



To
The Clerk Senate,
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi.

17th August 2020.

MEMORANDUM ON THE REPRODUCTIVE HEALTHCARE BILL, 2019, SENATE BILL NO. 23 OF 2019

Introduction

This submission was prepared by a collective of 14 Civil Society Organisations (CSOs) that are implementing reproductive health care particularly, Reproductive, maternal, Neo-natal, Child and Adolescent Health care (RMNCAH) projects at County and National levels. The participants were convened via the Zoom meeting platform. The analysis covered all sections of the Bill. We submit a number of issues related to the Reproductive Healthcare Bill, 2019, Senate bill No. 23 of 2019.

Summary

This submission has compiled recommendations as per the parts of the Bill. We propose on Preliminary, to have the definitions derived from WHO, the constitution of Kenya and Adolescent Sexual Reproductive Health Policy. We further propose that the bill should include Maternal, New-born, Child and Adolescent Health (RMNCAH).

1. On Part II on Access to Family Planning, we propose that the bill should provide the role of the National Government, County Government on ensuring Family planning commodity security by governments having an FP budget line in their approved budgets. This will reduce donor dependence on FP funding. .
2. Under Part IV on Safe Motherhood, we recommend the section should address Maternal, neo-natal, Child and Adolescent Health. In this case, safe motherhood must address the inclusion of respectful and dignified motherhood and provision of services to women with special needs.
3. In part V on Termination of Pregnancy, the section should have provisions as provided in the Constitution of Kenya.
4. In Part VI on Reproductive health of Adolescents, we propose it needs to be rewritten to conform to the National Adolescent Sexual and Reproductive Health Policy, 2015 and the national guidelines for youth friendly service provision, 2016.

Conclusion

The Reproductive Healthcare Bill, 2019 needs to be rewritten to ensure that provisions in the bill are aligned to various policies and guidelines published by the Ministry of Health on the provision of maternal, neo-natal, child and adolescent health (RMNCAH). It is our recommendation that the Senate Standing Committee on Health works closely with the Ministry of Health - Family Health and Reproductive and Maternal Health Services Unit (RMHSU), the National Council on Population and Development, representation of county governments (through the council of governors), CSOs and other actors to rewrite this bill.

We propose the need to have a meeting with the Senate Health Committee and the religious leaders separately to review the sections that they raised and decide how to address them in accordance with the Constitution (2010), clearing any myths and misconceptions. Are there sections opened to abuse (promotion of Homosexuality etc,)? Then these have to be clarified. Please allow the CSOs to get back to you with a more detailed review as this email is just a tip of the iceberg. We believe the baby must not be thrown away with the bath water! Amendment be done accordingly. Thank you in advance.

PART I – PRELIMINARY

We recommend that in this part, the bill:

Uses the World Health Organisation's definition of adolescent - **individuals in the 10-19 years age group** - This is also the same definition provided in the National Adolescent Sexual and Reproductive Health Policy, 2015.

- Use the definition of the term **adolescent-friendly reproductive health services** to that which is provided in the National Adolescent Sexual and Reproductive Health Policy, 2015 - Sexual and Reproductive Health services delivered in ways that are responsive to specific needs, vulnerabilities and desires of adolescents. These services should be offered in a non-judgmental and confidential way that fully respects human dignity.
- Provide a definition for "reproduction health professional" and provide his/her qualifications.
- In defining safe motherhood, we recommend the use of the term "women of reproductive age" instead of the word women
- Use the World Health Organisation's definition of Family Planning - **the ability of individuals and couples to anticipate and attain their desired number of children and the spacing and timing of their births.**
- Define "safe motherhood" before defining rights to safe motherhood
- In defining safe motherhood, use "women of reproductive age" instead of the word women.
- Define "Maternal" before providing a definition for maternal care
- we also recommend the inclusion of the following terms in te definition:

“intrapartum period” refers to the period commencing at the onset of labor to the end of the third stage of labor;

“neonate” refers to a child from birth until twenty-eight days of life;

“neonatal” means of, or relating to newborn child;

“newborn” refers to a child between childbirth and six weeks of age;

“maternal” refers to any issues related to pre-conception, pregnancy, childbirth and the first forty-two days after delivery or end of pregnancy;

“maternal health” maternal health means the health of women during pregnancy, childbirth and the postpartum period

Clause 3 – Object of the Act

Sub-section (a) align the protection an advancement of reproductive health framework to international reproductive health standards since they are acceptable for all and Kenya being a signatory to most of them

Recommendation:

- **The protection and advancement of reproductive health rights framework should be aligned to the international reproductive health standards.**
- **3 (d) provide for a framework to ensure quality and equity in health service delivery for women, newborns and children;**
- **3 (e) establish a coordinated and structured system for the provision of quality maternal, newborn and child health care services;**

Sub-section (b) and (c) are not covered in the draft bill i.e. There is minimal or no mention of issues pertaining to child morbidity, child mortality and comprehensive health care services for every person

Recommendation:

- **delete sub-section (b) and (c) or add material that addresses these areas.**

Clause 4: Obligations of the National Government

The National and County Governments shall ensure that mothers are afforded services necessary to address the leading causes of maternal morbidity and mortality including but not limited to postpartum haemorrhage, pre-eclampsia, eclampsia and sepsis;

The National and County Governments shall ensure that newborns are afforded services necessary to address the leading causes of newborn morbidity and mortality including but not limited to prematurity, neonatal sepsis and asphyxia;

Under Clause 4 (b), we recommend the section to read:

The National Government and County Government shall, in relation to national referral hospitals or any other health facility within its functional jurisdiction, ensure that there is adequate provision of—

- (a) maternal, newborn, and child health services;
 - (b) childcare services to facilitate provision of health services and other social services needed;
 - (c) availability of antenatal, intrapartum and postnatal services directly or through referral;
 - (d) emergency and ambulance services;
-
- (a) skilled and adequate numbers of health professionals for maternal, newborn, and child health services;
 - (b) essential maternal, newborn, and child health services supplies, life saving commodities and equipment;
 - (c) provision of accessible maternity services; and
 - (d) infrastructure to support basic and comprehensive emergency obstetric and newborn care services.

We further recommend that the National and County governments should:

The National Government and County Government shall publish on its website and on any other prescribed means, information on the importance of preconception health, nutrition, the possible health complications occurring in mothers and newborn during pregnancy, labour childbirth, and postnatal.

The information required under this section shall at a minimum, include —

- (a) causes of maternal, newborn and child morbidity and mortality and the danger signs;
- (b) emergency preparedness and complication readiness;
- (c) the need to deliver under skilled care;
- (d) the unique health issues affecting infants born prematurely;
- (e) care and the proper care needs of premature infants, methods, vaccines, and other preventative measures for protecting premature newborns from infectious diseases;
- (f) importance of preconception health and nutrition for mothers;
- (g) the importance of proper nutrition for infants and children; and
- (h) the emotional and financial burdens and other challenges that parents and family members of premature infants experience and information about community resources available to support them.

The National Government shall establish the Kenya Reproductive, Maternal, Newborn, Child and Adolescent Health and Nutrition Multi-Stakeholder Platform.

The Director General of Health shall develop the terms of reference and appoint the membership of the Multi-Stakeholders Platform established

The Multi-Stakeholder Platform shall work collaboratively with the Ministry of Health and other relevant government departments at the national and county level to strengthen the coordination, implementation and enhance accountability for resources and health outcomes for women, children and adolescents in Kenya.

The Cabinet Secretary shall in consultation with the Ministry of health and through a Multi-Stakeholder Platform, prepare an annual report and submit the report to the President and Parliament on the status of maternal, newborn, child and Adolescent health services in Kenya.

Clause 5 – Each county government shall...

Under sub-section (b), The County government shall allocate, in the county budget...

Recommendation – For clarity, the statement should read “the county government shall allocate, disburse and spend, in the county budget, adequate funds necessary for the provision of reproductive healthcare.

Sub section (b) (i) reads that the County Government shall hire adequate personnel.

We recommend that it should read; the County Government should hire and continuously build the capacity of the health workers to quality reproductive health information and services

Sub-section (b), bullet (ii) mentions sufficient equipment, medicines and medical supplies required to adequately cater for reproductive health care services in the county. Family planning commodities do not fall under the above categories

Recommendation – Include family planning commodities in the list.

Sub-section (d) on access to reproductive health services by persons who ‘suffer from varied forms of disability’. Sub-section (d) also does not mention other disadvantaged/special needs groups such as key populations.

Recommendations:

- **Since the spirit of the bill is to secure reproductive health rights and services to every person (non-judgemental), these disadvantaged/marginalised groups should be included.**
- **Replace the phrase “persons who suffer from varied forms of disability” with the phrase “persons living with disability”.**

Sub-sections (g) and (h) talks of provision of age and development appropriate reproductive health services. It however leaves it at to the discretion of the service provider to decide what is appropriate

Recommendation – age appropriate material (classified by age) should be clearly demarcated in the policy rather than be left to the discretion of the care provider. Alternatively, the section should be amended to read provision of reproductive health services on demand

PART II – ACCESS TO FAMILY PLANNING SERVICES

Section does not comprehensively address systemic issues in the family planning space i.e commodity security and supply chain, budgeting for family planning commodities, hiring and training of service providers, commodity distribution channels (including through community health workers).

Recommendation – Section should address family planning as strategic commodities and vaccines including HPV and therefore cover quantification, resources, health worker training and refreshers, role split between national and county governments. And include special groups e.g. sex workers and mature minors, these include reproductive health needs of mothers who are below 18 years of age. Family planning being under primary health care, this section should highlight establishment of community units and further training of CHVs to provide FP information and referrals.

Recommendation: The bill should provide the role of the National Government, County Government on ensuring Family planning commodity security. This includes the National and County governments having an FP budget line in their approved budgets. This will reduce donor dependence on FP funding.

Clause 7

Sub-section 4(b) talks about obtaining written consent before administration of family planning methods. This will end up being a barrier particularly for young people. The practicality of the process is also questionable

Recommendation – requirement for written consent should be removed and should only remain applicable for those seeking permanent methods of family planning, which are also minor surgical procedures i.e Tubal ligation and Vasectomy.

Clause 11

Sub-section 3(a) talks about consent for assisted reproduction. It is not explicit is such consent should be verbal or written

Recommendation – insert the word “written” so that any consent for assisted reproduction is documented in writing

Clause 13

Sub-section (b) talks of supply or export of a gamete except with the written consent of the gamete provider. In instances where such gametes are to be exported, consent of the Government should also be sought

Recommendation – include consent of the state where gametes are to be exported outside the jurisdiction of Kenya

Clause 14

Sub-clause 1(a) talks of surrogate parenthood agreements only being enforceable if the commissioning parent(s) are unable to give birth to a child and that the condition is irreversible. This locks out those whose health may be at risk if they are to carry a pregnancy to term

Recommendation – include a clause allowing commissioning parents certified by a medical practitioner as being at risk of serious health implications if they were to carry a pregnancy to term to enter into a surrogacy agreement.

Sub-clause c(i) proposes a lower age limit for surrogate mothers but does not have an upper limit

Recommendation – cap the upper limit at 49 which is the globally recognised age limit for reproductive age. This should enable the developing foetus to benefit from a surrogate mother who is still in her prime.

Clause 15

Sub-clause 1(a) talks of validity of a surrogate parenthood agreement which is duly signed by both parties. It however does not mention the issue of a witness to the same

Recommendation – include provision of witnessing of the surrogate parenthood agreement by a commissioner of oaths or any other official as stipulated by contract law.

Sub-clause (e) talks of expenses incurred by the surrogate mother that are to be met by commissioning parent(s). It however omits other direct costs that are bound to be incurred as a result of the pregnancy

Recommendation – include medical care costs, delivery costs and post-natal care costs incurred by the surrogate mother.

Clause 18

Sub-clause 1(a) talks of termination of a surrogate parenthood agreement in event of termination of the pregnancy. It is however silent on legal options open to the commissioning parent(s) in case the surrogate mother intentionally terminates the pregnancy

Recommendation – include option of commissioning parent(s) seeking legal address to recover costs already incurred on the surrogate mother.

Sub-clauses (2), (3) and (4) talks of outcomes in case the child born is not the one contemplated under the surrogate parenthood agreement. It adequately covers limits of responsibility of the commissioning parents and to some extent those of the surrogate mother. It however does not state the rights of the child born out of such an incident (for instance if gametes are accidentally or otherwise served to the wrong recipient)

Recommendation – include clause indicating rights of the child in case both commissioning parent(s) and surrogate mother are absolved of parental responsibility.

PART IV – SAFE MOTHERHOOD

Section does not comprehensively address maternal health issues.

Clause 24

We Recommend the following:

The National/County Government shall, in relation to national/county referral hospitals or any other health facility within its functional jurisdiction, ensure that there is adequate provision of—

- (a) maternal, newborn, child and adolescent health services;
- (b) childcare services to facilitate provision of health services and other social services needed;
- (c) availability of antenatal, intrapartum and postnatal services directly or through referral;
- (d) emergency and ambulance services;
- (e) skilled and adequate numbers of health professionals for maternal, newborn, child and adolescent health services;
- (f) essential maternal, newborn, child and adolescent health services supplies, life saving commodities and equipment;
- (g) provision of accessible maternity services; and
- (h) infrastructure to support basic and comprehensive emergency obstetric and newborn care services.

Clause 25

Whole clause talks about issues surrounding permanent sterilizations (permanent family planning). The clause is misplaced

Recommendation – move the whole of clause 25 to the Family Planning section and provide a sub-section where written consent is required for clients who request for tubal ligation and vasectomy which are surgical procedures.

We recommend the inclusion of respectful and dignified motherhood which includes;

A pregnant woman shall be entitled to—

- (a) early diagnosis of pregnancy;
- (b) referral for and provision of prenatal care;
- (c) referral to childbirth preparation classes as desired or to adoption services at licensed agencies if indicated;
- (d) services in the intrapartum period including emergency and referral care;
- (e) services during the postpartum or postnatal period;
- (f) provision of dignified and respectful care;
- (g) ninety working days of maternity leave upon delivery of the newborn;

- (h) sensitization and education on the benefits of breastfeeding children, proper nutrition, vaccination, growth promotion of children and any other child beneficial activities;**
- (i) provision of adolescent friendly services; or**
- (j) any other services that may be prescribed relating to prenatal, intrapartum and postpartum period.**

A woman with special needs shall be entitled to —

- (a) maternal health services that are responsive to pregnant women with special needs;**
- (b) pregnancy related services as set out in section 5;**
- (c) diagnosis and treatment or referral and follow-up of mental health problems, both acute and chronic, including emotional and learning disorders, behavioural disorders, alcohol and drug related problems, and problems with family and peer group relationships;**
- (d) where applicable, provision of adolescent friendly services;**
- (e) provision of disability friendly services;**
- (f) provision of respectful and dignified care;**
- (g) counselling and anticipatory guidance with referrals and follow-up of the adolescent or guardian as appropriate.**

For purposes of this Act, women with special needs include—

- (a) pregnant adolescents;**
- (b) women with disabilities;**
- (c) women suffering from mental illnesses;**
- (d) women with chronic illnesses; and**
- (e) women in marginalized areas.**

A newborn shall be entitled to comprehensive newborn care, including emergency care, referral care and postnatal follow up.

A child shall be entitled to health services that ensure child survival, growth and development, including-

- (a) optimal child nutrition;**
- (b) childhood vaccination;**
- (c) growth promotion;**

- (d) monitoring child development;
- (e) child protection;
- (f) comprehensive assessment;
- (g) diagnosis, treatment or referral and follow-up;
- (h) provision of respectful and dignified care;
- (i) assessment, counselling and anticipatory guidance with referrals and follow-up as needed regarding child development;
- (j) behaviour counselling and provision of support services as required by children with chronic illnesses or handicapping conditions; and
- (k) be breastfed in so far as it is appropriate and applicable in accordance with the prescribed guidelines;

Every head of a hospital, institution, an approved health facility or owner of an approved facility shall maintain a register in a prescribed form for recording the details of the maternal, newborn and child healthcare cases reported and dealt with in the hospital or facility.

- (a) The report referred to under subsection above shall include all maternal deaths, prenatal and newborn deaths, and their audit reports.

The Executive Committee Member responsible for Health in each county shall prepare an annual report and submit the report to the County Assembly on the status of maternal, newborn, child and adolescent health services in the county.

The report shall contain—

- (a) state of funding of maternal, newborn and child health services in the county;
- (b) the availability and state of health facilities relating to maternal, newborn and child health services in the county;
- (c) staffing levels and skills for maternal, newborn and child health services in comparison to client load in the county;
- (d) status of maternal, newborn and child health commodities, supplies and equipment in the county;
- (e) the status of maternal, newborn and child health services and indicators in the Country;
- (f) recommendations on specific actions to be taken in enhancing access to quality maternal, newborn and child health services in the county; and
- (g) any other information relating to maternal, newborn and child services.

PART V – TERMINATION OF PREGNANCY

Clause 26

Sub-clause 1(a) talks of termination of pregnancy being allowed due to need for emergency treatment. This is rather ambiguous as it does not have the rider on if the emergency treatment will result in physical harm to the foetus.

The decision to terminate should also not be left to the health care provider but also to the pregnant woman.

This clause also does not have provision to cater for pregnancies resulting from abuse or rape
Recommendation – Insert provisions as provided in the Constitution of Kenya.

Clause 28

Sub-clause 1(b) talks of parental/guardian's consent being sought in termination of a pregnancy in case of a pregnant minor. It does not imply if the voice/opinion of the minor counts

Recommendation – include a section detailing how the opinion of the minor will be included.

PART VII – REPRODUCTIVE HEALTH OF ADOLESCENTS

Sub-clause 2(b) talks of spiritual and moral guidance yet health workers may not be best placed to provide this. It also comes across as being judgemental of the adolescents seeking reproductive health information and services

Recommendation – part (b) should be deleted or otherwise included in the school curriculum under the Basic Education Act

Sub-clause (c) talks about counselling which can be viewed as being judgemental and implying the adolescents are doing something wrong

Recommendation – replace the word “counselling” with “information”

Sub-clause (d) talks of livelihoods training which is more of an education issue than reproductive health issue.

Recommendation – delete “livelihoods” or otherwise move to the Ministry of Education under the Basic Education Act.

Sub-clause (e) talks of vocational trainings which is more of an education issue than a reproductive health issue

Recommendation – delete vocational trainings or otherwise move to education sector.

Sub-clause 33(a) talks of provision of consent from parents. This will result into marginalization of adolescents who will shy away from accessing reproductive health information

Recommendation – delete obtain parental consent; it's an unnecessary barrier among women from patriarchal communities and adolescents and breaches confidentiality.

As an overall recommendation, PART VII of the bill needs to be rewritten to conform to the National Adolescent Sexual and Reproductive Health Policy, 2015 and the national guidelines for youth friendly service provision, 2016.

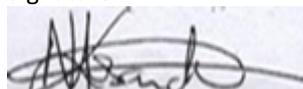
We recommend the removal of Subsection 37 that reads “All persons who get health complications arising out of genital mutilation shall access treatment from any health care provider without discrimination”. This in itself promotes FGM practices.

Under sub-section 38 which reads “The Cabinet Secretary shall make regulations generally for the better carrying out of the provisions of this Act”.

We recommend that it should be written as: The Cabinet Secretary in consultation with the Ministry of Health shall make regulations generally for the better carrying out of the provisions of this Act.

The following persons are signing this memorandum on behalf of the 14 civil society organisations, and will be available to respond to any questions, or further engagements with the Senate's Standing Committee on Health:

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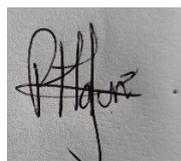
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