



Bunge La Wamama Mashinani
Amplifying voices of grassroots women

**CENTER for
REPRODUCTIVE
RIGHTS**



**The African Women's
Development and
Communication Network**



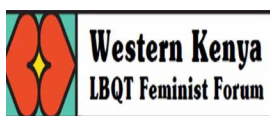
Kenya Medical Association
Championing the Welfare of Doctors and Quality Healthcare in Kenya



MildmayKENYA
improving health systems
impacting lives



**She Decides.
Kenya**



women's **LINK** worldwide



The Cabinet Secretary, Health
Sen. Mutahi Kagwe EGH,
Office of the Cabinet Secretary
Ministry of Health
P.O. Box 30016 – 00100,
NAIROBI.
Email: cshealth2015@gmail.com

21st July 2020

RE: ALIGNING THE REPRODUCTIVE HEALTH CARE BILL, 2019 TO MINISTRY OF HEALTH POLICIES

Greetings. We, the undersigned, being representatives of institutions drawn from the health, Women's Rights and human rights sectors, individual citizens of the Republic of Kenya, and residents of different counties write to you regarding the above mentioned matter.

Our attention is drawn to the letter from your office dated 01st July 2020 and addressed to the Clerk of the Senate, Ref MOH/ADMN/1/2. The Ministry's request for the suspension of the Reproductive Health Bill, Senate Bill 23 of 2019, in order to align it to the Kenya Reproductive Health Policy 2020-2030 is noted with deep concerns.

We collectively recognize the constitutional mandate of the Ministry in designing health related policies as enshrined under the Fourth Schedule. We further acknowledge the Ministry's obligation under Article 21 of the Constitution to take legislative, policy and other measures including the setting of standards in order to achieve the right to health.

Cognizant that the Kenya Reproductive Health Policy 2020-2030 is currently in draft form and yet to be completed, and well aware of the current agonies that women and girls of reproductive age continue to adversely and disproportionately suffer, we write with the following recommendations for consideration as the Ministry aligns the Bill to its existing policies:

1. As the Ministry completes the drafting exercise, the proposed reproductive policy 2020-2030 must remain aligned to the aspirations and founding values of Constitution of Kenya (2010), international covenants ratified by the Government of Kenya and reflective of ALL commitments made at regional and international platforms including the ICPD+25 as guided by Articles 2(5) and 2(6) of the Constitution of Kenya.
2. That in aligning the Reproductive Health Bill, the Ministry is mandated to align it to the following policies already existing within its own frameworks:
 - a) The Ministry of Health's National Guidelines on the Management of Sexual Violence 2014 which allow survivors of sexual violence to access emergency pills, post exposure prophylaxis and STI treatment with urgency when they present in health care facilities; Page 78 of the Guidelines recognizes that one of the rights that a survivor of sexual violence has is the right to termination of pregnancy and post abortion care.
 - b) The Ministry of Health's National Adolescent Sexual and Reproductive Health Policy 2015 which provides for comprehensive Adolescent Sexual and Reproductive Health and Rights
 - c) The National Menstrual Hygiene Management (MHM) Policy 2019 which provides for and protects rights in relation to Menstrual Hygiene Matters
 - d) Ministry of Health's National Guidelines for quality obstetrics and perinatal care 2012 which regulate Post Abortion Care (PAC) including emergency treatment of complications from a spontaneous or unsafe induced abortion.
 - e) It is also worth noting that as of 2nd March 2020, Reference MOH/ADM/1/1/2 the Ministry of Health piloted the revised Post Abortion Care training package and draft 'Post Abortion Care Guidelines: A pocket guide for health care providers in Kajiado County. These guidelines must inform the Ministry's alignment to the Reproductive Health Bill, 2019.
 - f) Ministry of Health Adolescents Package of care 2014 recognizes that Adolescents are medically eligible to use any method of contraception and must have access to a variety of contraceptive choices.
 - g) The Ministry of Health has remained committed to facilitating achievement of results articulated in the Kenya AIDS Strategic Framework (KASF). The Framework 2014-2019 demands for provision of key commodities including lubricants and condoms for key populations including the LGBTQ community which needs to be reflected in the Bill as well.
- 3) That the Ministry must stand guided by Section 6(1) of the Health Act 2017 which legally allows access to treatment by a trained health professional for conditions occurring during pregnancy including abnormal pregnancy conditions, such as ectopic, abdominal and molar pregnancy, or any medical condition exacerbated by the pregnancy to such an extent that the life or health of the mother is threatened.
- 4) THAT the Court's decisions on reproductive health cases are also instructive. In particular, the recent decision of the court in Petition 266 of 2015 made orders declaring inter alia that-
 - (i) the memos by the Director of Medical Services withdrawing the Standards and Guidelines and the Curriculum were unlawful, illegal, arbitrary, unconstitutional and hence null and void ab initio and thereby quashed;
 - (ii) pregnancy resulting from rape and defilement, if in the opinion of a trained health professional, poses a danger to the life or health of the mother may be terminated under the exceptions provided under Article 26(4);

- 5) THAT among the recommendations reviewed and noted by the Government of Kenya in its recent submission to the Universal Period Review (UPR)(2019 / 2020) includes clause 144.51 which commits to ' Immediately implement the High Court judgement in Petition No. 266 of 2015 by reinstating the standards and guidelines on reducing maternal mortality and morbidity related to unsafe abortion and the training curriculum for medical professionals in public hospitals'
- 6) THAT the Government of Kenya made several voluntary commitments related to the right to health of women and girls of Kenya during the ICPD+25 – Accelerating the Promise which took place in Nairobi, Kenya from 12-15, November 2019, to mark the 25th anniversary of the International Conference on Population and Development (ICPD+25). These commitments are part of an international effort to ensure that the promise of the ICPD Programme of Action and 2030 Agenda are achieved.
- 7) Aware that health is a devolved function, we further encourage the Ministry to also draw inspiration from county-enacted Maternal Newborn Child Health Acts. Kakamega and Makueni counties are instructive on matters termination of pregnancy, free maternal delivery and access to contraception.

In safeguarding access to the rights above, the Ministry of Health is constitutionally and professionally obligated to provide comprehensive sexual and reproductive healthcare within the entire life-cycle of women and girls without any cultural, religious or moral bias which goes a long way to reduce adolescent, maternal, new-born and child mortality and morbidity.

Kenyan women, girls and their communities are counting on the Ministry. We are confident in your commitment to uphold the right to the highest attainable standard of reproductive health care. We trust that the steps above will urgently be actioned to deliver these rights.

Cc:

His Excellency Uhuru Kenyatta
Head of State and Government &
President of Kenya.

Jeremiah Nyegenye,
CBS The Clerk of the Senate,
Parliament Buildings.

Sen. Dr Michael Mbiti
The Chairperson,
Senate Committee on Health.

Signed by:

1. ANMA-Kenya
2. Bunge La Wamama Mashinani
3. Center for Reproductive Rights
4. Community Forum for Advances and Sustainable Development (COFAS)
5. Deutsche Stiftung Weltbevölkerung (DSW)
6. Epic Youth Organization
7. FEMNET
8. Grassroots Women Initiative Network- Kenya
9. Happy Life for Development
10. Kenya Ethical and Legal Issues Network on HIV&AIDS (KELIN Kenya)
11. Kenya Medical Association (KMA)
12. Mildmay Kenya
13. Network for Adolescents and Youth on Africa (NAYA-Kenya)
14. Reproductive and Maternal Health Consortium
15. Reproductive Health Network
16. Reproductive Health Services
17. Right Here Right Now (RHRN)
18. She Decides Kenya
19. The White Ribbon Alliance-Kenya
20. Trust for Indigenouse Culture and Health
21. Western Kenya LGBTQ Feminist Forum
22. Women's Link Worldwide
23. Youth Health Organization