



THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS' SEXUAL AND REPRODUCTIVE RIGHTS PUBLIC INQUIRY REPORT

A CALL TO ACTION FOR
THE KENYAN GOVERNMENT

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In 2011, in response to a joint request by the Center for Reproductive Rights and the Federation of Women Lawyers-Kenya (FIDA Kenya), the Kenya National Commission on Human Rights commenced a public inquiry into “the extent and nature” of sexual and reproductive rights violations in Kenya.¹ The goals of the national inquiry were to assess the extent to which the government and non-state actors were complying with their reproductive and sexual rights-related obligations, document rights violations, and issue recommendations to key actors to redress these violations.²

The Commission gathered information through desk research, field interviews, consultations with key stakeholders, and public hearings. The Commission’s in-depth report, published in 2012, reveals the Kenyan Government’s failure to adequately respect, protect, and promote women’s reproductive rights. The report’s recommendations call on governmental and non-state actors to remedy this failure and to ensure the government’s compliance with its obligations under the Kenyan Constitution and international human rights law.

This fact sheet highlights key findings and recommendations from the Commission’s 2012 report, focusing on family planning and maternal health care services, sexual violence, sexual minorities, vulnerable and marginalized groups, and the affordability of sexual and reproductive health services. The full text of the report can be accessed at <http://www.knchr.org/Portals/0/Reports/Reproductive%20health%20report.pdf>.

IMPROVING ACCESS TO FAMILY PLANNING SERVICES AND INFORMATION

The Commission’s report concludes that “most Kenyans who desire to plan their families still do not have access to family planning services”³ and that there are “major barriers in accessing [family planning] services” in Kenya.⁴ These barriers include a lack of contraceptive availability, affordability, and accessibility, as well as pervasive misinformation on family planning methods.

The Commission calls on the Government of Kenya to take the following actions:⁵

- Expand access to a broad selection of family planning methods.
- Eliminate fees for family planning services in both public and private facilities.
- Undertake rigorous, comprehensive community education on family planning, including through sexuality education programs in schools and colleges.
- Ensure access to accurate information on family planning to dispel myths and misconceptions around the issue and to enable Kenyans to make informed choices.
- Ensure that all persons—including adolescents, persons living with HIV/AIDS, unmarried persons, and persons of all sexual orientations—can access family planning services free from discrimination.
- Promote gender equality in the context of family planning, and integrate gender-responsive mechanisms into all health systems. In particular, ensure that women do not experience delays or denials of services if they are seeking them without a spouse and that spousal consent is never required for a woman to access family planning services.
- Ensure access to family planning through appropriate planning, resource allocation, and implementation. Provide equal and consistent distribution of family planning commodities to both private and public health care institutions by streamlining procurement and stock oversight.

IMPROVING MATERNAL HEALTH SERVICES

The Commission's report finds that the "poor quality of maternal health services, high cost of care, weak referral systems, inadequate capacity in terms of personnel and facilities to provide the care, negligence and malpractices among health providers, socio-cultural barriers" to services, and restrictive abortion laws all contribute significantly to high maternal mortality and morbidity in Kenya.⁶ The report concludes that "women continue to die or suffer disability due to preventable causes" and that "Kenya is still far from realising . . . maternal health rights as stipulated in international and regional human rights frameworks to which it is a party and in accordance with its domestic laws and policies."⁷

The Commission calls on the Government of Kenya to take the following actions:

› Maternal mortality and morbidity⁸

- Implement the UN Human Rights Council's resolution on preventable maternal mortality⁹ by adopting a human rights-based approach to all interventions aimed at reducing maternal mortality and morbidity.
- Create a clear strategy to ensure that the constitutional right to health, including reproductive health, is implemented and upheld.¹⁰ This requires making services available, accessible, affordable, acceptable, and of high quality.
- Establish a plan that addresses and ameliorates the five identified sources of delays that lead to maternal deaths in Kenya.¹¹
- Ensure that county governments address congestion in referral hospitals by adequately equipping lower-level facilities to provide maternal health services, both through the provision of essential equipment and through staffing policies that ensure the presence of skilled providers in these facilities.

› Health care systems¹²

- Strengthen referral systems in order to guarantee effective linkages between the various levels of the health care system, from the community level to the county level. This is particularly critical for emergency cases that require lifesaving procedures.
- Recruit and train more health personnel, especially maternal health care providers.
- Guarantee the affordability and accessibility of maternal health care by adopting the proposed social health financing scheme.
- Adequately equip health facilities to provide maternal health services, including emergency deliveries, C-sections, and termination of pregnancy.
- Require all health care facilities to create patient complaint mechanisms that offer redress for patients whose rights have been violated. Issue guidelines on how to create these mechanisms and require health care facilities to clearly and visibly display information on patients' rights and how to file a complaint.

› Health education¹³

- Ensure that educational programs focused on maternal health-related rights, as provided for in the Constitution and under international and regional human rights law, are implemented in communities, schools, and health care institutions. Intensify health-related education at the community level, particularly among women.

- Guarantee that the Ministry of Health and health training institutions ensure that health care professionals are comprehensively trained on patients' rights.

› Safe abortion¹⁴

- Guarantee that the Ministry of Health and other stakeholders develop standards and guidelines to ensure the availability of abortion services as provided for in the Constitution. These guidelines and standards must comply with Kenya's international human rights obligations and must be taught and disseminated to all health care professionals and training schools.
- Ensure that safe abortion services and post-abortion care are available in all health facilities. Facilities offering these services must have appropriately trained staff, and at least one trained staff member must be on call at all times to ensure 24-hour availability of abortion-related services; these facilities must also be adequately equipped to provide these services.
- Ensure the affordability of abortion services by integrating abortion into the government's broader health financing policy and strategy.
- Health regulatory bodies' codes of ethics and conduct must clearly state that health care providers cannot deny abortion services in emergency situations or post-abortion care because of their personal objections.
- Withdraw Kenya's reservation placed on article 14(2)(c) of the Maputo Protocol¹⁵ to comply with the country's obligations under article 26(4) of the Constitution.
- Ensure that health care professionals are trained on Kenya's abortion law (as stated in article 26(4) of the Constitution).
- Ensure that clinical officers and nurses and midwives—in addition to medical practitioners—are trained on providing safe abortion services and post-abortion care.
- Ensure that police officers are trained on Kenya's abortion law in order to prevent the wrongful arrest and harassment of health care providers and women.

PROVIDING REDRESS AND ACCESS TO HEALTH CARE SERVICES FOR SURVIVORS OF SEXUAL VIOLENCE

The Commission's report concludes that Kenya has a high prevalence of sexual violence¹⁶ and notes that survivors of sexual violence experience multiple barriers to accessing remedies. These barriers include a "lack of integrated services, lack of awareness of [the] existence [of services], especially of post-rape services, stigma and shame associated with sexual violence, . . . unaffordable services, [and] the complex and often humiliating justice system."¹⁷ The report notes that none of the health workers interviewed on sexual violence case management had mentioned either the existence of or their use of the National Guidelines on Management of Sexual Violence—indicating a potentially pervasive lack of awareness about these guidelines.¹⁸

The Commission calls on the Government of Kenya to take the following actions:¹⁹

- Urgently ratify the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women to allow citizens to file individual complaints.
- Urgently repeal section 38 of the Sexual Offences Act²⁰—which renders complainants who make "false allegations" liable to punishment equal to

that of the offense complained of—as recommended by the Task Force on Implementation of the Sexual Offences Act.

- Remove all barriers that hinder access to justice, and ensure that survivors of sexual violence are able to access justice without delay.
- Disseminate and popularize the 2009 National Guidelines on Management of Sexual Violence in Kenya.²¹
- Expand the range of health facilities with the capacity to treat survivors of sexual violence, and ensure that survivors have the necessary legal, medical, and psychological support.

PROMOTING AND RESPECTING THE SEXUAL AND REPRODUCTIVE RIGHTS OF SEXUAL MINORITIES

The report highlights that “sexual minorities face numerous sexual and reproductive rights violations on the basis of their sexual orientation and behaviour”²² and that “for the sexual and reproductive rights of sexual minorities to become a reality in Kenya, the laws criminalising their activities and behaviours will have to be repealed.”²³

The Commission calls on the Government of Kenya to take the following actions:

- Decriminalize same-sex relationships and sex work.²⁴
- Ensure access to sexual and reproductive health services for all, free from discrimination.²⁵

PROMOTING THE REPRODUCTIVE RIGHTS OF VULNERABLE AND MARGINALIZED POPULATIONS

The Commission’s report documents numerous reproductive rights violations experienced by vulnerable and marginalized groups, such as adolescents, youth, people with disabilities, people living with HIV/AIDS, and internally displaced persons and refugees.²⁶ It explains that “[t]he violations manifest in discrimination and stigma, harassment and mistreatment, difficulties in accessing the facilities . . . , lack of access to information, lack of involvement in medical decisions affecting them, unaffordability of the health services, among others.”²⁷

The Commission calls on the Government of Kenya to take the following actions:

> Adolescents and youth²⁸

- Ensure that youth-friendly, non-discriminatory sexual and reproductive health services, including family planning services, are available and accessible to adolescents and youth. Specifically, increase the proportion of health facilities offering youth-friendly services.

> Persons with disabilities²⁹

- Enhance access to sexual and reproductive health services by making the physical infrastructure of facilities user friendly and communicating information in a format accessible to the deaf, blind, and those with other disabilities.
- Raise awareness of the sexual and reproductive rights of persons with disabilities.

- In collaboration with the National Council for Persons with Disabilities, fully implement the Persons with Disabilities Act³⁰ and promote the right to information on sexual and reproductive health and the right to health of persons with disabilities.
- Protect persons with disabilities from abusive and coercive practices, such as forced sterilization carried out while seeking reproductive health services. Implement measures to guarantee informed consent.

› People living with HIV/AIDS³¹

- Ensure that health care providers and facilities adhere to guidelines requiring full and informed consent for HIV testing and the obligation to protect the confidentiality of test results.
- Immediately repeal sections of the Sexual Offences Act³² and the HIV Prevention and Control Act³³ that criminalize HIV transmission, to comply with the Constitution’s prohibition of discrimination, including discrimination based on health status.
- Disseminate accurate, reader-friendly information on prevention, treatment, care, and support for persons living with HIV/AIDS.
- Sensitize health care professionals on the importance of respecting the dignity and rights of persons living with HIV/AIDS.
- Ensure an adequate supply and the availability of essential medicines, antiretrovirals, and contraceptives, among others.

MAKE SEXUAL AND REPRODUCTIVE HEALTH CARE SERVICES AFFORDABLE

The Commission’s report emphasizes that the Kenyan Government’s policies to address financial barriers have not been successfully implemented due to underfunding and a failure to utilize available funding equitably and effectively. Although health spending “overall has increased in the past decade, it is largely because of increased contributions from development partners and not because of higher levels of government investment.”³⁴ The report therefore concludes “that the government has not complied with its obligation to dedicate the maximum of its available resources to progressively realise the right to [sexual and reproductive health].”³⁵

The Commission calls on the Government of Kenya to take the following actions:

› Remove financial barriers that result in the denial of, or delays in receiving, necessary sexual and reproductive health services.³⁶

- Publicize a list of free services, and ensure that they are actually free in practice.
- Monitor health care facilities to ensure that informal and inappropriate fees are not being levied.
- Ensure that women in need of delivery services are not turned away for inability to pay fees or a deposit.
- Implement the Ministry of Health’s stated commitment to free maternity services in public hospitals by providing the necessary finances and staffing, and define explicitly what is included in free maternity services.
- Scale up the level of coverage under the National Hospital Insurance Fund.

› **Implement the waiver system in public health facilities.**³⁷

- Develop clear guidelines and procedures for effectively implementing the waiver system.
- Raise awareness about the waiver system, and explain the criteria for qualifying for a fee waiver.
- Ensure that determining waiver status does not delay access to care.

› **Increase the amount of public resources allocated to the health sector³⁸ in order to meet the Abuja Declaration's goal to allocate 15% of government spending to health.**³⁹

› **Ensure that resources allocated to the health sector are spent equitably and effectively.**⁴⁰

- Allocate additional resources to family planning and maternal and child health, and expand this budget line to include other sexual and reproductive health services.

› **Ensure an open and transparent budgetary process that encourages public participation.**⁴¹

Endnotes

- 1 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, REALISING SEXUAL AND REPRODUCTIVE HEALTH RIGHTS IN KENYA: A MYTH OR REALITY? A REPORT OF THE PUBLIC INQUIRY INTO VIOLATIONS OF SEXUAL AND REPRODUCTIVE HEALTH RIGHTS IN KENYA AT XV (2012) [HEREINAFTER KNCHR REPORT].
- 2 *Id. at 1.*
- 3 *Id. at xvii.*
- 4 *Id. at 36.*
- 5 *Id. at 37–38.*
- 6 *Id. at 66–67.*
- 7 *Id. at 67.*
- 8 *Id. at 67–69.*
- 9 Human Rights Council, Resolution 11/8, Preventable Maternal Mortality and Morbidity and Human Rights, *adopted June 17, 2009*.
- 10 CONSTITUTION, ART. 43 (2010).
- 11 The five delays identified in the KNCHR report are as follows: (1) delay in recognizing that a woman is facing life threatening complications; (2) delay in deciding to seek services; (3) delay in traveling in search of services; (4) delay in receiving services upon arrival at a health facility; and (5) the failure of government and donors to effectively address maternal mortality. KNCHR REPORT, *SUPRA NOTE 1*, AT 68–69.
- 12 *Id. at 69–71.*
- 13 *Id. at 71–72.*
- 14 *Id. at 72–73.*
- 15 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2nd Ordinary Sess., Assembly of the Union, adopted July 11, 2003, art. 14(2)(c).
- 16 KNCHR REPORT, *SUPRA NOTE 1*, AT 75.
- 17 *Id. at 89.*
- 18 *Id. at 88.*
- 19 *Id. at 89–90.*
- 20 Sexual Offences Act, Cap. 3, sec. 38 (2006).
- 21 MINISTRY OF PUBLIC HEALTH AND SANITATION & MINISTRY OF MEDICAL SERVICES, NATIONAL GUIDELINES ON MANAGEMENT OF SEXUAL VIOLENCE IN KENYA (2D ED. 2009), AVAILABLE AT [HTTP://WWW.SVRI.ORG/NATIONALGUIDELINES.PDF](http://www.svri.org/nationalguidelines.pdf).
- 22 KNCHR REPORT, *SUPRA NOTE 1*, AT 103.
- 23 *Id. at 104.*
- 24 *Id. at 104, 106.*
- 25 *Id. at 104–106.*
- 26 *Id. at 125–126.*
- 27 *Id. at 126.*
- 28 *Id. at 126–127.*
- 29 *Id. at 127–128.*
- 30 Persons with Disabilities Act, Cap. 14, sec. 20 (2003).
- 31 KNCHR REPORT, *SUPRA NOTE 1*, AT 128–129.
- 32 Sexual Offences Act, Cap. 3, sec. 26 (2006).
- 33 HIV and AIDS Prevention and Control Act, Cap. 14, sec. 24(3) (2006).
- 34 *Id. at 150.*
- 35 *Id. at 151.*
- 36 *Id.*
- 37 *Id.*
- 38 *Id. at 152.*
- 39 *Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, African Summit on HIV/AIDS, Tuberculosis, and Other Related Infectious Diseases, Abuja, Nigeria, Apr. 24–27, 2001, O.A.U. Doc. OAU/SPS/ABUJA/3 (2001).*
- 40 KNCHR REPORT, *SUPRA NOTE 1*, AT 152.
- 41 *Id.*

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