



ECONOMIC, SOCIAL AND CULTURAL RIGHTS

RIGHT TO HEALTH



**49TH SESSION OF THE UNIVERSAL PERIODIC REVIEW (UPR)
FOURTH CYCLE UNIVERSAL PERIODIC REVIEW OF KENYA**



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Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN)

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Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN)

49TH UNIVERSAL PERIODIC REVIEW SESSION, KENYA
JOINT CSO STAKEHOLDER REPORT

THEMATIC CLUSTER: ECONOMIC SOCIAL AND CULTURAL RIGHTS

RIGHT TO HEALTH, KENYA

Six Issues: Inadequate financial resourcing for health; Limited access to comprehensive and integrated HIV prevention services for Key Populations (including prisoners and SOGIESC persons) in Kenya; Gaps in TB service delivery; Limited access to sexual reproductive health services, information and commodities by adolescents & young people, persons with disability, People living with HIV & Key Populations; Gaps in mental health service delivery; Lack of a comprehensive regulatory framework for digital health and rights.

ISSUE 1: Inadequate financial resourcing for health in Kenya

1. Kenya's health budget allocation has consistently fallen short of recommended WHO guidelines and Abuja Declaration recommendations of 5% and 15% respectively. In the 2022/23 budget, the health sector at national level was allocated a total of Ksh. 122.52 billion – 3.69% of total and 0.97% of GDP¹. Nominally, allocation increased by 1.18% from Ksh. 121.09 billion in 2018/19 to Ksh. 122.52 billion in 2022/23. However, the share of the health sector to total budget reduced from 3.97% in 2021/22 to 3.69% in 2022/23, and as a share of GDP reduced from 1.08% in 2021/22 to 0.97% in 2022/23. Despite a significant increase in health sector allocations nominally over the last five years (36% increase from Ksh.90 billion to Ksh. 122.52 billion), health sector allocations as a share of the total national budget and GDP have slightly reduced from 3.70% to 3.69% and 1.06% to 0.97%, respectively. Further budgetary disparities exist in national government allocation to counties in healthcare, which is only 35% while 65% remains at the national level.²
2. Only 19.9% of Kenyans were registered under the previous national social health insurance scheme, National Health Insurance Fund (NHIF). This meant that 80.1% were unable to access healthcare under and had to pay out of pocket for services. The Social Health Insurance Act, 2023, repealed the NHIF Act and as at 01 October 2024, Kenya transitioned to a new model administered by the Social Health Authority. This model proposes the Primary Healthcare Fund, Social Health Insurance Fund (SHIF) and the Emergency Chronic and Critical Illness Fund. Access to services under SHIF will be on mandatory registration and monthly contributions at a rate of 2.75% of gross income for salaried Kenyans, with a means testing tool applied to identify indigent populations who will receive government support to make contributions. However, current government funding only covers 4% of the estimated costs needed for implementation of this new model³.
3. The current doctor to patient ratio in Kenya is still far below WHO recommendation of 1 doctor to 1,000 patients and 25 nurses per ten thousand patients. The ratio of nurses

¹ <https://www.ohchr.org/sites/default/files/2022-09/Human-Rights-Based-Analysis-of-Kenya-Budget-2022-23.pdf>

² <https://kmpdu.org/the-launch-of-the-named-report-kenyas-health-care-crisis-where-is-the-money/>

³ <https://www.health.go.ke/kenya-officially-launch-social-health-authority-october-1-2024>

to patients is 42,487 nurses per 10,000 people⁴ and 5559 general medical officers for every 10,000 people⁵. Recent protests by doctors and interns evidences a gap in financing as the Ministry claimed inability to post the interns due to lack of funding.

4. Heavy reliance on donor funding and public private partnerships⁶ greatly affects priority setting for budgetary allocations for health. Domestic funding for HIV prevention increased from \$31 million in 2017 to \$38.5 million in 2022 while international funding over the same period increased from \$223.1 million in 2017 to \$73.4 million. Overall HIV expenditure reduced from \$254.1 million to 111.8 million in 2022. Budgetary allocation in 2022-2023 was to the tune of Kes. 1.2 billion for procurement of family planning and reproductive health commodities.⁷ However, in 2024-2025, there was no allocation for family planning or related expenses.⁸
5. Kenya's health sector lacks accountability and transparency. In the National Ethics and Corruption Survey, 2021, the sector ranks second most corrupt nationally.⁹ An alarming finding in the Ethics and Anti-Corruption Commission (EACC) 2023 report was the pervasive corruption in all phases of the health sector project management process¹⁰. Scarce financial resources are further depleted owing to poor resource management and misappropriated funds, ultimately eroding public trust and undermining service delivery in the sector.

Legal framework

The World Health Assembly Resolutions:

6. Sustainable health financing structures and universal coverage (2011) - Resolution WHA64.9 urges member states to aim for affordable universal coverage and access for all citizens based on equity and solidarity, so as to provide an adequate scope of health care and services and level of costs covered, as well as comprehensive and affordable preventive services through strengthening of equitable and sustainable financial resource budgeting;
7. Sustainable health financing, universal coverage and social health insurance (2005) Resolution WHA58.33 urges member states to ensure health-financing systems include a method for prepayment of financial contributions for health care, with a view to sharing risk among the population and avoiding catastrophic health-care expenditure and impoverishment of individuals.

⁴ <https://www.health.go.ke/sites/default/files/2024-01/Kenya%20Health%20Facility%20Census%20Report%20September%202023.pdf>

⁵ <https://www.health.go.ke/sites/default/files/2024-01/Kenya%20Health%20Facility%20Census%20Report%20September%202023.pdf>

⁶ Ministry of Health <https://www.health.go.ke/18-million-public-private-partnership-save-lives-mothers-and-babies-kenya>

⁷ <https://www.treasury.go.ke/wp-content/uploads/2022/04/Mwananchi-Guide-for-FY-2022-23-pdf.pdf>

⁸ <https://www.treasury.go.ke/wp-content/uploads/2024/06/Budget-Highlights-The-Mwananchi-Guide-for-the-FY-2024-25-Budget.pdf>

⁹ National Ethics and Corruption Survey 2021; Accessed at <https://eacc.go.ke/default/wp-content/uploads/2022/12/National-Ethics-and-Corruption-Survey-2021-EACC-30-Dec-2022.pdf>

¹⁰ *Report on Corruption and Unethical Conduct in Kenyan Health Care Projects: A Study of Procurement and Financial Management Practices*; Accessed at <https://eacc.go.ke/default/wp-content/uploads/2023/05/Final-Health-Sector-Study-of-Procurement-and-Financial-Practices.pdf>

Regional Instruments:

8. Abuja Declaration (2001) - commits African Union countries to allocate at least 15% of their national budgets to health.

National framework:

9. Constitution of Kenya, 2010 - Article 43(1)(a) (3) enshrines the right of every person to the highest attainable standard of health, including the right to healthcare services.
10. Kenya Health Policy 2014–2030 - Policy Objective 2: Aims to ensure that Kenya attains the highest possible health standards in a manner responsive to the population’s needs.
11. Kenya Health Sector Strategic Plan 2018-2023 - Indicator and Target A13 on health financing sets out government targets to increase health budgets progressively.
12. Kenya Health Financing Strategy 2020 – 2030- Highlights guiding principles such as equity, transparency and accountability.
13. Health Act, 2017 - Section 5(1): outlines the obligation of the national and county governments to ensure the progressive realization of the right to health.
14. Public Finance Management Act, 2012 - Section 15(2)(a): mandates the national government to allocate adequate funds to support the implementation of devolved functions, including healthcare.

Progress since the 3rd cycle

15. During the 3rd Cycle, Kenya accepted the following eleven (11) recommendations¹¹ touching on improvement of healthcare services;
 - 142.209 by Mauritius: Kenya committed to implement the Kenya Health Strategic Plan 2018-2023. This plan was partially implemented and is now outdated and ought to be reviewed.
 - 142.193 by Indonesia and 142.196 by Djibouti. Kenya committed to implement the Kenya Health Policy 2014-2030. This recommendation has been partially implemented as the health policy is in progress.
 - 142.194 by Eritrea: Kenya committed to increase access to health facilities to cover remote areas. Implementation of this recommendation is on track since several facilities have since been built.
 - 142.199 (Japan), 142.204 (Singapore), 142.205 (Cuba) and 142.201 (Oman), 142.210 by Venezuela on strengthening universal health coverage. Kenya is on track to implement the UHC schemes having already passed legislation of the Social Health Insurance Act, Primary Health Care Act, Digital Health Act and Facilities Improvement Financing Act, 2023.
16. The Government's commitment to strengthening health financing is evidenced by enactment of the Digital Health Act 2023, the Social Health Insurance Act, 2023, the Facility Improvement Financing Act, 2023 and the Primary Health Care Act, 2023. The

¹¹ 142.180: Barbados, 142.209: Mauritius, 142.194: Eritrea, 142.191: Angola, 142.199: Japan, 142.204: Singapore, 142.205: Cuba, 142.201: Oman, 142.210: Venezuela, 142.193: Indonesia, 142.196: Djibouti.

Kenya Health Sector Strategic Plan 2018-2023 has also been partially implemented with respect to the number of health facilities in the country^{12,13}. The National Government worked closely with the County Governments to strengthen the delivery of community health services through payment of stipends for 100,000 Community Health Promoters, on a matching basis of 50:50. The National government has allocated Kshs.3 billion annually for payment of the stipends.

Recommendations

17. The Government should;

- a) Increase the health budget to a minimum of 15% share of the national budget (Abuja Declaration) and 5% of the GDP (WHO recommendation) to health spending.
- b) Ensure that the roll out of SHIF is done in accordance with the guiding principles in formulation of Kenya Health Financing Strategy 2020-2030 such as equity, transparency and accountability.¹⁴
- c) Review the Kenya Health Sector Strategic Plan 2018-2023 and fully implement the contents relevant to domestic health financing, in accordance with its international commitments on budgetary allocation to health, as a percentage of the total government budget (15%) as evidenced through budget estimates, County Health Budget Analysis. The review should include:
 - Revision of the estimates in the supplementary budgetary allocation.
 - Increase of the core health worker density per 10,000 people; and
 - The percentage of persons enrolled into the social health insurance scheme.

ISSUE 2: Limited access to comprehensive and integrated HIV prevention services for Key Population (including prisoners) and SOGIESC persons in Kenya.

18. The Ministry of Health recommends access to comprehensive HIV services to key and vulnerable populations including access to condoms and pre-exposure prophylaxis (PrEP) services for prisoners to maximize the impact of the HIV and STI prevention interventions.¹⁵ Global AIDS monitoring Report 2024 (UNAIDS) recommends monitoring of clean needles and condom distribution to contribute to prevention of HIV in prison settings¹⁶.

19. Nonetheless, there are still gaps in providing access to comprehensive HIV services to key populations (including prisoners) and SOGIESC persons. Kenya has an estimated 197,096 female sex workers (FSW), 61,650 men who have sex with men (MSM), 26,673

¹² http://guidelines.health.go.ke:8000/media/Kenya_Health_Sector_Strategic_Plan_July_2018- June_2023.pdf

¹³ <https://www.health.go.ke/sites/default/files/2024-01/Kenya%20Health%20Facility%20Census%20Report%20September%202023.pdf>

¹⁴ Health Financing Strategy, 2020-2030

¹⁵ Kenya AIDS Strategic Framework II: Recommended package of HIV services for prisoners, Page 28

¹⁶ UNAIDS, Global AIDS Monitoring 2024, *Indicators and questions for monitoring progress on the 2021 Political Declaration on HIV and AIDS*

people who inject drugs (PWIDs) and 4,305 transgender people (TG).¹⁷ The coverage with HIV services for the FSW programme against the above estimates stands at 115%, for MSM at 151%, but gaps exist in the coverage of PWIDs at 75% and for TG persons at 86%. This reflects a gap in reaching PWIDs and TG people with HIV services. Among all KP, there were also suboptimal uptake and coverage of PrEP interventions, HIV testing, screening, diagnosis, and treatment services, erratic supply of condoms and lubricant distributions across prevention programs. There was over 50% gap in finding and enrolling on ART the HIV positive KP with significant ART coverage gap among TG at 83% and PWIDs at 82%.¹⁸ Gaps further widen due to stigma and other harmful practices such as conversion therapy and violence on KP.¹⁹ A mid-term assessment (MTA) conducted in 2021 found that although levels of stigma and discrimination have reduced, stigma and discrimination is still prevalent in the education, labour and health sectors²⁰. The MTA also found documented infliction of violations against key populations in Kenya by law enforcement and county government officers.

20. Although the Kenya Prisons revised HIV workplace policy, 2014²¹ and the Kenya Prisons Service HIV prevention Standard Operating Procedures²² expands HIV prevention, care and treatment services, they are silent on access to some prevention services to the prisoners, specifically condoms, PrEP, needles and syringes. This limited access to comprehensive prevention services in prison settings results in the HIV prevalence being higher in prisons (12-15%)²³ compared to the general population (3.7%) while TB prevalence in Prisons was 3-5 times higher than the general population.³ Additionally, the high rate of HIV/TB Co-infection in prisons complicates treatment due to the immunosuppressive effects of HIV, which make it harder to manage TB.⁴

Legal framework

21. The World Health Organization Consolidated guidelines on HIV, Viral Hepatitis and STI Prevention, Diagnosis, Treatment and Care for Key Populations, 2022 recommend provision of comprehensive HIV prevention services including PrEP, condoms and needles and syringes to key populations including in prison and other closed settings.

¹⁷ KHIS Data MoH 26.08.2024 ; ¹⁷ UN Human Rights Council (UNHRC), 'Practices of so-called "conversion therapy", Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity' (Practices of conversion therapy report), 1 May 2020, UN Doc A/HRC/44/53, paras. 30 and 52.

¹⁷ Ibid UNHRC, 'Practices of conversion therapy', para. 39; See also NGLHRC, '2020/2021 Annual Legal Aid Reports'. 1, 17 (para. 4.4.6) and 'July 2019/July 2020 Legal Aid Report', p. 15 (para. 4.0).

¹⁸ KHIS Data MoH 26.08.2024

¹⁹ Ibid UNHRC, 'Practices of conversion therapy', para. 39; See also NGLHRC, '2020/2021 Annual Legal Aid Reports'. 1, 17 (para. 4.4.6) and 'July 2019/July 2020 Legal Aid Report', p. 15 (para. 4.0). National AIDS Control Council (NACC), Kenya. (2022). Kenya HIV Estimates Report. <https://nacc.or.ke> ² United Nations Office on Drugs and Crime (UNODC). (2019). HIV Prevention, Treatment, Care and Support in Prisons: A Framework for Effective National Response. <https://www.unodc.org>, ⁵ Amnesty International. (2018). Health in Kenyan Prisons: Overcrowding and Health Risks. <https://www.amnesty.org>

²⁰ Mid-term Assessment Summary Report: Global Fund Breaking Down Barriers Initiative July 2022

²¹ Kenya Prisons Revised HIV Workplace Policy 2014 (1).pdf

²² SOP for HIV prevention in prison settings, version 2

²³ 17 SOP for HIV Prevention in Prisons Version 2.pdf

22. Article 43(1) of the Constitution of Kenya (2010) enshrines the right of every person to the highest attainable standard of health, including the right to healthcare services.
23. The Kenya AIDS Strategic Framework (KASF) II, 2020/21 - 2024/25 highlights HIV risks and vulnerabilities among vulnerable populations (which include prisoners).
24. The Guidelines for HIV and STI Programs for Key Populations in Kenya, 2014 spell out the country's commitment to ensure comprehensive HIV prevention, care and treatment services for key populations.
25. Rule 24 (1) of The Mandela Rules (United Nations Standard Minimum rules for Treatment of Prisoners - UNSMR) highlights states' responsibility for providing health care to prisoners, ensuring receipt of the same quality of care as the general population, free of charge and without discrimination.

Progress since the 3rd cycle

26. During the 3rd Cycle, Kenya accepted recommendation 142.197 by Dominican Republic to continue strengthening HIV prevention and education policies and programs. This is in the process of being implemented. In June 2023, the Ministry of Health launched the use of vaginal rings among adolescent girls and young women in a bid to reduce new HIV infections. In September 2023, the Government launched the Kenya (four-point) Plan to End AIDS in Children by 2027 through addressing mother-to-child transmission of HIV, Syphilis and Hepatitis²⁴.

Other positive developments include;

27. Reduced burden of HIV: HIV Prevalence in Kenya reduced from 4.76% in 2020 to 3.7% in 2023 while HIV-related mortality reduced by 5% (from 19,486 to 18,473 people) from 2020 to 2023. Further, new HIV infections reduced by 31% (from 32,027 to 22,154) from 2020 to 2023.²⁵ The national stigma index reduced from 45% in 2014 to 23.28% in 2021, although it was highest among key populations.²⁶
28. Policy development: Kenya AIDS Strategic Framework II (2020/21 to 2024/25) which provides an updated framework to anchor the HIV programs, the HIV Prevention, Care and Treatment guidelines 2022 and the HIV Testing Operational Manual, 2022.
29. Prisoners' inclusion as part of vulnerable groups: The Kenya AIDS Strategic Framework II (2020/21 - 2024/25) recognized prisoners as a high-risk group and recommended comprehensive HIV prevention services. Currently the key and vulnerable population guidelines is under review to include guidance on implementation of HIV programs in prison settings.
30. Opioid substitution Therapy: The first opioid substitution therapy center began operating in 2020. Currently, there are two opioid clinics in two different prisons.

²⁴ [KNCHR 3rd Cycle Universal Periodic Review \(UPR\) Mid-Term Report \(ohchr.org\)](#)

²⁵ HIV Estimates report, 2024

²⁶ PLHIV Stigma Index report, 2021

Recommendations

31. The Government should;

- a) Accelerate ongoing review of the Key Populations 2014 guidelines to integrate HIV programs for key populations and SOGIESC people including prisoners.
- b) Strengthen implementation of the Key Population guidelines to expand access to comprehensive HIV services for key populations (including prisoners) and SOGIESC people.
- c) Review and update the Kenya Prisons Service HIV prevention policy and the Standard Operating Procedures to be explicit on access to PrEP and condoms as part of the comprehensive HIV prevention services for prisoners
- d) Expand service provision access to condoms and PrEP services for prisoners as part of the comprehensive HIV prevention services to maximize the impact of the HIV and STI prevention interventions in prisons in line with the KASF II recommended package of care for people in prisons.
- e) Update the Kenya Health Information System (KHIS) including availing the tools to include documentation and reporting of all prevention services including PrEP and condoms among inmates.
- f) Make concerted efforts through policies to reduce stigma, especially among key populations (including prisoners) and SOGIESC persons to ensure they are comfortable seeking health services without fear of discrimination or mistreatment.

ISSUE 3: Gaps in TB service delivery

32. Discrimination exists against persons with Tuberculosis (PATB) and manifests itself through treatment seeking interactions from health care providers, in administration of TB treatment,²⁷ and also through ineffective laws, policies and administrative actions. Lack of adequate facilities and shared waiting bays for TB patients forces them to stay at facilities for prolonged periods. This compromises PATBs free access to services, enhances stigma and discrimination. PATBs experience discrimination with healthcare service providers often assuming that they are HIV+, as TB is the most common present illness in Person Living with HIV (PLHIV). Discrimination is further compounded by healthcare facilities set up of designated areas within the facility for HIV+ patients. PATBs are denied treatment unless they test for HIV. The treatment cycle of PATB by the directly observed therapy (DOT) is an intrusion of privacy and is discriminatory contravening Article 27 of the Constitution of Kenya 2010.²⁸

33. The government has denied administration of most recent innovative TB treatments

²⁷ Issues reported by TB Champions (Barriers to Health Services) at https://kelinkkenya-my.sharepoint.com/:x/r/personal/okaniapesa_kelinkkenya_org/_layouts/15/Doc.aspx?sourcedoc=%7B4915E9AC-1681-4FB8-AC3B-C99B1E6DD4ED%7D&file=Issues%20reported%20by%20TB%20champions.xlsx&action=default&mobileredirect=true ; See also, *M W K v another v Attorney General & 3 others* [2017] eKLR para.122.

²⁸ Article 27 (4) and (5) Constitution of Kenya 2010 prohibits discrimination against any person on any ground including health status.

(first-line TB drugs), against the UN recommendation on the use of science and innovation in medicine as a right. The government still uses old, outdated regimens which have adverse side effects such as hearing loss which results in non-adherence of the treatment and compounds TB prevalence. Additionally, the old, outdated drugs are often out of stock and unavailable to the patients who consistently and urgently need this treatment to curb TB prevalence. This contravenes the Policy Goal in the Kenya Health Policy 2014-2030.²⁹

Legal framework:

34. Constitution of Kenya 2010 Article 43(a) provides for the right to the “highest attainable standard of health, which includes the right to health care services.”³⁰ This right is owed indiscriminately directly or indirectly on the basis of race, religion, political belief, economic and social status and the status of one’s health³¹.
35. Public Health Act Cap 242 Section 17(1) and Health Act 2017: contain explicit language ensuring availability of a full spectrum of health facilities, goods and services which specifically mention TB or PATB³².
36. The Kenya School Health Policy 2018 requires that both the Ministries of Health and Education contribute to the prevention, early diagnosis and management of TB and pneumonia in learners and school community member and to active contact tracing and stigma reduction.
37. Kenya also has a coherent TB workplace policy³³ developed by National Leprosy Tuberculosis and Lung Disease Program (NLTP) that has not yet been disseminated to employers nor implemented.

Progress since the 3rd cycle

38. During the 3rd Cycle, there were no recommendations on tuberculosis service delivery. However, positive developments in this sector include;
 - The newly enacted Facility Improvement Financing (FIF) Act, 2023, provides health facilities with financial independence to manage own revenue.³⁴
 - Decriminalization of failure to go for treatment for TB patients.
 - Removal of forced isolation for TB patients at health facilities.
 - Training of health care providers on new treatment regimens.
 - Increased time frames between visits for medical treatments.
 - Treatment and special nutrition for TB patients in prison.

²⁹ Policy Goal in the Kenya Health Policy 2014-2030: to support the equitable, affordable, and high-quality health and related services at the highest attainable standards for all Kenyans.

³⁰ Health Act 2017 Sec 4,5.

³¹ Article 27 Constitution of Kenya 2010.

³² Public Health Act Cap 242 Section 17(1) and Health Act 2017

³³ [TB Workplace-Policy.pdf \(nltp.co.ke\)](#) TB infection Prevention and Control Measures at the Workplace, Safety of Workers, Respect for the Rights of Persons with TB, Care and Support of Staff/workers with TB, Adjusting of Tasks According to the Worker/patient’s Health Status etc.

³⁴ See, Facility Improvement Financing Act 2023.

Recommendations

39. The Government should;
- a) Ensure integration of all services including HIV and TB.
 - b) Ensure continuous training of cadres of healthcare workers on TB and HIV/AIDS and human rights people centered care amongst health care workers to eliminate stigma and discrimination.
 - c) Roll out the previous regiments and progressively introduce recommended regiments.
 - d) Ensure that strategic reserves for public health commodities include tuberculosis by acquiring and maintaining adequate stocks of strategic and special/expensive categories of products. It should also ensure the availability of essential/basic products at county health facilities and in line with Kenya Essential Medicines List.

ISSUE 4: Limited access to sexual reproductive health services, information and commodities by adolescents & young people, persons with disability, People living with HIV, Key populations

40. The National Reproductive Health Policy 2022-2032, Section 3.4 excludes young women and girls below the age of 21 from accessing or receiving critical reproductive health care services or information and imposes unreasonable requirements of parental consent prior to the provision of reproductive health services thus limiting attainment of the highest standard of health.³⁵ This is despite evidence that points to an increasingly sexually active young population with the Kenya Demographic and Health Survey 2014 reporting more men aged 15-24 had their sexual debut before the age of 15, similar to the KDHS 2022 report where 8% of women and 19% of men aged 15-24 had their first sexual intercourse before age 15. KDHS 2022 notes that the percentage of women aged 15–19 who have ever been pregnant increases with age, from 3% among those aged 15 to 31% among those aged 19. Fifteen percent of women aged 15–19 have ever been pregnant; 12% have had a live birth, 1% have had a pregnancy loss, and 3% are currently pregnant.
41. Persons with disabilities (PWDs) miss out on the crucial reproductive health services and information despite constituting 2.2% (0.9M) of Kenya's population, with women making up 57% (523,883), of all PWDs. About 80 percent of PWDs do not access quality medical services compared to 50 per cent of the general population.³⁶
42. A glaring gap in knowledge on HIV prevention exists among youth aged 15-34. 41% of women and 39% of men had no knowledge on HIV prevention³⁷. In 2021, an estimated 66.7% (23,051) of all new HIV infections occurred among women and girls.

³⁵ <https://ncpd.go.ke/wp-content/uploads/2021/10/Advisory-Paper-3-Impact-of-Teenage-Pregnancy-on-Women-Empowerment-in-Kenya.pdf>

³⁶ Special Paper No. 32 (2022) by Kenya Institute for Public Policy Research and Analysis (KIPPRA): Enhancing Inclusivity by Empowering Persons with Disabilities (PWDs).

³⁷ 2022 Kenya Demographic Health Survey

Women and girls tended to become infected at a much earlier age than men and boys of the same age with 8 out of every 10 new HIV infections occurring among adolescent girls and young women aged 15-24.³⁸

43. Finally, key populations (sex workers, gay men and men who have sex with men, transgender people, people who inject drugs, people in prisons and other enclosed settings who are disproportionately affected by HIV) also have inequitable access to safe, effective, and quality HIV services and face disproportionate levels of stigma, discrimination, violence, human rights violations, and criminalization. Significant barriers, like police harassment, societal discrimination and insufficient community-based services prevent them from getting care. In 2021, key populations accounted for 70 percent of new HIV infections.³⁹

Legal framework

The Reproductive Health Policy 2022-2032⁴⁰.

44. The Policy contains discriminatory⁴¹ provisions such as the exclusion of unmarried women from fertility treatments and reinforces discrimination against intersex persons by completely excluding them from reproductive interventions in some cases.

National Adolescent Sexual Reproductive Health policy (2015)⁴²

45. The policy acknowledges challenges affecting young people such as unintended pregnancy among girls in Kenya leading to termination of education, child marriage and unsafe abortion.

A Commitment plan to End the 'Triple Threat', 2023-2030⁴³

46. The plan acknowledges that adolescent mothers are vulnerable to stigma, discrimination, and mental health issues. Adolescent girls who get pregnant have higher vulnerabilities to HIV, other sexually transmitted infections and related complications and poor health outcomes such as the risks of premature birth, low birth weight, perinatal deaths, and disability.

National Guidelines for the Provision of Adolescent and Youth Friendly Services in Kenya 2016

47. AYFS Guidelines together with the 2015 National Adolescent Sexual and Reproductive Health Policy, outline standards for service provision of AYSRH services, essential package of services and service delivery models and points that should be implemented and scaled up at the counties.

Progress since the 3rd cycle

³⁸ [World Aids Report of 2022.](#)

³⁹ <https://www.usaid.gov/global-health/health-areas/hiv-and-aids/technical-areas/key-populations>

⁴⁰ http://guidelines.health.go.ke:8000/media/The_National_Reproductive_Health_Policy_2022_-_2032.pdf

⁴¹ Section 3.4.11, Paragraph 6.

⁴² <https://tciurbanhealth.org/wp-content/uploads/2018/03/Ministry-of-Health-ASRH-POLICY-2015.pdf>

⁴³ <https://nsdcc.go.ke/wp-content/uploads/2024/05/Ending-the-Triple-Threat-Commitment-Plan-2024.pdf>

48. During the 3rd Cycle, Kenya accepted the following three (3) recommendations:
- 142.111 by New Zealand urging Kenya to end Gender-Based Violence (GBV) and harmful practices, including through recent legislative frameworks, a pledge to end female genital mutilation, and its commitment to reduce maternal deaths. This is in the process of being implemented. The Government launched the Child Justice and Sexual and Gender-Based Violence (SGBV) strategies and the Convicted Sexual Offences Electronic Register; establishing specialized SGBV Courts. Launch of the Training Handbook for the Investigation and Prosecution of Online Child Sexual Exploitation and Abuse and adopted the Protection Against Domestic Violence Rules, 2020.
 - 142.195 by Denmark to improve maternal and child health care by redoubling investments in line with its International Conference on Population and Development commitments;
 - 142.202 by Portugal to review all legal, policy and structural barriers that impede the provision of sexual and reproductive health services, against adolescent girls, young women and members of key populations more vulnerable to HIV. This has not been implemented. The Reproductive Healthcare Bill, 2019 was rejected over concerns that it would normalize abortion on demand⁴⁴.
49. In other positive developments, the Government passed the National Reproductive Health Priority Research and Learning Agenda 2022-2027, developed a Menstrual Hygiene Management in Schools; A Handbook for Teachers 2022 and the Understanding Adolescence; A tool guide for Adolescents 2022.

Recommendations

50. The Government of Kenya should;
- a) Review and address legal, policy, and structural barriers that hinder access to sexual and reproductive health (SRH) information and services such as consent for adolescents, young people, people with disabilities (PWDs) and key populations vulnerable to HIV.
 - b) Re-commit to implementing the Eastern and Southern Africa (ESA) ministerial commitments to the provision of youth friendly services and sexuality education to sustain and enhance SRHR outcomes for adolescents and young people.⁴⁵
 - c) Formulate guidelines on reproductive health education and information for adolescents and young people, PWDs, PLWHIV and key populations in Kenya.

ISSUE 5: Gaps in mental health service delivery

51. Mental health resourcing stands at 0.01% of the national health budget. Kenya spends 15 cents vis a vis KES 150 per capita⁴⁶. The National Health Insurance Fund did not

⁴⁴ [KNCHR 3rd Cycle Universal Periodic Review \(UPR\) Mid-Term Report \(ohchr.org\)](https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1171/Press-Release-The-World-Mental-Health-Day-%E2%80%9CMental-Health-Is-a-Universal-Human-Right%E2%80%9D)

⁴⁵ <https://healtheducationresources.unesco.org/library/documents/eastern-and-southern-africa-ministerial-commitment-fulfilling-our-promise>

⁴⁶ <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1171/Press-Release-The-World-Mental-Health-Day-%E2%80%9CMental-Health-Is-a-Universal-Human-Right%E2%80%9D>

offer comprehensive cover to mental health patients and the proposed social health insurance benefits package does not include coverage for severe mental health conditions⁴⁷ excluding high-cost interventions for complex psychiatric disorders⁴⁸.

52. Lack of disaggregated analysed data, to ensure that mental health policies are evidence-based and tailored to the diverse needs of the population⁴⁹ results in a one-size-fits-all approach that fails to address unique circumstances of various populations.
53. There is a shortage of specialized mental health practitioners in Kenya with an estimated 100 psychiatrists which translates to 1 psychiatrist per million population.⁵⁰ According to Ministry of Health (MOH) guidelines, Kenya needs 1,400 more psychiatrists, 7,000 more psychiatric nurses, and 3,000 more psychologists. Currently, many trained mental health professionals work outside the public sector; of Kenya's 92 psychiatrists and 427 psychiatric nurses, only 36 (39%) and 187 (44%) are employed in public facilities⁵¹. These rates are way below globally quoted minimum psychiatrist to patient ratio is 1:10,000 with a recommended pragmatic ratio of 1:8000 for the foreseeable future.⁵²
54. The Mental Health Policy 2015-2030, Mental Health Action Plan 2021-2025 and Mental Health Act 2023 have not been fully implemented. Gaps include; low budgetary allocation from the current Kshs. 15 cents to the recommended Kshs. 150, and non-establishment of the Mental Health Commission. Section 226 of Kenya's Penal Code, which criminalizes attempted suicide is problematic in addressing mental health crises.
55. Kenya's suicide rate stands at 6.1 per 100,000 people, with an age-standardized suicide rate of 11.0 per 100,000, translating to approximately four suicide deaths per day¹⁸. In 2021 alone, 483 suicide deaths were recorded, a significant rise from the annual average of 320 cases⁵³. Criminalization hampers efforts to design and implement effective mental health programs.⁵⁴
56. Lack of national guidelines to address stigma and discrimination within mental health facilities and communities exacerbates the challenges faced by individuals with mental health conditions. Stigmatization and discrimination stem from limited awareness which fuels harmful stereotypes and exclusion.⁵⁵

⁴⁷ Social Health Insurance Act (2023) <https://www.health.go.ke/sites/default/files/2023-11/SOCIAL%20HEALTH%20INSURANCE%20%28GENERAL%29%20REGULATIONS%20%2C2023.pdf>

⁴⁸ Social Health Insurance Act (2023) <https://www.health.go.ke/sites/default/files/2023-11/SOCIAL%20HEALTH%20INSURANCE%20%28GENERAL%29%20REGULATIONS%20%2C2023.pdf>

⁴⁹ <https://documents.un.org/doc/undoc/gen/g23/177/48/pdf/g2317748.pdf>

⁵⁰ Wakida, Edith K., Celestino Obua, Jessica E. Haberer, and Stephen J. Bartels. "Enhancing the Capacity of Providers in Mental Health Integration (ECaP-MHI) in Rural Uganda: The Adaptation Process." *Journal of Multidisciplinary Healthcare* (2023): 387-396. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9930675/>

⁵¹ Muhia, Joy, Florence Jaguga, Victoria Wamukhoma, Jacqueline Aloo, and Simon Njuguna. "A human rights assessment of a large mental hospital in Kenya." *Pan African Medical Journal* 40, no. 1 (2021). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8760291/>

⁵² Wakida, Edith K., Celestino Obua, Jessica E. Haberer, and Stephen J. Bartels. "Enhancing the Capacity of Providers in Mental Health Integration (ECaP-MHI) in Rural Uganda: The Adaptation Process." *Journal of Multidisciplinary Healthcare* (2023): 387-396. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9930675/>

⁵³ Ministry of Health (MOH). *Suicide Prevention Strategy 2021-2026*. 2021. <https://guidelines.health.go.ke:8000/media/SUICIDE-PREVENTION-STRATEGY-2021-2026.pdf>.

⁵⁴ Ministry of Health (MOH). *Suicide Prevention Strategy 2021-2026*. 2021. <https://guidelines.health.go.ke:8000/media/SUICIDE-PREVENTION-STRATEGY-2021-2026.pdf>.

⁵⁵ <https://mental.health.go.ke/op-ed-why-we-must-end-stigma-against-mental-illnesses-and-position-mental-health-as-a-priority-agenda/>

Legal framework

57. Constitution of Kenya- Article 43 (1)(a) – provides for the right to the highest attainable standard of physical and mental health; Article 27(4) prohibits discrimination based on health status and disability by the government. Article 54 of the Constitution specifically protects the rights of persons with disabilities, including those with mental health conditions. Article 260 defines disability to include mental, psychological, or other impairments that substantially or long-term affect an individual’s ability to carry out everyday activities. The Mental Health (Amendment) Act, 2022, addresses critical gaps for enhancement of mental health services.
58. The Kenya Mental Health Action Plan 2021-2025 outlines key priorities and actions to improve mental health services, increase access to care, and address stigma. It aims to integrate mental health into primary health care, expand community-based services, and improve policy and legislative frameworks.

Progress since the 3rd cycle

59. During the 3rd Cycle, the Government of Kenya accepted Recommendation No. 142.27 by Ecuador to finalize the adoption processes of the draft bills on children, mental health and persons with disabilities. This recommendation has been implemented. The President assented to the Mental Health (Amendment) Act, 2022 on 21st June 2022 which came into force on 11th July 2022. The Act outlines the roles of both national and county governments towards the prevention, care and treatment of persons with mental illness⁵⁶.
60. Other positive developments include the formulation of the Mental Health Policy 2015-2030, development of the Community Health Volunteers Mental Health Training Manual, National Mental Health Action Plan 2021-2025, ⁵⁷ launch of National Guidelines on Workplace Mental Health and launch of the National Clinical Guidelines for Management of Common Mental Health Disorders⁵⁸. The adopted Suicide Prevention Strategy 2021-2026 outlines a comprehensive approach to reducing suicide rates.⁵⁹ The Kenya National Commission on Human Rights launched an ongoing petition due for judgement in November 2024 to decriminalize attempted suicide⁶⁰.

Recommendations

61. The Government should;
Fully implement and actualize the Mental Health Policy 2015-2030, Mental Health Action Plan 2021-2025 and Mental Health Act 2023 by:

⁵⁶ [KNCHR 3rd Cycle Universal Periodic Review \(UPR\) Mid-Term Report \(ohchr.org\)](#)

⁵⁷ <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/209-43-economic-and-social-rights>

⁵⁸ <http://guidelines.health.go.ke/#/category/5/457/meta>

⁵⁹ <http://guidelines.health.go.ke:8000/media/SUICIDE-PREVENTION-STRATEGY-2021-2026.pdf>

⁶⁰ HCCHR Petition E045/2022 Kenya Psychiatric Association and Kenya National Commission on Human Rights & 1 other VS Coalition Action for Preventative Mental Health Kenya & Ministry of Health and 2 Others

- Establishing a digital health information system and research and monitoring and evaluation framework to strengthen data management, and a national survey to establish disease burden and gaps.
 - Providing comprehensive mental health services at National and County level.
 - Establishing and integrating substance use disorders prevention, treatment and rehabilitation services
 - Establishing infrastructural development of community based mental health services with psychosocial support units at the primary care setting (level 2) dispensary in all the 47 counties
 - Restructuring and upgrading Mathari hospital to a National specialized referral hospital and institute of mental health with affiliated six regional mental training and specialized services referral and devolve and integrate mental healthcare into the primary health care system.
62. Increase mental health budgetary allocations from the current Ksh 15 cents to Ksh 150 recommended by the World Health Organisation (WHO)⁶¹ and enforce a budget tracking mechanism to ensure the funds are used in mental health promotion intervention national and county level.
63. Repeal Section 226 of the Penal Code that criminalizes attempted suicide to ensure conformity with the laws on mental health, Constitution of Kenya 2010⁶², Health Act and the Convention on Rights of People with Disabilities⁶³.

ISSUE 6: Lack of a comprehensive regulatory framework for Digital health and rights

64. Kenya lacks a comprehensive regulatory framework for digital health and rights thus resulting in fragmented health information systems, data privacy and security and limited access to healthcare, especially in remote areas.
65. The Digital Health Act was enacted in October 2023. However, the Act was declared unconstitutional via Constitutional petition E473 of 2023 on 12th July 2024, leaving the digital health space in Kenya largely unregulated. The court's directed that Parliament must by or before 12th November 2024 undertake sensitization and ensure adequate, reasonable, sufficient, and inclusive public participation in accordance with the Constitution before enactment..
66. This has resulted in regulatory uncertainty due to insufficient and unclear laws, with the public not involved or aware of existing digital health laws, thus discouraging investment and innovation in digital health. Furthermore, there are inconsistent health standards at national and county levels due to the lack of an integrated health information system to manage health data, including sensitive personal data, anonymized data, and administrative data. This inconsistency has resulted in varying

⁶¹ <https://www.who.int/publications/i/item/9789240036703>

⁶² Kenya. Laws of Kenya: The Constitution of Kenya, 2010. 2010

⁶³ Bukusi, David. Kenya Mental Health Policy 2015 - 2030 : Towards Attaining the Highest Standard of Mental Health. Ministry of Health, 2015. <https://mental.health.go.ke/download/mental-health-and-wellbeing-towards-happiness-national-prosperity-a-report-by-the-taskforce-on-mental-health-in-kenya-high-res/>.

quality of care across digital health platforms due to non-standardized guidelines for service delivery, health data management, and patient engagement. Current health laws and policies are inadequate in addressing and safeguarding human health rights, particularly in the context of emerging technologies and digital health solutions. This gap results in insufficient protection of patients' privacy, autonomy, and equity in the rapidly evolving digital health landscape, potentially leading to abuses and inequalities in healthcare.

Legal framework

Regional Frameworks:

67. African Charter on Human and Peoples' Rights (ACHPR) - Article 16 guarantees the right to physical and mental health and obligates states to ensure access to medical care. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) - Article 14 emphasizes women's rights to health, including sexual and reproductive health. The African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) - Article 25 requires states to protect personal data. Weak data protection measures within digital health platforms particularly in Kenya can be interpreted as a violation of this provision.

Constitution of Kenya

68. Article 27 of the Constitution of Kenya protects against discrimination and ensures equality. Article 31 protects privacy, including personal data. Article 43 guarantees economic and social rights, including healthcare. Article 46 addresses consumer rights, ensuring protection of health, safety, and economic interests.

National statutes and policies

69. The Data Protection Act (2019) safeguards personal data and outlines responsibilities of data controllers and processors.

70. The Kenya Information and Communications Act (1998) regulates electronic communications, including combating misinformation and ensuring digital literacy. Failures in digital health systems related to misinformation are linked to breaches under this Act. Additionally, the Kenya National E-Health Policy 2016 -2030 was created towards an enabling environment for the sustainable adoption, implementation and efficient use of eHealth products and services at all levels of healthcare delivery in Kenya.

Progress made since the 3rd cycle

71. There were no recommendations on digital health and rights during the 3rd Cycle.

72. Other positive developments include the enactment of the Digital Health Act 2023 which sought to streamline data management, improving healthcare efficiency, ensure health data protection in line with data protection laws and enhance access to healthcare: E-Health and telemedicine services aim to enhance healthcare accessibility, especially in remote areas. Despite the significant changes and positive reinforcements, the Act was invalidated for want of public participation.

Recommendations

73. The Government should;

- a) Enact and implement the Digital Health Act 2023 to provide a cohesive legal and regulatory framework, in line with recommendations derived from Constitutional Petition E473 of 2023 which requires Parliament to undertake sensitization, adequate, reasonable, sufficient and inclusive public participation before enactment.

.....END OF REPORT.....

ANNEX: UPR Submission: Right to Health- Kenya

	ORGANIZATION & PROFILE (In full & abbreviated if any)	PHYSICAL ADDRESS	CONTACT PERSON(S)	E-MAIL ADDRESS/TELEPHONE
1	Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN)	Kuwinda Lane, off Lang'ata Road, Karen C	Allan Maleche Or Elsie Milimu	amaleche@kelinkenya.org +254708389870 elsiemilimu@kelinkenya.org +254729082277 info@kelinkenya.org Phone: +254 20 2515790 +254 57 2041001
2	VSO kenya	5th floor Timau plaza Arwings Kodhek road	Catherine Mwangi Sheenan Mbau	catherine.mwangi@vsoint.org sheenan.mbau@vsoint.org
3	Peoples Health Movement Kenya (PHM-Kenya)	Hs 74 Huma Hills Court Harrambe Sacco	Dan Owala	danowalla@gmail.com Phmovement69@gmail.com +254714567988
4	The East African Centre For Human Rights (EACHRIGHTS)	House No. 4 Cedar Court, Timau Road Kilimani, Nairobi, Kenya.	Gilbert Onyango	director@eachrights.or.ke +254722361051
5	AFYAFRIKA	AFC Building, Along Narok-Bomet highway. P. O Box 73-20500 Narok.	Ms. Catherine Kimaren Mootian. Executive Director, Mr. Isa Ndegwa. Communications Officer.	Email: afyafrika@gmail.com Phone: +254727068747 Email: isamndegwa@gmail.com Phone: +254712788412
6	HOYMAS (Health Options for Young Men on HIV/AIDS/STI) Kenya	City Gate House , Pangani PO Box, Nairobi, 16885-00202, Kenya	John Mathenge Executive Director	Email: hoymas4@yahoo.com Phone: +254725608724
7	THE CRADLE - The Children Foundation.	702 Dhanjay Apartments, Valley Arcade Complex. Hendred Road, off Gitanga Road. P.O BOX 10101 - 00100	Mildred Aoko Programs Officer - Child Justice Program	Email : aokoouma100@gmail.com info@thecradle.ke Tel: 0712656242

	ORGANIZATION & PROFILE (In full & abbreviated if any)	PHYSICAL ADDRESS	CONTACT PERSON(S)	E-MAIL ADDRESS/TELEPHONE
8	HAKIJAMII-ESRC The Economic and Social Rights Centre	Suite 8, Yaya Court, Chania Avenue	Zipporah Muthama Executive Director	Email address zipporah@hakijamii.com Tel +254722835626
9	PEMA Kenya	Mombasa ;Nyali P.O.Box 41662-80100 Mombasa	Executive Director; Ismael Ondunyi Or Maxine Kidali	Ishmaelb@pemakenya.org 0732400950 pema@pemakenya.org kidali@pemakenya.org 0720330815
10	Health Rights Advocacy Forum (HERAF)	Ring Road Kilimani Next to 53 Park, Black gate with white circle. P.O. Box 100667-00101 Nairobi, Kenya	Lordlaro Lidoros, Project Assistant	lidoros@heraf.or.ke 0113437412
11	Umande Trust	Kibera Grounds Off Kibera Drive P.O. Box 43691-00100	Managing Trustee Md. Benazir Douglas	Phone Number: 0728-248-670 Email: omottobe@yahoo.com
12	Talk it Out – CBO	Gatukuyu along Thika- Naivasha road	Joseph Rugia	Phone number: 0723568824 email: talkitoutcbo@gmail.com /rugiajoseph@gmail.com
13	Centre for the Study of Adolescence (CSA)	Mbaazi Avenue off Kingara Road, Lavington P.O Box 19329 – 00202 Nairobi	Humphres Evelia	csa@csakenya.org hevelia@csakenya.org +254721574954
14	Health NGOs' Network (HENNET)	Nachu Plaza, Kiambere Road, Off Upper Hill Road	Faith Ndungu - Advocacy and Communication Manager. Ruth Warutumo - Partnerships and Mobilization Head.	faith.ndungu@hennet.or.ke ruth.warutumo@hennet.or.ke communication@hennet.or.ke

	ORGANIZATION & PROFILE (In full & abbreviated if any)	PHYSICAL ADDRESS	CONTACT PERSON(S)	E-MAIL ADDRESS/TELEPHONE
			David Wedava - Communication and Media Officer.	
15	Jinsiangu Kenya	Mountain View Estate, Nairobi	Executive Director Samantha Toni Alesandra Ogeta Deputy Director/Director of Programs Gigi Louisa Programs Manager	Toni@jinsiangu.org Jinsiangu@gmail.com Alesandra@jinsiangu.org Gigi@jinsiangu.org +254719509299
16	Western Kenya LBQT Feminist Forum - WKLFF	Milimani Estate, Off Tom Mboya Road.	Caroline Rucah Mwochi	+254712574247
17	Trans* Alliance Kenya - TAK	Milimani Estate, Off Tom Mboya Road.	Seany Odera	+254710632755 westernkitgnetwork2015@gmail.com
18	Wangu Kanja Foundation (WKF)	BuruBuru Phase 5 Katulo Road	Wendy Akoth	0795786778 wendy@wangukanjafoundation.org
19	Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)	Hosted by The EACHRights at House No. 4 Cedar Court, Timau Road Kilimani, Nairobi, Kenya.	Magdalena Sepúlveda Carmona or Roselyne Onyango	+41 798129034 magdalena@gi-escr.org or +254 721433544 roselyne@gi-escr.org
20	LVCT Health	Sonning Suite, Suna Road Off Ngong Road, Nairobi	Dr. Lilian Otiso, The Executive Director	P.O. Box 19835, Nairobi, 00202 Kenya + 254 722 203610 + 254 733 333268 enquiries@lvcthealth.org

	ORGANIZATION & PROFILE (In full & abbreviated if any)	PHYSICAL ADDRESS	CONTACT PERSON(S)	E-MAIL ADDRESS/TELEPHONE
21	The Center for Reproductive Rights (CRR or the Center) health care.	Fourth Floor Pinetree Off Ngong Road Kamburu Drive, Kindaruma Road Junction P.O Box 48136-00100, Nairobi, Kenya	Anita Otieno	Main number: +254 20 2518361/63 Email: kenyaoffice@reprorights.org
22	Feminist For Peace Rights and Justice Centre (FPRJC)	Kibera- Olympic , near chiefs camp	Editar Ochieng- Executive Director	kiberafeminists@gmail.com Tel- 0728081147
23	Undugu Family of Hope	Kibra Katwekera	Evelyn Onyango	onyangoeve1980@gmail.com