



September 13, 2021

Mark Andrew Meassick
Mission Director, Kenya and East Africa
The United States Agency for International Development (USAID)
P.O. Box 629
Village Market
Nairobi, 00621

Dear Mr. Meassick,

We are writing on behalf of the Economic & Social Rights Centre-Hakijamii and the Center for Human Rights and Global Justice (CHR&GJ) to request a response to the attached questions regarding the growing role of the private healthcare sector in Kenya.

Hakijamii is a leading national human rights organization that supports marginalized groups to claim their economic and socio-cultural rights. CHR&GJ is a premier human rights center based at New York University School of Law in the United States. The Human Rights and Privatization Project at CHR&GJ is focused on how the privatization of essential sectors and services affects the realization of human rights, particularly for low-income people. We will soon release a report on privatization of healthcare in Kenya. The report is based on extensive interviews and focus group discussions with community members, public and private healthcare workers, and community health volunteers living and working in informal settlements in Isiolo, Mombasa, and Nairobi; interviews with health and human rights experts, government officials, and other stakeholders; and a review of public documents, surveys, and laws related to health in Kenya.

Our research to date documents significant concerns about the growing role of the private sector in healthcare. These include high costs for individuals and the government, safety and quality concerns, and shortcomings with regard to public health priorities, accountability, and workplace conditions. People interviewed raised serious human rights concerns, reporting that they were denied and excluded from private facilities, received inadequate care from private providers, and were pushed into debt and economic hardship due to the high cost of private sector care. People in poverty, those with disabilities, rural residents, and women have raised particularly acute concerns.

We are writing to a number of entities including the Ministry of Health, the National Treasury, the National Hospital Insurance Fund, the Public Private Partnership Unit, and the Auditor General. To ensure that our report accurately reflects USAID's position on these issues, we have attached an annex of questions to this letter. In order for us to reflect your responses in our upcoming report, we request that you respond to us by October 1, 2021; alternatively, we would be happy to discuss these questions and our report in a meeting at your convenience. We can be reached at rebecca.riddell@nyu.edu.

Thank you for your attention to this matter.

Philip Alston
Faculty Director, Center for Human Rights and Global Justice
New York University School of Law

Bassam Khawaja
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New York University School of Law

Nicholas Orago
Executive Director
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Rebecca Riddell
Co-Director, Human Rights and Privatization Project
New York University School of Law

Annex: Questions for the United States Agency for International Development (USAID)

Does USAID have a response to the preliminary findings of our research?

USAID has carried out a number of projects that seek to increase private sector participation in Kenya's health sector. What is USAID's rationale for supporting the private health sector in Kenya? For example, what is the evidence base underlying this support and how does USAID believe its support for the private sector will contribute to improving access to healthcare?

Given that accessing private healthcare is often substantially more expensive than public healthcare in Kenya, and the difficulty many Kenyans face in paying for healthcare, what steps has USAID taken to ensure its support of the private health sector benefits poor and lower income Kenyans and does not contribute to existing inequalities in access to care?

Has USAID assessed how its support for private sector healthcare in Kenya has impacted human rights, social risks, or access to healthcare during the last ten years? If so, can you share any assessments or evaluations or, in the alternative, summaries of their contents?

Is USAID's 2018 Private Sector Engagement Policy still in place?

Has USAID undertaken any assessments of the outcome or impact of the Private Sector Engagement Policy, including with relation to whether its implementation has provided opportunities for US businesses? If so, can you share these or, in the alternative, summaries of their contents?

Does USAID have in place any mechanisms for enabling Kenyans to participate in decision-making around its projects in Kenya that affect healthcare and health policy?

In August 2020, USAID posted a request for information concerning a contract to "reshape the healthcare supply in Kenya using market-based approaches."¹ Would it be possible to receive an update on the status of grant? Was the contract awarded? If so, to whom and what activities have been, or are planned to be, carried out?

According to the request for information's "conceptual approach," the focus of this grant is on Kenyans who are "willing and able to fully finance their care in the private sector," and one of the primary activities is to "shift significant patient volumes [from the public sector] to private-sector care."² On what basis is USAID promoting such an approach, rather than focusing on the needs of the majority of Kenyans who are not able to fully finance care in the private sector, or supporting investments in, and strengthening of, the public healthcare system?

¹ USAID, RFI Attachment 1: Private Sector Opportunities to a Fully Private Care and Treatment, 2020, available at <https://www.grants.gov/view-opportunity.html?oppId=328744>.

² USAID, RFI Attachment 1: Private Sector Opportunities to a Fully Private Care and Treatment, 2020, available at <https://www.grants.gov/view-opportunity.html?oppId=328744>.