ANNUAL SCIENTIFIC CONFERENCE

KAMEL PARK HOTEL

16th – 18th, June 2021

RHRA REPORT

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LIST OF ABBREVIATIONS

1. **RHRA** Reproductive Health Rights Alliance
2. **ICESCR** International Covenant on Economic Social and Cultural Rights
3. **ICCPR** International Covenant on Civil and Political Rights
4. **FIGO** International Federation of Gynecology and obstetrics
5. **ICPD** International Conference on Population and Development.
6. **SRH** Sexual and Reproductive Health
7. **KMA** Kenya Medical Association
8. **PP Global** Planned Parenthood Global
9. **KELIN** Kenya Legal and Ethical Issues Network on HIV and AIDs
10. **ICCPR** International Covenant on Civil and Political Rights
11. **CAT** Convention Against Torture
12. **CEDAW** Convention on Elimination on all Forms of Discrimination Against Women
13. **ACHPR** African Charter on Human and People's Rights
14. **WHO** World Health Organization
15. **KDHS** Kenya Demographic and Health Survey.

EXECUTIVE SUMMARY

Sexual and reproductive health is an integral part of health. It is an issue of development concern .Realization of many fundamental human rights is highly dependent on realization of rights under the sexual and reproductive health frame.

Given the high maternal and morbidity rates resulting from unsafe abortion, the International Conference on Population and Development (ICPD) in 1994 recognized access to safe abortion as a key public health concern. Many years later gains have been made to ensure access to safe abortion. However, many actors have failed to expedite their responsibilities hence the claw backs witnessed in realization of sexual and reproductive health rights in general and access to safe abortion in particular.

INTRODUCTION

Kenya Medical Association executes its twin mandate of promoting quality healthcare through various committees among them the reproductive health Committee. The latter has been committed to realization of sexual and reproductive health rights.

KMA –RHRA with the support of PP Global launched a report, 'Chief Conspirators in Unsafe Abortion and Maternal Deaths in Kenya: The Role of Existing Laws and Policies, Health Systems and Duty Bearers.'

A representative from the consultancy team i.e. Dr. Frederick Wekesah led the process of disseminating the report findings at the conference. This was followed by presentations by a team of experts made up of Ms. Nerima Were (KELIN), Dr.Carol Odula (RHRA) and Prof. Boaz Otieno –Nyunya (Co-convener KMA RHRA). Ms. Wangari Ireri, the project officer in the reproductive health committee moderated the session and developed this report.

EXPECTED OUTPUT(s)

- ✓ To share the major findings of the abortion analysis focusing on:
    1. The burden of the induced and unsafe abortion, complications of unsafe abortion, cost and quality of treating abortion, complications in Kenya.
    2. The prohibitive environment that governs access to abortion in Kenya.
    3. Public health implications of a prohibitive environment governing access to abortion.
    4. Sexual and reproductive health in the context of Universal Health Coverage and Sustainable Development agenda

- ✓ To identify a pool of champions and allies committed to championing sexual and reproductive health rights among medical practitioners.

PRESENTATION ONE

Study Methodology and Findings: Dr. Frederick Wekesah

- ✓ The big accountability question.
- ✓ The study identified duty bearers to whom recommendations were made.
- ✓ Contextual review of methodology: identification of and comprehensive review of published articles, reports and gray literature, review of policy and legal documents and judicial pronouncements by legal experts.
- ✓ 3 Key research questions:
    1. What systemic issues influence the burden and cost of unsafe abortion and its complications in Kenya?
    2. What relationships exist between the increased cost and poor quality of post-abortion care services in Kenya and the lack of access to safe abortion-related services?
    3. What existing global, regional, socio-cultural and religious environments govern provision of abortion in Kenya?
- ✓ Aims and objectives
    1. Assess what Kenya has done to ensure that her women and girls enjoy their full right to safe and quality sexual and reproductive health.
    2. Analyze the missing and/ or weak links , and barriers in the provision and access to quality
    3. Analyze the impact of a legally restrictive environment on the provision and access to safe abortion services, the growing burden of unsafe abortions, morbidity and mortality, and the runaway cost to the public healthcare system of treating complications resulting from unsafe abortions in Kenya.
    4. Propose/recommend based on the findings to the Government of Kenya, the Ministry of Health & to Kenya Medical Association as the professional medical body with the mandate to advise the government on matters regarding the health of the population.
- ✓ Key results sections
    1. Burden and magnitude of unsafe abortion and complications in Kenya
    2. Access to safe abortion services in health facilities in Kenya. Barriers to access to safe abortion.
    3. Cost of treating unsafe abortion in Kenya (health systems, individuals, families).
    4. Quality of abortion care in Kenya.
- ✓ Burden and magnitude of unsafe abortion and complications in Kenya

Maternal mortality rate per 100,000 live births

In 1998, maternal mortality rate in Kenya was about 488 per 100,000 live births, in 2008 it stood at 590 per 100,000 way below the zero maternal deaths target. (KDHS)

- ✓ Access to safe abortion services in health facilities in Kenya

Hampered by the restrictive framework, punitive laws and policies, direct and indirect financial cost of accessing safe abortion services pushing women to clandestine facilities, unavailability of safe abortion services and trained health services, negative societal attitudes & stigma toward abortion, gender inequality and conscientious and religious objections which requires

healthcare providers to refer clients, harmful cultural practices and religious interpretations, lack of knowledge and awareness about services available. There are heath system barriers which include: frequent service interruptions, facility ownership if public or private, and availability of services.

- ✓ Cost of treating unsafe abortion in Kenya (health systems, individuals, families).
  It takes about Ksh. 4,943 to treat a typical case
  Ksh. 433 Million nationally as of 2012 and Ksh.533 Million as of 2016.

The cost of treating abortion related complications stated above may be viewed against the cost of providing contraceptives.

- ✓ Quality of abortion care in Kenya.
  - There are differentials depending on healthcare provider i.e. whether physician/ non-physician, facility type i.e. whether public or private.
  - Use of/non-use of appropriate guidelines/ procedures and technologies (e.g. E/MVA vs D&C).
  - Training, standardization, guidelines and clarification on legal provisions.

PRESENTATION TWO

The legal and policy framework on access to abortion, MS. Nerima Were

- ✓ There are legal and policy provisions to facilitate access to safe abortion.
- ✓ Given that abortion is criminalized in some circumstances, it is imperative that medical providers providing abortion services minimize legal risks while still offering the highest standards of health.
- ✓ The legal and policy frameworks that govern provision of abortion services include:

National Framework

The constitution

- ✓ The chapter in the constitution on devolution separates the mandate of the national and county government.

The national government has primary healthcare functions including setting standards applied in tertiary hospitals i.e. level 6 hospitals.

The county government has primary health care functions for levels 1 to 5 hospitals.

Chapter 4 of the constitution provides for the bill of rights. The constitution provides for non-discrimination on many grounds such as pregnancy.

- ✓ Article 43(1) (3) provides for the highest attainable standards of health including reproductive health.
- ✓ Article 26(4) provides that, ' abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law…'

As opposed to the previous constitution, the 2010 constitution adds the health of the mother being in danger as a ground for providing of abortion.

The definition of health in the act resembles that adopted by the WHO.

Emergency treatment in article 26(4) refers to post-abortion.

The phrase, 'permitted by any other written law, 'may be interpreted to include laws developed at the county level, sexual offences act among others.

- ✓ Health Act, 2017 provides the definition of both healthcare professional and health.

The Health Act 2017 expounds on what constitutes reproductive health rights while also providing for the right to information.

The act provides access to treatment for conditions occurring during pregnancy such as ectopic, abdominal and molar pregnancy which threaten the health of the mother.

- ✓ *The Sexual Offences Act* allows MOH to make laws for the management of sexual violence such as the national guidelines on management of sexual violence.

The guidelines includes rights of a survivor of rape in the instance of rape.

In some jurisdictions such as Zimbabwe, victims of rape are entitled to safe abortion. However, as in a particular case in Zimbabwe, delays in coordination within the system may lead to denial of justice.

The case referred to in Zimbabwe involved lack of coordination between the director of public prosecution, the police officers and the medical practitioners and eventual denial of justice as the ruling was made when the lady in question had given birth.

Devolution and county Frameworks

At the counties level, different counties have legislated laws that affect provision of abortion services.

In Makueni, one may receive abortion services in case of sexual violence. The bill leaves room for the healthcare provider to receive the testament from the victim of rape before rendering the service.

Medical practitioners should note that resolving cases of deceit amongst those seeking abortion services under the guise of rape are not within their purview as they fall within the criminal domain.

In Kilifi, the county maternal, Newborn and child Health Act largely claws back on the constitution by limiting abortion to emergency treatment.

MOH developed *Standards and guidelines for reducing mortality and morbidity from unsafe abortion in Kenya.*

The ministry at some point withdrew the guidelines and issued a circular to the effect that training and providing services around abortion was not allowed.

However, the guidelines were reinstated but were not accompanied by a circular clarifying the earlier position on training of medical care providers on provision of abortion services and provision of the same.

Given that the guidelines bind the public healthcare sectors, it is important that the ministry circulates the guidelines and perhaps develop a circular to provide further instructions.

Notably, the guidelines are clear on: on who can provide what service, at what stage abortion services may be provided and at the point at which the services of an obstetrician may be required.

International Law

- ✓ The international law also guide provides of abortion. The 2010 constitution contains a domesticating clause i.e. 2(6) provides for any treaty or convention ratified by Kenya to form part of the Kenyan law.
- ✓ The ICESR and particularly the General comment 22 provides that restricting/ criminalizing access to abortion constitutes a violation of human rights.
- ✓ The ICCPR provides that no one shall be subjected to torture and other cruel, Inhuman or Degrading treatment or punishment. This provision is further elaborated in the convention against Torture and other cruel, Inhuman or degrading treatment or punishment.
- ✓ Jurisprudence emanating from the committee against torture confirmed that denial of abortion services may amount to cruel, inhuman and degrading treatment.
- ✓ The regional instruments such as the Maputo protocol and the African Charter on Human and People's rights provide for the right of health.
- ✓ The Maputo protocol enjoins all states to take measures to ensure medical abortion in different instances such as sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother.

Kenya despite ratifying the protocol has placed some reservations on the above provision i.e. article 14(2) (c). However, the provisions in the latter are quite similar to provisions in Article 26(4) of the Kenyan constitution.

Key jurisprudence in access to abortion

1. FIDA *Kenya and Another v The Attorney General and Others* (Petition 266 of 2015). Petition 266 of 2015 involved a young lady JMM who eventually passed on after sustaining complications from an unsafe abortion. The court found MOH in contravention of the law by withdrawing standards and guidelines developed to reduce maternal and morbidity rates arising from unsafe abortion.
   In addition, the court established that abortion is allowed in cases of rape and defilement.

2. In the John Nyamu case, John Nyamu was charged with murder alongside two nurses. The accused were however acquitted on grounds of insufficient evidence.

3.Republic v Jackson Namunya Tali Criminal Case No.75 of 2009; (2014) EkLR (High court of Kenya).In this case Mr. Tali was accused of murder following the demise of a lady seeking care after procuring an abortion passed

Medical practitioners have the responsibility of:

- Minimizing legal risk by for instance keeping medical records properly.
- Participating in legislative processes.

- Providing the best standard of care to patients.

PRESENTATION THREE

Public health implications of a prohibitive environment governing access to abortion, Dr. Carol Odula.

- ✓ With an aim of zero maternal deaths, not a death should be condoned.
- ✓ The following two studies form the backdrop against which KMA – RHRA undertook the analytical study.

1. National Assessment of the magnitude and consequences on unsafe abortion(Ministry of health, Ipas Alliance et al. (2004)
2. Incidences and complications of unsafe abortion in Kenya, key findings of a National study(MOH , APHRC et al.(August 2013)

From the studies, the following are glaring facts:

1. Abortion fatality rates are higher in Kenya compared to other Sub-Saharan countries.
2. Abortions in some cases result in severe disabilities and complications that require specialized care as well as long hospitalization periods
3. One of 10 the girls seeking abortion related care have had a previous induced abortion. This implies that: before leaving the facility, the girls are not counseled, advised on contraceptives Care or even linked to other services such as cervical cancer screening.

Secondly, it is possible that medical providers employed methods and dosages of unproven efficacy /dangerous medications or that providers weren't updated on what to do.

It remains imperative therefore that, girls/ women needs are placed at the center of the interventions employed.

Access to safe abortion is influenced by:

1. Direct and indirect cost
2. (Un)availability of training of safe abortion services
3. Societal attitudes
4. Harmful cultural practices and religious practices
5. Facility based healthcare stigma.
6. Capacity challenges for healthcare providers that relate to:
    a) Training and availability of commodities. For instance long -acting reversible contraception such as intrauterine device requires more time to handle. It is important that providers are equipped with knowledge to handle all manner of contraceptives.
    b) Training on legal provisions on safe abortion services.

Comprehensive Abortion Care

1. Primary prevention – prevent unwanted pregnancy

2. Secondary prevention – manage unwanted pregnancy and may include: counseling for carrying the pregnancy, delivering and giving out the baby for adoption, termination of pregnancy safely within the law.
3. Tertiary prevention – life saving, recognized and provided in both private and public health facilities.

In 1994, ICPD recognized comprehensive abortion care as a human right. At the ICPD, it was further provided that in circumstances that abortion is not against the law, it should be safe.

Therefore, laws that are punitive to women accessing abortion care should be reviewed.

CONFLICT BETWEEN PERSONAL AND PROFESSIONAL RESPONSIBILITY

- ✓ Beyond religious biases, healthcare providers are called upon to uphold professional responsibility.
- ✓ Healthcare providers have both moral and ethical responsibility to uphold acceptable behavior in the community and especially so if they are to be entrusted with people's health.
- ✓ There are consequences of unacceptable behavior: healthcare provider being shunned, loss of employment and income, deregistration by the medical board, jail terms. All this create caution in the manner healthcare providers execute their responsibilities.
- ✓ Scientific evidence at times conflicts community and personal values.
- ✓ Healthcare providers have a professional duty to prevent deaths resulting from unsafe abortion.
- ✓ There is scientific evidence to show that abortion may be safely performed.
- ✓ In circumstances where abortion is legal, services should be made available and of high quality. As opposed to obsolete methods such as dilation and curettage there are more safe methods such as vacuum aspiration.
- ✓ The dilemma between personal and professional responsibility has resulted in unsafe abortion accompanied by severe complications in circumstances where women were denied access to safe abortion.

RESPONSE OF HEALTHCARE WORKERS TO VALUE CONFLICTS

1. Total rejection of scientific evidence and adherence to community/ personal values.
2. Total rejection of community values and adherence to scientific evidence
3. It is improper for healthcare workers to project a favorable image to the community while risking lives.
4. Whatever the decision, there are risks and consequences.

In reference to conscientious objection i.e. adherence to personal values, rejection of scientific evidence:

- ✓ Conscientious objection only applies to medical workers and not managers and administrators. Conscientious objection is not facility based
- ✓ Institutions that offer SRH services must have a policy on conscientious objection
- ✓ Conscientious objectors must refer their clients on time for the required services in good time to safe life.

FIGO Committee on Ethical Aspects of Human Reproduction

- ✓ Provides that in case of abortion for non-medical reasons: providing the process of properly informed consent has to be carried out, a woman's right to autonomy, combined with the need to prevent unsafe abortion, justifies the safe abortion.
- ✓ Article 32(1) of the 2010 Kenyan constitution provides for right to freedom of conscience, religion, thought and opinion
- ✓ Article 32(4) provides that a person shall not be compelled to act or engage in any act that is contrary to the person's belief or religion.
- ✓ Conscientious objectors though protected by the constitution should timely refer clients for assistance. There is however a caveat: objection may not apply during emergency.
- ✓ During the emergency, conscientious objectors that deny the services are to be held liable.
- ✓ The FIGO resolution provides that in emergency situations, practitioners should provide care regardless of their personal objections.
- ✓ The FIGO Committee on Ethical Aspects of Human Reproduction creates an obligation for doctors that do not find abortion permissible to refer the woman to a colleague who is not in principle opposed to termination of pregnancy.
- ✓ Medical practitioners must participate in legislative processes.
- ✓ There are dire consequences of judicial interpretations being adopted without the participation of KMA members.

PRESENTATION FOUR

Sexual and reproductive health in the context of Universal Health Coverage and Sustainable Development agenda, Prof Boaz Otieno- Nyunya

- ✓ There is no health without sexual health
- ✓ There is no health without reproductive health
- ✓ There is no health without sexual and reproductive health
- ✓ Sexual and reproductive issues beyond health are development & integrity concerns.
- ✓ UHC must ensure that SRH services are included in the package
- ✓ Given its contribution to maternal and morbidity rates, unsafe abortion was highlighted as a public health concern at the ICPD in Cairo.
- ✓ ICPD in Cairo recommended resource mobilization through both domestic means and official development assistance to ensure realization of SRH services.
- ✓ SDG 3 healthy lives and promoting wellbeing of all at all ages.
- ✓ National agenda as contained in UHC is aimed at ensuring that all individuals and communities get quality health services without financial hardships.
- ✓ The disadvantages of an expensive healthcare lie in excluding some sections of the population that are vulnerable such as people who are living with disabilities, people who use drugs etc.
- ✓ It is not possible to realize both national and international goals on health without addressing SRH concerns.
- ✓ To reduce morbidity and mortality rates, access to comprehensive abortion care should be enhance.

- ✓ Affordable SRH services ensure quality abortion care whose markers are: adequate infrastructure, competence of healthcare provider accompanied by non-judgmental attitudes of the providers, clients being at the center of the care and not providers.
- ✓ UHC is not sustainable if it excludes abortion care services for philosophical, religious or even cultural considerations.
- ✓ KMA should examine its values system to ensure it is not a conspirator of unsafe abortion and hence perpetuator of women's deaths inadvertently.

PLENARY

1. How do you resolve the conflict with the religious groups e.g. Catholics that oppose use of contraception in an effort to prevent unsafe abortion?

Response

The primary duty bearer is the government. It has a responsibility of looking into the unmet needs of contraceptives. Therefore, the political goodwill from the primary duty bearer will be a good starting point.

(More details on the response from Dr. Otara's presentation)

2. Doesn't the law and especially penal code criminalize abortion?

Response

- ✓ Constitution is the founding law
- ✓ The penal code criminalizes unlawful abortion
- ✓ In rendering safe abortion, medical doctors should adhere to lawful practices as guided by the constitution, stipulated standards and guidelines.
- ✓ Most of the cases filed against medical practitioners who offered safe abortion ended up being dismissed. In one case, it ended in acquittal while in the other a successful appeal was made.

DR. OTARA

- ✓ The discussion on abortion is timely and we cannot shun it.
- ✓ There are statistics to indicate loss of lives of mothers and girls through unsafe abortion.
- ✓ The current context created by COVID 19 is responsible for producing teenage mothers.
- ✓ The discussion on pregnancy entails a discussion on abortion and contraceptives.
- ✓ Religious inclinations must not be used to exclude provision of contraceptives.
- ✓ There are three elements to be considered when referring to safe abortion: the environment, the immediate legal and policy framework and the healthcare providers.
- ✓ Access to abortion demonstrates the existing inequalities in the society. On one hand are people who can access /afford abortion in safe services. On the other hand are people who cannot access abortion as a result of the high financial costs and stigma involved.
- ✓ 'We must own our women.'

DR WERE

- ✓ Appreciation to PP Global, Consultants, Dr. Carol Odula, Nerima Were, Tabitha Saoyo, Prof Boaz Nyunya – Otieno, Wangari Ireri
- ✓ It is important to have an open discussion about ending maternal deaths.
- ✓ The above stated discussions should revolve around reviewing legislative and policy frameworks to protect healthcare providers that provide abortion services
- ✓ The 2010 Kenyan constitution provides for access to the highest standards of health. The constitution makes reference to reproductive health.
- ✓ Safe abortion is a component of reproductive health.
- ✓ KMA through existing partnerships with organizations such as KELIN, Haki jamii, MSI and through fostering new partnerships will continue to champion for sexual and reproductive health rights.
- ✓ KMA will utilize the partnerships to increase awareness and availability of safe abortion services in order to contribute towards realization of UHC.

GALLERY


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