



Collaborating Organizations: Division of Reproductive Health, Division of Community Health Services, Federation of Women Lawyers (FIDA).

Family Planning Opportunities at County Governments Under the New Kenyan Constitution

The Constitution of Kenya 2010 provides valuable opportunities for family planning at County government levels. The opportunities are entrenched in several Articles of the Constitution, which need to be unpacked to help flag out the family planning opportunities.

There are wide regional variations in the uptake of family planning in Kenya from a high of 67 percent in Central province to a low of only 4 percent of contraceptive use in North Eastern province.¹ Increased uptake of family planning at County levels will be key in accelerating achievement of Millennium Development Goals (MDGs) and the Kenya Vision 2030 Development masterplan. The government's aim is to rise Contraceptive Prevalence Rate (CPR) by at least 2 percent every year in order to attain a CPR of 56 percent by 2015.

Counties which will prioritise and effectively implement provision of family planning and related services will experience faster development and improved quality of life as they will reap the benefits of family planning. Provision of Family planning services will facilitate to the reduction of unmet need for modern contraceptives, prevent unintended pregnancies that lead to unsafe abortions, reduce maternal and child mortality, and improve the health and economic well-being of families and communities² at County levels, thereby contributing to realisation of the Kenya Vision 2030.

Background

The Vision 2030 goal is to make Kenya a globally competitive and prosperous country. Kenya's population growth rate and structure pose major constraints to attainment of Vision 2030's set targets. About 64 percent of Kenya's population of 40 million people is below the age 24 years. The 2009 Census revealed a population growth rate of 2.9 percent per annum, which translates to about 1.1 million babies being added to the Kenyan population annually.³

Most counties will encounter surmounting challenges in providing economic and social rights stipulated in the Constitution due to high population growth rates.



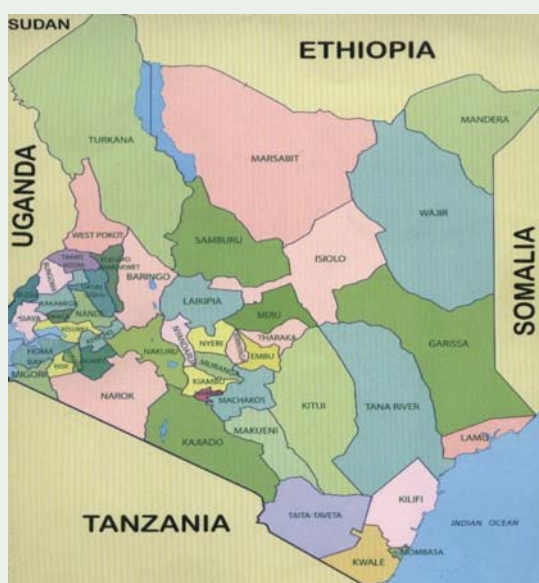
Service provider attending a FP client-Mombasa County

Rapidly growing populations mean increased pressure on limited resources. Population management through, among other means, provision of quality family planning services will, therefore, be crucial in the County governments.

About half of the most recent births among all women aged 15 to 49 years are unplanned in Kenya. The situation is worse in Western, Nyanza and Rift valley provinces as well as in rural areas of Kenya where more than half of the recent births are unplanned. The high unmet need for modern contraceptives, at 26 percent, and at a high of 50 percent among HIV infected persons,⁴ low contraceptive prevalence rate of only 39 percent for modern methods, and high total fertility rate of about five children per woman provides an opportunity for county governments to address these needs. This is important considering the low knowledge levels on reproductive health issues where only 24 percent of women know their fertile period, and only 9 percent of non-users of family planning who visit a health facility are told about family planning.⁵

Devolution in The Constitution of Kenya 2010

The main thrust of the Constitution is the introduction of a devolved government structure where national government shares executive powers with 47 County governments. The objectives of devolution includes recognition of the right of communities to self-management and development, promotion and protection of rights and interest of minorities and marginalised groups, promotion of socio-economic development, and ensuring equitable sharing of national and local resources.⁶ The devolved governance is expected to bring several benefits such as effective and quality service delivery including family planning. Service delivery points will be shifted from the central government to County governments that are nearer to the people.



A Kenyan map showing the 47 counties created by the New Constitution.

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Right to Health Services

The Constitution of Kenya 2010 obligates County governments to provide services including family planning. The Constitution of Kenya 2010 article 43 (1), states 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.”**⁷

The Fourth Schedule of the Constitution 2010 part 2 (2) entrusts County governments with all functions related to health care apart from health policy and national referral health facilities, which remain the responsibility of the national government. County Health Services

will, therefore, be responsible for management of health facilities and pharmacies at Levels 1 to 4; ambulance services; and promotion of primary health care, provision of community health services, provision of health education, provision of reproductive health, provision of health insurance services, procurement, distribution and management of commodities and supplies and community services, among other responsibilities; all relevant for increased uptake of family planning.⁸

Family Planning Services for Minorities and Marginalised Groups

Article 56 (e) states that “the state shall put in place **affirmative action programmes** designed to ensure that the **minorities and marginalised groups** have reasonable access to **water, health services and other infrastructures.**” Family planning services for the minorities and marginalised groups need to be prioritised by the County governments.

Provision of Resources

Resources will be allocated for the running of the County governments and for provision of services and implementation of programmes from both the Central government and those that will be generated at County level. The Constitution provides for a minimum of 15 percent of the national revenues to be allocated to the County governments.

International and Regional Obligation

The Constitution of Kenya 2010 Article 2(5) provides that the general rules of international law shall form part of the Constitution of Kenya. In Article 2(6), any treaty or Convention ratified by Kenya shall form part of law of Kenya. The Constitution in Article 21(4) obligates the state to enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms. Kenya has signed and incorporated into local laws and practices domesticated international protocols and conventions dealing with reproductive health and rights, including the 1994 ICPD, the 1995 Fourth World Conference on Women, and the Convention on the Elimination of Discrimination Against Women (CEDAW).⁹

The Protocol to the African Charter on Human and People’s Rights on the right of women in Africa (Maputo protocol) which Kenya has ratified this convention seeks to eliminate all forms of discrimination, article 14 provides for the health and reproductive rights. It provides that states Parties shall ensure that the right to health of women, including sexual and reproductive

health is respected and promoted including the right to control their fertility. The right to decide whether to have children and the spacing of children, the right to choose any method of contraception and the right to have family planning education. All the countries that have ratified this protocol have the obligation to provide adequate and accessible health services. Article 27 of the Constitution of Kenya 2010 provides for equality and freedom from discrimination. In addition, the United Nations Commission on Human Rights, in 2003, confirmed that reproductive health is an integral element of each person's right to enjoy the highest attainable standard of physical and mental health.¹⁰

Family Planning Opportunities at County Governments

The Constitution of Kenya 2010 provides several family planning opportunities at County governments. The opportunities for family planning services include the following:

- **Integration of family planning into the County Development and Sectoral Plans.** The Constitution mandates the County government to undertake county planning and development, including statistics. This provides opportunity for family planning to be prioritised and integrated in the County Development Plan and in all sectoral plans. Family planning related activities will, therefore, be undertaken in all the sectors. Generation of county family planning data by the Statistics Unit will provide an opportunity for proper family planning service delivery based on accurate and updated county information and data.
- **County governments' budgetary allocations.** The Constitution in Article 175(b) states that a County government shall have reliable sources of revenue to enable them to govern and deliver services effectively. The main sources of revenue will be from (i) County government taxes and charges, specifically property rates and entertainment, and to a lesser extent charges for services the County government provides, and (ii) transfer of money from national revenue. The Constitution provides for a minimum of 15 percent of revenue to be allocated to County governments using a constitutional formula developed by the Commission of Revenue Allocation (CRA). To undertake devolved functions in counties, the government set aside Ksh. 148 billion in the 2012/13 financial year. This is an equivalent of about 26 percent of recent audited revenue. During transition, the National government will continue to provide these functions until the Counties are up and running.

- **Equalisation funds.** The Constitution provides for an equalisation fund to cater for provision basic services, including health facilities, in marginalised areas. It is expected that equitable regional development of the marginalised areas will be enhanced with the allocations of resources for devolved functions and through the Equalization Fund. A total of Ksh. 5.5 billion was allocated for Equalisation Fund covering two fiscal years of 2011/12 and 2012/13. The allocation for the 2011/12 of Ksh. 2.5 billion will be utilised on water, roads, health facilities, and electricity as per the Constitution. The allocation of Ksh. 3 billion for the 2012/13 financial year will await the CRA to determine and publish the criteria to be used to identify marginalised areas.

- **The Health Sector Services Fund (HSSF).** This provides direct financing to primary health care level: health centres, dispensaries and community levels. These provide basic treatment services and health promotion. Public institutions and those managed by the community as well as faith-based organisations will all benefit from the fund. The HSSF scheme is meant to improve the coverage of health care to Kenyans. Local communities are involved in managing the funds and prioritising their health needs. It is also in line with the provisions of Article 43 of the Constitution, which gives the state responsibility to provide to every citizen the highest attainable standard of health. The HSSF scheme fosters the Constitution's central tenet of decentralisation
- **Rights to health.** The Constitution gives a detailed Bill of Rights that includes provision of reproductive health services. Article 43 (1) (a) and (b) explicitly states the health rights of the citizen. This recognition gives every citizen of Kenya the freedom to take legal action to demand the implementation of various clauses on health rights.

Article 43 of the new Constitution also recognises the rights of youths (ages 18 to 35) to good health. Youths, therefore, have an opportunity to access and use family planning services in an environment that is suitable to their needs.

- **Affirmative action: Article 56 (e)** of the Constitution articulates that "the state shall put in place **affirmative action programmes** designed to ensure that **minorities and marginalised groups** have reasonable access to **water, health services and other infrastructure.**" County governments need to give priority to family planning services for the minorities and marginalised groups
- **Devolution of government structures.** The creation of county governments under the

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new, decentralised structure will help move family planning services closer to the people and better deploy health workers in all parts of the country. People will be able to participate freely in decision making on issues affecting them, especially family planning issues. This can lead to better provision of health services, including reproductive health services, and hence a sharp improvement in the provision and use of family planning services in all the 47 counties.

● **County government delegation of functions and responsibilities.**

The Constitution provides for the County government to delegate certain functions. The Cities and Municipalities, and other institutions within the Counties can be assigned family planning responsibilities as part of measures aimed at increasing the uptake of the services.

Recommendations

To benefit from the opportunities for family planning at County governments under The Constitution of Kenya 2010, the following actions are required:

1. The CRA should urgently determine and publish marginal areas and ensure that the equalization funds are allocated to those areas to be used in the provision of services including family planning.
2. The CRA should refine and finalise the constitutional revenue allocation formula to open the way for disbursements of the devolved County Governments funds by March, 2013. Population numbers per se should not have more weight in the formula as it may hamper the efforts being made to encourage families to plan their families at all levels.
3. Family planning stakeholders and civil society organisations should lobby and advocate for family planning to be accorded high priority in all the 47 County governments.
4. The Ministry of Justice and Constitutional Affairs in collaboration with other government departments, development partners and civil society organisations should initiate civic education sensitisation meetings in all the 47 Counties to sensitise the people on their basic rights as enshrined in the constitution including their right to reproductive health services and family planning.

Conclusion

The Constitution of Kenya 2010 provides family planning with lots of potential opportunities at the County government levels. The potential opportunities if well utilized will greatly increase the uptake of family planning services across the country. Concerted efforts are required at national and county levels, and among the family planning stakeholders, to ensure family planning issues at the Counties are given high priority so that all the 47 counties can reap family planning benefits.



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Young mother receiving FP information & service, Mombasa County