



**HEALTH  
POLICY  
PROJECT**

# Devolution and the Health System in Kenya

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# Outline

- A. Understanding Devolution; Concepts and Principles.
- B. The Objectives, Functions, Powers and Structures of Devolved Governance in Kenya.
- C. Transition to county governance; Challenges and Prospects
- D. Devolution and health system in Kenya

# **Part A: Understanding Devolution; Concepts and Principles**

# A. Devolution-Concepts and Principles

- Devolution is a form of decentralisation
- Founded on the principle of **subsidiarity** (David A. Bosnich, The Principle of subsidiarity <http://www.acton.org/pub/religion-liberty/volume-6-number-4/principle-subsidiarity>)
- Refers to **restructuring or re-organisation** of authority that there is a system of co-responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiarity,..."(UNDP, Bureau for Development Policy, September 1997)
- Decentralisation seeks to promote **individual freedom** and **public participation** in governance

# Forms of Decentralization

- 1 Privatization
- 2 Deconcentration
- 3 Delegation
- 4 Devolution

## 1

# Privatization

- This form is not considered per se as a form of decentralisation
- Better considered as a form of **divestment** which occurs when planning and administrative responsibility or other public functions are transferred from government to voluntary, private, or non-government institutions.
- A county government may enter into partnerships with any public or private organization in accordance with the provisions of any law relating to public or private partnerships for any work, service or function for which it is responsible. (CGA 2012 Sec 6)

## 2

# Deconcentration

- Involves the transfer of authority for specific decision-making, financial and management functions by administrative means to different levels under the same jurisdictional authority of the central government
- Also defined as 'shifting power from the central offices to peripheral offices of the same administrative structure' (T Bossert, *Decentralization of Health Systems: Decision Space, Innovation and Performance*)
- In deconcentration, decentralised personnel are typically full-time career officials, appointed, promoted, remunerated, controlled and deployed by the bureaucratic means applicable to all members of the organisation. (Smith 1979)
- Kenya has exercised deconcentration through provincial admin

# Delegation

- Refers to the transfer of government decision-making and administrative authority and/or responsibility for carefully spelled out tasks to institutions and organizations that are either under government indirect control or semi-independent. Delegation represents the shifting of responsibility to semi-autonomous 'agencies'.(UNDP)
- Examples are parastatals and such other corporate bodies like Municipal and City Boards under the Urban Areas and Cities Act



- Transfer of authorities to autonomous lower-level units legally constituted as separate governance bodies. Transfer of functions, powers and authority to such units is often referred to as devolution and is the most common understanding of genuine decentralization.
- **Devolution:** a transfer of jurisdiction and authorities to territorial and Indigenous and self governments, from the federal government ranging from authority over such areas of health, to the regulation of lands and resources. *(Stephanie Irlbacher-Fox and Stephen J. Mills)*
- Through devolution, new units of government that are created outside direct control of national government.
- Federalism is the strongest form of devolution.
- There is no uniform design of devolution or all over the world

# Devolution in Kenya-An Overview

- The Sovereign power of the people exercised at the two levels of government
- Devolution is one of the values and principles recognised in Art. 10 of the Constitution
- Devolution runs through the all constitution and not confined to the devolved government as provided in Chapter 11 of the Constitution
- The challenge is to galvanise the minds of Kenyans especially those in authority to appreciate the reorganisation of state in line with devolution

# The Form of Devolution in Kenya

- Art. 6 (2) provides that “The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”
- From the above it can be concluded that Kenya chose a **Cooperative system of devolved government** and not a system that emphasizes autonomy as the case is in Ethiopia, US and to some extent Nigeria

# The Form of Devolution in Kenya

Three Principles are key in Kenya

- 1) **The Principle of distinctiveness:** Each level of government have distinct boundaries, sources of resources and functions
- 2) **The principle of of interdependence:** They depend on each other, they serve same clients (Kenyans), some functions overlap, one does policy and the other implements
- 3) **The principles of oversight.** Oversight is left to intergovernmental institutions such as independent offices and commissions

# Characteristic of Kenyan Devolution

- Defined levels of governance- Two levels unlike other countries with three
- Constitutional protection of the defined levels.- Counties cannot be abolished easily and the Bicameral legislature with Senate as the guardian angel of devolution
- Self governance plus shared governance
- Allocations of functions- Fourth Schedule

# Characteristic of Kenyan Devolution

- Allocation of Resources- At least 15 percent, Equalization fund of budgetary allocation and ability to borrow and to receive grants
- Taxation powers-Property and entertainment taxes to counties
- Defined boundaries (still a challenge in Kenya see the case of Turkwel)
- Mechanisms of intergovernmental relations.-Creation of the Summit, Council of counties and the Tribunal

**Part B: The Objectives,  
Functions, Powers and  
Structures of Devolved  
Governance in Kenya-  
Objectives**

# An Overview (Art 174)

- To promote democratic and accountable exercise of power
- To foster national unity by recognizing diversity
- To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them



# Objectives of Devolution in Kenya

- Recognize the **right of communities** to manage their own affairs and to further their development
- Protect and promote the **interests and rights of minorities** and marginalized communities
- Promote social and economic development and the provision of proximate, **easily accessible services** throughout Kenya
- Ensure **equitable sharing** of national and local resources throughout Kenya
- Facilitate the **decentralization** of state organs, their functions and services
- Enhance **checks and balances** and the separation of powers

# Functions of the National and County Governments

Outlined in Schedule IV

- i. Social functions are mainly performed by counties(except education) while foreign affairs, security and defence by national government.
- ii. National government sets the policy framework while counties are implementers
- iii. There are cases of concurrent functions with a possibility of overlap of mandates.
- iv. Art. 186 (3) residual power lies with National Government.
- v. Functions can be transferred btw the two levels

**Enormous responsibility for service delivery lies with the county**

# Powers of County Governments

- Have all powers necessary to discharge their functions
- Powers to enter into contracts
- Powers to acquire, purchase, or lease any land
- Powers to delegate any of its functions to its officers, decentralised units or other entities within the county
- Power to enter into PPP
- Power to establish agencies

# COUNTY ASSEMBLY

The County Assembly Speaker

The Deputy County Assembly Speaker

Majority Party Leader

Minority Party Leader

Members of the County Assembly

Oversight Committees of the County Assembly

County Assembly Clerk  
County Assembly Administration

# COUNTY EXECUTIVE

The Governor

The Deputy Governor

Appointed Members of the County Executive Committee

Municipality Oversight Boards

Municipal Managers

County Public Service Board

Intergovernmental Relations Forums

**POLICY AND EXECUTIVE LEADERSHIP**

**The Governor**

**The Deputy Governor**

**Appointed Executive Committee Members**

Finance & Economic Planning; Spatial Planning, Transport & Environment; Public Safety & Security; Shared Services; Human Capital Development; Attorney General; Infrastructure and Economic Services; Agriculture, Livestock and Consumer Affairs; Intergovernmental Affairs

**TECHNICAL, IMPLEMENTATION, AND OPERATIONAL LEADERSHIP**

**HEADS OF DIRECTORATES, SECTIONS AND UNITS**

**SERVICE ADMINISTRATION, MANAGEMENT AND PUBLIC POLICY DELIVERY**

**Urban Areas and Cities**

**Rural Sub-counties**

**Wards**

**Wards**

**Village / Neighbourhoods**

**Villages**

**EFFECTIVE AND EFFICIENT DELIVERY OF PUBLIC SERVICES**

**Part C: Transition to  
County Governance;  
Challenges and  
Prospects**

# Transition to County Government Act Guides Two Phases of Transition

## Phase I

- Audits of assets, liabilities, staff, infrastructure and equipment of govt and local authorities
- Civic education
- Initial preparation of county budgets
- Preparation of county profiles
- Determining mechanism for closure and transfer of public records
- Development of county PFM system
- Transition of government and local authority staff, assets and liabilities
- Provide for mechanism to secure assets and liabilities held by local authorities

# Transition to County Government Act Guides Two Phases of Transition

## Phase II-After the Elections

- Complete any activity that may be outstanding from Phase I
- Oversee the transfer of functions from the national government to the county government;
- Facilitate the county governments in the performance of their functions;
- Any other activity that may be necessary to enable county governments carry out their functions




# Transition Challenges

- Lack of political good will
- Vested interests among the midwives of devolution
- Institutional competence and capacity.
- Lack of knowledge and understanding on the Constitution and devolution
- Resource constraints

# **Part D: Devolution and Health In Kenya**


# Working context

## Various Health Sector Reforms



Ministry of Medical Services  
Ministry of Public Health and Sanitation

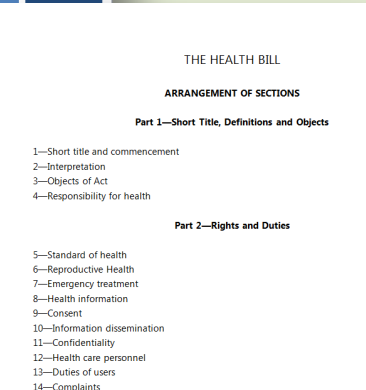
**Kenya Health Policy 2012 – 2030**



**POSITION PAPER**

**IMPLEMENTATION OF THE CONSTITUTION IN THE HEALTH SECTOR**

*This Position Paper presents the Health Sector's position on key issues in relation to the implementation of the implementation of the constitution in the health sector. It is a development tool led by the Minister of Medical Services, and Public Health and Sanitation. Health Stakeholder consultations were carried out to envisage the existing Health Sector partners, to strengthen the impact and processes, and foster ownership.*



**THE HEALTH BILL**

**ARRANGEMENT OF SECTIONS**

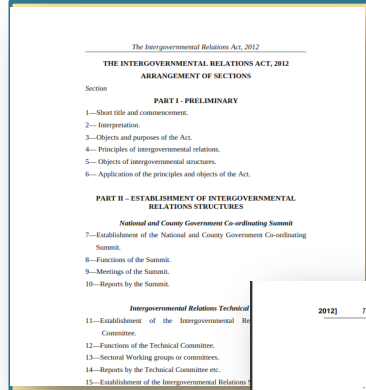
**Part 1—Short Title, Definitions and Objects**

- 1—Short title and commencement
- 2—Interpretation
- 3—Objects of Act
- 4—Responsibility for health

**Part 2—Rights and Duties**

- 5—Standard of health
- 6—Reproductive Health
- 7—Emergency treatment
- 8—Health information
- 9—Consent
- 10—Information dissemination
- 11—Confidentiality
- 12—Health care personnel
- 13—Duties of users
- 14—Complaints

## Devolved Acts



*The Intergovernmental Relations Act, 2012*

**THE INTERGOVERNMENTAL RELATIONS ACT, 2012**

**ARRANGEMENT OF SECTIONS**

Section

**PART I – PRELIMINARY**

- 1—Short title and commencement.
- 2— Interpretation.
- 3—Objects and purposes of the Act.
- 4— Principles of intergovernmental relations.
- 5— Objects of intergovernmental structures.
- 6— Application of the principles and objects of the Act.

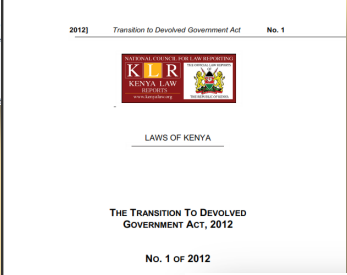
**PART II – ESTABLISHMENT OF INTERGOVERNMENTAL RELATIONS STRUCTURES**

**National and County Government Co-ordinating Summit**

- 7— Establishment of the National and County Government Co-ordinating Summit.
- 8— Functions of the Summit.
- 9— Meetings of the Summit.
- 10— Reports by the Summit.

**Intergovernmental Relations Technical Committee**

- 11— Establishment of the Intergovernmental Relations Committee.
- 12— Functions of the Technical Committee.
- 13— Sectoral Working groups or committees.
- 14— Reports by the Technical Committee etc.
- 15— Establishment of the Intergovernmental Relations

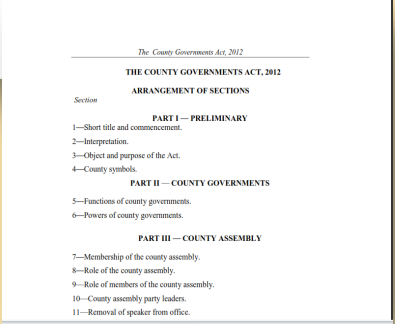


2012] Transition to Devolved Government Act No. 1

**LAW OF KENYA**

**THE TRANSITION TO DEVOLVED GOVERNMENT ACT, 2012**

No. 1 of 2012



*The County Governments Act, 2012*

**THE COUNTY GOVERNMENTS ACT, 2012**

**ARRANGEMENT OF SECTIONS**

Section

**PART I – PRELIMINARY**

- 1—Short title and commencement.
- 2— Interpretation.
- 3— Object and purpose of the Act.
- 4— County symbols.

**PART II – COUNTY GOVERNMENTS**

- 5— Functions of county governments.
- 6— Powers of county governments.

**PART III – COUNTY ASSEMBLY**

- 7— Membership of the county assembly.
- 8— Role of the county assembly.
- 9— Role of members of the county assembly.
- 10— County assembly party leaders.
- 11— Removal of speaker from office.

# The Kenya 2010 Constitution guarantees health for all Kenyans

- Art. 26; Every person has the right to life
- Art.42; Every person has the right to a clean and healthy environment
- Art. 43. (1) Every person has the right— (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care
- 53. (1) Every child has the right--(c) to basic nutrition, shelter and health care
- 56. The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—(e) have reasonable access to water, health services and infrastructure.

# Why devolve the health system?

- To promote access to health services through out Kenya
- To address discrimination of the “low potential areas”. Urban areas have had better health services than rural area
- To address problems of bureaucracy in matters of health service provision especially procurement related problems
- To promote efficiency in the delivery of health services
- Address problems of low quality of health services

# The IV Schedule distributes functions between national and county govts

## Part I

- National referral health facilities
- Health Policy

## Part II

2. County health services including..
- 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 parlours and crematoria; and
  - Refuse removal, refuse dumps and solid waste disposal.



Functions are either; exclusive, concurrent or residual

# What happens to undefined functions?

- Preventive and promotive health services
- HIV/AIDS Programme and other Sexually Transmitted Infections (STIs)
- Family planning
- Health Inspection and other public health services.
- Quarantine administration

# Why unbundle functions?

## The devil lies in the detail

- To ensure that overlapping functions do not cause confusion and conflict
- To ensure that the functions are allocated and performed by a body that can account.
- To distribute effectively the assets and liabilities between the County and National Government.
- Unbundling and analysis of functions is better captured in one law or relevant legislations depending on the sector. Who is doing it?

The unbundling of functions is better handled through the Health Bill and the Draft Health Policy



# How does one distinguish National from County Referral facility?

## Existing definition

Any process in which health care providers at lower levels of the health system, who lack the skills, the facilities, or both to manage a given clinical condition, seek the assistance of providers who are better equipped or specially trained to guide them in managing or to take over responsibility for a particular episode of a clinical condition in a patient (Al-Mazrou, Y., S. Al-Shehri, and M. Rao 1990. *Principles and Practice of Primary Health Care*. Riyadh: Al-Helal Press.)

## As defined by policy

Process by which a given level of health services that has inadequate capacity to manage a given health condition or event, seeks the assistance of a higher level of health care delivery to guide, or take over the management of the condition. It ensures establishment of efficient health service delivery system linkages across levels of care that ensure continuity of care, for effective management of health needs of the population in Kenya

# The draft policy and bill attempt to ensure equitable access of referral hospitals

## Health Bill

- National government is responsible for health has been left under Sec. 16 to " set guidelines for the designation of national and county referral hospitals
- Designation of national referral is done by *Kenya Health Services Authority* while county referral is done by *County Health Department*

## Definition by policy

- National referral services comprise all secondary and tertiary referral facilities which provide highly specialized services
  - General specialization
  - Discipline specialization, and regional specialization



- Have clear criteria for the determination of referral hospital
- Outline the number of referral hospitals to ensure equitable distribution
- Manage the risk of state funded university hospitals being in Nairobi
- Functions and services need to be costed to avoid misallocation of funds at the expense of lower level hospitals
- Referral hospitals to offer only referral services

# Unbundling functions-Other issues on referrals

- The two levels of government are distinct, does it mean that county government cannot invest in Hospitals of the standard of a referral hospital?
- What if an hospital has grown, are there graduation mechanisms?
- How do you ensure there is good relationship between county health managers and the referral hospitals especially because they have separate political accountability centres?

# Impact of Devolution in Human Resources for Health

## An Overview

- Art. 235 of the Constitution empowers the counties to establish offices and employ individuals performing functions allocated to them in Fourth Schedule.
- It means persons working in the county health departments including the community services , primary care services and County Referral Services are going to be employees of the County government.
- In effect some counties will have the benefit of employing qualified healthcare providers than others. This may lead to further marginalisation

# Impact of Devolution in Human Resources for Health

- The next centres of industrial actions will be counties
- How do we built the capacity of counties to avert and/or handle strikes?
- The guarantee of health services in the transition phase is crucial. A clearly crafted plan needs to be put in place to ensure that staff are assured of their welfare and avoid mass migration of health workers (Brain drain)
- Currently there is no adequate preparation of staff to cope with the major changes that will take place after March 2013

# Impact of Devolution in Human Resources for Health-Lessons from the Philippines

## First year of devolution in the Philippines

- Decreased hospital occupancy and health center utilization
- Decreased procurement of drugs and medical supplies
- Decreased maintenance and operating expenses for health facilities
- Loss of managerial and fiscal control of hospital administration
- Resignation of key personnel
- Low staff morale

Problem worsened by perceived political recruitment and retention of health staff among others

Grundy J, Healy V, Gorgolon L, Sandy E. Overview of devolution of health services in the Philippines.

<http://www.ncbi.nlm.nih.gov/pubmed/15877513>

## Kenya

Philippines scenario could be replicated in Kenya

- “My people syndrome”
- May be worse if transition process is poorly managed

# Devolution and Financing the Health Sector in Kenya

- Apart from budgetary allocation to the ministries and autonomous hospitals, there are other decentralised funds under the Ministries of Health in Kenya.
  - Health Sector Services Fund (HSSF)
  - Hospital Management Services Fund
- There are other devolved funds which indirectly support health
  - Local Authority Transfer Fund (LATIF)
  - Constituency Development Fund (CDF)
- The current health devolved funds have been scrapped. What happens in the transition process?
- The place of CDF is still in discussion but popular legal interpretations favour the scrapping of CDF

# Financing the Health Sector

- Through budgetary allocation to both levels of government
- Through grants or donation from a development partners/ charitable entities to both levels of government
- Equalisations fund to be managed by national government or by counties as conditional grant for health (see Art. 204)
- Through money raised by counties through taxes and licenses
- Through Loans



# Financing the Health Sector

- Under the Constitution and the PFM Law, each sector has the power to approach donors for funding
- Currently the Health Sector-Wide Approach “Health-SWAP” brings together government, donors, NGOs, the private sector and civil society
- Now with devolution the definition of government refers to 48 entities. The Health SWAP arrangement will have to change either through the IGR Framework or each county is accommodated

# Financing the Health Sector-Lessons from the Philippines

- A study of five years of devolution revealed problems of understaffing, unmaintained infrastructure, unrepaired and un-replaced equipment. A lot of resources were used on staffing and less on other resources necessary to deliver the services to the people
- Wage bill and recurrent expenditures are going to be a threat to devolution in Kenya because they inhibit capital expenditure
- There is need for the development of norms and standards

# Financing the Health Sector-Possible Challenges for Counties

- **Inadequate allocation of funds.** Currently Health sector is still way below the 15% Abuja commitment. According to Gonzalez-Block et al., (1989) Mexican states that achieved decentralisation were characterised by: (i) having smaller social security infrastructure; and (ii) having greater financial decentralisation
- **The challenge of absorption of funds.** A study of Mexico state of Guerrero showed that absorption declined as a consequence of the lack of capacity to cope with the new responsibilities required. In addition, the cities within the state benefited most as most of the resources went to them thus resulting in inequities in resource allocation within the state

# Financing the Health Sector-Lessons From the Philippines

- An early study in Philippines showed inequitable distribution of resources with cities receiving 3.5 times more than the provinces. This has resulted in many local government units being unable to finance the health services that they were required to provide

# Medical Procurement-Whose duty?

- The SA Policy position on procurement;

“ The authority of hospital managers and hospital tender committees will be increased to enable them to purchase goods more efficiently and responsively. Spending bands will be widened, and modern systems and managerial skills developed to increase hospital procurement capacity. If hospitals have the capacity and are in a position to comply with the requisite financial regulations they will in time, be able to decide whether to procure on their own, through government and other agencies”.

# Medical Procurement-Whose duty?

- The Kenyan draft policy allocates the function of medical procurement to national government
- The Health Bill allocates the national government the function of “*Procurement of pharmaceutical and non-pharmaceutical goods for public health facilities except as otherwise delegated to procuring entity within the County government*”
- National government under the Bill is expected to enact regulations on “*The procurement of pharmaceutical and non-pharmaceutical drugs.*”

# Medical Procurement-Whose duty?

## Part 10 of the bill

- Sec (57) (1) The procurement for the public health services of medicines, vaccines and vaccines and other medical goods shall be undertaken primarily by the Kenya Medical Supplies Agency
- (2) The classes of products procured by the Kenya Medical Supplies Agency shall extend to therapeutic feeds and nutritional formulations in addition to pharmaceutical and non-pharmaceutical goods
- 3) The Kenya Medical Supplies Agency may be the point of first call for procurement at the county level and it shall endeavor to establish branches within each county at such locations as it may determine

# Medical Procurement-Whose duty?

## Part 10 of the bill

- (4) Notwithstanding sub section (3), counties shall have the right to procure these items incidentally from other sources where the Kenya Medical Supplies Agency is unable to supply them in good time or at a competitive price
- 5) National referral hospitals shall have a right to purchase medicines and vaccines from other accredited sources
- 6) National Government shall provide guidelines for the procurement, distribution and management of essential medicines at all levels of the national health system.



# Medical Procurement-Whose duty?

## Part 10 of the bill

- What is then the place of KEMSA?
- Counties may ignore KEMSA if they can find credible alternative

# Policy by who, and for who?

- Ownership and participation is an important factor in policy development and implementation
- The current draft policy is being developed in the absence of the entities (counties) that are expected to implement
- In SA Department of Health officials came up with a policy for devolution in the health sector. “Local government health officials were critical that they were not formally represented on the team that developed the document arguing that those that were responsible for the document did not understand local government and how it operates.”
- Although policy is a constitutional function of national government, top-down approach runs counter to the objects of devolution

# Blotted governance-The Kenya Health Services Commission

- Part 4 of the Bill: This is an unnecessary additional institution in the health sector duplicating the roles of the two levels of government.
- The commission is replacing the ministry
- The organisation structure is sort of intergovernmental relations yet the functions are already domained within national government
- The existence of the authority is basically setting the stage for conflict

# Transitional Issues

- Getting the centre to let go
- There is need to ensure equitable distribution of health resources throughout the country
- Capacity building especially among the marginalised counties.
- The Transitional Authority to be facilitated to perform its legal functions of expediting devolution.
- Massive civic education to be carried among the various actors including the members of public. The quality of the incoming leadership must be up to the scale
- Preparation of the current health staff and officers for the impending challenges without sugar-coating



# Thank You!

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