



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
Open consultation on Youth & Human Rights

Joint submission by:

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Queer Alliance, Nigeria

Network for Adolescents and Youth of Africa, Kenya

Centre for Youth Empowerment and Civic Education, Malawi

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Introduction

The YP Foundation, Queer Alliance, Network of Adolescents and Youth of Africa (NAYA), Centre for Youth Empowerment and Civic Education (CYECE), and CHOICE for Youth and Sexuality are pleased to transmit this submission on Youth and Human Rights to the Office of the High Commissioner for Human Rights (OHCHR) in preparation of its report to the Human Rights Council for its 39th session.

This submission identifies key challenges in the realization of young people's rights, supported by country-specific data and information from India, Kenya, Malawi, and Nigeria.

This submission has a specific focus on the impact of restrictive laws and failing policies in the field of SRHR and related rights, i.e. the right to freedom of association and peaceful assembly; the right to freedom of expression; the right to security of the person; the right to non-discrimination; the right to health; and the right to education.

The key challenges highlighted in this submission are:

- Discrimination and marginalization
- Violence, including sexual and gender-based violence
- Access to sexual and reproductive health care services
- Access to education, including comprehensive sexuality education
- Political participation

This submission concludes with specific recommendations to Member States for measures at the national and international level to improve the realization of young people's rights.

From the outset, our organizations want to emphasize that young people are not a homogenous group, but that young people suffer from a number of intersecting forms of discrimination based on different aspects of their identity, be it sex, gender identity or expression, sexual orientation, race, ethnicity, class, caste, religion or any other grounds. The failure in the realization of young people's rights is not attributable to individual inability, but rather represents an overall failure to provide sufficient and equitable resources for young people's development and leadership opportunities, leaving specific groups of young people even further behind.

Key challenges faced by young people

1. Discrimination and marginalization

- Negative gender and sexual stereotypes represent a significant barrier to young people's access to information, mobility and decision-making power, as they marginalize those who do not conform to the dominant norms and expectations. The imposition of patriarchal norms has particularly been used to control women's sexuality and agency, impacting negatively on their right to life, right to health, right to education, and right to freedom of expression. Similarly, young people who are or are perceived to be LGBTQI* have often been excluded and ostracized in education, health systems and other core societal processes due to gender and sexual stereotypes.
- Discriminatory national laws on sexual orientation and gender identity or expression further threaten people from the LGBTQI* community by making it illegal and impossible for them to affirm their identity. Examples of such laws are IPC Section 377 in India; the Same Sex Marriage Prohibition Act (2014) and Section 214-217 of the Criminal Penal Code in Nigeria¹; and Sections 162 (a) and (c), 163 and 165 of the Kenya Penal Code. The enforcement of these laws has led to different human rights violations, including the use of forced anal-examinations and arbitrary arrests and detention.
- Restrictive legal provisions on access to safe and legal abortion also constitute discrimination against girls and young women. The criminalization of abortion is one of the most damaging ways of politicizing and instrumentalizing girls' and women's bodies, as it subjects them to risks to their lives and health and deprives them of autonomy in decision-making.
- Harmful cultural practices such as female genital mutilation (FGM/C) and child, early and forced marriages (CEFM) continue to be a major source of discrimination of girls and young women, hindering their access to health and education. These harmful practices expose them to a significantly higher risk of physical injuries, morbidity, domestic violence, birth complications, and psychological and mental health issues.

In Kenya, the harmful traditional practice of beading also continues to exist. According to this tradition, warriors (Morans) are allowed to have a temporary marital relationship with very young girls (as young as 7 years old) from the same clan as the warrior. The Moran buys red beads for the girl after getting the mandate from her family. The main objective of the beading is to prepare the young girl for marriage in the future. Since the Moran and his beaded girl are relatives, and the girl is uncircumcised, both marriage and pregnancy are forbidden. In the case a girl does become pregnant, the pregnancy is terminated through an

¹ Additional criminal provisions can be found in the Sharia Penal Codes in Northern Nigeria

abortion induced by elderly women of the clan. They squeeze the girl's stomach and force her to drink herbs until the pregnancy is terminated. If the beaded girl gives birth, the child is killed through herbs poisoning, since the child is perceived to be an outcast. The babies who survive are given out to other communities like the Turkana tribe. In addition to life threatening early pregnancies and abortions, the practice of beading exposes young girls to sexual, physical and mental abuse. There are no official statistics on these violations due to the stigma of the practice, but Samburu Women Trust conducted a desk review in Samburu, Marsabit and Laikipia counties and found that over 755 girls had been beaded over the past two decades, translating to 3 girls every month.²

2. Violence

- Against the backdrop of discriminatory laws on sexual orientation and gender identity and/or expression, young people who are or are perceived to be LGBTQI* have been victims of violence, extortion and blackmail by state and non-state actors.

Especially after the signing into law of the Same Sex Marriage Prohibition Act in Nigeria, the LGBTQI* community there has been confronted with a sharp increase in violence. A case was reported of a gay man in his early 20s who decided to meet up with a friend he had made via a closed Facebook group. When he arrived at the arranged meeting place he found a crowd of people waiting. They beat him repeatedly, stripped him naked and threatened to drown him in a nearby canal.

Police authorities are known to be regularly involved in violating the rights of LGBTQI* persons in Nigeria. In one reported case, a young man was stopped by policemen on the road without any prior violation and asked to show his phone so they could search it. He was subsequently arrested for having sexually charged messages on his phone. Upon reaching the police station, the police demanded money for his release and threatened to "out" him to his family and charge him with homosexual acts if he were not to comply.

- Lesbian and bisexual women have been subjected to "corrective rape" and forced marriages in Nigeria. In the absence of comprehensive sexuality education, many people continue to believe that heterosexual rape or relationships can "cure" a woman's homosexuality. In May 2017, the African Commission on Human and People's Rights expressly listed "corrective rape" as an act of sexual and gender-based violence that may amount to torture and ill-treatment under the African Charter.
- Young people who are or are perceived to be LGBTQI* have been unable to find judicial redress for the violence, extortion and blackmail they

² Available at [http://www.ngeckenya.org/Downloads/SWT%20Girl-Child%20beading%20Research%20in%20\(Laikipia,%20Samburu%20and%20Marsabit\)%20Counties.pdf](http://www.ngeckenya.org/Downloads/SWT%20Girl-Child%20beading%20Research%20in%20(Laikipia,%20Samburu%20and%20Marsabit)%20Counties.pdf)

suffer. When police authorities have been presented with evidence of violations, they have consistently refused to pursue any further investigation. With young people having little knowledge of the legal system and minimal to no financial resources to access legal counsel, they are generally unable to fight this impunity.

3. Health

- Legal barriers restrict young people's access to sexual and reproductive health care services. These legal restrictions include laws criminalizing homosexuality, HIV and abortion; age of consent laws; and requirements of spousal or parental consent for accessing SRH services.

In India, the Protection of Children from Sexual Offences Act (POCSO 2012) is a law that seeks to protect any person below the age of 18 from sexual abuse. The provision in this Act on mandatory reporting of any sexual encounter of someone under the age of 18 as abuse, irrespective of someone's consent, has made the delivery of essential SRH services to young people extremely difficult. A failure of the service provider to report under-age sexual activity is namely considered a crime under Section 21 of the Act. A further limitation of this Act is that an extremely vulnerable group of under-age girls – those who are in child, early and forced marriages – are not protected by this law, as marital rape is not recognized.

In Kenya, the Constitution provides for access to safe and legal abortion under certain circumstances, but failure by the State to develop subsequent legislation and to withdraw outdated guidelines have in practice endorsed the continued criminalization of abortion services, even under circumstances provided for by the Constitution.

- Whereas young people's access to sexual and reproductive health services remains a major challenge, young people who are or are perceived to be LGBTQI* have been even further restricted in enjoying their right to the highest attainable standard of health.

According to a report by the East African Sexual Health and Rights Initiative (UHAI), 4 out of 10 LGBTQI* persons in East Africa were denied health services on account of their gender identity, with 46% responding that they were denied services due to their sexual orientation.³

In Nigeria, many young LGBTQI* have developed a strong distrust of health services because of previous experiences of violence or verbal abuse, causing them to avoid these services altogether. An online survey by the Bisi Alimi Foundation showed that 44% of the respondents did not seek medical care when they had a physical health problem.

³ UHAI: East African Sexual and Health Rights Initiative, "Why must I cry? Sadness and laughter of the LGBTI community in East Africa" (2013)

- Even in countries where specific health policies on adolescents and young people are in place, like in Kenya⁴ and Malawi⁵, practical barriers to accessing SRH services continue to dominate.⁶ Regularly reported practical barriers include: high costs; negative service provider attitudes influenced by cultural and religious norms; shortage of supplies; lack of counselling services; and inadequate information on SRHR.

In India, a research audit conducted by The YP Foundation of 29 health centres in Lucknow, Uttar Pradesh⁷, showed multiple barriers experienced by young people in accessing these services, mostly due to taboos around pre-marital sexual activity and moral policing by health practitioners. The research audit also revealed that most information on young people's health was inadequate; information was typically available on issues of nutrition and family planning, but not on matters of STIs, mental health or abortion.

In Malawi, unmarried girls and young women are also frequently denied access to contraceptives because of personal objections by their health care providers.

- An important impediment to the implementation of specific policies on adolescents' and young people's access to SRH services has been the inadequate budgetary allocation to health in general, and sexual and reproductive health and rights in particular. This is because the accessibility of good quality care for young people is directly related to its affordability. Despite the fact that Kenya and Nigeria are party to the Abuja Declaration, budgetary allocation to health in these countries remains far below the minimum of 15 %.⁸ India's health expenditure is also extremely low at around 1.2% of its GDP, with only 0.0049% dedicated to family planning services.⁹ In Nigeria, there is no specific budget line to support SRHR for young people.

While private health centres often offer better quality services than public facilities, the fees are too high for the majority of young people who have limited spending power and/or are financially dependent on their families.

⁴ Adolescent Sexual and Reproductive Health Policy and National Adolescent and Youth Friendly Service Guidelines

⁵ Youth-friendly health services program (2007)

⁶ In Kenya, only 1 out of 10 health care facilities actually provide youth-friendly services according to the Ministry of Health (2014)

⁷ Available at

<https://static1.squarespace.com/static/5837d4b3725e25680b8b758e/t/58737e16e6f2e14a35267a17/1483963934364/Seen%2CNotHeard+%5BEnglish%5D.pdf>

⁸ In Kenya, 7.5% in 2014/2015, 7.7% in 2015/2016 and 7.6% in 2016/2017 (Ministry of Health, *National and County Health Budget Analysis* (2017)). In Nigeria, only 6 % is earmarked for health, despite a significant increase in overall budget (see <http://www.hmcan.com.ng/index.php/news-items/458-nigeria-allocate-6-of-2017-budget-to-health-stakeholders-urge-nigerian-govt>).

⁹ According to a recent news article, 40% of 2017's family planning funding remained unutilized (<http://www.firstpost.com/business/health-ministry-seeks-more-funds-for-family-planning-in-budget-even-though-40-of-last-years-corpus-remains-unused-4289035.html>)

4. Education

- Girls, young women and young people identifying as LGBTQI* continue to experience barriers in accessing education. Specific barriers vary greatly on each context, from lack of safe and clean sanitary facilities for girls to bullying and violence against young people who are or are perceived to be LGBTQI*.

In India, most universities systematically discriminate against young women by upholding early curfew rules on campuses that restrict their mobility and deny them equal access to libraries and other public spaces. Movements like *Pinjra Tod* have protested on campuses against these rules and regulations but there have been little efforts from the government and educational institutions to address this discrimination.

- Young people are denied access to accurate and evidence-based comprehensive sexuality education, especially regarding sexual and gender diversity. Schools, caregivers and religious leaders remain straitlaced on issues of sexuality, thus forcing young people to depend on their peers and the Internet for information.

In Kenya, a Google Zeitgeist review revealed that some of the most asked questions online were: “how to use a condom”, “what is sex”, “how to abort”, and “what is HIV/AIDS”.

In India, potentially positive policies on young people’s access to health information have not been uniformly implemented. The Ministry of Human Resources Development has the national Adolescence Education Program (2006) to provide young people in schools with information on adolescent reproductive and sexual health to promote healthy attitudes and life skills. However, the implementation of this program has not been uniform; the program was banned in states like Chattisgarh, Gujarat, Karnataka, Maharashtra, Kerala and Rajasthan by the state governments for reasons of “objectionable content” and going against the Indian culture and values. Although some states eventually lifted the ban, it continues to persist in 5 of them, and where it is implemented, its comprehensiveness is questionable.

5. Political participation

- Youth organizations have been significantly impacted by recent state clampdowns on sensitive issues like sexual diversity, abortion, CSE and foreign funding. These restrictions on young people’s rights to freedom of expression and peaceful assembly are a worrisome development in itself, but also have the potential to obstruct the realization of other rights.

- Youth policies often lack an explicit human rights-based approach.

In India, the Ministry of Youth Affairs and Sports has developed the National Service Scheme, which focuses on the overall development of students around life skills, employment and engagement in sports. It for instance provides students with the opportunity to participate in community service. However, even though the program aims at building the skills of young people, the framing and implementation of the policy is devoid of a human rights approach. There is only minimal focus on raising awareness of young people about their rights and entitlements.

In Nigeria too, the Ministry of Youth Affairs is combined with that of Sports because of the politicization around youth rights. As a result, the needs of young people from marginalized and vulnerable groups remain unmet and their voices are not included.

- Young people are generally not included in formal decision-making structures in a systematic and meaningful way. The potential of youth organizations to act as watchdogs, advisors or implementers of youth policies is significantly under-utilized.

In some countries, like Malawi and Kenya, we see more positive developments regarding meaningful youth participation. Youth organizations are increasingly consulted in the development of youth policies and asked to help in the implementation, monitoring and evaluation of these policies.¹⁰ However, governments do not provide any funding for youth organizations to help with developing and implementing youth policies, which makes it difficult for them to ensure consistency and sustainability.

¹⁰ For example, participation of youth organizations in Adolescent Health Technical Working Group in Kenya

Recommendations

We advise OHCHR to recommend the following to the Human Rights Council in its report on Youth and Human Rights:

National level

- To guarantee that preconditions for meaningful youth participation are met, notably by protecting the right to freedom of opinion and expression, right to freedom of assembly and association, freedom of movement, and non-discrimination;
- To track youth participation and inclusion in political processes and institutions;
- To increase government budget for the realization of youth rights, specifically regarding health, education and economic empowerment;
- To establish or strengthen accessible and inclusive structures to foster youth participation in all political institutions. Such mechanisms should be provided with an adequate budget and tasked with the formulation of recommendations that should be acted upon and followed up;
- To invest in education and training initiatives to raise awareness among all young people regarding their human rights;

International level

- To mainstream youth rights in existing UN human rights mechanisms, such as the UPR, by involving youth organizations in national consultations, supporting them in submitting alternative reports, and giving visibility to the submissions made by youth organizations;
- To develop UN guidelines on using a human rights-based approach in the development of youth policies;
- To systematically include youth representatives in State delegations to the various UN organs and bodies, and create enabling conditions for them to meaningfully participate, e.g. by inviting them to all meetings, providing full access to information and offering financial support;
- To create a transparent accountability mechanism mandated to monitor and evaluate State commitments related to youth rights and youth participation;
- To mobilize resources for the participation of young people in reporting on the implementation of State obligations under international human rights law;
- To offer youth-friendly information on human rights and how to use the UN human rights mechanisms for national accountability.