

UNIVERSITY OF NAIROBI

**CENTRAL AND COLLEGE BASED SENSITISATION OF RAPID RESULTS
INITIATIVE (RRI) ON CONSTITUTIONAL IMPLEMENTATION AND PUBLIC
SERVICE INTEGRITY PROGRAMME**

**Remarks by Naomi N. Njuguna at the Mini Launch of RRI at the College of Health
Sciences, Kenyatta Hospital Campus**

Developing countries the world over have had a culture of having Constitutions which only consider and grant political rights (whether adequately or not) to their citizens. This has resulted in many constitutional debates and issues being highly politicized at the expense of the “real issues” that face the common citizenry.

Progressive countries have however reformed their Constitutions to being more than mere political documents and to being more of social contracts that guarantee social, cultural and economic rights that the State can be held accountable for protecting hand in hand with political rights.

In Kenya, which is one such progressive country, the independence Constitution and the previous Constitution only guaranteed political rights and also only made these rights the main preserve of the State to protect. However, the Constitution of Kenya 2010 is a document which has incorporated social, economic and cultural rights alongside political rights as well as principles and values that not only leaders and public officers, but all Kenyans should aspire to and espouse in the conduct of all their affairs and work.

For this Constitution’s objectives to be realized, it will require unity and a sense of patriotism on our part as Kenyans. It will require an understanding and a commitment to ensuring that we uphold and defend the dignity of this Constitution as is envisaged by Article 3 of the Constitution:

“Every person has an obligation to respect, uphold and defend this Constitution.”

We must do so for our children and our children's children and for all future generations that will come after us.

For a long time in the history of this country, despite many great national leaders coming from public universities in Kenya, Universities (and especially public universities) have been reluctant by standers in the process of Constitution making and Implementation. But not anymore! This Constitution creates avenues and values by which Public Institutions of higher learning and indeed all Kenyans can participate in the implementation of the Constitution's objectives. This is through Article 118 on public participation and Article 232 which sets out the principles of public service.

Article 11 of the Constitution recognizes CULTURE as the foundation of the nation and as the cumulative civilization of the Kenyan people and the nation. The State is thus given the responsibility to:

- Promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.
- Recognize the role of science and indigenous technologies in the development of the nation
- Promote the intellectual property rights of the people of Kenya

These are all aspects that Universities, particularly University of Nairobi as the mother of all Universities, are involved in. they are involved in the production and distribution of knowledge but are also incubators of leadership values. There is thus a place for partnership of the University with the State in the implementation of the Constitution.

During this mini launch of the RRI at the College of Health Sciences, it is important to consider the implications of the Constitution of Kenya on health care in the country and to see how the University can effectively and sustainably implement the Constitutional provisions which have a bearing on health and access to health care.

Without even going into details into the available statistics concerning the number of deaths caused by HIV/AIDS, malaria, tuberculosis, cholera, malnutrition, lack of adequate facilities for maternal and child care, lifestyle diseases and conditions, road accidents and even medical negligence, there is no doubt a need to restore public

confidence in the country's ability to provide quality healthcare and services in a sustainable, effective and efficient manner. There is need for a re-positioning, re-thinking and a reculturalisation of healthcare providers in meeting public expectations and hopes that have been raised by the Constitution of Kenya 2010. This can be done by the University training competent and globally competitive healthcare professionals who also have values of integrity and professionalism inculcated in them.

It is often the argument that economic development contributes to the health of a nation. That a wealthy nation is a healthy nation. However, the converse can also be stated. That the improvement in the health of a country can contribute to the economic development of that country through improved productivity or output of the workforce, through reduced family sizes and hence reduced poverty levels and through a reduced treatment burden (among other arguments that one can make). The role of health in the development of a nation thus cannot be overemphasized.

It therefore justifies why health has been constitutionalised.

The Constitutional provisions that are relevant to health in this country fall into two main categories:

- a) Those that deal with the right to health and healthcare
 - b) Those that deal with devolution and decentralization of healthcare services and access to those services
- Article 26 – provides that every person has the right to life. The life of a person begins at conception. Abortion is not permitted, unless in the opinion of a trained health professional, there is need for emergency treatment or the life or health of the mother is in danger, or if permitted by any other written law
 - Article 43 – right to the highest attainable standard of health, which includes the right to health care services, including reproductive care. (More relevant to public health) also the right to reasonable standards of sanitation and to have adequate food of acceptable quality (issues to do with GM food, imports, etc), to clean and safe water in adequate quantities. This Article also provides that a person shall not be denied emergency medical treatment.

- Article 53 – for children – every child has the right to basic nutrition, shelter and healthcare
- Article 54 – for persons with disabilities – a person with any disability is entitled to be treated with dignity and respect and to access materials and devices to overcome constraints arising from the person’s disability.
- Article 56 – the State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups have reasonable access to water, health services and infrastructure
- Article 28 – every person has inherent dignity and the right to have that dignity respected and protected – this is particularly relevant for the protection of the autonomy of the patient.
- Article 31 – Provides for the right to privacy
- Article 57 – the state shall take measures to ensure that the rights of older persons to receive reasonable care and assistance from their family and the State.
- Article 20 (1) – the Bill of Rights applies to all law and binds all State organs and all persons (in previous Constitutions, the Constitution only bound the State)
- Article 20(5) – in applying any right contained in Article 43 – which includes the right to health – if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the following principles:
 - i. It is the responsibility of the State to show that resources are not available
 - ii. In allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances including the vulnerability of particular groups or individuals.
- Article 21 – on Implementation – it is the fundamental duty of the State and every state organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights; the State shall also take legislative, policy and other measures including the setting of standards to achieve the PROGRESSIVE REALISATION of the rights guaranteed under Article 43

(including the right to health) – The University can partner with the State in this respect.

- Article 174 – objects of devolution. Pertinent of which are:
 - i. To promote democratic and accountable exercise of power
 - ii. To give powers of self governance to the people and to enhance their participation in the exercise of the powers of the State in the making of decisions affecting them
 - iii. To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya
 - iv. To facilitate the decentralization of State organs, their functions and services from the capital of Kenya
- Article 175 – principles of county governments – including the principle that country governments shall have reliable sources of revenue to enable them govern and deliver services effectively
- Article 176 – every county government shall decentralize its functions and the provision of its services to the extent that is efficient and practicable to do so.
- Schedule 4 – further gives guidance as to the roles that National government will perform and those that County governments will perform.

National Government – general principles of land planning and the coordination of planning by the counties; national referral health facilities; health policy

County government – county health services including in particular, county health facilities and pharmacies, ambulance services, promotion of primary health care, licensing and control of undertakings that sell food to the public, veterinary services(excluding regulation of the profession), cemeteries, funeral parlors and crematoria, refuse removal, refuse dumps and solid waste disposal

- Article 235 – staffing of county governments – it is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament for establishing and abolishing offices in its public service, appointing persons to hold or act in those offices and confirming appointments and exercising disciplinary control over and removing persons holding or acting in those offices (this excludes the TSC positions)

The challenges in the progressive realization of this basic socio – economic right to be considered are:

1. Interpretations of the constitutional provisions on the right to highest attainable standards of care (what should be the core content of the health care services and reproductive health care services?); right to emergency medical treatment (what conditions give rise to emergency medical treatment; scope of emergency medical treatment i.e. what does it cover? Questions of professional indemnity are also pertinent); the different roles of the stakeholders in society in regard to health issues as well as the responsibilities of the State and of the individual in realizing these rights should be considered.
2. Leadership and Governance of the Healthcare sector – including organization and governance at county level; how responsibilities will be shared between National and County governments
3. Service delivery and health systems management
4. Health products and facilities – including how health commodities will be procured at county level; there is need for machines, weighing scales, thermometers, blood pressure machines, glucometers, stethoscopes, foetoscopes, beds, ultrasound machines, dialysis machines, even vehicles.
5. Health work force/ personnel – it is interesting to note that the recruitment, employment and deployment of teachers lies with the TSC which has been constitutionalised. The Doctor's recruitment, employment and deployment lies with county government. (There have been arguments that National government should handle personnel while counties can oversee infrastructure).

6. Health care financing – planning and budgeting at national and county levels for the health – Note the situation at present. This year, for every Kshs. 100 the government will spend, only Kshs. 5 will go to healthcare. In 2010, the government spent Kshs. 7.20 for every Kshs. 100; it went down in 2011 to Kshs. 6.10 and last year it was Kshs. 5.90. This has been criticised as gross underfunding. The Cabinet secretary Mr. James Macharia also raised concern at the health sector needing Kshs 160 billion but only receiving 34.7 billion of the budget. The challenge is also that the “little” money that is allocated is lost through corruption and mismanagement (around 40% is lost); County governments have been allocated Kshs. 60 billion in addition to the 34.7 billion allocated to national government (all this is 5.7% of the national budget). This is not enough to fund salaries, infrastructure and equipment. A national economic survey has shown that budget allocation to the Health sector has reduced significantly over the last three years (7.2% in 2010; 6.1% in 2011; 5.9% in 2012). The Musyimi Taskforce report recommended that the National Treasury was to allocate a minimum of 217 billion shillings to the Health Ministry to implement a three year health stimulus package. This was to have begun last year. This amount was to progressively increase by 2% per annum to achieve the Abuja target of 15% of the budget.
7. Health care information – e-health; a lot of medical information and knowledge remains in paper form. It should be digitized and stored in accessible formats and repositories and be disseminated and analysed for the betterment of predictive and preventive medicine. There is need to implement the file transfer protocol system; the district health information system, the county knowledge management system, among other digital initiatives. Harmonization of regional information systems and laws.

There are thus numerous opportunities that the University of Nairobi, as the mother of all Universities, has to partner with the State in ensuring that the policy, administrative and legislative frameworks have been put in place to ensure the implementation of the Constitution of Kenya.

In conclusion, as Kenyans and indeed the University of Nairobi looks at ways of implementing the Constitution of Kenya 2010, Vision 2030 and the United Nations Millennium Development Goals in the area of health and health care, it also needs to

look at the strategic partnerships that are already available to support the sustainable implementation of the same. One such strategic partnership is the East African Community which can be a vehicle to support and help implement the goals of the Constitution of Kenya. Already there has been launched the Regional Open Health Initiative that has the aim of harmonizing the health care laws and initiatives of the East African Community. (That however is a topic, hopefully, for another day).

Thank you and God bless you.