

## Commentary

# Proposed Termination of Pregnancy Bill in Malawi: Doctors use the best of what they have



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Induced abortion has been a universal phenomenon in the history of humanity. The first recorded evidence was found in an Egyptian papyrus from 1550 BC.

The debate on the proposed Termination of Pregnancy Bill is mired in misconception. Many, including the Christian doctors' group, make the assumption that the prohibition of abortion is biblical. In fact, prohibition of abortion predates all monotheist religions<sup>1</sup>. Since the 5th century, doctors have been required to take the Hippocratic oath, which was authored in 2030 BCE and modified over the years. Among the things the doctors swore in the original oath was the following:

*I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly I will not give a woman a pessary to cause an abortion.*

The message is clear. Even when performed by medical doctors, abortion was fatal before analgesia, asepsis, and antibiotics were introduced. These pagan civilisations, more than two millennia before the Christian era, were morally bound to forbid doctors induce abortion.

The physicians did not swear to Yahweh, as the opening statement of the oath reads:

*I swear by Apollo<sup>2</sup> the physician, and Asclepius [son of Apollo and patron of healing], and Hygieia [the goddess of health], and Panacea [cure-all and sister of Hygieia], and all the gods and goddesses as my witnesses, that, according to my ability...*

The issue is not about the rights and wrongs of abortion. It is about women dying from unsafe abortion in increasing numbers, and using increasingly more resources before they die. This is despite Malawi, in 1930, enacting a law designed specifically to eliminate abortion deaths.

In medicine, doctors use the best of what they have to treat illness. The best may be toxic and hazardous, but doctors use it while they search for better options. The moment they discover or invent a better option, they abandon the less acceptable option. Termination of pregnancy to eliminate abortion deaths will follow the same path. A doctor who would leave a woman to die, rather than sacrifice the foetus for the mother's life, is guilty of malpractice.

Lately, Malawi has reformed a number of Acts. For example, the Age of Marriage Act was revised because the consensus was that it was not serving Malawi well, and the age of marriage was subsequently raised from 16 years to 18. The current Malawi Penal Code prohibits abortion, except when the pregnant woman's life was threatened. As a result of this restriction, women are dying from unsafe abortions obtained outside the medical service.

The Ministry of Health (MOH) requested the Malawi Law Commission to review the sections of the Penal Code related to abortion to make the law more effective in eliminating abortion deaths, which currently account for 17% of all

maternal deaths. The Law Commission, after conducting nationwide consultations, has proposed that abortion remain illegal but that the exceptions under which it may be legally provided should be expanded to include the following grounds: (a) when the continued pregnancy will endanger the life of the pregnant woman; (b) when termination is necessary to prevent injury to the physical or mental health of the pregnant woman; (c) when there is a severe malformation of the foetus, which will affect its viability or compatibility with life; and (d) when the pregnancy is a result of rape, incest, or defilement.

While termination to save a woman's life may be conducted at any gestational age, if termination is carried out because of incest or rape it must be conducted before 16 weeks' gestation. This is not science-based determination; rather, it reminds us that before abortion was coded in the legislature in England<sup>3</sup> to be dealt with in state courts, it was dealt with in the ecclesiastical courts, where abortion procured after quickening was punished by death. Before quickening, the punishment was less severe—penance for 40 days, for example. This thinking originated from Aristotle, who taught that the soul entered the body at 40 days for males and 90 days for females, and quickening was evidence of the presence of a soul.

The Law Commission further proposed that the law be removed from the Penal Code and be made to stand alone as the Termination of Pregnancy Bill. This would coincide with a clarification of terminology wherein termination carried out before foetal viability would be called "abortion", while "preterm delivery" would be the designation used for termination after viability. In cases of the latter, both the mothers and the babies are saved, while in cases of the former, the foetuses are sacrificed for the mothers' lives. Those who are opposed to the new bill on the grounds of foetal rights are effectively saying that even the law that is currently in place should be scrapped in that it sacrifices foetuses to save pregnant women.

Most obstetricians, on the other hand, say that it is not enough to reduce abortion deaths; abortion deaths should be totally eliminated. They quote the typical case of a couple who presented to request an abortion at Bwaila Hospital in Lilongwe. After screening the female spouse, they told the couple that they did not qualify for safe abortion, based on the stipulations of the current law. A week later the husband brought his wife back to Bwaila after procuring unsafe abortion elsewhere. She died after a lot of resources were spent trying to save her. The only way to eliminate such deaths and save the MOH more than US\$1 million annually, is to legalise abortion on demand, as is the case in Mozambique and South Africa.

The proposed bill further outlines where abortion shall be provided and who shall provide it. It also provides for *conscientious objection*. Any service provider who could not provide the service on this ground is, however, required to find and make necessary arrangements to refer the patient to another willing provider without delay. Every health facility is to have a complaints board, where clients may lodge complaints if they feel that they have been unfairly denied service.

To reduce the need for abortion, the MOH has increased the provision of contraceptive services. The contraceptive prevalence rate (CPR) is steadily rising and is now at 59%, with the use of traditional methods now reduced to 1%. Despite this, abortion rates continue to rise; the rate was 23 per 1000 women of reproductive age in a 2009 study<sup>iv</sup>; a 2015 study whose data is still being analysed shows an almost doubling of the 2009 rate. This is partly because contraceptive methods are least accessible to the women who need them the most. The unmet need for family planning for married women is 19%; that of sexually active unmarried women is 40%. School girls are also left out of the family

planning service. The prevailing belief is that contraceptive use is not morally acceptable for young people. With a 29% teenage fertility rate, unwanted pregnancy is the commonest cause of school dropout for pupils in Malawi; many of these girls go on to procure unsafe abortions, and some of them die in the process. The Ministry of Education needs to understand that the West agonised over this problem before us and never came up with a better solution other than to offer contraceptives to young people in schools, and it has worked—at least for Holland, which has the lowest teenage fertility in Europe.

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[i] Prohibition of abortion predates monotheist religions. Compare the timing of the first evidence of prohibition of abortion, found in a 1550 BC Egyptian papyrus, with the advent of Judaism (1200 to 100 BCE), Christianity (1st century), and Islam (6th century).

[ii] Apollo was the Greek and Roman deity of medicine, among others. Asclepius was the son of Apollo and the patron of healing. His sign was the serpent and the medical profession has since adopted this serpent as a sign of healing. The Bible also uses this serpent for cure of snake bites in the desert.

Hygeia is one of the five daughters of Asclepius, and Panacea, is the sister of Hygeia.

The Bible, in Acts 17:28, makes reference to Apollo's father Zeus who was revered by the pagans as their poets wrote: "In him we live and move and have our being, which makes us his offspring".

It is interesting that we still have connection with these pagan gods today – Apollo's Dynasty. The most effective drug for malaria is Artemisinin. It was discovered by Tu Youyou, a Chinese scientist, who was awarded half of the 2015 Nobel Prize in Medicine for her discovery. ("The Nobel Prize in Physiology or Medicine 2015". Nobel Foundation. Retrieved 7 October 2015). The word comes from Artemis, the twin sister of Apollo who was the goddess of the natural environment from whence the Chinese scientist found the plant yielding artemisinin.

[iii] Sections 1 and 2 of the Ellenborough Act of 1803

[iv] Levandowski BA, Mhango C, Kuchingale E, Lunguzu J, Katengeza H, Gebreselassie H, et al. The incidence of induced abortion in Malawi. *Int Perspect Sex Reprod Health*. 2013 Jul;39(2):88-96.

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