



ADDRESSING LEGAL AND HEALTHCARE CHALLENGES ARISING FROM KENYA'S RESERVATIONS UNDER ARTICLE 14(2)(C) OF THE MAPUTO PROTOCOL



Executive Summary:

This comprehensive policy brief addresses the impact of Kenyan government reservations under Article 14(2)(c) of the Maputo Protocol on women's reproductive rights and access to safe abortion services. Motivated by concerns regarding alignment with domestic laws, particularly Article 26(4) of the Kenyan Constitution, these reservations have given rise to multifaceted legal and practical challenges. This brief proposes a set of targeted recommendations to deal with these challenges and uphold women's reproductive autonomy, including the pivotal recommendation of lifting the existing reservation, alongside a specific focus on implementing existing health policies.



Background:

The Maputo Protocol, adopted by the African Union, is a landmark instrument that seeks to advance and protect the rights of women in Africa. Article 14(2)(c) specifically addresses the right to health, including sexual and reproductive health. Kenya, having committed to the Maputo Protocol, opted for reservations under Article 14(2)(c) due to perceived incongruence with domestic laws. This dissonance has resulted in legal ambiguity, leaving healthcare providers, legal professionals, and women in a state of confusion. Consequently, this situation has implications for women's rights, and healthcare access, and raises concerns about potential violations of international human rights standards.



Key Challenges:

- 1. Legal Ambiguity:** The misalignment between international obligations, the penal code and the constitution has produced confusion within the legal and healthcare areas, impeding the provision of reproductive health services. Criminal prosecutions against healthcare providers and women and girls seeking professional services are still based on the country's pre-2010 constitutional provisions of the penal code, indicating a lack of legal adaptation to the new constitutional framework. While courts have started to assert constitutional protection for women seeking lawful abortion services, challenges persist.
- 2. Impact on the Health Sector:** Healthcare providers are hesitant to offer adequate services due to fear of criminal prosecution. This fear among healthcare providers has led to suboptimal healthcare for women seeking lawful abortion services.
- 3. Impact on Maternal Health Healthcare Access and Consequences:** A direct consequence of the lack of clarity is the constriction of access to safe abortion services, potentially pushing some women towards perilous alternatives, thereby endangering their health and lives. Restricting access to safe abortion services, even in critical situations, amplifies risks to maternal health, contributing to unsafe abortions and an increase in maternal morbidity and mortality rates. Despite the constitutional provision allowing abortion in specific circumstances, the expected reduction in unsafe abortions has not materialized.
- 4. Inadequate Implementation of Constitutional Provisions:** The constitutional provisions related to abortion have not been adequately implemented. This inadequate implementation has contributed to the enduring stigma and misperceptions surrounding abortion, negatively impacting women's access to safe procedures. The lack of clarity and alignment between constitutional provisions, the penal code, and implementation mechanisms poses significant challenges to women's access to safe abortion services.
- 5. Impact on Women's Rights:** The reservations pose a threat to fundamental human rights, particularly reproductive autonomy, and may perpetuate gender-based discrimination by restricting access to essential reproductive healthcare services needed by women and girls.



Recommendations:

- 1. Ensure Legal Clarity:** Ensure that laws and regulations related to reproductive rights are clear and accessible to both healthcare providers and the general public.
- 2. Lift the Reservation:** Initiate the process of lifting the reservation under Article 14(2)(c) of the Maputo Protocol. Lifting the reservation signifies a commitment to aligning national laws with international human rights standards.
- 3. Legal Framework Review:** Conduct a comprehensive review of domestic laws, particularly under "offences against morality" (Chapter XV, sections 158 to 160) and "offences connected with murder and suicide" (Chapter XXI, sections 221 to 228) of the Penal Code, aligning them with the Constitution and international

human rights standards to eliminate inconsistencies and provide a clear legal framework for reproductive rights.

- 4. Guidelines Reinforcement:** Reinstate and strengthen guidelines for healthcare providers, ensuring clarity on procedures for facilitating safe and legal abortions within the existing legal framework. This includes training programs and resources to support healthcare professionals in adhering to these guidelines.
- 5. Policy Reforms:** Undertake policy reforms that prioritize women's reproductive rights, ensuring access to comprehensive reproductive health services and aligning policies with international human rights standards.
- 6. Strengthen Healthcare Infrastructure:** Invest in healthcare infrastructure to ensure that healthcare facilities are equipped and staffed to provide safe and legal abortion services. This includes training healthcare providers in the provision of these services.
- 7. Implement the constitution and the Existing Health law and Policies:** Strengthen and enforce the implementation of existing health policies that support reproductive health and women's rights. This involves ensuring that healthcare facilities are equipped and staffed to provide essential reproductive health services, including safe abortion procedures where legally permissible.
- 8. Public Awareness and Education and Stakeholder Engagement:** Launch extensive public awareness campaigns to educate citizens, healthcare providers, and legal professionals on reproductive rights, dispelling misconceptions, and ensuring that decisions are made with full awareness and understanding. Foster multi-stakeholder dialogues involving government agencies, legal experts, healthcare providers, civil society organizations, and women's rights advocates to address concerns and collaboratively find solutions. This ensures a holistic and inclusive approach to policy changes.



Implementation Steps:

- 1. Establish a Task Force:** Form a task force comprising representatives from government agencies, legal experts, healthcare professionals, and women's rights advocates to oversee the implementation of recommended reforms. This task force will ensure coordinated efforts and a focused approach.
- 2. Legislative Review:** Initiate a legislative review process to initiate the process of lifting the reservation under Article 14(2)(c) of the Maputo Protocol; to amend existing laws, providing clarity on legally justifiable circumstances for abortion. This involves engaging lawmakers, legal experts, and stakeholders to draft and pass amendments that align with international standards.
- 3. Capacity Building Programs:** Implement training programs for healthcare providers, focusing on recognizing situations where abortion is legally permissible and ensuring strict adherence to guidelines. This includes continuous education to keep healthcare professionals updated on legal changes and best practices.
- 4. Public Awareness Campaigns:** Execute public awareness campaigns using various media channels to disseminate accurate information on reproductive

rights and the legal framework. This involves utilizing traditional and digital media platforms to reach diverse audiences and address misconceptions.



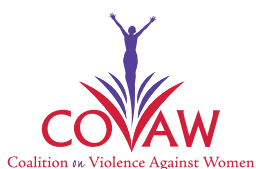
Monitoring and Evaluation:

Establish a robust monitoring and evaluation mechanism to assess the impact of implemented reforms on women's access to safe abortion services, maternal health outcomes, and overall reproductive rights. Regular assessments will inform further adjustments and improvements to the policy framework.



Conclusion:

Addressing the impact of Kenyan government reservations under Article 14(2)(c) of the Maputo Protocol necessitates a holistic and multifaceted approach, involving legal reforms, public awareness campaigns, and stakeholder collaboration. By strictly implementing these recommendations, particularly by lifting the existing reservation and reinforcing existing health policies, Kenya can address the challenges posed by reservations and establish a framework that safeguards women's reproductive rights, respecting both domestic legal frameworks and international human rights standards. This comprehensive strategy ensures a balanced and inclusive approach to women's healthcare, promoting autonomy and well-being.



This publication has been financially supported by the Swedish Development Cooperation through Equality Now and SOAWR.



Coalition of Violence Against Women

Dhanjay Apartments, 8th Floor, Apartment No. 807,
Hendred Avenue, Valley Arcade, Off Gitanga Road, Nairobi
Telephone: +254 20 804 0000, +254 (0) 722 594794/ +254 (0) 733 594794
Email: info@covaw.or.ke Website: www.covaw.or.ke

