# NATIONAL CSO ACTION PLAN SUPPORTING SEXUAL AND REPRODUCTIVE RIGHTS (SRH &RR) IN REALIZATION OF THE MAPUTO PROTOCOL

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# I. List of Abbreviations

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| ACDHRS | African Center for Democracy and Human Rights Studies |
| ACERWC | African Committee of Experts on the Rights and Welfare of the Child |
| ACRWC | African Charter on the Rights and Welfare of the Child |
| ACHPR | African Commission on Human and Peoples' Rights |
| AfCHPR | African Court on Human and Peoples' Rights |
| APDF | Association pour le Développement des Droits de la Femme |
| AU | African Union |
| AUC | African Union Commission |
| ASRH | Adolescent Sexual and Reproductive Health |
| CARMMA | Campaign on Accelerated Reduction of Maternal Mortality in Africa |
| CAT | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CEDAW | UN Convention on the Elimination of All Forms of Discrimination Against Women |
| CHMT | Community Health Management Team |
| COG | Council of Governors |
| COVAW | Coalition on Violence Against Women Kenya |
| CRC | UN Convention on the Rights of the Child |
| CRF | Continental Result Framework |
| CSEA | Child Sexual Exploitation and Abuse |
| CSO | Civil society organization |
| ECOWAS | Economic Community of West African States |
| EGDC | ECOWAS Gender Development Centre |
| FGM | Female Genital Mutilation |
| GBV | Gender Based Violence |
| GEWE | Gender Equality and Women's Empowerment |
| GDP | Gross Domestic Product |
| HIV/AIDS | Human Immuno Deficiency Virus / Acquired Immune Deficiency Syndrome |
| HRBA | Human Rights Based Approach |
| ICPD | International Conference on Population and Development |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic Social and Cultural Rights |
| IHRDA | Institute for Human Rights and Development in Africa |
| ISLA | Initiative for Strategic Litigation in Africa |
| KII | Key Informant Interviews |
| KNCHR | Kenya National Commission on Human Rights |
| MoU | Memorandum of Understanding |
| MP | Member of Parliament |
| NCAP | National CSO Action Plan |
| NGO | Nongovernmental organization |
| OECD | Organization for Economic Co-operation and Development |
| PSG | Policies, standards, and guidelines |
| PWD | Persons living with disability |
| REC | Regional Economic Community |
| STI | Sexually Transmitted Infection |
| UNFPA | United Nations Population Fund |
| US | United States of America |
| WPS | Women Peace and Security |

## II. Executive Summary

The realization of the sexual and reproductive health and reproductive rights (SRH &RR) of women and girls in Kenya, continues to be challenged owing to a legal and policy framework at national level containing several laws that are not aligned to each other. Additionally, this framework does not reflect the normative standards to which Kenya has committed itself through the ratification of binding regional and international instruments on the rights of women and girls.

Kenya is a State Party to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, hereinafter the Maputo Protocol. The reservation that Kenya placed upon ratification of this important instrument, stands in the way of the full enjoyment the SRH and RR by women and girls in Kenya.

This National CSO Action Plan (Action Plan) supporting SRH &RR in the realization of the Maputo Protocol is designed to be relevant, measurable, achievable, forward-looking, and continually informed by the lessons from the engagements of stakeholders, and regular research to build evidence to buttress all the actions contained therein. The Action Plan is the result of extensive internal and external consultations with a broad range of actors. It is a manifestation of the commitment of civil society organizations to collaborate in addressing the gaps in, while seizing the opportunities for, the full promotion and protection of the SRH & RR of women and girls in Kenya.

Initially conceptualized by the Coalition on Violence Against Women (COVAW) to include the participation of government, it was later reframed to only consist of civil society action, as the former would require government engagement and commitment that is outside the purview of COVAW and its collaborators. A government driven national action plan must be initiated and led by the government to attain the legitimacy it requires. Currently, there are several government ministries responsible for the implementation of the Maputo Protocol by virtue of the various rights provided for therein. Nonetheless, COVAW will in the implementation of this Action Plan engage the government in actions that could lead to a government led national action plan on SRH &RR. This Action Plan will therefore leverage the interdependency, interrelatedness, indivisibility, and inalienability of human rights convene and provide technical support to the various government stakeholders through an intersectional and multi sectoral approach in the implementation of the Maputo Protocol. It is expected that this engagement will result in greater understanding of the need to secure Kenya's commitment to Article 14(2) (c) by lifting the reservation to this Article.

The methodology used in developing the Action Plan consisted of a desk review undertaken of various reports including the recent research by COVAW on *the Impact of Kenyan Government Reservations Under Article 14(2)(C) of The Maputo Protocol on The Reproductive Rights of Women and Girls.* Two consultations were held with civil society actors to discuss the context, emerging issues, and opportunities for engagement. From these consultations it was clear that there was need for coordinated action to implement Article 26 (4) of the Constitution of Kenya 2010 which is aligned with Article 14 (2) ( c) , the subject of Kenya's reservation. Key Informant interviews were also conducted for 20 respondents from civil society, government, faith-based organizations, and the private sector. A draft report was validated in a meeting that saw the participation of civil society organizations and quasi-governmental bodies including the Kenya National Commission on Human Rights (KNCHR).

These key informant interviews highlighted the existing opportunities for collaboration amongst diverse stakeholders while placing a premium on awareness and information on the Maputo Protocol to enhance the engagement of the public with this instrument to increase the demand for SRH & RR protection. The interviews and the desk review also the highlighted the confusion created among the various stakeholders working on SRH & RR by the non-alignment of laws and policies on SRH & RR with the regional and international normative standards. and highlighted the opportunities for addressing the same.

The Action Plan sets forth the goal, objectives, and actions of the collaborative efforts of civil society organizations targeted at and in collaboration with national and county governments that will lead to the ultimate lifting of the reservation on the Maputo by the Kenya government, thereby affording the women and girls of Kenya full access to the rights contained in the Maputo Protocol.

The Action Plan will be implemented through the collaborative action of a diverse range of stakeholders brought together by COVAW coalescing on the basis of themes and geographies to drive advocacy for SRH &RR protection at local , national , regional levels.

# III. Introduction and Background

## *A. Situational Analysis*

As part of a project entitled Securing Change**: Popularizing and Strengthening the Implementation of the Maputo Protocol in Kenya,** COVAW seeks to popularize and strengthen the implementation of the Maputo Protocol following the identification of gaps, and the corresponding interventions to promote and protect sexual and reproductive health and reproductive rights (SRH &RR) in Kenya. These gaps relate to providing for non-conditional SRH & RR rights of women and upholding the rights of vulnerable groups including women with disabilities.

In Africa, the risk of dying from an unsafe abortion is the highest in the world.[1] In Kenya, at least 7 women and/or girls die every day from complications arising from unsafe abortion. Kenya's history of abortion practices predates the colonial era. The imposition of stringent restrictions during British colonial rule has had enduring consequences over the past 60 years since the country's independence.

Data going back 40-years from the Kenyatta National Hospital, Kenya's largest and oldest hospital, indicates that "incomplete abortions" accounted for over half of all gynecological admissions. While the reasons for these gynecological admissions have shifted over the years, unsafe abortion practices were driven by various factors then, that persist to date. These include legal restrictions, inadequate services, stigma, privacy concerns, and limited education on reproductive health. In this period, just as we see presently, there was resistance against educating adolescents on sexual and reproductive health, with the opposition led by religious and political leaders including then President, Daniel Moi, who later shifted his stance owing to the HIV/AIDS epidemic. [2]

Over the years, the country has recorded alarmingly high maternal mortality ratios with over 2600 annual deaths linked to complications arising from unsafe abortions. Adolescents and young adults aged 10-19 experience the longest delays in seeking post-abortion care, and these age groups have a higher incidence of abortion-related complications. Moreover, women, girls – and health workers have been, and continue to be prosecuted or punished for seeking or providing abortion and/or post abortion care; further complicating the landscape[3].

Prior to the 1994 International Conference on Population and Development (ICPD), unsafe abortion in Africa was largely shrouded in stigma and silence, contributing to a lack of attention from national governments, communities, and funding organizations. In the decade following the ICPD and the Fourth World Conference on Women in Beijing, transformative changes took place on the continent. Advocacy for improved abortion laws gained momentum; and in Kenya this was alongside the constitutional review processes. Efforts toward law reform were seen as crucial for eliminating unsafe abortions and respecting women's rights in decision-making regarding their reproductive health.

The Constitution of Kenya 2010 is progressive and explicitly guarantees the right to the highest attainable standards of reproductive health in Article 43. Article 26 (4) allows for abortion under any of the following four conditions (a) if in the opinion of a trained health professional, (b) where there is a need for

[1] https://www.who.int/news-room/fact-sheets/detail/abortion
[2] Extracted from the COVAW research on The Impact of Kenyan Government Reservations Under Article 14(2)(C) of The Maputo Protocol on The Reproductive Rights of Women and Girls
[3] *Ibid*

emergency treatment; (c) if the life or health of the mother is in danger; and (d) if permitted by any other written law.

Soon after the promulgation of the Constitution of Kenya 2010, Kenya ratified the Maputo Protocol. With a substantive Bill of Rights, the Constitution was seen as a positive step towards the full and comprehensive protection of the rights of women and girls. The government, however, placed two reservations on the Protocol. This first reservation is with regards to Article 10 (3) of the Protocol which relates to Member States reducing military expenditure significantly in favor of spending on social development in general, and in the promotion of women in particular. The second reservation which is the focus of this National CSO Action Plan , is on Article 14 (2) (c) which provides for the right to 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. This provision aligns with those provided in the Constitution of Kenya. Nonetheless, the government's justification of the reservation was that this Article was inconsistent with its new supreme law of the land.

The legal framework on abortion is, however, primarily situated within the Penal Code. Despite the expanded Constitutional rights that clearly state when abortion is permitted as indicated above, there is unfortunately a corresponding vacuum in domestic law necessary to give effect to this Constitutional provision. This effectively gives rise to legal and administrative ambiguities that detrimentally impinge on any gains that are made in the protection of the SRH & RR of women in Kenya.

Additionally, religious fundamentalism and cultural dogma that are deeply rooted in patriarchy continue to play a significant role in entrenching opposition to, including financing for, SRH & RR. Opposition to SRH & RR is strengthened by the confusion around the interpretation of Article 26 (1) which provides that every person has the right to life, and Article 26 (2) which provides that the life of a person begins at conception. The misinterpretation of these two provisions has resulted in the negation of the full meaning and tenor of Article 26 (4) of the Constitution.

The challenges presented by the reservation to Article 14(2) (c) of the Maputo Protocol and Article 26 (1) (2) and (4) of the Constitution call for enhanced and sustained advocacy for the implementation of the constitutional provisions on safe abortion and improved abortion laws. The quest for clarity is not solely to eliminate unsafe abortions but to also uphold women's rights in decision-making regarding their reproductive health. The juxtaposition of constitutional provisions supporting health rights and the criminalization of these rights within the Penal Code on the one hand, and the reservation under Article 14 (2)(c) of the Maputo Protocol on the other, underscore the ongoing need for legal reform and advocacy efforts. These endeavors aimed at legal reform can be expected to bring coherence to legal frameworks, align legislation with the principles of reproductive justice and women's autonomy.

There is some ongoing litigation[4] on SRH and RR, including a petition ***Rachael Mwikali & Others v The Attorney General & Others Petition 27 of 2022***[5] to challenge the retrogressive provisions of the National

[4] The ongoing and decided cases are discussed in great detail in the COVAW research on The Impact of Kenyan Government Reservations Under Article 14(2)(C) of The Maputo Protocol on The Reproductive Rights of Women and Girls

[5] https://www.kelinkenya.org/rachael-mwikali-kenya-obstretics-gynecologist-society-katiba-institute-interested-parties-high-court-petition-27-of-2022/

Reproductive Health Policy 2022. Other cases include the ongoing ***PAK***[6] and ***JMM***[7] appeals which question the applicability of Article 14 (2) ( c ) of the Maputo Protocol in Kenya.

Another factor influencing sexual and reproductive health and rights on the continent and in Kenya is foreign policy positions. The government of the United States of America (US) is the world's largest funder of global health. Funding includes support for both disease and population related services. The Organization for Economic Co-operation and Development (OECD) reports that second to the US is the United Kingdom, followed by Germany, France, and Japan in that order. As such, foreign influence about SRH & RR of women in Kenya cannot be gainsaid. In fact, many decisions that are taken in countries in the global South on health issues reflect the said U.S. policy on the matter.

Consider the Mexico City Policy – commonly referred to as the Global Gag Rule, a US government policy that blocks US federal funding for non-governmental organizations (NGOs) outside of the U.S that provide abortion information, counselling, services and/or referrals. It additionally bars these organizations from engaging in advocacy for the decriminalization of abortion. It was enacted in 1984 by U.S President Ronald Reagan. The various US Presidents who have come after Reagan have either reinstated or withdrawn the rule based on their political party subscriptions which operate hand in hand with their ideologies; where the Democrats are liberal while the Republicans are rigid around non-conventional issues such as abortion rights, among others. Every President thereafter has either withdrawn the rule or reinstated it mainly through executive branch action by virtue of presidential memoranda.

While non-governmental organizations are meant to complement government services, in many parts of Africa the responsibility of the realization of SRH & RR service delivery sits with governments which appear to have been relegated this responsibility. Kenya is no exception. The rights of women and girls seem to have been reduced to a ping-pong game given the oscillating nature of the global gag rule depending on who yields power in Washington D.C.[8]

Economists recommend that countries should spend at least 5% of their GDP and US$86 per capita on health to ensure all citizens have access to primary healthcare services including sexual and reproductive health. No African country has met this target. Other regional targets for health spending exist, like the African Union's Abuja Declaration to allocate 15% of government spending to health.[9] In February 2023, African countries in renewed efforts to end AIDs, recommitted to this 21-year-old promise.[10] While this is a welcome development, it does not guarantee advancement given the little progress in the realization over the past two decades.

## *B. Progress on the implementation of Kenya's commitments on SRH and RR*

### *1. Regional and international commitments*

#### *a) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in African (Maputo Protocol)*

[6] PAK Case
[7] Final CRR Fact Sheet - JMM Case.pdf (kma.co.ke)
[8] Musho S., Assessing the Impact of American Foreign Health Policy on Access to Sexual and Reproductive Health Services in Kenya between 2013 And 2020 < Ageng'o Stephanie Musho MIR 2021.pdf (usiu.ac.ke) > last accessed 20 December 2023.
[9] Health Financing - ONE Data & Analysis
[10] African leaders pledge new commitments to end AIDS | UNAIDS

On 6th October 2010 Kenya ratified the Maputo Protocol, an avant-garde instrument that contextualizes the normative standards of women's rights into the African context considering the unique the social cultural realities of African women as clearly analyzed in its Preamble[11]. The Maputo Protocol has been described as one of the most progressive legal instruments providing a comprehensive set of human rights for African women, earning it the name African Bill of Rights of Women's Human Rights in some quarters. It covers a broad range of substantive human rights for women in the civil and political, economic, social, and cultural and environmental rights and has contributed significantly to the promotion and protection of women's rights since it was adopted in July 2023. In a report presented by the Special Rapporteur on Women's Rights in 2016, several countries have used the Maputo Protocol and reflected this in their periodic reports.[12]

Upon ratification Kenya placed a reservation on Article 14(2)(c) on the basis that it is inconsistent with the provisions of the Laws of Kenya on health and reproductive rights[13]. Yet Article 26 (4) of the Constitution of Kenya 2010 which was in force at the time the reservation was made, is in complete alignment with Article 14 (2) ( c) of the Maputo Protocol. Article 14(2) (c) provides that: -

> *States Parties shall take all appropriate measures to: "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".*

This is highly comparable to Article 26 (4) of the Constitution which provides that "abortion is not permitted unless, 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".

There is clear convergence in the Maputo Protocol and Constitutional provisions on the access to abortion in cases where the life or health of the mother is in danger. In both instances, the opinion of a trained medical professional is key in the decision on whether to proceed with an abortion.

Article 14 (2) ( c) must be also be read together with the totality of all the Articles in the Maputo Protocol within the principles[14] of universality and inalienability [15], indivisibility[16], interdependence and interrelatedness[17]. To this end, the implementation of the Maputo Protocol and the ascription of the rights therein is therefore not complete with the reservation in place. As the challenges related to abortion continue to[18] manifest in the lives of women and girls several focus must shift to other provisions of the Protocol. Two examples stand out of the right to life, integrity and security of the person, and the

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[11] 37077-treaty-charter_on_rights_of_women_in_africa.pdf (au.int)

[12] The report was given as part of a presentation on the "State of Ratification of the Maputo Protocol" during the AU Ministerial Consultation Meeting held on 18 March 2016, on the margins of the 60th Session of the United Nations Commission on the Status of Women (CSW), in New York, USA. http://www.peaceau.org/uploads/special-rapporteur

[13] 37077-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_WOMEN_IN_AFRICA.pdf (au.int)

[14] Human Rights Principles | United Nations Population Fund (unfpa.org)

[15] Human rights are *universal* and *inalienable*. *All people everywhere* in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the *Universal Declaration of Human Rights*: "All human beings are born free and equal in dignity and rights."

[16] Human rights are *indivisible*. Whether they relate to civil, cultural, economic, political, or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

[17] Human rights are *interdependent* and *interrelated*. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological, and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.

[18] Art, 4 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

right to dignity[19], when women die from unsafe abortions and the unsafe conditions within women get access abortion services below the radar, respectively.

The Maputo Protocol is also clear in its article 21 that provides that "

> *"None of the provisions of the present Protocol shall affect more favourable provisions for the realization of the rights of women contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties".*

### *b) Other relevant instruments to which Kenya is party.*

Among the international and regional instruments that Kenya has ratified are the African Charter on Human and Peoples' Rights (Banjul Charter); Maputo Protocol, the African Charter on Rights and Welfare of the Child (ACRWC), the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The African Charter on the Rights and Welfare of the Child (ACRWC)[20] advances the protection of the rights of the child due to the physical and mental development needs of children that requires particular care regarding health, physical, mental, moral, and social development, and legal protection children in conditions of freedom, dignity, and security. The Charter which was adopted on 1 July 1990 and entered into force on November 29, 1999 contains specific provisions that relate to the reproductive health rights of children in Article 14 ( e ) and ( f) which call on States parties to ensure appropriate health care for expectant and nursing mothers and develop preventive health care and family life education and provision of service.

Kenya also ratified the African Youth Charter[21] in 2014. The Africa Youth Charter protects the rights of young people and provides specifically for the protection of young people from violence including SGBV. Article 8 implicitly protects children from early marriage by providing for marriage by persons of full age. Further, the Charter in Article 23 provides for specific protection for young women and girls including from violence and abuse. Early marriage remains an avenue used across political, legal, and social spaces yet the reproductive health of these girls is not taken into consideration.

General Comment No. 2, adopted by the African Commission on Human and Peoples' Rights in 2014, serves as a crucial interpretative guide for the implementation of Article 14(1)(a), (b), (c), and (f) and Article 14(2)(a) and (c) of the Maputo Protocol. This comprehensive document with 8 key recommendations outlines specific measures that state parties should take to safeguard women's health and reproductive rights, emphasizing the importance of a holistic approach. It provides a roadmap for states, including Kenya, to ensure the realization of women's health and reproductive rights as outlined in the Maputo Protocol. Implementation requires a multifaceted approach encompassing legal reforms, healthcare accessibility, education, and protection of women's rights. It underscores the ongoing need for

[19] Ibid, Art 3
[20] African Charter on the Rights and Welfare of the Child | African Union (au.int)
[21] 7789-treaty-0033_-_african_youth_charter_e.pdf (au.int)

comprehensive legislation, clarity in the legal framework, and alignment with international human rights standards. The guidance offered by the General Comment emphasizes the importance of a rights-based approach to women's reproductive health, promoting dignity, equality, and access to essential services.

There are several other policy documents that relate to the reproductive rights of women and children as noted below and to which Kenya is committed: -

- **African Union Gender Policy**[22] which was adopted in 2009 has the main purpose to establish a clear vision and make commitments to guide the process of gender mainstreaming and women empowerment to influence policies, procedures and practices which will accelerate achievement of gender equality, gender justice, non-discrimination, and fundamental human rights in Africa. Policy Values and Principles.
- **Continental Result Framework: Monitoring and Reporting on the Implementation of the Women, Peace, and Security Agenda in Africa (2018 - 2028)**[23] seeks to ensure that there is an effective, articulate, and organized way of monitoring and reporting on the implementation of the WPS Agenda in Africa.
- **Solemn Declaration on Gender Equality in Africa (SDGEA)**[24] is a 13-point document that reaffirms the commitment of the African Union to Gender Equality and calls on the Member States to enhance the protection and the promotion of the rights of women and girls around various themes.
- **AU Strategy for Gender Equality and Women's Empowerment** [25] which was launched during the AU Summit February 2019 is based on an inclusive and multisectoral approach and builds on the lessons learned from the 2009 Gender Policy. According to the African Union, "It is transformational in that its outcomes aim to mitigate, if not eliminate the major constraints hindering gender equality and women's empowerment, so that women and girls may participate fully in economic activities, political affairs, and social endeavours. The GEWE Strategy is a framework document to strengthen women's agency in Africa and ensure that women's voices are amplified, and their concerns are fully addressed through, among others, effective implementation of legislation and proper financing of gender equality work. It is a guiding document on the implementation of the AU's GEWE commitments and is to be used to design transformational programmes that bring results for African women and girls on the continent and in the diaspora"[26]. It cannot be gainsaid that the sexual and reproductive health and reproductive rights stand at that core of the persons of women and girls and their non respect reflect their economic, social, and cultural as well as their civil and political rights.
- **Africa's Agenda for Children 2040** [27] Africa Agenda for Children, (the Children's Agenda) is inspired by the aspirations in AU Agenda 2063 and recognizes young people and children as the drivers of the ideals of the renaissance envisaged in Agenda 2063. The Children's Agenda places a premium on the welfare and the protection of their rights. The reproductive rights of girls and children in general must be protected for the reasons noted above.
- **Other relevant policies include t**he AU Vision, Mission, and Strategic Framework (2004-2007 and beyond) which put health high on the continent's agenda; the 2005 Continental Policy Framework on the Promotion of Sexual and Reproductive Health and Rights (SRHR) in Africa and the Maputo

[22] African Union Gender Policy
[23] Continental_result_framework_on_wps_agenda_in_africa.pdf (un.org)
[24] Solemn Declaration on Gender Equality in Africa | African Union (au.int)
[25] AU Strategy for Gender Equality and Women's Empowerment | African Union
[26] Ibid
[27] Africas_agenda_for_children-english.pdf (au.int)

Plan of Action (2006) for its implementation; the Abuja Call for Accelerated Action towards Universal Access to HIV/AIDS, Tuberculosis, and Malaria (ATM) services in Africa (2006); the Africa Health Strategy (April 2007); and the international consensus on Millenium Development Goal (MDG) 5 and the target set for universal access to reproductive health.

These instruments provide the necessary basis against which to set the standards of protection of the SRH and RR of women and girls in Kenya. From a review of the analysis undertaken by COVAW on the impact of the reservation on Article 14(2) ( c) [28], it is clear that Kenya's reports to the various treaty monitoring bodies do not always cover the entirety of the commitments that Kenya has made under the instruments analyzed in this section.

## *2. National level commitments and progress[29]*

The legal framework in Kenya, influenced by the Constitution, international treaties, and policies like the RH Policy, navigates complex terrain, seeking to balance women's reproductive rights with legal and health considerations. The ongoing challenge lies in aligning various legal provisions [30] and policies[31] to ensure comprehensive and accessible reproductive healthcare for women in Kenya. There is however increased government appreciation of the R in SRH & RR and the diversities in the population including sexual diversities.

In addition to international and regional instruments, the legal and policy framework on the right to health in Kenya is outlined in various documents, including the Constitution of Kenya 2010, the Health Act 2017, the Kenya Health Policy 2014-2030, the Kenya Emergency Medical Care Policy 2020-2030, the National Reproductive Health Policy 2022, the National Adolescent Sexual and Reproductive Health Policy 2015[32] and Kenya Vision 2030. It could be argued that these are sufficient legal frameworks for the protection and promotion of women's reproductive health and what is now necessary to implement and enforce the key legal and policy frameworks relating to the right to health.

The National Adolescent Sexual and Reproductive Health Policy 2015 seeks to enhance the SRH status of adolescents in Kenya and contribute towards realization of their full potential in national development. The Policy intends to bring Adolescent Sexual and Reproductive Health and Rights (ASRH) issues into the mainstream of health and development and was developed based on evidence that adolescents and young people "are vulnerable to early and unintended pregnancy, unsafe abortion, female genital mutilation (FGM), child marriages, sexual violence, malnutrition and reproductive tract infections including sexually transmitted infections (STIs) as well as HIV and AIDS"[33]

Article 26(4) of the Constitution of Kenya 2010 as noted above provides the basis of the law on abortion in Kenya. Article 26(4) must be read together with Article 43(2) which provides that**: "***No person may be denied emergency medical treatment. This includes post-abortion care, which is medically given to women for treatment of abortion complications".*

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[28] Research commissioned by COVAW into the Impact of the Kenya Government Reservations on Article 14(2) (C) of the Maputo Protocol on the Reproductive Rights of Women and Girls

[29] This section reflects the findings of the research commissioned by COVAW into the Impact of the Kenya Government Reservations on Article 14(2) (C) of the Maputo Protocol on the Reproductive Rights of Women and Girls

[30] The Sexual Offenses Act, No.3 of 2006, Laws of Kenya

[31] National Guidelines on Management of Sexual Violence in Kenya 2009

[32] NATIONAL ADOLESCENT SEXUAL AND REPRODUCTIVE HEALTH POLICY 2015 3 final.indd (tciurbanhealth.org)

[33] Ibid

The Constitution provides those international treaties and conventions that Kenya is a party to, form part of the laws of the country; meaning that instruments ratified by Kenya are legally binding in the Republic.[34] It is therefore important that greater alignment is sought between the Constitution and Article 14 of the Maputo Protocol.

The challenge to getting this alignment lies in the fact that a significant part of the primary legal framework governing abortion in Kenya is entrenched in the Penal Code, specifically Sections 158 to 160 (and in some instances, Section 214). These sections criminalize abortion, except when the life or health of the mother is at risk. These provisions, inherited from colonial times, remain stringent and have not been amended to respond to the legislative reform processes that have taken place since including the Constitution which is the supreme law of the land.

Article 2(6) also highlights that international treaties ratified by Kenya are enforceable in Kenyan courts. If there is a conflict or a legal issue related to the Protocol, Kenyan courts can address it based on the Protocol's provisions as if they were part of Kenyan law. The Constitution also establishes mechanisms for constitutional oversight, including judicial review. If there are concerns or disputes related to the implementation or interpretation of Article 14(2)(c) within Kenya, the Constitution provides for a legal process to resolve these matters through the courts.

The Reproductive Health Policy 2022-2032 ( RH Policy) also aligns with the Constitution and provides guidance to reduce reproductive health- related illness and deaths. The policy recognizes the evolving demands on reproductive health services, influenced by the Constitution, previous policies, the Kenya Health Policy, Kenya Vision 2030, commitments at the Nairobi Summit, and international legal instruments. Notably, the RH Policy addresses post-abortion complications as the third direct cause of maternal deaths, emphasizing the urgency to bridge gaps in reproductive health services. The gap exists however in the lack of an enabling and unifying law to put into effect Article 26 (4) of the Constitution.

[34] Article. 2 (6), Constitution of Kenya 2010.

## IV. Gaps and challenges in the implementation of SRH & RR in Kenya

Despite the robust legal framework analysed above and which finds strong grounding in the Constitution of Kenya 2010, buttressed by a broad range of regional and international treaties that Kenya has ratified on the comprehensive protection of women's rights, there are still various challenges to the implementation of SRH & RR in Kenya on women's rights. These can be summarized as follows:

a. The reservation on Article 14(2) of the Protocol which does not allow for accountability on the part of the government on the SRH &RR as the reservation effectively places the government outside of the existing framework for reporting on the Protocol.
b. The implementation of Article 26(4) ( c) of the Constitution of Kenya 2010, is yet to be actualized owing to the non-alignment of the multiple laws that relate to reproductive health and rights of women and girls including abortion, of note being the Penal Code[35] and the Sexual Offences Act.[36] The guidelines for implementation of this Constitutional provision are largely lacking.
c. There is a related challenge of lack of coherence between the various laws with the policies and administrative processes to ensure comprehensive and accessible reproductive healthcare for women in Kenya. Even where laws exist, the implementation of the same is generally weak. The doctrine of separation of powers is blurred around SRH &RR in terms of monitoring, reporting and accountability. Even where laws exist, the application of the same is not strictly adhered to and seems to be guided by the social and cultural dictates of the persons addressing the issue at any one time.
d. Despite the robust engagement of the judicial processes to challenge the non-respect of the SRH &RR of women and girls including strategic litigation, there is deliberate non- respect of the judgements issuing from such engagement. The government continues to ignore court decisions whose implementation would significantly change the situation of the SRH & RR for women and girls. Examples abound including the failure of the government to implement the judgement of the Constitutional Petition 266 of 2015 that reinstated the Standards and Guidelines and National Training Curriculum[37].
e. There is a general lack of political will to promote and protect SRH &RR which is worsened by poor governance and lack of accountability. This is reflected in the limited resources as the budgetary allocation for SRH &RR follows the priority ranking of the same.
f. The weight of culture and religion stands in the way of comprehensive sexual education despite the evidence indicated in (d) above.
g. Reproductive rights are often excluded in the general rights discourse and deprioritized against other civil rights in the political and development agenda. As a result, there are data gaps on women's reproductive health rights with a corresponding gap in policy and development arrangements.
h. The issues of gender and health sit across various government ministries and departments that are not well coordinated. Civil society actors are also not coordinated in their actions to advance SRH & RR.
i. The advancement of SRH & RR is substantially hampered by the actions of the opposition and anti-rights movements and a corresponding weakness in coordination of opposition action in the SRHR movement .
j. All the above is made worse by the misinformation and lack of awareness on the issues regarding the law, substance and context of SRH & RR that cuts across the general population, CSO and government actors.

[35] The Penal Code , Cap 63 Laws of Kenya
[36] The Sexual Offenses Act, No.3 of 2006, Laws of Kenya
[37] Ibid, no 7

k. There is a lack on knowledge on the actual provisions of safe and legal abortion leading to unfounded dear and heightened stigma. The failure to view abortion as a health care need and only view it as an exception to the right to life increases the confusion and diminishes the possibility of addressing access to safe abortion from a human rights perspective.

## V. Opportunities for strengthening the implementation of SRH and RR In Kenya

In developing this National CSO Action Plan, the following opportunities emerged:

a. Article 14 of the Protocol is all encompassing. The government's reservation is limited to Article 14 (2) (c ) and does not preclude CSOs from actively engaging in advocacy in the basis of the Article 14 ( 1) which reads :

> "States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted.
>
> This includes:
>
> a) The right to control their fertility.
> b) The right to decide whether to have children, the number of children and the spacing of children; c) The right to choose any method of contraception.
> c) The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS.
> d) 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 recognised standards and best practices.
> e) The right to have family planning education."

b. There is opportunity to leverage the multisectoral approach in engaging the government so that at implementation. Each ministry is aware of that protocol and how they are implementing it. For example, the Ministry of Health should ensure that women and girls are accessing sexual and reproductive health services, while the Ministry of Education ensures that girls are accessing education including sexuality education in the face of issues such as early marriage and FGM. There is therefore opportunity to view the Protocol from a multi-sectoral approach and then implement it in a comprehensive multi-sectoral way that leverages on data and directs services to those who need it most.

c. There is opportunity for coordinated action amongst CSOs for greater sustainability of efforts which is not possible from a fragmented siloed way. Advocacy for SRH & RR requires greater coordination.

d. The County governments have active legislative processes that can be leveraged to advance SRH &RR at county level and bring the collective action of several counties to the national level.

There is opportunity to leverage the interdependence of human rights through collaboration across intersectional spaces and movements for greater impact. The structures of the country including County Health Management Teams and County Entry Meetings can be targeted with support of the Ministry of Health Headquarters and the Council of Governors (COG).

e. There is opportunity to leverage social media in awareness creation on the Maputo Protocol. Similarly, more information and education should be directed to communities using strategies such as popular and community responsive versions of the Maputo Protocol. Awareness creation can be in the form of workshops, media campaigns and community forums. Similarly, there is opportunity to integrate awareness of the Maputo Protocol into school curricula and technical capacity building frameworks of governments and civil society organizations.

f. There is ample opportunity for increased litigation to increase progressive jurisprudence on the right to affordable, accessible, and available sexual and reproductive health including access to safe abortion. Such action however needs to be more community led action, using the voices and stories of women who have been denied services, and conducting informational and educational campaigns on what these rights entail.
g. The opportunities for increased awareness on SRH &RR must be integrated into broader health discourse while linking it to the broader development discourse that embraces innovation and technology to advance access to SRH services, with a focus on efficient data collection and monitoring for evidence-based decision-making.

## VI. Rationale for a National CSO Action Plan

In view of Kenya's reservation on Article 14 (2) ( c) of the Maputo Protocol, there is need for targeted action towards the government to ensure that the same is lifted to afford women and girls the full extent of rights as are provided in the Protocol. The limitation of one right has a direct impact on the extent to which they enjoy all the other rights.

It is important that for women to fully enjoy the SRH &RR as envisaged in the Maputo Protocol, the legal framework in Kenya should be reviewed, with the potential lifting of Kenya's reservation to Article 14(2)(c), and amendments to the Penal Code sections that criminalize abortion to align with constitutional provisions and international agreements. Comprehensive legislation is needed to protect women's rights and access to safe abortion services within the lawful grounds outlined in the Constitution.

COVAW has therefore commissioned the development of this Action Plan Supporting Sexual and Reproductive Health and Reproductive Rights (SRH & RR) In Realization of the Maputo Protocol. Whereas it was initially intended to be a National Action Plan, COVAW has established the need for greater government engagement in such an endeavor. This was not possible owing to various limitations. Additionally, COVAW established the opportunity for increased and better coordinated civil society action and has reframed the action plan into a National Civil Society Action Plan Through coherence of existing promising practices and opportunities to overcome the gaps and challenges in addressing SRH &RR issues, the National CSO Action Plan will provide tools and strategies to actualize commitments made by the Kenyan government to provide quality comprehensive and accessible SRH & RR services as envisioned in Maputo Protocol.

The objectives of the National CSO Action Plan are:

i. Provide a framework for supporting SRH &RR and advocacy for lifting the reservation Kenya has placed on Article 14 (2) (c ) of the Maputo Protocol.
ii. Guide national stakeholders in facilitating the implementation and actualization of regional and national commitments to the Maputo Protocol on the promotion of Sexual Reproductive Health Rights through translating those commitments into strategies and actions to be undertaken at the national level.
iii. The National CSO Action Plan will also serve as a monitoring, reporting and accountability framework for Kenya's commitment to promoting SRH &RR in Kenya.

iv. Undertake advocacy for enhanced commitment by the Kenyan government to increase investment in addressing SRHR issues.

# VII. Purpose and Design Principles of the National CSO Action Plan

## *A. Purpose of the National CSO Action Plan*

Promotion of SRH & RR requires a multifaceted approach requiring sustained efficient and coordinated multi-sectoral collaboration. It requires providing an enabling environment for the elimination of violations under SRH & RR issues, survivor-centered services for the protection of the survivors of SRH & RR cases and ensuring comprehensive and informative SRH & RR services. It calls for skilled, well-informed, and timely responses of relevant stakeholders and the adoption of the legal framework that holds the perpetrators of violence accountable for their actions. Through coherence of existing promising practices and opportunities to overcome the gaps and challenges in addressing SRH &RR issues, the National Action Plan will provide tools and strategies to actualize commitments made by the Kenyan government to provide quality comprehensive and accessible SRH & RR services as envisioned in Maputo Protocol

This National CSO Action Plan is to sets out strategies and actions for civil society to promote and protect SRH &RR in Kenya in line with the normative standards contained in the Maputo Protocol, while sustaining advocacy targeted at the government for lifting of the reservation that Kenya has placed on Article 14 (2) of the Maputo Protocol.

### *B. Design Principles*

The challenges facing women and girls cannot be addressed in linear ways. Any action to advance the rights of women must reflect the Principles of Human Rights of universality and inalienability, indivisibility, interdependence and interrelatedness, equality and no-discrimination, participation and inclusion, and accountability and the rule of law. Given the disparity in laws and processes around SRH &RR in Kenya, action to advance these rights around a politically complex process of lifting the reservation on Article 14(2 ) ( c) which touches on an equally complex and emotive issue of abortion , the action must be undertaken in an integrated manner that embraces the issue it is clear that the advocacy for the lifting of the reservation on by Kenya Women's rights like all human rights are universal and inalienable, interdependent and The Action Plan therefore seeks actors from those working on SRH &RR and beyond.

The National CSO Action Plan is therefore anchored on the following Design Principles: -

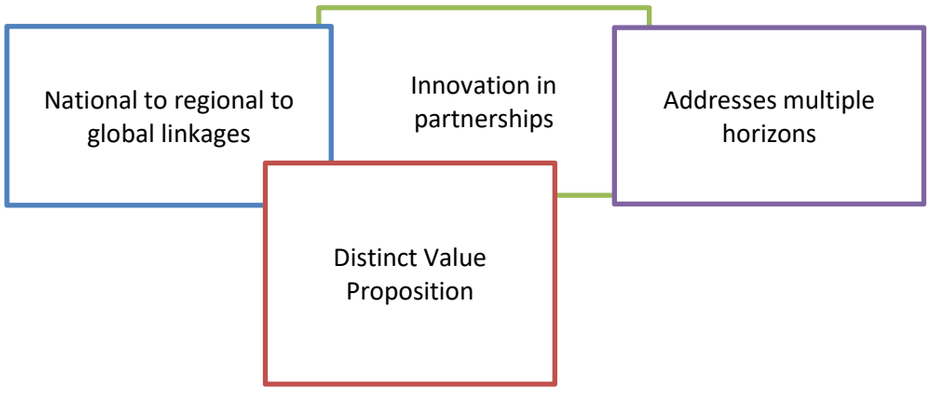
1. **Innovation in partnerships**: It has been 13 years since Kenya placed the reservation on Article 14(2) (c) and the actions of several actors in the intervening period have not yielded a lifting of this reservation. To scale action and respond to the complexity of the issue of SRH &RR, build on existing advocacy while responding to emerging issues including the opposition, there is a need to innovation in the partnerships that take the advocacy forward with the aim to attaining the lifting of the reservation on Article 14 ( 2) ( c) of the Protocol.

2. **Distinct value proposition:** the failure to protect the SHR & RR of women and girls is reflected in the violations and the evidence of the consequences of these violations is important to inform action towards enhancing the protection of these rights. The Action Plan demonstrates this value-add in practice by showing in how this has been realized in previous work with relevant examples.

3. **Addresses multiple horizons**: Sexual and reproductive health and reproductive rights sit at the core of women's human rights and must therefore be addressed from an intersectional and collaborative ways that reflects the interdependence, indivisibility, and inalienability of human rights. It responds to current, emerging, and possible future challenges and opportunities in our external environments, ie 'today,' the 'near future', and 'long-term futures'.

4. **National to regional and global linkages**: While rooted in the Kenyan context, the plan seeks to engage at regional and global levels or spaces to maximise leverage for greater impact at the national level. As discussed in the situational analysis, several international actions and processes ranging from treaties to policies such as the Global Gag rule have a direct impact on the status of SRH & RR at national level.

**Table 1 : Design Principles**



## VIII. Strategic Goal, Objectives, Results and Actions

### *A. Focus Areas of the National CSO Action Plan*

The focus of the National CSO Action plan over the next 3 years will be to collaboratively engage the government of Kenya to enhance the promotion and protection of the SRH &RR of women in Kenya with a view to attaining the ultimate lifting of the reservation that the government placed on Article 14 ( 2 ) ( c) at the time of the ratification oof the Maputo Protocol .

The National CSO Action plan will focus on the following five areas: -

**a. Awareness and sensitization**

From the consultations with stakeholders, the level of popular awareness of the Maputo Protocol is not optimal for purposes of creating the necessary demand for the rights contained therein for the benefit of Kenyan women and girls. Similarly, the level of awareness of the Protocol and the accountability of the State is not fully appreciated across the necessary state actors necessary to ensure its full implementation. There is therefore need for broad based awareness of the Protocol and sensitization of state and non-state actors on the accountability mechanisms established under the Articles 25-33 of the Protocol that address its implementation and the responsibility of the state.

To enhance awareness of the Maputo Protocol in Kenya, a comprehensive plan must be founded on increasing the awareness around the rights, laws and policies on SRH &RR and this would entail collaboration with local organizations, media campaigns, community dialogues, and empowering local leaders are vital components. Such awareness must also focus on the youth so that it is integrated into the education and school curricula.

**b. Legal action**

According to the research undertaken by COVAW *on the Impact of Kenyan Government Reservations Under Article 14(2)(C) of the Maputo Protocol on the Reproductive Rights of Women and Girls,* there has been legal action by the state and non-state actors on reproductive rights particularly related to abortion. Such legal action has brough to the for the need to unify the laws and processes around SRH & RR. Legal action allows for challenging the gaps in the normative frameworks while considering the sub national, national, regional, and international frameworks to ensure that they afford accountability to the women of Kenya for the full realization of SRH and RR. Legal action must entail legal aid to ensure that an increased number of women have access to justice in the protection of their SRHR.

**c. Intersectional action**

The realization of the SRH &RR of women calls for the interaction of several actors across various sectors within government, civil society, and private sector in an integrated, collaborative process whereby different actors come together to address the complex challenges of ensuring the actualization of SRH and RR while leveraging on the interrelated goals on specific issues of interest to them. Examples include the need for civil society to engage the government ministries responsible for education, gender, health when developing awareness programs targeted at youth as part of effective and comprehensive sexuality education as part of awareness creation on the Maputo Protocol. Similarly, the ministry responsible for finance and planning must be engaged at various points for CSOs to leverage the budget advocacy for

effective implementation of SRH and RR in line with Article 26 ( 2) of the Protocol that calls on governments to take measures to ensure that budgetary allocations are adequate for the implementation of the Protocol.

**d. Coordination and sustainability of CSOs**

Promotion of SRH & RR requires a multifaceted approach with sustained efficient and coordinated multi-sectoral collaboration. It requires providing an enabling environment for the elimination of violations under SRH & RR issues, survivor-centered services for the protection of the survivors of SRH & RR cases and ensuring comprehensive and informative SRH & RR services. It calls for coordinated, well-informed and timely responses of relevant stakeholders and the adoption of the legal framework that holds the perpetrators of violence accountable for their actions.

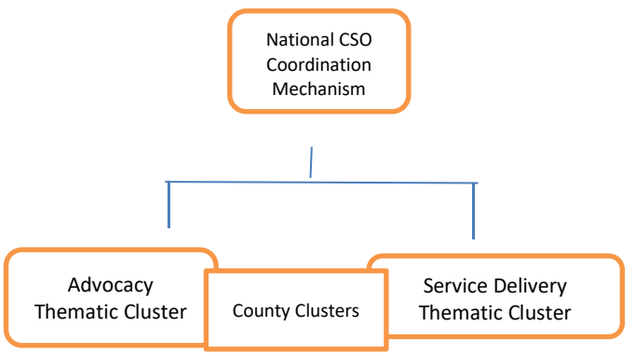
**e. Monitoring, reporting, accountability, and learning**

To ensure that the available SRH & RR protections are sustained while addressing the gaps in such protection, there is need to continually monitor government action on the same. To this end, CSOs will engage with government in the development of periodic reports to the various treaty bodies that Kenya is party to including the CEDAW and the Protocol to bring objectivity to the government report. This will also include alternative or shadow reports. On the other hand, CSO implementing this action plan must also be accountable to each other, monitor their actions, report to the respective partners and share the lessons from the implementation with one another. This will allow for scaling up action and minimize duplication for greater impact.

***B. Coordination Mechanism***

The National CSO Action Plan will be implemented by CSOs working in close collaboration with one another in simple structure made up of a National Coordination Mechanism and thematic clusters that adopt a geographic outlook. The Coordination of such action will be undertaken across thematic and geographic levels with the latter following the current devolved government set up.

However, the National Coordination Mechanism will be made up of representatives of organizations working at the national level, regional and international levels and representatives of organizations working at national level drawn from the previous administrative formation of 8 provinces. This is for expediency to ensure that the numbers in the Coordination mechanism are reasonably manageable.



### *C. Objectives and Outcomes*

**Goal**

To enhance coordination of state and non-state actors to advance the promotion and protection of the SRH and RR of women in Kenya that will lead to the removal of Kenya's reservation on Article 14 (2) ( c) of the Maputo Protocol .

**Objectives**

1. To address knowledge gaps on the SRH & RR contained in the Maputo Protocol
2. To use legislative and judicial activism in lobbying and advocacy for the removal of the reservations on Article 14 ( 2) ( c ) of the Protocol
3. To leverage a multisectoral approach to prioritize SRH & RR for women in Kenya.
4. To leverage the strength of the diversity of organizations working on SRH & RR for greater impact on the reproductive rights of women as envisaged in the Maputo Protocol
5. To develop accountability mechanisms for the government on SRH & RR while using lessons to enhance the promotion and protection of SRH & RR

**Expected Results**

1. Expanded reach and knowledge of the Protocol by all key stakeholders and the population to build demand for SRH & RR from the government.
2. Strengthened policy advocacy and communication for advocacy for enhance protection of SRH & RR by the government.
3. Increased action by state actors from an intersectional perspective that leverages the interdependence, inalienability, and indivisibility of human rights to place SRH & RR.
4. Increased impact of CSO action through coordination, collaboration, and movement building
5. Sustained action targeted at the government for the removal of the reservation on Article 14(2) ( c) in order to attain its ultimate removal.

**Key Strategies**

**Awareness and sensitization**

1. Broad based research for awareness to cover the dual psychosocial and economic and effects on abortion on the society, online sexual violence, and the impact of the removal of the PSG for evidence based advocacy for enhanced SRH & RR protection.
2. Inclusive engagement of the experiences of PWD and intersex in research to build evidence for effective SRH & RR advocacy.

**Legal action**

3. Leverage Kenya's regional political leadership in benchmarking best practices from other countries (Malawi, Kenya, Rwanda) to use as evidence in advocacy for removal of the reservation.
4. Cultivate champions to straddle parliament and civil society to spearhead the agenda for lifting reservation from the ground up (by leveraging increased popular knowledge of the Protocol and merging with the legislative processes of law reform)
5. Use multiplicity of cases in judicial activism as a campaign to create the necessary impetus for removal of the reservations through judicial action.

**Intersectional action**

6. Map and identify at least 5 counties with high indicators to be prioritized for implementation of SRH & RR action.
7. Support policy formulation at devolved level with the identified county legislatures to advance SRH & RR.
8. Engage the friendly county governments in national level advocacy for removal of the reservations on Article 14 ( 2) ( c).

**Coordination and sustainability of CSOs**

9. Undertake a needs assessment on the Maputo Protocol and a HRBA for organizations working on SRH & RR in the country.
10. Create a coordination mechanism that brings together all organizations working on SRH & RR In the country.

**Monitoring, reporting, accountability, and learning**

11. Create an accountability framework at national, regional, and global levels with the Maputo Protocol at the core.
12. Review indicators for SRH & RR including private sector action Undertake research using comparative law for role modelling.
13. Map opposition and develop a framework for pre-empting opposition action and opposition monitoring.

## *D. Results and Actions*

| Objectives | Outcomes | Actions | Responsibility |
|---|---|---|---|
| **Awareness and sensitization**<br>**Expand the reach and knowledge of the Protocol by all key stakeholders and the population to build demand for SRH & RR from the government** | | | |
| **To address knowledge gaps on the SRH & RR contained in the Maputo Protocol** | • Increased awareness on the Maputo protocol in Kenya<br>• Increased demand for comprehensive SRHR by population<br>• Increased availability of data to inform advocacy for the lifting of reservations. | • Develop/ adapt existing curricula on life skills for purposes of CSE.<br>• Sensitization/ decentralization of information on the Maputo Protocol to the grassroots including translation of Maputo Protocol into local languages.<br>• Sensitization of service providers and stakeholders<br>• Training relevant stakeholders and the population on the intersectionality and indivisibility of rights<br>• Sustained hard hitting media advocacy for awareness using mainstream and social media.<br>• Engage existing networks of journalists working on SRH & RR to strengthen their knowledge on the same.<br>• Broad based research for awareness to cover the psychosocial and economic and effects on abortion on the society, online sexual violence, and impact of the removal of the PSG.<br>• Inclusive engagement of the experiences of PWD and intersex in research to build evidence for effective SRH & RR advocacy. | |
| **Legal action**<br>**Use policy advocacy and communication for advocacy for enhance protection of SRH & RR by the government** | | | |
| **To use legislative and judicial activism in lobbying and advocacy for the removal of the reservations on Article 14 ( 2) ( c ) of the Protocol** | • Increased awareness on SRH &RR among judicial and legislative officers.<br>• At least one legislator is spearheading the advancement of SRH &RR<br>• Increased evidence on the need for the lifting of the reservation on Article 14 ( 2) ( c) of the Maputo Protocol | • Undertake a detailed analysis of the national, regional, and global policies on abortion.<br>• Undertake awareness, sensitization of key stakeholders of legal frameworks, their interconnectedness, deviations, and impact on reason/ interpretation.<br>• Benchmarking best practices from other countries (Malawi, Kenya, Rwanda) to use as evidence in advocacy for removal of the reservation.<br>• Capacity building of all stakeholders in the justice system (criminal justice system) to facilitate judicial activism.<br>• Use multiplicity of cases in judicial activism as a campaign to create the necessary impetus for removal of the reservations through judicial action.<br>• Cultivate champions to straddle parliament and civil society to spearhead the agenda for lifting reservation from the | |

| | | | |
|---|---|---|---|
| | | ground up (by leveraging increased popular knowledge of the Protocol and merging with the legislative processes of law reform )<br>• Litigation strategy targeting the removal of the reservation.<br>• Advocate for re- entry into the Regional CSE Accord | |
| **Intersectional action**<br>**Leverage the interdependence, inalienability, and indivisibility of human rights to place SRH & RR at the core of government action on women's rights** | | | |
| **To use a multisectoral approach to prioritize SRH & RR for women in Kenya** | • Enhanced clarity on alignment imperatives across government institutions working on SRH & RR<br>• Increased understanding of SRH & RR across national government institutions and county legislatures<br>• Enhanced intersectionality between SRH & RR and other thematic areas in development and humanitarian including climate change.<br>• Enhanced prioritization of SRH & RR including on budgeting. | • Map all relevant government departments whose roles touch on SRH &RR<br>• Develop an MoU with key government ministries on addressing SRH & RR in a multisectoral approach with efforts that complement each other.<br>• Map county legislatures addressing SRH & RR<br>• Map and identify at least 5 counties with high indicators to be prioritized for implementation of SRH & RR action.<br>• Support policy formulation at devolved level with the identified county legislatures to advance SRH & RR.<br>• Engage the friendly county governments in national level advocacy for removal of the reservations on Article 14 ( 2) ( c).<br>• Undertake training and capacity building on a human rights-based approach (HRBA) and the Maputo Protocol for national and county governments specifically targeting ministerial advisors. | |
| **Coordination and sustainability of CSOs working on SRH & RR**<br>**To strengthen the movement of organizations working SRH & RR for increased impact** | | | |
| **To leverage the strength of the diversity of organizations working on SRH & RR for greater impact on the reproductive rights of women as envisaged in the Maputo Protocol** | • Increased coordination of action between organizations working on SRH & RR for greater impact.<br>• Increased awareness and knowledge on the impact of the reservations on Article 14 ( 2) ( c) of the Maputo Protocol<br>• Increased action towards the removal of the reservations by CSO actors | • Undertake a needs assessment on the Maputo Protocol and a HRBA for organizations working on SRH & RR in the country.<br>• Create a coordination mechanism that brings together all organizations working on SRH & RR In the country.<br>• Use social media platforms to strengthen collaborative engagements on awareness creation and sensitization.<br>• Coordinate CSO complementary role in addressing gaps in legal and policy frameworks and supports government in filling the vacuum.<br>• Develop and action clear referral pathways between organization working on SRH & RR. | 1. |
| **Monitoring, reporting, accountability, and learning**<br>**Sustain action targeted at the government for the removal of the reservation on Article 14(2) ( c) in order to attain its ultimate removal.** | | | |
| **To develop accountability mechanisms for the government on** | • Enhanced accountability for | • Review available reporting tools, amend, or develop new | |

| | | | |
|---|---|---|---|
| **SRH & RR while using lessons to enhance the promotion and protection of SRH & RR** | SRH & RR by the government at national, regional, and global levels<br>• Increased prioritization of SRH & RR in budgeting processes<br>• Increased participation of CSOs in government reporting processes at regional and global levels. | ones as necessary.<br>• Sensitize CSOs coalescing under objective 4 on the reporting tools.<br>• Create an accountability framework at national, regional, and global levels with the Maputo Protocol at the core.<br>• Review indicators for SRH & RR including private sector action Undertake research using comparative law for role modelling.<br>• Develop and issue advisories to the necessary duty.<br>bearers to allocate resources to ensure SRH and RR to women and girls.<br>• Map opposition and develop a framework for pre-empting opposition action and opposition monitoring.<br>• We advocate for a transparent and comprehensive reporting framework.<br>• Undertake budget advocacy to enhance allocation of resources for SRH & RR.<br>• Collaborate with government on reporting at regional and global levels. | |

# IX. Annexes

**Annexe 1. List of stakeholders**

1. Government Agencies:
    a. Ministry of Health (1)
    b. Ministry of Gender
    c. State Law Office ( 3).
2. 2. Civil Society Organizations (CSOs) and NGOs:
    a. Women's rights groups, health advocacy organizations ( 15)
    b. Women’s rights activists (3)
    c. Healthcare Professionals (4):
    d. Legal and Policy Experts ( 4)
    e. Education Sector – Teachers (2)
    f. Youth Organizations (4)
    g. Religious Leaders and Institutions (3)
    h. Private sector (3)
    i. Media and advertising (2)
    j. Community leaders (1)

## Annexe 2 : Questionnaire

| | Objectives | Questions | Source | Government ministries | Civil society organizations | Quasi judicial | Others |
|---|---|---|---|---|---|---|---|
| 2 | Guide national stakeholders in facilitating the implementation and actualization of regional commitments on the Maputo Protocol on the promotion of Sexual Reproductive Health Rights through translating those commitments into strategies and actions to be undertaken at the national level | What commitments has the Kenyan government made to to provide quality comprehensive and accessible SRH & RR services as envisioned in the Maputo Protocol.<br>What strategies exist in the implementation fo these commitments<br>Where are the gaps and what can be done to address theses gaps | Desk review and KIIs | | | | |
| 6 | Provide a framework for supporting SRH &RR and lifting the reservation Kenya has placed on Article 14 (2) of the Maputo Protocol. | What is the effect of the reservations that Kenya placed on Article 14(2) the Maputo Protocol on the SRH &RR.<br>What strategies would you propose to support SRH & RR and the lifting of the reservation that Kenya placed on Article 14(2) of the Maputo Protocol | KIIs with stakeholders | | | | |
| 7 | Guide national stakeholders in facilitating the implementation and actualization of regional and national commitments to the Maputo Protocol on the promotion of Sexual Reproductive Health Rights through translating those commitments into strategies and actions to be undertaken at the national level. | What has been done to implement the commitments to the Maputo Protocol Are you undertaking any action in the implementation of the Protocol. If so, what actions are you undertaking<br>What gaps exist in the implementation of these commitments<br>What would you recommend to address these gaps<br>What strategies would you propose for the implementation of the Maputo Protocol and the Promotion of the SRH and RR<br>What support would you need to facilitate the implementation fo the commitments on SRH &RR in Kenya<br>How can we best coordinate and synchronize survivor comprehensve services and ensure effective | KIIs with stakeholders | | | | |
| 8 | The National Action Plan will also serve as a monitoring, reporting and accountability framework for Kenya's commitment to promoting SRH &RR in Kenya | What role would you play in monitoring , reporting and accountability of Kenya's commitment to promoting SRH &RR<br>Where are the most significant elements to consider in the monitoring, reporting and accountability framework for Kenya's commitment to promoting SRH & RR in Kenya | KIIs with stakeholders | | | | |
| 9 | Enhance the commitment by the Kenyan government to increase investment in addressing SRHR issues | What opportunities exist for increasing Kenya's investment in addressing SRHR issues What role would the civil society, government and other actors play in this regard | KIIs with stakeholders | | | | |
| 10 | | | | | | | |

**Annexe 3: Supplementary Questionnaire for KIIs**

# National CSO Action Plan on SRH &RR

National CSO Action Plan on SRH & RR

This form is automatically collecting emails from all respondents. Change settings

Please indicate any additional context background issues that should inform the National CSO Action Plan on SRH & RR *

Long answer text

What should be done to increase awareness of the Maputo Protocol in Kenya at county / community and grassroots level? *

Long answer text

What are the gaps in access to SRH & RR particularly the rights to safe medical abortion at national and community levels? *

Long answer text

What opportunities do you see in the implementation of the right to SRH & RR for women and girls in Kenya? *

Long answer text

What in your view would catalyze the implementation of Article 26 ( 4) ( c ) of the Constitution

Short answer

B I U

Short answer text

Required

Which stakeholders should be involved in the advocacy for the protection and promotion of SRH and RR in Kenya. How can their participation be ensured? *

Long answer text