

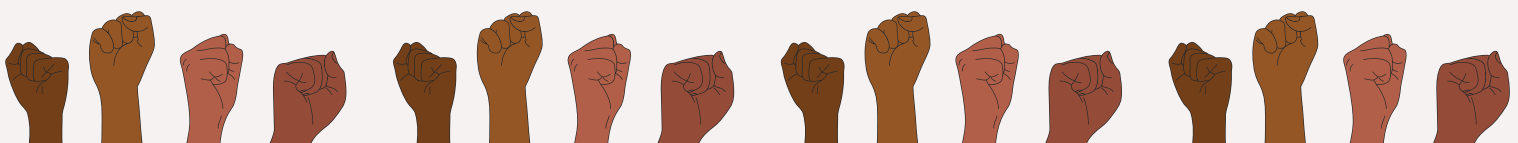


Dr Stephen Kaliti, MD MPH
Head, Division of Reproductive and Maternal Health,
Ministry of Health.

17th March 2022

**RE: NEED FOR PUBLIC PARTICIPATION IN THE DRAFT
REPRODUCTIVE HEALTH CARE POLICY 2020 – 2030**

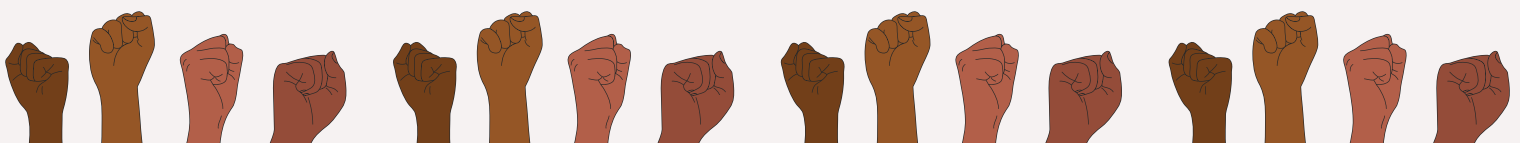
We refer to the above-mentioned matter and your intention to launch the National Reproductive Health Policy 2020 – 2030. We, the undersigned, write in our capacity as service providers; organisations working in the right to health, women's rights and human rights sectors; individual citizens; and residents of different counties. We write to request that you take urgent steps to ensure adequate and meaningful public participation before launching and operationalising the RH Policy 2020 – 2030.





This request is based on the following key reasons:

- i. **Public participation is a Constitutional obligation.** Under Articles 1(1), 1(2), 10, and 38 of the Constitution of Kenya, there is an obligation to consider the needs and interests of the public who are likely to be adversely affected by the proposed policy, before the policy is launched and operationalised.
- ii. **Critical stakeholders were not adequately and meaningfully engaged in the development of the RH Policy.** On 5th October 2021, non-governmental organisations wrote to the Ministry requesting inclusion of civil society in the drafting and validation processes prior to roll-out of the draft Policy. To date, the Ministry has neither responded to the request for inclusion nor made any direct efforts to include civil society in the policy development process despite the fact that the Ministry held validation meetings on 2nd February 2022, and 17th March 2022.
- iii. **The RH Policy being launched has not been made readily available.** The draft Policy is not readily available online, on the Ministry of Health's website. Moreover, the Ministry has not provided the public with information on where and how they can access the draft Policy. It is therefore impossible for people to comment on this crucial document as it is not readily available.

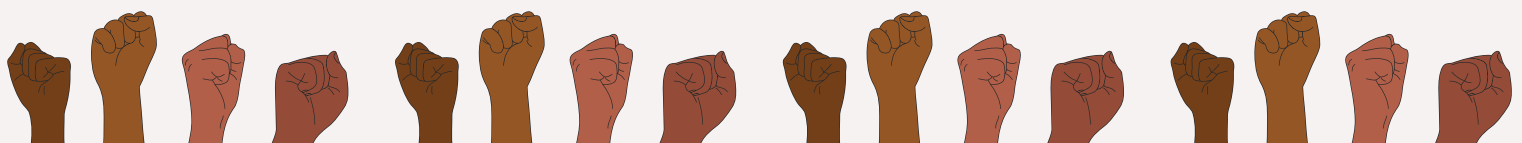


This request is based on the following key reasons:

iv. **The RH Policy excludes key sexual and reproductive health issues.** It completely ignores any interventions on unsafe abortion despite unsafe abortion being a major cause of maternal mortality and morbidity in Kenya. The right to safe and legal abortion in exceptional circumstances is articulated in Article 26(4) of the Constitution. A guiding framework on Article 26(4) is necessary to ensure access to safe abortion services provided by trained medical personnel.

v. **The RH Policy contradicts the Convention on the Rights of the Child and the Ministry's own Adolescent Package of Care** by classifying sex for persons under the age of 21 years as a harmful reproductive health practice, and enforcing consent from parents, guardians or government medical specialists when providing reproductive health services to minors. This also contradicts certain county-specific reproductive health policies that allow minors to consent to their own reproductive health services.

vi. **The RH Policy is unconstitutional** as it requires single parents to be vetted by a professional committee to have children through surrogacy. This violates the right to reproductive health under Article 43(1) of the Constitution, which includes the right to decide if, when and how often to have children; and the right to equality and freedom from discrimination under Article 27 of the Constitution.



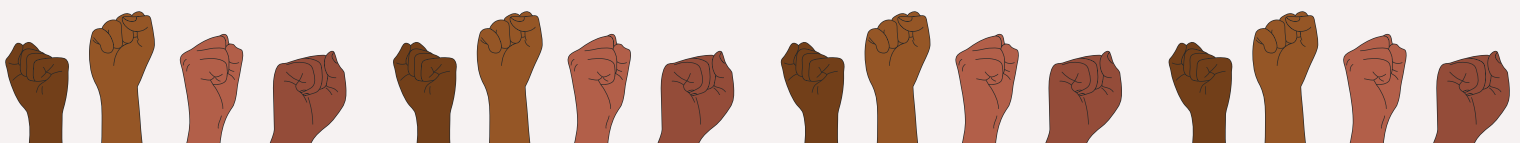


This request is based on the following key reasons:

vii. **The RH Policy is a fundamental policy for the health sector** as it provides a framework for actualising the right to the highest attainable standard of health including reproductive health as articulated in Article 43(1) of the Constitution of Kenya. This Policy provides a much-needed foundation for ensuring quality reproductive health services are available, and accessible. The RH Policy should be given ample opportunity to receive all the relevant feedback from stakeholders.

We, therefore, call upon your office to undertake the following actions to ensure we have an RH Policy that meets the Constitutional threshold and takes into account the views of the public:

- a. Stop the launch of the RH Policy 2020 – 2030.
- b. Make the most recent draft of the RH Policy 2020 – 2030 readily available by making it available online, and publishing the full copy in the leading dailies.
- c. Issue a request for submission of memoranda on the RH Policy 2020 – 2030 that will allow stakeholders at least 30 working days to make written submissions.
- d. Organise public hearings to directly receive oral submissions from stakeholders.





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. We trust that you will urgently undertake the proposed steps above.

Cc: Hon. Mutahi Kagwe, EGH
The Cabinet Secretary
Ministry of Health

Cc: Susan Mochache, CBS
Principal Secretary
Ministry of Health

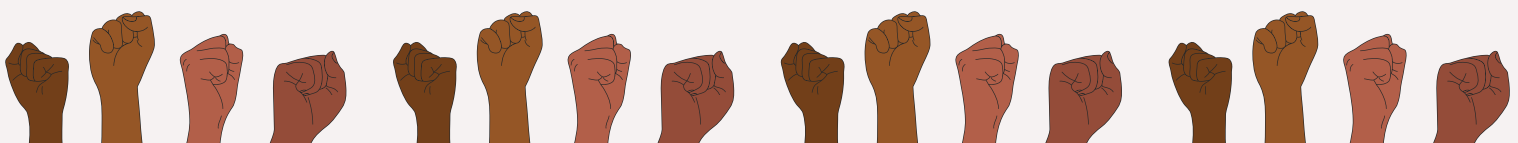
Cc: Dr. Patrick Amoth, EBS
Ag. Director-General for Health
Ministry of Health

Cc: H.E Martin Wambora, EGH
The Chairperson,
Council of Governors.

Cc: Roseline Odede, HSC
The Chairperson,
Kenya National Commission on Human Rights

Cc: Dr. Joyce Mwikali Mutinda, PHD
The Chairperson,
National Gender and Equality Commission.

Cc: Hon. Florence Kajuju, MBS
The Chairperson,
Commission on Administrative Justice.



Signed by the following organisations



women's **L I N K** worldwide