

Health Rights and Misinformation: Safeguarding Truth

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**“And the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the only story.”
- Chimamanda Ngozi Adiche.**

At the heart of the concept of health rights is access to accurate information. Article 43 (1) (a) of the Constitution of Kenya, 2010 guarantees every person the right to the highest attainable standard of health, and Sections 8 and 9 of the Health Act reinforce this by stating the importance of accurate health information dissemination to give informed consent. This concept is further augmented under Article 35 of the Constitution which also provides for the right to access information for the realization of human rights.

However, in the digital age, where information flows swiftly, misinformation has become an adversary in fighting health care by undermining noble initiatives and eroding fundamental constitutional rights. Misinformation not only distorts perceptions but also creates false narratives surrounding the efforts to improve healthcare. Some narratives making rounds include sentiments such as, “sex education for young people will lead to an increase in sexual activity among the youth”, or “sex education is just a

way of exposing young people to immorality”. Such statements are false and misleading, especially in this age of open access to digital technology where social media is a go-to for information on sex and sexual & reproductive health.

Conversely, sex education, which is age appropriate and standardized serves as a mitigation measure for the potential misinformation that young people can and are exposed to. Sex education is a proactive measure to enable young people to make informed decisions about their sexuality.

In all fairness, the single story being perpetuated around sex education has not received sufficient critique by medical experts, teachers, parents and legal experts, who are among the first responders in these matters affecting young girls and women of reproductive age. Here lies the danger of a single story! It is for that very reason that I am here to build a case for access to information as a pathway to safeguarding the right to health.

Unpacking the consequences of a single story

When it comes to healthcare, people will easily gravitate towards narratives that resonate with stereotypes, myths and misconceptions which are often couched in harmful social norms that lack factual interpretation. In turn crucial aspects of health care are mishandled, misinterpreted, and underrepresented from policy formulation, to budget allocation to service delivery and legal interpretation.

In the case of sexual and reproductive health, access to information continues to face significant barriers rooted in stigma and religious bias. This impedes progress in crucial areas such as comprehensive sexuality education, safe abortion rights, and access to sexual and reproductive health services - including contraceptives and safe abortion services. Resultantly, many girls and women of reproductive age experience severe health complications and ultimately, death, due to choosing unsafe reproductive health options.

Promoting the right to information

KELIN, has been at the forefront in addressing misinformation and promoting health rights through strategic litigation. Here, I highlight two Cases, one concluded, and the other ongoing – to underscore the legal stance on the right to information.

L.A.W & Anor vs Marura Maternity and Nursing Home & Others (Petition 606 of 2014)¹

The petitioner, who was pregnant, attended antenatal care and tested positive for HIV. At the clinic, she was advised against having more children due to her HIV status, which was portrayed as dangerous for future babies. However, she was not fully informed that people living with HIV can have healthy babies if they are on antiretroviral treatment. She was referred to a Nursing Home, where she delivered her baby via caesarean section. Four years later, when she attempted to conceive again, she discovered that she was unable to do so. Upon consulting her healthcare provider, she learned that she had been sterilized through bilateral tubal ligation during her caesarean section, without her knowledge or consent.

In this account, there is clear evidence of incomplete information regarding HIV and childbirth, as well as a lack of transparency in the decision to perform bilateral tubal ligation on the patient without her consent. These actions collectively amount to a violation of her right to information.

In the judgment, the court said that ***“health care providers are required by law to obtain a patient’s informed consent before any procedure is performed on that person. This information is to be broken down and communicated to the patient in a language they understand, this includes the duty to explain alternative forms of contraception.”***

¹L.A.W & Anor vs Marura Maternity and Nursing Home & Others Available at <https://www.kelinkeny.org/petition-606-of-2014-law-anor-vs-marura-maternity-and-nursing-home-others-petition/> and <https://www.kelinkeny.org/case-brief-petition-606-of-2014/>

Petition 27 of 2022- Rachael Mwikali & 3 others v the CS Ministry of Health² (National Reproductive Health Policy 2022-2032³)

The passing of the reproductive health policy was unconstitutional on grounds that the procedural process excluded public participation – a requirement encapsulated in the Supreme law of the land that incorporates and prioritizes the views of the rights holders’ as well as provides a platform to advance awareness of the policy and its benefit to the community.

Having excluded the public in this important policy development process, the right to

information was violated as stakeholders were not fully aware of the contents of the policy. Additionally, several substantive gaps have been identified in the policy, including that a person only attains complete full cognitive competence on matters of sexuality and reproduction at the age of 21. This provision effectively robs the population below this age limit of their constitutional right to health as they are excluded from accessing reproductive and sexual services and information.

Why is access to information critical?

The violation of access to information is disproportionately experienced with negative outcomes for women, who encounter discrimination and other severe repercussions, as in the case of L.A.W. Ensuring access to information is therefore an important component of the right to health, particularly for girls and women, for several reasons. Firstly, it empowers individuals to participate actively in their own healthcare decisions, fostering a patient-centred approach that respects autonomy and dignity. It also enables individuals to understand their health status, treatment options, and potential risks thereby facilitating informed consent. Furthermore, it promotes health literacy, prevents stigma, and enhances health-seeking behaviour. Finally, it supports accountability and

responsibility between duty bearers and rights holders’ respectively.

How can we safeguard truth?

As citizens and rights holders’, we can make use of our freedom to challenge myths and misconceptions, by speaking up whenever we encounter such trends. We can also demand for effective enforcement mechanisms to ensure compliance and accountability by duty bearers. Public participation is an avenue that we need to explore more to ensure our views are incorporated and prioritized.

KELIN remains fully committed to advocating for the realization and enjoyment of health-related human rights for all, including the right to information.

²Rachel Mwikali & 3 others v the CS Ministry of Health Available at <https://www.kelinkenya.org/rachael-mwikali-kenya-obstetrics-gynecologist-society-katiba-institute-interested-parties-high-court-petition-27-of-2022/>

³National Reproductive Health Policy 2022- 2032 available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://guidelines.health.go.ke:8000/media/The_National_Reproductive_Health_Policy_2022_-_2032.pdf