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Advocacy towards Changes on Laws Governing Access to Safe Abortion in Kenya

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Abstract

Unsafe abortion is one of the leading causes of maternal mortality and morbidity worldwide as well as in Kenya. The discussion of a revised constitution for Kenya during 2008 to August 2010 was an opportunity to create a greater awareness on the need of reproductive health services and of broadening the circumstances under which abortion is permitted by law.

The Kenyan Obstetrical and Gynecological Society (KOGS) used its scientific prestige to advocate for more liberal abortion legislation in which it teamed with civil rights and professional associations in reproductive health such as the National nurses association, the midwife chapter and the Kenya clinical officers' society. Since it is not possible to fully evaluate the full impact of these efforts in the constitutional change debate, we describe what was done and achieved in the constitutional changes affecting reproductive health in Kenya.

Keywords: Unsafe abortion; Maternal mortality; Advocacy; Law; Kenya

Introduction

Worldwide maternal morbidity and mortality continues to be a largely preventable tragedy that adversely affects women, children, families, communities and ultimately, nations [1]. Women and children still die needlessly from pregnancy related complications which are preventable. Cost-effective interventions family planning and other reproductive health services can dramatically reduce maternal morbidity and mortality when made widely available and implemented in accordance with national policies and international standards.

World Health Organization (WHO) estimates that unsafe abortion case fatality rate has regional variations; in developed regions are around 30 deaths per 100,000 unsafe abortions. 530 deaths per 100,000 in Eastern Africa [2], 1,000 deaths per 100,000 live births [3].

Global experience show that legalization of abortion and increasing access to safe abortion services can significantly reduce maternal mortality without increasing abortion rate, and reduce the costs associated with treating post- abortion complications. These resources can then be redirected to provide safe abortion and other reproductive health services [4].

One of Kenya's leading causes of maternal morbidity and mortality is unsafe abortion [3]. Each year, over 300,000 women undergo unsafe abortions in the country, 20,000 are admitted to public hospitals with complications while an estimated 2,000 women die annually from these complications and injuries [5]. Kenyatta National Hospital records (largest national referral hospital), 60% of emergency gynecological admissions are due to abortion related complications, and majorities are young women [6].

Any move to introduce public policy and legislation that effectively advocate for women reproductive rights is always met with a huge public outcry. Laws governing access to safe abortion in Kenya are indeed restrictive when compared to similar laws in other African countries, such as South Africa, Tunisia and Zambia, whose abortion laws are fairly liberal and allow termination to take place up to 12 weeks of gestational age [2].

In the previous constitution, abortion was restricted in Kenya and only permitted to save the life of the mother. Severe penalties were prescribed by the Penal Code for the performance of abortion [7-11]. The discussions around the restrictive law made abortion a constitutional issue as Kenya went into constitution reform process. The country was then divided with some groups wanted to make it more restrictive while the others promoted a more liberal legislation [7].

In this legally restrictive environment women who find themselves with untimed pregnancies do not have alternative but to resort to backstreet clinics to procure unsafe abortions. Others opt to self-administer chemical substances, herbal remedies, anti-malarias and other drugs in attempts to self-procure an abortion. Poor women are the most affected by lack of access to safe abortion in Kenya [5].

The various opinions and the lack of comprehensive information regarding unsafe abortion in the country led members of Kenya Obstetrical and Gynaecological society (KOGs) with partners embarked on an advocacy mission to provide correct information to the health workers, the media and policy makers such as the members of parliament. KOGs led in discussions during the national constitutional review with the purpose of widening the circumstances under which safe abortion will be provided to the Kenyan women.

This paper describes some of the activities the KOGS carried out to introduce a more liberal legislation on abortion in the new constitution including the evaluation of the effectiveness of an advocacy instrument that is intended to improve the public awareness of the problem of unsafe abortion its causes and consequences.

Methodology

The Members of the KOGS with partners actively participated in

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the Kenyan Constitutional Review Process and other relevant forums to prevent anti-choice language inserted in the constitution and create a supportive and enabling environment for sexual and reproductive health and rights in Kenya.

To achieve this a Multi-disciplinary working group composed of KOGs, National Nurses Association of Kenya, Kenya Clinical Officers Association, Midwife chapter, Federation of women lawyers(FIDA), Kenya Medical Association (KMA), Centre for Adolescent studies was formed to strategize , draft and review relevant documents, participate in and prepare the presentation for use in advocacy training. The team prepared more than 30 statements to the Committee of Experts (COE) and Members of Parliament. They participated in more than 30 media debates, both in radio and TV. More than 20 articles in major national newspaper were published in collaboration with journalists. Members of KOGs also made live appearances and presentation to the COE at various stages of the constitution review process. This was to prevent the efforts of anti-choice groups to introduce articles in the constitution that would enact a total ban of abortion services in the country

Specific strategies for these presentations were:

- Develop evidence-based multimedia presentations that use new state-of-the-art techniques in graphic design and presentation.
- Strengthen local capacities to draw out policy implications from the latest data, design strategic communication plans, and sustain advocacy efforts.
- Increase knowledge among high-level policymakers, program officials, and community influential members about the magnitude of high fertility and unplanned pregnancies, unsafe abortion, maternal morbidity and mortality, and their costs, consequences, and solutions.
- Educate journalists on the consequences of unplanned pregnancies and resultant unsafe abortion, maternal morbidity and mortality using the multimedia presentations as teaching tools.

To advocate for laws, policies and practices that are in conformity with international and regional human rights principles on reproductive health and rights several meetings were held with reform commission to discuss the ratification of Maputo protocol and domestication of the Convention of Elimination of Discrimination against Women (CEDW). The team lobbied policy makers and legislators through presentation, media debates, and advocate for the ratification/ adoption of relevant conventions and for Kenya to ratify the Maputo protocol and domesticate the CEDAW. To increase on the number of advocates for this, we held workshops on abortion law and related international instruments to create awareness of members of health professionals, encouraged them to make presentations in various forum and to provide safe abortion services to the fullest extent of the law.

The Kenya Obstetrical and Gynaecological society developed a Multi Media Presentation (MMP) on abortion and its complication titled "*Women's Health, Our Nation's Health*", as an advocacy tool funded by the Population Research Bureau (PRB). As of mid-July 2010, the presentation had been shown at 12 events to a total audience of 503people.

A handout that accompanied the presentation was distributed at the end of each event so as to empower the attendees to be able to fully engage in discussions with the anti-choice team that included Catholic Church cleric and members of evangelical churches in Kenya.

Given the contentious nature of abortion in the Kenyan Constitutional Referendum debate, dissemination of the *Women's Health, Our Nation's Health* presentation was strategic and targeted up to this point. The primary audiences who saw the presentation were reproductive health stakeholders and health professionals, to prepare them for participating in the debate around the constitutional referendum and the implementation stage to follow. At the request of the Centre for the Study of Adolescence, the presentation was also shown to several groups of teachers and school administrators who were participating in training on adolescent reproductive health and sexuality. The MMP was presented in forums (which included conferences, workshops, meetings, in-service training of KOGS members) where participants were equipped with knowledge and given a chance to ask any questions. The presentations were made to health care providers, policy audiences including high-level government policymakers, civic and religious leaders, program officials, journalists, and medical students.

Results

Through the advocacy work under the leadership of the Kenya Obstetrical and Gynaecological society, the objective of preventing the total ban on abortion to be included in the constitution was prevented and a more favourable language to the Kenyan women was endorsed (article 26 4). The multiple methods of advocacy worked in our favour. The Kenyan public got well versed with the regional plans of actions like the Maputo Plan of Action and Maputo Protocol that states "protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus", and understood the laws in other countries like Ethiopia, South Africa and Zambia that ratified the Maputo protocol having realized that Kenya is not an isolated island.

Although we cannot claim a cause-effect association, the efforts of the working group to change the archaic colonial laws which were very restrictive on provisions of safe abortion services in Kenya was rewarded with the promulgation of the new Kenyan constitution on August 27th, 2010.

The Bill of Rights Article 26 (4) states: '*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.* The health providers include medical doctor, registered nurse/midwife, clinical officer and pharmacist. Through this law though abortion is not granted on demand there is a wide range of circumstances under which it is permitted and will be performed safely in both private and public health institutions.

In addition, Article 43 (2) states: 'A person shall not be denied emergency medical treatment. All persons, including women seeking post-abortion care or emergency abortion services, receive necessary medical treatment-denying treatment due to cost, stigma and/or private institutions objections, unconstitutional.

Finally, the first chapter of the new Kenyan constitution article two states the following concerning international laws as it relates to the Kenyan law:

(5) The general rules of international law shall form part of the law of Kenya.

(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

This means that all the international laws and treaties that were ratified by the government of Kenya including the Maputo protocol and CEDAW became law in Kenya the day the constitution was promulgated in October 2010. Realizing the Reproductive Health Provisions in the Bill of Rights the society of trained health professional, lobbied and successfully revised the Medical Practitioners and Dentists' Act, Nurses' Act/Scope of Practice, Clinical Officers' Act and training curricula in line with Articles 26(4), 43 (1a and 2) to include safe abortion and post abortion care. Besides the health providers training, a subsidiary law on abortion was drafted "Reproductive Health Rights Bill (2011) and include a Miscellaneous Section to repeal Sections 158-160, 214 and 240 of the Penal Code that restricted provision of abortion services on the basis of the new Constitution-Chapter 1: article 2(4) that states "Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid."

Discussion

The Kenya Obstetrics and Gynaecological society (KOGS) presented on different public forums on issues focusing on the magnitude of unsafely performed abortion, unmet need for family planning, and maternal mortality in Kenya in general and specifically attributed to unsafe abortion.

The audiences were not only learning the facts about these issues, but also about the relationships, causes, and consequences. They learnt that access to family planning and sexual and reproductive health information can reduce the need for abortion and that because of the legal status of abortion in Kenya, the majority are performed unsafely.

It is not possible to establish a cause-effect relationship between the Kenya Obstetrical and Gynaecological society efforts and the final language of the constitution.

We could not evaluate the effect of the MMP as instrument of advocacy over the level of relevant knowledge among the intended audiences, since it was not possible to determine that the same people respond before and after being exposed to multiple MMP. Although the level of knowledge was significantly greater after exposure to the MMP, there was a large difference in the number of people responding in each occasion. The difference found cannot be attributed exclusively to exposure to the MMP. It is safe to assume that some members of the audiences were not supportive of abortion before and after the presentation. Evidence from the post-tests, however, suggests that those who may not have been willing to directly support abortion were nonetheless learning about the consequences of unsafely performed abortion and ways that they could become involved in the issue through supporting and promoting family planning.

In a context where abortion has been and will still continue to be an issue of great national interest. This presentation expands what people know about abortion and broadens the debate that focuses on the evidence of preventing abortion or making abortion safe. As discussion about maternal health and abortion continues in Kenya, it is important to first broaden the base of people who are willing to listen to the evidence and appreciate the complex causes and consequences and participate in the debate from a position of knowledge.

With the raging debate that was going on in Kenya during the constitutional review on laws relating to abortion KOGS was able to sensitize most of the stake holders including the members of parliaments on the need to address the matter of unsafe abortion in the country thus creating a supportive and enabling environment for sexual and reproductive health and rights in Kenya.

In conclusion collaboration of different stakeholders with different background but with a common goal can collectively work together against a strong opposition to bring changes in a country's laws to improve women health in a country.

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