

BAROMETER

Safe Abortion



- ▶ Unwanted pregnancies have a profound effect on the lives of women and girls; their ability and right to make choices about their lives. According to the World Health Organisation (WHO), safe abortions are one of the safest and simplest medical procedures in existence. Yet, with abortion mostly illegal and highly frowned upon in most Southern African countries, unsafe abortion accounts for 10% to 13% of maternal mortality in the region.
- ▶ In the Southern African attitudes survey, nearly half (45% women and 44% men) said they agreed or strongly agreed that a woman had a right to terminate her pregnancy within the first trimester. Attitudes towards abortion are changing!
- ▶ **28 September is International Safe Abortion Day.** The day was first celebrated as a day of action for decriminalization of abortion in Latin America and the Caribbean in 1990. In 2011, the Women's Global Network for Reproductive Rights (WGNRR) declared 28 September as an international day. The day's name was changed to International Safe Abortion Day in 2015. 2016 was the biggest International Safe Abortion Day ever celebrated.¹
- ▶ From 5 to 9 November, SADC senior officials and Ministers of Health will meet in Windhoek, Namibia to adopt the revised SADC SRHR Strategy 2019-2030 and its related score card.
- ▶ This takes place against the backdrop of the global #Women'sMarch; #MeToo; #TimesUp and related regional campaigns such as the #IWearWhatILike and #TotalShutdown.
- ▶ The 2018 SADC Gender Protocol Barometer put a spotlight on the inter-linked gender justice issues of our time including menstrual health, comprehensive sexual education, teenage pregnancies, safe abortion, maternal health, GBV, HIV and Aids, and sexual diversity.
- ▶ SAfAIDS, cluster lead of the Southern Africa Gender Protocol Alliance, is leading the campaign for preventing unwanted pregnancy and unsafe abortion. This is part of the SAfAIDS Transforming Lives - Time for Change, Time for Action campaign supported by Sweden. SAfAIDS calls for policy changes to enable women to make choices about their bodies.

¹ https://en.wikipedia.org/wiki/International_Safe_Abortion_Day

28 September: International Day on Safe Abortion
- Southern Africa Awakening - Time for Action



MAPPING OF ABORTION LAWS IN SOUTHERN AFRICA

Country	Law	Abortion on demand (yes/no)	Conditions under which an abortion may be granted			Childs life	Time frame	Consent	Post abortion care
			Rape/incest	Mothers life	Mothers Mental state				
ABORTION AVAILABLE ON DEMAND									
 South Africa	Choice on Termination of Pregnancy Amendment Act No. 1 of 2008 ²	Yes - specifies available to any woman who wants to terminate out of choice, including counselling.					Within the first trimester.	Right to terminate without consent of other parties apart from medical practitioners.	Yes
 Mozambique	Amended Penal Code	Yes					On demand up to 12 weeks; incest, up to 16 weeks; foetal anomalies, up to 24 weeks.	A certified practitioner must perform the termination at designated facilities. ³	Yes
ABORTION AVAILABLE IN CERTAIN CIRCUMSTANCES									
 Zimbabwe	Termination of Pregnancy Act of 1977, Chapter 15: 10 ⁴		If conception is deemed unlawful (instances of rape).	Only under circumstances where the life of the mother is in danger.				A magistrate must grant permission.	Yes - In 2012, policy approved for women who undergo illegal abortions to receive medical post-abortion care without being referred to the police.
 Zambia	Termination of Pregnancy Act, 13 October 1972	No		✓ If the pregnancy will cause death.	✓ Mental or physical damage to the woman.	✓ Child at risk of mental and physical deformities.		Once three medical practitioners have agreed.	No
 Botswana	Penal Code (Amendment) Act, 1991 - Section 160	No	✓ Rape or incest.	✓ If the mother's life is at risk or may cause harm to her mentally.	✓ Where a woman has been deemed to be an idiot or an imbecile as per the Immorality Act of 1957, which makes sex with her illegal.	✓ If the unborn child will suffer or later develop physical or mental abnormality.	Termination has to be performed before 16 weeks. ⁵		No
 Lesotho	The Penal Code (2010) ⁶	No	✓ If pregnant due to incest or rape.	✓ To save the life of a pregnant woman.		✓ To prevent the birth of a child who will be seriously physically or mentally handicapped.		Performed by a registered medical professional, with the written opinion of another registered medical professional.	No
 Mauritius	Criminal Code Amendment Act 2012 ⁷			✓ To save the life of a pregnant woman; or from permanent physical damage.		✓ If the foetus may suffer severe malformation or abnormalities.	The pregnancy is within 14 weeks and the girl is younger than the age of 16.		No
 Namibia	Abortion and Sterilization Act 2 of 1975	No	Where two other medical practitioners confirm that the woman has been raped or is a victim of incest.	✓ The pregnancy poses a threat to the physical and mental health of the pregnant.	✓ Where a woman has been deemed to be an idiot or an imbecile as per the Immorality Act of 1957, which makes sex with her illegal. ⁸	✓ The unborn child is at risk of a serious mental or physical deformity and handicap.		Two medical practitioners must approve in writing that the pregnancy is a risk.	No
ABORTION ONLY AVAILABLE IN LIMITED CIRCUMSTANCES									
 Seychelles	Termination of Pregnancy Act, 2012	No		When a woman's life is deemed to be in danger or if the cost of carrying the foetus is greater than the pregnant woman's physical and mental health.		Termination can be carried out if the child is at risk of serious mental and physical deformities. ⁹		If three medical practitioners agree in good faith, termination can be undertaken at Victoria Hospital, Mahe.	No
 Tanzania	Penal Code ¹⁰			Woman is at risk of death, pregnancy threatens the mental and physical wellbeing of the woman.	Pregnancy threatens the mental and physical wellbeing of the pregnant woman.				No
 eSwatini	The Constitution			Only possible where the life of the pregnant woman is in danger. ¹¹					No
 Malawi	Penal Code and The Law Commission of Malawi has drafted the Termination of Pregnancy Bill to legalise safe abortion for women in the event of incest, rape or severe foetal abnormalities. ¹²	No		Currently, Malawi only allows abortion to save a woman's life.					No
 Angola	Penal Code 2014 ¹³			Termination only permissible to save the life of a woman.					No
 DRC	The Constitution			Abortion is illegal except in cases where a woman's life is in danger. ¹⁴					No
ABORTION ILLEGAL UNDER ALL CIRCUMSTANCES									
 Madagascar	Reproductive Health and Family Planning Law 2017		Abortion under any circumstance remains illegal.	In Criminal Procedure law, an abortion can be performed to save the life of a woman.					No

² http://www.parliament.gov.za/live/commonrepository/Processed/20140414/67169_1.pdf
³ <https://www.womenonwaves.org/en/page/5009/abortion-law-mozambique>
⁴ <http://cyber.law.harvard.edu/population/abortion/Zimbabwe.abo.html>
⁵ <http://www.gov.bw/en/Citizens/Sub-Audiences/Women/Unsafe-Abortions/>
⁶ <https://www.hsph.harvard.edu/population/abortion/BOTSWANA.abo.htm> http://www.wipo.int/wipolex/en/text.jsp?file_id=238601
⁷ <https://lesotholii.org/ls/legislation/num-act/6>
⁸ <https://srhr.org/abortion-policies/documents/countries/02-Mauritius-Criminal-Code-Amendment-Act-2012.pdf>
⁹ https://laws.parliament.na/cms_documents/abortion-and-sterilization-c5c7b99b28.pdf
¹⁰ <https://srhr.org/abortion-policies/documents/countries/01-Seychelles-Termination-of-Pregnancy-Act-2012.pdf>
¹¹ https://www.globafinancingfacility.org/sites/gff_new/files/Tanzania_One_Plan_II.pdf
¹² <http://srhr.org/abortion-policies/country/swaziland/>
¹³ <http://www.satregional.org/wp-content/uploads/2018/05/Age-of-consent-Malawi.pdf>
¹⁴ <http://srhr.org/abortion-policies/documents/countries/01-Angola-Penal-Code-2014.pdf>
¹⁵ <https://www.google.co.za/#safe=off&q=abortion+bill+1991+democratic+republic+of+Congo> (UN Publication)

The mapping of laws shows that

- ▶ All SADC countries provide for abortion in some circumstances, but this ranges from **South Africa and Mozambique**, where abortion is available on demand, to **Zimbabwe, Zambia, Botswana, Lesotho, Mauritius and Namibia**, where abortion is only available in certain circumstances; to **Seychelles, Tanzania, eSwatini, Malawi, Angola and DRC** where abortion is only available in extremely limited circumstances, to **Madagascar**, where abortion is almost totally outlawed.
- ▶ In **South Africa**, despite strong pro-abortion laws, access to the service remains a challenge, with only 7% of the country's health facilities providing abortions.¹⁵ Research shows that many health workers refuse to perform the procedure, with government unable to do anything about it. Information about where and how to acquire the service remains limited.¹⁶
- ▶ In **Lesotho**, government acknowledges the devastating effects of illegal backyard abortions on girls and women but still will not relent to make abortion legal in the country. Instead, it surreptitiously advises women to go across the border into South Africa where abortion is legal. The irony is not lost on human rights lawyer Lineo Tsikoane, who has said of the Ministry of Health: "They know abortion is illegal, but they're telling us to advise girls to go elsewhere, and [yet] won't change our own law."
- ▶ The most common circumstances in which abortion is provided for are incest and rape; related to that, threat to the mother's mental well-being. Evidence of possible child deformities may also be grounds for abortion.

- ▶ While allowing for abortion in limited circumstances, **Zimbabwe** passed a law in 2012 that allows for post-abortion care. A much more cost effective option would be to provide for safe abortion.
- ▶ It is clear that many of the laws governing abortion in SADC are inherited from the colonial era and are out of sync with modern rights-based laws. For example the Abortion and Sterilization Act 2 of 1975 in **Namibia** dates back to 1975. One of the few grounds for abortion is where "a woman has been deemed to be an idiot or an imbecile as per the Immorality Act of 1957, which makes sex with her illegal."
- ▶ On 24 February 2018, **Angola's** parliament approved an amendment to the abortion law, making all abortions, without exception, illegal and punishable by between four to ten years' imprisonment. This is part of the process of replacing Angola's 1886 penal code. Parliamentary debate on the amendment stalled following a public outcry over it, leading to the ruling party proposing a revised version of the legal amendment. The revised version retained the legality of abortion in cases of rape or maternal health risk.¹⁷

- ▶ In December 2017, **Madagascar** passed the Reproductive Health and Family Planning Law after many years of advocacy to revoke colonial policy that prohibited promotion of contraception. The law recognises reproductive health and family planning as basic human rights for all, irrespective of age. It defines "counselling and family planning services for sexually active teens, married or unmarried" as one of the necessary reproductive health services. The law also provides for family planning education and outreach, community-based distribution of services, improved family planning technical capacity in health facilities, and availability of commodities, including emergency contraception."¹⁸ But parliament rejected efforts by the Ministry of Public Health to make amendments to the family planning law to allow for therapeutic abortion. As a result, abortion remains illegal in Madagascar under all circumstances, with virtually no exception.

Increasingly, women have turned to social media, in particular Facebook, to look for illegal abortion services. This can lead to serious complications and death if they receive the service from unqualified people and in unhygienic conditions (CNN 2018).

SIGN THE PETITION FOR SAFE ABORTION IN SADC

<https://genderlinks.org.za/what-we-do/sadc-gender-protocol/advocacy/safe-abortion-campaign/>



SADC GENDER PROTOCOL ALLIANCE



Knowledge for action: The power to make a difference!



SWEDEN



AMPLIFY CHANGE



¹⁵ Skosana, I (2017), 'Less than 7% of health facilities nationwide offer abortions - Amnesty International', available at: <http://bhokisisa.org/article/2017-02-14-00-only-260-health-facilities-nationwide-offer-abortions-amnesty-international/> (accessed 11 June 2018)

¹⁶ Amnesty International (2018), Amnesty International Report 2017/2018, Amnesty International, London

¹⁷ The Citizen (2017), 'Angola Backs Down on Total Abortion Ban' available at <https://citizen.co.za/news/news-africa/1542075/angola-backs-total-abortion-ban/> (accessed 1 April 2018)

¹⁸ https://medium.com/@FP2020Global_20685/madagascar-enacts-historic-family-planning-law-8ac7ab62e0ad. Accessed 20 June 2018