

PEOPLE'S HEALTH MOVEMENT KENYA (2010)

REPORT ON THE RIGHT TO HEALTH CARE CAMPAIGN: ASSESSMENT PHASE.

Health for All Now!!

Compiled by: **Erick Otieno Owuor,**
National Coordinator, Right to Health and Health Care Campaign
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INTRODUCTION

A four months Right to Health and Health Care Campaign (RTHHCC,) including grass-roots mobilization, was launched by PHM Kenya under the lead of Kamukunji Paralegal Trust (KAPLET) in partnership with the other members of the circle. The Kenya campaign received a small grant of USD 1,100 from People's Health Movement also known hereunder as the PHM Global and the campaign was aimed at:

- Creating awareness in mobilizing and educating people so as to maintain their participation in the recognition, protection and promotion of the people's right to health and health care for all in Kenya.
- Consolidation of the People's Health Movement Circle in Kenya so as to carry out right to health and health care advocacy and activism work with a focus on addressing the social determinants of health.

The Right to Health Campaign:

The Right to Health Campaign (RTHC) was launched by KAPLET, the Butere Focused Women for Development and the Shimba Hills Forest Guide Association. KAPLET carried out ad-hoc capacity building workshops on:

- The right to health, the social determinants of health and the Alma Ata Declaration
- The Mumbai Declaration/People's Charter for HIV/AIDS
- The People's Charter for Health (including its endorsing)
- The PHM Right to Health and Health Care Campaign Assessment Guide, and
- How to launch the RTHC campaign and a national and two regional PHM Circles in Kwale and Butere.

So far, over eighty members have joined PHM Kenya; their list can be found in annex.

RIGHT TO HEALTH IN KENYA:

Kenya is a signatory of and has ratified United Nation's Conventions and Charters on various Human Rights (see list in annex 2). The right to health and health care is now considered under the new Constitution of Kenya yet it is still too difficult for Kenyans to claim their right to health and health care due to a lack of proper policy, resources and institutional frameworks needed to implement it.

Moreover, the RTH is by now part of national and international HR law and can thus be imputed since Kenya has domesticated some ESCR in the new constitution. The government can, therefore, be held accountable for health rights violations through its new Constitution and the international legal framework. However, there are just a few health promotion and protection policies, programs and laws that have been passed in Kenya that directly tackle the same.

The Government of Kenya has made the following **commitments** towards comprehensive primary health care:

- To the Rights to life, to property, to liberty and freedom of association among other civil and political rights, (**Under Chapter Four of the Constitution of Kenya**). [Nevertheless, the fact is that the right to life is not respected since social conflicts and economic hardship, that

are fueled by inequity and impunity, still claim innocent lives in Kenya every day. The same can be said about the right to health].

- To a National Malaria Control and Prevention Program. [Nevertheless, malaria continues to lead as the No.1 killer disease in Kenya despite it being both a preventable and a curable disease. Most people are too poor to afford costly charges for malaria diagnosis or prophylactic treatment. The cheapest mosquito repellent net costs approximately USD 3; yet over 60% of Kenya's population lives from hand to mouth with an average income of under USD 2 per day. Some die on long queues at congested health centres due to the inadequate number of health professionals in them. In its fight against malaria, the government has failed to more universally distribute mosquito prevention nets].
- To AIDS through the HIV/AIDS Prevention and Control Act of 2006. [Nevertheless, just as for the more visible malaria prevention program, the government needs to do more than male circumcisions if it wants to effectively control HIV transmission. Most people are losing their lives due to a lack of access to ARVs. Stigmatisation is also a problem. Beneficiaries will have to organise to push the government to focus way more on preventive measures: a challenge for PHM Kenya. It is noted that the Government's new development strategy paper: 'Vision 2030', recognizes that HIV and AIDS is a key development issue, thus the need to mainstream it in all development programs. (Florence Simbiri Jaoko, Chairperson, Kenya National Human Rights Commission)].
- To a Tuberculosis Control and Prevention policy. [Nevertheless, TB continues to claim several thousand lives in Kenya and the most affected are the needy who live in congested rooms with poor ventilations and sanitation. Just like cholera, TB is a disease of poverty].
- To a Polio Eradication Program. [This program, with important foreign aid, seems to work out quite well and other health related programs should follow this example].
- To a job creation scheme. [Nevertheless, the Kazi Kwa Vijana Initiative Program (targeting the creation of jobs for the youth) is faced with many challenges despite some successes. The youth is given casual jobs that are not in line with their training. For example, unemployed pharmacists sometimes end up digging sewer lines or sweeping roads so as to earn a living. Some youth work in polluted environments without protective gear].
- To the Millennium Development Goals. [We note here that there will be no excuse for the government of Kenya in 2015 for having failed to achieved most of the Millennium Development Goals. Progress has been patchy with more rapid progress in reduction in the rate of infant mortality, and war against HIV/AIDS and less progress in combating extreme poverty, provision of free primary education and other goals.
- To the Abuja Declaration that requires the government of Kenya to allocate at least 15% of domestic budgets to health towards achieving MDGs & African health priorities. [Nevertheless, in its 2010-2011 budget, Kenya has failed to allocate at least 15% of its budget to the health sector] and must be held accountable for failure to comply with the Abuja Declaration.
- To a Slum Upgrading Program. [Nevertheless, still over 60% of urban population lives in unsanitary Nairobi slums. A recent research conducted by Amnesty International revealed that most slum dwellers face many challenges related to health at large. [Amnesty International report 2010](#) revealed quite a number of challenges ranging from lack of toilet facilities with only 24 per cent of residents in Nairobi's slums having access to home toilet facilities, inadequate clean water supply, indecent housing among other health hazards. Unable to leave their one-roomed houses after dark for fear of sexual violence, many women in informal settlements resort to 'flying toilets' – using plastic bags thrown from the home to dispose of waste and some women describe the humiliation of bathing in front of their relatives and children.
- To ending violence against women through the Sexual Offences Act of 2006. [Nevertheless, the same has proved to be more punitive in nature than being a social means for dealing with social diseases like HIV transmission through rape or defilement].

- To children through The Children's Act, Chapter 586 of the Laws of Kenya. [Nevertheless, most children are still out of school and some live with scavengers in the city streets under filthy unhealthy conditions].
- To the The Nairobi Call to Action for Closing the Implementation Gap in Health Promotion (7th Global Health Promotion Conference). [This Call is meant to bridge the implementation gap on health promotion programs and, so far, has not been implemented].

As has been pointed out, despite all the above laws, policies and programs, poor implementation has made them lack the appropriate impact on health rights protection and promotion in Kenya. It is contended that only organizing claim holders to demand the implementation of these will result in true progress: a challenge for PHM Kenya.

New Constitution of Kenya versus Right to Health Care:

The Constitution of Kenya that was passed on the 4th of August, 2010 and thereafter promulgated into a Supreme Law of Kenya on the 27th of August of 2010 has sanctioned health related rights for Kenyans and these include:

1. Under Chapter Four: Under Article 21 (1); “It is a fundamental duty of the state and every state organ to observe, respect, promote and fulfill the rights and fundamental freedoms in all Bills of Rights”. [Failure for which Kenyans will have the right to hold the state, as the main duty bearer, responsible for loss or damages with respect to the RTH].

2. Article 26 (1 and 4); “The Right to life and the right to emergency treatment” are recognized. [The former constitution of Kenya did NOT recognize the right to emergency treatment, and this is now guaranteed].

3. Article 41 (1); Articulates that “every person has the right to fair labour practices.” [Despite a new law in place, most labour practices in Kenya remain very unfair and are often a risk to the workers’ health].

4. Article 42; Entitles “every person to the right to a clean and healthy environment”. [This entitlement did NOT exist under the former constitution of Kenya and is now guaranteed].

5. Article 43 (1)(a)(b)(c)(d) and (2) does ratify the following **Economic, Social and Cultural Rights:** The Right to the highest attainable standards of **Health** including the right to health care services, including **reproductive health care;** the right to **housing** and **sanitation** of a reasonable standard; the right to **food,** the right to **water** and the **right to emergency medical care** respectively. [As pointed out above, these are new guarantees to Kenyan citizens –now sanctioned by the Constitution].

Article 43(3) adds that “the state shall have the duty to provide appropriate **social security to the needy** and their dependents”. [If well implemented, no person should be expected to die from hunger and starvation in Kenya. But the reality today is that Kenyans continue to die from hunger-related deaths. In a Nairobi slum, for example, a 17 year old boy was gunned down in 2008 for stealing a packet of milk. In September 2010, a male youth was lynched by an angry mob for having eaten food in a kiosk and being unable to meet the cost for the meal].

6. Under Article 46 (1) (a) (d): Consumers now have “the right to goods and services of reasonable quality and the **right to compensation for loss or injury** arising from defects in goods or services”. [Food safety clearly remains a problem though and compensation is nowhere to be seen. In April, 2010, 19 people died in Nairobi after consuming a lethal brew; none of their dependents were compensated].

7. Under Article 53 (1)(c): Every child has the “**right to basic nutrition, shelter and health care**”. [But most children are still surviving under extreme poverty and can not afford basic nutrition as part of the highest attainable standard of living and health care services.]

8. Article 56 (e): Articulates that “the state shall put in place affirmative action programs

designed to ensure that the **minorities and marginalized** groups have reasonable access to **water, health services and other infrastructures.**” Currently, the state has not put in place any practical affirmative action program to ensure that the minorities and marginalized groups have reasonable access to water, health services and other infrastructures.

As PHM, we note: *Kenyan citizens do not only need to usher in a new constitution, but now have to organize to demand from the government of the day to ensure that the new Economic, Social and Cultural Rights articulated in the document are implemented; else, the rights will be as good as if they never existed.*

Facts:

- Kenya currently has 100+ new districts that were created with the sole aim of bringing services (including health services) closer to the people, but there have not been made available adequate district hospitals needed to meet the health needs of the rising population. We however, acknowledge that not every district necessarily needs a new hospital if another one is close by. Economic Stimulus Programs, Constituency Development Funds and Local Authority Transfer Funds have in most cases been channeled to projects, but have not really promoted better public health care in Kenya. Instead, some politicians have been misusing the public funds to rehabilitate private projects such as private toilet facilities that charge members of the public for their use.
- **“No Dumping!” or “Kojoa Upigwe!”** are two of the most popular writings on the walls and on signposts in the streets of Nairobi. But poor planning and poor policy implementation has left most Nairobi streets with no public toilet facilities or dumping sites; urinating and dumping in open places are daily human activities. This is a major challenge for the Nairobi River where most solid and liquid waste ends up despite the ongoing Clean Up the Nairobi River Project that treats the river waters. Someone somewhere is not performing his/her legal duties and must be held responsible. All former public toilet facilities have been privatized and members of the public are now charged for the use of public toilets.
- Most health centers lack adequate medical personnel, modern medical equipment and medicines and work only during day time. A good example is at Kenyatta National Hospital where cancer diagnostic and treatment equipment is said to be malfunctioning. Kenyans that can not afford to pay costly hospital bills are unlawfully detained in both private and public hospitals until they pay. (De-jure, gazetted places of confinement/detention in Kenya are police cells, remand prisons, jails and rehabilitation centers; **NOT hospital wards**). It is by this fact therefore, that as PHM Kenya, we again call for all community members to demand for universal social security coverage from the government.
- Kenyan prisons are popularly known as **lice paradises**. Most inmates have to stay partly dressed due to discomfort caused by lice; prisoners also do not have access to proper nutrition. (A total war against lice in prisons should be declared. Also, conjugal rights of prisoners should be encouraged since their lack causes anti-social behavior, including unsafe anal sexual practices that are hazardous to the health of many detainees and their spouses.) Prisoners that complete their terms in prisons comes out are pose other members of the society at risk of contracting communicable diseases that are not properly addressed in the prisons.

Activities in the three sites (Nairobi, Kwale and Butere) where the campaign was launched included:

- Grassroots organizations mobilization to demand better health services delivery from duty bearers. (In Nairobi, this included a peaceful protest for clean water for slum

dwellers).

- Civil Society Organizations meetings that were geared towards strengthening and supporting health advocacy and PHM activism in Kenya within the principles of comprehensive primary health care and with a strong focus on the social determinants of health.
- Endorsement of PHM's People's Charter for Health by members. (In Kwale and Butere sub-national PHM circles were formed).
- Campaigning during the discussions of the new Constitution so that it included RTH provisions.

As relates to the assessment of the RTH in the three locations, the following were found to be the main violations in each site:

Nairobi: Denial of emergency medical treatment (“money first,”), poor living standards, unsafe foods and beverages, unfair labour practices and unemployment, extra-judicial killings & social insecurity.

Kwale: Inadequate supply of medicines, poor health and other infrastructure, inadequate health care providers and unfair labour practices.

Butere: Denial of emergency medical treatment (“money first,”), poor living standards, unsafe foods and beverages, unfair labour practices and unemployment, extra-judicial killings and social insecurity.

As relates to the mobilization of grassroots organizations for advocacy, the following was done in each site:

Nairobi: Endorsement of the People's Charter for Health, peaceful protest to demand for water supply in slums where there was a cholera outbreak, CSO meeting, formation of PHM Kenya, of the Nairobi circle and civic education.

Kwale: Endorsement of the People's Charter for Health, formation of the Kwale Circle.

Butere: Endorsement of the People's Charter for Health, formation of the Butere Circle.

As relates to lobbying for the new Constitution, the following was done in the three sites:
Conducted civic education programs in support of the draft Constitution.

After the assessment of the RTH phase of the campaign, we can report the following follow-up activities in the three sites:

Nairobi: Sensitisation and mobilization of people to demand: for their right to emergency medical treatment now; for their right to an adequate standard of living; and mobilisation of workers to demand for fair labour practices now, as well as to demand for the right to social security. To call for a press conference.

Kwale: Organisation of meetings and mobilisation of people to demand for equitable resources distribution and fair labour practices now.

Butere: Sensitisation and mobilisation of people to demand for their right to emergency medical treatment now, their right to an adequate standard of living and mobilisation of workers to demand for fair labour practices now and to demand for the right to social security.

Conclusions:

Through the above described assessment and mobilisation, 80+ people have been mobilised to join PHM Kenya and to endorse the People's Charter for Health; thereafter PHM Kenya was formed with three sub regional circles in Nairobi, Butere and Kwale regions. What now remains to be done is to harmonise them into one strong national movement with proper representation. With the little resources that the government of Kenya has, quite a bit can still be done towards promoting and protecting the RTHHC. It is important to note that actual community

participation in the assessment was very low --a fact to be regretted and improved upon.

Next steps:

As a way forward, PHM Kenya is planning to conduct the following activities:

- Hold a post-assessment workshop to present results.
- Form a task force of members to prepare a plan of action for the People's Health Movement institutional building in Kenya and to center its activities on mobilising its membership to proactively demand the changes needed to revert the major violations of the RTH depicted in this assessment report.
- Strengthen and expand the network to as many as possible of the other 44 counties across the Republic of Kenya.
- Engage more and more community members to participate in the RTHC to demand respect of the new constitutional provisions on the RTHHC in Kenya.

ANNEX 1

NAME ORGANIZATION/AFFILIATION/EMAIL/ TELEPHONE

1. Abdullahi M Mwachgonzi, Ngangar Youth, Kwale +254 724 906 720
2. Alice, KISS FM
3. Alie Eleveld, SWAP swap@vicweb.net +254 733 864 009
4. Anwar Sharif, ALP, Nairobi anwarshariff@gmail.com +254 720 856 939
5. Asha Mohamed, Community with Vision Dandora +254 720 947 682
6. Athuman Saidi, KHRD, Nairobi lombotobabu@yahoo.com +254 724 936 904
7. Bahati R Ngazi, Amani Youth Group, Kwale +254 0412 006 704
8. Beatrice Wanjiru, S D N , Nairobi saidianet@yahoo.com +254 727 800 003
9. Bedengo Mwanajuma, KART, Kwale kwalearts99@yahoo.com +254 717 660 082
10. Beth Wanjiku, CHW Kanuku, Nairobi +254 727 247 159
11. Bonface Beti, Weltel University +254 724 950 045
12. Bonface Mutuma, Activist bonniekaura@gmail.com +254 723 462 368
13. Chacha Lucas Matiko, LICUSA kenya, Butere licasukenya@yahoo.com +254 722 417 999
14. Charles Okigbo, APHRC cokigbo@aphrc.org +254 735 153 409
15. Chrispin Omuok, Kiambiu Youth Group, Nbi N/a +254 721 846 357
16. Christine Kasiva, Tolerance Africa (TA) c.kasiva@toleranceafrica.org +254 725 574 890
17. Claire Wambui, SIDAREC, Nairobi clarewambu@yahoo.ca +254 722 399 756
18. Dan Owalla, Health Activist danowalla@yahoo.com +254 714 567 988
19. David Oduor, Pamoja Youth, Nairobi oduu85@yahoo.com
20. David Oginga Makori, KAPLET, Nairobi davidoginga@ymail.com +254 722 280 406
21. Deborah Olwal, World Neighbors dmodi@wneastafrica.org +254 722 799 592
22. Diana Awuor Agai, Bunge la Wananchi, Nbi dayanee2000@yahoo.co.uk +254 720 947 682
23. Dr Allan Makenzi, Aga Khan Hospital, Nbi +254 727 443 251
24. Dr Anisa Abdalla Bhagazal, Coast General Hospital, Mombasa drbaghazal@yahoo.com N/a
25. Dr Ravi Ram, AMREF Ravi.ram@amref.org +254 735 285 369
26. Elizabeth, CPDA elizaphame@gmail.com +254 725 708 749
27. Erick Otieno Owuor, KAPLET, Nairobi ericotienoss@yahoo.com +254 722 361 017
28. Evans Sure, Evasure Producers evasure@yahoo.com
29. Francis Kinyua Gathua, KHRD, Nairobi kinus2008@yahoo.com +254 727 253 131
30. Gapuzwa Kanzere, Millan Youth Group, Kwale P.O. Box 34, Kwale +254 724 227 224
31. Godrick Mwachofy, KVDA, Nairobi chofimwa@yahoo.com
32. Grace Wambui, HERAF info@heraf.ov.ke +254 723 976 187
33. Hamad S. Mwarahani, Darubini Youth Group, Kwale P.O. Box 8 Kwale +254 719 191 629
34. Hassan Indusa, KENGO Admin.kengo@gmail.com +254 723 489 463

35. Idris Aci, SUPKEM idrismahat@gmail.com +254 720 215 596
36. Isabel Wandati Nyangule, BUFOWODE, Butere isabelnyangule@yahoo.com +254 711 514 277
37. Jacqueline Wambui, Tembea Youth Centre viqueeh@yahoo.com
38. Jeniffer Cohn, Health Gap jecohn@healthgap.org
39. John Mulingwa, NCPA, Nairobi garang83@yahoo.com +254 724 421 772
40. Joseph Njuguna, LEANA, Kiambiu +254 724 445 396
41. Joseph O Aloo, Health Activist, Nairobi joe_aloo@yahoo.com +254 722 858 036
42. Juma S. Gassambi, Matuga Arts Troupe, Kwale jumagassambi@gmail.com +254 725 153 089
43. Lucy Muta Macharia, Lutheran Church, Nairobi lucymutta@yahoo.com +254 720 586 985
44. Margaret Amisi Murundo, O W G, Nairobi maresheries@yahoo.com +254 714 663 317
45. Mariam Zuberi, SHIFOGA, Kwale shifoga@yahoo.com +254 734 807 239
46. Maurine Muwenga, Learn More +254 724 206 845
47. Mesaid Abdalla, Kwale Arts, Kwale +254 728 741 126
48. Meswalehe Abdalla, Golini Youth Group shifoga@yahoo.com +254 724 227 224
49. Millicent Akinyi, SMYG, Nairobi rembomilly@yahoo.com +254 723 447 469
50. Mohamed A. Mwamrezi, Ziwani Youth Group, Kwale +254 729 228 568
51. Mohammed Ali, Famau Pumwani Village Health Committee, Nairobi amadifamau@yahoo.com
52. Moses Nduguti Wanja, Kiambiu Youth for Change ndugutinduguti@yahoo.com +254 726214 321
53. Mr Ochieng Ogodo, Activist, Butere Mumias +254 722 369 488
54. Mwakazi Juma, Ambassadors of Change, Kwale Jumamwakazi@yahoo.com +254 716 135 912
55. Mwakutunzah S. Mwarabu, SHIFOGA, Kwale shifoga@yahoo.com +254 724 227 224
56. Mwanakombo Mkono, TSIMBA B.I. +254 723 980 438
57. Naomi Kago, Nbi HBC Alliance, Kayol c/o Bunge
58. Nyamawi Mwandia, Petmazuma Lume CBO, Kwale mazumalumepet@yahoo.com +254 710 530 812
59. Olivo June, Tolerance Africa (TA) olivojjm@toleranceafrica.org +254 721 504 670
60. Omondi Otieno, ACVK +254 722 928 092
61. Pamela SISIMKA, Butere +254 721 383 466
62. Paul Odhiambo, Nyalumba Human rights activist paulezon3@yahoo.com +254 773 706 803
63. Perpetual K Nancy, EDAP, Nairobi +254 722 380 827
64. Phillip Mulongo, Maxfacta, Nairobi maxfacta@yahoo.com +254 724 459 180
65. Rahel A. Oyugi, AIHD royugi@aihdint.org +254 726 531 894
66. Raphael M. Mwachiti, Wema Youth Group, Kwale +254 711 243 011
67. Renalda Mjoba, VSO Renalda.mjoba@vsoint.org
68. Riziki Ramadhani, Chinarini Adolescent Parent Group, Kwale +254 725 949 575
69. Rohalo Mwaniki, NEPHAK bmwaniki2000@yahoo.com +254 720 986 341
70. Rose Dorcas Cheche, Upendo Group, Butere cheromu@yahoo.com +254 722 877 687
71. Rose Norah Anam, SWCFC seniowcc2004@yahoo.com +254 729 431 170
72. Roselyn Kwenda, FWG, federationofwomen@yahoo.com +254 722 578 440
73. Ruth Nasiyo, KOSO +254 722 890 769
74. Salama Baradi, 99.9 Ghetto FM, Nairobi +254 728 259 654
75. Samuel Kavuti, Legal Resource Foundation s.kavuti@lrf-kenya.org +254 713 070 585
76. Shakila Nanzala, Health Activist, Butere shakilananzala@yahoo.com N/a
77. Solomon Ogada, Human rights Activist sogada@gmail.com +254 726 774 381
78. Susan Akoth, KCBONET 67+ akoth_susan@yahoo.com +254 710 731 290
79. Susan Keino, Activist, Nairobi +254 722 320 087
80. Tom Achar Kasudhe, Welfare Society thomasmbuya@yahoo.com +254 720 582 172

81. Walter Nganyi, KMD, Activist, Butere eshiunwa@yahoo.co.uk +254 722 849 144
82. Wycliffe O OMany, Health Unlimited, Kenya wycliffeomanya@healthunlimited.or.ke
+254 722 735 223

ANNEX 2

List and dates of HR Conventions and Treaties ratified by Kenya

1. 23rd January 1992: African Union Convention on African Charter on Human and People's Rights ACHPR (2010c). Status of Ratification/Accession to OAU/AU Human Rights Treaties. Available 19.1.2010: http://www.achpr.org/english/info/index_ratifications_en.html.
2. Convention of the Rights of the Child (CRC) Ratification date: 30.07.1990
3. Optional Protocol on the Involvement of Children in Armed Conflict Ratification: 28.01.2002
4. African Charter on the Rights and Welfare of the Child Ratification 25.07.2000
5. ILO Convention 138 on Employment Age Ratification 09.04.1979
6. ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Ratification 07.05.2001
7. Convention on the Rights of Persons with Disabilities (ICRPD), 2006 Ratification 18.05.2008
8. Rome Statute of the International Criminal Court. Ratification date: 05.03.2005
9. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Ratification date: July 2003.
10. African Charter on Human and Peoples' Rights on the Rights of Women in Africa July 11, 2003 Ratification date: 12.12.2003

Annex 3

Other References:

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10. Other conventions and treaties ratified by Kenya: http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KE/KSC_UPR_KEN_S08_2010_KenyaStakeholdersCoalitionforUPR_Annex3.pdf