

COMMUNIQUE ON RIGHT TO HEALTH LEGAL AND POLICY FRAMEWORK: GAPS, CHALLENGES, AND RECOMMENDATIONS.

Background

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) held a webinar on June 13, 2023, to discuss the findings and recommendations arising from ICJ Kenya's review of existing legal and policy frameworks that inhibit access to health rights and impede access to healthcare services as envisaged in the Constitution of Kenya 2010.
2. ICJ Kenya notes that the Constitution of Kenya 2010 brought a significant shift to the realisation of economic, social, and cultural rights, including the Right to Health (ROH).
3. The Constitution guarantees every person the Right to the highest attainable health standard and devolves the health function. Similarly, Kenya has ratified several international and regional treaties and conventions that enumerate the State's duty to realize the Right to Health, all of which also form part of the law of Kenya under the Constitution.
4. Beyond the Constitution and the international treaties, Kenya has also enacted the Health Act of 2017 and developed various policies and strategies that guide the priorities in the health sector, such as the Kenya Health Policy (2014- 2030) and the Kenya Health Sector Strategic Plan (2018-2023).
5. Additionally, ICJ Kenya notes that Kenya's government began implementing the Universal Health Coverage (UHC) pilot program meant to solve the cost challenge in the health sector to support the realization of the Right to Health.

Context

6. The objectives of the webinar were guided by the need to enhance awareness of the Right to Health, initiate discussion on the role of legal practitioners, and explore new channels and alternatives to improve legislation and policy that enhance the Right to Health.
7. ICJ Kenya sincerely appreciates the distinguished panelists and participants, including jurists, scholars, academia, medical practitioners, and the general public, for joining the webinar through the ICJ Kenya social media platforms and online streaming services.

In the deliberations, the panelist and the participants acknowledged that:

8. While the current policy and legal framework for the Right to Health is robust, many challenges and barriers plague the full enjoyment of the Right to Health in Kenya.
9. The national and county legal and policy frameworks are inadequate to give full effect to the realisation of the Right to Health, including for emergency medical treatment and to implement concurrent health functions between the two levels of government.
10. Since the promulgation of the 2010 Constitution, there has not been a comprehensive review of existing policy and legal frameworks and their alignment for attaining the Right to Health. Some new laws and policies related to the Right to Health contradict the constitutional edict.
11. The standards adopted by the State as enforceable obligations on the Right to Health are not clarified nor operationalized as public health measures at the national and county levels of government. The circumstances created inhibit accountability measures toward ensuring the full enjoyment of the constitutional Right to Health.
12. Judicial enforcement of the Right remains challenging due to the lack of effective normative guidelines for interpreting the Right to Health and the appropriate remedy when the Right to Health has been infringed, violated, or threatened. The courts emphasize the State's available resources rather than the minimum content approach when adjudicating cases on claims violating the Right to Health.
13. Planning and resource allocation in the health sector is not rights-based in approach and practice.
14. Challenges and gaps exist in all the right-to-health dimensions of availability, accessibility, acceptability, and quality.
15. There are no clear guidelines on the disclosure of information and inadequate health and hospital management information systems.
16. There is inadequate and inefficient utilization of the available human resources for Health within the devolved health system.
17. Inadequate fiscal decentralization within counties limits the ability of health departments and health facilities to offer quality healthcare services.
18. The inability of the National Health Insurance Fund (NHIF) to function as a social health insurance fund with a limited benefits package is not beneficial to the most affected Kenyans.

Therefore, and given the foregoing, ICJ Kenya calls upon the following:

The national government to;

19. Promote and facilitate legislative and policy reforms on the Right to Health. There is an urgent need for a comprehensive review of national and county legislations and policies to assess their consistency with human rights, norms, standards, and principles.
20. Establish measures to strengthen Kenya's health system and institutional environment to improve access, acceptability, availability, and healthcare quality.

21. Strengthen health emergency response and preparedness in the Country.
22. Promote sustainable healthcare planning and financing guidelines to reduce gender and social inequalities in Health.
23. Define the minimum essential standards and service package for realizing the Right to Health.
24. Strengthen mechanisms for multi-sectoral stakeholder and intergovernmental collaboration, cooperation, and coordination.
25. Create the office of a healthcare ombudsperson to oversee healthcare delivery between medical service providers, patients, and healthcare facilities.
26. Establish a single central regulatory body for all health care and service providers.
27. Create a centralized healthcare management information system to improve access to information in the devolved system.
28. Establish national policy and legislative guidelines to promote the effective management and implementation of concurrent functions, including the Right to Health.

County Governments to;

29. Enhance awareness and understanding of the Right to Health.
30. Strengthen the Health Sector Inter-Governmental Consultative Forum.

Civil Societies to;

31. Conduct activities to strengthen community capacity to the rights-based approaches and social accountability.
32. Champion for better implementation of laws that promote, protect and enforce fair workplace norms and standards.
33. Advocate for the establishment of the Health Service Commission.

Signed



Protas Saende
ICJ Kenya Chairman

