



KENYA

**WATER SECTOR
POLICY OVERVIEW PAPER**

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WATER POLICY OVERVIEW PAPER

Introduction

Kenya is a water-scarce country. Surface waters cover only 2% of Kenya's total surface area. The climate varies from tropical along the coast of the Indian Ocean to arid in the interior, and two-thirds of the country is covered by semi-desert or desert land. As a result, only about 160,000 km² of land, most of which is situated in the wetter southwest area, is suitable for the current population of approximately 33 million. Per capita available water is about 650 m³/year. Future projections show that by the year 2025, per capita water availability will drop to 235m³ as a result of population growth.

The level of water scarcity in some regions of Kenya has become a serious limiting factor for development activities. Consequently, the need to change the scattered structure and functioning of the water management system has arisen. In 2002, major reforms were initiated with the revision of the Water Act, which defines clear roles for the different actors involved in the decentralized institutional framework that separates policy formulation from regulation and services provision. Where possible, the participation of stakeholders in the decision-making processes promoted by involving communities and other actors such as NGOs, community-based organizations (CBOs) and the private sector.

Policy evolution

The present institutional arrangements for the management of the water sector in Kenya can be traced to the launch in 1974 of the National water Master Plan whose primary aim was to ensure availability of potable water, at a reasonable distance, to all households by the year 2000. The Plan aimed to achieve this objective by actively developing water supply systems, sinking of boreholes, construction of catchments dams and provision of the conveyance infrastructure in the form of pipes and furrows. To do so require that the Government directly provide water services to consumers, in addition to its other roles of making policy, regulating the use of water resources and financing activities in the water sector.

The legal framework for carrying out these functions was found in the law then prevailing, the water Act, Chapter 372 of the Laws of Kenya. In line with the Master Plan, the Government upgraded the Department of water Development (DWD) of the ministry of Agriculture into a full ministry of Water which embarked on an ambitious water supply development programme. By the year 2000, it had developed, and was managing, 73 piped urban water systems serving about 1.4 million people and 555 piped rural water supply systems serving 4.7 million people.

In 1988 the Government established the National Water Conservation and Pipeline Corporation (NWPC), as a state corporation under the State Corporations Act, Chapter 446 of the Laws of Kenya, to take over the Management of Government operated water supply systems that could be run on a commercial basis. By 2000 the NWPC was operating piped water supply systems in 21 urban centre serving a population of 2.3 million people and 14 large water supply systems in rural areas serving a population of 1.5 million people. Alongside the DWD and the NWPC the large municipalities were licensed to supply water within their areas and by the year 2000, ten municipalities supplied 3.9 million urban dwellers. Additionally, about 2.3 million people were receiving some level of service from systems operated by self- help (community) groups

who had built the systems, often with funding from donor organizations and technical support from the district officers of the Department of water Development (Government of Kenya, 1999). Persons not served under any of the above arrangements did not have a systematic water service, and had to make do with such supply as they were able to provide for themselves, typically by directly collecting water from a watercourse or some other water source on a daily basis. Indeed, despite the Government's ambitious water supply development programme, by 2000, less than half the rural population had access to potable water and, in urban areas, only two thirds of the population had access to potable and reliable supplies.

In the 1980s the Government begun experiencing budgetary constraints and it became clear that, on its own, it could not deliver water to all Kenyans by the year 2000. Attention therefore turned to finding ways of involving others in the provision of water services in place of the Government, a process that came to be known popularly as "handing over."

There was general agreement over the need to hand over Government water supply systems but much less agreement over what it meant for the Government to hand over public water supply systems to others. In 1997 the Government published manual giving guidelines on handing over of rural water supply systems to communities (Ministry of Land Reclamation, Regional and Water Development, 1997).

The Manual indicated that "... at the moment the ministry is only transferring the management of the water supply schemes. The communities will act as custodians of the water supply schemes, including the assets, when they take over the responsibility for operating and maintaining them." But, the goal of community management should be ownership of the water supplies, including the associated assets. The Manual stated the criteria for handing over to be the capacity of the community to take over; ability to pay; capacity to operate and maintain the system; involvement of women in management and ability and willingness to form a community based group with legal status.

By 2002 ten schemes serving about 85, 000 people had been handed over under these guidelines, focusing on management and revenue collection, not full asset transfer. Building on this experience, the Government developed a full fledged policy, the National Water Policy in 1999. It has tackled issues pertaining to water resources management, water and sewerage development, institutional framework and financing of the sector. In each case an attempt has been made to discuss the problems associated with each area and suggest the appropriate strategies and the desired policies that the government will put in place to resolve those problems.

The Policy stated that the Government's role would be redefined away from direct service provision to regulatory functions: service provision would be left to municipalities, the private sector and communities. The Policy also stated that the Water Act, Chapter 372 would be reviewed and updated, attention being paid to the transfer of water facilities. Regulations would be introduced to give other institutions the legal mandate to provide water services and to provide mechanisms for regulation. The Policy justified handing over, arguing that ownership of water facility encourages proper operation and maintenance: facilities should therefore be handed over to those responsible for their operation and maintenance. The Policy stated that the Government would hand over urban water systems to autonomous departments within local authorities and rural water supplies to communities.

While developing the National Water Policy, the Government also established a National Task Force to review the Water Act, Chapter 372 and draft a Bill to replace the Water Act. The Water Bill 2002 was published on 15th March 2002 and passed by Parliament on 18th July 2002. It was gazetted in October 2002 as the Water Act, 2002 and went into effect in 2003 when effective implementation of its provisions commenced.

The New Water Act

Building on this initiative, the current government set out on an agenda of reform with water resources development and management as one of its priorities. In his opening address to parliament, President Mwai Kibaki stated that his Government, “. . . is committed to ensuring that Kenyans have access to clean water.” In this context, the Minister for Water Affairs established the new *2002 Water Act*, intended to tackle the worsening water services experienced over the earlier decade. This step has given poverty reduction in Kenya a new possibility.

This *Water Act* established an autonomous Water Resources Management Authority, destined to manage and protect Kenya’s resources. It also shaped an institutional framework that gave responsibility for providing decentralised services to seven regional Water Services Boards (WSB). These Boards manage water services assets and ensure that they remain in the public realm. An essential aspect of the reform outlined in the *Water Act* is the separation of water and sanitation from the management of resources.

Overall supervision of water services will consequently be carried out by the Water Services Regulatory Board (WSRB), an organ in charge of regulating the services supplied by the regional Boards and their providers. From mid 2005, the responsibility for water services provision – originally falling under the Ministry of Water and Irrigation was put entirely to the WSRB. Simultaneously, representatives for the new Area Catchments Advisory Committees are being selected and the Water Users Associations are being encouraged to define their new roles.

Conclusions

The political determination for structural change of water management in Kenya is therefore, both strong and solid. In effect, the target of developing national Integrated Water Resources Management and Water Efficiency strategies and plans – set off at the 2002 World Summit for Sustainable Development in Johannesburg – consolidates this effort. And it links directly to the six priority issues in Kenya’s efforts towards achieving the Millennium Development Goals – food security, unemployment, gender, water, sanitation and infrastructure development.

Under the revised system, the Ministry for Water and irrigation is responsible for formulating the National Water Policy and for carrying out reforms by bringing together all the stakeholders in the water sector. This is achieved through transferring the responsibility of water management to basin organizations. Furthermore, since 2004, the provision of water and sanitation services are being transferred to private companies as a part of the decentralization process.