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The Spirit of Human Rights: Universal Health Coverage in Makueni County, Kenya

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Abstract

In view of the United Nations' goal to achieve universal health coverage (UHC) by 2030, this paper investigates MakueniCare, the highly successful UHC program in Makueni County, Kenya, to reveal the spirit of human rights underlying it. Drawing on international, Kenyan, and Makueni County law and policy, as well as 30 interviews with government and civil society leaders in health care policy and programming at the national and county levels, we examine the human rights law and principles that underlie the adoption and implementation of MakueniCare. We first set out key human rights principles grounded in the International Covenant on Economic, Social and Cultural Rights and the 2010 Kenyan Constitution, and then describe the research design and methodology of the project. Then, we analyze the data collected to highlight the various ways in which the adoption and implementation of MakueniCare were influenced by human rights, particularly the right to health. We conclude with thoughts on how MakueniCare could be further improved from a human rights perspective.

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Introduction

Universal health coverage (UHC) has been promoted by the World Health Organization since 2005 and was adopted by the United Nations General Assembly in 2015 as target 3.8 of the Sustainable Development Goals (SDGs) to be achieved by 2030.[1] According to the World Health Organization:

> *Universal health coverage (UHC) means that all people have access to the full range of quality health services they need, when and where they need them, without financial hardship. It covers the full continuum of essential health services, from health promotion to prevention, treatment, rehabilitation, and palliative care across the life course.*[2]

Despite United Nations General Assembly and World Health Organization commitments to prioritize UHC, in 2021, 4.5 billion people were not fully covered for essential health services.[3]

Importantly, UHC is not equivalent to the right to health.[4] Indeed, "not all paths to universal health coverage are consistent with human rights."[5] First, the right to health includes but extends far beyond health care to include the underlying determinants of health, such as safe housing, decent work, nutritious food, potable water, sanitation, and a clean environment. Second, the right to health also includes process rights such as nondiscrimination, transparency in policymaking, participatory decision-making, and accountability, including the right to a remedy. Thus, UHC may be a component of the right to health, if it is implemented in a rights-based manner, but it is only one component of the broader right to health.[6]

While UHC is not necessarily rights based, human rights underlie the SDGs, including SDG target 3.8 on UHC. Indeed, the SDGs are grounded in the Charter of the United Nations, which aims to advance respect for human rights, as well as the Universal Declaration of Human Rights and international human rights treaties.[7] Thus, consistent with their international legal and political commitments, UN member countries must implement UHC in a human rights-based manner to achieve SDG target 3.8. Significantly, at the national level, the right to health has proven to be an important factor in driving action to achieve UHC in several countries, including Mexico and Turkey.[8]

Kenya has struggled to implement UHC since the country's independence in 1963.[9] A major step forward was the recognition of the right to health in the 2010 Kenyan Constitution, which simultaneously devolved significant authority to the 47 counties to implement UHC. Article 43(1)(a) of the 2010 Constitution states, "Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care."[10] Toward this end, in 2013, the national government eliminated user fees for primary health care, as well as for maternal care and under-five health care.[11] Devolution of health care to the county level resulted in a variety of approaches to implement UHC across the country. None was as successful as the UHC program in Makueni County, MakueniCare. In 2013, only 8.8% of the county population had health insurance, primarily covered under the National Hospital Insurance Fund; by 2018, 91% of the county was insured under MakueniCare.[12]

In this context, this paper examines the highly successful UHC program, MakueniCare, to reveal the extent to which human rights principles and the right to health underlie its adoption and implementation. Recent articles on health rights and UHC in Kenya have focused on several county programs—including those in Kwale, Nairobi, Kisumu, Nyeri, Machakos, and Isiolo Counties—but have not examined Makueni County.[13] Further, while several publications analyze MakueniCare, none of them have made human rights central to their inquiry.[14]

This paper is the second in a series of papers on MakueniCare that draws on (1) international, Kenyan, and Makueni County law and policy and (2) 30 interviews conducted in 2019 with leaders in health care policy and programming at the national and county level.[15] While the previous paper focused specifically on the political drivers for the adoption of MakueniCare, this one examines the spirit of human rights—specifically, the right to health—in the adoption and the implementation of MakueniCare. We begin by briefly setting out human rights principles grounded in the International Covenant

on Economic, Social and Cultural Rights and the 2010 Kenyan Constitution, and then describe the research design and methodology for the project. Next, we analyze the data collected to highlight the various ways in which the spirit of human rights infused the adoption and implementation of MakueniCare. We conclude with thoughts on how MakueniCare could be improved from a human rights perspective.

Human rights law and principles

The spirit of human rights, particularly the right to health, provides a strong foundation for UHC by setting normative standards, principles for governance, and expectations of duty bearers and rights holders. In the case of Kenya, the human rights foundation is established in the International Covenant on Economic, Social and Cultural Rights, which Kenya joined by accession in 1972. Article 12 of the covenant provides in part that state parties must "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[16] Further, "to achieve the full realization of this right," states must create "conditions which would assure to all medical service and medical attention in the event of sickness."[17] This obligation is spelled out more fully in General Comment 14 issued by the United Nations Committee on Economic, Social and Cultural Rights, which explains that the right to health includes the right to health facilities, goods, and services, including "the provision of equal and timely access to basic preventative, curative, rehabilitative health services and health education."[18]

Further, the right to health includes key human rights features, including the rights to transparent processes of health governance, participation of the population in political decisions relating to health, nondiscrimination and equality in decision-making and in access to health care, accountability of government officials as duty bearers, and access to remedies for rights holders.[19] Importantly, the International Covenant on Economic, Social and Cultural Rights recognizes that state parties may not be able to provide all elements of the right to health immediately; however, they must take steps to the maximum of available resources with a view to achieving progressively the right to health.[20]

Kenya incorporated the international right to health, including its key features, into its 2010 Constitution. Reflecting article 12 of the covenant, article 43 of the Kenyan 2010 Constitution states, "Every person has the right (a) to the highest attainable standard of health, which includes the right to health care services, including the right to reproductive health care." Further, the 2010 Constitution recognizes the human rights principles of governance and public service, including nondiscrimination, transparency, participation, and accountability, as well as the obligation to progressively realize in full the right to health.[21]

On the basis of these commitments in international and domestic law, this paper analyzes the circumstances of the adoption and implementation of MakueniCare to unveil the extent to which this UHC program reflects the spirit of human rights.

Research design and methodology

Makueni County made for an interesting case study on realizing SDG target 3.8 on UHC because it is an outlier in Kenya and in Sub-Saharan Africa due to its rapid success in expanding health insurance coverage. We used a case study research design and employed qualitative methods allowing the flexibility to probe multidimensional factors in a complex landscape of health care reform in Kenya.[22] We employed two main data collection techniques. First, we undertook document and archival research to develop an in-depth understanding of the political and policy framework guiding health policy from 2010 to 2021 in Kenya and in Makueni County.[23] We analyzed key national and county health policies, development plans, campaign manifestos, government gazettes, and media clippings. In the field, first author Kamau also reviewed county government internal memos, operational guidelines and budgets, and health facilities' inpatient and outpatient statistics. Second, in the summer of 2019, Kamau conducted 30 in-depth interviews with key informants, including three politicians, fourteen bureaucrats, and seven civil society representatives

in Makueni, as well as six key health policy experts in Nairobi.

The interview data were manually transcribed, and all data (interview transcripts, documents, and field notes) were analyzed using ATLAS ti., a qualitative social science software using human rights principles as the framework for analysis. We employed several strategies to ensure rigor, including triangulating information from the multiple methods and sources, providing a rich and thick description of the findings, and debriefing with peers.[24] Research approval was received from the University of Massachusetts Boston (approval no. 2019115) and the National Commission for Science, Technology and Innovation in Kenya (reference no. NACOSTI/19/218221/31705).

Findings

The evidence showed that the following six key human rights principles provided a foundation for the adoption and implementation of MakueniCare: (1) the right to health care as a normative framework, (2) progressive realization of the right to health, (3) use of maximum available resources, (4) universality, equality, and nondiscrimination, (5) participation, transparency, and accountability, and (6) understanding of duty bearers and rights holders.

The right to health care as a normative framework

The 2010 constitutional provision that guarantees everyone the right to health created a foundation for the adoption of policies to realize UHC. Both the key informants and the documents reviewed connected the investment in the county's health sector and the establishment of MakueniCare to the 2010 constitutional guarantee of the right "to the highest attainable standard of health, which includes the right to health care services."[25] For example, James Kanyange, the county director of health commodities and technology, claimed:

> [T]*he governor mentioned in his manifesto that he'll ensure that the population gets the highest attainable standard of health as is dictated in our Constitution; so every year we have been getting some amount of budgetary allocation.*

Similarly, Peter Owiti, executive director of Wote Youth Development Project, a county nongovernmental organization (NGO), asserted:

> *The Constitution says that every citizen has a right to the highest level of health care. So that was a drive in itself, that it was a constitutional mandate for people to have the highest level of health care. So, if you combine the* [global UHC] *wave plus the Constitution, then automatically the county government made it one of its pillar projects.*

Further, the 2016 *MakueniCare Implementation Guidelines* cite the constitutional guarantee of the right to health as a key impetus for the county government's commitment to enhance access to health services. The guidelines state that "[t]he Department of Health [in] Makueni is committed towards improving access to health care to all citizens as a means of realising the Right to Health enshrined in the constitution of Kenya 2010 as well as the long-term development blueprints including the Makueni County Vision 2025."[26] In sum, the record shows that the constitutional right to health played an important role in influencing the adoption of MakueniCare.

Progressive realization of the right to health

Following devolution in 2013, the Makueni County government began to progressively realize the right to health. Key informants and policy documents revealed that, like many other counties, Makueni inherited a dysfunctional health care system from the national government at the start of devolution. The evidence further indicated that during the first three years, from 2013 to 2016, the county invested substantially in strengthening the health care system to increase access to both primary and secondary care. To this end, the county increased the number of health care workers, improved access to quality essential drugs, and expanded and equipped health facilities, all of which contributed to a more efficient service delivery system.[27] This set the stage for the subsequent adoption of a county

health insurance program in 2016. In the words of Governor Kibutha Kibwana, a key lesson from Makueni is that

> *Universal health coverage is possible, but you must make sure that the basis for it exists—so that you don't have a hollow universal health coverage system in terms of you have no facilities, you have no doctors, you have no budget for medicine. It is almost like a checklist so that by the time you think you are considerably ready, tick the following … So that's very vital, and that's why we were lucky to have, first of all, just worked on the essentials. And then when we now came to the decision that we could have the universal health care and let the people contribute to their own insurance coverage, the facilities, health workers and the money for drugs and the systems for how you get the drugs to them and so on are in place … By the time we started, because of the focus on health, we had already prepared quite a bit …* [T]*here was deliberate work to prepare ourselves.*

Similarly, Andrew Mulwa, Makueni County minister of health, explained that upon devolution, the county worked to invest in the health system to ensure increased access to both primary and secondary care, and the next logical step was to resolve the issue of financial protection. He recounted:

> *So, we asked ourselves, now that the primary component seems to be fairly sorted and everyone feels happy, how can we have a mechanism of taking care of financial protection of the citizens in the secondary level of care?*

To this end, in early 2016, the county government launched a six-month pilot program that covered the cost of health services for residents 65 years and older.[28] Then, in October 2016, the county government established the Makueni Universal Health Care Programme, known as MakueniCare, to provide health insurance to all households that pay an annual premium of Ksh 500 (US$5).[29] The Ksh 500 annual premium for MakueniCare is much lower than the Ksh 6,000 (US$60) annual premium for the National Hospital Insurance Fund. Moreover, residents over the age of 65 are exempt from the Ksh 500 premium.[30]

MakueniCare pools members' contributions together with a county government contribution derived from its annual allocation from the national government general tax revenue.[31] Table 1 shows the county government's allocations to MakueniCare from its inception in 2016 to 2020.

Significantly, following devolution, the Makueni County government progressively realized the right to health by first building the health care infrastructure, then launching a pilot health care financing scheme for people aged 65 and older, subsequently establishing a health care financing system for all county residents, and then annually increasing funding for health care. According to the World Health Organization, 91% of the 188,000 households had registered for MakueniCare by the end of 2018.[32]

Maximum available resources

The right to health calls for governments to use the maximum of available resources toward progressively realizing the right to the full extent.[33] The Makueni County government took significant steps to do so, including (1) adopting measures to curb corruption, (2) putting in place procedures to minimize waste in spending, and (3) prioritizing health care in the county budget.

A key change brought about by devolution was the provision for the equitable sharing of at least 15% of the revenue raised nationally to all 47 counties, thereby substantially increasing the Makueni County budget.[34] In this context, Makueni implemented

TABLE 1. County government allocations to MakueniCare, 2016–2020

Year	2016/2017	2017/2018	2018/2019	2019/2020
Amount in US$	2 million	2.5 million	3.0 million	3.5 million

Source: P. Muasya, "Inside Makueni's Universal Health Care Programme," The Standard (August 13, 2018), https://www.standardmedia.co.ke/health/article/2001291782/inside-makueni-s-universal-health-care-programme; Key informant interviews, June-August 2019.

several measures to build a culture of integrity despite the country context characterized by endemic corruption. First, key informants reported that the county leadership took action against corrupt officials. The Honorable Jackson Mbalu, member of the County Assembly and chair of the Health Committee, noted:

> *Makueni has succeeded because the governor is keen in fighting corruption … Because the minute you open a crack of corruption, everybody down there will follow you. So that's what Kenya needs, leaders who are very true to what they say … leaders who will toe the line. Anybody who is involved in corrupt dealing is sacked. So, it has to start from the top …* [E]*ven if the executive officer who is hired by Governor Kibwana himself becomes corrupt, he will be sacked … If you're corrupt, you'll be sacked and that's very good. Because even chief officers know, everybody knows, if we catch you with corruption, you'll be sacked, and there is no question about Governor Kibwana. He won't allow it … And he has sacked several ministers before.*

A second measure taken to stop corruption was hiring an external consultant to vet bills of quantities for county government-funded projects to ensure that prices are not inflated. Key informants underscored that most corruption in government stems from procurement. They explained that before a tender for a new construction project is advertised, the Ministry of Public Works first develops bills of quantities. To ensure that these are not inflated, the Makueni County government engages an external quantity consultant to evaluate and approve all the bills of quantities before they go through the tendering process. Patrick Kibwana, Makueni County's chief officer of health, explained:

> [M]*ost of the bills of quantities in the country are usually inflated. But … we have hired an external consultant quantity surveyor who reviews the bills of quantities from our public work and makes sure that there's no money hidden there for any public servant.*

A third measure taken to curb corruption was the installation of project management committees (PMCs) composed of two members from the county government and three members from the community. Key informants explained that PMCs ensure that construction projects are completed to the required standard and that material and equipment procured are delivered in the right quality and quantity. Several key informants spoke about the role played by the PMCs in reducing opportunities for corruption and ensuring value for money. For instance, Jopha Kitonga, a county health administrator, related:

> *Another unique thing is that all the projects in Makueni County are manned by PMCs. Project contractors cannot be paid if the PMC has not approved. The PMC has to ascertain that this is the building that was constructed, or that toilet was constructed properly, or these are the materials or equipment that were delivered, and they are of the right quantities and quality. When you do that, then you avoid a situation where people say money has been stolen, or you've paid for it, but it has not been constructed. No payment can be made, not unless the PMC has signed.*

The use of PMCs was also commended by NGO leaders. For example, Joseph Mbalu, regional programs coordinator for the Red Cross, shared:

> *For Makueni it has been a system-wide sort of thing. So, for example, the entire procurement process, the nightmare of corruption for Kenyans, it is run a bit differently. For example, health center X in Kilome or somewhere has a local committee from the village cluster, and if they're supposed to procure a CT scan, a table, and a bed for the maternity wing, the supplier does not get paid until that committee on the ground signs off on the delivery. So that promotes efficiencies because in the other few counties that I've been, I'll not mention them, the only person who signs off is the person in charge or the manager … But in Makueni, you have members of that community, people who will use that hospital, not employees who will be there for a time.*

The fourth measure that the county government took to curb corruption was open contracting—that is, opening the procurement process for scrutiny by

all. As Governor Kibwana explained:

> [H]*ere in Makueni, we are transitioning into open contracting, which means that the entire process is open to everybody, and it is online so you can see who has bid, you can see how much, you can see what has happened, you can see who was sitting on the committees. All that information is now available to everybody. So, those are the kind of innovations that we are making so that it's harder to do a lot of rent seeking.*

Media reports indicated that the Makueni County government's implementation of Kenya's procurement laws has curbed corruption.[35] Indeed, the media is full of praise about Makueni's zero corruption as reflected in its clean audit reports by the Office of the Auditor-General, being one of only two counties in Kenya to get a passing score.[36] Meanwhile, media reports are awash with reports of corruption in the other counties and in the national government.[37]

Key informants stressed that in addition to curbing corruption, reducing inefficiencies was an important factor in Makueni's success in the health sector. Joseph Mbalu, regional programs coordinator for the Red Cross, stated:

> [A] *key lesson from the Makueni experience is the efficiencies within the system. And I'm not pointing fingers at any other saying somebody else is inefficient but looking at Makueni … the non-corruption, the level of efficiencies that have been developed in the bigger system* [county wide], *are things to learn about. That it is not possible to have a good universal cover or a health care system inside a system that is corrupt, or where there are a lot of leakages. So that is the other thing to learn about Makueni and the universal cover.*

Members of the County Assembly also pointed to the measures taken to enhance the efficient use of public funds in Makueni in order to make UHC attainable. For instance, the Honorable Jackson Mbalu, County Assembly member, noted:

> *They* [the county executive] *also use the money prudently, that's why you see like the mother and child hospital, which people expect we used a lot of money and we only used Ksh 135 million. What does that tell you? It tells you there is prudent use of resources. Anything is attainable as long as corruption is cut back because you give the same money to anybody else and see how much they will bring!*

An NGO leader shared that Makueni does more with less, which is the main difference between Makueni and the other counties. He stated:

> *For instance, early last year the governor was able to launch a mother-child hospital with around 230-bed capacity. It is something that wowed the whole nation because the governor was able to construct it with only Ksh 133 million. I have stayed in other counties. I have been in Narok, I've been in Siaya, Homabay, Nairobi, and I've seen what those people do sometimes with Ksh 100 million. It makes you wonder. I was reading a news article about Narok County that they were able to do an expansion of a 10-bed maternity wing,* [on] *which they spent Ksh 250 million. And then I come to Makueni, and I find the governor has done a 230-bed capacity* [maternity hospital] *with Ksh 133 million, fully equipped, and I just can't understand … So what magic are they doing so that they can be able to provide free health services to their communities?*

Finally, key informants also shared that from the onset of devolution, Makueni prioritized health care by allocating at least 30% of its county budget to the health sector. For example, Bill Olwenda, project manager of the Partnership for Primary Care, a public-private partnership in Makueni County, stated:

> *Makueni county allocates not less than 30% of its budget to health. Not that there has been a lot of advocacy efforts towards that—it's a conscious decision which the county has sat down from both executive and the County Assembly, and they have said this is what we want. But in other counties, you look at the budgetary allocations and you even do not know where to start the dialogue from. That is key.*

Media clippings and Makueni County government reports aligned with the perspectives of key informants.[38] For example, the *Standard Digital* reported that "so far, the county [Makueni] has managed to keep its budget allocation to health above 30 per

cent."[39] Similarly, Mohammed and colleagues reported that since 2013, the county allocated more than 30% of its annual budget to the health sector, which was invested in strengthening the health system.[40] In sum, the evidence revealed that devolution enabled the county government to take measures to curb corruption, reduce government wastage, and prioritize the health sector in budgeting, which were all fundamental to the county's ability to maximize available resources and successfully adopt and implement MakueniCare.

Universality, equality, and nondiscrimination

In building the health care system and establishing MakueniCare, the county government's goal was to advance the right to health by providing universal, equal, and nondiscriminatory access to health care. Key informants noted that after taking substantial steps to increase access to primary and secondary health care services at the onset of devolution, the county government realized that out-of-pocket payments at the time of service continued to be a major barrier to health care access for those living in poverty. MakueniCare was the county government's effort to ensure universal and equal access to health care services. The Honorable Jackson Mbalu, a member of the County Assembly, stated:

> *The majority* [of residents] *could not afford health care because of payment and most of them are living below a dollar a day … Most of them are quite poor. So that's why the idea came up of finding where they can chip in. You know like, now if you pay Ksh 500 per family, that's quite cheap. And also, we have the elderly scheme, which treats them for free. Most of those people were just being left to suffer because they have no income, and they are not able.*

Similarly, another government official, Joseph Mulei, acting medical officer of health, Makueni Sub-County, reflected on the county government's commitment to universal access to health services:

> [F]*rom my own observation, the governor really wanted to see that his people could access health care services in a way that is affordable to them, and that is how the idea came in. Because basically any household can afford Ksh 500 per year, and once they pay that money, any service provided within the county is free for the next one year—name any service, whether it is major operations, drugs, anything for one year for that household. And actually, from my own observation, it has really increased the patient flow. In all health facilities, demand for health services has tremendously increased.*

Likewise, the 2016 *MakueniCare Implementation Guidelines* state that out-of-pocket payments had been posing a barrier to access health care, especially for people living in poverty. To this end, a key reason for starting MakueniCare was that access to quality public health care services in Makueni "should not be impeded by the cost patients have to pay."[41] Further, media reports indicated that MakueniCare was a measure "to cushion people from unwarranted suffering and inability to access quality healthcare."[42]

Promoting equality and nondiscrimination was also a key consideration in the establishment of the seniors' scheme and MakueniCare. Key informants explained that the governor's campaign slogan was *O kila nyumba oo kalila*, which directly translates to "every household a glass of milk," and loosely means that his administration will make every effort to ensure equity and fairness in the distribution of county resources to all residents. Indeed, article 174(g) of the 2010 Constitution says that a key objective of devolution was "to ensure equitable sharing of national and local resources throughout Kenya."[43]

Key informants noted that investment in the health sector and the eventual adoption of MakueniCare was an opportunity for the governor to fulfill his campaign promise of ensuring that all residents benefit equally from county resources. For example, Joseph Mulei, acting medical officer of health, Makueni Sub-County, stated:

> *When the governor was running for his second term, his slogan was, "oo kila nyumba oo kalila" … that is, every household a glass of milk, symbolizing sharing of the county cake. And you know, in terms of health, if they can make it affordable, everybody would be able to access it such that we can say, every household a glass of health.*

In sum, in establishing MakueniCare, the county government aimed to provide universal, equal, and nondiscriminatory access to improved county health services to all Makueni residents.

Transparency, participation, and accountability

The human rights principles of transparency, participation, and accountability also played important roles in the success of MakueniCare. Key informants and the documents reviewed linked the prioritization of the health sector and the establishment of MakueniCare to a new public participation system. Key informants related that soon after devolution, Makueni put in place a robust public participation system that allowed residents to meaningfully participate in planning and budgeting processes right from the village level. This enhanced transparency because people knew what was planned and budgeted for, which enabled residents to hold the government accountable to implement the plan and the budget.

Key informants believed that participatory planning and budgeting processes created space for the needs and priorities of even those in remote villages to shape development and resulted in the prioritization of the health sector and the adoption of MakueniCare. As Peter Owiti, executive director of Wote Youth Development Project, a county-level NGO, stated:

> *When we got into devolved government, there was a requirement by law that public participation is one of the mandatory requirements in the budgeting process. In that respect, you find that when people went to start budgeting at the ward level, then most of the money was being allocated either to building the facilities or providing medical services. So that's how it originated …* [I]*t was the community that was demanding health as priority number one.*

Another NGO leader in Makueni County stated:

> [The public officials] *felt that the greatest importance is to ensure that you respond to the immediate need of the communities. And in this case, the information that was gathered across the county during the public participations was: health is very critical and on top of all the priorities. It was health followed by water and then followed by livelihood—that is, improving the agriculture, livestock, fisheries and all those other departments. So, health was given a priority.*

The *Makueni County 2019 Annual Report* aligns with the perspectives of key informants, stating that in the annual public participation forums, residents had prioritized the provision of health care.[44]

Key informants also related that the robust public participation structures in Makueni empowered residents to hold leaders accountable, which in turn resulted in more responsible and people-oriented leadership. Jackson Mbalu, a member of the County Assembly, noted:

> *When devolution came, people were empowered to be heard, empowered to participate in what they need … I cannot introduce anything which the people have not prioritized in the budget, and the citizens know that. So, when I start, I tell them, "What you said is what I am following up on." When I come here I ask* [the executive]*, "Why didn't you follow what my people said?" … That is the way. If you don't do that, you will be chucked off. So, when I'm following up for my people, it shows that I'm very serious … It's my job on the line and that is how it should be because I am offering oversight, and I am doing legislative work, which is beneficial to my people.*

Further, informants explained that the fact that health workers are now employed by the county government has made them more accountable to patients, who may report health workers to their elected representatives—members of the County Assembly––who report to the governor. Jackson Mbalu explained:

> *Before devolution … the hospitals were in a very bad state, run by people who do not have the responsibility of answering to the local people. Now they are answerable; the personnel are answerable to the people here. If you mistreat somebody in a dispensary, it will reach me. I'll want to know from the chief officer of health, "Why have you mistreated so-and-so?" And it becomes a big issue. So it's not the way it used to be. Before, people were not responsible; today it is different.*

Simon Kavisi, unit head of health records and information at the Department of Health, provided a

health worker's perspective:

> *The citizens have really benefited. They really worship devolution because the leaders have gotten closer to them, because when they are harassed by the civil servants, they can report to the member of the County Assembly, then phones go ringing up to the governor, then we see big cars coming to do fact finding and see where the problem is, and the problem is solved … When you are a health worker in the facility, the governor's number is on the board, the minister's number is on the board … So, when a patient is wronged in the slightest way, they call the numbers provided. For example, when the doctors are late. So, the civil servants are forced to write a letter explaining why there was a complaint.*

In sum, the evidence showed that participatory planning and budgeting empowered residents to influence development planning and budget allocation, enhanced transparency, and enabled residents to hold the government accountable to implement development plans and budgets. In addition, having elected county executive officers and legislators so close to the people improved (democratic) accountability, resulting in improved service delivery at the county level.

Duty bearers and rights holders

Key informants also linked the adoption and successful implementation of MakueniCare to the election of Governor Kibwana, a human rights activist and constitutional scholar who has advanced degrees in constitutional law and international human rights law and was previously an associate professor and dean of the Faculty of Law at the University of Nairobi. As a national expert on human rights, he had advocated for the reforms that led to Kenya's 2010 Constitution, including the Bill of Rights. His subsequent election as governor of Makueni allowed him to implement the Constitution at the county level, including the right to health, that he had championed at the national level. Key informants noted the governor's lifelong advocacy on behalf of the human rights of marginalized populations, as well as his commitment to advancing Makueni residents' rights. Indeed, in the governor's campaign manifesto, he committed specifically to advancing the right to the highest attainable standard of health, as recognized in the Constitution.

The governor's commitment to human rights is widely recognized. Indeed, he was honored in 2018 by the Kenya Human Rights Commission "for his outstanding performance, reformist agenda and fight for human rights in the country" that dates back from the 1990s and for his "implementation of a model public participation system" in Makueni County.[45]

Consistent with the governor's commitment to human rights, key informants attributed the increased investment in the health sector and the establishment of MakueniCare to his appointment of executives who were both social change-minded and knowledgeable about the health sector in Makueni. Patrick Kibwana, the Makueni County chief officer of health, noted that it was one thing to have resources that came with devolution and yet another to apply the resources appropriately for the benefit of the residents. He continued:

> *Now we have an opportunity to do the things that we thought the national government was not doing and put a smile on somebody's face. So, essentially the difference would be leadership. It is very, very key. Even as resources are availed, if the leadership is wrong, then definitely those resources would be misapplied.*

Further, NGO leaders noted that unlike in other counties, in Makueni County all ministries were headed by professionals. They noted that hiring professionals as opposed to political allies ensured that Makueni ministries were run competently. They also pointed out that having a medical doctor head the Department of Health made it easier for the department to make the right judgment in investing capital and human resources.

Complementary to the governor's commitment to advancing the right to the highest attainable standard of health and his appointment of professionals with knowledge of and experience in the local community, Makueni residents knew and claimed their human rights set out in the 2010 Constitution. Key informants believed that the

robust public participation system in the county was crucial to prioritizing the right to health care, leading to increased budget allocations and investment in the health care system. Further, because residents knew and approved the plan and the budget, they could hold service providers accountable by following up with their representatives if plans were not implemented. In sum, duty bearers carried out their duties, and rights holders held their leaders accountable.

Conclusion

This case study revealed that human rights, particularly the right to health, provided an important foundation for MakueniCare. International and Kenyan constitutional law recognize the right to health care, which encouraged both the county government and residents to achieve UHC and provided a legitimate rationale for prioritizing UHC in the budget. Further, human rights principles—namely, progressive realization; maximum available resources; universality, equality, and nondiscrimination; transparency, participation, and accountability; and the understanding of rights holders of their rights and duty bearers of their obligations—guided the adoption and implementation of MakueniCare.

Still, MakueniCare could align more closely with the right to health care for all. Registration in MakueniCare has always been voluntary. Initially, the program did not require a grace period after registration. Because residents could access benefits immediately after registration, many residents waited until they fell sick to enroll. In 2020, a grace period was instituted to provide incentives for healthier residents to register and thereby address adverse selection and promote sustainability of the health insurance pooling mechanism. The current design of MakueniCare could be further improved by enacting an individual mandate requiring the registration of all households, which would further enlarge the pool and move toward universality. From a human rights perspective, however, fully financing MakueniCare through general tax revenue would make health care truly universal since access would not depend on residents' ability to understand, register, and pay for health insurance. An insurance scheme like MakueniCare that requires people to sign up and pay will often exclude the most marginalized.[46] Moreover, under the current scheme, all households, rich or poor, pay the same premium; it would be more equitable if funded through progressive general tax revenues so that residents could pay according to their ability to do so.

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