ECONOMIC, SOCIAL AND CULTURAL RIGHTS

RIGHT TO HEALTH

KELIN Reclaiming Rights, Rebuilding Lives
EACHRights The East African Centre for Human Rights
HERAF Transforming Health System
PEMA KENYA Advancing social inclusion and human rights
Hennet Health NGOs' Network
JINSIANGU
Centre for the Study of Adolescence
The Cradle
Global Initiative for Economic, Social & Cultural Rights
AfyAfrika
Wangu Kanja Foundation
Center for Reproductive Rights
Feminist for Peace, Rights and Justice Centre
TA Trans* Alliance
Talk It Out
Undugu Family of Hope
Western Kenya LBQT Feminist Forum
Umande Trust
Health for All Now! People's Health Movement Kenya
Hakijamii Economic and Social Rights Centre "Putting People First"
HOYMAS
lvct health healthy societies
VSO

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.

INTRODUCTION TO THE COALITION

This submission has been developed and submitted by the Right to Health Thematic Group, a member of Universal Periodic Review Kenya, a coalition that brings together over 200 Civil Society Organizations. The 23 thematic group members include: Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), EACH Rights, Umande Trust, People's Health Movement Kenya, Health Options for Young Men on HIV/AIDS/STI (HOYMAS), Pema Kenya, Global Initiative for Economic Social and Cultural Rights, Talk It Out CBO, Health Rights Advocacy Forum (HERAF), LVCT Health, Hakijamii – ESRC, Centre for the Study of Adolescence Kenya, Afyafrika, THE CRADLE, Feminist for Peace Rights and Justice Centre, Wangu Kanja Foundation (WKF), Center for Reproductive Rights (CRR), Undugu Family of Hope, Trans Alliance Kenya, Western Kenya LBQT Feminist Forum (WKLFF), Health NGOS Network (HENNET), Voluntary Services Organization (VSO) and JINSIANGU.

The drafting process of this submission included capacity building sessions for members whose objective was to inform and educate on the UPR process and its relevance to health rights in Kenya. The development of the 4th cycle recommendations was done through group sessions and interactive discussions with members. All the above activities took place in the period August to September 2024.

This report is based on a submission from the Right to Health Thematic Group which consists of 23 Civil Society Organizations (CSOs).

The submission was developed through capacity-building sessions aimed at educating members about the UPR process and its connection to health rights in Kenya.

ISSUE 1: INADEQUATE FINANCIAL RESOURCING FOR HEALTH IN KENYA

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 GDP[1]. In nominal terms, 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 in nominal terms 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 between the national government allocation to counties in healthcare which is only 35% while 65% remains at the national level[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% of Kenyans were unable to access healthcare under the Fund and had to pay out of pocket for these 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 new framework 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 their 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 model[3]. Inadequate financing for health jeopardizes the actualization of the highest attainable standard of health especially for indigent persons.

[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-vamed-report-kenyas-health-care-crisis-where-is-the-money/

[3]https://www.health.go.ke/kenya-officially-launch-social-health-authority-october-1-202

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 to patients is 42,487 nurses per 10,000 people[4] and 5559 general medical officers for every 10,000 people[5]. The recent protests by doctors and interns have evidenced that there is still a gap in financing as the Ministry claimed it was unable to post the interns due to lack of funding.

Heavy reliance on donor funding and public private partnerships[6] has also greatly affected the priority setting for budgetary allocations for health by the government. 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 by the Ministry of Health 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]

Kenya's health sector also lacks accountability and transparency. According to the National Ethics and Corruption Survey, 2021, the sector ranks as the second most corrupt in the country[9]. An alarming finding in the 2023 report by the Ethics and Anti-Corruption Commission (EACC), was the pervasive corruption in all phases of health sector project management process[10]. Consequently, the scarce financial resources are further depleted owing to poor resource management and misappropriated funds, ultimately eroding public trust and undermining overall service delivery in the sector.

Summary of the existing frameworks

The World Health Assembly Resolution:

- Sustainable health financing structures and universal coverage (2011) - WHA64.9 urges member states to aim for affordable universal coverage and access for all citizens on the basis of 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;

[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

	• Sustainable health financing, universal coverage and social health insurance (2005) - World Health Assembly Resolution 58.33 urges member states to ensure that 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 because of seeking care.
Regional Intruments:	• Abija Declaration 2001 commits African Union countries to allocate at least 15% of their national budgets go to health.
National legal frameworks:	• 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. • 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. • Kenya Health Sector Strategic Plan 2018-2023: Indicator and Target A13 on health financing sets out government targets to increase health budgets progressively. • Kenya Health Financing Strategy 2020 - 2030: Highlights guiding principles such as equity, transparency and accountability. • 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. • 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 made in Kenya since the last review

During the 3rd Cycle in 2020, Kenya accepted the following eleven (11) recommendations[11] 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 on health financing but 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. We believe that these recommendations have been partially implemented as the health policy is a work in progress.

[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.

- **142.194 by Eritrea:** Kenya committed to increase access to health facilities to cover remote areas. Implementation of this recommendation is on track since there have been several facilities built by the government.
- **142.199 (Japan), 142.204 (Singapore), 142.205 (Cuba) and 142.201 (Oman), 142.210 by Venezuela on strengthening universal health coverage** on strengthening universal health coverage. We are persuaded that Kenya is on track to implement the UHC schemes having already passed legislation to lay out a legal framework in the Social Health Insurance Act, Primary Health Care Act, Digital Health Act and Facilities Improvement Financing Act, 2023.

Progress on the Government's commitment to strengthening health financing, is seen in the enactment of the Digital Health Act 2023, the Social Heath Insurance Act, 2023, the Facility Improvement Financing Act, 2023 and the Primary Health Care Act, 2023. The 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 to the Government of Kenya

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.

[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

ISSUE 2: LIMITED ACCESS TO COMPREHENSIVE AND INTEGRATED HIV PREVENTION SERVICES FOR KEY POPULATION (INCLUDING PRISONERS AND SOGIESC PERSONS) IN KENYA

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 in Kenya.[15]

Global AIDS monitoring Report 2024 (UNAIDS) recommends monitoring of clean needles as well as condom distribution to contribute to prevention of HIV in prison settings[16].

Despite the above recommendations and commitments, there are still gaps in providing access to comprehensive HIV services to key populations (including prisoners) and the SOGIESC people. Kenya has an estimated 197,096 female sex workers (FSW), 61,650 men who have sex with men (MSM), 26,673 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 gaps in reaching PWIDs and TG persons 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 countrywide. There was over

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

[16]UKHIS Data MoH 26.08.2024 ; 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).

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]. Such gaps continue to widen due to stigma and other harmful practices such as conversion therapy and violence on KP.[19] A mid-term assessment (MTA) of Kenya's human rights and gender programmes to address barriers to access to HIV, TB and malaria services 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 sectors (Ref 73). The MTA also found infliction of violations against key populations in Kenya by law enforcement and county government officers have been documented by numerous actors.

Although the Kenya Prisons revised HIV workplace policy, 2014[20] and the Kenya Prisons Service HIV prevention Standard Operating Procedures[21] has expanded HIV prevention, care and treatment services, they are silent on access to some prevention services to the prisoners, specifically condoms, PrEP, needles and syringes. As a result of the limited access to comprehensive prevention services in prison settings, the HIV prevalence remains higher in prisons (12-15%)[22] 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]

Summary of the existing frameworks

International frameworks:	• 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 which include people in prisons and other closed settings. • Rule 24 (1) of The Mandela Rules (United Nations Standard Minimum rules for Treatment of Prisoners - UNSMR) highlights the state's responsibility for providing health care to prisoners, ensuring they receive the same quality of care as the general population, free of charge and without discrimination.
National frameworks:	• 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. The Kenya AIDS Strategic Framework (KASF) II, 2020/21 - 2024/25 highlights HIV risks and vulnerabilities among vulnerable populations (which include prisoners). • The Guidelines for HIV and STI Programs for Key Populations in Kenya, 2014 spell out the countries commitment to ensure comprehensive HIV prevention, care and treatment services for key populations.

[18]KHIS Data MoH 26.08.2024

[19]hIbid 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]Kenya Prisons Revised HIV Workplace Policy 2014 (1).pdf

[21]SOP for HIV prevention in prison settings, version 2

[22]17 SOP for HIV Prevention in Prisons Version 2.pdf

Progress made in Kenya since the last review

During the 3rd Cycle in 2020, 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 Plan to End AIDS in Children by 2027. This four-point plan of action aims to end paediatric AIDS by 2027, including through addressing mother-to-child transmission of HIV, Syphilis and Hepatitis.[23]

Other positive developments include;

- **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 22,15)4 from 2020 to 2023[24]. The national stigma index reduced from 45% in 2014 to 23.28% in 2021, although it was highest among key populations.
- **Policy development:** The Kenya AIDS Strategic Framework II (2020/21 to 2024/25) which provides an updated framework on which to anchor the HIV programs was developed together with the HIV Prevention, Care and Treatment guidelines 2022, the HIV Testing Operational Manual, 2022.[25]
- **Inclusion of Prisoners as part of vulnerable groups:** Prisoners were recognized as a high-risk group by the Kenya AIDS Strategic Framework II (2020/21 - 2024/25) which recommended comprehensive HIV prevention services for prisoners. Kenya is currently reviewing the key and vulnerable population guidelines to include guidance on implementation of HIV programs in prison settings.
- **Opioid substitution Therapy:** The first opioid substitution therapy center began operating in 2020. Currently, there are two opioid clinics in two different prisons.

Recommendations to the Government of Kenya

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.

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

[24]HIV Estimates report, 2024.

[25]PLHIV Stigma Index report, 2021

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 to reduce stigma, especially among key populations and SOGIESC persons to ensure they are comfortable seeking health services. Policies should protect the rights of all inmates to access healthcare services without fear of discrimination or mistreatment.

ISSUE 3: GAPS IN TB SERVICE DELIVERY

Discrimination exists against persons with Tuberculosis(PATB) and persons Living with HIV(PLHIV).

Discrimination manifests itself through treatment seeking interactions in health facilities, in relationships with healthcare workers, in administration of TB treatment[26], and also through ineffective laws, policies and administrative actions. There is lack of adequate facilities and shared waiting bays for TB patients forcing them to stay at facilities for prolonged periods of time. This compromises PATBs free access to services, enhances stigma and discrimination. TB patients experience discrimination with healthcare service providers often assuming that they are

[26]Issues reported by TB Champions (Barriers to Health Services) at https://kelinkenya-my.sharepoint.com/:x:/r/personal/okaniapesa_kelinkenya_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.

HIV+. Discrimination is further compounded by healthcare facilities set up of designated areas within the facility for HIV+ patients. Doctors deny TB patients treatment unless they also test for HIV. The treatment cycle of PATB by the directly observed therapy (DOT) is an intrusion of privacy and is discriminatory. This contravenes Article 27 of the Constitution of Kenya 2010.[27]

The government has denied the administration of most recent innovative TB treatments (first-line TB drugs), going 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 discourages 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. All health services, goods and facilities must be available, accessible, acceptable and of good quality. This contravenes the Policy Goal in the Kenya Health Policy 2014-2030.[28]

Summary of the existing frameworks

National legal frameworks:

- **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."[29] This right is given without discrimination directly or indirectly on the basis of race, religion, political belief, economic and social status and the status of one's health[30].
- **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 PATB[31]. **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 members and also to active contact tracing and stigma reduction. Kenya also has a coherent **TB workplace policy**[32] developed by National Leprosy Tuberculosis and Lung Disease Program (NLTP) that has not yet been disseminated to employers nor implemented.

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

[28]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.

[29]Health Act 2017 Sec 4,5

[30]Article 27 Constitution of Kenya 2010.

[31]Public Health Act Cap 242 Section 17(1) and Health Act 2017

[32]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.

Progress made in Kenya since the last review

During the 3rd Cycle in 2020, 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.[33]
- 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 regiments.
- Increased time frames between visits for medical treatments.
- Treatment and special nutrition for TB patients in prison.

Recommendations to the Government of Kenya

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, human rights and human rights breaches in the health care workers policy; on people centered care to eliminate stigma and discrimination.
c. Roll out the previous regiments and progressively introduce the new 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.

[33]See, Facility Improvement Financing Act 2023.

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

The National Reproductive Health Policy 2022-2032, Section 3.4 excludes particularly young women and girls below the age of 21 from accessing or receiving critical reproductive health care services or information.

The policy imposes unreasonable requirements on parental consent prior to the provision of reproductive health services imposing additional barriers for adolescents and young people attaining the highest standard of health.[34] 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.

Persons with disabilities also 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 persons with disabilities. About 80 percent of PWDs do not access quality medical services compared to 50 per cent of the general population.[35]

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

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

There is also a glaring gap in knowledge on HIV prevention among youth aged 15-34. 41% of women and 39% of men had no knowledge on HIV prevention[36]. In 2021, an estimated 66.7% (23,051) of all new HIV infections occurred among women and girls. 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.[37]

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, such as police harassment, societal discrimination and insufficient community-based services prevent them from getting the care they need. In 2021, key populations accounted for 70 percent of new HIV infections.[38]

Summary of the existing frameworks

National legal frameworks:

- **The Reproductive Health Policy 2022-2032[39]** - The Policy contains provisions which are discriminatory[40]such as the exclusion of unmarried women from fertility treatments. Policy provisions also reinforce discrimination against intersex persons, and in some cases, completely exclude them from much needed reproductive interventions.
- **The National Adolescent Sexual Reproductive Health Policy (2015)[41]** - The policy acknowledges challenges affecting young people such as unintended pregnancy among girls in Kenya leading to termination of education (dropping out of school), child marriage and unsafe abortion.
- **The Commitment Plan to End the 'Triple Threat' (2023-2030)[42]** - The policy states 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, 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)** - AYFS Guidelines together with the 2015 National Adolescent Sexual and Reproductive Health Policy, outline the standards for service provision of AYSRH services, the essential package of services, service delivery models and service delivery points that should be implemented and scaled up at the counties to improve the health outcomes of adolescents and youth.

[36]2022 Kenya Demographic Health Survey

[37]Issues reported by TB Champions

[38]https://www.usaid.gov/global-health/health-areas/hiv-and-aids/technical-areas/key-populations

[39]http://guidelines.health.go.ke:8000/media/The_National_Reproductive_Health_Policy_2022_-_2032.pdf

[40]Section 3.4.11, Paragraph 6.

[41]https://tciurbanhealth.org/wp-content/uploads/2018/03/Ministry-of-Health-ASRH-POLICY-2015.pdf

[42]https://nsdcc.go.ke/wp-content/uploads/2024/05/Ending-the-Triple-Threat-Commitment-Plan-2024.pdf

Progress made in Kenya

During the 3rd Cycle in 2020, Kenya accepted the following three (3) recommendations:

- **142.111** by **New Zealand** urging Kenya to end gender-based violence 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 strategies and the Convicted Sexual Offences Electronic Register; establishing specialized sexual and gender-based violence Courts at Kibera and Makadara Law Courts and launching the Training Handbook for the Investigation and Prosecution of Online Child Sexual Exploitation and Abuse. The Government has also adopted the Protection Against Domestic Violence Rules, 2020[43].
- **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, in particular 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 by the State over concerns that it would normalize abortion on demand[44].

In other positive developments, the Government passed the **National Reproductive Health Priority Research and Learning Agenda 2022-2027.** The government also developed a **Menstrual Hygiene Management in Schools; A Handbook for Teachers 2022. Understanding Adolescence; A guide for Adolescents 2022** was also developed as a tool for use primarily by adolescents to navigate the complexities of the adolescence stage.

Recommendations to the Government of Kenya

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, promoting their holistic development.[45]
c. Formulate guidelines on reproductive health education and information for adolescents and young people, PWDs, PLWHIV and key populations in Kenya.

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

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

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

ISSUE 5: GAPS IN MENTAL HEALTH SERVICE DELIVERY

Resourcing for mental health stands at 0.01% of the national health budget. Kenya spends 15 cents vis a vis KES 150 per capita[46].

The National Health Insurance Fund does not offer comprehensive cover to mental health patients and the proposed social health insurance benefits package does not include coverage for severe mental health conditions[47] and excludes high-cost interventions and treatments for complex psychiatric disorders[48].

The lack of disaggregated analysed data, to ensure that mental health policies are evidence-based and tailored to the diverse needs of the population[49] results in a one-size-fits-all approach which often fails to address the unique circumstances of various populations.

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 facilities[51]. These rates are way below the globally quoted minimum psychiatrist to patient ratio is 1:10,000 with a

[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

[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/

recommended pragmatic ratio of 1:8000 for the foreseeable future.[52]

The Mental Health Policy 2015-2030, Mental Health Action Plan 2021-2025 and Mental Health Act 2023 have not been fully implemented. Gaps thereof include; low budgetary allocation of the mental health budget from the current Kshs.15 cents to the Kshs. 150 recommended by WHO, and non-establishment of the Mental Health Commission. Section 226 of Kenya's Penal Code, which criminalizes attempted suicide, has been problematic in addressing mental health crises. Kenya's crude 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 cases[53]. Criminalization hampers efforts to design and implement effective mental health programs.[54]

The 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 and understanding of mental health issues, which fuels harmful stereotypes and exclusion.[55]

Summary of the existing frameworks

National frameworks:

- **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.
- The **Kenya Mental Health Action Plan 2021-2025** outlines key priorities and actions to improve mental health services, increase access to care, and address the stigma surrounding mental health issues. It aims to strengthen the mental health system by integrating mental health into primary health care, expanding community-based services, and improving policy and legislative frameworks.

[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/

Progress made in Kenya since the last review

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. The Act came into force on 11th July 2022. The Act clearly outlines the roles of both national and county governments towards the prevention, care and treatment of persons with mental illness[56].

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] the launch of **National Guidelines on Workplace Mental Health** and the launch of the **National Clinical Guidelines for Management of Common Mental Health Disorders** by the Kenya Ministry of Health[58]. **The Suicide Prevention Strategy 2021-2026,** was also adopted outlining a comprehensive approach to reducing suicide rates in the country.[59] The Kenya National Commission on Human Rights launched an ongoing petition due for judgment in November 2024 to decriminalize attempted suicide[60].

Recommendations to the Government of Kenya

The Government should;

a. Fully implement and actualize the Mental Health Policy 2015-2030, Mental Health Action Plan 2021-2025 and Mental Health Act 2023 by:

- 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 within the healthcare system
- 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.

[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

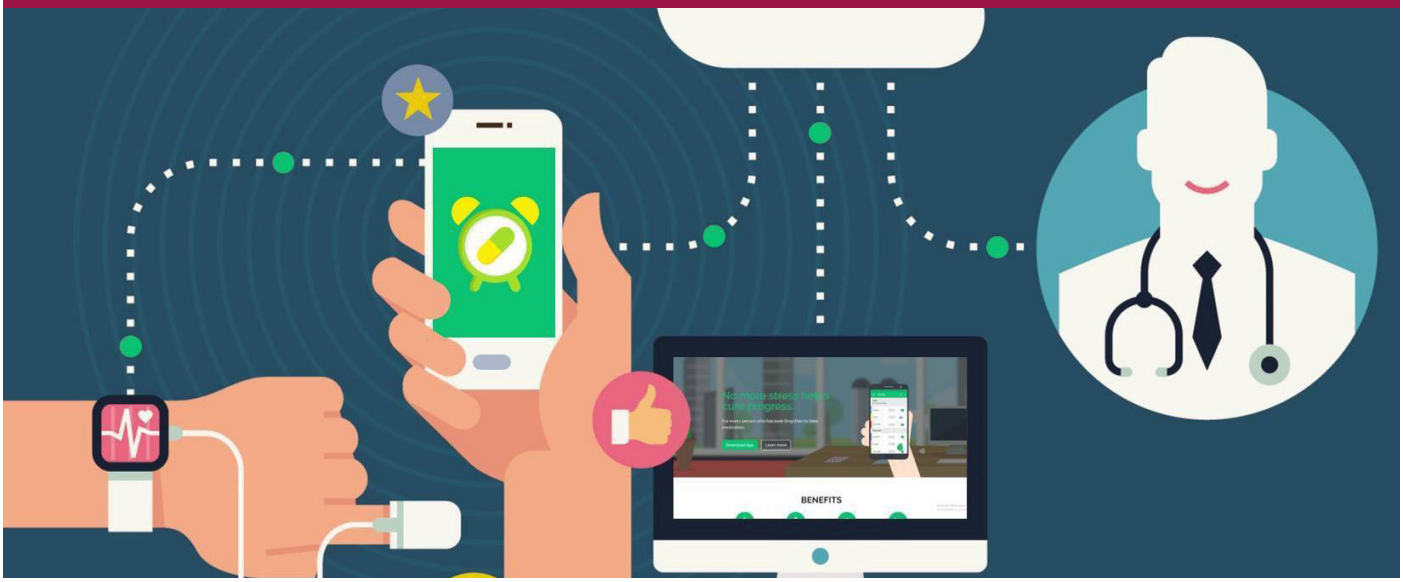
[58]http://guidelines.health.go.ke/#/category/5/457/meta

[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

b. 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 at the national and county level.
c. Repeal Section 226 of the Penal Code that criminalizes attempted suicide to ensure it conforms with the laws on mental health, Constitution of Kenya 2010[62], Health Act and the Convention on Rights of People with Disabilities[63].

ISSUE 6: LACK OF A COMPREHENSIVE REGULATORY FRAMEWORK FOR DIGITAL HEALTH AND RIGHTS



Kenya lacks a comprehensive regulatory framework for digital health and rights thus posing challenges such as fragmented health information systems, data privacy and security and limited access to healthcare, especially in remote areas.

The causes of this issue include regulatory challenges such as inadequate public participation in the implementation or enactment of relevant laws.

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 unregulated. The court's judgement stated that Parliament must undertake sensitization and ensure adequate, reasonable, sufficient, and inclusive public participation in accordance with the Constitution before enacting the said Act. This

[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/.

compliance must be completed by or before 12th November 2024.

The effects of these challenges are significant. There has been 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 quality of care across digital health platforms, as there are no 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.

Summary of the existing frameworks

Regional frameworks:	• **African Charter on Human and Peoples' Rights (ACHPR)** - Article 16 which guarantees the right to physical and mental health, obliging 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 can be interpreted as a violation of this provision, particularly in Kenya, where data protection is crucial in digital health contexts.
National frameworks:	• **Constitution of Kenya:** Article 27 of the Constitution of Kenya protects against discrimination and ensures equality. The gender digital divide and unequal access to digital health services may violate this article. Article 31 protects privacy, including personal data. Article 43 guarantees economic and social rights, including healthcare. Inefficiencies in digital health systems that limit access to care could violate the right to health. Article 46 addresses consumer rights, ensuring protection of health, safety, and economic interests. Inadequate regulation of digital health services could infringe on consumer rights.
National statutes and policies	• The **Data Protection Act (2019)** which safeguards personal data and outlines the responsibilities of data controllers and processors. Weak data protection in digital health solutions breach this law. • 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 in Kenya since the last review

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

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 to the Government of Kenya

The Government should;

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

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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
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17.	Trans Alliance Kenya - TAK	Milimani Estate, Off Tom Mboya Road.	Seany Odero	+254710632755 westernkitgnetwork2015@gmail.com
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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

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23	Undugu Family of Hope	Kibra Katwekera	Evelyn Onyango	onyangoeve1980@gmail.com


KELIN
Reclaiming Rights, Rebuilding Lives

EACHRights
The East African Centre for Human Rights

HERAF
Transforming Health System

PEMA KENYA

Hennet

JINSIANGU


THE CRADLE

Global Initiative
for Economic, Social
& Cultural Rights

AfyAfrika

WANGU
KANJA
FOUNDATION

CENTER for
REPRODUCTIVE
RIGHTS

FEMINIST FOR PEACE, RIGHTS AND JUSTICE CENTRE

TRANS* ALLIANCE

Talk It Out

INDIGO FAMILY OF HOPE

Western Kenya
LBQT Feminist Forum

UMANDE TRUST

Health for All Now!
People's Health Movement
Kenya

Hakijamii
Economic and Social Rights Centre
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