



Kenya Medical Association

NATIONAL EXECUTIVE

KMA CENTRE, CHYULU ROAD, P.O. BOX 48502 – 00100 GPO, NAIROBI - KENYA

Mobile: +254 722 275 695

Email: nec@kma.co.ke

Website: www.kma.co.ke

Ref: KMA / HEALTH SERVICE COMMISSION

21st June 2020

KENYA MEDICAL ASSOCIATION RECOMMENDATIONS TO THE BUILDING BRIDGES INITIATIVE TECHNICAL COMMITTEE ON CONSTITUTIONAL REVIEW

1. PREAMBLE

The Kenya Medical Association is a membership society representing medical practitioners and dentists registered to practice in the Republic of Kenya. The Association exists to champion for the welfare of doctors in Kenya, and to advocate for the highest quality of healthcare for all. In this role, KMA works with government, civil society and the public to achieve these objectives.

From the outset, we must declare that the Association fully supports devolution in Kenya and acknowledges that it has brought huge improvements in the lives of the people of Kenya. We do not advocate for recentralization of political power in this country and will support any and all moves to strengthen devolution and accountable governance in Kenya.

As we contemplate the reorganization of the governance structures in this country in the wake of the handshake between the President and the Former Prime Minister that resulted in the creation of the Building Bridges Initiative (BBI), we take this opportunity to declare our support for the BBI process, and to make certain observations and resultant recommendations.

2. OBSERVATIONS

a) On the Right to Health

We emphasise that any discussion on health in this country must ensure that the needs of the people are placed at the centre, rather than any other considerations including the needs of individual professionals or politicians. We are reforming the health sector to ensure better health for all, and not just for a segment of our population. Every decision we make must pass the test of greatest benefit for the people. This consideration is predicated on **Article 43(1)(a)** of the Constitution of Kenya 2010, which provides that:

“Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care”.

Additionally, Article 21 places the responsibility on the State to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights, providing, specifically at **Article 21(2)**, that:

“The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.”

b) On Health as a National Security issue

The COVID-19 pandemic and the response to it has exposed the risk to national security that is posed by health crises in Kenya and across the globe. A healthy population is a strategic national asset, providing a stable base for economic growth and security from internal and external threats. Protecting the health of the population is therefore a core national imperative, and certain strategic aspects of the health function must be coordinated and managed from an accountable national-level perspective. It follows therefore that just like the national security and foreign affairs dockets, the national government must be held accountable for certain key deliverables concerning the health of our people.

While certain important domains such as primary health care, health promotion, sanitation and disease prevention must be implemented by the level of government closest to the people, national health crises and provision of specialized health services must be guaranteed by a national level entity. This, in our view, includes management of the scarce human resources for health, whose distribution, as a strategic asset, cannot be left to the ‘market forces’ of competing subnational entities.

c) On the dangers of over-fragmenting the health function

Over-fragmenting the health function results in a disjointed approach in distribution of human resources for health and other scarce resources in the health sector. This means that people living in richer counties receive better quality health care than those living (often for no fault of their own) in poorer counties. Further, in the event of a serious national health crisis, people living in poorer counties (or even in poorer segments of wealthy counties) are at greater risk of death and disability than those living in wealthier areas.

Poorer people and counties are therefore left to make-do with poorer alternatives to the highest standard of health, or what we at KMA have christened ***Poor Medicine for Poor People***. The Constitution of Kenya, at **Article 27(4)**, outlaws such kinds of discrimination, providing that:

“The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

Fragmentation of health service delivery offends this provision of the constitution, and in our view, ***provision of Poor Medicine for Poor People resulting in poorer outcomes***

including preventable death and disability is a form economic genocide that must be fought by all citizens.

d) On the current distribution of Human Resources for Health

Statistics provided by the Kenya Medical Practitioners and Dentists Council, as well as by the Ministry of Health, clearly demonstrate that Kenya has a severe shortage of health workers, and that the few available are very poorly distributed, with wealthier counties and large urban centres enjoying several orders of magnitude more numbers of health workers than less endowed counties and areas.

The largest contributor to this situation is the fact that each county applies a different approach in their attempt to attract and retain health workers, resulting in some areas being more attractive to work in than others. Further, large urban areas offer more social and economic opportunities for health workers, and therefore attract larger numbers than the more rural or remote areas.

As a result of these disparities there have been almost continuous instances of industrial unrest in the health sector since 2013, further interfering with health service delivery in counties all over the country. It is clear that depending on ‘market forces’ to equitably distribute the health workforce means that poor areas and people will not have access to health services, creating the untenable situation in which all lives in this country are not treated with equal dignity contrary to **Article 28** of the Constitution that provides that:

“Every person has inherent dignity and the right to have that dignity respected and protected.”

3. PROPOSALS

In order to address these issues, the Kenya Medical Association recommends as follows:

a) Health Service Commission

In order to address the management of the scarce human resources for health, which is demonstrably a strategic national resource, we propose the creation of a constitutional **Health Service Commission**.

The composition of the Commission is proposed to include:

- i) A chairperson who must be a respected senior health professional with high level training and several years of health service provision or leadership
- ii) Representation from the national government, including the ministry of health and the National Treasury
- iii) Representation of the Health Worker associations
- iv) Representation of the Health Worker unions
- v) Representation of county governments through the Council of Governors

The powers and functions of this Commission shall include:

- i) Setting standards on the training, recruitment, remuneration, and codes of conduct for health workers in the public service
- ii) Registration of all health workers in the country
- iii) Recruitment of health workers into the public service
- iv) Deployment and transfer of health workers within the public service
- v) Ensure all health workers in the public service adhere to a code of conduct and discipline

The rationale for a Health Service Commission

We believe that centralized management of the Human Resources for Health will strengthen the health function, which is **shared** between the national and the county level of government. Efficient management of Human for Health will strengthen the county governments and free them to focus on equally important areas including improving community health services and primary health care, health promotion, sanitation, prevention of ill health, and provision of supplies to ensure smooth running of county level health facilities. While the Human Resources for Health will be recruited by the HSC, the deployment will be based on needs derived from norms and standards developed by the Commission in consultation with the National and County governments. Remuneration and other terms and conditions of service will be rationalized and standardized to ensure that health workers are comfortable serving Kenyans in any part of the country.

b) On the training of health workers

The Kenya Medical Association makes a further recommendation concerning the training of health workers. Given the need to ensure that health workers are appropriately trained in order to offer services that are contextual and address the needs of Kenyans, we propose that the health training function be shifted completely to the health sector.

We propose that all health training institutions be established and controlled under the ministry responsible for health, given that standards for training will be set and enforced by the Health Service Commission and the health sector regulatory bodies. This will streamline training of health workers and ensure that they are properly prepared to provide the highest attainable standard of health as required by the constitution.

4. CONCLUSION

In conclusion, we thank the President and the Former Prime Minister for establishing the BBI process that provides us with the opportunity to fix the gaps in our health sector and ensure that we are better able to address the health needs of our people. We hope our proposals will be implemented in order to start us on the path towards better health for all Kenyans.

Sincerely



Dr Jacqueline Kitulu
President