

Maternal, Newborn and Child Health: Policy Brief on why there is need for an MNCH Law in Kenya

Overview

According to Kenya Demographic and Health Survey (KDHS) 2014 report, maternal mortality ratio (MMR) was 362 for 00,000 live births, and neonatal mortality rate was 22 for 1000 live births. Some of the factors responsible for these figures included late or inconsistent attendance to antenatal care clinic, varying quality of antenatal care, poor access to skilled care during pregnancy, delivery and the postpartum period.

The right to survive pregnancy and childbirth is a basic human right. Under the Constitution and International law, the government of Kenya bears a legal obligation to ensure that women do not die or suffer complications as a result of preventable pregnancy-related causes. The high number of maternal and child deaths in Kenya are in indication that the government's failure to protect women's reproductive rights, and comply with the Constitution.

The Constitution, 2010 for the very first time enshrined socio cultural and economic rights in Kenya including the right to health. **Article 43(1)** of the Constitution calls on the government to provide the highest attainable standard of health, including **reproductive health care**.

The Constitution also created two levels of government, namely: the national government; and 47 devolved county governments. Both levels of government share the health function. In July 2014, Kenya adopted the Health Policy 2014-2030. The goal of the Policy is “to attain the highest possible standard of health in a responsive manner.”

Article 53(1) (c) of the Constitution guarantees every child of a right to basic nutrition, shelter and health care.

On its part the **Health Act, 2017**:

- Recognized the right of every person to reproductive health care which includes the right to be informed about and have access to reproductive health care including the right to safe, effective, affordable and acceptable family planning services.
- Provided for access to reproductive health and the right to emergency treatment, the management of human resources for health, health financing and private sector participation.
- Provided a binding framework through which the right to health can be implemented in the two levels of government in Kenya. That is, at national and county government levels.
- Has clarified the obligations of the government as well as enumerated the rights of patients as well as health service providers.

Why an MNCH Law?

- An MNCH law is necessary in order to meet the aspirations of the Constitution that is guarantee access to reproductive health services and child health services in Kenya.
- Institute legal accountability mechanism. The absence of legal accountability for maternal, new born and child deaths caused by health system failures, socioeconomic disparities and discriminatory social practices is a major impediment to successfully reducing maternal and child mortality. Indeed, compliance with quality and standards

¹ See Schedule Four of the Constitution, 2010.

procedures in MNCH services have remained a challenge due to inadequate legal mechanism for enforcing maternal, newborn and child health for both public and private sector players. A system that will sanction and hold those responsible for the failure of health system accountable is inevitable.

- Provide for a coordinated system for the provision of quality maternal, newborn and child health services. The governance framework should recognize that health is a shared function between national and county government as set out in Part I and II of the Fourth Schedule to the Constitution. The role of each level of government in securing maternal, new-born and child health should be elaborated.
- Insufficient prioritization, investment, monitoring and evaluation and follow-up mechanisms to address maternal, newborn and child health. This is attributed to lack of a governance structure that prioritizes, mobilizes and ensures necessary services are catered for.
- Provide for penalties to be imposed on persons and institutions that violate the Constitution and the Health Act, 2017. The maternal services envisioned in the Constitution and the Health Act, 2017 must be acceptable to the clients. There are instances where certain maternity services including family planning methods have been forcefully administered on women without their consent especially those with disability or living with HIV.
- There are several MNCH policies and laws scattered in various legislations, whose implementation need to be streamlined in

order to achieve the intended results. Their full implementation has remained a challenge. The law will enable prioritized investment of public resources to provision of health services to mothers, newborns and children, create frameworks that ensure implementation, accountability and monitoring of maternal newborn and child health and related matters.

- Multispectral approach is key in dealing with maternal, new-born and child health issues. This is informed by fact that, maternal, newborn and child deaths are not solely as a result of lack of health services or facilities, but a combination of other factors. This could be due to lack of good road network, power/ electricity connection, internet / communication system, referral network, insecurity, pandemics, ignorance, lack of information, gender issues and poverty among others. A multi-sectoral coordination framework that brings all the relevant actors in the government is necessary. Such a framework needs to be entrenched in law to ensure compliance.
- International treaties and conventions that Kenya is a signatory to obligates member states to put in measures necessary to reduce child mortality and improve maternal health. For example, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Government of Kenya has an immediate duty to ensure that the right to health is fully realized and enjoyed without discrimination of any kind. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls of government to introduce special measures of protection for women during pregnancy.