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Summary of the Kenya Reproductive Health Bill (2019) and Contentious Issues

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1. Background

Reproductive Health Bill (2019) was introduced into the Senate by Susan Kihika, a Senator from Nakuru, through a Kenya Gazette on 20th November 2019.

Since then, the Bill has undergone two readings and the third is due in August when the Senate comes back from Recess. After the third reading, if passed, the bill will be taken to the National Assembly for debate and if passed, the President will sign it into Law and it will become the Reproductive Health Act 2020.

2. Parts of the Bill and Contents

Part I: Preliminary - Definitions, Purpose of the Bill and the role of the county and national Government.

Part II: Access to Family Planning – States that every person has a right to reproductive health care services; importance of counselling and consent by the client.

Part III: Assisted Reproduction - States that every person has a right to assisted reproduction, to be provided by a trained and licensed health care provider gives conditions for Assisted reproduction including Surrogacy.

Part IV: Safe Motherhood – Addresses who gives safe motherhood services. The Permanent method (Sterilization) should be given only with consent of the person involved.

Part V: Termination of Pregnancy – This will be offered under 3 circumstances- Emergency, life and health of the mother is in danger, and/or in the case of severe congenital malformation of the fetus. It stresses the importance of consent of the woman, the minor and in mental illness. Post abortion care and record keeping are also listed here as necessities.

Part VI: Confidentiality- Reproductive Health Information is confidential.

Part VII: Reproductive Health of Adolescents – Adolescents should have friendly age appropriate Reproductive Health Services.

Part VIII: Miscellaneous information

The Bill covers HIV/AIDS and Female Genital Mutilation (FGM).

It also requires the Cabinet Secretary to make regulations to carry out provisions of the Reproductive Health Act once signed into an act of parliament.

It gives requirement for a notice to be given by parent or a commissioned person, of a child after being born.

3. Memorandum of Objects and Reasons for the Bill

The Bill seeks to implement the following:

- i. Article 43 (1) a of the constitution - every person has a right to the highest attainable Standard of health including the right to reproductive health.
- ii. Part 2 of the fourth schedule of the Constitution - requires county governments to promote county health services including primary health care.

- iii. Section 6 of the Health act,2017- states that every person has the right to Reproductive Health Care.

4. Contentious Issues

a. Issues brought by the Religious Leaders (Catholics and Muslims)

No.	Claims/Misinformation	Fact	Notes
1.	“The Bill introduces abortion for any reason and on demand.”	There are 3 indications for abortion in part V of the Bill (to save life & preserve health, in case of emergency and in case severe congenital malformation of the foetus making it incompatible with life after birth). A clinical provider has to authorise women’s access to abortion according to the aforementioned reasons	Kenya Constitution 2010 article 26(4) allows abortion under four circumstances, including rape and Health Act 2017 part II- 6 (1) right to reproductive health and 7 (1) right to emergency treatment.
2.	“Kenya will introduce abortion up to Birth.”	Abortion is the termination of pregnancy when a foetus cannot survive outside the mother’s womb (typically 20 weeks in Kenya). The current guidance in Kenya does not authorise abortion up until birth, it is up to 16 weeks	This is also the World Health Organization of the definition of abortion.
3.	“The Bill will introduce Comprehensive Sexuality Education that will teach children Masturbation.”	Part VII of the Bill proposes Friendly Age Appropriate Reproductive Health Services. There is an abundance of evidence that access to RH information and critical thinking about gender norms delays sexual debut and contributes to reduced teenage pregnancy rates. The AU has cited CSE as	In 2013 Kenyan Government signed a declaration by Ministers of Education and Health from 20 East and Southern Africa (ESA) countries in which it committed to scaling up comprehensive Sexuality Education

		one of the top 5 most effective interventions in HIV transmission reduction amongst young people, and a UNESCO 45 country study of CSE found that every country reported improved ASRHR outcomes because of CSE	beginning in primary school.
4.	“International NGOs Like Ipas and Planned Parenthood are supporting the Bill and have paid the movers of the Bill.”	The Bill is a private Members Bill and is not supported by the NGOs.	Members of the Senate or National Assembly are free to introduce any Bill or Motion.
5.	“Life Begins at Conception and every Human being deserves the right to life.”	The Bill proposes that the Termination of pregnancy be done in case of emergency, if the Mothers life or health is in danger, and/or in the case of severe congenital malformation incompatible with life.	The Bill is supported by the Constitution and the Health Act in its proposal for Termination of Pregnancy.
6.	“87 % of Kenyans don’t support abortion on demand.”	No one supports abortion on demand. The Bill proposes only 3 essential indications for Termination of pregnancy which are when the Mothers Life & Health is in danger, in case of emergency and in case of severe Congenital Fetal abnormalities).	Termination of pregnancy is only indicated for medical reasons to save the mother’s life or when the fetus is so much affected that it cannot survive after birth and not on demand.
7.	“The Bill will erode molarity by encouraging and promoting abortion.”	Unsafe abortion and its complications are one of the five leading causes of death among Kenyan women and we must address it.	By ignoring abortion, we are burying our heads in the sand.
8.	“Giving adolescents and youth too much information will spoil them, and they will adopt western way of life.”	All sexually active women and girls have a right to universal Sexual and Reproductive Health services including accurate	The Kenya Government has published the National Guidelines for the Provision of

		<p>information, services, and the ability to protect themselves from potentially life-threatening diseases or pregnancy. Without the bill or access to CSE we are seeing an increased number of teenage pregnancies. Our current strategy to protect young people is not working.</p>	<p>Adolescent and Youth Friendly Services in Kenya (2016) which needs to be disseminated.</p>
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b. Ministry of Health Statement

On 1st July 2020, the Ministry of Health, through the Cabinet Secretary, released a statement addressed to the Senate stating that the Contents of the Bill are not aligned to the Ministry of Health Reproductive Health Policy 2020-2030.

On 15th July 28 Kenyan Civil Society Organizations and NGOs requested the Cabinet Secretary to call a meeting to harmonize the Reproductive Health Bill and the Reproductive Health Policy.

The Senate also called some organizations to give evidence of their claims and agreed to have another three days for any one to come up with their proposals before the senate resumes on 4th August when the Bill will be discussed and voting on it done.