Making the Right to Health a Reality

By

Allan Achesa Maleche
Executive Director©
Outline

• About Kenya
• About KELIN
• Health as a devolved function
• State responsibilities in implementing the right to health
• Work in Progress for KELIN
  – Health Bill 2015
  – TB Is not a Crime Campaign
  – Forced & Coerced Tubal Ligation of Women living with HIV
  – Presidential directive that restricts the right to privacy
• Thinking forward & Work in Progress for KELIN
About Kenya & Health

• Progressive Constitution provides for right to health and rights based approaches

• HIV & AIDS one of top five causes of death

• 2.68% of the current National Budget gone to health ($470,000,000). In the last two years it was 3% and 5.8%.

• 80 per cent of Kenya’s HIV programmes externally funded.
About KELIN

• Human rights NGO
• Works to protect and promote health-related human rights in Kenya by:
  – Facilitating access to justice for those who have faced human rights violations;
  – Creating partnerships with key stakeholders;
  – Building capacity of communities to know their rights; and
  – Analysing laws and policies to ensure they integrate human rights principles
Frameworks for Delivery of the Right to Health

- National, National government, County government
  - Policies, laws and administrative procedures.
- Inter-governemental agreements (NG and CG)
- Inter-governemental agreements (CG and CG)
- Agreements with development partners.
- Inter-sectoral agreements
- Public/private partnerships
Roles of the two levels of Government

**National**
- National policy
- National standards
- Capacity building and technical support
- National referral services

**County**
**County Health Services:**
- County health facilities and pharmacies
- Ambulance services
- Promotion of primary health care
- Licensing of food outlets
- Veterinary services
- Cemeteries, funeral parlours and crematoria
- Refuse removal, refuse dumps and solid waste disposal
Constitutional structures for delivery of the right to Health

**National Government**
- Senate
- National Assembly
- National Executive (Cabinet, Ministry of Health, Health Sector Agencies- National Referral Hospitals)

**Intergovernmental Structures**
- Summit
- Council of Governors
  - Inter-governmental technical committee
  - Inter-governmental agencies
- Inter-county consultative forums
- Health Sector Consultative Forum

**County Government**
- County Assembly
- County Executives (county executive Committee), County Ministry of Health, County health sector agencies, County Health Facilities
State responsibilities in implementing the right to health

Every state organ has the fundamental duty to observe, respect, protect, promote and fulfil the right to health

• **The Executive**: Formulation of health policies strategies and implementation of the same to actualize the legislative provisions

• **The Legislature**: Enacting laws to realize the right to health. Approving the national budgets that have provisions for health sector

• **The Judiciary**: Interpreting laws and polices in a manner that facilities enjoyment of the right to health and protects the rights of all when violations have been proved.
#Health Bill 2015

- Process of developing the bill flawed
- KELIN with 40 other CSOs raised the issues with the parliamentary health committee in an open letter:
  - Concerns about lack of public participation & time period
  - Bill not available online
  - Bill unconstitutional
  - Better draft ignored

---

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:

1. 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.
2. 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.
3. Organise public hearings by the two health committees to receive oral submissions from stakeholders.
4. Establish a process that will facilitate the Parliamentary Health Committee to harmonize the Health Bill 2019 that is before it and the Bill they have received from the CIC, to ensure Kenya has 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.
Forced & Coerced Tubal Ligation

Five women forcefully sterilized under different circumstances as follows:

- Threats to withhold food portions and baby formula;
- Inducement with the promise to pay medical and maternity fees;
- Lack of provision of essential information to enable the women make informed decisions; and
- Lack of provision of choices of other forms of family planning methods.
Case challenging widespread practice by Public Health Officers to seek court orders to confine TB patients in Prison for treatment. This is despite the fact that Kenyan Prisons:

• Are over-crowded
• Poorly ventilated
• Have no isolation facilities

It puts other prisoners and warders at a risk of infection
Case about a presidential directive seeking to collect data on all school going children who are HIV positive, information on their guardians, number of expectant mothers who are HIV positive and number of breastfeeding mothers who are HIV positive.

The data was to be collected in a prescribed data matrix that would directly link the above mentioned persons with their HIV status.

Advocacy groups moved to court over HIV & AIDS data victims (https://www.youtube.com/watch?v=zivhbc5omMc)
KELIN: Thinking forward & Work in Progress

- How do we ensure we have the right laws and policies at the national and county level that embrace human rights?
- How do we ensure that when people face human rights violations they have access to justice or how do we use the law to stop the violations?
- How do we ensure that communities are empowered on their health rights and are able to challenge the unequal power relations?
- How do we ensure those with a constitutional responsibility deliver as expected by the Constitution on the right to health and respect the rule of law?
- What kind of partnerships do we have to build to achieve this?
Asante sana

Follow us on;
Twitter: @KELINKenya
Facebook: KELIN
Youtube: KELIN Kenya

Email: info@kelinkenya.org
Website: www.kelinkenya.org