



Unsafe Abortions in Kenya: What are the Competing, Compelling Issues and Linkage in Relation to Human Rights, Policies and Legal Frameworks?

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Introduction

The definition of un-safe abortion in Kenya as per the Kenya National Adolescent Sexual and Reproductive Health Policy 2015 is a procedure for terminating pregnancy performed by persons lacking the necessary skills or in an environment that is not in conformity with minimal medical standards or both. Kenya's laws, policies, guidelines and codes of ethics that regulate, criminalize or advance the provision of safe abortion and post abortion care is not implemented as required. Despite the legislation and policy provisions, it takes women and girls a lot of struggle to enjoy their mental, physical, social, economic, political, and cultural stability of their well-being. Kenya's 2017 Medical Act emphasize health being a state of complete physical, social well -being and not merely absence of disease or infirmity. The cultural tendency especially in the Kenyan rural, urban, affluent and informal sector is that women are expected to consent to have sex without protection nor is there room to consider their feelings and opinions throughout prenatal to postnatal period. Throughout pregnancy period it is normally the women business to deal with all the aspects. In some cases they are abandoned at the hospital facilities. It is then common sense women and girls from poor and affluent economic backgrounds die from abortion complications when they don't seek for professional services. In most cases they rely on services from unqualified health providers.

In February 2019 Caroline Mwatha a human rights activist and founder of Dandora Community Justice Center went missing. In the same month Director of Criminal Investigations George Kinoti signed a report indicating Caroline died of abortion conducted at a community clinic in Dandora by one Betty Akinyi and Michael Onchiri quark medical professionals. Postmortem report revealed Caroline died of excessive bleeding. What could have made Caroline to seek for services from the unqualified professional at a community center? Many questions remain unanswered.

On the other hand quark Dr. Mugo Wairimu exposed his clients to abortion, rape, and drug abuse in Kayole for five years without arrest. When he was arrested no woman came out to testify against Mugo or claim justice for rape, drug abuse and abortion conducted by him.

The answer then to why women and girls don't claim their rights through justice systems is clear. The justice and law enforcement agencies do not link services. The advocacy and lobbying for women's abortion legal services is not out spoken and accepted subject in Kenya. Ideally abortion service should be given to women throughout the reproductive health services to include family planning, ante-natal care, post-natal care and delivery and in ceases of sexual violence that leads to pregnancy. When women and girls don't realize the services needed they opt for abortion in dingy places and facilities.

The Ministry of Health launched the Standard Guidelines for the reduction of maternal morbidity and mortality from unsafe abortion in 2012. The Guidelines set out regulations on a range of services and information including on the prevention of unintended pregnancies, management of risky pregnancies, and how to deal with post-abortion care. However in 2014 the Ministry of Health issued a memo banning training of health providers on safe abortion and threatened punitive action against those found attending such trainings.

The statistics of induced abortion by the Incidence and complication of unsafe abortion in Kenya show that 48% of reproductive age between 15-49 Years girls and women received care of an induced abortion. This high percentage of induced abortion shows there are no proper regulations and guidelines for safe abortions in Kenya. This is due to policy and legal content, social cultural economic landscape, stigma and quarks providing services that they are not trained to provide.

Limitations of the law, policy and human rights

The limitations of unsafe abortion in Kenya include failure to provide for comprehensive sexual education at school, middle and high level of learning institutions. Withdrawal of The Ministry of Health Standard Guidelines in 2013 caused FIDA Kenya and other likeminded organization, to file a case against Attorney General, Petition 266 of 2015. The Federation of Women Lawyers also launched a campaign to Safeguard Constitutional Rights to Safe and Legal Abortion for Girls and Women in Kenya. The campaign uses social media and capacity building targeting different stakeholders lobby and advocate for reinstatement of Standard Guidelines on for reduction of maternal morbidity and mortality from unsafe abortion withdrawn in 2014 and to lobby for passing of Reproductive Health Bill.

The good news is in Nairobi on the 12th June 2019 the court ruled that a rape survivor had a right to an abortion and ordered authorities to pay Ksh. 3,000,000 to the mother of teenage girl victim who died after a botched abortion. The ruling has upheld the Kenyan 2010 Constitutional right of article 26(4) on the right to life which should not be limited in the opinion of a trained health professional and if there is need for emergency treatment. The ruling is in line with the revised penal code where a medical professional under article 240 takes surgical operations. The article provides for “a person is not criminally responsible for performing in good faith and with reasonable care and skills a surgical operation upon any person for life benefit, or upon an unborn child for the preservation of the mother’s life, if performance of the operation is reasonable, having regard to the patient’s state at the time and to all the circumstances of the case.” The article agrees with the decriminalization exception in the 2010 Kenyan Constitution. With this ruling the government should declare and lift the guidelines on safe abortion to include pregnancy resulting from mental, economic, cultural and any other societal aspects of stigma of pregnant girls and women seeking for the services.

In addition the revised penal Code Cap 63 regulate the activities of medical professionals in Article 240 talking to surgical operations. The article reads, “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”. The provision of this article agrees with the decriminalization exception in the 2010 Kenyan Constitution.

Conclusion

Providing safe abortion and post abortion care gives women and girls the right to make choices in relation to when they want to have children depending on certain circumstances such as age and their ability to raise children in a healthy and conducive environment or home. RJ Cook, *et al.* [1], postulate that women’s ability to access safe abortion is affected by the domestic laws and how those laws are interpreted and administered in practice and how the healthcare provider perceives the laws. The net effect of this is that women will not be able to access safe abortion especially where the health care professionals and women do not understand the vaguely worded legal provisions. According to G. Sedgh, *et al.* [2], Women with unwanted pregnancies are likely to have an abortion regardless of whether the abortion is permitted under the law. It can be argued that domestic laws are a great determinant as to whether women will have safe or unsafe abortions. The place of laws should be to facilitate women access their reproductive health rights and choices but should not fetter this right, the law has a role in ensuring the abortions that would otherwise been unsafe are safe. There is need to continuously safeguard the Constitutional provisions on safe abortion and lobby for the reinstatement of Standards Guidelines on safe abortion and passing of Reproductive Health Bill 2014. Section 19(1) states “a Pregnancy may be terminated if a trained health professional, after consultation with the pregnant woman, is of the opinion that pregnancy may endanger the life or health the mother. Support advocacy for removal of reservation particularly Article 17 of Maputo protocol ratified by the government of Kenya.

Bibliography

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