

FOURTH CYCLE

**49TH SESSION**

# UNIVERSAL PERIODIC REVIEW OF KENYA

JOINT STAKEHOLDERS' SUBMISSION BY:  
Economic, Social and Cultural Rights Cluster.

Sexual Reproductive Health Rights (SRHR)  
Thematic Group - Kenya.



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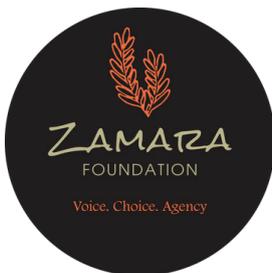
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# Key words

- Sexual Reproductive Health Services and Information
- Health Budget
- Child Marriage
- Key Population

# Executive Summary

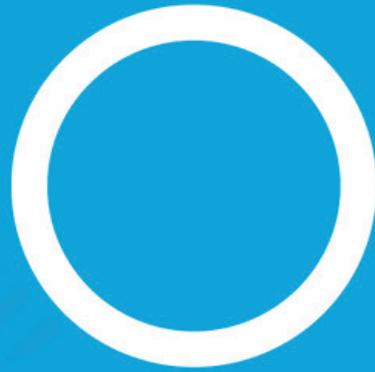
1. This stakeholder report has been developed and submitted by the Sexual Reproductive Health Rights (SRHR) Cluster, a member of Universal Periodic Review Kenya, a coalition that brings together over 200 Civil Society Organizations, all of which are divided into 30 sub clusters. Members of the cluster include the Centre for the Study of Adolescence, African Gender and Media Initiative Trust, Sexual Reproductive Health Rights Alliance, The East African Centre for Human Rights, Kenya Legal and Ethical Issues Network, Raise Your Voice, VSO Kenya, Network of African National Human Rights Institutions, Kenya Human Rights Commission, Talanta Africa, Action For Sustainability Initiative, Zamara Foundation, Reproductive Health Choices, Dream Achievers Youth Organization, Positive Young Women Voices, Stretchers Youth Organization, Resilience Action International, Reproductive Health Network Kenya, Trust for Indigenous Culture and Health, FIDA Kenya, Nyimine Empowerment CBO, the Network for Adolescent and Youth of Africa, CSOs Network Kisumu and CSOs Network Coast.

2. This submission focuses on four key issues:

- Limited Access to Sexual Reproductive Health Services, Information and Commodities by Adolescents & Young People, Persons with Disability, People Living with HIV and Key Populations
- Reduction in Budgetary Allocation to Maternal and Child Health Programs
- Lack of a Harmonized Policy and Regulatory Framework to Operationalize Article 26 (4) of the Constitution of Kenya
- Lack of a Specific Legal and Policy Framework Addressing Child Marriage in Kenya

3. Kenya has previously been reviewed thrice under the Universal Periodic Review and has received key recommendations on the above themes.

4. This report is to provide information on the situation of sexual reproductive health ad rights in line with the above themes and provide key recommendations to improve SRHR situation in Kenya.



# ISSUE 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.

5. Kenya's reproductive health system is characterized by significant disparities like prejudiced legislation, limited knowledge and inadequate comprehensive Sexual and Reproductive Health service delivery that limit young women, particularly those under 21, people with disabilities, people living with HIV and key populations from attaining the highest standards of Reproductive Health.

6. According to Article 43 (1) (a) of the Constitution of Kenya 2010, every person has the right to the highest attainable standard of health which includes the right to healthcare services, including reproductive health care.

7. However, the **National Reproductive Health Policy 2022-2032, Section 3.4** excludes particularly young women and girls below the age of 21 from accessing or receiving critical reproductive health care services or information and imposes unreasonable requirements on parental consent before the provision of reproductive health services thus imposing additional barriers for adolescents and young people attaining the highest standard of health. [1]

8. According to the Kenya Demographic and Health Survey 2014, more men aged 15-24 had their sexual debut before the age of 15, this was similar to the KDHS 2022 report where 8% of women and 19% of men aged 15-24 had their first sexual intercourse before age 15.

KDHS 2022 noted that the percentage of women aged 15–19 who have ever been pregnant increased with age, from 3% among those aged 15 to 31% among those aged 19. Fifteen per cent of women aged 15–19 have ever been pregnant; 12% have had a live birth, 1% have had a pregnancy loss, and 3% are currently pregnant.

[1] <https://ncpd.go.ke/wp-content/uploads/2021/10/Advisory-Paper-3-Impact-of-Teenage-Pregnancy-on-Women-Empowerment-in-Kenya.pdf> <https://rdcu.be/dTIUJ>

9. Persons with Disabilities are also a critical population that miss out on the crucial Reproductive Health services and information. They do not access healthcare equitably, yet they constitute 2.2% (0.9M) of Kenya's population, with women making up 57% (523,883), of all persons with disabilities. The common types of disability are mobility (42%), followed by visual (36.4%), cognition (23.2%), hearing (16.7%), self-care (15.3%) and communication (12.1%) [2]

According to **Special Paper No. 32 (2022)** by Kenya Institute for Public Policy Research and Analysis (KIPPRA) about 80% of PWDs do not access quality medical services compared to 50 per cent of the general population. [3] According to a health analysis by United Disabled Persons of Kenya, the Right to Health was ranked among the lowest as compared to other associated needs and SRHR information is frequently not readily available in accessible formats.

10. There is also a glaring gap in knowledge on HIV prevention among youth aged 15-34. According to KDHS 2022, 41% of women and 39% of men did not know about HIV prevention. In 2021, an estimated 66.7% (23,051) of all new HIV infections occurred among women and girls. Women and girls tended to become infected at a much earlier age than men and boys of the same age with 8 out of every 10 new HIV infections occurring among adolescent girls and young women aged 15-24 according to the World Aids Day Report 2022

11. Key populations including sex workers, gay men and men who have sex with men, transgender people, people who inject drugs, and people in prisons and other enclosed settings are more disproportionately affected by HIV. They have inequitable access to safe, effective, and quality HIV services and face disproportionate levels of stigma, discrimination, violence, human rights violations, and criminalization. Significant barriers, such as police harassment, societal discrimination and insufficient community-based services prevent them from getting the care they need. In 2021, Key Population accounted for 70% of new HIV infections. [4]

12. A holistic approach is necessary to dismantle these barriers and ensure equal access to sexual and reproductive health care for all to confront the reproductive health issues of these populations.

## Laws and Policies

### The Reproductive Health Policy 2022-2032 [5]

[2] Kenya Population and Housing Census report 2019. <https://www.knbs.or.ke/2019-kenya-population-and-housing-census-reports/>

[3] Enhancing Inclusivity by Empowering Persons with Disabilities (PWDs).

[4] <https://www.usaid.gov/global-health/health-areas/hiv-and-aids/technical-areas/key-populations>

[5] [http://guidelines.health.go.ke:8000/media/The\\_National\\_Reproductive\\_Health\\_Policy\\_2022\\_-\\_2032.pdf](http://guidelines.health.go.ke:8000/media/The_National_Reproductive_Health_Policy_2022_-_2032.pdf)[6]Section 3.4.11, Paragraph 6

13. The Policy contains provisions which are discriminatory and claw back on the constitutional rights to sexual reproductive health. Among the unconstitutional provisions in the policy. [6 Section 3.4.11, Paragraph 6.] is the exclusion of unmarried women from fertility treatments as only married women are deemed as desirous couples. Provisions made in the Policy reinforce discrimination against intersex persons, and in some cases, completely exclude them from much needed reproductive interventions. For example, the policy requires that intersex persons present themselves before a professional body to facilitate transition to the actual sex [7 Section 3.4.12, Paragraph 3.] The policy direction does not envision a situation where an intersex person may have no desire to undergo transition and choose to live as intersex throughout their lives.

### **National Adolescent Sexual Reproductive Health policy (2015) [8]**

14. The policy acknowledges challenges affecting young people such as unintended pregnancy among girls in Kenya leading to termination of education (dropping out of school), child marriage and unsafe abortion. Evidence from KDHS 2008-2009 shows that among adolescent girls who had started childbearing by age 18 in Kenya, 98% were out of school, indicating that early pregnancy means the end of education for almost all adolescent girls. It is estimated that about 13,000 girls drop out of school annually in Kenya due to early and unintended pregnancy. Overall, adolescents between the ages of 10 and 19 years represented about nine percent of persons living with HIV and 13% of all HIV-related deaths in Kenya. It is reported that HIV testing rates for Kenya are lowest among adolescents between 15-19 years (49.8%), with only 23.5% reporting awareness of their status. However, the policy does not provide a comprehensive framework that is coherent with other policies and guidelines. The Ministry of Health initiated a review process for the Policy that has further eroded access to inclusive and comprehensive adolescent and youth friendly SRHR services by young people in their diversity.

### **A Commitment Plan to End the ‘Triple Threat’, 2023-2030 [9]**

15. The policy states that adolescent mothers are vulnerable to stigma, discrimination, and mental health issues. Adolescent girls who get pregnant have higher vulnerabilities to HIV, other sexually transmitted infections and related complications, and poor health outcomes such as the risks of premature birth, low birth weight, perinatal deaths, and disability. Adolescent mothers diagnosed with HIV must cope with mistimed pregnancies, HIV diagnosis and initiation into lifelong treatment. Adolescent pregnancies impact the continuation of education for adolescent girls, interrupting educational attainment, and leading to loss of economic opportunities. This perpetuates poverty at family, societal and national levels with an increased burden on social services.

[6]Section 3.4.11, Paragraph 6.

[7] Section 3.4.12, Paragraph 3.

[8] <https://tcirurbanhealth.org/wp-content/uploads/2018/03/Ministry-of-Health-ASRH-POLICY-2015.pdf>

[9] <https://nsdcc.go.ke/wp-content/uploads/2024/05/Ending-the-Triple-Threat-Commitment-Plan-2024.pdf>

## **National Guidelines for the Provision of Adolescent and Youth Friendly Services in Kenya 2016**

16. This Guidelines together with the 2015 National Adolescent Sexual and Reproductive Health Policy, are clear proof of the Kenya government's desire and commitment to bring adolescent and youth sexual and reproductive health and rights issues into the country's mainstream health and development agenda. However, more focused effort is required to increase access to SRH information and services among adolescents and youth and improve health outcomes. These AYFS guidelines evolved through an extensive consultative process involving key adolescent and youth SRH stakeholders, Counties' Departments of Health, the Ministry of Education, Science and Technology, youth serving organisations among others. It outlines the standards for service provision of AYSRH services, the essential package of services, service delivery models and service delivery points that should be implemented and scaled up in the counties to improve the health outcomes of adolescents and youth.

### **Legal and Jurisprudential development**

17. The government has developed policies including the **Universal Health Coverage (UHC) Policy 2020-2030** which conveys the health sector policy directions, strategies and implementation framework. Besides, the UHC laws were also enacted. HIV Prevention and Treatment Guidelines, 2022 was also developed to widen access to key diagnostics and medicines to manage the most common causes of illness and death. The Government passed the **National Reproductive Health Priority Research and Learning Agenda 2022-2027**. The government developed a **Menstrual Hygiene Management in Schools; A Handbook for Teachers 2022**. **Understanding Adolescence; A guide for Adolescents 2022** was also developed as a tool for use primarily by adolescents to navigate the complexities of the adolescence stage. We commend the Kenyan government for the reduction in teen pregnancies from 18% in 2014 to 15% in 2022. This indicates that the Kenyan government is working towards reducing the national prevalence of teenage pregnancy in Kenya and there is still more to be done.

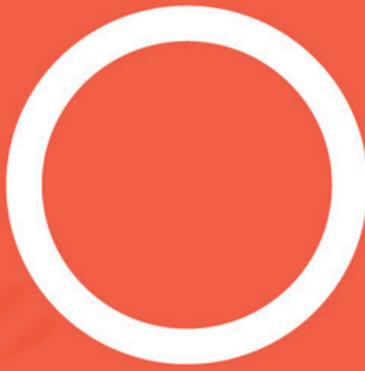
### **Recommendations for Action**

18. The 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 therefore addressing structural barriers that hinder access to sexual and reproductive health (SRH) information and services.

19. 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, promoting their holistic development. [10]

20. 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.

[10] <https://healtheducationresources.unesco.org/library/documents/eastern-and-southern-africa-ministerial-commitment-fulfilling-our-promise>



# ISSUE 2:



Reduction in Budgetary Allocation to  
Maternal and Child Health Programs

21. Kenya's health budget has increased over the years but still falls short of the 15 % allocation of the total budget as recommended by the Abuja Declaration. In the 2019/2020 FY the combined health budget for the national and county governments was 7.8% of the total national budget. In the 2020/2021 FY, the health allocation was 9.1% of the national budget. This represented a significant increase but was still far from the 15% goal. In 2021/2022, Health received its largest allocation ever, amounting to 9.3% of the national budget. In 2023/2024, 9.8% of the national budget was allocated to health, still falling short of the Abuja targets.

22. Further, most of the health budget is directed towards recurrent expenses [11] like salaries, rather than service delivery and health systems strengthening, which negatively impacts the overall efficiency and effectiveness of health expenditures. [12]

23. Although health budget has gradually increased in the last five years, allocations for Reproductive, Maternal, Neonatal, Child and Adolescent Health has reduced cutting back on social programmes benefitting from the national health budget and impacting community health. For example, the Linda Mama program [13] budget slashed from 4 billion to 2 billion in the 2024/2025 budget estimates disrupting delivery and access to quality maternal, neonatal and child health in public health facilities across the country. Reproductive Maternal Neonatal Child Adolescent Health (RMNCAH) budget and projections are not disaggregated by service elements such as Family Planning, Maternal and Infant care, management of sexually transmitted infections, and management of other SRH problems. In addition, the RMNCAH budget can be reappropriated to other competing health issues because it is not ring-fenced. [14]

[11] [http://guidelines.health.go.ke:8000/media/National\\_and\\_County\\_Budget\\_Analysis\\_FY\\_2020-21\\_April\\_2022.pdf](http://guidelines.health.go.ke:8000/media/National_and_County_Budget_Analysis_FY_2020-21_April_2022.pdf)

[12] <https://www.treasury.go.ke/>

[13] [http://guidelines.health.go.ke:8000/media/Implementation\\_Manual\\_for\\_Programme\\_Managers\\_-\\_December\\_2016.pdf](http://guidelines.health.go.ke:8000/media/Implementation_Manual_for_Programme_Managers_-_December_2016.pdf)

[14] <https://aphrc.org/wp-content/uploads/2019/07/Reproductive-health-and-family-planning-financing-in-Kenya.-A-mapping-of-the-resource-flows.pdf>

## Laws and Policies

### 2024 Budget Policy Statement. 1.2.4 Healthcare, 28.

24. Significant progress has been made in the delivery of universal healthcare. Notably, the Government has reformed the National Health Insurance Fund to meet the urgent needs of Kenyans at the bottom of the socioeconomic structure by actualizing its purpose as a social medical insurance facility. Health insurance coverage in Kenya has generally been low at 26 percent, with those at the bottom of the economic pyramid having the least coverage of less than 5 per cent. Many Kenyans incur catastrophic expenditures from out-of-pocket healthcare payments, while many more do not seek care when they fall ill, because they simply cannot afford.

25. Over the last decade, several measures have been put in place to enhance the capacity of the National Hospital Insurance Fund to effectively deliver on its mandate. While these reform initiatives have yielded significant progress, several gaps remain. Recent analysis shows that, among others, the NHIF operates as a passive, rather than a strategic purchaser, is plagued by inefficiency and governance challenges and is potentially financially unsustainable.

### Reproductive Health Policy 2022-2032 [15]

26. The policy section 3.4.2.1 provides for “... *appropriate costing and ring-fencing of allocated funds for RH programs in the national and county budgets including funding for FP commodities and services*”. The top five direct causes of maternal deaths are haemorrhage, hypertension in pregnancy, infections/sepsis, obstructed labour and post abortion complications (CEMD, MOH, 201730).

27. Pregnancies with abortive outcomes regardless of the cause, method or rationale, carry a significant risk of morbidity and mortality and thus this policy will strengthen health systems to mitigate morbidity and mortality from post-abortion complications while minimizing preventable causes of abortion. This policy expands the management of pregnancy to include holistic management, and psychosocial support for pregnancies compounded by a crisis. Specific guidelines mainstreaming pregnancy related crisis management and standardizing the practice of managing crisis in pregnancy shall be formulated to fully operationalize this policy direction.

## Legal and Jurisprudential development

28. The Government allocated Ksh. 141.2 billion to health in the budget 2023/2024. Some counties such as Machakos County have developed medical schemes in partnership with the National Hospital Insurance Fund that will see needy patients access free healthcare. [16] There is progress towards reforming health financing, for example, the proposed Primary health care fund established to purchase services from health care facilities at levels 1-3 and the Social Health Insurance Fund (SHIF) which will cover services from levels 4-6, emergency chronic and critical illness fund will handle emergencies and chronic illnesses costs once SHIF is depleted. Facility Improvement Fund addresses underfunding in public health facilities.

## Recommendations for Action

29. The 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 services, including sexual and reproductive health (SRH) services.

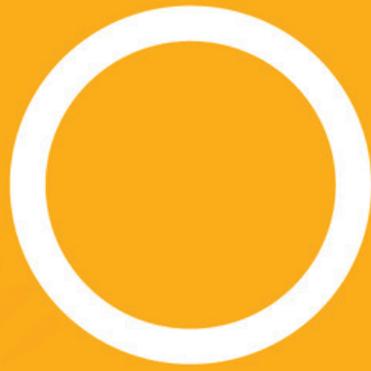
30. The Government of Kenya to scale up and institutionalize a social program on Maternal and Child Health, for example, the Linda Mama Programme [17] for all women of reproductive age for achievement of reduction of Maternal mortality by 2030.

31. 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.

32. 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.

[16] <https://www.kenyanews.go.ke/machakos-county-nhif-partner-to-assist-patients-access-free-healthcare/>

[17] [http://guidelines.health.go.ke:8000/media/Implementation\\_Manual\\_for\\_Programme\\_Managers\\_-\\_December\\_2016.pdf](http://guidelines.health.go.ke:8000/media/Implementation_Manual_for_Programme_Managers_-_December_2016.pdf)



# ISSUE 3:

Lack of a Harmonized Policy and  
Regulatory Framework to Operationalize  
Article 26 (4) of the Constitution of Kenya

33. Article 26 (4) of the Constitution provides for the conditions for the provision of lawful abortion i.e. in the opinion of a 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.

34. However, the criminalization of abortion under the Penal Code (sections 158-160) creates a situation where abortion needs are poorly understood and difficult to address. Some of the repercussions include unlawful arrests and harassment of women and Health Service Providers for providing and facilitating access to legal and safe abortion.

35. Moreover, the lack of the implementation of the Standards and Guidelines for Reduction of Morbidity and Mortality from Unsafe Abortion creates a vacuum for the operationalization and provision of abortion services in accordance with the law, [18] limiting documentation of maternal mortality and morbidity due to unsafe abortion. [19]

36. There is also lack of recent data documenting maternal morbidity and mortality rates from unsafe abortion in the Kenya Demographic and Health Survey 2014 and 2022 and other national data resources. The most available data is by KDHS 2008-2009 which shows that the maternal mortality ratio stood at 488 deaths (95% CI 333–643) per 100,000 live births and many of these were due to abortion complications.

## Laws and Policies

### Reproductive Health Policy 2022-2032.

37. The nascent mechanisms for accounting for maternal deaths and still births through Maternal Perinatal Death Surveillance and Response audit systems [20] provide a tremendous opportunity for the health-system and communities to identify the gaps and opportunities for improvement by including unsafe abortion related deaths.

[18] Unlawful arrests and harassment of Health Service Providers and women for provision and accessing of legal and safe abortion as provided by the Constitution.

[19] Unlawful arrests and harassment of Health Service Providers and women for provision and accessing of legal and safe abortion as provided by the Constitution.

[20] Section 2.4, Paragraph 8

## **Kenya Reproductive, Maternal, Newborn, Child and Adolescent Health (RMNCAH) Investment Framework, 2016.**

38. Although Kenya has made good progress over recent decades in reducing the number of child deaths, too many mothers and children continue to die each year despite the availability of feasible, cost effective and evidence-based solutions that could be scaled up.

39. Investing in women is a smart investment that improves productivity, engenders economic empowerment, closes the gender gap and has an inter-generational impact. This is an opportune time for Kenya to invest in RMNCAH as proven and affordable interventions exist and far more is known about innovative service delivery channels and approaches which accelerate coverage and quality of RMNCAH care.

### **Legal and Jurisprudential development**

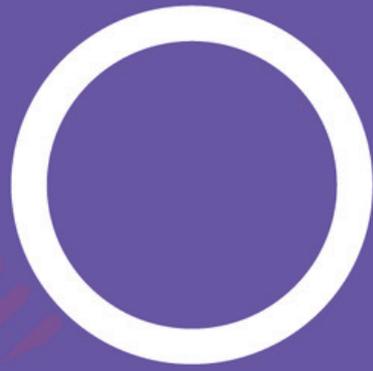
40. We commend the High Court decision to reinstate the Standards and Guidelines to Reduce Unsafe Abortions as well as the High Court's decision in the 'PAK' and Salim Mohammed Case. The decision recognized abortion as a fundamental right under the 2010 Constitution and directed Parliament to enact legal reforms, demonstrating significant progress towards ensuring safe and legal abortion services for women in Kenya.

### **Recommendations for Action**

41. 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 sections 158, 159 and 160 with the Kenyan Constitution 2010 26(4).

42. 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.





# ISSUE 4:

Lack of a specific legal and policy framework addressing child marriage in Kenya

43. In Kenya, child marriage is very widespread with far reaching 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 KHDS 2014 [21]

44. 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.

45. Despite the magnitude and severity, child marriage incidences and trends have not been adequately documented, even missing out in key national surveys such as KDHS 2022. The absence of data, coupled with the lack of specific legal frameworks targeting child marriage, creates a situation where the practice flourishes unchecked.

46. County specific documentation of child marriage and the need for a context specific legal framework as highlighted in the UNICEF Report and KDHS 2024 report is critical to evidence based programming and action.

## Laws and Policies

47. **The Sexual Offences Act, Rev 2009**. Section 8. (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

48. **The Children Act, 2022**. Section 23. (1) No person shall subject a child to— (c) child marriage; (g) any other cultural or religious rite, custom or practice that is likely to negatively affect the child's life, health, social wellbeing, dignity, physical, emotional or psychological development.

49. **The Marriage Act, 2014**. Section 2. In this Act, unless the context otherwise requires— "child" means an individual who has not attained the age of eighteen years; Section 4. A person shall not marry unless that person has attained the age of eighteen years. Section 87. Any person who marries a person who is below the minimum age commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or both.

## Recommendations for Action

51. 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.

52. 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.

54. 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.

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17	Talanta Africa	Kisumu	Stephen Okwany	<a href="mailto:okwany.steph@talanta-africa.org">okwany.steph@talanta-africa.org</a> <u>+254706676389</u>
18	Trust for indigenous Culture and Health	Karen, Korongo Rd,	Sheilah Warindi	<a href="mailto:swarindi@ticahealth.org">swarindi@ticahealth.org</a>
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20	Nyimine Empowerment Community Based Organization (NYECBO)	Bondo-Usenge Road, Opposite Jaramogi Oginga Odinga University of Science and Technology (JOUST)	Lorna Nyandat	<a href="mailto:lorna@nyecbo.org">lorna@nyecbo.org</a> <u>+254703906401</u>

**FOURTH CYCLE**

**49TH SESSION**

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