

**Universal Periodic Review of Kenya**

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**Submission by:**

**Family Health Options Kenya**



**FAMILY HEALTH OPTIONS KENYA**

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## **EXECUTIVE SUMMARY**

1. This report is submitted by Family Health Options Kenya, a national Non-Governmental Organization registered in Kenya and affiliated to International Planned Parenthood (IPPF) since 1962 and a pioneer of Sexual and Reproductive Health for the past 50 years. Unsafe abortion is still a leading cause of maternal mortality and morbidity. It is a social justice demand for millions of Kenyan women especially the poor, young and disadvantaged women. In Kenya, abortion is not a crime and no woman or girl should be punished for it. It is very sad that with advancement in technology, women still continue to die every day from unsafe abortion. The government withdrew the standards and guidelines for reducing maternal morbidity and mortality from unsafe abortion as per article 26 (4) of the 2010 Constitution. This was due to the pressure from anti-choice groups claiming the document concentrated mainly on abortion. Women face multiple obstacles to obtaining a safe abortion in Kenya, due largely to the stigma, lack of legal clarity, and prohibitive costs surrounding the procedure.

## **PROGRESS AND GAPS IN IMPLEMENTATION OF RECOMMENDATIONS FROM PREVIOUS CYCLE**

2. During the Kenya's last review by the Universal Periodic Review Process in 2010, Kenya did not receive much recommendations on abortion.

## **NATIONAL LEGAL FRAMEWORK**

3. The Kenyan constitution from 2010 grants every person the right to life noting that life begins at conception. The constitution does not permit abortion except for emergency for "emergency treatment" or if the "health of the mother is in danger"
4. **Article 43** says that every person has a right to the highest attainable standard of health, which includes right to health care services, including reproductive healtht5
5. **Article 21.** (1) states that, it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.
6. (2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43.
7. (3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.
8. (4) The State shall enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.
9. Reproductive health includes access to information on reproductive health services which includes access to safe abortion services, freedom to decide the timing, the number and spacing of children as well as contraceptives.

10. **Article 26** (4) Abortion is not permitted unless in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.
11. **Penal Code 159** Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony and is liable to imprisonment for seven years.

#### **UNSAFE ABORTION**

12. Recent studies by African population and Health Research Center (APHRC) and the Ministry of Health, show that the numbers of unsafe abortions remain very high in Kenya. The national study undertaken in 2012 assessed the number of induced abortions at nearly 465,000 annually<sup>1</sup>. Diverse sectors have been looking at this phenomenon from different dimensions: legal, health, human rights, economic and religious.

#### **POST-ABORTION CARE**

13. The public health care system is severely burdened by restrictive abortion law. The system is ill equipped –lacking in trained staff, supplies, equipment and appropriate to provide even post-abortion care which thousands of women need<sup>2</sup>. There is also mixed signals from medical professional bodies, academic institutions and the Ministry of Health as to whether or not clinical officers and nurses are permitted to offer safe abortion.

#### **HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF ABORTION**

14. Access to safe abortion is recognized as central to protecting women’s human rights. Article 14 of the African Charter’s Protocol on the Rights of Women in Africa (Maputo Protocol), which Kenya has signed, outlines a woman’s right to abortion in a range of circumstances: “States Parties shall take all appropriate measures to . . . protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus<sup>3</sup> . . .”<sup>4</sup>

#### **RECOMMENDATIONS**

15. Ensure achievement of gender equality and empowerment including women’s right over their bodies. At this stage of review, Kenya should demonstrate commitment to promote, protect, respect and fulfill human rights pursuant to article 21 of the Kenyan constitution. Specifically consider sensitizing women on the right to quality post-abortion care at all public and private health facilities. Consider making post-abortion care free service for women who cannot afford.

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<sup>1</sup> African Population and Health Research Centre *et al.*, (2013). Incidence and complications of unsafe abortion in Kenya: Key Findings of a national Study. Nairobi, Kenya.

<sup>2</sup>Centre for Reproductive Rights (2010). IN HARM’S WAY. The impact of Kenya’s restrictive abortion law.

<sup>3</sup> Article 14 of the African Charter’s Protocol on The Rights of women in Africa

<sup>4</sup> The Africa union Commission (18-22 September 2006). Plan Of Action on Sexual and Reproductive Health and Rights. Maputo Plan of Action

16. Reinstating the 2012 Ministry of Health standards and guidelines on safe abortion
17. Increase access to quality safe motherhood and reduce maternal mortality. Ensure effective dissemination and implementation of the Ministry of Health's Essential Obstetric Care Manual, which has abortion and post-abortion care guidelines for providers.
18. Enact policies and legal frameworks to reduce incidences of unsafe abortion. Ensure development and endorsement of safe abortion guidelines. Ensure dissemination and training on these guidelines.
19. Train health service providers (including changes in pre-service training curriculum) in the provision of comprehensive abortion care services within the confines of article 26 of the Kenyan Constitution and Maputo Plan of action.
20. Improve accuracy and availability of data on abortion and post-abortion care to ensure an accurate assessment of, and response to, the scope of the problem of unsafe abortion.
21. Provide safe abortion services to the full extent of the law.