


REPUBLIC OF KENYA



Paper laid by
the Hon. Rachel
Nyamari on the
20/03/2014


NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT— SECOND SESSION

REPORT OF THE DEPARTMENTAL COMMITTEE ON
HEALTH
ON
DEVOLUTION OF HEALTH SERVICES

Clerk's Chambers
Parliament Buildings
NAIROBI

MARCH, 2014

1.0 PREFACE

The Departmental Committee on Health was constituted by the House on Thursday, 16th May, 2013 pursuant to the provisions of Standing Order No. 216 comprising of the following Members:-

The Hon. Dr. Rachel Nyamai, M.P.	-	Chairperson
The Hon. Dr. Robert Pukose, MP	-	Vice Chairperson
The Hon. Alfred Agoi, M.P.		
The Hon. Christopher Nakuleu, M.P.		
The Hon. David Karithi, M.P.		
The Hon. Dr. Dahir Duale Mohamed, M.P.		
The Hon. Dr. David Eseli, M.P.		
The Hon. Dr. Enoch W. Kibunguchy, M.P.		
The Hon. Dr. James Murgor, M.P.		
The Hon. Dr. James Nyikal, M.P.		
The Hon. Dr. James O. Gesami, M.P.		
The Hon. Dr. Naomi Shaban, M.P.		
The Hon. Dr. Patrick Musimba, M.P.		
The Hon. Dr. Patrick Musimba, M.P.		
The Hon. Dr. Stephen Wachira, M.P.		
The Hon. Dr. Susan Musyoka, M.P.		
The Hon. Eng. Stephen Mutinda Mule, M.P.		
The Hon. Fred Outa, M.P.		
The Hon. Hassan Aden Osman, M.P.		
The Hon. James Gakuya, M.P.		
The Hon. John Nyaga Muchiri, M.P.		
The Hon. Joseph O. Magwanga, M.P.		
The Hon. Kamande Mwangi, M.P.		
The Hon. Leonard Sang, M.P.		
The Hon. Masoud Mwahima, M.P.		
The Hon. Michael Onyura, M.P.		
The Hon. Mwinga Gunga, M.P.		
The Hon. Paul Koinange, MP		
The Hon. Raphael Milkau Otaalo, M.P.		
The Hon. Zipporah Jesang, M.P.		

One of the functions of the Committee according to Standing Order 216(5) includes *investigating into, and reporting on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments.* The Committee is also expected to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee oversees the Ministry of Health and state corporations within the Ministry including, but not limited to, National Hospital Insurance Fund, Kenyatta National Hospital, Moi Teaching and Referral Hospital, Pharmacy and Poisons Board Kenya Medical Supplies Authority and the Kenya Medical Training College.

The Committee is also guided by the Fourth Schedule to the Constitution of Kenya which contains the distribution of functions between the National & County Governments. The Health Committee is thus charged with two functions: - overseeing of National Referral Hospitals & National Health policy as well as capacity building and technical assistance to the counties as stated in thirty second function of the Fourth Schedule to the Constitution.

Pursuant to its mandate therefore, the Committee set its agenda ensuring its oversight role in the implementation of the Constitution especially with regards to devolution. The Committee from the onset notes that the health sector is facing serious implementation challenges that ought to be addressed as a matter of urgency. These challenges are enumerated in detail throughout the report.

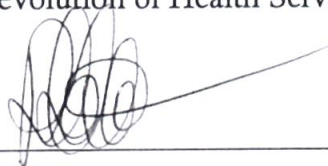
APPRECIATION

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the several meetings and forums.

On behalf of the Committee, I wish to thank the Offices of the Speaker and the Clerk of the National Assembly for the logistical support.

On behalf of the Members of the Departmental Committee on Health and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on Devolution of Health Services in the new Constitutional dispensation.

Signed:



Hon. Dr. Racheal K. Nyamai, MP
Chairperson, Health Committee

Date:

20/03/2014

2.0 INTRODUCTION

1.1 The following functions are devolved to the County Government according, to part two of the Fourth Schedule of the Constitution of Kenya:

- i. County health facilities and pharmacies;
- ii. Ambulance services;
- iii. Promotion of primary health care

1.2 The National Government however, is charged with overseeing national referral health facilities and health policy.

1.3 Pursuant to its mandate therefore and given that Parliament represents the people, the Committee received requests from stakeholders in the health sector to intervene and find solutions to challenges facing the sector especially in the current devolved structure.

1.4 With the foregoing, the Committee held meetings with various stakeholders in the health sector to discuss the emerging challenges associated with devolution of health services with the aim of finding a way forward. The following are some of the stakeholders the Committee met:-

- (i) The National Treasury
- (ii) Ministry of Health
- (iii) Ministry of Devolution & Planning
- (iv) The Transition Authority
- (v) The Commission for Revenue Allocation
- (vi) Commission for the Implementation of the Constitution
- (vii) The Kenya Medical Practitioners & Dentists Union
- (viii) The Kenya National Union of Nurses
- (ix) The Kenya Medical Supplies Authority

2.0 SUMMARY OF SUBMISSIONS FROM THE STAKEHOLDERS

The Committee held meetings with various stakeholders on the challenges facing devolution of Health Services. Herein below is a summary of the views/challenges as submitted by stakeholders:-

2.1 The Health Workers Union

The Committee held a meeting with representatives of the Health Workers Union (The Kenya Medical Practitioners & Dentists Union, the Kenya National Union of Nurses

and the Kenya Medical Supplies Authority) on 11th December, 2013. They informed the Committee that:-

- (i) Devolution of health functions should have been carried out in a phased out manner as envisioned in the Constitution. The mismanagement of the process of devolving health services will result in mass resignation of doctors.
- (ii) The transition period be managed properly and areas of immediate devolution need to be re-looked into. The National Government should retain procurement of drugs.
- (iii) County health facilities are not clearly defined by the Transition Authority
- (iv) There is need for a legislation to guide devolution of health services with the statutory establishment of a body to look into issues of Human resource of health workers.
- (v) The reasons for opposition to devolution of health services by the health workers are attributed lack of proper legal framework, harassment by County officials, plans to interfere with health workers salaries, tribalism and uncertainty in transfers among others
- (vi) There were proposal that health workers emoluments be retained at the national government level until requisite legislation is enacted.

2.2 Commission on Revenue Allocation (CRA)

The meeting with the CRA was held on the 15th October, 2013 and issues of conditional grants were discussed with the need for consultations before their allocation high on the agenda. The main issue was the cost of operationalizing the devolved functions and the skewed allocation of Kshs 3.4 Billion conditional grant to provisional and level five hospitals. The Committee was informed that the allocation was based on historical expenditures of the Ministry of Health.

It also emerged that CRA did not have the resources to undertake a study on the costing of various functions and further that costing ought to be undertaken by the Transition Authority.

2.3 Ministry of Health

The Committee met with the Ministry of Health officials on the 15th October, 2013. During the meeting the committee was informed that:-

- (i) County allocations on health were arrived at through a consultative meeting between Ministry of Health officials, Commission on Revenue Allocation and the Transitional Authority.

- (ii) Funds had been erroneously transferred to the Counties yet the specific functions had been retained at the National level.

2.4 The Transition Authority

The Committee held a meeting with the on the Transition Authority on 15th October, 2013. During the meeting the Committee was informed that:-

- (i) Functions had been devolved before their costing hence complicating the devolution of health services.
- (ii) The Transition Authority had developed a schedule for phased transfer of functions where facilities earlier under the jurisdiction of Municipalities were to be devolved by February, 2013 while the rest had a deadline of August, 2013. This scenario was however a concern to the Committee particularly on the immediate timelines.

3.0 COMMITTEE OBSERVATIONS:

3.1 Following the Committee interactions with the stakeholders the Committee was in agreement that a lot requires to be done to forestall the unforeseen consequences of devolution of the health sector. The following is a summary of the identified challenges facing the sector:

Precipitate Transfer of Functions to County Governments

3.2 The main challenge facing devolution of health services is the blanket transfer of functions to counties with disregard of the three year transition period provided for in the Constitution. It is the Committee's view that devolution should have been phased out taking into account individual counties' preparedness to take up the various functions and to further allow for a more consultative process. Further, the Committee is of the opinion that the Fourth schedule and Article 187(1) (2) of the Constitution, the Transition to Devolved Government Act, 2012 were clearly not the guiding pieces of legislation during the transfer of these functions.

Co-ordination Challenges

3.3 The health sector is facing serious health workers discontent and disparities across counties are beginning to emerge in relation to standardization, regulation and quality of services provided. The committee observed that the sector lacks a framework to address health workers welfare and as such was of the opinion that this could be addressed adequately through the establishment of the Health Services

Commission (HSC). The need for the Commission has become more pronounced in the recent past during the process of devolving health services. This process has been characterized by issuance of conflicting and confusing positions by the various players currently managing the healthcare services. The sector faces coordination challenges that are as a result hampering service delivery. The Committee therefore is of the view that the sector requires a functional body for the effective coordination of this essential service.

Human Resource Challenges

- 3.4 The Committee observed that issues relating to health care workers remain contentious post devolution particularly on hiring, training and capacity building of health workers. The Committee also took note of the hostilities faced by Ministry of Health personnel seconded to counties. Further, devolution of health workers has attracted court cases and there are ongoing threats and industrial actions by the unions and associations of the various cadres of health workers as relates to unfulfilled Collective Bargaining Agreements. Of major concern is the recent enmasse resignation of doctors which latest figures is at least one hundred and eighty nine (189) as at 15th of March 2014.

Operational Challenges

- 3.5 Logistical issues in operations including commodities have proved challenging due to lack of structures and clear cut guidelines. The Committee received several submissions outlining the extent of shortage of drugs and other medical supplies in public health facilities. The Committee observed that the capacity of Counties to take up the function of procuring drugs and medicaments was weak and that the channels of accountability prone to abuse.
- 3.6 Further the Committee was concerned about the quality of drugs and whether there is any likelihood in terms of economies of scale derived from Counties procurement of drugs independent of the Kenya Medical Supplies Agency (KEMSA). The Committee was in consensus that there is need for greater oversight over KEMSA while considering introducing amendments to the KEMSA Act, 2012 to ensure counties procure from KEMSA with the aim of standardization, ensuring quality and to maximize on the economies of scale.
- 3.7 The Committee further noted that there were underutilized health infrastructure at County levels for example dispensaries constructed through the use of Constituency Development Fund (CDF).

MINUTES OF THE 57TH SITTING OF THE HEALTH COMMITTEE HELD IN
COMMITTEE ROOM NO. 7, MAIN PARLIAMENT BUILDINGS, ON
WEDNESDAY, 11TH DECEMBER, 2013 AT 10.00AM

PRESENT

1. The Hon. Dr. Rachel Nyamai, M.P. – Chairperson
2. The Hon. Dr. Robert Pukose, MP - Vice Chairperson
3. The Hon. David Karithi, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Joseph O. Magwanga, M.P.
6. The Hon. Leonard Sang, M.P.
7. The Hon. Eng. Stephen Mule, M.P.
8. The Hon. Zipporah Jesang, M.P.
9. The Hon. Dr. James Murgor, M.P.
10. The Hon. Kamande Mwangi, M.P
11. The Hon. Hassan Aden Osman, M.P.
12. The Hon. James Gakuya, M.P.
13. The Hon. Dr. James Nyikal, M.P.
14. The Hon. Raphael Milkau Otaalo, M.P.
15. The Hon. Dr. James O. Gesami, M.P
16. The Hon. Paul Koinange, MP

ABSENT WITH APOLOGY

17. The Hon. Mwinga Gunga, M.P.
18. The Hon. John Nyaga Muchiri, M.P.
19. The Hon. Dr. Enoch Kibunguchy, M.P.
20. The Hon. Dr. David Eseli, M.P.
21. The Hon. Alfred Agoi, M.P.
22. The Hon. Dr. Dahir Mohamed, M.P.
23. The Hon. Dr. Naomi Shaban, M.P.
24. The Hon. Christopher Nakuleu, M.P.
25. The Hon. Fred Outa, M.P.
26. The Hon. Mwahima Masoud, M.P.
27. The Hon. Michael Onyura, MP
28. The Hon. Dr. Patrick Musimba, M.P.
29. The Hon. Dr. Susan Musyoka, M.P.

IN ATTENDANCE

- Hon. Aden Duale, MP - Leader of Majority, NA
Hon. Johnson Sakaja, MP - Nominated MP

NATIONAL ASSEMBLY SECRETARIAT

- Susan Maritim - First Clerk Assistant
Eutyclus Mwitiri - Junior Legislative Fellow

HEALTH WORKERS UNIONS

- Dr. Vitalis Ogola - Ag. Chairman, KMPDU
Dr. Sultan Matendechero - Sec – Gen, KMPDU
Mr. Jophinus Musundi - Chairman, KNUN
Mr. Seth Panyako - Sec-Gen, KNUN
Mr. Joseph Wadereva - National Org Sec, KNUN

MIN.NO. DCH/256/2013: PRELIMINARIES

The meeting was called to order at 10.30am and prayers said by Hon. Dr. Stephen Wachira, M.P.

Confirmation of Minutes was deferred to the next Sitting.

MIN.NO. DCH/258/2013: MEETING WITH HEALTH WORKERS' UNION

The Committee held lengthy deliberations with the officials of the health workers unions with the aim of resolving the strike.

The following is a summary of the deliberations: -

- i. Devolution of health functions should have been carried out in a phased manner as envisaged by the Constitution. If not properly managed, doctors in the public sector will seek greener pastures either in the private sector or abroad. This calls for careful management of the public health sector.
- ii. This transition period should be managed careful and re-look at which areas ought to be devolved immediately and which ones should take longer. The issue of procurement of vaccines and drug should be managed by the national government.
- iii. County health facilities not defined by Transition Authority Gazette Notice. TA should define health facilities and phase out devolution of health.
- iv. There is need for legislation to guide devolution of health services. The Committee should push for publishing of the Health Bill before the House resumes for the next Session. The Health Bill should include establishment of a statutory body to deal with health workers HR issues (HSC).
- v. Health workers cited several reasons why they are currently opposed to being devolved to counties without proper legal framework. These include: harassment by county officials, plans to slash health workers salaries (reduced salary scales by counties), tribalism, clanism, nepotism etc. There is also uncertainty in transfers, promotions, training etc.
- vi. The health workers proposed retaining of personnel emoluments at national level until health law is passed and health policy passed. This ought to be done after adequate consultations with all stakeholders.
- vii. The Committee also noted that the Executive (CS Health & Devolution) share the same position with the Governors' Council on devolution of health services. In fact the CS Health had already filed a suit in the High Court to stop the strike.

WAY FORWARD:

The Committee and the Health Workers' Union adopted the following resolution for presentation to the Executive for consideration:-

A Legal Notice to be issued enumerating the following:

1. THAT, processing and payments of Personnel Emoluments for health workers be upheld at the national level until:-
 - i. *The Cabinet completes and approves the Health Policy not later than March 2014;*
 - ii. *The Health Bill is published by April 2014 and the health laws enacted within six months beginning 1st January 2014 and ending 30th June, 2014;*
 - iii. *Adoption of Public Service Policy not later than March 2014.*
2. That, all unions (Kenya Health Professionals Union-KHPU, Kenya Medical Practitioners Pharmacists and Dentists Union - KMPDU, Kenya National Union of Nurses- KNUN) represented in this forum be duly involved during the preparation of all the following documents :health policy, health laws, and public service policy.
3. That an independent statutory body, with authoritative representation from the county governments and charged with the responsibility of hiring retaining and equitably deploying health workers to all the counties be established.
4. Put in place a monitoring and evaluation system to ensure that the above suggested processes are done as per the schedule and modalities.
5. A review to be done in July 2014 to ensure that the above have been met.

Having failed to secure an appointment with the President and his Deputy on 11th December, 2013 owing to Jamhuri Day celebrations, the Committee resolved to continue trying to secure the appointment during the weekend and will inform the Union accordingly on progress made on this front.

MIN.NO. DCH/259/2013: ANY OTHER BUSINESS

No other business arose.

MIN.NO. DCH/260/2013: ADJOURNMENT

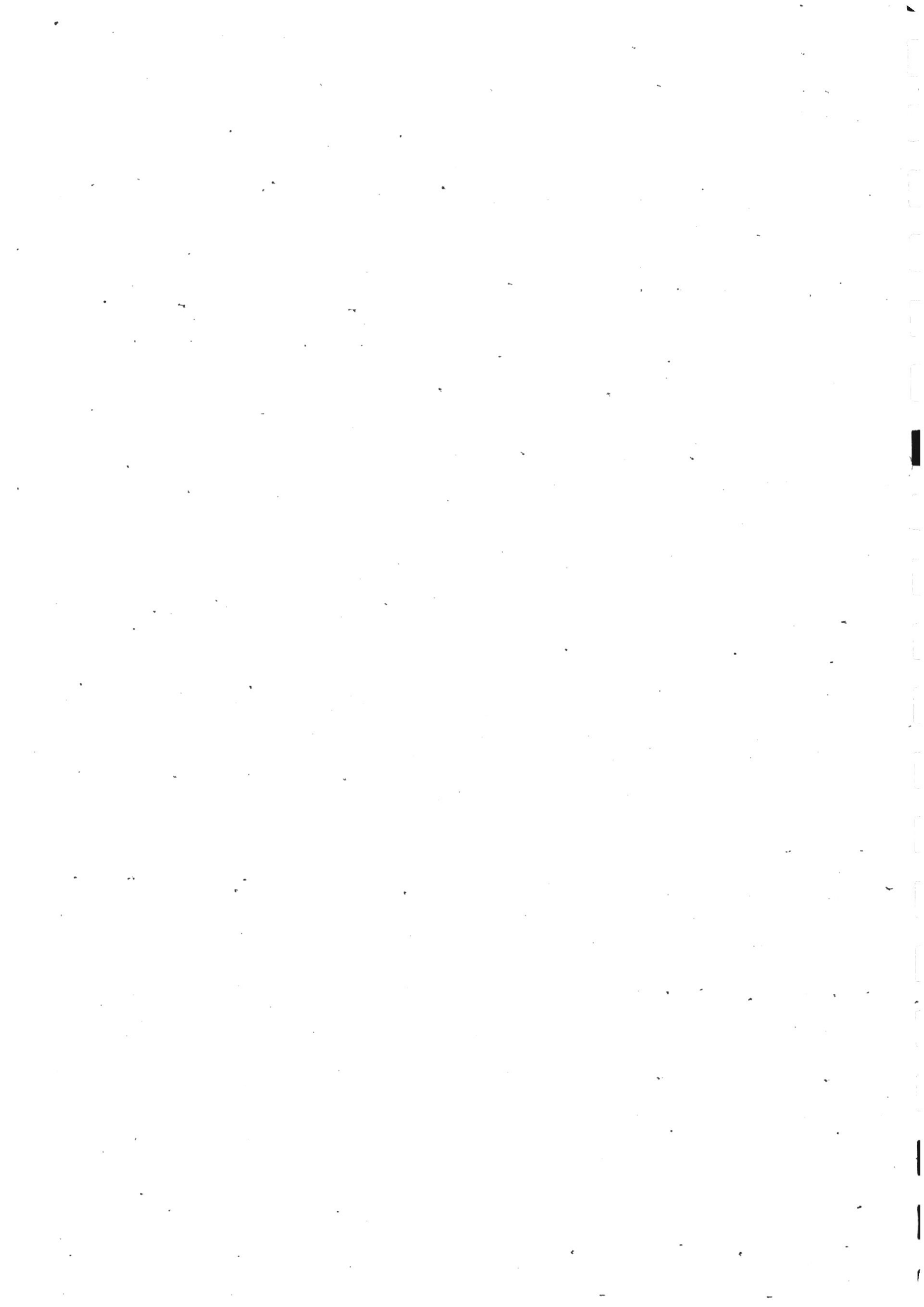
There being no other business, the meeting was adjourned at 8pm.

SIGNED _____

HON. DR. RACHEAL NYAMAI, MP
(CHAIRPERSON)

DATE _____

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MINUTES OF THE 50TH SITTING OF THE HEALTH COMMITTEE HELD IN COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE, ON THURSDAY, 14TH NOVEMBER, 2013 AT 9 A.M.

PRESENT

1. The Hon. Dr. Rachel Nyamai, M.P. – Chairperson
2. The Hon. Dr. Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Dr. James Murgor, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Fred Outa, M.P.
6. The Hon. Dr. Susan Musyoka, M.P.
7. The Hon. Joseph O. Magwanga, M.P.
8. The Hon. Michael Onyura, M.P.
9. The Hon. Kamande Mwangi, M.P.
10. The Hon. Mwinga Gunga, M.P.
11. The Hon. Paul Koinange, MP
12. The Hon. Zipporah Jesang, M.P.
13. The Hon. Raphael Milkau Otaalo, M.P.
14. The Hon. David Karithi, M.P.
15. The Hon. Hassan Aden Osman, M.P.
16. The Hon. Dr. David Eseli, M.P.
17. The Hon. Dr. James O. Gesami, M.P.
18. The Hon. Eng. Stephen Mule, M.P.

ABSENT WITH APOLOGY

19. The Hon. Dr. Naomi Shaban, M.P.
20. The Hon. Dr. Dahir Mohamed, M.P.
21. The Hon. Alfred Agoi, M.P.
22. The Hon. Christopher Nakuleu, M.P.
23. The Hon. Dr. Enoch Kibunguchy, M.P.
24. The Hon. Dr. James Nyikal, M.P.
25. The Hon. Leonard Sang, M.P.
26. The Hon. James Gakuya, M.P.
27. The Hon. John Nyaga Muchiri, M.P.
28. The Hon. Mwahima Masoud, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Susan Maritim - First Clerk Assistant
Eutyclus Mwiti - Junior Legislative Fellow

MIN.NO. DCH/229/2013: PRELIMINARIES

The meeting was called to order at 9.15 am and Prayers said by the Hon. Dr. Stephen Wachira, MP.

MIN.NO. DCH/230/2013: CONFIRMATION OF MINUTES

Minutes of the 46th Sitting were confirmed as a true record of the proceedings having been Proposed by Hon. Dr. Stephen Wachira, MP and Seconded by Hon. Joseph Magwanga, MP.

Minutes of the 47th Sitting were confirmed as a true record of the proceedings having been Proposed by Hon. James Gakuya, MP and Seconded by Hon. Zipporah Kering, MP.

Minutes of the 48th Sitting were confirmed as a true record of the proceedings having been Proposed by Hon. Dr. Stephen Wachira, MP and Seconded by Hon. Joseph Magwanga, MP.

MIN.NO. DCH/231/2013: MATTERS ARISING

1. KEMSA

The Committee deliberated on KEMSA and noted that there was still a shortage of drugs in most public health facilities despite KEMSA having given its assurance that drugs have been supplied. It was resolved that before inviting them to another meeting, Members should ascertain whether medical supplies were delivered as per the report submitted to the committee. The Committee would also visit two facilities in Kisumu (Kisumu District Hospital and Jaramogi Oginga Hospital) to ascertain the status of delivery. Members were also asked to confirm the status of delivery in their constituencies.

2. Devolution of health services

The Chair informed Members that she held a meeting with the CS, Devolution and Planning to discuss challenges facing devolution of health services. It was resolved that a consultative forum be held to find solutions to challenges facing devolution of health. The meeting be convened by Ministry of Devolution and will bring together Health Committees of NA & Senate, MoH, TA, CRA, CIC, Governors Sub-Committee on Health, county health executives.

MIN.NO. DCH/232/2013: ANY OTHER BUSINESS

1. Taxation on health commodities

Hon Osman sought the Committee's intervention in taxation of health commodities. He was requested to provide more information on the exact nature of tax being charged on the commodities.

2. Request for Statement by Hon. Joseph Lekuton, MP

The Committee deliberated on the Response from the Cabinet Secretary for Health on the Statement by Hon Joseph Lekuton, MP. The MP sought a Statement on **the rampant cases of cancer related to petroleum drilling in the northern parts of Kenya, of Kenya, especially in Marsabit, Isiolo, Garissa and Wajir Counties.**

The Committee noted that the Response was inadequate and that there is need to visit the sites and meet institutions like the Science Council to get more conclusive information on the issues raised. The Committee will seek an extension of one month to respond to the statement.

3. Meeting with Universal Health Insurance expert

Hon. Koinange informed the Committee that renowned health insurance expert Prof. Hsiao will be visiting Kenya from 25-27th November, 2013 and expressed interest to meet the Committee.

4. Funds for Research

The Committee noted that there is need for the government to set aside funds for research especially in the medical field.

MIN.NO. DCH/233/2013: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.55 pm.



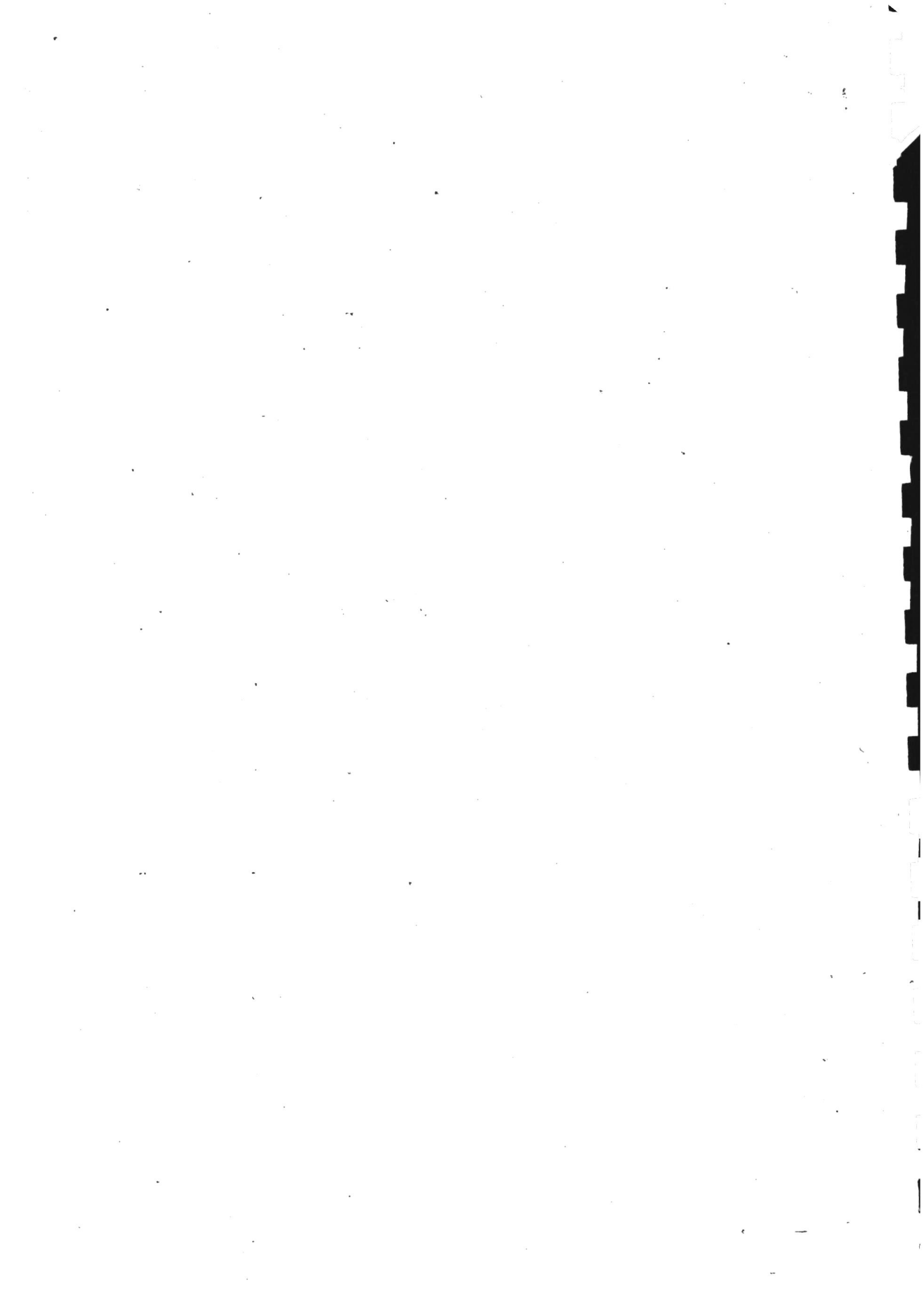
SIGNED _____

HON. DR. RACHEAL NYAMAI, MP

(CHAIRPERSON)

DATE _____

21/1/2014



MINUTES OF THE 48TH SITTING OF THE HEALTH COMMITTEE HELD IN COMMITTEE ROOM ON 9TH FLOOR, HARAMBEE SACCO PLAZA, ON THURSDAY, 31ST OCTOBER, 2013 AT 9.00A.M.

PRESENT

1. **The Hon. Dr. Rachel Nyamai, M.P. – Chairperson**
2. The Hon. Dr. James Murgor, M.P.
3. The Hon. Christopher Nakuleu, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Fred Outa, M.P.
6. The Hon. Dr. Susan Musyoka, M.P.
7. The Hon. Joseph O. Magwanga, M.P.
8. The Hon. Leonard Sang, M.P.
9. The Hon. James Gakuya, M.P.
10. The Hon. Michael Onyura, M.P.
11. The Hon. John Nyaga Muchiri, M.P.
12. The Hon. Kamande Mwangi, M.P.
13. The Hon. Zipporah Jesang, M.P.
14. The Hon. Raphael Milkau Otaalo, M.P.
15. The Hon. David Karithi, M.P.
16. The Hon. Dr. James Nyikal, M.P.
17. The Hon. Hassan Aden Osman, M.P.
18. The Hon. Alfred Agoi, M.P.
19. The Hon. Dr. Dahir Mohamed, M.P.
20. The Hon. Dr. Enoch Kibunguchy, M.P.
21. The Hon. Mwahima Masoud, M.P.
22. The Hon. Dr. David Eseli, M.P.
23. The Hon. Dr. James O. Gesami, M.P.
24. The Hon. Eng. Stephen Mule, M.P.

ABSENT WITH APOLOGY

25. **The Hon. Dr. Robert Pukose, M.P. - Vice Chairperson**
26. The Hon. Dr. Naomi Shaban, M.P.
27. The Hon. Paul Koinange, MP
28. The Hon. Mwinga Gunga, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Susan Maritim	-	First Clerk Assistant
Joash Kosiba	-	Fiscal Analyst
Eutyclus Mwiti	-	Junior Legislative Fellow

MINISTRY OF HEALTH

Prof. Fred Segor	-	Principal Secretary
Dr. Francis Kimani	-	Director Medical Services
John Folinga Longole	-	Chief Financial Officer

NATIONAL TREASURY

Dr. Kamau Thugge	-	Principal Secretary
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COMMISSION ON REVENUE ALLOCATION (CRA)

Raphael M Munavu	-	Commissioner
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Amina Ahmed - Commissioner
Rose Osoro - Commissioner
George Ouko - CEO

TRANSITION AUTHORITY (TA)

Dr. Dabas Abdi Maalim - Member
Simon Pkiyach - Member

MIN.NO. DCH/220/2013: PRELIMINARIES

The meeting was called to order at 9.40 am and Prayers said by the Hon. Fred Outa. A round of introductions was thereafter conducted.

MIN.NO. DCH/221/2013: MEETING WITH TA, CRA, TREASURY AND MOH TO DISCUSS THE DEVOLVED FUNCTIONS OF HEALTH

CRA

The CRA informed the Committee that following the meeting held on 15 October, 2013, the Commission wrote to the Principal Secretary, National Treasury seeking to know the criteria used by the Treasury to allocated Kshs. 3.4 billion to the eleven level 5 Hospitals in FY 2013/14. It was reported that Treasury did not respond to the letter.

The Commission pointed out that the Conditional Grant was allocated in accordance with Article 202 of the Constitution which states that "revenue raised nationally shall be shared equitably among the national and county governments and that County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally." It however insisted that its mandate pursuant to Art 216 of the Constitution is sharing of raised by national government between the national and county governments and among the county governments.

It further added that although it did not have the final say on the allocations, it participated in the talks that arrived at the sharing of the revenue more equitably and that through its input, there was a marked improvement in the final allocation of funds which saw the Grant reduced to Kshs 3.4 B from Kshs 8.04 Billion and allocation for Nakuru reduced from Kshs. 1.4 B to 600M and Machakos increased from Kshs 23 million to Kshs 109 Million. (*Annex I*)

The Commission reported that the figures tabled by MoH, were new to them and that they had not seen them previously. Further, after the allocations (3.4B) were released, the Commission was unhappy with the skewed allocation and voiced their concern to Treasury.

The Commission regretted that the last Budget cycle was rushed because of deadlines occasions by the election period and it therefore was not given an opportunity to appear before the Parliamentary Budget Committee to discuss the allocations. It is hoped that all stakeholders will be involved in the drawing of the next budget.

Ministry of Health (*Annex II*)

Giving his presentation, the PS, Health confirmed to the Committee that it gave Treasury the criteria to be used in allocating revenue to various counties based on historical spending. The Committee learnt the MoH provided the information to the Fiscal Decentralization Committee of Treasury and not directly to CRA or TA. CRA & TA are members of the FDC.

MoH was taken to task over their claim that the criteria they provided were disregarded. The Committee asked to see the Minutes of that meeting but they were not available.

The PS Health reported that some funds were erroneously allocated to counties yet they are national functions e.g funds for hiring of health workers and paying intern doctors, Government Chemist and the Radiation Board. The PS Treasury regretted the errors and reported that reversal of the funds is being undertaken.

The Ministry also reported that it had conducted several inter-governmental forums with health stakeholders to discuss challenges facing devolution in the health sector.

Transition Authority

TA stated that their mandate is to cost functions before they are transferred or devolved. However, it faced challenges as some functions were transferred before the Authority could cost them, which complicated the situation further.

TA informed the Committee that it had provided a schedule for phased transfer of functions to the Clerk's office and also to the Leader of Majority. It further added that it had devolved the facilities that were previously under municipalities in February, 2013, while the remaining facilities were devolved in August, 2013. The Committee questioned the hurry in devolving the facilities, and insisted that that this should have been done gradually, evaluating the progress and taking into account counties' readiness to take up the new functions.

National Treasury

The Principal Secretary, National Treasury informed the Committee that the criteria used to allocate revenue in the current financial year was provided by the MoH historical spending. The Committee expressed displeasure with the skewed allocation of revenue.

On salaries, the Ministry the PS Treasury reported that Treasury is currently paying health workers including doctors until counties are ready to do so hopefully by 31st December, 2013 as agreed July 2013. Treasury will recover from the counties these monies at a later date.

Way Forward:

The Committee expressed displeasure with the skewed allocation of the Conditional Grant and noted that marginalized areas e.g the Northern Kenya did not benefit from the funds.

The Committee was also displeased with the precipitate devolvement of functions especially in the health sector thereby occasioning operational challenges e.g transfer of personnel and hostility from county governments. **DEVOLUTION MUST BE PLANNED!**

The Ministry of Health should urgently convene a stakeholders' forum to discuss challenges facing the health sector in the current devolved system. The meeting will bring together National Assembly and Senate Health Committees, Governors and the Executive arm of government. One of the proposals on mitigating the crisis in the health sector is invoking of Art 187 of the Constitution to transfer functions between the National and County governments.

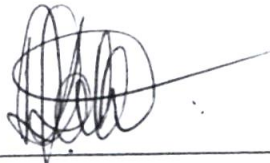
MIN.NO. DCH/222/2013: ANY OTHER BUSINESS

It was reported that public hospitals are facing a financial crisis because of bureaucracy at the county treasury. Hon. Mule informed the Committee that he was planning to raise the matter on the floor of the House. He further invited Members to accompany him to Kangundo Hospital to attend a crisis meeting on the financial status of the hospital.

MIN.NO. DCH/223 /2013: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.55 pm.

SIGNED _____



HON. DR. RACHEAL NYAMAI, MP

(CHAIRPERSON)

DATE _____

14 / 11 / 2013

COMMISSION ON REVENUE ALLOCATION

RESOURCES FOR THE HEALTH SECTOR

Provincial and Level Five Hospital Fund			
	County	Initial allocation (Millions)	Amount Allocated (Millions)
1	Nakuru	1,454	600
2	Mombasa	1,003	414
3	Kisumu	958	396
4	Nyeri	925	382
5	Kiambu	891	368
6	Kakamega	754	311
7	Embu	629	260
8	Kisii	511	211
9	Garissa	446	184
10	Meru	443	183
11	Machakos	23	109
	Total	8, 042	3,419

— Population —



MINISTRY OF HEALTH

CLARIFICATION ON THE MINISTRY'S POSITION ON THE ALLOCATION OF CONDITIONAL GRANTS TO LEVEL 5 HOSPITALS

Role of the Ministry in the allocation of the grants

The Ministry of Health participated in stakeholder meetings on allocation of conditional grants to level 5 hospitals. Our understanding of the conditional grant was money to cater for service delivery in a particular referral facility which serves other counties. During the meetings, the Ministry proposed allocation of the grants on the basis of a resource allocation criteria that had been in use historically. The variables of the criteria and the assigned weights are as indicated in table 1 below:

Table 1: Resource Allocation Criteria

Variable	Weight
Poverty	0.2
Beds utilized	0.4
Out Patient cases	0.2
Accident prone Facilities	0.05
Fuel cost	0.15
Total	1

This is the criteria that the Ministry has been using to allocate money to hospitals in past financial years. The aim of the Ministry was to ensure that the Provincial and Level 5 Hospitals fund is equitably distributed to the level 5 hospitals. However, the proposal by the Ministry was disregarded and the Commission on Revenue Allocation (CRA) applied its own criteria to allocate funds to the hospitals.

The role of the ministry of Health in allocation of resources to level 5 hospitals was limited to mapping the hospitals within the counties and provision of historical data on allocation of resources to the hospitals with regard to salaries, commodities, goods and services/Health Services Management Fund and development. This information was submitted to the Fiscal Decentralization Committee in the National Treasury whose clarion call was "services without disruption." This committee considered the information provided and made recommendations to the Commission on Revenue Allocation. Thereafter the Commission on Revenue Allocation applied its allocation criteria, generated the allocations and forwarded them to the National Assembly for approval.

Observations on the grants generated by CRA

The Ministry has noted the following about the conditional grants to the level 5 hospitals;

1. That they are significantly different from the past allocations that the hospitals used to receive while under the oversight of the Ministry;
2. That they seem to have been made on the basis of county parameters and not on the actual requirements of the facilities;

Recommendation

Since the Provincial and Level 5 Hospitals fund was meant to improve the running of the 11 level 5 hospitals, the grants should be given on a pro-rata basis relative to what they had been receiving prior to devolution. It is our considered opinion that Kshs. 3,419,000,000.00 should have been shared as indicated in table 2 below;

Table 2: LEVEL 5 HOSPITAL GRANTS PROPOSED BY THE MINISTRY OF HEALTH

No	Hospital	HMSF (Basis for extrapolation)	Proposed Allocation
1	Coast Province General Hospital	25,648,000.00	383,230,038.82
2	Garissa Provincial General Hospital	13,696,000.00	204,644,362.59
3	Embu Provincial General Hospital	22,732,000.00	339,659,437.09
4	Machakos Level 5 Hospital	19,200,000.00	286,884,620.45
5	Nyeri Provincial General Hospital	24,176,000.00	361,235,551.25
6	Thika Level 5 Hospital	10,750,000.00	160,625,503.64
7	Nakuru Provincial General Hospital	38,892,000.00	581,120,659.31
8	Kakamega Provincial General Hospital	25,248,000.00	377,253,275.90
9	New Nyanza Provincial General Hospital	30,408,000.00	454,353,517.64
10	Kisii Level 5 Hospital	10,200,000.00	152,407,454.62
11	Meru Level 5 Hospital	7,869,516.00	117,585,578.69
	Total	228,819,516.00	3,419,000,000.00

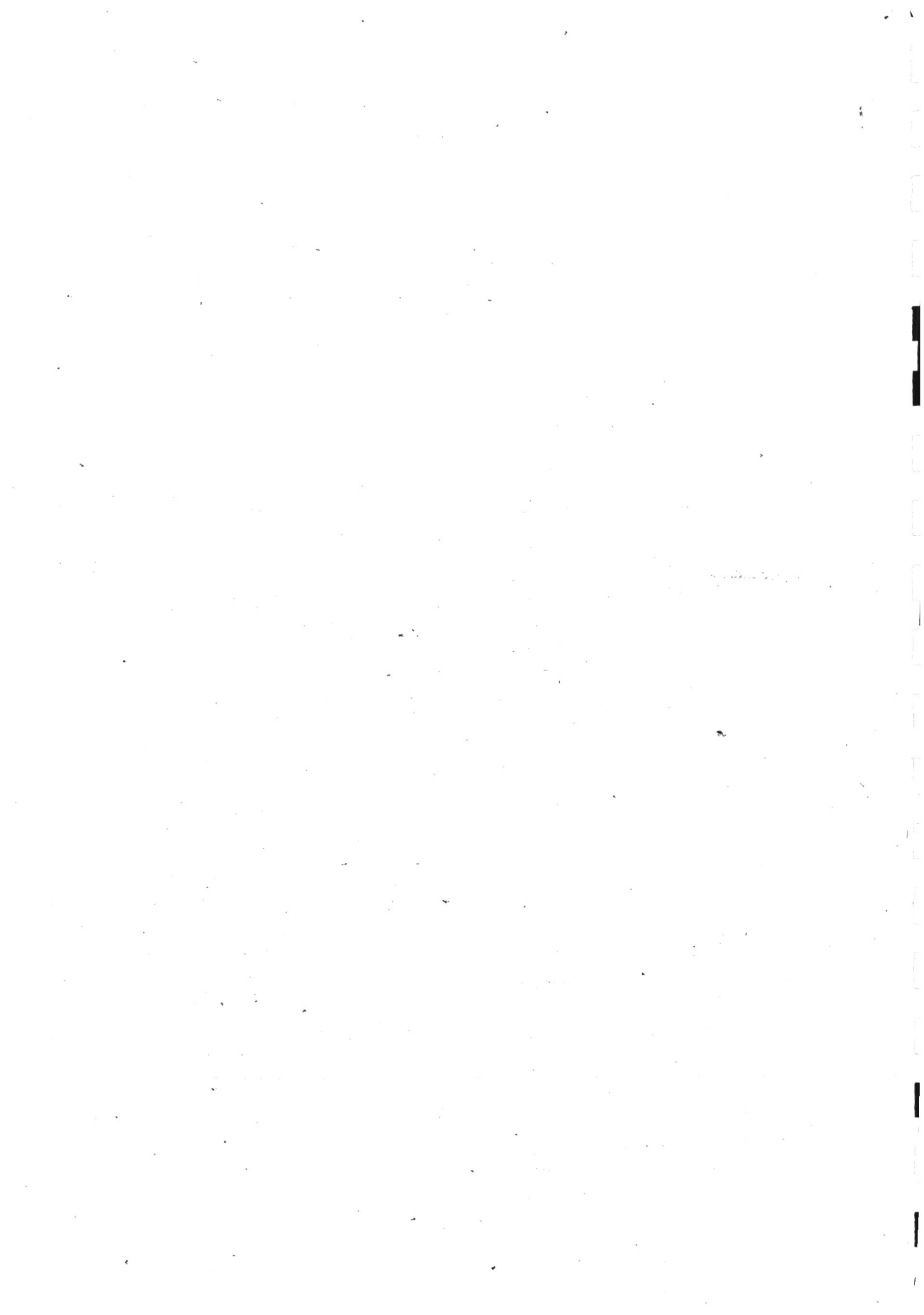


Mr. James W. Macharia

CABINET SECRETARY

30th October 2013

DISTRICT	HOSPITAL	population	poverty lev	pplle bel. Pov	Fuel cost	Beds	% occ.	Bed utilisatio	No.Out Patient	Acc. Prone	Alloc weight
1 Nyeri South	Nyeri PGH	4,884,932	31	1,514,329	88	323	102.65	331.57	186,112	0	0.6044
2 Embu	Embu PGH	3,128,416	58	1,814,481	92	468	67.78	317.21	181,076	0	0.5683
3 Machakos	Machackos L	3,146,781	58	1,825,133	92	375	70.64	264.91	91,470	0	0.48
4 Mombasa	Coast PGH	3,502,908	58	1,825,133	86	499	78.48	391.62	234,480	0	0.6412
5 Garissa	Garissa PGH	1,440,452	64	921,889	107	180	58.12	104.61	88,642	0	0.3424
6 Kisumu East	Nyanza PGH	5,849,721	65	3,802,319	92	429	78.03	334.77	194,133	0	0.7602
7 Nakuru Centra	Nakuru PGH	10,316,634	48	4,951,984	87	588	75.02	441.12	190,656	0	0.9723
8 Kakamega Cer	Kakamega PC	4,797,163	61	2,926,269	84	449	71.72	322.03	142,020	0	0.6312
Totals		37,067,007		19,581,538	728			2,508	1,308,589	0	4.9999
9 Imenti North	Meru DH	82,856	23.5	19,471	92	318	150	477	190,364	0.1	0.0728
10 Thika West	Thika DH (L5)	273,910	35.5	97,238	89	265	120	318	158,659	0.5	0.1075
11 Kisii central	Kisii DH	105,824	51	53,970	92	379	130	492.7	118,605	0.4	0.1002
Totals		40,458,110		18,933,623	23,349			13,046	10,056,212	9.69	6



MINUTES OF THE 42ND SITTING OF THE HEALTH COMMITTEE HELD IN ROOM 9,
MAIN PARLIAMENT BUILDINGS ON TUESDAY, 15TH OCTOBER, 2013 AT 3.00 P.M.

PRESENT

1. The Hon. Dr. Rachel Nyamai, M.P. - Chairperson
2. The Hon. Dr. Robert Pukose, MP - V/Chairperson

3. The Hon. Alfred Agoi, M.P.
4. The Hon. Christopher Nakuleu, M.P.
5. The Hon. David Karithi, M.P.
6. The Hon. Dr. David Eseli, M.P.
7. The Hon. Dr. Enoch W. Kibunguchy, M.P.
8. The Hon. Dr. James Murgor, M.P.
9. The Hon. Dr. James O. Gesami, M.P.
10. The Hon. Fred Outa, M.P.

11. The Hon. James Gakuya, M.P.
12. The Hon. John Nyaga Muchiri, M.P.
13. The Hon. Kamande Mwangi, M.P.
14. The Hon. Michael Onyura, M.P.
15. The Hon. Mwinga Gunga, M.P.
16. The Hon. Raphael Milkau Otaalo, M.P.
17. The Hon. Zipporah Kering, M.P.

ABSENT WITH APOLOGY

18. The Hon. Dr. Dahir Duale Mohamed, M.P.
19. The Hon. Dr. James Nyikal, M.P.
20. The Hon. Dr. Naomi Shaban, M.P.
21. The Hon. Dr. Stephen Wachira, M.P.
22. The Hon. Dr. Susan Musyoka, M.P.

23. The Hon. Hassan Aden Osman, M.P.
24. The Hon. Joseph O. Magwanga, M.P.
25. The Hon. Leonard Sang, M.P.
26. The Hon. Mwahima Masoud, M.P.
27. The Hon. Paul Koinange, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Susan Maritim - First Clerk Assistant

COMMISSION FOR REVENUE ALLOCATION

Micah Cheserem - Chairman
Rose Osoro - Commissioner
George Ouko - CEO
Janę Maingi - Senior Analyst-Financial Management

MIN.NO. DCH/192/2013: PRELIMINARIES

The meeting was called to order at 3.30 pm and prayer said by Hon. Fred Outa, MP.

MIN.NO. DCH/193/2013: PRESENTATION BY THE CRA & PLENARY

The Commission made a presentation on the criteria used to determine allocation of funds for devolved functions in the health sector (*Annexed to the Minutes*).

The Committee took the Commission to task on the cost of operationalizing devolved functions and the skewed allocation of Kshs. 3.4 billion Conditional Grant to Provincial and Level 5 Hospitals (*Page 20 of the CRA Presentation*). The Commission responded that it held consultations

with various stakeholders including the National Treasury, Ministry of Health, Transition Authority, and the Commission on Implementation of the Constitution and arrived at the allocations based on historical spending of the Ministry of Health. It further added that it did not have the capacity /resources to undertake a study on the costing of various functions and furthermore, the costing ought to be undertaken by the Transition Authority.

The Committee found the response inadequate and resolved to adjourn the meeting to allow the Commission more time to prepare a more acceptable response to the Committee's concerns.

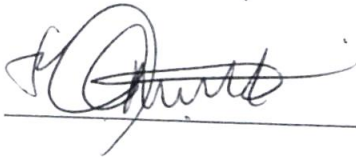
MIN.NO. DCH/ 194 /2013: ANY OTHER BUSINESS

No other business arose.

MIN.NO. DCH/195/2013: ADJOURNMENT

There being no other business, the meeting was adjourned at 4.30 pm.

SIGNED



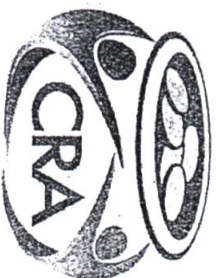
Hon. Dr. Racheal Nyamai, MP

(CHAIRPERSON)

DATE

22/10/2013

COMMISSION ON REVENUE ALLOCATION



Promoting an equitable society

CRITERIA USED BY CRA TO DETERMINE ALLOCATION OF
FUNDS FOR DEVOLVED FUNCTIONS IN THE HEALTH SECTOR

PRESENTATION TO THE NATIONAL ASSEMBLY DEPARTMENTAL
COMMITTEE ON HEALTH ON 15TH OCTOBER 2013, ROOM 9, MAIN
PARLIAMENT BUILDINGS

PRESENTATION BY THE CRA TEAM

COMMISSION ON REVENUE ALLOCATION



COMMISSION ON REVENUE ALLOCATION'S MANDATES AND STAKEHOLDERS

KEY RECOMMENDATIONS

1. SHARING OF REVENUE BETWEEN NATIONAL AND COUNTY GOVTS
2. SHARING OF REVENUES AMONG COUNTY GOVTS
3. MARGINALIZATION POLICY
4. EQUALIZATION FUND
5. REVENUE ENHANCEMENT
6. FISCAL RESPONSIBILITY
7. FINANCING & FINANCIAL MANAGEMENT OF COUNTY GOVTS
8. BILLS ON SHARING REVENUES
9. OTHER BILLS ON DEVOLVED GOVTS

RECOMMENDATIONS FORWARDED TO THE FOLLOWING

- SENATE
- NATIONAL ASSEMBLY
- NATIONAL EXECUTIVE
- COUNTY ASSEMBLIES
- COUNTY EXECUTIVES

CONSULTATIONS WITH

- PUBLIC PARTICIPATION
- PROFESSIONAL BODIES
- COMMISSIONS & INDEPENDENT OFFICES
- MEDIA

COMMISSION ON REVENUE ALLOCATION

CRA Process in Developing Vertical and Horizontal Formulae

- Step 1:** Training of secretariat staff and commissioners, and extensive desk research.
- Step 2:** Continuous engagement with stakeholders, including Treasury and Parliament.
- Step 3:** Peer-to-Peer Learning i.e. learning from independent commissions/institutions from Ethiopia, South Africa, India, Uganda and Brazil.
- Step 4:** Critical assessment of the constitutional stipulations, including functions.
- Step 5:** Costing of national and county governments' functions.

IN ATTENDANCE

Marale Sande – Senior Research Officer

MIN.NO.DCH/88/2014 PRELIMINARIES

The meeting was called to order at 10.40 am and commenced with a word of prayer by Hon. Dr. James Murgor, MP

MIN.NO. DCH/89/2014 ADOPTION OF THE REPORT ON THE EMERGING CHALLENGES OF DEVOLVING HEALTH SERVICES

The meeting started with a brief introduction by the Chairperson on the need for the Committee to deliberate on the draft report on the emerging challenges of devolving health services since it was in the public interest following the mass resignation of doctors in the recent past. Members were in consensus that there was an urgent need to have the report tabled before the House and its recommendations debated and adopted for further action so as to salvage the health sector.

The following issues were raised, deliberated and consensus built:-

As regards the introduction and a summary of issues raised by stakeholders, the Committee felt they represent the deliberations as held with the various stakeholders.

On Committee observations, the Committee agreed on the broad challenges as highlighted in the report but emphasis was placed on following areas: -

- (i) Rushed transfer of functions to County with disregard to Article 187(1)(2) of the Constitution.
- (ii) Coordination challenges which the Members felt are hampering healthy service delivery at the County level where both National and County Government have County officials thereby duplicating efforts.
- (iii) The Human resource challenges were highlighted with concern and calls by Members for the report to reflect the current situation in the health sector where doctors and even nurses were resigning enmasse. Members re-emphasized that the report reflect the disparities across Counties, unfulfilled Collective Bargaining Agreements, training of health workers and general discontent by health workers.

MINUTES OF THE 22RD SITTING OF THE HEALTH COMMITTEE HELD ON 7TH
FLOOR OF PROTECTION HOUSE, PARLIAMENT BUILDINGS, ON WEDNESDAY,
19TH MARCH, 2014 AT 10.30 AM

PRESENT

1. The Hon. Dr. Rachel Nyamai, M.P. - Chairperson
2. The Hon. Dr. Robert Pukose, MP - Vice Chairperson
3. The Hon. David Karithi, M.P.
4. The Hon. Dr. Dahir Duale Mohamed, M.P.
5. The Hon. Dr. David Eseli, M.P.
6. The Hon. Dr. Enoch W. Kibunguchy, M.P.
7. The Hon. Dr. James Murgor, M.P.
8. The Hon. Dr. Patrick Musimba, M.P.
9. The Hon. Dr. Stephen Wachira, M.P.
10. The Hon. Dr. Susan Musyoka, M.P.
11. The Hon. Fred Outa, M.P.
12. The Hon. Hassan Aden Osman, M.P.
13. The Hon. James Gakuya, M.P.
14. The Hon. John Nyaga Muchiri, M.P.
15. The Hon. Joseph O. Magwanga, M.P.
16. The Hon. Kamande Mwangi, M.P.
17. The Hon. Leonard Sang, M.P.
18. The Hon. Mwinga Gunga, M.P.
19. The Hon. Raphael Milkau Otaalo, M.P.

ABSENT WITH APOLOGY

1. The Hon. Alfred Agoi, M.P.
2. The Hon. Christopher Nakuleu, M.P.
3. The Hon. Dr. James Nyikal, M.P.
4. The Hon. Dr. James O. Gesami, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Masoud Mwahima, M.P.
7. The Hon. Michael Onyura, M.P.
8. The Hon. Zipporah Jesang, M.P.
9. The Hon. Paul Koinange, MP
10. The Hon. Eng. Stephen Mutinda Mule, M.P.

6. The Ministry to develop a policy that will guide central procurement of drugs and medical supplies through a central procurement agency, KEMSA with an aim of guaranteeing quality and ensuring benefits from economies of scale.
7. A taskforce on devolution of health care be set up to co-ordinate and supervise the reversal of already devolved health functions most of which have compromised health services.

4.0 COMMMITTE RECOMMENDATIONS

Arising from the interaction with the various stakeholders and the observations made, the Committee therefore recommends as follows:-

1. The Constitution and other governing laws for example the Transition to Devolved Government Act must be applied as a guide in the devolution process. Further the unbundling of health functions as prescribed in the Constitution should be a matter of urgency.
2. The Constitution in Article 187(1) (2) is clear on the criterion and mechanisms of transfer of functions and powers between levels of Government. The Constitution prescribes health services as a devolved function. Devolution of health services however ought to have taken cognizant of the capacity of respective counties to take up the functions. The Committee therefore recommends the reversal of devolved health functions back to the National Government and further restarting the process in an organized and consultative manner so as to take into consideration the three year window period as provided by the Constitution.
3. Parliament to give priority to the Health Policy and Health Bill. This will guarantee effective coordination of the health services and to guide devolution of the health sector.

Parliament to provide leadership in classification of health facilities. The Committee recommends that level one to three be retained at the county level while level four to six be placed under the jurisdiction of the National Government.

4. Health workers are key stakeholders who need to be involved in development and implementation of policies in the health sector. The relevant authorities that is, the Ministry of devolution, Ministry of Health, Commission for the Implementation of the Constitution (CIC), Transition Authority and any other decision making organ should consult with the various registered unions within the health sector.
5. As regards health workers welfare on matters relating to terms of service, training, the Committee was in consensus that the sector requires a coordinating body to address workers grievances across Counties. The Committee therefore proposed the establishment of Health Service Commission to effectively address these matters.

Financial Challenges

3.8 As regards financing of the health services, the County governments are facing numerous challenges as highlighted below:-

- (i) County budgets for health are insufficient and not congruent with County Integrated Development Plans and County Health Strategic Integrated Plans;
- (ii) Insufficient funds are allocated for basic operating costs such as recurrent expenditure in health facilities;
- (iii) Guidelines on the collection, banking and utilisation of Facility Improvement Funds (FIF);
- (iv) Counties facing capacity challenges in terms of un-bundling of the health sector budgets;
- (v) Commodities that are of national public good such as vaccines, family planning commodities, anti- TB drugs, anti-retroviral drugs, HIV testing kits other and specialized medical equipment need to be safe-guarded to stem low quality products that can lead to emergence of resistant strains pathogens and failure to take advantage of economies of scale;
- (vi) Finances not easily accessible due to lack of structures and legal framework;
- (vii) Itemized kind of budget denies priority setting hence the gains made may be lost over time; and
- (viii) Funds meant for health at national level are re-allocated to other sectors with overreliance of the health sector on donor funding

Criteria for Classification of National Referral Hospitals versus County health facilities

3.9 The present status on classification of health facilities is such that the National Government is responsible for level six hospitals (the referral hospitals such as Kenyatta National Hospital and Moi Teaching and Referral Hospital). The level one to five are therefore referred to as County health facilities. Engagements with stakeholders including the Ministry of Health and the Transition Authority revealed that currently there is no criterion for classification of national referral vis-à-vis county health facilities.

COMMISSION ON REVENUE ALLOCATION

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ISSUES IN THE HEALTH SECTOR

- ❖ DONOR FUNDS
- ❖ NATIONAL HEALTH STANDARDS
- ❖ AVAILABILITY OF DATA