NURSING AND MIDWIFERY IN AFRICA

The process of review and reform of legislation

Genevieve Howse, Legal Adviser
Introduction

- Thinking about a review
- Analyse the environment
  - Legal and Policy environment
  - Current issues
  - Strategic issues
- How does the law measure up?
- Some policy ideas
- The process
- Some ideas and conclusions
Thinking about review of legislation

- Do you really need to do it?
- What is the policy issue which needs to be solved?
- Carefully examine the current law for the flexibility to address the issue
  - Can regulations be promulgated?
  - An order/code/guidelines?
- Sometimes an administrative action can solve the problem
- Legislation is resource intensive, difficult and unpredictable and always takes longer than you think it will
- There is a reason why it takes time
- Non legislative options should always be considered
International Legal and Policy Environment

• International Covenant on Economic, Social and Cultural Rights
  – Right to the highest attainable standard of health

• CEDAW
  – Right to information on reproductive health and access for rural women

• Millennium Development Goals
  – Goal 5 – improve maternal health
Domestic Legal Environment

• What does the Constitution say about health?
  – Right to health
  – Equality of access and participation in the resources of a country

• What do other health laws say?
  – Public Health Act re health system objectives and administration
  – Drugs and Poisons laws re prescribing rights
  – Public service laws re disciplinary processes for public servants

• Is there any case law about appeals from decisions of the Nursing Council?
Domestic Policy Environment

• What is the present policy environment?
  – What does the national health strategy say about human resources for health?
  – What is its overall objective, i.e. better access and equity, primary health focus etc
  – What does it say about workforce in health system strengthening?

• Ministers and Ministries of Health are more interested in sponsoring and funding legislative proposals which can be demonstrated to be implementing present policy obligations
Relevant research or reports

• Any other relevant reports such as
  – data on health workforce vacancies and retention
  – WHO regional or country reports
  – reports on poor nursing or midwifery practice

• Needs assessment of nurses in Swaziland, and in Lesotho, a needs assessment for all health professionals, identified risks

• These materials enable an analysis of the current policy environment and some conclusions of what are the policy goals in the area
Broader health workforce environment

• How many nurses work in public and or private sector?
• Who employs them or are they public servants?
• What is effect of public service disciplinary process?
• Is the country retaining the nurses it trains?
• Is training adequate
• Are there any issues about the overlap between doctors practice and nurses practice? I.e. task sharing and task shifting
• Does it fit with process under nursing council?
• What kind of vacancies for doctors and what does this mean for nursing practice?
• How do traditional birth attendants work with nurses and midwives?
Any country specific issues

• Is population concentrated outside cities?
• Does consideration need to be given to encourage rural practice?
• Are there large vacancies in the nursing and midwifery workforce?
• What is the public/private split on health workforce?
• Issues re broader source of people to be trained, Dr Pillay
• Geographical issues in compliance with law and monitoring compliance
• Can the Nursing Council go on circuit?
• Problems with prescribing rights of certain drugs under drugs laws, i.e. can nurses prescribe?
Public and stakeholder opinion

• Are there current issues causing public pressure or pressure from stakeholders for a review?
  – Issues with professional standards
  – Need to consider task shifting or task sharing; doctors, community health workers
  – Issues with community health workers registration
  – Problems with interface with public service legislation
  – Are there issues arising from foreign nurses seeking registration?
  – Are there issues with local qualified nurses leaving to practice in other countries?
  – Regional recognition of registration?
  – Regional recognition of education?
How does the current law measure up?

- Does the law comply with broader legal obligations?
- Does the legislation implement the national health strategy in relation to HRH?
- Is it suitable for the country context?
- Does it appoint a body to register, set standards and investigate those who fail to meet the standards?
  - Does it set clear criteria for registration and renewal of registration?
  - Are there clear standards of education, professional and ethical practice and support for CPD?
  - Are there levels of registration to facilitate branches of the profession?
  - Is there a clear and fair process to manage complaints of unprofessional conduct?
- Is there clarity about entry for foreign practitioners?
How does the current law measure up in practice?

- Consult the Nursing Council and the profession to ask how the present legislation being used?
- The use of a law is often different from the law itself
- Is there evidence of risk to the public or failure of policy goals arising from the current law and its implementation?
- Are there problems with lack of training or resources for the Nursing Council to fulfill its statutory obligations?
Are current laws supporting current nursing and midwifery practice in Africa?

• Based on older British laws to regulate health practitioners
• Drafted at a time when health issues and ideas about professional practice were quite different
• Medical model in urbanized, industrialized society
• Little or inadequate statement of purpose or objectives
• No African focus
• Principal acts prescribe education and other requirements when a more flexible instrument might be used (Mauritius)
  – Standards prescribed in regulations or codes which can be more easily amended
  – Can incorporate by reference in law to codes if that is a preferred policy approach (Jill Iliffe on CPD said detail better in regs)
Are current laws supporting current nursing and midwifery practice in Africa?

• Process for undertaking investigations might be more flexible and better tailored to the nursing profession
  – Are council members trained in the process of investigation?
  – How many prosecutions are carried out??
  – For what?
  – are the outcomes communicated back to the profession or the public?
  – Are outcomes used in education and standard setting?

• Role of Council in prescribing requirements for CPD may need to be clearer
  – Role of Council and relationship to government and policy making could be clearer
  – Council could have broader policy role – national health strategy

• Relationship with public service disciplinary process could be clearer
Conclusions from surveying environment

- Understanding the broader legal and treaty obligations, domestic legal environment, present policy objectives, country specific issues and any current issues giving impetus to a review will provide the basis on which a proposal to review may be based and justified.

- Gives credibility to any legislative proposal.
Strategic issues in considering a review

- What does the health minister think about a review?
- Swaziland said, political involvement from the initial stage yielded good results
- How strong is the health minister in Cabinet or the high level council or decision making body accepting legislative proposals?
- Any other health legislation reforms on the legislative agenda?
- What are the budgetary implications of the review
- Are they recurrent?
- Are funds available for implementation?
Strategic issues in considering a review

• Is the Quad in agreement about the need for a review and its scope?
• What is public perception of the nursing and midwifery professions?
• When is the next election due. Lesotho reported many delays arising from the election
• What are budgetary priorities of MoH more broadly into which a review might fit?
• Are other countries in the region or outside the region making reforms which may be of interest. Lesotho noted usefulness of networking with other countries
Policy issues - Maintaining professional competence

- Recency of practice, i.e. refuse to renew registration if the nurse has not had sufficient nursing experience in the past 5 years to be able to practice as a nurse
- Continuing professional development
  - Point system
  - Minimum number per year
  - Over a five year cycle with a yearly minimum
- Points for different activities such as
  - QA activities;
  - practice related CPD; and
  - teaching and research.
Policy Issues - Prescribing rights for Nurses and Midwives

• What criteria for endorsement to prescribe, educational requirements, continuing competence, accreditation of courses and transition period?
• Standards/competencies which are nationally consistent (if relevant) and internationally compatible
• Amend nurses legislation and drugs and poisons legislation to enable:
  – Limited rights for nurses or midwives to prescribe scheduled drugs
  – Establish lists of drugs in each category of nurse or midwife
• Particular application for
  – Primary health care
  – Rural and remote care
Some policy ideas for reform of laws

• Consider levels of registration for
  – Nurse;
  – Midwife;
  – Nurse practitioner;
  – state enrolled nurse; and
  – community health workers

• Policy development process needs to establish criteria, competencies, education, professional standards etc
Some policy ideas for reform of laws

- Provide clarity in role and powers of Council
  - Setting standards of practice and education with details in codes/regulations
  - Investigation powers
  - Formal hearings to be done by body with nursing expertise
  - Nursing/midwifery expertise and some community representation on tribunal, no need for doctors
  - Traditional medicine expertise if hearing complaint and traditional birth attendant etc
  - More flexible sanctions
Policy issues - Some alternative sanctions

• Warning letter which does not constitute a finding of unprofessional conduct
• If the practitioner agrees, an undertaking not to repeat conduct is drawn up and signed by the practitioner placed on his/her file and sent to the complainant
• Enable requirements for
  – Counselling
  – Further education in specific areas
  – Conditions on registration

• Appointment of case manager
• Case management meetings would be conducted on a ‘without prejudice’ basis.
• The conduct of the case management meetings would be at the case manager’s discretion, but could include the seeking and exchange of witness statements.
• The case manager could also ask questions of parties and expert witnesses to establish areas of agreement and to narrow issues in dispute.
Some policy ideas

• Objective, purposes and principles
• State purpose of the law and are used in its interpretation
• Mandate for nurses and midwives to inform the broader policy debate about health system planning and budgeting
• Principle of support for equity of access
• Access to reproductive health information and the implementation of CEDAW
Process of legislation review or amendment

• Conduct legal and policy analysis
• Identify issues for consideration in a review, indicating how they fit with MoH policy and how the current law fails to address them
• Prepare timeline and indicative budget
• Obtain MoH support
• Develop terms of reference for a review
• Draft a discussion paper and obtain MoH approval and release, seeking submissions
• Consult
• Prepare report (based on consultations and initial legal and policy analysis), making policy recommendations
Draft law

- Policy about how to address issues is finalised
- Accepted by MoH
- Policy translated into “drafting instructions”
- Drafting instructions “translated” into a draft law or “bill”
- Approval from other portfolios such as Attorney General, Treasury, Public Service Commission, provincial/rural affairs
- Any costs whether once only or recurrent need to be in the budget
- Consequential amendments to other laws e.g. drugs and poisons, public sector management laws, etc
- Any regulations needed?
- Minister needs to champion bill at cabinet/council
- Cabinet needs to approve and then parliament
Preconditions for implementation

• Are resources available to implement legislative reform?
• How can rural nurses comply?
• Council to register and hear complaints
• Process to set
  – CPD process
  – Education standards
  – Code of conduct
• Officers to investigate complaints
• A communications strategy
• Training for investigating officers
• Possibly the tribunal goes on circuit in geographically difficult countries
• Is the law to be implemented in stages?
Nursing Council wishing to ask the MoH to support a review

- Identify current policy and what it says about HRH and in particular nursing and midwifery
- May include need for health system strengthening and better access and primary care – HRH crucial to achieve such goals
- Identify any current issues giving rise to public opinion or stakeholder advocacy for review
- Identify how a review would address these issues
- Identify any possible budgetary implications
- Set out an indicative timeline, noting elections, Parliamentary timetable etc
- Role in implementing millennium development goal, CEDAW, right to health etc
No funding? Don’t give up

- Put together a proposal
- Justify proposal based on national health strategy
- Set it out in components if it is a large proposal
- Malawi leveraged resources from additional donors after initial work
- Indicative timeline and costs
- Seek seed funding to consult and put together a good proposal
- Seek larger funding based on your proposal
- Scan the environment and be ready to move i.e. donors are interested, government wants to act etc
Working with the Minister

• The role of government is to govern according to its policy platform
• Prime Minister (or similar role) appoints ministers and allocates portfolio responsibility
• The Minister for Health executes government policy in relation to health and is assisted in this task by the MoH
• It is the Ministers job to execute policy in relation to nursing and midwifery
• It would be unusual for a Minister to know more about nursing and midwifery than a nursing council
• Most nursing councils have a mandate to advise the Minister
• An invitation is unlikely to come
Working with the Minister

• A nursing council may choose to exercise its mandate to enter the broader policy debate on the health system and on matters relevant to nursing and midwifery practice

• It may draft position papers, issues press releases and express opinions on matters relevant to its expertise
  – Domestic violence
  – Decentralisation of health services
  – Equity of access to health care, particularly for rural people
  – A primary care focus of the health system
  – Emerging communicable diseases such as SARS and H1N1
  – Growth of NCDs
  – Progress on ICCESR, CEDAW and the MDG’s
Working with the Minister

• A nursing council may choose to advocate and lobby
• What are the broader themes of the government policy?
  – Advance economic growth
  – Develop industry
• These will not be achieved without a functioning health system and the necessary HRH
• Policies to advance the profession of nursing and midwifery will help the government achieve its broader policy goals
• What section of the population voted in the government or the Minister?
• Does the Government or Minister need to better engage rural voters/women/urban voters?
• Package your policy proposals to target these political needs
Some lessons learned from round one alumni

• Importance of involving stakeholders Seychelles and Mauritius
• Timelines blew out because of elections and other national events (Seychelles), ministerial reshuffle (Mauritius)
• Final word rests with MoH (Mauritius)
• Nursing Council Act is now more reflective of current practice (Mauritius)
Any other reason to seek dialogue with government about regulation?

• Nurses and midwives belong at the policy table and not just in relation to their own regulation
• A mature dialogue shows potential of nurses and midwives to take their long overdue place in decision making about health planning and health budgeting
• Nurses and midwives are at the front line and their experience needs to influence policy making
• Policy making and budgeting decisions directly affect your work and your livelihood
• Take the initiative and know your boarder environment
  – Legal
  – Policy
  – Political and Parliamentary
  – Current issues

• Think about how the legislation could better support policy and be better targeted for the country context

• Make a staged plan and begin to seek funding for stage one

• Don't wait for an invitation

• Take your place as crucial players in the health system and make yourselves heard