

**STATEMENT BY HON. JOHN MUTUA KATUKU, MP, MINISTER FOR WATER AND IRRIGATION, DURING THE WATER SECTOR REFORMS WORKSHOP FOR MEMBERS OF PARLIAMENT, WEDNESDAY 6<sup>TH</sup> SEPTEMBER 2006, KENYATTA INTERNATIONAL CONFERENCE CENTRE, NAIROBI**

**Honourable Members of Parliament,  
Stakeholders in the water sector,**

**1. INTRODUCTION**

I take this opportunity to welcome you all to this workshop and thank you for finding time to come. This workshop is part of our public awareness programme on the water sector reforms that we are implementing. This is provided for in the Water Act 2002 which was enacted by Parliament. The Government recognizes the importance of water to development and aims to manage and develop it in a sustainable and efficient manner.

As the people's representatives, members of Parliament are key stakeholders and actors in the successful implementation of the reforms programme. We also recognize that a significant percentage of the Constituency Development Fund goes into water projects and therefore it is very important that you are well informed on the changes that are taking place in this sector.

The Government of Kenya through the Ministry of Water and Irrigation embarked on a comprehensive water sector reform programme in the 1990's. This included among other things, the development of national water policy popularly known as *Sessional Paper No. 1 of 1999* and the National Water Sector strategies. The result is the repeal of the Water Act Cap 372 of the laws of Kenya and the enactment of the Water Act 2002.

**2.0 THE WATER ACT CAP 372, LAWS OF KENYA**

First let me give a highlight on the origin of the Water Act Chapter 372 of the laws of Kenya and the reasons that made it necessary to repeal it.

The first specific legislation on the management and use of water resources in Kenya came into being in 1929. The Water Ordinance of 1929 was then repealed and replaced by the Water Act Cap 372 in 1952. This Act was slightly amended for the last time in 1972. Many of those who are familiar with the Administration of the Water Act Cap 372 have expressed views that even though the Act was sufficiently flexible, it was not enough to serve the interests of all Kenyans even if it was properly implemented. Indeed, Cap 372 allowed for creation of certain institutions which were not set up and operationalized.

However, for a number of years, particularly after the start of the international Water Decade (1979 –1989), many experts and the public started agitating for a complete revision of the Water Act Cap 372. This was because the Act was failing to meet the needs of the contemporary society especially with regard to enforcement and emergence of strong community managed water schemes, self help groups and NGO'S.

The Ministry in charge of water affairs did not separate management of water resources from that of water services. And since Kenya is a water-scarce country, concentration has always been on water services with the aim of increasing water coverage forgetting that the source of the water needed attention as well.

This obviously led to non-protection and hence degradation of Catchment areas and accelerated soil erosion. As a result, the economic life of our dams and pans was reduced and the costs of water treatment went up. Even more critical is that some rivers and streams disappeared and those remaining are carrying less water especially during the dry seasons.

The water apportionment and allocation practices in the Water Act Cap 372 were very weak and fundamentally the cause of the water conflicts often witnessed in some parts of the country.

On the side of institutional arrangements, the Act did not make provision for the coordination of activities of the different sectors that use the water resources. There existed 25 sectoral laws that in one way or another touched on water use. Such Acts include;

- The Agricultural Act Cap 318,
- The Forest Act cap 385,
- The Environmental Management and coordination Act No 8 of 1999,
- The Physical Planning Act,
- The Local Government Act Cap 265 and
- The various land laws.

On provision of Water Services the Water Act Cap 372 did not make it mandatory for those in charge of supplying water to offer or maintain specified service levels. A consumer could therefore stay for any length of time without water and nothing could be done to the institution responsible. Furthermore, illegal connections and tampering with installations was not criminalised.

From the foregoing it was not surprising that the Ministry of water had been receiving numerous complaints. These were mainly in regard to water rights and accessibility of water for agricultural and livestock use and on the poor performance of water supplies.

## **2.1 THE WATER ACT 2002**

It is against this background that an inter-Ministerial committee was set up which also included members from the non-Governmental organisations to review the Water Act, consult with the stakeholders and make recommendations on the necessary changes. This resulted in the writing of Sessional per no. 1 of 1999 on National Policy on Water Resource Management and Development. The policy deals with four specific objectives namely:

- § To preserve, conserve and protect available water resources and allocate it in a sustainable, rational and economic way. This role is currently being fulfilled by the Water Resources Management Authority.
- § To supply water of good quality and sufficient quantities to meet the various needs including poverty alleviation, while ensuring safe disposal of waste water and environmental protection. This is the role of Water Services Boards, the Water Services Providers and the Water Services Regulatory Board.

- § To establish an efficient and effective institutional framework to achieve a systematic development and management of water sector. This has now been achieved by operationalization of WA 2002.
- § To develop a sound and sustainable financing system for effective Water Resource Management and Water supply and sanitation. The Water Services Trust Fund has a big role to play here. But we as the lawmakers have room to improve funding in water sector.

The Government consulted widely to create a tool for implementing the new water policy. The findings and recommendations were enacted by the Eighth Parliament as the Water Act 2002 (Act No. 8 of 2002) in July 2002. It received Presidential Assent in October 2002.

The provisions of the Water Act 2002 conform to latest thinking worldwide and are common in many countries. They make a clean break with the past. By repealing the Water Act Cap 372, Parliament touched on one of the sources of national wealth and power. But from an economical, technical, social and moral point of view, this had to be done.

## **2.2 Principles of the Water Act 2002**

The main principles on which the Water Act 2002 is developed are:

- a) **Ownership of all surface and Groundwater is vested in the state.** The Minister has been vested with the right to use water and the responsibility for its management for the benefit of our dear country Kenya.
- b) **Stakeholders are to be involved** in all important decision making and management of water resources. This legitimizes the participation of many different actors in the water sector.
- c) **Water Resources are to be managed on a Catchment basis** because rivers do not recognize administrative boundaries.
- d) Water Services are to be managed at the **lowest level possible**.

- e) Development of water resources is to be implemented on an **environmentally sustainable** basis.
- f) The skewed allocation and distribution of water is to be redressed and **access to water** by all Kenyan improved.
- g) Water prices will be based on the **User pays and polluter pays** principle, but they will have to be socially acceptable to the different consumer groups. It is recognized that water has an economic value in all its competing uses. It should therefore be taken as an economic good in order to achieve efficient and equitable use, and encourage conservation and protection of water resources. An important outcome is that water utilities should be treated as sustainable commercial enterprises, but with a humane face.
- h) Other social objectives such as **supplying the needy** poor with water shall be achieved by other means that may include Government subsidy to the production of water for different uses.
- i) Water Services operations be treated as **separate business entities** for institutions operating other activities to **ring-fence revenue** generated from sale of water.

### **2.3 Institutional Arrangements**

The Water Act 2002 has introduced new institutional arrangements in the management of water resources and water and sewerage services. These include:-

- a. Separation of water resources management from water and sewerage services by establishing two autonomous regulatory institution namely:-
  - The Water Resources Management Authority (WRMA) for water resources;
  - Water Services Regulatory Board (WSRB) for water and sewerage services.
- b. Decentralization of services to the regional level

- Water and Sewerage services planning and provision will be done through seven Water Services Boards (WSBs) established at regional level;
  - Direct provision of water and sewerage services will be carried out by Water Services Providers (WSPs) who will serve as agents of the Water Service Boards;
  - Catchment Area Advisory Committees (CAACs) established at catchment level will provide water resources management advisory functions. There are six regional offices established by the Water Resources Management Authority which cover the whole country;
  - Water Resources User Associations (WRUAs) for cooperative management of water resources and conflict resolution at sub-catchment level.
- c. The water Services Trust Fund (WSTF) is mandated to support the financing of water and sewerage services for the under served rural and urban areas.
- d. The National Water Conservation and Pipeline Corporation to be the construction arm of the Ministry in as far as erecting water infrastructure is concerned.
- e. The Water Appeals Board(WAB) will handle disputes in the water sector

### **3.0 WATER SUPPLY AND SEWERAGE SERVICES (WATER SERVICES)**

#### **3.1 Background**

Before the commencement of the reforms, water supply and sewerage services was dominated by three major players:

- The Ministry of Water & Irrigation which had 280,000 metered connections;
- The National Water Conservation and Pipeline Corporation with 230,000 metered connections.

- The local Authorities with 230,000 metered connections. Most of the metered connections in local authorities were to be found in Nairobi City, which had 160,000-metered connections, by 2003.

**Hon. Members, Ladies and gentlemen,**

Water and sewerage coverage in this country is very poor. About 14 million Kenyans do not have access to clean drinking water, while 21 million do not have access to sanitation. Even though the water supply situation has deteriorated across the board, the urban areas, which have the highest population growth rates, have been the most affected. The Services have shortcomings in terms of low quality, high water losses ranging between 40% – 70%, low revenue collection ranging between 50% to 70% and low coverage. This unsatisfactory status was addressed by the Government through reorganization of the water sector.

**3.2. Reorganization of Water Sector**

The reorganisation is in line with the objectives of the economic development policy of the Government whose aims (among others) are to streamline Civil Service operations and promote efficiency in service delivery. It is also in line with all relevant resolution of numerous international conference and summits, starting with the Mardel Plata Conference of 1977.

It is becoming more and more evident throughout the world that provision of water services especially in urban areas should be on commercial lines, as opposed to the management and planning of water resources. Indeed our neighbours and other countries in sub-Sahara Africa are currently involved in changing the status of their water supply institutions to commercial ventures.

Uganda, Tanzania, Malawi, Zambia, Botswana, Namibia and South Africa have either commercialised or are in the process of commercialisation. Experience in some Kenyan towns suggests that significant improvements could be achieved with commercialisation. Such is the case with Nyeri Water and Sewerage Company Limited (NYEWASCO). It is now clear that what is required in our water supplies is granting of financial incentives and managerial autonomy.

### **3.3 Partnerships**

- The Ministry's efforts to reform the water sector have received support from our development partners evident in the number participating in the water sector and the level of contribution to the budget. Currently the donor component of the water sector budget amounts to 40%. *(Details in the PS presentation on Financing the water sector)*

## **4.0 THE REFORM PROCESS**

The reform process in the Water Sector is about operationalizing the Water Act 2002 that Parliament enacted in 2002. The establishment of the new water sector institutions has been discussed exhaustively as well as the various options of managing our water resources and water supplies.

However, many people still call for further discussions, sometimes not to seek clarifications but to buy time in order to delay the changes. In the meantime, the scramble for the utilisation of the water resources continues. Indeed, hardly a week passes before we hear of water conflicts among our people. On the other hand the provision of water is getting worse with the numbers of those having access decreasing instead of rising.

By implementing the Water Act 2002 and by establishing and operationalizing the new institutions, the Government is trying to achieve the following three **E**'s.

### **4.1 EQUITY**

- Access to water for all,
- All water users jointly manage their water in decentralised catchment areas or water Services Boards,
- Affordable tariffs.

### **4.2 ENVIRONMENTAL SUSTAINABILITY**

- Polluter pays through discharge permits
- Drought and Flood preparedness and control of siltation.

### **4.3 EFFICIENCY**

- Commercialise water supply and sanitation services in all urban areas,

- Finance water resources management from water levies and charges,
- All users pay for water,
- Demand management to reduce water losses,
- Encourage rainwater harvesting and water saving technologies and crops.

## **5.0 TRANSFER PLAN**

For the reforms to become fully operational the Ministry of Water and Irrigation has transferred its functions and responsibilities, assets, staff and equipment to the new Institutions. The transfer entails the following:-

- Functions and responsibilities of water resources management and water and sewerage services as per Water Act 2002;
- Assets, plants and equipment which have hitherto been used for water resources management and provision of water and sewerage services;
- Staff performing the functions and responsibilities and operating and managing the assets and equipment to the respective new institutions as the Government continues to pay the personal emolument during the transition period for its staff under transfer.

Functions, responsibilities, assets and equipment were transferred to the new institutions; vide legal notice No 101 Of 15<sup>th</sup> August 2005, with effect from 1<sup>st</sup> July, 2005.

### **5.1. STAFFING ISSUES**

Beginning from 1<sup>st</sup> of July 2005, staff from Ministry of Water and Irrigation and the National Water Conservation and Pipeline Corporation were redeployed to the new institutions to enable them continue performing all the duties that were being carried out by the Ministry and the Corporation smoothly for a period of three years (i.e. with effect from 1<sup>st</sup> July, 2005 to 30<sup>th</sup> June 2008). During this transition period, the new institutions will be responsible for paying staff that join them from the National Water Conservation and Pipeline Corporation while the Ministry will pay its own staff now deployed in the new institutions up to 30<sup>th</sup> June, 2008.

Section III of the Plan of Transfer of Water Services requires the Water Services Boards to be adequately staffed as per the standards set by the Regulatory Board. Therefore all new institutions will be required to employ the staff redeployed to them by the Ministry and the Corporation in accordance with their own staffing requirements and terms and conditions of service with effect from 1<sup>st</sup> July, 2006.

There are few issues that my Ministry still has to finalise in order to strengthen the reforms. These include:-

- a) Determining the status of the water companies that have been formed by either local authorities or by other actors. These companies are utilising public assets to produce and supply water. Should we consider them as private or public entities?
- b) As of now the Boards are using the Government assets that were passed on to them by my Ministry. There is need for a formal transfer of these assets to the Boards.
- c) Parliamentarians need to endorse the recommendation for the Water Services Boards to become budget centres. This will mean that funds to districts will pass through the Boards directly rather than through the district treasuries where Boards have no control.
- d) The appointment of Board Members to the water companies has not been streamlined. Indeed there have been complaints on the mode that is utilised to pick them. How best can it be done?
- e) The Ministry concentrating on policy, fundraising and guidance functions and only intervening where it is necessary within the sector.

## **6.0 CONCLUSION**

**Hon. Members, Ladies and Gentlemen,**

There are naturally many activities that are on going in the reform process which will have far reaching impact in the water sector. One of these is the development of Draft Water Resources management Rules which are currently undergoing public scrutiny.

The Ministry has also produced the Practice manual for Water Supply Services in Kenya, October 2005. The Manual if applied professionally will ensure high standards of planning, design and implementation of water infrastructure.

In conclusion therefore, let me remind you dear colleagues that we all use water in our daily activities. Now that we are firmly on course in implementing the Water Act 2002, we ask for your support. In the meantime we shall continue to communicate and consult with all Kenyans in this process.

I thank you for your attention!

Hon. John Mutua Katuku, MP  
**MINISTER FOR WATER & IRRIGATION**

6<sup>th</sup> September 2006