

In its General Recommendation on Women and Health under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee recommended that State parties amend legislation criminalizing abortion and “withdraw punitive measures imposed on women who undergo abortion.

The CEDAW Committee, in its review of Sierra Leone earlier this year, noted with concern the very high maternal mortality ratio in Sierra Leone and the fact that the law on abortion criminalizes the procedure without providing any exception, the high incidence of sexual violence and unwanted pregnancies resulting in unsafe abortions which account for 13% of maternal mortality, and delays in adopting the Abortion Bill which decriminalizes the termination of pregnancy based on various socio-economic grounds;

The CEDAW Committee further urged the Government of Sierra Leone to accelerate the adoption of the Abortion Bill.

MADE this *13th* day of *November, 2015*.

HON. ISATA KABIA,
Member of Parliament.

Freetown
Sierra Leone
October, 2015.

BILL

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No.



Sierra Leone

2015

A BILL ENTITLED

The Safe Abortion Act, 2015

Short title.

Being an Act to prevent maternal death and injury, safeguard reproductive rights determine the circumstances and conditions under which pregnancies may be terminated and to provide for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I – PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires –

“gestation period” means the period of pregnancy of a female calculated from the first day of the menstrual period which in relation to the pregnancy, is the last;

“health” means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;

“health care facility” means premises in which health care is provided as approved by the Ministry responsible for health and certified by the appropriate authorities for that purpose;

“health care provider” means a medical practitioner, midwife or community health officer or (a health care professional), with the appropriate skill registered by the appropriate regulatory authority;

“informed consent” means consent by a female of her own free will after receiving information on the risks and benefits of termination of pregnancy;

“Minister” means the Minister responsible for health; and “Ministry” shall be construed accordingly.

“abortion services” means services that are provided by a person with the appropriate skills using methods consistent with World Health Organization guidelines as may from time to time be issued by the Organisation

PART II – CIRCUMSTANCES IN WHICH AND CONDITIONS UNDER WHICH ABORTION SERVICES MAY BE PROVIDED

2. (1) Abortion services may be provided–

Abortion Services.

(a) during the first twelve weeks of the gestation period of a pregnant female who so requests after counseling using the World Health Organization guidelines;

(b) from the thirteenth week up to the twenty-fourth week of the gestation period upon request of the pregnant female after counseling if –

(i) the continued pregnancy would pose a risk of injury to the female’s health; or

(ii) there is a risk of fetal abnormality

(iii) according to the pregnant female, the pregnancy resulted from rape, incest or other felonious intercourse.

3. (1) No person shall engage in abortion services or provide the means for abortion services unless that person has the appropriate skill as may be determined by the Sierra Leone Medical and Dental Council.

Persons authorized to provide safe abortion services

(2) No person shall provide abortion services unless that person is registered by the appropriate regulatory authority and possesses the appropriate skill in relation to the gestational period.

(3) A person who contravenes subsection (1) or subsection (2) commits an offence and is liable on conviction to a fine not less than ten million Leones and not exceeding fifty million Leones or, to imprisonment for a term not exceeding four years or to both the fine and imprisonment.

Place for
abortion
services.

4. (1) Abortion services shall only be provided in a health care facility.

(2) A person who provides surgical abortion services outside a health care facility commits an offence and is liable on conviction to a fine not less than ten million Leones or not exceeding fifty million Leones or to a term of imprisonment not less than four years or to both the fine and imprisonment.

Conscientious
Objection.

5. (1) Subject to subsection (3), no health care provider shall be under any legal duty to directly participate in abortion services if the health care provider has a conscientious objection to provide abortion services.

(2) Subsection (1) does not apply to any duty to participate in a treatment which is necessary to save the life or to prevent injury to the health of a pregnant female.

(3) A health care provider who has a conscientious objection referred to in subsection (1) shall inform the female who requests abortion services of other approved health care facilities or providers which may be in a position to terminate the pregnancy within a reasonable time.

(4) Any practitioner whose action results in injury or loss of life or both commits an offence and is liable on conviction to a fine not less than ten million Leones or not exceeding fifty million Leones or to a term of imprisonment not less than four years or to both the fine and imprisonment.

6. (1) Subject to subsection (2), a health care provider referred to in section 3 shall not provide or assist in the provision of abortion services unless the health care provider obtains the informed consent of the pregnant female. ^{Informed consent to be obtained.}

(2) Where the pregnant female is below 18 years of age, the health care provider shall not provide abortion services unless he or she obtains the consent of the parent or guardian of, or another adult acting *in loco parentis* to the pregnant female.

(3) Where the pregnant female is unable to give informed consent due to a mental, medical or physical incapacity, the health care provider shall not provide abortion services unless he or she obtains consent from the parent or guardian or an adult acting *in loco parentis* capacity.

(4) A person who contravenes any provision of this section commits an offence and is liable on conviction to a fine not less than ten million Leones and not exceeding fifty million Leones or to a term of imprisonment not less than four years or to both the fine and imprisonment.

PART III—MISCELLANEOUS PROVISIONS

7. (1) A person who provides abortion services shall ensure that the identity of the pregnant female concerned is kept confidential. ^{Confidentiality.}

(2) Such information shall only be made available for use by the Ministry and its partners for medical research only.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not less than ten million Leones and not exceeding fifty million Leones or to a term of imprisonment not less than four years or to both the fine and imprisonment.

8. The Minister may by statutory Instrument make regulations ^{Regulation.} for giving for giving effect to this Act.

Non-application of Offences Against The Person Act, 1861. 9. Sections 58 and 59 of the Offences Against the Person Act, 1861 shall on the commencement of this Act cease to apply in Sierra Leone.

Memorandum of Objects and Reasons

Each year, throughout the world, approximately 210 million women become pregnant and over 135 million of them deliver live born infants. The remaining 75 million pregnancies end in stillbirth, or spontaneous or induced abortion. It was estimated by the world Health Organization that in 2003 approximately 42 million pregnancies were voluntarily terminated 22 million safely and 20 million unsafely.

Deaths due to unsafe abortion remain close to 13% of all maternal deaths. Unsafe abortion related deaths have however reduced to 47,000 in 2008 from 56 000 in 2003 and 69,000 in 1990; corresponding to the decline in the overall number of maternal deaths to 358 000 in 2008 from 546,000 in 1990.

Although unsafe abortions are preventable, they continue to pose undue risks to women’s health and lives. An estimated 21.6 million unsafe abortions took place worldwide in 2008, almost all in developing countries. Numbers of unsafe abortions have increased from 19.7 million in 2003 although the overall unsafe abortion rate remains unchanged at about 14 unsafe abortions per 1000 women aged 15–44 years. This increase in the number of unsafe abortions without a corresponding increase in the death rate is mainly due to the growing population of women of reproductive age.

Even though numbers have risen slightly to 6.2 million, the unsafe abortion rate for the Africa Region has decreased due to Africa’s dichotomous situation that includes medium to high contraceptive prevalence rate and partial availability of safe abortion services in the Northern and Southern Africa Sub-regions that contribute to counter the high numbers of the other African Sub-regions to an average 28 per 1000 women aged 15–44 for the Africa Region. For sub-Saharan Africa the unsafe abortion rate is 31 per 1000 women aged 15–44.

Each year in Sierra Leone, approximately 857 women die from pregnancy-related causes per 100,000 live births – giving it the fourth highest maternal mortality ratio in the world. Recent figures from the World Health Organization suggest that Sierra Leone is still lagging behind when it comes to maternal mortality. The country is still ranked as one of the worst for maternal mortality in the world. This clearly does not paint a good picture for Sierra Leone in the international arena.

Abortion is an extremely common experience worldwide. Women terminate about 41.6 million pregnancies every year. According to the World Health Organization, at least 95 percent of abortions performed in Africa and Latin America and about 60 percent in Asia (excluding Eastern Asia) are unsafe. Globally, unsafe abortion accounts for approximately 13 percent of maternal deaths from complications of pregnancy and childbirth. Almost all deaths from unsafe abortion occur in developing countries, with African women facing the highest risk. According to the World Health Organization, 650 deaths occur per 100,000 unsafe abortion procedures in Africa, compared with only 10 in developed regions.

In the last decade, more than half a million women lost their lives because they lacked access to safe abortion services, women in the prime of life and who most often had children and families to care for. Yet unsafe abortion is one of the easiest causes of maternal mortality to address, through improved access to family planning information and services, high-quality post abortion care, and safe, legal abortion service. All that is lacking is the political will to do so. Among developing regions, sub-Saharan Africa had the highest maternal mortality ratio at 640 maternal deaths per 100,000 live births in 2008. According to the estimates, some of the countries, such as Chad, Guinea- Bissau and Somalia even had an estimated Maternal Mortality Ratio in the magnitude of 1,000/100,000 live births. Sierra Leone is the fourth amongst these countries with an estimated Maternal Mortality Ratio of 857/ 100,000 live births.

The fifth Millennium Development Goals aim to improve maternal health with a target of reducing Maternal Mortality Ratio by 75% between 1990 and 2015, that is, it seeks to achieve a 5.5% annual decline in Maternal Mortality Ratio from 1990.

Globally the annual percentage decline in Maternal Mortality Ratio between 1990 and 2008 was only 2.3%. Among countries with a Maternal Mortality Ratio of 1,000 in 1990, it is evident that 30 countries have made insufficient or no progress, including 23 from sub-Saharan Africa. Though Sierra Leone has registered some progress in reducing Maternal Mortality Ratio from 1,800 to 1,300 down to 970/100,000 and now to 857/100,000, the progress has been very slow, so it has been classified as insufficient progress. There is hope that in the remaining five years much can be achieved to attaining the Millennium Development Goals 5 though not with a 75% reduction.

The conditions under which abortion is legally permitted differ from country to country. In some countries, access is highly restricted; in others, pregnancy termination is available on broad medical and social grounds or on request. It is important to note that with the exception of Eastern Europe, regions with less restrictive abortion laws have low rates of induced abortion. Unsafe abortions are nonexistent or the rate is very low.

Conversely, where the laws are restrictive most abortions are unsafe; and the combined induced abortion rates are high at around 30. The contraceptive prevalence rates are generally lower with the notable exception of South America where traditional methods account for 10% and sterilization for another 35% and, therefore, many women may rely on unsafe abortion to space births before terminating childbearing.

It must be re-iterated that, where abortion laws are the least restrictive there is no or very little evidence of unsafe abortion, on the contrary legal restrictions increase the percentage of unlawful and unsafe procedures. It must also be re-iterated here that, the maternal health indicators of Sierra Leone are among the worst in sub-Saharan Africa. The 2008 maternal mortality ratio (Maternal Mortality Ratio) of Sierra Leone is estimated to be 1,033 deaths per 100,000 live births. This rate is exceeded only by Chad, Malawi and the Central African Republic. Complications of abortion rank fourth among the primary direct causes of obstetric complications; after obstructed labor, severe eclampsia, and hemorrhage. Abortion complications rank fifth as a direct cause of maternal death.

Under Sierra Leonean law, abortion for unwanted pregnancies is illegal in all circumstances as stipulated by the English Offences Against the Person Act of 1861. This law, along with a very low contraceptive prevalence rate of 8% for any modern method, and high rates of unwanted and unplanned pregnancies, contribute to many unsafe abortions throughout the country.

Millennium Development Goal 5 calls for improved maternal health with a target of reducing the Maternal Mortality Ratio by 75% by 2015. Since 1990 Sierra Leone has made significant progress in reducing the Maternal Mortality Ratio from 1,300 per 100,000 live births to 857 according to in-country estimates, however, this progress has been slow and insufficient to meet the Millennium Development Goals target of a Maternal Mortality Ratio of 320.

In order to improve women's health, significant effort is needed to address the root causes of maternal death, including unsafe abortion. A holistic approach to address unsafe abortion is needed, including improvement of the enabling environment and services to provide safe abortion care and increasing capacity to treat unsafe abortion complications.

Sierra Leone has a population of 5,245,695 inhabitants with an annual growth rate of 2.2%, a birth rate of 38.8/1,000, and infant mortality rate of 80.1/1,000, Maternal Mortality Ratio of 854/100 000 live births, a life expectancy of 55.7. Sierra Leone also has one of the worst health indicators for maternal deaths in the world. The Sierra Leone Demographic Health Survey estimated that more than one in four deaths (27 percent) among women of childbearing age (15-49) is due to maternal causes. But these causes are not specified in the report. However, the annual report of the Ministry of Health and Sanitation states that unwanted pregnancies and unsafe abortions are high where abortions reported at some major hospitals contribute to 13% of maternal mortality.

In Sierra Leone, less than half of all deliveries are attended by a skilled birth attendants and less than one in five are carried out in health facilities. Thousands of women bleed to death after giving birth. Most die in their homes and some die

on the way to hospital, in taxis, on motorbikes or on foot. Overall, one in eight women risk dying during pregnancy or childbirth and more than a quarter of that number are as a result of unsafe abortions. This is one of the highest maternal deaths in the world. Almost all of these deaths could have been prevented by accessible, affordable and timely medical care. The resources devoted to health care are highly inadequate. The discrimination women face in almost all aspects of their life in Sierra Leone is reflected in the lack of priority given to their health needs and undermines their right to health.

The termination of pregnancy related complications represent on average 50% of the emergency admissions in referral maternities in Sierra Leone. Of the direct causes of maternal deaths, complications due to unsafe abortion rank fourth. In fact, 20% of maternal deaths are caused by unsafe abortion. These deaths are, according to experts, unnecessary and medically preventable. The common practice is that women tend to seek abortion services outside the health system in Sierra Leone.

Studies carried out in Sierra Leone to find out the causes and determinants of unsafe abortions found the following:

- (a) Early and premature sexual activity; actually 55% of teenagers aged 15-19 are sexually active while the average age for a first marriage is 18 years though with regional disparities.
- (b) Premature maternity at 19 years (50% of pregnancies that occur before the age of 19 years).
- (c) The use of contraceptives is not common (4,7 % for the 15 – 19 year olds); and the use of condom as birth control is still very rare (36 % for girls of 15 – 24 years and 52% for boys according to Sierra Leone Demographic Health Survey 2008). The general percentage use of modern contraception in all age groups is 8% and 7% amongst women of 45-49 years.

- (d) A very high percentage of unmet family planning needs. Overall, 28 percent of married women in Sierra Leone have an unmet need for family planning, with a higher proportion with an unmet need for spacing births than with an unmet need for limiting births.

The cost and burden of unsafe abortion in Sierra Leone study commissioned by the Ministry of Health and Sanitation found the following:

- Unsafe abortion is a major contributing factor to maternal mortality and pregnancy-related injuries and death in Sierra Leone.
- Unwanted pregnancies were identified in all regions of the country as a significant problem, contributing to thousands of maternal deaths and injuries, infertility, poverty and orphaned children.
- The major contributors of unsafe abortion are poverty, sexual violence, girls' desire to continue their education, extramarital pregnancies, the refusal of partners to take responsibility for pregnancies, the prohibitive cost of safe care and abortion stigma.
- Overall, Sierra Leoneans think the abortion law, which has been in the books since 1861 is restrictive and outdated. They would like to see the Government liberalize abortion as part of its commitment to reduce unsafe abortions and maternal mortality.
- Based on actual data collected, there were an estimated 1,632 post-abortion cases treated in 19 secondary and tertiary public hospitals in 2011. It is estimated that if all cases that had been treated in the hospital were recorded, the number of cases would be as many as 3,374.

Much evidence has revealed that the biggest barrier for accessing health care in Sierra Leone is financial. However, a greater proportion of the barriers are grounded in laws, policies, programs and cultural and societal belief and practices. The nature of these barriers and manifestations, including the attainable approaches, require research for targeted interventions

Under Sierra Leone law, The English Offences Against the Person Act of 1861 is still in effect. The law does not authorize abortion under any circumstance. Doctors have often used general criminal law principles of necessity to carry out the procedure to save the life of the pregnant woman. In all other instances, including in cases of rape or incest, foetal impairment, economic or social reasons the law prohibits the performance of abortions and makes it an offence for a person performing an abortion and a pregnant woman consenting to the performance of an abortion subject to imprisonment.

However, Sierra Leone, like many Commonwealth countries whose legal systems are based on English common law, follows the holding of the 1938 English *Rex v. Bourne* decision in determining whether an abortion performed for health reasons is lawful. In the *Rex v. Bourne* decision, a physician was acquitted of the offence of performing an abortion in the case of a woman who had been raped. The court ruled that the abortion was lawful because it had been performed to prevent the woman from becoming “a physical and mental wreck”, thus setting a precedent for future abortion cases performed on the grounds of preserving the pregnant woman’s physical and mental health.

Britain has amended its 1861 law four times but Sierra Leone has not done so even a single time. Section 58 of the Act makes abortion a criminal offence, punishable by imprisonment from three years to life even when performed for medical reasons. Under Section 58, the offence is committed where a woman, with intent to procure her own miscarriage, unlawfully administers poison or other noxious substance or use instruments to procure her own abortion. Under the same section, the offence can also be committed where another person with intent to procure the miscarriage of any woman, unlawfully administers her or cause her to take any poison or noxious thing or use any instrument to procure such miscarriage. The offence created under Section 58 is a felony and can attract a penalty of up to life imprisonment. A law introduced in 1988 to regulate the practice of pharmacy (Pharmacy and Drugs Act of 1988) also prohibits any advertisement of drugs or services that could be used to terminate or influence the course of a human pregnancy.

The National Family Planning Program involves locally adapted initiatives designed to overcome specific obstacles, as well as attempts to coordinate the activities of the different donors and stakeholders. In 1999, the Government drafted a program of priority actions and investments in population in response to the International Conference on Population and Development held in Cairo in 1994. Reproductive health was one of three main areas of action. Implementation of these plans is still at an early stage.

The Government of Sierra Leone and health development partners are committed to achieving universal health care in order to reduce high infant, child and maternal mortality rates in line with the Millennium Development Goals. To achieve this, one of the state priorities is the Agenda for Change introduced by the Head of State for the health sector to address the unacceptably high infant, child and maternal mortality and morbidity. The Ministry of Health and Sanitation has committed to improve the quality of care. The road map has been developed through the 2010 National Health Sector Strategic Plan aiming to achieve improvement in quality of care through the successful implementation of a basic package of Essential Health Services. In the 1990s, the Sierra Leone Government implemented a series of policy changes for the provision of family planning services through the public sector. A strategy to provide high quality services through reference centers was adopted. It is noteworthy that, the introduction of Complete Abortion Care (CAC) which is a concept that composes of 5 steps which constitute an effective strategy to reduce maternal mortality caused by complications of unsafe abortion and which allows for the linkage between emergency treatment and family planning. This also includes training of different healthcare providers to meet this requirement. This strategy is only possible with law reform and will have a significant impact on the reduction of maternal deaths and injuries and also on the improvement of the prevalence of contraceptives use.

As has been pointed out earlier evidence shows that where abortion laws are restrictive most abortions are unsafe and maternal mortality is higher. Furthermore, a woman’s right to life, and health protected by international and regional treaties and ratified by the Government of Sierra Leone and under national laws is undermined by the neglect of the prevention of unwanted pregnancies and the criminalization of abortion. Sierra Leone has signed and or ratified almost all international and regional treaties and optional protocols and signed consensus documents that are designed to protect human rights including (with date of ratification):

- The Universal Declaration of Human Rights of 10 December, 1948.
- The Convention on Elimination of Racial Discrimination (1968)
- The International Covenant on Civil and Political Rights (1996)
- The Convention on the Rights Of the Child (1990)
- The International Covenant on Economic, Social and Cultural Rights (1996)
- The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) 1988.
- The International Convention on the Protection of the Rights of Migrant Workers and their Families 2000
- The Convention Against Torture (2003)
- The Convention on the Rights of Persons with Disability (2010)
- The African Platform for Action (1994).
- The Beijing Platform for Action (1995).
- The African Plan of Action for the acceleration of the implementation of the Dakar and Beijing Platforms for Action for the Promotion of Women (1999).
- The Document adopted at the 23rd Extraordinary Session of the UN General Assembly on the implementation of the Beijing Platform for Action (2000).
- The Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003). Article 3 of which endorse women with the right to dignity, to life, to integrity and security of person etc. Article 4 protects the reproductive rights of women, particularly in authorizing medical abortion in cases of sexual assault, rape, incest etc.
- The Maputo Plan of Action for the Operationalization of the Continental Policy Framework for Women' Sexual and Reproductive Health and Rights 2007 – 2010.

The consideration of these legally binding treaties and the consensus agreements in the context of the public health situation and the legal, policy and programmatic environment and their implementation or lack of implementation indicate that Sierra Leone did not completely fulfill its obligations to respect, protect and fulfill human rights in relation to women's health. In order to better understand the obstacles to the promotion of women's health and rights, and in particular their rights to exercise

their reproductive choices including abortion, the Reproductive and Child Health Unit, in the Ministry of Health and Sanitation in Sierra Leone has decided that a strategic assessment on issues related to prevention of unwanted pregnancies and unsafe abortion be conducted in Sierra Leone.

The Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on Civil and Political Rights and the Convention Against Torture. Authorities interpreting such human rights treaties have found that restrictions on access to abortion can violate the human rights to life, health, privacy and non-discrimination, and the freedom from cruel, inhuman and degrading treatment or punishment.

The current abortion law violates Articles 3 and 6 (f) of the Convention on Civil and Political Rights. In interpreting the treaty, the Human Rights Committee has suggested that in order to uphold the right to life, states must take steps to ensure that women do not have to undergo life-threatening clandestine abortion. The Committee has also linked lack of access to safe abortion to violations of the right to privacy, Article 17 (1) of the Convention.

During the Human Rights Committee's review of Sierra Leone under the ICCPR earlier this year, the Committee recommended that Sierra Leone adopt a bill to reform the abortion law. The Human Rights Committee stated:

The Committee notes with interest the Abortion Bill of 2012, but expresses its concern at the current general criminalization of abortion, which may oblige pregnant women to seek clandestine abortion services that endanger their lives and health. The Committee is also concerned at the persistently high incidence of adolescent pregnancy and maternal mortality, despite the State party's prevention efforts (arts. 6 and 17).

The State party should accelerate the adoption of a bill that includes provision for exceptions to the general prohibition of abortion for therapeutic reasons and in cases of pregnancy resulting from rape or incest. The State party should ensure that reproductive health services are accessible for all women and adolescents. Furthermore, the State party should increase education and awareness-raising programmes, both formal (at schools and colleges) and informal (in the mass media), on the importance of using contraceptives and the right to reproductive health.