council of Malawi in Lilongwe, Malawi (10 Mar. 2020).

[26] *Id.*

[27] Interview with a Catholic Reverend in Malawi (13 Mar. 2020).

[28] Interview with a women's rights lawyer and member of COPUA in Lilongwe, Malawi (9 Mar. 2020).

[29] Guttmacher Institute, *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, (Mar. 2018), https://www.guttmacher.org/report/abortion-worldwide-2017.

[30] Guttmacher Institute, *Unintended pregnancy in Malawi, 2015,* (4 Apr. 2017), https://www.guttmacher.org/infographic/2017/unintended-pregnancy-malawi-2015.

[31] National Statistical Office (NSO) [Malawi] and ICF, *Malawi Demographic & Health Survey 2015-2016* 107 (2017), https://dhsprogram.com/pubs/pdf/FR319/FR319.pdf.

[32] Guttmacher Institute, *Abortion and Postabortion Care in Malawi,* (Apr. 2017), https://www.guttmacher.org/fact-sheet/abortion-malawi.

[33] Paul Kawale, Claudia Pagliari, and Liz Grant, *What does the Malawi Demographic and Health Survey say about the country's first Health Sector Strategic Plan?* 9(1) J. OF GLOBAL HEALTH 2019, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6551483/; *see also* https://www.health.gov.mw/index.php/essential-health-package for a list of the modern family planning products included as part of the "Essential Health Package."

[34] Interview with a sexual and reproductive health specialist at the University of Malawi College of Medicine in Blantyre, Malawi (12 Mar. 2020).

[35] *Id.*

[36] FHI 360, *Malawi Evaluation finds Community-Based Distribution of Injectable Contraception Works Well*, https://www.fhi360.org/sites/default/files/media/documents/Works%20in%20PROGRESS%20No.%202.pdf.

[37] Interview with a sexual and reproductive health specialist at the University of Malawi College of Medicine in Blantyre, Malawi (12 Mar. 2020).

[38] Interview with a social science researcher based out of Chancellor College, University of Malawi in Blantyre, Malawi (12 Mar. 2020).

[39] *Id.*

[40] Interview with a program officer at Every Girl in School Alliance in Lilongwe, Malawi (9 Mar. 2020).

[41] *See* Andrew Self et al., *Youth Accessing Reproductive Health Services in Malawi: Drivers, Barriers, and Suggestions from the Perspectives of Youth and Parents*, 15 REPROD. HEALTH J. 1, 6 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6008927/.

[42] Interview with a safe motherhood advocate at The White Ribbon Alliance in Lilongwe, Malawi (9 Mar. 2020).

[43] Effie K. Chipeta et al., *Contraceptive Knowledge, Beliefs and Attitudes in Rural Malawi: Misinformation, Misbeliefs and Misperceptions*, 22 Malawi Med. J. 38, 39 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3345759/.

[44] Effie K. Chipeta et al., *Contraceptive Knowledge, Beliefs and Attitudes in Rural Malawi: Misinformation, Misbeliefs and Misperceptions*, 22 MALAWI MED. J. 38, 40 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3345759/.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Chelsea B. Polis et al., Guttmacher Institute, *Contraceptive Failure Rates in the Developing World: An Analysis of Demographic and Health Survey Data in 43 Countries* 17 (2016), http://www.guttmacher.org/report/contraceptive-failure-rates-in-developing-world.

[49] *Id.* Table 7.

[50] Lameck Masina, *Malawi Campaigners Seeks to End Sex in Girls' Initiation Ceremony*, Global Citizen (9 Jan. 2019), https://www.globalcitizen.org/en/content/malawi-girls-sex-initiation-ceremony/.

[51] *Id.*

[52] *Id.*

[53] Interview with a professional at an international organisation working on women's and children's rights in Lilongwe, Malawi (11 Mar. 2020).

[54] Lameck Masina, *Malawi Campaigners Seeks to End Sex in Girls' Initiation Ceremony*, Global Citizen (9 Jan. 2019), https://www.globalcitizen.org/en/content/malawi-girls-sex-initiation-ceremony/.

[55] *Id.*

[56] *Id.*

[57] Jill Thompson, et al., *Harmonizing national abortion and pregnancy prevention laws and policies for sexual violence survivors with the Maputo Protocol: proceedings of a 2016 regional technical meeting in sub-Saharan Africa*, BMC Proceedings 2018, page 2, 12(Suppl 5):0, https://doi.org/10.1186/s12919-018-0101-5.

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[59] *Id.* at 17-18.

[60] Interview with a coordinator at the Centre for Victimised Women and Children ("CAVWOC") in Blantyre, Malawi (13 Mar. 2020).

[61] Lameck Masina, *Poor Women in Malawi Forced to Trade Sex for Fish*, VOA News (30 Sept. 2019), https:// https://www.voanews.com/africa/poor-women-malawi-forced-trade-sex-fish.

[62] Martin E. Palamuleni and Ayo S. Adebowale, *Prevalence and Determinants of Unintended Pregnancies in Malawi*, 28 African Population Studies 551, 561 (Apr. 2014), https://www.researchgate.net/publication/273599300_Prevalence_and_Determinants_of_Unintended_Pregnancies_in_Malawi.

[63] International Covenant on Civil and Political Rights, art. 6(1), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 Mar. 1976 [hereinafter ICCPR], https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx, *acceded to by Malawi* 22 Dec. 1993, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en#EndDec.

[64] African [Banjul] Charter on Human and Peoples' Rights, art. 4, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 Oct. 1986 [hereinafter Banjul Charter], https://au.int/en/treaties/african-charter-human-and-peoples-rights, *acceded to by Malawi* 17 Nov. 1989, https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf.

[65] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 4(1), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (13 Sept. 2000), *reprinted in* 1 Afr. Hum. Rts. L.J. 40, *entered into force* 25 Nov. 2005 [hereinafter Maputo Protocol], https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa, *acceded to by Malawi* 20 May 2005, https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf.

[66] African Charter on the Rights and Welfare of the Child, art. 5(1), OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* 29 Nov. 1999 [hereinafter African Children's Charter], https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf, *ratified by Malawi* 16 Sept. 1999, https://au.int/sites/default/files/treaties/36804-sl-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf.

[67] Convention on the Rights of the Child, art. 6, U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3, *entered into force* 2 Sept. 1990 [hereinafter CRC], https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx, *acceded to by Malawi* 2 Jan. 1991, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.

[68] CONST. (Malawi) 1994 (rev. 2017), § 16 ("Every person has the right to life and no person shall be arbitrarily deprived of his or her life").

[69] Human Rights Committee, *General Comment No. 36: Article 6 (Right to Life)* (124th Sess., 2018), ¶ 8, U.N. Doc., CCPR/C/GC/36 (3 Sept. 2019), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf.

[70] *Id.*

[71] Rhonda Copelon, et al., *Human Rights Begin at Birth: International Law and the Claim of Fetal Right*, 13 REPRODUCTIVE HEALTH MATTERS 120, 122 (2005), https://www.sciencedirect.com/science/article/abs/pii/S0968808005262183*; Roe v. Wade*, 410 U.S. 113, 162 (1973) ("[T]he unborn have never been recognized in the law as persons in the whole sense.")

[72] Universal Declaration of Human Rights, art. 1, G.A. Res. 217A (10 Dec. 1948), https://www.un.org/en/universal-declaration-human-rights/ (emphasis added).

[73] African Children's Charter, *supra* note 66, art. 5; Maputo Protocol, *supra* note 65, arts. 1(k) (women includes girls), 1(g) (harmful practices deny women's and girls' right to life), 4(1) (right to life), 5 (ban on harmful practices), 14(1)(b) right to choose or reject having children).

[74] Convention on the Elimination of All Forms of Discrimination against Women, arts. 12(1) and 16(1)(e) U.N. Doc. A/34/36 (1979), 1249 U.N.T.S. 13, *entered into force* 3 Sept. 1981 [hereinafter CEDAW], https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx, *acceded to by Malawi* 12 Mar. 1987, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en.

[75] Maputo Protocol, *supra* note 65, art. 14.

[76] CONST. (Malawi) 1994 (rev. 2017), § 30(2) (guaranteeing "equality of opportunity for all in their access to . . . health services.")

[77] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24, Women and Health* (20th Sess., 1999), ¶ 14, U.N. Doc CEDAW/C/GC/24 (1999), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_E.pdf.

[78] CEDAW, *supra* note 74, art. 16(1)(e); Maputo Protocol, *supra* note 65 art. 14(1)(b).

[79] Maputo Protocol, *supra* note 65, art. 14(2)(c).

[80] Committee on the Elimination of Discrimination against Women, *Concluding Comments of the Committee of the Elimination of Discrimination against Women: Malawi* (35th Sess., 2006), ¶ 31, U.N. Doc. CEDAW/C?MWI/CO/5 (3 Feb. 2006), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMWI%2fCO%2f5&Lang=en.

[81] Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Seventh Periodic Report of Malawi*, (62nd Sess., 2015), ¶¶ 34(a)-(b) and 35(c), U.N. Doc. CEDAW/C/MWI/CO/7 (24 Nov. 2017), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMWI%2fCO%2f7&Lang=en.

[82] Committee on the Elimination of Discrimination against Women, *Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, ¶¶ 54, 56, 85(a), U.N. Doc. CEDAW/C/OP.8/GBR/1 (23 Feb. 2018), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf. Paragraph 54 provides, "Article 12 complemented by article 16(1)(e) guarantee women the right to health, including sexual and reproductive health. They require States parties to eliminate discrimination against women in the provision of health care and ensure access to services, including family planning and the right to freely and responsibly decide on the number and spacing of children." *Id.*

[83] *Id.* at ¶ 83.

[84] Northern Ireland (Executive Formation etc) Act 2019, c. 22 §§ 9(2) (repeal), 9(1), 9(3)-9(10) (Secretary of State's obligations to issue regulations to comply with CEDAW recommendations for Northern Ireland) (UK); The Abortion (Northern Ireland) Regulations 2020, SI 2020/345, reg. 3 (UK for N. Ir.). *See* the Abortion Act 1967, c. 87, §§ 7(3) (non-application to Northern Ireland), 1(1) read with 6 (permitting abortion and excluding the application of §§ 58-59 of the Offences against the Person Act, 1861 in England, Wales, and Scotland) (UK).

[85] *Roe v. Wade*, 410 U.S. 113, 152-153 (1973).

[86] *See id.* at 117-118 (quoting Articles 1191-1194 and 1196 of the Penal Code of Texas).

[87] *See Mellet v. Ireland*, U.N. Doc. CCPR/C/116/D/2324/2013 (Human Rights Comm. Views; 116th Sess., 31 Mar. 2016). The Human Rights Committee also found violations of Irish women's rights to freedom from cruel treatment (art. 7) and to non-discrimination (art. 26).

[88] *Id.* at ¶ 3.22 ("At the time of the facts and until 2013, Section 58 of the Offences Against the Person Act (1861 Act) criminalized abortion for both women and abortion providers, even in cases where it was necessary to save the woman's life, and subjected to life imprisonment any woman who tried to terminate her pregnancy and any doctor who tried to help her."). The 1861 Act governed Ireland because it was adopted while Ireland was part of the U.K. As encyclopedia.com explains: "In 1800, with the Act of Union of Great Britain and Ireland, the United Kingdom formally came into being." While the 6 northern counties of Ireland remained part of the U.K. as Northern Ireland, the 26 southern counties became the Republic of Ireland in 1922. *See* https://www.encyclopedia.com/history/modern-europe/british-and-irish-history/united-kingdom-great-britain-and-northern-ireland#HISTORY.

[89] *Id.* at ¶ 3.6.

[90] *Id.* at ¶ 9.

[91] Health (Regulation of Termination of Pregnancy) Act 2018, §§ 9-12 (Ir.); Constitution of Ireland 1937 art. 40.3.3 as amended in 2018.

[92] CEDAW, *supra* note 74, arts. 1 and 2(f).

[93] ICCPR, *supra* note 63, arts. 2(1) and 3.

[94] Banjul Charter, *supra* note 64, art. 2 and 3(1).

[95] Maputo Protocol, *supra* note 65, art. 2(1)(a).

[96] African Children's Charter, *supra* note 66, art. 3.

[97] African Commission on Human and Peoples' Rights, *General Comment No. 2 on Article 14.1(a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (55th Sess., 2014), ¶¶ 3-4, https://www.achpr.org/legalinstruments/detail?id=13.

[98] *Id.* at ¶ 32.

[99] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)* (20th Sess., 1999), ¶ 11, U.N. Doc. A/54/38/Rev. chap 1, https://www.refworld.org/docid/453882a73.html.

[100] CONST. (Malawi) 1994 (rev. 2017), § 19(1) and (3). These rights are also guaranteed by article 7 of the ICCPR, article 3 of the Maputo Protocol, as well as many other human rights treaties. *See Mellet v. Ireland*, *supra* note 87, ¶¶ 7.3-7.6, and 8.

[101] Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, 16 *(*June 2015).

[102] Interview with an OB/GYN at the College of Medicine at the University of Malawi in Blantyre, Malawi (13 Mar. 2020).

[103] *Id.*

[104] *Id.*

[105] Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, 8 *(*June 2015).

[106] CEDAW, *supra* note 74, art. 2(g).

[107] Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)* (68th Sess., 2000), ¶ 5, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (29 Mar. 2000), https://www.refworld.org/docid/45139c9b4.html.

[108] World Health Organization, *Preventing unsafe abortion*, https://www.who.int/reproductivehealth/topics/unsafe_abortion/hrpwork/en/.

[109] *Id.*

[110] *See* Reed Boland, *Second trimester abortion laws globally: actuality, trends and recommendations,* REPROD. HEALTH MATTERS 67, 67 (2010) DOI: 10.1016/ S0968-8080(10)36521-9, https://www.tandfonline.com/doi/full/10.1016/S0968-8080%2810%2936521-9.

[111] Center for Reproductive Rights, *The World's Abortion Laws*, https://reproductiverights.org/worldabortionlaws. Scroll down to Category IV ("386 million (23%) of women of reproductive age live in countries that allow abortion on broad social or economic grounds.") and Category V ("590 million (36%) women of reproductive age live in countries that allow abortion on request. 67 countries globally fall within this category. The most common gestational limit for countries in this category is 12 weeks." Eight African Union countries have such laws, with Cape Verde, Ethiopia, Rwanda, and Zambia permitting abortion on broad social and economic grounds, and Guinea Bissau, Tunisia, Mozambique, and South Africa permitting abortion on request. See the world map at *id.* and click on each country to see the result.).

[112] Marge Berer, *Abortion Law and Policy Around the World: In Search of Decriminalization*, 19 HEALTH AND HUM. RTS. J. 13, 13 (2017), https://www.researchgate.net/publication/317829581_Abortion_law_and_policy_around_the_world_In_search_of_decriminalization.

[113] Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, 40 (June 2015).

[114] *See* Stanford University, *What are the Basic Principles of Medical Ethics?*, https://web.stanford.edu/class/siw198q/websites/reprotech/New%20Ways%20of%20Making%20Babies/EthicVoc.htm (The ethical principle of beneficence requires a procedure to be performed "with the intent of doing good for the patient involved" and "[d]emands that health care providers . . . consider individual circumstances of all patients . . . .").

[115] Constitution of the World Health Organization, *signed* July 22, 1946, *preamble* (*entered into force 7* Apr. 1948).

[116] WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 92 (2012), https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=67DE1AC42FDDC45FB35A591E1057EAD7?sequence=1.

[117] *See e.g.*, PENAL CODE (AMENDMENT) ACT, 1991, amending § 160(2)(b) (Botswana); CONSTITUTION OF KENYA, art. 26(4) (2010); LIBERIAN CODE OF LAWS REVISED, § 16.3(2) (Liberia) (1978); ABORTION AND STERILIZATION ACT 2 of 1975 (RSA), § 3(1)(b) (Namibia) (1975); and THE TERMINATION OF PREGNANCY ACT, §§ 3(1)(a)(iii) and 3(2) (Zambia) (1972).

[118] Committee on the Elimination of Discrimination against Women, *Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland*, *supra* note 15, ¶ 85(b)(iii) (85. The Committee recommends that the State party urgently: . . . (b) Adopt legislation to provide for expanded grounds to legalise abortion at least in the following cases: . . . (iii) *Severe foetal impairment, including FFA*, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term.)

[119] *Id.*

[120] The Abortion (Northern Ireland) Regulations, 2020, *supra* note 17, reg. 7.

[121] PENAL CODE, § 138(1) (2012) (Malawi); CONST. (Malawi) 1994 (rev. 2017), § 23(6).

[122] Marriage, Divorce and Family Relations Act, No. 4 (2015) (Mal.) §§ 14 and 26, https://malawilii.org/mw/legislation/act/2015/4.

[123] *See* African Children's Charter, *supra* note 66, art. 27(1) ("State Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent: (a) the inducement, coercion or encouragement of a child to engage in any sexual activity . . . .").

[124] Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, 16 (June 2015).

[125] *Id.* at 42.

[126] *See* Gender Links for Equality and Justice, *Teen Pregnancies Surge in Malawi* (1 Aug. 2020), https://genderlinks.org.za/news/teen-pregnancies-surge-in-malawi/; TheStar.com, *Teen pregnancies surged during the pandemic, authorities reveal* (20 Jul. 2020), https://www.thestar.com.my/lifestyle/family/2020/07/29/teen-pregnancies-have-surged-during-the-pandemic-malawi-authorities-reveal.

[127] TheStar.com, *Teen pregnancies surged during the pandemic, authorities reveal* (20 Jul. 2020), https://www.thestar.com.my/lifestyle/family/2020/07/29/teen-pregnancies-have-surged-during-the-pandemic-malawi-authorities-reveal.

[128] African Commission on Human and Peoples' Rights, *General Comment No. 2 on Article 14.1(a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (55th Sess., 2014), ¶ 34 (2014), https://www.achpr.org/legalinstruments/detail?id=13.

[129] Interview with a sexual and reproductive health specialist at the Centre for Reproductive Health at the University of Malawi College of Medicine in Blantyre, Malawi (12 Mar. 2020).

[130] *Id.*

[131] Interview with a women's rights lawyer and member of COPUA in Lilongwe, Malawi (9 Mar. 2020).

[132] Interview with a program officer at Every Girl in School Alliance in Lilongwe, Malawi (9 Mar. 2020).

[133] *Id.*

[134] Law Commission, *Report of the Law Commission on the Review of the Law on Abortion*, 42 (June 2015).

[135] Interview with a High Court judge in Zomba, Malawi (12 Mar. 2020).

[136] *Id.*

[137] Committee on the Elimination of Discrimination against Women, *Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland*, *supra* note 15, ¶ 85(a).

[138] The Abortion (Northern Ireland) Regulations, 2020, *supra* note 17, reg. 11(3).