

POLICY BRIEF

ON ABORTION STIGMA IN KENYA

MANAGING ABORTION STIGMA AS A VITAL RIGHT FOR WOMEN'S REPRODUCTIVE HEALTH RIGHT

2021

Over the last
50
years

female population of Kenya grew substantially from **6.09 million** to **27.7 million**

Fact Sheet/ Policy Brief

As of 2021, the female population of Kenya was **27.7 million persons**. Over the last 50 years, female population of Kenya grew substantially from 6.09 million to 27.7 million persons rising at an increasing annual rate that reached a maximum of 3.94% in 1982 and then decreased to 2.26% in 2021. In 2020, Kenya's male to female ratio stands at **98.76 males per 100 females**. Meaning that the total population of females (women and girls) in Kenya is higher than that of men.

This therefore greatly affects and shapes the country's health and development agenda; as more women and girls increasingly need health and education/information services that include sexual and reproductive health rights. Women and girls are not a heterogenous population thus making 'rights' an issue of priority.

Rights are **legal, social, or ethical principles of freedom or entitlement**; that is allowed or owed to people based on a legal system, ethical theory or social convention. The issue of women's reproductive health cannot not be separated from rights.

In the Maputo Protocol for (2003) example; article 14 clearly stipulates the sexual and reproductive health rights of women and girls as:

- The right to control their fertility;
- The right to decide whether to have children, the number of children and the spacing of children;
- The right to choose any method of contraception;
- The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- The right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
- The right to have family planning education.

The right to sexual and reproductive health does not end there as this regional policy goes ahead to emphasize that; all state partners must protect the reproductive rights of women by authorizing **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.

In Kenya, article 26 (4) of the Kenyan Constitution (2010) states that; Abortion is permitted 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.



In accordance with the **Constitution**; other laws permitting **safe abortion** in Kenya are:

The Penal Code Cap. 63 revised edition 2009 (2008)

article 240, The Health Act 2017 and the **National Guidelines on the Management of Sexual Violence 2014**,

which state that a woman can access safe abortion if:



In need of emergency treatment; or



Whose pregnancy poses a danger to her life; or



Whose health is in danger.

The Health Act 2017 defines health as a complete state of physical, mental and social wellbeing and not merely the absence of disease.



Despite these guidelines and policies, stigma against safe abortion increases due to the following reasons:

1. Religious biases.
2. Socio-cultural norms and beliefs.
3. Negative lived experiences where a woman lost her life due to **unsafe abortion**.
4. International regulations against safe abortion such as, **the Global Gag Rule** and **Roe vs Wade** which limit resource allocation and service provision for safe abortion internationally.

Stigma is having a negative attitude toward people or an issue we think are not “normal” or “right.” For example, stigma can mean not valuing women's access to safe and legal abortion as a rights issue and shaming them for accessing such services and information.



Existing statics in Kenya

7 (seven) women die daily as a result of unsafe abortion.

Unsafe abortion is the leading cause of maternal deaths in adolescent girls aged 15–19 years and women of reproductive age 15-49 years.

49% of all pregnancies in Kenya are unintended and 41% of them lead to an abortion; safe or unsafe.

Maternal morbidity is also highly linked to unsafe and illegal abortions sourced from self-induced abortions and quack doctors.

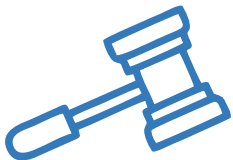
Maternal mortality, to which unsafe abortion is a major contributor, is unacceptably high in Kenya with about 488 maternal deaths per 100,000 live births. (KDHS 2014)

WHO estimated the Eastern African region where Kenya belongs to have the highest (18 %) proportion of maternal deaths being attributed to unsafe abortion in 2008.

Another study on maternal mortality in urban slums in Nairobi estimated the maternal mortality ratio in the slums to be 706 deaths per 100,000 live births with 31 % of these deaths being attributed to abortion complications.

This is a clear indication that stigma and lack of accurate safe abortion information and services only increases the use of unsafe methods to procure an abortion as compared to safe methods. Should women and girls be educated about safe and legal abortion, maternal mortality rates would drastically reduce and women and girls would be well equipped to make safe and informed decisions about safe abortion and contraceptive use. The Ministry of Health Kenya would also openly aid women and girls seeking safe abortion services as compared to only offering post abortion care (PAC) services.

Despite increased stigma that limits safe abortion services for women, Kenya recently made progressive efforts to counter/ manage stigma and reduce unsafe abortions through a landmark ruling on safe abortion care also known as **The Malindi Case**. The High Court of Malindi in March 2022, ruled that safe abortion care is a fundamental right under the Constitution of Kenya and that arbitrary arrests and prosecution of patients and healthcare providers, for seeking or offering such services, is completely illegal.



Specifically, the Court ruled that:

- Abortion care is a fundamental right under the Constitution of Kenya and that arbitrary arrests and prosecution of patients and healthcare providers seeking or offering such services is illegal.
- Protecting access to abortion impacts vital Constitutional values, including dignity, bodily autonomy and integrity as well as equality
- Criminalizing abortion under Penal Code without Constitutional statutory framework is an impairment to the enjoyment of women's reproductive right.



Key recommendations for Kenya moving forward on managing abortion stigma as a vital right for women's reproductive health right include:



1. Support the passing of the **East African Sexual and Reproductive health Bill 2021**; where safe and legal abortion is under clause 16 that states; *'A woman may terminate a pregnancy if in the opinion of a health professional, there is need for emergency treatment, the pregnancy endangers the mental health or physical health or life of the woman, in the case of sexual assault, rape, incest or as may be permitted by the law of a Partner State'*.



2. Train healthcare service providers to offer accurate safe abortion information as well as services with a contraceptive package for all women of reproductive age.



3. Avail civic education on laws and policies for awareness of women's sexual and reproductive health rights that encompasses the right to safe and legal abortion for knowledge management and demand creation; while demystifying all myths and misconceptions that propagate abortion stigma and influence women to seek unsafe abortion options.



4. Strengthen the capacity and skills of community health volunteers and traditional birth attendants to share accurate and age appropriate sexual and reproductive health information that constitutes of safe and legal abortion as well as **refer** women and girls in need of safe abortion services to health facilities.



5. Institute an official ban on all quack doctors and shut down all illegal medical facilities that encourage unsafe abortions vs safe and legal abortion.



Under the **You Can** project supported by WGNRR Africa that aims to reduce stigma levels on CSE, abortion and contraception. Zamara Foundation and YEM developed this policy brief on abortion stigma in Kenya to help manage opposition and the adverse effects of abortion stigma to adolescent girls and young women, so as to reduce the case numbers of unsafe abortions.



Mobilize Equip Empower

Youth Empowerment Movement Kenya (YEM Kenya) is a registered community based organization that was founded in 2020. It is a Youth-led movement that seeks to Mobilize, Equip and Empower Adolescent and Youth voices into Youth Empowerment platforms, programs and initiatives in Community and Development Work. YEM Kenya also seeks to promote sexual and reproductive health rights (SRHR) through advocacy, provision of information and services, media and digital health interventions.



Zamara Foundation is a feminist homegrown organization founded in 2016 and registered in Kenya in 2019. Zamara is anchored on radical, bold perspectives on bodily autonomy and integrity, intersectional feminist transformational leadership within the young women and a strong voice that speaks to the sexual and reproductive health and rights of young women, girls and those that are differently challenged. Zamara Foundation focus counties are Nairobi, Kwale and Kilifi. Zamara Foundation's core values are deeply rooted on African feminist principles.