

Casesheet



Focus: Kenya

Regulation and Supervision in Water Supply and Sanitation (WSS)

Key Facts Kenya

Population	32 million
Urban population as a percentage of total population	36%
Population with access to water supply	50%
Population with access to to sanitation	No reliable data available
Regulatory framework	Water Services Regulatory Board (WSRB)
Service providers	Water Services Providers (WSPs); Alternative providers

Situation in the Country with regard to WSS

Kenya is classified as a chronically water-scarce country and has currently the lowest access to safe water in East Africa. Available access statistics are largely outdated but it is estimated that more than 50% of the population is underserved. Urban informal settlement and the rural poor are the most affected: while the urban poor largely rely on informal vendors, the rural consumers often draw their water from unprotected sources. The sanitary situation is likely to be worse with just about 10% of all households connected to a sewerage system and around 50%

to decentralised sanitation. Population growth in Kenya is projected to increase dramatically, particularly in the urban informal settlements, further worsening the situation.

Service Provision in the Sector.

There have been a great number of changes in Kenya's WSS sector with the completion of the Water Act of 2002 (enacted in 2003). The Act provides for the decentralisation of powers from the national to the regional and local level; the separation of water resources management from WSS as well as the institutional separation

of policy, regulatory, asset holding and operational functions.

Prior to the reforms, a number of organisations had been involved in water service provision including the Ministry of Water and Irrigation (MWI), the National Water Conservation and Pipeline Corporation (NWGPC), various local councils as well as an estimated 3000 Community Based Organisations.

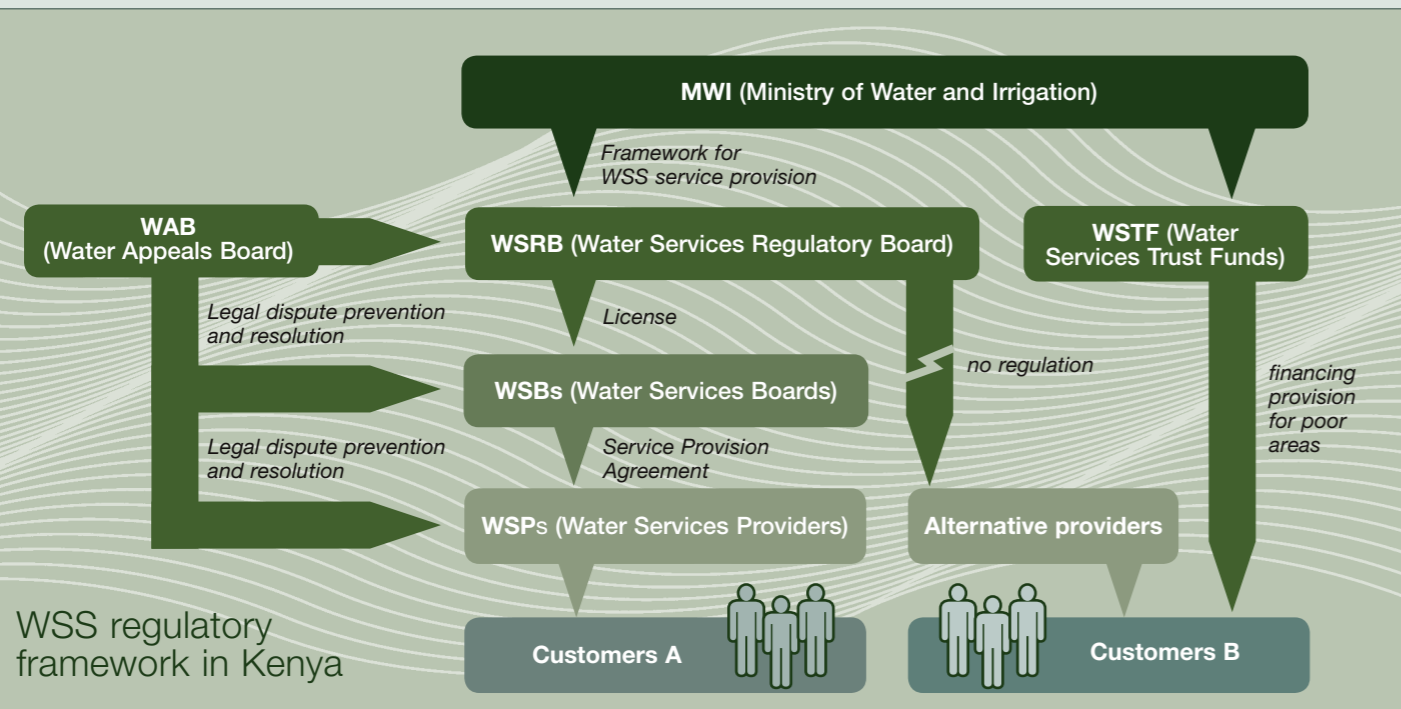
Following the provisions of the Act, the transfer of asset ownership from the Water Ministry and the National

commissioned by:

gtz



Federal Ministry
for Economic Cooperation
and Development



WSS regulatory framework in Kenya

Regulatory Framework

Water Corporation to seven regional Water Services Boards (WSBs) has been gazetted in July 2005, and most local governments have handed over their assets to the WSBs. While the WSBs are in charge of asset development and bear overall WSS service responsibility within their areas of jurisdiction, they appoint Water Services Providers (WSPs) to actually provide the service.

In urban settlements the WSPs are mostly local authority-owned utilities that have been established recently as commercialised, publicly owned companies. In other areas numerous community-managed projects are to be transformed into formally recognised WSPs. Community Based Organisations will retain the ownership over their assets and, where possible, remain or become in charge of operations.

Institutional Structure of the Sector. The national regulator, the Water Services Regulatory Board (WSRB), has been created by virtue of the 2002 Water Act to supervise water services provision in the country. However, some regulatory tasks are delegated to the seven regional WSBs. A Water Appeals Board (WAB) is responsible for resolving and determining certain disputes. The Water Services Trust Fund (WSTF) assists in financing the provision of water to unserved areas without adequate supply (see chart above).

The regulator, which has only become operational in 2004, consists of an 11-member board structure in charge of major decisions and a management team headed by a CEO. The recruitment process to fill the key positions is still on going. The sector's "line" ministry is the MWI,

defined by the Act as policy-making body in charge of providing an enabling framework for effective service provision. The Minister wields considerable powers, such as appointing and removing Board members and ensuring sector control.

Regulatory Tasks, Powers and Tools. Institutional responsibilities, powers and regulatory tools are still in the process of being further defined. The regulator's primary responsibilities are:

- Licensing the WSBs and formulating sector guidelines and regulations.
- Monitoring and enforcing the WSBs' compliance with conditions attached to their licences.
- Determining standards and issuing guidelines on service provision, customer protection, cost-effective and efficient operation and maintenance (O&M) procedures.
- Fulfilling certain dispute resolution functions.
- Issuing overall guidelines on tariff policies, structures and adjustment mechanisms.
- Compiling sector information for comparative competition of providers and informing the public about sector development.

The overall price regulation regime is currently being further defined and clarified. The proposal endows individual WSPs to request adjustments of remuneration as part of their periodic business planning process, which the WSB approves. Any adjustment to the WSB remuneration will need to be approved by the regulator. In addition, the current draft concept proposes an indexation formula to be included in the standard service pro-

vision agreement between the WSBs and the WSPs. The WSBs also have monitoring tasks in relation to the service provision agreements within their area and are partly allowed by law to make their own subsidiary regulations within the framework of the overall regulatory regime.

Incentives for Service Providers.

The current Model Service Provision Agreements provide for some simple incentive mechanisms. According to these, the WSPs may be allowed to retain part of the additional revenues if they outperform with regard to collection rates and Unaccounted-for-Water (UFW). As part of a government civil service reform policy, on going since July 2005, the WSBs and the top management of state corporations as well as the Ministry have signed Performance Contracts, which will be assessed annually.

Dispute Prevention and Resolution.

The functions of the Water Appeals Board are likely to be limited to disputes between the regulator and WSB or, as a third instance, between WSBs and WSPs. Alternative more localised and accessible mechanisms are currently being discussed as part of the on-going development of dispute resolution and appeals mechanism guidelines and Model Service Provision Agreements.

Pro-poor Provisions. Although strategic plans indicate an awareness of "pro-poor" issues in the regulatory process, the definition of targets has remained vague and implementation is in the initial stages. While many formal

providers operate a flat-rate lifeline tariff, the actual impact on low-income communities is contentious. There are indications that connection rates may be prohibitively high. Service provision in the large informal settlements remains outside the regulatory regime. Presently, the sector institution with a clear pro-poor focus and mandate is the Water Services Trust Fund.

Assessing Results

Regulatory reforms have only started recently and are part of a wider sector reform. So far, key institutions have been established and are in the process of becoming operational. Some crucial regulatory tools have been developed or are currently being finalized. Direct impacts of the regulatory reform are expected to be seen once the institutions and tools become effective.

Regulatory Independence. Although the Water Act provides for a fairly independent regulator, at this stage of the reform process, the WSRB is not yet fully independent. Funding is currently provided through government grants and a proposal for a regulatory levy of 1% is waiting for approval. In addition, staff is still being seconded from the Ministry to the regulator instead of being recruited from the market. A board appointed by the Minister takes key regulatory decisions and most of the WSRB's responsibilities are limited to issuing guidelines and advice rather than actual decision-making. However, the ultimate degree of independence





Conclusions and Outlook

will be determined with the definition of the respective roles and responsibilities and the development of regulatory tools.

Transparency in Decision-making.

There is an increasing awareness of the regulator as well as growing pressure from the general public and the regulated industry to move towards more transparency and accountability in regulatory decision-making.

Stakeholder Involvement. The Water Act requests consultation on a number of provisions and regulations. A culture

of public consultation and active stakeholder engagement is gradually being built. By appointing representatives into the boards of the respective institutions some improvements have been made with regard to involving consumers and civil society. Some of the larger WSPs are starting the process of improving customer service (e.g. Nairobi Water Company).

Promotion of Competition. While the Water Act encourages competition by appointing the WSP, government policy gives preference to public local government companies.

The success of regulatory reform will depend on the progress of the overall reform process in the sector as well as on the future strength and credibility of the regulator. It remains to be seen whether the regulator will be able to take a leading role, providing guidance to the regulated industry as well as to the Ministries throughout the reform process.

Role of German Development Cooperation.

German Development Cooperation has been intensely involved in establishing local government-owned autonomous and commercialised companies in various secondary towns in Kenya. These projects serve as a model for the establishment of WSPs throughout Kenya under the on-going reforms. Presently, GTZ is providing substantial support to the sector through the Water Sector Reform

Programme. Objectives of this project are inter alia the establishment of an effective regulatory regime for WSS; the operationalisation of the new institutions, established as part of the water sector reforms; and the commercialisation of WSPs. Water resource management components intend to optimise available resources, their management and use. KfW as the sector focus coordinator repre-

sents German cooperation externally and as such also co-chairs the water donor forum. Close cooperation exists with the Swedish/Danish funded Kenya Water and Sanitation Programme formalised in a joint financing agreement as well as an agreement on a common programme between German Development Cooperation (KfW, GTZ and DED) and the World Bank.

This document belongs to a series of Case Sheets, which draw on GTZ's advisory services in the area of "Regulation and Supervision of Water Supply and Sanitation". The conclusions expressed in this paper are those of

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