

Kenya in the Crosshairs: How the abortion lobby is pressuring an African country from within and without

By Rebecca Oas, Ph.D.

INTRODUCTION

Sub-Saharan Africa has become a key battleground for the abortion debate that continues within international institutions. Many countries in the region, with the notable exception of South Africa, have pro-life laws that prohibit or strongly restrict abortion, and the practice continues to be viewed negatively within the broader culture of many African countries, which celebrate large families.

Kenya is in the top ten most populous countries in Africa, as well as one of the wealthiest, and it therefore has an influential role, in the East African region in particular. While it is far from being the only country targeted by groups seeking to change its abortion laws, it is an informative example of how this process is being done in many countries in Africa, as well as elsewhere in the world. This *Definitions* explores the recent abortion debate in Kenya, with a particular focus on how outside countries and organizations are exerting their own influence.

Contrasting approaches

Of all the organizations whose mission involves promoting “sexual and reproductive health and rights” (SRHR)



internationally, Ipas is noteworthy for its singular commitment to promoting and providing abortion. While some, including global abortion behemoths Marie Stopes International (MSI) and the International Planned Parenthood Federation (IPPF) began primarily as contraceptive providers and have expanded into other areas of reproductive health, and where some organizations focus on less controversial areas such as ending child marriage and female genital mutilation, Ipas was founded to distribute abortion devices and has kept its focus relatively narrow.

According to an article analyzing the behind-the-scenes impact of international nongovernmental organizations (NGOs) in the area of “reproductive health” in African countries, Ipas “prides itself on its work with national authorities to advocate for policy change” whereas MSI “is recognized for its private sector service provision and its ‘advocacy by doing’ approach.”¹ Both are active in Kenya, and have successfully navigated political opposition to abortion.

In 2013, when Kenya’s Ministry of Health launched the first edition of its Patients’ Rights Charter, two Ipas employees were listed as part of the Patients’ Rights Charter Secretariat, and the Ipas Africa Alliance was cited with “special gratitude” for “providing financial and technical support in the development of this Charter.”² Members of Ipas were also cited as participants in the various working groups that led to the publication of the charter.

The charter itself does not mention abortion; it most closely approaches the subject when asserting that every patient has a right to access health care, which “shall include promotive, preventive, curative, reproductive, rehabilitative, and palliative care.”³

The constitution of Kenya, updated in 2010, explicitly states that “[t]he life of a person begins at conception” and that “[a]bortion 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.”⁴ While such exceptions have been successfully exploited by abortion advocates around the world, the clear sentiment of the constitution is that abortion is presumptively prohibited precisely because it involves taking the life of a person. So why would the health ministry in a country with such a constitution partner with the preeminent global abortion advocacy group in drafting its patient rights charter? Evidently there is as much need to promote abortion by stealth, as there is to doing it openly.

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Ipas has done its work behind the scenes, by establishing relationships with high-level political figures, such as health ministers, and offering technical assistance and funding for projects that may not initially even involve abortion.

The “advocacy by doing” strategy has landed MSI in trouble in the past. MSI was banned in Zambia in 2012 after being accused of performing almost 500 illegal abortions, on demand.⁵

In November 2018, the Kenya Medical Practitioners and Dentists Board banned MSI from providing any abortions after they were accused of advertising abortions for circumstances not covered by Kenya’s constitution.⁶ The constitution, adopted in 2010, prohibits abortion “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.”⁷ The following month, the ban was lifted by the health cabinet secretary, who asked MSI to submit a letter promising not to perform abortions “on demand” and a promise to conduct routine compliance checks.⁸

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In addition to the charter, Ipas also had a hand in producing other documents for the Kenyan government: a Code of Professional Conduct and Discipline⁹ for doctors and dentists in which Ipas is once again credited with providing “financial and technical support,” and Standards and Guidelines for the reduction of mortality from “unsafe abortion”.¹⁰ The latter document was published in 2012, but withdrawn the following year, “without the involvement of the stakeholders who had participated in its development,”¹¹ which included Ipas, abortion provider Marie Stopes Kenya, and two UN agencies: the World Health Organization (WHO) and the United Nations Population Fund (UNFPA). Following a lawsuit filed by the Center for Reproductive Rights, the guidelines were reinstated in 2019.¹²

Following the money

While Ipas received the credit for supporting the Kenyan government in generating the patient rights charter, the code of conduct, and the guidance on “unsafe” abortion, they had also received assistance. Prior to the 2010 revision to the constitution, Kenya only permitted abortion to save the mother’s life. In 2012, the Netherlands Ministry of Foreign Affairs gave Ipas a three-year grant to improve “the enabling social and policy environment for women’s sexual and reproductive health and rights, as stipulated in the Kenyan Constitution,” with a “particular focus on women’s ability to obtain comprehensive abortion care services and to prevent unintended pregnancy.”¹³

In recent years, the charge of “neo-colonialism” and the imposition of Western values on developing countries have driven wealthy donor countries to adopt more of a “behind-the-scenes” approach.

According to its most recent annual report, Ipas also receives money from Finland, France, Norway, Sweden and the United Kingdom, in addition to private foundations and other donors.¹⁴ All of these countries have been outspoken at the United Nations and other international institutions in favor of abortion as a human right. However, particularly in recent years, the charge of “neo-colonialism” and the imposition of Western values on developing countries have driven wealthy donor countries to adopt more of a “behind-the-scenes” approach.

In particular, with regard to “sexual and reproductive health,” “progressive donors have preferred to work through specialist reproductive health NGOs to avoid having to deal with recalcitrant governments, particularly in Africa.”¹⁵ While Ipas has its Africa Alliance headquartered in Nairobi, the organization is based in Chapel Hill, North Carolina. But even at the regional or country level, the international NGO preferred to keep a low profile. In Malawi, the local Ipas affiliate conducted its advocacy work through a separate organization with a different name and whose “local legitimacy was strengthened by choosing a Malawian national as its lead representative.”¹⁶

Similarly, the Netherlands, Denmark, the United Kingdom, Sweden, and some private foundations joined forces to create Amplify Change, a mechanism to channel funds to locally-based organizations like ANMA Kenya (a chapter of the Africa Network for Medical Abortion), which collaborated with the Kenyan Ministry of Health to produce a handbook for post-abortion care in 2019. Among those credited for assistance in producing the guide are Ipas Africa Alliance, Marie Stopes Kenya, and Planned Parenthood Global.¹⁷

Uneven playing field

According to the Norwegian researcher Katerini Storeng and her colleagues, who profiled the behind-the-scenes work of international NGOs and their donors to promote abortion in Africa:

Within the context of work on reproductive health, the political challenges of development practice are compounded by the need to manage globalised opposition to reproductive health rights, which similarly seeks to influence donor-recipient country policy.¹⁸

They then go on to cite the U.S.’s Helms Amendment and Mexico City Policy, which restrict U.S. funding for abortions or for organizations overseas that promote abortion with their own funds. They also cite the work of pro-life NGOs like Human

Life International that have long worked to delegitimize the pro-abortion practices of organizations like MSI and Ipas in developing countries around the world. But this comparison is not entirely balanced. The U.S. has a law called the Siljander Amendment that prohibits U.S. funding from being used to lobby for *or against* abortion overseas. Pro-life NGOs have never had the kind of support from sympathetic governments that their opponents have received, as many of the countries most aligned to their viewpoints are aid recipients, not donors.

Generating evidence

In addition to cultivating contacts within governments, abortion groups and their funders seek to assemble scholarly evidence to advance their agenda. A key example of this is the African Population and Health Research Center (APHRC), headquartered in Nairobi, and funded by a variety of donors, including Sweden, the UK, the U.S., and several UN agencies and other foundations and corporations.

APHRC is conducting a four-year study funded by Sweden to advance the “sexual and reproductive health and rights” of adolescents, promote “safe” abortion, and promote LGBTQ+ issues—topics chosen specifically because they are political contentious in the seven African countries being studied, including Kenya.¹⁹ The purpose of the project is explicitly to inform policy changes and use evidence to “shift barriers to the translation of continental commitments into sound sub-regional and national policy, legal and practice responses.”

The future for Kenya and other sub-Saharan African countries

When Kenya ratified its new constitution in 2010, pro-abortion organizations saw their opening. Despite insisting that life begins at conception, there were new exceptions to the restrictions on abortion, including an exception for the mother’s health, which has been interpreted in other countries, often by using an expansive definition of mental health, to essentially mean abortion on demand.

The new constitution also stated that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”²⁰ According to members of the Kenyan Obstetrical and Gynecological Society, which has lobbied strongly for liberalization to Kenya’s abortion laws, “[t]his means that all the international laws and treaties that were ratified by the government of Kenya including the Maputo protocol and

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CEDAW became law in Kenya the day the constitution was promulgated in October 2010.²¹

While CEDAW, the UN's multilateral treaty on eliminating discrimination against women, does not mention abortion or even "reproductive health," the expert committee monitoring compliance by states party to it has repeatedly exceeded its mandate by pressuring them to legalize and decriminalize abortion. The Maputo Protocol, also known as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which states:

States Parties shall take all appropriate measures to [...] protect the reproductive rights of women by authorising 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.²²

The Maputo Protocol has been described as "the only legally binding human rights instrument that explicitly addresses abortion as a human right."²³

Ann Kioko, a Kenyan who serves as the spokeswoman for the local chapter of the pro-life organization CitizenGO, spoke at a recent event for the Heritage Foundation. She said the women in villages like the one where she grew up do not want abortion, but clean water, reliable electricity, good quality health care, and well-built schools. "We are experiencing a lot of pressure right now to legalize abortion across African countries; it is important to note that this has been received with a lot of resistance because this is not what Africans want. Which African woman wants to kill their pre-born child?"²⁴

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Kenya Christian Professionals Forum recently commissioned a survey that found that 85% of Kenyans think abortion should not be permitted, a result that was almost exactly the same between men and women.²⁵

While Kioko may speak for the majority of citizens in her country, it is the relative minority of those seeking to promote abortion as a right that have the backing, funding, and amplification of a wealthy global donor network. With funding from some of the wealthiest countries in the world, international NGOs like Ipas and MSI find like-minded partners in government ministries, academia, and medical organizations, as well as channeling funding to smaller, locally-based NGOs whose face is Kenyan, but whose support is more likely to be Dutch or Danish.

As of this writing, a “reproductive health” bill is being considered in Kenya’s Parliament that would promote abortion, jeopardize the conscience rights of health care providers, and enshrine in law a right to assisted reproductive technology, including surrogacy.²⁶ A similar bill was proposed and failed to pass in 2014, and regardless of the outcome of the currently pending legislation, one thing is certain: if it fails, there will be more attempts, and if it passes, it will only embolden those advocating for abortion on demand, both in name and in practice.

In late October the government of Kenya joined 31 countries in signing the Geneva Consensus Declaration reinforcing the government’s commitment to the preservation of life. The Declaration asserts that abortion is not an international right. It also repeats common UN caveats that in no case should abortion be promoted as a method of family planning” and that “any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”²⁷

Endnotes

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reducing morbidity & mortality from unsafe abortion in Kenya. Nairobi: Kenya Ministry of Medical Services, 2012. Available at <https://www.safeabortionwomensright.org/wp-content/uploads/2018/02/Standards-Guidelines-for-the-Reduction-of-Morbidity-and-Mortality-from-Unsafe-Abortion.pdf>

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- 12 <https://www.ipas.org/news/kenya-restores-standards-and-guidelines-for-comprehensive-reproductive-health-including-abortion/>
- 13 TNS RMS East Africa Limited, for Ipas Africa Alliance. Securing women’s reproductive rights in Kenya: Endline evaluation report. 26th February, 2016.
- 14 <https://www.ipas.org/wp-content/uploads/2020/07/IPASIMPE15-IpasGlobalImpact.pdf>. Private foundations funding Ipas include the Susan Thompson Buffett Foundation, the David and Lucile Packard Foundation, the Channel Foundation, the MacArthur Foundation, the Hewlett Foundation, the Tara Health Foundation, the WestWind Foundation, the Oak Foundation, and others.
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- 16 Storeng et al., 2019, *ibid*.
- 17 <https://globaldoctorsforchoice.org/wp-content/uploads/MOH-PAC-GUIDELINES-Feb-2019.pdf>
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- 19 <https://aphrc.org/project/challenging-the-politics-of-social-exclusion-cpse-a-regional-research-and-advocacy-approach-to-contentious-srhr-issues-in-sub-saharan-africa/>
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- 27 The endnote for this paragraph is: <https://www.hhs.gov/about/agencies/oga/global-health-diplomacy/protecting-life-global-health-policy/geneva-declaration.html>

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DEFINITIONS is published monthly by the Center for Family & Human Rights (C-Fam).

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