

LEGAL AND INSTITUTIONAL FRAMEWORK FOR HOUSEHOLD AND PUBLIC SANITATION PROVISION IN KENYA



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PART 1: INTRODUCTION

Access to water is an essential requisite for attaining the most fundamental levels of development. It is a requirement for achieving adequate standards of living. In this light, Kenya acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into force in 1976. In so doing, it recognized that the right to adequate standards of living is intrinsically linked to the right to access to water and sanitation. General Comment No. 15 adopted by the UN Committee on Economic, Social and Cultural Rights states that: *The right to water specifically entitles every person to have access to sufficient, clean and affordable water and sanitation for personal and domestic use.*

The Millennium summit in 2000 set time frames for achievement of development targets; popularly referred to as Millennium Development Goals (MDGs). In respect to water and sanitation, MDGs stress the importance of the roles played by water supply services and integrated water resources managements toward achieving target economic development and poverty reduction levels.



Kenya is presently considered a water-scarce country. This essentially means renewable freshwater supplies are below the global standards of 1,000 cubic meters, efficient water management is therefore essential. The 2002 Water Act partly in recognition of this fact has separated policy formulation, regulation and service provision. In so doing, the legislation has tackled some of the key bottlenecks that were experienced in the water sector under the previous legislative regime. The bottlenecks were inter alia: poor management of water resources; lack of policy accountability (prior to Sessional Paper No. 1 of 1999, there were no comprehensive policy papers that addressed key issues in the water sector); inadequate allocation of resources and a dilapidated infrastructure. The urban poor are one of the faster growing demographics and are greatly impacted by poor water provisions because of existing living standards. The price for poor regulation of water provision has a direct result on this sector and more often than not manifests itself in forms of preventable waterborne diseases. Access to safe water is essential, especially in light of continued increase in rural to urban migration and the resulting expansion in informal settlements.

Government statistics presently state sustainable access to safe water is estimated at 60% in urban areas; 40% in rural areas and only 20% within informal settlements. The Ministry of water and Irrigation estimate national sanitation coverage to be at 50%. The new water act defines clear roles for sector actors and has created a decentralized institutional framework. These



changes should result in improved infrastructure; improved management of water resources which should ultimately lead to increased access to water and improved sanitation provisions at a national level.

1.1 CONTEXT

Kenya currently has a population of over 33 million. It is estimated that 33% of this population live in urban areas and 66% in rural areas. Of these figures, a little over half the population of the urban population has access to safe drinking water and only 35 % of the rural population has access to safe drinking water. On average, the Ministry of Water and Irrigation estimates that roughly 19 million people do not have access to safe water and basic sanitation.

The National Policy on Water Resources Management and Development (Sessional Paper No. 1 of 1999) describes the process of ensuring that every area has adequate water and sewerage services. One of the strategy's objectives was to provide a program that progressively extends sewerage services to all populated areas.

Water coverage in the country had been declining in terms of quality due to decrepit conditions of the infrastructure. The 2002 Water Act attempts to address this by delineating service provision and resource management. The quantity of water is also of concern. As mentioned earlier, Kenya is classified as a water-scarce country. By 2025, Kenya is projected to have a renewable freshwater supply of only 235 m³ per capita per annum. On the positive side,



up to 40% of the renewable freshwater has potential for development. Kenya, despite its classification as a water scarce country, has the ability to develop its water resources in order to achieve increased utilization of its renewable freshwater resources.

The legislative reforms encompassed in the 2002 Water Act in conjunction with key sector players, in development of sustainable water and sanitation policies must taken into account specific factors such as water scarcity; water resources underdevelopment; climate variability and degradation of water resources. The Kenya Economic Recovery for Wealth and Employment Creation Strategy points out the bottlenecks within the current institutional frameworks. It advocates for increased emphasis on providing adequate water services to the poor. The Poverty Reduction Strategy Paper highlights the importance of improving the living standards of rural communities by providing water resources that are sustainable.

Sanitation is not sufficiently provided for in the existing legislation that is the provisions of the Public Health Act or in the Local Government Act. The two statutes provide for a wider ambit in relation to other matters with sanitation only being mentioned as collateral for e.g. the local government act in section 160 recognizes the role of local authorities in provision of sanitation services but there is no subsequent provisions outlining how the local government is going to ensure equitable provision of sanitation beyond sewer and drainage services to all users. However, the grand coalition government has constituted



the Ministry of Public Health is the mandated lead agency in provision of sanitation services. The first round of discussions on the Environmental, sanitation and hygiene policy bears testament to the government's recognition of the need for efficient and improves sanitation services.

1.2 OVERALL OBJECTIVE

Kenya's water and sanitation sector has undergone major structural reforms, the impetus being to disconnect water resource management from water service provision, as an aim toward improving both services and management of water and sanitation. The purpose of this report is to highlight the connection between institutional bodies and the present legal provisions regarding the water sector, specific consideration is given to sanitation service provision. Towards this end, the report outlines the regulatory framework, policies and technical standards that are in place for ensuring adequate water and sanitation provision as well as a critique of the provisions of sanitation services in informal settlements.

The report looks at key sector players their contractual obligations towards provision of services and recommends a best practice to be adopted. The report is aimed at identifying issues if any that exist in the cohesion of present legislation and institutional bodies that may hinder the betterment of water and sanitation service provision.



PART 2: SITUATIONAL ANALYSIS

Efforts towards improving provision of water have been undertaken in recognition of the fact that it is a basic need and a major vehicle towards attainment of social and economic development goals. The previous Department of Water Development had its origin in the National Water Master plan, whose function had been to guarantee portable water to all households by the year 2000. The legislation that ensured the provision of this function was the now repealed Water Act, CAP 372 of the Laws of Kenya. The Ministry of Water and Irrigation emanated from the Department of Water Development. In the 1980s, there was a significant reduction in government funding for the water sector, paving the way for the necessity for the water reforms suggested in the National Water Policy of 1999. Present reforms in the current Water Act (Act 8 of 2002) Laws of Kenya, have introduced the commercialization of water resources towards attainment of efficient provisions, it is also part of the decentralization of policy formulating bodies, services provision and regulation.

As already noted, the legislation that ensures the provisions of sanitation services is the Public Health Act and the Local Government Act – as well as the guidelines provided by the water service regulatory boards which recognize the need to coordinate sanitation improvements particularly in informal settlements (through the Kenya Slum Upgrading Project – KENSUP efforts) and in the rural areas. There are certain rules set forth in the Building Code and in the Public



Health (Drainage and Latrine) Rules which are concerned with the construction, installation, laying or connecting of any sewage discharge, cesspool, gully, septic tanks or other like receptacle for drainage and sanitation services. The Public Health (Drainage and Latrine) Rules provide for the inspection of sanitation services by a sanitary inspector appointed by a government or local authority to ensure the set standards are met with regards to sanitation service provision. Rule 4 of the Public Health (Drainage and Latrine) Rules, empowers local authorities to require owners of any buildings or dwelling houses to make specific provisions for drains and other connected sanitation installations.

Further efforts toward the extension of access to water and sanitation within the Nairobi area saw the incorporation of the Nairobi Water and Sewerage Company. Continued corporation between private sector players and local government bodies such as the Nairobi city council should ideally translate into improved access to water and sanitation services.

2.1 WATER

The growing population in Kenya has strained the availability of water resources especially in the urban areas. Water scarcity in various areas has become a major barrier toward achievement of development goals. Within the new legislative framework, the Ministry of Water and Irrigation is responsible for formulating the national Water Policy. They are charged with the added task of bringing together all the relevant stakeholders in the water sector. As part of



the decentralization process, the task of providing water and sanitation services has been allocated to private companies.

Improved access to water for the poor is recognized in the new water legislative framework by the creation of the Water services trust fund. Access to water for these areas will translate into improved health, will offer convenience and have a marked impact toward reduction of poverty levels.

2.2 SANITATION

Proper sanitation is essential in attaining what are considered acceptable global living standards. The role of sanitation in improving areas such as health, economic development and education is incontrovertible. According to recent reports released by the World Health Organisation, coverage in Kenya in year the 2006 was below 10%. This means unfortunately, that Kenya is presently not meeting its goals for attaining the Millennium Development Goals (MDGs) sanitation targets.

The term *Sanitation* refers to the provision of facilities and services for the safe disposal of human waste using engineering solution (e.g. sewerage and wastewater treatment). It can also refer to the maintenance of hygienic conditions through services such as garbage collection and wastewater disposal. In Kenya, sanitation can fall into two categories; onsite and offsite or waterborne sanitation.

- Onsite sanitation



This mode of sanitation is common in rural and suburban or unplanned settlement areas. Examples would be the pit latrine. Encouragement of the construction (as opposed to the provision) of pit latrines is the responsibility of the Ministry of Health.

The pit latrine was introduced to Kenya by the colonial administration and has proved to be a very successful waster disposal method. Construction of the pit latrine was initially spearheaded by provisions in the Public Health Act. An upgrade of the pit latrine; the Ventilated Improved Pit (VIP) was introduced in 1980s but its usage was not as widespread due to the cost of construction.

Presently the Government has developed the Environmental Sanitation and Hygiene Policy to further the use and education of the advantages of pit latrines. Under the policy, the Ministry of Health is mandated to organize sanitation related activities. It does this by providing the necessary support to the Local Government authorities and other relevant ministries.

- Offsite sanitation

This refers to waterborne sewerage systems that are prevalent in urban settings. The provision of waterborne sewerage systems falls under the responsibility of the ministry of Water.



Aside from the Environmental Sanitation and Hygiene Policy, legislation such as the National Environment Management Coordination Act touches on issues of hygiene in relation to sanitation.

PART 3: LEGAL ENVIRONMENT

The Kenyan water supply and sanitation sector has been in considerable disarray – beset by challenges posed by under financing and under staffing – which has led to it being unable to meet its service delivery obligations. The National Water Services Strategy [and the ensuing Implementation Plan for the National Water Services Strategy] recognizes that ultimately the sector needs to be decentralized beyond local authorities and that delivery effectiveness depends not only on technical competence but also on cost recovery and financial viability. At the same time, the Government has decided to examine the need to reduce the often conflicting responsibilities of the sector’s ministries and agencies to determine what structure and policy changes would make the sector more effective – culminating in a policy initiative titled “Water Sector Reform in Kenya and the Human Right Water”.

Aside from the Water Act 2002, there are various laws that act to support the provision of water and sanitation services. The Local Government Act in conjunction with the Public Health Act gives the mandate for water and sanitation services to Local Authorities with regards to regulation, construction and maintenance of water and sewer facilities. The enactment of the



Environmental Management and Coordination Act (EMCA), established the National Environmental and Management Authority who are ultimately reposed with the responsibility of ensuring bodies responsible for water and sanitation services comply with its environmental regulations.

The Water Act establishes certain bodies (state corporations) whose responsibility is to carry out state schemes with regards to provision of water and sanitation services and this places them under the purview of the State Corporations Act (e.g. National Water Conservation and Pipeline Corporation (NWCP)).

Eventually, it is hoped that the existing legislation and the implemented reforms as proposed by the Water Act 2002 and the National Environmental, Sanitation and Hygiene Policy will address new objectives, further clarify roles and responsibilities and subsequently provide an effective legal framework for these changes along the following principles;

- Separation of water resources management from water supply;
- Separation and clarification of regulatory and executive functions within the water supply and sanitation sector;
- Devolution of authority to private enterprises, community based organizations and recognition of enhanced public-private partnerships in the sector;



- Human resource development leading to more effective institutions;
- Increased government priority and budgetary allocation to the sector; and
- Technology appropriate to local conditions.

3.1 REGULATORY FRAMEWORK

The opportunities and constraints regarding provision of water supply and sanitation; investment incentives and securing tenure are embodied in various legislations and guidelines set forth by the Water Services Boards to their correlating Water Service Providers. A holistic approach with regards to the legal interventions envisaged by the statutes will particularly help ensure provision of water supply and sanitation services in informal settlements which fall outside the formal planning framework of the government and local authorities.

3.1.1 THE WATER ACT 2002

The Water Act 2002 establishes two autonomous public agencies that seek to regulate the management of water resources and the provision of water and sewerage services. Section 7 of the Act establishes the Water Resources Management Authority (the Authority) which is charged with the management of water resources and its responsibility, among other things, includes the allocation of water resources through a permit system. Section 46 establishes the Water Services Regulatory Board which is mandated to license all providers



of water and sewerage services that supply water services to more than 20 households. Thereby these bodies are divested with the responsibility of water resources management and eventual allocation and are tasked with the development of national and regional water resources and management strategies, which are intended to outline the principles, objectives and procedures for the management of water resources – as outlined in the National Water Services Strategy [and the ensuing Implementation Plan for the National Water Services Strategy].

A detailed analysis of the Water Act reveals that it is structured around three components that have deemed essential for the prompt and effective delivery of water and sewerage services, namely; decentralisation to new entities, enhancing the role of non-governmental entities and streamlining the acquisition and operation of water supply licenses.

The Act has made spirited efforts to have its various functions devolved to lower level public entities. With regards to water resources management, Section 14 of the Act provides that the Water Resources Management Authority has the authority to designate catchment areas and formulate for each catchment area ‘a catchment area management strategy’ consistent with the national water resources management strategy. Regional offices [staffed by a committee of up to 15 persons to advise the Authority’s officials] are to be established in each catchment area as provided for in section 15 and 16 of the Act. The committee’s mandate is to advise the officials at the appropriate



regional office on matters concerning water resources management, including the grant and revocation of permits. The regulatory functions over water resources management, currently performed by the district offices of the Ministry in charge of water affairs are, supposedly, under the new legal framework, to be transferred to the catchment area offices of the Authority.

National Water Conservation and Pipeline Corporation (NWCPC), through state funding, is vested with the mandate to develop of large-scale infrastructure for harnessing water resources, including the building of dams and other infrastructure for flood control and water conservation. This effectively establishes the NWCPC as a state corporation (falling under the State Corporations Act) and is charged with the responsibility of supplying water ‘in bulk’ for downstream use by others.

Section 51 establishes Water Services Boards responsible for the provision of water and sewerage services and whose area of service may encompass the area of jurisdiction of one or more local authorities. (Their service areas have been demarcated to coincide largely with the boundaries of catchment areas). However, they must obtain a license from the Regulatory Board and they are prohibited by the Act from engaging in direct service provision. This mandate has been thereafter reposed in Water Service Providers (WSPs) who act as agents of the Water Services Board. But in situations where the WSBs have not identified an appropriate WSP, the law allows WSBs to directly provide water and sewerage services.



3.1.2 THE LOCAL GOVERNMENT ACT

Municipal authorities, deriving their powers from the Local Government Act, have the main responsibility for the provision, operation and maintenance of urban water supply services – arguably, their interests being the smooth functioning of water supply and sanitation services; low operating cost; adequate revenues and the possibility to expand services if necessary.

Local authorities through section 160 of the Act, have the power to:

- (a) *to establish and maintain sanitary services for the removal and destruction of, or otherwise dealing with, all kinds of refuse and effluent and, where any such service is established, to compel the use of such service by persons to whom the service is available;*
- (b) *to establish and maintain public lavatories, closets and urinals within its area, and where such lavatories, closets and urinals are established, the local authority shall maintain them in good order and repair.*

Section 169 of the Act empowers local authorities to provide drainage and sewerage works which in essence supplement the provisos set out in section 160 of the Act.

The municipal authorities empowered by the Building Code also have the authority to regulate construction of buildings to meet the technical standards set out for provision of water and effective sanitation systems.



Provision of water and sanitation services by local authorities is structured in the following three ways:

- (a) They supply water up to bulk meters at the periphery of particular area in which case their responsibility ends at the meter and the inhabitants of that area undertakes the management of the system and pays for the water consumed as metered at the periphery meter (this is typified in the Nairobi City Council's Master Plan of 1975 with regards to provision of water to low income settlements within the city).*
- (b) In areas where a combination of individual water connections and standpipes exist, they manage the distribution network but enlist support from the community to look after the standpipes and to protect the infrastructure against vandalism. (This is typified by the water vending kiosks in various municipalities).*
- (c) Individual connections of residential houses to the water distribution network and sewerage collection network for which they pay standing rates as set by the local authorities.*

3.1.3 PUBLIC HEALTH ACT

In collaboration with local authorities, the Public Health Department (recently elevated to a full ministry – the Ministry of Public Health) through section 126(a) of the Public Health Act is mandated to ensure safe and effective sanitation systems in line with public health policies. Section 126 A of the Act provides:



Every municipal council and every urban and area council may, and shall if so required by the Minister for the time being responsible for local government with the agreement of the Minister, make by-laws for all or any of the following matters—

- (i) for regulating sanitary conveniences in connexion with buildings, the drainage of buildings(including the means for conveying refuse water and water from roofs and from yards appurtenant to buildings), the cleansing, drainage and paving of courts, yards and open spaces used in connexion with buildings and cesspools, and other means for the reception or disposal of foul matter in connexion with buildings;*
- (ii) for regulating excavations of any kind in connexion with buildings;*
- (iii) for regulating wells, tanks and cisterns for the supply of water for human consumption in connection with buildings.*

PUBLIC HEALTH (DRAINAGE AND LATRINE) RULES

Alongside the Public Health Act is subsidiary legislation which regulates drainage and sewerage provisions and provides technical standards that have to be met in the construction, laying or maintenance of any sewerage system. The sanitary inspector appointed under those rules is mandated to check any sewer or drainage apparatus within a building or a dwelling house to ensure that they meet the set standards. These rules categorize various drainage and sewerage



systems such as slop-hoppers, urinals, soil-water fittings, water flushing systems, pit latrines and pail closets (the latter two are particularly common in informal settlements).

3.1.4. PUBLIC PROCUREMENT ACT

The Public Procurement Act establishes procedures for procurement and disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve the following objectives:

- (a) Maximize economy and efficiency;
- (b) Promote the integrity and fairness of those procedures;
- (c) Increase transparency and accountability of those procedure;
- (d) Increase public confidence in the procedures.

Water service and sanitation providers are public entities either setup purely on state funding or through quasi state funding (as in the case of public-private partnerships) and as such would be required to comply with the provisions of the Public Procurement Act. Key sector players have often attributed delays in the discharge of their mandate to the stringent stipulations of the Public Procurement Act. However, the Act has enabled transparency in the way tenders are sourced for, with regards to materials required for construction of infrastructure for provision of water and sanitation services.



3.1.5 NATIONAL ENVIRONMENTAL SANITATION AND HYGIENE POLICY

According to the Ministry of Health, the policy which is still in its final stages, aims at contributing to the attainment of the Millennium Development Goals by 2015. To achieve this, the policy will focus on:

- Strengthening community awareness on importance of, and need for improved Environmental Sanitation and Hygiene practices for improved health;
- Improved sanitation coverage so that at least every school community and 90% of households have access to, and make use of hygienic, affordable, functional and sustainable toilet and hand washing facilities;
- Improved management and disposal of all types of wastes, including healthcare wastes;
- Reduction of national incidences of preventable sanitation-related diseases.

3.1.6 NATIONAL HEALTHCARE WASTE MANAGEMENT PLAN

The plan aims at improved management of healthcare wastes through:

- Operational research to establish current status in management of healthcare wastes;
- Demonstration of effective and hygienic methods of waste management;
- Establishment of standards for handling healthcare wastes during generation, segregation, storage, transportation and disposal;



- Sensitization of all stakeholders on importance of proper management of healthcare wastes;
- Training healthcare waste handlers;
- Provision of appropriate equipment and receptacles for handling healthcare wastes.

3.2 TECHNICAL STANDARDS

The by-laws set out in the Local Government (Adoptive by-laws) (Building) Order 1968, are the adoptive building by-laws which municipal or county councils may implement with regards to water and sanitation systems. Alongside these by-laws are the Public Health Act (Drainage and Latrine) Rules which specifically set out standards for sanitation systems. The code assists the relevant local authorities charged with the administration of water and sewerage provision to ensure sufficient facilities are available for the maintenance of set standards of sanitation and personal hygiene.

REFUSE DIPOSAL	
Refuse Disposal	<ul style="list-style-type: none"> • A container plinth of permanent construction • Height not less than 3 inch above the surrounding ground area • Area not less than 6 sq for each container
Refuse chutes	<ul style="list-style-type: none"> • Required for block of buildings exceeding 3 stories • Must be constructed out of fire-resistance material, with a fire resistant period of not less than 1 hour • Access from each point of disposal designed when opened to contain the refuse deposited. • Internal surface of the chute shall be not less than 12 in



	<p>diameter</p> <ul style="list-style-type: none"> • Designed to prevent penetration of rain
WATER SUPPLY	
Water Supply	<ul style="list-style-type: none"> • Plans of building must show an approved supply of water before certificate of completion is issued by council • Water supply installation shall comply with the British Standard Code of Practice C.P. 310 • Water supply installations must be capable of sustaining a working pressure of 300 lb per sq inch (unless fittings in low pressure system) • Each dwelling must have stored supply of water of not less than 100 gallons • For storage system for quantities less than 200 gallons, Grade 'A' 8B.S. 417) type cistern is used, and for quantities of 200 gallons or more a Grade 'B' (B.S. 417) type is used. • Cold water taps from which water for human consumption may be drawn are connected direct to the rising main. • Cold storage cistern or tank shall be provided with an overflow pipe which shall be at least ¼ in larger diameter than the supply pipe
SANITARY CONVENIENCES	
Urinals	<ul style="list-style-type: none"> • Urinal shall be provided with a slab stall, through or other suitable receptacle • Shall be provided with an apparatus capable of effectually flushing apparatus
Latrine accommodation	<ul style="list-style-type: none"> • Plans for the erection of any building shall show that sufficient latrine accommodation will be provided • Minimum standards for latrine accommodations and similar appliances shall comply with the provisions of 6th and 12th schedule of the Building Code



SEWERS & DRAINS

Building over sewers	<ul style="list-style-type: none"> Prohibited unless with the written consent of the council 															
Requirement for construction of closed drains	<ul style="list-style-type: none"> The <u>Public Health (Drainage and Latrine) Rules</u> provides that the drain should be constructed of good sound cylindrical pipes made of glazed stone wear or of heavy cast iron or other equally suitable material approved by the local authority The drain with the following minimum gradients <ul style="list-style-type: none"> (a) Drains of 4 inches internal diameter – 1 in 40 (b) Drains of 5 inches internal diameter – 1 in 50 (c) Drains of 6 inches internal diameter – 1 in 60 <p>Wherever the foregoing minimum gradient of a drain is found to be impracticable the local authorities may require that special flushing tanks and inspection chambers be provided to such drains</p> <p>If the drain is made of cast iron, only cast iron pipes made of good quality free from imperfections and well coated internally and externally with Doctor Angus Smiths or other approved rust preventative composition shall be used and the weight of such pipes in proportion to the diameter shall conform to the following:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>INTERNAL DIAMETER</th> <th>THICKNESS OF METAL</th> <th>WEIGHT PER 9 FIT. LENGTH (INCLUDING SOCKET AND SPIGOT)</th> </tr> <tr> <th>inches</th> <th>inches</th> <th>lb</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">3/8</td> <td style="text-align: center;">160</td> </tr> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">3/8</td> <td style="text-align: center;">190</td> </tr> <tr> <td style="text-align: center;">6</td> <td style="text-align: center;">3/8</td> <td style="text-align: center;">230</td> </tr> </tbody> </table> <p>If constructed of stoneware, only the best socketed stoneware pipes which are truly cylindrical in section, straight in shape and free from other cracks and imperfections shall be used</p>	INTERNAL DIAMETER	THICKNESS OF METAL	WEIGHT PER 9 FIT. LENGTH (INCLUDING SOCKET AND SPIGOT)	inches	inches	lb	4	3/8	160	5	3/8	190	6	3/8	230
INTERNAL DIAMETER	THICKNESS OF METAL	WEIGHT PER 9 FIT. LENGTH (INCLUDING SOCKET AND SPIGOT)														
inches	inches	lb														
4	3/8	160														
5	3/8	190														
6	3/8	230														



and the thickness of the pipes, the depths of the sockets and the annually space for the cement in proportion to the diameter shall conform to the following:

INTERNAL DIAMETER	THICKNESS	THICKNESS	WEIGHT PER FIT. LENGTH (INCLUDING SOCKET AND SPIGOT)
inches	inches	inches	lb
4	1/2	1 3/4	5/16
5	9/10	2	5/16
6	5/8	2	5/16
9	3/4	2	5/16

SEPTIC AND CONSERVANCY TANKS

Sewage and waste water disposal

Sewage and waster water disposal other than a sewer, shall be by one of the following means, or a combination:

1. Water Closets
 - In permeable soils: Septic tanks with radial arms
 - In impermeable soils: Conservancy tank
2. Sink waster and servant's quarters waste
 - In permeable soil: Septic tank, and/or soakage it and/or radial arms
 - In impermeable soil: Conservancy tank
3. Baths. Lavatory basins and showers
 - In permeable soils: same as number 2, but a separate waste water storage tank may be permitted with an approved overflow into the main system of disposal
 - In impermeable soil: Same as 2 but a separate waste water storage tank may be permitted with an approved



	overflow into the main system of disposal
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PART 4: INSTITUTIONAL FRAMEWORK

The Water Act 2002 outlines new institutional structures which are geared towards achieving a large scale impact (optimising social benefits in the medium term with their budgetary allocations), giving sanitation an equal prominence to water on all levels to accelerate relevant actions to ensure its progress and holding all sector players accountable to ensure transparency as they carry out their mandate.

The new Water Policy has reoriented the sector as its policy principles have formed the basis for the new institutional framework envisaged in the Water Act 2002. The “Water Sector Reform in Kenya and the Human Right to Water” delineates them as follows:

INSTITUTION	ROLES AND RESPONSIBILITIES
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Water Appeals Board (WAB)	Arbitration of water related disputes and conflicts between institutions and organisations
Ministry of Water and Irrigation (MWI)	<ul style="list-style-type: none"> • Development of legislation, policy and strategy formulation, sector coordination and guidance, and monitoring and evaluation • Overall sector investments, planning and resource mobilizations
Water Services Trust Fund (WSTF)	Financing provision of water and sanitation to disadvantaged groups in rural and urban areas.
National Water Conservation and Pipeline Corporation (NWPC)	Construction of dams, drilling of boreholes and bulk water supply
Water Resource Management Authority	<ul style="list-style-type: none"> • Planning management, protection and conservation of water resources • Allocation, appointment, assessment & monitoring of water resources • Issuing of water permits • Water rights and enforcement of permit conditions • Regulation of conservation and abstraction structures • Catchment and water quality management • Regulation and control of water use • Coordination of the IWRM Plan
Catchments Areas Advisory Committee	Advising WRMA on water resources issues at catchment level
Water Resource User Associations	<ul style="list-style-type: none"> • Involvement in the decision-making process to identify and register water users • Collaboration in water allocation and catchments management • Assisting in water monitoring and information gathering • Conflict resolution and cooperative management of water resources
Water Services	<ul style="list-style-type: none"> • Regulation and monitoring of service provision



Regulatory Board (WASREB)	(Water Services Boards and providers) <ul style="list-style-type: none"> • Issuing of licenses to Water Services Boards & approval of SPAs • Setting standards and developing guidelines for provision of water services • Carry out tariff negotiations • Publish comparative reports
Water Services Boards (WSBs)	<ul style="list-style-type: none"> • Contracting Water Service Providers (WSPs) for efficient and economical provision of water services • Developing/rehabilitating water and sewerage facilities, investment planning and implementation (asset management) • Applying regulation on water series and tariffs
Water Service Providers (WSPs)	Provision of water and sanitation services, ensuring good customer relations and sensitization, adequate maintenance of assets and reaching a performance level set by regulation

Table taken from *Water Sector Reform in Kenya and the Human Right to Water*, Published by the Ministry of Water and Irrigation 2007

4.1 KEY SECTOR PLAYERS

MINISTER FOR WATER AND IRRIGATION

1. The Minister shall have and may exercise control over every water resource.
2. It shall be the duty of the Minister to promote the investigation, conservation and proper use of water resources throughout Kenya and to ensure the effective exercise and performance by any authorities or persons under the control of the Minister of their powers and duties in relation to water.



3. The Minister shall be assisted in discharge of his duties under this section by Director of Water.

WATER RESOURCES MANAGEMENT AUTHORITY

The powers and functions of the Authority shall be exercised and performed under the direction of a governing board, which shall consist of a Chairman and ten other members, who shall be appointed by the Minister. The Authority has powers to prosecute any offences arising from the Water Act.

The powers and functions are to:

- a) develop principles, guidelines and procedures for the allocation of water resources;
- b) monitor, and from time to time reassess, the National Water Resources Management Strategy;
- c) receive and determine applications for permits for water use;
- d) monitor and enforce conditions attached to permits for water use;
- e) regulate and protect water resources quality from adverse impacts;
- f) manage and protect water catchments;
- g) determine, in accordance with guidelines in the national water resources management strategy, charges to be imposed for the use of water from any water resource;
- h) gather and maintain information on water resources and from time to time publish forecasts, projections and information on water resources;



- i) liaise with other bodies for the better regulation and management of water resources;
- j) advise the Minister concerning any matter in connection with water resources.

CATCHMENT AREA ADVISORY COMMITTEES

They advise officers of the Authority at the appropriate regional office concerning:

- a) water resources conservation, use and apportionment;
- b) the grant, adjustment, cancellation or variation of any permit; and
- c) any other matters pertinent to the proper management of water resources.

WATER SERVICE REGULATORY BOARD

The powers and functions of WASREB are to:

- a) issue licenses for the provision of water services;
- b) determine standards for the provision of water services to consumers;
- c) establish procedures for handling complaints made by consumers against licensees;
- d) monitor compliance with established standards for the design, construction, operation and maintenance of facilities for water services;



- e) monitor and regulate licensees and to enforce license conditions;
- f) advise licensees on procedures for dealing with complaints from consumers and to monitor the operation of these procedures;
- g) develop guidelines for the fixing of tariffs for the provision of water services;
- h) develop guidelines for and provide advice on the cost-effective and efficient management and operation of water services;
- i) develop model performance agreements for use between licensees and Water Service Providers;
- j) monitor the operation of agreements between Water Services Boards and Water Service Providers and to take appropriate action to improve their effectiveness;
- k) develop guidelines on regulations for the provision of water services to be adopted by licensees;
- l) disseminate information about water services;
- m) promote water conservation and demand management measures;
- n) monitor, and from time to time re-assess the national water services strategy;
- o) accordance with the national water services strategy, to determine fees, levies premiums and other charges to be imposed for water services;



- p) gather and maintain information on water services and from time to time publish forecasts, projections and information on water services;
- q) liaise with other bodies for the better regulation and management of water
- r) advise the Minister concerning any matter in connection with water services.

WATER SERVICES TRUST FUND

The Fund is to assist in financing the provision of water services to areas of Kenya which are without adequate water services. Sources of funds for WSTF are:

- (a) Parliament;
- (b) Donations, grants, and bequests from whatever source.

WTSF shall be managed by trustees from time to time appointed and holding office under a trust deed. The trustees shall develop and apply principles governing the grant of moneys from WSTF.

WATER SERVICES BOARD

The Minister may, name a Water Services Board (WSB). It may issue Licenses to Water Services Providers (WSPs). A Water Services Board shall, as a licensee, be responsible for the efficient and economical provision of water services authorized by the license.

It may:

1. purchase, lease or acquire premises, plant, equipment and facilities;



2. purchase, lease or otherwise acquire land;
3. Other powers in the Water Act.

WATER SERVICE PROVIDERS

The Water Services Board may, in accordance with this section arrange for the exercise and performance of all or any of its powers and functions under the license by one or more agents, to be known as Water Service Providers (WSPs).

Such an arrangement shall be reduced to an agreement in writing between the Water Services Board and the Water Service Provider, the terms of which (and of any amendment of which) shall be of no force or effect unless approved by the Water Services Regulatory Board (WASREB).

The agreement shall specify the powers and functions under the license which shall be exercised and performed by the Water Service Provider during the currency of the agreement.

The agreement may also make provisions for or with respect to:

- a) the concurrent performance, by the Water Services Board and the Water Service Provider, of the same functions in different parts of the area defined by the board's limits of supply;
- b) the indemnity by the Water Service Providers of any liability of the Water Services Board arising from the performance or non performance of functions conferred by the license; and



- c) the maintenance, rehabilitation and development, by the Water Service Provider of water services infrastructure and facilities of the Water Services Board; and
- The Water Services Board may enter into agreements with more than one Water Service Provider in respect of its area of supply;
 - A power or function conferred by a license which, pursuant to an agreement approved, may be exercised or performed by a Water Service Provider shall be deemed, when exercised or performed by the Water Service Provider, to have been exercised or performed under the authority of the license.

WATER APPEAL BOARD

Hear appeals from the Water Services Regulatory Board.

WATER QUALITY REGULATIONS, 2006 (Legal notice No. 121) NEMA

- Water Quality Regulations apply to water used for domestic, industrial, agricultural, and recreational purposes; water used for fisheries and wildlife purposes, and water used for any other purposes. Different standards apply to different modes of usage. These regulations provide for the protection of lakes, rivers, streams, springs, wells and other water sources.



- Everyone is required to refrain from any actions, which directly or indirectly cause water pollution, whether or not the water resource was polluted before the enactment of the Environmental Management and Coordination Act (EMCA) gazetted in 1999. It is an offence to contravene the provisions of these regulations with a fine not exceeding five hundred thousand shillings.

WASTE MANAGEMENT REGULATIONS, 2006 (Legal Notice No.121)

Waste Management Regulations are meant to streamline the handling, transportation and disposal of various types of waste. The aim of the Waste Management Regulations is to protect human health and the environment. The regulations place emphasis on waste minimization, cleaner production and segregation of waste at source.

The regulations have classified various types of waste and recommended appropriate disposal methods for each waste type. Under the Waste Management Regulations, NEMA licenses transporters, incinerators, landfills, composers, recyclers and transfer stations, Facilities to be licensed include local authorities, transporters and handlers of various types of waste. The licensing employs a risk-based approach by concentrating on facilities considered to pose a high risk to the environment.



4.2 CONTRACTUAL OBLIGATIONS: LICENSING

Section 57 provides that an application for a license may be made only by a WSB, which therefore has a monopoly over the provision of water services within its area of supply. Thus the WSB can only provide the licensed services through an agent known as a Water Services Provider, which can be a community group, a private company or a state corporation that is in the business of providing water services. In order to qualify for the license the applicant must satisfy the Board that:

- Either the applicant or the Water Service Provider by whom the services are to be provided has the requisite technical and financial competence to provide the services.
- The applicant has presented a sound plan for the provision of an efficient, affordable and sustainable service.
- The applicant has proposed satisfactory performance targets and planned improvements and an acceptable tariff structure.
- The applicant or any Water Service Provider by whom the functions authorized by the license are to be performed will provide the water services on a commercial basis and in accordance with sound business principles.



- Where the water services authorized by the license are to be provided by a Water Service Provider that conducts some other business or performs other functions not authorized by the license, the supply of those services will be undertaken, managed and accounted for as a separate business enterprise.

Section 58(2) stipulates that the license shall not be capable of being sold, leased, mortgaged, transferred, attached or otherwise assigned, demised or encumbered and thus offers a sense of security with regards to the license granted. Ownership of the assets for the provision of water services is vested in the WSB, which is a state corporation. Section 113 provides for the transfer of assets and facilities for providing water services to the WSBs. Where the assets and facilities belong to the government they are required to be transferred outright to the WSBs. Where, on the other hand, they belong to others, including local authorities and community groups, only use rights may be acquired by the WSBs.

The right to provide water services is also subject to licensing requirements. Section 56 states that no person shall provide water services to more than 20 households or supply more than 25,000 l of water/day for domestic purposes – or more than 100,000 l of water/day for any purpose – except under the authority of a license. Indeed, Subsection (2) stipulates that it is an offence to provide water services in contravention of the license requirement. Consequently, community groups must obtain a license in order to be able to



continue or commence supplying water to their members, a clear departure from their previous practice where they operated without a license.

APPLICATION FOR A LICENCE

1. An application for a license may be made only by a Water Services Board, and shall be made to the Regulatory Board.
2. The Regulatory Board shall prescribe a form for use in making such an application, which shall require at least the following particulars to be furnished by the applicant:
 - a) the technical and financial capability of the applicant, and any Water Service Provider by whom its functions are to be performed, to provide the services and perform functions authorized by the license;
 - b) the applicant's plans for the provision of efficient, affordable and sustainable water services;
 - c) performance targets;
 - d) details of planned financial and infrastructural improvements;
 - e) a proposed tariff structure.
3. The application shall be made by completing and lodging the prescribed form together with the prescribed fee.
4. The Regulatory Board shall determine an application for a license by granting the license or rejecting the application:



- a) The application shall not be granted unless the Regulatory Board is satisfied that – the applicant, or a Water Service Provider by whom the functions authorized by the license are to be performed, has the requisite technical and financial competence to provide the services to which the license relates;
- b) the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable service;
- c) the applicant has proposed satisfactory performance targets and planned improvements and an acceptable tariff structure; and
- d) the applicant, or any Water Service Provider by whom the functions authorized by the license are to be performed will provide the water services authorized by the license on a commercial basis and in accordance with sound business principles;
- e) where water services authorized by license are to be provided by a Water Service Provider which conducts some other business or performs other functions not authorized by the license, the supply of those services will be undertaken, managed and accounted for as a separate business enterprise; and
- f) the applicant and any associated Water Service Provider have met any other requirements which the Regulatory Board considers are called for by the services to be provided under the license.



5. An application for a license shall be the subject of public consultation and, where applicable, environmental impact assessment in accordance with the requirements of the Environmental Management and Coordination Act, 1999.
6. Any person opposed to the grant of license may object in writing to the Authority.
7. The Regulatory Board shall notify the applicant and any objector of its decision and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefore, and an applicant or objector may, if aggrieved by the decision within thirty days after the date of the notification, appeal to the Water Appeal Board against the decision.
8. It shall be the duty of the Regulatory Board to determine an application for a license as soon practicable after lodgment of the application.
9. Where an application duly made in accordance with this section is not determined by the regulatory Board within six months after lodgment, any fee chargeable by the Regulatory Board under subsection (3) shall be refunded to the applicant.

LICENCE

A license shall authorize and, to the extent provided therein, require, the provision by the licensee of water services specified in the license.



There is no property in a license, and except as provided by this Act, a license shall not be capable of being sold, leased, mortgaged, transferred, attached or otherwise assigned, demised or encumbered.

As a condition precedent to the issue of a license, the Regulatory Board may require the applicant to deposit with it a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from him, as a licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

LICENCE FEES

A licensee shall pay to the Government, on issue of the license and at prescribed intervals thereafter, such fees as the Regulatory Board may determine.

LICENCE CONDITIONS

A license shall be subject to conditions in the Act and the Regulatory Board which have to be consistent with the Act.

The License Rules may:

- a) require the imposition of prescribed conditions in prescribed circumstances;
- b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or



improvement of any plant, equipment facilities or works used for the purposes of the license or for meeting any other prescribed contingency;

- c) provide that a contravention of any or of any specified, conditions prescribed by or under the Water Act as conditions of licenses shall constitute an offence punishable by a penalty not exceeding one hundred thousand shillings.

To the extent required by the license, it shall be the duty of a licensee to ensure that water services and associated works and facilities are provided, maintained and progressively improved.

PART 5: RECOMMENDED CONTRACTUAL PRACTICE

Various countries have successfully reformed their water and sanitation services sector through innovative contractual practices and effective capital allocation to ensure prompt and efficient delivery of these vital services. A good example would be the reforms initiated in the water and sanitation sector in Gaza, which has an extremely dense population of about 2500 people per square kilometer (the population is about 900,000). Responsibility for water and sanitation services was fragmented among four municipal water departments, twelve village counsels, and the United Nations Relief and Works Agency.

All stakeholders recognize that private sector involvement was the only way to rapidly improve the water supply and sanitation system; but long term



arrangements posed significant risks to both the government and potential private investors. The stakeholders came up with a management contract which offered several advantages; it was highly flexible; of limited duration and ensured that a range of options would be available at the end of the contract. In addition the contract will allow both the government and the general public to judge the advantages of private sector management without committing to a long term relationship. The contract would also allow private sector to judge the government's commitment particularly to cost recovery through tariffs. Finally the terms of the contract included a number of tasks necessary to establish a sound commercial approach such as implementing a computerized administrative system, network mapping, hydraulic modeling and innovative sanitation services design. In mid 1996 Lyonnais des Eaux/Khatib and Alami (LEKA) was awarded a four year water and sanitation services management contract to help local government service providers and the government improve water service.

The contract design would be particularly helpful for a country struggling to achieve the millennium development goals, in relation to efficient water supply and sanitation services such as Kenya.

5.1. DESIRED CONTRACT DESIGN

The contract fee is split between a fixed annual payment and an additional performance payment based on the achievement of performance targets. The fixed fee portion of the contract, which forms the basis for competitive bidding



of the contract, is set at a certain amount over the contract duration. In return, the operator provides fulltime experienced managers, fulltime technicians (drawn from community participation), administrative support and short-term specialist to undertake specific tasks. The scope of work for the contract ought to focus on the following objectives:

- Increasing the quantity of available water by improving the efficiency of the water supply distribution system.
- Increasing the infrastructural network for sanitation supply and operating equipment.
- Improving the management of waste systems through better operations, revenue collections and customer services.
- Strengthening waste water institutions through long term system planning and training.
- Strengthening community participation to increase their awareness with regards to their need to protect water and sanitation supply infrastructure.

Incentive payments ought to be added to the contract to encourage the achievement of the above contract objectives, with annual ceilings for incentive payments set at one quarter of the total contract price. The performance payment is calculated according to performance targets, grouped under the five contract objectives highlighted above. Each of the performance targets – ranging from the number of meters repaired or replaced, latrines built, sewers



and drainages constructed or repaired to reductions in unaccounted for water to the completion of tasks such as the development and implementation of maintenance and materials management systems – is given indicator values that quantify the annual achievement of the target. Performance targets are then weighted to reflect the priority of the target. Critical targets are given much higher weightings. The indicator weightings emphasize the importance placed on increasing an efficient supply of water and sanitation services. A composite performance score determines the incentive payment. If the composite score does not meet the given threshold level the operator is disqualified from any incentive payment.

5.2. PUBLIC PRIVATE PARTNERSHIPS

The Government and various state agencies have begun embracing the concept of public–private partnerships (PPPs) to enable them to meet their performance targets in various contractual situations. This has been done by recognizing the role played by non–governmental entities such as NGOs, community based organizations and private sector players who reach the critical masses in informal settlements. There is yet to be an official policy or legislation governing PPPs though various contractual designs govern individual relationships between particular state agencies and private sector players. Of importance to note is that other than the general contract provisions, the state agencies and private sector players are allowed to invoke a force majeure clause in the contract for any event beyond their control that makes it impossible for



them to fulfill their obligations. Such events include strikes, lockouts, industrial actions and public demonstrations which would result in vandalism of infrastructure related to water supply and sanitation systems (except where such events can be prevented by the party invoking the force majeure clause).

PART 6: INFORMAL SETTLEMENTS

While the Nairobi City Water and Sewerage Company (NCWSC) and those retailing its water are the primary actors in the delivery chain for water supply services, this is not the case for sanitation, which is primarily the purview of individual households.

Waterborne sewerage is the only component of broadly defined sanitation that is under the direct responsibility of NCWSC. The nominal responsibilities for other components (drainage and solid waste) are shared between households, community groups and municipal agencies.

In Nairobi's informal settlements, residents have access to household toilet facilities— a ventilated improved pit latrine, an ordinary pit latrine, or a flush toilet. The majority rely on shared facilities, while a small number has no access to toilets. Lack of public action and easements as well as congested land use has led to a situation where most residents rely on over-crowded and sub-standard pit latrines—and even open spaces and flying toilets.



Household expenditure on basic services (in KSh)

Service/Area	Gatwika	Kianda	Makina	Mashimoni	Kisumu Ndogo	Kambi Muru	Laini Saba	Soweto
Water	560/-	1200/-	900/-	1500/-	300/-	450/-	450/-	1500/-
Sanitation	350/-	100/-	200/-	100/-	50/-	50/-	900/-	1500/-

Taken from 'The Right to Water and Sanitation in Kibera - An Action Research Report' 2007

Sewerage infrastructure in informal settlements is either broken down, lacking or grossly inadequate. The oldest settlements are crossed by aging sewerage pipes with frequent burst and overflows. Latrine emptying and sludge removal are handled by small scale operators working under unsanitary conditions. Sludge is disposed haphazardly either in the rare sewer inlets or in rivers and drainage ditches. Like sludge, solid waste is also lacking a structured collection, transport and disposal chain.

Drainage is also insufficient. Natural drainage ditches and storm water gullies carry liquid and solid waste but not in an environmentally friendly or hygienic path. Rain water sometimes flows into latrine structures, forming pools and flowing into footpaths and nearby rivers. These appalling conditions and lack of



environmental sanitation lead to acute water and vector-borne infectious diseases such as diarrhea and malaria, with epidemics such as cholera and typhoid occurring with greater frequency and impact.

INSTITUTION ARRANGEMENTS

On a national level, while water services provision is the responsibility of the Ministry of Water and Irrigation (MWI), sanitation falls under the Ministry of Public Health and Sanitation, created in 2008.

Several policies have been tabled since the enactment of the Water Act. The policies are aimed at facilitating the coordination of various actors within the water sector. Some of these policies include:

- National Water Resources Management Strategy (2005–2008);
- National Water Services Strategy (2007–2015);
- Water Services Regulatory Board Tariff Guidelines and Model (2007).
These guidelines establish tariffs that balance commercial and social interests;
- Pro-Poor Implementation Plan for Water Supply and Sanitation, 2007;
- Ministry of Health, National Health Sector Strategic Plan of Kenya (2006);
- National Environmental Sanitation and Hygiene Policy (2007) which outlines the way forward on environmental sanitation, the development of basic sanitation infrastructure and promotion of basic sanitation and hygiene education.



Section 7 of the Water Act 2002 established the Water Resources Management Authority and gives it inter alia the powers to develop principles, guidelines and procedures for the allocation of water resources; in accordance with guidelines in the national water resources management strategy, to determine charges to be imposed for the use of water from any water resource; liaise with other bodies for the better regulation and management of water resources.

The Water Services Regulatory body is established in Section 46, it is given the powers to amongst others: to issue licenses for the provision of water services; monitor compliance with established standards for the design, construction, operation and maintenance of facilities for water services; liaise with other bodies for the better regulation and management of water services. Neither one of the bodies is given a specific mandate regarding sanitation. The Health Act, unlike the Water Act, does not decentralize the provision of sanitation services. There is no clear establishment of private–public partnerships for the sanitation sector. One of the Ministry of Health’s mandates is to promote basic sanitation and hygiene education. It appears however to be lagging behind the Ministry of Water and Irrigation in terms of their respective duties.

WORKING ARRANGEMENT: WATER

Following the enactment of the 2002 Water Act, newly created institutions undertook the provision of water and sewerage services in urban areas. This task, previously managed by the City Council primarily through their water and



sanitation department, is now the responsibility of seven Water Services Boards (WSBs) which then delegate operational responsibilities for service delivery to local Water Services Providers (WSPs). In the case of Nairobi, Athi Water Services Board has delegated the operational mandate to NCWSC.

Water Supply and Sanitation provision in the informal settlements will be guided by the Athi Water Services Board (AWSB) Pro-Poor Policy of 2007.

The Government of Kenya's Slum Upgrading Program (KENSUP) has the institutional mandate for slum upgrading. KENSUP partners include line ministries, City Councils, and UN Habitat. Water and sanitation services are components of the program, but progress in these upgrading efforts is slow.

LEGAL ENVIRONMENT

Informal settlements fall outside the formal planning framework of the State authorities, and therefore lack legal standing. The City Council and all other utilities rarely plan the provision of services to these areas. The Nairobi Water and Sewerage Company has noted the unique circumstances in improvement of service provision in informal settlements because of the lack of security of tenure. In regards to implementation of projects, the company is willing to work with community members, however, those informed about various funding options from local authorities such as the opportunities available through the Local Authorities Service Delivery Action Plan (LASDAP) are predominantly 'landlords', notorious for overcharging for the most basic of services. There is a



need for increased awareness amongst the communities. Various projects have taken place in informal settlements whereby individuals within the informal settlements have banded together and successfully negotiated with the Ministry of Lands to secure tenure for sites where projects will be based. Education regarding finance availability from the Community Development Fund and Bursary funds from the government appears to be on the lower end, hence continued reliance on the status quo.

LAND TENURE

Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of or transmitted.

Land tenure regimes in Kenya are fragmented into six systems:

1. Registration of Documents Act (Cap 285)

The record of transactions under this act was merely evidence that a transaction has taken place but was not proof of legality of the transaction. There is no guarantee under this Act. Presently, this Act is used to register documents other than those alienating interests in land.

2. Land Titles Act (Cap 282)

This Act deals with matters relating to private ownership of land ownership of land at the coast. The Government does not guarantee title in under the LTA and no indemnity is provided. Most LTA titles have now been converted to RLA and RTA.



3. Government Lands Act (Cap 280)

This Act covers land that was the subject of Government grants prior to 1920 except for leasehold that were converted from 99 years to 999 years or freehold. The State does not guarantee title and no indemnity is provided.

4. Registration of Titles Act (Cap 281)

This Act relates:

- All land that is subject of a Government grant since 1920 or a Certificate of title issued by the Recorder of Titles after 1920;
- Leaseholds that have been converted from 99 years to 999 years or freeholds;
- Titles that have been converted from LTA and GLA on a voluntary basis;
- Grants that are made by local authorities in respect of trust land.

The State guarantees title and provides for indemnity.

5. Registered Land Act (Cap 300)

This Act governs the following lands:

- Titles that have been converted from LTA, GLA and RTA on a voluntary basis.



- Adjudication under the Land Adjudication Act (Cap 284) and Land Consolidation Act (Cap 293) since 1963 and successful claims under the LTA after 1963.
- Titles which were registered under the Land Registration (Special Areas) Act of 1959. This was land held under customary law and registered after adjudication and consolidation.

The general rule under this Act is that a proprietor's title is impeachable except on grounds of fraud or mistake to which the proprietor is a party.

The inhabited land in informal settlements is mainly owned by the State or the Local Authority. Most residents believe their tenancy is secure but legally it is not. In this light, provision of adequate sanitation services for the long terms can only be effectively implemented once strides have been made towards improving housing in informal settlements.

1. State Owned Land

Land owned by the state is usually allotted to individuals or groups through the District Adjudication Officer. The allottees in essence are beneficial owners but the true legal owner is the government. This means they cannot have a better title than they themselves have. The allottees, as beneficial owners, hold the land with the promise that upon successful adjudication of the property and due registration thereof, the property would be transferred to them.



2. Local Government Owned Land

This Land is owned by the Local Authority in two different ways; by the Local Authority holding the property as trust land for a certain community or by the local authority allocating the property to different entities.

The first system entails the Local Authority holding the property in trust usually for a certain group or institution. The beneficiary is usually the beneficial owner but has no title over the property. No better interest can be passed by the beneficiary than he has.

The second system is where the property is allocated to entities and the entities are given 'land certificate' evidencing 'ownership' of the land. This in law does not pass any property but could be seen as contracts binding the parties *inter parte* as opposed to alienating an interest to the holder. The allottee cannot pass a better interest than he has.

In the modes of ownership above, no legal conveyancing instrument can be procured. Any person who intends to get an interest in the property or at least secure their interest has to deal with the legal owner of land. It is also desirable to have the beneficiary in copy of the transactions on the property.

For a transfer, lease or even licence in State owned land, the transferee, lessee or licensee should seek the consent of the adjudication officer in his representative capacity of the Commissioner for Lands.



For trust land, any person intending to transact should consider it prudent to deal with the beneficiary for goodwill and the Council for legality. The instrument should therefore have the provision for both parties to execute.

With regard to land held by the council's allottee, it is desirable that one transacts with the allottee but insert on the instrument a consent clause by the Council.

Use of the above options may not pass an interest, but will bind the parties and provide an avenue for not only equitable remedies but also legal remedies.

Evidently the security of tenure issues in informal settlements have greatly affected the abilities of the inhabitants and interested parties to improve the services in the areas. The Draft National Land policy recognizes the various concerns of inhabitants of informal settlements, and it has tried to address this in the policy. The policy recognizes that informal settlements by their very nature fall outside physical or land use planning. It proposes that the Government should:

- a) Create a regime of secondary land rights as a mean of improving security in informal settlements;
- b) Recognize and protect the rights of informal land occupiers and guarantee their security of tenure; and



- c) Establish a legal framework and put in place procedures for transferring unutilized land and land belonging to absentee landlords to ‘squatters’ and landless people.

The National Land Policy notes the emergence of land markets in informal settlements, it notes the need for land market principles to guide transactions in areas that fall outside the various legislations on land. The policy also advocates for the following principles to deal with informal settlements:

- a) Development of a slum upgrading and resettlement programme under secure system of tenure for existing slums; and
- b) Putting in place measures to prevent further slum development.

THE ROLE OF NON-GOVERNMENTAL ENTITIES

Recent initiatives by the government allowing for public-private partnerships and recognizing an enhanced role by NGOs and other community based organizations have been captured by the Water Act. The Act explicitly allows for individuals in the private sector and representatives of water users to be appointed to the various bodies set up in the Act (as set out in Rule 2 of the First Schedule of the Act). Significantly, the Act provides that members of the catchment advisory committee shall be chosen among the various users such as farmers and pastoralists, as set out in section 16(3), and also provides a role for community groups organized as water resources user associations (WRUAs) in the management of water resources. Section 15(5) of the Act outlines that these



associations will act as fora for conflict resolution and cooperative management of water resources. Section 53(2) stipulates that water services shall be provided only by a Water Service Provider, which is defined as ‘a company, non-governmental organization or other person providing water services under and in accordance with an agreement with a licensee [the WSB]’. Community self-help groups providing water services may therefore qualify as Water Service Providers. The role of non-governmental entities in both the management of water resources and the provision of water services is thus clearly recognized.

CONCLUSION

It is widely acknowledged, by the sector players, that the provision of water and sanitation services still faces various challenges as a result of inadequate policy implementation mechanisms. This is compounded by the fact that provision of sanitation lacks proper legal backing in any of the states. There need to be a National Water Supply and Sanitation Council, a regulating agency for the sector that provides advice, develops guidelines and is responsible for establishing and enforcing standards. For there to be an effective implementation of any sanitation policy, the key players in the water sector must be involved. The rationale for putting sanitation under the Ministry of Health docket, is positive primarily because its responsibility was previously apportioned between various bodies and implementation of a cohesive policy regarding sanitation was understandably difficult to coordinate. This said however, there is still a crucial



interplay between sanitation services and those of water, the linkages between the various key players still appear to be lacking. Whereas the water sector has seen comprehensive changes and the public–private partnerships appear to be making headway in improvement of water services, the sanitation sector, especially in informal settlements have been left lagging.

