



Privatization of the urban water supply in Kenya: policy options for the poor

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1. *The Kenya Gazette* (2002), Supplement No 107 (Acts No 9), 24 October, pages 935-1053.

2. *The East African* (2003), May 14 and June 16.

SUMMARY: This paper considers how the government of Kenya's plans to privatize water supplies in urban areas could ensure that the needs of those living in informal settlements and of others with inadequate water provision are served. The need for reform in the water sector is evident from the years of poor performance and the growing numbers lacking piped provision. The government has chosen privatization as the main policy direction. However, privatization can cause the needs of the unserved and of low-income groups in general to be ignored. This paper discusses various policy options to secure advantage for these groups, within the framework of a privatized water sector. These include participatory sector planning, social tariffication, contractual clauses, water trust funds and support for alternative water suppliers.

I. INTRODUCTION

IN 2002, THE Parliament of the Republic of Kenya passed an important piece of legislation that proposed radical policy changes in the water sector, especially concerning water supply.⁽¹⁾ The law provided the *modus operandi* by which water supply is to be privatized. At the time, the critical issues in the Act escaped the attention of policy analysts, politicians, lobbyists and NGOs. This was probably because the whole country was absorbed in the politics of transition that culminated in the December 2002 elections. Since then, the minister in charge of water supply has expressed her intention to implement the Act. This has met with great resistance from local authority institutions (who are responsible for water supply and sanitation in urban areas) and from advocates for the poor.⁽²⁾ Local authorities are resisting the move because it will remove a substantial portion of their revenue base and their function as local service providers. Advocates for the poor suggest that privatization of the water supply will deny the poor access to this service. The fear is that those who cannot afford water under a normal market situation may have to do without, and this brings serious implications with regard to their health and livelihoods. The arguments have mainly been wrought within a political context.

This paper considers what can be done to ensure that the needs of the unserved and, more generally, of low-income households in urban areas can be met within privatization.

II. THE DIFFICULTIES IN IMPROVING URBAN WATER SUPPLIES

a. Difficulties in provision in low- and middle-income nations

WATER SUPPLY HAS long been seen as best provided by a piped system managed by a government agency. But governments in most low-income and many middle-income nations, including the Government of Kenya, have failed to provide for growing urban populations.⁽³⁾ They have failed to expand water supply systems – especially to serve those living outside the central districts – despite substantial funding available from international agencies. Their failure to manage existing supplies, including the maintenance of piped systems, usually led to large volumes of water lost to leaks and to illegal connections. Provision for collecting payments from those who were connected was often deficient, and tariffs were not increased (and often fell below the cost of provision).

The management of public utilities has often not been transparent and has been subject to political interference, which encouraged corruption at all levels. Managements have often recruited staff using criteria other than merit. Revenues have often been diverted away from the operation, maintenance and expansion of the system towards personal or political benefit. Overstaffing has been common at lower levels, while the technical and management levels have often faced a shortage of qualified personnel as a result of political interference and inadequate or unreliable remuneration.

There have also been problems with accessing finance. Public utilities have often lacked access to the capital needed for service improvement and expansion. Many have not been permitted to draw on private capital. Many public service providers also came to have large debt burdens to the point where they were financially insolvent. Most have become dependent on central government to bail them out.

The result of all this has been little or no capacity to expand to areas lacking services, replace obsolete technology, address leaks and ensure adequate water quality and quantity.

b. Urban water supply in Kenya

Rapidly growing urban populations have complicated the urban water supply situation in Kenya. Table 1 indicates that, by 1999, Kenya's urban population was close to 10 million, and included slightly more than one-third of the nation's 28,686,607 inhabitants. An increasing urban population implies increasing demand on urban service providers, including water providers. This takes place against a backdrop of a static institutional base, a dwindling revenue base, and obsolete technology for service providers in the public domain. It inevitably translates into inadequate services in the water sector.

The 1999 population census suggested that only 7 per cent of the population of the capital, Nairobi, lack access to piped water (Table 2). However, the tendency for official statistics to understate the level and adequacy of provision is well documented.⁽⁴⁾ For instance, having access to piped water and having a piped connection are two different things, especially in the informal settlements in which over half of Nairobi's population live. In these settlements, the poor rarely have piped water connections to their homes, and have to access piped water from kiosks or vendors, which is

3. This section draws on the following sources: UN-Habitat (2003), *Water and Sanitation in the World's Cities*, Earthscan, London; also Anton, Danilo J (1993), *Thirsty Cities: Urban Environments and Water Supply in Latin America*, International Development Research Centre, Ottawa; Budds, Jessica and Gordon McGranahan (2003), "Are debates on water privatization missing the point? Experiences from Africa, Asia and Latin America", *Environment and Urbanization* Vol 15, No 2, October, pages 87–114; Hardoy, Jorge E, Diana Mitlin and David Satterthwaite (2001), *Environmental Problems in an Urbanizing World: Finding Solutions for Cities in Africa, Asia and Latin America*, Earthscan, London; and Solo, Tova Maria (1999), "Small-scale entrepreneurs in the urban water and sanitation market", *Environment and Urbanization* Vol 11, No 1, April, pages 117–132.

4. See reference 3, UN-Habitat (2003); also reference 3, Hardoy, Mitlin and Satterthwaite (2001).

Table 1: Urban population in Kenya, 1999	
Urban centre	Population
Nairobi	2,143,254
Mombasa	665,018
Kisumu	322,734
Nakuru	231,262
Others	6,614,723
Total urban population	9,996,991

SOURCE: Central Bureau of Statistics (2001), *1999 Population and Housing Census, Volume I: Population Distribution by Administrative Areas and Urban Centres*, Ministry of Finance and Planning, Republic of Kenya, January, page 3-1.

Table 2: Main sources of drinking water for households in Nairobi, 1999		
Source	Number of households	Percentage
Pond	19,792	3.05
Dam	1,577	0.24
Lake	2,119	0.33
Stream/river	1,940	0.30
Spring	2,506	0.39
Well	2,654	0.41
Borehole	10,395	1.60
Piped	601,806	92.67
Jabias/tanks	6,637	1.02
TOTAL	649,426	100.00

SOURCE: Central Bureau of Statistics (2001), *1999 Population and Housing Census, Volume I: Population Distribution by Administrative Areas and Urban Centres*, Ministry of Finance and Planning, Republic of Kenya, January, page 7-

5. Alder, Graham (1995), "Tackling poverty in Nairobi's informal settlements: developing an institutional strategy", *Environment and Urbanization* Vol 7, No 2, October, pages 85-108.

expensive and often inconvenient. The official statistics are also misleading, as they give only generalized statistics for the city. Adler's 1995 review of water and sanitation in Nairobi showed that in informal settlements, only 11.7 per cent of households have water directly available on plot and 85.6 per cent obtain water from kiosks.⁽⁵⁾ In addition, even when piped water connections are provided, there are often water shortages and the quality of the water is often in doubt.

There are also problems with regard to piped water management. In Nairobi, for example, during April-May 2003, there was no water in the piped system. This situation lasted for several weeks in some parts of the city. Other urban centres also have water shortage problems. Machakos, for

example, experiences a permanent water shortage. In other cities, such as Kisumu and Mombasa, there have been several large-scale outbreaks of water-borne diseases.

For Nairobi, it is also estimated that only 50 per cent of the water can be accounted for.⁽⁶⁾ Corruption has also been reported in the water departments. As noted by Joseph Onjala: “... when the water rationing had taken root in Nairobi, it was discovered that many illegal structures ... had been built on top of water lines, and their owners have been siphoning the council water in collusion with council officers to provide car wash services etc. for many years.”⁽⁷⁾ He has also listed rampant corruption as one of the reasons why privatization of water had to be instituted in Kenya.

These deficiencies in provision and in the institutional structure needed for water management occur against the backdrop of a water policy that seeks to:

- supply water of good quality and in sufficient quantities to meet the various needs for water while ensuring safety; and
- establish an efficient and effective institutional framework to achieve systematic development and management of the water sector.⁽⁸⁾

According to one of Kenya’s high-ranking water officers, urban water supply in Kenya could not operate on a sustainable basis due to problems related to insufficient and unreliable revenue and government bureaucracy.⁽⁹⁾ The government therefore saw the need to reform the water sector and, in doing so, to de-link its own institutions from the provision of water and sanitation.

III. PRIVATIZATION AS A POLICY RESPONSE

a. Privatization of water in Kenya

THE GOVERNMENT CHOSE the path of privatization for its reforms. In this, it followed what has become a general response in the contemporary policy domain, namely the privatization of public sector enterprises in Kenya (and elsewhere). A UN study defined privatization as: “...the entire process of expanding the sphere of the market through a host of regulations that create an enabling environment for free enterprise to operate as a strategy for sustainable economic development.”⁽¹⁰⁾ This is expected to foster efficiency and encourage investment in infrastructure and services for the overall benefit of human settlements. A recent UN review of water and sanitation in cities highlighted the many different forms that privatization in the water sector may take, including service contract, management contract, affermage contract, lease contract, concession contract, build-own-transfer contract, divestiture, joint venture and multi-utility contract.⁽¹¹⁾ Water privatization has become a common response in much of sub-Saharan Africa, although the forms that this takes differ considerably.⁽¹²⁾

In Kenya, privatization in the water sector in the form of commercialization has been tried, but with no significant gains. Individual municipalities, including Eldoret, Kericho and Nyeri,⁽¹³⁾ took the initiative to form private companies to undertake water supply in their respective jurisdictions. This marked the initial attempts to address the problems in the water sector through privatization, at a time when no comprehensive policy framework had been put in place. It also demonstrates an earlier understanding that privatization is probably the policy makers’ preferred option in reforming the country’s water sector.

6. Onjala, Joseph (2002), “Good intentions, structural pitfalls: early lessons from urban water commercialisation attempts in Kenya”, CDR Working Paper 02.2, Center for Development Research, Copenhagen.

7. See reference 6.

8. Donde, Fredrick Odhiambo (1997), “Water supply situation in Kenya”, Partnership in the Water Sector for Cities in Africa, report of the Cape Town consultants, United Nations Centre for Human Settlements (Habitat), Nairobi.

9. See reference 8.

10. UNCHS–Habitat (1998), “Privatisation of municipal services in East Africa: a governance approach to human settlements management”, United Nations Centre for Human Settlements (Habitat), Nairobi.

11. See reference 3, UN–Habitat (2003).

12. See reference 3, UN–Habitat (2003).

13. See reference 10.

14. See reference 1

15. Bold emphasis added by author.

16. See reference 3, UN–Habitat (2003); also Johnstone, Nick, Libby Wood and Robert Hearne

(1999), "The regulation of private sector participation in urban water supply and sanitation: realising social and environmental objectives in developing countries", Environmental Economic Programme Discussion Paper DP 99-01, September.

17. See reference 16.

18. Eberhard, Rolfe (2001), "Supply pricing of urban water in South Africa: theoretical approaches to urban water pricing – a review", Working Paper 1, Palmer Development Group.

19. Bhattacharyya, A, E Parker and K Raffie (1994), "An examination of the effect of ownership on the relative efficiency of public and private water utilities", *Land Economics* Vol 70, No 2, May, pages 197–209.

20. Kinnersley, David (1994), *Coming Clean: The Politics of Water and the Environment*, Penguin Books, London.

21. See reference 3, Budds and McGranahan (2003); also reference 3, UN-Habitat (2003); and Loftus, Alexander J and David A McDonald (2001), "Of liquid dreams: a political ecology of water privatization in Buenos Aires", *Environment and Urbanization* Vol 13, No 2, October, pages 179–200.

22. Postel, Sandra (1997), *Last Oasis: Facing Water Scarcity*, Norton, New York.

23. Jaglin, Sylvie (2002), "The right to water versus cost-recovery: participation, urban water supply and the poor in sub-Saharan Africa", *Environment and Urbanization* Vol 14, No 1, April, pages 231–246.

24. Kenya, Republic of (1996), "Welfare monitoring survey II, 1994 basic report", Central Bureau of Statistics, Office of the Vice-President and Ministry of Planning and National Development, Nairobi.

The policy framework has now been crafted and is about to be implemented. However, it is not clear what form of contractual arrangement the privatization of water will take. Under the Water Act of 2002, water services boards will apply for licensing by the Water Services Regulatory Board.⁽¹⁴⁾ Section 57(5)(d) of the Water Act of 2002 states that: "...the application shall not be granted unless the Regulatory Board is satisfied that... the applicant, or any water service provider by whom the functions authorized by the licence are to be performed will provide the water services authorized by the licence on a commercial basis and in accordance with **sound business principles**."⁽¹⁵⁾ However, the Act is not clear as to what "commercial basis" means. The Act states in Section 57(1) that: "An application for a licence may be made only by a water services board." Yet, according to Section 51, the water services board is to be constituted by the minister in charge of water resources and it is the board that will be licensed to provide water services. The board may thereafter operate on a commercial basis, or contract out part or all of its operations to a commercial provider.

b. Critiques of water privatization

Current literature points to an increase in privatization of the water sector as a result of mismanagement problems in the public sector.⁽¹⁶⁾ There is also the issue of lack of funds needed for new investments to meet current requirements.⁽¹⁷⁾ However, privatization is not the only option in reforming the water sector.

In terms of economic theory, privatization would not necessarily present an advantage over public enterprise,⁽¹⁸⁾ and privatization is certainly not a pre-condition for efficient management.⁽¹⁹⁾ Even the view that privatization was intended to achieve efficiency has been contested – for instance, David Kinnersley suggested that the original idea was to remove existing and prospective debt from public accounts.⁽²⁰⁾ With regard to actual performance, many experiences with water privatization in low- and middle-income nations have proved disappointing, especially with regard to expanding provision for lower-income groups. In addition, privatization has generally failed to attract private capital, reduce corruption, reduce tariffs and protect the interests of the poor.⁽²¹⁾

The process of privatization has also been subject to criticism. The first criticism is that it has often been rushed, without first ensuring that adequate rules and regulations have been laid down.⁽²²⁾ There has been implementation within inappropriate contexts, with little consideration for equity requirements, despite the importance of equity considerations in safeguarding the interests of the poor. Sylvie Jaglin contends that achieving economic efficiency has taken precedence over other equally important aims such as equity and consumer protection.⁽²³⁾

Thus, privatization may not be the best option for reforming the water sector in Kenya. However, since the government is intent on privatization, this paper seeks to suggest what measures could be taken to ensure that the needs of the poor are addressed within the context of privatization.

IV. POLICY IMPLICATIONS FOR THE URBAN POOR

THE SCALE OF urban poverty in Kenya is significant. An estimate for 1994 suggested close to 2 million urban poor, half of them in Nairobi.⁽²⁴⁾ The number has certainly increased rapidly since then; an official government report suggested that 49 per cent of the urban population were

below the poverty line in 1997, which implies more than 4 million urban poor.⁽²⁵⁾

There is a strong spatial link between water provision and poverty. Most of the urban poor live on city peripheries, largely because the price of land near city centres, where infrastructure and services are available, is far above what they can afford. In the peripheral areas, water supply infrastructure may not have been put in place or, where it has, the pressure in the pipes may be so low that this leads to persistent shortages, as those closer to the central areas tend to use up the available supply.⁽²⁶⁾

When the poor are not living in the periphery, they are living in inner informal settlements that are still peripheral areas in terms of the infrastructure and service network. Most of the settlements are located on hazardous sites such as valleys, flood plains, river banks and disused quarries, and these present many engineering difficulties for infrastructure provision.⁽²⁷⁾ Supplying these areas with water may therefore involve high unit costs. When this is combined with the limited capacity of the population to pay for water, there is often a large gap between costs and potential cost-recovery. Private enterprises seeking to maximize profits or minimize losses would avoid these areas because they are not profitable.

Another problem with regard to improving water provision is that most of the settlements where the urban poor live in Kenya contravene official laws and regulations. Their land tenure is not legalized, they are unplanned (and often lack access roads), their buildings contravene the building code and they lack services. They are also regarded as an eyesore by middle- and upper-income groups. They are almost entirely left out of the programmes and budgets of national and local authorities. In terms of water supply, most of these areas lack a piped water network, largely because providing connections to each house plot is difficult where plot ownership is unregistered (and perhaps contested) and settlements are unplanned. In many informal settlements, there are no public rights of way to allow pipes to be laid, and it is difficult and complicated to determine who "owns" what and with whom any service contract should be signed (large sections of the population in the informal settlements are tenants and the housing structures are often "owned" by absentee landlords). A private water provider will avoid any provision for household connections in these settlements. Yet, the inhabitants of these settlements have a right to basic services. An estimate for 1996 suggested that little more than half the "slum" population had access to safe drinking water in Kenya, and the proportion served had hardly grown at all since 1990.⁽²⁸⁾ There is no evidence that provision has improved much since then.

Thus, one of the key issues is how water privatization in Kenya can avoid the problems evident in many other privatization experiences.

V. PARTICIPATORY MANAGEMENT APPROACHES

THE MOST POSITIVE attribute of the Water Act of 2002 is that it has made provision for a participatory approach to the management of water resources. There are instruments and institutions which the poor or their advocates may use to ensure that they also get their share of the water.

a. Regulatory agency

The Water Services Regulatory Board is meant to license water providers.

25. Kenya, Republic of (2000), "Second report on poverty in Kenya, volume I: incidence and depth of poverty", Human Resources and Social Services Department and Central Bureau of Statistics, Ministry of Finance and Planning, Nairobi, 89 pages.

26. Ahmed, Noman and Muhammad Sohail (2003), "Alternate water supply arrangement in peri-urban localities: *awami* (people's) tanks in Orangi township, Karachi", *Environment and Urbanization* Vol 15, No 2, October, pages 33–42.

27. See reference 3, Anton (1993).

28. See reference 25.

29. The Water Act 2002,
Section 2, First Schedule.

Currently, the provision is that the minister in charge of water resources will be responsible for appointing members to the board, while the president will appoint the chair. There is also the Water Services Board that has to be constituted by the minister. When making appointments to these two boards, the minister is meant to consider, among other things, "...the degree to which water users, or water users of particular kinds, are represented on the board...at the time of appointment."⁽²⁹⁾ In this case, the poor can be considered as "water users of a particular kind", or stakeholders, and therefore they have a right to be represented on these boards. The boards therefore present the poor with a forum through which they can lobby and push for their right to access to water supply. There are various ways in which access can be achieved, as discussed below.

b. Water development forum

30. See reference 1.

The Act also establishes another forum known as the National Water Services Strategy. This is an instrument for participatory planning in the water sector. The law requires the minister in charge of water resources to formulate the strategy through public consultation. This should provide the poor with the possibility to air their grievances and influence water development policy in the country. One of the objectives of the National Water Services Strategy is: "...to institute arrangements to ensure that at all times there is in every area of Kenya a person capable of providing water supply."⁽³⁰⁾ This is meant to ensure that no area is left without a water supply programme. The strategy would contain details such as:

- existing water services;
- the number and location of persons who are not being provided with basic water supply;
- a plan for the extension of water services to under-served areas;
- a time frame for the plan; and
- an investment programme.

This should give some advantage to the poor being able to articulate their needs which, in turn, are incorporated into the official documentation. However, the shortcoming of the strategy is that no provision is made for its implementation in the context of commercialized operations. This can be corrected using various other water management instruments, such as trust funds, social tariffication, contractual clauses and alternative water providers.

VI. WATER SERVICES TRUST FUND

31. See reference 1.

SECTION 83 OF the 2002 Water Act makes provision for the establishment of the Water Services Trust Fund. Funding is expected from three principal sources: parliamentary appropriations, donations/grants/bequests and statutory payments. The objective of the fund is to help finance water provision in areas of Kenya that are without adequate water services.⁽³¹⁾

The trust fund will receive development money from the government as budgetary allocations, and it may also get money from taxing water users or providers. The money can then be used to finance investments to provide water for the poor and to neglected areas. However, the performance of trust funds created by the government in Kenya has never been impressive. If it can be demonstrated that this fund can work, then the donor community and NGOs would be willing to work with it in a joint endeavour to

provide water to the poor. Unfortunately, the Act does not specify how the trustees are to be appointed, which lays it open to appointments serving political patronage. Low-income, unserved groups must be represented in the Water Services Trust Fund; this would give them access to funding for water projects that would benefit them.

VII. SOCIAL TARIFICATION

SOCIAL TARIFICATION REFERS to charging a “social” rather than a commercial tariff. It is a policy instrument that may be used to ensure that the poor get water in instances where charges based on full cost-recovery would be too expensive. It works for those poor citizens who are connected to the main water network but who may otherwise not be able to afford the market price. Low-income households generally consume low volumes of water. The “social tariff” can price the first block of consumption (which corresponds to basic needs) cheaply, and thereafter each block of consumption should become progressively more expensive.⁽³²⁾ Again, the poor will be in a position to benefit from this policy instrument only if they can command influence in the Water Services Regulatory Board, where tariffs will be determined.

Social tariffs are also useful for promoting conservation of available water. Since this system penalizes high consumption, it will encourage consumers to limit consumption to necessary levels. This also helps avoid the high costs and the time delays inherent in investments to expand the water supply. It is in line with the growing realization that it is easier and cheaper to make better use of existing supplies by managing the demand rather than struggling to increase supply while much of the water goes to waste.⁽³³⁾

VIII. CONTRACTUAL CLAUSES OR CONDITIONALITIES

AS WELL AS specifying tariffs in the contract, it is also possible to specify that part of the performance of the contract includes extending the water network to an area which is unserved – for instance, to informal settlements or peripheral communities. If such conditions are not adhered to, a breach would be implied and the licence could be withdrawn. The Water Services Regulatory Board will be in charge of supervision. The board is also mandated to take action against the licensee, which includes withdrawal of the licence.

Again, it is important that representatives from urban poor organizations or their advocates sit on this board, so that they can influence policy in the way that has been suggested. If they are under-represented, the board may ignore their plight and promote other agendas that may be detrimental to them. Being on the board would also allow them to ensure that the licensee performs according to the conditions attached to the licence.

IX. ALTERNATIVE WATER SUPPLIERS

GIVEN THE NUMBER of urban dwellers who get unsatisfactory or no service from the conventional piped water network, a number of alternative

32. UNCHS–Habitat (1989), “Conservation of drinking water supplies: techniques for low-income settlements”, United Nations Centre for Human Settlements (Habitat), Nairobi.

33. Postel, Sandra (1985), “Conserving water: the untapped alternative”, *World Watch* Paper No 67, World Watch Institute, Washington DC.

water suppliers have emerged to address these shortfalls. They include drinking water companies that supply water in disposable bottles, which are sold in supermarkets, shops, kiosks and even by hawkers. There are also those who supply drinking water to offices using bigger and returnable containers. Water tankers supply homes during periods of serious water shortages; however, their rates are very high and this cannot be considered as an option for the poor.

There is another group of providers who serve the poor; they include well-owners and cart-pushers. Cart-pushers provide tap water for those who are not served by taps, while well-owners provide cheaper water than the official supplier, catering for those unable to afford official rates, while also providing water for all during shortages.

In Kenya, no comprehensive study has been undertaken on the operations of the alternative water suppliers. However, in other countries with similar situations to Kenya's, studies have revealed that alternative low-income suppliers can supply water at an acceptable standard. The studies also show that alternative suppliers hold several advantages over official suppliers where providing water for the poor is concerned. These advantages include efficiency, cost-effectiveness, good customer relations and lower rates.⁽³⁴⁾

Thus, there is a lot of potential for alternative providers to cater to the needs of the occupants of informal settlements and other low-income groups. The role of the informal economy is recognized in other sectors; for example, even in the petroleum sub-sector of the energy sector, when it was being liberalized, the informal sector in the form of independent dealers was recognized. The formal water companies, including foreign ones with sophisticated technology and management systems, will be relevant only to economies or societies that are "formal" in nature. They are not appropriate for those living in informal settlements, who do not even have a billing address.

Carpenter has suggested that the future of privatization of water in low-income countries lies with the small-scale provider, and that its success will measure up to the performance of their counterparts in the liberalization of the telecommunications digital/wireless industry: "*Why not look to household point-of-use purification of water as a viable alternative to massive new infrastructure, particularly in rural areas and in urban slums, which will not see that infrastructure for years, even decades.*"⁽³⁵⁾

Unfortunately, the Water Act of 2002 has not recognized the alternative water suppliers who are so important to the poor. Instead, the Act even tightened the rules for their operations. In Section 56, it stipulates that: "*No person shall, within the limits of supply of a licensee [formal water supplier] provide water services to more than 20 households; or supply more than 25,000 litres of water a day for domestic purposes, or more than 100,000 litres of water a day for any purpose, except under the authority of a licence.*" This authority is in the form of a supply contract. Applying for a water supply licence will be much more difficult and complicated than applying for a hawker's licence from City Hall. An alternative water provider cannot apply for direct licensing by the regulatory board. They can only supply water by contract through the Water Supply Board, which may be their rival/competitor, according to Section 57(1)(5).

Thus, there are no overt policy arrangements to encourage alternative water suppliers, despite their importance as supplementary suppliers essential for large sections of the lower-income groups. It is possible for the poor to influence issues through the boards by licensing these alternative

34. See reference 3, Solo (1999); also Collignon, B and M Vezina (2000), "Independent water and sanitation providers in African cities", full report of a ten-country study, Water and Sanitation Program, Washington DC.

35. Carpenter, G (2003), "Making markets work for clean water in balancing competing water uses – present status and new prospects", Twelfth Stockholm Water Symposium, August 12–15, IWA publication, London.

water providers. But the policy should encourage and support the operations of alternative water providers/suppliers to ensure that the poor get a basic water supply in spite of "privatization" or "licensing".

However, alternative suppliers should only be considered as a stopgap measure. Policy measures should seek to ensure good-quality formal provision for all, otherwise the poor are left as captive consumers of "informal" rather than standard services.

X. CONCLUSIONS

IN KENYA, AS in so many other low- and middle-income nations, provision for water to the urban and rural populations is very unsatisfactory. One response is for government to de-link itself from the water supply business. This can be done by relinquishing the management to stakeholders (mainly the consumers) or by privatizing water services. Given the limitations of relying on community self-help water projects, the latter seems preferable.

But privatization brings risks in terms of welfare for the poor. This paper has outlined ways in which the needs and priorities of low-income and unserved households can be safeguarded. The Water Act of 2002 puts in place a legal framework through which the interests of the poor can be safeguarded. But the policy framework lacks a clear statement guaranteeing the poor access to safe water supplies in spite of their limited ability to pay. Also, there is a need to redefine the constitution and role of the Water Services Trust Fund that the Act intends to create, to make it more relevant to the needs of the poor. The current and potential role of alternative water suppliers must be recognized and supported by the Act, so that they can supplement the formal or official providers. Overall, a fine-tuning of the law and policy along the lines mentioned above is necessary before actual privatization is undertaken.