ADVANCING REPRODUCTIVE HEALTH IN KENYA.
A HUMAN RIGHTS PERSPECTIVE.

BY

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DECLARATION

I Sewe Mercy Adhiambo declare that, this is my original piece of work and to the best of my knowledge, it has never been partially or fully submitted in any University or institution for any award. I personally take full responsibility for any errors, mistakes and misinformation in this work.

Signature.....

Date ..26th August.....2011.

Sewe Mercy Adhiambo.

APPROVAL:

This research has been submitted with my approval as the University Supervisor.

MS. ARYANYUJUKA ANNET WINFRED

Supervisor

Signature.....

Date.....

DEDICATION.

This work is dedicated to my sister Miss. Paullyne Achieng Sewe whose love, support and interest throughout my life has helped me achieve an education to this level and an interest in what I was doing that enabled me to endure and still remains a source of inspiration in my heart. You're my life long source of strength.

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Duty of writing this project was so enormous, but its success was through efforts from various individuals who participated in different ways enabling me to achieve my goal.

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I also wish to acknowledge services provided to me from various libraries and institutions. Special thanks goes to KIU library and Kisumu county officials among others for providing me with relevant information regarding this study. I Am also grateful to my colleagues; Austin Sekeyian, Beth Kui, Nelson Kyalo, and all Law students of KIU class of 2011 for their constructive criticism and moral support in writing this report and other scholarly projects over the past four years.

I wish to express my heartfelt thanks to my sister Paullyne Achieng Sewe whose financial assistance and moral support enabled me to pursue my education. I also extend my gratitude to fiance, Jeff Kephas Otieno and my daughter, Jasmin Imani Otieno for their overwhelming support and humble time, not forgetting my extended family and relatives for their support and prayers in my academic struggle.

MAY THE ALMIGHTY GOD REWARD THEM ABUNDANTLY

LIST OF TABLES

LIST OF ABBREVIATIONS

AMREF- African Medical Research Foundation

CEDAW- Convention on Elimination of all forms of Discrimination Against
Women.

CESCR- Committee on Economic Social and Cultural Rights.

CRR- Center for Reproductive Rights.

ICESCR- International Covenant on Economic Social and Culture Rights

ICCPR- International Conference on Civil and Political rights.

ICPD- International Conference on Population development.

KDHS- Kenya Demographic Health Survey

.KMA- Kenya Medical Association.

KIPPRA- Kenya Institute of Public Policy Resolution and Analysis.

.KSSPAS- Kenya Service Provision Assessment Survey.

UDHR- Universal Declaration on Human Rights.

.UNCPD – United Nations Conference on Population Development.

WHO- World Health Organization

LIST OF CASES.

1. *Bravery Vs Bravery* (1954)3ALLER 59.
2. *R Vs Smith* (1974) 1ER 376

LIST OF LEGISLATION.

1. *Abortion Act* of 1967 (United Kingdom)

2. Alma- Ata Declaration, *Report of the International Conference on Primary Health care*, Alma-Ata, 6-12 September 1978 in: World Health Organization, "Health for All" series, No.1, WHO, Geneva, 1978.

3. International Covenant on Economic Social and Cultural Rights General Assembly resolution 2200 (xxi) of 16 Dec.1966.Entry in to force 3 January 1976, in accordance with article 27.art.12

4. International Covenant on Civil and Political Rights of 1966, G.A. res. 2200A (XXI), UN Doc [U.N. Doc. A/6316]

5. The Committee on Economic Social and Cultural Rights; twenty-second session of Geneva 25 April-12 May 2000. Agenda item 3 on the substantive issues arising from the implementation of the international covenant on economic social and cultural Rights, 11/08/2000. General comment 14, UN Doc. E/C.12/2000/4.
Report on reproductive health research. No 50 part1 of 1999. 8–12 February *1999* to review *progress* towards the goals of ICPD. UN Doc.WHO/FRH/WOM/98.2.

6. United Nations Charter of 1946, (The Charter that established the United Nations). Charter *of the* United Nations *signed at San Francisco on 26 June* 1945. Entered into force, 24 October *1945.*

7. Universal declaration on Human Rights. Adopted by the United Nations general assembly on 10 Dec. 1948

8. World Health Organization Constitution; The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States (Off. Rec. World Health Org. 2, 100), and entered into force on 7 April 1948.

9. World Health Organization (WHO) fact sheet No 31.

ABSTRACT

Sexual and reproductive health are among the most sensitive and controversial issues in international human rights law, but they are also among the most important. Reproductive health cannot be separated from the right to life. When reproductive health rights are violated, lives are lost.

Women, youths and the children, mostly bare the brunt of ill reproductive health. In Kenya for instance many women still lose their lives due to reproductive health complications. The still births, maternal and infant mortality rates are still unacceptably high.

The state has also relaxed on its duty to actually fulfill, protect and respect the reproductive rights of the people. There is no proper legislation that provides for a clear roadmap on how to handle reproductive health cases.

Reproductive health has now been widely accepted as part of human right. It is therefore imperative that all the doctrines applicable to all other human rights be applied to the reproductive health accordingly.

The reproductive health rights need not to be pegged to other factors such as religious and cultural relativism most of which are harmful.

Rights need to be guaranteed, regardless of the feelings by other interested parties.

This research therefore attempts to explore the applicability of the human rights law to reproductive health

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CHAPTER ONE

1.1 GENERAL INTRODUCTION

The disadvantages women suffer in health may be closed as injustices in the light of Human Rights.[1]For instance, material morality can be explained as being due to immediate cause of lack of maternity care, underlying causes of exhaustion and anemia associated with short intervals between births and structural causes such as poverty.[2]In the cause of immediate maternity care, the right to health care would require obstretic services and access to information.[3] In the case of underlying causes of exhaustion and anemia association with short intervals between births, the right to education, among other rights would enable people become literate and thereby learn of health benefits of child spacing and having fewer children.[4] In the case of structural causes such as poverty, states maybe legally responsible if they allocate national wealthy disproportion to expenditure that denies population their basic needs.[5] Epidemiology and other data shows how lack of basic obstretic services, antenatal care and related reproductive health services result to unnecessary high rates of maternal mortality and mobility.

Unsafe abortion procedures can endanger life, health and future fertility. In other developed countries and states, there are laws that provide for safeguards on abortion. For instance in the United Kingdom, abortion can only be procured by a

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[1] See, report by Human Rights Programme.Progress in the reproductive health Research (No 50 part 1 of 1999).
[2] Ibid.
[3] See International Covenant on Economic, social and cultural Rights (ICESCR).Resol 2200 A of the General Assembly (XXI of 16 Dec 1996) at 12.2 (9) also see, para 14 of the General comment 14 of the Committee on Economical, social and Cultural Rights. (CESCR).
[4] Ibid.
[5] See position paper on enhancing and operationalising Economic, social and Cultural Rights in the Constitution of Kenya, Issue No 1, (Kenya National Commission on Human Rights) 2006, Para 29, pg 20.

registered medical practitioner.[6] There is even a reported case where abortion was alleged to have been carried out privately and incompetently.[7] The essence of the case against the doctor was that he had not formed an opinion in good faith as required by the Act. Even to the registered medical practitioners, it is a requirement of the law that while carrying out or procuring an abortion, it has to be within the ambit of the act.

In Kenya however, there is no abortion legislation in place. This means that there is no legal procedure that governs the act of abortion unless the in the opinion of the practitioner, the life of the mother is at risk. Abortion in Kenya is largely prohibited with only basic exceptions under the penal code.[8] And the new Constitution **Article 26**(3) a person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law. **(4)** Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.[9]

The essence of this research is to highlight areas of women reproductive health disadvantages expose them as rights and not mere aspirations.

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[6] See Abortion Act of 1967 (United Kingdom) at S 1 (1).
[7] See *R Vs Smith* (1974) 1 ER 376.
[8] Cap 63 (Laws of Kenya), at S.S 158,159,160, 214 $ 240. Also see the Pharmacy and Poisons Act (Cap244 laws of Kenya) at S. 38 that has provision an advertisement of abortion drugs/medice.
[9] 2010 Constitution of Kenya.

1.2 STATEMENT OF THE PROBLEM.

The international Human Rights law and convention provide for the right to health that also includes the right to reproductive health.[10] Women in Kenya are still deprived of the greater freedom to determine their own health and life choices within families and communities. Women still, are deprived of the adequate opportunity to learn about their health and health rights they still do not have access to accurate information about their health as well as high quality women centered care. Other than knowledge, majority of women in Kenya still don't have greater access to education and economic opportunities to be able to afford their own healthcare.

Women in Turkana Kenya, a semi arid area ravaged by poverty and high child mortality for instance still believe to this day and age that there is no such thing as family planning. That a woman is supposed to give birth 'until her womb runs out of Eggs'. Such is the mentality they have been brought up with and while the men sit around sipping on their local brew, a woman oblivious of her right to access proper treatment, right to have a say on the spacing of the children they carry each year struggle with babies suckling on both breast. Such is the extent of the neglect in advancing reproductive health and education thus the need reason this research was done.

Adolescent girls have not been given the opportunity to develop the life skills so that they can act to protect their own health. Men too

[10] See Para. 2 of General comment 14 (The committee on Economic, social and Cultural rights, 200) in the sense that. "The human right to health is recognized in numerous international instruments. Article 25.1 of the Universal Declaration of Human Right affirms. "Everyone has the right to a standard of living adequate for the health of himself and of his family including food, clothing, housing and medical care and necessary social services." The international convection on Economic, social and cultural rights provides for the most comprehensive article on the right to health in international human rights law including the right to reproductive health care.

have not been made aware of their role in expanding women's choices in household and communities.
The new constitution Under the Bill of Rights Prohibits abortion except in exceptional circumstances.[11]

It is therefore the lack of promptness and neglect on the reproductive rights that amounts to violations of the right of women as contained in the covenant on Economic Social and Cultural Rights that Kenya has indeed ratified.[12]The problem on the need to act by the Kenyan government to come up with Series of legislation in order to curb the rising infant and maternal mortality rates is the reason this research was done and since there is a problem there is need to evaluate the problems with a view of suggesting solutions.

The lack of legislation protecting women's rights to reproduction runs so deep as to influence every sense of their being in most communities in Kenya. Female genital mutilation has been the basis for many forums and debates. This practice is so brutal and inhumane that it sometimes leads to death. Among the Kisii in Kenya for instance ,after infibulations [the removal of the whole clitoris and adjacent labia minola and the sides][13], sometimes the girls legs are tied using a rope for weeks so that when the wound heals the entry to the virgina would be the size of a matchstick. Unbelievable as that sounds it actually happens in real life cases and the reason is so that the husband gets

[11] Supra note 9 above
[12] See Para. 52 of the General Comment 14 (The committee on Economic, social and Cultural Rights, 2001) in the sense that, "violation of the obligation to fulfils occur through the failure of state parties to take all necessary steps to ensure the realization of the rights to health. Examples include the failure to adjust or implement a national health policy designed to ensure the right to health for everyone. Insufficient expenditure or misallocation of public resources which result in the non-enjoyingment of the right to health by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right to health at the national level e.g. by identifying right to health indicators and benchmarks; the failure to take measures to reduce the inequitable distribution of health facilities, good and services, the failure to adapt a gender sensitive approach to health and failure to reduce infant and maternal mortality rate.

maximum satisfaction during sex.This leads to many unanswered questions. What happens when the same girl is giving birth? What about the woman's sexual needs? Who is fighting for her? The pain that comes with that and other complications coupled with lack of proper health care during pregnancy and while giving birth are unimaginable. These practices exist because of the lack of the much needed legislation on reproductive health. The mere fact that such state of affairs exist to this day is not only degrading to women in general, it is also discriminatory, illegal, inhuman and urgently need addressing.

"The same rights to decide freely and responsibly on the number and spacing of their children, and to have access to the information, education and means to enable them to exercise these rights."

Reproductive rights, according to the ICPD, also include the right "to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents." This aspect of reproductive rights can also be derived from the Women's Convention.

"Clandestine, illegal abortions are being done in Kenya by the thousands but court cases dealing with this crime are very few. Unfortunately these unsafe abortions are the procedure that lead to high rates of abortion related mortality in Kenya" Raymond Mutura.[14]

[14] Raymond Mutura is the president of the voice of the family in African international (Accessed from Saturday Nation, January 24, 2009.pg 7.

Recently residents of Mathare, a slum in Nairobi were shocked by one of the incidences where seven babies were stashed in a paper bag and thrown into an open sewer[15]

Many quarters have called for the legalization of abortion and the passing of a legislation to safeguard the procedures of reproductive health. Dr Adrew Suleh[16] observed that those opposed to the Reproductive Health and Rights Bill[17] were doing so from a moralistic point of view and that the reproductive issue was medically very serious.

Doctors, through the (KMA), support the Bill on reproductive health and rights and say that maternal deaths at around 3,000 annually would be drastically reduced if the Bill is passed. [18]
The issues of reproductive health are so sensitive and should be taken with a lot of seriousness. The problem is that this does not happen.

1.3 BACKGROUND INFORMATION

1.3.1 Historical background of reproductive health and rights in Kenya

Other than the normal procedures of healthcare, Kenya like most third world countries has no elaborate, solid laws that relate to reproductive health and rights. Clearly reproductive health rights remain to be more of aspirations.
Several attempts have however been made towards the realization of reproductive health and rights.

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[15] See Report by Billy Muiruri, Samwel Kumba and Peter Mwai (Accessed from the Saturday Nation, Jan. 24, 2009) pg 7.
[16] Dr Adrew Suley is the Chairman of the Kenya Medical Association (KMA) (Report Accessed from the Saturday Nation. Jan 24, 2009)pg 7.
[17] The Reproductive Health and Rights Bill, 2008 (Bill drafted by the Kenya Chapter of women lawyers and the coalition on violence against women to be tabled soon).
[18] Supra note 12 above.

In the year 2002, Kenya was in the helm of reviewing her constitution. Issues on reproductive health did not miss either. In the Bomas Draft.[19] Reproductive health was provided for under the Bill of rights.[20] The Wako Draft [21] that was subjected to referendum and rejected by Kenyans also had provision for the reproductive health under the Bill of right.[22] Amendments were made to the draft that later led to the passing of a new Constitution 1n 2010.It provides that abortion is illegal except where in the professional opinion of a doctor the life of the mother is at risk.[23]It is also suffice to note that many a people in Kenya strongly believed that this constitution legalized abortion, a fact that almost led to this constitution not being passed. This is the mentality that comes with issues that affect women. Everyone in every aspect of the law work at curtailing the rights of women.

1.4 Status Review

Advertisement in the recognition promotion and protection of Reproductive health has been accelerated in the after math of the international conference on population and development[24]and the United Nations fourths world conference on women[25]many countries have already reassessed and reformed their policies, laws and practices in the light of these conferences or are in the process of doing so.

In the light of social and economic rights, the absence of laws and legal framework provides loop holes as far as policies are concerned.

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[19] THE Draft Constitution of Kenya; 2004: as adopted by the national constitutional conference on Martin 15th 2004. And verified and confirmed by the constitution of Kenya Review Commission.
[20] Ibid. Article 60(2).
[21]See the proposed new constitution of Kenya. (Drafted and published by the attorney. General pursuant to section 27 of the constitution of Kenya Review Act (Act 3A of the laws of Kenya).
[22] Ibid. Article 60(2).
[23] See note 9 supra.
[24] See Report by the International Conference on population and Development (ICPD Cairo, 1994).
[25] See the United Nations Fourth world conference on women (held in Beijing, 1995).

Recently, a bold step was taken by Kenya chapter of women lawyers and the coalition on violence against women in a significant step towards the advancement of reproductive health and rights. The organization participated in the drafting of reproductive health and Right Bill[26] in the month of June 2008. This can be legal framework on the issues of reproductive health including laws on abortion.

The objects of the Act and its purposes have been set as follows.[27]

a) To provide framework for the protection and advancement of reproductive and health rights by all persons,

b) To promote women's health and safe motherhood,

c) To achieve a rapid and substantial in maternal morbidity and mortality,

d) To ensure access to quality and comprehensive provision of family planning services,

e) To prevent female genital mutilation and to ensure those who have undergone it receive the necessary medical care to address their reproductive health consequences.

f) To make provisions for adolescent reproductive health.

This can be seen as the boldest step ever made by Kenya as a country to ensure that women receive adequate reproductive healthcare as a right.

The researcher took the view that unless the provisions for the reproductive health rights are ensued in the constitution; it will still be easy to violate them. This is because these kinds of rights are seen to be those that compel the state to act for the purpose of their fulfillment. There should be a mechanism to compel the state to ensure that these rights are not only granted but also implemented.[28]

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[26] Supra note 14.
[27] See s 2(a-f).
[28] See Cecile Fabre, constitutionalising social Rights. 6J polite Phil. 263 (1998), at 280 – 283.

If the bill is passed by the legislators, it will be a stepping stone towards the realization of these rights.

It should be noted that International Human Rights are the key elements to achieving a better Reproductive health world wide.[29]

1.5 JUSTIFICATION FOR RESEARCH.

Reproduction health and rights is still one of the most controversial areas of health law. This is because there are a lot of interest in the issues of reproductive health that includes abortion or termination of pregnancy, female genital mutilation or cutting, the reproductive health of the adolescents and access to contraception and family planning.[30]

This research looks into the reproductive health care more objectively as a matter of Rights and not subject to any other practices and beliefs visioned in a culture, religion, politics or creed.

The researcher felt that this is the best opportunity to look into the issue of reproductive health and rights since this is the time that the legislature is in the process of providing a legislation on the same, now that the Reproductive Health and Rights Bill[31] is awaiting tabling in parliament.

Because there are several comments both for the Bill and against the bill, it is also the right moment to critically evaluate certain commentaries and arguments on the same.

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[29] See Report in the position paper presented to the ICPD (International Conference on Population Development) 15th forum in The Hague, Netherlands, 8 – 12 February 1999. (Held to Review Progress towards the goals of ICPD).

[30] See report by Human Rights Programme progress in reproductive health research No, 50 part 1 of 1999.

[31] Supra note 14.

It is however, the view of this research that the comments and arguments propagated by any quarters, either for or against legislation on the issues of reproductive health and rights only shows how sensitive the subject is.

The need to carry out this research was also motivated by personal experiences of the devastations that people close to the researcher have gone through because of lack of proper maternal health, friends who have had to resort to illegal and shoddy doctors to secretively have abortions .Risking their lives and having to live with the horror of where, how and the unqualified people who carry out these procedures.

This research was also motivated by the fact that while other areas of study covering different topics have been done over time with some even at risk of being over done, not very many people have had keen interest in this topic thus the researcher's motivation to carry out the research.

1.6 RESEARCH OBJECTIVES

1.6.1 Short term objective

The short term objective of this research is to highlight and give insight on reproductive health as rights and to help other people change their perception on such kind of rights. This will help change people's perspective on issues such as abortion family planning and other areas of women health disadvantages, and start viewing them as rights, not subject to any other ideology moralistic, political, and cultural or creed.

1.6.2 Specific Objectives

a) Coming up with a reasonable justification on why the reproductive health rights be granted as rights, as contained

in the International Convention or Economic and Social and Cultural Rights[32]as ratified by Kenya.

b) To bring out the fact that the state has a role to play in the realization of the reproductive health rights, regardless of views from other stakeholders and interested parties such as the politicians, the church and culture.[33]

1.6.3 Overall Objectives

The overall objective of this research is to point out the fact that regardless of other views, dissenting or for the reproductive health rights, it should be understood that the failure to grant the rights on reproductive health or form policies and legislation on the same amount of violation of the rights of women. And of which is punishable as provided for the international human Rights law.[34]

1.6.4 Objectives of the Study

1.6.5 General Objective

To investigate how lack of reproductive health rights have been ignored in Kenya and its impact on women and families in general.

1.7 HYPOTHESES

i. Advancement of the reproductive health would mean low maternal mortality rate hence improvement of livelihood of women in the society.

ii. International human rights laws are enough provisions to ensure that reproductive health and rights are adhered to.

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[32] Supra note 3.
[33] Supra note 10.
[34] See General Comment 14 (Art 12) adopted 12 may 2000, Para 59. On remedies and accountability on the rights to health incase of violations.

iii. Failure to formulate policies and put in place legislations to protect women from disadvantages they face as far as reproductive health is concerned, amounts to human rights violations.

iv. Third world countries such as Kenya are able to grant the right to health regardless of their economic status.

v. The realization of the reproductive rights would be a step towards the achievement of health right goals as set in the International convention economic, social and cultural Rights.

1.8 Research Questions.

i. Will advancement of reproductive health lower maternal mortality rate ?

ii. Are the International Human Rights laws enough to ensure adherence to reproductive health?

iii. Is failure to formulate policies that cater for reproductive health a violation of Human Rights?

iv. Can third world countries such as Kenya afford the implementation of reproductive health?

v. Will the realization of reproductive health be a step in fulfilling health rights set in International convention Economic ,Social and cultural Rights?

1.9 Scope of the Study

The research targeted Kisumu County located in Nyanza province in western Kenya .The study has basically been limited to examining the reproductive health issues that are not addressed as rights but looked at as mere aspirations. Problems faced by women in this county as regards reproductive health. The researcher sought to find out from the women about their partners attitudes, contributions and views concerning reproductive health. Samples comprising of local government officials, women in the community,

a few selected men will be used diagonally to conduct the research with effective use of questionnaires to get relevant data.

1.10 Limitations of the study.

The researcher had various problems that were associated with this study. These included but were not limited to the following.

a) **Cost.** The study involved traveling to various parts of the county to collect the data, this needed money for transportation, meals and also included accommodation.

b) **Time.** This study needed a lot of time and dedication that the researcher could not have in the time frame given. It is also suffice to note that this study was running concurrently with the researchers studies therefore '*robbing*' the little time she had.

c) **Illiteracy.** Majority of the population being illiterate posed problems such as language barrier, inability of the people to effectively communicate their feelings, their feeling that if they speak about personal problems they were exposing their families to ridicule, the people also had a feeling that they would have material gain for the information they give and therefore expected to be given money and so on.

1.10.1 How these problems were solved.

While the solutions were not absolute it helped to some extent in alleviating these problems. The researcher is of Luo origin and the county largely being comprised of luos, language barrier to some extent was not a problem. In the instances that it was the researcher used translators to effectively communicate. The problem of cost was sorted out by seeking help from sponsors to assist by providing them with a budget.

The researcher also used cheaper means of transport like *'BodaBoda'*[35] to commute so as to reduce cost. The problem of illiteracy was solved by using interpreters and employing reassuring tactics to assure respondents of the confidentiality of this study. The respondents were also made aware that it is for their long term gain that their plights be brought to the public eye and therefore while monetary benefit might not be available now, this study will go along way in helping to bring to light their plight.

Conclusion.

The study had some shortcomings but these were solved as indicated.

[35] (Boda Boda is a cheaper alternative to using Buses or private means of transportation like taxis. It is the use of motorcycles which are cheaper)

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This particular chapter is all about the literature related to reproductive health and all the international instruments pertaining thereto. The researchers' views have also been highlighted in the study after accessing libraries, print. Journals, internet and relevant materials that other authors have written on.

Reproductive Health, HIV/AIDS and Gender Perspectives in East Africa: Understanding the Oromo Culture (Paperback)

by Ibrahim Elemo (Author)

Description

. Understanding the sexual and reproductive health philosophies that necessitated the existence of practices such as polygamy, widow inheritance and culturally tolerated extramarital sexual partnership would greatly contribute to the endeavors of all stakeholders and actors working to tackle HIV, RH and Gender related problems in similar pastoralist communities such as the Somali & Afar people.

According to Education Training of Women and the Girl-Child, 10th January – 4th February (2005). Sponsored by UNESCO and UNICEF. It becomes awkward and difficult for girls to catch up with their friends when they return to schools after the ceremony of circumcision. Girls are usually taught to be subservient to their husbands and to happily accept their subordinate status. Girls after initiation tend to be interested in boyfriends and sexual relationships rather than school studies. Pregnancy and early marriage are the second most common reasons why girls leave school. In Zambian culture, pregnancy and child bearing are regarded as the ultimate fulfillment of womanhood, particularly when accompanied by

marriage. Stereotyped gender roles have been strongly maintained. The researcher agrees with this view.

Odaga and Henerald (1995). Maintained that the socio-economic and socio-cultural factors influencing female empowerment at the household and community levels are closely interwoven. These factors have led to low investment in female education and hence, low societal demand for female education. This has deteriorated the development level in such societies since development is inclusive of all members of the society.Socio-economic factors have also impacted on family planning and reproductive health. The writers maintained that low development can be directly associated to lack of empowerment of women in the society and the researcher agrees with this view. The writers however failed to include how deeply rooted cultural practices such as circumcision have impacted on the girl child in the community. The research has highlighted these factors.

U.N. Doc. A/6316. International Covenant on Civil and Political Rights. The Optional Protocol to the International Covenant on Civil and Political Rights was adopted and opened for signature, ratification or accession by the same act of the United Nations General Assembly, (resolution 2200 A (XXI) of 16 December 1966), that adopted the Covenant itself. Both the Covenant and the Optional Protocol entered into force on 23 March 1976.

2.2 Reproductive Health: The Rights Perspective

Modern Era of rights that can be applied to women's health may be said to have started with the adoption of the United Nations Charter.[36] The Charter requires the United Nations to encourage

[36] See the United Nations Charter of 1946 (The Charter that established the United Nations).

respect for the principle of equal Rights by promoting universal respect for and observance of human rights and fundamental freedoms for all without distinctions as to sex.

The universal declaration on Human Rights, adopted by the United Nations General Assembly,[37] condemned discrimination on grounds of sex and set of network of rights relevant to the promotion and protection of health. The declaration was developed into international human Rights laws by two general covenants adopted by the general assembly in 1966 namely, the international covenant on civil and political rights [38] and the International covenant on Economic, social and cultural rights.[39]

2.3 Reproductive health rights and termination of pregnancy

In Kenya, there is no legislation on termination of pregnancy except for where the life of the mother is at risk. It is however, undisputed that termination of pregnancy or abortion is one of the reproductive health disadvantages that woman face, especially when they cannot live with the pregnancy due to several reasons, whether medical, social or for the benefit of the feotus.

The law that relates to termination of pregnancy largely prohibits the act with only refer rations on protecting the life of the mother, if the pregnancy poses danger.[40]The law that relate to abortion in Kenya can be traced in the penal code and the pharmacy and poisons act.[41] The bill on reproductive health and rights[42] on the other side has

[37] See the universal declaration on Human Rights. Adopted 1948.
[38] See the International Covenant on Civil and Political Rights of 1962 adopted in 1966 by the General assembly.
[39] See the International Covenant on Economic, social and cultural rights of 1966.
[40](Cap 63 Laws of Kenya) Ss. 158,159,159,160,214 & 240.
[41] (Cap 244 Laws of Kenya) S.38 that prohibits the advertisement of abortion inducement medicine.
[42] Supra note 14.

several provisions and circumstances in which pregnancy may be terminated.

The bill provide that termination of pregnancy for the purpose of the Act means the separation and expulsion, by medical or surgical means of the contents of the uterus of a pregnant woman before the fetus has become capable of sustaining an independent life outside the uterus.[43]

Part IV of the reproductive health and rights bill provides that a pregnancy may be terminated if a trained and certified healthcare provides, after consultation with pregnant woman is of the opinion that:[44]

i. The continued pregnancy would pose a risk to the woman's physical and mental health, or
ii. There exists a substantial risk that the fetus would suffer from severe physical or mental abnormality,
iii. Where the pregnancy resulted from sexual assault, defilement, rape or incest,
iv. The pregnant woman on being a mentally disordered person is not capable of appreciating pregnancy,
v. The pregnancy is as a result of contraception failure,
vi. Extreme social deprivation.

The bill also provide that the statement by a pregnant woman to the medical practitioner concerned as proof of report of the incidence is adequate to prove that the pregnancy is as a result of sexual assault, rape, defilement or incest.[45]

[43] The Reproductive Health and Rights Bill 2008, Part 1 article 6.
[44] Ibid S. 13(1) – (I – VI).
[45] Ibid S. 13(2).

The bill also provides that termination of pregnancy shall only be carried out by a healthcare service provider in a facility authorized by the Medical and Research Practitioners Board (MRPB).[46]

The above provisions are majority to curb the backstreet abortions that have resulted to high levels of maternal mortality. The KMA (Kenya Medically Association)[47]

Has set the maternal mortality to 3000, annually, a number they say, would reduce drastically if abortion was permitted in some circumstances and if the bill on reproduction health was passed.

2.4 Reproductive Health Rights for the children and adolescent

International law provides that there is need to take measures to reduce infant mortality and promote a healthy development of infants and children.[48]

State parties should provides a safe and supportive environment for adolescents that ensures the opportunity to participate in decision affecting their health, to build life skills, to acquire appropriate information, to receive counseling and to negotiate the health behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth friendly healthcare. This respects confidentiality and privacy and includes appropriate sexual and reproductive health services.[49]

2.5 Safe Motherhood as a Right

The provision for the reduction of stillbirth rate and infant mortality and for healthy development of the child may be understood as

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[46] S. 13(13).

[47] See report by Billy Muiruri, Samuel Kumba and Peter Mwai (Accessed from Saturday Nation, Jan 24, 2009) pg 7.

[48] See general Comment 14 (Art 12) adopted 12 may 2000. Para 22 read together with art 24 1 of convection on the rights of the child adopted.

[49] Ibid Para 23.

requiring measures to improve child and maternal health, sexual and reproductive health services, including accesses to family planning, pre-and – post-natal care, emergency obstetric services and access to information as well as to resources necessary to act on that information.[50]

The reproductive health bill provides that the minister in consultation with the board and other heath regulation bodies shall make regulations to facilitate the provision of affordable maternal care in all health institutions.[51] The bill also provides for the category of persons authorized to offer maternal care they are, medical practioners, clinical officers, nurse's community health workers and that any person offering maternal care shall operate in an environment that ensures adequate medical attention.[52]

2.6 Access to contraceptives and family planning as a right

It is in order to say that in Kenya, contraceptives are readily available in the pharmacies but are very expensive. It has always been a practice in modern developed countries like United Kingdom that family planning is a right and that everyone has the right to choose whether to have it or not.

In United Kingdom for instance, in the issue of family planning and contraception, it is a practice that, there is no need to consult clients' particular even when clients are married. In the case of *Bravery vs. Bravery.*[53] Lord Denning stated that sterilization of a married person should not be and has been held to be bad law even if at the time it was a good one.[54]

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[50] See general Comment 14 (Art 12) adopted 12 may 2000.
[51] See S.12 (1).
[52] S. 9(I – IV) and S. 10.
[53] (1954) 3 ALL ER 59.
[54] The other Judges in the court of appeal expressly declined to adopt Denning's position see also, Norrie, K, Family planning practice and the law(Aldershot: Dartmouth, 1991) pg 11- 13.

It is however important to note that to date, there can be several arguments as far as family planning and the use of contraception in Kenya is concerned. It is also important that other arguments about family planning and termination of pregnancy be included in legislation. When this is done, the argument about them being against public order morality or contrary to religious beliefs may be contained. For Example, in the united kingdom at one stage it was argued that family planning would be unlawful because clients were not legally permitted to consent to it. However, no such public policy argument can be advanced because contraception expressly comes within the national service act.[55]No argument can be advanced because it is provided for in legislation.[56]

METHODOLOGY.

2.7 Introduction

This chapter basically focuses on the method that was used to carry out the study. To this effect the researcher examined the research design, the area of the study. Study population and the methods that will be used to collect data.

2.8 Research Design

The study is qualitative in nature aimed at giving detailed account to the phenomenon, tacking note of the views, feelings and attitudes of the people towards reproductive health.

2.9 Population Size Area

The target population of the research were the local residents of Kisumu County. The sample included the community leaders, men, women, youths, district officials, teachers and religious local leaders

[55] Of 1977 (United Kingdom) S.5.
[56] See Gillick W. Norfolk AHA (1985)3 ALL ER 402,425 per Lord Scarman.

of the area under study.

2.10 Sampling and Sampling technique

The sample comprised 30 respondents in total and was divided as follows: 5 local community leaders, 3 religious leaders, 4 elders (2 men and 2 women (both aged the same)) 6 teenagers and 12 women who have children.

The researcher employed three sampling techniques for carrying out the research, these includes:

Multistage cluster sampling, Quota Sampling, Purposive Sampling.

2.10.1 Sampling procedure

Simple random sampling this is whereby each individual is chosen from a larger population. Each individual is chosen randomly and entirely by chance. This was employed inform of rotary, without replacement till the number of respondents were got. For instance:

Under Multistage Cluster Sampling This is a sampling technique which involves dividing a larger population into relatively smaller subdivisions and then randomly selecting a number of these small areas (clusters) which may involve towns within a county two basic steps are involved. Listing and sampling of the study population. The list of the primary sampling unit comprised local community/leaders, elders and parents. These were compiled and stratified for sampling. The sample of those units were selected and then listed.

Quota Sampling this addressed issues of repetitiveness where matrix description of the characteristics of the target population was used to know what proportion of the population is mostly affected by the lack of reproductive health rights, what population falls under various age groups and the educational level of the population.

Purposive Sampling of the population was based on the basis of researchers own understanding and knowledge of the population being studied, its elements and the nature of the research designed especially in the initial design of the questionnaire where the researcher wished to select the widest variety of respondents to test the broad applicability of the research questions that have been designed.

2.11 Methods of Data Collection

2.11.1 Instruments of Data Collection

The researcher employed two or more types of instruments:

a) Questionnaires

This is a means of eliciting the feeling, beliefs, experiences, perceptions or attitudes of some sample of respondents. It could be structured or unstructured.

These were provided to the relevant subjects or respondents who were predominantly literate and filled them by expressing their opinions on the problem matter concerning Reproductive health rights issues in the county.

These were provided to the relevant subjects or respondents who were predominantly literate. They were filled by expressing their opinions on the subject matter concerning reproductive health rights.

The questionnaire consisted of both opened ended and closed ended type of questions.

b) Interview

An interview is a direct face to face attempt to obtain reliable and valid measures in form of verbal responses from one or more respondents. It is a conversation in which the roles of the interviewer and the respondent change continually.

In this method, oral interview was used to collect information about phenomenon and interview was administered to the district officials, local community leaders, religious leaders, parents and the youths. This method was supported by question guide or interview guide. The purpose of this tool was to give more data. That is, the respondents yielded qualitative data resulting from free expression.

The advantage of using interview was that: it allowed the interviewer to clarify questions; allowed the informants to respond in any manner they saw fit; and was a means of obtaining personal information, attitudes, perceptions and beliefs.

On the other hand, the disadvantages of using interview were that unstructured interviews yielded data too difficult to summarize and evaluate and structured questions were rigidly standardized and informal. Training interviewers, sending them to meet and interview their informants, and evaluating their effectiveness all added to the cost of the study.

However, the researcher over came these disadvantages by determining when to interview and considered source of biasness. This gave the respondents enough time to respond to the interview freely. In addressing the challenges and shortage of funds, the researcher adequately solicited enough funds from friends and family to meet the cost of the study.

In this method, oral interview was used to collect information about the phenomenon and interview was also administered to the district officials, local community leaders, religious leaders, parents and teenagers. This method was supported by question guide or interview guide. The purpose of this tool was to give more data. That is, the

respondents yielded qualitative data resulting from free expression.
The researcher used in-depth interviews to get an in-depth analysis of the experiences of various respondents. Most of the experiences are personal for example respondents who have undergone Female Genital Mutilation or abortion would only talk freely in private sessions. This is especially so since using a focus groups did not work well with the population due to the need for privacy and confidentiality

2.11.2 Sources of Data

Mainly two sources of data collection was used to collect data these are:

a) Primary Source

This involved data collection through interviewing respondents and submission of questionnaires to be filled by the respondents who are literate.

b) Secondary Source

Here data was collected from previous reports on the research problem. The major source of data here were libraries, internet, text books and journals to analyze the problem.

2.12 Data Processing

Data was collected from subjects using two methods that are quantitative and qualitative. The quantifiable data was then coded and laid out in sections according to what they addressed. Qualitative data was arranged and organized according to the variables of the study which were identified. The researcher will present the data in table and that will facilitate better analysis of the issues at stake.

2.13 Data Analysis

The researcher organized and realized meaning from the data collected during interview, session, running notes, administering questionnaires and information on new themes that was collected to ease the process of analyzing data.

The data collected through observations interviews and questionnaires was quantitatively analyzed.

Conclusion.

Data was collected from correspondents and analyzed in various ways as shown above

CHAPTER THREE

FINDINGS DATA PRESENTATION, DISCUSSIONS AND ANALYSIS

3.0 Introduction

This chapter presents analysis and discussions of the results of the study. The chapter deals with these results as per the themes and research questions which are presented in chapter 1.

3.1 Profile of the respondents

In order to capture the respondents' profile, the following factors were considered: Sex , age, educational level, categories of the respondents and also marital status of the respondents. The following figure indicates their presentation.

3.1.1. Gender of the respondents

Table 1 Sex of the respondents

Sex of the respondents	Frequency	Percentage
Male	8	27
Female	22	73
Total	**30**	**100**

This figure indicates that there were more female respondents than male. More specifically 73 per cent of respondents that participated in the study were females compared to 27 percent of male respondents. This is so because women are the most affected when it comes to issues of reproductive health. Women are the ones who undergo abortion, they are the ones who take contraceptives, they carry the pregnancies and experience every form of reproductive health. As

compared to the male counterparts the researcher found that women suffer most from the lack of legislation and failure to recognize these reproductive health issues as matters of concern and the need to recognize them as fundamental human rights.

3.1.2 Age Group of the Respondents

By asking age group of the respondents, the researcher sought to find out the age bracket in the community that is most affected by issues of reproductive health. The responses of the population were summarized in the following table:

Table 2 Age Group of the Respondents

Age Group	Frequency	Percentage
0-14	2	6
15-24	6	20
25-34	8	27
35-44	9	30
Above 45	5	17
Total	**30**	**100**

From this figure we can deduce that the group most affected by reproductive health or lack of is the age of 25-34.This is due to the fact that most of the respondents in this age set are married and most of them have children at that age. The age of 15-24 were largely affected by issues of abortion due to unwanted pregnancies and female genital mutilation. It is also suffice to note that the age set of 0-14 although slightly affected with female genital mutilation and early pregnancy, the age set seemed to the researcher too naïve and ignorant of these issues that even the mere mention of them was

viewed offensive, therefore the bid for quantifiable data was deprived though it stands that children as young as 10 years of age were found to have been subjected to female genital mutilation.

3.1.3 Level of Education of the Respondents

The researcher found out the education level of the respondents as summarized below:

Table 3 level of education of the respondents

Level of education	Frequency	Percentage
Illiterate	2	7
Primary	16	53
Secondary	7	23
Degree	5	17
Total	**30**	**100**

Source: Field Data`2009

From this figure it can be deduced that illiterate respondents represents 7 % , followed by those with primary education representing 53 %; secondary 23 %; and those with degree represent only 17 %.

The people who suffer the most devastating problems related to reproductive health are mostly the people with little education. This is due to the fact that they are unaware of their rights to decide the spacing of their children, they consider themselves subordinate to their husbands and therefore let the husbands decide every aspect of their lives and they are the lot that adhere to degrading cultural practices such as female genital mutilation, early marriages and practice taboos associated with contraceptives. The learned lot to

some extent are aware of their rights and some have made decisions regarding reproductive health based on this knowledge. For instance, one of the female respondents who had gone up to high school told a story of how her decision to use contraceptives and determine the spacing of her children led her husband to divorce her since he wanted her to give birth to a boy and kept pressing her to get pregnant every other year.

The research also found that most educated respondents had shunned Female Genital Mutilation as backward and instead preferred taking the girls to school rather than marrying them off at a tender age as the case would be had they been circumcised.
The educated teenagers also sought help when parents who were mostly illiterate attempted to force them to be circumcised. However it is important to note that the practice of circumcision is still prevalent among the kisii speaking members of the community.

3.1.4 Marital Status

The marital status of the respondents varied and was summarized in the table below:

Table 4 Marital Status

Marital Status	Frequency	Percentage
Single	5	17
Married	15	50
Widowed	7	23
Divorced	3	10
Total	**30**	**100**

From this figure, it can be deduced that the marital status of respondents varied, 50% of respondents were married, 10% were divorced 17% single; and 7% widowed.
According to the research findings, a good number of residents in the community are married. This is mainly related to cultural factors for instance value given to children, early marriages, school drop outs and so on.

Most single people interviewed were found to have been affected in one way or the other by issues of reproductive health. most of them had procured illegal abortions in backstreet clinics that had put their lives at risk. One of the respondents got pregnant at the age of fifteen. Fearing the repercussions that would accrue from that and the hostility that would have come from her parents she choose to have an abortion. A friend took her to a home of an unqualified man who was known to carry out the abortions in the area. With crude unsterilized tools and excruciating pain with the girl screaming out the abortion was done. Few weeks later the bleeding did not stop and she had to be rushed to hospital in a critical condition. There, they found a rotting wound in her womb and had to remove her womb. This little girl will never know the joy of having a child. She is barren and describes herself as a man walking in a woman's body..."but even a man would be able to father a child, I cannot do either, I am a useless human being." She says tears running down her face.

Such is the effect of the lack of realization that a woman should be given freedom of choice to decide whether to keep a child or not and not to have to resort to such clandestine means to achieve what she wants. The situation on the ground is not only a violation of human rights its inhumane going by the experiences told.

3.2 FINDINGS.

These findings are a result of the research assumptions and or questions. They reflect the result found on the ground.

1. Advancement of reproductive health will lower maternal mortality rate.

Maternal mortality in the county is pegged on many issues. For instance, early pregnancies. Girls who get pregnant at early ages are at risk of maternal mortality because they lack the requisite knowledge to take care of the pregnancy, they tend to be in denial and most times procure illegal abortions that mostly end with the death of the teenagers. Two out of five girls interviewed knew someone who had procured an abortion that went wrong. The girls also do not have enough energy during labor and psychological strength to pull through the painful, draining process of labour.Their bodies are too weak to handle the process of delivery and the research found that in most cases the pregnancy either ended up being a cesarean or the girls, due to lack of money and ignorance go into labor for even four days leading to death of the baby or the mother. These cases as the research found are due to lack of knowledge of reproductive health issues and rights. If the government and other stakeholders worked at advancing reproductive health, the maternal mortality would be lowered by fifty percent. Twenty four out of the thirty respondents that this question was posed to confirmed this assumption to the positive. This assumption was therefore confirmed to the affirmative.

2. The international Human Rights laws are enough to ensure adherence to reproductive health.

International human rights as discussed in the preceding chapters have put pressure on the government to implement the laws and seek adherence to them. However, these Human Rights laws are very little

known and even their implementation is hardly felt. What the situation on the ground presented was that the implementation of local legislation would best serve the locals. If The Reproductive Health and Rights Bill, 2008 (Bill drafted by the Kenya Chapter of women lawyers and the coalition on violence against women to be tabled soon). Is passed into law, then these injustices will be better addressed. Only seven out of thirty respondents had an idea of what the international Human Rights are. Four out of the seven are the only ones who held the view that these laws would be enough to address the said issues. The International Human Rights Laws are therefore not enough to ensure adherence to reproductive health rights.

3. Failure to formulate policies that cater for reproductive health is a violation of Human Rights?

The international Human Rights law and convention provide for the right to health that also includes the right to reproductive health.[57]

The International Conference on Population and Development (ICPD) held in Cairo in 1994 marked the acceptance of a new paradigm in addressing human reproduction and health. Reproductive rights, according to the ICPD, "rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health." The language is taken from Article 16(1) (e)

[57] See Para. 2 of General comment 14 (The committee on Economic, social and Cultural rights, 200) in the sense that. "The human right to health is recognized in numerous international instruments. Article 25.1 of the Universal Declaration of Human Right affirms. "Everyone has the right to a standard of living adequate for the health of himself and of his family including food, clothing, housing and medical care and necessary social services." The international convection on Economic, social and cultural rights provides for the most comprehensive article on the right to health in international human rights law including the right to reproductive health care.

of the Women's Convention, which states that States Parties shall ensure on a basis of equality of men and women:

From these provisions and many others discussed in preceding chapters it is clear that failure to formulate policies that cater for reproductive health is a violation of Human Rights. Twenty six out of the thirty respondents interviewed hold the same view. Four respondents added that the government should be sued for neglecting their duty of care to the locals and held accountable for the number of lives lost due to over bleeding during female genital mutilation, lives lost during unsafe abortions procured illegally and so on. They hold the view that if government passed laws catering for these ills and ensured their implementation 65% of the lives would be spared, thus the confirmation of this assumption to the affirmative

4. Can third world countries such as Kenya afford the implementation of reproductive health?

Kenya is one of the poorest third world countries often plagued with natural disasters, plagues, famine and so on. The government mainly relies on funding and this is aggravated by other ills that dog the government such as corruption. tribalism and many others. The research found that the little funds meant to cater for reproductive health awareness campaigns, to educate pregnant women, money meant to buy insecticide treated mosquito nets for distribution to pregnant women and money meant to be used in buying contraceptives was mostly misappropriated by the people put in charge. The Nyanza District hospital which is the provincial hospital is suppose to provide some contraceptives for free to members of the public, but this is not the case and people have had to rely on private means to get contraceptives. Five respondents interviewed contend that they have had to wash condoms like clothes so that they are able to reuse them and they supported this by showing the researcher

used condoms that they reuse from time to time. Therefore as much as Kenya is a poor third world country, respondents contended that there are basics that the government can afford to ensure provisions of these services. If vices such as corruption are eliminated at high levels of government down to the grassroots, the funds meant to cater for reproductive health can make a lot of difference. From the findings on the ground it is clear that if the government was committed to providing such basic services as contraceptives, educating the women on their rights and empowering women and teenagers these reproductive health rights violations would be curtailed. Some services do not even need money like holding public educative forums and so on. It is also suffice to add that when this question was posed to the district officials they restrained from commenting out of fear to incriminate themselves.

5. The realization of reproductive health will be a step in fulfilling health rights set in International convention Economic, Social and cultural Rights?

70% of the respondents were of the view that Health Rights set in the convention Economic, Social and Cultural Rights that are discussed in detail in previous chapters will only be realized if reproductive health rights in Kenya are realized, confirming this assumption to the affirmative.

3.2.1 Other findings of the research.

1. Discrimination in Health Facilities.

Most of the health facilities in the area were found in poor conditions and of concern was especially the state of Delivery rooms and wards. Twelve women interviewed said how they are often abused by the nurses who say that they should pay the 'price for the sin' The mentality in most government hospitals which are the most affordable and therefore preferred by many, is that they {nurses and doctors}

have seen it all and there is no one condition that is unique to them. They therefore neglect the women in pain leaving them crying on the ground until they see the babies head. This as told by one woman lead to pre-mature pushing leading the woman to excessive tearing and pain. It also puts the baby at risk because the heart rate is not monitored.

Discrimination also happens according to ones financial status. The research found that those who could bribe or were viewed to have money were more favored by the doctors than the poor ones. The ones who have insurance are also better taken care of than those who don't.

2. Cultural Effects hindering the realization of reproductive health rights.

The research went deep into the intricacies associated with the different tribes who reside in the county. Cultural practices such as Female Genital mutilation was still being paractised. In most families also the research found that the men are viewed as the heads of the families and therefore make all the decisions regarding reproductive health. They decide when to use condoms and when they do not feel like. They determine whether the wives should use contraceptives, they determine the spacing of their children and so on.

Culturally also some members of the kissi tribe believe that a woman should give birth until her womb 'runs' out of eggs and issues of contraceptives are only discussed in hushed tones.

3. Poverty and Illiteracy.

Most people in this county are poor and live below a dollar a day. Their main concern in life is to provide food and shelter to their

children and by the end of the day they have nothing left to spare in buying, if they chose to, any contraceptives. A case in point is whereby some residents have resorted to washing condoms, like clothes so that they can reuse it. Poverty has greatly hindered the bid to realize some of the issues of reproductive health.

The county officials also contend that the government is not able to afford provision of certain services for instance to pregnant women as they are supposed due to lack of funds to cater for the same.

Poverty has also led to illiteracy and ignorance of the law protecting women against abuse, ensuring adherence to their rights and so on.

4.Corruption.

Kenya is one of the leading countries in corruption and corruption has led to misappropriation of funds meant to cater for reproductive health.

CHAPTER 4

4.0 CONCLUSION AND RECOMMENDATIONS

4.1 CONCLUSIONS

From the above presentation, it is evident the women in Kenya are so much disadvantaged as far as reproductive health and rights is concerned. It is a matter of violation of the rights of the women in Kenya.

Kenya is still faced with high maternal mortality rates due to strict abortion laws, which leaves the women to seek help from backstreet abortionists, who are not qualified personnel to carry out abortion.

The adolescents have not been given adequate information to enable them understand their reproductive health and to enable them make correct life choices.

The high rate of maternal mortality is a sure indication that the Kenyan government is doing so little to ensure that the right to safe motherhood is guaranteed.

International bodies with affiliation to the United Nations are present to give both financial and technical support to assist the government achieves its goal to deliver the highest attainable standard of health to its people.

The international human rights law articulately outlines the government obligations that if deliberately neglected, would amount to violation.

It is easy to conclude that even though the government has obligations under the international law to safe guard the reproductive rights, it has done so little to ensure that it is accountable. Without accountability it is almost impossible to enforce laws. There are good policies that the government has adopted from the international human rights instruments but the policies are rarely implemented.

Poverty and lack of information on the available mechanisms of redress by the victims is a major impediment to justice. Majority of women and the adolescents in Kenya are financially disadvantaged and therefore are not able to pursue their rights as accorded to them by law.

The women in Kenya have gotten used to the cruel treatment they undergo in the Kenyan health facilities and are not willing to take their time to fight for their rights. To most women such kind of treatment is okay to them as long as they are alive they view the challenges as part of life.

Majority of Kenyans no longer have faith in the Judiciary and view judicial redress as a waste of time. This has enabled the rights violators to bed even bolder knowing that no action would be taken against them.

Cultural and religious relativism continue to dictate the development of the reproductive health rights and that if the religious societies are not put n check, they may use their positions to actually contribute to the violations of the reproductive health rights.

Having ratified most of the international human rights instruments, it is only right that the government see to it that the reproductive health rights are safe guarded.

The international community should therefore ensure that the government is always put on toes in insuring that the reproductive health rights are safeguarded. Reproductive rights can never be separated from the right to life. Many women, youths and children lose their lives daily due to the reproductive health rights violations.

4.2 RECOMMENDATIONS

4.2.1 To the government

The government of Kenya needs to address the problem of delivery and maternal health care. It should implement and enforce the ministry of health's maternal care standards which protect the women's health and rights. The government should also meet the recommended staffing in medical facilities. Supplies and equipment necessary to maintain hygienic conditions are also necessary in the public health facilities.

The government should also develop a comprehensive strategy to address the problems identified by the 2004 Kenya Service Provision Assessment Survey, including equipment and supply shortages, Distribute government guidelines addressing reproductive health services to all facilities and encourage their use; emphasize the importance of informed consent in these guidelines, Provide continuous training for reproductive health care providers in both public and private facilities and improve contraceptive access.
Improve contraceptive access.

The government also needs to put legislation in place to protect the women from the backstreet abortion that contribute to serious numbers of maternal mortalities. The government should propose abortion guidelines to ensure that the women who adopt abortion related complications are not double victimized and targeted for criminal prosecution.

The government also needs to that the family planning methods are accessible to the women in need of them.

The government also needs to tackle issue of corruption and misallocation of public resources in order to deal with the issues of ambivalence. Proper budgetary allocation should be granted o the health sector to enable the sector run its activities in a more civilized and customer friendly way.

The government also needs to ensure that the issues of cultural, political and religious relativism do not interfere with its obligation to ensure that reproduction health rights are not only fulfilled but also protected and respected.

4.2.2 To the public and private healthcare facilities

Both public and private healthcare facilities must protect the patient's rights and promote accountability in the health facilities. They also need to Conduct trainings for all staff members on protecting the rights and dignity of patients; encourage health care staff to report rights violations, Post patients' rights and provide complaint boxes. Develop clear processes for lodging and redressing complaints and make this information readily available to patients. The facilities should also refrain from detaining patients who cannot afford medical bills and turning away pregnant women in labour because they cannot afford to pay deposit

4.2.3 To the association of healthcare professionals

Revise ethical codes to provide sanctions for all violent and discriminatory practices against women and ensure that these provisions are widely publicized. Emphasize the importance of respecting patients' rights in trainings and other activities for members.

4.2.4 To all the non-state actors

The World Bank and the IMF should examine the human rights consequences and conditions placed on funding and take the necessary steps to ensure that these conditions do not result in the reproductive health violations. Funds should also be made accessible to the third world countries that cannot afford to implement the right to health to its entirety.

The donor community and the organizations financing reproductive health and family planning services should ensure that such programs are designed to improve health care and improve healthcare and promote the exercise of women's rights, and should establish indicators for evaluating these projects.

APPENDIX (A)

QUESTIONNAIRES TO THE COMMUNITY MEMBERS.

Dear respondent,

I am Sewe Mercy Adhiambo, Registration Number LLB/9690/61/DF, a student of Kampala International University pursuing a Bachelors degree in Law. As part of the course, I am supposed to carry out a research project on Advancing Reproductive health Rights a Human Rights perspective. A case study of Kisumu County in Nyanza Province. The purpose of this study is to gather data on the issues of reproductive health, how the lack of realization of these rights affect the members of the community and efforts if any, have been made in advancing these rights.

You have been included in the study sample through random selection procedure. The questions that follow are intended to facilitate the study.

This is to request you to answer these questions; I want to assure you that, your response will be treated with confidentiality and the information obtained will strictly be for educational purposes.

QUESTIONAIRS TO WOMEN AND TEENAGE GIRLS LIVING IN THE COMMUNITY.

Tick one or write the relevant information in the space provided

Section A: Socio-demographic data

Personal data

1. Age

(a) Below 24 years ☐ (b) 25 – 34 years ☐

(c) 35 – 44 years ☐ (c) 44 and above ☐

2. Sex

(a) Male ☐ (b) Female ☐

3. Marital status

(a) Married ☐ (b) Single ☐

(c) Divorced ☐ (d) Separated ☐

4. Educational level

(a) Not educated ☐ (b) Primary level ☐

(c) Secondary level ☐ (d) Diploma ☐

(e) Degree ☐ (f) Masters ☐

5. Occupation ☐

(a) Employed (b) Self employed

(c) Non ☐ (c) Religious ☐

(e)Others ☐

Specify.....

6. What do you understand by the term reproductive health rights?

.....

.....

7.Will advancement of the Reproductive health rights lower maternal mortality?

.....

.....

8. Do you think failure to formulate policies that cater for reproductive health is a violation of Human Rights?

Yes ☐ No ☐

9. If yes or no, please explain why you take this view.

.....

.....

10. How has the lack of realization of these rights affected you?

.....

.....

11. Has the government in your opinion done anything in advancing reproductive health.

.....

.....

12. Can third world countries such as Kenya afford the implementation of reproductive health?

Yes ☐ No ☐

13. If yes or no explain why?

.....

.....

14. How would you like these problems to be addressed?

.....

.....

THANKS, AND GOD BLESS YOU

APPENDIX (B)

Kampala International University

Faculty of Law

Student's Research Project.

INTERVIEW GUIDE TO THE COMMUNITY LEADERS/ELDERS

Dear respondent,

I am Sewe Mercy Adhiambo, Registration Number LLB/9690/61/DF, a student of Kampala International University pursuing a Bachelors degree in Law. As part of the course, I am supposed to carry out a research project on Advancing Reproductive health Rights a Human Rights perspective. A case study of Kisumu County in Nyanza Province. The purpose of this study is to gather data on the issues of reproductive health, how the lack of realization of these rights affect the members of the community and efforts if any, have been made in advancing these rights.

You have been included in the study sample through random selection procedure. The questions that follow are intended to facilitate the study.

This is to request you to answer these questions; I want to assure you that, your response will be treated with confidentiality and the information obtained will strictly be for educational purposes.

1. Historically, what are some of the reproductive health problems that are faced in the community?
2. Which group in the community is most affected by these problems?

3. How has Female Genital Mutilation affected reproductive health in

the community?

4. What are some of the cultural practices that have hindered the realization of reproductive health rights?

5. Have the elders in the community made any advances in sensitizing the community on reproductive health rights ?

6. Will advancement of reproductive health lower maternal mortality rate ?

7. As a community leader, what issues of reproductive health do you think need addressing the most?

8. What efforts has the government made, if any in advancing reproductive health?

9Are the International Human Rights laws enough to ensure adherence to reproductive health?

10. What changes and recommendations can the government make in realizing these rights?

THANKS, AND GOD BLESS YOU

APPENDIX (C)

Kampala International University

Faculty of Law.

Student's Research Project.

INTERVIEW GUIDE TO THE DISTRICT OFFICIALS

Dear respondent,

I am Sewe Mercy Adhiambo, Registration Number LLB/9690/61/DF, a student of Kampala International University pursuing a Bachelors degree in Law. As part of the course, I am supposed to carry out a research project on Advancing Reproductive health Rights a Human Rights perspective. A case study of Kisumu County in Nyanza Province. The purpose of this study is to gather data on the issues of reproductive health, how the lack of realization of these rights affect the members of the community and efforts if any, that have been made in advancing these rights.

You have been included in the study sample through random selection procedure. The questions that follow are intended to facilitate the study.

This is to request you to answer these questions; I want to assure you that, your response will be treated with confidentiality and the information obtained will strictly be for educational purposes.

1. According to you, what is the state of reproductive health in this community?

2. What kind of problems do women face as regards reproductive health?

3. Has the government and or the non governmental organizations made any efforts in helping to alleviate these problems?

4. What laws are you as a district official aware of that address the issue of reproductive health?

5. Will the advancement of the Reproductive health rights lower maternal mortality?

6. According to you is failure to formulate policies that cater for reproductive health a violation of Human Rights?

7. Has the government through the local officials made any efforts in sensitizing the community about reproductive health rights? If yes please explain how?

8. What are some of the loopholes in the law that addresses reproductive health that need addressing?

9. According to you, has the government done enough in addressing these issues?

10. What recommendations can you make to the government concerning these problems?

THANKS, AND GOD BLESS YOU.

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