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49TH SESSION OF THE UNIVERSAL PERIODIC REVIEW (UPR)

FOURTH CYCLE UPR OF KENYA

Economic Social and Cultural Rights Cluster; Sexual Reproductive Health Rights Thematic Group
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This summary is based on a report prepared by the Sexual Reproductive Health Rights (SRHR) Cluster, a member of the Universal Periodic Review Kenya Coalition whose members include The East African Centre for Human Rights, The Centre for the Study of Adolescence, African Gender and Media Initiative Trust, Sexual Reproductive Health Rights Alliance, Kenya Legal and Ethical Issues Network, Raise Your Voice, Volunteer Services Overseas, Network of African National Human Rights Institutions, Kenya Human Rights Commission, Talanta Africa, Action For Sustainability Initiative, Zamara Foundation, Reproductive Health Choices, Dream Achievers International Youth Organization, Positive Young Women Voices, Stretchers Youth Organization, Resilience Action International, Reproductive Health Network Kenya and the Network for Adolescent and Youth of Africa and focusses on the below four key issues:

1 | LIMITED ACCESS TO SEXUAL REPRODUCTIVE HEALTH SERVICES, INFORMATION AND COMMODITIES BY ADOLESCENTS & YOUNG PEOPLE, PERSONS WITH DISABILITY, PEOPLE LIVING WITH HIV AND KEY POPULATIONS

Despite several frameworks on health and SRHR, access to SRHR services and information remains a challenge leading to high incidences of sexually transmitted infections including HIV, teenage pregnancies and unsafe abortions among others. Article 43 (1) (a) of the Constitution of Kenya 2010 guarantees every person the right to the highest attainable standard of health including reproductive health care. Significant barriers like prejudiced legislation and socio-cultural norms deny young women, particularly those under 21, people with disabilities, people living with HIV, sex workers, sexual and gender minorities, transgender people, people who inject drugs, and people in prisons and other enclosed settings' access to SRHR services and information. In 2021, Key Population accounted for 70 per cent of new HIV infections. The National Reproductive Health Policy 2022-2032 excludes young women and girls from accessing SRHR information and services by imposing unreasonable requirements on parental consent.

Recommendations

1. Government of Kenya should review the Reproductive Health Policy specifically on the age of consent to ensure it aligns with the Constitution of Kenya 2010 therefor addressing structural barriers that hinder access to sexual and reproductive health (SRH) information and services
2. The Government of Kenya should re-commit to implementing the Eastern and Southern Africa (ESA) Ministerial Commitments to the Provision of Youth Friendly Services and Sexuality Education to sustain and enhance SRHR outcomes for adolescents and young people, promising their holistic development.
3. The Kenyan government should implement existing guidelines and legal framework including the Constitution of Kenya on reproductive health education and information for adolescents and young people. PWDs, PLWHIV and key populations in Kenya.

2 | REDUCTION IN BUDGETARY ALLOCATION TO MATERNAL AND CHILD HEALTH PROGRAMS

Kenya's health budget falls short of the Abuja Declaration target of allocating at least 15% of national budgets to health. Most of the health budget is also directed towards recurrent expenses like salaries, rather than service delivery and health systems strengthening, which negatively impacts the overall efficiency and effectiveness of health expenditures. Allocations for Reproductive, Maternal, Neonatal, Child and Adolescent Health (RMNCAH) has reduced cutting back on social programmes such as Linda Mama. RMNCAH budget has also not been disaggregated by sub programming making it difficult to analyse allocation and expenditures for sub programmes

Recommendations

1. Government of Kenya to increase the health budget to at least 15% of the total national budget in line with the Abuja Declaration to improve access to health service, including sexual and reproductive health (SRH).
2. The Government of Kenya to scale-up and institutionalize a social program on Maternal and Child Health, for example the Linda Mama Programme 17 for all women of reproductive age for achievement of reduction of Maternal mortality by 2030.
3. The Government of Kenya to breakdown SRH budget and expenditure into key items that constitute RMNCAH component - Family planning, Maternal and infant care, management of sexually transmitted infections, management of other SRH problems and develop a comprehensive investment case for domestic financing for each of these components in line with Programme Based Budget principles as per the Public Finance Management ACT 2012.
4. The Government of Kenya to strengthen public participation in the budget making process and develop and enhance citizen oversight mechanisms to monitor the implementation of health programs and budgets, including SRH and reproductive health (SRHR), to ensure effectiveness in county budgeting, accounting, and auditing processes.

3 | LACK OF A HARMONIZED POLICY AND REGULATORY FRAMEWORK TO OPERATIONALIZE ARTICLE 26 (4) OF THE CONSTITUTION OF KENYA

The top five direct causes of maternal deaths are haemorrhage, hypertension in pregnancy, infections/sepsis, obstructed labour and post abortion complications (MOH). Article 26 (4) of the Constitution provides for the conditions for the provision of lawful abortion i.e. in the opinion of trained health care provider and as permitted by any other written law. Further, Section 6 (1) of the Health Act (2017) states that every person has a right to fundamental health rights and reproductive health rights respectively. However, the Penal Code criminalizes abortion leading to denial of services, unlawful arrests and harassment of women and Health Service Providers for providing and facilitating access to legal and safe abortion.

The lack of implementation of the Standards and Guidelines for Reduction of Morbidity and Mortality from Unsafe Abortion creates a vacuum for operationalization and provision of abortion services per the law, limiting documentation of maternal mortality and morbidity due to unsafe abortion.

Recommendations

1. The Government of Kenya should review 1.The government of Kenya should align, harmonize and implement all laws, policies and guidelines on access to safe abortion in Kenya including the Penal Code section 158, 159 and 160 with the Kenyan Constitution 2010 26(4).
- 2.The government of Kenya should ensure periodic documentation of quality and disaggregated data on maternal mortality especially on unsafe abortions in National data sources such as the Kenya Demographic Health Survey.

4 | CHILD MARRIAGE IN KENYA

In Kenya, child marriage is prevalent with severe consequences. Kenya is home to over 4 million Child Brides. 1 in 4 young women were married or in union in childhood. 1.1 million were married or in union before the age of 15 while 4.2 million were married or in union before the age of 18 years as highlighted in a KDHS 2014. The consequences of child marriage are devastating. Girls forced into marriage are more likely to experience teenage pregnancy, drop out of school, and face increased violence, HIV infection, and maternal and child mortality. Their health suffers from reproductive complications, and their economic opportunities are severely limited, hindering both their own well-being and national development.

Recommendations

1. The government of Kenya should develop a policy and legal framework specifically targeting Child marriage in Kenya. Child Marriage is contained in other Acts and should be highlighted as a key issue on its own.
2. The government of Kenya should review the National Plan of Action for Children in Kenya (2015-2022) as well as the National Plan against Sexual Exploitation of Children in Kenya (2018-2022) and fast track the adoption and implementation of both action plans that address Child marriage.
- 3.The government of Kenya should periodically document updated context and county-specific data on child marriage in surveys such as the Kenya Demographic Health Survey.

