



Alternative Report on

Kenya–Reproductive Health and the Maputo Protocol



Introduction

The Government of the Republic of Kenya (Kenya) is party to the African Charter on Human and People's Rights and its Protocol on the Rights of Women (hereinafter referred to as the Maputo Protocol). Kenya however entered two reservations to its ratification of the Maputo Protocol, on Article 10 (3), and on Article 14 (2) (c) on access to medical abortion. In the absence of a state report from Kenya on the Maputo Protocol, and in accordance with Rule 74 of the 2010 Rules of the African Commission, we representatives of Civil Society in Kenya hereby submit an alternative report to the African Commission focused on Article 14 of the Maputo Protocol. The alternative report will address the following:

- I. The legal framework on the right to reproductive health in Kenya
- II. Violations of the right to reproductive health
- III. A case study on the violation of the right to access safe abortion care
- IV. Recommendations and proposed questions to the State

I. Legal Framework on the Right to Reproductive Health in Kenya

Despite the reservations on Article 14 (2) (C) of the Maputo Protocol, Kenya currently has a legal framework that provides for the realization of reproductive health and rights that is consistent with the provisions for sexual and reproductive health and rights (SRHR) in the Maputo Protocol. These include:

a) The Kenya Constitution (2010)

• Through the provision of an expanded Bill of Rights in Chapter 4 of the Constitution, Kenya has provided for every citizen's right to access the highest attainable standard of health including reproductive health.

• Article 43 (2) states that emergency medical treatment cannot be denied.

• Safe abortion care, which is also a core part of reproductive health, is addressed

• Article 2(6) of the Constitution provides that "Any treaty or convention ratified under Article 26 of the Constitution. Abortion is permitted under certain circumstances, that is, where the health or life of the woman is in danger, in emergency situations and if permitted by any other written law. In addition to medical doctors, the Constitution has further allowed safe abortion services to be provided by any trained health professional, with the requirement that they are trained to provide these services. This is in line with the World Health Organization technical and policy guidance on safe abortion (2012). by Kenya shall form part of the law of Kenya." Kenya has ratified key treaties relating to women's rights including their rights to health, including the African Charter and the Maputo Protocol.

b) Pursuant to the Constitution Article 21 (2) various policy documents in Kenya have

been developed or amended since 2010 in order to be aligned with the provisions of the

Constitution on the right to reproductive healthcare, including access to safe abortion care.

These include:

- The Code of Professional Conduct and Discipline for Medical Practitioners
- Code of Ethics and Conduct for Nurses in Kenya
- Standards of Nursing Education and Practice for Nurses in Kenya
- Scope of Practice for Nurses in Kenya
- The Code of Professional Conduct for Clinical Officers
- Hospital Service Charters
- The Kenya National Patients' Rights Charter, 2013
- The Presidential Declaration on free maternal health 2013
- The Adolescent Sexual and Reproductive Health Policy, 2015

However, the Penal Code continues to criminalize the provision of abortion services by making it punishable by fourteen years imprisonment. The Penal code further criminalizes the woman who seeks abortion care services by making her liable for imprisonment for seven years.

II. Violations of the Right to Reproductive Health

Despite the enabling legal and policy environment, significant barriers remain that prevent women from accessing reproductive health services, including safe abortion.

Access to quality reproductive health care has been hampered by the cost as well as remoteness of health care centers and the lack of youth-friendly services. Policy implementation is still weak due to challenges posed by the transitions into a devolved system of governing the management of health care services. This includes least attention paid to reproductive health especially access to family planning, which directly impacts on the number of unintended pregnancies including teenage pregnancies.

The maternal and reproductive health indicators show poor access to sexual and reproductive health services in Kenya. For example, 103 in every 1000 pregnancies in Kenya are attributed to girls between 15 and 19

years of age.² The percentage of married women age 15-49 using contraceptives is about 45% and maternal mortality remains high at about 400 deaths per 100,000 live births.

All these statistics relate to the high levels of unsafe abortion in Kenya, which accounts for about 13% of maternal mortality⁴, and has a high fatality rate with 266 women dying for every 100,000 unsafe procedures.

In 2012, there were 465,000 unsafe abortions in Kenya, an increase from 300,000 in 2002. This translates to an abortion rate of 48 abortions per 1000 women of reproductive age, which is higher than the global abortion rate of 30 abortions per 1000 women. Of the 465,000 unsafe abortions, 120,000 women received care for moderate to severe complications. It's important to note that over 70% of the women who received post abortion care were not on any method of family planning at the time they got pregnant.

Withdrawal of the Standards and Guidelines for Safe Abortion

Following a lengthy consultative process led by the Ministry of Health and including key stakeholders', Kenya launched the National Standards and Guidelines for the reduction of morbidity and mortality from unsafe abortion in Kenya in December 2011. These guidelines were understood and applied to conform with the Constitutional limits on access to abortion found in Article 26(4). Despite the development, launch and dissemination of these guidelines, many healthcare professionals were unaware of both the change of conditions in the legal and policy environment on abortion, and the existence of the policy document. This was coupled with poor availability, accessibility and affordability of reproductive health commodities for contraception and safe abortion care for Kenyan women. Lack of trained providers on safe abortion services also contributed to limited access to services and information by Kenya's women and young women⁷. For instance, the most searched question on Google in 2012 was 'How to abort,' implying that women and girls in Kenya were resorting to unsafe methods in the absence of other options.

In December 2013, *the Ministry of Health un-procedurally withdrew the abovementioned guidelines*. For healthcare providers, the withdrawal of the Standards and Guidelines without providing an alternative caused great uncertainty on the clinical responsibility and role of the health care provider in ensuring access to safe abortion care.

Health care providers have therefore been turning

away clients who need to be attended to due to the suspension of the guidelines. A recent study on institutional and structural abortion stigma in health care centers in six counties in Kenya revealed that the lack of implementation by the state of policies that regulate abortion services continues to contribute to stigma by health care providers, as they continue to turn away women seeking comprehensive abortion care.

Since 2012, the Ministry of Health has embarked on a process of consultation to re-develop *National Standards and Guidelines for The Reduction of Maternal Mortality and Morbidity* that includes clinical guidelines on provision of safe abortion services; these guidelines have however not been adopted to-date, despite ardent advocacy by civil society actors.

Article 14 (2) (a) of the Maputo Protocol also provides that state parties shall take appropriate measures to provide for adequate, affordable, and accessible reproductive health services. Further, the High Level Task Force on the International Conference on Population and Development (ICPD) includes a recommendation for all countries to develop a multi-year national action plan for financing SRHR to ensure integration of SRHR budgets with the wider national health strategies and budgets as well as in other sectoral plans. ⁹ However, budgetary allocation to Kenya's health sector has declined each year. In 2010 only 7.25% of the national budget was allocated to the health sector, which has since reduced to 6.4% in 2015.

III. Case Study on the Violation of the Right to Safe Abortion Care

“Wanjiku,” a 14-year-old Kenyan girl, became pregnant at age 14 after being raped by an older man from her village. Feeling anguished and fearing rejection from her family, she decided to terminate the pregnancy. Because safe abortion services were not available, she sought care from an unqualified person who botched the procedure. Afterwards, she started to vomit, bleed heavily, and her body began to swell—signs that her kidney was failing.

The daughter of a poor tea picker, Wanjiku was unable to pay her medical bills for the post-abortion emergency care. She was detained by the hospital and forced to sleep on the floor. Her health continued to worsen, and doctors diagnosed her with kidney disease, for which

she would require regular dialysis, and ultimately, a kidney transplant. She consequently had to drop out of school.

Wanjiku’s story is not unique. Each year, 120,000 women are treated for post-abortion complications and girls between the ages of 10 and 19 suffer the most severe health consequences¹². It is further evidence that the government’s failure to provide access to safe abortion services according to the legal framework available has severe repercussions for Kenyan women and girls, and constitutes a violation of their human rights guaranteed under the Constitution and in international treaties that they are signatory to.

IV. Recommendations

In light of the issues raised above, we members of civil society in Kenya hereby recommend the following:

1. The Government of Kenya should ensure the immediate release, dissemination, popularization and resourcing of the National Standards and Guidelines for The Reduction of Maternal Mortality and Morbidity that provide clinical guidance to health care providers on the skills and indications for provision of safe abortion care in accordance with the Kenyan Constitution.

2. The Government of Kenya should resume training of all relevant medical providers to provide comprehensive abortion care, and equip facilities on the same.

3. The Government of Kenya should prioritize the prevention of unwanted pregnancies for all women including adolescent and young women, and those living in rural areas, by increasing resources for family planning and contraceptives including emergency contraceptives.

4. The Government of Kenya should amend the Penal Code Sections 158 and 159 so as to align it with the Constitution as well as the provisions of Article 14 2 (c) of the Maputo Protocol that guarantees access to safe, legal abortion in certain circumstances.

5. The Government of Kenya should accelerate the implementation of all laws, policies and commitments on sexual and reproductive health, and ensure youth friendly services, comprehensive sexuality education and meaningful youth participation in all policy and programmatic processes related to health.

6. The Government of Kenya should ensure that any subsequent legislation that addresses sexual and reproductive health and rights is consistent with the Maputo Protocol and the Kenya Constitution.

Proposed Questions for the Government of Kenya

1. What steps has Kenya taken towards lifting of the reservation on Article 14 (2) (C)?
2. What steps will Kenya take to meet its obligation of reporting on the Maputo Protocol?
3. What steps has Kenya taken to improve the per capita expenditure on health?
4. What steps is Kenya taking to ensure that safe abortion services are available within existing laws?

Submitted by Civil Society Organisations in Kenya:

1. African Women and Child Feature Service (AWCFS)
2. African Women's Development and Communication Network (FEMNET)
3. Coalition on Violence against Women in Kenya (COVAW-K)
4. Equality Now Africa Region
5. Fahamu Networks for Social Justice
6. Federation of Women Lawyers in Kenya (FIDA –Kenya)
7. Ipas Africa Alliance for Women's Reproductive Health and Rights
8. Kenya Legal and Ethical Issues Network on HIV AIDS (KELIN)
9. Network for Adolescent and Youth of Africa (NAYA–Kenya)
10. Planned Parenthood Federation Africa (PPFA)
11. Reproductive Health Rights Alliance (RHRA)
12. Solidarity for African Women's Rights Coalition (SOAWR)
13. State of the Union Africa Coalition (SOTU)
14. Trust and Indigenous Culture and Health (TICAH)
15. Young Women's Leadership Institute (YWLI)

