sharp
Solutions for Supporting Healthy Adolescents

RWANDA NGOs FORUM ON HIV/AIDS & HEALTH PROMOTION

Policy Brief

POLICY AND LEGAL ANALYSIS ON GAPS RELATED TO SEXUAL REPRODUCTIVE HEALTH AND RIGHTS (SRHR) IN RWANDA

Funded by the European Union

Contents

Funded by
the European Union

EXECUTIVE SUMMARY

This is an analysis report of gaps in laws and policies related to Sexual and Reproductive Health and rights in Rwanda. It examines the extent to which Rwanda as a country ensures that sexual reproductive health of women and girls is realised, protected and promoted sexual and reproductive health and rights, in particular those women and girls who are most vulnerable.

The analysis is centred at the commitments made by the Government of Rwanda towards the international and regional instruments related to sexual reproductive health and rights. The genesis of the commitment started with 1994 landmark International Conference on Population and Development (ICPD) which was held in Cairo-Egypt, and the 2019 Nairobi Summit on ICPD25. Furthermore,

The Rwandan government pledged to realise, protect and promote a number of sexual and reproductive health and rights, including access to voluntary family planning and access to contraception and others. In this report, five key areas of sexual and reproductive health and rights were selected and analyzed. Section one examines a multitude of legal and policy questions surrounding the treatment for infertility and surrogacy, section two analyses the centuries-old problem deals with the right to access safe abortion, section three discusses the right for adolescent girls to access contraception services. Additionally, section four briefly touches on the right to a comprehensive sexuality education and section five look at the rights of sexual and gender minorities more particularly LGBT Community. The last section is the general conclusion and recommendations.

Funded by
the European Union

1. BACKGROUND

Rwanda has made substantial efforts to improve the health and wellbeing of women by reducing maternal mortality and reaffirming its commitment to promoting and respecting women's health and rights by ratifying various human rights instruments that protect women's rights. These dates as early as in September 1994, a landmark International Conference on Population and Development (ICPD) was held in Cairo-Egypt, in which 179 governments agreed that human rights, including reproductive rights, were fundamental to development and population concerns and a programme of action was adopted that called for all people to have access to comprehensive reproductive health care, including voluntary family planning/contraception and safe pregnancy and childbirth services (UNFPA 2014). These commitments were followed by the Nairobi Summit on ICPD25 in November 2019 which provided an inclusive platform for a broad range of stakeholders to support a set of global commitments complemented by national commitments that would collectively advance the ICPD agenda. The commitments were cantered on achieving:

1. Zero unmet need for family planning information and services,
2. Zero preventable maternal deaths,
3. Zero sexual and gender-based violence and harmful practices against women and girls, and
4. Access for all adolescents and youth, especially girls, to comprehensive and age-responsive sexual and reproductive health services.

At the regional level Rwanda is also a signatory to the African Charter on the Rights and Welfare of the Child (the African Children's Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol). Articles 3 and 2 of the African Children's Charter and the Maputo Protocol, respectively, prohibit all forms of discrimination against children and women. Reading from the provision 21 and 5 of the African Children's Charter and Maputo Protocol, respectively, also obligates States Parties to take action to eliminate all harmful practices, including all forms of violence, abuse and intolerance against women. The African Children's Charter also enshrines the principle of the `best interests of the child

which dictates that, as a general rule, interests of the child will be given consideration over any other conflicting interests. Provision 14 (1) of this Charter further provides that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health (Maputo protocol 2004).

Additionally, the Maputo Protocol contains a number of specific health and reproductive rights, including:

(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;

(d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;

(e) 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;

(f) the right to have family planning education.

The Protocol further obligates States Parties to take all appropriate measures to:

a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
c) Protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy

Funded by
the European Union

endangers the mental and physical health of the mother or the life of the mother or the foetus.

In addition to the above treaty obligations, the Government of Rwanda has also received recommendations from international human rights bodies that call for specific actions to realise, promote and protect sexual and reproductive health and rights.

Despite the progress the above progress, the sexual and reproductive health sector still has issues related to the low capacity of a large number of service providers, stigma and discrimination associated with service provision, and restrictive legal and policy frameworks that hinder young people's access to services without parental consent and gaps in the supply chain management which affect the availability of commodities. The Nairobi Summit recalled for the various stakeholders, including non-state actors, to support national governments in implementing the Commitments. It is against this call Rwanda NGOs Forum on HIV/AIDS and Health Promotion (RNGOF) with support from the EU consortium funding sought to analyse gaps in laws, policies related to sexual and reproductive health in Rwanda and provide guiding recommendations that requires action.

2. SPECIFIC OBJECTIVES

For the purposes of this assignment, the Consultant was guided by the following objectives;

(a) Conduct a comprehensive literature review of existing policies, laws, and related to sexual and reproductive health in Rwanda,

(b) To identify and analyse existing gaps in policies, laws, related to sexual and reproductive health in Rwanda,

(c) Basing on identified gaps phrase out actionable recommendations for enacting or revising policies and laws.

3. METHODOLOGY

This analysis is qualitative in nature. It mainly consists of an analytical and critical doctrinal and desk review of existing laws, policies with reference sexual reproductive health and rights exclusively in Rwanda. It entails reviewing the existing documents on laws and policies in the country, examine carefully the gaps in provisions of the laws that contravenes the international and regional human rights standards.

4. THE STRUCTURE OF THE REPORT

Save the general introductory part, and Recommendations this report contains five whereas the first section focuses on legal and policy questions surrounding the treatment for infertility and surrogacy, section two analyses the centuries-old problem deals with the right to access safe abortion, section three discusses the right for adolescent girls to access contraception services. Additionally, section four briefly touches on the right to a comprehensive sexuality education and section five look at the rights of sexual and gender minorities more particularly LGBT Community.

5. LEGAL AND POLICY ANALYSIS IN RELATION TO TREATMENT OF INFERTILITY AND SURROGACY

Treatment options for female and male infertility depend on the cause. They generally include surgery, Ovulation Induction for women, and Assisted Reproductive Technologies (ART). However, the most common contested issue in this sector is Assisted Reproductive Technologies (ART) is the term used for medical procedures that involve manipulation of sperm and ova or embryos using medical technologies with the goal of producing a pregnancy (WHO Infertility, 2020). It includes Artificial Insemination, In-vitro Fertilisation (IVF), Intracytoplasmic Sperm Injection (ICSI) and Surrogacy (FIGO Guideline on surrogacy 2022).

Surgery and Ovulation Induction do not raise any significant legal problems, except for the requirement of valid consent from the patient. Simply put, consent to treatment means that a patient must give permission before they receive any type of medical

Funded by
the European Union

treatment, test or examination (FIGO 2019). For consent to be valid, it must be voluntary and informed, and the person consenting must have the capacity to make the decision. Consent is voluntary when the decision to either consent or not to consent to treatment is made by the person, and that person is not influenced by pressure from medical staff, friends or family (Women and infant 2022).

In regards to the Assisted Reproductive Technologies that has been provided under article 254 (1) of Law nº32/2016 of 28/08/2016 Governing Persons and Family (Family law 2016), it states that reproduction can occur naturally or through the use of technology 'medically assisted. In short, procreation through Assisted Reproductive Technologies is as a matter of principle allowed in Rwanda. But due to the ambiguity and lack of clarity in detailed manner about the issue, it affects poor and vulnerable women seeking the services related to assisted reproductive technology which raises many legal questions.

Since it began over thirty years ago, surrogacy has become a viable alternative means of reproduction and is utilized by an increasing number of infertile and same-sex couples. There is no specific legislation on surrogate motherhood in Rwanda. Yet, since the technology became available locally, people have started increased interest in seeking the services; the need to legislate on this matter quickly became obvious. The first legal question that arose immediately after the technology was introduced in Rwanda was whether the agreement between the surrogate mother and the intended parents (Intermediate Court 2020) is not contrary to public order and therefore not enforceable by courts, doctors and hospitals. This legal dispute was brought before the Primary Court of Kicukiro in 2020. In this case, Mr X and his wife Y had agreed with her biological sister, a married woman, Miss Z (with the consent of her husband) to carry on a pregnancy on their behalf through the surrogacy technology. The couple was married since 2013 but could not have a child for almost seven years. The doctors had diagnosed that the wife would never conceive through natural ways or Artificial Insemination. Doctor advised them that the only procedure through which they could have a child was surrogacy.

Funded by
the European Union

The couple sought for the court to declare the surrogacy agreement valid and that it was not contrary to public order and Rwandan law. The Primary Court of Kicukiro rejected the applicants' request, averring that what article 254 (1) of the Family Law accepts assisted reproduction between the married couples exclusively, not assisted reproduction through a third party (surrogate) woman. On appeal level, the Intermediate Court reversed the ruling and the court further emphasized that technology is not static, that it evolves and that nothing prevents modern technologies, including gestational surrogacy, from being brought into the scope of article 254 (1) (Family law 2016). The Court also noted that laws cannot be passed each time a new technology in the field of human reproduction is invented. The Court thus held that the surrogacy agreement between the two families was not contrary to Rwandan public order and laws and should thus be enforceable.

6. LIMITED ACCESS TO SAFE ABORTION SERVICES IN RWANDA

This section aims at exploring the protection of sexual reproductive health services on access to safe abortion that enshrines under the national, regional and international legal frameworks. The work under this section highlights domestic laws that guarantee safe abortion, regional instruments, abortion is regarded as a taboo and controversial issue on the African continent, including in Rwanda (African tradition 2017). Societal norms label abortion as immoral and shameful and this leads to no public discourse or limited media coverage about abortion and public discussions on abortion are not centred on the human rights perspective (Ipas 2014).

The Government of Rwanda has made two paramount reforms on its Penal Codes in 2012 and 2018 respectively, the 2012 penal law extended access to abortion to four conditions including rape, incest, forced marriage and for therapeutic conditions and the 2018 saw the removal of the court order requirement and allows women to access safe abortion under extended five conditions such as the pregnant person is a child; the person having an abortion became pregnant as a result of rape; the person having an abortion became pregnant after being subjected to a forced marriage; the person having an abortion became pregnant as a result of incest up to the second degree; in cases where carrying the pregnancy to term puts at risk the health of a pregnant person or the

foetus (Penal Code 2018). For smooth implementation of the law, the government further enacted a Ministerial Order to guide medical doctors on the conditions to be met before conducting any abortion procedure (Ministerial order on abortion 2019).

Despite the progressive legal reforms on reproductive rights including abortion, there is a lack of public awareness on legal exemptions for abortion which prevents women from knowing their human rights concerning access to safe abortion. This limited knowledge is perpetuated by a general societal taboo around sex (WHO 2019). Often women are given misleading information because people do not discuss sexual matters. When women know their rights they make informed choices and they can better claim their sexual reproductive rights including abortion through domestic, regional or international laws (RBC 2014).

Moreover, the Ministerial Order on abortion only recognizes medical doctors as competent people to perform abortions (Ministerial Order 2019). This procedure continues to raise concern for poor vulnerable women living in rural areas currently facing challenges in accessing safe and legal abortion services. Though the ministerial order does not require women to produce evidence in seeking safe abortion services (Art 2 Ministerial Order 2019), the law regulating Community-Based Insurance in its article 13 (2) states that apart from cases of emergence treatment, all other health care services should start at the health center and requires transfer if the person seeking health services is going to the hospital yet the Ministerial order on abortion states women seeking abortion are not required to provide medical transfer. All the above challenges require that both ministerial order and law on mutuelle should be reviewed to accommodate access to friendly abortion service for women.

7. LIMITATION OF ADOLESCENTS' ACCESS TO SRH INFORMATION AND SERVICES IN RWANDA

Rwanda has made tremendous progress on the protection of children including adolescent girls and boys against abuse and harassment. This has been done through establishment of numerous laws, policies and strategic actions to ensure these laws and policies are implemented. However, issues of sexual and reproductive health and

rights among adolescents have been scourge in a way that both the law on human reproductive health of human of 2016 (art 7 of Reproductive Health) and the law on medical professional liability insurance law of 2013 (art 11 of the law on Patient's Rights) bar adolescent boys and girls to access health services without parental consent.

The above stated provisions under the laws subject adolescents under the age of 18 to parental consent for access to sexual reproductive health services and information, which makes it difficult for these adolescents to prevent teenage pregnancies and other sexual reproductive health challenges. Yet the statistics show that the current DHS (Demographic Health Survey (DHS) 2020), teenage mothers are more likely to experience adverse pregnancy outcomes and are more constrained in their ability to pursue educational opportunities than young women who delay childbearing. The proportion of teenagers who have begun childbearing rises rapidly with age, from less than 1% at age 15 to 15% at age 19 (DHS 2020). The Comprehensive Sexuality Education (CSE) that was initiated in upper primary schools by the government of Rwanda in 2016, still lacks precision and information that could empower young people to advocate for their sexual and reproductive health and rights (SRHR). Data from the current DHS report indicate that the contraceptive prevalence rate among married women varies with age, rising from 53% among women aged 15-19 to a peak of 70% among women aged 30-34 before declining to 46% among women aged 45-49.

Furthermore, a Comprehensive Sexuality Education (CSE) in their public schools, which lacks precision and complete information in a way that empowers young people to advocate for their sexual and reproductive health and rights. In addition, teachers are often ill-equipped to deliver the curriculum as intended. They are therefore not likely to have the desired impact due to social barriers (UNFPA & RBC 2018). Additionally, there has not been any evaluation study that demonstrates the impact of CSE since its establishment in 2015.

According to the National Study of Family Planning Barriers in Rwanda, their study showed several reasons youth do not use Family Planning methods at lower levels

Funded by
the European Union

including: a lack of youth-friendly services in certain areas, poor relationships between youth and healthcare staff, lack of parental support and financial barriers (DHS 2020). Some studies illustrate that the law is among the barriers for adolescents to access contraceptives, they are subjected to parental/guardian consent. Furthermore, unsafe abortions are common among young women and have lasting social-economic effects. This puts women's rights at considerable risk of clandestine abortions, and incidences of unsafe abortions are high (Ipas 2014). Such challenges require that the Government of Rwanda comply with the FP2030 Commitments on promoting the sexual reproductive health of adolescents through reviewing the restrictive laws.

8. COMPREHENSIVE SEXUALITY EDUCATION IN SCHOOLS (CSE)

The United Nations Population Fund (UNFPA) defines "comprehensive sexuality education" as a right-based and gender-focused approach to sexuality education, whether in school or out of school that aims to equip children and young people with the knowledge, skills, attitudes and values that will enable them to develop a positive view of their sexuality, in the context of their emotional and social development (International Women Center 2022).

Comprehensive Sexuality Education (CSE) can be understood as age-appropriate education about human rights, human sexuality, gender equality, relationships and sexual and reproductive health and rights through the provision of scientifically-accurate, non-judgmental information. Building the capacity of adolescents to make their own decision and choices on their reproductive health, which is shaped by numerous social, cultural and economic circumstances, is vital. Some of the contributing factors to adolescent pregnancy and child mortality are beliefs, attitudes and norms in the community about adolescent sexuality that put them at risk for poor health outcomes (Noori et al, 2022).

At the Global level, research shows that 45% of first-time adolescent mothers are themselves children as they are aged less than 18 years. There is no dispute that transition to adulthood requires children and young people to become informed and equipped with the appropriate knowledge and skills to make responsible choices in their

social and sexual lives. CSE enables young people to protect and advocate for their health, well-being and dignity by providing them with a necessary toolkit of knowledge, attitudes and skills (UNFPA Report 2022).

At the international level, the United Nations Committee on the Rights of the Child (CRC Committee) recommended to countries that they improve adolescent reproductive health care education policies. The CRC Committee has also observed that the education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values (UNESCO 2009).

9. THE RIGHTS OF SEXUAL AND GENDER MINORITIES IN RWANDA (LGBTIQ+)

Despite the existence of laws and policies that protect human rights, sexual and gender minorities (lesbian, gay, bisexual, and transgender [LGBT] people) across sub-Saharan Africa (SSA) are socially excluded from full participation in society (Haste p 2015). While LGBT rights are gaining momentum and increasingly being highlighted in the global arena, several SSA countries have formulated punitive laws against sexual and gender minorities. However, Rwanda is one of the few African countries that has assented to international conventions and continental frameworks that protect the human rights of all citizens including LGBT populations (Logie C 2012).

Rwanda has recorded a positive progress to ensure equality of all persons including LGBTI, from the constitution of 2003 and revised in 2015 that provides for non-discrimination based on gender, sex or any other kind and other legal document including the Medical professional liability insurance law that enshrines equality in healthcare treatment that was enacted in 2013. In addition, Rwanda signed in 2011 a Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people. Therefore, most of the laws and policies that Rwanda has established enshrines provisions that promote equality LGBTI community

inclusive, the challenge is within the implementation and enforcement of these laws and policies.

Despite the above progress, stigma and discrimination, inadequate legal protection against gender-based violence, inadequate enforcement of the law criminalizing hate speech which targets transgender persons, and arbitrary arrest and detention are among the factors that lead to ineffective access to health services which increases their risk of HIV infection. This is due to the fact that programmatic priorities under the National HIV and AIDS Strategic Plan 2018-2024 only considers MSM groups being on HIV risks among other LGBTI groups (NSP 2024). This does not therefore correlate with the fact that Rwanda government has signed the UN joint statement ending acts of violence and related human rights violations based on sexual orientation and Gender Identity in 2011.

10. KEY DECISION MAKERS TO REACH WITH ADVOCACY AND ADVOCACY STRATEGIES

Direct engagement with Members of Parliament through Commissions, engaging the Ministry of Justice, Ministry of Health, Ministry of Gender and Family Promotion, Rwanda Biomedical Center (RBC), the Law Reform Commission and Security Organs

11. RECOMMENDATIONS

- ✓ Review article 7 of the law N°21/05/2016 of 20/05/2016 relating to human reproductive health to lower the age of consent for adolescents below the age of 18 years old to access sexual reproductive health services without parental/guardian consent
- ✓ To allow task-shifting and add mid-level health providers among qualified professionals to provide abortion services at the health centers
- ✓ To remove the requirement of a medical transfer from a health centre to a hospital as a precondition for the Community-Based Health Insurance users to cover the costs of abortion services at the hospital

- ✓ The government should provide alternative health facilities in areas whereby the Catholic Church operates hospitals that does not provide safe abortion.
- ✓ Review article 11 of the Medical Professional Liability Insurance law to accommodate the room for adolescents to access health services including sexual reproductive health without parental consent.
- ✓ Government and civil society organizations should conduct awareness campaigns among LGBT people to ensure that they know their human rights and legal protections available to them, as well as LGBT-related policies.
- ✓ Advocate for, enact and implement comprehensive anti-discrimination legislation and policies that address all forms of direct and indirect discrimination including sexual orientation and gender identity.
- ✓ Conduct a thorough review of the contents of the existing CSE to harmonize it with international and regional human rights in the context of sexual and reproductive health,
- ✓ Identify synergies and linkages between the provision of CSE in the formal education sector and out of school provision.
- ✓ Review the Ministerial Order n°002/MoH/2019 of 08/04/2019 determining conditions to be satisfied for a medical doctor to perform an abortion to afford women full access to safe abortion
- ✓ To take all necessary legislative, administrative and other measures to ensure that public and private health insurance schemes cover all medical procedures and treatments needed by LGBTQI individuals, including body modifications related to gender identity
- ✓ Review the legal and policy framework to define clearly adolescence.
- ✓ Expedite the adoption and implementation of the Prime Minister's Order determining the role of other institutions in activities related to human reproductive health.
- ✓ Expedite the adoption of the Ministerial Order on curriculum on reproductive health

Funded by
the European Union

NOVEMBER
2023