

Water Services Devolution in Kenya

Briefing note to support effective and sustainable devolution of water and sanitation services in Kenya

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Supporting the new Water Policy and Act in alignment to the new Constitution of Kenya 2010 (P132025)



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1.0 Brief Overview of Technical Assistance

The overview over the next pages summarizes key themes and findings from on-going technical assistance provided to the Kenyan water sector by the Water and Sanitation Program (WSP) of the World Bank's Water Global Practice.

1.1 Context

Kenya's new Constitution (Constitution of Kenya 2010) came into effect in 2013, declaring water supply and sanitation services a basic right and devolving key water and sanitation functions to the county level. Key legislation, including the County Government Act of 2012 and the Urban Areas and Cities Act of 2011, have provided the framework for far reaching changes.

As these changes took shape before and after the new constitution came into effect, WSP's TA programs have been providing specific advice at the national level¹ to align the sector's legal and institutional frameworks to the new decentralized constitution. The Engagement and support to counties to adopt the new frameworks has been stepped up substantially since mid-2013. This is evidenced by the progress of the transition process under the Transition Authority and Commission for the Implementation of the Constitution.

1.2 Key elements of the Technical Assistance

A sequence of knowledge products and exchanges between 2010 and 2014 analyzed issues and implications for Kenya's devolved water sector, and provided insights into how the national and new county governments could best respond to these challenges. Prior to the new constitution coming into effect in mid-2013, the work focused on preparing the enabling frameworks at the national level and supporting the dialogue on how counties could deal water sector issues. Subsequently, there has been a growing range of interactions with counties, including peer to peer learning programs, to provide support to the county governments in tackling the challenges related to management of water and sanitation services.

The concept package provides select written outputs delivered in this process, including:

- A high profiled briefing note "*Devolution in Kenya: Opportunities and Challenges for the Water Sector*" in close collaboration with the Ministry of Environment Water and Natural Resources MEWNR, that identified key issues and pointed out key strategic priorities and interventions required.
- A series of high level briefing notes for the MWENR cabinet secretary used as base material for numerous interactions.
- South-South Learning Note on a visit by delegations from Nairobi and Mombasa that went on a joint mission to Durban to learn from the experiences of eThekweni Water (water supply) and Umgeni Water (Inter-jurisdictional water management, including bulk water management).
- The attached briefing note for counties that draws on the above outputs, tailoring the main messages and lessons specifically to the challenges county governments and their water utilities face.
- Several presentations and inputs on good practices to decision-makers at the Kenya Annual Water Sector Conferences and other public forums.

¹ Under this TA, and in close collaboration work with the Bank's Devolution unit, WSP has also worked where relevant with the Transition Authority, other ministries, sector institutions and the new county governments to help institutionalize the new devolved system.

2.0 Counties, water and sanitation and Kenya's devolution

The Constitution of Kenya 2010 provides a special opportunity to shift the water and sanitation sector to new scales of improved efficiency in service delivery. Most fundamentally, the constitution recognizes access to safe and sufficient water as a basic human right and assigns responsibility for the provision of these core services to 47 newly established counties. In tangible terms, this means for all counties having to extend their water networks to increase service coverage, reduce nonrevenue water and water losses, and increase production capacity and cash collection efficiency. But these tangible improvements in service delivery cannot be achieved through increased investment alone. All responsible parties at the county and national levels would have to work smart to reform the systems and practices in the sector. The section below outlines a few critical priorities in this regard.

2.1 New water legislation under debate

The County Government Act, passed in 2012, provides the legislative framework for the functioning of county governments, with some guidance on the new roles and responsibilities of county governments, including on the delivery of water and sanitation services. Devolution of these core services became effective from July 1, 2013 under the guidance of the Transition Authority, a statutory body with constitutional authority to facilitate the transition process. Sector specific legislation is currently being debated under the Water Bill 2014. Until the Bill is passed, however, the Water Act 2002 continues to provide the broad legislative framework for the sector. While there will be uncertainty until a new Water Act is actually passed, there are several aspects of the new system that can already be considered as counties understand the implications of the new system.

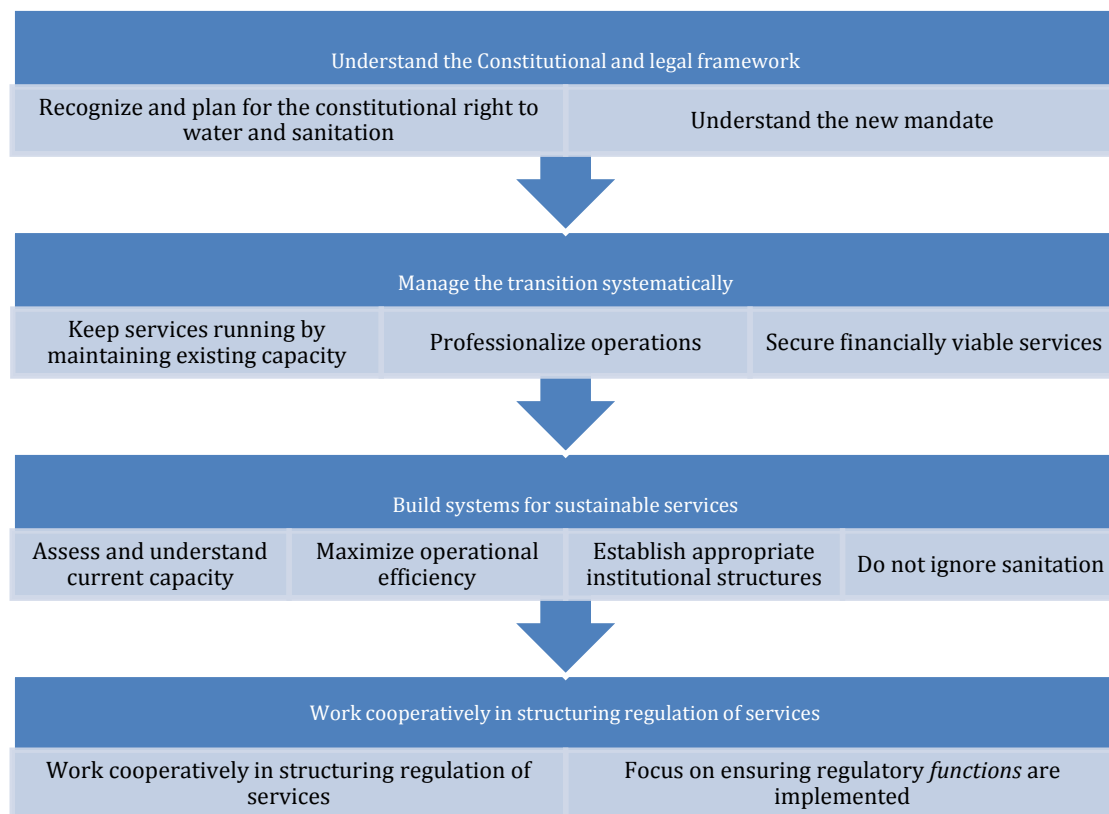
2.2 Two-tier governance system

This transfer of responsibilities to County governments has wide-ranging implications for the water and sanitation sector. The creation of a two-tier system of government, each with a legislature, together with the allocation of the functions of water and sanitation services to county government, means that the policy role of national government with respect to water and sanitation services requires a level of cooperative governance and consultation with counties that was less evident in the previous system. Effective implementation of the new devolved functions now requires county governments to focus on key opportunities and challenges. In addition, counties will have to work with the national Government to sustain existing services and to ensure a smooth transition as the legislative framework for the sector is formalized, and new institutions settle in. Furthermore, county governments also need to understand the specific legislation that applies to the delivery of water and sanitation services – and be able to execute the mandate of delivering water and sanitation services.

This note seeks to briefly highlight priorities and practical suggestions to pursue those priorities in order to support counties as they navigate the process of devolution.

The graphic below captures the key priorities that will be discussed later.

Figure 1: Key priorities for counties



3.0 Constitutional and legal framework for water and sanitation

The mandate of the county governments is drawn from obligations under the constitution and from a number of supporting policies and regulations. Some were issued prior to devolution but have yet to be updated. Others have been passed by Parliament since the new constitution took hold. County governments should be aware of the details within each of these policy documents. This section summarizes the most salient features of the constitutional and legislative framework governing water and sanitation service delivery.

3.1 What the Constitution of Kenya 2010 says

3.1.1 The constitutional right to basic water and sanitation services

The new constitution establishes access to water and sanitation as a basic right for every person in Kenya. It requires the state, which includes all national and county entities, to work towards universal access to these basic services.

Specifically, Article 43 of the Constitution states that: *“Every person has the right... to reasonable standards of sanitation [and] to clean and safe water in adequate quantities”*. Article 21 further states that: *“It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. [...] The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed”*.

3.1.2 National and county roles and responsibilities

The Fourth Schedule outlines the distribution of functions between the national government and the county governments. Sections 2 and 11 of the Fourth Schedule of the Constitution of Kenya 2010 stipulate that the functions and powers of the county governments include water and sanitation services, storm water management in ‘built-up areas’, and solid waste management. Section 22 of the Fourth Schedule places the responsibility for developing policy and regulation for water resource management with the national government, while counties are responsible for implementing these policies.

3.1.3 Laws and obligations

For existing laws, the Fifth Schedule of the Constitution of Kenya 2010 states that legislation that has not been repealed under the constitution remain in force but shall be construed *“with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution”*. Provisions in the constitution prevail over any contradictions or disputes with existing laws. However, all legislation required by the constitution is required to be enacted by Parliament within five years, unless otherwise specified in the Fifth Schedule. As the Fifth Schedule does not specify a timeline for legislation related to the water and sanitation sector, it is assumed that all legislation for the sector is to be enacted by 2015.

For new laws, Article 185 of the Constitution of Kenya 2010 states that *“a county assembly may make any laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule of the Constitution of Kenya 2010.”* This provides county governments the right to regulate county water services. Article 191 of the Constitution of Kenya 2010 further states that *“national legislation can prevail over county legislation, particularly if the issue cannot be regulated effectively by individual counties or where national legislation is necessary to promote equal opportunity or equal access to services; or to protect of the environment”*.

The implicit lack of clarity on how these exceptions are defined will need to be addressed in the revised water bill. Until then, counties can pass laws and regulations to manage service delivery in the water and sanitation sector, any national legislation – in particular the proposed Water Bill 2014– may eventually override county legislation.

Across county borders, Article 189 of the Constitution of Kenya 2010 encourages counties to develop institutional arrangements with other counties or the national government on inter-jurisdictional issues of common concern. This is important because the flow of water across borders often is a complex and risky matter, which may require special institutional arrangements that would stretch across the jurisdictions.

3.2 The legal framework

3.2.1 In the making: a new water bill

The proposed Water Bill 2014 aims to clarify the roles and responsibilities in the delivery of water and sanitation services in Kenya and to provide for the regulation, management and development of water resources, sanitation, and water services in line with the Constitution of Kenya 2010. In the draft Bill, “Water Services” refers to the supply of water and includes the provision of sewerage services. “Sewerage Services” refers to the process of transporting and treating wastewater but does not include household sanitation facilities. “Sanitation” refers to on-site facilities, including pit latrines and septic tanks.

The draft Bill encourages county governments to establish Water Service Providers under the Companies Act – Cap 486 to serve as licensed water operators:

- Existing water service providers will continue operating within the period defined by a ‘transfer plan’ published by the Cabinet Secretary under the Bill.
- The Bill also contains enabling conditions for Water Service Providers to enter into public-private partnerships to carry out some or all of their functions.
- Where water services in rural areas are not commercially viable, the Bill provides for the provision of these services by county governments. Specific measures to supply water should meet the standards established by the regulator. County governments will be required to prepare 5-year development plans and submit it to the regulator.
- An important feature of the proposed Bill is that all revenue from water licensing, abstraction, and service delivery is to be used for the management of water resources.

Regulation has been controversial in the formulation and the legislative process concerning the new Bill. The need for a water regulatory function is recognized to formulate and enforce minimum standards and procedures for service delivery, together with a mandate to monitor and report on services and to license water service providers. It is now agreed that it is legally possible to share the regulatory responsibility, but at the time of preparation of this briefing note, it had not yet been formally resolved exactly how such sharing would work.

While there seems to be agreement that county governments will be able to license county water providers within their boundaries, and that the national regulator could license cross-county water providers, the latest draft legal framework suggest that the national regulator would accredit providers, from which the counties can then appoint or decide not to appoint their providers. The issues have not been resolved fully, and it will only be possible to confirm the exact arrangements once the new bill has been adopted.

3.2.2 Other legislation

Table 1 outlines key pieces of legislation relevant to the sector.

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Box 1: Related legislation relevant to the water sector

County Government Act 2012	
Planning and budgeting	The Act requires county plans based on the functions specified in the Constitution and budgeting to achieve the progressive realization of the rights guaranteed under the Constitution of Kenya 2010. County plans are to include an integrated development plan; sector plans for the provision of water, sanitation and solid waste management services; a county spatial plan; and urban plans as provided for under the Urban Areas and Cities Act of 2011.
Tariffs	The Act gives county governments the mandate to establish tariff policies for services delivered within the county. Section 120 of the County Government Act outlines specific guidelines for establishing tariffs, with a strong focus on equity and financial sustainability.
Public-Private Partnerships	Section 6 enables counties to delegate the management and delivery of specific services to the private sector “...in accordance with the provisions of any law relating to public or private partnerships for any work, service or function within its area of jurisdiction”.
Monitoring and reporting	Section 47 assigns responsibility for a performance management plan to the County Executive Committee to evaluate county public services and the implementation of county policies. The national government must provide support to county governments to enable them to perform their functions, including performance and capacity assessments. If assessments demonstrate an inability to perform functions, the cabinet secretary can call for national intervention, even performing the functions with approval of Parliament.
County Public Service	Section 56 and 57 of the County Government Act establish County Public Service units. The specific role and purpose of these units, however, is not clarified.
Decentralized urban services	Under Section 48 the functions and provisions of services within each county are decentralized to the urban areas and cities within the county established in accordance with the Urban Areas and Cities Act of 2011. County governments should therefore be aware of the specific duties and responsibilities on urban water and sanitation services.
Intergovernmental coordination	Section 54 requires the establishment of a County Intergovernmental Forum that includes the heads of all national departments rendering services in the county. This forum provides a critical platform for coordination between county and national government.
Water Act 2002	
Separating sector functions and responsibilities	The constitution requires Parliament to revise the Water Act of 2002 in line with the Constitution of Kenya 2010 by 2015. The current Water Act remains in force until the bill is passed by Parliament. While the 2002 Act assigned significant responsibility on the Minister in charge of the water portfolio, it also separated key functions within the sector, widely acknowledged as a catalyst for increased funding and improvements in service delivery.
Establishing water companies	The post-2002 reforms encouraged formation of water companies, under the Companies Act, professionally managed, governed under a board of directors, regulated, and able to recover the costs of operations and contribute funding to capital costs. Most urban water operators prior to devolution were publicly owned companies of local government.
Urban Areas and Cities Act of 2011	
Overview	The Urban Areas and Cities Act of 2011 provides for the definition of and principles of governance and management for urban areas and cities in each county.
City and municipal Boards	Section 12 of the Urban Areas and Cities Act of 2011 states that: “ <i>The management of a city or a municipality shall be vested in the county government and administered on its behalf by a board with the mandate to develop and adopt policies, plans, strategies and programs, and may set targets for delivery of services. They serve as the agents responsible for urban water, sanitation, sewerage, and solid waste management services</i> ”.
Integrated development planning	Section 36 of the Urban Areas and Cities Act of 2011 states that “ <i>every city and municipality shall operate within the framework of integrated development planning, including delivery of basic water and solid waste management services</i> ”.
Other	
Other legislation	Other significant legislations that county governments should be familiar with include the Public Health, Environmental Management, and the Coastal Development Authority acts.

4.0 Role of the national government and transition management

4.1 Keep the water running: maintain existing capacity to provide services

While the need for reform and service improvements is widely acknowledged, it makes sense for county governments to keep the water running by letting existing service providers continue operations during the transition period until a new water bill is passed and larger scale reforms adopted. They have at their disposal the basics of an institutional architecture to make this possible as there are over 100 water operators in Kenya currently monitored by the Water Services Regulatory Board (WASREB). These water providers have demonstrated significant improvements in service delivery since the reforms in 2002.

4.2 Make constructive use of national government

The national government has a duty and mandate to support County Governments as is stipulated in the County Governments Act 2012 Section 121. The main roles of the Ministry of Environment Water and Natural Resources (MEWNR) in the area of water and sanitation services are:

- To develop and oversee national sector policy and legislation
- To support counties in the provision of water services
- To facilitate funding for the sector (capital and subsidies)
- To oversee sector coordination, strategy and planning

In the devolved framework, it will be important for policy and legislation implementation capacity support to be developed and finalized in consultation with the counties and in response to requests from counties. Against this background, the National Ministry of Environment, Water and Natural Resources' framework for consultation with county governments is critical to set the tone for assistance to counties. Immediately after the devolved system came into existence in mid-2013, MEWNR has had to deal with issues like staff establishment, planning, budgeting and performance management systems, and guidance on the broader process of institutional reform. The Ministry has also been providing technical assistance to counties for supporting needs that are specific to individual counties, for example, assisting with issues related to institutional reforms in the country, and negotiation of service agreements, among others.

However, as has happened in other countries that have decentralized, the sub-national institutions have also sought to assert their authority. Exactly how this plays out in practice is still taking shape, and this has brought to the fore important issues that still need to be decided, such as the institutional arrangements for asset planning and management. Under the reforms after 2002, Water Services Boards (WSBs) - entities of national government-have been made responsible for the efficient and economical provision of water services, and have been authorized to do so in terms of a license issued by the Water Services Regulatory Board. Water Services Providers have been agents of the Boards, providing water and sanitation services in terms of contracts with the Water Services Boards. The Water Services Boards have been the owners of the assets (or were intended to be the owners), with the Water Services Providers as asset operators.

In its reform plans for the new system, the national government has considered creating a single national Water Works Development Board or a few such boards that will develop and manage "national public works" assets (water assets of national and strategic importance and cross-county water assets). Under devolution however, counties have not been satisfied with an assumption that assets would belong to the national government alone, and there has been strong demand for the transfer of assets to counties, or at least for some form of sharing assets. This would mean that the assets held and/or managed by existing WSBs will need to be categorized into national public works assets and county assets, and national assets moved to

the Water Works Board(s) and counties, respectively. Past experience suggests that these processes are likely to take a long time and require support from the National Treasury: the earlier reforms initiated in 2002 that intended to transfer assets from local government to the WSBs were not completed by the time the new Constitution came into force.

While these issues take time to get decided, the immediate challenge is continuity of services, paying attention to how water services are operated and by whom, and what happens to revenue (and liabilities). At the same time, and in parallel, the matter of asset transfers remains pertinent and demands expeditious attention.

Related to this are questions on how investments in new infrastructure are to be funded. This is a burning matter, as none of the counties have the resources to finance capital investment in scale, and none have quite the financial track records to mobilize adequate market finance for infrastructure expansion on their own accord. This demands, first, a concerted effort to address – in partnership with counties – reforms to the overall public finance framework and strategy to move water service providers and counties to bankable status. Second, the system of fiscal transfers needs attention. Since devolution, the focus has been on the unconditional equitable share transfer to counties, under the assumption among many county protagonists that conditionality is not appropriate in a devolved system. Yet, if a systematic investment strategy is to be the objective, it may be necessary to explore lessons from other counties where a well-thought through set of transfers have been used specifically for infrastructure investment support. As counties and national government find their way through the intricacies of the new devolved system, this remains a delicate issue that demands balanced political exchanges, as well as learning from other experiences.

4.3 Focus on maintaining professionally managed operations

Dedicated Water and Sanitation service providers have an important role to play in improving services. There is a strong case for a separate corporate entity, with a board of directors, soundly governed, professionally managed and with fully accounted-for revenues used to support investment and good performance.

Direct management of water services by government (whether at the national, regional or local levels) carries with it the risk that politicians become too directly involved in the day-to-day management and operations of the utility, rather than performing a supervisory role to provide strategic direction and hold the service provider accountable for performance, including the direction of resources for investments to particular political constituencies and involvement in recruitment.

These interventions are often at the expense of sound and rational allocation of resources and optimal recruitment practices, with negative impacts on service improvements and on utility performance. The establishment of a corporatized structure (with a Board of Directors, clear policies and procedures based on sound government principles, and a clear mandate to management to operationalize the strategies developed by the board) provides greater protection to management from interference, and allows management to undertake their responsibilities professionally.

Box 2: What makes successful reform?

Successful reform at the utility level requires that local decision makers view water supply as a long-term business proposition, albeit a unique one that involves careful political and social considerations. Doing so can help ensure the financial sustainability of water systems and protect the long-term value of water resources. It can also open the door for external expertise and finance from the private sector.

Source: *Every drop counts: learning from good practices in 8 Asian Cities, Manila, Asian Development Bank (2010)*

4.4 Secure the financial viability of sustainable services

Water services in urban areas can generate significant revenues for the county government. It is critical to ensure these revenues are used to finance maintenance and operations costs and, where possible, expansion of services within the water and sanitation sector. There are risks in the sustainable provision of services where water revenues are allocated to other county functions. The one thing that most successful service providers in Africa – and the rest of the world – have in common that their revenues are ring-fenced so as to be fully accountable for their services and the finances they generate and invest.

In the absence of proper accounting for revenues and expenses, there is a risk that water revenues are used for non-water purposes in a non-transparent way. The consequences of this are the under-provision for the necessary maintenance and operation expenses to sustain the utility over time and to support the necessary investments in asset replacement and expansion. This compromises services to customers (current and prospective) and results in poor performance and inefficient use of resources.

Box 3 suggests that a utility with a corporate structure, with separate financial accounts is a good starting point for improving performance. Since this structure is already in place in several counties, it makes practical sense to consolidate and build on this capacity. However, a corporate structure, on its own, is insufficient for good performance. Other requirements include sound governance, good utility management and a sound policy and regulatory environment. In order for the utility to achieve better performance, counties would be well advised to review the existing corporate structure ensuring the board is competence-based and independent, and that its corporate policies and the governance rules for reporting and decision-making remain appropriate. Within such a process, it is also appropriate to review strategy and performance targets, such as those introduced by Burkina Faso's ONEA (see below), including putting in place progress measures to realise the right to water and safe sanitation. In addition, the recruitment and human resource policies of utilities require review to ensure that they support optimal performance and that appointment decisions made guarantee that people with the right set of skills are selected for the job.

Box 3: International evidence on utilities

International evidence demonstrates the value of professionally managed utilities

International evidence suggests that even under difficult circumstances, transitions can be managed towards more effective and efficient utilities. In many countries, water is provided by professionally managed, corporatized utilities (with public, private or mixed public-private ownership) with excellent results. For example:

In **Burkina Faso**, a national public water company was established in 1977 (becoming known as ONEA) with responsibility for urban water supply in the country (43 cities and towns). In the 1990s the government decided to counter political interference and create tools to independently monitor the performance of ONEA. They also established a financial model for tariffs to meet costs. A private contract, focussed on improving customer services and revenue management supported further performance improvements. ONEA enters into three-year performance contracts with operational targets with national government. A board of directors is responsible for the supervision of ONEA's performance and for strategic decisions. It has the authority to appoint (and fire) the general manager and determine employees' pay scales, while a general manager makes day-to-day operational decisions. The utility is allowed to disconnect customers when water bills are not paid, and its workers are subject to private sector (not civil service) rules. It is regarded as one of the best performing water utilities in Africa.²

Coverage and operational performance of ONEA during the contract period (2001–06) and in 2008

Indicator	2001	2002	2003	2004	2005	2006	2008
Household connections	72,500	78,500	84,000	90,000	100,000	125,500	168,000
Connection coverage (%)	32	33	33	34	36	43	50
Improved coverage (%)	53	54	54	54	56	63	73
Estimated population served (millions)	1.2	1.3	1.4	1.5	1.6	1.8	2.4
Nonrevenue water (%)	16	14	15	17	18	18	17
Collection ratio (%)	85	83	78	88	93	95	95.4
Labor productivity (staff per 1,000 connections)	7.9	7.2	7.1	7.2	6.4	5.0	4.5

Source: ONEA.

Note: Connection coverage is the share of the urban population with access to water through a household connection.

Improved coverage is the share of the urban population with access to water through a household connection or a standpipe.

In **Mexico**, which has a federative form of government, responsibility for water supply and sanitation services delivery rests with 2,438 municipalities since decentralization in 1983. However, a few states deliver services through state water companies on behalf of municipalities. In most cases services are provided by municipalities, cooperatives, public or private utilities. These differ substantially in size, autonomy, performance and financial efficiency. Although most providers still lack political independence and financial efficiency, there are some exceptions that are efficiently operated: for example, in Monterrey, Tijuana and León. These water agencies have succeeded in assuring widely available service and improving water quality while reducing water loss and increasing fee collections from their customers. Unlike most public systems, however, water costs in these areas are substantially higher than those prevailing in the rest of the country, and the autonomy that the water companies enjoy enables them to be more effective in collection.³

In **Cambodia**, the Phnom Penh Water Supply Authority (PPWSA) is a successful public sector utility and was awarded the 2010 Stockholm Industry Award. It covers 100% of the inner city and 85% of its service area with a 24 hour water supply. It also recovers its costs fully. Before the reforms, the utility was run as part of a Government Department with no administrative, operational or financial autonomy. Municipal approval was required for all its operational expenditures. To increase the utility's efficiency and performance, a policy framework was adopted which allows the public company to operate autonomously without political interference. In order to create a financially viable and socially sensitive institution, it was decided that the utility was to be operated in a business-like manner. It increased its tariffs, and under the National Water Policy, the utility is obliged to recover all its operating costs. Operations were made more efficient and incentives to report illegal connections were introduced. The top management was restructured and incentives were created for good performance whereas penalties are applied to poor performance. Annual investment plans need to be approved by the Board of Directors and the relevant Ministries, but the General Director is accountable for the utility's performance, and holds each department responsible for planning and accounting. The reforms benefited from strong support from the Government and donors, and strong leadership within the utility. In 2001, only 15 to 20% of the urban population had access to water services. Over a 10 year period, unaccounted-for-water was reduced from over 70% to below 7%, water production was increased by more than 4 times, the distribution network by more than 5 times and the customer base by over 6 times. Tariffs were also increased to cover cost to support these improvements.

² Corporatizing a water utility: A successful case using a performance-based service contract for ONEA in Burkina Faso Philippe Marin, Matar Fall, and Harouna Ouibiga. March 2010.

³ David Barkin, The contradictions of urban water management in Mexico, Vertigo - la revue électronique en sciences de l'environnement [En ligne], Hors-série 2 | septembre 2005, mis en ligne le 01 septembre 2005, consulté le 12 janvier 2014. URL : <http://vertigo.revues.org/1881> ; DOI : 10.4000/vertigo.1881

5.0 Build systems for sustainable water and sanitation services

What about beyond the transition? Managing water, sanitation, and waste management services sustainably over time requires understanding a number of critical issues that are specific to the water and sanitation sector. This section outlines some of these factors that county governments should consider as they prepare to fully take over the delivery of these core services. It should be noted that this is not exhaustive and recognizes that there are a number of issues that need to be clarified through the new water bill and through other policies and legislation.

5.1 Assess and understand current capacity

There are three aspects of current service providers' capacity counties should assess, understand, and improve in order to effectively manage the delivery of water and sanitation services:

- Understand current service delivery outcomes, sustainability and performance. The regulator (WASREB) is a key ally as it already has considerable data on performance, captured around metrics on coverage, services to the poor, revenue generated and non-revenue, staff productivity and other aspects of utilities' performance.
- Understand the money, i.e. the budgets of existing water service providers – revenues, expenses and capital budgets – as well as financing arrangements (the flow of grants for capital development and loans and liabilities).
- Understand current skills available in the county, particularly the availability of experience and skills in the water services providers to support the needs of the county (for planning and budgeting, for example).

Any reforms should further enable and empower the provider to make professional operational decisions without political interference, while developing structures for it to be accountable to policy makers and customers.

5.2 Ensure financial sustainability

Water operators that have consistently shown good results have also been able to set tariffs that recover their costs, including adequate maintenance costs. Achieving a cost-recovery ratio of over 100% in urban areas is important because it means that more funds can be spent on capital investments both to rehabilitate and expand the system. Equally important, this also means that more of the available capital subsidies from government taxes and development partners can be spent on rural areas.

While the final procedure and authority for setting tariffs is still being discussed under the draft Water Bill 2014, county governments can take steps to allow water service providers in their counties to secure their revenues. Water and sanitation services need to be managed as a business, paying due attention to all five key areas – asset management and operations, asset creation, customer management, financial management and getting the best of the most important resource a water provider has – its staff.

5.3 Establish accounting, monitoring and reporting systems and processes early

Collecting and using robust financial and operational data enables counties and water operators to manage services more effectively. There is currently a benchmarking process managed by the regulator in Kenya that requires water operators to monitor and report specific data as indicated in the section under regulation. These processes should be maintained and improved going forward. Data should also be used in sector planning processes to determine tariffs, allocate budgets, identify operational strengths and weaknesses, and to target investments at the county level.

5.4 Maximize operational efficiency

The Regulator (WASREB) has developed benchmarks for a number of performance areas. Figure 2 provides trends shortly before the counties were formed. Examples include:but are not limited to:

- **Billing:** Accounting for and billing customers supplied by a water operator is the first step towards revenue collection. Accurate billing is critical to maintain the trust of customers and to adequately account for water that is sold.
- **Collections:** Bills that are not paid are a huge issue for most water operators. Public sector accounts are often major culprits.
- **Non-revenue water:** Water carries an opportunity cost if it does not generate revenue. Examples can include water that is lost through leaks, illegal connections, or water that is not paid for by customers because they did not receive a bill or have not paid. Unaccounted for water is also used to understand how to account for the true costs and revenues of delivery.
- **Metering:** While not all water systems have meters on all connections, meters are a critical tool in monitoring where and in what quantities water is being used. They can help detect water losses in the system and also help generate accurate bills. Dysfunctional meters due to a lack of maintenance or tampering, however, are key issues facing county governments.
- **Staff per 1,000 connections:** The number of staff on an operator's payroll is a major cost. The WASREB indicators include specific ones on how many staff is required per thousand connections. This, however, should not obscure from the need for hiring staff with the right qualifications

Figure 2: Performance indicators, sector benchmarks and scoring regime

Indicators			Sector Benchmarks			Scoring Regime	
			Good	Acceptable	Not Acceptable	Performance	Score
1	Water Coverage		>90%	80-90%	<80%	≥90	30
						≤50	0
2	Sanitation Coverage		>90%	80-90%	<80%	≥90	15
						≤50	0
3	Drinking Water Quality	No. of tests-Residual Chlorine	>95%	90-95%	<90%	≥95	10
						≤90	0
		Compliance-Residual Chlorine	>95%	90-95%	<90%	≥95	5
						≤90	0
		No. of tests-Bacteriological Quality	>95%	90-95%	<90%	≥95	10
						≤90	0
	Compliance – Bacteriological Quality	>95%	90-95%	<90%	≥95	5	
						≤90	0
4	Hours of Supply	Population>100,000	21-24	16-20	<16	≥20	20
						≤10	0
		Population<100,000	17-24	12-16	<12	≥16	20
						≤6	0
5	Non-Revenue Water		<20%	20-25%	>25%	≤20%	25
						≥40%	0
6	O+M Cost Coverage		≥150%	100-149%	≤99%	≥150%	25
						≤90%	0
7	Collection Efficiency		≥95%	95-85%	≤85%	≥95%	20
						≤85%	0
8	Staff Productivity (Staff per 1000 connections)	Large & Very Large companies	<5	5-8	>8	≤5	20
						≥8	0
		Medium & Small (Less than 3 towns)	<7	7-11	>11	≤7	20
						≥11	0
		Medium & small (3 or more towns)	<9	9-14	>14	≤9	20
					≥14	0	
9	Metering Ratio		100%	95-99%	<95%	100%	15
						≤80%	0
Total Maximum Score							200
10	Personnel Expenditure as Percentage of O&M costs	Large & very large companies	<20%	20-30%	>30%	N/A	N/A
		Medium Companies	<30%	30-40%	>40%		
		Small Companies	<40%	40-45%	>45%		

Source: WASREB (2014): Impact Report

5.5 Optimal staffing and human resources management

While the broader institutional framework is of critical importance, counties also need to focus on enabling Water Service Providers to put in place appropriate staffing and human resources systems. Water Service Providers will need to develop their own staffing establishment to assume responsibility for water services in their county. On County office staffing, a staffing structure with job descriptions and an associated staffing budget is required. The county will need to know the starting point (current County staff, seconded national government staff) and have a plan of how the staffing complement and budget will evolve to properly fulfil this function. One key step will be to prioritize the appointment of a Cabinet Secretary and County Water Director who can be trusted to take care of all water affairs in the County.

5.6 Look at the sector as a whole, not water supply alone

Much of the debate about the devolved water functions tends to focus on water supply. However, counties would benefit from not neglecting other critical aspects of delivering such services. Two points are of particular significance:

Do not ignore sanitation: Under the new constitution and related legislation, county governments have a legal responsibility to plan, finance, and deliver sanitation. County governments are required to develop a roadmap towards universal access. Urban sanitation encompasses a range of technologies and systems, including on-site sanitation (latrines and septic tanks) and larger sewerage systems. There is currently a propensity to focus only on sewerage systems but these require massive capital expenditures and are unlikely to meet the needs of citizens within the short term.

Manage water resources responsibly: Water resources are a critical factor in developing sustainable water and sanitation services. The Constitution of Kenya 2010 defines water as a shared resource that should be managed as a public good. However, while services are managed and developed at the county level, water resources often cross county and national boundaries. There are therefore critical questions that county governments and the national government need to consider with regards to developing these resources.

5.7 Thinking through separation of roles and functions

The water sector reforms over the past decade or so have placed considerable emphasis on separate asset holding from operating functions. Significantly, this approach was linked to an underlying view that envisaged private operators managing water systems; hence Kenya seemed to draw on international experiences that entailed separated the asset holding and operating functions. Internationally, this has been common since the 1980 as more private sector operators became contracted. The intention was to mitigate negative public perceptions to private ownership of water assets by establishing, separate public asset holding companies with the functions of planning and investing in assets, whilst private providers were contracted to manage service delivery. Box 2 shows a few relevant international experiences.

While the separation of functions approach holds sway in the public discourse in Kenya, its relevance in the current reform context needs to be carefully thought through. In most countries where public provision has been the norm, the operator of a service has seemed best placed to plan for future investments due to better knowledge (compared to an asset holder) of the infrastructure system being operated, and therefore being better able to make resource allocation decisions between spending on maintenance versus asset rehabilitation or replacement. Counties and the national government should therefore analyze these approaches carefully before accepting the approach that has been attempted over the past decade or so of separating asset holding and management.

Box 4: Institutional international experience

International experience in developing institutional structures

Integration of planning, investment and operations is the international norm. It is notable that all of the high-performance utilities mentioned in Figure 2 above integrated these functions, examples of separate public asset holding companies are as follows:

- In **Senegal**, SONES, a state entity, owns the water supply assets and is responsible for extension of the network. It also regulates the technical and engineering performance of the private utility - Senegalaise des Eaux (SdE), under a ten-year performance contract (an *affermage* contract) to operate the system in Senegal's nineteen major urban centres, including Dakar.
- Urban water supply in **Guinea** was privatized from 1989 until 2003. SONEG, a State-owned agency, was responsible for owning sector assets and for planning and financing investments. SONEG was also in charge of monitoring the private operator's (SEEG) activities. When the term of the 10-year lease contract ended government and the private operator could not agree on a new lease contract and the water sector reverted to public management in 2003.

In the above three cases, asset holding companies were set up at the same time as private sector participation was introduced and to facilitate this participation. However, it should be noted that the creation of separate asset holder is not a prerequisite for private participation (for example, private participation in the water sector in Côte d'Ivoire was achieved without a separate asset holding company) and it has been argued in two of the above three cases the creation of a separate asset holding company was a suboptimal solution.

In the Kenyan context, the formation of the Water Services Boards, as asset holding companies, was motivated in Kenya as a way to encourage and facilitate private sector participation in the sector. This has not materialised to any great extent over the last 10 years. Furthermore, if asset planning and creation functions are separated from operations with national government being responsible for the former and county government for the later, there is a real risk of on-going conflict and contestation between the tiers of government because each tier of government will be able to apportion blame to the other in cases of poor performance. It may therefore actually weaken accountability, rather than supporting it.

In the light of the benefits of integrating the planning, investment and operations functions, there is therefore not a strong argument to maintain the separation of the investment function from the operations function and there are important benefits to be gained by integrating these functions into a single entity.

5.8 Managing inter-jurisdictional water issues across county borders

In a number of cases, water flow stretches over county borders. This points to a need – in some cases at least – for regional institutions or arrangements for planning and managing the bulk water system for a region. However, there are a number of benefits to integrating the entire water supply chain into one streamlined entity. Integrating bulk and retail water services facilitates integrated planning of these services, provides for economies of scale, and aligns risks and incentives more clearly within the sector.

Nairobi County, for example, is very dominant in water supply in the regional inter-county context. However, even in the case of Nairobi County, poor economies of scale argue against separation of bulk water services even though large parts of the Nairobi bulk water system are located in its neighboring counties. Nairobi County sells only 2.5% of its bulk water to neighboring counties as a bulk supplier. The scale of this business is therefore very small in relation to its total business.

There is also little merit in setting up an inter-county water services provider to address small inter-county water issues. The cost and complexities of establishing an inter-county water services provider will far outweigh the small benefits that may be achieved through such an arrangement. This may change over time as the bulk water system becomes increasingly integrated across counties and the share of bulk water used by other counties increases.

International experience delivers a mixed verdict on this issue, which is highly dependent on the context of where water resources originate. In some countries and cities, bulk water provision is separated out from retail provision. This makes sense where a single entity manages an integrated system supplying multiple jurisdictions or can take advantage of economies of scale. Box 5 below summarizes three examples.

Box 5: Bulk water arrangements

Lessons from bulk water arrangements in Australia, Brazil and South Africa

Australia, Brazil and South Africa have very different systems of government, but they have in common decentralized constitutional arrangements and all have had to grapple with questions on managing bulk water. The experience has shown that there are no absolute rights or wrongs. All three have used both vertically integrated and vertically separated systems that have performed well.

In **Australia**, the federal system leaves considerable scope for States to manage autonomous institutions, but also to cooperate with other states where there are shared concerns. Major water utility reforms in the 1990s aimed to professionalise the provision of services, realise economies of scale, improve governance and ensure financial viability. The reforms resulted in well-performing organisations that were both vertically integrated utilities (for example, Hunter Water) and vertically separated (for example, Adelaide).

In **Brazil** there are well-performing examples of municipalities providing a vertically integrated service themselves (e.g. Sao Paulo) and state water companies providing vertically integrated services (e.g. in the relatively poor state of Ceará, with its relatively more centralized model of water management than that proposed by the national water law. Before 1970, municipalities had the responsibility for water supply and sanitation provision. In 1971, the National Sanitation Plan was developed and state-owned water and sanitation companies established with financial support from the federal government. Municipalities had strong incentives to contract with the state companies in order to receive subsidies and most municipalities ceased to provide services themselves. The new democratic 1988 Constitution gave responsibility for water and sanitation to municipalities, but a new law enacted in 2006 did not clarify responsibility for service provision in metropolitan regions. This lack of clarity has caused contestation and legal suits between municipal and state governments.

In **South Africa**, regional bulk water providers were established prior to the new 1998 constitution in South Africa for the purposes of providing water to multiple municipalities. When the constitution allocated water services to municipalities in 1996 as a separate sphere of government, and redrew the municipal boundaries, these bulk water providers continued to exist as national government-owned entities. In theory, municipalities may contract with these providers or make their own bulk supply arrangements. However, in practice, municipalities have little choice but to contract with the regional bulk provider in their area. This situation is not contested as municipalities have little political power relative to national government.

South Africa also serves as a reminder of the risks of instability in water management when joint ownership of bulk institutions and utilities is not supported by an effective political base or sound mutually agreed governance principles and drivers. As a consequence of far-reaching decentralization and local government reform in the early 2000s, district municipalities were allocated responsibility for water services. Local municipalities were the de facto water services authorities and water service providers for urban areas and the district municipality was providing services in the mainly rural balance of the district, assisted by national government.

During this shift towards greater decentralization in the early 2000s, in the province of Kwazulu-Natal, plans were advanced for the creation of the uThukela Water joint venture, a water services utility which was to be co-owned by the four municipalities of the north-western part of the province: Amajuba District Municipality, Newcastle Local Municipality, uMzinyathi District Municipality and uThukela District Municipality. The joint entity was envisaged as being able to provide a higher level of service at a lower cost than any of the four municipalities would be able to provide alone.

Within months a dispute arose between uThukela District Municipality and the uThukela Water joint venture, related to the cost of services and the payment for services. This was never resolved, with the result that uThukela District Municipality left the joint venture in December 2004, just six months after its inception. All staff and assets were returned to the district. This is the only example of a regional entity that was created through a voluntary aggregation process in the 18 years after the start of the local government reforms in 1994. The governance arrangements for this entity, owned by the participating municipalities, have proven to be unstable, and performance has been poor.

Source: Salga. 2012. Municipal Introspection into Decision-Making and Implementation of Water Service Delivery Mechanisms: Case Study Report: uThukela DM, KwaZulu Natal.

6.0 What regulatory systems would be most effective?

Both national government and the county have a right regulate water services. The respective regulatory functions of national and county governments still need to be established in law, as the proposed Water Bill has no force in law until it is enacted. The respective roles of the counties and national government in regulating water services will need to be negotiated and established in legislation and through practice.

Box 6: Functions of regulation

Understanding regulation
Regulation can be defined as the setting and enforcement of rules for water infrastructure and service provision, concerning aspects such as <i>monitoring and enforcement of standards, licensing of service providers, and tariff setting</i> .
. Regulation has two broad components that help describe regulatory functions:
A. Institutional responsibilities and processes for setting and enforcing the rule:
<ul style="list-style-type: none">• Clarity of roles and objectives: have roles and objectives been clearly defined without significant overlap between departments and agencies;• Autonomy: can regulatory decisions be made without political interference;• Accountability: are regulatory decisions made in an accountable manner;• Transparency: are regulatory decisions made in a transparent manner;• Credibility: are regulatory decisions and processes seen as being credible.
B. What to regulate?
<ul style="list-style-type: none">• Access: do current regulations enable citizens to connect to water service networks;• Service quality: are basic water quality and other service quality standards being enforced;• Tariffs: are price structures designed to enable cost recovery and are they fair to customers;• Subsidies: are direct or indirect subsidies for water services targeting the right people and are they the most effective use of public funds;• Licensing: are the processes for licensing water operators clear, transparent, and fair;• Accounting and Reporting: what accounting and reporting standards will be enforced;• Efficiency: is the delivery of water services efficient in terms of water resources used and in terms of the cost of operations;• Financial Performance: what financial performance ratios will be imposed on water operators;• Investment and Maintenance: are operators and counties investing adequately in developing assets and maintaining the system;• Equity: are water services equitable;• Sustainability: are water services sustainable;• Market composition and competition: do regulations and regulatory decisions encourage competition or are operators generally a monopoly

Regulatory models governing the delivery of water and sanitation services vary globally. It is one of the range of tools that governments can use to mitigate the risks of a 'natural monopoly', and to enforce safety and quality standards, protect consumers, and achieve social, environmental, and consumer protection objectives. Whereas ownership of providers is a powerful way to affect strategic and investment priorities and fiscal incentives make it possible to influence providers through subsidies and tax incentives, regulation offers a third party option to ensure through guidance and enforcement that providers function according to certain standards and rules.

Regulation alone cannot however solve all water sector issues. A few considerations are important in deciding on and setting up regulatory capacity as the new system gets consolidated in Kenya:

First, clear policy objectives on the part of the government would greatly enhance the effectiveness of regulation. Without policy, it is not possible for regulators to know what they need to regulate, and what the underlying premise for the delivery of good services is. With a policy framework in place, it becomes more feasible for them to manage the rules, for example to ensure that as many people as possible can afford water services and that the quality of services is adequate.

Second, the type of regulation should be considered. For example, economic regulation may be the mode for keeping tariffs well related to reasonable costs, but there may be a need for additional measures to enable regulators to uphold social objectives, such as incentivizing providers to extend

services to poor people who cannot afford to pay the full cost of service. A recent OECD analysis highlights the role of regulators in several Latin American countries in building capacity and knowledge in the waters sector. In El Salvador for example, regulations are used to distinguish uses, purposes and implementation areas for control and water supply mechanisms. With that as backdrop, regulation has been used effectively not only to uphold rules and standards in the sector, but also to facilitate “learning by doing” at and between the different levels of government⁴.

Third, it is necessary to allocate regulatory functions to the right institutions, and equip them with the legal instruments needed to apply and enforce regulatory rules. Often an “independent regulator” may be the appropriate mechanism, but different regulatory functions may be allocated to different organizations. In Kenya, a considerable part of this issue concerns the level of government at which regulation should be institutionalized. Under the system over the past decade, the underlying basis was that there should be a national regulator. As shown in Box 7 below, there is marked merit to this arrangement, and it is widely acknowledged that the regulator in Kenya has contributed constructively to improving the sector since the 2002 reforms were introduced. Nonetheless, the cases of countries like Colombia and South Africa show there are no absolute rights and wrongs..

In deciding what the “right institution” is, an important consideration should be whether there is a capacity to build on. In Canada and New Zealand⁵, for example, after initial delegation of regulation to local governments, significant gaps in local agency were identified in the 1990s. In particular, the capacity of the decentralized institutions was judged inadequate for the regulation of health and environmental regulation. For Kenya, and for the counties, it makes sense to recognize the value of a technically equipped regulator and to look at ways for ensuring that its capacity gets utilized optimally – and not lost – in the evolution of a new devolved system.

It is also important to ensure adequate separation of regulation from policy making and operations. This is the essential rule for ensuring the credibility of the regulator. An example was in Canada after the inquiry into the serious contamination of water in Walkerton, Ontario, which led to over 5000 people experiencing bloody diarrhea and 7 deaths. As a result there was a decisive shift in the 1990s to ensure that regulation is NOT at the local level where the responsibility for service delivery was assigned to⁶. Along with local capacity weakness, co-locating regulation and service delivery functions were seen to raise major conflict of interest issues. In Kenya, the counties are responsibility for delivery, so that this risk of conflict also needs to be addressed.

As the devolved system takes shape it is critical to ensure that the regulatory *functions* described above are adequately defined and implemented. The current draft Water Bill 2014 seeks to establish a national regulator but the role of the regulator, the national government, and the county governments need to be adequately defined, and counties and the national government should consider a few key points in assessing the appropriate regulatory framework in Kenya, such as:

- A regulatory framework (and the appropriate institutions to implement regulation) should be designed within the context of the sector as a whole.
- Institutional design of the regulator should consider several questions:
 - a. What are the problems and objectives of the sector?
 - b. Is regulation the most suitable instrument to achieve these objectives?
 - c. What regulatory functions are needed?
 - d. What legal instruments are best suited?
 - e. What institutions are best suited to fulfill these functions?
- Well-designed regulatory regimes can use widely varying legal and organizational arrangements to achieve similar objectives. This suggests that the regulatory design must pay more attention to local circumstances and traditions than has been done in the past.

⁴ Akhmouch, A. (2012), “Water Governance in Latin America and the Caribbean: A Multi-Level Approach”, *OECD Regional Development Working Papers*, 2012/04, OECD Publishing

⁵ Mark S. Winfield, (2002), *The Devolution of Local Water Management Lessons from Ontario and Canada*, Pembina Institute for Appropriate Development.

⁶ Mark S. Winfield, (2002), See above.

Box 7: International experience on regulation

Should regulation be at national or county level in a devolved context? Some lessons

It is possible for that function to be regulated at the national and/or regional/local levels (the point at which the function has been decentralised too). What are the considerations?

The argument of regulation at a national level within a devolved context is usually based on efficacy. With scarce resources, it is easier to sustain a competent regulator at the national level compared to multiple local ones. This argument usually applies where there is some form of national licensing regime for providers and where provision is through public or privately owned companies. Requiring national government to regulate minimum standards would seem to have merit where the national government has a constitutional obligation to progressively provide for the right to water.

The argument for local regulation is based on the constitutional rights conferred to a devolved tier of government. If a tier of government is responsible for and competent to legislate for that service, then it is also competent to regulate that service. A further challenge with local regulation is that where the devolved tier is also the shareholder of the public company that is regulated, a conflict of interest may arise between the shareholder and the regulator. Interestingly, in Australia where the constitutional responsibility for water has been firmly with sub-national states, territories and local government, there have been several initiatives since the 1990s to recognize and deal better with national needs in the regulation of especially urban water quality. In 2009, the National Urban Water Planning Principles set out to provide guidance to governments and regulatory institutions in managing ‘the full portfolio of water supply and demand options’. The broader framework surrounding the regulation of urban water quality still undergoes continuous reform. There have been a number of informal forums to deal with numerous inter-jurisdictional spillovers at the sub-national level, and areas of shared or common interest or economies of scale. The national vs. sub-national debate is therefore not necessarily about absolutes, but may demand cooperative and pragmatic arrangements. Kenya already has a competent national water services regulator (which is envisaged to continue in terms of the Water Bill). From an institutional design perspective, it would not be necessary for counties to set up its own regulator. But **national regulators** operating where there is a unified government or where the water services function is allocated to national government or **state-level regulators**, such as in Australia and the many state-level utility regulators in the USA, are not necessarily relevant to Kenya because of the local political context and because they operate at a much larger scale, with far more utilities. Yet, as mentioned above, even in such countries there have been developments of enhancing greater inter-jurisdictional collaboration to recognize the need for institutions that transcend the often highly politicized boundaries between sub-national institutions and between them and other levels of government. Should Kenya wish to consider **hybrid regulatory models**, there are some international experiences where regulatory functions have been shared between national and devolved government. Two relevant examples are **Colombia** and **South Africa**.

In **Colombia**, an independent economic regulator, the Commission for the Regulation of Water Supply and Sanitation (Comisión de Regulación de Agua Potable y Saneamiento Básico, CRA) was established in 1994. This regulator was complemented with a scheme of “multi-regulators” with competencies scattered in different entities and territorial levels under a decentralized structure for the provision of services. This structure demands a high level of inter-institutional coordination and clear policies to avoid conflicts in environmental, technical, water quality and tariff objectives. A separate national body, SSPD, oversees service providers and monitors compliance, and the municipalities and the National Congress have a “residual regulation” capacity on tariff issues. The lessons for Kenya are that, (1) some form of hybrid regulation must necessarily evolve as a result of both the national government and county governments having regulatory powers, and (2) this system must be co-designed to meet service objectives and take account of its political and institutional realities.

In **South Africa**, the City of Johannesburg (responsible for water services in its area) set up separate shareholder and contract management (regulation) units to manage its relationship with Joburg Water, a city-owned public utility. However, it was difficult to distinguish between these two separate functions, and the shareholder function has tended to dominate the relationship with the utility.

The performance contracting used in Uganda to improve the performance of its national utility NWSC may be relevant in Kenya and could be applied at the county level as a performance contract between the County and Nairobi Water. If the County was to consider introducing a private operation to manage water services on its behalf, then the County would regulate this arrangement through a contract, rather than an institution. In this case, the **contracting model**, used in a number of West African states, may be relevant.

7.0 Key considerations and priorities for counties

There are few absolute rights and wrongs as Kenya's water sector moves forward in the post-2013 devolution framework. It is incumbent on decision-makers at the national and county level to seek cooperative solutions, while looking after their own immediate interests. In many respects this will occur through political processes, but this note also aims to bring to the fore some considerations and priorities where there have been lessons in the past and in the international context, and also where technical issue and matters of principle deserve serious consideration. In short, this document highlights the following such aspects, which would comprise a very relevant set of priorities.

Box 8: Key priorities

Key priorities

1. **Recognize and plan for the constitutional right to water and sanitation**

- *Understand the new mandate:* Kenya's new constitution enshrines the right to basic water and sanitation and formally devolves the responsibility to progressively extend and improve water and sanitation services to county governments. Understanding the legal and constitutional rights and responsibilities for county and the national governments will help ensure a smooth transition, and will pave the way for a constructive supporting role by the national government to counties performing their mandates and developing the capacity for their new functions.

2. **Manage the transition systematically**

- *Keep the water running by maintaining existing capacity to provide services.* While there is a need to improve water and sanitation services, it is wise to ensure existing services remain operational to minimize risk. Abrupt changes often lead to unintended consequences.
- *Focus on maintaining professionally managed operations.* Local and international evidence shows that water providers that are managed professionally and governed well perform better. While other matters such as issues of asset development and ownership and the specific nature of regulation are critical for sustaining and improving water and sanitation services, counties should ensure a strong focus on core operations in the short-term.
- *Secure the financial viability of sustainable services.* In many towns it is possible for customers to contribute to the full cost of providing the service, enabling providers to provide reliable services through maintenance and on-going investment in the service without outside support. In rural areas users can also contribute to operating costs. Progress since the early 2000s should provide a good platform from which counties can build such viability.

3. **Build systems for sustainable services**

- *Assess and understand current capacity:* There are three aspects of current service providers' capacity counties should assess, understand, and improve in order to effectively manage the delivery of water and sanitation services: (1) Existing services including performance and sustainability; (2) Revenues, expenses and capital budgets of existing service providers, including financing arrangements; and (3) current skills available in the county.
- *Establish accounting, monitoring and reporting systems and processes early on.* Collecting and using robust financial and operational data enables counties and water operators to manage services more effectively. While existing operators currently have systems in place to collect and store data, county governments should review these arrangements and strengthen processes of collecting and using data.
- *Prepare a county water, sanitation, and solid waste management plan and budget.* Counties are required by law to prepare county water, sanitation, and solid waste management plans and budgets. This is a key set of instruments to put the sector in the county on a sustainable path of delivery and reform.
- *Do not ignore sanitation:* Counties have a constitutional responsibility to plan, finance, and deliver sanitation. Strategies to deliver sanitation services should encompass a range of technologies and systems, including on-site sanitation (latrines and septic tanks) and larger sewerage systems.
- *Remain diligent about wider water resources,* and think through the institutional arrangements best suited to managing resources within the county and across its borders
- *Establish appropriate institutional structures to manage the sector.* There are important benefits to be achieved for counties by integrating the planning and development functions along the entire water supply chain with operations. The benefits for each county, however, should be weighed against inter-county considerations related to water resources and future investments that may require establishing cross-county agencies.
- *Prioritize developing a strong team to manage and deliver water services* at county level. In addition to operational staff, key players are county-level Cabinet Secretaries and senior officials in water institutions
- *Attend to inter-jurisdictional issues across county borders.* Where bulk water systems are integrated across counties, there is an argument for the benefits of a regional body that plans and manages the bulk water system for a region. However, there are a number of benefits to integrating the entire water supply chain into one streamlined entity.

4. **Work cooperatively in structuring regulation of water and sanitation services**

- While there are a number of regulatory models governing the delivery of water and sanitation services globally, it is critical to ensure that the regulatory functions described in this note are adequately defined and implemented.