

HIGHLIGHT

ABORTION AND FETAL INTERESTS

Several countries in Africa have reformed or are reforming their national laws on access to legal abortion to expand the grounds under which a legal abortion should be provided. Examples include Kenya, Rwanda, Malawi, Sierra Leone, Ethiopia and Swaziland.⁵¹ This trend is due in part to the global, regional and national recognition of the connection between restrictive abortion laws and high levels of unsafe abortion which contribute to avoidable maternal deaths particularly in the African region.

The recognition at the global level has led to an increased number of recommendations by UN treaty monitoring bodies to African countries urging them to decriminalise abortion. Accordingly, in January 2016, the UN Committee on the Rights of the Child stated that it was concerned at the high level of maternal mortality due to unsafe abortion and recommended that Kenya decriminalise abortion in all circumstances and review its laws to ensure better access to safe abortion.⁵² Regional human rights mechanisms have also made concrete contributions to efforts to address restrictive abortion laws. In May 2014, the African Commission on Human and Peoples' Rights (the Commission) adopted a general comment on Article 14(2)(c) of the Maputo Protocol in which it urged governments to ensure that they authorise access to legal abortions as guaranteed by the Protocol.⁵³

However, alongside the ongoing shift to expand access to legal abortion is a growing effort to limit its application. Some African states have invoked a right to life prior to birth to justify their failure to reform restrictive laws or their adoption of laws and policies that directly contradict regional and international human rights standards. Yet, this claim is not supported by any international human rights instrument or treaty. Documentary evidence shows that the drafters of the African Charter on Human and Peoples' Rights explicitly rejected language extending the right to life prior to birth. Equally, the Maputo Protocol implicitly reinforces the understanding that the right to life accrues at birth.⁵⁴

A case in point is Kenya, whose 2010 Constitutional law reform provided for access to legal abortion on specific grounds, including where there is a need for emergency treatment, where the life of health of the woman is at risk, and as otherwise authorised by law. However, its health ministry subsequently withdrew the standards and guidelines it developed to guide healthcare providers on provision of safe abortion. It also issued a directive to all healthcare workers prohibiting them from obtaining any training on safe abortion. Likewise, Sierra Leone's reformed abortion law, which provided for expanded access to legal abortion, received a unanimous vote from its parliament to pass it into law, but the President was pressured into declining to sign it into law. Similar efforts to limit the application of current policies that provided for specific grounds for legal abortion are currently unfolding in Uganda.

In order to comply with their human rights obligations and address the rate of maternal mortality due to unsafe abortion in the region, African governments have a duty to eliminate all legal and procedural barriers that impede access to safe abortion.