



REPUBLIC OF KENYA

Ministry of Medical Services and Ministry of Public Health and Sanitation

DEVOLUTION AND HEALTH IN KENYA

Consultative Meeting Report

24 October 2012

Hilton Hotel, Nairobi



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This document was prepared by the Health Policy Project for the Ministry of Medical Services and the Ministry of Public Health and Sanitation.

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EXECUTIVE SUMMARY

The Ministry of Medical Services and the Ministry of Public Health and Sanitation, in partnership with the Health Policy Project of the U.S. Agency for International Development (USAID), convened two meetings in the fall of 2012 to discuss the impact on the health sector of Kenya's devolution of power from the central government to the counties. The first, on 20 September 2012, involved the leaders of the ministries of health. The second, on 24 October 2012, was wider in scope; it brought together many representatives of government, development partners, and other sectors who have a stake in the implementation of this significant change in Kenya's Constitution. (See Annex 2 for the list of organizations represented.)

The second meeting's aims were to brief those in attendance on the steps that the ministries of health, in collaboration with other government authorities, have undertaken to move the devolution process along and to identify activities that require immediate attention going forward in a roadmap.

The agenda consisted of six presentations on different aspects of the **devolution process**:

- Devolution and health, by Onesimus Kipchumba Murkomen, an attorney and consultant
- Devolution and human resources, by Peter Macharia (Public Service Commission)
- Transformational leadership in a devolved government, by Elijah Achoch (Office of the Prime Minister)
- The Public Finance Management Act of 2012, by Albert Mwenda (Treasury)
- Resource allocation and health, by Rose Osoro and Stephen Masha (Commission on Revenue Allocation)
- Devolution and transition, by Dr. Dabar Maalim, Transition Authority

Professor Anyang Nyong'o, the Minister of Medical Services, surveyed the progress that the ministries of health have made toward the transition to a devolved health sector. They have prepared several guiding documents, including a major piece of legislation (the "Health Bill 2012") and a health policy framework paper. The Cabinet has discussed these documents, clearing the way for the development of a Sessional Paper, which will be presented to Parliament for discussion and approval before the members recess in January 2013. The ministries have also prepared a bill to transform the Kenya Medical Supplies Agency (KEMSA) into an autonomous statutory body to improve its performance in managing pharmaceuticals. This bill will also be tabled in Parliament soon.

Professor Nyong'o challenged participants to examine the devolution process from all angles and propose solutions to dilemmas on the horizon, such as

- How to ensure that counties will have adequate resources to deliver high-quality health services; and
- How the procurement of commodities should be handled to safeguard quality and standards.

Over the course of the day, other issues emerged that the ministries of health must address as they prepare to transfer health functions to county governments. Examples include the following:

- **Conformity with the provisions of the Constitution.** What should be done to ensure that the spirit of the Constitution is upheld in all actions taken to devolve public health services to the counties?
- **The fate of provincial hospitals.** What level of government will be responsible for these regional entities, which are not covered in the new Constitution? In the devolved system as currently conceived, these hospitals may become the responsibility of their home counties, and this may lower their status and deprive others areas of their services.
- **Human resources committed to the health sector.** What can the ministries of health do to support the efficient management of the healthcare workforce and to ensure that cash-poor counties are able to retain qualified staff?
- **KEMSA's role in the procurement of medical supplies in the devolved governments.** How should pharmaceuticals and other commodities that are now procured centrally through KEMSA be handled in a devolved setting to ensure quality and standards?

At the end of the meeting, the ministries of health came up with an eight-point roadmap to guide their immediate actions. The roadmap points in the following directions:

- **Strengthen the core team that is guiding the devolution.** Make sure the team is multisectoral so that devolution can proceed seamlessly, with minimum disruption, because public health is a national interest with implications for Kenya's security.
- **Merge the two ministries of health in 2013.** The government is defining how the new ministry will look, and to do so, it needs to identify gaps in capacity, set standards, and formulate policy.
- **Unbundle functions in accord with the Fourth Schedule of the Constitution** to ensure that the roles of county governments and national government are clear, that funds follow the functions assigned to the two levels of government, and that the two levels of government interact as the Constitution prescribes.
- **Make the county teams**, which include the district health management teams, **aware of their roles, relationships, and reporting lines** and **develop capacity-building programmes** to support these teams.
- **Take stock of the assets available** in each county. (This task is under way—a joint project with the Transition Authority.)
- **Prepare guidelines and other simple tools** to help the newly established counties plan health service delivery.
- After mapping current facilities and identifying where new facilities are needed, **prepare an infrastructure plan** for each county to eliminate the risk of haphazard decisions.
- **Review the roles of bodies** such as hospital management boards and facility management committees that were established by laws that have been repealed.

ABBREVIATIONS

AG	Attorney General
BPS	budget policy statement
BROP	budget review and outlook paper
CARB	county allocation of revenue bill
CBROP	county budget review and outlook paper
CFSP	county fiscal strategy paper
CRA	Commission on Revenue Allocation
DORB	Division of Revenue bill
ERP	enterprise resource planning
KANU	Kenya African National Union
KEMSA	Kenya Medical Supplies Agency
MDGs	Millennium Development Goals
NACC	National AIDS Control Council
NARC	National Rainbow Coalition
NASCOP	National AIDS & STI Control Programme
OP	Office of the President
PS	Permanent Secretary
PSC	Public Service Commission
STI	sexually transmitted infection
TA	Transition Authority
TSC	Teachers Service Commission
USAID	U.S. Agency for International Development

INTRODUCTION: THE BIG PICTURE

Kenya changed the course of its history on 27 August 2010, with the promulgation of a new constitution. Citizens and leaders alike regarded the adoption of the new body of laws as Kenya's third liberation. Only two previous events in the country's history had been received with as much hope and enthusiasm nationwide: the attainment of independence, in 1963, and the defeat of the Kenya African National Union (KANU) government by the National Rainbow Coalition (NARC), in 2002.

The new Constitution brought to an end the powerful, centralised form of government that had prevailed since independence and put in its place a two-tiered system that comprises a lean national government and 47 devolved county governments. National ministries will develop and oversee the implementation of national standards and policies and relinquish service delivery to the counties. The new county governments, which will be established with the 2013 general elections, will be distinct and independent bodies with increased authority to make decisions, control budgets, and manage public services.

To respond to these constitutional demands and prepare for the smooth transition of health services to the devolved governments, the Ministry of Public Health and Sanitation and the Ministry of Medical Services have been holding consultative meetings with partners and other stakeholders to discuss how devolution will be implemented. The latest was held on 24 October 2012, and drew 200 participants from different agencies.

This report highlights the day's proceedings and summarises the primary issues raised for further action and other follow-up. (See Annex 1 for the agenda.)

DEVOLUTION AND HEALTH: OVERVIEW OF PROGRESS

The Director of Medical Services, Francis Kimani, MD, began the meeting by reminding the participants that they had been called together to share their knowledge and ideas for managing the devolution of health services "so that Kenyans can benefit from others' experiences." He outlined these **objectives**:

- Sensitise the delegates to the centrality of the health sector in the national devolution process.
- Report the steps that the Ministry of Public Health and Sanitation and the Ministry of Medical Services, in collaboration with other government authorities, have taken to move the devolution process along—creating policy papers, position papers, and strategic frameworks and setting up a core committee on devolution in the health sector.
- Discuss the process of devolution from the perspectives of the Public Service Commission (PSC), the Transition Authority (TA), and the Commission on Revenue Allocation (CRA).
- Draw a roadmap of the way forward for the ministries of health.

Dr. Kimani encouraged the delegates to deliberate fully and without reservation and confirmed that the outcomes of the meeting would help chart the way forward. Mary Ngari, Permanent Secretary of the Ministry of Medical Services, told participants that the meeting had come at a good time for them to review the ministries' progress toward devolution and to arrive at a deeper understanding of how the devolved system can be organised to deliver better services.

After the Constitution's promulgation in 2010, the ministries of health began preparing to implement the new laws. Ms. Ngari listed seven **topics** that the ministries had identified **for immediate action**:

1. Leadership and governance
2. Health service delivery
3. Medical products, infrastructure, and equipment
4. Human resources for health
5. Health information systems
6. Review of health-related laws
7. Healthcare financing

To date, she said, the following **tasks** have been **completed**:

- A position paper has been written detailing how the Constitutional provisions will impact the health sector.
- A health policy for Kenya has been drafted.
- Health legislation ("Health Bill 2012") has been drafted.
- The National Health Strategic Plan III has been initiated.

Ms. Ngari said that the ministries are aware that the following **laws** will have a major impact on the health sector and will **guide the devolution process**:

- County Governments Act (passed in 2012)
- Transition to Devolved Governments Act (passed in 2012)
- Public Finance Management Act (passed in 2012)
- Intergovernmental Relations Act (passed in 2012)
- National Government Loans Guarantee Act (passed in 2011)
- Urban Areas and Cities Act (passed in 2011)
- Contingencies Fund and County Emergency Act (passed in 2011)

Anyang Nyong'o, the Minister of Medical Services, announced that a Sessional Paper is being prepared to lay out a national framework for devolution of health services. Several policy papers have been lined up for approval before Parliament is dissolved later in the year. Professor Nyong'o said that a new bill has been prepared to transform the Kenya Medical Supplies Agency (KEMSA) into an authority that can receive direct allocations from the Treasury, develop a commercial wing, use its depots as autonomous supply hubs, and use enterprise resource planning (ERP) systems to implement an on-demand system of commodities delivery in the counties.

"Devolution ...is the heartbeat of the Constitution."

--Anyang Nyong'o
Kenya Minister of Medical Services

The two ministries are working with the TA to complete an audit of their existing human resources, infrastructure, and assets; identify any liabilities on the part of either the central or local governments; and

develop a realistic programme for the transfer of functions to county governments. The ministries are developing a “county facts and figures” database, which counties can use to guide their health investment programmes.

A Health Services Commission has been proposed in the draft Health Bill 2012 to regulate the deployment of human resources in the public health sector. The government has also taken the initiative to define the basic healthcare package for Kenyans to comply with the Bill of Rights provisions for equitable health access and quality. Professor Nyong’o reminded participants that devolution must be “accompanied by properly designed systems of fiscal management and responsibility, evidence-based planning, effective human resources planning, strong accountability mechanisms, proper and effective coordination, and political will, as well as selfless leadership.”

He challenged participants to think more creatively about ways to raise money for the national and county health systems, because it is not possible to increase Kenya’s budget for health. The universal health insurance that the government proposes is one such idea.

Professor Nyong’o asked the delegates to seek answers to the following **questions**:

- Will the resources the government allocates now be enough to sustain high-quality county health services?
- How will counties access medical equipment, pharmaceuticals, and other such products? The laws on devolution give the counties autonomy in sourcing their supplies. How can this be done without compromising standards and safety?
- How can Kenya ensure that resource-constrained counties and better-resourced counties deliver services of equal high quality?
- How should counties respond to international agreements, such as the Millennium Development Goals (MDGs)? Professor Nyong’o advised ministries of health officials to be thinking about how to achieve the MDGs at four levels of service delivery (community health worker, dispensary, health centre, and district hospital).
- How will the healthcare workforce in the devolved system be managed? The proposed Health Services Commission, whose creation requires an act of Parliament, will second the cadre of healthcare workers employed by the counties.
- After the general elections, how should the new Ministry of Health be structured and managed? Professor Nyong’o said that in the devolved system, the services that the national government offers will complement those of the county governments. For example, the national government will run the two national teaching and referral hospitals (Kenyatta National Teaching and Referral Hospital, in Nairobi, and the Moi Teaching and Referral Hospital, in Eldoret), while the counties will run other facilities located within their boundaries.

Given the regional scope of the eight provincial general hospitals, Professor Nyong’o said, Parliament has been asked to designate them as national referral hospitals. The same request has been made for 12 district hospitals, because of their high volume of service. If Parliament approves these proposals, the national government will manage these 20 hospitals as centres of excellence with the highest-qualified general and specialist medical personnel.

PRESENTATIONS

1. Devolution and the Health Sector

Kipchumba Murkomen

In this presentation, Onesimus Kipchumba Murkomen, an attorney and consultant of the Health Policy Project, discussed what devolution will mean for Kenya and how it will affect the organisation of public service delivery. Counties will have the freedom to form partnerships that work best for them. Murkomen reminded the participants that the devolution as laid out in the Constitution is a cooperative model, unlike the versions operative in the United States and Ethiopia, and transfers enormous responsibility for service delivery to counties. He summarised the characteristics of the Kenyan devolution model as follows:

- The counties cannot be abolished easily, because they are entrenched in the Constitution.
- The counties will practice self-governance as well as sharing governance with national authorities.
- The Fourth Schedule of the Constitution lays out the functions of the national and county governments.
- Counties will receive at least 15 percent of the shareable audited revenue and equalisation funds as their budgetary allocation and will have the ability to borrow and to receive grants.
- Counties will have the power to levy taxes—primarily on property and entertainment.
- Counties are clearly defined geographical entities.
- Intergovernmental relations will be handled with the establishment of a Summit, a Council of Counties, and a Tribunal.

The devolution of functions and roles according to the Fourth Schedule will have the following consequences:

- The counties will be responsible for all social services except education, which the national government will control along with foreign affairs and security and defence services and functions.
- The national government will set policies in all domains and the counties will implement them.
- Some governmental functions may be concurrent and have overlapping mandates.
- Article 186 (3) assigns residual power to the national government. That is, any functions and roles that the Constitution does not clarify or allocate will revert to the national government.
- Functions might be transferable between the two levels of government.

Mr. Murkomen told the delegates that there is urgent need for the ministries of health to decide how functions that the Constitution does not mention will be handled. Examples are preventive and promotive health services; programmes related to HIV and AIDS and other sexually transmitted infections (STIs); family planning; health inspection; and quarantine administration.

Moreover, many anticipated challenges stand in the way of a smooth transition of power to county governments. Mr. Murkomen cited the following:

- Lack of political goodwill. The tremendous changes associated with devolution may not be wholly welcome.

Presentations

- Vested interests counter to devolution among people responsible for implementing the transition. There may be job losses, for example.
- Loss of a mandate for institutions that were established under old laws and whose roles in the devolved system are unclear. Where will such statutory bodies as KEMSA, the National AIDS Control Council (NACC), and the National AIDS & STI Control Programme (NAS COP) be in the new dispensation? How will they relate to the new county governments?
- Unbundling functions shared by national and county governments. Eliminating overlapping responsibilities at the national and county levels is urgently needed to avoid confusion and conflict and to ensure that all functions are performed as assigned by a body that is accountable to the public. Discharging this task will also clarify liabilities at the two levels of government. It is not clear who or what office in the ministries of health is handling unbundling now.
- Avoiding overstaffing. Some counties may have trouble attracting a high-calibre staff while others, perceived to be more attractive places to live, may have skilled workforces that are disproportionately large.

Regarding referral hospitals, Mr. Murkomen pointed out the following issues that may bring conflict or other challenges:

- Because the two levels of government are distinct, are county governments barred from investing in hospitals to bring them up to the standards of a referral hospital? If a hospital at a lower level grows, are there mechanisms for it to graduate to the status of a referral hospital?
- How will good relationships between county health managers and the referral hospitals be maintained, given that the referral hospitals are accountable to a national authority?

Questions and discussion

After the presentation, the participants asked the following questions:

- In the new set-up, how will quality assurance be handled?

Answer: The national government is responsible only for policy formulation, not implementation. Professional bodies at the national or county level will continue to manage regulation and monitoring and evaluation to assure quality.

- Would a Health Services Commission be legal?

Answer: It might be best to consider merging functions and roles and trimming the workforce at any level of government. The Constitution establishes the Teachers Service Commission (TSC) as a national institution. In the domain of health, however, the Constitution cedes the management of healthcare services to the counties, which will hire and supervise their own health staff. The only employees at the national level will be those delivering services in referral hospitals and those involved in policymaking. The Constitution does not provide for a national Health Services Commission.

The participants offered the following comments:

- According to the current CRA formula, some counties will be marginalised (cash-poor). The resources they have will determine what types of services they can afford to offer.
- Some things should remain with the national government and not be devolved to the counties—immunisation, for instance. Some counties may not be fully capable of delivering all the

necessary health services. The management and deployment of health service personnel and procurements of pharmaceuticals should also be left at the national level.

- Some services are in a grey area and not assigned to any level of government. For example, how will national programmes like immunisation be managed? The person or office charged with unbundling services will have to look into this and clarify to avoid the disruption of programmes.
- Devolution has placed KEMSA in a delicate position, because counties are not required to use the agency for procurement of drugs and other medical supplies.

2. Doctors' Role as Transformational Leaders within the New Constitutional Dispensation

Elijah Achoch, Office of the Prime Minister

In this presentation, Elijah Achoch, of the Office of the Prime Minister, focused on transformative leadership and its value in the devolution process. With the passing of the 2010 Constitution, the landscape has changed and all leaders must observe national and public service values and principles: patriotism; a high standard of professional ethics; efficient, effective, and economic use of resources; responsive, prompt, impartial, and equitable provision of services; accountability for administrative acts; and transparency and provision to the public of timely, accurate information (Chapter 13: Article 232). Mr. Achoch pointed out that consumers' rights as set forth in Section 46(1) of the Constitution must also be observed in the new dispensation.

Transformative leadership in the devolution process must be visible and credible; change-ready; well-informed on key issues; decisive and pragmatic; open to communication and debate; accountable; and resilient. The devolution process will require both leaders and managers, which represent different roles with distinct characteristics. The speaker reminded the participants that the new Constitution introduced a new leadership culture, a high ethical code, and a demand for integrity among leaders.

Questions and discussion

The participants made two comments:

- Sometimes the roles expected of doctors are not communicated early enough in the profession or defined well enough to set doctors on the right path to becoming leaders.
- Most doctors are taught to manage diseases, not institutions or organizations, so they do not have management and leadership capacity. How will a balance be achieved at the county level, so doctors can do what they do best?

Mr. Achoch responded that there is a difference between management and leadership, and counties will need both types of people.

3. Highlights of the Public Finance Management Act of 2012

Albert Mwenda, Treasury

Albert Mwenda of the Treasury focused on the framework of public finance management and the constitutional powers, acts of Parliament, and policies that support the framework's enactment. Mr. Mwenda explained the functions and roles of finance officers at the national and county levels.

Article 201 of the 2010 Constitution provides the legal framework for public fiscal management. Other laws that direct how public finance will be managed have been enacted recently: the Public Finance

Management Act of 2012; the Commission on Revenue Allocation Act of 2011; the Independent Offices (Appointment) Act of 2011; and the Salaries and Remuneration Commission Act of 2011.

More laws are being formulated: the Controller of Budget Act; the Public Audit Act; and the Procurement of Public Goods and Services Act.

Finally, several old laws have been repealed as the Ministry of Finance tries to consolidate public finance management laws. These are the Fiscal Management Act of 2009; the Government Financial Management Act of 2004; the Internal Loans Act (Cap 420); the External Loans and Credits Act (Cap 422); the Civil Contingencies Act of (Cap 245) the Contingencies Fund and County Emergency Fund Act of 2011; and the National Government Loans Guarantee Act of 2011.

Article 189 requires county and national government to have fiscal autonomy, so the roles and responsibilities of the main institutions involved in public financial management at these two levels of government will be mirrored. For instance, there will be accounting officers for county governments as well as for national government. The Public Finance Management (PFM) Act of 2012 established county treasurers to manage funds at the county level. The PFM Act also created new institutions with clear roles and functions. At the national level, these are the Public Debt Management Office, the Accounting Standards Board (ASB), the Controller of Budget and Auditor-General, and the Commission on Revenue Allocation. New institutions at the county level are the Boards of Cities and Municipalities and the County Budget and Economic Forum.

The PFM Act established two institutions to coordinate finances at the national and county levels of government. These are the Intergovernment Budget and Economic Council and the Joint Intergovernment Technical Committee, which has power to stop funds to county governments in serious breach of the law. The PFM framework also clearly describes the roles and functions of the two levels of government in fiscal management:

- The national government prepares a medium-term fiscal strategy (a “budget policy statement,” or BPS), progress reports on fiscal strategy (a “budget review and outlook paper,” or BRPOP), and pre-election and post-election reports. The national government is required to observe the fiscal responsibility principles covering debt, spending, government employee wages, borrowing, fiscal risks, and tax rates and bases.
- Each county government must prepare a medium-term fiscal strategy (a “county fiscal strategy paper,” or CFSP) and progress reports on CFSP (in the form of a “county budget review and outlook paper,” or CBRPOP). County governments are required to observe the same fiscal responsibility principles demanded of the national government: those covering debt, spending, government employee wages, borrowing, fiscal risks, and tax rates and bases.

The budget process has also been clarified. It will have parallel national and county tracks.

The national budget process established by the PFM Act calls for an “issuance of the budget” circular; a BRPOP and a BPS; bills governing the Division of Revenue and the allocation of revenue to the counties; budget estimates; an appropriation bill; submission of a strategy to manage the national debt; public pronouncement of budget policy highlights and revenue raising measures by the Cabinet secretary; and approval of a finance bill.

At the county level, the budget process looks much the same. The PFM Act calls for an “issuance of the budget” circular; a BRPOP and a CFSP; a county government development plan; a strategic plan for urban areas and cities; budget estimates; an appropriation bill; submission of a strategy to manage the national debt; public pronouncement of revenue raising measures; and approval of a finance bill.

In terms of the timing of activities to prepare for the transition, some modifications have been made to accommodate the transition period, as shown in the table below:

Activity	PFM Act timelines	Transition year timelines
Issuance of medium-term expenditure framework guidelines	30 August 2012	End July 2012
Submission and approval of BROP by Cabinet	By 30 September 2012	By 15 September 2012
Submission of approved BROP to Parliament	7 October 2012	By 22 September 2012
Submission of BPS, Division of Revenue bill (DORB), and county allocation of revenue bill (CARB) to cabinet for approval	Before 15 February 2013	Before 15 November 2012
Submission of BPS, DORB, and CARB to Parliament for approval	By 15 February 2013	By 15 November 2012
Submission of supplementary budget proposal by ministries and departments	Every 2 months but no later than 30 June 2013	Every 2 months but no later than 3 December 2012
Submission of supplementary budget proposals to Cabinet for approval	Every 2 months but no later than 30 June 2013	Every 2 months but no later than 5 December 2012
Submission of supplementary budget proposals to Parliament for approval	Every 2 months but no later than 30 June 2013	Every 2 months but no later than 15 December 2012

Mr. Mwenda said these new budgetary provisions have the following implications for the health sector:

- Budgets must be programme-based and effective from 2013 to 2014 for national government entities and from 2014 to 2015 for county government entities (Section 12, Second Schedule of the PFM Act of 2012).
- County governments will have autonomy in preparing and approving health budgets for health services devolved to counties.
- The national government may provide conditional grants to motivate counties to prioritise certain health programmes.
- The health sector budgets of county governments must be subjected to public scrutiny through county budget and economic forums.
- Decisions on the health sector's decentralised funds will affect the costing of functions and therefore the revenue bill.
- Decisions related to health facilities providing services across county borders (e.g., provincial health hospitals) will affect national and county governments' budgets, especially during the transition phase.

According to Mr. Mwenda, the following questions need to be settled during the transition period, before county governments are in place:

- How will fiscal powers be transferred to county governments, following the transfer of functions during the transition period? (The Transition Authority is expected to come up with a plan.)
- What share of Kenya's budget should be transferred to counties during the transition period?
- How should the transition-year budget calendar be adjusted, given that the elections will take place very close to the end of the current fiscal year (2012–2013)?
- How will local authorities transfer their revenue-raising powers to the county assemblies that will be elected to take their place, as dictated by the Constitution following the repeal of the Local Government Act (Cap 265)?
- Given the anticipated variations in the numbers and skills of administrative staff across the counties, how can capacity building of counties be expedited, as required by Article 262(15)(2) of the Constitution?

Questions and discussion

- What are the implications of the repeal of old laws enacted after the promulgation of the Constitution, before the PFM Act of 2012 came into being?

Answer: The PFM Act of 2012 covers all the issues posed by the older laws, so it is sufficient.

A participant noted the need for criteria to incentivise grant making by the national government to county governments.

4. Devolution and Human Resources

Peter Macharia, Public Service Commission

Peter Macharia, of the PSC, explained the commission's roles in the devolved government system. The commission will nominate people to the judicial service commission and to the salaries and remuneration commission, recommend people to be principal secretaries, and hear and settle appeals to decisions by county government public service agencies. Each county will establish its own county public service board.

The following laws have been passed regarding human resources management in the devolved system:

- Article 235 allows counties to establish offices for public service and appoint people to those offices.
- Article 236 protects public officers.
- Section 138 of the County Governments Act stipulates that officers employed by government agencies that the devolution process abolishes will be seconded to new county agencies on the same terms of service they had before and that this cannot be altered.

The PSC is responsible for the secondment of officers to the county government and is working on this with the Transitional Authority. The PSC is also responsible for setting professional standards for public servants and hearing and determining labour-related appeals from county governments.

Mr. Macharia said that some human resources issues raised by the devolution process are not yet clear:

- How can gender balance in compliance with the Constitution's requirements be achieved? What should happen in counties where staff is not balanced by gender?
- How will the counties achieve ethnic and regional balance?

- What will happen to officers who are rejected by counties to which they have been seconded? Will they be absorbed back into national government?
- How will counties ensure that they attract and retain qualified staff?

The PSC is working with the Transition Authority to ensure rational management of the current human resources in the transition.

5. Devolution and Resource Allocation

Rose Osoro, Stephen Masha CRA

Rose Osoro and Stephen Masha, of the CRA, discussed the resource allocation formula that the commission has adopted and its implications for devolved health services.

The resource allocation formula was calculated to ensure appropriate revenue sharing among county governments. The formula was set up to be as simple as possible to apply. It is based on available official data and aims to be an incentive for efficient fiscal management. It also aims to reduce inequalities among counties and to lead to the achievement of the provisions of Article 213 of the Constitution.

The formula takes into consideration population, an equal share (which assumes that every county will have basic fixed expenses regardless of its land area or population), poverty rate, land area, and incentives for responsible financial management. The Constitution is clear about what constitutes shareable revenue:

- CRA Act 2(1): “all taxes imposed by the national government under Article 209 of the Constitution and any other revenue (including investment income) that may be authorised by an Act of Parliament, but excludes revenues referred to under Articles 209(4) and 206(1)(a)(b) of the Constitution”
- Article 203 (3): “shareable revenue shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly”

The following areas of concern have serious implications for resource allocation in the devolved system:

- Human resources
 - How will counties share the scarce professional expertise of dentists, surgeons, and other specialists to ensure there are no imbalances? If these professionals are deployed at the county level, how will counties that lack specialists obtain specialty services?
 - To whom will county staff in the health sector report?
 - How will salaries be processed for staff on secondment?
- Procurement and supply of pharmaceutical products
 - What relationship will KEMSA have with county governments? Because KEMSA will have competition, it may not be the supplier some counties choose.
- Information systems
 - How will the national health information system link with county systems? The systems should be synchronised to ensure rapid response and high standards of quality.
- National laboratories
 - No provision has been made for national laboratories and what will become of them in the devolved systems is unclear. Will these laboratories have satellites located in the counties?

- Other considerations
 - How will health services offered by local authorities be managed? They have been left out in most health policy and budgetary decisions.
 - How will provincial hospitals be managed to ensure that they serve not only the counties where they are located but other counties, as well? What mechanism will cover the extra cost of providing services to people outside these hospitals' home counties?
 - How will the contributions of development partners in the health sector be disaggregated by counties?
 - What will happen to devolved funds? Can they be included in each county's basic share? What will happen to existing structures?

The Fourth Schedule outlines the functions assigned to the national and county governments. The national government will be responsible for developing health policy and veterinary policy and for the oversight of national referral hospitals and institutions of research and higher learning. County governments will be responsible for promoting primary health care and for the oversight of county health facilities, ambulance services, veterinary services, funeral parlours, cemeteries, and so forth. Human resources and other related service delivery functions will be major cost drivers in the counties.

Another anticipated cost driver will be the provision of emergency health services. Every Kenyan has a right to these services, but it is not clear who will pay for them. Merging the two ministries of health and reducing their institutional overhead will save money. It is likely that some institutions will die or be privatised.

In the new dispensation, the merged Ministry of Health must serve as a strong centre for tasks serving the nation as a whole such as policy formulation, the setting of norms and standards, and regulation. The development and enforcement of policies are crucial tasks, as is communication of policies to the counties, which are responsible for implementation.

Transition champions are needed to guide the devolution process.

6. The Transitional Framework's Impact on the Devolved Governments and Health Systems

Dr. Dabar A. Maalim, Transitional Authority

According to Dr. Dabar A. Maalim, the Transitional Authority was set up in July 2012 as a statutory body to facilitate and coordinate Kenya's transition to the devolved system of government prescribed by the Transition to Devolved Government Act of 2012 and by Section 15 of the Constitution's Sixth Schedule, adopted in 2010.

Dr. Maalim told the participants that the authority's mandate is "facilitating the realisation of a devolved system of government through effective and efficient coordination of the transition process." In the first phase (from inception to the date of the 2013 general election), the authority is expected to oversee the management and transfer of assets and liabilities to the county governments. The second phase of the TA's work will be the three years immediately following the 2013 general election.

The authority has developed a "transition roadmap" to guide the fulfilment of its mandate and the success of the transition process. The roadmap has the following eight steps:

1. Operationalisation of the Transition Authority
2. Mapping of all government transition activities

3. Capacity assessment and development
4. Functional analysis, competency assignment, and costing
5. Resource mobilisation
6. Strategic communication and engagement
7. Performance management framework
8. Inauguration and operationalisation of county governments

The authority is in the midst of mapping government transition activities and assessing and developing capacity. Next, it will pursue functional analysis, competency assignment, and costing.

According to Dr. Maalim, the ministries of health need a roadmap, too, in order to accomplish the following tasks during the transition period:

- Determine who will be responsible for provincial hospitals. These regional entities are not provided for in the Constitution. In the devolved system as currently conceived, each provincial hospital will be the responsibility of the county in which it is located, which may deprive other counties of the hospital's services.
- Make sure that the proposed policy papers and laws conform to the provisions of the Constitution.
- Decide how cash-poor counties will be supported to retain qualified staff.
- Decide how pharmaceuticals and other commodities previously procured centrally through KEMSA will be handled in a devolved setting to ensure quality and standards.
- Figure out how donor-supported initiatives will be managed.
- Determine at what point the authority will be able to define readiness of counties in health services delivery.
- Determine where money allocated to counties that are not ready to dispense it will be held during the transition period.
- Consider what will happen if county functions are not adequately financed to pay all the staff required to carry them out. Will counties be forced to retrench?

Dr. Maalim sketched several challenges to the implementation of devolution: serious time constraints; lack of infrastructure in some counties; little understanding of the concept of devolution by the citizens; euphoria and worries; protection of turf; and resistance by vested interests.

Follow-up discussion

In the closing discussion, these issues were raised:

- S.K. Sharif, MD, of the ministries of health, disclosed that the ministries have set up a devolution committee of legal and development partners and planners. The committee's job is to advise the ministries on how devolution will affect the health sector and what adjustments need to be made in the ministries' strategic plan. Dr. Sharif pointed out that some functions will have to be coordinated centrally, because decentralizing them will pose significant public health risks. One example is the procurement of immunisation commodities.
- To manage the intergovernmental relationship between national and county governments, legal provisions have been made for forums where these governments can come together. There is also legal provision for other sector-wide partnerships, including public-private partnerships.

- The PSC will set standards on pay for all public servants to level out inequalities in the new system. The wage bill is expected to be significant in some counties.
- How will Kenya avoid creating undesirable boundaries between national and county governments? Allocating funds appropriately for functions and roles requires tasks to be defined, costed, and assigned. It should be clear to what level of government the tasks belong, how much they cost, and who is accountable for them.
- Regarding provincial hospitals, one participant felt strongly that they cannot become county hospitals administered by county governments, because they are regional and serve multiple counties. Instead, they should be given the same status as referral hospitals and be allowed to continue in their current role.
- Kenya needs more health staff. Some participants felt that some counties will have inadequate human resources owing to their perceived relative disadvantage (e.g., remote location). Therefore, the ministries of health must consider how to achieve balance. However, the law allows counties to decide for themselves what incentives they will offer to attract qualified staff. In the transition period, arrangements will have to be made to pay staff seconded to counties.
- Although the national government and county governments are all autonomous, the relationships between the national and county governments will have to be cooperative and consultative for the governments to achieve their mandates. The Constitution provides linkages to accomplish this.
- Ms. Ngari noted that the permanent secretaries in the ministries of health are not represented in the Transitional Authority, even though health issues are national and should be handled well in the devolution process. She also argued that it will be necessary to accommodate a Health Services Commission in the new arrangements, even though the Constitution does not call for such a commission, because transferring all human resources issues to the counties will not solve problems.

The moderator of the session, Kate Bigmore, of the World Bank, summed up the day's discussions in five points:

- There are lots of unknowns in the devolution process in Kenya.
- The priorities touched on at the meeting are urgent and require attention over the next few months.
- Kenya has the expertise to carry out the devolution process and therefore may have no need to import foreign experts.
- Strong champions for the devolution process are needed.
- With dialogue, communication, and consultation, devolution can move forward.

7. The Roadmap: Where Do We Go from Here?

Ms MW Ngari, PS, MMS

Health is the first security the government can offer its citizens; the Constitution will not have been implemented without a healthy citizenry. Ms. Ngari said that even though the devolution process is raising more questions than answers, the day's forum had gathered useful information to help fast-track the necessary reforms. She pointed out that the enormity of the work that needs to be done is perturbing. The counties will be in place in 2013, and they will expect a lot of guidance.

To move the process forward, Ms. Ngari said, the ministries of health have set some **immediate priorities** that will constitute their roadmap in the coming months:

- **Strengthen the core team that is guiding the devolution.** Make sure the team is multisectoral so that devolution can proceed seamlessly, with minimum disruption, because public health is a national interest with implications for Kenya's security.
- **Merge the two ministries of health in 2013.** The government is defining how the new ministry will look, and to do so, it needs to identify gaps in capacity, set standards, and formulate policy.
- **Unbundle functions in accordance with the Fourth Schedule of the Constitution** to ensure that the roles of county governments and the national government are clear, that funds follow the functions assigned to the two levels of government, and that the two levels of government interact as the Constitution prescribes.
- **Make the county teams**, which include the district health management teams, **aware of their roles, relationships, and reporting lines** and **develop capacity-building programmes** to support these teams.
- **Take stock of the assets available** in each county. (This task is under way—a joint project of the ministries and the Transitional Authority.)
- **Prepare guidelines and other simple tools** to help the new counties plan health service delivery.
- After mapping current facilities and identifying where new facilities are needed, **prepare an infrastructure plan** for each county to eliminate the risk of haphazard decisions.
- **Review the roles of bodies** such as hospital management boards and facility management committees that were established by laws that have been repealed.

Ms. Ngari reminded participants that devolution requires a completely new way of thinking and cautioned them not to resist the change. "It's time to roll up our sleeves and provide leadership to this process," she said, adding that the ministries of health will be calling on stakeholders to identify parts of the process where they can provide technical and financial support. She thanked the Health Policy Project, funded by the U.S. Agency for International Development, for supporting the meeting and helping to steer the agenda, which had yielded fruitful discussions.

ANNEX 1. MEETING AGENDA

Ministry of Medical Services
 Ministry of Public Health and Sanitation
 Devolution and Health Consultative Meeting
 24 October 2012

Time	Event	Responsible	Chair
8.00–8.30 AM	Arrival and Registration		
8.30–9.00 AM	Welcome Remarks by Permanent Secretary	M.W. Ngari, Permanent Secretary, Ministry of Medical Services	Dr. S. K. Sharif, Director of Public Health and Sanitation
	Remarks by Minister	Prof. Anyang Nyong'o, Minister for Medical Services	
9.00–9.05 AM	Overview of the Day	Elkana Onguti, Chief Economist, MOMS	S. Muchiri, Director, Policy Project
9.05–10.45 AM	Devolution and Health	Kipchumba Murkomen	
10.45–11.15 AM	Discussion		
11.15–11.30 AM	Tea/Coffee Break		
11.30 AM–12.10 PM	Devolution and Human Resources	Public Service Commission	Dr. F. Kimani, Director of Medical Services
12.10–12.40 PM	Transformational Leadership in a Devolved Government	Office of the Prime Minister	
12.40–1.00 PM	Discussion		
1.00–2.00 PM	Lunch		
2.00–2.45 PM	Public Finance Management	National Treasury	K. Bigmore, Senior Health Specialist, World Bank
2.45–3.20 PM	Resource Allocation and Health	Commission on Revenue Allocation	
3.20–4.00 PM	Devolution and Transition	Transition Authority	
4.00–4.30 PM	Discussion		
4.30–4.45 PM	Roadmap and Closing	M.W. Ngari, Permanent Secretary, Ministry of Medical Services	Dr. D. Kiima, Director of Mental Health
	Tea and Departure		

ANNEX 2. ATTENDANCE LIST

- Ministry of Medical Services
- Ministry of Public Health and Sanitation (MOPHS)
- Ministry of Finance
- National AIDS and STI Control Program
- U.S. Embassy/PEPFAR
- United States Agency for International Development
- U.S. Centers for Disease Control
- Development Partners for Health Kenya
- U.K. Department for International Development
- World Health Organization
- KFW
- DANIDA
- MOPHS Nyeri
- MOPHS Western
- Kenya Medical Supplies Agency
- Commission on Revenue Allocation
- Health Policy Project/USAID
- Futures Group
- UNICEF
- AMREF
- UNFPA
- Mothers 2 Mothers
- IntraHealth/Capacity Kenya
- Office of the Prime Minister (OPM)
- PATH
- Kenya Broadcasting Corporation
- K24
- International Medical Corps
- University Research Corporation
- Population Reference Bureau
- Good News Broadcasting System TV (GBS TV)
- Moi Teaching and Referral Health MILELE FM
- MEASURE Evaluation
- World Vision
- World Bank
- The Academic Model Providing Access to Healthcare (AMPATH)
- Pathfinder International
- Health NGOs Network (HENNET)
- World Neighbors
- University of Maryland
- Management Sciences for Health
- Public Service Commission of Kenya
- Nursing Council of Kenya (NCK)
- Kenya Pharma/USAID
- ATNC/PF
- African Family Health
- Global Communities
- The People (newspaper)
- Medical Practitioners and Dentists Board
- Kenya Television Network (KTN)
- Kenyatta National Hospital (KNH)
- Kenya Medical Training Centre (KMTC)
- People Daily
- APHIA PLUS/RIFT
- Transition Authority
- Daily Nation
- Lea Toto (COGRI)
- GA
- Kenya News Agency
- AK Global Health
- Pricewaterhouse Coopers (PWC)
- The Standard
- Supply Chain Management Systems/USAID
- Afya Info
- Marie Stopes
- International Finance Corporation (IFC)
- Liverpool VCT (LVCT)
- Capital FM
- African Institute for Development Policy (AFIDEP)
- ICF International
- RTI International
- Internews
- World Food Programme
- Strathmore University
- Kenya Healthcare Federation (KHF)
- Kenya Medical Laboratory Technicians and Technologists Board (KMLTTB)

ANNEX 3. PRESENTATIONS

The full range of presentations can be found at

<http://www.healthpolicyproject.com/index.cfm?id=KenyaDevolutionPressRelease>

