CABRI Policy Dialogue

Value for money in the water, sanitation and hygiene sector

CASE STUDY

Decentralisation of water and sanitation services in Kenya

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- advance the development of member states by strengthening capacities and encouraging training and research in public financial management; and
- develop and promote common African positions on issues associated with the budget, which are of interest to Africa.

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Acronyms and abbreviations

CABRI	Collaborative Africa Budget Reform Initiative
CBO	community-based organisation
CEC	county executive committee
GDP	gross domestic product
JMP	UNICEF/WHO Joint Monitoring Programme for Water Supply and Sanitation
KNBS	Kenya National Bureau of Statistics
LMIC	lower-middle-income country
MDAs	ministries, departments and agencies
MoH	Ministry of Health
MoWI	Ministry of Water and Irrigation
NGO	non-governmental organisation
O&M	operations and maintenance
PFM	public financial management
PFM Act	Public Finance Management Act of 2012
WASH	water, sanitation and hygiene
WASREB	Water Services Regulatory Board
WSB	Water Services Board
WSP	Water Service Provider
WSTF	Water Services Trust Fund

1. Introduction

Between 2010 and 2015, there was only a slight overall increase in access to water and sanitation services in Kenya. The UNICEF/WHO Joint Monitoring Programme for Water Supply and Sanitation (JMP) estimated that 63 per cent of Kenyans had access to improved drinking water sources in 2015, compared to 60 per cent in 2010; and 30 per cent of the population had access to improved sanitation in 2015, compared to 29 per cent in 2010 (UNICEF/WHO 2015). Kenya's progress on water, sanitation and hygiene (WASH) is poor compared to other lower-middle-income countries (LMICs) and regional peers, with Kenya below the average level of progress for both water and sanitation.

In 2010, a new constitution was introduced in Kenya, which has significantly reshaped the political and administrative landscape. It created 47 new county governments and devolved powers to them in line with citizens' rights established in the constitution. The aim of the devolution was to bring service delivery 'closer to the people'.

As many administrative processes are still being established, it is too soon after devolution to draw conclusions as to whether it has been successful or not. This case study discusses the devolution process in Kenya and how it has affected public finances, public financial management (PFM) and the structure of the WASH sector. It begins with a discussion of the socio-economic context of the devolution period (2013–2016), before considering the nature of devolution in Kenya and how this has affected the WASH sector. The case study finishes by proposing discussion questions, many of these being live debates in the Kenyan WASH sector.

1.1 Socio-economic context

Of Kenya's 48 million people, 74 per cent live in rural areas.[1] Kenya also has a very youthful population, with 73 per cent younger than 30 years; this is driven by a relatively high population growth of 2.6 per cent per annum. In recent years, there has been good progress on reducing poverty; and sustained economic growth has meant that in 2015 Kenya became an LMIC. In the three years since devolution (2013–2016) Kenya's gross domestic product (GDP) growth, at an average of 5.5 per cent, has largely kept pace with the relatively high East African Community average. However, Kenya has one of the highest levels of income inequality in East Africa, with an estimated Gini coefficient of 0.43 in 2013 (KNBS & SID 2013), and an estimated 46 per cent of the population living below the national poverty line,[2] which rises to 51 per cent in rural areas.

Kenya's policy direction is rooted in Vision 2030. Adopted in 2008, Vision 2030 is:

> *A national long-term development blue-print to create a globally competitive and prosperous nation with a high quality of life by 2030, that aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment.* (http://www.vision2030.go.ke/vision/)

Priority sectors noted in the Vision 2030 Medium-Term Plan II (2013–2017 political cycle) include education, governance, energy, infrastructure, and information and communication technology. These sectors receive around 75 per cent of allocated spending on ministries, departments and agencies (MDAs). In comparison, the health and environment sectors (including expenditure on water and sanitation) receive an average of just 7 per cent of total budgeted MDA spending. Development budgets across sectors have low absorption rates, with an average of 55 per cent over the first three years of devolution, which raises questions about the capacity to manage public procurement and investment.

1.2 The WASH sector

The structure of the WASH sector in Kenya is currently evolving in response to devolution and the recently passed Water Act of 2016. Previous sector structure reforms in the 2000s focused on professionalising the operation and management of water and sanitation services, creating independent utilities, known

1 World Bank data. Available at: https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=KE [accessed September 2017].

2 Poverty is estimated according to the headcount ratio – the national poverty line is determined by the cost of a basket of food and non-food items deemed to be the minimum requirement.

as Water Service Providers (WSPs),[3] 8 regional Water Services Boards (WSBs)[4] and a national regulator, the Water Services Regulatory Board (WASREB). At the national level, responsibility for WASH is divided between two ministries: the Ministry of Water and Irrigation (MoWI) has responsibility for water and the Ministry of Health (MOH) for sanitation. Under devolution the new county government ministries have responsibility for water and sanitation. There are currently some overlapping mandates that recent legislation is addressing.

Between 2010 and 2015, there was a slight overall increase in access to water and sanitation services in the country. The JMP estimated that, in 2015, 63 per cent of Kenyans (82 per cent in urban areas and 57 per cent in rural areas) had access to improved drinking water sources, compared to 60 per cent in 2010 (83 per cent urban, 53 per cent rural) (WHO/UNICEF 2015). Progress on water, thus, has been driven by increases in rural access. In urban areas, the proportion of the population with access to piped water fell between 2010 and 2015 from 47 per cent to 45 per cent. There was a one percentage point rise in those using other improved sources and unimproved sources. With regard to sanitation, 30 per cent of Kenyans (31 per cent of urban and 30 per cent of rural) had access to private improved sanitation in 2015, compared to 29 per cent in 2010. In rural areas, open defecation was estimated to still be practiced by 12 per cent of the population (compared to 13 per cent in 2010).

Kenya's progress compared to other LMICs and the East and southern African is poor, with Kenya below the average level of progress for both water and sanitation. Though there has been a moderate increase in access to improved sanitation in most areas, the rate of progress is behind what is needed to meet government targets. In 2015, the JMP classified Kenya as having made 'little to no progress' with regard to sanitation, and 'good progress' with regard to water over the millennium development goal period (WHO/UNICEF 2015). Very limited data are available to assess post-devolution sector performance; this, combined with the fact that many processes are still being established and embedded at the county level, means that an assessment of the degree to which devolution has benefitted the sector would be premature.

1.3 Public expenditure in WASH pre- and post-devolution

Prior to devolution (2010–2013) the WASH sector received small budget allocations, with allocations to the water sector through the MoWI ranging from 3 to 4 per cent of the total budget. A high proportion of the MoWI's budget was allocated to development expenditures (83 per cent on average), and budget execution was consistently above 80 per cent. During this period, over 45 per cent of the development budget was funded from external sources. Between 2010 and 2013, government budget allocations to the independent WSPs slowly decreased as they were increasingly expected to raise their own revenues from tariffs. There were concerns, however, about the sustainability and efficiency of service delivery as spending on the operation and maintenance (O&M) of facilities and water service provision was low. This was partially due to low cost-recovery levels of the WSPs and limited allocations to O&M in the recurrent budget.

Post devolution (2013–2016) the nominal amount allocated to WASH sector ministries increased; driven by the rapid increases in allocations to county ministries (CECs) with responsibility for water. Though there was a slight fall in the amount allocated to the MoWI. Unlike the trends in GGE; WASH budgets at both the county and national levels are heavily weighted towards development expenditure. Post-devolution budget execution rates by the MoWI have fallen slightly. Execution at the county level is poor; though in most counties execution have improved dramatically - though they remain substantially lower than the county average and other social sectors. WSPs remain are an important source of expenditure - their collective turnover is greater than the expenditure by the MoWI WSP turnover has increased over the last three years – though many remain in a poor financial position.

3 The WSPs were formed following the Water Act of 2002. There are currently 91 licensed WSPs, with roughly 20 million people in their service areas (WASREB 2016).

4 The WSBs were established between 2003 and 2004, following the Water Act of 2002.

2. Devolution and PFM

The rationale for devolution was to bring service delivery functions closer to the people and to progressively realise more equitable service delivery. Prior to devolution, however, some risks were identified. These included: higher costs of administration, capacity constraints at the county level for PFM, and that counties would receive a mandate for budget execution (expenditure) without an equal mandate for revenue mobilisation (PwC 2013; World Bank 2013a). This section briefly discusses budget processes and how these affect the WASH sector.

Devolution has radically reshaped the legislative and policy framework for sub-national finances. A key piece of legislation is the Public Finance Management Act of 2012 (the PFM Act), which established the framework for PFM under devolution. In addition to granting county administrations the power to raise their own revenues from specific sources, the PFM Act also specifies how funds flow from the national to the county governments. The constitution mandates that 15 per cent of the national budget is allocated to counties; this 15 per cent is shared between the counties according to an allocation formula that takes into account population, poverty levels, land area, a 'basic share' and the level of fiscal responsibility. In total there are four main flows to county treasuries:

- *Concessional transfers from the national government (equitable share):* These funds are known as the 'equitable share' and account for over 70 per cent of counties' revenues for the past three years.
- *Conditional grants:* In addition, there are several conditional grants that are sent from the national government to the counties and have to be used for the purpose specified. For example, counties may receive a special grant for hospitals, or a special grant for road maintenance, based on a formula of specific needs indicators. Counties also receive funds from the government's Equalisation Fund, in the form of conditional grants to bring basic services to marginalised communities.
- *Locally collected taxes:* Almost all major taxes are collected by the national government, except for property tax and entertainment tax, which are collected by county governments. Some fees for the use of services (such as hospitals, or charges for licences) are collected by counties. Locally generated revenues from taxes, fees and licences account on average for only 10 per cent of county funding.
- *Other sources of revenue:* Counties may receive other types of revenues – firstly, they may receive grants from donors, which they should then report in their budgets. Secondly, counties may receive loans from donors or investors. However, all loans received by a county must be guaranteed by the national government.

Each year, the division of revenue between the national government and the county governments is established through a series of acts of parliament. A Division of Revenue Bill, divides the revenue raised by the national government among the national and county levels of government in accordance with the constitution; and a County Allocation of Revenue Bill divides among the counties the revenue allocated to the county level. Further, the composition of revenues between MDAs at the national level and CECs at the county level is set via the passing of appropriation acts at the appropriate level.

The Kenyan financial year ends on 30 June and the county-level budget process is aligned with the national-level process. The CECs, acting as the county ministry of finance and county Treasury, are the main actors at county level involved in ensuring the proper execution of the approved budget estimates. If county governments need to spend more than allocated in the appropriation act, county governments may issue up to six supplementary budgets a year. The national government has drawn up an average of two supplementary budgets per year for the period assessed, as have most county governments.

The high degree of fiscal decentralisation means county governments largely decide how much is spent in the 14 sectors devolved. In the WASH sector, there are no conditional grants, so sector allocations are almost completely at the discretion of the county administrations. There are some WASH services that receive funding form locally collected revenue – this is more common in sanitation, as the environmental health departments in the ministry of health charge for some services (e.g. hygiene inspections) and are allowed to retain that revenue within the department by the county authorities.

3. The WASH sector in Kenya

The structure of the WASH sector in Kenya is currently being adjusted in response to changes in responsibilities as a result of devolution and the recently passed Water Act of 2016, which clarifies responsibilities in the light of devolution. Sector reforms began in Kenya in the 2000s with the Water Act of 2002. This focused on professionalising the operation and management of water and sanitation services, creating independent utilities – WSPs, regional WSBs and the WASREB. The sector structure described below is accurate as of the time of the passing of the Water Act of 2016 (September 2016). There are ongoing reforms in the sector and this case study focuses on current questions surrounding how best to balance responsibilities between the national and county governments and, accordingly, how to structure the sector, allocate resources and assess sector performance.

At the national level, responsibility for WASH is shared by two ministries: the MoWI, which is responsible for water, and the MoH, which is responsible for sanitation. Both ministries also have responsibilities for monitoring and evaluation, and capacity-building in their respective sub-sectors. The WSBs, WSPs, and the county governments have responsibility for developing and managing services.

The WSBs are the asset holders for the water and sanitation infrastructure in their respective jurisdictions (usually several counties within one or more basins) and manage large-scale investments in WASH infrastructure. The WSPs are the service delivery agents in the water sector. All WSPs are commercialised, with the vast majority being state-owned. Under a service provision agreement, the WSPs usually have a mandate to supply water (operate and maintain water and sewage infrastructure) and to collect tariff revenue in their service areas. The Water Services Trust Fund (WSTF) is a pooled fund that makes grants to NGOs/CBOs and WSPs for developing infrastructure. The fund acts as a channel for donor funds into the sector, which are not subject to budgetary processes. However, following the adoption of the new constitution in 2010 and the promulgation of devolution from 2012, the newly formed county administrations also have a mandate for ensuring water and sanitation services in their jurisdictions. This has resulted in some overlapping responsibilities, which the Water Act 2016 seeks to clarify, making it plain, in particular, that the national government retains responsibility for 'national public works' in water. The 2016 Act defines national public works as including: water storage; water works for bulk distribution and provision of water services; inter-basin water transfer facilities; and reservoirs for impounding surface run-off and for regulating stream flows to synchronise them with water demand patterns that are of strategic or national importance.

Table 1: Key legislation in the Kenyan WASH sector

Document	Year	Description
Water Act	2002	The Water Act sets out the institutional structure for the water sector and grants mandates. This act laid the foundations for the water sector reforms of the 2000s, which established the service delivery structure that largely remains intact today.
Constitution of Kenya	2010	The constitution enshrines the right to water. It also gives the national government the responsibility for national public works and county governments the responsibility for county public works, with specific reference to water and sanitation. The county administrations are formed with the promulgation of the constitution.
Water Act	2016	This Water Act reinforces the structure of the 2002 Water Act, with some revisions, and, importantly, defines national public works, thereby partially clarifying the roles as set out in the constitution.

Figure 1 presents a simplified map of the WASH sector in Kenya at the time of the passing of the Water Act of 2016. Those institutions making investments in both water and sanitation are in dark blue, while those concerned exclusively with sanitation are in purple. It is important to note that this figure summarises the main flows in the sector considered in this analysis, and is a representation of key flows as opposed to a mapping of all flows. Prior to devolution, the local implementing agents in the water sector were 'district water offices', which received funding directly from the national

ministry. Both in size and staffing these are comparable to the new county ministries (although there has been some centralisation within counties).

Various features of this funding structure should be noted. First, there is an extremely limited flow of funds between the national ministries and the county ministries with responsibility for water. Second, the WSPs have the ability to collect revenue locally in the form of tariffs, which are retained by the WSPs for their operation (with a small proportion, 4 per cent, paid to the regulator). Third, few county governments receive international transfers or have access to commercial finance. Fourth, there is a difference in who provides services within WSP service areas and outside of them, with those living inside WSP service areas receiving funds from a wider range of sources. Lastly, service delivery functions are performed by a wide range of actors, some with overlapping responsibilities.

The constitution guarantees every Kenyan the 'the right and access to clean, safe and adequate water; and reasonable standards of sanitation', and places the county administrations at the centre of service delivery. Yet the division of responsibility is not entirely clear, especially concerning 'national public works' and 'county public works'. These terms were ill-defined in the constitution and have led to confusion and conflict between national and county institutions (World Bank 2013b).

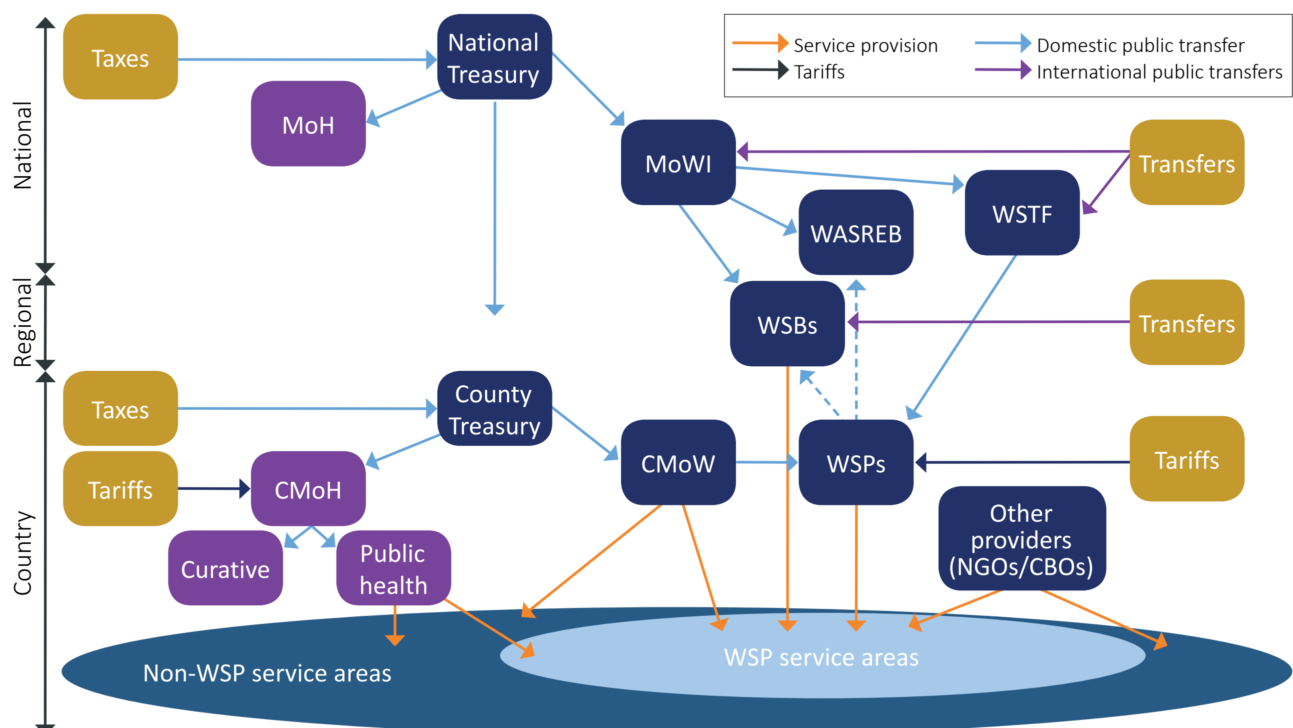
The 2016 Water Act sought to place the sector structure established in the 2002 Water Act in the context of the constitution, defining 'national public works' more specifically. The definition employed by the Act is broad but clearly stipulates that the national government retain responsibility for some aspects of WASH service delivery. This has been viewed by some as an effort to re-centralise certain service delivery functions. Specifically, the Council of Governors – the national institution that represents all county administrations – has condemned the Water Act of 2016 as unconstitutional and threatened legal challenges.

The WSPs have a central role in water service delivery. One of the decisions in devolution was to transfer the responsibility of their management from the WSBs to the new county governments. During the first few years of devolution this created considerable confusion. More recently, county authorities have established new management structures and service level agreements with WSPs, adding clarity and improving efficiency.

The WSPs collect tariff revenue from those they serve, which is protected and used by the WSPs for the provision of WASH services and is not subject to the budgetary process. This revenue is sizable and often greater than the counties' recurrent budget allocation to WASH. Despite this, many WSPs are in a dire financial position, with expenditure often far exceeding revenues. As a result, county governments are having to subsidise some aspects of WSP service delivery – particularly chemicals for water purification and electricity for pumping stations.

Currently less than half of the population in Kenya live within a WSP service area, with even fewer actually provided with services by the WSP. Outside of service provider areas, most counties report relying on communities to manage their own services through CBOs, whose responsibilities extend to collecting tariffs or fees for O&M. These are key dimensions when considering how equitably funds are allocated and how sustainable services are, especially outside of WSP service areas.

Figure 1: Map of the actors and flows of funds in the WASH sector in Kenya as of September 2016



Source: Authors' own design

4. Conclusions

In the WASH sector, the principles of devolution are broadly reflected in budgeting and expenditure trends. They highlight the growing importance of county governments, while the MoWI has seen a nominal reduction in budget allocations over the period the counties have seen their budget increase to the degree that overall MDA funding is increasing. WASH spending has increased in absolute terms, but has fallen as a proportion of both GDP and total government expenditure.

Under devolution, the semi-autonomous government agencies (WSPs and WSBs) retain their central role in service delivery – WSPs' expenditure on O&M is greater than that of the county governments in most cases. External finance remains important in the sector, though currently the vast majority is still channelled through the national and regional institutions rather than the county governments, and is heavily skewed towards loans as opposed to grants.

Despite the presence of a national targets for WASH and the right to water guaranteed by the constitution, many of the counties' first (2013–17) medium-term county integrated development plans did not contain specific county-level access targets for WASH. Consequently, it is not possible for these counties to assess the degree to which the county policy is aligned with national objectives. The approach taken to WASH policy and budget allocation is largely at the discretion of the county administrations. This, combined with the fact that there is a high degree of fiscal decentralisation and few direct (financial or accountability) links with the national line ministry, means that budget allocations to WASH vary significantly between the counties, particularly in terms of development expenditures, which raises questions related to geographical equity in funding and service provision.

Furthermore, despite numerous monitoring initiatives there are few sources of data for a comparative analysis of performance between the counties; currently, it is not possible to readily or reliably assess whether efficiency has improved under devolution or how equitable WASH expenditure is between counties. County monitoring systems are weak, with the majority dependent on output data (which use inconsistent indicators); and the counties do not use common measures for core WASH indicators linked to national targets.

At the national level, projected sector finance allocations are insufficient to meet requirements. The national government's projections reveal a large and widening gap in sector funding. For the following three years external finance needs are projected to be equivalent to more than 80 per cent of the MoWI's overall budget, an unrealistic figure in comparison with previous and current levels of external finance.

Although the institutional home of sanitation is the MoH, sanitation projects are also undertaken by WSBs, WSPs, and county ministries with responsibility for water, particularly in urban areas. Currently, policy and practice do not reflect one another in this area. O&M arrangements outside of WSP service areas are weak and there is limited monitoring of service sustainability. County governments report utilising community-based management models for rural services, but few assess service sustainability or allocate budget towards the O&M of rural services.

Few counties report undertaking joint planning processes with the national or regional institutions or the WSPs. Co-ordination between sector institutions is relatively weak due to few formal mechanisms. Currently, the planning processes for the county governments, WSPs, WSBs and the MoWI are not linked. Given the structure of the water sector, it is essential that these institutions consult one another during their planning processes and align investments to maximise impact. The Kenyan WASH sector is still very much in a phase of restructuring following the promulgation of the constitution – with the outcome not yet entirely clear.

5. Current debates and discussion questions

The structure of the WASH sector is still adapting to devolution. To this end, the Water Act of 2016 adjusted the structure established by the 2002 Act. In doing so, it can be argued, it has recentralised some service delivery functions. This can also be interpreted as contrary to the spirit, and letter, of the constitution. Arguments for regional institutions retaining a role in service delivery often rely on the fact that many investments in water are cross-county in nature and that the resource itself is shared between counties, with basement catchment areas often crossing multiple county borders.

Furthermore, for large-scale infrastructure projects it is only the national institutions that currently have the capacity to secure and manage large loans or chunks of external finance; and, with decisions on county allocations to WASH made independently by the 47 counties, the overall amount of funding allocated to WASH has the potential to be highly variable. While the 2016 Water Act is likely to be implemented, its effect on sector funding and financing will be influenced heavily by the *way* in which it is implemented, and particularly the shape of the supporting regulations. In this context there are open questions as to how funding might be increased and more effectively spent in the sector.

The questions below aim to open discussion surrounding the appropriate balance of responsibility between the national, regional and county institutions and administrations; and, consequently, what the appropriate budget allocations are to each and how accountability and efficiency can be enhanced.

Discussion questions

(i) Balance of power between the national and county levels:

- Given the cross-county nature of water resources and investments, are regional institutions necessary to manage both cross-county investments as well as disputes? If so, what is the appropriate balance of responsibility and funding between the two?
- Given its importance, what is the most appropriate way to manage external finance entering the sector? Should efforts be made to enhance county administrations' ability to manage large external finance or is this more efficiently done at the regional and national levels?

(ii) Accountability:

- Given the limited financial links between the national line ministry and the county line ministries, how can county responsibility for the achievement of national policy objectives be enhanced?
- Given that there is such a high degree of fiscal decentralisation and that county allocations for WASH are made from entirely concessional transfers, should a conditional grant for water be introduced in the WASH sector? What other mechanisms could be used?

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