Since the draft constitution for Kenya was passed by parliament, paving the way for its publication and referendum, those seeking to stop the march towards a new dawn for Kenya have embarked on a mission of misinformation and misinterpretation of the draft constitution for selfish personal and fundamentalist interests. They have latched onto Article 26, claiming that it legalises abortion.

Abortion is defined as the partial or complete expulsion of products of conception before viability, normally taken as 23 weeks from the last normal menstrual period. There are two types of abortion: Spontaneous abortion referred to by lay people as miscarriage, and elective or voluntary abortion.

In case they have not read the draft constitution carefully, Article 26 on the right to life states that:

1. Every person has the right to life.
2. The life of a person begins at conception.
3. A person shall not be deprived of life intentionally, except to the extent authorised by this constitution or other written law.
4. Abortion 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.

The clause seeks to protect the life of all Kenyans regardless of their gender, religion or moral persuasion. It balances the interest of the church on one hand and women’s rights to life and respect for medical ethics and professionalism on the other. The crafters of Article 26 listened to all interest groups and came up with a provision that appreciates that there are instances when abortion does occur naturally or spontaneously, which is referred to as miscarriage in layman’s language.

In fact, 30 per cent of all clinically diagnosed pregnancies end in spontaneous abortion. It also seeks to acknowledge that medical conditions such as ectopic pregnancy, high blood pressure and others do not allow a woman to carry a pregnancy to term without resulting in maternal and foetal death and therefore doctors make a choice to preserve the life of the mother.

It is therefore immoral to try and misinform Kenyans on this issue from the pulpits or public forums. A few men who have never and will never conceive should not purport to speak for and on behalf of the women of Kenya on an issue that they are inexperienced to discuss.

They must realise that women are citizens of Kenya and entitled to all human rights. Women constitute more than half of the Kenyan population and also over 80 per cent of the church. Are the leaders telling us the lives of the majority of Kenyans who voted them into power and who finance and sustain the church are inconsequential?
In their submissions to the Committee of Experts, women’s groups, lawyers and medical practitioners made it clear that a constitution has no business delving into issues of abortion and should provide the general principle and leave abortion to be legislated through an act of parliament. They disagreed with the church’s assertion that is now in Article 26 (2) that ‘the life of a person begins at conception’. They questioned what conception is or when it occurs and expressed fear that this vague reference point may be used to criminalise certain effective and safe contraceptive methods. The church’s proposal prevailed.

Politicians and church leaders must emulate the humility of other interest groups; exercise tolerance, honesty and truthfully educate Kenyans on the provisions of the draft constitution so that we can realise a new constitution for this country. As they clamour for the amendment of the Article 26 before or after the referendum, they must consider sobering facts on abortion, women’s rights and the status of women in this country.

They need to appreciate that abortion is a universal practice: It occurs in all parts of the world – east and west, developed and developing, rich and poor – and among women of all types, single and married, sexually promiscuous and ‘celibate’, believers and non-believers, adolescent and older. Abortion is not a service procured by women only; men also force their wives, daughters and girlfriends to procure it.

They should note that no one in his or her right mind would say that it is fortunate to need a kidney or heart transplant. The same applies to abortion. Should need arise, it is very fortunate to be able to have a safe and legal one. That is why abortion is a medical procedure that doctors are taught and examined on to make sure they are proficient in performing it before leaving medical school, just like a tooth extraction, amputation of the leg or any other medical procedure.

They should recognise the fact that voluntary abortion happens irrespective of whether laws making it legal or illegal exist. The only difference is that where laws restricting voluntary abortion exist, like in Kenya, many women – especially those who are poor and cannot pay for safe procedures – end unwanted pregnancies themselves, or at the hands of unskilled personnel using unsafe methods, risking their health and lives. Legal status only affects the safety of abortion. In other words it makes safe abortion ‘illegal’ and unsafe abortion ‘legal’, sentencing poor women and girls to unnecessary and preventable suffering and death. It does not save ‘babies’, it just kills and maims women and girls.

Even though the current Kenya laws restrict voluntary abortion, 300,000 abortions are performed annually. For the 21,000 women who manage to get to health facilities with abortion complications each year, most post abortion care is provided in government health facilities, exacting a heavy toll on our under-resourced public health system.

Voluntary abortion reflects the unmet contraception and security needs of women and girls in the Kenyan society. Poor and young women in our country do not have easy access either to birth control, proper sex education or protection from sexual violence such as rape. Who is to judge that voluntary abortion for these Kenyan citizens is improper? Have we seen the church and political leaders marshal their troops in support of the Kenyan women’s call for an end to violence against women particularly rape and incest?

Haven’t they been at the forefront of campaigns against opposing the use of contraceptives and introduction of sex education in schools? Have certain sections of the church been accused of sexually violating women and girls? For those who end up being pregnant, are they entitled to voluntary abortion? Is it moral to punish women for the failings of society or even the failings of their own judgment as human beings?

Have some sections of the church refused to baptise or admit in their schools children born out of ‘wedlock’ because they have ‘no fathers’, their ‘parents are single’ or simply because they are ‘children of sin’? Have they excommunicated women who get pregnant before marriage, regardless of the circumstances under which they conceived?
It is imperative to appreciate that a woman with an unwanted pregnancy has three choices: To continue with the pregnancy with its risks and responsibilities; continue with the pregnancy and arrange for adoption; or procure abortion with its risks and consequences. The key word here is CHOICE.

There are known ways to reduce the health and human burden of unsafe abortion: To integrate sex education in the upper primary school curriculum; to increase the prevalence of contraceptive use to reduce overall levels of unintended pregnancy; to broaden the legal criteria under which abortion is permitted and establish services for the provision of safe, legal abortions within the law; and to provide women who experience complications from unsafe abortion with the medical treatment they need.

They could learn from Ethiopia, South Africa, Benin, Chad, Niger, Togo, Guinea and Mali, which have amended their laws to provide for safe abortion, resulting in considerable reduction in unsafe abortion and maternal mortality rates. Abortion is morally right because a woman should not be forced to use her body to bear a child against her will.

The universal moral justification would be that no one should be forced to use his or her body for the benefit of someone else. The real moral outrage should be that a section of our society with selfish personal and fundamentalist religious and political interests is preventing a majority of Kenyans from enjoying a very critical service-abortion. Lets us vote YES and later amend Article 26, not to make abortion illegal, but to make it explicitly legal and available on demand. That is the only way to ensure that all Kenyan women and girls enjoy their fundamental rights to life and health.

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Categories: Features [5]
Issue Number: 477 [6]

Article-Summary:
As a range of interest groups clamour for amendments to Kenya’s draft constitution on the basis of claims that it ‘legalises abortion’, Mary Wandia asks them to consider the ‘sobering facts on abortion, women’s rights and the status of women’. Voluntary abortion ‘happens irrespective of whether laws making it legal or illegal exist’, writes Wandia, and Kenya’s current legislation simply ‘makes safe abortion “illegal” and unsafe abortion “legal”, sentencing poor women and girls to unnecessary ... read more [7]