



**USAID**  
FROM THE AMERICAN PEOPLE

# DEVOLUTION IN KENYA STUDY

## POLICY ANALYSIS AND PROGRAMMING STRATEGIES

**OCTOBER 18, 2011**

This publication was produced for review by the United States Agency for International Development. It was prepared by J. Tyler Dickovick, Management Systems International.

# DEVOLUTION IN KENYA STUDY

## POLICY ANALYSIS AND PROGRAMMING STRATEGIES



600 Water Street, SW, Washington, DC 20024, USA  
Tel: +1.202.484.7170 | Fax: +1.202.488.0754  
[www.msiworldwide.com](http://www.msiworldwide.com)

Contracted under DFD-I-00-05-00221-00

DCHA/DG Core Task Order (Rapid Response)

### **DISCLAIMER**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

# CONTENTS

- Executive Summary ..... 0**
- 1. Overview: Goals and Parameters of the Study ..... 1**
  - 1.1. Kenya’s Policy and Programming Environment ..... 1
  - 1.2. Devolution and USAID Goals ..... 3
  - 1.3. Outline of the Study ..... 3
- 2. Assessment of the Environment: Devolution, Political Economy, and Institutions ..... 4**
  - 2.1. The Country Context: Political Violence, Constitutional Reform, and Devolution ..... 4
  - 2.2. The Devolution Framework: Policy Analysis..... 5
    - 2.2.1. Advances in Devolution..... 5
    - 2.2.2. Limitations and Uncertainties of Devolution..... 6
    - 2.2.3. Promise and Risks: Speed and Extent of Devolution ..... 7
  - 2.3. Political Economy ..... 8
    - 2.3.1. Individual Actors: Politicians in the Executive ..... 9
    - 2.3.2. Ministerial and Administrative Actors..... 10
    - 2.3.3. Elected Officials: Members of Parliament and County Politicians ..... 11
    - 2.3.4. Commissions and Independent Bodies ..... 13
  - 2.4. Implications for USAID Goals and Objectives..... 13
- 3. Framework: Promoting Effective Devolution in Kenya..... 15**
  - 3.1. Counties in Context: Supporting Institutions “Above” and “Below” County Level ..... 15
  - 3.2. Towards Programming: A Strategy for Supporting Institutions ..... 16
- 4. Approaches and Entry Points ..... 17**
  - 4.1. Stakeholder Coordination and Targeting: Developing a County Baseline ..... 17
    - 4.1.1. County Baseline Analysis ..... 17
    - 4.1.2. Where to Program? ..... 18
  - 4.2. Accountability on the Demand Side: Strengthening Civil Society Effectiveness..... 19
    - 4.2.1. Comparative strengths: existing programs..... 19
    - 4.2.2. Civil Society for Resource Mobilization: a new *harambee*? ..... 20
  - 4.3. Capacity on the Supply Side: Building Intergovernmental Institutions..... 21
    - 4.3.1. Sectoral Forums ..... 21
    - 4.3.2. Intergovernmental Forums: Elected Officials..... 22
    - 4.3.3. County and Sub-county level (including wards and villages) ..... 22
  - 4.4. Sectoral Approaches: Combining Demand-Side and Supply-Side Interventions ..... 24
    - 4.4.1. Health..... 24
    - 4.4.2. Land tenure and conflict ..... 25
  - 4.5. Improving Measurement ..... 26
- V. Conclusions and Implications ..... 27**
- Appendix A: References ..... 29**

<b>Appendix B: List of Interviews and Meetings .....</b>	<b>31</b>
<b>Appendix C: Kenya Desk Study August 2011 [advance deliverable].....</b>	<b>33</b>
<b>Appendix D: Lessons from Comparative Assessment of Decentralization in Africa .....</b>	<b>45</b>
<b>Appendix E: Kenya’s Leading Politicians and Relations to Decentralization .....</b>	<b>48</b>

**TABLES**

Table 1: Geographic Units of Kenya with Population Estimates .....	8
Table 2: Goals, Opportunities, and Risks of Devolution in Kenya.....	14
Table 3: From Risks to Responses.....	14
Table 4: Potential Collaborators on County Baseline Survey.....	18

## EXECUTIVE SUMMARY

This study offers programming strategies for USAID/Kenya's support of the country's devolution of powers and resources to 47 counties that is currently underway and will culminate with elections and installation of new counties in 2012. Devolution poses substantial opportunities and risks in Kenya, given the ambition of the undertaking and the backdrop of civil strife in 2007/2008. USAID objectives will be to support the overarching goals of stability, development, and democracy; the programmatic interventions proposed here are designed to mitigate risks and promote the positive attributes of devolution. The recommendations are based on an analysis of the political economy and the prevailing institutional framework, which includes the decentralization laws that are being passed in August 2011. The analysis suggests that there is a political commitment to proceed with devolution, but that it will be subject to centripetal forces from central government ministries and elected officials. Supporting effective implementation will thus be crucial to future performance.

The recommendations are as follow. First, USAID can engage in a period of modest information gathering to determine the "State of Readiness" of specific counties, as suggested in the Kenya DG Assessment; this can be low-cost to USAID/DG if undertaken collaboratively with other stakeholders and development partners. After selection of target counties (for which Coast and Rift Valley are leading candidates, based on prior experience and likely criteria), the recommendation is for simultaneous interventions on the demand and supply side. The demand side can benefit from existing USAID experience on support to civil society and to civic education; the main challenge will be adapting these to the new dispensation. The supply side may require a more unconventional approach that features support to "articulating institutions" that link county governments to other actors; this can complement support targeted directly at building the technical capacity of county actors themselves. Support to intergovernmental institutions – such as sectoral forums, Senator-county forums, or sub-county bodies – can make governance more coordinated above the county level and more local below the county level. Together, these recommendations should allow for a feasible set of interventions that can target major USAID goals and contribute to a successful institutionalization of effective county governance at the crucial early stages after 2012.

# I. OVERVIEW: GOALS AND PARAMETERS OF THE STUDY

This study provides policy recommendations and programming strategies for USAID/Kenya's support of the country's devolution of powers and resources to 47 counties in 2012. The purpose of the report is to provide recommendations for future action in two areas: policy advocacy and programming strategies. The study took place during a period when many of the major policy decisions were being made in the ongoing policy debate in Kenya about devolution. Since some of these decisions are difficult to impact at this stage, the emphasis is on programming strategies for the future, with analysis of policy shortcomings serving to inform these strategies; programming recommendations are based in part on existing policy gaps.<sup>1</sup> The time frame for the most substantial programming is for the period after the planned general elections in 2012, though some steps are proposed prior to that date.

## I.1. Kenya's Policy and Programming Environment

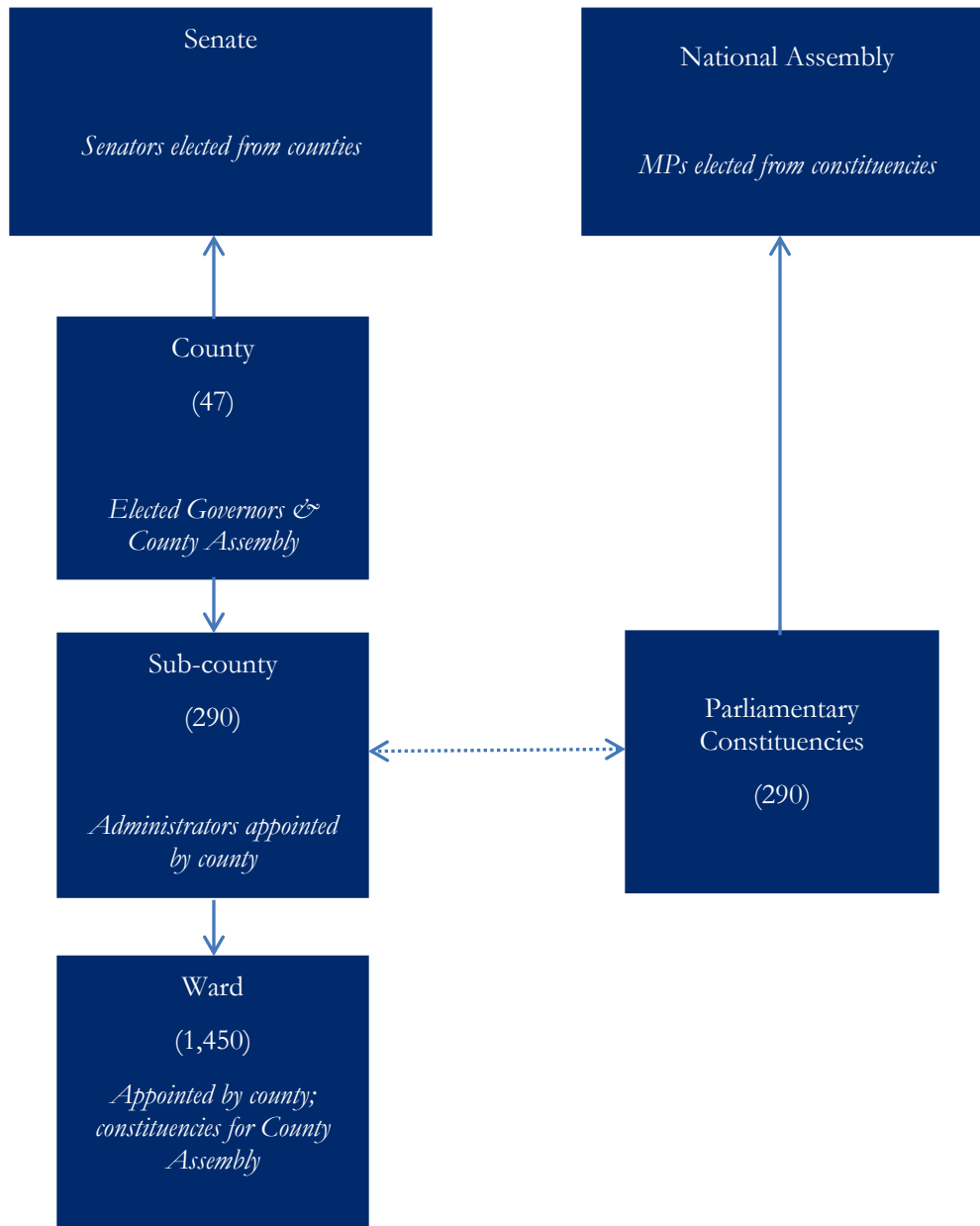
Devolution poses substantial opportunities and risks in any country undertaking reforms, but the stakes are arguably even higher in Kenya than in most other African countries. This is due to two factors. First, the devolution in Kenya is substantial and consequential, which is not always the case in Sub-Saharan Africa; the implications of devolution are likely to be much more significant than in less-decentralized countries, whether francophone countries such as Burkina Faso, lusophone countries such as Mozambique, or certain Anglophone countries such as Botswana. Second, Kenya has a volatile political environment, and ethno-regional differences are a sore spot that devolution touches upon directly. The elections of 2007 resulted in violent clashes between supporters of the two leading candidates, and the ethnic dimension of the conflict clearly remains salient for 2012 and beyond. There are shifting and complex political maneuvers involving leaders representing the Luo, Kikuyu, and Kalenjin communities (three of the largest in Kenya), while contestation over land between the groups continues at the local level.<sup>2</sup> At the same time, pushes for autonomy from the current Coast province have even culminated in separatist and secessionist movements there. These ethnic and regional concerns are set against a backdrop of rapid increases in the cost of living – especially in food price inflation and the rising cost of land and property – that can further contribute to rising tensions. Devolution has the ability to either mitigate or exacerbate ethnic tensions that could erupt into violent conflict.

Devolution holds substantial promise for Kenya, though it clearly should not be considered a panacea for improved governance. Interviewees discussed the promise of devolution in a variety of ways, but were unanimous in their expectations that whether devolution works will be quite consequential for Kenya's future.<sup>3</sup> Common phrases included terming decentralization a “game changer”, or a reform that can make a “huge difference in this country”. Less optimistically, one observer noted that this is the “last chance to get it right”, given Kenya's historic track record with poor governance. Devolution in Kenya has several notable and promising characteristics, including a substantial legal framework, broad political and legal support for subnational elections and a county civil service, and relatively strong revenue transfers mandated to accompany the devolution of public services; a more thorough analysis of the policy environment – including drawbacks and risks – is taken up in detail in section 2.

The structure of representation in Kenya after devolution can be seen in Figure 1. There are several noteworthy features. First is the creation of a Senate to represent county government at the national level. The Senate has the power to vote on matters that pertain to or affect county government; how broadly this constitutional provision is construed will have a substantial impact on the politics of devolution. Second, the county appoints administrators to the sub-county and ward bodies below the county level, but there are also elections held at those levels. Specifically, MPs are elected in constituencies that are geographically identical to the sub-county structures, while the wards elect the members of the County Assembly. (Below the wards,

legislation of each county will provide for villages as further decentralized units.) This means that while Kenya will not have a devolved level of local government below the county level, there will be elected officials representing those smaller geographic units. This report argues that devolution will benefit not just from a county government with technical capacity, but also from a Senate capable of defending the principle of devolved government and through the strengthening of linkages between sub-county structures and elected officials; this can be seen by the dashed line in the figure below.

**Figure 1: Representation under Devolved Governance in Kenya**



## I.2. Devolution and USAID Goals

USAID/Kenya's strategic environment can be understood with respect to the three main goals identified by USAID as motivations for programming in decentralization and in democracy and governance more generally (see DDPH 2009; CADA 2010; Connerley, Eaton, and Smoke 2010). These are the promotion of *stability*, *development* (to include improved service provision as well as promotion of economic growth), and *democracy*. As this report moves from analysis to proposals for specific programming interventions, it works with these overarching goals as guiding principles.

While a more thorough treatment of Kenya's policy environment comes in the next section, it can be said here that devolution presents both opportunities and risks on all three goals, and the recommendations are designed with a twofold purpose: to maximize the likelihood of contributing to the goals, while minimizing the likelihood of exacerbating their opposites: instability, underdevelopment, and a low quality of democratic governance. In Kenya, it is essential that programming to support devolution take into account a "do no harm" principle. The features of Kenya's decentralization noted above do engage all three goals of stability, development, and democracy.

## I.3. Outline of the Study

The study is specific to current issues in Kenya, and explicitly builds upon Kenya Democratic Governance Assessment from 2010, but also draws upon existing USAID knowledge and experience in decentralization and local governance. In particular, the study makes reference to the *Democratic Decentralization Programming Handbook* (DDPH, 2009) and the various reports of the *Comparative Assessment of Decentralization in Africa* (CADA, 2010), which featured assessments of 10 African countries along with a comparative synthesis study; to keep the main text succinct, most references to the latter are contained in Appendix D. There is occasional reference to the objectives and goals identified in other USAID documents, insofar as these support the current study, but the structure of the study is based on Kenyan specificity.

The report is based on meetings held in Kenya over the period from Aug 6 to Aug 24, though the report also draws freely upon the Kenya Desk Study (see Appendix C), where the findings from that study remain intact.<sup>4</sup> Due to the meetings and interviews held in Nairobi, it was not possible at this stage to investigate local variations in different regions or localities of Kenya. More contextualized analysis of which localities and regions are suited to programmatic intervention is necessarily left to a further information-gathering stage proposed later in the report.

The report is organized into five sections, including this brief introduction. Section 2 below addresses the policy environment. This includes the legal framework in Kenya, with an analysis of the strengths and gaps of the new dispensation. It also includes a political economy analysis of those actors and institutions that set the agenda on devolution.<sup>5</sup> Section 3 briefly develops a framework for supporting devolution in Kenya; this leads quickly to Section 4, which offers specific approaches and entry points for programming. The final section brings together these findings into a conclusion that includes a proposed "ideal type" intervention.



## 2. ASSESSMENT OF THE ENVIRONMENT: DEVOLUTION, POLITICAL ECONOMY, AND INSTITUTIONS

Kenya's political environment is marked by the trauma of civil strife after the hotly contested general elections of 2007. As part of the process to overcome this unrest, the country passed a new constitution that included an unprecedented devolution process for the historically centralized country. This devolution is "on track", with substantial enabling legislation working its way through Parliament in August 2011, but it is also subject to major centripetal forces in the central government, with a skeptical presidential administration and ministries that are seeking to put the brakes on certain aspects of devolution. This cautious approach to devolution among central government actors is to be expected and is advisable against the backdrop of such a rapid and extensive process. More worrisome are structural factors that could lead to negative outcomes: ethnic and regional conflict that can compromise stability, political cultures of weak local government that could linger into the new arrangement, and lack or reversal of political support for the new systems of governance.

### 2.1. The Country Context: Political Violence, Constitutional Reform, and Devolution

Kenya has been an essentially centralized state since its independence from the United Kingdom in 1963, and the current devolution is the first significant attempt to break with that pattern since the early post-independence days. After an early experiment with quasi-federal regionalism known as *majimbo* was ended in 1964, the government centralized authority under two presidents from the governing Kenya African National Union (KANU): Jomo Kenyatta (1963 – 1978) and Daniel arap Moi (1978 – 2002). During the period of KANU dominance, much of the authority at local levels and in rural areas fell to the Provincial Authority, a deconcentrated arm of the central government that operated more as internal security apparatus than service provider.

Following a political decompression in the 2000s, current President Mwai Kibaki was elected from opposition in 2002; amid efforts from civil society and opposition actors to push a new decentralizing charter after Kibaki's election, the new president attempted to engineer a new constitution in 2005. This failed in referendum, however, and the 2007 election set up as a contest between Kibaki and Raila Odinga of the Orange Democratic Movement (ODM). Kibaki was deemed reelected in a suspicious election, which resulted in civil strife between ODM members and followers of Kibaki's party. The strife became ethnic in nature, with clashes in particular between Kikuyu (Kenya's largest ethnicity) and Kalenjin in the Rift Valley.

In response to the unrest, Kibaki and Odinga successfully brokered a power-sharing agreement and agreed on the drafting of a new constitution that passed with strong support in a 2009 referendum. The Constitution that went into effect in 2010 reflected a strong consensus among the populace on the need for devolution, partly in response to concerns that winner-take-all politics was exacerbating ethnic grievances, corruption, and patronage by leading Kenyan elites to treat the state as the main fount of an ethnic spoils system; as the common saying goes, victors treated their election as signifying it was "our turn to eat".

Since 2009, there has been relatively robust support among leading officials for a process that will establish 47 semi-autonomous counties, effective with the general elections in 2012. Legislation has proceeded apace and counties should be installed on time in 2012, although the phasing in of devolution will take place over subsequent years. Devolution is currently the subject of ongoing negotiations between a variety of political actors, including national ministries (especially National Treasury, but also line ministries), several implementing commissions and task forces, other stakeholders in civil society and the donor community, and principals including the President and Prime Minister. Also part of the political mix – though in a less

articulated fashion – are would-be candidates for forthcoming elected positions such as the 47 county governors, the County Assemblies, and the city, municipal, and town councils that will be instituted in the counties as semi-autonomous delegated units. The current situation seems to be the passage of the major pieces of enabling legislation, albeit with some provisions to which decentralization advocates object. The merits and demerits of the new dispensation – including analysis of the legal framework itself – are treated in section 2.2.

## 2.2. The Devolution Framework: Policy Analysis

There are several established elements of the new dispensation in Kenya that can be expected to provide concrete advantages in the devolution process. These are:

- Elections for Governors and County Assemblies in 47 counties;
- Decentralization of major public service responsibilities (especially in Health and Agriculture, with more limited decentralization in Education);
- Intergovernmental transfers for distribution based on formulas (yet to be established);
- Creation of a county public service to which county officials will belong;
- Supporting institutions for the devolution process and transition.

### 2.2.1. Advances in Devolution

In terms of USAID’s knowledge on decentralization, these support several of the four desirable characteristics in a decentralization reform: *authority*, *autonomy*, *accountability*, and *capacity*. The reforms clearly provide the county governments with a significant degree of *authority*, and an important measure of *autonomy* from the center. The extent to which these characteristics are present to the appropriate degree depends largely upon the implementation and execution of the legal framework. The laws also generate numerous mechanisms for *accountability*, both downward to local residents through civil society forums and civic education forums at the county and sub-county levels, and upward to the center through patterns of intergovernmental relations. The cost-effectiveness of these institutions and the balance between upward and downward accountability are the subject of debate (as noted in section 2.2.2), but the legal provisions have the merit of addressing the characteristic of accountability. Less clear from the legal framework is the fourth essential characteristic: the *capacity* of the future county governments. That said, there are legal provisions creating a central government role in evaluating county capacity, adapting decentralization to correspond to the exhibited capacity, and building it where needed. (Whether these provisions create obligations for central governments or openings for the center to slow or halt decentralization by asserting low county capacity is a matter of interpretation.)

Effective decentralization is not simply a matter of increasing county authority, autonomy, accountability, and capacity. In some areas – namely authority and autonomy – too much power for subnational governments (SNGs) can be as detrimental as too little if central governments are unable to coordinate national policies, achieve economies of scale in public services, or supervise the spending and borrowing of SNGs. Put in terms of accountability, counties must balance upward accountability to national actors with downward accountability to local actors. Even in the area of capacity, where more would seem to be better, there are direct and indirect costs associated with more mechanisms and more institutions; one of the key observations of many interlocutors is that Kenya’s thoroughgoing dispensation risks creating a “big government” at too many levels. With these caveats, however, an operating assumption is that programming should often seek to promote these four characteristics, largely due to the desire to break with Kenya’s centralized past. The programming recommendations focus relatively little on strengthening central government capacity for oversight and monitoring, given the historical fact that top-down monitoring has been substantial and that

there is little reason to expect central government authority to evaporate overnight. This expectation of continued central government power is buttressed by the fact that the Treasury looks set to play a major role in the future dispensation and that line ministries will continue to set national standards, even if the much-reviled Provincial Authority is restructured.

Apart from the four characteristics identified as crucial by USAID, Kenya's 2012 dispensation can also be evaluated in terms of three dimensions commonly used to assess the extent of decentralization: *political decentralization*, *fiscal decentralization*, and *administrative decentralization*.<sup>6</sup> Political decentralization occurs when authority is placed under elected subnational governments; this creation of elected positions at the subnational level is the necessary component of devolution, the form of decentralization occurring in Kenya. Elections will be held for a single Governor in each county and for members of a County Assembly, who will be elected in county wards. Fiscal decentralization will take place with the creation of the guaranteed revenue transfers, along with the transfer of public service responsibilities in several major areas, including health, agricultural extension, and infrastructure. The new counties are slated to receive a guaranteed 15% of the national budget, with lower-income districts receiving "equalization grants" to the tune of 0.5% per annum of the national budget to address service backlogs. In addition to these central government transfers, counties are authorized to raise their own revenues from several sources, including property taxes. Administrative decentralization will also take place, with the transfer of a large number of management and planning responsibilities. This affects a range of existing institutions, including line ministries and Ministry of Finance procedures in effect for the management of intergovernmental relations between the center and local governments. In Kenya, the prior existence of various levels of subnational government complicates the assessment of whether decentralization is new, as Local Authorities previously had some such attributes at the local level, but the new framework is widely interpreted as strengthening decentralization in scope and scale, breadth and depth.

### **2.2.2. Limitations and Uncertainties of Devolution**

While the provisions above do constitute an impressive reform to Kenyan governance, the dispensation is also characterized by substantial retention of central government authority in many areas. This includes expected administrative leverage through line ministries, as will be detailed below. In addition, processes will be in place in the National Treasury to continue to supervise and monitor county fiscal operations (e.g., Medium Term Expenditure Framework, or approval of subnational borrowing). Indeed, the role of the Treasury with respect to county finance is currently the most heated topic in debates over the dispensation, as many devolution advocates have stressed that Treasury seeks to dominate or control all aspects relating to county finance (interview, Kangu; CSO roundtable on devolution).

A full examination of the debate between Treasury and decentralization advocates is beyond the scope of this study, but a brief word is in order. Both the Treasury and the Task Force on Devolved Government developed different versions of a Public Financial Management Bill. The Treasury version has stronger language about Treasury's control of the economy and particularly public spending, while also integrating issues of national and county financial management into a single bill. The Task Force, conversely, proposed two distinct bills for national and county financial management. This standoff resulted in President Mwai Kibaki and Prime Minister Raila Odinga intervening in the discussion (amid media allegations of IMF involvement), with the apparent result being a preference for the integrated bill forwarded by Treasury. This is seen by decentralization advocates as undercutting the autonomy of counties, but by some public financial management specialists as providing a single comprehensive framework that will allow devolution to proceed while retaining safeguards against counties compromising the national economy by overspending. This study does not take a stance on the relative merits of the two positions, particularly since the debate is likely to be resolved before programming begins. Nonetheless, it can be said that other country experiences suggest a substantial degree of central government monitoring of the economy is in order to set overall spending parameters, but that devolution depends upon a degree of county autonomy in the details of expenditures.

Ironically, the African country that has most informed Kenya's devolution process – South Africa – is viewed as a model by Kenya's advocates of decentralization, but is also a country with a very strong National Treasury; Kenya seems set to follow this model in certain respects, although the more competitive political party system in Kenya may result in counties more willing to contest central authority.

Besides this uncertainty about the Public Financial Management Bill, another concern is that counties will have little in the way of own-source revenue bases: they will rely heavily on a property tax (the proceeds of which will vary considerably from wealthier to poorer counties) and on user fees and charges. This in turn means that the vast majority of revenues will come from the central government transfers. While these transfers are constitutionally guaranteed and not subject to central government discretion, other African countries show that a reliance on transfers is likely to leave the counties in a situation where central government monitoring of spending in public service sectors remains considerable (see CADA Final Report).

Several aspects of the dispensation are still in flux, and for several reasons. First, the legal framework is still taking shape under the auspices of various task forces, commissions, and elected officials engaging in the process of drafting, debating, and redrafting laws. This leaves some uncertainty at the time of this report. Second, there is a scheduled phasing-in of devolution over a three year period once the laws are passed. Implementation can be expected to proceed more rapidly in some counties, in some sectors, and on some issues, while lagging in others. Finally, there are concurrent competencies in many public service areas written into the framework laws. This means that central and county governments will be sharing (but also contesting) responsibilities, even after laws are settled and fully implemented. Each of these elements of uncertainty is explored further below.

Kenya thus has a strong constitutional framework for devolution, with a legal framework in progress, guaranteed devolution of resources and expenditure areas, and new institutions including the Task Force on Devolved Government, the Commission on the Implementation of the Constitution, the Commission on Revenue Allocation, Governors and County Assemblies, and the Senate, among others. The decentralization bills (Devolved Government, Intergovernmental Relations, Intergovernmental Fiscal Relations, and Urban Areas and Cities, as well as the Transition Bill) clearly establish legal authority for counties. Insofar as other African experiences serve as a guide, challenges in authority have generally been found in implementing assigned powers, as authority is often more impressive on paper than in practice.

### **2.2.3. Promise and Risks: Speed and Extent of Devolution**

Kenya's approach to devolution process can backfire if it takes shape either "too little, too slow" or decentralizes "too much, too fast". The "too little, too slow" possibility is the likelier. This could occur if there are inadequate voices in the domain of politics and policy that "speak for counties". Nominally, the Senate and county-level elected officials should represent county interests, but there are risks that this support will prove too thin in a short time frame and for counties that as yet have low administrative capacity and little political heft. "Too little, too slow" would likely take the form of weaker decentralizations elsewhere in Africa: unfunded mandates, low own-source revenue and limited fiscal autonomy for counties, and resistance among civil servants and ministries to transfer to the counties. Such a path would have two foreseeable consequences. The first is that the impetus for decentralization will slow, stop, or reverse without champions. The second and related outcome is that citizen commitment can wane and be replaced with cynicism and a sense of alienation from the process. This would have substantial opportunity costs as it would represent foregoing a major chance to recreate interactions between Kenyan citizens and their state.

Conversely, a decentralization that undertakes too much, too fast can be just as problematic. Problems here often result from a lack of upward coordination or upward accountability between newly autonomous subnational governments (in Kenya's case, the counties) and the central government. This inadequacy of central control has been a problem in Africa only rarely, and even less so in unitary states, but it has been

salient in selected countries, most notably in Nigeria, where accountability mechanisms in highly autonomous state governments are geographically uneven and underdeveloped in many areas (see CADA Nigeria reports 2010). If an extensive devolution of authority is followed by low capacity or poor performance, recentralization may occur, as happened in neighboring Uganda with the abolition of the graduated tax and the attendant reduction in the importance of subnational governments in the 2000s (CADA Uganda 2010).

A variant of the “too much, too fast” problem in Kenya could also come from a lack of downward linkages to more local levels, since sub-county levels have yet to be the subject of substantial investment. Kenya’s devolution process is in fact something of a misnomer in the sense that Kenya’s 47 counties are actually replacing a range of Local Authorities; these Local Authorities had less constitutional, fiscal, and political significance than the new counties, plus poor reputations for governance, but they did arguably have the relative merit of being “more local” than the counties. Table 1 illustrates a dilemma of Kenya’s new dispensation: to be local, the process will need to empower geographic units smaller than the counties, yet the political debate is heavily focused on the county level itself. Sub-counties and smaller wards (as shown in Figure 1 above) are provided for in the Devolved Government Bill, and these will fall administratively under the purview of counties, but much of the discussion regarding their composition, powers, and relationship to the county level has been deferred.<sup>7</sup>

**TABLE 1: GEOGRAPHIC UNITS OF KENYA WITH POPULATION ESTIMATES**

Geographic Unit	Number of units	Avg. Population per unit (est.)
Kenya	1	41,070,934
Counties	47	873,850
Sub-counties/constituencies	290	141,624
Wards	1450	28,325

Sources: CIA World Factbook estimate, July 2011 (<https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>); Devolved Governments Bill [August 1 draft]

Kenya has a unique challenge given the size and scope of the single level of subnational government. Counties are “small” on the one hand, especially with regard to coordination of policy in a unitary state and with respect to counties trying to deliver public services that benefit from economies of scale, such as advanced health care (see also Kenya DG Assessment 2010).<sup>8</sup> On the other hand, the 47 counties will average around 800,000 persons each, which is “big” when contrasted with the larger number of less-populous municipalities in many African countries. This need for governing layers of different sizes suggests a strategy to empower institutions “around” the counties that can give the counties the support they need (both politically and administratively) to succeed. At the same time, several interlocutors cautioned against decentralization as a recipe for big government, a concern highlighted by the creation of mandatory civil society forums and civic education committees in every sub-county and every ward. This need for balance – for a “Goldilocks” decentralization that is neither too big nor too small – is especially important when considering the stakes of “getting it right” in Kenya in the lead-up to 2012.

### 2.3. Political Economy

Decentralization is puzzling because it involves political actors voluntarily choosing to grant powers and resources to other actors rather than retaining them. The decisions of national level leaders to decentralize can be explained in several ways: the *political will* of leaders having a deep democratic commitment; the *self-interest* of leaders who stand to benefit politically from decentralization; or the *constrained optimization* of leaders seeking a best solution in an institutional environment that shapes their choices. These may operate separately or jointly to promote decentralization. Understanding the incentives of central government actors is crucial to determining how decentralization will proceed and what limits will be imposed by political realities.

Even when central governments pass decentralization into law, they are typically interested in reforms with certain characteristics: limited authority and decision-making autonomy for subnational governments, along with accountability for those SNGs that points upward to the center as much or more than downward to local citizens. The modal form of decentralization in Africa has the merits of a legal framework that creates subnational elections, decentralizes some major public service responsibilities, and transfers revenues through grants from the center based on clear formulas, but also constitutes a weak form of decentralization for several reasons. In much of Africa, most decision making over public services remains controlled by central government standards, the civil service (including teachers) remains under central government purview, and fiscal resources transferred to local governments are inadequate to meet responsibilities, resulting in unfunded or underfunded mandates that offload responsibilities from the center to SNGs. In this setting, the gains in local autonomy and downward accountability are modest. Whether Kenya follows the modal African experience depends upon the incentives facing leading actors and institutions.

### **2.3.1. Individual Actors: Politicians in the Executive**

Kenya's devolution will take place in tandem with a wide-open 2012 general election that presents considerable uncertainty about the likely president and the likelihood of civil strife. There are expectations that "the next occupant of State House will determine whether devolution works or not" (interview, Kangu). The open electoral field contrasts with decentralization processes in many other countries in Africa, where the national level features a dominant party (CADA Final Report 2010). This is both an opportunity because it indicates prospects for democracy and a risk because it is more challenging to foresee the eventual administration's incentives on implementing devolution.

Different candidates may indeed have distinct perspectives and ideologies about devolution, but a political economy analysis focuses on the incentives of political actors, rather than understanding "political will" as a purely personal characteristic that some individuals always possess and others never will. From a political economy perspective, the offices held by individual decision makers go a long way towards determining their political positions; the dictum goes that "where you stand depends on where you sit". Thus, leading government figures and governing institutions may have incentives to support devolution, may have mixed incentives with regard to devolution, or may oppose it outright, but any of these are subject to change as political realities and prospects shift.

Central government officials that stand to lose control over the resources transferred to counties have incentives to oppose decentralization. By contrast, it is common to find proponents of decentralization among those who do not control the presidency, and among those defeated in national elections. Depending upon the outcomes of elections, backers of strong presidentialism under a given president may continue with this perspective or may be much more amenable to strong counties upon losing control of State House, while advocacy for devolution by others can wane upon assuming the presidency. (These statements are in general terms, and references to specific leading politicians and their positions on decentralization are found in Appendix E.)

The general observations are not to deny that different actors will have formed different levels of commitment to decentralization, in part due to their previous statements and positions. But given Kenya's political-economic history and tensions between groups, it is likely any incoming presidential administration (regardless of ethnic backing) will seek to retain certain powers and control over resources at the national level. This preference will inform how national ministries and county-level officials that are in the president's party shape the implementation of decentralization after 2012. The incoming president will appoint top ministry officials and will seek to exercise some authority over co-partisans; it can be anticipated that these officials will face at least some incentives to comply with central directives, though Kenya's multiparty system

presents an important contrast with many other African countries where single parties are dominant and operate in top-down fashion.

Among those with incentives to *support* decentralization, the most obvious candidates are those elected officials responsible to county populations, as well as the appointed officials who in turn accountable to elected county officials. On the elected side, this includes Governors, County Assemblypersons, Senators, and possibly MPs insofar as electoral constituencies work alongside counties. Appointed officials such as county secretaries, city administrators, and members of the county civil service are also included here. However, caution must be exercised even among these groups that should be expected to support devolution. Kenya's history of strong centralized rule and ethno-regional divisions, combined with political ambitions found in all political systems, can lead to county elected officials eager to comply with and attend to the political needs of the central leadership. It is speculative yet to estimate how much county officials will be accountable "downward" rather than "upward", but results can generally be expected to vary as a function of how centralized the political party system is after the elections: a more centralized and top-down party system will lead to greater challenges to devolution.

### 2.3.2. Ministerial and Administrative Actors

Politics and policy reform take place in a given institutional framework, even when that framework is itself in revision and reformulation, as in Kenya. The current structure of government institutions must inform recommendations. Among the most relevant institutions are the National Treasury and the sectoral ministries for devolved areas, such as Health. These institutions may have institutional memory that can be both helpful and detrimental to devolution. On the negative side, these institutions may have pathologies such as embedded corruption and inefficiencies. On the positive side, fiscal and administrative capacity will be one of the key challenges in Kenya's devolution, and preexisting institutions may be where a large portion of that capacity resides. Planning and management will depend upon personnel who are familiar with a range of governmental processes. Retaining institutional memory can be compatible with major reforms to improve public management, capacity, and probity.

The **National Treasury (Ministry of Finance)** is one of the leading organizations whose instituted practices are likely to continue to shape county governance past 2012. It has perhaps some of the clearest (and most justified) reasons for wishing to ensure central control, including proper accounting of government expenditures and protection of the national macroeconomy. A range of existing features may be adjusted or largely incorporated into the new devolved system, including such processes as the Medium Term Expenditure Framework (MTEF), Ministerial Public Expenditure Reviews (MPER), and the Integrated Financial Management System (IFMS). The presence of similar institutions in the intergovernmental systems of South Africa and Uganda suggests these are compatible with significant moves toward devolution. USAID approaches could include building upon these mechanisms with capacity-building among county-level officials in intergovernmental finance and the promotion of priority issues for the counties in Budget Review consultations.

**Sectoral ministries** will continue to exert authority over civil servants under their purview, while also seeking to ensure county compliance with national standards. The wish to ensure national standards for service delivery often coexists with a reticence to devolve power to subnational elected officials, though the form of administrative decentralization known as deconcentration is often supported. A related set of institutional actors are those in the civil service, who may resist transfer to the subnational level and can be a powerful constituency that delimits county power. In many African countries, the continuation of a centralized civil service for most personnel, such as teachers in the education sectors, may be the fact that has most consistently tempered the devolution of public service responsibilities.

Within their sectors, line ministries in Kenya may have several mechanisms for retaining central control. One was observed during this study, when one of Kenya's two health ministries moved to reclassify certain hospitals as referral hospitals of national scope, thus preparing them for retention under central government control rather than for transfer to counties; it can be argued this was advisable given questions about county capacity, but the key point is an illustration of how ministries matter in the implementation and extent of devolution. On a similar note, Kenya will be undertaking a crucially important process of identifying capacity and county readiness to assume functions and responsibilities. This process is ill-defined, but it seems self-evident that the counties will not simply self-evaluate. Rather, determinations about capacity will certainly be made through ministerial processes, both in line ministries for administering expenditures and in the National Treasury for managing revenues. County officials may well have lower technical capacity than ministries at the central level, and a challenge is that this may be used (as in other African countries) by the center as a justification for limiting or reversing devolution. Central ministries may even be reticent to develop local capacity, if they have political incentives to retain power. Even where local officials do have adequate technical competence, there will be difficulties in adapting to the new systems and procedures as officials from various Local Authorities are worked into the county system (see below). In short, line ministries and their approaches to the county capacity question will strongly condition how devolution unfolds.

**Staff of current Local Authorities (LAs)** will also frequently have occasions to shape the future of local governance. The Local Authorities currently in place will cease to exist in 2012, but they are staffed by administrative personnel that will often transfer over to the new county governments. This represents a source of continuity with Kenya's prior system of local governance. These LAs are criticized for their ineffectiveness and poor performance (such that Kenya's devolution process is described by its advocates as decisive a break with the past), but not all LA officials will necessarily prove detrimental to local governance in the future. The LAs have presided over several processes that are echoed in devolution.<sup>9</sup> For example, they spend the proceeds of the central governments Local Authorities Transfer Fund (LATF), which will be expanded in the new framework in the form of the equitable share of 15% of revenues for county governments. They also preside over a degree of public participation in the Local Authorities Service Delivery Action Plan (LASDAP) that is being transformed into civil society forums in the new counties. Finally, LA officials have worked under the Kenya Local Government Reform Program (KLGRP). This suggests some staff of LAs may allow the new counties to retain some institutional memory of how to manage resources and participatory processes. In addition to these administrative staff members, elected officials currently found in Kenya's LAs are likely to run for county elected positions as well (see below under 2.3.4).

### **2.3.3. Elected Officials: Members of Parliament and County Politicians**

Besides elected and appointed officials in the executive, legislators in the **National Assembly** (also referred to as MPs, members of parliament) will have considerable say over the extent, pace, and implementation of decentralization.<sup>10</sup> Because all legislation must pass the National Assembly, the members of the chamber can collectively prevent decentralization from taking place or can push it convincingly. At present, for instance, the current form of the decentralization framework laws in August 2011 took shape in negotiations between the Task Force on Devolved Government that drafted the laws and a committee of MPs that demanded changes to the laws – the so-called Naivasha Compromise, after the town where the retreat took place (cf. CSO roundtable).

Advocates of decentralization may be able to help shape the incentives of MPs regarding decentralized governance. By enhancing links between national legislators, County Assemblies, and sub-county officials at the constituency level, champions of devolution can attempt to encourage members of the National Assembly to become allies supporting county governments. MPs will be elected in constituencies that are geographically coterminous with the sub-county level of devolved government; while MPs will not be directly



accountable to county officials, collaboration between these national and sub-county actors can be of mutual political benefit if enhanced service provision is to the advantage of incumbents.

That said, National Assembly MPs will still be more or less attentive to the central executive, depending upon the extent to which the new dispensation alters how partisan powers operate. At present, Kenyan politics is characterized by patron-client relationships: MPs are frequently subordinated to the executive actors in policy decisions, though they are monitored only weakly by central government oversight of their spending (especially with the use of the Constituency Development Funds, or CDF, allotted to them). Top-down discipline in the KANU era before 2002 has given way to greater factionalism in the Kibaki years, and it is not yet determined whether devolution will result in MPs that attend more to national party leaders or to local constituencies. A noteworthy feature of Kenya's National Assembly is the quite high degree of turnover among MPs, which has been in the neighborhood of 70% or more in some recent elections. As a result, it can be expected that many MPs will be attentive to how devolution can sway their reelection chances in their sub-county constituencies.

**The Senate**, meanwhile, is a new institution, and it is empowered to vote on all matters in parliament deemed to "affect counties". The Senate's impact will be largely a function of how this is interpreted. If issues that "affect counties" are found to be exceptions in significant areas of policymaking, the Senate will be of low consequence. Weak upper chambers have been common in other countries in Africa, either due to constitutional limitations on the upper chamber (*de jure* limitations) or due to dominant parties that make upper chambers largely redundant (*de facto* limitations).<sup>11</sup> Yet Kenya has a Senate with a degree of constitutional empowerment, plus a more competitive party system at the national level. In particular, the Senate is empowered by Section 217 of the Constitution to "determine the basis for the allocation among the counties the share of national revenue"; while there is constitutional guidance on criteria, this gives a large degree of autonomy to the body, which could make the political economy of decision making in the Senate increasingly important over time.<sup>12</sup>

The composition of the Senate itself will impact the influence it has as a chamber, though the judiciary may ultimately rule on what matters affect counties. As the Chairman of the Task Force on Devolved Government notes, the Speaker of the Senate and the Speaker of the National Assembly have considerable latitude in determining what is the Senate's prerogative (interview, Kangu). Hopes for robust devolution thus largely depend upon a Speaker of the Senate that takes this role seriously. Beyond the Speaker, the composition of the Senate as a whole will inform much of the devolution process. Some observers worry the chamber will be filled with political "elder statesmen" seeking career-ending sinecures, and that the robust voice for county autonomy will be short-circuited. On the other hand, if the Senate is filled with ambitious and committed politicians with strong links to county constituencies, the likelihood of a sustained voice for the counties is much higher.

**Governors and County Assemblypersons**, for their part, can be generally expected to seek greater powers and autonomy for county governments. This includes guarantees of access to tax bases and revenue transfers, though there is considerable debate about whether subnational politicians prefer own-source revenue that is not subject to central government earmarking, or reliance on intergovernmental transfers that pass along the political costs of collecting taxes to the center.<sup>13</sup> These officials have incentives to favor devolution, and the challenge is to strategize about how to empower these actors to best serve as voices supporting devolution. The most preferred strategy may be efforts to form strong political ties to the national-level elected officials above. Governors and Senators represent the same counties, yet the linkages between them are as yet tenuous. Similarly, National Assembly MPs represent 290 constituencies that are geographically coterminous with the sub-county levels (which are under the aegis of the counties), but the link between MPs and county elected officials is unclear. To foreshadow possibilities for programming, forming and strengthening linkages between these institutions and actors may provide the counties with a form of political capital; this programming approach may serve the counties as well or better than conventional capacity-building, for example.

### 2.3.4. Commissions and Independent Bodies

In defending the principle of devolution, the question emerges who will speak for counties. Elected officials at the county level and in the Senate are expected to do so. In addition, there are several commissions and bodies with important roles in overseeing the transition to devolved government. The first of these is the **Task Force on Devolved Government** (TFDG) that has drafted many of the framework laws, as well as a substantial report on devolved government. However, the term of this task force will come to an end prior to 2012. The **Committee on the Implementation of the Constitution** (CIC) is also charged with defending the principles of the Constitution in which devolution features prominently, but its mandate is manifold and it reflects the ongoing debate about the extent of devolution. The CIC is comprised of members representing both a strongly devolutionary position and others advocating (quite plausibly) the need for strong central control over Kenyan finances.

Additionally, the **County Transition Authority** will have major responsibilities for transitioning from the current dispensation to the devolved system of county governments. This authority will have significant impacts on how devolution works in practice because it is responsible for conducting the inventory of assets and liabilities to be transferred to the counties; these include both “hard” physical assets and “soft” assets in the form of county capacity and personnel (cf. Transition to Devolved Government Bill). Other commissions and independent bodies will also impact the devolution process, including the Ethics and Accountability Commission and the Human Rights Commission.<sup>14</sup> A full examination of the operation of these commissions is beyond the scope of this report, but each can be seen as a potential partner or impediment in devolution: they can help ensure accountability, autonomy, and capacity at the county level, or may serve the function of undermining these if they are beholden to either central or local actors.

The body with the most enduring significance in “speaking for counties” is probably the **Commission on Revenue Allocation** (CRA). This body is assigned to develop formulas for the vertical division of revenue between the levels of government and the horizontal division among the counties. In an interview, the Chair and Vice Chair of the CRA expressed their view that the fiscal decentralization of 15% of national revenues should be a starting point and that the portion should steadily increase (interview, Chiserem). The CRA also takes into account determinations about county capacity, and is thus engaged with decisions being made in central government ministries. A willingness to push for devolution on the part of the CRA may thus serve as a foundation for building coalitions among officials (elected and appointed) who wish to see devolution thrive and expand.

## 2.4. Implications for USAID Goals and Objectives

Kenya’s decentralization has implications for the three goals associated with USAID endeavors in democracy and governance. These are noted in the table below. A noteworthy feature of Kenya’s devolution is the clear link between the opportunities and risks associated with the change. That is, each opportunity closely corresponds to an associated risk, as indicated on the rows below. For instance, one leading advantage of decentralization for stability – the fact that it can provide more opportunities for regional minorities to win meaningful elected positions, and thereby gives more actors a stake in the system – is also directly associated with a particular risk in Kenya: the prospect of creating “new minorities” in specific counties that may see governance dominated by majority or plurality groups. Similarly, devolution is posited to improve accountability and empower people to participate locally, but may also serve to “decentralize corruption” and turn power over to elite local actors.

**TABLE 2: GOALS, OPPORTUNITIES, AND RISKS OF DEVOLUTION IN KENYA**

USAID Goal	Opportunities	Risks
<b>Stability</b>	End “winner-takes-all” politics Engage local minorities in governance	Create “winner-takes-county” politics Create politics of “New minorities”
<b>Development</b>	Tame corruption Services improve with local responsiveness	Decentralize corruption Services decline due to low local capacity
<b>Democracy</b>	Enhanced participation at local level Improve accountability	Limited participation and citizen alienation Elite dominance at local level

Of course, the risks associated with devolution can be addressed if programming strategies are developed to convert risks into responses. The risks identified above each have implications for how USAID/Kenya can engage in the high stakes game associated with devolution in Kenya. The issue of stability and minority politics within a county is best addressed through building government institutions that can directly address minority concerns. This means working at the sub-county level, almost by definition. It is at that level that USAID/Kenya can engage with minority groups who may be outnumbered or otherwise excluded from decision making at the county level. At the same time, demand-side interventions are essential to improve participation and accountability in governance. The implications are outlined in Table 3.

**TABLE 3: FROM RISKS TO RESPONSES**

USAID Goal	Risks	Responses (Programming Implications)
<b>Stability</b>	Create “winner-takes-county” politics Create politics of “New minorities”	<b>Supply-side</b> work below county level (sub-county, ward) to address minority issues <b>Demand side</b> work below county level to promote citizen input from minority groups
<b>Development</b>	Decentralize corruption Services decline due to low local capacity	<b>Demand side</b> work to enhance accountability via CSOs <b>Supply-side</b> work to enhance central government relations with counties: oversight and capacity support
<b>Democracy</b>	Limited participation and citizen alienation Elite dominance at local level	<b>Demand side</b> work to enhance accountability and autonomy via CSOs <b>Supply-side</b> work to support/strengthen government capacity to host and manage legally-mandated civil society forums

Table 3 shows that interventions can happen on the demand side and/or on the supply side to address each of USAID’s three major goals. In addition, this menu of responses includes work at various levels of government: central government institutions, and county and sub-county institutions. As noted above, the central government remains critical in maintaining oversight of county governments and in providing support for capacity-building. The emphasis below will be primarily on building the capacity of institutions below the center, though some reference is made to central government responsibilities and roles in promoting such capacity building. There is relatively little emphasis on central government oversight capacity, since this power (as noted above) is deemed one of the stronger aspects of Kenya’s institutional inheritance.

## 3. FRAMEWORK: PROMOTING EFFECTIVE DEVOLUTION IN KENYA

This section develops a framework for how best to support Kenya’s devolution reform; it is brief so as to move quickly towards more concrete programming issues. The framework draws upon the political economy and institutional analysis that precedes it, bridging this to specific programmatic recommendations by identifying likely gaps and shortcomings in the system and developing general principles for how to address these. The premise is placing counties at the nexus of a web of intergovernmental institutions that can either support county government or represent points where decentralized governance can break down through lack of political support or inadequate performance.

### 3.1. Counties in Context: Supporting Institutions “Above” and “Below” County Level

Kenya’s 47 new counties will not operate in isolation, but rather are situated at the center of a web of institutions. This report proposes an approach that may sound paradoxical or counterintuitive: some of the strongest support to counties may come not from supporting counties directly, but rather from supporting a network of intergovernmental relations in which counties are the key nexus. It is an admittedly indirect approach to suggest that some of the best ways to support counties are to support other institutions, but there are two main reasons for this proposal. One looks “above” the county level to national-level institutions and the “other” below to sub-county structures.

**“Above”** the county level comes the question of coordination and articulation with central government. Notwithstanding legal guarantees of their authority and autonomy, counties will require substantial “political capital” if they are to flourish. This means robust support from elected officials in the parliament (especially the Senate, but also the National Assembly) for the premise of decentralized governance and at least grudging acceptance of county roles among ministries and top officials in the executive branch. Without legislative support, counties will be marginalized and without executive acceptance, recentralization through a variety of administrative and other procedures is a real possibility.

**“Below”** the county level is the issue of making county governance more truly local. As noted in **Table 2**, counties are substantial in size, with many having over one million residents. Many of these will have difficulty reaching down to truly local levels in the absence of further decentralization of county structures, especially in more rural and geographically dispersed areas. The legal framework provides for sub-county and ward-level structures, as well as certain institutions at the village level, but these have received considerably less attention to date. Supporting these local levels of county government – which come under the purview of counties, but are county-level offices from a programming perspective – will likely be crucial in improving service provision and accommodating the needs and demands of groups that will be minorities in the county. It can also be noted that the sub-county institutions also represent a key opportunity for policy intervention, since county-level laws (which are yet to be formulated) will shape the particular arrangements in any given locality.

As will be discussed in section 4 below, this does not imply ignoring capacity-building at the county level. Indeed, some specific suggestions are made in that regard. Rather, the emphasis on institutions above and below the county level is intended to ensure these crucial aspects of local governance are not overlooked in the discussion and planning surrounding devolution.

## 3.2. Towards Programming: A Strategy for Supporting Institutions

In a context of numerous rapidly changing institutions, USAID programming will benefit from anchoring at least some of its approaches in areas where it has institutional memory and is dealing with known quantities and familiar objectives. To operationalize this, USAID can collaborate with existing institutions with which it is familiar and has a standing relationship. This goes for development partners as well as CSOs making the transition to the new dispensation. With regard to CSOs in particular, it can undertake a “conventional” approach to work on the demand side, building upon existing programmatic strengths in civil society strengthening and civic education.

On the other hand, there are likely to be major institutional points that are relatively underserved in the new dispensation, and this may militate for a more unconventional approach on the supply side. The ward and sub-county structures in particular will require substantial support, but have received considerably less attention than the county-level structures themselves. Rather than working directly or exclusively with County Assemblies, programming instead with other levels of institutions may be especially beneficial. Civic education on devolution can be undertaken at more than the level of the County Assembly; it will be equally needed at the local levels of the sub-county and wards, where there will be county-level permanent staff likely to remain in place beyond a single electoral cycle. Large numbers of actors will need a new or refreshed understanding of county compliance with central government standards and obligations, along with dissemination of information on counties’ rights and opportunities, and many of these will be at the sub-county levels that are at risk of being relatively overlooked in the enthusiasm about county-level elected offices.

While USAID can work with CSOs and with institutions below the county level, there will also be a need for articulation of interests between those actors responsible for defending devolution. This includes members of the Senate, who will need to develop relationships with the National Assembly, county elected officials, and a range of other actors if they are to represent county interests effectively. On the more administrative side, USAID can also support county-level representatives of the various sectors, to ensure central government responsiveness to the counties accompanies county compliance with central government directives. In short, coordinating venues are needed between county-level actors and national-level decision makers.

Bringing these items together, USAID/Kenya can consider several approaches, as elaborated upon in part 4 below:

- 1) Collaborate on a baseline study to select counties and measure impacts (section 4.1)
- 2) Strengthen (selected) existing institutions on the demand side (section 4.2)
- 3) Build new supporting/articulating institutions on the supply side (section 4.3)

This set of proposals proceeds to a paired approach that combines demand-side and supply-side interventions (section 4.4). It allows USAID to collaborate and coordinate with other development partners to ensure complementary investments, while prioritizing areas where it has comparative strengths.

## 4. APPROACHES AND ENTRY POINTS

The analysis above has implications for programming in USAID/Kenya. This section offers recommendations in three steps. Section 4.1 proposes a coordinated effort on a baseline study that will establish counties' readiness and result in better-targeted action and advocacy on behalf of the devolved governments. Section 4.2 proposes building upon existing programming on the demand side. Section 4.3 looks at the supply side and argues that institutional development will be especially urgent above and below the county level, though this does not preclude important work at the county level. Section 4.4 elaborates on how pairing demand-side and supply-side interventions can work by taking on a sectoral shape. Finally, a brief section 4.5 highlights how this array of interventions can improve measurements and indicators for the future.

### 4.1. Stakeholder Coordination and Targeting: Developing a County Baseline

A first recommendation for programming is to engage in coordination with other advocates of effective devolution, but prior to the stage of programming interventions. Specifically, beyond the straightforward recommendation for donor coordination or coherence, there is a particular need to work in complementary fashion on a county baseline. As noted below, this is not simply a matter of recommending “more study”, but an integral part of the process of devolution itself.

#### 4.1.1. County Baseline Analysis

The need for county baseline knowledge was forwarded (unsolicited) by a large majority of interviewees. This included individuals working in development agencies and government institutions (such as the Task Force on Devolved Government and Commission on Revenue Allocation), as well as in research institutions. One reason for such unanimity is that the transition to devolved county government necessarily involves a central government audit of the assets and liabilities of county governments. This will include detailing physical infrastructure and human resources to be deployed to the counties; as an observer at UNDP notes, this should be complemented by an evaluation of the economic base of the counties and by an inventory of the density of civil society organizations present (interview, Wambui Mwangi). The mandated parts of the central government audit, along with an evaluation of county capacity, will figure into decisions about the speed and extent of devolution to each county. Where capacity lags, legal provisions hold that the central government shall support county-level capacity-building, but there are also expectations that this discovered lack of capacity can serve to truncate devolution.

USAID/Kenya can thus play an important role by taking the lead in *coordination* among the various institutions examining the prospects and futures of county governments. An array of the institutions engaged in this process is offered in the table below. Many of these institutions are already undertaking studies of counties to some extent, as noted in the right-hand column. Coordination of this effort could better inform development partners about their subsequent programming interventions, of course. It can also help contribute directly to effective intergovernmental relations: it will allow the central government to prepare for the transition to devolved government with more information, and can open the door to advocacy on behalf of counties for capacity-building support purported to come from central government.

**TABLE 4: POTENTIAL COLLABORATORS ON COUNTY BASELINE SURVEY**

<b>Institution</b>	<b>Type</b>	<b>Actions to Date and Notes</b>
<b>Bureau of Statistics</b>	Government of Kenya	Promoting Open Data Initiative (as of July 2011) County- and constituency level data ( <a href="http://opendata.go.ke/">http://opendata.go.ke/</a> )
<b>Government ministries</b>	Government of Kenya	Required by law to conduct inventory of county assets and liabilities for 2012; Evaluating capacity for devolution implementation
<b>USAID/Health</b>	USAID	Present and collecting data in all 47 counties; Most important sector for devolution; Standing relationship with Health Ministry
<b>USAID/DG</b>	USAID	Consideration of “State of Readiness” reports on individual counties; DG Assessment and other reports available in-house
<b>World Bank</b>	Development partner	Fiscal Decentralization Knowledge Program; Conducting selected county studies
<b>UNDP</b>	Development partner	Will be present in 24 counties; Conducted preliminary study for donor basket funds
<b>Institute of Economic Analysis (IEA)</b>	Research institution	Conducting county studies to supply quantitative data to major national newspaper for county editions
<b>Society of International Development (SID)</b>	Research institution	Proposes county profiles undertaken with Bureau of Statistics data
<b>Institute for Civic Affairs and Democracy (ICAD)</b>	Research institution / Development Partner	Proposes team of research institutions and academics to measure/follow county-level indicators
<b>Uraia</b>	Development partner / Government of Kenya	Standing relationships with range of stakeholders; Presence and experience in coordinating/liasing

USAID/Kenya has several venues for dialogue with development partners (who themselves coordinate some activities through basket funds). Many of these practices can continue, with some adaptation to the specific task of data collection. Observations from interviewees suggest that collaboration and coordination have been less robust with research institutions, suggesting a need to prioritize collaboration with those institutions, and within USAID.

#### **4.1.2. Where to Program?**

The county baseline study may inform in **which counties or regions** of Kenya should USAID focus its efforts. One possible answer to the question is offered here, and draws upon the USAID/Kenya Democracy and Governance Assessment: a focus on counties in Coast province and Rift Valley province. One main advantage of this approach is clear: it addresses the USAID goal of stability as well as development and democracy, since these two provinces are where conflicts over land and ethnic relations are especially pointed. In addition, USAID/Kenya familiarity with the areas can facilitate entry and effective programming.



Another answer to the question would be more agnostic: a focus on counties to be determined according to the baseline study (noted above) of the “state of readiness” of the counties. This has the merit of leaving the decision to be taken deductively based on a set of pre-established criteria and more in-depth analysis by county, rather than on estimation of existing trends. It also would allow for more flexibility in any coordination with other development partners. Both of these issues are considered below. Nonetheless, given pragmatic issues surrounding the short time frame for devolution and the many variables that will change in 2012, the recommendation here is to strongly consider Coast and Rift Valley for the reasons noted above.

## **4.2. Accountability on the Demand Side: Strengthening Civil Society Effectiveness**

To date, CSOs have had limited success in holding local officials accountable in Kenya, and in 2012 these organizations will be confronting long-standing challenges while also adapting to a new governance framework. Furthermore, research from elsewhere in Africa and beyond suggests that many efforts to promote civil society activity have often had disappointing or unintended results (Schonwalder 1997, Bierschenk and Olivier de Sardan 2003). This begs the question why further interventions will be expected to produce different results.<sup>15</sup> Kenya’s new governing framework presents an opportunity to break with the past, but local governance in Kenya also should be expected to retain some of the political culture that currently exists; in addition, the process of change to county government also represents a new challenge as new actors assume responsibilities.

Despite concerns about the previous performance of civil society in Kenya, the reasons for continuing to pursue a demand-side strategy are twofold. First, the strategy itself need not necessarily be more of the same, but rather can adopt new approaches that facilitate more cost-effective monitoring of civil society activity via sectoral collaboration. This will be discussed below in section 4.4, with particular reference to the health sector. A second advantage of continuing demand-side work is less about innovation and more about the fact that certain elements of programming will be familiar; this does not mean advocating for unoriginal programming, but rather is to note the advantage of having some anchor in a political and institutional environment where many parameters are changing simultaneously. USAID/Kenya can anchor its demand-side strategy for post-2012 in selected institutions and processes that already exist. Recommended steps are based on ensuring greater participatory involvement at various stages of action by county governments: identification of needs and preferences, program/project design, planning, budgeting, monitoring, and evaluation. The merits of such recommendations need not reside primarily in their inventiveness – as such steps have been pursued in programming before – but rather in their ability to provide a point of reference in a shifting political environment.

### **4.2.1. Comparative strengths: existing programs**

USAID/Kenya has existing strengths in developing, implementing, monitoring, and evaluating programs such as the Kenya Civil Society Strengthening Program (KCSSP) and initiatives in the area of civic education. This is more than a mere observation about the nature of current programming; interlocutors repeatedly stressed USAID/Kenya’s “comparative advantage” and existing strengths in formulating programs to support civil society organizations and work for accountability from the demand side (interviews, Finch, Kanyanga, e.g.).<sup>16</sup> In a similar vein, civil society organizations are preparing for the modification of the process known as LASDAP (Local Authorities Service Delivery Action Plan), a set of forums that ensure civil society participation in the planning and implementation of initiatives by the current Local Authorities. The LASDAP process has mandated inclusion of public consultations as a condition of intergovernmental transfers. The process received mixed reviews, but the elimination of the Local Authorities leads to questions about whether the current decentralization bills before the National Assembly envision building upon this



institutional form. One approach could build on existing procedures from LASDAP, while using 2012 as an opportunity to improve performance. Since LASDAP works at a “more local” level than the 47 counties, it may be possible to adapt this process to the sub-county or ward level, adding a procedure that “federates” constituency or ward consultation mechanisms between government and civil society and aggregates these up to the county level.

Neither the CDF nor the LASDAP will continue to exist in its current form after devolution, though they may be incarnated in new forms. Given that there are provisions in the Devolved Government Bill for civil society forums under county government, USAID should consider working to ensuring that any existing institutional memory in civil society “carries over” into the new dispensation as procedures to formalize participation are being adopted, implemented, and sorted out. There is a need for continued support for civil society mobilization, alongside civic education for CSOs about the new dispensation, so that these organizations can exercise voice and leverage under new rules.

#### **4.2.2. Civil Society for Resource Mobilization: a new *harambee*?**

Another concept that could be important for the state-society relationship in Kenya after 2012 is *harambee*, a term roughly meaning “self-help” that appears on the country’s official coat of arms. This is the second potential avenue for intervention on the demand side. *Harambee* has long been associated with local resource mobilization for community needs and projects, but the term also took on a negative connotation for years as it came to be associated with politically charged, quasi-compulsory fundraising led by KANU members of parliament backed by law enforcement; it served the electoral and financial interests of the governing party. Despite this history, one interviewee noted, “the spirit of *harambee* is alive” in the sense that Kenyans can be expected to contribute willingly in instances of genuine bottom-up mobilization of local resources (interview, Nyanjom). Such mobilization does not require government coordination to operate, and may work best when it operates independently of government authority, since incentives for local officials will be to intervene heavily where resources are on the table and claim credit for bottom-up activities.<sup>17</sup>

Nonetheless, USAID may be able to build upon the idea of “*harambee*” (if not its prior practice) after devolution, while allowing the civil society mobilization itself to remain autonomous.<sup>18</sup> Specifically, USAID could work with civil society organizations that have independently developed local projects and raised revenue by leveraging county financial support and supporting cofinancing and coproduction of small-scale infrastructure. Such a process would require care to ensure it is not coopted by local government, but genuinely bottom-up programming could, for example, earn matching funds from counties, central government funds (which USAID could encourage through advocacy), or development partners. Where county own-source revenues will be relatively limited, community-mobilized resources could play a significant role in small-scale capital investment at the local level.

This approach has two major advantages. First, it facilitates measuring civil society performance and linkages to local governance through clear indicators. Co-financing can build governance and public goods when counties are responsive, while also incorporating elements of *accountability* and enforcement: CSOs in Kenya can be expected to promptly cease collaborations with county governments if the latter are profligate.<sup>19</sup> This gives local governments strong incentives to consult and perform, and provides useful indicators for the quality of interaction between civil society and local governance. Preparing county governments to respond effectively to autonomous resource mobilization can be an intervention that promotes not just their *accountability*, but also their fiscal *autonomy* and *capacity*. Second, the bottom-up approach to local needs (that leverages formal government resources) can work for physical infrastructure of the sort envisioned by decentralization, as well as local-level natural resource management issues, including the important question of land management, which is a major trigger for instability in Kenya. In other words, this is not simply a *democracy* intervention, but addresses *development* and *stability* as well; it is about the effective provision of public

goods and services and the sense of responsiveness to county minorities that will be needed for stability to prevail beyond 2012. Together, these findings suggest the following specific interventions:

Recommendations for Demand-Side Interventions with Civil Society Section 4.2
<ul style="list-style-type: none"> <li>• Build on existing institutional capacity, helping CSOs adapt to new dispensation</li> </ul>
<ul style="list-style-type: none"> <li>• Build upon civic education approach on both demand and supply sides</li> </ul>
<ul style="list-style-type: none"> <li>• Adapt former LASDAP process to the county level by “scaling up” from local levels</li> </ul>
<ul style="list-style-type: none"> <li>• Collaborate with CSOs and local social forces to generate local revenues/resources</li> </ul>

### 4.3. Capacity on the Supply Side: Building Intergovernmental Institutions

Devolution is not just about counties. Rather, it is about *intergovernmental relations* between the devolved counties and a host of other actors. It requires a set of institutions that support or supplement county government in their efforts to provide services. To be strong and effective governments, counties will need to do several things that involve articulating links between actors in the intergovernmental system. Governors, County Assemblies and the County Public Service will all need to: coordinate with central government ministries and with one another; function internally with division of labor at the county level; liaise with parliamentarians (National Assembly and Senate) to ensure central support; and further decentralize their own functions, deconcentrating some to sub-county levels and delegating some to semi-autonomous cities, municipalities, and towns. Proposed interventions on the demand side reflect the need to strengthen this set of intergovernmental institutions.

#### 4.3.1. Sectoral Forums

One of the best approaches to addressing the challenge of coordination is through **sectoral forums** that bring together the central government ministry with the official(s) responsible for the sector in each of the 47 counties. Sectoral forums were envisioned by the Task Force on Devolved Government in a draft of the Intergovernmental Relations Bill it submitted to parliament, but this was one of the sets of institutions eliminated in negotiations.<sup>20</sup> While the elimination of the sectoral forums is unfortunate, it now presents a programmatic opportunity, and can be reintroduced a twist. USAID-sponsored sectoral forums may have more latitude than central-government mandated forums in terms of *allowing county governments more say in setting the agenda*. This would ensure the sectoral forums become places for dialogue, information-sharing, and joint planning, rather than simply clearinghouses for dissemination of central ministry information. This would theoretically allow Kenya to go one better on South Africa’s much-admired intergovernmental system, which features sectoral forums (known as MinMECs), but which have a reputation as centrally-dominated.

USAID/Kenya interventions to support sectoral forums would be targeted at improving governance above the county level. With 47 new counties in a unitary state, Kenya will require more coordination above the counties, especially for those public goods that spill across county borders. The possibility of public services crossing county boundaries – also known as “intercommunality” – is also significant on issues related to natural resource endowments such as land, water, and other common pool resources. Since these issues are often at the heart of conflict in Kenya, it would be advisable to consider how working in a cluster of counties in a single region offers opportunities for cross-border linkages.

In addition to local effects on the ground, the development of such linkages would likely have positive intergovernmental effects by necessitating collaboration and coordination that might otherwise be lacking in the early stages of devolved government. These intercommunal issues would involve collaboration between countywide executives and county assemblies representing different wards. Because they will be crossing the boundaries of different political constituency, the adjacent areas will also have different National Assembly and Senate representatives. Navigating the relationships here is more challenging than working within the confines of a single county, but it can contribute to addressing what is likely to be an aforementioned central challenge of Kenya's devolution: the lack of institutions above the county level that can achieve economies of scale and effective coordination of services.

### 4.3.2. Intergovernmental Forums: Elected Officials

Another necessary form of **intergovernmental coordination** is between the various elected officials representing the **counties and subnational constituencies**. Since the Senate will be key institution in defending county prerogatives, Kenya will benefit from forums and practices that systematically link Senators to Governors and to the County Assemblies. Senate – county forums were also envisioned in a draft of the Intergovernmental Relations Bill, but removed in a later version. It is important that these include not just Governors (who represent the whole county), but also county assemblypersons, since these will represent the various wards within a county, and thus the various minority populations that might otherwise fear being sidelined.

The Senate is not the only important institution, as members of the National Assembly also matter mightily (see Section 2). To buttress devolution, USAID/Kenya's DG office can consider building on existing strengths in the Parliamentary Strengthening Program (and work with political parties) to build in programming on devolution for the National Assembly. Forums and sessions that bring together National Assembly members with their various subnational elected counterparts (Senators, County Assemblypersons, and Governors) can offer civic education to MPs in the National Assembly and raise awareness of their constituents' interests, needs, and demands.<sup>21</sup> In a political system where MPs face very high turnover due to constituent dissatisfaction, this sort of forum that improves knowledge about the interests of devolved levels of government could be an easy sell to many ambitious MPs.

### 4.3.3. County and Sub-county level (including wards and villages)

**Institutional development at the sub-county level** will need to happen for devolution to improve service delivery. Efforts at the sub-county level should dovetail with the strategies above. Health and other services will need to be provided at the local (ward or village) level. And the sub-counties and wards themselves are linked to both the County Assembly and National Assembly through the electoral system: the sub-counties correspond to National Assembly constituencies and the wards as County Assembly constituencies. Strengthening sectoral coordination and working with elected officials can entail interventions at the sub-county, ward, or village level.

As noted previously, the strategic thinking about building capacity at the *sub-county level* seems to have been largely deferred, though the legal framework has advanced. By way of example of what has not been sorted out, there are legal provisions to require civil society forums and civic education forums in all 290 sub-counties and 1,450 wards, yet there is also general agreement that this may mandate overkill or be a recipe for excessive government. Nonetheless, the provisions remain intact, with the implicit expectation that many of the questions at sub-county levels will be sorted out in the implementation phases. To make decentralization work, USAID contributions may be especially timely and useful at these levels below the county.

Sub-county interventions to build capacity and promote accountability can have two clear benefits. First, more localized distribution of public goods can be enhanced by the fact that the 290 constituencies (effective in 2012) are geographically smaller than the 47 counties.<sup>22</sup> Second, as noted above, the sub-county level is where the “new minorities” will have their best chance to experience responsive government. Working at the sub-county level will most directly deliver local governance benefits in ways that approach Kenya’s challenge of stability in the face of ethnic minorities.

This emphasis on sub-county and ward governance does not preclude efforts at the county level. Indeed, a supply side strategy that works above (section 4.3.1) and below the county level (section 4.3.3) also implies work at the county level itself. Building capacity at the county level will be one of the central challenges of devolved governance.

There are two observations on programming to **build capacity at the county level**. The first is that the devolution framework requires the central government undertake capacity-building measures in counties that are deemed to have inadequate capacity. USAID and other development partners should work first and foremost to ensure that Kenya’s central government follows through in providing such support. Development partner initiatives may complement central government efforts, but should not substitute for them. The greatest USAID impact at the lowest cost will likely come from using leverage to **press central government to assume its capacity-building responsibilities** in devolution, rather than assuming them directly on the central government’s behalf. This will not only heighten impact, but will also entrench the precedent of central government support for devolution that will be crucial for the sustainability of devolved governance.

The second point on capacity at the county level is that a particular kind of capacity-building may be useful that central government efforts may necessarily overlook. That is **building a county’s capacity to promote collaboration across neighboring constituencies** (or sub-counties), or the “intercommunality” noted in section 4.3.1 above. This is important in areas where public goods and common resources spill across formal boundaries, as two or more localities may need to cooperate to ensure positive outcomes; examples range from public health in the area of communicable diseases to the management of fish stocks in lakes or rivers. USAID programming at the county level could work to ensure that counties serve as a coordinating level of government across sub-county units. Such an approach is already envisioned for some areas with the Urban Areas and Cities Bill, which provides for a special status (as a city, municipality, or town) for areas of a given population size. It will be important to ensure that counties have the capacity to manage relations across the boundaries between lower-level units.

<b>Recommendations for Supply-Side Interventions Section 4.3</b>
• Support sectoral forums for coordination (health, e.g.), with some bottom-up agenda setting
• Build networks of Governors/County Assemblies (and their associations) and MPs
• Promote collaboration and links between Senate, counties, and related institutions
• Link Parliamentary Strengthening approaches to devolution
• Work at sub-county level to build capacity in local administrative units of county structures
• Work with counties to ensure central government capacity-building obligations are met
• Assist at the county level to coordinate and pool resources between neighboring constituencies

## 4.4. Sectoral Approaches: Combining Demand-Side and Supply-Side Interventions

The sections above have outlined demand-side and supply-side interventions, respectively, but a comprehensive approach will include interventions on both sides. To make the above proposals more concrete, USAID/DG can consider targeting specific sectors. Approaching governance through sectoral areas allows for symbiotic efforts between DG and programming in other sectors. An exclusively sectoral approach that ignores governance may identify the best technical criteria for provision of services (such as placement and structure of new dispensaries, or distribution mechanisms for medical supplies and devices, e.g.), but the performance of these will lag without the support for improved governance and management that DG programming can offer. Conversely, an exclusive focus on the governance process is likely to prove incomplete as well, since service provision is typically the ultimate interest of claimants on the demand side and ultimate responsibility of actors on the supply side. An example of symbiotic programming between DG and a sector would be promoting civic engagement and county capacity on the use of devolved funds (especially the equitable share). This section looks primarily at health as a model sector, followed by a section on the question of land tenure and conflict prevention. The logic may be extended to other sectors such as Education, but these are not treated in detail because the devolution provisions are more limited in those other sectors where USAID has a programming presence.

### 4.4.1. Health

The health sector should be a leading sector for simultaneous interventions on the supply side and demand side. The general proposals for programming were outlined in sections 4.2 and 4.3 and can be readily applied to the health sector; these specific proposals will not be repeated here, but the reasons for selecting health as a target sector must be outlined, and they are twofold. First, health is probably the most important devolved responsibility under the new dispensation, especially since the decentralization of education has been limited to the pre-primary level. The two health ministries (which will be merged into a single ministry in 2012) have produced policy papers and position papers that develop strategies for achieving devolution (see Republic of Kenya, Ministry of Medical Services and Ministry of Public Health and Sanitation 2011a, 2011b). Second, health is an area where collaboration between existing USAID programs and the relevant ministry are especially robust. USAID/Kenya's presence in Health extends to all 47 counties, and works closely with the ministries in a range of areas. Robust sectoral cooperation in health between center and counties, which is already envisioned in ministry documents, will be the hallmark of effective intergovernmental relations in post-2012 Kenya.

An example to illustrate the symbiosis comes with the question of procurement of health supplies, a substantial fraction of overall costs. There are some provisions that allow for decentralized procurement by the counties. Some advocates of strongly devolved government are critical of health ministry efforts to retain procurement responsibilities at the center (interview, Kangu). Yet there are also important reasons to favor centralization of some procurement, especially given economies of scale and bargaining power of central government actors vis-à-vis 47 uncoordinated counties (interviews, Adrian, Owino). From a governance perspective, the challenge of devolution is abiding by the principle of subsidiarity, in which actions are taken at the lowest appropriate level. But subsidiarity does not mean neglecting economies of scale and efficiencies inherent in central government action. Rather, the health procurement issue can be best handled through clear sectoral coordination across counties for responsibilities that have been devolved, and clear responsiveness to county needs on the part of central government for responsibilities it retains. Sectoral forums (as outlined above) in which counties are active participants and contributors can be indispensable on both counts.

A related note is that decentralization invites different approaches to public services in different jurisdictions, according to local needs and demands. That services in Kenya might vary by county is in fact one of the purposes of decentralization. To use a health example, a malaria-free province will require a different composition of health inputs from an endemic area. The dispensation opens the possibility of counties merging services, contracting out to one another, or delegating authorities to other institutions (interview, Nyanjom). USAID/Kenya can support devolution in this regard. Because needs vary by county, there is opportunity to engage with truly bottom-up processes that address local challenges. This requires sectoral coordination and cross-county communication to reach flexible arrangements for effective service provision.

Collaboration between DG and health has another benefit in the area of measurements and indicators. Finding valid evidence linking interventions to development outcomes is a challenge both in promoting civil society and in promoting capacity building (as opposed to inputs and some outputs that are easier to measure), and collaboration with the data-rich health sector can enable better measurement of the effectiveness and impact of interventions. The presence of USAID programs in areas that closely monitor local development indicators (as is the case with health) can facilitate more extensive reporting on outcomes. This improved data in turn can facilitate better monitoring, evaluation, institutional learning, and adaptation of programming approaches over time. It may be possible with better development indicators to conduct more robust comparative analysis of how counties with DG interventions perform better or worse on improvements in health indicators (for example) than other counties where DG interventions did not occur.

#### **4.4.2. Land tenure and conflict**

A second potential thematic area for intervention is in land tenure and conflict (though this cuts across USAID's programming sectors). As a programming area, this has the advantage of addressing USAID's goals of stability, democracy, and development at the same time. Devolution will require county governments to take on many of the tasks associated with managing conflict, and responsiveness to civil society is especially important if the "new minorities" challenged is to be managed peacefully. In general, mitigating conflict over land requires close collaboration between state and society, and this is an area where demand-side and supply-side interventions should be complementary. Specific programming options are subject to further study, as the current study did not entail an evaluation of current and ongoing USAID efforts at mitigating land conflict, but some general principles can be forwarded.

On the supply side, the Kenyan government's efforts to build county capacity up to 2012 will necessarily be targeted mainly at administering existing public services (already a significant task), and not at preparing county personnel for more analytical tasks such as diagnosing the likelihood of conflicts and preparing proactively for these. Capacity-building on the land issue could thus go beyond advising on technical aspects of administration, and could instead approach capacity from the perspective of developing diagnostic capabilities and proactive mechanisms for intervention. Examples may include: developing early-warning mechanisms managed by county governments; training county officials in mediation, arbitration and conflict management; or establishing and strengthening ombudsman services with representation for county minorities.

On the demand side, interventions may directly look to collaborate with existing partners (such as the Kenya Land Alliance) and those that can establish direct linkages to minority groups in civil society. While it should not be presumed that all conflict will be ethnic in nature, nor that minorities will be systematically disadvantaged by county governments, it is likely that stability will most imperiled where ethnic grievance maps onto land conflict; accordingly, outreach to minority groups may be needed to counterbalance any favoritism (or even *perception* of favoritism) towards the county majority.

Finally, given the importance in protecting the rights of "new minorities", it may again be advantageous to look *below* the county level to the sub-county or ward levels for interventions: groups that are minorities in a county may have more political weight in a small geographical unit, and USAID may do well to work with

sub-county officials that are at least partially accountable for outcomes at that level. Similarly, if USAID can promote linkages between ward officials and the county assemblypersons elected from the same ward, then minority groups may have stronger political representation and backing within the county structure. In other words, USAID can promote stability under devolution by furthering the principle of decentralized governance below the county level.

<b>Recommendations for Sectoral Approaches</b> <b>Section 4.4</b>
<ul style="list-style-type: none"> <li>• Support sectoral forums for coordination with some bottom-up agenda setting (see also Sec. 3.3)</li> </ul>
<ul style="list-style-type: none"> <li>• Collaborate with USAID sectors such as health to build capacity of civil society and government</li> </ul>
<ul style="list-style-type: none"> <li>• Collaborate with partners to ensure central government capacity-building responsibilities are met</li> </ul>
<ul style="list-style-type: none"> <li>• Build capacity of county officials to diagnose conflict and act proactively to prevent it</li> </ul>
<ul style="list-style-type: none"> <li>• Support “new minority” groups on land issues through linkages at county level and below</li> </ul>

## 4.5. Improving Measurement

The interventions proposed above can produce improved indicators to assess impact. This is noted in the health section with respect to development indicators that the sectoral approach already collects and monitors. Some areas and counties will be selected for DG intervention and others will not. The abundance of development indicators in areas like health mean that counties can be examined on a before-after basis, and counties that received DG interventions can be compared and contrasted with those that did not in order to isolate the effect of the intervention. Moreover, a full evaluation of programming in DG target counties can include correlating outcomes with other demographic, economic, and social variables. In short, the more robust data collection facilitated by sectoral collaboration provides a basis for better understanding the impact of DG programming. Similarly, the proposed county baseline study can provide information on the capacity of county governments and civil society prior to interventions, which will serve as the basis for future measurements of impact.

Similarly, the new *harambee* recommendation can include new indicators and measures: the activity of civil society can be measured not just by their participation in meetings and other traditional mechanisms, but also by their willingness to engage in coproduction and co-financing with county governments. This willingness to have “skin in the game” or “put money where its mouth is” will be a useful and sensitive indicator of civil society’s confidence and trust in county government. In the context of development partner programming, civil society organizations might continue to “show up” and exercise even when governance is relatively unresponsive, but the expectation is that any willingness to co-finance or put up financial resources would probably be much more conditioned on the quality of county governance. Together, the baseline study, collaborations with other sectors, and new approaches detailed above should facilitate a more thorough understanding of DG impacts, and thereby allow for learning and improvements over the longer-run.



## V. CONCLUSIONS AND IMPLICATIONS

Kenya's forthcoming devolution creates opportunities for more effective and responsive subnational governments in the form of elected counties, partly due to a break with the past. The 47 counties could facilitate a new model in which civil society organizations (CSOs) and everyday citizens are better able to hold government accountable; the desire among citizens to do so was by most accounts a major part of the broad support for constitutional reform in 2010. Subnational government will ostensibly be more autonomous and institutionally defended after 2012; elected counties will be the single constitutionally-recognized level of government below the center, as contrasted with the centrally-appointed provinces and districts that are in existence to date. While facilitating a break with the past, the devolution process would be ill-advised to overlook preexisting institutions and patterns of governance in Kenya. Several preexisting institutions (including central government institutions) are potential assets that can contribute to effective county governance. Collaboration with existing CSOs and building upon existing supply-side structures (such as sub-county level institutions) will help support functional devolution in a hectic transition period.

Despite optimism within the country, caution is in order. Kenya's devolution has a range of potential concerns and contradictions. Perhaps most important is concern about stability, and specifically questions about whether the new counties may create greater tensions. There are also questions about democracy and development, of course, namely whether governance will improve after 2012. Citizen enthusiasm about devolution will not itself make improvements in governance self-enforcing; these improvements are rather dependent upon effective structuring of incentives, implementation of legislated decisions, and the development of new norms and practices. To mitigate risks and promote opportunities, this paper has proposed several possible programmatic interventions, which are brought together below in an "ideal type" recommendation.

### **Step 1: Collaborate on baseline study**

The first step is collaboration with a range of partners on a baseline study of the "State of Readiness" of the counties, as highlighted in the Kenya DG Assessment and section 4.1. This can set a starting point for USAID intervention and subsequent collaboration.

### **Step 2: Select counties using baseline study**

This step is the selection of a modest number of counties, probably in a couple of regions (provinces) of Kenya. Criteria can be established prior to or during the baseline study, but a preliminary recommendation is to program in areas of high potential conflict where future interventions can most positively impact stability. This could include prioritizing areas with land conflict issues or known ethnic tensions or autonomy movements. This recommendation is consistent with the DG Assessment that emphasizes Coast and Rift Valley as potential locales. Working in several counties in a region (as feasible) will provide economies of scale, and can allow the possibility of straddling boundaries as possible to develop dynamic systems of "intercommunality" that involve a range of elected actors and civil servants serving different neighboring constituencies.

### **Step 3a: Support existing institutions on demand side**

Step 3a is so numbered because it is simultaneous with 3b below. On the demand side, the recommendation is to build upon existing strengths, anchoring programming in support to civil society and enhancements in civic education. One mechanism or entry point is assisting CSOs in mobilizing to monitor county governments on the use of devolved funds, especially the equitable share. Another is effort to institutionalize participation through forums similar to the previous LASDAP (mentioned above). The new legal framework provides for such forums, and early institutionalization will be essential to habituate both CSOs and county



governments to routinized participation. A more unconventional element of support to civil society can be added with efforts to leverage “new *harambee*” resources. Processes that make elected officials responsive to community-based resource mobilization can contribute to both local fiscal autonomy and accountability.

**Step 3b: Build new intergovernmental relations bodies on supply side (in sectors as feasible)**

Step 3b would ideally happen simultaneously with step 3a above. It involves capacity-building for units and forums above and below the county level, as well as at the county level itself. A particular focus has been placed in this paper on organizations situated to be champions of devolution: the Senate, County Assemblies and Governors, and possibly some National Assembly Members, as well as the Commission on Revenue Allocation. These coordinating and articulating bodies can work sectorally, especially if symbiotic collaboration is feasible with the likes of USAID’s Health programming.

It may be that not all proposed interventions are feasible. Yet there are significant advantages in this sequence of modest information gathering (which can be low-cost to USAID/DG if undertaken collaboratively), followed by careful selection of target counties, then simultaneous interventions on the demand and supply side. Especially if this can contribute to containing ethnic tensions in 2012, counties are much likelier to get off on the right foot. Experiences from elsewhere in Africa (and around the world) suggest decentralization has a “path-dependent” nature: early moments matter a great deal in how institutions take shape over time. Collaborative, well-articulated governance in key counties can contribute to stability, as well as improved service provision and democratic deepening.

## APPENDIX A: REFERENCES

- Amkeni waKenya. 2011. *Strategic Plan 2011-2015: Enhancing the Capacity of Civil Society to Promote Democratic Governance and Reforms in Kenya*. Nairobi: Amkeni waKenya.
- Ayee, Joseph and J. Tyler Dickovick. 2010. *Comparative Assessment of Decentralization in Africa: Ghana Desk Study*. Washington, DC: USAID.
- Biau, Daniel and Alain Kanyinda. 2010. “Kenya’s new constitution – a progressive framework for decentralization”, *Urban World* 2(4): 37-39. Nairobi: UN-HABITAT.
- Bierschenk, Thomas and Jean-Pierre Olivier de Sardan. 2003. “Powers in the Village: Rural Benin Between Democratisation and Decentralisation”, *Africa* 73(2): 145-173.
- Boex, Jamie and Roy Kelly. 2011. Fiscal Decentralization in Kenya: A Small Step or a Giant Leap? IDG Policy Brief. Washington: Urban Institute Center of International Development and Governance.
- Brancati, Dawn. 2009. *Peace By Design: Managing Intra-State Conflict through Decentralization*. Oxford: Oxford University Press.
- Connerley, Edwin, Kent Eaton, and Paul Smoke. 2010. *Making Decentralization Work: Stability, Development, and Democracy*. Boulder, CO: Lynne Rienner.
- Coulibaly, Chéibane, J. Tyler Dickovick, and James Thomson. 2010. *Comparative Assessment of Decentralization in Africa: Mali In-Country Assessment*. Washington, DC: USAID.
- Dickovick, J. Tyler. 2011. *Decentralization and Recentralization in the Developing World: Comparative Studies from Africa and Latin America*. University Park: Penn State Press.
- Dickovick, J. Tyler and Tegegne Gebre-Egziabher. 2010. *Comparative Assessment of Decentralization in Africa: Ethiopia Desk Study*. Washington, DC: USAID.
- Institute of Economic Affairs. 2011. Policy Considerations for Decentralised Financing in Kenya, *The Futures Bulletin* 9.
- Kibua, Thomas and Germano Mwabu. 2008. *Decentralization and Devolution in Kenya: New Approaches*. Nairobi: University of Nairobi Press.
- Lambright, Gina. 2011. *Decentralization in Uganda: Explaining Successes and Failures in Local Governance*. Boulder, CO: FirstForum Press.
- Menon, Balakrishana, James Mutero, and Simon Macharia. 2008. Decentralization and Local Governments in Kenya. International Studies Program Working Paper 08-32. Atlanta: Georgia State University Andrew Young School of Policy Studies.
- Muia, Daniel. 2008. “Devolution: Which Way for Local Authorities?”, in *Decentralization and Devolution in Kenya*, Thomas Kibua and Germano Mwabu, eds. Nairobi: University of Nairobi Press.
- Picard, Louis and Thomas Mogale. 2010. *Comparative Assessment of Decentralization in Africa: South Africa Desk Study*. Washington, DC: USAID.

- Republic of Kenya. 2010. *The Constitution of Kenya*. Nairobi: The Republic of Kenya.
- Republic of Kenya, Ministry of Medical Services and Ministry of Public Health and Sanitation. 2011a. *Comprehensive National Health Policy Framework: 2011-2030*. Nairobi: The Republic of Kenya.
- Republic of Kenya, Ministry of Medical Services and Ministry of Public Health and Sanitation. 2011b. *Implementation of the Constitution in the Health Sector: Draft Position Paper*. Nairobi: The Republic of Kenya.
- Republic of Kenya, National Assembly. 2011. County Governments Financial Management Bill [draft].
- Republic of Kenya, National Assembly. 2011. Devolved Government Bill [draft].
- Republic of Kenya, National Assembly. 2011. Intergovernmental Fiscal Relations Bill [draft].
- Republic of Kenya, National Assembly. 2011. Intergovernmental Relations Bill [draft].
- Republic of Kenya, National Assembly. 2011. Transition to Devolved Government Bill [draft].
- Republic of Kenya, National Assembly. 2011. Urban Areas and Cities Bill [draft].
- Schonwalder, Gerd. 1997. "New Democratic Spaces at the Grassroots? Popular Participation in Latin American Local Governments", *Development and Change* 28(4): 753-770.
- Smoke, Paul, William Muhumuza, and Emmanuel Ssewankambo. 2010. *Comparative Assessment of Decentralization in Africa: Uganda Desk Study*. Washington, DC: USAID.
- Task Force on Devolved Government of Kenya. 2011. Interim Report of the Task Force on Devolved Government: A Report on the Implementation of Devolved Government in Kenya. Nairobi: Task Force on Devolved Government of Kenya. Available at: [http://www.tisa.or.ke/uploaded/resources/Interim\\_Report\\_of\\_TFDG-200420111.pdf](http://www.tisa.or.ke/uploaded/resources/Interim_Report_of_TFDG-200420111.pdf). Accessed August 4, 2011.
- Tidemand, Per, Jesper Steffensen, and Hans Bjorn Olsen. 2007. Local Level Service Delivery, Decentralisation, and Local Governance: A Comparative Study of Uganda, Kenya, and Tanzania Education, Health and Agriculture Sectors. DEGE Consult.
- Tidemand, Per and Nazar Sola. 2010. *Comparative Assessment of Decentralization in Africa: Tanzania Desk Study*. Washington, DC: USAID.
- Tidemand, Per, Nazar Sola, Amon Chaligha, and Peter Bofin. 2010. *Comparative Assessment of Decentralization in Africa: Tanzania In-Country Assessment*. Washington, DC: USAID.
- United States Agency for International Development. 2009. *Democratic Decentralization Programming Handbook*. Washington, DC: USAID.
- United States Agency for International Development. 2011. *Kenya: Democracy and Governance Assessment and Strategy*. Washington, DC: USAID.

## APPENDIX B: LIST OF INTERVIEWS AND MEETINGS

John C. Mcharo, Deputy Mayor of Mombasa  
July 21, 2011, 1:30 – 2:30 (Washington, D.C.)

Dan Spealman, USAID/Kenya [preliminary meeting]  
August 8, 2011, 8:30 – 9:30

[Meeting] USAID/Kenya Democracy and Governance team  
August 8, 2011, 2:00 – 2:30

Henry Kuria, PACT-Kenya  
August 9, 2011, 11:00 – 12:00

Othieno Nyanjom, PACT-Kenya consultant  
August 10, 2011, 9:30 – 11:30

Dwaine Lee, USAID/Kenya Education  
August 10, 2011, 2:00 – 2:30

Kamotho Waiganjo, Commission on the Implementation of the Constitution  
August 11, 2011, 9:00 – 10:00

Democracy and Governance implementing partners' meeting  
August 11, 2011, 2:00 – 5:00

Lynn Adrian, USAID/Health  
August 12, 2011, 8:30 – 9:30

Chris Finch, World Bank  
August 12, 2011, 12:00 – 1:30

Karuti Kanyinga, Institute for Development Studies (IDS)  
August 12, 2011, 3:00 – 4:00

Laurence Dare, United Nations Development Programme (UNDP)  
August 15, 2011, 9:00 – 11:00, Java House

Tim Colby, Canadian International Development Agency (CIDA)  
August 15, 2011, 12:00 – 1:30

Samuel Mbithi Kimeu, Transparency International  
August 15, 2011, 2:30 – 3:30

Kwame Owino, Institute of Economic Affairs  
August 15, 2011, 4:00 – 5:00

Gideon Ochanda, Institute for Civic Affairs and Democracy  
August 16, 2011, 12:00 – 1:30

Micah Cheserem, Chairman, Commission on Revenue Allocation  
August 16, 2011, 2:30 – 4:00

Mutakha Kangu, Chairman, Task Force on Devolved Government (TFDG),  
Ministry of Local Government (MoLG)  
August 17, 2011, 9:30 – 11:30

Pauline Wambui Mwangi, Monitoring, Reporting, and Outreach Officer,  
United Nations Development Programme / Amkeni waKenya  
August 17, 2011, 3:00 – 4:30

Duncan Okello, Society for International Development  
August 18, 2011, 9:00 – 10:30

Abubakar Zein, URAIA  
August 18, 2011, 12:00 – 2:00

Yash Pai Ghai, Chairman, Constitution Review Commission  
August 19, 2011, 9:00 – 10:00

Henry Ochieng', Kenya Alliance of Residents' Associations (KARA)  
August 19, 2011, 12:00 – 1:00

Civil Society Roundtable, PanAfric Hotel  
August 22, 2011, 9:00 – 4:30

USAID/Kenya Presentation and Meeting  
August 24, 2011, 1:00 – 2:30

# **APPENDIX C: KENYA DESK STUDY AUGUST 2011 [ADVANCE DELIVERABLE]**

## **Overview and Summary**

This preliminary desk study offers an overview of prospects for USAID strategy to support the devolution process in Kenya in 2011, during 2012, and beyond. It is a brief paper (10 pp.) to guide a more in-depth assessment and set of recommendations to be undertaken in Kenya (August 6 – August 19, 2011). It aims to link existing documents and material on Kenya’s decentralization to the concepts and issues deemed significant in previous work by USAID on decentralization in Africa. As such, it draws implicitly on lessons and trends from other countries, as examined in the Comparative Assessment of Decentralization in Africa, in 2010. This deductive analysis lies behind examination of the Kenya case and its use will be expanded in the final report. This desk study is based on a preliminary review of documents, and not on communication with USAID/Kenya mission personnel, local residents, nor on direct field research. As a result, estimates are subject to revision upon further study.

The lead findings at this stage are that Kenya’s devolution in 2012 presents a major opportunity to reinvent local governance at the level of the 47 elected counties, but also faces several foreseeable dilemmas and challenges. Devolution can advance a range of goals – democracy and development, as well as the pressing question of ethno-regional stability – but this depends upon effective legislation and implementation to ensure appropriate measures of authority, autonomy, and capacity for the counties, along with accountability that bounds action by county officials.

Kenya will be building its new devolved government system upon an existing institutional inheritance, including a centralized state that has had mixed results in accountability and a political economy in which many individuals and institutions will have incentives that run counter to strong county government. Several existing institutions emerge in central government and civil society for particular examination: central ministries (and their processes), elected officials in Parliament (including the Senate), the Constituency Development Fund (CDF), and civil society organizations. At the county level, there are several aspects of county government that give rise to possible policy recommendations and programming guidance for good outcomes on the various criteria for effective decentralization. A particular emphasis is placed on work with supporting institutions at various levels that can empower county government, giving it greater autonomy and capacity while holding it accountable.

The structure of this brief desk study is as follows. Section 1 (Decentralization in Kenya and USAID Goals) outlines key USAID goals and objectives in policy and programming for decentralization. Section 2 (Political Economy Analysis) examines the political economy of Kenya with specific respect to decentralization. Section 3 (Institutional Inheritance: Implications of the Existing Framework) outlines the institutional backdrop on which devolution will take place in 2012, on the assumption that this will greatly shape future institutions. Finally, Section 4 offers Implications of County Government for Decentralization and Conclusions.

## 1. Decentralization in Kenya and USAID Goals

Kenya's new decentralized system of governance will take effect in 2012, two years after the successful constitutional referendum approved in 2010. Devolution of power and resources to 47 elected county governments is one of the most significant provisions of the new charter, which has several features intended to limit the power of the central executive. By most assessments, devolution was one of the key factors that led to the approval of the constitutional referendum by two-thirds of Kenyans in 2010, just five years after 58% of Kenyans rejected a constitutional reform that would have retained more power in the central executive. The decentralization that is planned for 2012 is characterized by both opportunities and dilemmas, and this brief paper will serve as a preliminary synthesis of questions, findings, and recommendations for Kenya's devolution and USAID's role in promoting it; these will be the basis for further examination in a more substantial report to follow.

### 1.1. Opportunities and Dilemmas for Devolution in 2012

Among its positive attributes, the forthcoming devolution may create opportunities for more effective and responsive subnational governments in the form of elected counties, partly due to a break with the past Local Authorities that had mixed reputations for performance and probity. The 47 counties could facilitate a new model in which civil society organizations (CSOs) and everyday citizens are better able to hold government accountable; the desire among citizens to do so is presumed to be part of the broad support for constitutional reform. Subnational government will ostensibly be more autonomous and institutionally defended, as the elected counties will be the single constitutionally-recognized level of government below the center, as contrasted with the centrally-appointed provinces and districts that are in existence up until 2012. At the same time, the preexistence of these deconcentrated institutions can also be seen as an opportunity, as there are likely prospects for building upon the technical capacity situated in these administrative units; indeed, while care must be taken to avoid top-down micromanagement of the devolved counties, the devolution process would be ill-advised to ignore preexisting institutions as potential assets that can contribute to effective county governance.

On the negative side, the devolution process in Kenya has a range of potential concerns and contradictions. Perhaps most important is the identified concern about stability, and specifically questions about whether the new counties may create greater tensions within their areas. There are also questions about democracy and development. First is finalizing the legal *authority* of the counties, and then following the extent to which they will exercise *autonomy* from the central government once decentralization is in implementation. Related to this is the question of where *accountability* will point: will it be primarily downward to local residents and civil society organizations, or upward to central government institutions? Finally, *capacity* is an enduring question that will be crucial in shaping outcomes in democracy and development.

In terms of three dimensions commonly used to assess the extent of decentralization, Kenya's 2012 dispensation includes elements of *political decentralization*, *fiscal decentralization*, and *administrative decentralization*, though the prior existence of various levels of subnational government complicates the assessment, as Local Authorities previously had such attributes at the local level. Political decentralization occurs when authority is placed under elected subnational governments; this creation of elected positions at the subnational level is the necessary component of devolution, the form of decentralization occurring in Kenya. Fiscal decentralization will take place in Kenya with the creation of guaranteed revenue transfers, along with the transfer of public service responsibilities in several major areas, including health, agricultural extension, and infrastructure. The new counties are slated to receive a guaranteed 15% of the national budget, with lower-income districts receiving "equalization grants" to the tune of 0.5% per annum of the national budget to address service backlogs. In addition to these central government transfers, counties are authorized to raise their own revenues from several sources, including property taxes. Administrative decentralization will also take place,

with the transfer of a large number of management and planning responsibilities. This affects a range of existing institutions, including line ministries and Ministry of Finance procedures in effect for the management of intergovernmental relations between the center and local governments (e.g., Medium Term Expenditure Framework).

## **1.2. USAID Goals and Objectives**

USAID has identified three overarching goals towards which decentralization can contribute: stability, development, and democracy. All three may be seen as directly pertinent to the Kenyan context and to the devolution. Stability is salient because of social tensions – especially ethnic and regional – that have existed for decades and which boiled over in the civil strife in 2007/2008; indeed, many of the challenges for the decentralization may revolve around the responses of different groups that will be minorities in the 47 counties. In Kenya, the twin goals of democracy and development can be seen as mutually reinforcing, as improvements in governance at the local or subnational level can contribute both directly to deepening democracy and indirectly to improvements in service provision and even economic growth. These three goals are not limited to USAID, but are also formally recognized in Kenya’s 2010 Constitution in Chapter 11 on Devolved Government, where among the aims of devolution are promoting the “democratic and accountable exercise of power”, fostering “national unity”, and promoting “social and economic development”.

Beyond these three overarching goals, there are several characteristics or objectives of decentralization that can be examined, with the view towards strengthening the mix of these attributes: *authority*, *autonomy*, *accountability*, and *capacity* (cf. USAID 2009). These too are salient in Kenya, and are one way of understanding how well-established decentralization will be. The transfer of legal *authority* to the counties seems assured with the Constitution and enabling legislation currently under review, though there will be lingering questions about authority at the more local level. Leading challenges will be an adequate degree of *autonomy* in practice, as well as ensuring downward *accountability* at the county level. *Capacity* is an enduring challenge and can also be addressed in programming.

These goals and objectives serve as a set of criteria against which USAID can evaluate the devolution process in Kenya. The observations and recommendations in this paper (and subsequent studies building upon this preliminary work) will be based on how they contribute to one or more of these goals and objectives.



## 2. Political Economy Analysis

The success of Kenyan decentralization in supporting stability, democracy, and development will depend to a large extent on a successful structuring of incentives for politicians to support and implement the vision of devolution outlined in the Constitution. The stakes are tremendous, with concerns about the incentives of these actors heightened by the specter of ethnic and regional conflict, particularly following the strife of 2007/2008 and in the lead-up to the national elections of 2012. Ethnic tensions could serve as the basis for either (a) forms of excessive decentralization that fragment the country in centrifugal fashion, compromising national unity and stability, or (b) central government undercutting decentralization in centripetal fashion, justifying this action as necessary for stability, democracy, and development. A political economy analysis is thus an essential part of any examination. In preliminary fashion, this section offers expectations about the preferences of individuals and institutions in the process.

### 2.1. Individuals: Political Incentives vs. Political Will

Political economy analysis has the merit of focusing on the incentives of political actors, rather than understanding “political will” as a purely personal characteristic that some individuals always possess and others never will. The question of “political will” to decentralize can be best understood in light of the incentives facing individuals and institutions, and the situations and positions of those actors. Leading government figures and governing institutions may have incentives to support devolution, may have mixed incentives with regard to devolution, or may oppose it outright.

Among those who may have *incentives to oppose decentralization*, the most apparent are central government officials that stand to lose control over the resources transferred to counties. Initial review of the political economy suggests the administration of President Mwai Kibaki fits this model. Kibaki and other leaders can be seen as reluctant decentralizers in the period from 2005 to 2009. Initial proposals for constitutional reform emanating from the national executive were quite centralist in nature, but were rejected in 2005. Following the election of 2007 and resulting violence, the 2008 power-sharing agreement and acceptance of devolution can be seen as a process of constrained optimization, or maximizing presidential leverage under a set of constraints. Under the new constitution, current followers of the president will be looking to maximize advantage for the post-2012 presidency. Depending upon the outcome of the election, backers of strong presidentialism under Kibaki may continue with this perspective or may be much more amenable to strong counties.

It is to be expected – given Kenya’s political-economic history and tensions between groups – that the incoming presidential administration (regardless of ethnic backing) will seek to retain certain powers and control over resources at the national level. This preference will inform how others shape the implementation of decentralization after 2012: national ministries and county-level officials that are in the president’s party. The incoming president will appoint top ministry officials and will seek to exercise some authority over co-partisans; it can be anticipated that these officials will face at least some incentives to comply with central directives, though Kenya presents an opportunity relative to many other African countries where single parties are dominant and operate in top-down fashion.

With regard to other national leaders, it is common to find proponents of decentralization among those who do not control the presidency, yet this advocacy can wane upon assuming the presidency. Prime Minister Raila Odinga is a prospective presidential candidate for 2012 and may fit this model. Other potential candidates and their followers, notably Uhuru Kenyatta and William Ruto, may also have preferences over decentralization that will vary depending on whether they secure national power or lose at the national level and have their political power circumscribed in ethno-regional bases; defeated national candidates often support devolution.

Among those with *incentives to support decentralization*, the most obvious candidates are those elected officials responsible to county populations, as well as the appointed officials who in turn accountable to elected county officials. On the elected side, this includes Governors, County Assemblypersons, Senators, and possibly MPs insofar as electoral constituencies work alongside counties. Appointed officials such as county secretaries, city administrators, and members of the county civil service are also included here. However, caution must be exercised even among these groups that should be expected to support devolution. Kenya's history of strong centralized rule and ethno-regional divisions, combined with political ambitions found in all political systems, can lead to county elected officials eager to comply with and attend to the political needs of the central leadership. It is speculative yet to estimate how much county officials will be accountable "downward" rather than "upward", but results can generally be expected to vary as a function of how centralized the political party system is after the elections: a more centralized and top-down party system will lead to greater challenges to devolution.

## **2.2. Institutions: Bureaucratic Incentives**

Other African cases illustrate that ministries and appointed officials at the central government level are another important set of actors that shape decentralization, often in ways that undermine the principle of devolution. As examined in USAID's Comparative Assessment in 2010, the especially relevant institutions in the Kenyan context are:

- Ministries of Finance
- Ministry of Local Government (MoLG)
- Sectoral ministries

Each of these operates with different modalities, but shares the common feature of being institutions accountable to the central authority with some responsibility for the actions at the county level. Ministries of Finance have perhaps some of the clearest (and most justified) reasons for wishing to ensure central control, including proper accounting of government expenditures and protection of the national macroeconomy. In sectoral ministries, the wish to ensure national standards for service delivery often coexists with a reticence to devolve power to subnational elected officials, though the form of administrative decentralization known as deconcentration is often supported. A related set of institutional actors are those in the civil service. If these are primarily accountable to directives from central ministries, rather than from county officials, civil servants may be a powerful constituency that delimits county power.

Finally, some of the other institutions hinted at above under "Individuals" will be more or less attentive to the center, depending upon individual incentives. This includes the Senate as a whole, for instance, as well as the National Assembly and even county elected offices.

### 3. Institutional Inheritance: Implications of the Existing Framework

Politics and policy reform take place in a given institutional framework, even when that framework is itself in revision and reformulation, as in Kenya. As part of an assessment of the policy and programming environment, a consideration of the institutional inheritance of the elected counties can follow political economy analysis as a step in developing recommendations; indeed, recommendations and implications will emerge directly from the combination of the political economy analysis and the examination of the institutional backdrop.

#### 3.1. Reckoning with the Institutional Inheritance

While some existing institutions may require overhauls or elimination in the new dispensation, it would be unwise to disregard many (even those whose functioning is weak at present), for two reasons. First, preexisting systems may have institutional memory that can represent an important form of capacity, even if these institutions may also have pathologies (such as embedded corruption or inefficiencies). The fiscal and administrative capacity of the new counties will be one of the key challenges in Kenya's devolution, and the preexisting institutions may be where a large portion of that capacity resides. Planning and management will depend upon personnel who are familiar with a range of governmental processes. Retaining institutional memory can be compatible with major reforms to improve public management and improve capacity and probity. Second, and more pragmatically, the likelihood of incorporating these institutions is quite high in any event, due to the limited time frame between the present and the "standing up" of the newly-empowered counties. Moreover, in the political sense, many of the elected officials currently found in Kenya's LAs are likely to run for county elected positions.

#### 3.2. Approaches to Specific Institutions: Preliminary Considerations

Existing institutional legacies can be found in three arenas: central government, subnational government, and civil society. Institutions include not only organizations, but also procedures and processes that shape the "rules of the game". Among the specific relevant institutions are:

Arena	Existing institutions
Central government	Ministries (Local Government, Finance, sectoral/line ministries) Elected officials (National Assembly MPs, Senate) Related institutions (CDF, e.g.)
Subnational government	Local Authority staff and bureaucracies County staff and bureaucracies Province / District staff and bureaucracies
Civil society	CSOs CSO processes (LASDAP, e.g.) CSO promotion programs (KCSSP, e.g.)

The sections below briefly outline possible approaches to building on institutions from *central government* and *civil society* into the new dispensation. While institutions may be abandoned or reinvented in some cases, in most cases they will continue to be part of the devolution environment. Issues relating to county government itself are addressed in Section 4 below.

## Central Government Officials: Ministries

The Ministry of Finance is one of the leading organizations whose instituted practices are likely to continue to shape county governance past 2012. A range of existing features may be adjusted or largely incorporated into the new devolved system, including such processes as the Medium Term Expenditure Framework (MTEF), Ministerial Public Expenditure Reviews (MPER), and the Integrated Financial Management System (IFMS). The presence of similar institutions in the intergovernmental systems of South Africa and Uganda suggests these are compatible with significant moves toward devolution. Strategically, approaches could include building upon these mechanisms with capacity-building among county-level officials in intergovernmental finance and the promotion of priority issues for the counties in Budget Review consultations.

In the Ministry of Local Government, there is one institution whose future incarnation may be especially interesting for the interaction between county government and civil society: the Local Authorities Service Delivery Action Plan (LASDAP), which has mandated inclusion of public consultations as a condition of intergovernmental transfers. The LASDAP process received mixed reviews in a preliminary examination, but the end of the Local Authorities leads to questions about whether the current decentralization bills before the National Assembly envision building upon this institutional form. One approach could build on existing procedures from LASDAP, while using 2012 as an opportunity to improve performance. Since LASDAP works at a “more local” level than the 47 counties, it may be possible to adapt this process to the sub-county or ward level, adding a procedure that “federates” constituency or ward consultation mechanisms between government and civil society and aggregates these up to the county level.

Sectoral ministries can be expected to continue to exert authority over civil servants under their purview, while also seeking to ensure county compliance with national standards. In many African countries, perhaps the fact that has most consistently tempered the devolution of public service responsibilities has been the continuation of a centralized civil service for most personnel, such as teachers in the education sectors. As an independent institution not directly under any executive branch ministry, the Public Service Commission of Kenya (PSCK) may also be relevant here in the development of the county civil service.

### *Preliminary Recommendations for Working with Ministries:*

- Collaborate with Ministry of Finance to build county capacity for budgeting/monitoring
- Adapt LASDAP process to the county level by “federating” as needed
- Work with ministries and PSCK toward full implementation of county civil service

## Central Government Elected Officials: National Assembly and Senate

The Senate is a new institution, and its impact will be largely a function of how many decisions in parliament are deemed to “affect counties”. If these are found to be exceptions when it comes to significant policymaking, the Senate will correspondingly be of low consequence. Weak upper chambers have been common in other countries in Africa, either due to constitutional limitations on the upper chamber (*de jure* limitations) or due to dominant parties that make upper chambers largely redundant (*de facto* limitations). The former case is seen in Mali and the latter in South Africa, for instance (see appendix). Yet Kenya has a Senate with a degree of constitutional empowerment, plus a more competitive party system at the national level. In particular, the Senate is empowered by Section 217 of the Constitution to “determine the basis for the allocation among the counties the share of national review”; while there is constitutional guidance on criteria, this gives a large degree of autonomy to the body, which could make the political economy of decision making in the Senate increasingly important over time.

One of the important perspectives on the Senate’s constitutional role will likely be found in the judiciary, which should have occasion to rule on the breadth of the Senate’s mandate. Accordingly, from a

programming perspective, it may be feasible to consider the judiciary as a backstop for county autonomy, insofar as it will adjudicate on what issues are deemed salient to county government. If work with the judiciary is deemed appropriate under the auspices of rule of law programming, then under certain circumstances it may be possible for USAID to advocate on behalf of county governments to advance constitutionally sound rulings about what National Assembly decisions are deemed to affect counties. While this must be handled with delicacy to avoid interference in the judicial process and unnecessary adversarial relations with the central government, transparent programming may be useful if precautions are taken. Combined with programming that tightens collaboration between the Senate and the counties, this could facilitate a web of major institutional support for the new counties.

*Preliminary Recommendations for working with Parliament:*

- Build networks of Governors/County Assemblies (and their associations) and MPs
- Promote collaboration and links between Senate, counties, and related institutions

### **Central Government Institutions: Constituency Development Fund**

One of the most potentially problematic institutions in Kenya, from the perspective of the counties, is the Constituency Development Fund (CDF). This fund allocates 2.5% of the national budget to Kenya's parliamentary constituencies (which currently number 210) for projects identified by local committees, thereby creating a devolved fund that runs in parallel to the resources allocated to local governments ([www.cdf.go.ke](http://www.cdf.go.ke)). One question regarding the CDF is whether it compartmentalizes and limits the use of patronage, or simply becomes one more venue through which clientelism operates. If the CDF "ringfences" and contains patronage, then the payoff in public service performance may compensate for the ways the systems sidesteps and bypasses the LAs and new counties. On the other hand, in the likely circumstance that the CDF supplements patronage rather than substituting for it, then its implications for public services are questionable at best, and its detraction from the autonomy of county governments may be especially problematic. The Institute for Social Accountability, among other actors, has advocated that the CDF resources be transferred to the county governments, effectively raising intergovernmental transfers from 15.5% (for the equitable share plus equalization fund) to 18% (cf. <http://www.tisa.or.ke/getmpsoutofcdf/>).

Political economy analysis routinely suggests that politicians are reticent to give up preferential access to resources. In the case of the CDF, it will be challenging to convince MPs to choose voluntarily to forego resources that lubricate local projects, with the double impact of possible delivery of development and electoral benefits for those MPs who can claim credit for largesse. (The statutory presence of the CDF amount for all constituencies would ideally signify to local residents that their MP is not directly responsible for bringing home national resources, but this understanding is a function of civic education, which USAID has identified as being limited.)

Given the possible continued presence of the CDF in parallel to the 47 counties, another question emerges: can the presence of the CDF be leveraged productively by elected counties to overcome some of the other concerns about devolution in 2012? More specifically: *is there a way to ensure collaboration between the CDF process and county government in a way that provides incentives for broad and inclusive distribution of public goods?* The possibility that emerges here comes from the fact that the 290 constituencies (effective in 2012) are geographically smaller than the 47 counties. One potential use of the CDF is thus to address truly local issues at the sub-county level, even if this level is not itself a devolved authority. This will depend in part upon whether all constituencies will be *within* the boundaries of the counties, or will spill across the boundaries. In any event, the CDF can both detract from county devolution and be a possible resource for collaboration at the local level between sub-counties and counties.

*Preliminary Recommendations for Building upon the CDF:*

- Encourage CDF projects that pool resources between neighboring constituencies
- Engage MPs with county (and sub-county) officials on use of CDF resources

### **Civil Society: Organizations and Processes**

Civil society organizations in Kenya will be essential in ensuring *accountability* of counties and decentralized units to local populations. In a general sense, organizations that can mobilize the populace will be primarily responsible for demanding accountability in periods between elections, while also having important roles in electoral moments. Civil society can also be constructive in the process of establishing the fiscal *autonomy* of counties. This was seen in certain communities in Mali, where robust and highly collaborative relations between local actors in civil society resulted in successful public goods provision (see appendix).

With regard to policy and programming in this area, USAID/Kenya and partners have considerable experience through such initiatives as the Kenya Civil Society Strengthening Program (KCSSP). Two noteworthy considerations for continuing work in this vein may be as follow. First, noting the questions around the LASDAP process mentioned above, USAID can consider ensuring that any existing institutional memory in civil society “carries over” into the new dispensation as procedures to formalize participation are being adopted, implemented, and sorted out. Second, USAID can seek to develop explicitly cooperative relationships between CSOs and county governments to buttress county fiscal *autonomy*. Mechanisms such as co-financing can build governance and public goods when counties are responsive, while also incorporating elements of *accountability* and enforcement: if examples from Mali are indicative, CSOs will promptly cease to collaborate with or provide support to county governments if the latter are profligate. This gives local governments strong incentives to consult and perform.

*Preliminary Recommendations for working with Civil Society:*

- Build existing institutional capacity, including through the modified LASDAP process
  - Collaborate with CSOs and local social forces to generate local revenues/resources
- 4. Implications of Counties for Decentralization and Conclusion**

The present situation in Kenya has implications for the several characteristics of decentralization identified as important concepts by USAID. Below, key challenges are noted with respect to each of four criteria used to evaluate decentralization. These challenges give rise to corresponding proposals for policy advocacy and for programming, as noted in the tables.

#### **4.1. Authority**

Several proposed decentralization bills (County Financial Management, Devolved Government, IGR, IGFR, Urban Areas and Cities) clearly establish legal authority for counties, as will be examined in detail in the subsequent report. Challenges in authority in Africa have often been found in implementing assigned powers, as authority is often more impressive on paper than in practice. This relates in part to *autonomy* (see below), but can be addressed as an issue of authority as well, as the table notes. In addition, Kenya has a unique challenge given the size and scope of the single level of subnational government. As noted in the DG Assessment, counties may be seen as “too small” to wield political weight; note that the comparable level of government in South Africa consists of 10 provinces, for example, which gives each more weight. On the other hand, the 47 counties will average around 800,000 persons each, which may be “too big” when contrasted with the much larger number of municipalities in many African countries. This suggests a strategy

to empower institutions “around” the counties that can give the counties the support they need (both politically and administratively) to succeed.

#### **Addressing Authority Challenges: Towards Strategies**

Challenge	Policy Strategy	Programming Strategy
Counties are either “too big” to be local or “too small” to be effective	Advocate formal links between local structures (sub-county, ward, village)	Propose legislation and programs to empower sub-county structures, wards, or “county clusters”
Legal authority will be legislated, yet lag in implementation	Push implementation in ministries after legislation by elected officials	Work with deconcentrated officials to ensure transfer of increasing responsibilities over time
Legal authority will be limited in practice by lack of political support	Address recommendations to actors beyond executive (Senate, councils, etc.)	Strengthen links between supporting institutions: counties and Senate, bodies in IGR Bill

#### **4.2. Autonomy**

More problematic than the question of legal authority are those surrounding the autonomy of county governments in practice. Even clear delineations of authority will not necessarily result in effective autonomy for county governments. Administratively, central states are often embedded in society and citizens have expectations that centralized provision of services will continue. On the fiscal side, greater reliance on central government fiscal resources (namely the equitable share) means greater required compliance with central government expenditure rules and less decision-making autonomy over spending. The likelihood of securing additional guaranteed revenue transfers for counties is low at this point, so strategic enhancements in fiscal autonomy are likeliest to come through effective collaboration with local populations and civil society to generate own-source revenues from existing sources. The exception here is the CDF, where it appears an open question whether additional resources (2.5% of budget) will be allocated to the counties (or sub-county structures) or will operate via MPs and constituencies.

#### **Addressing Autonomy Challenges: Towards Strategies**

Challenge	Policy Strategy	Programming Strategy
State institutions used to top-down governance	Promote deconcentration as well as devolution	Work with deconcentrated agencies to develop links to local officials
Lack of county own-source revenues (OSR)	Develop co-financing institutions (center-county and local resources)	Enhance OSR via collaboration with CSOs, civic education, participatory budgeting processes
CDF as resource channel parallel to counties (if CDF persists)	Recommend incorporation of CDF into budgets at county or sub-county level	Promote interaction between CDF constituencies and sub-county structures (MP-county relations)

#### **4.3. Accountability**

Accountability at the local level has clearly been incomplete to date, as Kenyans will attest through their interactions – to varying degrees –with existing Local Authorities. The upgrading of the 47 counties to become the sole recognized level of local government means amalgamating various units into larger units. In an environment where CSOs have had limited success in holding local officials accountable, how can the new dispensation ensure counties maintain accountability to local institutions (as well as to legitimate central government standards), especially in periods between elections? Recommended steps can include ensuring

greater participatory involvement at various stages of action by county governments: identification of needs and preferences, program/project design, planning, budgeting, monitoring, and evaluation.

#### **Addressing Accountability Challenges: Towards Strategies**

Challenge	Policy Strategy	Programming Strategy
Lack of sustained demand for accountability between elections	Push legislation (and implementation) of participatory processes	Work with CSOs and local media for civic education on responsiveness on a sustained basis
Accountability upward vs. downward to local populations	Push participatory processes for all stages of county action (plan design, budgeting, etc.)	Work with county officials to lead translation of public demands into plans, budgets, monitoring, etc.
Non-compliance with central government standards	Support relations between deconcentrated officials and county staff	Work with county permanent staff (and elected officials) on compliance with central standards

#### **4.4. Capacity**

County officials may well have lower technical capacity than ministries at the central level, and a challenge is that this may be used (as in other African countries) by the center as a justification for limiting or reversing devolution. Central ministries may even be reticent to develop local capacity, if they have political incentives to retain power. Even where local officials have adequate technical competence, there will be difficulties in adapting to the new systems and procedures as officials from various Local Authorities are worked into the county system; this amalgamation will represent a capacity challenge.

#### **Addressing Capacity Challenges: Towards Strategies**

Challenge	Policy Strategy	Programming Strategy
County capacity used to justify less devolution or recentralizing	Advocate for counties via various institutions, not just the executive	Build capacity among local officials on simple tasks, growing progressively more challenging
Corruption in LAs and high turnover in public offices	Develop authority county civil service	Work with permanent staff and county bureaucracy, rather than elected officials

#### **4.5. Conclusion**

In sum, devolution in Kenya faces several key challenges with respect to USAID goals and objectives for decentralized governance, also presents a number of opportunities for policy advocacy and programming interventions. While *authority* is being transferred to counties in impressive fashion, the new dispensation for counties remains ambiguous in some aspects, especially with regard to how effectively counties will relate and link to a variety of supporting institutions, from CSOs and wards at the sub-county level up to the Senate and MPs in National Assembly that currently control CDF funds. Devolution in Kenya is likely to witness levels of county *autonomy* that are initially too low, rather than too high, due to likely limited own-source revenue and the expected continuity in many state institutions. Related to this, *accountability* may well be stronger going upward through the state, rather than downward to local populations. Finally, *capacity* is an enduring challenge. Addressing these challenges in policy advocacy and in programming will contribute to the larger goals of democracy, development, and stability.



To an extent, the recommendations here aim to strategize about how to build upon the existing institutional inheritance, while working to transform the institutions and realities that may hold back the process. As noted at the outset, these recommendations are derived from a preliminary review of documents in desk study format, for a system currently being established for the future with no existing track record; these implications and recommendations will be subject to revision (upon further study) in a final assessment.

## APPENDIX D: LESSONS FROM COMPARATIVE ASSESSMENT OF DECENTRALIZATION IN AFRICA

This appendix briefly outlines selected comparative lessons that can be drawn for Kenya from the Comparative Assessment of Decentralization in Africa, produced by USAID in 2010. It is arranged with brief comments from salient aspects of decentralization among the countries studied, with an emphasis on Anglophone Africa. This comparative perspective informs the prospects for successful devolution. It provides insights into best policy practices and best entry points for programmatic intervention. Comparative glances at other African countries can also raise warning flags about likely negative consequences for county governments of the framework; these negative repercussions may be unintended consequences, but may also be “intended” insofar as the central government may wish to withhold powers or resources from county governments.<sup>23</sup>

### Ghana

Ghana offers two principal lessons for the Kenyan case, and both are related to elections at the subnational level. First is the challenge of preventing executive dominance at the county level (in Ghana, district assembly level), and second is the issue of electoral competitiveness at the national level vs. the subnational level. With regard to executive dominance, district chief executives have exerted considerable leverage over decision making, replicating “presidentialism” at the district level (cf. Ayee and Dickovick 2010). This can be addressed by working to strengthen county assemblies, and will be especially important in Kenya were concerns about minorities in the counties are central to the stability question.

With regard to the question of competitiveness at the national and subnational levels, Ghana is a mixed blessing. On the one hand, competitiveness at the national level seems to support decentralization: since both main parties have a reasonable chance of *losing* power in the national election, and since both main parties have strong power bases in different regions, they have incentives to support robust decentralization. Even when losing power nationally, they wish to retain important governing positions. On the other hand, elections in the different districts in Ghana are often *less competitive*, with each of the two main parties predominating in different regions of the country. Something similar could arise in Kenya. Elected district officials in Ghana will often be from a party associated with the majority ethnicity in a district, and this predominance can also contribute to executive predominance within the district, as assemblypersons seek to please the district executive.

### Mali

Mali has 703 local government communes, in 49 *cercles*, and 9 regions, all for a population about one-third that of Kenya. The *cercle* and region levels have both deconcentrated and devolved officials. While this number of units may seem excessive by contrast with Kenya, it serves as a counterexample that raises the question of the size and scope of Kenya’s 47 counties. Mali has local government units at a much “more local” level, more akin to the village level units in Kenya. Mali’s decentralization is quite circumscribed and is not itself a model, but the importance of small, elected communes may serve to illustrate the importance of sub-county levels, wards, and villages in Kenya.

The upper chamber of Mali’s legislature, the *Haut Conseil des Collectivités Territoriales* (HCCT) offers lessons with regard to the effectiveness of such chambers. Most importantly, it can only issue advisory opinions. This constitutional limitation on its authority has turned it into a chamber that has been very articulate in supporting the aims of decentralization, yet has been unable to convert this into significant policy change. On the other hand, the HCCT represents an intriguing structure, being the pinnacle of a bottom-up indirect electoral process. All members are chosen from their respective regional councils, whose members are in

turn selected from councils at the next lower level of government (*cercles*), who are in turn selected from the local level (*communes*). This indirect electoral pyramid may have limitations, but does ensure representation at each council that is geographically distinct, in a way similar to the ward system planned in Kenya. These sorts of representation may (or may not) contribute to Mali’s generally low level of ethnic mobilization; there is little firm evidence that this structure alone prevents ethnic disagreement in politics, but neither does it seem to exacerbate it.

Civil society has been a boon to certain local governments in Mali, and has even contributed to the fiscal autonomy of certain *communes* (see Coulibaly, Dickovick, and Thomson 2010). In Niéna commune, for example, there was an important instance of bottom-up development financing that involved local civil society institutions, traditional authority, the local government, and ultimately the central government. In this instance, close collaboration between local actors resulted in a locally-identified investments that were co-financed by local residents’ associations and the commune government. Because of the success in mobilizing local revenue, the central government co-financing agency supported the remainder of the project. In this case, local resources were leveraged into projects in a bottom-up fashion.

### South Africa

South Africa is explicitly a model for Kenya’s devolution process, as was made clear by the Chairs of the Task Force on Devolved Government, the Commissioner for Public Finance on the Commission for the Implementation of the Constitution, and the Chair of the Commission on Revenue Allocation (interviews, Kangu, Kamotho Waiganjo and Micah Chiserem). The South African fiscal federal model has a number of promising features that would serve Kenya well, including robust systems of intergovernmental relations and intergovernmental fiscal relations, a secure equitable share, and a highly professionalized process of recommendations for the allocation of revenue. These features have clearly, and understandably, impressed advocates of devolution in Kenya.

At the same time, it is intriguing that the South African model is held in high esteem by advocates of devolution in Kenya that are contesting the dispensation with the National Treasury. This is curious because South Africa illustrates that overarching central ministries can play valid roles in coordinating, planning, and monitoring expenditure, but that they often do so through a strong exertion of power (cf. Picard and Mogale 2010; Dickovick 2011). Much like Kenya, South Africa has a host of institutions designed to ensure effective, efficient, and proper use of nationally-generated revenues; many of these operate within or in conjunction with the Ministry of Finance (National Treasury). These institutions were associated in the late 1990s and early 2000s with relatively low levels of impropriety among provincial and local governments in South Africa, compared with many other countries in the region. At the same time, these can compromise the autonomy of subnational governments (such as the South African provinces or Kenya’s counties). Relevant institutions include the following:

Institution in South Africa	Corresponding Institution in Kenya
Equitable share provision	Equitable share provision (Sec. 202)
Medium Term Expenditure Framework	Medium Term Expenditure Framework
Financial and Fiscal Commission	Commission on Revenue Allocation
MinMECs	Sectoral Councils [early draft of IGR Bill]
Budget Review	Budget Review
Budget Council	Budget Council
Public Finance Management Act	Public Finance Management Bill (proposed)

Lessons also come from the upper chamber of Parliament. South Africa’s National Chamber of Provinces (NCOP) has been a relatively weak institution, largely due to the dominance of the governing African National Congress (ANC) and top-down party discipline within that party. In these circumstances,

centripetal forces retaining power at the center overwhelm even the presence of a specific institution designed to protect the interests of subnational governments.

### **Tanzania**

Tanzania had a decentralization process that had an institutional inheritance similar in some ways to that in Kenya. The new system has the elected district as the core level of subnational government, supplemented by village level institutions, with the existence of electoral constituencies and wards. Another similarity is the division of districts into differentiated units according to size, as is planned in Kenya's Urban Areas and Cities Bill. Tanzania's districts include cities, municipalities, and towns. Together with sharing a border, these suggest a deeper analysis of the Tanzanian experience in the final report may offer recommendations for Kenya.

More substantively, the Tanzanian case offers both lessons and challenges. It is one of the African cases that has witnessed relatively robust efforts to incorporate civil society into the governance process. On the other hand, considerable challenges remain in the area of human resource management, in particular the civil service. Apart from the individual lessons offered in each area, this illustrates the general proposition that decentralization can advance further in some areas than in others. Decentralization can be expected (even intended, in many ways) to lead to variations in performance across goals, public service sectors, and individual governments at the subnational (district or county) level.

### **Uganda**

Uganda's early stages of decentralization in the 1980s and 1990s serve as both inspiration and cautionary tale for the process in Kenya. Inspiration can be found in the genuinely bottom-up governance created with the Local Councils (formerly Resistance Councils), as well as considerable transfer of fiscal resources and responsibilities. In short, this was a relatively dramatic "big bang" decentralization that went somewhat farther than the Kenyan process by rebuilding state authority at the local level. Yet the Ugandan case also represents a cautionary tale because it has been an African case where recentralization has been most notable. In particular, the undercutting of fiscal autonomy occurred with the elimination of the "graduated tax" for local councils. This concern has been raised by interlocutors in the donor and stakeholder groups in Kenya as rapid decentralization possibly setting the stage for subsequent recentralization. Further examination of the Ugandan case has been undertaken in comparative workshops in Kenya, and these will be examined in detail in the final report.

## APPENDIX E: KENYA'S LEADING POLITICIANS AND RELATIONS TO DECENTRALIZATION

**President Mwai Kibaki** (a Kikuyu) and other leaders in the administration were reluctant decentralizers in the period from 2005 to 2009. A 2005 constitutional referendum on reform began included a set of decentralizing reforms (the “Bomas draft”), but these were replaced by a more centralist “Wako draft” (named after the Attorney General) that came from the national executive; this referendum was rejected in 2005. Following the election of 2007 and resulting violence, the 2008 power-sharing agreement and acceptance of devolution can be seen as a process of constrained optimization, or maximizing presidential leverage under a set of constraints. Under the new constitution, current followers of the president will be looking to maximize advantage for the post-2012 presidency. Depending upon the outcome of the election, backers of strong presidentialism under Kibaki may continue with this perspective or may be much more amenable to strong counties.

**Prime Minister Raila Odinga** (a Luo) is a prospective presidential candidate for 2012 and is expected by many observers to carry the banner of decentralization. Indeed, several observers have noted that many of the pressures for devolution have come from the ODM party that Odinga heads. However, Odinga followers may be susceptible to support decentralization less in the event of a presidential victory.

**Uhuru Kenyatta** (a Kikuyu) is current Minister of Finance, and son of Kenya's first president Jomo Kenyatta. In his function as Minister of Finance, Kenyatta has taken a relatively centralist perspective in debates over current decentralization bills, placing him in opposition to the Task Force on Devolved Government and those civil society organizations seeking greater county powers. In particular, the National Treasury has sought to consolidate county financial management under a single Public Financial Management Act that in its wording would give the finance ministry considerable power over county finances. Kenyatta is also one of the “Ocampo Six”, named after the chief prosecutor at The Hague who is investigating crimes during the period in 2007/08.

**William Ruto** (a Kalenjin) may also have preferences over decentralization that will vary depending on whether he and his candidates secure substantial national power or lose at the national level and have their political power circumscribed in ethno-regional bases. Like Kenyatta, Ruto is one of the “Ocampo Six” of prominent Kenyans facing indictment at The Hague over their roles in conflict in 2007/2008. Ruto's political and legal fate is widely seen as shaping not only the presidential race, but also the prospects for inter-ethnic violence in 2012 (though it is unclear whether arrest and/or conviction would be more or less destabilizing than acquittal and participation in the elections).<sup>24</sup>

**Kalonzo Musyoka** (a Kanga) is a final potential candidate of significance. He came in third in the 2007 presidential election behind Kibaki and Odinga, and was named vice president by Kibaki when the government of national unity formed. Musyoka is a member of a smaller ethnic group and is seen by some as a compromise candidate.

## Notes

---

<sup>1</sup> While policy recommendations do not feature prominently here, it should be noted that “constitutional moments” are not the only period when legal authority is at issue, and thus are not the only moments when USAID can intervene constructively on the policy side. Policy advocacy can also happen in subsequent phases of lawmaking and implementation, and especially in Kenya, where most observers concur that devolution is being undertaken in a rather hasty fashion. It is certain that subsequent new and revised legislation will be needed before and after 2012. Thus, policy recommendations will be useful for once the foundational laws are passed. It will also be useful at the county level, where many important decisions will be made after 2012.

<sup>2</sup> There are a variety of other ethnic groups in Kenya that are part of the national political dynamic, but peace between these three groups is seen as key to ensuring stability.

<sup>3</sup> It can be noted that the interviewees are all directly engaged in debates over devolution, and are thus not necessarily a random sample of observers of the process. They may be more inclined to see significant implications of decentralization. That said, it seems clearly established that one of the main reasons Kenyans voted for the constitutional referendum in 2009 was due to the promise of devolution.

<sup>4</sup> The drawing upon the Desk Study holds especially for the sections on political economy analysis.

<sup>5</sup> This analysis draws directly for some sections on the Kenya Desk Study, an advance report written prior to the period of study here.

<sup>6</sup> A side note is in order on how to characterize the extent of decentralization in the new arrangement. This is because the change involves the effective elimination of Local Authorities (LAs), local level governments whose staffs and functions are being incorporated into the new dispensation in a fashion that is as yet ambiguous. Counties clearly have a degree of new powers, and several institutions are being eliminated or demoted in importance to make way for these more powerful SNGs. Moreover, the LAs had a rather poor reputation in governance, due their weakness as institutions, their manipulation by central government officials, and their weak accountability mechanisms. Nonetheless, a paradoxical effect of Kenya’s devolution is the virtual elimination of a level of elected government that is “more local” than the counties. One way of characterizing the process may thus be “amalgamating decentralization” or “rationalizing decentralization” in which subnational units are eliminated, yet the principle of devolution is constitutionally strengthened, along with the powers and resources of devolved governments.

<sup>7</sup> One of the points of contention is expected to be the establishment of boundaries for these units, which will be highly controversial in contexts of ethnic rivalries. Some provisions for the establishment and management of the sub-counties has been left to the county level itself; while defensible, this also highlights one manifestation of how the “new minorities” problem can become significant.

<sup>8</sup> The DG assessment notes that this may also present a challenge in wielding political weight, though the mechanisms here are less clear.

<sup>9</sup> See Muia 2008: 150-154.

<sup>10</sup> Note that the term MPs has hitherto been used to refer to members of Kenya’s parliament, which is currently unicameral and for which the Senate is being instituted only in 2012. While nomenclature has not been standardized for what will happen after 2012, conventional usage in Kenya refers to members of the National Assembly as MPs. This document refers to members of the National Assembly as MPs and future members of the Senate as Senators.

<sup>11</sup> The former case is seen in Mali and the latter in South Africa, for instance (see appendix).

<sup>12</sup> One of the important perspectives on the Senate’s constitutional role will likely be found in the judiciary, which should have occasion to rule on the breadth of the Senate’s mandate. Accordingly, from a programming perspective, it may be feasible to consider the judiciary as a backstop for county autonomy, insofar as it will adjudicate on what issues are deemed salient to county government. If work with the judiciary is deemed appropriate under the auspices of rule of law programming, then under certain circumstances it may be possible for USAID to advocate on behalf of county governments to advance constitutionally sound rulings about what National Assembly decisions are deemed to affect

---

counties. While this must be handled with delicacy to avoid interference in the judicial process and unnecessary adversarial relations with the central government, transparent programming may be useful if precautions are taken. Combined with programming that tightens collaboration between the Senate and the counties, this could facilitate a web of major institutional support for the new counties.

<sup>13</sup> See Dickovick 2011 on why the best formulation of this assumption may be that what subnational officials really value is autonomous access to revenue.

<sup>14</sup> Thanks to reviewers from USAID-Kenya for their input on the relevant commissions.

<sup>15</sup> Thanks to Ed Connerley at USAID-Washington for thoughts on this issue.

<sup>16</sup> Programs sponsored by USAID-Kenya have engaged extensively with the devolved fund known as the Constituency Development Fund (CDF), with an eye towards empowering civil society to hold members of parliament responsible for these expenditures (interview, Kuria).

<sup>17</sup> Indeed county government intervention in *harambee*-type organization would likely backfire, as it would invoke the much-hated Provincial Administration, a colonial vestige that became the central government's internal security force during several decades of repression under presidents Kenyatta (1964-1978) and Moi (1978-2002).

<sup>18</sup> Needless to say, interventions should not deign to "tell Kenyans how to do *harambee*", but there can be useful interventions in making local government and even MPs responsive to bottom-up initiatives.

<sup>19</sup> This was not true under autocratic rule by KANU, when local organizations may have been compelled to work with the government, but under more democratic rule, such organizations can be expected to opt out of working with county governments that use funds poorly.

<sup>20</sup> It is all the more striking that the sectoral forums were omitted given the strong influence of the South African model on the Kenyan dispensation; in South Africa, the coordinating bodies known as MinMECs serve the function of sectoral forums and are an important feature of the intergovernmental relations network.

<sup>21</sup> As noted in the section on the political economy of different institutions, the involvement of the Commission on Revenue Allocation (CRA) is another institution that will be central to the dispensation, and that could be usefully involved in coordination and communication efforts.

<sup>22</sup> This was one potential use of the much-maligned Constituency Development Fund that ran parallel to funding for local government: a devolved fund to the sub-county level would allow the decentralized governments to address truly local issues, even if this level is not itself a devolved authority.

<sup>23</sup> It is not assumed that this is always detrimental; there are a variety of circumstances in which central government withholding power and resources is both appropriate and advisable. Some such circumstances are noted elsewhere in the report, and include issues where there are economies of scale, need for coordination to improve service provision, or risks to the national macroeconomy from subnational actions.

<sup>24</sup> Observers made this point on several occasions: either arrest or acquittal could upset different groups, and the absence or presence of these prospective candidates in the race could also have contrasting effects.