

ADVANCING WOMEN'S REPRODUCTIVE RIGHTS: THE MAPUTO PROTOCOL AND SAFE ABORTION ACCESS IN MALAWI

I. EXECUTIVE SUMMARY

The Maputo Protocol, adopted by the African Union, is a pivotal document advocating for women's rights, including reproductive health and access to safe abortion. This policy brief investigates the current state of access to safe abortion in Malawi. It further presents recommendations to harmonise Malawi's laws and practices with the Maputo Protocol in order to safeguard and promote young women and adolescent girls reproductive rights in Malawi. This ultimately is aimed to improve their health and well-being for girls aged between 12 and 19 years who are at a high risk associated with pregnancy and abortion.

KEY MESSAGING

1. Malawi has ratified the Maputo protocol but has not domesticated it yet to bridge the gap between Malawi's current abortion laws and the Maputo Protocol's vision .
2. De-stigmatization of safe abortion services is crucial to advancing reproductive rights and reducing the demand for unsafe abortions
3. Upholding the Maputo Protocol and ensuring safe abortion access is not just a legal matter but a fundamental step toward promoting women's reproductive rights, reducing maternal mortality, and improving women's overall health and well-being in Malawi.
4. It is crucial to raise awareness on the provisions of the law in countries where access to abortion services is restricted or in cases where post-abortion care is available regardless of the limits placed on abortion itself. In such circumstances, women often assume that abortion is outrightly banned and will not access even the services that are allowed by some laws.

II. INTRODUCTION

The Maputo Protocol, formally known as the [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#), was adopted in 2003 outlines a comprehensive framework for the protection and advancement of women's rights across the African continent. This policy brief delves into the imperative need for Malawi to take all measures to align its laws, policies and practices with the provisions of the Maputo Protocol, particularly concerning safe abortion.

Section 149 and 150 of the Penal Code criminalise abortion. Abortion is only legal in Malawi when the pregnant woman's life is in danger and obtaining an abortion, aside from this one condition, is punishable by 7-14 years imprisonment.

Section 243 of the Penal Code states that

"A PERSON IS NOT CRIMINALLY RESPONSIBLE FOR PERFORMING IN GOOD FAITH AND WITH REASONABLE CARE AND SKILL A SURGICAL OPERATION UPON ANY PERSON FOR HIS BENEFIT, OR UPON AN UNBORN CHILD FOR THE PRESERVATION OF THE MOTHER'S LIFE, IF THE PERFORMANCE OF THE OPERATION IS REASONABLE, HAVING REGARD TO THE PATIENT'S STATE AT THE TIME, AND TO ALL THE CIRCUMSTANCES OF THE CASE"

Nevertheless, it does not stop abortion from occurring. Women with unintended and unwanted pregnancies resort to unsafe abortions performed under clandestine and unsafe conditions. It is estimated that **for every 1000 women, 38** have induced abortions each year in Malawi (Polis et al., 2017). Most of these abortions result in complications requiring costly post-abortion care to the already challenged health system. Higher rates of complications are seen in women in rural areas compared to urban areas (Polis et al., 2017; Sully et al., 2019).

The Malawi National Sexual and Reproductive and Rights Policy Guidelines recommend that all women with complications of abortion shall have access to quality post-abortion care services, including post-abortion counselling and family planning to prevent repeat abortion. Although this is the case, only 38% of women with induced abortion are estimated to have treated complications while 22% have untreated complications (Polis et al., 2017). Abortion stigma, gender-based power imbalances, inadequate contraceptive use and sexual education, high cost and poor availability of comprehensive sexual reproductive rights services, restrictive abortion laws and religious factors influence care seeking.

The article 14 of the Maputo Protocol promotes and protects women's health and reproductive rights, underscoring several critical provisions related to women's reproductive rights, prominently including access to safe abortion services. In contrast, Malawi's current abortion laws remain highly restrictive, resulting in elevated rates of unsafe abortions and the associated health risks. This disparity underscores the urgency of reform in Malawi's abortion policies.

III. RESEARCH OVERVIEW

Malawi's current legal framework on abortion is characterised by severe restrictions. The Penal Code, instituted in 1930, permits abortion solely when the mother's life is in danger. However, this is interpreted differently by health providers as it is unclear. This leaves women with limited recourse when seeking abortions due to other health concerns, rape, incest, or fetal anomalies. Therefore it is the restrictive legal landscape that funnels many women toward unsafe abortion practices. The Health Policy Project (2015) has also shown that women and girls who survive rape, defilement and sexual assault, but become pregnant experience several challenges such as social, economic and health especially when forced to carry an unwanted pregnancy to term. The lack of research in Malawi on sexual violence, rape and incest-related pregnancy further presents a challenge to the policy and programming.

1. Unsafe Abortion and Health Risks:

The impact of restricted access to safe abortion services in Malawi is profound and distressing. Women, in their desperation, resort to unsafe methods, often administered by untrained providers in unsanitary

conditions. These practices lead to life-threatening complications, including sepsis, haemorrhage, and long-term health issues. It is important to note that unsafe abortion is a leading cause of maternal mortality in Malawi. The lack of research in Malawi on sexual violence, rape and incest-related pregnancy further presents a challenge to the policy and programming. Given the high risk to girls in Malawi of pregnancy from rape or defilement, there is an information gap for policy formulation and programming on what happens to such girls when they are turned away from OSCs.

2. International and Regional Commitments:

Malawi, as a signatory to the Maputo Protocol, is legally obligated to ensure women's reproductive rights in accordance with the provisions of the Protocol. However, the existing discrepancies between the Maputo Protocol's vision and Malawi's legal framework and practices pose a critical challenge.

The Maputo Protocol, a framework developed under the auspices of the African Union, recognizes the importance of safe abortion as a constituent of women's reproductive rights. Article 14 explicitly affirms women's right to "medical abortion in cases of sexual assault, rape, and incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus."

3. Current Abortion Laws in Malawi:

Malawi's Penal Code, with its origins in the colonial era, remains a significant obstacle to safe abortion access. It strictly limits abortion to situations where the mother's life is at risk. This leaves no legal avenues for women seeking abortions for other reasons, such as rape, incest, or when the fetus has severe anomalies. The legal framework's rigidity exacerbates the prevalence of unsafe abortions in the country, Minors who experience sexual violence, defilement and rape suffer different long-term consequences that affect their mental, physical and reproductive well-being. Adverse outcomes such as unintended pregnancy, infectious diseases, mental disorders, depression, dropping out of school, alcoholism, and suicide, as well as complications from unsafe abortion, have been reported. These push the minors to access unsafe abortions thereby increasing maternal mortality and morbidity, especially where the law restricts access to abortion services.

IV. POLICY RECOMMENDATIONS

1. Legal Reforms:

To bridge the gap between Malawi's current abortion laws and the Maputo Protocol's vision, we propose a series of legal reforms:

- **Broaden Legal Grounds:** Expand the permissible grounds for abortion to include circumstances where the woman's health is at risk, cases of rape, incest, and severe fetal anomalies.
- **Access to Safe Abortion Services:** Ensure that accessible, affordable, and safe abortion services are available within healthcare facilities across the country.

- **Age Restrictions:** Remove age-related restrictions that impede minors' access to abortion services, particularly since they may be at an elevated risk of unsafe abortions.
- **Ensure the right of women to get abortion when life is in danger without interference of husband or family.**
- **Conscientious Objection Guidelines:** Develop comprehensive guidelines that strike a balance between the rights of healthcare providers to conscientious objection and a woman's fundamental right to access safe abortion services.
- **Clarify Current Abortions laws:** Ensure that the current abortion laws are clear for health providers to be able to deliver the services to those that are eligible especially adolescent girls and young women that are survivors of sexual gender based violence.

2. Ending Abortion Stigma:

A crucial aspect of advancing reproductive rights and reducing the demand for unsafe abortions is the de-stigmatisation of safe abortion services. Empowering individuals with knowledge about safe abortion services and creating a dialogue around this will help people make informed decisions. To counteract the pervasive stigma surrounding abortion, and to inform the public about women's reproductive rights, public awareness campaigns must be initiated. These campaigns should emphasise not only the legal rights of women to access

safe abortion services but also the broader significance of supporting women's reproductive health choices. There is a need for education and awareness-raising on sexual assault, rape, and the rights of minors. This can help prevent sexual assault and rape, and also ensure that minors know their rights and are aware of the available support services.

3. Healthcare Infrastructure:

The foundation of safe abortion access lies in a robust healthcare infrastructure. It is essential that healthcare facilities are adequately equipped, and healthcare providers are trained in providing safe abortion services and post-abortion care. Investment in healthcare infrastructure is fundamental to guaranteeing safe and accessible abortion services across the nation.

4. Capacity Building:

The competency of healthcare providers is of paramount importance in ensuring the safety of abortion procedures. Comprehensive training for healthcare professionals on safe abortion techniques and post-abortion care should be conducted. This training not only ensures that women receive proper care but also empowers healthcare providers to fulfil their roles effectively. There's a need for healthcare professionals to be comprehensively trained in de-stigmatizing abortion in order to provide services without bias and stigma. There should provide services professional without bias and stigma

V. REFERENCES

The recommendations and statements in this policy brief are substantiated by credible sources and references. The following list contains these essential references for further study and verification.

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Policy Brief by

The Young Women's Consortium (YOWCO)

The Young Women's Consortium on Sexual Reproductive Health and Rights in Malawi (YOWCO) is a feminist led network founded in 2021 made up of 5 women youth led organizations including: [Kwathu Ndi Kwanu](#), [Young Feminist Network](#) and [PEPETA Malawi](#). Chaired by Kwathu Ndi Kwanu, our mission is to advocate for the reproductive justice of young women and adolescent girls in Malawi.



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Nala Feminist Collective (Nalafem) is a multigenerational platform of women politicians and activists striving towards the liberation of African women and girls. In Swahili and other languages spoken in African countries, 'Nala' means Queen, lion and gift. This platform was launched in July 2021 but emerged in 2020 from [Africa Young Women Beijing+25 Manifesto](#) developed in consultation with 1,500 young people from across 44 African countries and over 30 partners. Nalafem efforts in collaboration with youth activists succeeded to collect over 10,000 signatures and 8 out of the 10 demands were included into UN Action coalitions and Women, Peace and Security and Humanitarian Action Compact.

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