Sustainable Development Goal 3 and the Termination of Pregnancy Act (Chapter 15:10) of Zimbabwe: An argument for expanding women's access to sexual and reproductive health rights

(A) Short Abstract

This paper examines the impact of the Termination of Pregnancy Act (Chapter 15:10) of Zimbabwe in fully realising women's access to sexual and reproductive health rights, as part of its commitment of achieving universal access to sexual and reproductive health-care services, including family planning by 2030. The paper reveals that though the Act restricts abortion to circumstances of rape, incest, foetal impairment, or to save the life of the pregnant woman, access to legal abortions on these grounds remain difficult and rare. Since illegal unsafe abortions and maternal mortality ratios remain high in Zimbabwe, the removal of barriers to access to abortion services would be crucial for women to access sexual and reproductive health-care services in the country. This paper then calls for the modernisation of the Termination of Pregnancy Act in order for Zimbabwe to align with Sustainable Development Goal 3 agenda.

[148 words]

Keywords

Termination of Pregnancy Act; legal reform; Zimbabwe; reproductive and sexual rights; health

(B) Extended Abstract

2015 is a landmark year that witnessed the world leaders make a binding commitment for an ambitious blueprint to achieve a better and more sustainable future for all global citizens in the form of SDGs. Through these 17 SDGs, the world has committed, among others, to end poverty, and other forms of inequality as well as improve the health of all to ensure that 'no one is left behind'. A comprehensive plan of action to build a global partnership for sustainable development to improve human lives was first adopted at the Earth Summit in Brazil 1992. Thereafter, member states of the UN unanimously adopted the Millennium Declaration at the Millennium Summit, which elaborated eight Millennium Development Goals (MDGs) to reduce extreme poverty by 2015. In 2002, 2012 and 2013 the initiatives on sustainable development kept evolving until 2015 when the UN General Assembly finally adopted the 2030 Agenda for Sustainable Development.

There are 17 SDGs and since all of them are indivisible and interdependent, there is also a need for the countries to have integrated strategies that collectively strive each Goal

and target by 2030. Accordingly, the targets set by these goals must also be viewed in light of with International Human Rights Norms, which also require State Parties to reduce address all form of inequalities and provide access to sexual and reproductive health-care services. For this reason, the targets and commitments to achieve Goal 3 in Zimbabwe are discussed hand in glove with her obligation to respect, protect and fulfil the human right to health. SDG 3 aims to ensure healthy lives and promote well-being for all at all ages. Among the associated targets is the aim to reduce the global maternal mortality ratio; end preventable deaths of new-borns and children, and ensure universal access to sexual and reproductive health-care services.

In line with the SDG 3 targets set above, the Committee on Economic, Social, and Cultural Rights in 2016 adopted a groundbreaking General Comment 22 on Sexual and Reproductive Health. It seeks to assist State Parties, such as Zimbabwe on how to implement their human right obligations, especially the right to health. General Comment 22 endorses SDG 3 by affirming that the right to sexual and reproductive health is an integral part of the right to health that must be enjoyed all by the year 2030. Similar to the 17 SDGs, the General Comment recognises that sexual and reproductive health and rights are indivisible from and interdependent with other human rights; hence, State Parties must strive towards the realisation of women's right to sexual and reproductive health if they were to realise some of their human rights as well, such equality and non-discrimination.

Indeed, the African Commission in General Comment 2 unequivocally requires State Parties, to which Zimbabwe is a party, to ensure access to health services on a non-discriminatory basis and in ways that are physically and economically accessible, and in which information is accessible. General Comment 2 reiterates the State parties' duties to; among others, refrain from hindering, directly or indirectly, women's rights and to ensure that women are duly informed on family planning/contraception and safe abortion services; prevent third parties from interfering with the enjoyment of women's sexual and reproductive rights; and more importantly, adopt relevant laws, policies and programmes that ensure the fulfilment *de jure* and *de facto* of women's sexual and reproductive rights, including the allocation of sufficient and available resources for the full realisation of these health rights.

Despite the plethora of international laws and policies, the Termination of Pregnancy Act (Chapter 15:10), hereafter remains the key barrier to access abortion services in Zimbabwe. As the principal law regulating abortion in Zimbabwe, the TPA in section 4 stipulates the circumstances in which a pregnancy may be terminated; namely, if pregnancy is a result of rape, incest, or if pregnancy has caused foetal impairment, or to save the life of the pregnant woman. As will be shown in this paper, access to legal abortions on these grounds in practice is very difficult and rare. Ganatra *et al* note that restrictive abortion laws never reduce abortion incidence because they simply push women to pursue illegal and often unsafe abortions. Indeed, the 2015 Zimbabwe

Demographic and Health Survey estimates the maternal mortality ratios at 651 per 100,000 live births in Zimbabwe. Sully *et al* reveal that illegal unsafe abortions are a key contributory cause of maternal mortality in the country since 40 per cent of pregnancies in Zimbabwe were unintended, and one-quarter of all unintended pregnancies ended in legal abortion. They further reveal that of all pregnancies in Zimbabwe, 50 per cent ended in intended birth, 24 per cent in unintended birth, 16 per cent in miscarriage, and 10 per cent ended in abortion. One could also argue that the women accounting for the 24 per cent of unintended birth may have intended to terminate the pregnancy but could not do so due to legal and administrative barriers in addition to fear of social repercussions.

What is clear from the above statistics is that the TPA does not transform the legal framework for abortion from limited access to a rights-based framework that allows for abortion on request. The fact that the TPA enacted in 1977 and was last revised in 2001 is a testimony as to why the Act has failed to expand abortion to a rights-based framework that allows for abortion on request. The failure to expand abortion rights can also be levelled against the new 2013 Constitution. The new 2013 Constitution in section 76 guarantees everyone the right to have access to basic health-care services, including reproductive health-care services but also contains a contrary provision in section 48(3), which endorses the TPA to protect the life of a foetus and the circumstances under which pregnancy may be terminated.

Since the TPA was last updated in 2001, constitutionally endorsed in 2013 by Zimbabwe's new Constitution, this paper takes a closer look of the Act in light of the country's commitment to the most recent SDGs, particularly, SDG 3 on good health and well-being. Removing the barriers to access to abortion services is one of the crucial step towards Zimbabwe achieving its commitment of universal access to sexual and reproductive health-care services, including family planning by 2030. Accordingly, this article will mainly use a framework based on SDG 3 and other human rights standards to argue that some of the provisions of the TPA form barriers to women's access to reproductive health services. The TPA has an abortion in relation to the authorised medical professionals and facilities. It requires the 'consultation' of medical professionals for cases of women seeking abortion services under any of the four circumstances the Act prescribes. Section 5 is so complicated to the extent that it even retracts the right to abortion that the TPA has already restricted to circumstances defined within section 4. The Mapingure case bears testimony to how the law is still oppressive concerning women's reproductive freedom. In this case, robbers raped Mapingure at her home. She intended to have the pregnancy terminated in accordance with section 4(c) of the TPA but for her to do so; she needed both a police report confirming that indeed she had been raped and receive the medication within 72 hours of the sexual intercourse has occurred. However, because of the delays from the police side, the 72-hour prescription lapsed before she could terminate the pregnancy. After further delays and frustrations from the public prosecutor as well as the magistrate, Mapingure finally acquired all the documentation needed; it was

already unsafe to perform the termination. She eventually gave birth to her child. On appeal, the Supreme Court handed a judgement, which overlooked the loss of autonomy in respect of the termination of pregnancy. The Supreme Court also dealt with the case as a delict matter and not from a human point of view. Had the Supreme Court been guided by human rights law, it would have appreciated that requirement s and procedures set by the TPA most often delay pregnancy to a point when it becomes difficult for a woman to abort; thereby, infringing on the right to have an abortion enshrined in the Act.

It is evident that the TPA acts as the main obstacle to the availability and accessibility of abortion as sexual and reproductive health right. The paper reiterates that: restrictive abortion law denies women access to safe abortion, which in itself is one of the most damaging ways of instrumentalising women's bodies and a grave violation of women's human rights. This article shows there is an urgent need for modernisation that the TPA elicits. As shown above, there is no reasonable doubt concerning the international obligations Zimbabwe assumes: it must transform the legal framework for abortion from limited access to a rights-based framework that allows for abortion on request and has women exercise this right in practice. As discussed above, a critical analysis of the existing framework and the potentially upcoming law reforms is key to ensure that the state complies with its obligations in the international sphere and effectively ensures women's access to abortion services. This way, Zimbabwe would firstly see itself and secondly be seen by others as taking all appropriate measures to, among others, fight all forms of inequalities while ensuring that no one, especially women and girls, is left behind.

This paper seeks to contribute with guidance for modifying the TPA to ensure it complies with Zimbabwe's human rights obligations. Its value is also that it enables all stakeholders-including healthcare providers, lawyers, policymakers, and judicial officers to learn, unlearn and relearn the importance of women sexual and reproductive health so that they don't get 'left behind the train' of *2030 Agenda for Sustainable Development.* For this reason, it reviews both primary and secondary sources that are related to the study. The primary sources that are reviewed include; international legal instruments both binding and non-binding such as conventions/treaties, declarations, resolutions, general comments, commentaries to these instruments, and State Party Reports to the regional and international human rights instruments. At the domestic level, these include; constitutions, acts by parliament, bills passed, policies, government reports, Parliamentary Hansards, and drafting preparatory materials. The study also greatly relies on case law mostly from Zimbabwe but also from other jurisdictions. Secondary sources have also been vital sources of information including; books, articles in edited books, journal articles, newspaper articles, magazines, reports written by international and local organisations, organizational and other pertinent websites.