Special Focus: Kenya’s Momentous Devolution
The turbulence in Kenya’s economy coincides with implementing the constitutional blueprint for a new political and administrative architecture; arguably the most momentous and far-reaching reforms in Kenya’s post independence history. At the heart of this transformation is the devolution of power to county governments and the design of arrangements that will turn the constitutional vision into a reality. Kenyans bring to this process a tremendous enthusiasm and energy, but the devil lies in the detail. The design of fiscal, accountability, public service and transition arrangements will determine whether Kenya can weather the economic storm in a way that enhances social equity, service delivery, citizen engagement, and so deliver on Kenyans’ expectations of constitutional transformation.

Devolution is a central promise of Kenya’s new Constitution. But the ambition and magnitude of the administrative and political changes, and the formidable expectations about what it will deliver, mean that making it work will pose substantial challenges. The hope is that Kenya will become a more equal and economically balanced country, but making that hope a reality will take time, particularly given the current economic uncertainty. The downside risks—of service delivery failure and political backlash—are very real if devolution is not skilfully managed and seen to deliver tangible results. Successful implementation will require careful coordination and planning, clear communication, as well as visionary and committed leadership.

This Special Focus reviews the promise of devolution and the steps needed to deliver on it. Section three briefly covers the history of devolution in Kenya, because history and context are key to understanding the passion that Kenyans have invested in the devolution process. Then, by analysing gaps in access to services and growth variations across Kenya’s counties, the importance of equity is stressed as a central promise of devolution. In section four, consideration of the main steps and challenges in designing fiscal arrangements that can deliver on the promise are discussed. Fiscal arrangements are core to the design, but so are mechanisms for ensuring good accountability by county governments to their citizens, covered in section five. Section six looks at ways of managing the risks when funds are not well spent. Finally, the outcomes of devolution will be profoundly shaped by how effectively the transition process is managed, covered in section seven.

If too much is expected of devolution, outcomes will inevitably disappoint some. In order to manage expectations, it is useful to focus on what devolution can and cannot realistically achieve. In particular, four popular myths that strongly influence common understandings of how devolution works need to be dispelled:

- **Myth #1: With devolution, central coordination is no longer needed.** Some Kenyans express the sentiment that the central government should largely stay out of devolution and leave it to the counties to manage their own affairs. The paradox is that, in fact, devolution requires sustained central coordination to be effective.

- **Myth #2: Devolution will result in additional resources and services at the local level.** There is a perception that the new counties will receive major new funding, and enjoy wide latitude to spend funds differently. Indeed, devolution involves shifting responsibilities and resources to the sub-national level, but the starting point is the existing levels of public spending. Counties will receive significant public funding but also the responsibility for funding existing services: if they decide to shift resources to new uses, they will need to make cuts in other services that are currently provided.

- **Myth #3: Devolution will immediately address entrenched inequity across and within counties.** Some counties will start at a relative disadvantage.
and it will take time to build up their capacity and ability to use resources well. The paradox is that counties that stand to benefit the most from devolution in theory, because they were neglected under the old constitution, will be the least equipped in practice to make efficient and transparent use of their resources, and retain the skilled staff that are essential to making services work. This means that dramatic redistribution will not occur overnight: it will need to be phased in gradually.

**Myth #4: Devolution will automatically result in increased accountability.** Countries around the world implementing decentralization reforms have repeatedly found themselves struggling with increased corruption, elite capture, and deterioration in service delivery. Kenya’s own experience with decentralized service delivery has repeatedly highlighted the challenges when transparency and accountability systems are weak. Building a culture of accountability into the fabric of the new devolved county governments, will require early and sustained effort.

### 3. The promise of devolution: power for the people and equity

#### 3.1 Kenya’s long journey to constitutional transformation

Kenya’s new Constitution marks a critical turning point for the nation. On August 27th 2010, Kenyans witnessed President Mwai Kibaki sign the new Constitution into law. This historic event was one of Kenya’s greatest moments. In response to the people’s expectations of greater democracy, human rights and accountability of the government to its citizens, the Constitution ushered in a new republic with expanded, transparent political and economic structures, including devolution to forty-seven counties. The new system builds on over sixty years’ experience with local government, a brief flirtation with federalism at independence, and a decade of failed attempts at constitutional reform. The design of the system of devolved government must be understood against the backdrop of this complicated history (see box 3.1), which will also fundamentally shape the way it is implemented.

The new Constitution marks the end of a highly centralized state and attempts to resolve the critical issues of state power versus citizens’ rights and control over the development process. Previous endeavors had failed. A powerful centralized state was ushered into place at independence, influencing key decisions including the formation of the judiciary and the parliament. The Kenya African National Union (KANU) finally lost power in the December 2002 general election, to a united National Rainbow Coalition (NARC), which promised a new constitution soon after it was installed in power. In 2003, NARC established the Constitution of Kenya Review Commission, which embarked on an all-inclusive process to overhaul the Constitution. The first draft was tested, but defeated, during a 2005 referendum, leading to a political crisis that continued to the December 2007 general election in which the results of the presidential vote were disputed.

The new Constitution establishes a powerful framework for democratic reforms, devolution of state power, land reforms, gender equality and human rights. Progress to date on implementing constitutional reforms has seen the appointment of independent office holders, including the Chief Justice, Attorney General, Auditor-General and Budget Controller, and three important constitutional bodies, the Commission on Implementation of the Constitution (CIC), the Commission on Revenue Allocation (CRA), and the Independent Electrol and Boundaries Commission.

Devolution of political and economic power to the new counties will take effect after the next elections. The new county governments feature full separation of powers between the Governor and County Assembly members, and a non-elected executive appointed by the Governor with the approval of the Assembly. They will enjoy a guaranteed share of national revenues, comprehensive law-making powers, a limited range of exclusive taxing powers,
Special Focus – Kenya’s Momentous Devolution

Box 3.1: Decentralization in Kenya: overcoming post-independence concentration of power

Embryonic decentralization under the colonial state (1950s). Like in many other African countries, Kenya’s system of local government was established during colonial rule. The colonial government had two separate systems; one for settlers and another for indigenous Kenyans. The system was restructured in the 1950s with the creation of African District Councils and a system of County Councils in white settler areas. These authorities had a majority of elected councilors, power to employ staff, formal legal status, and a system for collecting their own revenues (mainly the graduated personal tax). They also benefited from limited intergovernmental transfers. This two-tiered system was combined under the 1963 Local Government Act, which gave the new councils significant responsibilities and revenue-raising powers.

Aborted devolution post-Independence (1960s). The 1963 Constitution provided for a system of devolution now popularly referred to in Kenya as ‘majimbo’. It established regions with elected assemblies and executive authority over roughly a third of government functions including health, education, agriculture, part of the police forces and local government. However, the newly independent government sought to weaken devolution in three ways: by exercising much closer control over regional civil servants than the Constitution envisaged, by delaying implementation of provisions allowing regions to assume full responsibility for their own finances, and by delaying the transfer of functions to the regions. The system was abolished in 1964 and replaced by provincial and district administrations. While local authorities continued to exist, their powers were assigned administratively rather than under constitutional authority.

Centralization of political and economic power (1960s - 1980s). Over the following two decades, the powers of local governments were gradually eroded. Although Sessional Paper 12 of 1967 included proposals to strengthen local government, the government reversed course with the Transfer of Functions Act in 1969, transferring many of local governments’ functions back to the center along with their main sources of local revenue, leaving local governments considerably weaker than before. Following constitutional amendments in 1982 that concentrated power in the central government and president still further, the District Focus for Rural Development Program was introduced, as a means of involving local people in development and sharing resources more equitably. Ultimately, the program became a vehicle for presidential political patronage, undermined the role of local governments, and resulted in little meaningful redistribution of economic development.

Piecemeal decentralization (1999-2010). This decade saw the introduction of devolved (geographically earmarked) funds in an attempt to address spatial inequality. The most notable were the Local Authority Transfer Fund, (LATF)-created through the LATF Act No 8 of 1998, the Road Maintenance Levy Fund, (RMLF)created through the Kenya Roads Act, 2007, the Rural Electrification Fund, created through the Energy Act of 2006 and the Constituency Development Fund, created through the CDF Act of 2003. Despite these piecemeal efforts to address inequality in resource distribution, political tensions remained high spilling over into the 2007 election crises and subsequent unrest, which proved to be the tipping point leading to demands for a new Constitution.


As of December 2011, Kenya is halfway through the preparatory phase of the devolution process. The first constitutional deadlines were met in August 2011, with the enactment of the Urban Areas and Cities Act, and a law on national guarantees for county borrowing. A further seven bills are currently pending, covering the framework for administration and control over their own public servants. These dimensions of devolution offer the potential for real and meaningful control by local citizens over service delivery and local economic development.

This report covers important policy issues that are rapidly evolving. Within the next six months, Kenya will enact the remaining bills into law and make some crucial decisions about how the transition process should proceed. By early 2013, the first county governments will have been elected. By that time, many of the questions raised in the following pages...
will have been decided, one way or another, and new issues will be emerging. Indeed, devolution is a constantly evolving process with no fixed end point. Although the constitutional referendum in many senses marked the end of a journey, in another sense, Kenya is at the beginning of a new and hopeful road, which offers the opportunity to turn the constitutional promise of devolution into a reality.

3.2 Devolution and people’s expectations: the hope for a more balanced model of development

The 2010 Constitution ushered in a sense of national renewal. After four decades in which power was perceived to have been removed from the people and concentrated in the hands of a small elite, the new Constitution provided renewed optimism that power and resources would be shared more equitably. The Constitution is predicated on five basic principles; (i) equity and inclusiveness; (ii) equity of opportunities; (iii) delinking politics and policy; (iv) better access to national resources; and, (v) bringing government closer to the people.¹ These aspirations resonate with the views of the top leadership of the country, as well as of ordinary Kenyans (see boxes 3.2 and 3.3).

3.3 A challenging starting point: enduring inequality and a highly ambitious devolution project

Two factors suggest the need for realism about how soon devolution can deliver on people’s high expectations. First, Kenya is starting from a base of enduring inequalities in service delivery – inequalities that may even be exacerbated in the initial transition phase of devolution. Second, Kenya’s devolution is among the most ambitious in the world, in terms of its scope and proposed speed. Resolving these inequalities will take time, and a learning by doing approach to devolution, especially given that county administrations will be new and inexperienced when they start out. Paradoxically, a more gradual transition is more likely to result in the full delivery of the promise of devolution embedded in the Constitution.

A history of spatial inequalities

Spatial inequalities help to explain the passion Kenyans display for constitutional issues and the hopes that they have pinned to devolution. Economic development has been concentrated along a narrow corridor between Mombasa and Kisumu,

Box 3.2: The promise of devolution as seen by Kenya’s leaders

“The new institutions that will come with the national and county governments need the support of all Kenyans. More importantly, let us use the opportunities being offered by the county governments to develop all corners of the country. The devolved governments must be adequately anchored in readiness to make their contribution to the attainment of Vision Twenty-Thirty.”

President Mwai Kibaki (Speech on August 27, 2010 - Presidential Press Service)

“By devolving power and resources to the 47 new counties, we shall be investing in local solutions for local problems, and facilitating local ownership of improvements to infrastructure, such as roads, irrigation, schools and hospitals.”

Prime Minister Raila Odinga (Speech to Strathmore University August 24, 2010 - Prime Minister Press Service)

leaving wide swathes of the country behind in terms of economic activity and employment. Moreover, the wealth created by Kenyans has not been adequately redeployed through public service delivery, to promote equal opportunities for all.

**Economic activity has been and remains concentrated in specific geographic areas.** Nairobi and Mombasa, the leading urban centers, account for the bulk of Kenya’s total production (see figure 3.1). Eighty percent of Kenya’s economic activity is generated by only one half of Kenya’s counties (23 out of 47). Outside of the two biggest urban centres, activity is highly concentrated in a few leading areas.

**Annex 2.1 contains a detailed methodology for estimating counties levels of economic activity.**

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**Kenya’s experience with spatially unbalanced growth is by no means unique.** Heavy spatial concentration of economic activity is the norm in most developed and developing countries. Initial natural endowments (like fertile soils) and location factors (like proximity to ports) are reinforced by migration of people to areas where they can make a living more easily—a process known as agglomeration. Firms tend to cluster where there are other businesses that supply inputs or buy their products or services. These agglomeration and clustering effects explain
to a large extent why some regions have developed faster than others and remain more dynamic; why cities, as opposed to rural areas will increasingly be driving growth, and why only a few among them have the potential to become major industrial and service hubs. In China, three coastal provinces accounted for over 50 percent of the country’s GDP in 2005.²

**Make growth more inclusive**

Although economic activity will be spatially concentrated, development can be inclusive if the state redistributes national income through investments and services. In other words, while all areas may not have the potential to become centers of economic development, all Kenyans should be entitled to the same level of basic services and to equal opportunities, in order to lead a healthy productive life. How well has Kenya delivered on this front until now?

One measure of this is the extent to which Kenyans have equal access to education, health care, and adequate water and sanitation. Access to these services neatly captures opportunities because it plays a large role in determining individuals’ welfare over the course of their lives. In this section, coverage rates for these services are presented. In the graphs below, counties have been ranked from left to right in terms of access (from lowest to highest) and colour-coded to tag Kenya’s nine most sparsely populated counties, so as to check for correlation between access to services and population density (used as a proxy for remoteness).

Inequality of opportunity is pervasive in Kenya, indicating partial failure of the Kenyan state over the years to redistribute the national income through services. The index of access to health services (measuring the share of newborns delivered at a health facility) displays the highest levels of inequality between counties. For example, while over 8 in 10 children are delivered at a health facility in Kirinyaga, just 1 in 20 have that chance in Wajir, which is located in the arid northern part of Kenya. This is closely mirrored by the index for access to safe water. While over the years, primary education

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Figure 3.2: There are significant differences in access to health care between counties

Source: World Bank computations based on Kenya Integrated Household Budget Survey, 2005/06

Figure 3.3: Primary education is relatively evenly spread but not secondary education

Source: World Bank computations based on Kenya Integrated Household Budget Survey, 2005/06

Figure 3.4: Access to water and sanitation, which is highly unequal, affects health, development and livelihoods

Source: World Bank computations based on Kenya Integrated Household Budget Survey, 2005/06
outcome gaps have narrowed (thanks to the free primary education policy) there are still significant differences at the secondary level.

Variations in access to services mirror, to a large extent, historical patterns of marginalization. Kenya’s North-Eastern areas—which are the least developed economically—have failed to receive the level of central government attention and support required to equalize access to services (arguably the cost of delivering services there, and the needs will also have been significantly higher). For instance, while malnutrition is relatively low in Mombasa, where 84 percent of children are of adequate height for their age, in Wajir county only 21 percent of children are of adequate height for their age, implying very high levels of chronic malnutrition. Overall, there is close correspondence between low population density and low social outcomes and as figure 3.1 shows, economic activity as well. Therefore, the only way that these inequities can be addressed is through redistribution and the design of adequate fiscal arrangements.

**Is devolution the solution?**

Some counties will require particular assistance to catch-up, but devolution alone is no guarantee that this will happen. While devolution is explicitly seen by many as a direct response to historical patterns of neglect, it is by no means certain that it can radically alter these imbalances by itself. In fact, it could even result in entrenching disparities, if the right policies are not implemented. Except for education, most public services will be delivered by county governments. A recent survey of the performance of Kenya’s local authorities recorded very high rates of dissatisfaction with the services that local authorities are delivering (see figure 3.5). There are many explanations about why local governments have failed, but results to date demonstrate that it will be quite challenging to get devolution right, and there will be many opportunities to get it wrong.

**Is devolution the “magic bullet” that will allow Kenya to turn the page on marginalization and inequitable distribution of wealth and opportunities?** This will depend critically on the design of devolved government—much of which remains to be determined—as well as on the management of the massive transition from the current to the new government structure. Flawed design, poor planning, weak coordination and fragmented leadership, could compromise the ability of county governments to operate effectively and affect the incentives of leaders to respond to their citizens’ demands for key services. A rushed transition might set counties up to fail, by giving them responsibilities before they have the capacity to carry them out. If the practical and detailed steps involved in Kenya’s radical reforms are not thought through, the immediate risk is a breakdown in service delivery. The greater long-term risk is of a political backlash if the Kenyan people feel that their hopes and aspirations for devolution have been deceived.

**What needs to happen if devolution is to help redress Kenya’s entrenched inequalities of opportunity?** Whether the devolution process can deliver on the promise of the Constitution will depend on design and implementation: (i) giving counties adequate resources to carry out their assigned functions; (ii) ensuring that accountability systems give them the right incentives to use resources effectively; (iii) adequately addressing risks that resources—both financial and human—will be badly managed; and, (iv) making sure there is orderly coordination and
management of the transition from the current centralised system to the newly devolved one. In the following chapters, challenges of successful design and implementation across these four dimensions will be considered.

4. Financing the promise of devolution

More equitable distribution of resources lies at the heart of the constitutional objectives of devolution. Achieving this goal is more complicated than it might seem at first. It involves both dividing resources vertically (between national and county governments), and sharing them horizontally between the counties. Equity needs to be balanced with efficiency to make sure that existing services are not compromised, especially in urban areas, that are critical for future economic growth. Conditional grants may be an important instrument for realising key national goals, but they should not crowd out the space for county governments to exercise real autonomy over resources—or else the potential benefits of decentralization will be lost. It will not be possible to strike an appropriate balance between these competing considerations overnight; it will take time, and devolution should be seen as a constantly evolving process, rather than a short-term journey towards a fixed end point.

Kenya’s devolution is also particularly ambitious by global standards. Not only does it involve the creation of forty-seven new elected governments, but the administrations that support them will be forged out of around 280 existing de-concentrated and district administrations, and 175 local authorities. Managing change on this scale would be a major undertaking for even the most capable and cohesive government.

Reaching the goal of improved equity will take time. County administrations will need to develop the capacity to use resources in ways that reduce...
inequality. While systems of strong accountability can be put in place at the start, it will take time for citizens to learn how they can influence their elected representatives to make decisions that benefit the majority. Implementing devolution is like flying a plane: too much speed heightens the risk of mechanical failure, but too little speed runs the risk of stalling, both with the same ultimate outcome. Thus balancing is required across two dimensions; firstly between the competing policy considerations, and secondly in terms of the time within which it is planned to achieve them.

4.1 How much will counties need?

Much attention has been paid to how much county governments should receive, because this is seen as a measure of whether government is serious about devolution. While this focus is understandable, the real question, to start with, is how much county governments will need. The fundamental principle of financing devolution is that funding should follow functions. Counties need sufficient funding to carry out the functions that are devolved to them, and to begin to address the most noticeable service gaps. In practice, costing the counties’ needs presupposes: (i) clarity over...
the assignment of functions between national and county levels; as well as, (ii) a roadmap for phasing in these functions (and the funding associated with them) over time.

While the Constitution provides a broad framework for assignment of functions between national and county levels of government, some major decisions still need to be made. The Fourth Schedule of the Constitution sets out the respective functions of county and national governments, and Article 186 provides for the national government to retain functions that are not explicitly assigned in the Fourth Schedule (i.e. ‘unspecified’ functions). Crucially, the unspecified functions will have to be defined before what is defined as a county function becomes clearer. For example, in areas of shared responsibility, like health, some important activities like training, HIV and provincial hospitals are not mentioned in the Fourth Schedule. A clear decision is needed as to whether these are unspecified functions that belong to the national government, or are considered part of the county functions that have been listed in the Fourth Schedule. Other sectors face similar assignment issues.

Specify functions

Even when major functions are all specified, it will be essential to ‘unbundle’ the many specific functions within each sector. The Fourth Schedule refers to very high-level aggregated functions and additional decisions are required at a much more detailed intra-sectoral level. These decisions cannot be made on the basis of the Constitution alone, and require careful consideration. They will often have significant cost implications. For example, in agriculture the 2011/12 budget disaggregates agricultural extension into three: Headquarters, Provincial and District extension services. Should these all pass to county level, or only some? Figure 4.2 shows a graphic representation of different components of the health services, some or all of which might be devolved.
Most counties are unlikely to be ready to take over many of these functions right away. Some will be ready earlier than others. The Constitution provides for a transition period during which functions should not be transferred to a county government unless it is ready. A roadmap will be required to guide how the phased transfer happens. Phasing could be approached in two ways. One approach is to transfer functions sector-by-sector, for example, by first focusing on health functions, then agriculture and so on. Another way is to transfer across several sectors at once, but to transfer only some activities, in each sector initially. Clear communication will also be required to ensure that the counties realise that a gradual approach to the transfer of functions is absolutely necessary for the success of devolution, rather than simply an excuse to delay or halt it altogether.

Funding should then follow function, with resources available to counties to be matched with estimated county costs. There are four main sources of county revenues (see box 4.2) which will need to be considered jointly. The objective of the revenue sharing arrangements should be to ensure that counties have sufficient resources to meet the costs of delivering the assigned functions from all sources of revenue, and that the resources continue to be sufficient, as county needs change over time.

Work out the cost

How much counties need will vary depending on how the transfer of functions is sequenced. Clearly defining, unbundling and assigning functions is the first step; the second step is ensuring that counties receive enough collectively to fund those functions. This is sometimes referred to as ‘vertical sharing’. It is an intensely political process in all countries, and this is no less true in Kenya. Because there is never enough to meet all competing demands for expenditure, the process of vertical sharing should be focused on reaching a fair split, taking into account both national and county needs.³

Vertical sharing starts with an understanding of the aggregate needs of county governments. Existing spending by the national government on future county functions provides a good starting point. In the 2010/11 fiscal year, the national government budgeted KES 140 billion for a range of functions that could conceivably be transferred to county governments over time in line with the

³The Constitution of Kenya has provided guidance, both through the criteria listed in Article 203, and in the form of independent advice from the Commission on Revenue Allocation. In this respect, Kenya is already ahead of many countries with much more developed systems of decentralization.
Fourth Schedule of the Constitution. This analysis is shown in table 4.1, and uses the 2010/11 fiscal year to simulate the process of determining the vertical division of resources. It shows the key functions that might be transferred to counties (including the CDF), and what assumptions about the percentage split between county and national governments underpin the costing. These assumptions are further detailed in annex 2.2. The amounts attached to each function are converted into a percentage of the total pool of

Table 4.1: Current funding for devolved functions likely to be delivered

<table>
<thead>
<tr>
<th>Vote</th>
<th>% of vote budget devolved</th>
<th>Type</th>
<th>Budget 2010/11 (KES billions)</th>
<th>As % of sharable revenues in 2010/11</th>
<th>Budget 2012/13 as extrapolated from 2010/11 shares (KES billions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincial Administration</td>
<td>6.6%</td>
<td>R</td>
<td>2.7</td>
<td>0.6%</td>
<td>3.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>0.2</td>
<td>0.0%</td>
<td>0.3</td>
</tr>
<tr>
<td>River and Lake Basin Authorities</td>
<td>77.9%</td>
<td>R</td>
<td>0.8</td>
<td>0.2%</td>
<td>1.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>4</td>
<td>0.9%</td>
<td>5.4</td>
</tr>
<tr>
<td>Water and Irrigation</td>
<td>32.8%</td>
<td>R</td>
<td>2.1</td>
<td>0.5%</td>
<td>2.8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>5.7</td>
<td>1.3%</td>
<td>7.7</td>
</tr>
<tr>
<td>Health</td>
<td>42.7%</td>
<td>R</td>
<td>14.2</td>
<td>3.1%</td>
<td>19.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>3.6</td>
<td>0.8%</td>
<td>4.9</td>
</tr>
<tr>
<td>Road Maintenance (recurrent only)</td>
<td>25.2%</td>
<td>R</td>
<td>11.3</td>
<td>2.5%</td>
<td>15.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Construction of Roads (development)</td>
<td>67.7%</td>
<td>R</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>30.4</td>
<td>6.7%</td>
<td>41.1</td>
</tr>
<tr>
<td>Energy</td>
<td>17.1%</td>
<td>R</td>
<td>0.7</td>
<td>0.2%</td>
<td>0.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>2.7</td>
<td>0.6%</td>
<td>3.7</td>
</tr>
<tr>
<td>Constituency Development Projects funded through CDF</td>
<td>3.6%</td>
<td>R</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>14.4</td>
<td>3.2%</td>
<td>19.5</td>
</tr>
<tr>
<td>Agriculture</td>
<td>31.7%</td>
<td>R</td>
<td>3.3</td>
<td>0.7%</td>
<td>4.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>1.9</td>
<td>0.4%</td>
<td>2.6</td>
</tr>
<tr>
<td>Livestock and Development</td>
<td>81.4%</td>
<td>R</td>
<td>3</td>
<td>0.7%</td>
<td>4.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>2.3</td>
<td>0.5%</td>
<td>3.1</td>
</tr>
<tr>
<td>Urban Services</td>
<td>66.0%</td>
<td>R</td>
<td>12.3</td>
<td>2.7%</td>
<td>16.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Finance</td>
<td>2.3%</td>
<td>R</td>
<td>1.2</td>
<td>0.3%</td>
<td>1.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>0.04</td>
<td>0.0%</td>
<td>0.1</td>
</tr>
<tr>
<td>Forestry and Wildlife</td>
<td>40.7%</td>
<td>R</td>
<td>1.7</td>
<td>0.4%</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>0.7</td>
<td>0.2%</td>
<td>0.9</td>
</tr>
<tr>
<td>Public Works</td>
<td>49.8%</td>
<td>R</td>
<td>0.7</td>
<td>0.2%</td>
<td>0.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>2.5</td>
<td>0.6%</td>
<td>3.4</td>
</tr>
<tr>
<td>Fisheries</td>
<td>99.9%</td>
<td>R</td>
<td>0.9</td>
<td>0.2%</td>
<td>1.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>3.2</td>
<td>0.7%</td>
<td>4.3</td>
</tr>
<tr>
<td>Other functions</td>
<td>3.9%</td>
<td>R</td>
<td>6.7</td>
<td>1.5%</td>
<td>9.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D</td>
<td>6.6</td>
<td>1.5%</td>
<td>8.9</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>139.8</td>
<td>31%</td>
<td>189.2</td>
</tr>
</tbody>
</table>

Source: World Bank Staff based on Estimates of Recurrent and Development Expenditures 2010/11

Functions which cost more to deliver compared to others.
national revenue available for sharing. This allows the results to be applied to fiscal year 2012/13. For that year, the extrapolated cost of devolved functions would total KES 190 billion. Depending on what functions are actually transferred on “day one,” the amount that counties need in the early years of devolution might be much less, with a gradual progression towards this.

In thinking about function assignment, it makes sense to concentrate on defining the more costly functions first. Some functions cost a lot more to deliver than others (see highlighted rows in table 4.1). This is why it is so important to make function assignment decisions soon, so that the assessment of total county needs is based on an accurate understanding of which costs counties will be expected to bear.

As more functions are transferred to county governments, the counties’ share of national revenues will need to increase. International experience suggests that a good deal of discipline is needed to ensure that changes in the functional assignments always result in corresponding reviews of the funding arrangements, so that funding continues to follow function. Since the national government raises most of the revenue, and the national parliament decides on the respective shares of revenue, it will be up to the national government to ensure that counties have enough funding to do what they are responsible for. If this does not happen, and their resources fall short (as shown in figure 4.3), the inevitable result will be that services deteriorate. Because defining functions will remain a central ongoing dynamic in the system of devolution, it is crucial that these decisions are managed through an orderly and transparent process, in which fiscal implications are at the forefront.

Coordinate function assignment

The process for defining county functions, and the timing of their transfer, should be coordinated centrally. Line ministries know the most about how functions are best delivered, but they often seek to retain as many functions as possible. Because the Constitution requires that a minimum percentage of national revenues is shared with counties, devolving too few functions could leave the government with too little funding to finance its own responsibilities. This would potentially create pressure for more borrowing, and threaten the macro-economic stability Kenya has successfully maintained for a number of years.

Figure 4.3: Current funding for functions likely to be devolved is well in excess of 15%

Source: World Bank
Clarity of functions is not just important for financing, it is also key for accountability. Unless citizens know which level of government is responsible for what, they cannot hold them accountable. Even within a constitutional framework of function assignment, the distribution of functions is usually dynamic. Changes are likely as both levels of government determine what works best for service delivery. To ensure there is always clarity there should be: a framework for negotiating reallocation of functions between levels of government (preferably on a whole-of-government basis rather than ministry by ministry); and, a mechanism through which ordinary Kenyans can easily find out which level of government is responsible for a particular service.

Balance national interests

National needs also have to be considered. The national government retains important and costly functions, like education and police. The Constitution directs that national interests are also relevant in deciding the respective shares of national revenue. Figure 4.4 shows what the national government is currently spending on different functions, including debt servicing, and how much of that spending is financed by borrowing. The amount of ‘room to move’ within the national priorities is relatively small, in comparison to the large spending items. Many of the big items in the national budget are sticky. Spending on debt servicing, and on paying the salaries of teachers, soldiers, police and provincial administration, cannot be reduced overnight, or easily.

Box 4.3: How functions might be transferred

The Task Force on Devolved Government has included a proposed mechanism for the transfer of functions to counties in the draft Transition to Devolved Government Bill. The mechanism has four elements:

- (a) criteria for assessing whether a county is ready to receive a function
- (b) applications by individual counties for specific functions to be transferred to them
- (c) a determination on the application by the Transition Authority, also to be established under the same Bill
- (d) publication of the determination in the gazette.

This approach has several advantages. It establishes a natural filtering mechanism: to be able to apply, counties must have some capacity first. It provides a transparent process that is relatively free from discretion (as far as this is possible), and it puts an independent and neutral body in charge.

However, there are also some disadvantages. It is likely to generate a large volume of applications, with perhaps between 500 and 2,500 individual applications being generated. The Transition Authority will have to rely on line ministries to help it evaluate applications, because it is unlikely to have the technical expertise to assess whether a county is ready to carry out a function. Finally, the resulting ‘patchwork quilt’ of different counties with different functions (each presumably receiving funding on a different basis), would make the intergovernmental financing and performance management arrangements very complicated.

Source: World Bank adapted from the August draft of the Transition to Devolved Government Bill, downloaded from www.cickenya.org

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Source: World Bank adapted from the August draft of the Transition to Devolved Government Bill, downloaded from www.cickenya.org
At a time of fiscal hardship, Kenya simply cannot afford to give revenues to counties unless the corresponding costs are also shifted there. Moreover, transferring functions is never neat and tidy: some residual costs are inevitably left behind, at the national level, and costs of delivery at the local level cannot be assumed to remain the same. In particular, the proposal for national staff to be seconded to counties during the transition period creates a risk of blowing out the wage bill, if large numbers of the seconded public servants are not absorbed into county administrations and return to the national level, once the transition phase is over. All these issues need to be considered as part of the function assignment process.

Refine the costing over time

Current spending by the national government is a good starting place, but it does not tell the full story of county needs. These will also include: (i) the total cost of urban service delivery (which is partly funded out of own revenues); (ii) some service delivery costs that are currently being financed by donors; and, (iii) the costs involved in running the new county institutions created under the devolved government arrangements. Moreover, there are a number of reasons why the cost of delivering services at central versus local level cannot be assumed to be identical (these reasons include scale diseconomies, efficiency differentials etc.).

Current spending from the national budget also reflects the inequitable treatment of some parts of the country. In the more remote and marginalized counties, the national government currently does not allocate sufficient resources to assure a basic level of service delivery to their citizens. These counties will need additional resources if service and infrastructure gaps are to be closed. Figure 4.5 shows the number of people for each publicly funded hospital bed in each county. The county with the poorest access, Mandera, has more than ten times as many people per bed, than do the counties that are best served—Isiolo, Nyeri, and Elgeyo Marakwet.

If access to services must increase in underserved counties while maintaining existing levels elsewhere, the overall cost of service delivery will rise. Over

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*Section 28 Transition to Devolved Government Bill and Section 157 Devolved Government Bill, versions available on the Commission on Implementation of the Constitution website.*
time, the annual calculation of the vertical share should take into account this expansion, reflecting increases in the population and more equitable access to services.

4.2 How much should each county get?

Working out total needs for all the counties is only a first step; the next challenge is to distribute this total across the forty-seven counties. This process of horizontal sharing will be particularly complex because the goal of equalization will need to be pursued without disrupting services or undermining growth and efficiency. This has two major implications: (i) existing imbalances may only be tackled over time; and, (ii) equalization policies should target people who will benefit from improved services, rather than trying to achieve equality between different geographic locations.

Equalize access to services

Equity is a central value in Kenya’s Constitution, but how to achieve it in practice through redistribution is very complex. The difficulty derives from the fact that people have various understandings of what is equitable, and because broad principles eventually need to be translated into a workable transfer formula. While formulas can capture many different variables, there is always a trade-off involved. The more finely tuned a formula is, the more complicated it becomes. This is particularly important for Kenya, because the Senate will decide the formula for horizontal sharing. Members of the Senate are likely to want a simple formula they and their voters can readily understand.

Equity does not mean each county should get an equal share. At the very minimum, a formula should seek to balance the costs different counties will face in delivering their mandated functions. The crudest measure of cost differences is population: all other factors being equal, population is the most significant driver of cost differences between counties (figure 4.6 illustrates the outcome of a purely population based formula). But in addition, counties also experience other cost disabilities. For example, delivering services to people in remote areas that are sparsely populated costs more per person. Some populations also have
**Box 4.4: Equalization as an explicit goal of the Constitution**

Article 203 of the Constitution (Equitable share and other financial flows) explicitly underscores the redistribution objective of the proposed transfers architecture.

Among the criteria to be taken into account in “determining the equitable share“:
- developmental and other needs of counties
- economic disparities within and among counties and the need to remedy them
- the need for affirmative action in respect of disadvantaged areas and groups

*Source: World Bank staff based on the Constitution of Kenya*

higher service needs (for example if the population suffers more illness and disease). A simple formula can add measures such as land area (to account for the much higher unit costs of delivering services to sparsely distributed populations), or poverty prevalence (to capture higher needs associated with poor communities). Both of these measures are readily available for Kenya.

**Transfers may need to account for own revenue potential.** Counties are not only unequal in terms of needs, they will also have widely different abilities to raise revenues to meet them. Figure 4.7 shows the per capita revenues raised by local authorities in each of the 47 counties in 2008/09. Local authorities currently have similar revenue raising powers to those the counties will have, so these figures provide some indication of the revenues counties will be able to mobilise from their own sources. On this basis, the per capita local revenue of Nairobi county would be more than ten times that of Garissa county. This raises an important question about whether the transfers will take into account both the highly diverse set of needs as well as available resources. Formulas that take into account both needs, and resources are often described as fiscal gap formulas (see annex 2.3).

*Figure 4.7: Own-revenue potential will vary widely across counties*

*Source: World Bank staff calculations based on LATF annual report 2008/09*
Transfers should address equality of opportunity by equalising access to services—not gaps in levels of economic development. Article 203 of the Constitution requires that the formula should take into account “economic disparities within and among counties, and the need to remedy them.” But does this mean that each county can expect to eventually have a capital city the size of Nairobi, or an international airport?

It is not realistic to expect all counties to reach the same level of economic development. As nations develop, population and production concentrate around urban areas. In Kenya, few probably think that Turkana or Garissa will ever catch up with Machakos or Narok; likewise it is unlikely that Kitale can be tomorrow’s Nairobi. The process of development almost universally implies an initial increase in inter-area disparities in living standards, before the gap begins to narrow when countries reach a high level of income. The reason why these gaps in living standards narrow as a country’s income grows is because the benefits of economic development are increasingly shared with the whole population as a country becomes more wealthy. The main avenue for sharing wealth—achieving inclusive growth—is to improve social services that benefit all citizens.

Policies seeking to reduce internal disparities in production and living standards are likely to be inefficient and costly. Not all counties, even with adequate infrastructure and public services, have the same potential to develop. In these cases, it is much less costly to move factors of production (workers and capital) from lagging to leading regions—where their full productive potential can be realized—than to develop remote areas. While large transfers to lagging regions would possibly generate equity and efficiency benefits for that region, the country as a whole would be losing.

The goal should be that all Kenyans have the same opportunities through universal access to services and deeper integration of the economies of different regions. While not all regions of Kenya will grow at the same rate, redistributive policies—including intergovernmental transfers—should seek to ensure that all Kenyans, regardless of where they live, have access to a basic bundle of quality services such as basic education and health, drinking water and sanitation, and security. This means adequately resourcing counties, to the extent that they are able to use these resources efficiently and transparently. Moreover, the distance between lagging and leading areas should be narrowed through integrated

>> Box 4.5: People versus places ... re-inventing the wheel?

The World Bank’s 2009 World Development Report must have seemed extremely familiar to Kenya’s policy-makers. Its flagship recommendation, to target equalization policies at “people versus places” is strikingly similar to the directions of Sessional paper 10/1965. In paragraph 134 of the section entitled Provincial Balance and Social Inertia the paper states:

The purpose of development is not to develop an area, but to develop and make better off the people of the area. If an area is deficient in resources, this can be best done by-

(i) Investing in education and training of the people whether in the area or elsewhere;
(ii) Investing in the health of the people; and
(iii) Encouraging some of the people to move to areas richer in resources; and of course
(iv) Developing those limited resources that are economic.

Good intentions don’t always result in good outcomes. Enduring inequalities in Kenya reflect the failure of the central government over the years to roll out the policies outlined in the 1965 Sessional paper.

The transfer system under devolution should empower and resource county authorities to do precisely that. However it does not and should not force them to do so. The challenge on going forward will be to design the proper democratic and financial incentives to realise these outcomes.

Source: World Bank

Constitution of Kenya, Article 203(1)(g).
**Box 4.6: Simulating the complexity of sharing revenue across counties**

For the purpose of illustration, 15 percent of Kenya’s revenue raised nationally in respect of FY 2010/11 is divided among the forty seven counties on the basis of three different hypothetical allocation formulas:

- Formula # 1: Purely per capita allocation
- Formula # 2: Current CDF formula [equal shares (75 percent) and poverty rate (25 percent)]
- Formula # 3: Simulated inherited needs [county share of hospital beds]

The resulting allocations to six selected counties are as follows:

<table>
<thead>
<tr>
<th>County</th>
<th># 1: Total Pop</th>
<th># 2: CDF Formula</th>
<th># 3: Hospital Beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kakamega</td>
<td>1,000</td>
<td>2,000</td>
<td>3,000</td>
</tr>
<tr>
<td>Meru</td>
<td>2,000</td>
<td>3,000</td>
<td>4,000</td>
</tr>
<tr>
<td>Mombasa</td>
<td>3,000</td>
<td>4,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Murang’a</td>
<td>4,000</td>
<td>5,000</td>
<td>6,000</td>
</tr>
<tr>
<td>Nairobi</td>
<td>5,000</td>
<td>6,000</td>
<td>7,000</td>
</tr>
<tr>
<td>Narok</td>
<td>7,000</td>
<td>8,000</td>
<td>9,000</td>
</tr>
</tbody>
</table>

**Main take-aways:**
- The choice of formula will generate widely different outcomes for each individual county and therefore creating and winners losers.
- Formulas with equal share components will disproportionately benefit small counties.
- Accounting for inequalities will need to be traded-off against the risks of:
  - Leaving richer counties with significant unfunded liabilities; and
  - Exposing poorer’ counties to absorptive bottlenecks.

*Source: World Bank*

infrastructure development, which will connect marginalized areas to the country’s growth poles.

**What are the implications for the transfers system?**

- Unconditional intergovernmental transfers should first and foremost seek to equalize the capacity of counties to deliver a basic package of essential services;
- Additional policy goals could be financed through conditional instruments;
- Central government may retain the responsibility for developing integrative infrastructural policies that facilitate the movement of goods, services and people.

*Safeguard economic efficiency and growth*

Large-scale redistribution across counties may not be possible or desirable immediately, given budget constraints and efficiency considerations. All other things being equal, any formula that would channel
significant additional resources to marginalized or lagging counties would result in reduced funding for all other counties. There are two major risks: firstly, even wealthy counties may not have the flexibility to rapidly reduce outlays, particularly if they are currently allocated to sticky uses (such as personnel or multi-year projects). Secondly, these counties are also among Kenya’s most dynamic regions, which are driving economic growth and generating the bulk of the national income out of which redistribution efforts will eventually be financed.

The immediate priority is to preserve existing service delivery. Kenya’s counties start from very different positions. This also means that they will inherit vastly different obligations in terms of existing sticky expenditure liabilities. Any drastic move to redistribute resources away from affluent towards destitute counties could result at best in severe fiscal stress, and at worse in the collapse of essential service delivery. For instance, figure 4.8 presents a very crude simulation of “winners and losers” if existing resources for district health⁶ were reallocated purely on a population basis. Counties like Kisii or Mandera would benefit, but Uasin Gishu or Nyeri would see a dramatic decline in the resources available to fund existing services. That is because these areas currently have good access to health services compared to the rest of the country, and redistribution of resources will mean they will get substantially less. In some cases, they may get so much less that they cannot afford to maintain services at existing levels.

Equalize over time. While the short run priority is to maintain existing service delivery, this does not mean business as usual forever. Equalization should be pursued over time. Box 4.7 provides an illustration of how redistribution can be phased in gradually, and this should be clearly communicated to the public, so that it is widely understood.

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*To estimate current allocation we have used distribution of nurses as a proxy.*
Box 4.7: How Papua New Guinea introduced equalization gradually

Papua New Guinea introduced a new intergovernmental financing system in 2008. The political negotiations involved in getting sufficient number of MPs to pass the required constitutional amendments meant striking a deal to ensure no province would lose out as a result of the changes. Mechanisms of this kind are often called ‘hold harmless’ provisions.

The new arrangements provide for provinces to share a percentage of national revenue called the Equalisation Amount. Over a five-year transition period, the provincial percentage share has gradually increased each year, starting from a base which gave provinces a slight increase over the previous year. The distribution of the Equalisation Share is based on a two-step process. First, an amount equal to the nominal value of the amount each province had received in the year before the new system began was distributed. Second, the remaining balance is distributed on an equalisation basis. As the amount of the Equalisation Share increases each year, there is more available to equalise.

At the end of the transition period, these ‘hold harmless’ arrangements stop, and the whole pool is distributed on an equalisation basis. Initially, it was feared that this would result in some provinces’ funding suddenly reducing, but it was decided to deal with this closer to the event. As it happens, these fears have not been realised. Because of strong national revenue growth, the equalisation pool has grown, and the amount available for all provinces is sufficient to ensure any decrease is very small compared with overall levels of funding.

Source: World Bank

There is a second compelling reason for avoiding radical redistribution. Areas that currently receive the lion’s share of national revenues not only provide services that reach beyond county boundaries (such as referral hospitals and international airports), but also generate the bulk of these revenues to start with. Maintaining services in these areas is essential to continued wealth creation for the whole country. Specifically, there is an acute risk that the ability of Kenya’s cities to remain the country’s main engines of growth will be significantly undermined.

4.3 Protect the urban growth engine

Urban areas are increasingly important for economic growth in Kenya. Currently the bulk of Kenya’s economic output comes from its urban centers and as the economy becomes more service oriented, and less dominated by agricultural production, economic growth will be more dependent on good urban management. Urban areas provide proximity benefits to businesses. But firms need more than just proximity: they need an enabling environment that provides well-managed transport networks, good security, consistent power supply, and management of solid waste. In other words, stable and reliable delivery of basic urban services.

As cities grow in size, delivering these functions becomes more complex and expensive. This is why international practice is for cities to be managed by democratically elected, fiscally autonomous urban local governments that can collect taxes from urban residents and use them to provide urban services. City governments are amongst the most complex public sector organizations, with large programs of capital investment, extensive asset management, and sophisticated accrual accounting systems.

Mitigate recentralization of urban service delivery

The recently enacted Urban Areas and Cities Act 2011 recentralizes urban service delivery for most urban areas from local authorities to county governments (see box 4.8). It remains to be seen what impact this bold and globally unprecedented experiment in urban management will have over time, but there is a clear risk that urban service delivery may be interrupted in the short to medium term. There are two aspects of the new arrangements that give rise to this risk: (i) the abolition of corporately managed bodies for most urban areas in Kenya; and, (ii) the recentralization of management responsibility under county governments, most of which will likely have a strong rural bias.
Box 4.8: Recentralization of urban service delivery?

Under the Urban Areas and Cities Act:
- County governments can establish corporate municipal boards for urban areas over 250,000. All other areas have town committees that operate through the county administration.
- Cities can be established for urban areas over 500,000. A special purpose city can be created if there is good reason, but this is unlikely to apply to urban areas that are too small to be municipalities.
- Members of the municipal and city boards will be appointed (in part by the county government, and in part by local associations representing professional, business, informal sector and residents).
- Municipal and city council functions include planning, control of land use, regulating public transport, and service provision functions delegated by county governments.
- Funding for municipal and city county functions will come from grants from the county government, or revenue raising powers delegated by the county government.
- Citizen fora will provide an opportunity for citizens to air their views.
- Nairobi is the capital city will be governed as a county. Kisumu and Mombasa are deemed to be cities.

Source: World Bank

Only three of the existing local authorities qualify to become city or municipal boards under the Urban Areas and Cities Act. The Act provides for cities and municipal areas to have corporate bodies to manage them, but it sets a minimum population threshold of 250,000. Urban areas between 10,000 and 250,000 are classified as towns and entitled only to an unincorporated town committee to advise the county government on management issues. Assuming Nairobi and Mombasa are governed as counties, only three urban areas will qualify for municipal boards—Eldoret, Nakuru and Kisumu. Kisumu is deemed a city.

Even if they do not have direct electoral representation, having corporate entities to manage urban services would provide greater continuity with existing local authority arrangements. A larger number of urban areas would have had corporate management under the proposals of the Task Force on Devolved Government, which recommended the minimum threshold for municipal boards should be 75,000 inhabitants. The threshold was lifted when the Bill was debated in Parliament. Table 4.1 shows the impact of this different threshold on the number of corporate entities. The table in Annex 2.4 shows which urban areas would have corporate management under different population thresholds.

Maintain urban services to generate county revenues and nurture private sector growth

Urban residents will contribute a disproportionately large share of county revenues, but they could be the biggest losers under Kenya’s devolution. Only five counties (Nairobi, Mombasa, Kiambu, Kisumu and Machakos) have a majority of urban residents (see figure 4.10). In these counties, there is less reason to fear the deterioration of urban services because the majority of residents will be very concerned to ensure

| Cities under Urban Areas and Cities Act (UACA) (threshold 500,000 + Kisumu) | 3 |
| Municipalities under UACA (threshold 250,000) | 2 |
| Number of urban areas over 75,000 (TFDG recommendation for municipal threshold) | 33 |
| Number of counties that would have at least one municipal board, if threshold is lowered to 75,000 | 22 |
| Number of counties with no urban area having a municipal board, if threshold lowered to 75,000 | 25 |

Source: World Bank
their county governments look after these services. In the other forty-two counties, rural residents will be in the majority. There is a real risk that they will use their majority in the Assembly to direct resources away from urban services.

The risks of under-funding urban services could be managed by having earmarked funding for urban services, and by setting standards and benchmarks for urban service delivery and monitoring them. Earmarked funding would involve financing urban service delivery (outside Nairobi and Mombasa) through conditional grants. Counties could be required to contribute to funding of urban services as well, since they benefit from the revenues generated by urban residents. As a complement to this, the national government could set standards for urban service delivery, including benchmarks for the resourcing required to finance effective service delivery. Benchmarking would provide citizens with a basis to assess whether their county governments are giving sufficient priority to urban services. Standards and benchmarks are likely to be important for other sectors too, as there are broad risks of poor prioritization in resource allocation by the counties that need to be managed.
4.4 Desing an integrated financing architecture

Conditional grants could play a fundamental role in the new intergovernmental transfers architecture for three reasons: (i) to safeguard priority expenditures at the local level such as primary health care; (ii) to elicit and reward county performance; and, (iii) to ensure that the equitable share formula (governing the distribution of unconditional grants) can remain as transparent and simple as possible.

But making space for conditional grants implies adjusting the unconditional equitable share. To maintain fiscal flexibility and sustainability, all the different kinds of transfers need to be considered as a whole in terms of how adequately they meet the total needs of counties.

Consider all the transfers together

The (minimum 15 percent) equitable share is not the only source of revenue to meet county needs. Counties have their own source revenues and the government may also finance them through other conditional and unconditional grants and via the equalization fund. However, the scope for the government to target and leverage expenditure at the county level via conditional instruments will depend on the fiscal space left after the government has accounted for the (unconditional) equitable share and other priority expenditures.

The higher the proportion of county need that is met through the equitable share, the lesser the scope for targeted conditional transfers (and vice versa). Figure 4.12 shows three different financing models for how those needs could be met. In option 1, the equitable share is paid at the minimum level of 15 percent, and the remaining need is met from conditional grants. In option 2, all county needs are addressed through the equitable share. There is a large range of options in between. Option 3 shows one of those, under which the equitable share is increased, but not to the full extent of needs, thereby requiring some conditional funding.
Figure 4.12: Three basic options for financing counties

Option 1: Maximum conditionality

Equitable share is paid at the minimum level required by the Constitution, 15 percent national revenues

Option 2: Maximum flexibility

All county needs are addressed through unconditional equitable share

Option 3: Mix of conditionality and flexibility

Equitable share is increased to more than 15 percent of national revenues, with remaining county needs addressed through conditional grants

Source: World Bank
Keep in mind the cost of conditional grants to the center

There are strong arguments in favour of some conditional funding to counties if only to continue existing programs. But conditional funding will need to be considered and prioritized carefully as it will be additional to the minimum 15 percent allocation.

Government may already be considering the use of conditional grants to fund counties. A number of existing programs tie funding to spending on particular purposes (see box 4.9). If continued, these mechanisms would effectively constitute conditional grants to counties. Additional conditional grants may also be appropriate for financing cross-border services—where one county is responsible for delivering a service that several other counties depend on (for example, provincial hospitals).

A key implication of this analysis is that decisions about the vertical share and decisions about conditional grants need to be made together. If these decisions are made separately, there is a risk that counties will be given too much, or too little, relative to the functions they will have to pay for. The county equitable share will be determined through the Division of Revenue Bill, enacted by Parliament. Treasury, Parliament, the CRA and counties will be involved in consultations through which the vertical shares are decided. What the foregoing discussion highlights is that these discussions must also involve consideration of conditional grants, which will be the other main source of revenue for counties. This consultation will need to start early in the budget process in order to be effective.

Fiscal space must be preserved for conditional transfers. For devolution to have any meaning as the Ugandan example suggests (see box 7.1) counties must be able to freely determine their own spending priorities. The Kenyan Constitution does justice to this by imposing a minimum untied transfer. But to the extent that the sharing formula will need to be simple and transparent (and therefore relatively crude), conditional transfers may also be needed to cater for: (i) counties with special needs; (ii) programs of strategic significance; and, (iii) projects that are asymmetric in space or time.

Box 4.9: Existing funding arrangements that would be conditional grants if continued

To the extent that they remained earmarked to specific uses, these programs would have to be financed through conditional grants and their costs would not be included in the calculation of the county equitable share:

Road maintenance—county share KES 11.3 billion. Road maintenance is currently funded through the Road Maintenance Levy Fund, financed by a fuel excise. If this funding is to continue to be tied to road maintenance, it would need to be an earmarked grant.

Constituencies Development Fund (CDF)—KES 14.4 billion. Some commentators have suggested that CDF will be maintained as a dedicated fund, but devolved to counties to manage. If CDF continues to be an earmarked program for spending only on specific projects, and allocations calculated using a specific formula, then it will effectively constitute an earmarked grant.

Local Authorities Transfer Fund (LATF)—KES 12.3 billion. Urban services are partly funded from the national government’s LATF. If the national government wishes to earmark funding for urban service delivery, this would not be factored into the calculation of the county equitable share.

Staff costs—Not known. The draft Transition to Devolved Government Bill recommends that during the transition period, staff performing devolved functions should be seconded to county governments, and their salaries should continue to be paid by the national government. Around KES 10 billion is currently being spent on the costs of district-level staff in health and agriculture sectors alone. If these remain national costs, they would not be factored into the calculation of the county equitable share.

Source: World Bank
5. Get accountability right from the start

The Constitution seeks to reshape the way citizens relate with government, and places a strong emphasis on principles of participation, transparency, and accountability. The spirit of devolution is to bring government closer to the people, so that they can better communicate their needs to the government, and ensure that the government responds to their needs. In particular, the Constitution seeks to “enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them.”

Nonetheless, devolution by itself will not necessarily produce such responsiveness or accountability. Global experience and empirical research provide many examples of accountability failures in decentralization reforms, leading to substandard service delivery and corruption. Factors that prevent traditional top-down accountability systems from functioning well in a decentralized setting include: (i) geographic distance from central government; (ii) diffused reporting lines; (iii) the multiplicity of programs; (iv) projects and funds that are dispersed at the local level; (v) low capacity levels.

Kenya’s own experience with decentralized funds—such as CDF, LATF and community-driven development (CDD) projects—highlight some of these challenges. Kenya’s audits, expenditure reviews, and civil society monitoring initiatives regularly document white elephant projects and significant levels of waste and leakage in government programs. According to these reviews, factors that often limit accountability to local communities and citizens include: (i) overlapping roles and responsibilities across decentralized programs; (ii) limited systems to reliably account for funds or track performance; (iii) limited availability of information on project activities; (iv) finances and performance; and, (v) limited systems to enable communities and citizens to obtain recourse.

A mixture of both top-down and bottom-up accountability systems are crucial for managing the risk that county governments will use their resources poorly: by favoring only some parts of the county, by spending on low-priority unproductive expenditures, or by spending too much on salaries. Traditionally, accountability has been about having strong systems of reporting to a central authority that can take action if resources are managed poorly (i.e. ‘top-down’ accountability). This approach is less effective in decentralized settings. When resource management is decentralized, it is difficult to exercise top-down oversight, because decision-making is more diffused (so it is hard to track who is responsible) and because these decisions are made a long way from the capital, and are far from centres of oversight. This means it is even more important for effective devolution to strengthen the ‘bottom-up’ systems of accountability that empower citizens to hold their elected local representatives accountable. But these mechanisms also rely on strong central systems. The two approaches—top-down and bottom-up—complement each other.

5.1 Build strong public financial management systems

The new Constitution raises big challenges for public financial management institutions at both national and local level. At local level, the significant increase of funding flows to local government, combined with the massive administrative reorganization involved in building a new tier of county governments, will make managing public money in the newly decentralized system a key challenge. Although many civil servants are in place, most of them will have had little experience at making major resource management decisions. The skills of staff across a range of devolved sectors (health, agriculture and so on) in planning, budgeting, budget implementation and managing human resources, are likely to be weak or non-existent.

A large, rapid, well-planned and carefully implemented program of capacity building is required to prepare civil servants and politicians for this new challenge. Staff in many local governments lack sufficient experience in planning, budgeting,
spending, reporting and accounting for such large funding flows. New structures, reporting relationships and accountabilities will be established at county level to manage these funding flows, with county governments responsible for meeting legal public financial management standards set in national legislation, and horizontally accountable to County assemblies. County governments will be required to submit their annual financial statements to the Auditor General. If counties make serious or repeated material breaches of the public financial management legal framework, they are liable to have their transfers curtailed by the Cabinet Secretary for Finance.

However, before capacity can be built, systems need to be put in place. Regardless of how many laws provide for public financial management, it is essential that there should be a single, country-wide public financial management system, covering both national and county governments. Elements of this system would include:

- a budgeting format that highlights expenditure on services (particularly transfer of funds to facilities) and projects, with planned outputs specified
- a common classification system for budgeting and accounting
- a single channel for flow of funds to county governments that eliminates the fragmentation of the current system
- a sound framework for managing disbursement of grants to community projects, facility-level service delivery, and small projects

There is also scope to avoid disconnection between planning and budgeting systems by integrating both functions under a single department at the county level. This would require integration of what are currently separate provisions proposed in the draft Public Finance Management Bill, and the draft Devolved Government Bill.

County assemblies will play an active role in financial management and will also need considerable support to develop their capacity. County assemblies will be empowered to safeguard the fiscal health of the County governments through setting and tracking levels of borrowing, scrutinising deviations from fiscal responsibility principles, reviewing fiscal strategy papers, considering budget review and outlook papers, and County government debt management strategies, considering and approving budget estimates, and enactment of associated County appropriation Acts. This will in turn involve building,
more or less from scratch, specialised committee structures with additional analytical support in the forty-seven new County assemblies. Learning from early good performers and sharing experience of what works and what does not among County assemblies will be important in ensuring all assemblies are able to guarantee a basic level of financial oversight. However, the capacity of county assemblies to hold the county executive accountable will only be truly effective if the accountability ‘loop’ is complete, and county citizens are empowered to hold their elected representatives accountable as well.

“Effective participation requires feedback systems, such as complaint mechanisms and customer satisfaction surveys.”

5.2 Promote accountability to citizens

Preventing accountability failures in devolution requires a sustained effort to enable citizens to participate in and hold local government to account. Bottom-up participation and accountability systems can complement traditional top-down accounting, auditing, and performance management systems. Effective citizen participation and bottom-up accountability requires several key mechanisms to be put in place:

• Transparency of government programs, rules, finances, and performance. To participate effectively, citizens need to access financial management and performance information on public service delivery in formats that are readily available, clearly presented, timely and relevant. Online access to information is the easiest means of making this information accessible to a national audience, but paper documents should also be available in public offices upon request. Transparency of fiscal information at the facility and project level, including for schools, health centers and Community Driven Development projects, best ensures that this information is relevant for citizens. Transparency can be safeguarded through legal provisions that mandate the publication of information on programs, finances, and performance.

• Participation mechanisms that enable citizens to express their views on development priorities and to monitor the performance of government programs. To be effective and fair, these mechanisms must be open to the public, and especially to marginalized groups, well designed to allow substantive input, and relevant to citizens so that their participation is meaningful. Effective participation also requires feedback systems, such as complaint mechanisms, customer satisfaction surveys, etc., that enable citizens to directly provide feedback on service delivery performance and funds.

Effective citizen participation requires both information sharing and participatory feedback mechanisms—a piecemeal approach is unlikely to be successful. Uninformed citizens cannot participate effectively, meaning that key fiscal and performance reports, especially the budget, must be made public in a timely and accessible manner. Citizens who participate substantially in the identification and design of a project are much more likely to provide feedback on it, such that participation promotes accountability. These elements of social accountability can reinforce one another.

Transparency of national government disbursements to county governments is also important. It is common in devolved systems for lower-level governments to blame service delivery stagnation on the national government’s failure or delay in release of funds. The Controller of Budget is already constitutionally mandated to oversee the implementation of the budgets of the national and county governments. In addition to this oversight role, he/she could be required in legislation to publish a simple monthly report on intergovernmental transfers, to show the
public the volume and frequency of transfers. This approach was utilized in Nigeria’s decentralized system, and helped to diffuse public mistrust of central government, focusing public scrutiny and pressure on the use of funds. Of course, information alone is not a sufficient condition to improve service delivery, but it is an important ingredient in a broader set of institutional reforms.

Kenya can draw on its experience using performance-based funding, to reinforce both upward and downward accountability by local authorities. The Local Authority Transfer Fund system seeks to reinforce both citizen participation and timely submission of plans and financial reports, by linking a proportion of funding to compliance with these requirements. A Local Authority Service Delivery Action Plan (LASDAP) must be prepared annually with input from citizens.

However, while the LATF system was largely successful in ensuring reporting by local authorities, the information they produced is not usually made public. The LATF Regulations specify in detail the penalties for late submission of required information, but there is no requirement in the Act for the reports to be made public, so the information has typically not been made available to citizens. The Public Expenditure Review of 2010 also observed that the quality of reports was quite substandard, reinforcing the need for enhanced capacity and transparency. The LASDAP process is intended to include citizens in the local authority planning process through public meetings, but several reports suggest that attendance is often limited, and budgets are not well aligned with the priorities identified in the LASDAP plans.

Several actions can strengthen participation, transparency and accountability in public financial management and performance of county governments. A first key action would be to establish a clear legal framework that supports participation, transparency and accountability. The public financial management legal framework, and the devolution bills, are the most appropriate place to require transparency of financial and performance information, and to detail the mechanism, timing and which office or official is responsible for compliance. Legislation can also provide strong legal mandates, as well as sufficient space (time) in the budget cycle to ensure meaningful participation in budget prioritization and monitoring.

Drawing on the LATF system, production of financial and performance reports could be tied to transfers, and these documents should be publicized, especially on the internet. The production of these documents could be among the performance conditions attached to performance grants discussed earlier. A more robust system of performance funding would build on the LATF by also requiring publication of the reports on the internet, and providing a system of independent verification, to confirm their accuracy. Transparency of this information will better inform citizens, and will also aid in creating pressure to improve the quality of the reports.

Building on the LASDAP system, devolution laws could require county governments to involve citizens in the budget and planning process, give the county administration responsibility for facilitating this, and integrate planning and budgeting more closely. Responsibility for designing opportunities for participation is better vested in the county administration so that it remains political. The Governor and assembly members should be invited to participate but should not control who attends.

The county administration should also be responsible for upholding certain good practices of participation, such as openness, inclusion of minorities and marginalized groups, and clear communication of events to the general public. Planning and budgeting units should be under a single county department to help make sure that planning actually feeds into budget development (and vice versa).

Kenya has the opportunity to be a leader in Africa with respect to transparency and local government accountability, but getting accountability relationships right will require sustained effort to build the capacity of both county governments and citizens to use them effectively. A strong legal
framework is important, but building effective participation and accountability mechanisms will also require substantial capacity at both levels of government. Capacity will be needed at the national level to develop systems (including for soliciting citizen feedback and registering complaints), and at the local level to implement them (including transforming complex financial information into formats that are accessible by citizens). This is an important component of a long-term project of capacity building to support the effectiveness of devolved government. It is important that these long-term goals should not be overlooked in the preoccupation with immediate and urgent concerns that will inevitably accompany the early transition period.

6. Manage risks

Kenyans have embraced devolution with the hope that it would solve three enduring governance bottlenecks: a monopolistic use of state power to the benefit of certain groups and regions, widespread corruption, and inefficient administration, and a desire by the majority of the population for a more equitable distribution of resources.

Economic theory would say devolution is precisely the right answer to these problems; but the experience of many other countries suggests a less clear-cut picture. If it is not well prepared and implemented, devolution could result in exacerbated inequalities, decentralized corruption and disrupted services. In particular, even if the transfers are fair, and adequately balance competing considerations of equity and efficiency, this alone will not be sufficient to ensure that the promise of more equitable service delivery is fulfilled.

While resources are important, counties’ abilities to use them well will be equally key and equally challenging. Ironically, counties that need additional resources are least likely to be equipped to use them well. There is a risk that implementation failure may provoke a backlash against devolution that leads ultimately to centralisation.

6.1 Risks of poor spending

The impact of transfers to counties on overall inequality critically hinges on the way they are managed at the county level. Empowering and resourcing county governments is not a guarantee for equity within counties. Devolution will transfer discretion over the use of significant public resources from the national to the county level. To the extent that specific regions may have been penalized by central neglect or discretion in the past, this is a major protection. But global experience indicates that local governments will not necessarily be more virtuous. They may face perverse incentives and pursue misguided policies. If unchecked, county leaders could use their offices to benefit powerful subgroups or interests. From a political economy point of view, county governments may be more prone to elite capture and less willing to trade-off narrow local interests for national greater good. Kenya’s own experience with decentralized funds has highlighted some of these challenges.

Increased control over resources by county governments will not automatically translate into expenditure that prioritizes service delivery. Many countries’ sub-national governments have trouble spending money well. Common problems include over-spending on salaries and administrative overheads, at the expense of service delivery and infrastructure investment. If county governments spend poorly, service delivery standards could actually worsen, instead of improving. The role of central government in setting and monitoring standards will be critical in managing this risk. The elements of a strong system of performance management for county governments will include standards for expected service delivery, indicators for measuring them, a system of regular reporting, and incentives for county governments to report accurately. Funding that is linked to meeting performance...
Box 6.1: Performance criteria under the Local Authorities Transfer Fund: A possible model

Local authorities can receive a full payment from the performance account if they submit seven documents: financial statements (revenues, expenditures, cash and bank balances), statement of debtors and creditors and debt management proposals, abstract of accounts, revenue enhancement plan, and a Service Delivery Action Plan.

Criteria for accessing the higher performance account are:

- executing the local authority budget as planned
- keeping expenditure on personnel emoluments within 5 percent of the budgeted amount
- increasing revenue collection by more than 10 percent
- implementation of the strategic plan
- having an unqualified audit report for the previous financial year

Source: World Bank based on LATF Regulation

indicators related to the establishment and operation of these systems—rather than to the service delivery outcomes themselves—can play an important role in reinforcing performance management systems.

6.2 Human resource risks

The importance of human resources in decentralization is often under-estimated. Capable personnel are crucial to achieve the promises of devolution, but human resources also present substantial risks to the effectiveness of decentralization. Governments with lower capacity find that employing more staff is the easiest way of all to spend money. This tendency is compounded by local pressures to employ staff as a way of shoring up political support. Managing human resources well relies on three key elements: (i) containing the risk of overspending on salaries; (ii) getting incentives right to encourage counties to acquire and retain skilled staff; and, (iii) increasing the focus on, and incentives for, good performance.

Overspending on salaries is a particular risk in the Kenyan context, because the Constitution gives county governments full control over engagement of staff. Article 235 of the Constitution empowers county governments to hire and fire staff, within a framework of uniform norms and standards. In order to manage the risk of overspending on unproductive consumption expenditure, this framework should include benchmarks for expenditure on personnel costs, and a standard remuneration framework. Absence of a standard remuneration framework may have another unintended consequence, in that it may lead to a widening capacity gap between rich and poor counties.

Kenya already experiences an inequitable distribution of staff and skills across counties. An unintended consequence of having forty seven individual county public services may be to further entrench or exacerbate this inequity, particularly if wealthier counties have the power to attract the most skilled public servants. There are a number of ways this risk can be addressed, but all of them require a national framework—for remuneration, entitlements to staff development, and other benefits—that give skilled staff an incentive to work for the county public services that need their skills the most, but are least likely to be able to attract them.

6.3 Structure funding to improve capacity

In seeking ways to improve county government performance, carrots may work better than sticks. Linking some proportion of funding to nationally-set performance benchmarks provides an incentive for county governments to meet those benchmarks. In developed countries (and some developing ones), the performance benchmarks are related to service delivery outcomes, or outcome improvements. In weaker capacity environments local governments may lack the basic systems of public administration that allows them sufficient control over resources to set and meet performance targets. In these contexts, improvement of systems is an essential precursor to improvement of services.
Performance-based grants can reinforce the development of essential public financial management and performance monitoring systems. Funding is calculated on the basis of compliance with a set of indicators relating to both functioning and improvement of basic elements of these systems. This is similar to two components of the current Local Authorities Transfer Fund (see box 6.1). Performance grants systems supported with donor financing have operated in over twenty countries, some of them for more than a decade. Kenya can draw on this experience to improve the approach to performance-based financing for counties. A key lesson is that the design of a robust monitoring system, involving self-reporting, desk auditing, and field review teams with independent personnel is crucial. Given the political context of devolved government, it may be appropriate for the highest level intergovernmental coordinating body to play a role in overseeing the monitoring of county government performance. This approach can be useful in establishing transparency about county governments’ performance among their peers, giving an even greater incentive for improvement.

Conditional grants, in which some funding is tied to specific kinds of spending, may also play a limited role. In general, experience shows that conditional grants with complex conditions are relatively ineffective because they are very difficult to monitor. However, a simpler form of earmarking referred to as function block grants, or sector block grants, can serve to signal the county government about the amount that should be allocated to a particular sector or program. Conditional grants can also be a useful way to tailor the allocation formula to a particular purpose, rather than complicating the general equalization formula with several different elements. Urban services may be a good candidate for this kind of conditional grant in the Kenyan context for both these reasons. Ultimately, the effectiveness of any kind of tied funding—whether tied to capacity benchmarks or to spending purposes—will depend on strong systems of public financial management.

7. Navigate a major public sector transition

Implementing devolution will involve a radical transformation of Kenya’s public sector. Such a transformation presents enormous opportunities for improvement, but also carries correspondingly high risks that—at least for a period—outcomes worsen while the new systems are rolled out. Public sector transition is also the area of greatest risk for increased fiscal instability. If transition is managed in a way that increases total public sector employment in an uncontrolled way, this will be to the detriment of both fiscal discipline and devolution outcomes.

Kenya’s devolution is one of the most ambitious to be implemented globally. In many countries, decentralization is a process of giving political autonomy to administrative units that are already in place. In Kenya, devolution will entail not only creating new political units, but also creating entirely new systems of administration that will absorb some or all of three existing systems of administration.

The golden rule of implementing decentralization is ‘do not disrupt service delivery’. Deterioration of services can rapidly erode popular support for decentralization. The dissipation of support in turn provides ammunition for recentralization. Therefore, ensuring that county governments do not over-reach themselves too early is important to protect the widespread support they enjoy at the moment. The risk of service deterioration in the Kenyan situation is greater because the changes to systems of public administration are on such a large scale.

Three specific aspects of the transition process warrant close attention. The first question is how such a complex transition will be managed and coordinated. Second, the single biggest transition issue will be managing the movement of public servants from national ministries and local authorities to county administrations, in line with the staff-intensive service delivery functions that are being transferred. A third overlapping issue is the sudden transition from local authorities to new
county governments, which raises serious risks of interrupting important urban services.

**Someone needs to be in charge.** Decentralization is one of the most substantial reforms any government can undertake. Because Kenya’s devolution is so ambitious, coordinating its implementation is a major undertaking. The Task Force on Devolved Government has proposed the establishment of a Transition Authority. International experience suggests decentralization is likely to be more successful if it is independently coordinated, but time is a major factor. Further empowering the Commission on Implementation of the Constitution may be a more realistic option given the short time left to get the new arrangements in place.

**There should be a plan.** The main function of the independent body supporting implementation should be to steer, not row. It can do this most effectively by developing and getting agreement on a high level strategy for implementing devolution that will guide line ministries. The detailed leg-work of implementation needs to be done by line ministries, because they understand the detail and technical dimensions of their functions. Above all, decentralization is a change management process for national ministries whose roles will change from actual service delivery, to setting standards and overseeing them. But oversight will be needed to make sure they stay on track. This should be the job of an independent body.

**The plan should aim to devolve incrementally.** Rapid decentralization comes with high risks. In other countries like Uganda, the impact of rapid decentralization was disruption and deterioration of important services (see box 7.1). This provided ammunition for line ministries to argue successfully for increased controls over funding and staff that effectively led to a recentralisation of control over key resource decisions. Uganda’s district governments now seems more like de-concentrated administration than a genuinely autonomous system of local government.

**A clear policy on what will happen to public servants is needed soon.** Around 32,000 local authority employees and as many as 50,000 national public servants are likely to move to county governments. More than 70 percent of the staff of the two health ministries alone will move (see figure 7.1). The Task Force on Devolved Government has recommended that these staff should initially be seconded, while county governments undertake their own recruitment of staff, including from the ranks of seconded staff. The bills the Task Force has prepared included provision for this approach. However, it is not clear what entitlements public servants will have—will they be entitled to refuse secondment, and if not recruited to a county government, will they be entitled to return to their original job (even though it may not longer exist)? This decision has major fiscal implications if the national government is left to continue paying staff whose jobs have been devolved even though occupants have not.

**A basic rule for managing the risks of service delivery disruption is to leave people doing the jobs they do now.** As far as possible public employees based in counties—working both for local authorities and de-concentrated administrations—should keep on doing the same jobs, even though they may report to a set of elected representatives.

**Transition may be particularly dramatic in the case of urban services.** The draft legislation to implement devolution provides for the Local Government Act to be repealed at the completion of county elections. If this proposal is adopted then, regardless of what other functions they assume, counties will be responsible for urban service delivery from day one. If county governments are unlikely to have any meaningful capacity immediately, it may be better to
leave the local authorities in place for a period after the election, to minimize the disruption to urban services.

**A framework of uniform national standards for county public services is mandated by the Constitution.** Important choices are being made about how extensive that framework should be. Key considerations are: (i) whether there should be a national remuneration framework that applies to all counties; (ii) which ministry should regulate public service matters (Local Government or Public Service); and, (iii) how extensive the national framework should be—over what matters will county governments have discretion.

All these policy considerations are informed by one key choice: **how much of the administrative architecture of county governments should be put in place before they are elected?** Most countries put in place transition arrangements to establish the basic machinery of administration before first elections are held. In Kenya the level of suspicion with which some policy actors regard central government leads them to propose that the establishment of administrative machinery should not begin until the county assembly and county government are elected. While the sentiments that underpin this approach are understandable, this is a high-risk strategy.

**Kenya’s devolution has the potential to transform government, by giving citizens more equitable access to resources, a greater say in how they are spent, and an increased sense of control over their own lives.** But these objectives do not flow automatically from devolution, and enthusiasm alone will not guarantee their achievement. Careful design of fiscal, public service and accountability components is required, focusing on devolution as a system, to ensure the different elements function together. In public policy, however, today’s solutions are inevitably tomorrow’s problems. Implementation will almost certainly not proceed as planned, and problems will emerge that were never foreseen. Whether these problems are merely bumps along the road, or fatal impediments to the success of devolution, is likely to depend on how carefully implementation is planned and managed.
Box 7.1: The risks from trying too much too soon ... lessons from Uganda

Uganda undertook a radical decentralization following the introduction of a new Constitution in the mid-1990s. The reforms were homegrown and there was an unusual degree of commitment to them by the government of the time. By the late 1990s Ugandan local governments were among the most empowered and best financed in Africa.

Local governments were given block grants and had substantial autonomy over budgeting and staff. However, over time it became apparent that many local governments were performing poorly in delivering services. A public expenditure tracking study revealed that very little funding was reaching schools. Central agencies that had initially supported decentralization began to realize the impact on their power and resources and argued for stronger central controls in the form of conditionalities on grants. These demands were supported by donors who were financing a substantial proportion of the delivery of basic services. The multiplication of conditional grants coupled with increased fragmentation of local governments removed much of the fiscal autonomy of local governments, and rendered them increasingly impotent in terms of making genuine decisions about local priorities. There has been little impetus to reverse these trends, with the result that Ugandan local governments are now relatively weak.

Despite much initial enthusiasm, the pace and trajectory of Uganda’s reform proved too ambitious, and in addition there was too much emphasis on formal development of the system and too little on developing local accountability. This experience illustrates why ‘hastening slowly’ might be the fastest way for devolved governments to achieve real and lasting autonomy.

Source: Adapted from USAID, Comparative Assessment of Decentralization in Africa, Uganda Desk Study