ABORTION AND FAMILY PLANNING IN TANZANIA

By:
***Ross E. J. Kinemo**
P.O. Box 184, Mzumbe
TEL: 023 2 604383
FAX: 023 260 4382
MOB: 0744 310906
E-mail: idm@raha.com.

∗ The author of this paper is a Senior Lecturer at the Mzumbe University.

ABSTRACT

Abortion has been defined as the termination of pregnancy, either spontaneously or by intervention before the fetus reaches viability. The term abortion covers both accidental and intentional interruption of pregnancy, although the word termination is often used for intentional act.

The causes of abortion are many and sometimes no cause can be established. Induced abortion may be criminal or therapeutic. This can be achieved by various means which are dangerous. Therapeutic abortion is artificial termination of pregnancy in the interest of the mother's life of health. On the other hand, family planning refers to practices consciously adopted by a family to determine the number of child spacing and pregnancies in the interest of the welfare and well being of the members of the family. The methods of Family Planning are stated in Family Planning policy which include Barrier methods, Intrauterine contraceptives devices (IUCDs) and Hormonal contraceptives. However, of late it has been revealed that some women have been conducting abortion to terminate an unwanted pregnancy as a method to achieve child spacing in Family Planning.

Although the government has taken initiative efforts to prohibit abortion as a method of family planning in Tanzania, there is no machinery to investigate, control and prosecute the offenders. Therefore, there is a lot of room for the government to improve this law and ensure greater and more effective prohibition of abortion as a method of child spacing in Family Planning.

1. INTRODUCTION

Family planning refers to practices consciously adopted by a family to determine the number of child spacing and pregnancies in the interest of the welfare and well being of the members of the family[1].

The rationale behind Family Planning Policy is to avoid pregnancies before the age of 18 years or after 35 years[2]. The birth intervals of less than three years and birth orders of five or higher are known to be associated with high maternal and childhood mortality and morbidity. Family Planning promotes better health for mothers and children by reducing such high risk pregnancies[3]. Like other components of MCH. E.g. immunization, nutrition, surveillance and antenatal care family planning is an effective and proven intervention in reducing maternal and childhood mortality and morbidity.

The safeguarding and promoting of the health of the family especially mothers and children constitutes the paramount, though not the sole rationale for providing Family Planning 'Services within the context of the objectives of the National health policy. All health workers are, therefore expected to provide, Family Planning after appropriate training so that they could monitor reduce and manage undesirable side effects associated with the use of contraceptives.

Along with this policy, Family Planning Policy is provided to all adults who voluntarily seek the services regardless of the parity or

marital status[4]. The Family Planning Services which are provided under the National Family Planning programmes are many and includes education and counselling, the provision of contraceptives, the management of infertility, the education about sex and parenthood, the screening for gynaecological malignancy, the management of sexually transmitted disease and many others.

However, this paper focuses on Family Planning child and spacing methods pointing out that abortion is a method of pregnancy termination rather than a method of Family Planning in Tanzania.

2. FAMILY PLANNING METHODS

The government of Tanzania has all along recognized the importance of Family Planning methods which are registered and allowed by the Ministry of Health in Tanzania. According to the TDHS 1996 the modern methods of family planning have been more frequently used (23 percent) *than* traditional/folk methods (15 percent). The modern methods commonly used by women are pills (15 percent) condoms (7 percent) and injectables (6 percent); while traditional methods frequently used are withdrawal (9 percent) and calendar/mucus (8 percent). The use of contraception is higher for sexually active unmarried woman than currently married women (TDHS 1996). This suggests that the intention of premarital contraceptive use involves more than pregnancy prevention and probably indicates motivation to avoid sexually transmitted diseases especially human immunodeficiency virus (HIV).

The use of family planning methods is lower in Zanzibar (8 percent) than the mainland (12 percent). Between the two islands, the use of modern family planning methods is slightly higher in Unguja (9 percent) than pemba (6 percent). In mainland, Urban women are much more likely to be using modern contraceptive methods (24 percent) than rural women (8 percent). Levels of current use of modern family planning methods are higher in the Kilimanjaro, Coast, and Dar es Salaam regions (23 – 24 percent) and lowest in Shinyanga, Kagera, Mara regions (4 – 5 percent). Current use of modern family planning methods is less than 10 percent in 6 regions and more than 10 percent in 14 regions.

Education is clearly related to the use of family planning. Women with some secondary and higher education are five times more likely to use modern methods than women without education (23 VS 5 percent).

3. GOVERNMENT'S RESPONSE.

The government of Tanzania has all along recognized the importance of Family Planning methods which are registered and allowed by the Ministry of Health. In 1969, while presenting the second Five Year Development Plan to the Annual General Meeting of the ruling Party (TANU) the then Mwalimu Julius K. Nyerere warned the nation that:

> *"Giving birth is something in which mankind and animals are equal, but rearing the off spring and especially educating them for many years is a unique gift and responsibility of man to look after them properly rather than thinking about the number of*

children and the ability to give birth for it happens that man's ability to give birth is greater than his ability to bring up the children in a proper manner".

In 1973 the National Executive Committee declared its support for the Family Planning Association of Tanzania (UMATI) and directed the Government (Ministry of Health) to assist UMATI in the promotion and delivery of child spacing services by using the above methods. In 1974 the Government (Ministry of Health) directed that child spacing advice and services be provided as an integral part of Maternal and Child Health Services – (MCH) in all health facilities in the country.

Several Legislation and Regulations aimed at promoting the health and social well-being of women and young children were instituted. These measures were directly or indirectly encouraged the practice of child spacing and family planning development at large. For instance, the law which governs maternity leave of 84 days for employed female workers once every three years encouraged child spacing and hence Family Planning Development at large. The income tax relief of up to four (4) children or dependants for all workers discouraged the parents from bearing many children. The provision of travel allowance for up to four (4) children once every (two) years when going on annual leave again discouraged parents from bearing more than four children.

In 1987 the Party directed the Government to prepare a Population Policy. A National Population Committee was set up in the same year with a secretariat in the Ministry of Finance, Economic Affairs and Planning. Some of the important population measures relating to Health, Fertility and Family Planning included the early child bearing and high infant and maternal mortality rates. The population policy was expected to take into account the high infant and maternal mortality rates with late (beyond 35) child bearing and high parity; the minimum age at marriage for females were to be raised from 15 to 20 years; encouragement of 2 to 3 years breast feeding; etc. This policy was indirectly encouraging child spacing. In 1982, the then President of the United Republic of Tanzania, Mwalimu Julius K. Nyerere cautioned the Nation that:

> *"Women in Tanzania are the greatest worker…. One cannot expect these people to give birth every year…… unless Tanzanians are careful, our daughters will be giving birth every year like rabbits"*.

Mwalimu's speech had a far reaching effect to women's rights and conditions in the family and the whole society at large. Impliedly Mwalimu's massage was deliberately calculated to encourage women on child spacing. Mere understanding among leaders and the public at large of women problems was not enough because the value of planned family size was only fruitful if child spacing was practiced. Mwalimu's speech was a challenge to UMATI and the public at large.

UMATI played a major and significant role in the promotion of family planning activities in Tanzania. In fact UMATI played three major roles:.

(1) to motivate, educate and inform the general public on the need for child spacing. (2) to train both government and non government service providers on child spacing benefits in Family Planning. (3) to procure and distribute contraceptives to curb women from giving birth every year like rabbits.

It is submitted that inspite of the financial problems which UMATI had been facing, the organization played a key role in implementing child spacing for Family Planning in Tanzania. A great deal of sensitisation has been done by UMATI since its inception. Many courses, trainings, seminars and study tours have been conducted in order to mobilise and implement child spacing in Family Planning.

4. ABORTAION AND TERMINATION OF PREGNANCY

Abortion has been defined as the termination of a pregnancy, either spontaneously or by intervention before the fetus reaches viability[5], the term abortion covers both accidental and intentional interruption of pregnancy, although the word termination is often used for the intentional act[6]. The causes of abortion are many and sometimes no cause can be established. Studies in recent years have shown that in many cases pregnancy occurs without the development of an embryo, the so called "blighted ovum' in these cases abortion of the fruitless pregnancy will occur in due course[7]. Induced abortion may be criminal or therapeutic.

It first became a statutory crime in England and Wales in 1893 (after a long history as an offence against canon law) but was not controlled in Scotland until the Abortion Act of 1967 came into force. The offences Against the Person Act, 1861 laid down an abortion however and whenever induced (by the woman herself or by another) was a felony punishable by life imprisonment.

Criminal abortion has been attempted or achieved by various means but all of them are dangerous. Drugs of several types are sold often as 'female pills' but to be effective they have to be taken in near fatal doses; local interference by means of household implements inserted into the uterus is commonly practised, but these might perforate the uterus or vagina with disastrous results. Douching under pressure with solutions of soap or antiseptics is sometimes employed; these or air, might enter the blood stream with fatal results. "Back Street" abortions are often done with little or no training. Oftenly the financial gain is insignificant and the main motive seems to help the women in distress.

Therapeutic abortion is artificial termination of pregnancy in the interest of the mother's life of health. Doctors do not hesitate to terminate pregnancy when there is a risk to maternal life. In the Bourne case[8], the judge held that it was not unlawful to terminate the pregnancy of a 15 –year – old girl pregnant as the result of rape by several soldiers in that her life in the sense of her mental well-being was at risk if this were not done. Induced abortion to terminate an unwanted pregnancy is illegal in Tanzania. The term abortion has

been defined as an indictable offence if a woman is with child and any person unlawfully administers to her any noxious drug or unlawfully uses any instrument with intent to procure her miscarriage. Section 150 of the Penal Code has been very clear about illegal abortion.

> *"Any person who with intent to procure miscarriage of a woman whether she is or is not with child unlawfully administers to her or causes her to take any poison or noxious thing or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony and is liable to imprisonment for fourteen years".*

In accordance with Section 150 the term 'any other person' includes the medical practitioners. However the provision excludes the woman herself. In order to be guilty of this offence such a person or a medical practitioner must accomplish two elements:- (1) He must intend to procure miscarriage. (2) He must unlawfully administer to such a woman or cause her to take any poison or noxious thing or use any force or other means.

In accordance with the case of R. v. Bourne[9] it is otherwise if such abortion is done in good faith in order to save the life of the woman or to prevent her from becoming a physical or mental wreck. In this case the Judge held that it was not unlawful to terminate the pregnancy of a 15 year old girl pregnant as a result of rape by several soldiers in that her life in the sense of her mental well-being was at risk if this were not done. Thus, in Tanzania abortions are medically necessary to protect the health or life of the mother.

They are also allowed when it is known that the child will be born deformed or congenitally abnormal.

5. TERMINATION OF PREGNANCY AND THE LAW

The general rule is that pregnancy should be terminated by a registered Medical practitioner if he is of the opinion formed in good faith that the continuance of pregnancy would involve risk to the life of the pregnant woman or of injury to the physical or mental health of the pregnant woman or any existing children or her family greater than if the pregnancy were terminated.

In Tanzania abortions that are medically necessary to protect the health or life of the mother are allowed; A woman who consents to an abortion in other circumstances is punishable under the Tanzanian penal laws.

In Kenya the Penal Code[10], only prohibits "attempts to procure abortion," which, with reference to English Law, is widely interpreted to include abortion per se. Under section 158, a person excluding the women herself is guilty of an attempt to procure abortion when he/she administers some poison or noxious substance, e.g. drug, or uses other means, e.g. an operation or physical force on a woman, with the intention of causing her to miscarry. The offense may be committed regardless of whether the woman is actually pregnant. The maximum penalty for the offense is eleven years, imprisonment[11].

Under section 159, a woman is guilty of an attempt to procure her own abortion when, she administers or allows someone to administer to her poison or drugs, to perform operations or use force as detailed above. This distinction between the two sections is so fine that it is not normally acted on by the law enforcers. Under this law, however, the woman can be punished by a maximum of seven year's imprisonment.

Section 160, on the other hand, is only concerned with the supplier of dangerous instruments used in attempted abortions. If it can be proved that the person supplying the instruments of abortion (for instance, a chemist supplying capsules or tables) knew that they were to be used in procuring an abortion, then the supplier had committed an offense and may be punished by a maximum of three years' imprisonment.

In Jamaica regulations and practices with regard to termination of pregnancy fall within the terms of the offenses against the Person's Act[12]. This Act is very restrictive. The medical practitioners may actually provide "treatment" which amounts to terminating a pregnancy where such treatment is immediately necessary to save the life of, or to prevent grave permanent injury to a female patient[13]. Some medical practitioners have been more liberal in their interpretation of what is immediately necessary than have their colleagues, but there is an element of risk in action taken along this line of reasoning the medical practitioner might be put to proving the necessity of his action, thus placing himself in jeopardy if he cannot.

In Indonesia the Penal code prohibits abortion and activities associated with it, such as procurement[14], and the display and distribution of abortion devices[15]. The woman herself, as well as the abortionist, is made punishable for the crimes of the procurement and the act of abortion[16]. A harsher sentence will be given to the abortionist if the abortion results in the death of the mother. Physicians, midwives and pharmacists also face harsher penalties if involved in abortions[17].

While the code has blanket prohibition against abortion, in practice there are no prosecutions under any of the abortion provisions for an abortion performed as an emergency medical necessity. Within this exception, abortions are limited to those situations where the pregnancy or birth places the mother's life in grave danger.

In Iran the law only permits abortion in cases where pregnancy is a real danger to the life of the mother. Anyone who intentionally induces a miscarriage or who performs an abortion in the absence of acceptable circumstances is subject to severe penalties of three to ten years' imprisonment is imposed on a physician, nurse, midwife, or pharmacist who performs an illegal abortion[18]. If a woman agrees to an abortion at the request of her husband, the latter is subject to imprisonment ranging from one to seven years[19].

Abortion is permitted only when it is used to save the life of the mother. In order to perform an abortion in such a case, the physician

must have concurring opinions of two other physicians and he must make a report of the procedure to the high council of the Iran Medical Association within twenty-four hours[20].

In Brazil the current Penal Code declared that abortion performed by a doctor will not be punished when 1) there is no other method of saving the mother's life or 2) the pregnancy is the result of rape and the pregnant woman consented to the abortion or, if she is a minor, her legal representative has consented [21].

In Egypt abortion is prohibited by the Egyptian Penal Law (No 58 of 1937) and by Articles 260, 261 and 263 of the Penal Laws, except in the following circumstances: abortions that are medically necessary to protect the health of life of the mother are allowed; and abortions are also allowed when it is known that the child will be born deformed or congenitally abnormal[22]. A woman who consents to an abortion in other circumstances is punishable under the Penal law.

The above abortion legislation illustrates prospective mothers are the central figures in the aforementioned laws relating to abortion; our principal concern is with the extent to which the law provides them with the power to effect their own miscarriage, and also the extent to which the mothers individually and the community in which they live generally benefit from the law. At this stage, special cases should be considered: where a prospective mother is of immature age, or pregnant from rape, incest or with a partner who suffers from venereal disease, AIDS etc.

The financial burden of mothers of illegitimate children is apparent; this leads to a further special case where the prospective mother is poor. Alternatively, she may be an invalid, insane or one who is habitually drunk. According to the law, the mother must give birth to a child conceived under all these circumstances, not withstanding the potential dangers inherent in the mother's or child's future life.

The abortion laws are very inflexible and obedience may hardly be realized by all women. Defiance of the law becomes a common phenomenon and the poor suffer. Whereas the rich can afford private doctors, either locally or by sending their daughters on "abortion holidays" to countries where the laws are more flexible or where the means of evading the law are more advanced, the pregnant poor must resort to taking overdoses of ordinary aspirin, using sharp instruments to puncture their wombs on hard surfaces or using other near suicidal measures to secure abortion

If they fail to employ these means, they obey the law and produce the children whom we stigmatise as undesirable street urchins, parking boys and thugs, or lable them with other epithets of bourgeois phraseology. In all these cases, the law causes grave mental and physical anguish to the mother.

6. THE RELIGIOUS VIEW ON ABORTION

Many religions support family planning, however they do not support abortion as a method of child spacing. The Roman Catholic Church is

opposed to abortion. The papal encyclical 'Humane Vitae' (q.v) re-asserted the prohibition of all interference with procreation and directly willed abortion, even for therapeutic reasons.

The Church of England Board for social Responsibility[23] has concluded that abortion should not be refused in all circumstances though the intention of the moral tradition was to uphold the inviolability of human life and the burden of proof lay with those who would terminate it. The Methodist church has expressed the same view. Judaism (q.v) although generally against abortion does not preclude it when there are strong medical and social indications. In Islamic law (q.v) abortion is less strictly prohibited.

Thus, besides our municipal laws religion also prohibits health workers to conduct abortion in order to terminate pregnancy.

7. OPINION ON INDUCED ABORTION

Research carried out in Dar es Salaam and Dodoma in Tanzania shows that more approval of a abortion is noted at the ethnographic level (see Appendix I). For example twenty percent of the men in the survey said they would approve abortion if the family could not afford another child, as compared to thirty-three percent of the men in the ethnography. Very few men and women (twenty percent and twenty-six percent respectively) in the survey approved of abortion if a woman simply wanted no more children while twenty four percent of the women and eighty percent of the men in the ethnography approved of abortion under those same conditions. Trends, however,

were consistent between the two samples. In general, people were less approving of abortions because people simply wanted them and more approving under difficult circumstances. In both samples, more men than women approve abortion if the life at a woman is threatened by pregnancy [see Appendix 1].

Appendix 2 shows that most of the doctors (82 percent) and nurses (89 percent) approved abortion only if the mother may die in childbirth. However, the majority of Doctors and nurses disapproved abortion even if the girl below15 years of age gets pregnancy.

Besides disapproving abortion on girls who obtain pregnancy while they are under 15 years of age, most of the doctors and nurses agreed that Abortion is immoral; and that it is against religious teaching. However, through conversations, discussions, observations and interviews it was also revealed that medical practitioners sometimes do conduct abortion operations for economic gains

8. CONCLUSION AND POLICY IMPLICATIONS

Abortion is unlawful and thus it is prohibited as a method of child spacing in family planning in Tanzania. However, a pregnancy may be lawfully terminated only by a registered medical practitioner and in accordance with the Abortion law of Tanzania. A person shall not be guilty of an offence under the abortion law when a pregnancy is terminated by a registered medical practitioner on good faith – that the continuance of the pregnancy would involve risk to the life of the pregnant woman or of injury to the physical or mental health of the

pregnant woman or any existing children of her family greater than if the pregnancy were terminated or there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be serious handicapped.

A foetus capable of being born alive may only be destroyed if it is necessary to preserve the life of the pregnant woman and not for child spacing purposes. A foetus is prima facie viable after the twenty eight weeks of pregnancy. Any abortion done for the purpose of child spacing and without medical need could lead the person who performed it open to the risk of prosecution. The consent of the person being no defence in such circumstances. A medical practitioner e.g. an anaesthetist or houseboy who co-operated with another to perform an illegal operation would ordinarily be guilty of an offence unless he satisfied the court that he had no knowledge of the illegality.

Therefore, medical practitioners should not conduct abortion for the purposes of child spacing in family planning. The medical practitioner should only conduct abortion when he is of opinion formed on good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant women However, the law governing abortion in Tanzania is not detailed like the Abortion Act 1967 of England. For example, it does not provide for medical practitioners to get a second opinion from another physician and report the matter to the Medical Association. The law does not cater for mothers who are

of immature age or who get pregnancy as a result of rape, incest or with a partner who suffers from venereal diseases or AIDS. Lack of comprehensive statute on abortion law has led to many medical practitioners in Tanzania to conduct abortion under the disguise of miscarriage pregnancy.

Therefore, there is a need for the government to enact a comprehensive statute on abortion law which may cater for the public and private sector in Hospital Administration in Tanzania.

ENDNOTES

1. United Republic of Tanzania; The National Family Planning Programme, Plan of Operations 1989 pp. 87.
2. United Republic of Tanzania; The National Family Planning Programme, Plan of Operations 1989 pp. 57
3. United Republic of Tanzania; The National Family Planning Programme, Plan of Operations 1989 pp. 57
4. United Republic of Tanzania; The National Family Planning Programme, Plan of Operations 1989 pp. 57
5. Dictionary of Medical Ethics (1977) by Darton, Longman & Toddy Ltd 89 Lilie Road, London SW6 IUD Page 1.
6. Kinemo R. (1997) Abortion Law in Tanzania, Uongozi Management Journal vol. 7 No. 2 of 1995
7. Josephine Banes (1981) Extracted from the Dictionary of Medical Ethics by Darton Longman & Toddy Ltd. 89 Lilie Road, London SW6 IUD Page 6.
8. (1938) 3 ALLER 615
9. (1938) 3 ALLER 615
10. The Penal Code (Kenya) Cap. 631.
11. Section 65 of Cap. 268.
12. Section 66 of Cap. 268 provides for punishing "at the discretion of the court" for those persons who knowingly assist a woman in an abortion.
13. See Act. 299 of the Indonesia's Penal Code.
14. See Act. 535 of the Indonesia's Penal Code.
15. See Act. 546 of the Indonesia's penal Code.
16. See Act. 549 of the Indonesia's penal Code.

17. See Act. 183 of the Iranian penal Code.
18. See Act. 180 of the Iranian Penal Code.
19. See Act. 183 of the Iranian Penal Code.
20. See Article 129, Nos 1 and 2 of the Penal Code, Decree Law No. 2848, of December 7, 1940.
21. National Centre for Social an Crimindogical Research, Law and Population Project in Egypt, part one, Compilation Laws, 3 – 5 (Cairo, 1974).
22. Compilation of Law, 3 – 5 (Cairo 1974)
23. Church of England Board for Social responsibility. Abortion: an ethical discussion. London: C10, 1965.
24. Kinemo, R. Abortion Law in Tanzania Uongozi Management Journal Vol. 7 No. 2 of 1995.

Appendix 1:

Table 1: Opinions on Induced Abortion (Ethnographic Sample)

Would you (accept agree to) a woman's having an abortion?

		(i) WOMEN (N = 500)			(ii) MEN (N = 200)		
		No	**Yes**	**Nr**	**No**	**Yes**	**Nr**
1.	If she became pregnant and already had children that she couldn't feed or dress?	81%	19%	-	70%	30%	-
2.	If the mother may die in child birth?	21%	77%	2%	20%	80%	-
3.	If the woman knows that the child may be born deformed?	45%	53%	2%	47%	53%	-
4.	If the woman doesn't want any more children and became pregnant?	80%	20%	-	74%	26%	-
5.	If the baby isn't the husband's or companion'	70%	26%	4%	50%	33%	17%
6.	If the husband left (abandoned) her	85%	15%	-	75%	23%	2%
7.	If the mother was raped?	60%	40%	-	49%	51%	-
8.	If she became pregnant and the man didn't want to marry her	94%	6%	-	80%	20%	-

N = Number of women and men interviewed

NO = Percent of women and men who did not accept (agree)

Yes = Percent of women and men who accepted (agreed)

Nr = Neutral

Source: Ross Kinemo, "Abortion Law in Tanzania" Journal of Management Development Vol. 7 No. 2 of 1995

Appendix 2:

Table 2: Doctors and Nurses Opinions on Induced Abortion (Ethnographic Sample) would you accept (agree to) a woman having an abortion?

		(i) WOMEN (N = 500)			(ii) MEN (N = 200)		
		No	**Yes**	**Nr**	**No**	**Yes**	**Nr**
1.	If she became pregnant and already had children that she couldn't feed or dress?	88%	10%	2%	81%	19%	-
2.	If the mother may die in child birth?	16%	82%	2%	9%	89%	2%
3.	If the woman knows that the child may be born deformed?	20%	75%	5%	20%	72%	8%
4.	If the woman doesn't want any more children and became pregnant?	75%	15%	10%	76%	24%	-
5.	If the baby isn't the husband's or companion'	86%	10%	4%	60%	31%	9%
6.	If the husband left (abandoned) her	86%	14%	-	72%	21%	7%
7.	If the mother was raped?	88%	10%	2%	78%	20%	2%
8.	If she became pregnant and the man didn't want to marry her	96%	3%	1%	89%	11%	-
9.	If the pregnant girl is under the minimum Stipulated marriage age of 15 years	55%	40%	5%	65%	32%	3%

N = Number of women and men interviewed

NO = Percent of women and men who did not accept (agree)

Yes = Percent of women and men who accepted (agreed)

Nr = Neutral

Source: Ross Kinemo, "Abortion Law in Tanzania" Journal of Management Development Vol. 7 issue No. 2 (1985).