Abortion in a Progressive Legal Environment: The Need for Vigilance in Protecting and Promoting Access to Safe Abortion Services in South Africa

Karen A. Trueman, RN, RM, and Makgoale Magwentshu, PhD

The importance of South Africa as a model for reproductive self-determination in Africa cannot be underestimated. Abortion has been legal since 1996, and the country has some of the most developed government systems for the provision of abortion care on the continent.

Yet in the same way opponents of abortion in the United States have whittled away at access with increased bureaucracy, South Africa faces similar assaults that leave women without safe care and threaten to turn back achievements made during the past 16 years.

I explore the history of the law, subsequent legal challenges, and new threats to women's access to abortion services, including service delivery issues that may influence the future of public health in the country. (*Am J Public Health.* 2013;103:397–399. doi:10.2105/AJPH.2012.301194)

LOOKING IN FROM THE OUT-side at a country that has a liberal law and provides state-supported abortion services one might assume that all is well for women's access to safe abortion services in South Africa.[1] The Choice on Termination of Pregnancy (CTOP) Act, promulgated in 1996, provides for abortion upon request up to and including 12 weeks of gestational age, under certain circumstances between 13 and 20 weeks of gestation, and under limited circumstances after 20 weeks.[2] The Act also recommends that nonmandatory and nondirective pre- and postabortion counseling be promoted as well as the mandatory provision of information to women seeking abortion services to enable women to make informed decisions.

As part of the research conducted prior to promulgation, the Medical Research Council (MRC) found that 425 women died each year in South Africa as a result of unsafe abortion.[3] The purpose of the CTOP Act was to improve women's health and to prevent these unnecessary deaths. The 2000 repeat study conducted by the MRC showed that there had been a dramatic decrease in maternal mortality (91%) and maternal morbidity (50%)[4] as a result of implementing the CTOP Act.

South Africa identifies as a predominantly Christian Country.[5] Although the Church and State are separate entities under the current dispensation, guaranteed by the Constitution and the Bill of Rights,[6] the legacy of the apartheid regime remains, with the Church and conservative morality continuing to influence the political sphere. Intertwined with ever-changing cultural and traditional beliefs and practices, abortion raises debates about when life begins and asks individuals to consider whether they accept a woman's right to make informed decisions relating to her own reproductive health. The African National Congress government engaged these issues in a long public-consultation process in preparation for the promulgation of the CTOP Act. These debates are often reintroduced by antichoice groups to influence communities and health care providers to prevent service provision and to increase the level of antiabortion sentiment on the ground.

DEFENDING THE CHOICE ON TERMINATION OF PREGNANCY ACT

Since the CTOP Act was promulgated, there have been several attempts by Christian bodies and other antichoice groups to have the law overturned or amended. In 1997 the Christian Lawyers Association and Doctors for Life challenged the CTOP Act on the right to life of the fetus. The Constitutional Court ruling at that time determined that the life of the woman superseded the right to the life of the fetus because the fetus was not yet a juristic person. In 2000 when the same groups attempted to overturn the minor consent clause, the Constitutional Court recognized the reproductive autonomy of minors.[7]

Since 2000 there have been a number of challenges to the CTOP Act. When the current amendment was challenged in 2005, on the grounds of noncompliance with constitutional processes, the Constitutional Court gave Parliament and the National Council of Provinces 18 months to comply with due process. The argument was that there had not been sufficient community consultation. Due process was followed and the amendment was enacted in 2008.[8] The amendment makes provision for nurses to be trained alongside midwives to provide abortion services and for measures to be taken to address illegal providers.

The latest attempt to challenge the Act was in 2010, just prior to the World Cup, through a process called the Private Members Portfolio. The African Christian Democratic Party attempted to add regulations to the CTOP Act that would make counseling, preabortion ultrasound (and viewing of the ultrasound by the woman prior to the abortion), and a waiting period to reconsider the decision to have an abortion mandatory. The African Christian Democratic Party submission made references to various studies that showed the connection of abortion with breast cancer and observed postabortion trauma leading to long-term depression. These strategies are consistent with international efforts to link abortion as being bad for women's health and the development of "Bad Science."[9] The timing of this submission took advantage

of the country's focus on a large international event; fortunately, the submissions by various academic institutions and the National Department of Health ensured that these regulations were not adopted for the time being.

Sixteen years after promulgation, negative attitudes and hostility toward abortion have not been eradicated in South Africa. Debate and the interplay between morals, ethics, and legal duties remain controversial. Many providers use conscientious objection as a means of refusing to provide abortion, and many facility managers use it as a reason to act as gatekeepers and as a means to prevent services from being provided in the facilities they manage. The CTOP Act does not mention the right to conscientious objection. It was believed, at the time, that it would be more prudent to exclude a conscience clause, because this might be perceived by providers as a means of forcing them to provide abortion services. Unfortunately, the lack of guidance from policy makers—often interpreted as a lack of interest—has led to conscientious objection becoming one of the greatest barriers to abortion service delivery. With no guidance from the provincial health departments it is used as a means to deny women their rights[10] to reproductive autonomy, access to health care, safe abortion, and access to information about abortion services. The CTOP Act does not force health professionals to perform abortions, although it does mandate that the health care provider give information and refer the woman to a willing provider. The CTOP Act also prevents the provider and any other person from obstructing access to safe abortion services.

THE CURRENT SITUATION IN SOUTH AFRICA

Today in South Africa, there are approximately 260 facilities licensed and registered by the government to provide legal abortions, including private and nongovernmental facilities; however, fewer than 50% of the licensed facilities in the public sector are providing services to their communities.[11] The ANC government was voted in in 1994 with a strong mandate to address reproductive health services, as underscored in various political documents including the ANC Health Plan and Constitution. The first two Health Ministers were strongly prochoice and publicly advocated for choice, but this leadership has not been sustained. Despite the implementation of Prevention of Mother to Child Transmission of HIV—a National Health Initiative that includes the prevention of unintended pregnancies—abortion has fallen off the radar of sexual health concern within the vast treatment focus on HIV. These changes have translated over time into the lack of political will to enforce the law and ensure that designated facilities provide abortion services.

The majority of abortion services (76%) within public health facilities are provided in the first trimester by trained midwives and trained nurses; in terms of the CTOP Act, second-trimester services have to be provided by trained medical practitioners.[12] Most medical practitioners are unwilling to provide second-trimester terminations, citing conscientious refusal of care as their main reason.[13] Along with conscientious objection, community-based stigma, ignorance within communities of abortion's legality, and unmet contraceptive needs are the most common barriers to access to both first and second trimester services.

These barriers increase the burden of service delivery and care on those public-sector facilities that are providing abortion care services and subsequently on the providers that offer the service. Delays in the provision of services, long queues at providing facilities, and women being turned away because they are in their second trimester are some of the many circumstances that have led to an increase in the number of unsafe abortions and an increase in the number of septic abortions being treated in public hospitals.[14] Although there has been a renewed focus on access to contraception by the Ministry and National Department of Health, the current lack of contraceptives and contraceptive choice leaves women, especially poor, young, and rural women, with little choice in how to manage their reproductive health.

There is also a deteriorating socioeconomic climate in South Africa, which reveals a widening gap in access between the rich and poor to health services in general. Women who can afford private-sector fees can access safe abortion services in private health care facilities or at institutions such as Marie Stopes, but poor women who cannot afford the fees have to rely on the state or on illegal providers. There is evidence that gains made in the first 10 years of our democracy are gradually being eroded, and that the country's poor women are no better off than they were before the CTOP Act was promulgated.[15]

If the state facility near them is not designated or not providing services, women have to travel long distances. Because of community stigma, many women are afraid to attend their local facility because they believe the provider may compromise their confidentiality, especially younger women.[16]

AN INCREASE IN UNSAFE ABORTIONS

One of the most worrisome developments occurring in South Africa is the dramatic increase in lamppost advertisements for "safe, pain free" abortions up to nine months. Only the contact number appears on the advertisements.[17] Several media exposés have tried to follow up and report on these unscrupulous illegal providers. The National Department of Health and its provincial counterparts seem unable or unwilling to tackle the problem. Lampposts are the responsibility of local municipal governments, and although some municipalities do try to remove them, the advertisements reappear much faster than they can be removed. Municipalities claim that the perpetrators have to be caught red-handed and charged by the police.

More alarmingly the fifth *Saving Mothers Report* no longer refers to abortion-related deaths.[18] The new term used is miscarriage; it is now almost impossible to assess the number of abortion-related deaths. Abortion- and HIV-related deaths are combined.[19]As elsewhere in the world, it is difficult to estimate the number of unsafe abortions. It is tragic that in a country with provisions for the criminal prosecution of illegal providers, the government is failing to utilize the CTOP Act to its fullest, responding only to address negative media furor.

THE NEED FOR CONTINUED VIGILANCE

The CTOP Act was promulgated to give access to safe and

legal abortion, to provide a reproductive rights framework for the country, and to save women's lives. Many successes were achieved during the early days of South Africa's democracy. Today, fewer than one third of trained providers actually provide services, either because they are working in licensed facilities that are not providing services or because they are moved by management to work in other areas of the facility. Overburdened providers in facilities that are providing services and lack of political will have played major roles in the erosion of past achievements.

Removing the term "abortion" from the latest *Saving Mothers Report* and replacing it with the term "miscarriage" is a good indication of the way government currently thinks about abortion, as are comments by the Minister of Health that "teenagers are using [abortion] as a contraceptive method."[20] These bureaucratic gestures, combined with a lack of consequences for illegal providers, are contributing to the door slowly closing on safe access to abortion services.

We need to ensure that providers are supported, that abortion services are monitored, and that the law remains intact and is implemented to its full extent, including the prosecution of illegal service provision. We need to assist, support, and defend willing providers and the facilities where abortion services are implemented safely, and most importantly we need to keep advocating for the full implementation of the law.

A liberal abortion law in a country does not mean that there is automatic access to safe abortion services. In order for the law to be effective, it has to be implemented. In order for it to be implemented there have to be willing parties. The CTOP Act needs to be defended against those who would deny women their reproductive health and rights, and prochoice groups need to collaborate to ensure they stay vigilant and protect the right of any woman in South Africa to make informed decisions about her reproductive health. ■

About the Authors

Karen A. Trueman and Makgoale Magwentshu are with Ipas South Africa, Johannesburg.

Correspondence should be sent to Karen A. Trueman, Ipas South Africa, Reproductive Health NGO, 9, Walters Avenue, Rosebank, Johannesburg, Gauteng 2121 South Africa (e-mail: truemank@ipas.org). Reprints can be ordered at http://www.ajph.org by clicking the "Reprints" link.

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Contributors

K. A. Trueman led the writing and research. M. Magwentshu led the fact checking.

Endnotes

1. The Choice of Termination of Pregnancy Act defines women as a female person of any age. For the purposes of this commentary, we are also using this definition; therefore the category includes female persons under the age of 18. Maternal and Child Health services are provided free of charge by the State, this includes sexual and reproductive health services such as Cervical cancer screening, contraception, abortion services, etc.

2. The Choice on Termination of Pregnancy Act; Act 92 of 1996.

3. H. Rees, J. Katzenellenbogen, R. Shabodien, et al., "The Epidemiology of Incomplete Abortion in South Africa," *South African Medical Journal* 87 (1997): 432–437.

4. R. Jewkes, H. Brown, K. Dickson-Tetteh, et al., "Prevalence of Morbidity Associated With Abortion Before and After Legalisation in South Africa," *British Medical Journal* 324: (2002): 1252–1253.

5. South African Government Information: Statistics South Africa: South African Census 2011: 80% of South Africans refer to themselves as Christian.

6. Constitution of the Republic of South Africa, Act 108.

7. The CTOP Act makes provision for women under the age of 18 years to sign their own informed consent for an abortion.

8. CTOP Amendment Act; Act 01 of 2008.

9. Pam Chamberlain, "How Anti-Abortion Myths Feed the Christian Rights Agenda," *The Public Eye Magazine*, 20, no. 2(2006), http://www.publiceye.org/magazine/v20n2/chamberlain_politicized_science.html (accessed December 18, 2012). "Bad Science" describes poorly conducted research that is not evidence-based that is quoted as being scientific fact. Often used by antichoice groups to promote the reasoning that abortion is bad for women's health; see for example Jody Jacobson, "Study Debunks Theory of 'Post-Abortion Syndrome,'" http://www.rhrealitycheck.org/blog/2010/12/20/study-debunks-theory-abortion-trauma (accessed December 26, 2012) and http://deadwildroses.wordpress.com/tag/guttmacher-institute (accessed December 26, 2012).

10. Constitution of the Republic of South Africa Act 108 of 1996: Bill of Rights Section 27.

11. Provincial Data; Tri-provincial workshops 2010 data National Department of Health South Africa.

12. "Confidential Enquiries Into Maternal Deaths, "*Saving Mothers 3rd Report 2002-2004*, http://www.doh.gov.za/docs/reports/2004/savings.pdf (accessed November 30, 2012); Choice on Termination of Pregnancy Act: 92 of 1996: Section 2.

13. Marijke Alblas, "A Week in the Life of an Abortion Doctor, Western Cape Province, South Africa," *Reproductive Health Matters Supplement*, 16, no. 31, (May 2008), http://ssrn.com/abstract=1350252 (accessed December 18, 2012).

14. "Confidential Enquiries into Maternal Deaths," *Saving Mothers 5th Report 2008–2010*, http://www.doh.gov.za/docs/reports/2012/Report_on_Confidential_Enquiries_into_Maternal_Deaths_in_South_Africa.pdf (accessed November 30, 2012)

15. Ibid

16. K Holt, N Lince, A Hargey, et al., "Assessment of Service Availability and Health Care Workers' Opinions About Young Women's Sexual and Reproductive Health in Soweto, South Africa," *African Journal of Reproductive Health* 16, no. 2 (2012):283–293.

17. Parker Faranaaz, "Police: Advertising Illegal Abortion Is 'like selling a car,'" *Mail and Guardian*, March 22, 2012.

18. "Confidential Enquiries into Maternal Deaths."

19. Marion Stevens, "Maternal Mortality – HIV and Unsafe Abortion – A Silent Epidemic," *Agenda: Empowering Women for Gender Equity*, 26 (2012):2, 44–50.

20. D Cooper, S Honikman, AND I Meintjies, "Teen Pregnancy and baby Dumping; Why do we always Blame the Girls?" *Editorial Cape Times*, April 19, 2011.