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KENYA

The Center for Family and Human Rights (C-Fam) is a nongovernmental organization that was founded in 1997 and has held Special Consultative Status with the UN Economic and Social Council since 2014. We are headquartered in New York and Washington, D.C., and are a nonprofit, nonpartisan research and advocacy organization that is dedicated to reestablishing a proper understanding of international law, protecting national sovereignty, and the dignity of the human person.

INTRODUCTION

1. In 2020, the ministers and high representatives of 34 countries met to launch the Geneva Consensus Declaration (GCD), in which they committed to promoting four objectives: improve women's health, protect human life, strengthen the family as the basic unit of society, and defend the sovereignty of nations concerning their laws and policies to protect life.¹ Kenya was one of the original signatories of the GCD. This report focuses on Kenya fulfillment of its commitments to human rights in the context of the four pillars of the GCD.

THE GENEVA CONSENSUS DECLARATION

2. The language of the GCD is drawn exclusively from documents agreed by consensus, including core UN human rights treaties, the founding documents of the UN such as the Universal Declaration of Human Rights (UDHR), and major meeting outcomes such as the Beijing Declaration, and Platform for Action and the Programme of Action of the International Conference on Population Development.

PROTECTING WOMEN'S HEALTH

3. At the 1994 International Conference on Population and Development (ICPD), nations pledged "to enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant."² This commitment is echoed in the GCD, alongside reaffirmations of the importance of women's equal rights and their contributions to society, both in terms of education, employment, and civic engagement and through the family. The unique and essential role of women as mothers was recognized in the Beijing Declaration and Platform for Action adopted at the 1995 UN Fourth World Conference on Women.³ Both of these landmark conferences, as well as the subsequent Millennium Development Goals and Sustainable Development Goals, include commitments to reduce maternal and child mortality, and while significant progress has been made around the world, critical gaps remain, especially for those in the poorest, most remote, and resource-deprived areas.
4. According to the Maternal Mortality Estimation Inter-Agency Group (MMEIG), Kenya has seen a reduction in its maternal mortality ratio from 564 to 530 deaths per 100,000 live births between 2000 and 2020, a reduction of 6 percent.⁴ Among sub-Saharan African countries, which as a region have the highest global maternal deaths, Kenya's maternal mortality ratio remains one of the highest, and progress in reducing deaths has slowed and even reversed in recent years. One important factor is inadequate nutrition for pregnant women, causing anemia which is a major risk factor for death due to hemorrhage. One study found that anemia among pregnant women has increased in Kenya between 2016 and 2019,⁵ and according to the World Health Organization (WHO), Kenya has just over one medical doctor per 10,000 people, a figure that has remained below 2 per 10,000 since before 2002.⁶ By comparison, the global average is 17 doctors per 10,000, and the average in sub-Saharan Africa is 2.3.
5. For over a decade, since 2013, Kenya has offered free a free maternal health service policy, which has led to increased uptake of services such as skilled birth attendance by

women who previously would have been unable to afford it. However, the effectiveness of the policy is hampered by insufficient funding, the difficulty of reaching mothers in rural and remote areas, and the insufficiency of good roads to enable timely access.⁷ According to the World Bank, girls complete lower secondary school at a similar rate than boys, (80.8% of girls and 82.2%, respectively) and adult literacy among women in Kenya remains lower than that of men (30.3% and 85.6%, respectively).⁸ However, in both measurements, Kenya is higher than the sub-Saharan African average and higher than the average of lower middle income countries.

6. Abortion is illegal in Kenya except to save the life or health of the mother according to Article 26(4) of the Kenyan constitution⁹ and, according to a 2019 Supreme Court ruling, in cases of rape. The court's ruling did not broadly legalize abortion, nor rule that the unborn child is not a person and has no rights.¹⁰ Article 26(1-2) of the Constitution of Kenya states that every person has the right to life, and that life begins at conception. Public opinion on abortion in Kenya remains largely unfavorable, with 88% of Kenyans saying it should be illegal in all or most cases.¹¹
7. In contrast, saving the lives of mothers and children through uncontroversial, reliable best practices is not politically controversial and would not offend the moral values and religious beliefs held by many Kenyans. Ensuring a sufficient number of health care providers and improving maternal and child health care, including emergency obstetric and neonatal care, requires both financial resources and political will, but would reduce maternal mortality and morbidity as well as improve the health and lives of all Kenyans. Further maternal health gains would be achieved by ensuring adequate nutrition for expectant mothers and improving access to health care in remote and rural settings, including by improving roads. Such a strategy would be in line with Kenya's efforts to achieve its Sustainable Development Goals targets, in keeping with its human rights obligations, and consistent with its affirmation of the Geneva Consensus Declaration. All women, including mothers giving birth and those injured by abortion, will benefit from more robust healthcare systems with more providers and expanded services.

PROTECTING HUMAN LIFE

8. As mentioned previously, abortion remains highly controversial in Kenya, and public opinion does not favor liberalizing the restrictions in the Penal Code concerning abortion.
9. In its previous UPR sessions, Kenya received several recommendations directly relating to abortion: in Kenya's second UPR, it was recommended by Slovenia: "Ensure that women have access to legal and safe abortions, especially in cases of pregnancies resulting from rape or incest."¹² This recommendation was marked as "noted" by Kenya. In the third UPR cycle, Kenya received this recommendation from the Netherlands, also noted: "Immediately implement the High Court judgement in Petition No. 266 of 2015 by reinstating the standards and guidelines on reducing maternal mortality and morbidity related to unsafe abortion and the training curriculum for medical professionals in public hospitals." However, Kenya indicated support for the recommendation from the Solomon Islands to "Reaffirm that the right to life exists from conception until natural death, and redouble efforts to protect it as such."¹³ In the third UPR cycle, Kenya also made recommendations to Benin, Botswana, and Zambia urging them to reject calls to

liberalize their abortion laws, recognize that life begins at conception, and protect unborn children.

10. Kenya's rejection of the recommendations from Slovenia and the Netherlands is entirely consistent with its human rights obligations as set out in the binding human rights treaties ratified by Kenya as well as other international agreements. The 1994 International Conference on Population and Development (ICPD), as quoted in the GCD, states that "any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process." The standard set at the ICPD has been repeatedly reaffirmed by international consensus, including at the adoption of the Sustainable Development Goals. No global human rights treaty ratified by Kenya asserts a human right to abortion, or could reasonably be interpreted as including such a right.
11. Kenya's recommendations to Benin, Botswana, and Zambia to protect unborn life and resist calls to change their abortion laws are consistent with the Geneva Consensus Declaration, which cites UN consensus documents to affirm that abortion is not a human right and that the laws regulating it are solely for individual UN member States to determine.
12. As a signatory to the Geneva Consensus Declaration, Kenya has expressed its position that abortion is not an international human right. It is therefore consistent with this position that Kenya and other members of the Geneva Consensus Declaration coalition reject any and all UPR recommendations to liberalize their abortion laws, as such recommendations are not only inconsistent with national laws and priorities but also outside the scope of internationally agreed human rights standards and obligations.

SUPPORT FOR THE FAMILY

13. The GCD reaffirms the obligations of States regarding the family enshrined in international law, including the definition of the family as "the natural and fundamental group unit of society" and the recognition that it is "entitled to protection by society and the State." Signatories to the GCD further committed to "support the role of the family as foundational to society and as a source of health, support, and care."¹⁴
14. Article 45(1) of the Constitution of Kenya states that "The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State."¹⁵
15. In Kenyan law, there is no recognition of same-sex relationships, and homosexual behavior is illegal. The Constitution explicitly states that adults have the right to marry a consenting person of the opposite sex. In Kenya's previous Universal Periodic Reviews, it has received numerous recommendations to repeal the laws criminalizing homosexual activity and to explicitly eliminate discrimination on the grounds of sexual orientation and gender identity from several countries, and all of these have been marked as "noted" rather than "supported." Kenya has expressed support for recommendations to extend protection from discrimination "to all individuals irrespective of their sexual orientation or gender identity" (Sweden, third UPR cycle), but has rejected calls to explicitly enact protections on that basis. This consistent position Kenya reflects the fact that these issues are not subjects on which global consensus exists, nor are they included as rights in any binding international legal instrument to which Kenya is a party. As summarized in the

Family Articles, a project of the coalition Civil Society for the Family, the right to found a family is based on the union of a man and a woman, and “Relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy.”¹⁶

16. All human beings possess the same fundamental human rights by their inherent dignity and worth, including the right to equal protection of the law without any discrimination.¹⁷ Individuals who identify as lesbian, gay, bisexual, transgender, queer, etc., are protected from violence and discrimination to the same extent as any individual under the equal protection principle in human rights law. However, they are not entitled to special protections based on their sexual preferences and subjective gender identity as such.

NATIONAL SOVEREIGNTY

17. As stated in the GCD, about the legal status of abortion and the protection of the unborn, it is a matter of longstanding consensus that “each nation has the sovereign right to implement programs and activities consistent with their laws and policies.” However, opposition to this sovereign right of countries has become increasingly commonplace in those parts of the United Nations system governed more by expert opinion or bureaucratic oversight than by the standard of negotiated consensus. There is no global mandate to pressure countries to liberalize their abortion laws or expand the categories for non-discrimination as a matter of international human rights law about, for example, sexual orientation or gender identity, and to the extent that mandate-holders engage in such behavior, they do so *ultra vires*.
18. Nevertheless, the frequency of such pressure has only increased toward countries whose laws restrict abortion to protect the unborn, or which maintain a traditional view of marriage and the family, in line with the human rights obligations expressed in the binding treaties they have ratified. Such nonbinding opinions have been elevated in many parts of the UN, although they have never been accepted nor adopted by consensus in the General Assembly.
19. The GCD, by anchoring its every assertion in a document adopted by consensus, reaffirms the centrality of the family, the rights of women and children and the fact that these rights are not upheld by abortion, and the importance of national sovereignty, especially in those places where global consensus does not exist.
20. Unlike other UN human rights mechanisms, the UPR provides a space for sovereign nations to speak to each other and provide encouragement to fulfill their human rights obligations. To the extent that this venue has been used to exert further pressure on countries to liberalize their abortion laws or redefine the family as a matter of national law and policy, global consensus on these matters must be upheld and promoted in the UPR as well, particularly by those countries that have already taken a stand in this regard by signing the GCD.

CONCLUDING RECOMMENDATIONS

21. We encourage Kenya to continue protecting the natural family and marriage, formed by a husband and a wife, as the natural and fundamental unit of society.

22. Kenya should continue to improve maternal and child health outcomes, including by increased investment in the training and provision of medical professionals and expanding access to skilled birth attendants, nutrition, and accessible services for those in rural and remote areas. Following Kenya’s commitments in the Geneva Consensus Declaration, this does not require the inclusion of abortion.
23. Kenya should continue to assert the fact that abortion is not a human right in the context of multilateral negotiations, as well as in the Universal Periodic Review, following the Geneva Consensus Declaration, and continue to call on its fellow signatories to do likewise. Likewise, Kenya should continue to advocate for the protection and respect for all human life, from conception to natural death.

¹ Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family, 2020. Available at <https://undocs.org/en/A/75/626>

² United Nations International Conference on Population and Development. (1994). “Programme of Action of the International Conference on Population Development,” Cairo.

³ United Nations Fourth World Conference on Women. (1995). “Beijing Declaration and Platform for Action” (Annex II, Paragraph 29). Beijing.

⁴ World Health Organization, UNICEF, UNFPA, World Bank Group, and UNDESA/Population Division. Trends in maternal mortality 2000 to 2020. Available at <https://www.who.int/publications/i/item/9789240068759>

⁵ Odhiambo, J.N., Sartorius, B. Mapping of anaemia prevalence among pregnant women in Kenya (2016–2019). *BMC Pregnancy Childbirth* 20, 711 (2020). <https://doi.org/10.1186/s12884-020-03380-2>

⁶ World Health Organization, The Global Health Observatory. Indicator: Medical Doctors (per 10,000 population.). Accessed September 2024, Kenya. [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-\(per-10-000-population\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-(per-10-000-population))

⁷ Masaba BB, Mmusi-Phetoe RM. Free Maternal Health Care Policy in Kenya; Level of Utilization and Barriers. *International Journal of Africa Nursing Sciences*, Volume 13, 2020, 100234, ISSN 2214-1391, <https://doi.org/10.1016/j.ijans.2020.100234>.

⁸ The World Bank, Gender Data Portal: Kenya. Available at: <https://genderdata.worldbank.org/en/economies/kenya>

⁹ Kenya. The Constitution of Kenya, 2010. Available at: <http://www.kenyalaw.org/kl/index.php?id=398>

¹⁰ Mburu, Racheal. High Court Rules Abortion Remains Illegal in Kenya. *Capital News*, June 13, 2019. Available at <https://www.capitalfm.co.ke/news/2019/06/high-court-rules-abortion-remains-illegal-in-kenya/>

¹¹ Fetterolf, Janell, and Clancy, Laura. Support for legal abortion is widespread in many places, especially in Europe. *Pew Research Center*. May 15, 2024. Available at: <https://www.pewresearch.org/short-reads/2024/05/15/support-for-legal-abortion-is-widespread-in-many-countries-especially-in-europe/>

¹² <https://undocs.org/A/HRC/29/10>

¹³ <https://undocs.org/A/HRC/44/9>

¹⁴ Geneva Consensus Declaration, *ibid*.

¹⁵ Constitution of Kenya, *ibid*.

¹⁶ Civil Society for the Family. The Family Articles. Available at <https://civilsocietyforthefamily.org/>

¹⁷ United Nations. Universal Declaration of Human Rights. 1948. Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>