

Toward effective governance of water services in Kenya

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Abstract

Effective governance is regarded as essential for national water management frameworks. Many countries are therefore striving to institute effective governance in their water sector. Kenya is one country that has instituted such governance framework in the recent past. This article evaluates Kenya's water governance framework in the area of water services provision in line with the conventional principles of effective governance. The outcome of this evaluation is that the framework has strived to achieve a structure for effective governance but falls slightly short of it. Recommendations are therefore made to help fill the gap.

Keywords: Effective governance; Institutional framework; Kenya; Water Act; Water services

1. Introduction

According to the Global Water Partnership (GWP), the current water crisis is mainly a crisis of governance (GWP, 2003). This means that improving governance can easily solve water problems facing many countries of the world today. It is for this reason that most global initiatives are keen to improve governance in the water sector. The 2000 Hague Ministerial Declaration, for example, called for good governance of water, while at the 2001 Bonn Freshwater Conference, the ministers recommended action on water governance (Rogers & Hall, 2003).

One of the global initiatives that has taken the issue of water governance seriously is the GWP. Hitherto, poor governance has characterized the water sector. The symptoms of poor water governance in developing countries have been captured in many scholarly works, see for example Bayliss (2003), Budds & McGranahan (2003) and K' Akumu (2004), which are among the latest. The symptoms include: failure to cope with demand, failure to manage supply, institutional weaknesses, and financial and technical problems.

It is in this regard that GWP has proposed the concept of "effective water governance" as the desirable opposite of and the desirable correction for poor governance. Instituting effective water governance

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requires that systems that are characterized by certain desirable attributes and that are able to meet certain desirable levels of performance are put in place. Such a system, for Kenya, has come in the form of a legal framework in the body of the Water Act of 2002 (Republic of Kenya, 2002). This paper evaluates the legal framework with respect to the desirable principles of effective governance in order to find out whether it will deliver the desired reform objectives. Unfortunately, this exercise finds the system lacking in some respects.

The paper does not intend to discuss actual achievement of effective governance in the water sector in Kenya. Its scope is limited to the attainment of an institutional structure that would ensure effective governance. In itself, it does not discuss the phenomenon of effective governance but it does discuss the instruments that are collectively meant to attain effective governance. The scope of the water sector is also limited to the governance of water services only.

2. Effective water governance

According to GWP (2003), water governance refers to the range of political, social, economic and administrative systems that are in place to regulate the development and management of water resources and provision of water services at different levels of society. Between water resources and water services, this paper focuses on the latter. These systems may be credited for good or bad performance depending on how they function in particular areas of operation. In case of bad performance, we may talk of “poor governance” while for good performance we may talk of “good governance”; however, in the water parlance, the GWP has preferred the term “effective governance” in this respect. The term good governance has also been used in water services reform discourses as seen in the examples of Bakker (2003), Bakker & Cameron (2005) and UN-Habitat (2003). The two terms can therefore be used interchangeably sometimes.

According to Loughlin (2004), governance refers to the configuration of relations between the three basic institutions of political or social administration, viz., state, market and society. In the welfarist or socialist regimes, the state was dominant over the market. The state had a dominant presence in the market in terms of allocation of resources. The market mechanism, which in a free market economy would be the mediator in the allocation of resources, was stifled or redirected by the state and hence the state had the most influence in resource allocation. The water sector, for example, water being a good or service of public interest, was a preserve of the state, where state agencies like local authorities or public corporations were granted legal monopolies to dominate the market.

Over the years, there has been an onslaught on this particular configuration especially by liberal capitalists. The collapse of the socialist bloc of eastern Europe underscored the end of this particular configuration and gave rise to the opposite configuration otherwise known as good governance. Doornbos (2003) tells us that the global rise of good governance as a policy principle is not unrelated to the collapse of the Berlin Wall. The world has since then made a grand march back to the market. Good governance refers to a particular configuration of relationships between the three basic institutions of political or social administration (state, market and society) in which the market dominates the state in terms of economic management (Loughlin, 2004). In this case the state is expected to cede its role in the market in favour of private participation and only retain the role of creating an enabling environment especially through regulation. This can be institutionalized through a series of deregulation

and reregulation measures. These measures are what constitute the attributes of good governance. In Kenya, deregulation and reregulation measures have been effected through the enactment of the Water Act of 2002.

So far, poor governance of water has dominated the world. Poor governance is represented by systems characterized by lack of certain conditions necessary for good governance (Rogers & Hall, 2003). These conditions include inclusiveness, accountability, participation, transparency, predictability and responsiveness. Rogers & Hall (2003) have indicated that poor water governance leads to increased political and social risk, institutional failure and rigidity among other things. According to the duo, poor water governance also leads to increased incidences of poverty as malfunctioning systems cause misallocation of scarce resources. It is within this realization that reforms in the water sector have been recommended and are being effected the world over.

Reforms are meant to rid the world of poor systems of water governance and to put in place systems that would ensure effective governance. This is what Kenya, like many other countries, has attempted to do by introducing reforms in the water sector through the enactment of the Water Act of 2002. Conventional objectives of water reforms that would achieve effective water governance must involve basic principles and attributes. The basic principles for effective water governance include open and transparent, inclusive and communicative, coherent and integrative, equitable and ethical approaches (Rogers & Hall, 2003). In terms of performance, the basic attributes include accountable, efficient, responsive and sustainable operations (Rogers & Hall, 2003). These basic principles and attributes of effective water governance can then be used to evaluate the system that has been put in place by the Water Act of 2002. The degree of integration of the principles and attributes in the new system will serve as good indicators of whether the system will be able to achieve effective governance or not. But before we come to this vital exercise, let us first look at the system that has been created through the water reform endeavour.

3. National framework for water governance

3.1. Symptoms of poor water governance

The new framework for governance of water services (see Figure 1) has been necessitated by the experience of poor governance in Kenya. The symptoms of poor governance of water services in Kenya have been discussed in many works including: Republic of Kenya (1996), Onjala (2002) and (K'Akumu & Appida, 2006) and as summarized in Table 1.

3.2. Institutions for effective water governance

Water Services Regulatory Board (WSRB): This board is created under section 46 of the Act. Eleven members constitute the board. The minister appoints ten of the members while the president of the Republic of Kenya appoints the chairman. The president of the republic of Kenya obtains power through a popular vote. A chairman appointed by the president of the Republic of Kenya may

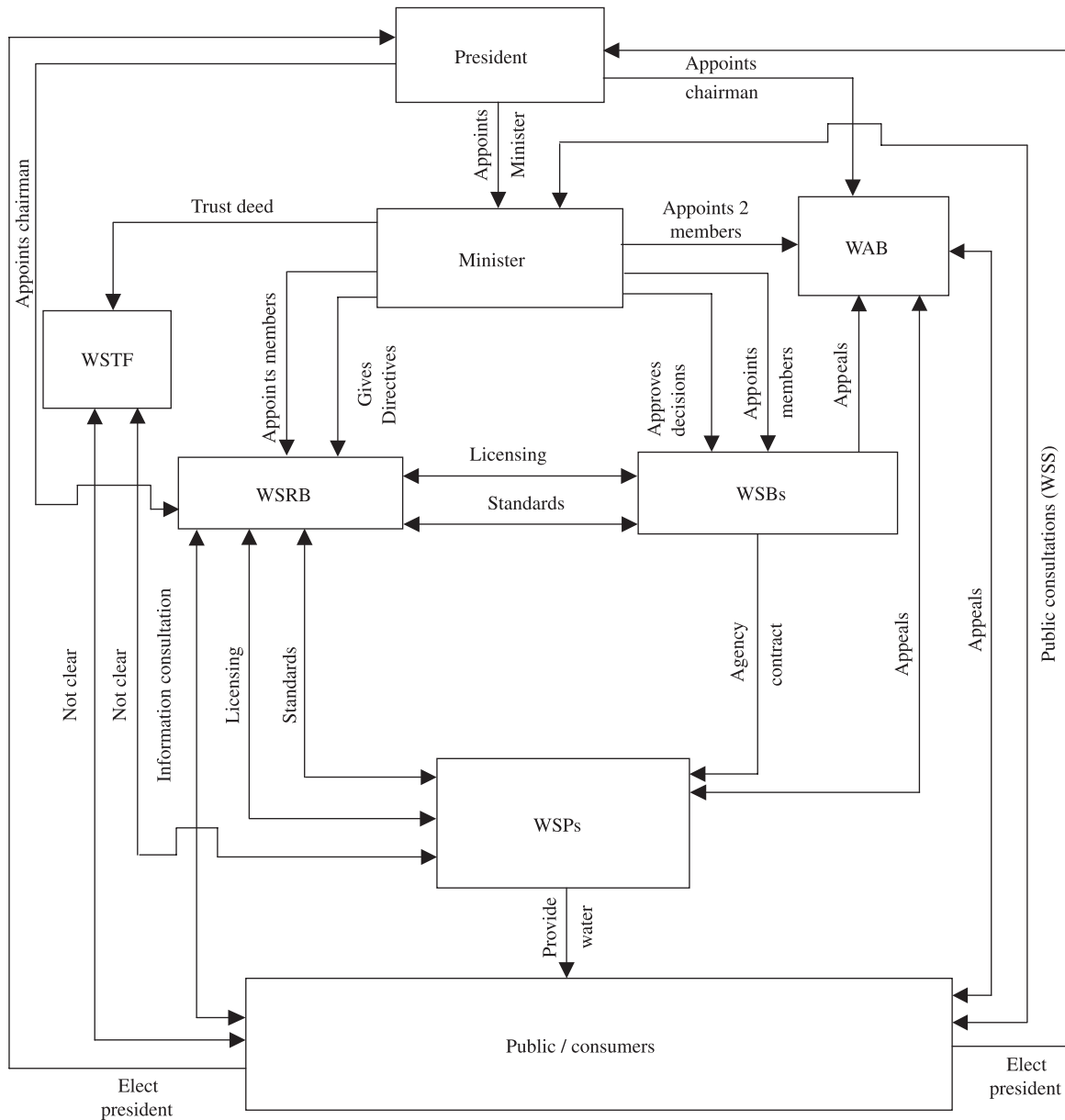


Fig. 1. Institutional framework for good governance of water services in Kenya.

therefore get necessary support or acceptance from the public. The functions of the WSRB includes the following:

- (i) issuance of licences for the provision of water services;
- (ii) determination of standards for the provision of water services to consumers;
- (iii) establishment of procedures for handling complaints made by consumers against licensees;

Table 1. Symptoms of poor governance of water services governance in Kenya.

Symptom	Manifestation	Governance implications
Unaccounted for water	Water loss in many urban areas in Kenya was estimated at 40–70% of water produced compared to 10–20% in developed countries. This loss was attributed to a number of factors—leakages, theft (through illegal connections), and outright collusion between revenue collectors and consumers.	This constituted a general lack of accountability and ethics (exemplified by illegal dealings, corruption and so on) which effective governance is meant to inculcate in the system.
Lack of metering	Most water consumers in Kenyan urban areas who are connected to the network were not metered. According to the Ministry of Water Resources, only 25% of consumers in Nairobi were properly metered and this translated into irregularity in consumer charges as well as loss of revenue that is due to service providers.	In terms of effective governance, metering would be necessary to achieve equity so that each consumer pays an amount commensurate with level of consumption. Metering is also necessary for an open and transparent billing system that is the hallmark of effective governance. Metering makes the system operators and consumers accountable for the billings.
Ineffective collection of water revenue	Poor keeping of water consumer records, coupled with inefficient billing and revenue collection practices contributed to huge losses in terms of revenue. Only about 60% of revenue due on the 50% of the water that reached the consumer on average was actually collected (Republic of Kenya, 2000a). The loss of revenue was responsible for the sustained lack of funds needed to expand service or to maintain the water system.	This is also a mark of lack of financial accountability which would lead to non-sustainability of water services, contrary to the objectives of effective governance. It is also redolent of corruption and lack of ethics in the water management framework.
Uneconomic tariffs	Urban water undertakers charged low tariffs on water provided to consumers. The level of tariffs was not in consonance with the economic cost of providing the service. The tariff policy was a major contributor to financial problems which faced water undertakers in the urban areas. This was mainly because the capital for expansion of the service and also for the maintenance was derived from user charges.	This had implications for the efficiency of service provision. Uneconomic tariffs also have implications for social equity where the rich pay for water at the same rate as the poor but the former derive more benefit from it as a public good. Uneconomic tariffs also mean excluding self-sustainability of services.

Continued

Table 1. (continued)

Symptom	Manifestation	Governance implications
Exclusion of the poor from the service	<p>The poor are usually left out of service either because their geographical location is away from the nearest network or because of apathy shown towards them by the water service providers who view them as commercially unattractive, owing to their low income.</p> <p>However, this is unfair to the poor because they end up buying water from vendors at prices that are higher than if they were connected.</p> <p>This behaviour by water service providers also go counter the norm of social justice as it entails discrimination of a section of the society.</p>	This implies lack of inclusiveness. It is a case of lack of social equity. It also implies non-sustainability especially in the light of the principles of sustainable development.
Excess staff of water service providers	Urban water provision in Kenya is characterized by excess staff ratios. 25–50 employees per 1000 water connections are common (Republic of Kenya, 2000b).	This has implications for efficiency, accountability and sustainability of the system.
Conflict of roles in water management	<p>There used to be no clear definition of roles in urban water management system in Kenya.</p> <p>The Ministry of Water Resources was expected to play the role of a regulator and to leave other players to provide the service. But the Ministry got involved in the provision of the service and there are quite a number of water schemes that are still being run in this format, which has seriously compromised its regulatory role.</p>	<p>This has implications for coherence and integration, openness and transparency.</p> <p>It also challenged the efficiency of the system and jeopardized its sustainability.</p>
Low connection to the municipal sewerage network	<p>Only 28% of urban dwellers were connected to the municipal sewerage system.</p> <p>The other urban dwellers dispose of their wastes through pit latrines, cesspools, septic tanks and streams.</p> <p>This method of waste disposal could lead to contamination of shallow ground water aquifers, which are also a source of water for many urban dwellers.</p>	<p>This compromised social equity and sustainability.</p> <p>It also implied social inefficiency in hydro-environmental management.</p>

Source: Compiled from K'Akumu & Appida (2006).

- (iv) monitoring of compliance with established standards for the design, construction, operation and maintenance of facilities for water services;
- (v) monitoring and regulation of licensees and enforcement of licence conditions;
- (vi) advising licensees about procedures for dealing with complaints from consumers and monitoring the operation of these procedures;
- (vii) development of guidelines for and provision of advice on the cost-effective and efficient management and operation of water services;
- (viii) development of model performance agreements for use between licensees and water service providers;
- (ix) monitoring of the operation of agreements between WSBs and WSPs (Water Services Providers) and taking appropriate action to improve their effectiveness;
- (x) development of guidelines on regulations for the provision of water services to be adopted by licensees;
- (xi) dissemination of information about water services;
- (xii) promotion of water conservation and demand management measures;
- (xiii) monitoring and reassessment of the national water services strategy;
- (xiv) determination of fees, levies, premiums and other charges to be imposed for water services;
- (xv) collection, management and publication of information on water services;
- (xvi) liaison with other bodies for the better regulation and management of water service.

Water Services Board (WSB): The WSB is constituted to replace the existing water providers i.e. the WSDs (Water and Sewerage Departments) and NWCPC (the National Water Conservation and Pipeline Corporation) at various local levels. Each WSB will be licensed by the WSRB to be responsible for the provision of water services. But because provision of services is intended to be on a privatized or commercial basis, the board is expected to contract the responsibility of provision of services to an agent or private water service provider. However, the law still empowers a WSB to own water service facilities and to acquire land for such purposes.

Water Services Trust Fund (WSTF): The Fund is established under section 83 of the Act. Its main objective is to assist in financing the provision of water services to areas of Kenya which are without adequate water services. It will derive funds from three main sources viz:

- (i) parliamentary appropriations
- (ii) donations, grants and bequests from any source
- (iii) statutory contributions.

The Water Appeal Board (WAB): The WAB is established under section 84 of the Act. Its chairman is to be appointed by the President of the Republic of Kenya. The qualification for being appointed chairman is that the appointee must have served as a judge of the High Court of Kenya or is qualified to serve in that position. Two other persons are to be appointed to sit in the WAB by the minister.

WAB may assume High Court powers under sections 10 and 13 of the Commission of Inquiry Act. This is an Act of Parliament that makes provision for inquiry and reporting on matters of public nature (Republic of Kenya, 1981). Section 10 gives WAB powers to summon witnesses and to call for production of books, plans and documents, and to examine witnesses on oath. Section 13 makes a WAB inquiry a judicial proceeding thereby becoming a due process of law.

The functions of WAB will be:

- (i) to hear and determine an appeal by any person having a right or proprietary interest which is directly affected by a decision or order of the minister or the WSRB;
- (ii) to hear and determine disputes;
- (iii) to hear and determine appeals against WSRB's decision on licence applications and objections.

WAB's decision would be final on issues brought before it for determination except in matters of law where a further appeal can be made to the High Court.

3.3. *Networks for effective water governance*

National Water Services Strategy (NWSS): The NWSS Strategy is a very important instrument for public participation. It has to be formulated by the minister through public consultation. Its principal objectives concern supply of water and provision of sewerage. The one objective is to ensure that at any time in Kenya, every area is catered for by a water provider. The other objective is to design a programme to bring about the progressive extension of sewerage to every centre of population in Kenya.

The contents of the strategy must contain:

- (i) details of existing water services;
- (ii) the number and location of persons who are not being provided with basic water supply and basic sewerage;
- (iii) plans for the extension of water services to under-served areas;
- (iv) an investment programme.

In formulating the strategy, the minister will consult with members of the public who are thus given opportunity to articulate their water needs.

National Monitoring and Information System (NMIS): This has to be provided for in the NWSS. It will involve collection and management of data and information regarding water services. The system has to provide procedures for analysis of the data and information and for dissemination of processed information. The law has made provision that the information must be made available to any member of the public who is interested in knowing about the water supply situation in Kenya. In addition to this, the annual report of the WSRB is also to be made available to any member of the public who wishes to know about its activities and its performance in every financial year.

Public consultation: The procedure of consulting the public over water services issues is detailed in section 107 of the Act. The procedure will involve a "designated person" who will undertake the public consultation. The designated person is required to:

- (i) publish a notice in the official Kenya Gazette;
- (ii) publish a notice in at least one national newspaper circulating in the locality to which the application or proposed action relates;
- (iii) publish a notice in at least one Kenyan radio station broadcasting in the locality.

These are effective ways of communicating with the people in general. However, to have greater impact at the local level, copies of the notices should be circulated on notice boards of local public offices and places, e.g. in town hall, public hospital, district offices, markets and so on.

The law specifies that the notice in each case has to:

- (i) set out a summary of the application or proposed action;
- (ii) state the premises at which the details of the application or proposed action may be inspected;
- (iii) invite written comments on or objections to the application or proposed action;
- (iv) specify the person or body to which any such comments are to be submitted;
- (v) specify a date by which any such comments are required to be received.

The designated person would consider:

- (i) any written comments received within specified time period;
- (ii) any comments written, or not, received at any public meeting held in relation to the application or proposed action at which the designated person was represented, or following any invitation to comment.

After the comments received have been considered *vis-à-vis* the application the “designated person” is to publish another notice in the same manner as before regarding the decision reached. The decision must be expressed in writing. The reasons behind it must also be stated and a copy of it must be made available for public inspection.

4. Evaluation of the national governance framework

4.1. Openness and transparency

Effective governance requires that institutions should work in an open manner. Transparency, on the other hand, means that policy decisions are transparent so that both insiders and outsiders can easily follow the steps taken in the policy formulation. Transparency and openness are achieved through free flow of information. Decision makers need good information in order to provide sound, accountable governance, while those who are governed need it to hold decision makers accountable (Bakker, 2003). UN-Habitat (2003) has also noted that improvement in water and sanitation provision, for example, requires good information about the quality and extent of provision.

However, with respect to determination of standards and prices in the Kenyan framework, it is not clear how good governance will be applicable. Will the people themselves decide standards or will the standards be conventional? And if the standards are conventional, is this what the people would opt for? This would take us back to the issues of the old system where standards were not serving the actual needs of consumers. Also the Act does not make provision for how pricing is to be done. It only gives WSRB the powers to determine water prices. Beyond this it does not give directions on how this is to be done. The Act requires WSBs and WSPs to make a price proposal when applying for a licence but this forms the whole story about pricing in the Act. Specific attention should therefore be given to standard setting and pricing procedures.

As we have noted, the minister, through a trust deed, will appoint the members of WSTF. Unlike the WSRB it lacks a system of accountability. This is not tenable for a trust that will receive money from public sources and also receive money from other sources on behalf of the public. Concerning membership, there is no specification for who qualifies to be a trustee of the fund. Here again the minister is given the chance to make personal decisions on who becomes a trustee, which is not in the spirit of good governance. Therefore more participatory approaches and more accountability and transparency needs to be factored in the operation of the fund.

4.2. Inclusiveness and communicativeness

Inclusiveness requires wide participation throughout the policy chain right from conception to implementation. Participation is necessary to make decisions more politically acceptable and to foster accountability (Bakker, 2003). Stakeholders should be able collectively to design and implement policies and management strategies that meet their goals effectively and acceptably (Kooiman, 2000).

In terms of broad stakeholder representation, there is no clear-cut way of ensuring that members of the board are drawn from a representative population of stakeholders in the governance framework. The Act only says that when appointing the board members of WSRB and WSBs, the person making the appointments “shall have regard to the degree to which water users, or water users of particular kinds, are represented on the board”. This is actually a vague statement that does not tell us what degree is desirable or undesirable. For example, in the Kenya Roads Board, constituted under the Roads Board Act of 1999, certain road users and private sector institutions have to nominate three names from which the minister appoints one member to the board (Republic of Kenya, 1999). In this way the minister is not given *carte blanche* for making appointments according to personal preferences.

For WSB, the main criticism that this evaluation levels against it is that although it is meant to inherit public assets, it has no clear-cut public representation. Second, the minister has a free hand in handling the affairs of WSBs. It is for the minister to define WSBs as geographical and legal entities and then appoint its members. The minister can vary the geographical jurisdiction, the membership and qualification for membership. In terms of investment for example, the minister is to approve all the transactions of WSBs, including investments in premises, plant, equipment, facilities and land. Hence WSBs are not conceived in the spirit of good governance. They form the principal renegade institutions in the Act. Therefore more participatory approaches are needed in the establishment and operation of WSBs.

In terms of the networks of governance, NWSS is an all inclusive and participatory exercise that promotes good governance. It is the only system that creates channels of interaction between the minister at the top of the chain and the consumer at the bottom.

NMIS is also an essential channel of communication between the top management of the water services chain and ordinary members of the public who are consumers of water services. NMIS will be instrumental in supplying information about the water services sector. This information will then be useful to stakeholders in making informed decisions about the water service situation in the country. This will promote citizen involvement and participation in the day-to-day activities at the top of the institutions of water services management in Kenya. Information will also help to achieve accountability and transparency which are key elements of good governance. Transparency and accountability will imply elimination of corruption.

The procedures for public consultation will, on the other hand, achieve good governance through inclusive participation. They represent a commendable attempt to involve the public in the water services debates. However emphasis seems to be on written presentations. Non-written comments seem to be neglected, while a good number of people may not be able to debate issues in writing even if they are literate. Verbal communications should therefore be given serious consideration and for that matter a public inquiry is appropriate. The Act allows for this but the minister has to make rules to this effect.

4.3. *Coherence and integration*

Coherence entails a consistent approach within a complex system while integration means that the framework is an internally and externally integrated policy mechanism (Rogers & Hall, 2003). There should be no contradiction or cross-purpose objectives in the pursuit of policy goals, otherwise this would undermine the efficiency of the system. The framework has attained coherence and integration by repealing the Water Act (Republic of Kenya, 1972). It has also repealed sections of the Local Government Act that gave local authorities a mandate as water undertakers (Republic of Kenya, 1986). Sections 111–114 on “Repeals, Savings and Transitional Provisions” have taken care of this.

An aspect of incoherence in the framework concerns the non-integration of WSTF. Also lacking in the whole framework is how WSTF is going to relate to the consumers or the general public, with WSRB, WSBs and WSPs in general (see Figure 1). There is a need to establish networks or links between WSTF and these major players in the water market. It is to be managed by trustees under a trust deed to be drawn up by the minister. The law has not clarified how the trustees are to be chosen. The general public and special water consumers should be consulted and should be given the chance to make their own nominations.

The main drawback of NWSS is that it is not stated how frequently it should be conducted. This again is one of the issues that is left to the discretion of the minister. But once the period has not been stated it becomes less compelling for the minister to undertake the exercise. It would become less compelling to accuse the minister of having failed or omitted to do a duty because there is no timeframe upon which to base such an argument. Second, NWSS is an excellent idea, but there is no compulsion upon the authorities concerned to ensure its implementation as a strategy. Also there are no defined mechanisms for implementation. It is stated that the NWSS must have among other things an investment component. But what happens if this investment is not realized? As things stand, NWSS will be an exercise in vain.

4.4. *Equity and ethics*

An effective governance framework should ensure equity between and among all interest groups, stakeholders and consumer-voters. Penalties for malfeasance should be equitably applied. The framework should also function within ethical limits as defined by the rule of law. It must recognize issues of justice and property rights for use, access and ownership of water.

Within the institutions of governance, the WSRB is also given power to prosecute offenders under the Act. In general, it will be a public watchdog in the water sector responsible for overseeing application of the legal obligations of the framework. For WSTF, K'Akumu (2004) has indicated that the fund has a social responsibility to bring about equity in the provision of water services in Kenya. It can be used to finance water services especially for the poor under a privatized system. Apart from the exchequer and

other statutory sources, it stands a good chance of sourcing financing from other development partners for this purpose. WAB, on the other hand, functions as the judicial system of the water sector where rights and interests are to be protected, fairness and equity is to be guaranteed, conflicts are to be resolved and justice is ensured. Justice is a very important aspect of good governance.

4.5. Accountability

Decision makers must be accountable to the public as well as to institutional stakeholders. How does the new framework ensure accountability especially to the public? In terms of public accountability, the minister has an undue influence in the whole business of the WSBs. It is the minister who names the board and defines its area of jurisdiction. It is also within the powers of the minister to specify the number of members to be appointed to each board and their respective qualifications. Lastly, it is again the same minister who appoints these members. The law does not require the minister to consult at local or any other level when dealing with the issues of the WSBs. This is tantamount to imposing an elitist/remote institution to manage a basic resource at the local level. For this matter, the former was a more representative institution than the new framework.

The WSB in this case represents an unacceptable situation where the new law that was intended to promote participatory management practice demotes the same. In the first instance, it replaces a local authority, which is constituted by local vote, by an imposed management institution that is handpicked by the minister. Its board will only be responsible to the minister and the WSB has no direct communication channels with the consumers. The institutions that will have direct relationship with consumers are the agents or WSPs to whom it is expected to contract its obligations.

Another aspect of a WSB that is questionable in terms of public accountability is its relationship with WSRB. It is notable that the minister appoints members of both institutions. The same minister also directs the functions of both institutions. So what is the point of a WSB applying for a licence from the WSRB and subjecting the public to an elaborate process when it is obvious that the mother institution, the ministry, has the ability to influence the outcome. Overall, the process seems to be one sided and justice will not be seen to be done.

For WSTF, financial accountability is seriously lacking. The law gives no directions about how the trustees will account for the monies they are allowed to receive and spend. The accounting process should allow for any member of the general public to have access to the audit report and to raise queries where need be.

The networks for governance, on the other hand, promote public and social accountability, as discussed above under *Inclusiveness and integration*.

4.6. Efficiency

Efficiency is mainly considered in economic terms but also includes social, political and environmental terms. Governance mechanisms should function optimally and be able to deliver at the least marginal cost. The system itself should not impede efficient decision making and actions. According to UN-Habitat (2003), governance must strive for economic viability or cost effectiveness that entails delivering good value service at an affordable price while also ensuring that revenues are sufficient to fund system management and expansion.

The new framework promotes demand-based water management that would lead to sustainable utilization of water as a natural resource. Which is one of the key objectives of effective water governance. Last, although WSRB is intended to be autonomous, the minister is privileged to give it directives and hence the board will not be independent. This should not be the case and there is an urgent need to address this situation. The WSRB does not have a free hand in water management. The minister in charge of water limits its powers to the extent that the latter is empowered to give it directions.

In terms of conflict resolution, the framework has shortened the legal process by creating a sectoral arbitrating institution in the name of WAB. This eliminates the need to go to court for dispute resolution. WAB's decisions are final except for a matter of law that may be subject to appeal in the High Court. Lastly, the procedure for public consultation, although imperative, may result in delay in decision making through its elaborate nature.

4.7. Responsiveness and sustainability

As we have seen, WSRB will be charged with the issuance and enforcement of licences, establishment of standards, dealing with complaints, collection and dissemination of information, water management and conservation—especially demand based management and water pricing. With respect to complaints, the WSRB will be instrumental in ensuring that water providers or their masters address consumer complaints. Complaints are a critical aspect of consumer participation in water services management. However, the sustainability of the framework is subject to question. Particularly, the legal, social, economic and commercial dimensions are lacking in sustainability attributes (K' Akumu, 2006).

5. Conclusions and recommendations

This paper intended to evaluate reforms in the water sector in Kenya as spelt out in the legal-policy framework of the Water Act of 2002. The focus has specifically been on the principles of good governance that the framework intended to entrench in the management of water services in the country. Good governance is actually appropriate for efficient management of the water sector. Therefore the thinking behind its introduction and the effort to introduce it are both commendable.

Generally, the legal-policy framework has created commendable policy institutions and networks for good governance of water services in Kenya. This is especially true when it comes to the creation of public interest institutions, conflict resolution institutions and procedures and participatory systems. To start with, the new system is able to address the symptoms in [Table 1](#). The new framework can easily address issues like accountability and ethics, efficiency, setting tariffs, service provision to the poor and unambiguous management system. This is due to the good score that the new governance framework has attained in this evaluation. Through the NWSS, it has created an inclusive and participatory system that would go a long way to promote effective governance. NMIS will also be responsible for supplying public information that would promote citizen involvement, promote transparency and accountability and hence eliminate corruption. Public consultation will also involve public engagement in water management decisions.

The repeal clauses, on the other hand, have made the framework coherent, and in essence the whole Act creates a one-stop-shop for water policy decisions. Generally, the creation of a regulatory body, the WSRB, will ensure enforcement of ethics, while WSTF will ensure social equity. WAB on the other hand will uphold both equity and ethics. WAB will also lessen the legal and time costs in the pursuit of justice, as it has shortened the litigation process by functioning as a sectoral arbitration institution with a mandate to deal with technical matters with finality; only legal issues can be the subject of appeal to the High Court.

However, there are cases where the policy instruments could be fine tuned in order to enhance good governance of water services. These arise, in part, from lack of clarity regarding the fixing of tariffs and setting of standards. Stakeholder inclusion is not assured in the appointment of board members to the WSRB and WSB. There is also lack of public representation in WSBs and the disturbing situation where the minister is in full control of the WSBs. This implies lack of public accountability both on part of the minister when dealing with a WSB and on the part of the WSB when dealing with public issues. The WSB stands out as a renegade institution with the worst type of undemocratic structure, composition and operation. There is also a conflict of interest when the minister is responsible for appointing and overseeing the operations of both boards while one (WSRB) is supposed to oversee the others. The lack of provision for financial accountability of the WSTF is also untenable.

Given the scenario in the foregoing discussion, the following recommendations can therefore be made:

- (i) Specific attention should be given to standard setting and pricing procedures in the Act;
- (ii) More participatory approaches and more accountability and transparency need to be factored in the operation of the WSTF;
- (iii) The Act should adopt the procedures used in the Kenya Roads Board Act in appointing board members;
- (iv) The Act should include more participatory approaches in the establishment and operation of WSBs;
- (v) The minister should make rules for consideration of verbal communications at a public inquiry;
- (vi) The law should clarify the process of appointment of trustees to WSTF and public and water consumers should be given a say;
- (vii) The law should also provide a suitable financial accountability framework for WSTF;
- (viii) The law should be emphatic on implementation of the Investment Plan of the NWSS;
- (ix) The minister should not be in control of the two-tier boards; specifically the minister should not give directives to the WSRB, instead the later should function as an independent regulator.

If these recommendations are duly implemented, Kenya will be able to boast an effective governance framework for water services that would serve as an example for other reform prone countries.

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