

OPEN LETTER TO THE CLERK, KENYA NATIONAL ASSEMBLY

RE: NEED FOR PUBLIC PARTICIPATION IN THE HEALTH BILL 2015

We refer to the above captioned matter and your request for submission of memorandum, published on 8 May, 2015 with regard to the Health Bill 2015. We write to you in our capacity as organisations working in various sectors of the right to health, and in the interest of the millions of Kenyans who will be adversely affected by the contents of the Health Bill 2015 as currently drafted.

We write to request that, in consultation with the chairpersons of the National Assembly and Senate health committee, you take urgent steps to ensure adequate participation by Kenyans in the Health Bill 2015. This request is based on the following key reasons:

- i. **Public Participation is now a Constitutional and statutory obligation.** Under Articles 1(1), 1(2), 10, 38, 104, 118, 221, 255 and 257 of the Constitution of the Republic of Kenya as read together with the provisions of Section 4, 5, 6 and 11 of the Statutory Instruments Act (No.3 of 2013). The cumulative effect of the above provisions is the need to take into account the consideration of the needs and interests of the public who are likely to be adversely affected by the proposed law or decision, before the decisions are made.
 - ii. **The time period provided for the initial request for submissions was too short.** The request was published on 8 May, 2015 with a proposed deadline of 13 May, 2015. This did not take into the account that Saturday and Sunday were not working days. Nairobi County and a few other counties also experienced heavy downpours that affected access to people's places of work on the 11th and 12th of May 2015. This had the total effect of reducing the timelines within which to review the bill, consult and make meaningful submissions.
 - iii. **The Health Bill 2015 is not available online,** either on the parliament's or the Ministry of Health's websites. It is therefore impossible for people to comment on this crucial document if it is not readily available.
 - iv. **The Health Bill 2015 that is before the Parliamentary Health Committee contains provisions that are unconstitutional.** Some of these include Section 6 on Reproductive Health, Section 19, 20 & 24 on County Health Systems, duties of the County executive department of health, and devolution, respectively.
 - v. **The Health Bill 2015 that is before the Parliamentary Health Committee is poorly drafted and totally omits some fundamental aspects of health such as palliative care.** It does not adequately provide for the rights of vulnerable and marginalized groups in the health sector such as women, adolescents, persons with disability, mental health patients and the elderly, among others. It is extremely weak on the protection of rights of users of health systems and does not clearly spell out the duties of the national and county governments. It does not adequately provide for intergovernmental collaboration for health service delivery and partnership with other actors, including private sector and non-state actors. These are only a few of the shortcomings of the Health Bill 2015.
 - vi. **An improved and more comprehensive version of the Health Bill is available.** This version was developed through a consultative process led by the Commission on Implementation of the Constitution (CIC) in consultation with the Ministry of Health, County Government representatives and other stakeholders. This version of the bill addresses some of the aforementioned concerns and has since been submitted to the Parliamentary Health Committee.
 - vii. **The Health Bill 2015 is a fundamental bill for the health sector.** The Health bill will provide for the legal and policy framework to actualize Articles 2, 21, 26, 43 and 46 of the Constitution of Kenya as it relates to the right to health. The Bill will provide the much needed foundation for the effective governance of the health sector at all levels and the development of other health related laws. This Bill should not be rushed, and should be given ample time to receive all the relevant feedback from stakeholders.
- We therefore humbly call upon your office, in consultation with the clerk of the Senate, the chairpersons of the Parliamentary and Senate Health Committees, to undertake the following actions to ensure we have a Health Bill that meets the Constitutional threshold and takes into account the views of the public:
- i. Make the Health Bill 2015 and the CIC version of the same available online, on the parliament and Ministry of Health websites. The full copies of the two bills should also be published in the leading dailies.
 - ii. Issue a new request for submission of memoranda on the Health Bill 2015 that will allow stakeholders at least 30 working days to make their written submissions.
 - iii. Organize public hearings by the two health committees to receive oral submissions from stakeholders.
 - iv. Establish a process that will facilitate the Parliamentary Health Committee to harmonize the Health Bill 2015 that is before it, and the Bill they have received from the CIC, to ensure Kenyans receive a draft that meets the Constitutional threshold.
- We are confident of your commitment towards the full implementation of the Constitution, and the enjoyment of the right to the highest attainable standard of health, including reproductive health, by all, as envisioned in the Constitution of Kenya 2010.

We trust that you will urgently undertake the four proposed steps above, as endorsed by the following organisations.



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| i. The Clerk of the Senate | v. The Chairperson Commission on Administrative Justice |
| ii. The Chairperson Parliamentary Health Committee | vi. The Chairperson Commission on Implementation of the Constitution |
| iii. The Chairperson Senate Health Committee | vii. The Members of the Parliamentary Health Committee |
| iv. The Chairperson Council of Governors | viii. The Members of the Senate Health Committee |