

Preventing State Harassment of Abortion Providers: The Work of the Legal Support Network in Latin America and East Africa

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Abstract

Access to safe abortion care is threatened, especially in legally restrictive settings, when providers are harassed or prosecuted on spurious charges. Legal networks have been working with safe abortion providers in Latin America since 2006, and in East Africa since 2010, to short-circuit this intimidation and protect access to quality information and abortion care. Planned Parenthood Global has nurtured these networks, now operating in nine countries. This paper describes this unique, prevention-focused legal strategy, with an eye toward analyzing its effectiveness, sharing the model and lessons learned with an interested audience, and encouraging replication. Prevention-focused legal networks for abortion providers have been effective in reducing police harassment, offering providers the information and skills they need to stand up to intimidation, and keeping safe abortion services available to those who need them. In the few cases of prosecution, providers have access to competent defense counsel through the networks. This model has also enabled better coordination between advocacy efforts on behalf of abortion rights, empowered health care providers, and increased access for women. Providers in other countries might explore whether and how creating local legal networks would offer similar protections.

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Introduction

Abortion in Latin America is subject to a patchwork of legal restrictions, ranging from total bans—even to save the life of a pregnant woman—to legal for any reason during the first trimester. Most countries in the region fall somewhere in the middle of this spectrum, with abortion permitted to protect the life and health of the pregnant woman, in cases of rape, and when the fetus will not survive once born.¹ Similarly, abortion laws in many countries in East Africa restrict access except to protect women's lives and health, though the Kenyan Constitution potentially expands access “if permitted by any other written law.”² The Ugandan Constitution also prohibits abortion “except as may be authorised by law.”³

In both regions, women are unable to freely make choices regarding their bodies, particularly when it comes to reproduction. Although such decisions ought to be in the hands of the woman whose life will be affected, other people—often health care professionals and justice officials—hijack the decision-making process and eviscerate the woman's power to decide, making decisions based on their own personal, moral, and religious beliefs and knowledge. Exacerbating this denial of autonomy, state agents ignore or dismiss the effects of unwanted and unsafe pregnancies on the health of women, employing a narrow interpretation of the right to health. The result is consistent, region-wide violations of the rights of women in both Latin America and East Africa: violations of the right to health, to access to justice, to being treated with dignity and impartiality, and, above all, to exercising their sexual and reproductive rights—a cornerstone of fundamental human rights.

In this context, private health care providers in these two regions constitute an avenue for women to exercise their rights and access the health care they need. However, the complexity of legal frameworks, together with the pressure exerted by religious and other cultural forces, means that private health care providers face obstacles and risks to providing high-quality, comprehensive care. As a consequence, private abortion providers are harassed by the police, forced to respond to spurious

charges, and, occasionally, arrested and prosecuted.⁴ And with access to safe care restricted, women resort to unsafe services—resulting in thousands of deaths and injuries each year—or are forced to carry unintended and unwanted pregnancies to term.⁵

Preventing this kind of police harassment and abuse demands the radical transformation of gender norms. But as that work continues, such harassment and persecution *can* be short-circuited in the immediate term. Abortion providers and lawyers in nine countries in East Africa and Latin America have, over 10-plus years of trial and error, developed effective protection strategies. These strategies are implemented by national legal support networks. Refined together with Planned Parenthood Global, the Legal Support Network (LSN) model has enabled and empowered providers to offer care—and clients to receive care. The LSN provides training and other opportunities for local lawyers to develop professionally and to help those who provide sexual and reproductive health services fully understand their rights and duties. Likewise, the LSN facilitates the exchange of experiences among lawyers within and between countries and regions to share lessons learned and improve the way they work.

Origins of the Legal Support Network

The work of Planned Parenthood Global is grounded in human rights, seeking to ensure access to sexual and reproductive health services, advocating for progressive laws and policies, and fostering social norms that uphold health equity and healthy sexuality. This has included supporting health care organizations in providing abortion care to the full extent of national law and consistent with the human rights to life, health, bodily autonomy, and information.

In 2000, Planned Parenthood Global facilitated the creation of a Latin American abortion providers' support network to combat the isolation of community-based and feminist partner organizations dedicated to providing abortion services under severely restricted legal circumstances and in politically difficult and dangerous situations. Under very hostile conditions, providers in these

organizations offer high-quality, client-centered services for those women most at risk of seeking unsafe procedures. This network provides a forum in which critical mutual support can be lent to those working in such harsh environments and offers an opportunity for the exchange of information and expertise.*

At the request of members of this network, Planned Parenthood Global partnered with the ESAR Foundation, a Latin American organization working in sexual and reproductive health care services, to create the LSN in Latin America in 2006. Then, in 2011, based on lessons learned from Latin America, Planned Parenthood Global and its partners extended the LSN model to East Africa, where member lawyers work not only with Planned Parenthood Global partner organizations but also with providers trained and supported to provide comprehensive abortion care by sister nongovernmental organizations.

What the Legal Support Network does

The LSN is guided by human rights, especially sexual and reproductive rights. Its members are committed to the belief that people have the right to autonomy over their own bodies, to make informed decisions about whether and when to have children, and to access the information and health care needed to make those decisions a reality. Its mission is to ensure that providers are able to offer abortion care and their clients are able to receive care with dignity and without fear.

The LSN endeavors to minimize the legal risks and ensure the legal protection of the rights and safety of providers and users of abortion care primarily by implementing legal guidelines for risk prevention. Through periodic exchanges during regular visits, in-country meetings, and regional gatherings, providers and local lawyers are able to share lessons learned, identify trends and solutions, and establish trust. The network also offers ongoing support and monitoring to private providers who have been trained in Planned Parenthood standards; trains and prepares lawyers to defend private providers, if necessary; and facilitates links with advocacy groups

and provides “lived experience” for local advocacy initiatives to advance abortion rights. This unique model allows women who are making important decisions about their own sexual and reproductive health to benefit from access to sensitized health personnel and sustainable services.

In practical terms, the LSN contributes to protecting access to safe abortion in four ways: prevention, risk reduction, defense, and advocacy.

Prevention

Preventing the harassment and arrest of abortion providers is at the heart of the LSN model. This is because the stigmatization of abortion, regardless of what the law formally permits, leaves providers vulnerable to intimidation and fearful of fighting back. And, in the absence of grounds for prosecution for the actual provision of care, harassment often focuses on trying to detect failings in the administrative requirements for practice—for example, authorizations, documentation, or employment laws and procedures. To protect providers from harassment by police and spurious prosecution, and to ensure that women have ongoing access to quality information and health care, local lawyers work on a regular basis with providers to put a wide range of protection mechanisms in place. These include the following:

- ensuring the security of clinic premises, staff, and documents (client registries, clinical records, and financial data)
- compiling and maintaining a complete and up-to-date file of credentials, authorizations, certificates, tax records, and any other documentation required to operate legally
- instituting clear and comprehensive counseling and informed consent procedures
- training all staff in rights-based approaches to health care
- confirming compliance with all relevant labor laws
- establishing procedures in case of both medical and legal emergencies.

These protection mechanisms are established through periodic visits with providers, during which the lawyer clarifies doubts the provider may have about the law and regulatory and administrative requirements, reviews the provider's compliance with security measures, and offers any needed assistance in implementing suggested changes.

Risk reduction

When providers find themselves facing any incident that involves the law—such as a raid, police harassment, accusations, or prosecution—a local LSN lawyer works with the provider and the LSN secretariat to manage the incident and reduce the risk to the provider, clinic staff, and clients. Most incidents of harassment by police or other authorities are abuses of power, driven by ideology or corruption and not the law. As a result, most incidents fizzle out before the provider gets anywhere near court, before services are shut down, and before clients are left without the health care they need. The main point is that each incident must be managed to ensure that it does not spiral out of control. The LSN lawyer's first step in case of a legal incident is to provide guidance to the provider to prevent circumstances from deteriorating. As part of this process, the lawyer interviews and counsels clients and staff who may have been present or otherwise involved in an incident.

Crucially, the lawyer consults with a cross-regional advisory committee for strategic guidance and support. The committee is composed of lawyers and health care providers who are able to draw on their experience working regionally and globally, as well as their expertise in international human rights, national law, and reproductive health. This “war room” undertakes legal and medical analyses of cases, formulates risk reduction, and (when necessary) devises defense strategies, including preparation for the unlikely event of prosecution.

Defense

Because the LSN's prevention work is so thorough, interactions between providers and the judicial

system do not often reach the point where a defense strategy is necessary. But if a legal incident deteriorates and a defense is needed, the LSN lawyer serves as the provider's advocate before the Ministry of Health, police, other local officials, the media, and courts.

Working from an incident report, the lawyer and provider continue to consult with the advisory committee on a defense strategy. When a prosecution does move forward, the LSN lawyer and the committee work together to implement the defense strategy that has been developed.

Advocacy

Through their work, LSN members serve as advocates, individually and collectively, for the full range of reproductive rights in their countries and regions. When appropriate, they also leverage and draw from their work protecting and defending providers to support advocacy to influence public policy, including advocating for laws and regulations that advance reproductive rights broadly and abortion rights specifically.

Although LSN lawyers are on the frontline of ensuring that women are not denied care to which they are entitled, public advocacy takes a back seat to their prevention work. That said, they are a vital source of data for supporting advocacy strategies and emblematic legal cases, and they may move forward on advocacy campaigns at the direction of the secretariat and under the leadership of local advocates.

To carry out activities in these four domains, the lawyers participate in ongoing skills building—such as trainings, meetings, and webinars—aimed at strengthening their technical capacity; keeping them up to date on developments in the policy environment and medical field; and nurturing their solidarity with the network, with providers, and with the community of people who need care. In addition, they enjoy access to professional development opportunities in the form of national, regional, and international conferences, as well as LSN-specific events. Finally, they occasionally engage with the wider reproductive rights movement

around the world, which offers opportunities for both intellectual and professional growth.

LSN management

In Latin America, Planned Parenthood Global works jointly with Fundación ESAR and serves as the LSN secretariat. Planned Parenthood Global developed the LSN model and drafted the tools and protocols used by the lawyers to prevent harassment of their clients. And it continues to raise money from donors to support this work. In East Africa, a local human rights organization has adapted the model and serves as secretariat in each of the three countries where the LSN operates. In both regions, the secretariat identifies, vets, and selects LSN lawyers; devises training and networking opportunities; troubleshoots (including participating in the advisory committee “war room”); and provides moral, intellectual, and financial support to LSN members.

Measuring what is not there: The impact of the LSN

Because it is hard to measure incidents that have *not* happened, the value of prevention is often underestimated and neglected. But the success of prevention in protecting vital services makes it the heart of the LSN model and is what distinguishes it from most legal work in the reproductive rights sector. In one country, for example, the LSN was contacted about a case concerning a minor girl who had become pregnant as a result of sexual violence perpetrated by her father. Instead of turning away this complicated case, the organization was able to get the legal support necessary to navigate the burdensome reporting requirements for sexual violence, and the timing and management of services, to ensure that all documentation was completed according to the law. The end result was that the girl was able to receive the services needed and the provider was able to work with authorities to support her charges against the aggressor.

In the more than 12 years since the LSN’s creation, close to 100 local lawyers have been trained, 75% in East Africa and 25% in Latin America. More

than 40 partner organizations and more than 400 independent providers have received support, training, or protection from LSN lawyers.

In this time, 30 legal cases have been brought against providers. Of these, only seven cases have reached the courts (all in East Africa), and all seven have had favorable outcomes, which of course in turn means the women they serve continue to receive vital services from a safe source. LSN lawyers prevented the other 23 cases from reaching the courts.

But the network’s most important impact has been to protect urgently needed health care: since 2006, nearly half a million people have received safe abortion care from partners protected by the LSN. While not a permanent solution to legal restrictions and gender discrimination, LSN strategies do preserve and expand access by short-circuiting harassment and have proven to be effective in ensuring that women are able to realize their rights.

The LSN has contributed to keeping harassment to a minimum in the countries where it functions in Latin America and East Africa. In the few cases of prosecution, providers have had access to competent defense counsel through the network. In one emblematic example, a provider organization working in a provincial area endured low-level harassment from local authorities for years. LSN lawyers supported the provider through attempts at police extortion, defamation, and spurious inspections. When a woman presented at the organization with severe hemorrhaging, the staff immediately transferred her to the local hospital, only to encounter harassment from the hospital staff and then accusations of performing an illegal abortion. The LSN lawyer ensured that the charges did not move forward—and the charges were indeed ultimately dropped. This provider organization continues to thrive and serve as a principal provider of sexual and reproductive health care in its geographical region.

Lessons learned

It has taken more than a decade of trial and error to create a successful LSN in the two regions concerned, and Planned Parenthood Global continues

to work alongside colleagues and partners to refine and strengthen the model. Through those experiences, important lessons have been learned along the way, including the following.

Prevention is the heart of a successful LSN.

Defense and advocacy are vital roles for human rights lawyers. The LSN lawyers do both, but—within the LSN—their primary role is to prevent harassment, abuse, and spurious prosecution of abortion providers. This ensures that people have the ability to exercise their reproductive rights within the limits of national legal frameworks. This focus on prevention is what makes the LSN model unique and, more importantly, successful in enabling health care providers to go about their work with minimal disruption.

Fostering a prevention mindset in LSN lawyers can be challenging at the start. It demands opportunities to discuss fears related to the work, personal values, and myths around sexuality. It also requires developing a solid shared understanding of the national legal framework and how providers' work fits into both national laws and international human rights norms.

Expertise in compliance, not in leading the charge, is what is needed most.

The most helpful lawyers in the LSN are generally not litigators or constitutional scholars. This sometimes comes as a surprise to the reproductive rights community since so much legal work to advance reproductive rights entails challenging constitutionality, clarifying laws, domesticating international human rights norms, demanding remedies, and litigating. The LSN serves another purpose, however: to prevent harassment and ensure the continuity of urgently needed services. As such, providers need lawyers that can help them navigate the regulatory and administrative requirements of their profession. The LSN looks for lawyers with expertise in such disciplines as labor law, tax law, and contracts.

Quality, comprehensive counseling is the best prevention strategy.

Planned Parenthood Global learned early on that incidents arose as a result of clients not having received full preparation and information. Taking the time for comprehensive counseling and informed consent procedures that fully explain pregnancy options, the abortion procedure, what to expect during and after an abortion, and what to do in case of any concerns or an emergency is the best way to ensure that women are fully able to exercise their rights to information and accessible, high-quality sexual and reproductive health care. This thorough understanding also helps protect against legal risk.

Solid local legal analysis should be coupled with human rights standards.

Providers and lawyers rely heavily on guidance documents that offer strong analysis of local legal frameworks but that are also informed by human rights law. In the early days, the Latin America LSN turned to international human rights lawyers to analyze the national legal context and draw up frameworks that could help guide providers. Now each country network has an internal human rights-grounded legal framework or reference guide that responds to national needs. The results are nuanced, useful documents that can be updated as needed.

Never ignore building productive relationships.

In the early days of the LSN, Planned Parenthood Global introduced lawyers and providers to one another and simply expected that they would work well together. After all, providers asked for legal support, and the lawyers submitted to a rigorous process of selection. The organizers learned that this was not the case, however. Lawyers overreached their authority, attempting to tell providers what to do, and refusing to continue to support them when they did not comply. Providers, for their part, in moments of crisis, simply turned to lawyers they knew or contacted Planned Parenthood Global directly rather than reaching out to the trained LSN lawyers. In response, Planned Parenthood Global and the secretariats actively encouraged providers and lawyers to develop relationships of collegiality and mutual respect through regular visits and joint

meetings. Lawyers began to understand that their purpose was to provide guidance, advice, and support, and that providers sometimes did not follow their recommendations for sensible reasons. Meanwhile, providers started to see that the LSN lawyers knew what they were doing and were there to help, not create senseless paperwork.

Retaining talented lawyers is hard.

After a lawyer has joined the LSN, it can be a challenge to encourage them to remain. Because LSN members' work is sporadic and because budgets do not allow for paying salaries, the network has always used volunteer lawyers. This has been both a strength of the model and a challenge. The strength comes from knowing that, as volunteers, lawyers have a serious commitment to reproductive rights and to abortion rights in particular. But there have been challenges in keeping lawyers engaged in the network over the long haul. In the absence of a salary, the LSN secretariats have identified creative ways to compensate and engage LSN members. This includes paying the lawyers on a fee-for-service basis for the prevention, risk reduction, and defense work that they do. In addition, the LSN offers professional development opportunities to its members, including ongoing training, participation in national and regional conferences, and more informal webinars and other learning spaces.

The importance of light-touch management.

Over-involvement of the managing secretariat in day-to-day activities is a risk for any network structure. During the first few years of the LSN, Planned Parenthood Global closely monitored the work of both the lawyers and the providers. But Planned Parenthood Global realized over time that setting out clear expectations, ensuring that members of both networks had the tools they needed, and checking in regularly on progress and setbacks made for a higher-functioning team. This "light-touch" management has strengthened the autonomy of the lawyers, deepened their commitment to the network and its mission, and freed up both the lawyers and secretariat staff to clarify and focus on their primary responsibilities rather than

on each other.

Recommendations

Prevention-focused legal networks for abortion providers are effective in reducing police harassment, offering providers the information and skills they need to stand up to intimidation, and keeping safe abortion services available to those who need them. Providers in other countries might explore whether and how creating local legal networks would offer similar protections. Planned Parenthood Global would welcome engaging with interested groups, who are invited to contact the corresponding author.

* To protect the security of these providers, their staff, and their clients, this article does not share specific examples of harassment and abuse.

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