



Kenya Anti-corruption Commission

Sectoral Perspectives on Corruption in Kenya

The Case of Water and Sanitation Sector in Kenya



On the Frontline against Corruption



KENYA ANTI-CORRUPTION COMMISSION

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The Case of Water and Sanitation Sector in Kenya

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KACC MISSION STATEMENT

Our Mandate

To combat corruption and economic crime in Kenya through law enforcement, prevention and public education as stipulated in The Anti-Corruption and Economic Crimes Act, 2003.

Our Vision

To be a world class institution fostering zero-tolerance to corruption in Kenya.

Our Mission

To combat corruption and economic crime through law enforcement, prevention and public education.

Our Core Values

Courage
Integrity
Teamwork
Professionalism
Fidelity to the law
Excellence in service

Foreword

The slogan, *Water is life*, underscores the importance of water in all aspects and spheres of life. The UN classifies Kenya as a water scarce country, thus emphasizing the need to enhance water adequacy, quality and access in the country for sustainable development.

In recognition of this challenge, the Kenya government has overtime put in place measures to enhance water supply in all parts of the country. Some of the measures include policy interventions such as the National Water Master Plan of 1974, which stated the Government policy objective to ensure availability of portable water at reasonable distance to all households by the year 2000, popularly known as *Water for All by the Year 2000*.

The other measures included; necessary legal and institutional frameworks to support implementation of such policies and to ensure adequacy; reliability, accessibility and quality of water supply; better water sector governance; enhanced efficiency in the use of our water resources; and improved conservation and utilization of water resources in Kenya.

In the recent past, key reforms in the sector have focused on the legal and institutional framework for improved governance of the water resources. These include: the enactment and operationalisation of the Water Act 2002, the separation of management of water resources from provision of water services; the separation of policy making from day to day administration and regulation; decentralization of functions to lower level state organs; and the involvement of non-government entities in the management of water resources and in the provision of water services. The reforms have led to marked improvement in the Sector. Water supply, quality and reach have tremendously improved as accredited by the customers.

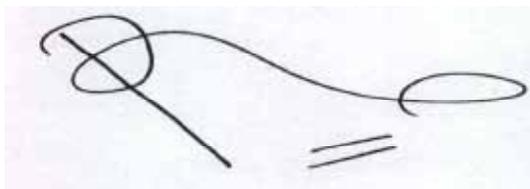
However, the water sector continues to be adversely affected by poor governance practices, inequity, inadequate and unreliable supply and poor access to water services by the greater majority of Kenyans. In addition, corruption and unethical practices continue to be witnessed in the Sector as evidenced by the numerous corruption reports and complaints made to the Ethics and Anti-Corruption Commission touching on the sector.

In response to the reports, the Commission has initiated various interventions to deal with reported cases of corruption in the sector. We have also undertaken a proactive approach to understand the corruption and governance challenges facing the sector

by carrying out this study. The study assessed the level, nature, and magnitude of corruption in the sector and examined the various challenges facing the sector. We therefore invite all stakeholders to read the report and identify areas for partnership and closer collaboration with the Commission in eradicating corruption and mismanagement in the water and sanitation sector.

We thank all those who participated in the study including the Research team at the Commission, respondents and those who supported the study in one way or another to make it a success.

Thank you all.

A handwritten signature in black ink on a light background. The signature is stylized, starting with a large loop, followed by a long horizontal stroke, and ending with a smaller loop. Below the main signature, there are two short, parallel horizontal lines.

Prof. P L O LUMUMBA, Ph.D
Director/Chief Executive
Kenya Anti-Corruption Commission

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Acronyms

ACECA	Anti-Corruption and Economic Crime Act
AFD	Agence Française de Développement
CBOs	Community Based Organizations
CPC	Corruption Prevention Committee
CPP	Corruption Prevention Plan
CRA	Corruption Risk Assessment
FGD	Focus Group Discussion
GOK	Government of Kenya
IAO	Integrity Assurance Officer
KACC	Kenya Anti-Corruption Commission
KFS	Kenya Forestry Services
KPLC	Kenya Power and Lighting Company
MDGs	Millennium Development Goals
MOH	Ministry of Health
NEMA	National Environmental Management Authority
NGOs	Non-Governmental Organizations
NWCPC	National Water Conservation and Pipeline Company
SIDA	Swedish International Development Agency
UNDP	United Nations Development Programme
WAB	Water Appeals Board
WASREB	Water service Regulatory Board
WRMA	Water Resources Management Authority
WSB	Water Services Board
WSP	Water Service Provider
WSTF	Water Services Trust Fund

Executive Summary

Kenya's poverty reduction strategy programme, initiated in 2000, commits the government to providing water, sewerage and irrigation services to the majority of the poor at a reasonable distance. The strategy involves the communities and local authorities more actively in the management of water and sewerage systems and services. The government introduced reforms in the Water and Sanitation Sector through the Water Act 2002. The act has created 15 parastatal to regulate, fund and provide water and sewerage services. In the Act, provision of water and sanitation services is being undertaken by the Water Service Providers (WSP) upon licensing by the Water Service Board (WSB). The Water Service Boards are formed, along the seven Basins namely, Lake Victoria, Tana, Coast, Athi and Ewaso Ng'iro (GoK, The Water Act 2002).

The general objective of this study was to explore the magnitude and impact of corruption in Kenya's water and sanitation sector. The specific objectives were to:

- i) Carry out a review of the policy, regulatory and management structures in the water resources management and water service delivery through interviews with key organizations, leading partners and stakeholders in the Water and Sanitation sector;
- ii) Document and analyze the institutional weaknesses and failures that exist and establish from stakeholders the contribution, if any, of these institutional weaknesses and failures identified to corruption forms, incidences and practices in the sector;
- iii) Gauge the opinion of Kenyans on water source, quality, access, prioritization, service levels, role of institutions and the tariff regime after reforms;
- iv) Assess the effectiveness of the existing anti-corruption strategies and other interventions and provide a benchmark study for further research in this area; and
- v) Recommend measures for improving the institutional and the governance framework for the sector.

The study applied both quantitative and qualitative methods of data collection. Whereas face to face interviews provided the quantitative data from 1,348 customers, the desk reviews, in-depth interviews, focus group discussions and stakeholder consultative

workshops generated the qualitative data. The highlights of the findings of the study are as follows:

Summary of Findings

A Policy Inadequacies

- i) The public is not properly sensitized on the wider reforms that are taking place in the sector although they are key stakeholder in the reform process. Thus, there is confusion on which institution does what.
- ii) There is inadequate funding for the development of the infrastructure which requires huge financing
- iii) Currently, the sector is experiencing enormous procurement malpractices and misappropriation of funds brought about by increased and timely demand for services. The water policies do not address governance malpractices in the Sector.

B Legal Inadequacies

- i) In terms of separation of functions in various bodies, there is duplication of duties between Water Resources Management Authority (WRMA), National Environmental Management Authority (NEMA), and Kenya Forestry Service (KFS) in conservation of water catchment areas.
- ii) The decentralization of functions does not devolve functions to the lower level entities and hence the ultimate decision making remains centralized. This has henceforth ensured that the rural poor do not have access to water for the following reasons:

C Institutional inadequacies

- i) Redeployment of existing staff has not been successfully undertaken under the transfer plan and hence the existence of District Water Officers who continue to discharge their duties with a line budget from Ministry of Water and Irrigation for improving water services
- ii) The working relationship among the institutions in the Water and Sanitation Sector is weak. There is no forum for direct interaction and hence lack of synergy and duplication of efforts where different institutions offer similar efforts. Institutions are acting independently and do not have a collective framework for interaction.
- iii) The Ministry of Water and Irrigation has not adequately empowered

institutions formed under the Water Act 2002 and it still controls budget and staff of different institutions in addition to ownership of certain assets in the supply of water.

D Extent of Corruption

- i) 32.8 percent of the respondents rate corruption in the Water and Sanitation Sector to be very high followed by 19.2 percent who rate it as moderate while 12.9 percent indicate that it is low.
- ii) 37.8 percent of the respondents think that corruption is increasing in the water and sanitation sector followed by 25.1 percent who think it's still the same while 19.4 percent indicate that it is decreasing.
- iii) 17.8 percent of the respondents indicated that they were asked for a bribe in the last 12 months while seeking water and sanitation services.
- iv) Of those who were asked for a bribe, 60.7 percent paid once, 23.9 percent paid twice, 7 percent paid thrice while 7.9 percent paid more than three times.
- v) When further asked to whom the bribe was paid, 61.8 percent of the respondents paid a bribe to the disconnecting officer, 8.1 percent paid to the billing officer, 7.3 percent paid to a clerk at the water suppliers premise while 4.9 percent paid to the water supply manager. A significant 17.9 percent did not indicate to whom they paid the bribe.

E Service Levels

- i) Among the metered customers, 53 percent of the respondents get water periodically followed by 41 percent who get water all the time.
- ii) The main alternative source of water in the event of any shortage is water vendors (41%), Borehole (17.9%) and Public tap (2.5%). However, 14.2% indicated that they always have water in their taps.
- iii) There is no significant difference in satisfaction levels of service for water and sewerage services. Whereas 55.6 percent and 54.7 percent were satisfied with the current water service levels, 44.4 and 45.3 percent were dissatisfied with water and sewerage services respectively.
- iv) Among the reasons extended for dissatisfaction with water services are; water rationing (45.1%), poor quality of water (38.9%), High cost of water (20.6%), Lack of water (17.7%), Inaccurate bills (11.6%), billing while taps are dry (8.2%), contaminated water (5.1%), discriminate supply (4.8%),



poor communication by the service provider (2.6%), poor maintenance of the infrastructure (2.6%) and water diversions (1.9%).

- v) While those dissatisfied with sewerage services cited the following problems; sewer overflow (36.2%), no sewerage system (28.1%), sewer leakage (23.4%), broken sewers never repaired (19.5%), open sewer (11.3%) and water mixing with sewer (7.1%).

F Anti-Corruption Measures

- i) Generally, stakeholders in the water and sanitation sector are implementing the corruption eradication indicator. Among the activities are; training of integrity assurance officers (IAOs); code of conduct; anti-corruption policy; formation of corruption prevention committees; and conducting corruption risk assessment etc.
- ii) Overall, 39.4 percent of the respondents rate the fight against corruption in the water and sanitation sector as 'not well' followed by 30.7 percent who indicate that the fight is moderately 'well' while 8.9 percent rate it as 'very well'.
- iii) Only 14.1 percent of the respondents are aware of some existing anti-corruption initiatives in the water and sanitation sector.



CHAPTER 1

Introduction

1.1 Background

The Kenya Anti-Corruption Commission is mandated by the Anti-Corruption and Economic Crime Act (ACECA) 2003, to combat and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion or the development of good practices to seal opportunities and loopholes that facilitate corruption.

Kenya is a water-scarce country, and still future projections show that per capita available water, currently at 647 m³/yr, will likely drop to 359m³/yr by 2020, as a result of population growth. The recommended United Nations benchmark is 1,000 m³/yr. Currently, access to safe water is estimated at 89 percent in urban areas and 49 percent in rural areas the value has not been determined. Sanitation access in urban areas is estimated at 94.8 percent as compared to 76.6 percent in rural areas. However, overall coverage has been declining in terms of quality and quantity, reliability and nature of access¹.

Urgent action is thus needed to increase the capacity of the Water and Sanitation Sector to improve the availability and accessibility of clean and safe drinking water. As so far, access to safe water and sanitation services has not caught up with the needs of the growing population. In Nairobi for example, Nairobi Water and Sewerage Company can only provide 74 percent of the current water demand. Various estimates indicate that the distributed capacity is 79.1 percent of available capacity or 58.4 percent of total demand.

Kenya's poverty reduction strategy programme, initiated in 2000, commits the government to providing water and irrigation services to the majority of the poor at a reasonable distance (less than 2 km). The proposed strategy is to involve communities and local authorities more actively in the management of water and sewerage systems and services. Corruption has a direct impact on water provision by decreasing access to, and quality of, water assets, management and services, and by increasing costs. Understanding the differentiated impacts on poor households and the types of corrupt interactions they experience is essential for the development of effective pro-poor strategies in Kenya. When a poor householder pays a bribe or indirectly suffers from the diversion of resources, one or more of their assets changes.

1 Case study: Kenya National Water Development Report UN-WATER/WWAP/2006/12

It is therefore critical for anti-corruption strategies to measure all effects of corruption on the poor. Many poor citizens live and function predominately in the informal economy, have much lower access to formal basic services, are subject to much greater intimidation, and have less access to justice than other citizens. Their marginalization from formal processes is therefore a key descriptor and determining factor of their interactions. However, we do not know how the different poor groups perceive this or what their views are on tackling corruption and changing their service options. It is against this background that the Kenya Anti-corruption Commission carried out a research to bring to the fore corruption issues that inform the numerous problems afflicting the water and sanitation sector.

1.2 Statement of the Problem

In its research programmes, the Commission carried out a sectoral study in the water and sanitation sector. This was informed by the media, both print and electronic, which carried news showing the bleak picture in the management of water and sanitation resources in the country. In addition, the report centre at KACC had received 289 complaints as of December 2009 of malpractices in the sector related to bribery and procurement. Further, studies had pointed to poor management, malpractices and inefficient service delivery that continue to stalk the Kenya Water and Sanitation Sector, despite reforms instituted in 2003.

For example, a study by Transparency International and *Maji ni Ufanisi* showed that 57 percent of water consumed for domestic purposes is unaccounted for while the Water Resource Management Authority is only collecting 20 percent of the fees due from large water users; these inefficiencies in revenue collection are leading to massive losses. Further, 17.6 percent of domestic water users interviewed claim they were never issued with receipts upon payment for water services and bribing water officers to facilitate illegal water connections is rife. Cases of bribery for illegal connection and diversion of water from small to large-scale water users were also reported in the study.

1.3 Objectives

The general objective of this study was to explore the magnitude and impact of corruption in Kenya's water and sanitation sector by:

- i) Carrying out a review of the policy, regulatory and management structures in the water resources management and water service delivery through interviews with key organizations, leading partners and stakeholders in the water and Sanitation sector;
- ii) Documenting and analyzing the institutional weaknesses and failures that exist and establish from stakeholders the contribution, if any, of these institutional weaknesses and failures identified to corruption forms, incidences and practices in the sector;

- iii) Gauging the opinion of Kenyans on water source, quality, access, prioritization, service levels, role of institutions and the tariff regime after reforms;
- iv) Assessing the effectiveness of the existing anti-corruption strategies and other interventions and provide a benchmark study for further research in this area; and
- v) Recommending measures for improving the institutional and the governance framework for the sector.

1.4 Scope and coverage of the Report

The study relied on both primary and secondary data. The primary data was collected from the stakeholders in the Water and Sanitation Sector starting with the regulators and policy makers and then the customers. Among the institutions consulted are the Ministry of Water and Irrigation, Water Service Regulatory Board, Water Resources Management Authority, Water Service Boards, Water Service Trust Fund and the various Water Service Providers. The secondary data was collected from the water act 2002, sector progress reports and surveys conducted by other agencies. The consultative group discussions were carried out in all the eight provincial headquarters in the months of October and November 2009 while the customer survey was carried out in February and March 2010.

1.5 Organization of the Report

This Report is organized into Five Sections. Section One and Two introduces the parameters of the research and methodology adopted. Section Three discusses the main findings under the headings of the policy environment, legal framework, institutional arrangements and the anti-corruption efforts in the Sector. Section Four focuses on the cross-cutting issues in the Sector while Section Five summarizes the findings and recommends the way forward for the Sector. The Report is also appended the list of respondents from the qualitative research.

CHAPTER 2

Methodology

The study applied both quantitative and qualitative methods of data collection. Whereas household interviews provided the quantitative data, desk reviews in-depth interviews, focus group discussions and stakeholder consultative workshops generated the qualitative data

2.1 Household Survey

A sample size of 1,348 targeting customers in the categories of commercial/industrial, irrigation/agricultural and households was achieved. The survey was carried out in Nairobi and 17 districts across all the provinces namely; Nairobi, Mombasa, Malindi, Garissa, Kitui, Machakos, Embu, Nyeri, Thika, Murang'a, Maragua, Nakuru, Uasin Gishu, Kajiado, Kakamega, Bungoma, Kisumu and Kisii Central.

2.2 Focus Group Discussions

The focus group discussion method was designed to explore, in a group setting, what people think and how they feel about a particular issue. The group consisted of participants, a moderator, note taker and a recorder. The group interaction was used to probe and bring out additional information.

There were six group discussions in Mombasa, Embu, Nyeri, Nakuru, Kisumu and Kakamega. The respondents were selected from both water providers, policy makers and the consumers. The appendix 1 presents the list of all the respondents in the group discussions.

2.3 In-depth Interviews

A provision was made to interview those key players in the water and sanitation sector who never found time to participate in the focus group discussions. There were 20 key informants in the study in Kitui, Garissa and Nairobi.

2.4 Desktop research

Under this method, official data with documents including statistics, policy guideline documents and Departmental Reports were reviewed to complement the primary data. The list of documents reviewed is captured in the reference.



Source: www.Shoes4Water.Org



CHAPTER 3

Findings

This section summarizes information gathered from policy documents, media content analysis, FGD, key informant interviews and the customer responses. It explores on policy, legal and institutional arrangements in the sector, pinpoints the various anti-corruption strategies being implemented in the Sector and measures their effectiveness. The section covers the verbatim sentiments arising from the qualitative approach in achieving the objectives of the study as discussed below.

3.1 Policy Environment

The reforms in the water and sanitation sector were initiated by the development of the National Water Policy. The Government also established a National Task Force to review the Water Act, Chapter 372 of the Laws of Kenya and draft a Bill to replace the Water Act, Chapter 372. The Water Bill 2002 was published on 15th March 2002 and passed by Parliament on 18th July 2002. It was accented in October as the Water Act, 2002 and came into force in 2003 when effective implementation of its provisions commenced.

The Water and Sanitation Sector has henceforth embraced several reforms that have expanded service provision as a result of implementing the Water Act 2002. These reforms revolve around the following four themes:

- i) the separation of the management of water resources from the provision of water services;
- ii) the separation of policy making from day-to-day administration and regulation;
- iii) decentralization of functions to lower level state organs; and
- iv) the involvement of non-government entities in the management of water resources and in the provision of water services.

The Sector has been opened up and there are now more players courtesy of the policy, legal and institutional reforms guiding its operations. The percentage of households with access to clean water and better sanitation has increased tremendously from 20 percent in 2002 to about 50 percent in 2009 in some regions following the implementation of numerous reforms in the Sector. There is also improved water quality as a result of continuous improvement. The regulatory framework has put in place ways to measure the performance of the sector through tracking of the following indicators; water coverage, sanitation coverage, unaccounted for water, water quality, hours of supply, metering ratio, revenue collection efficiency, operation

and maintenance coverage and staffing levels².

However, the Sector still experiences a number of problems which are directly linked to corruption. For example the World Bank estimates that 20-40 percent of the finances to the Sector are lost through corruption while there are frequent media reports depicting poor service delivery within the Sector³.

The Government policy position on the provision and management of water resources can be traced back to the launch of the National Water Master Plan of 1974 (Ngigi and Macharia, 2006). As stated in the master plan, the Government's policy objective was to ensure availability of portable water at reasonable distance to all households by the year 2000. This objective was to be achieved by developing water supply systems, sinking of boreholes, and construction of catchment dams and provision of infrastructure, pipes and furrows.

Besides the direct provision of water services, the government was also to regulate the use of water resources and finance activities in the water sector. Guided by this plan, the Government implemented various water supply and sanitation programmes in parts of the country in pursuit of its overall policy. Having implemented the plan over a period of time the government later developed a comprehensive policy in 1999, the National Water Policy, Sessional Paper 1 of 1999 (GoK, 1999), which has guided the provision and management of water resources to date. The current government policy position is articulated in the Kenya Vision 2030 and its first Medium Term Plan and the National Water Services Strategy which supports the realization of the MDGs of the United Nations.

It is important to note that this Sector has witnessed major policy changes. Most of these changes have been pursued as part of the wider reform measures implemented in the sector. These reforms have in general been geared towards separating water resources management and development from water services delivery.

3.1.1 Sessional Paper No. 1 of 1999

This National Water Policy provides a framework for management and development of water resources and sewerage services. Particularly, the four broad areas of the policy are:

- i) Preserving, conserving and protecting available water resources and allocating it in a sustainable, rational and economical way;
- ii) Supplying water of good quality and in sufficient quantities to meet the various water needs, including poverty alleviation, while ensuring safe disposal of waste water and environmental protection;

2 Impact- A performance Report of Kenya's Water Services Sub- Sector – Issue No. 2, Water Services Regulatory Board, 2010

3 Case study: Kenya National Water Development Report UN-WATER/WWAP/2006/12

- iii) Establishing an efficient and effective institutional framework to achieve a systemic development and management of the water sector; and
- iv) Developing sound and sustainable financing systems for effective water resources management, water supply and sanitation development.

3.1.2 Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC 2003-2007)

ERSWEC 2003-2007 (GoK, 2003) was a strategy focused on implementing the promises in the Manifesto of the National Rainbow Coalition (NARC) based on two concepts: democracy and empowerment. It was a roadmap that outlined specific actions to be taken in the preceding 5 years to put Kenya on the path to economic recovery.

In the ERSWEC, it was acknowledged that the Water and Sanitation Sector was grossly underperforming due to a number of factors including: inadequate and complex institutional framework; lack of funds for the development of new infrastructure investments and for operations and maintenance; and destruction and degradation of water resources and catchment areas. In order to address these problems, various strategic measures were earmarked for implementation thus guiding overall development in the Water and Sanitation Sector over the period 2003 - 2007. They included:

- i) *Water Resources Management*: Establishing a **Water Resources Management Authority** (WRMA) under the Water Act 2002 to manage all water resources in the country;
- ii) *Water and Sanitation Services*: Undertaking comprehensive institutional reforms to facilitate pro-poor water and sanitation service programmes. This strategy was to be implemented over a 10 year period based on a 3 year MTEF budget cycle. Among the key reforms were: establishing a **Water Services Regulatory Board** responsible for over-seeing water services provision and licensing; establishing **Water Service Boards** responsible for water and sanitation provision and asset development; transferring government water and sanitation services schemes to Service Boards, communities and other lower level actors; implementing Private Sector Participation in financing and management of water and sanitation services; developing models for distribution of water and sanitation services to the poor in both rural and urban areas; and establishing **Water Services Trust** to facilitate financing of water development in rural and low income areas of the country; and
- iii) *Water for agriculture/irrigation and flood control*: Reviving the irrigation sub-sector along the lines of the new irrigation policy whose main thrust is to separate irrigation infrastructure development and maintenance from crop production and marketing. This strategy involved: construction of dams across rivers; rehabilitation of deforested water catchments; construction of dykes; and preparation of an early warning system.



World concern water pan near Narok

Source: <http://www.worldconcern.org>

3.1.3 The National Water Services Strategy (NWSS) 2007 – 2015

NWSS provides a roadmap for implementing water sector policy. It sets clear goals to be achieved overtime and provide an array of strategies (strategic responses) for each and every goal to be adopted in order to realize these goals. The goals are in line with the MDG targets and the aspiration of the Kenya Vision 2030. Whereas the main intermediate goal is to meet the water related MDGs by 2015 - *to halve the proportion of people without sustainable access to safe drinking water and basic sanitation; and to ensure environmental sustainability-* the following are the main goals of the NWSS:

- i) To increase sustainable access to safe water complying to the Kenyan standards such as drinking water quality from 60% to 80% in urban settings by 2015 and to reduce the time taken to the nearest public/communal outlet and back home to an average of 30 minutes;
- ii) To increase sustainable access to water complying to the Kenyan standards such as drinking water quality from 40% to 75% in the rural setting by 2015 and reduce the distance to the nearest public/communal outlet to 2 Kilometers;
- iii) To reduce unaccounted for water due to both economical and technical losses from the current average of 60% to 30% by 2015;
- iv) To achieve operating and maintenance cost recovery of all WSS systems gradually by 2010;

- v) To increase access to waterborne sewerage collection, treatment and disposal from 30% to 40% in the urban setting and from just under 5-10% in the rural settings;
- vi) Effluent discharge to meet relevant Kenyan standards; and
- vii) To increase collaboration with other concerned ministries, particularly the Ministry of Health (MoH), the access to basic sanitation from 55% to 77.5% in the urban setting and from 45% to 72.5% in the rural setting by 2015.

3.1.4 The Kenya Vision 2030

The Kenya Vision 2030 outlines broad government policy position with regard to securing adequate high quality water by the year 2030 so as to support the anticipated economic and social development. The vision for water and sanitation in Vision 2030 is "to ensure water and improved sanitation availability and access to all by 2030". The overall policy goal for the Government as encapsulated in The Kenya Vision 2030 is to increase both access to safe water and sanitation in both rural and urban areas. In this respect, the Government aims to develop and pursue specific strategies so as to raise the standards of the country's overall water, resource management, storage and harvesting capability. The strategies to realize these policy goals are defined in the First Medium Term Plan, 2008-2012 of the Kenya Vision 2030 and include among others:

- i) Enhance water resources information management by rehabilitating the hydro-metrological network and rehabilitation of 600 hydro-metrological stations;
- ii) Undertake water harvesting and storage programmes, especially the construction of large multi-purpose dams; and
- iii) Rehabilitate and expend national water supply and sanitation.

3.1.5 Policy Inadequacies

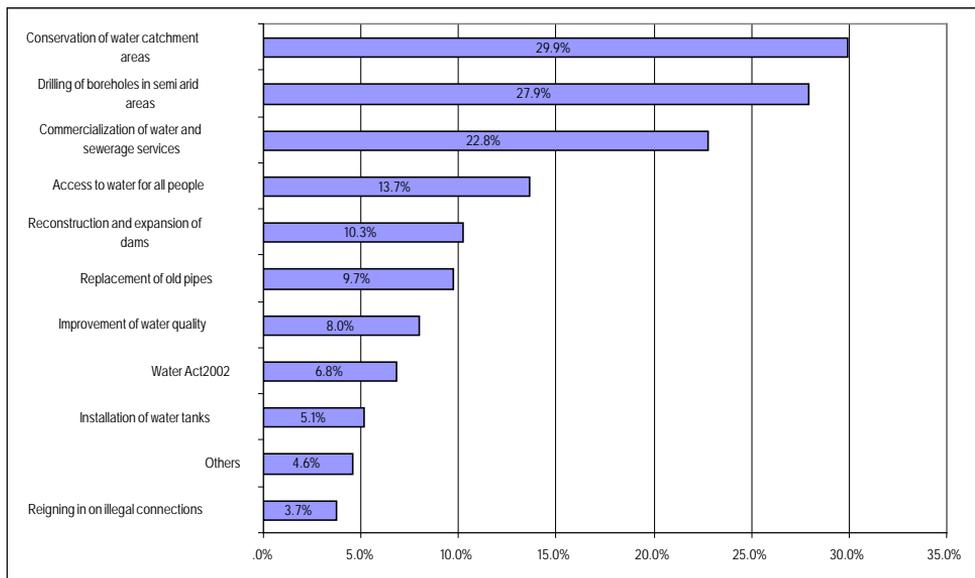
3.1.5.1 Lack of an appropriate communication strategy

The Ministry of Water and Irrigation needs to develop a communication strategy which will articulate, explain and promote a vision and a set of well defined goals. It will create a consistent, unified voice that links diverse activities and goals in a way that appeals to the partners or stakeholders. It addresses the audience, behaviour, messages, channels and evaluation of management decisions such as reforms. A communication strategy allows the exercise of better control over work and frame issues in perspective other than research. It removes doubts, emphasizes planning and involves all the project participants at all levels. A communication strategy provides the general guidelines on the role of institutions and the beneficiaries of particular reforms.

After the Water Act 2002, the management of water and sanitation services changed significantly with the introduction of several water service providers, national and

regional regulators and separation of roles of service and resource management. These changes have had a direct impact on the consumer especially on the role of institutions in the Sector. However, the public is not properly sensitized on the wider reforms that are taking place in the sector although they are key stakeholder in the reform process. Thus, there is confusion on which institution does what.

Figure1:- Knowledge of changes in the Water and Sanitation Sector



From the customers, only 26.3 percent indicated that they were aware of changes in the provision of Water and Sanitation Services. From figure 1, it can be seen that 29.9 percent of the respondents understood the reforms to mean conservation of water catchment areas, 27.9 percent stated drilling of boreholes in semi arid areas while 22.8 percent indicated that it is the commercialization of water and sewerage services. Only 6.8 percent mentioned the reforms related to the Water Act 2002. Furthermore, domestic consumers were more aware about the reforms than both industrial and irrigation consumers. In regard to the source of information about changes, 43.2 percent of the respondents knew about the reforms from the media followed by 15.1 percent who heard of the reforms from the water service provider while 13.9 percent from the Ministry of Water and Irrigation.

Hence, there is need for development of an appropriate communication strategy and even carrying out wider public sensitization on the reforms that are taking place in the sector to address various stakeholders.

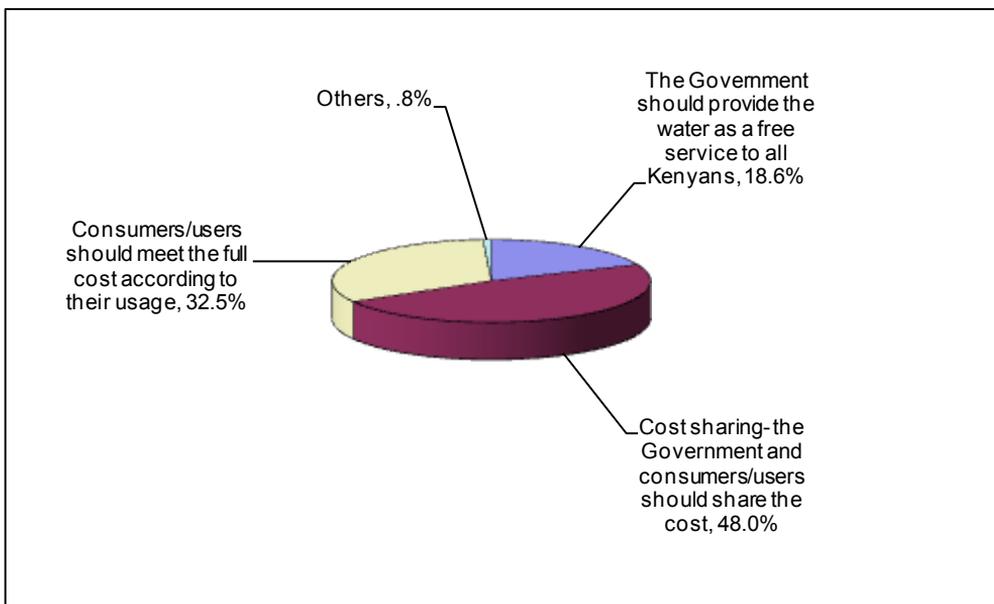
3.1.5.2 Lack of a financing strategy

The Policies fail to point out on the procedure for funding for the infrastructure as well as coordination of financiers.

The development of the infrastructure requires huge financing and hence the reliance on the exchequer and the donors. However, the development of the infrastructure is the sole responsibility of the WSB through the exchequer since the assets are owned by the Government. The inadequate financing from the exchequer has led to stagnation in water network expansion and thus most households do not have access to clean and safe drinking water especially in poor urban settlements and rural areas.

As shown in figure 2, responses from the customers indicated that the cost of providing water be met by cost sharing between the government and consumers (48%).

Figure 2: How the Cost of providing water should be met



Secondly, the water and sanitation sector has attracted several donors such as the World Bank, UNDP, SIDA, AFD among others. Each of these donors deals and finances their own programmes in the regions of their interest. This has led to uncoordinated investment and hence some areas have completely been left out due to the adverse conditions such as insecurity and weather.

Thirdly, policy targets in Kenya are generally not supported by adequate financial outlays. Practically, funds are required to meet the policy targets. In the water and sanitation sector, though, water is available at the source, mechanisms to raise

funds to develop the requisite infrastructure to reach the target beneficiaries are not adequately provided for in the policy.

The current policies discussed above do not address these three problems and hence there is need to harmonize all funding sources that target the Water and Sanitation Sector at the local levels so as to have targeted and timely service provision. This can be achieved through a policy directive.

3.1.5.3 Inadequate anti-corruption strategy

The opening up of the water and sanitation sector has come along with increased procurement of goods and services. As a result of this, the sector is experiencing enormous procurement malpractices and misappropriation of funds brought about by increased and timely demand for services. This is worsened by the creation of several water service providers with capacity problems in the areas of human and capital resource. More so, very few companies have developed internal policies that guide their operations such as revenue collection and expenditure and human resource management among others. This has left a wider gap that makes it hard to hold errant officers accountable for their misdeeds.

There is need for a framework that would foster internal controls so as to reduce corruption and hold errant officers accountable. In this view, there is need for a clear policy stance for addressing corruption in the Water and Sanitation Sector.

3.1.5.4 Undefined formation of companies in the policy

As stated above, the ownership and development of the assets belongs to the Water Service Board. However, the water service provider runs the provision of water and sanitation services using these public assets.

It is important to also note that the water service providers are private companies registered under the Companies Act. Further, the Board of Directors of the Water Service Providers are appointed by the Minister for Water and Irrigation. This has led to conflicts in the areas of asset development, political interference in the day to day running of water Service providers and management of profits by the water service providers.

Currently, there is no clear policy position to guide the formation of companies. Such a guide should define the formation and representation on the Board of Directors and management of profits by the Water service Providers.

3.1.5.5 Policy Implementation

Overall, sector players agree that the policies governing the provision of water and

sanitation are reform oriented and well thought with a few omissions as discussed above. However, they are already experiencing delays in the implementation of the National Water Services Strategy (NWSS) 2007 – 2015 and hence fear that the policy proposals will not be implemented in full in accordance to their proposals and the time schedule that has been set.

3.2 Legal and Regulatory Framework

The implementation of the above policies is guided by various legal and regulatory frameworks. The Water and Sanitation Sector is guided by the Water Act 2002. The Water Act 2002 came into being after the repeal of Chapter 372 of the Laws of Kenya as contained in the National Water Master Plan of 1974. The policies on water provision and management contained in the 1999 National Water Policy and recent government policy documents (the ERSWEC are anchored in The Water Act 2002.

The State Corporations Act Chapter 446 of the Law of Kenya created the National Water Conservation and Pipeline Corporation (NWPC) which was charged with the responsibility of managing and providing water supply systems.

The Water Act 2002 stipulates the legal framework for: ownership and control of water; water resources management; water supply and sewerage services; financial provisions; and other general and supplementary provisions for efficient water management. Besides, the Act provides strategies



for Water Resources Management and Water Supply and Sewerage services among other things. The Act provides all the levels of administration of water services and resources by creating relevant institutions as discussed elsewhere in this Report.

WASREB in its progress reports, documents marked improvement in service delivery in the water and sanitation sector. It also points out reliable water supply, improved customer relations and quality supply among others following the implementation of the Water Act 2002.

3.2.1 Legal and Regulatory Framework Inadequacies

Water stakeholders pointed out various weaknesses in the Water Act 2002 as highlighted below:

3.2.1.1 Separation of functions

The Water Act 2002 separates water resources management from the delivery of water services. Part III of the Act is devoted to water resources management while Part IV is devoted to the provision of water and sewerage services. It establishes two autonomous public agencies: the one to regulate the management of water resources and the other to regulate the provision of water and sewerage services.

The Regulatory Board is mandated to licence all providers of water and sewerage services who supply water services to more than twenty households. Community managed water systems therefore need to obtain a license from the Regulatory Board to continue providing water to their members. This is a departure from the practice previously prevailing under which community water systems, unlike the other systems, operated without a license.

Respondents argue that the creation of many institutions has resulted in the following problems:

- i) Though the Water Act 2002 requires the creation of district water companies, the move has proved none viable since most companies are unable to manage their operational costs and hence are heavily indebted and unsustainable. At the time of the survey, there were approximately 118 water service and sewerage companies in the country. However, most of these companies cannot even afford to pay wages, power bills and various license fees. For example, Lake Victoria South Service Board has 8 WSPs of which only 3 can meet operational costs and make profits;
- ii) There are too many boards whose roles overlap therefore there is duplication of responsibilities which means wasted resources. For example where as the role of WRMA is clear, their impact in terms of giving people clean water and protected catchments is an issue comparing with Kenya Forestry service and NEMA which play a similar role. These institutions of course are contributing to the cost of water with the various levies that are paid to them and this cost is transferred to the consumers. Therefore as an input, the price influences the competitiveness in the country;
- iii) At the time of the study, the Local Government Act recognizes the local authorities as water providers. There is need to harmonize the law to enable recognition of the WSPs playing the role of the local authorities and further review the public Health Act to recognize the various institutions in the Water Act 2002 to monitor responsibilities of the sewerage systems and control of the quality of water; and
- iv) There is conflict in the formation and running of the water companies. In law they are private companies and yet the Board of Directors are not shareholders. It is not clear on who forms WSPs as shareholders, the role of local authorities in these boards, who should be paid dividends when profits are made among others. Water companies are under the Ministry of Water

and Irrigation but formed under the companies act, owned by municipal council under the ministry of Local Government. This creates dilemma on who controls the companies.

3.2.1.2 Decentralization of functions

The Water Act 2002 decentralizes functions to lower level public institutions. It does not, however, go as far as to devolve these functions to the lower level entities: ultimate decision making remains centralized. This has henceforth ensured that the rural poor do not have access to water for the following reasons:

- i) The rural poor cannot afford water even when subsidized and since the WSPs are profit driven are disinterested in targeting a market that cannot pay for the services provided to them; and
- ii) The cost of laying the framework and network for the supply of water is too costly for the WSBs and hence cannot provide the infrastructure needed to supply water to the rural poor especially considering the expansiveness of the homes.



Athi Water Services Board

Source: <http://www.awboard.go.ke/>

3.2.1.3 Role of Institutions

The Act envisages the appointment of private individuals to the boards of both the Authority and the Regulatory Board.

Rule 2 of the First Schedule to the Act, which deals with the qualification of members for appointment to the boards of the two public bodies' states that, in making appointments, regard shall be had to, among other factors, the degree to which water users are represented on the board. More specifically, subsection 3 of section 16 states that the members of the catchment advisory committee shall be chosen from among, inter alia, representatives of farmers, pastoralists, the business community, non-governmental organizations as well as other competent persons. Similarly, membership on the board of the water services boards may include private persons.

- i) The provision that members to boards be private persons or representatives from the groups mentioned above have been ignored instead the boards are made by political patronage and hence results in lack of representation and interference in the management of the institutions;
- ii) The Act does not provide adequate mechanisms for enforcing penalties to various offenders. Penalties are low and therefore not a deterrent enough to various offenders. In some cases, consumers unable to pay their water bills have moved to court under the notion that water is a right to force water providers to resume provision and enter into a civil agreement on how they settle the bill; and
- iii) The Department of Irrigation though under the Ministry of Water is not part of the Water Act 2002.

3.2.1.4 Provisions of the Water Act

The Water Act 2002 is state-centred hence its design and operation are based monopoly of central state organs and state systems in the management of water resources as well as in the provision of water and sewerage services. It makes only limited provision for reliance on non-state based systems, institutions and mechanisms. Kenya's rural poor, typically, live within normative frameworks in which state based law is no more applicable and effective than customary and traditional norms. The new water law, however, ignores this reality

Kenya's rural poor have not been integrated into the private land tenure and other formal regimes upon which the Water Act 2002 is premised. They depend largely on land rights arising from customary practices which however have been systematically undermined over the years by the statutory provisions governing land rights and which are not recognized by the Water Act 2002.

It is unlikely therefore that the new Law will be able to facilitate Kenyan's achievement of the Millenium Development Goals with respect to the provision of water and

sanitation by 2015 particularly for poor rural communities. This Report argues that, in order to address the circumstances of the rural poor, there is a compelling case for continued reliance in the management of water resources and in the provision of water services, on alternative and complementary frameworks drawn from community practices⁴.

3.3 Institutional Framework

In terms of changing the scattered structure and functioning of the water management system in response to the growing water scarcity Kenya faces, major reforms were initiated in 2002. This defines clear roles for the different actors involved in the decentralized institutional framework that separates policy formulation from regulation and services provision. When possible, the participation of stakeholders in the decision-making process is promoted by involving communities and other actors such as NGOs, community-based organizations (CBOs) and the private sector.

The Water Act 2002 stipulates the necessary institutional arrangements for water provision and resource management in the country. While the Act vests every water resource in the State, it establishes an autonomous institution, Water Resources Management Authority (WRMA), mandated to manage and protect water resources in the country. The Water Act 2002 further provides an institutional framework giving responsibility for providing decentralized services to different regional Water Services Boards (WSBs) with mandate to manage water services assets and ensure that they remain in the public realm (Ngigi and Macharia, 2006). The boards are regulated by the Water Services Regulatory Board, an institution charged with overall supervision of water services. The Act also provide for the Water Appeal Board charged with the responsibility of hearing and determining appeals arising from management and use of water resources.

The institutional framework for the water sector embodies eight (8) important institutions with different but complementary roles. These institutions are:

- i) **Ministry of Water and Irrigation (MWI)** with a role of developing legislation, policy and strategies, sector coordination and guidance and overall sector investment planning and resource mobilization;
- ii) **Water Services Regulatory Board (WASREB)** responsible for the regulation and monitoring of services provision (Water Services Boards and Providers), issuing of licenses to Water Service Boards, setting standards for the provision of water services and developing guidelines (water tariffs etc);
- iii) **Water Services Boards (There are 7 WSB)** responsible for the provision of water services, developing water and sewer facilities, investment planning and implementation, rehabilitation and replacement of infrastructure, enforcing regulations on water services and tariffs,

⁴ Kenya's new water law: an analysis of the implications for the rural poor, Albert Mumma

procuring and leasing water and sewerage facilities and contracting Water Service Providers (WSPs);

- iv) **Water Service Providers (there were 118 WSPs as of October 2009)** responsible for the provision of water and sanitation,
- v) **Water Services Trust Fund (WSTF)** that finances the provision of water and sanitation to disadvantaged groups – water poverty fund;
- vi) **The Water Appeals Board (WAB)** that arbitrates on water related disputes and conflicts between institutions and organizations;
- vii) **National Water Conservation and Pipeline Corporation (NWPC)** responsible for the construction of dams and drilling of boreholes; and
- viii) **Kenya Water Institute** responsible for training and research as further summarized in table 1.

Table 1: Institutional Arrangement in the Water Sector

No.	Institution	Roles and responsibilities
1.	Ministry of Water and Irrigation	<ul style="list-style-type: none"> - development of legislation, policy and strategy formulation, sector coordination and guidance, monitoring and evaluation - overall sector investments planning and resource mobilization
2.	Water Services Regulatory Board	<ul style="list-style-type: none"> - regulation and monitoring of service provision (WSBs and WSPs) - issuing of licenses to Water Service Boards - setting standards for provision of water services - developing guidelines (water tariffs etc)
3.	Water Service Boards	<ul style="list-style-type: none"> - efficient and economical provision of water services - developing water and sewer facilities, investment planning and implementation - rehabilitation and replacement of infrastructure - applying regulations on water services and tariffs - procuring and leasing water and sewerage facilities - contracting Water Service Providers
4.	Water Service Providers	<ul style="list-style-type: none"> - provision of water and sanitation services, ensuring good customer relation and sensitization, adequate maintenance of assets and reaching a performance level set by regulation
5.	Water Service Trust Fund	<ul style="list-style-type: none"> - financing provision of water and sanitation to disadvantaged groups (pro-poor) as water poverty fund
6.	Water Appeals Board	<ul style="list-style-type: none"> - arbitration of water related disputes and conflicts between institutions and organizations

7.	National Water Conservation and Pipeline Corporation	- Construction of dams and drilling or boreholes
8.	Kenya Water Institute	Training and research

The Water Services Regulation Board has finalized the development of diverse tools to regulate the Water and Sanitation Sector. They include the following: A 10-year license for WSBs with targets for improved network expansion for water and sewerage coverage; Three types of model Service Provision Agreements with targets on hours of supply, water quality and reduction of unaccounted for water ; Model Water Regulations- for regional regulation by Water Services Boards; Guidelines on Corporate Governance; Guidelines on Minimum Service Levels (MSLs); Guidelines on Tariff Setting; Guidelines on Business Planning; Guidelines on Reporting; Guidelines on Customer Service and Complaints Procedures; Guidelines on the Water Regulation Information System; Guidelines on Water and Effluent Quality

The tools have already been disseminated to stakeholders through regional workshops and are now in use. Other regulatory tools that are still under development include Water Demand Management, Kiosk Design Standards, Metering Standards, and Kiosk Management standards.

3.3.1 Institutional Inadequacies

3.1.3.1 Capacity problems

- i) The working relationship among the institutions in the Water and Sanitation Sector is weak. There is no forum for direct interaction and hence lack of synergy and duplication of efforts where different institutions offer similar efforts. Institutions are acting independently and do not have a collective framework for interaction.

3.1.3.2 Role of Institutions

The Ministry of Water and Irrigation has not adequately empowered institutions formed under the Water Act 2002. The respondents decried that the Ministry of Water and Irrigation controls the budget and staff of the institutions that have been formed.

The respondents argue that although the implementation of the Water Act 2002 is bearing fruit, operations of the Ministry of Water and Irrigation has not been aligned to the reforms. For instance, there still exists District Water Officers who are charged with the same responsibilities before the Act. In fact, the officers have a budget from the Ministry of Water and Irrigation for improving water services despite the existence of Water Service Boards.

3.4 Nature and Extent of Corruption in the Sector

Data from the Report Centre of the Kenya Anti-Corruption Commission indicates that 223 corruption cases concerning Water and Sanitation Sector were received over the period **January 2006 – December 2009**. Table 2 illustrates the different organizations that were reported against.

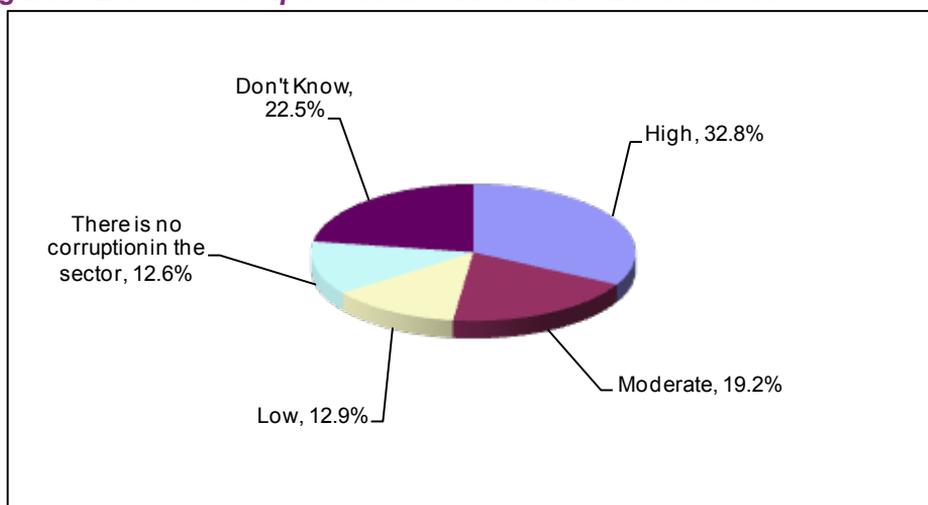
Table 2: Corruption cases reported to KACC between 2006 - 2009

	Organization	No.
1	Ministry of Water and Irrigation	89
2	Nairobi Water Company Limited	40
	Mombasa Water and Sewerage Company	14
3	Water Resource Management Authority	15
4	National Water Conservation and Pipeline Corporation	16
5	Water Services Regulatory Board	7
7	Kenya Water Institute	2
8	Other Water and Sanitation Related projects	40
Total		223

3.4.1 Bribery

From figure 3, 32.8 percent of the respondents rate corruption in the Water and Sanitation Sector to be very high followed by 19.2 percent who rate it as moderate while 12.9 percent indicate that it is low. Only 12.6 percent indicated that there is no corruption in the Sector while 22.5 percent said they don't know if corruption exists in the sector.

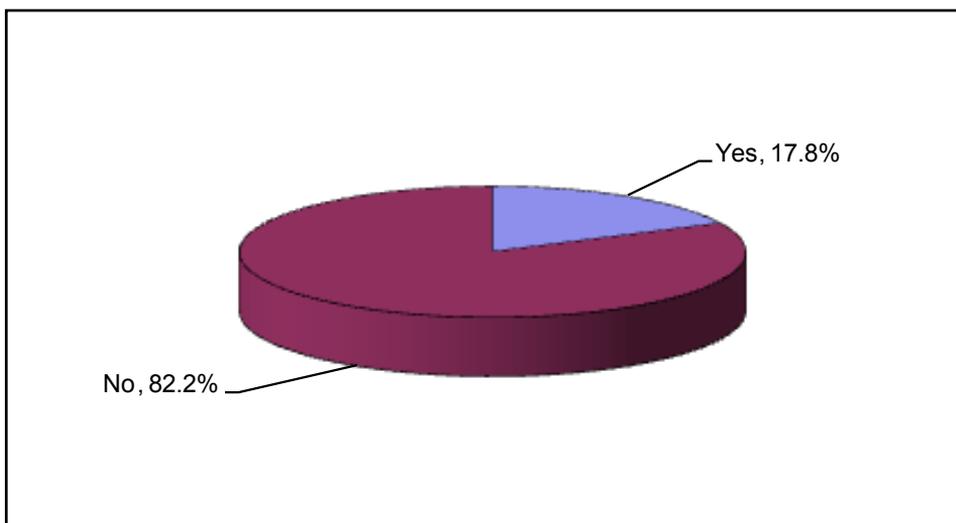
Figure3: Level of corruption in the Water and Sanitation Sector



Further, 37.8 percent of the respondents think that corruption is increasing in the water and sanitation sector followed by 25.1 percent who think it's still the same while 19.4 percent indicate that it is decreasing.

As shown in figure 4, only 17.8 percent of the respondents indicated that they were asked for a bribe in the last 12 months while seeking water and sanitation services. Of those who were asked for a bribe, 60.7 percent paid once, 23.9 percent paid twice, 7 percent paid thrice while 7.9 percent paid more than three times.

Figure 4: Have you ever paid a bribe while seeking water and sanitation services



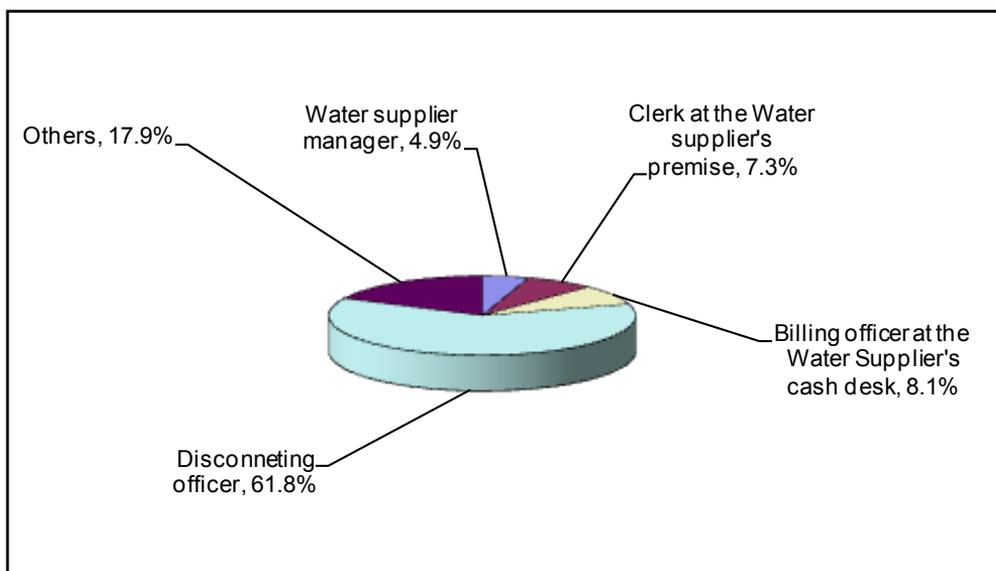
The average bribe paid was Kshs. 1912.50 with most bribes being demanded in Nairobi and Rift Valley provinces. The highest bribes are demanded in Coast Province as further presented in table 3.

Table 3: Average bribe by province

Province	Average bribe (Kshs)	Number of persons	Minimum bribe (Kshs)	Maximum bribe (Kshs)
Central	2,715.38	13	200.00	10,000.00
Coast	10,860.00	5	200.00	50,000.00
Eastern	1,205.55	9	100.00	5,000.00
N. Eastern	2,650.00	7	100.00	15,500.00
Nairobi	1,426.38	36	50.00	15,000.00
Nyanza	685.71	14	100.00	2,000.00
Rift Valley	1,905.55	18	100.00	10,000.00
Western	542.85	14	200.00	1,500.00
Total	1,912.50	116	50.00	50,000.00

When further asked to whom the bribe was paid, 61.8 percent paid to the disconnecting person, 8.1 percent paid to the billing officer, 7.3 percent paid to a clerk at the water suppliers premise while 4.9 percent paid to the water supply manager. A significant 17.9 percent did not indicate to whom they paid the bribe as shown in figure 5.

Figure 5: To whom was the bribe paid



Among the reasons extended for bribing are; demanded (48.7%), too much delay (19.3%, usually bribe to receive service (17.6%), offered as a token (5%) and others such as seeking employment (9.2%)

In the event of a delay in obtaining a service in the water and sanitation sector, 39.2 percent of the respondents lodge a complaint to the relevant office while 22.3 percent wait until the service is rendered (figure 6). A significant 3.5 percent offer bribes.

Figure 6: What happens when a delay in service provision

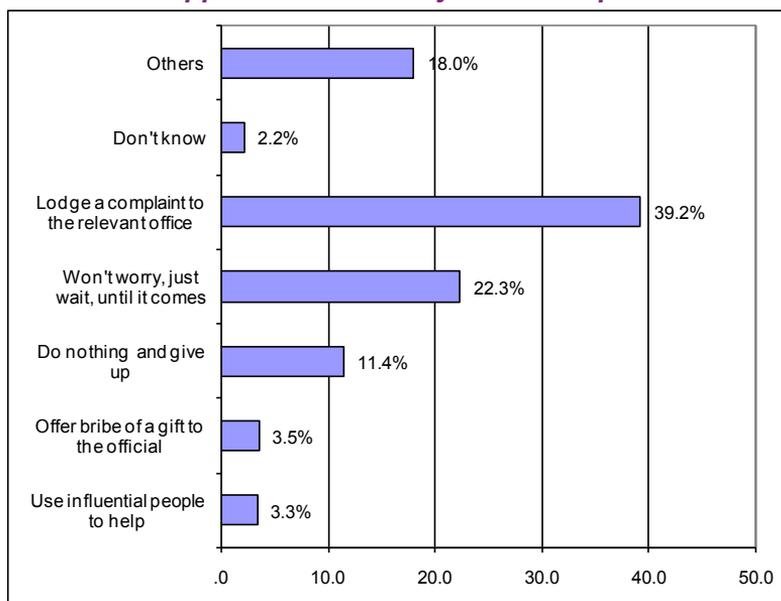


Table 4 summarizes various incidences under which respondents cited bribery cases.

Table 4: Manifestation of Corruption

Manifestation of Corruption	%
During connection of new meters consumers are asked to pay extra	16.6%
During replacement of old meters consumers are asked to pay extra	7.7%
During disconnection consumers pay a bribe so as not to be disconnected	30.9%
During reconnection Water employees ask extra money to make the reconnection	21.7%
Consumers collaborate with water employees to fix an illegal connection	11.6%
Consumers tamper with their meters to show incorrect readings	5.1%
At the payment counters- Water employees collaborate with consumers to cancel bills	6.8%
Water vendors bribe the Water Service Board to get permits	4.4%
Others	30.7%

- i) **Meter Connections:** Respondents in this study reported cases of bribery at the meter connection level either as a new customer or after disconnection (service area). They explained that under such cases bribery is necessitated by delays in service provision which prompts service seekers to offer bribes for quick service resumption.
- ii) **Issuance of Permits by WRMA:** Respondents pointed at favoritism and bribery to win licenses to use water resources commercially e.g. irrigation. This was more pronounced in Nyeri and Embu.
- iii) **Illegal Connections:** Illegal connections across the country account for a larger proportion of unaccounted for water. In Mombasa and Embu, respondents cited that this is mainly done by the water company employees at a fee.
- iv) **Meter Tampering:** In Kitui and Machakos, tampering with the meters by company employees is a common occurrence. It was reported that meter readers tampered with the meter to reflect nearly zero usage and deprive the water company of revenue in exchange for a bribe, Other issues included:
 - Paying a meter-reader to under-report metered consumption
 - Paying a utility employee or contractor to tamper with the meter, or in some other way cause under-registration of actual consumption
 - Paying a utility employee to drop a customer from the billing system
 - Where an illegal connection has been discovered, bribing a utility employee to fail to regularize that connection (so the user can continue to steal water from the utility).
- v) **Water Diversion: Though rare, water diversion cases are facilitated by** employees of the various institutions. In Nyeri, most complaints come from people who bribe to divert water for domestic use for irrigation and hence depriving others sufficient water.

3.4.2 Conflict of Interest

Apart from Nyeri Water and Sewerage Company, all water companies indicated that they ration water to their customers. However, it was reported that various water company providers cause artificial shortages that allows water vendors to thrive. It was argued that most water vendors are company employees or their relatives. Note that vendor's sale water at a fee much higher than the normal tariff. In Kisumu for example, a 20 liter jerrican retails at between Kshs. 10 and 20. Water vendors are more visible in Mombasa, Nakuru and Kisumu.

3.4.3 Embezzlement/Misappropriation of public funds

These are cases where officials dishonestly acquire or wrongfully use public funds places under their care. They involve huge sums of money. There are current investigations into loss of millions of shillings in the sector by KACC.

3.4.4 Public Procurement irregularities

Procurement related corruption includes manipulation of tendering systems and payment process. This is mainly perpetuated by senior employees. The Water and Sanitation Sector is bedeviled by serious procurement malpractices. The malpractices involve purchase of water meters, pipes and even stationary. In the procurement of pipes for example, there are rampant cases of supplying of pipes outside the pipe width and tensile strength at the price of the specifications. In purchase of office goods, there are dominant cases of single sourcing, favoritism, nepotism and tribalism in the award of suppliers.

3.4.5 Impact of Corruption

Table 5 presents various problems respondents encounter in the provision of water and sanitation services which they directly link to the manifestation of corruption. Majority (37%) link poor service to corruption followed by 35 percent who think water shortages experienced are as a result of corruption.

Table 5: Impact of Corruption

Impact	N	Percent
Poor service	407	37.0%
Water shortage	395	35.9%
Delays service delivery	139	12.6%
Inaccurate billing	123	11.2%
Loss of revenue	117	10.6%
High cost of business operations	112	10.2%
High cost of water as a result of water vendors	101	9.2%
Discrimination by water service provider	86	7.8%
Dilapidated water infrastructure	76	6.9%
Lack of faith in the water service provider	59	5.4%
Illegal connections	38	3.5%
Water diversion	35	3.2%
Drilling boreholes without environmental consideration	35	3.2%
Delays in reconnections	34	3.1%
Others	44	4.0%

3.5 Anti-Corruption Measures

3.5.1 Corruption Eradication Indicator in Performance Contracting

The Anti-Corruption and Economic Crimes Act of 2003, the Public Officer Ethics Act of 2003 and the Public Service Integrity Programme provide the foundation and environment for developing, implementing and sustaining a sound and effective integrity system across the public sector and eradicating corruption. The government introduced performance contracting in the public service as one of the reforms aimed at increasing productivity in the public sector and enhancing service delivery and restoring transparency and accountability. The aim of this initiative is to maintain professional and performance driven management ethics in the public service with a view to improve service delivery. It provides the basis for mainstreaming mechanisms for prevention and detection of corruption in public institutions.

Performance contracts essentially involve developing specific targets against which performance of officers in charge of organizations and departments is measured. Following the inclusion of the "Corruption Eradication" indicator in the performance contracts, all public institutions are expected to mainstream anti-corruption strategies in their management systems

The corruption eradication indicator entails fulfilling the following key anti-corruption measures:-

- i) Formulation of an institutional Anti-Corruption Policy;
- ii) Operationalizing Corruption Prevention/Integrity Committees;
- iii) Developing Corruption Prevention Plans;
- iv) Developing a Code of Conduct;
- v) Integrity Training; and
- vi) Baseline survey on corruption perception.

The Water and Sanitation Sector has made some progress in the implementation of various anti-corruption strategies as discussed below.

Table 6 summarizes the various anti-corruption strategies being implemented by the specific institutions listed below.

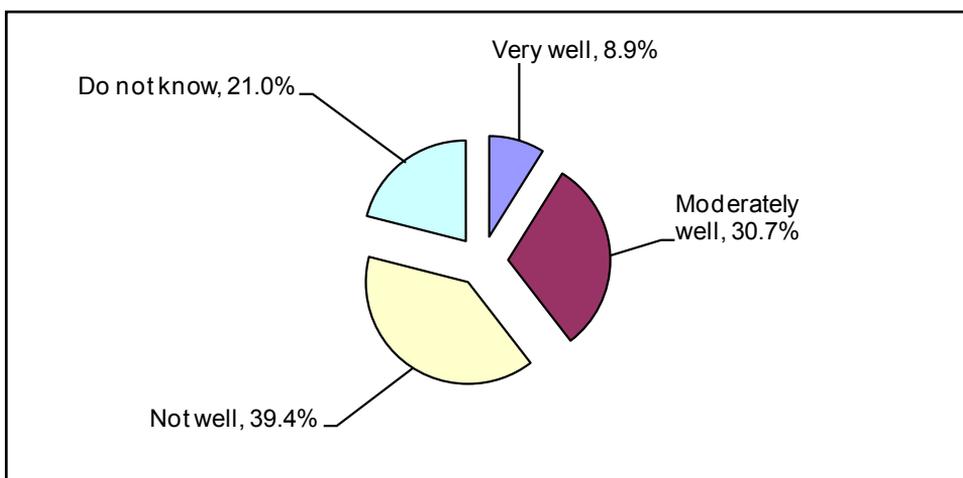
Table 6: Anti-corruption measures within the Water and Sanitation Sector

Water Service Provider	Anti-Corruption Policy	Number of CPCs	Code of Conduct	Number of IAOs	Baseline Survey
Ministry of Water and Irrigation	Ongoing	1	Ongoing	0	No
Water Resource Management Authority	No	1	Ongoing	2	No
Water Services Trust Fund	Yes	1	Ongoing	0	Yes
Tana Water Service Board (Nyeri)	Yes	1	Yes	4	Yes
Northern Services Board	Yes	1	Yes	1 (from the ministry)	Yes
WSPs					
Nairobi Water Company	Ongoing	1	Yes	11	No
Mombasa Water and Sewerage Company	No	1	No	4	No
Garissa Water and Sewerage Company	Ongoing	1	Yes	3	Yes
Western Water and Sewerage Company	No	0	Yes	0	No
Kisumu Water and Sewerage Company	Yes	1	Yes	1	No
Nyeri Water and Sewerage Company	Ongoing	1	Yes	5	Yes
Kitui Water and Sewerage Company	Yes	Yes	Yes	1	Yes

3.5.2 Impact of anti-corruption measures

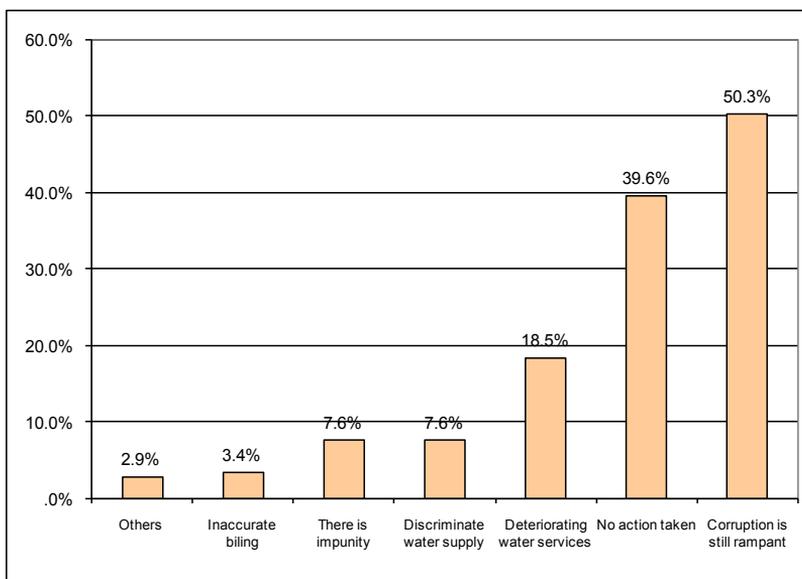
Overall, 39.4 percent of the respondents rate the fight against corruption in the water and sanitation sector as *not well* followed by 30.7 percent who indicate that the fight is *moderately well* while 8.9 percent rate it as very well as shown in figure 7.

Figure 7: How well is the government handling corruption in the water and sanitation Sector



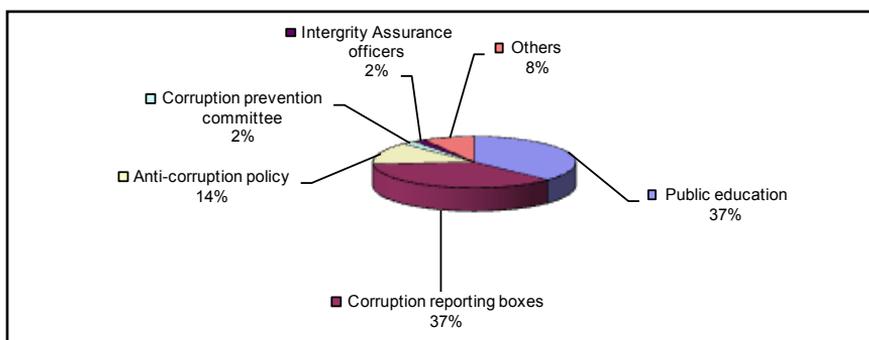
Among the reasons extended for the poor rating are as presented in figure 8.

Figure 8: Reasons cited for the poor rating in the fight against corruption in the water and sanitation sector



Only 14.1 percent of the respondents are aware of some existing anti-corruption initiatives in the water and sanitation sector as presented in figure 9.

Figure 9: Existing anti-corruption measures in the water and sanitation sector

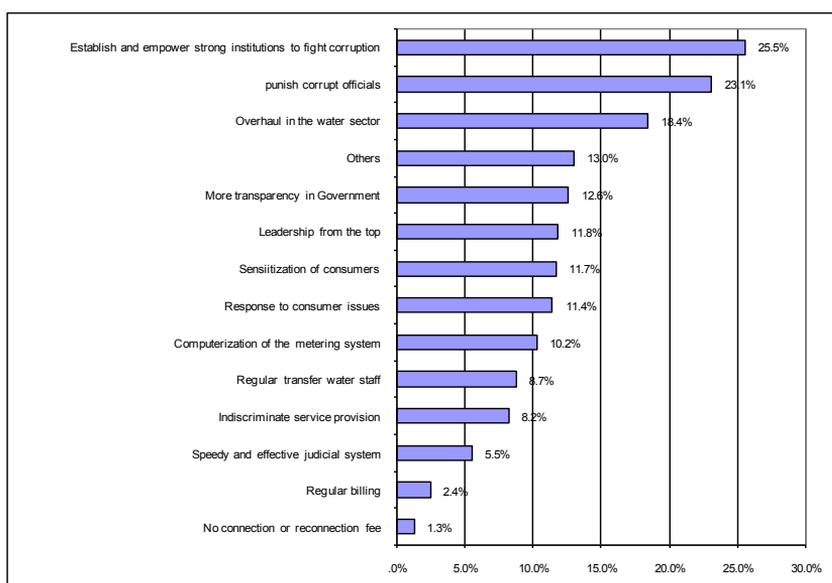


3.5.3 Reporting of Corruption

Respondents recommended that KACC should have corruption clinics every 2 weeks to visit communities to listen to resident’s grievances, educate them and report on current issues being tackled. KACC should partner with the local human rights organizations and NGOs so as to address the corruption issues that arise and remain relevant. The corruption boxes are not properly placed hence raising victimization issues and hence deters reporting of corruption.

Figure 10 presents suggestions on how to fight corruption in the water and sanitation sector. From the figure, 25.5 percent recommend to establish and empower institutions to fight corruption.

Figure 10: Suggestions on how to fight corruption in the water and sanitation services



CHAPTER 4

Cross Cutting Issues

4.1 Billing

There seems to be a haphazard way of reading the water meters leading to unreliable water bills. These bills issued at the end of the month are aggregated for 3 months and the consumers always believe their bills are inaccurate. The WSPs attribute the high water bills on the theft happening in the sector that causes them to give inflated bills.

However, not all bills are estimated. Consumers who have proper water meters get accurate bills as opposed to those with faulty meters. Further, some companies are not computer compliant and hence generate their bills manually leading to distrust among the consumers.

In the survey, 90.5 percent of the respondents indicated that they get their bills monthly. However, 3.8 percent indicated that they never get bills despite them being metered while 5.6 percent said their bills are usually delayed.



Source: <http://trevorkloeden.wordpress.com>

4.2 Infrastructure

One of the causes of water scarcity is the dilapidated and underdeveloped infrastructure that is prone to breakages leading to water leakages. WSPs are running on old pipes some are estimated to 30-40 years old. Infrastructure for water and sewerage provision in rural areas is however very dilapidated that it requires urgent improvement. Sector players decry the phenomenal amount of capital required to develop the infrastructure that is unavailable.

In addition, there are blatant cases of theft and vandalism of pumps, meters and water and storage tanks across the country.

4.3 Power Bills

Electricity bills form a bulk of the expenditure items and the sector is 99 percent dependant on KPLC supply. There are several cases of unpaid power bills leading to disconnections and hence the inability to supply water. Power outages, rationing and surges have a direct negative impact in the sector.

4.4 Water Quality

Generally, the water and sanitation sector has witnessed improved water quality. However, there are still cases of water contamination as a result of sewerage lines running hand in hand with the water pipes. This case is very common in Mombasa. Due to the leakages in the water pipes, the water that is treated at the source is not what is received by the consumers. The water sometimes has sewer remnants, pungent smell and dust that settles or when it's boiled foams.

Water contamination is also widely reported among consumers of vendor water. These cases were dominant in Embu, Mombasa and Kisumu. The overall quality of water provided by the Nyeri Water and Sewerage Company is at par with the recommended standards.

From the customers, 30 percent complained of poor quality of water particularly in Mombasa, Kisumu and Embu.

4.5 Customer Reach, Water Scarcity and Unaccounted for Water

The level of water scarcity in many regions of Kenya has become a serious limiting factor for development activities. There is a great need to change the scattered structure and functioning of the water management system. Moreover, whilst approved standards for drinking water quality and effluent discharges exist, the relevant rules and regulations are not strictly enforced due to a lack of skilled personnel and limited funds. As a result, water pollution from urban and industrial wastes continues to degrade water quality; the heavy use of pesticides and fertilizers in agriculture leads to deterioration of surface water and underground resources; deforestation for



Where communities do not have running water, women often have to travel long distances to bring water for all their family's needs

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firewood production continues at an increasing pace; and the overall exploitation of the country's resources remains an imminent threat to ecosystems.

Water shortages have been attributed to several factors the leading one being that Kenya is a water scarce country. Pundits have also cited population growth while the development of water and sanitation infrastructure has stagnated. An average of 60 percent of tapped water is not accounted for due to huge system losses occasioned by dilapidated water supply systems/infrastructure, unauthorized water connections and vandalism among others. Support of illegal connections by staff of water providers is also a serious contributor to water shortages. Scarcity of water resource occasioned by the interference of catchments that has brought the drought. Failure to meet water demand has given rise to numerous water vendors and NGOs among others. Water rationing is practiced across the country.

Table7: Customer Reach, Water Scarcity and Unaccounted for Water

Water Service Provider	Customer Reach (%)	Unaccounted for Water (Average-%)	Storage Capacity (liters)	Number of days after system collapse	% cost of power bill in relation to other costs
Nairobi Water Company	100	35	50M	1 day	15-Oct
Mombasa Water and Sewerage Company	50	35	Get water from board	1 day	30
Garissa Water and Sewerage Company	100	60	12,000	1 day	30
Western Water and Sewerage Company	45	53	-	In out	56
Kisumu Water and Sewerage Company	40	50	20,000	In out	30
Nyeri Water and Sewerage Company	80-85	29	11,100	1 day	5.8
Kitui Water and Sewerage Company	40	72	7,000	In out	More than total collection

Source: Impact- A performance Report of Kenya's Water Services Sub- Sector – Issue No. 2, Water Services Regulatory Board, 2010.

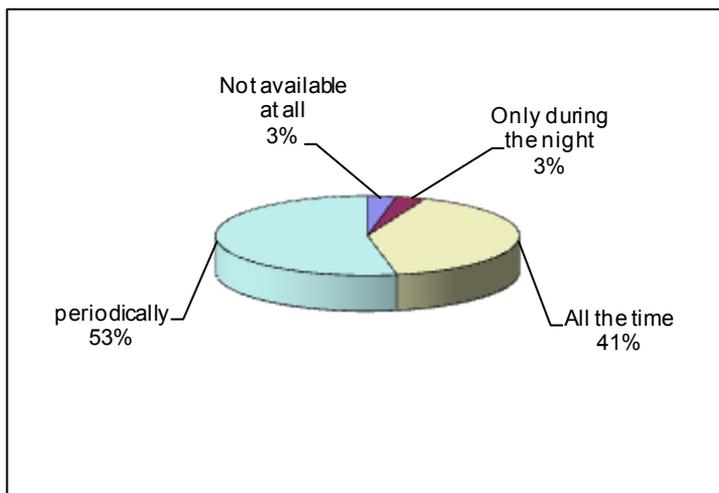
4.6 Viability of WSPs

Commercialization of water provision as a key reform initiative has faced numerous political problems and this has hindered the realization of its full benefits across the country. Companies tasked with the responsibility of providing water, lack the much needed financial resources so as to meet the ever rising demand for water and sanitation services in the country. For example, in the Lake Victoria South Water Service basin, only 3 companies out of 8 are making profits.

4.7 Satisfaction with water and sanitation Services

From figure 11, among the metered customers, 53 percent of the respondents get water periodically followed by 41 percent who get water all the time.

Figure 11: Water reliability



The main alternative source of water in the event of any shortage is water vendors (41%), Borehole (17.9%) and Public tap (2.5%). However, 14.2 percent indicated that they always have water in their taps.

There is no significant difference in satisfaction levels of service for water and sewerage services. Whereas 55.6 percent and 54.7 percent were satisfied with the current water service levels, 44.4 and 45.3 percent were dissatisfied with water and sewerage services respectively. Among the reasons extended for dissatisfaction with water services are; water rationing (45.1%), poor quality of water (38.9%), High cost of water (20.6%), Lack of water (17.7%), Inaccurate bills (11.6%), billing while taps are dry (8.2%), Water smelling sewer (5.1%), discriminate supply (4.8%), poor communication by the service provider (2.6%), poor maintenance of the infrastructure (2.6%) and water diversions (1.9%).

While those dissatisfied with sewerage services cited the following problems; sewer overflow (36.2%), no sewerage system (28.1%), sewer leakage (23.4%), broken sewers never repaired (19.5%), open sewer (11.3%), water mixing with sewer (7.1%) and high charges (4.9%).

4.8 Poor customer relations / communication strategies

There is a communication gap between the providers and the consumers. Respondents complained of the level of ignorance of customers about the official fees to be paid to water companies regarding reconnection and disconnection at their homes. The consumers are also unable to understand their meter readings and bills. Water providers also pointed at the need to sensitize the public on water infrastructure vandalism, water usage and management through the public meetings and the print and electronic media.

CHAPTER 5

Conclusion and Recommendations

5.1 Conclusion

The Water and Sanitation Sector has embraced several reforms that have expanded service provision as a result of implementing the Water Act 2002.

The sector has been opened up and there are now more players courtesy of the policy, legal and institutional framework guiding its operations. The percentage of households with access to clean water and better sanitation has increased tremendously from 20 percent in 2002 to about 50 percent in 2009 in some regions following the implementation of numerous reforms in the sector. There is also improved water quality as a result continuous improvement. The regulatory framework has put in place ways to measure the performance of the sector through tracking of the following indicators: water coverage; sanitation coverage; unaccounted for water; water quality; hours of supply; metering ratio; revenue collection efficiency; and operation and maintenance coverage and staffing levels.

However, access to safe water and sanitation services has not met the needs of the growing population in Kenya. Inadequate funding curbs the rehabilitation and expansion of the water supply and sewerage systems that have been in place as old as 40 years. The need for domestic, industrial and agricultural water supply is growing, but the absence of demand-management strategies means that the increase in demand will likely outstrip the available supply. However, the absence of international funding remains a major obstacle for development efforts and must be overcome by attracting and sustaining international donors. Only with sufficient funding will the capacity of the water sector in Kenya have any chance of being improved.

The percentage of people with access to safe water is 68 percent in urban areas and 49 percent in rural settlements as of data in 2003. Overall, about 57 percent of water goes unaccounted for, lost through either leakage or illegal connections. Access to sanitation in urban areas is at 65 percent compared to 40 percent in rural areas. Accordingly, water-borne or sanitation-related diseases make up the majority of Kenya's morbidity rate and are responsible for over 60 percent of premature deaths due to poor quality water⁵.

Development of the sector and improved water access, quality and affordability by the majority of Kenyans in hampered by a number of factors, including poor and

⁵ Case study: Kenya National Water Development Report UN-WATER/WWAP/2006/12

uncoordinated implementation of policies and laws, weaknesses on the policy, legal and institutional frameworks, lack of awareness by stakeholders of the rights and obligations in the sector, inadequate investments in the sector, poor targeting and coordination of development programmes, mismanagement of resources and institutions, serious procurement malpractices, corruption, and political interference in the development of the sector and management of water service boards.

These factors have led to poor governance, corruption and underdevelopment of the sector. To reverse this trends, bold measures must taken by stakeholders to rid it of corruption and poor service delivery for Kenya to move towards the achievement of the Vision 2030 and the MDGs.

5.2 Recommendations Policy Inadequacies

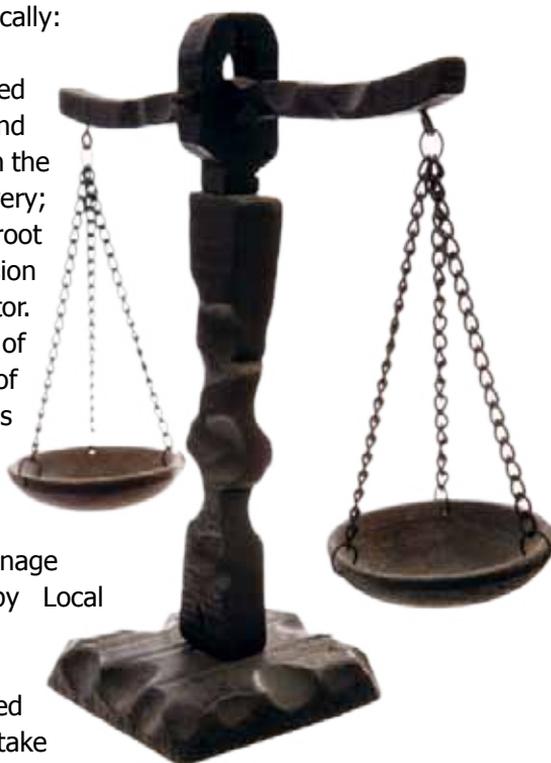
- i) The Ministry responsible for water and sanitation matters and connected institutions should undertake public sensitization and awareness campaigns on the current policies, laws, and institutions governing the water sector. The campaigns should cover the role and responsibilities of regulators, water service providers, consumers, communities, the private sector and the civil society to address the confusion, poor coordination and exploitation of consumers of waters services.
- ii) Adequate funding through the GOK and others sources should be sought to: support capital investment, infrastructure development and expansion of water network; and address equity, access, quality, cost and affordability of water services to the poor urban settlements and rural areas. It is imperative that funding of the programmes should be properly coordinated and managed by the key stakeholders, namely the Government, Donors and the others (private sector, CBOs, NGOs etc) to ensure equitable distribution of resources to all needy areas.
- iii) Mismanagement of the resources in the sector should be addressed through: enforcement of the relevant laws; streamlining the procurement processes; dealing with procurement malpractices; and enhancing legal and technical capacity for management and oversight of water institutions and programmes.
- iv) All water institutions and water service providers must put in place operational policies, systems; procedures and controls to enhance transparency and accountability from public officials entrusted with the stewardship and management of water and sanitation institutions, programmes and services. They should develop and implement corruption prevention policies and plans, codes of conduct and ethics, and set up proper structures for dealing with corruption especially in procurement, infrastructure development, service delivery; and to address political interferences and profession misconduct.

- v) The Ministry responsible for Water and Sanitation Services should ensure that all the institutions, both parastatals and WSPs, practice strong internal controls in financial, procurement and Human Resource management laid down by various statutes.
- vi) Since less than 10 WSPs can be classified as viable, the Ministry responsible for Water and Irrigation should move with speed to ensure the clustering of companies is complete to harness from large expectant market for water and sanitation services and achieve the economies of scale. This will also rid the sector of WSPs reliant on WSBs for payment of electricity bills and wages and other operational costs and thus result in efficient and reliable supply of water.

Legal and Institutional Inadequacies

All the relevant laws touching on the sector should be reviewed to be in line with the current constitutional dispensation. More specifically:

- i) The Water Act 2002 should be reviewed to ensure clear separation of powers and responsibilities among the key players in the sector; enhance efficiency of service delivery; and to provide for the role of grass-root institutions and communities in decision making and governance of the sector. This should also address the problem of political interference in management of the sector and appointment of persons to the Water Service Boards.
- ii) The Local Government Act should be reviewed to empower the WSPs to manage operating facilities previously run by Local Authorities.
- iii) The Public Health Act should be amended to enable WASREB and WSBs to undertake sewerage monitoring, functions that were previously vested in Local Authorities.
- iv) Streamline and harmonize the role of NEMA on the administration of effluent discharge levy and the WRMA abstraction fees to remove double licensing and address corruption associated with the confusion and poor coordination.



- v) Streamline the roles and responsibilities of District Water Officers and personnel of the Water Service Boards on the provision of water services at the district/county levels to remove duplication, overlaps, wastage of resources and corruption associated with poor coordination and weak management policies and systems.
- vi) Ensure that the Ministry responsible for Water and Irrigation adequately empowers institutions formed under the Water Act 2002 in terms of budgets, personnel, control and ownership of assets in the water supply chain.

Corruption and Service Delivery

- i) Given that a significant number of consumers of water services perceive corruption levels to be high in the sector, KACC in collaboration with various stakeholders in the sector should intensify actions on combating and preventing corruption in the sector through law enforcement, public education, advisory services, sealing corruption loopholes and eradicating bribery at the high, middle and lower levels.
- ii) Focus should be placed on corruption prevention through requisite capacity development programmes such as integrity assurance training; development and enforcement of codes of conduct, anti-corruption policy; formation of corruption prevention committees; and conducting corruption risk assessment etc.
- iii) Services to water and sanitation consumers should be improved by ensuring and guaranteeing reliability of water supply (piped water, boreholes and other sources); reducing water rationing/diversions; improving water quality; addressing the high cost, inequity and access of water supply; undertaking regular and proper maintenance of infrastructure; eradicating water vendors who collude with service providers to exploit consumers; and dealing with meter readers who facilitate inflated water bills and blackmailing consumers among others.
- iv) Water sector institutions should embark the rapid results initiative to improve service delivery and change perception of consumers of water services.

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APPENDIX I:

List of Participants

Mombasa Region

Focus Group Discussion:

1. Mrs. Margaret Munuve – Coast Water Services Board
2. Mr. Patrick Masaku – Water Resources Management Authority
3. Mrs. Margaret Moraa – Water Appeals Board
4. Mr. Micah Otieno Omoro – Municipal Council of Mombasa
5. Mohammed Hamisi – MUHURI
6. Husna Mbarak – MUHURI
7. Fahad Said – MUHURI

In-depth Interview:

8. Mr. Benjamin Kai – Finance Director – Mombasa Water and Sewerage Company

Garissa Region

In-depth Interviews:

9. Mr. Samuel K. Ndungu – North Water Service Board
10. Mr. Robert G. Ndirangu – North Water Service Board
11. Mr. Yusuf Ibrahim – Garissa Water and Sewerage Company

Kitui Region

In-depth Interviews:

12. Mrs. Christine Kwinthonga – Kitui Water and Sanitation Company
13. Eng. J. Nzesya- Managing Director, TANATHI Water Service Board
14. Tanathi Water Service Board – Quarterly Board Meeting

Embu Region

Focus Group Discussion:

15. Mr. Robert Miruri – District Water Office
16. Mr. Kagutho – Embu Water and Sewerage Company
17. Mr. Timothy Mutie – Water Resources Management Authority,
18. Ms. Rhoda Kendi – NAP Kenya
19. Mr. Mugeru – Ngadore Ngina
20. Mrs. Ruth Njoki Moses – Municipal Council

Nyeri Region

Focus Group Discussion:

21. Eng. Timothy Kibaki – Tana Water Service Board
22. Mr. Beato K. Migwi – Tana Water Service Board

23. Mrs. Lucy Njuguna – Water Resources Management Authority
24. Eng Joseph Muchiri – Nyeri Water and Sewerage Company
25. Mr. Wilson Mwai - Nyeri Water and Sewerage Company
26. Mr. Willy Kamwaro – Tetu Aberdare Water & Sanitation Company
27. Mr Alex Mwangi – Population Services International
28. Mr. Andrew Wambugu – Deputy Town Clerk- Municipal Council of Nyeri
29. Cllr. S.N. Kabai –Municipal Council of Nyeri
30. Cllr. Paul G. Kanyari –Municipal Council of Nyeri
31. Mr. Stanley Nderitu Nyeri – Municipal Council of Nyeri

Nakuru Region

Focus Group Discussion:

32. Mr. Bernard Nyacheo – Rift Valley Water Service Board
33. Mr. Paul Gicheru – Rift Valley Water Service Board
34. Mr. Stephen Mbugua – Rift Valley Water Service Board
35. Mrs. Leah Tanui – Rift Valley Water Service Board
36. Mrs. Jacynter Were – Water Resources Management Authority
37. Mrs. Juliana Cheptoo – Water Resources Management Authority
38. Eng. John Cheruiyot – Nakuru Water and Sewerage Company
39. Mr. Job K. Tomno – Nakuru Rural Water and Sanitation Co. Ltd
40. Mr. David Towett – Nakuru Rural Water and Sanitation Co. Ltd
41. Mr. Patrick Kubai – Catholic Diocese of Nakuru

In-depth Interview:

42. Eng Japheth Mutai- Rift Valley Water Service Board
43. Mr. James Ambuso – Nakuru Rural Water and Sanitation Co. Ltd

Kisumu Region

Focus Group Discussion:

44. Eng. M.O Ochieng – Lake Victoria South Water Services Board
45. Mr. Gideon Kirui – Lake Victoria South Water Services Board
46. Eng. David Onyango – Kisumu Water and Sewerage Company
47. Mr. Allan Juma – District Water Officer
48. Mr. Simon Ondigo – Kisumu Water and Sewerage Company
49. Mr. Jacob Akuno – Lake Basin Development Authority
50. Mr. Reuben Dienya – Water Resources Management Authority
51. Mr. Susan Oswald – SANA International
52. Mrs. Naum Mbeya – Obondo Wandiege Watsan
53. Mr. Leonard Akwany – Osenalala

Kakamega Region

Focus Group Discussion:

54. Eng. Richard Donde – Lake Victoria North Water Service Board
55. Mr. James Ngugi – Lake Victoria North Water Service Board
56. Mr. Enock S. Wanyonyi – Water Resource Management Authority
57. Mr. Ismael O. Oduor – Department of Irrigation and Drainage
58. Mr. Simeon Kinyangi – District Water Officer

59. Eng. Sylvester Bett – Western Water Service Company
60. Mr. Michael Kemboi – KAMADEP
61. Cllr Amisi Omukanda – Municipal Council of Kakamega

Nairobi Region

In-depth Interviews:

62. Eng. SAO Alima – Deputy Director – Ministry of Water and Irrigation
63. Mr. David W. Kiboi – Principal Economist – Ministry of Water and Irrigation
64. Eng. Robert Gakubia – CEO, WASREB
65. Eng. Jacqueline K. Musyoki – CEO – Water Services Trust Fund
66. Eng Olum – Water Resources Management Authority
67. Eng. Lawrence W. Mwangi- CEO, Athi Water Services Board
68. Mr. James Karanja – Nairobi City Water and Sewerage Company
69. Mr. Griffins Songole – Nairobi City Water and Sewerage Company

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