



UNIVERSITY OF NAIROBI

**THE CONTRIBUTION OF INSTITUTIONAL GOVERNANCE TO WATER SERVICES
DELIVERY IN KENYA**

JAMES ORIGA OTIENO

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**A thesis submitted in partial fulfilment of the requirements for the award of the Degree of
Doctor of Philosophy in Public Policy at the Department of Political Science and Public
Administration of the University of Nairobi**

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DECLARATION

This thesis is my original work. I also affirm that to the best of my knowledge; this has not been presented for a degree in any other university.

Name: JAMES ORIGA OTIENO

Registration Number: C80/57370/2020



24th July 2024

Signature: Date:

This thesis is submitted for examination with our approval and knowledge as university supervisors:

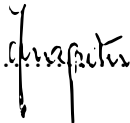
SUPERVISORS

Dr. Joseph Okeyo Obosi, PhD



Signature: Date: 25-07-2024

Dr. Justine Mokeira Magutu



Signature: Date: 24-7-2024

DEDICATION

I dedicate this thesis to my uncle James Ondigo. Thank you so much for the many sacrifices you have made and your guidance over the past 30 years since both of our parents passed away. Your commitment to ensuring that my siblings and I received an education and thus have a better chance at quality life is what has enabled me to come this far. For that, I am eternally grateful.

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ABSTRACT

This study explored why water service delivery in Kenya continues to face significant challenges, despite multiple governance reforms efforts to address these challenges. The overall objective was to establish how the current institutional governance structure has affected water service delivery with a particular focus on the effects of intergovernmental functional assignment, intergovernmental coordination, and institutional autonomy of water service providers on water services delivery. To realize these objectives, qualitative data was collected to understand this phenomenon from the perspective of policy actors from both levels of government. Semi-structured interviews were conducted with a total of 37 respondents including individuals and organizations involved in water services delivery at the national and county government levels, representatives from non-governmental organizations, as well as community-level representatives.

The findings of the study show that contestations over the legitimacy of intergovernmental functional assignment for water services delivery has led to persistent disputes over perceived encroachment of the national government into county government's functional mandates in water services delivery; weaknesses in the mechanisms for intergovernmental coordination and limited autonomy of water service providers (WSPs) from political interference and capture. These governance challenges have impacted water services delivery in various ways including inefficiency in the deployment of resources, as both levels of government deliver water services in parallel rather than in a coordinated manner, resulting in duplication of efforts and waste of resources; delays in enacting critical policies as the two levels of government contest overlapping mandates and pursue conflicting policy objectives; accountability gap to citizens as both levels of government shift blame to each other for unmet water service needs, and weak and financially unsustainable WSPs dependent on county subsidies rather than operating as commercially independent state-owned agencies.

This study concludes that that policy leaders at both the national and county levels of government in Kenya involved in water services delivery have failed to harness the strengths of polycentric diversity to accelerate the progress towards achieving universal access to affordable, equitable, and sustainable water services delivery.

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CHAPTER ONE

INTRODUCTION

1.0 Background to the study

Governance is the capacity of a government to exercise its political, legal, and administrative authority through various instruments and institutions to provide public services and to enable expression of rights and for collective decision-making in a participatory and accountable manner (United Nations Development Program (UNDP, 1997). These instruments and institutions assign roles, define relationships, constrain the exercise of power, and mediate access to various resources and services. The institutional arrangements in place in a country significantly influence the outcomes of water governance (Hassenforder & Barone, 2019). Worldwide, diverse institutional governance arrangements have been implemented for water services delivery with mixed results.

In Latin America and the Caribbean, the predominant focus of institutional arrangements for water services has been on the promotion of decentralization and private sector participation (Castro, 2008). This has been further reinforced by institutional reforms aimed at the separation of policy and strategy formulation, service delivery, and regulation functions within the water sector, with these responsibilities being assigned to distinct institutions at various levels of government. The involvement of the private sector in water services has taken various forms and has resulted in a range of outcomes. For instance, in countries like Chile and Colombia, there have been improvements in infrastructure and operational efficiency. However, in other countries such as Bolivia and Argentina, significant challenges have been encountered, including substantial increases in water tariffs and disagreements over performance, ultimately leading to the reversal of service provision to the public sector. Furthermore, ideological conflicts, weak coordination mechanisms, and inadequate multilevel water planning within governance decentralization have impeded the achievement of specified water service access targets in countries like Argentina, Bolivia, Ecuador, and Peru (Akhmouch, 2012).

In Asia and the Middle East, water sector institutional governance has encompassed a wide range of models, from highly centralized to highly fragmented (Lowi, 1999), including central planning models, integrated municipal services, corporatization, and clustering of water utilities into national or regional state-owned enterprises. However, these reforms have not fully achieved the

intended governance outcomes, with many water service providers still unable to deliver continuous piped water supply, especially to the poorest, due to lack of financing for infrastructure, inability to raise revenues from water tariffs, and insufficient water production. The institutional governance structures for water services management in European countries has largely been driven by the joint Water Framework Directive. While the framework has improved transboundary water governance, it has struggled to manage tensions between governance harmonization between countries and local differentiation in water supply service (Moss et al., 2020).

Efforts to corporatize and commercialize water utilities, mobilize private sector-led service models, decentralize service delivery, and support community-based approaches to water governance continue to dominate water sector governance in Africa. While several African countries have experimented with decentralized governance models for water service delivery, most countries continue to entrust the national government with responsibility for water service provision throughout the country, either through government-owned utilities or through contracted private operators. Approximately 40% of countries have subnational governments, either local governments or municipalities, responsible for water provision (Akhmouch, 2012). Some western African countries, including Senegal and the Ivory Coast, have reported success in implementing alternative private sector-led service delivery models. Contracting out the operation of small towns and rural water systems to civil society organizations, aided by a government technical unit, has resulted in improved governance in Mali. The community-led model, prevalent in rural water access across many African nations, suffers from a lack of formal recognition and institutional backing. This often results in infrastructure that does not function properly and poor financial sustainability, as noted by Whaley & Cleaver (2017).

In Kenya, the existing institutional framework in place to guide water service delivery is defined by the Water Act of 2016, which has evolved through various amendments to previous water laws enacted since Kenya's independence in 1963.

1.1 Statement of the Research Problem

Water services delivery in Kenya has faced several challenges since independence. As of 2002, only about 60% of urban and 40% of rural inhabitants had access to safe drinking water, with the remainder dependent on unimproved sources or paying exorbitant rates—5 to 10 times higher—to informal vendors (Government of Kenya, 2004). The country's water infrastructure, majority

aged between 20 to 50 years at the time, was in decline due to inadequate maintenance, resulting in 40-70% of water being unaccounted for and a drastic decrease in urban per capita water consumption to nearly a third of the levels recorded in the 1960s by the year 2000 (Government of Kenya, 2004). Furthermore, about 35% of rural water projects were non-functional, representing significant unproductive investments and forcing households without piped connections to spend more than an hour to access water from alternative sources (Government of Kenya, 2004).

In response to these challenges, the Government initiated governance reforms, with the most significant being the adoption of the Water Act of 2002. This legislation brought about pivotal institutional restructuring, delineating policy, regulatory, and service provision roles, and establishing new water utilities (GoK, 2002). The reforms aimed to boost efficiency, escalate investment, and enhance access by commercializing water services while maintaining public ownership. The Water Act of 2002 also established regional Water Service Boards for infrastructure development, a national regulatory authority for water supply and sewerage services, and a separate entity for water resources management. The promulgation of a new Constitution in 2010 led to the devolution of water services to county governments, necessitating additional reforms. Subsequently, the Water Act of 2016 was enacted to align the sector with the decentralized governance system, based on the premise that localizing service provision would enhance delivery (Government of Kenya, 2016).

Despite the reforms, the water service delivery in Kenya continues to face several governance challenges. While the access rates to water services increased mostly in rural areas from 40% in 2002 to 54% in 2011 following the 2002 reforms, the sector recorded a declining overall access rate in the years following adoption of the devolved institutional framework (WASREB, 2014). Public expenditure on water services has remained constant at around 2.9% of total government expenditure between 2014 and 2020 (World Bank, 2023). Furthermore, Public water utilities still serve less than half the population, compared to an 80% urban target and operate inefficiently with high losses of about 45-50% (Water Sector Regulatory Board (WASREB, 2023).

Persistent contestation and conflicts between the two levels of government on ownership and liability for water supply infrastructure, on responsibilities for setting of water tariffs and negative political interference in the governance of WSPs has dominated the sector, as well as conflicts between WSPs and community-based water supply systems regarding the ownership and management of community-based water supply systems (WASREB), 2023). Given this context, this study investigated how the institutional governance challenges has contributed to the state of water service delivery in Kenya.

1.2 Research Objectives

The overall objective of this study was to establish how the existing institutional structure in Kenya has affected water service delivery.

The above objective was achieved through the following three specific objectives:

- i) To examine the effects of water sector intergovernmental functional assignment within the current institutional structure on water service delivery
- ii) To investigate the effect of water sector intergovernmental institutional coordination on water services delivery in Kenya
- iii) To examine the effect of institutional autonomy of county-owned water service providers (WSPs) on water service delivery.

1.3 Research Questions

The specific research questions are as follows:

- i. How has the water sector intergovernmental functional assignment within the current institutional structure in Kenya has affected service delivery?
- ii. How has water sector intergovernmental institutional coordination in Kenya affected water service delivery?
- iii. How autonomous are county-owned water service providers (WSPs) from the county government, and how does this affect water service delivery?

1.4 Significance and justification of the Study

This section demonstrates the relevance of this study to both academic discourse and public policy making processes. It articulates the specific gaps in current literature and the main contributions this study makes to scholarly knowledge and evidence that can inform policy decisions.

1.4.1 Academic Justification

Existing scholarship has demonstrated that how the institutional structure is designed has an influence on public service provision (Spiller & Tommasi, 2003). However, the existing evidence on the specific causal mechanisms linking institutional forms to service delivery outcomes is limited in these literatures. This research addresses this gap by providing a granular empirical account of how institutional form using the case of Kenya's water sector impact service delivery thereby contributing to a more robust understanding of these causal pathways. Furthermore, the existing scholarly works on multilevel governance regimes have insufficiently explored the political contestation inherent in negotiating multilevel governance outcomes (Morison et al, 2019). This study addresses this weakness by illuminating the power struggles and political economy dynamics that shape water governance in Kenya, offering a more nuanced empirical account of how power relations and the perception of power influences governance behaviors in practice. Multilevel governance theories have been criticized for not adequately addressing uneven power dynamics and the potential for elite capture (Morison et al, 2019). This study contributes to this limitation by examining how power imbalances between different actors can undermine the promise of institutional polycentricism in improving governance outcomes, thereby enriching our theoretical understanding of these complex multilevel systems. Moreover, scholarship has established that institutional governance at a broader level has a more significant influence on improving water service delivery performance than ownership structure (Beecher, 2013). For instance, institutional governance reforms such as commercialization aimed at removing political influence from water service delivery and decentralization aimed at increasing citizen participation and political accountability in water governance have tended to be contradictory (Herrera & Post, 2014). Such scholarship tend to often make simplistic assumptions about the benefits of decentralization for local service delivery. This study addresses this weakness by providing empirical evidence on the complex interplay between commercialization and decentralization as institutional forms, offering a more comprehensive understanding of their combined effects on water service delivery.

1.4.2 Policy and practice Justifications

The findings are expected to provide critical evidence for reforming Kenya's water sector policy and current institutional structure for delivering public water services, as well as for informing generic institutional structures for delivering public services in decentralized environments similar to Kenya. Policymakers at key government institutions, particularly ministries responsible for water services and devolution implementation; the Council of County Governors (CoG); and the IGRTC (IGRTC), all of which share responsibility for ensuring effective and coordinated institutional arrangements for delivering water services and other critical public services in general, will find the empirical evidence generated by this study useful in addressing some of the outstanding policy issues.

The policy implications of this study are critical because, while the counties' water service delivery functions are constitutionally assigned and protected, and thus de jure immune from national government control, the government at national level maintains control over important policy decisions that influence the execution of duties at the county level. Ensuring that sectoral policies and institutional structures are aligned with proper incentives for all involved parties is vital for the efficient and sustainable provision of water services. This study's empirical findings on how authoritative policy decision-making and intergovernmental coordination are implemented in practice, and how actors at all levels of government can persuade and incentivize each other to mutually adjust in beneficial ways, are critical for championing collaborative policy development and implementation, as envisioned in the Constitution.

1.5 Scope and Limitations of the study

The scope of the research is limited to an exploration of the institutional arrangements governing the delivery of water supply services in Kenya. The focus was on national-level institutions charged with the responsibility of ensuring water service provision, including the Ministry of Water, WASREB, the CoG, and the IGTRC; Regional-level institutions, particularly the Water Works Development Agencies (WWDAs); and County-level institutions, including county departments of water and water service providers. While the water sector in Kenya is broad including water supply and sanitation services, water resources management and irrigation waters management, the limits of the analysis in this research is on the water supply and sanitation services delivery sub-sector. While a variety of factors influence decentralized public service

delivery, including intergovernmental fiscal arrangements and public participation in service delivery, the scope of this study is limited to an examination of intergovernmental institutional arrangements for service delivery as a critical factor shaping actors' behaviors, providing incentives, and constraining choices. The study's scope is limited to the Kenya case study, covering both the national and county tiers of government, with a special focus on the period starting from August 2013, coinciding with the commencement of Kenya's devolved governance system.

1.6 Structure of the thesis

The thesis is structured around seven chapters. Chapter 1, Introduction, delineates the research problem addressed by the study and outlines its objectives and research questions. The chapter commences with a background narrative on the key concepts pertaining to the influence of institutional governance on public services delivery. It also delineates the prevailing trends in water services delivery in Kenya, highlights disparities between observed trends and normative expectations, articulates the primary issues addressed by the thesis, specifies the research objectives, and concludes with a discussion of the study's significance and limitations.

Chapter 2 constitutes the literature review, which examines how other scholars have addressed the overarching research question concerning the impact of institutional structures on public services delivery. Furthermore, it establishes the theoretical and conceptual framework guiding the study's empirical approach and identifies the gaps in the literature that this study addresses.

Chapter 3 describes and justifies the research methodology applied, encompassing the sampling strategy, data collection, processing, and analysis.

Chapter 4 analyzes the allocation of water services functions within the current institutional structure and its impact on water service delivery in Kenya. Chapter 5 examines the effects of intergovernmental coordination on water services delivery. Chapter 6 delves into the nature and extent of institutional autonomy of county-owned water service providers (WSPs) from the parent county government and its implications for water service delivery. Chapter 7 provides a summary of the findings, conclusions, and recommendations

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter provides a comprehensive review of existing scholarly literature concerning the correlation between institutional structures and public service delivery systems, with a specific focus on water services delivery. The chapter is structured into six sections. Section 2.1 introduces the concepts of public service delivery and institutional structures, emphasizing the influence of institutional structures on public service delivery and introducing key concepts related to water services delivery. Section 2.2 conducts a review of the theoretical and empirical literature, examining the nature of the relationship between institutional structures and water service delivery in the context of the three specific objectives of this study: assignment of functions and intergovernmental power dynamics in multilevel government institutional systems and their impact on service delivery, intergovernmental institutional coordination and its effect on water service delivery, and the autonomy of public water service provider organizations and their influence on service delivery. Section 2.3 identifies the specific gaps in the literature that this study addresses within the scholarly field. Section 2.4 outlines the research hypotheses to be empirically tested in the study. Sections 2.5 and 2.6 present the theoretical and conceptual frameworks guiding the empirical approach used to address the study's research questions. Finally, Section 2.7 provides definitions of the key variables applied in the study.

2.1 Institutional structures and public services delivery

Enhancing public service delivery is crucial for achieving the global sustainable development goals (SDGs) and bolstering the state's legitimacy in the eyes of its citizens (United Nations, 2015). However, in most countries, deficiencies in sector governance and institutional structures hinder the attainment of public service delivery objectives (World Bank, 2003). Franco & Rice (2007) define public service delivery as the process of converting government policies into actual services that citizens consume. Spicker (2009) identifies four characteristics that characterize public services: They are delivered to serve specific policy goals set by the government to meet the needs and welfare of the public; They are designed to provide services that are too expensive for individuals to obtain on their own and have positive externalities for the public at large; They have a redistributive function to address inequality and advance social justice; They are not motivated

by profit, but by a sense of public duty and responsibility in accordance with the social contract between the state and its citizens.

Various scholars have discussed different theoretical models of public service delivery, each with its own advantages and disadvantages. The dominant debate in theory and policy practice regarding the delivery of public services has centered on whether adopting the New Public Management (NPM) model or the traditional Weberian bureaucratic model will produce better service delivery outcomes for citizens. According to Osborne et al. (2012), NPM emphasizes results orientation and holding managers accountable for those results, whereas the traditional bureaucratic model emphasizes adherence to standardized rules and procedures. In the NPM approach, managers are given greater autonomy and latitude to be entrepreneurial in the delivery of public service results, whereas in the bureaucratic model, managers are more constrained by standardized government rules and procedures for the delivery of public services. De Arajo (2001) asserts that NPM promotes flexible organizations, personnel, employment terms, and emphasizes the use of market mechanisms, such as outsourcing to private providers, thereby challenging the traditional bureaucratic model, which tends to adhere to more controlled hierarchical approvals and standardized work packages service delivery procedures.

The social accountability concept, as introduced in the World Development Report (WDR) of 2004, has significantly influenced the dynamics of citizen-state interactions in the context of public service delivery, aligning with the emerging new public governance paradigm (World Bank, 2004). This new public governance theory, a recent addition to existing theories of public service delivery, emphasizes an inter-organizational, multi-stakeholder, and multi-governance approach to service delivery. It promotes accountability through collaborative decision-making processes and recognizes the cooperation among different stakeholders at various levels of governance as essential for effectively addressing the complexities associated with service delivery. According to the social accountability framework, citizens express their demand and preferences for priority public services, to which states respond by aggregating these demands and entering into contracts with specific service providers for the selected services. Additionally, the framework asserts that citizens influence service delivery processes by exercising client power directly with the government-designated service provider.

Becher (2013) demonstrated that strategies aimed at enhancing public service delivery, which prioritize external enabling institutional structures, yield more effective outcomes compared to approaches focusing solely on internal organizational reforms. This is attributed to the fact that the existing institutional arrangements define the nature and extent of accountability relationships within the service delivery chain. Consequently, the government's ability to establish an appropriate institutional structure for governing public services is of paramount importance. Institutional structures encompass the organizational processes, inter-governmental arrangements, laws, regulations, and administrative frameworks within which public services are administered (Franco & Rice, 2007). These structures delineate the roles and responsibilities of various government actors at different levels, decision-making processes, and the allocation of power and resources for public service delivery.

Pahl-Wostl (2015) asserts that the institutional arrangement constitutes the primary structural feature of a water governance regime. She identifies four key structural elements of the institutional arrangement that exert the most significant influence on the performance of water services delivery systems. These elements include the interactions between formal and informal institutions and the resultant institutional bricolage, power structures among actors with a focus on service delivery responsibilities, interactions between actors, and the governance mode adopted, whether hierarchical, market-based, or network-based logics. Additionally, she emphasizes the importance of multilevel interactions across jurisdictional boundaries.

The concept of polycentricism in the design of institutional structures for the governance of water has been extensively discussed in water governance literature (Thiel et al., 2019). Based on its three key configuring elements of the existence of multiple policy making centers, operating an overarching institutional framework that creates the connectedness between these centers and the mutual adjustment of these actors in different ways in response to one another either through competition or coordination, polycentric institutional arrangements influence service delivery outcomes in two ways (Aligicia & Tarko, 2012). On one hand, these centers, depending on the governance configuration, can compete with each other for resources, they may have overlapped and sometimes conflicting functional assignment and jurisdictions and may be interdependent without being acting in a manner tandem to the interdependence.

This can create competition leading to policy entrepreneurship and innovations in service delivery as decision centers strive to attract and serve their constituents effectively and secure more political mileage. Conversely, competition for resources and persistent jostling and fights over roles and responsibilities between the policy centers could cripple service delivery if not addressed. On the other hand, these centers also engage in mutual adjustment and coordination taking each other into account and engage in processes such as establishing compacts and developing partnerships for service delivery leading to more effective and responsive service delivery outcomes (Aligicia & Tarko, 2012).

2.2 The influence of institutional structures on water services delivery

The following three subsections reviews existing literature on the three key variables of the institutional structures for water services delivery that are being investigated in this thesis: intergovernmental assignment of functions, intergovernmental institutional coordination, and institutional autonomy of state-owned water services providers.

2.2.1 Institutional structures and Functional assignment for water service delivery

The existing body of research on the impact of institutional governance on water service outcomes has underscored the significance of networked governance beyond government-led approaches, the involvement of diverse actors in decision-making processes through integrated resource governance, and the embedding of local level institutions within larger governing structures (Pahl-Wostl, 2015). The rationale for emphasizing governance beyond government and integration is that adopting a more comprehensive perspective that prioritizes system-wide outcomes rather than narrow views focusing solely on an individual actor's immediate boundary creates a more conducive environment for achieving desired water sector outcomes (Ostrom, 2010).

North's (1990) theory of institutions posits that institutions reduce uncertainty in complex, unpredictable contexts, thereby fostering the development of trust and reciprocal norms necessary for collective action. Ostrom (2010) further asserted that the nesting of smaller scale institutions within a larger scale overarching institutional framework is a critical design element of robust institutions, as it defines an overarching institutional system of rules as the collection of regulations, standards, and guidelines that govern the interaction of actors in a particular policy area, encompassing both formal and informal norms and values.

Numerous scholars have highlighted the need for nesting decentralized lower-level institutions inside an overall institutional system of rules that outlines how responsibilities, authority, and autonomy are shared and exercised across jurisdictions while also offering mechanisms for dispute resolution (Lankford & Hepworth, 2010).

Numerous studies on institutional governance have highlighted the tensions between the need to maintain order through centralized hierarchy and the necessity to allocate jurisdictional competencies based on the locality of a policy issue. The structure and nature of the overarching institutional system of rules play a critical role in addressing this tension. However, there is conflicting evidence from different countries regarding the success of the existing overall institutional framework in managing these tensions to produce positive outcomes in water services. For instance, Meinzen-Dick (2007) observed that in Chile, the existing centralized institutions constrained the operations of regional water agencies at the local government level, leading to inadequate infrastructure investment overall and particularly in rural areas. Conversely, Reeve (2003) identified positive relationships between water management outcomes and the effectiveness of existing overarching institutional norms in Australia, where the set of rules empowered regional and local organizations to determine implementation choices, as long as these choices did not adversely affect individuals outside the groups' jurisdiction.

Likewise, van den Brandeler et al. (2019) observed that the lack of a comprehensive set of rules outlining the interaction between local governments and higher-level government entities led to inadequate communication and coordination between subnational municipalities and the federal level, resulting in notable discrepancies in water access levels. Marshall (2007) analyzed local irrigation water usage structures and concluded that enduring conflicts related to water usage primarily arise from central governments imposing strict and confining conditions on the utilization of decentralized water management rights, thereby limiting the discretion of local-level actors over their designated competencies. In a similar vein, Frimpong Boamah (2018) contends that deficiencies in the overarching institutional framework resulted in a scenario where federal and state agencies implemented a top-down approach in the Middle Rio Grande urban watershed as distinct entities, effectively marginalizing less influential actors from influencing system outcomes.

Additionally, Montenegro & Hack (2020) identified that the most critical challenges in water policy implementation in Nicaragua stemmed from a failure to adhere to the comprehensive regulatory and policy framework and collective action decision-making rules, both of which have historically been linked to centralized power and authority.

In contrast, Stoa (2014) observed that, despite being relatively in the formative years of implementing decentralized water service delivery, Rwanda is achieving its objectives, owing in large part to a powerful and carefully coordinated overall institutional regime with clear mandates and enforced interactions among all pertinent participants. The existing body of scholarship examining the nature and influence of contemporary institutional arrangements on multilevel water governance has largely focused on outcomes related to water resource allocation, with few studies focusing on the delivery of water supply services. The extent to which the existing overarching institutional system of rules between national and subnational government levels affects the quality of water supply service delivery in decentralized government systems remains minimally explored. Additionally, there is a dearth of research examining the broader dynamics of the connections between national and sub-regional jurisdictional mandates and their impact on performance indicators for water service providers.

2.2.2 Intergovernmental institutional coordination in water services delivery

By the beginning of the new millennium, nearly 95% of countries had introduced various forms of multilevel decentralization reforms with the aim of enhancing the provision of public services (World Bank in 1999). Cook (2014) and Molina-Garzón et al., (2021) have emphasized that the institutional arrangements used to implement decentralization is a critical factor influencing their outcomes. They argue that institutional frameworks can result in increased bureaucratic burdens, high transaction costs, fragmentation, and increased conflict over functional competences and jurisdictional roles, all of which contribute to an atmosphere hostile to the decentralization goals. According to Molina-Garzón et al., (2021) these threats can be minimized to a degree if institutions are built in such a way that incentives for more coordination and accountability are in place.

Zelli and van Asselt (2013) posit that institutional fragmentation may not necessarily yield negative implications in governance if trust can be cultivated across multiple institutions through concerted efforts and cooperative behaviors.

Wang et al. (2017) conducted an examination of the root causes of water management conflicts in China and discovered that a lack of coordination among stakeholders, arising from intricate inter-jurisdictional connections, exacerbated conflicts despite substantial investments in technical solutions. In contrast, Hurlbert and Diaz (2013) conducted a comparative analysis of institutional coordination in multilevel governance systems in Canada and China, concluding that coordination breakdowns resulted from ambiguity in functional mandates. According to Jia et al. (2020) weaknesses in coordination in China's urban water governance led to lack of accountability, inconsistent strategies for securing water sources, and increased water supply costs. They noted that regular and specialized meetings of government officials, as well as the establishment of a coordinating body to consolidate responsibilities dispersed across jurisdictions, proved beneficial in addressing the gaps in coordination.

Bakker and Cook (2011) conducted an extensive analysis of the distribution of authority within Canadian water governance, finding that the process of reaching agreement on policy objectives was protracted due to deficiencies in coordination mechanisms. They also observed that the complexity arising from conflicting organizational mandates requiring compromise significantly impacted coordination and, consequently, collective water management outcomes. In a similar vein, Mobarak Mushfiq and Lipscomb (2009) assessed the impact of interjurisdictional coordination on river water pollution and observed that negotiations conducted by collectively coordinated basin committees resulted in a greater reduction in pollution compared to individual efforts. Cook (2014) showed that the existence of overarching rules facilitating coordination and ensuring alignment of responsibilities with the capacity for action and integration across management levels had the most significant impact on water quality and access outcomes in several Canadian provinces. Similarly, Cook further illustrated how collaboration is utilized to enhance governance in networks where problem-solving capacity is dispersed and few organizations can independently complete their tasks. They emphasized the development of local collaborative organizations as a crucial element in achieving coordination, serving as neutral conveners, accelerators for action, conduits for information sharing, and advocates for their members.

While existing literature has illustrated the adverse effects of a lack of effective coordination framework in government systems characterized by institutional fragmentation, further exploration is needed to understand the specific aspects of decentralization, constitutionally protected institutional autonomy, and the efficacy of overarching institutions in enforcing sanctions against deviation from expected norms on coordination. This study aims to delve deeper into the underlying factors of these variables and provide empirical evidence demonstrating their direct impact on the quality of water service provision.

2.2.3 The autonomy of water service providers

The global trend towards establishing autonomous commercially operated water service providers is largely driven by New Public Management (NPM) theories, which emphasize the importance of enterprise autonomy for performance outcomes (Osborne et al. (2012). According to Beecher (2013), institutional governance reforms, including those defining the appropriate level of autonomy between water utilities and their political authorities, have a more substantial impact on the quality of water services compared to the impact of utility ownership structure i.e., whether privately run or publicly owned.

Scholarly research in water utility governance has established a strong correlation between managerial autonomy and utility performance outcomes. Utilities with a higher degree of autonomy tend to exhibit better performance on key service indicators such as cost-reflective tariffs, operational cost recovery ratios, and non-revenue water levels (Braadbaart et al., 2007). Braadbaart et al. (2007) conducted a global study across multiple countries and found a positive association between water utility performance outcomes and managerial autonomy. They also emphasized that financial independence from the government had the most significant impact on outcomes compared to other autonomy indicators. Additionally, Haug (2008) illustrated that removing political control over water service providers enhanced technical efficiency in eastern Germany by preventing local administrations from misusing utilities for political purposes.

Fukuyama (2013) raises concerns that an excessive focus on market-like technical efficiency risks diminishing organizational responsiveness to citizens as service users, leading to conflicts with populist preferences. He argues that some level of political control of agencies is necessary, as politicians ultimately hold final accountability for service delivery, not the utilities.

Fukuyama argues that delegating authority to specialized service delivery firms does not always imply a complete hands-off approach from the political authorities, emphasizing the need to strike a balance between preserving autonomy and ensuring accountability to the electorate. The literature on the influence of institutional autonomy of water service providers on service results demonstrates an expected positive relationship. However, there is a lack of research exploring the extent to which political control is necessary and should be exercised in a manner that does not have adverse effects on the agency's performance outcomes. This study aims to address this gap in the literature.

2.3 Summary of Literature gaps

This literature review offers valuable insights into the correlation between institutional structures and various dimensions of water governance. It specifically provides valuable insights on the functional assignment to institutions operating at different levels of government, the impact of institutional coordination, and the relationship between the autonomy and performance of water utilities. However, it is noteworthy that the majority of the literature reviewed primarily focuses on the water resources management aspects of water governance. Nevertheless, there is a gap in the literature pertaining to the specific context of water supply services within multi-level devolution institutional structures in sub-Saharan Africa and other emerging economies with comparable contexts. This study contributes to the existing body of knowledge on the effects of institutional structures on water governance by examining the case of water delivery services in Kenya within the context of devolved institutional structures. As previously mentioned in chapter one, the scope of this dissertation was confined to the water supply services subsector of Kenya's overall water governance landscape.

2.4 Research hypothesis

The study had the following three research hypotheses:

- (i) The existing structure for intergovernmental assignment of functions continues to reinforce centralized control over the delivery of water services despite devolution, thereby negatively affecting the delivery of water services.
- (ii) The nature of the existing intergovernmental water sector coordination has negatively impacted water service delivery.

- (iii) Water service providers with greater autonomy from the county government will have improved performance in water services delivery.

2.5 Theoretical framework

The theoretical framework for this study is rooted in Governance Theory which provides a framework for understanding how organizations, societies, and systems are directed, controlled, and held accountable. Governance theory posits five fundamental propositions regarding decision-making processes that establish order in policy making and facilitation of collective actions led by government as part of their social contract mandate. These propositions include the role of institutions, both within and outside government, in moderating incentives and constraints on actors; the blurring of boundaries and responsibilities for addressing policy issues, necessitating the critical input of non-state actors and organizations; the interdependence of actors, moderated by available resources; interactions between autonomous self-governing networks of actors; and the sustainability of governance contingent on systems capable of accomplishing tasks with minimal reliance on government authority, with the state serving as a guiding force (Stoker, 1998).

The concept of polycentricism within governance was used to analyze and present data in this study. Ostrom (2010) introduced the concept of polycentricism in governance, to provide an analytical framework for examining how actors interact to influence outcomes within a multilevel governance system. Polycentricism in governance is characterized by the existence of multiple decision-making centers with overlapping areas of responsibility within an overarching institutional structure. A key assumption is that these governance units engage in cooperative and coordinated actions that require mutual modification of individual strategies in reaction to one another (Ostrom, 2010). Empirical efforts to establish correlations between concepts in polycentric governance theory have focused on the impact of institutional fragmentation, coordination and the power dynamics underlying interactions among actors (Morrison et al., 2019; Ostrom, 2010).

The utilization of polycentric governance theory in this study is motivated by its valuable framework for comprehending the intricacies of multi-institutional and multi-level governance systems, such as the devolved structure in Kenya.

The institutional framework for water services delivery in Kenya embodies the fundamental principles of institutional polycentricism, where policy functions are distributed among various actors at both national and subnational levels, with a sense of interdependence. A key feature of

the design of Kenya's institutional structure for water services delivery was to facilitate scale matching based on subsidiarity, enabling lower levels of government to take the lead in planning and delivering services at the local level, while working collaboratively with the national government (Government of Kenya, 2010). Furthermore, the institutional arrangement allows these institutions to operate with policy autonomy while remaining nested within a national-level overarching system of rules aimed at addressing institutional fragmentation and coordination.

2.6 Conceptual Framework

The conceptual framework for this study shown in figure 1.1 centers on the relationship between three dimensions of institutional governance constructed as independent variables and the provision of water services in Kenya as the dependent variable. These independent variables include the configuration for functional assignment within the existing institutional framework, the coordination mechanisms between national and county governments, and the autonomy of water service providers at the institutional level

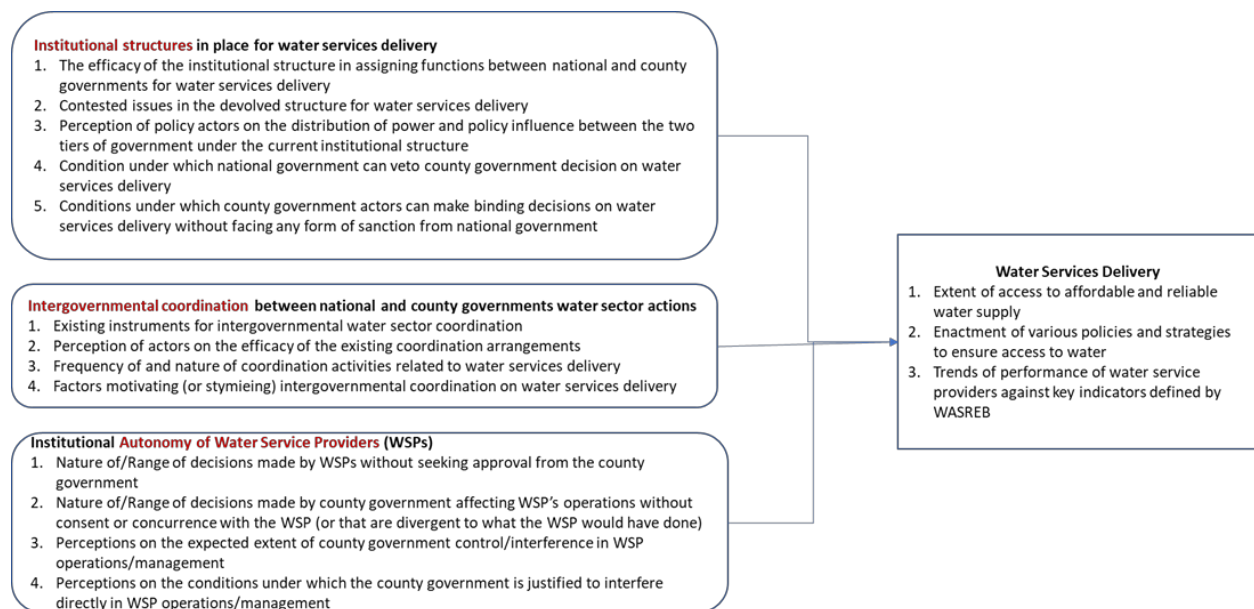


Figure 1 1: Conceptual framework for the study (source: Author, 2023)

According to the polycentric governance theory, the overarching institutional structure, which includes constitutional provisions, water laws, water service policies, and regulatory provisions, is crucial for defining the roles and distribution of policymaking and service delivery powers among multilevel actors' system wide. Positive water service delivery outcomes are anticipated in a

decentralized multilevel government system when subnational actors are satisfied that the system of rules does not reinforce centralization, i.e., when the institutional structure does not confer disproportionate influence on the decisions of subnational governments. Moreover, it is anticipated that the existence of a well-established and legitimate institutional coordination mechanism between the two tiers of government will lead to increased frequency of coordination events, as it enhances the likelihood of actors adjusting to each other's actions. Consequently, this is expected to culminate in better water service delivery. The conceptual framework also posits that granting Water Service Providers (WSPs) adequate autonomy will foster greater enterprise and managerial innovation, ultimately resulting in the enhancement of water service delivery.

2.7 Definition and Operationalization of Key Concepts

The following key concepts operationalized in this study.

Water service delivery is defined as the extent of access to affordable and reliable safe water in the right quality and quantity for users (United Nations, 2015). In this study, water services delivery was operationalized as extent of access to affordable and reliable water, the enactment of various policies and strategies to ensure access to water and the performance of water service providers against key indicators and targets defined by the national water sector regulatory authority.

Water service Provider is defined as an entity responsible for the delivery of water supply services to consumers within a designated service area (Bakker, 2010). In this study, water service provider is operationalized based on the definition provided in article 77 of the Water Act of 2016 as an entity authorized by law to supply water services within specified service areas. This encompasses both government owned utilities, private sector providers and community-based water service providers.

Intergovernmental functional assignment refers to the allocation of roles and policy decision-making authority for specific public services between levels of government in a multilevel governance system (Smoke, 2015).

In this study, intergovernmental functional assignment is operationalized within the context of water services delivery to encompass the distribution of regulation, infrastructure development, and service delivery functions between national and county governments as defined in schedule four of the Kenyan Constitution, other relevant legislations.

Intergovernmental coordination refers to the deliberate alignment of policies, actions, and resource allocation between different levels of government in pursuit of jointly agreed public services (Bolleyer, 2006). In this study, intergovernmental coordination is operationalized within the context of water services delivery as both the structural arrangements, instruments, and behavioral processes that facilitate collaboration, information sharing, and joint policy decision-making between national and county governments.

Institutional governance refers to the process by which institutions are designed and organized in such a way that they provide the framework for the coordination, control, and interaction of diverse actors in a policy arena (Farazmand, 2018). Institutional governance was operationalized in this study as the institutional arrangements for intergovernmental assignment of functions, coordination, and autonomy of WSPs in the context of water services delivery.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.0 Introduction

This chapter presents the approach used to investigate the research questions. It details the chosen overall research design approach, methods used for data collection, and analytical procedures employed to organize and interpret the collected data with the aim of ensuring rigorous and reliable findings.

3.1 Research Design

The study applied a qualitative research design which focuses on the interpretations individuals or groups attribute to social phenomena in their context (Creswell, 2014). An interpretivist approach in qualitative research design was applied because the study focuses on interpretations of the views or perceptions of the water service actors and stakeholders on the contribution of institutional governance on water services delivery in Kenya based on policy actors' perceptions and experiences. This approach was operationalized in several keyways throughout this study. Primarily, the study focused on the experiences, and perspectives of participants regarding critical issues touching on intergovernmental functional assignment, intergovernmental coordination mechanisms, and the autonomy of water service providers. This approach allowed for a deep dive into the lived experiences of stakeholders, recognizing that their interpretations and constructions of reality are fundamental to understanding the governance landscape. In line with interpretivist principles, the data collection process prioritized open-ended, in-depth interviews that encouraged participants to articulate their views and experiences freely. This method facilitated the capture of rich, contextual data that reflected the complexity of water governance issues from multiple stakeholder perspectives.

The data analysis phase further reinforced the interpretivist approach. Findings were presented with use of participant quotes, ensuring that stakeholders' voices and perspectives were directly represented in their own words. This approach provided a rich, multifaceted understanding of the research subject, contributing valuable insights to both theoretical discussions and practical policy considerations in the field of water governance.

3.2 Research Methods

The study collected data through two methods: interviews and desk reviews. Interviews were utilized to gather data from senior policymakers at the national and county levels, as well as key non-governmental policy actors involved in water services delivery. Semi-structured interviews were chosen due to their capacity to elicit detailed, descriptive responses from respondents about their experiences, perceptions, opinions, feelings, and knowledge through follow-up probes. Additionally, they facilitate theme discovery by allowing impromptu questions, uncovering important themes that may not have been anticipated. The interviews, lasting approximately one hour each, were guided by an interview guide providing a framework for open-ended questioning. The interview guides are included in Annex 1 of this dissertation. All interviews were conducted in person between July and October 2022.

A desk review of pertinent secondary documents was then conducted to contextualize the perceptions of the respondents collected through the interviews. The review focused on relevant legislation, regulatory documents, policy documents, and other official government reports defining the institutional context and administrative procedures for water services delivery at both levels of government. The use of both interviews and document analysis aimed to enhance the credibility and validity of the research findings through data source triangulation.

3.3 Target Population and sampling Design

The population for sampling included policy leaders at the national and county level, encompassing ministries, departments, and agencies involved in water services delivery and intergovernmental coordination. Additionally, interviews were sampled from the population of Civil Society Organizations/Non-Governmental Organizations (CSOs/NGOs) and development agencies involved in various activities related to water services delivery, such as financing investment projects or policy advocacy. Table 3.1 summarizes the populations from which samples were derived, as well as the respondents within each population. Once the population was identified, purposive sampling was employed to select respondents based on their availability for the interviews.

The purposive sampling strategy for this study was carefully designed to align with the unique water governance structures in Kenya, which are organized around seven principal water basin governance areas. These basins are delineated based on distinct socio-economic characteristics and

hydrological boundaries, each presenting its own set of water governance challenges and opportunities. To ensure comprehensive representation of the range of water governance issues across different basin areas, the sampling of study respondents was strategically aligned with these established basin governance structures. This approach necessitated a purposive selection of counties and water service providers (WSPs) to best represent the diversity of governance issues across the different basins.

Interview requests were extended to a minimum of three county governors, county executive committee members, and water service providers in each basin area. The final respondents interviewed comprised seven Managing Directors of water companies and seven County Government Executive Committee Members (CECM) for water affairs, each representing a different water basin governance area. This sampling approach explains why, despite the existence of 86 water service providers and 47 county governments in Kenya (as illustrated in Table 3.1), only a small subset of 14 were included in the interview process. The sampling continued until data saturation was achieved, indicating that additional interviews were unlikely to yield new insights relevant to the research questions.

A total of 37 interviews were conducted with respondents directly involved in or with the governance of water services delivery in Kenya. The research design prioritized protecting the identity and names of the specific respondents.

The rationale for the sampling was to get perspectives from all the major stakeholders involved. This informed the categorization of the population into specific categories of policy actors based on their role in service delivery. This included national government ministry responsible for national policy and strategy, national government agencies of the ministry of water with distinct roles in services delivery such regulation, infrastructure development and sector financing, county government responsible for domestication of national policies and strategies at county level and investment planning including establishment of service providers agencies, water service providers including both county-owned utilities and community-based service providers, donors and development partners providing funding and technical assistance in water services delivery, and civil society engaged in water rights campaigns as well as other government agencies supporting the implementation of the devolved governance framework such as the IGTRC and the CoG. The study used a purposive sampling of targeted senior leaders of these organizations with

the aim being to get a 360-degree view of the institutional governance for water services delivery from various angles.

Table 3 1: The study's sampling framework

Category of Respondents'/Sampling Frame		Target population	Sample size
National ministry responsible for water services	Current and former Cabinet secretaries (ministers)	3	1
	Current and former Principal Secretaries	3	2
	Senior directors at the ministry	5	2
CoG (CoG)	Current and former Chair of the CoG committee responsible for water sector	3	1
	Other senior officials at the CoG	3	2
IGRTC (IGRTC)	Senior leadership of the IGRTC	1	1
Water Service Providers (WSPs)	Managing Directors of the WSPs/utilities/ Public water companies	86	7
	Leadership of three different community-based water service providers	15	4
County Governments	Selected County Governors	5	1
	County Government Executive Committee Members for water affairs	47	7
Water Works Development Agencies	Chief Executive Officers (CEOs) of the agencies	9	4
Water sector Development Partners (Donors) Working Group	Senior officials purposively selected based on the extent of their financing of water sector institutional reforms	12	3
Civil society organizations (CSOs) and Non-Governmental Organizations (NGOs)	Chief Executive officers of CSOs/NGOs	2	2
Other National Government agencies	Chief Executive Officers of the agencies	2	2
Total		194	37

Source: Author, 2023

3.4 Data Analysis

To generate research findings, data collected from the interviews were analyzed using Thematic analysis, which involves the identification and reporting of emerging themes within the data and the findings interpreted and discussed. Thematic analysis was utilized due to its effectiveness in examining the perspectives of various research participants regarding the same theme emerging from the data (King, 2004). Initially, the interviews that were recorded with a portable audio device were transcribed using manual transcription involving listening to audio recordings and typing out verbatim transcripts by hand. This was deemed necessary so as to maintain accuracy of the transcripts but also to triangulate with the hand-written notes collected during the interview sessions.

The interview transcripts were then coded with open-ended coding in order to organize the data into meaningful groups and identify patterns. A code frame was devised and used to direct the organization of interview transcript data according to the three objectives of the study. Coding the qualitative interview data based on text resulted in the creation of analytical memos. The generated analytical memos were then manually analyzed using MS Excel-based analysis. The themes that emerged were then defined and given appropriate names. The analytic narratives presented in the results sections of chapters four, five, and six were generated by combining data extracts from the transcripts and MS Excel files that had been processed for each objective.

The presentation of results and discussion of findings in this dissertation were organized around ten themes that emerged from the interview data. These included the following: Functional assignment, Contested issues in functional assignment, Intergovernmental power dynamics in water services delivery, Veto power and county autonomy in water services delivery under chapter four. Intergovernmental coordination instruments, Intergovernmental functional interdependence, and Coordination frequency under chapter five. Autonomy of water service providers, Autonomy versus accountability and Institutional interplay between community-based water operators, water service providers, and county government under chapter six.

3.5 Research Reliability

Three approaches were used to ensure that the measurement tools produce consistent results across time and space. First, the reliability of collected data was ensured during transcription.

This was done by carefully reviewing transcripts to correct any transcription errors before coding. Second, reliability was assessed during coding. The codebook was reviewed by an independent third party to ensure that the codes were correctly defined and aligned with the study's key themes and objectives. This ensured that the codes were consistently applied and that consistent results were obtained, even when the data was coded by different people.

In preparation for the full study, a pilot study was conducted in October and November 2021 to assess the reliability of the proposed research design. The primary aim of the pilot study was to evaluate the research tools and enhance their internal validity, ensuring that the research plan would yield the most accurate and dependable data to address the three research questions. The pilot study specifically focused on several potential issues, including the phrasing of the questions. The findings from the pilot study indicated that certain questions were unclear or leading, potentially biasing the respondents' answers. Consequently, adjustments were made to the interview guidelines to enhance question clarity and to prevent leading the respondents. These modifications significantly enhanced the overall reliability of the research instruments.

3.6 Research Validity

The data collection tools underwent pre-testing to ensure uniform understanding of the questions among all respondents, thereby ensuring that the data collection instruments accurately measure the intended constructs. This process validated the tools' capacity to capture the targeted data. Piloting of the data collection tools with a select group of respondents facilitated the identification and rectification of any flaws in the tools. Consistency in questionnaire administration was maintained by utilizing the same interviewer. Furthermore, triangulation was employed to enhance the research quality by cross-referencing data obtained from diverse respondent categories. Additionally, the data collection tools were reviewed with other industry experts to further optimize their suitability for the research objectives.

3.7 Ethical Issues

To avoid any form of harm to those involved in the study, the following ethical research guidelines were strictly followed:

- i. Consent was sought and provided voluntarily, and participants were informed that consent can be withdrawn at any time during the study.

- ii. Researchers provided full disclosure of all information required for potential participants to make informed decisions about participating in this study.
- iii. Respondents were assured of confidentiality through not identifying their names in the reports but rather generally limited the respondent's identification to the category of respondents.
- iv. Prior to field data collection, the data collection tools were submitted for Ethical approval to the University of Nairobi's ethical review committee and approval to proceed to field data collection was granted through the Departmental chairman.

CHAPTER FOUR

THE IMPACT OF FUNCTIONAL ASSIGNMENT STRUCTURES ON WATER SUPPLY SERVICES DELIVERY IN KENYA

4.1 Introduction

The purpose of this chapter is to present and discuss the findings related to the first objective of the study which was to examine the effects of water sector intergovernmental functional assignment within the current institutional structure on water service delivery. The study hypothesized that despite devolution to counties, how functions are assigned for water services as defined in the existing institutional structure has continued to reinforce centralism in water services delivery. In order to examine the validity of this hypothesis, qualitative data was collected to understand this phenomenon from the perspective of sampled participants and analyzed. Semi-structured interviews were conducted with a total of 37 respondents. These respondents included individuals and organizations involved in policymaking and water services delivery at both levels of government, representatives from non-governmental organizations, as well as community-level representatives to bring in more of the users' perspectives. This chapter addresses five interview questions presented to these respondents structured around the following four themes (see Annex I for the full framing of each of the questions):

- (i) The structure of intergovernmental functional assignment for water services
- (ii) Contested issues in functional assignment.
- (iii) Intergovernmental power dynamics in water service delivery
- (iv) National government Veto power and County Government Autonomy in water services delivery

The presentation in this chapter is organized around the above four themes. Each section begins with a presentation of the results from the analyzed data, followed by a discussion of these findings in relation to the specific interview question asked and other literature. The chapter concludes with a final section that synthesizes the discussions from each of the themes to respond to the research hypothesis and address the study's first research question: How has the intergovernmental assignment of functions within the institutional framework for water services in Kenya affected the delivery of water services?

4.2 Structure of intergovernmental functional assignment for water services delivery

This section analyzes and discusses the study's findings on the impact of the assignment of water services delivery functions and responsibilities to the two levels of government within the existing institutional framework on service delivery.

4.2.1 The structure for intergovernmental functional assignment in water service delivery

The respondents were first asked to state their view whether the existing structure for intergovernmental functional assignment is biased towards the national government, despite the fact that schedule four of the Constitution of Kenya of 2010 designates water service delivery as a devolved function. The responses are summarized in table 4.1.

Table 4 1: Perception of Respondents as to whether the structure of functional assignment favors national government over county government.

Category of respondents	Structure is based towards National Government	Structure is not biased towards National Government
County level		
WSP companies (MDs, Chairs of Board, Water Service Providers Association-WASPA)	4	3
County executive department officials (CECM, Chief officers)	3	2
Council of Governors (CoG)	3	0
National level		
Ministry of water	2	1
Water Works Development Agencies (WWDAs) staff	3	0
National water sector agencies (WSTF, WASREB, and WRA)	4	0
CSOs/NGOs	2	2
Development partners	3	0
Community-based water service providers	0	4
Totals	25	12

Source: Author,2023

Table 4.1 shows that a majority of the respondents (almost 60%) hold the view that the existing institutional framework for functional assignment is biased towards the national government in the allocation of water service delivery functions. Table 4.1 also shows that respondents from the CoG, waterworks development agencies, national water sector agencies, and development partners categories expressed a unanimous view that the assignment of functions favors national government over county governments. In contrast, respondents from the community level, who serve as representatives of water customers, unanimously expressed the view that the existing institutional framework does not favor the national government in terms of how water service delivery functions are assigned.

There was a divided opinion as to whether the existing structure for functional assignment within the institutional framework favors the national government over the counties among policy actors at the county government level. On one hand, half of the representatives from water companies answered affirmative to this question while the other half were of a contrary opinion that there is no favor. On the other hand, majority of the officials from the county water department were of the view that a bias existing, but a few had a contrary opinion. Notably, it is intriguing that respondents from the CoG, a collective platform representing all county governments, hold a contrary perspective, asserting that the structure for functional assignment is biased in favor of the national government.

The finding suggests that despite the constitutional designation of water service delivery as a devolved function, a majority of respondents believe the current framework exhibits a functional assignment bias favoring the national government over the counties. Intergovernmental functional assignment refers to the allocation of responsibilities and functions between different levels of government in a multi-level government system (Ferrazzi & Rohdewohld, 2017). The institutions for water services delivery is defined in schedule four of the Constitution of Kenya of 2010 and the Water Act of 2016. These frameworks outline the procedures, rules, regulations, and administrative structures that assign functions and responsibilities for the delivery of water services to governmental entities, including ministries, departments, and agencies operating at the national, regional (inter-county) and county levels. Figure 4.1 is a creation from the Water Act of 2016 of this institutional framework which was adopted to align water services delivery with the devolved service delivery system.

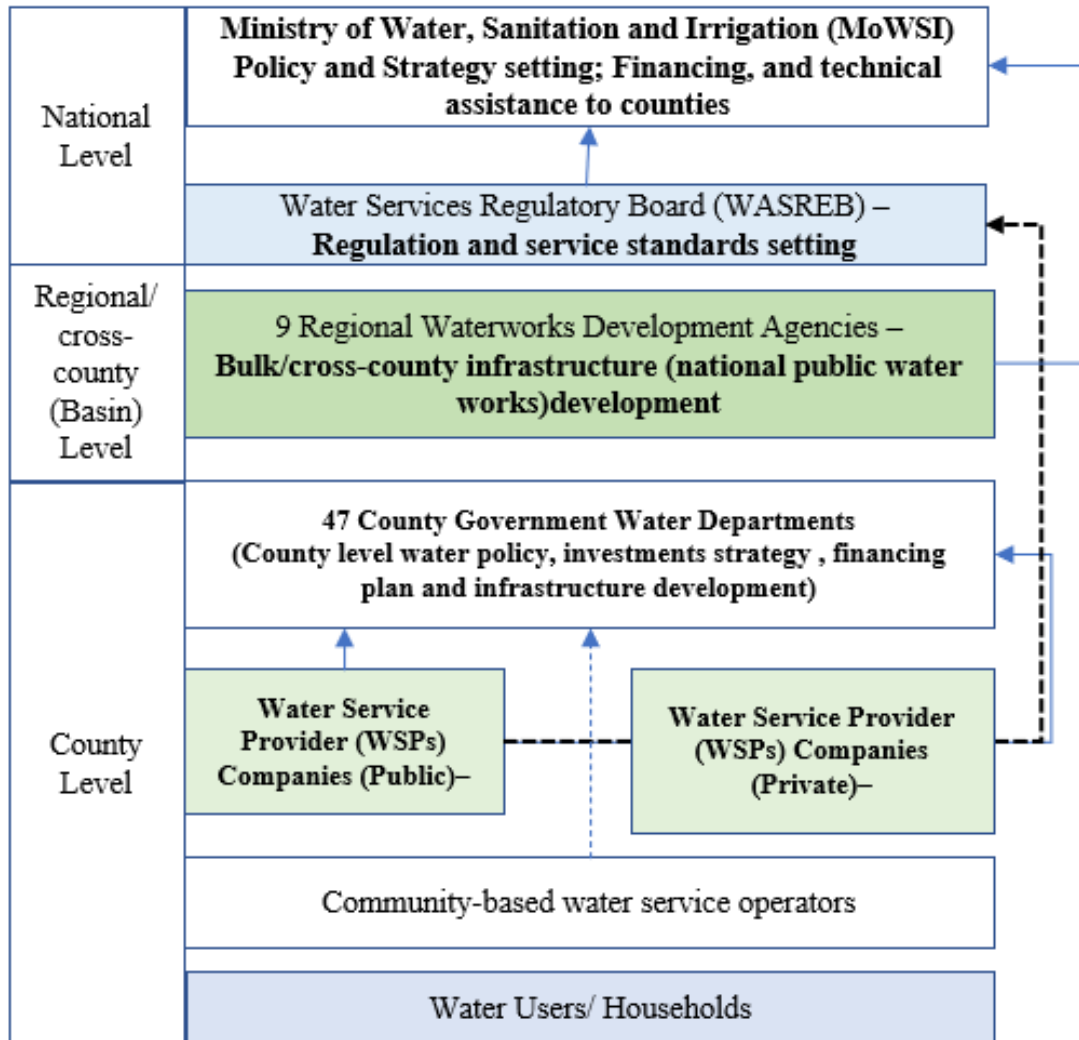


Figure 4 1: Institutional structure for water services delivery in Kenya (Source: Author, 2023)

According to the fourth schedule of the constitution of Kenya and the current institutional structure as defined in the Water Act of 2016 which was enacted to ensure that water services delivery is regulated, managed, and developed in accordance with the Constitution, the delivery of water services is the responsibility of the county governments, to be carried out by the County government water departments in accordance with the laws, policies, and standards set by the national government. Article 77 of the 2016 Water Act stipulates that a county government must establish water services providers, which may be a public county-owned limited liability corporation or any other entity that provides water services, including community-based water service providers. In order to implement the provisions of the fourth schedule of the constitution

regarding the role of the national government in the delivery of water services, the water Act establishes a number of agencies at the level of the national government. WASREB provides economic regulation, setting and enforcement of service delivery standards across counties. In addition, the Act establishes several agencies of the ministry of water services known as waterworks development agencies (WWDAs) for the purpose of undertaking works classified in the fourth schedule and in article 8 of the Act as national public water works that maybe operated on an interim basis by the national government with the aim of being transferred to the operations and management of the county or counties under whose jurisdiction it falls. Most of the water services provision mandate is delegated to county governments in the current institutional structure, with the national government, through the ministry of water and its agencies, playing the support role of national policy and strategy formulation, regulation, technical assistance, and bulk infrastructure development as opposed to a larger role in service delivery. However, even though the existing administrative structures designate functions and responsibilities for the delivery of water services to governmental entities at the two levels of government, the majority of respondents continue to believe that the current structure favors the national government.

The responses to the initial question did not distinctly elucidate the reasons behind the prevailing perception that the existing structures Favor the national government over the county governments in functional assignment. Consequently, a follow-up question was presented to the interviewees to ascertain the factors underpinning this perception.

4.2.2 Specific areas in functional assignment where the existing institutional structure shows bias or lack thereof

To further clarify the above responses, the respondents were asked to explain the specific areas within the functional assignment where the existing institutional structure demonstrates a bias or lack thereof for one government level over the other, several responses were given as shown in Table 4.2.

Table 4 2: Perception of respondents on areas where the structure for functional assignment in water services show bias towards national government.

Summary of respondents' perceptions	Respondent Category	Level of Government
Resource mismatch: Counties lack funds for water functions	CoG, WSPs, CECMs, county chief officers (CCOs)	County Government
Insufficient local revenue for water services	CoG, Community representatives	County
Ambiguous water service definitions cause role confusion	WSPs, Development partners, CoG, CSOs/NGOs,	County, Development Partners
Counties lack technical expertise, rely on national government	Ministry of water, WWDA) CSOs/NGOs, WSPs, CoG, development partners	National, County, Development Partners
Institutional structure limits counties' external fundraising	WWDAs, Development partners	National
Poor staff appointments hinder county water service delivery	WWDAs, WSPs	National, County
Rapid decentralization caused role misunderstandings	Ministry of water official, Community representatives	National, County
Conflict over national oversight vs. county autonomy	WWDAs, WASREB, CoG	National, County
Collaboration challenges in shared water functions	WSPs, CoG, CSOs/NGOs, Community representatives	County
"Middlemen agencies" hinder county constitutional functions	CoG	County

Source: Author, 2023

From the summary of respondents' perceptions presented in Table 4.2, there are mainly five (5) areas in functional assignment where the existing institutional structure shows bias towards the national governments in water services delivery. These are resource allocation patterns which are

biased in favor of the national government, retention of competent staff at national level, limitations on county policy autonomy, establishment of middlemen agencies by national government, and a fast pace of decentralization: These areas are presented and discussed in detail turn as follows.

Firstly, resource allocation emerged as a significant concern among multiple respondents regarding the intergovernmental structure for functional assignment in water service delivery, indicating a bias favoring the national government over county governments. This observation is particularly noteworthy given that water service delivery is constitutionally designated as a devolved function. The imbalance in resource allocation was emphasized in two key aspects. Firstly, it was noted that the devolution of water functions to counties has not been accompanied by a commensurate transfer of resources. As articulated by a representative from the CoG, which advocates for the collective interests of the counties, the transfer of functions has not been paralleled by a transfer of resources. Most water resources remain under the purview of the national government, while the counties bear the responsibility for implementing water service delivery at the local level. Secondly, it was highlighted that counties encounter challenges in generating adequate local revenue to fully finance their water services, necessitating reliance on an equitable share of national resources, the majority of which are still centralized at the national level and disbursed by national agencies.

All interviewees from the CoG expressed the view that despite the constitution assigning roles to the national and county governments in water service delivery, the county level has not been provided with the resources necessary to carry out these responsibilities, with the majority of budgets for water services going to national government agencies such as water works development agencies. They believe that the constitution anticipated that the counties would generate revenue, but the problem has been that there are not enough economic activities in those counties to allow them to generate the full revenue required for water services, so they continue to rely on the inadequate government allocation.

As per a respondent from the CoG, there were doubts about the assumption that resources would follow functions when the constitution was promulgated. The majority of county governments find it extremely challenging to invest in water services due to insufficient resources.

A respondent from the WWDAs concurs with respondents from the CoG that the assignment of resources is the most important aspect of the assignment of functions. However, he is of the view that while service delivery is devolved, the national government is still in a better position to finance major water projects due to the fact that most county governments have not yet put in place the necessary structures to assume this responsibility. A respondent from one of the water companies owned by the county acknowledges that the counties do not receive the full funding necessary to deliver water services within their jurisdiction, and thus they are at the mercy of the national government. However, he agrees with the respondent from the WWDAs that the national government ministry of water should retain the majority of the sector funds and appropriate these through the WWDAs and not the counties. CSOs/NGOs respondents, on the other hand, believe that the benefits of devolution will only be realized if the national government releases more funds that are presently allocated to the national WWDAs to the county governments, as they are more familiar with the needs of the local community. As a respondent stated,

"The reason why it has taken so long to close the water access gaps, especially in rural areas, is that WWDA projects are not well targeted because they are not operational at the community level. As a result, WWDAs invest more in urbanized areas as opposed to rural areas where the need is greatest." (CSOs/NGOs official)

The Constitution of Kenya provides a guiding framework on the division of responsibilities between the national and county governments. However, there remains a significant degree of ambiguity regarding the allocation of financial resources necessary to execute these responsibilities effectively. This observation was articulated by a county water department official during an interview conducted as part of this research.

The official expressed the view that despite the decentralization of water services to counties, as mandated by the Constitution, the national government has demonstrated reluctance in relinquishing control over the resources required to deliver these services. This reluctance, according to the official, has effectively deprived counties of the vital resources they need to fulfil their constitutional mandate in water services delivery.

This perspective was corroborated by an official from one of the water companies, who echoed similar sentiments. The water company official asserted that the national government continues to retain a substantial portion of the funds that should, in principle, be allocated to the counties. This

retention of funds, the official argued, is motivated by a desire to maintain control over financial resources and, by extension, preserve a greater degree of power. This situation, the official contended, runs counter to the fundamental purpose of devolution, which was intended to disperse both policy-making authority and expenditure powers across different levels of government.

The research also revealed a convergence of opinion among respondents from both the Council of Governors (CoG) and the national ministry responsible for water affairs. These respondents shared the view that the absence of precise definitions regarding the scope of national versus county public works in water service delivery has contributed significantly to the observed skewness in budgetary resource allocation. This lack of clarity, they argued, has resulted in a disproportionately large share of resources being allocated to the national government at the expense of the counties.

However, it is important to note that while there was agreement on this broad issue, respondents held divergent perspectives on the specific delineation of responsibilities across various functions within the water services delivery value chain. Officials from the national government ministry and some representatives from the Water Works Development Agency (WWDA) expressed the view that county responsibilities are clearly limited to household-level service delivery. According to this perspective, the national government assumes responsibility for major infrastructure development, including the construction of large dams, bulk pipelines, treatment plants, and reservoirs. These infrastructures, they argued, would subsequently be transferred to the counties for operational management.

In contrast, respondents at the county level presented a markedly different interpretation of their mandate. They argued that the scope of water supply provision at the county level should encompass the development of substantial infrastructures in addition to last-mile services. This interpretation, they contended, justifies the allocation of resources to counties for large-scale infrastructure development.

The complexity of this issue was further illuminated by a county government executive committee member, who highlighted the ambiguity and overlapping roles in functional assignment. This official cited the lack of clarity regarding what constitutes "national public works" to be undertaken by the national government as a significant source of inter-county conflicts driven by resource control dynamics. This sentiment underscores the contention that the national government, by

unilaterally determining what constitutes national public works, effectively directs funds to preferred water works agencies, further exacerbating the resource allocation imbalance.

In conclusion, this research reveals a complex landscape of intergovernmental relations in Kenya's water sector, characterized by divergent interpretations of constitutional mandates, competing claims over resources, and ongoing debates about the appropriate division of responsibilities between national and county governments. These findings underscore the need for clearer guidelines and more robust mechanisms for intergovernmental coordination in the implementation of devolved water services.

The resolution of precise functional definitions is deemed essential by a CoG official to ensure that resource allocation aligns with functional assignment. The official expressed skepticism regarding the congruence of resources with functions following the ratification of the constitution, highlighting the absence of a comprehensive study on the scope of water service provision. This lack of clarity, encompassing infrastructure development, water delivery, and maintenance, is posited to determine the alignment of resources with functions. Additionally, a respondent from a development partner organization echoed concerns about the accountability of funds at the county level, attributing the national government's preference for utilizing its own WWDAs for water projects to apprehensions about weak accountability checks at the county level, thereby indicating a disparity between resources and functions, as asserted by respondents from the CoG.

Secondly, the issue of staff competency to carry out assigned duties was recognized as another aspect in which the current institutional framework is perceived to be biased towards the national government compared to county governments. Respondents from various organizations at both levels of government unanimously acknowledged the national government's historical experience in providing water services and the consequent accumulation of a proficient and qualified workforce. In contrast, county governments were perceived to be in the nascent stages of development, lacking the requisite expertise, processes, and systems to effectively manage their assigned water service responsibilities. This disparity in capacity has resulted in a biased implementation of functions in favor of the national government, as highlighted by a county government water official and a water company official. The former emphasized the inadequacy of technical capacity and the absence of established local regulations and processes for service delivery within county bureaucracies, while the latter underscored the developmental disparity

between national and county bureaucracies, attributing the prevailing imbalance to the counties' limited expertise and sophistication in public policy development and implementation.

Moreover, respondents unanimously agreed on the lack of capacity as a key factor leading to the national government undertaking most functions. However, a respondent from a county-owned WSPs attributed this to the politicization of staff employment in county governments, contending that the counties' employment practices have led to the reliance on the national government to execute functions assigned to them. Conversely, a respondent from a civil society organization and a county government water company official criticized the national government for being reluctant to build the capacity of counties, using the capacity gap as a pretext to consolidate key water service functions, thereby impeding the development of county capacity.

Thirdly, respondents highlighted constraints on county autonomy in executing their assigned functions as another way in which the intergovernmental assignment of functions within the institutional structures for water services delivery favors the national government over counties. The national government's final authority on key policy decisions, such as the approval of water tariffs and the requirement for national government approval for counties to negotiate directly with external partners for funds, was cited as evidence of the prevailing imbalance favoring the national government.

This limitation on county autonomy was underscored by respondents from both the CoG and the national government, reflecting the disparity in decision-making authority and the consequent impact on tailoring water services to local needs.

Furthermore, a respondent from the national Ministry of Water emphasized Kenya's unitary state structure, with multiple levels of government under one overarching institutional framework, asserting that the national government holds residual control and authority in the water sector. This perspective diverged from the view of counties as independent governments parallel to the national government, emphasizing the national government's responsibility to regulate and standardize water services, with counties tasked with domesticating national laws, policies, and standards within their jurisdictions.

Overall, the responses underscore the multifaceted dynamics influencing the intergovernmental assignment of functions within the institutional structures for water services delivery, reflecting

the complexities and disparities that shape the relationship between the national government and county governments in Kenya.

The fourth area identified by county-level respondents unanimously pertains to the national government's establishment of intermediary agencies to implement water services delivery activities, which is perceived as favoring the national government within the current institutional framework. Interviewees from the county level were of the view that the national government has encroached into county functions primarily through the WWDA, which are assigned functions and allocated resources that should constitutionally be appropriated to the counties. This perceived encroachment is seen as counter to the objects of devolution, as it crowds out the counties in the service delivery chain. Conversely, national government officials argue that these agencies serve as avenues for supporting the capacity building of counties, providing technical assistance, and enhancing their capabilities. The establishment of these intermediary agencies is thus a point of contention, reflecting divergent perspectives on their role and impact on the intergovernmental assignment of functions within the water services delivery framework.

The rushed transition of the intergovernmental functional assignment emerged as the fifth aspect in which the institutional structure is perceived to favor the national government over county governments in water service delivery.

This hurried implementation of a complete governance system overhaul has resulted in implementation challenges and a lack of clarity regarding the definition of specific roles, functions, and responsibilities within water services, according to the respondents. The rapid pace of devolution of water services is believed to have hindered stakeholders from fully understanding and getting acclimatized to the new institutional arrangement, leading to conflicting perspectives and a misunderstanding of functions between the national and county governments. Consequently, the national government has taken advantage of this rushed implementation to assume functions assigned to the counties as the county level actors, majority whom were not in government before, still grapple with understanding the sector. The lack of clarity and conflicting views have also led to a lack of accountability, leaving citizens underserved and creating an accountability void due to the differing perspectives on water service functions.

In conclusion, the majority of policy actors from both levels of government are of the opinion that the current institutional framework favors the national government in several ways, including

resource allocation patterns, retention of competent staff, limitations on county policy autonomy, establishment of intermediary agencies by the national government, and the rapid pace of decentralization, which has allowed the national government to continue undertaking most functions for water services delivery. These findings highlight the complex dynamics and challenges shaping the intergovernmental assignment of functions within the water services delivery framework in Kenya.

The study findings reveal that the lack of clear definitions of water services delivery has contributed to asymmetrical resource allocation, with a majority of funds being allocated to the national government, despite the counties being responsible for delivering water services to the majority of the population. This disparity arises from contestations over the definition of water services delivery and the functional limits of each tier of government. While there is consensus that the national government should use its superior competency and resources to build capacity in the counties, it has instead used this capacity gap as a pretext to consolidate key water service functions. This consolidation is perceived to have both positive and negative effects on service delivery, reflecting the complexities and tensions inherent in multi-level government systems.

These findings align with existing research on the challenges of finding the right institutional structures for addressing tensions between harmonization and subsidiarity in multi-level government systems (Ferrazzi & Rohdewohld, 2017; Farazmand, 2018).

The perceived bias towards the national government in the current structure for intergovernmental functional assignment for water services delivery in Kenya contradicts the expectations of functional assignment as defined in the Constitution of Kenya (CoK, 2010). The Constitution assigns water services functions to both tiers of government, defining water services delivery as a concurrent function for which both levels of government share mandates and obligations. However, the results indicate that the national government has used its control of resources and limited capacity at the county level to undertake functions assigned to the counties, despite specific legal notices and constitutional provisions operationalizing the assignment of functions to the county governments. The disagreement over whether the structure favors the national government is further complicated by constitutional provisions that assign any function or power not allocated to county governments as a function or power of the national government (Government of Kenya, 2010).

Empirical evidence supports the findings, with a World Bank analysis showing that the relative share of water sector expenditures by the national government and its agencies increased, while the relative share of expenditures at the county level decreased from 2014 to 2020. This discrepancy in resource allocation patterns is consistent with the literature on decentralized institutional structures, which emphasizes the importance of aligning resource allocation with assigned competencies to ensure effective public service delivery (De Mello, 2000). Additionally, the study findings align with Vezbergaitė (2016), who demonstrated that greater fiscal autonomy at the subnational level can enhance the effectiveness of devolution, as evidenced by the dependency of counties on transfers from the national government for a significant portion of their expenditures. This dependency limits the counties' autonomy to exercise subsidiarity in water services delivery.

The national government's justification for encroaching into county functional mandates due to inadequate capacity is consistent with observations that centralized models tend to fill capacity gaps at the subnational level. However, the failure to build county capacity to undertake assigned functions, as highlighted by county-level respondents, underscores the national government's consolidation of powers rather than fulfilling its responsibility to build capacity at the county level (Marshall, 2007).

The study findings provide empirical support for the challenges and tensions inherent in the intergovernmental assignment of functions within the water services delivery framework in Kenya, reflecting the complexities and disparities that shape the relationship between the national government and county governments. These findings contribute to the broader discourse on multi-level governance and the effective implementation of devolved and federal systems of government.

Marshall (2007) analyzed that ongoing disputes regarding water usage predominantly stem from central authorities enforcing rigid regulatory frameworks on decentralized water management rights, which in turn diminishes the decision-making power of local entities. In contrast, county government representatives maintain that the constitution affords equal status to both levels of government. This view is reinforced by a High Court of Kenya ruling, which clarified that the constitution grants power to both national and county governments directly from the Kenyan populace, thereby establishing their theoretical equivalence and autonomous functions.

These concerns are mirrored by Garrick et al. (2018), who pointed out that the risk of over-regulation by central government could potentially suppress the constitutional responsibilities of sub-national bodies. They recommend that the design of institutional structures should encourage synergy and accountability to lower tiers of governance. In a similar vein, Meinzen-Dick (2007) found that the overreach of central institutions has restricted the operational effectiveness of regional water agencies at the local government level, resulting in inadequate infrastructure development, especially in rural areas. These findings are consistent with the experiences and perspectives of county-level actors.

The creation of the WWDAs by the national government to execute functions at the county level is akin to the approach adopted by the central government in Indonesia, where outpost agencies are positioned at the provincial and district levels to carry out services as directed by the central government without delegating authority to the subnational level. In this context, Lewis (2016) concluded that central government spending at the local level collaboratively with subnational governments, had a positive effect on local services by enhancing the capacity of local bureaucrats and influencing the efficiency of local government. Conversely, national spending at the local level in a manner that sidelines the local policy actors had a detrimental impact on local service delivery, primarily due to significant accountability gaps resulting from the national's limited presence at the local level.

UNDP (2009) concluded that when subnational Governments are constitutionally established as a second tier of government with their own –specified- responsibilities and decision-making powers, the role of the central sector ministry should be a facilitative one to ensure that the subnational level of governments operate as intended by ensuring their adequate technical capacity is developed, required resources are transferred to devolved functions, and there is a set of national reference strategy, policies, standards, and guidelines. In a situation where subnational units have established an administrative structure for service delivery, the national ministry should not engage in direct service delivery at the local level through establishment of agencies seen as meddling by the lower tier units but should rather focus on building the capacity of lower units to execute their mandate. These results align with existing research, which has highlighted that during periods of governance transition that do not allow sufficient time for all stakeholders to fully comprehend the

new structure, central governments tend to maintain control over the larger, more complex functions, even those designated as decentralized mandates (Andrews & Schroeder, 2003).

4.3 Contested issues in the structure for intergovernmental functional assignment for water services delivery

The section 4.2 above analyzed the findings and discussed the intergovernmental functional assignment structure for water services delivery, specifically whether it is biased in favor of the national government over the county governments.

This section presents data and discusses the findings based on the respondents' perspectives on the specific contested issues in the structure for functional assignment for water services delivery between the two levels of government within the existing institutional framework in Kenya.

4.3.1 Contested Issues in the structure of the assignment of water service functions in Kenya

The participants were asked to highlight what in their views are the primary disputed matters in the allocation of water sector responsibilities between the two tiers of government. The responses received are summarized in Table 4.3.

Table 4 3: Perceptions of respondents on contested issues in functional assignment for water services delivery

Summary of respondents' perceptions	Respondent Category	Level of Government
The lack of clarity on overlapping roles in water services	WSPs, Ministry officials, CoG	County, National
Contested interpretations of national public works in water services	WSPs, Ministry officials, CoG	County, National
Water assets ownership and debt repayment obligations	Development partners, Ministry officials, WWDAs, County government official;	National, County, development partners
Limited county-level technical capacity for infrastructure development and policy reforms	county government official; WWDAs; ministry of water officials	County, National
Control of water services funding	WSPs; CoG; county government official	County

Source: Author, 2023

Table 4.3 shows that there are primarily five contested issues in the structures for intergovernmental functional assignment for water services delivery in Kenya. These are namely, contested overlapping roles and responsibilities for water services delivery, contested definition of what constitutes national public works assigned to the national government through the waterworks development agencies (WWDAs); contested ownership of water infrastructures and debt repayment obligation; contestation on the adequacy of staff at the county level to undertake assigned water service functions; and contestations on the control of funds appropriated for water services delivery. To a large extent, there was consensus among respondents from both levels of government on these issues as the primary areas of contestation in the current institutional structure for water services delivery. Respondents from the CoG and the County Government highlighted the lack of clarity in defining concurrent functions to be undertaken by both levels of government as the main source of contestation from a county perspective. These issues were also highlighted

by respondents from the development partners as well as some officials of water companies. These policy actors from the county level were of the view that this presents a significant overlap between national and county functions in water services delivery, leading to disputes over mandates. Interviewees from the national government including from the WWDAs and the Ministry of Water noted that counties contest the role of WWDAs in developing infrastructure, as counties want that mandate transferred to them based on their contestation of what constitutes services categorized as national public works to be undertaken by these WWDAs. Majority of the respondents from the Water Service Provider companies highlight that the failure to transfer water infrastructure assets from national agencies to counties limits counties' ability to expand services thus remaining a key contested issue in the current structure for water services in Kenya. Most of the interviewees from the development partners were of the view that the control of funds where the national government still retains control a larger portion of fiscal resource appropriated for water services despite the decentralized structure is a key contested issue.

This section identified the key contested issues in the assignment of water sector functions between the national and county governments in Kenya and found that the key contested areas relate to unclear overlapping roles and responsibilities: There is a lack of clarity on the distinct roles and responsibilities of each level of government, disagreement over what constitutes national public works to be handled by national government through the WWDAs, disputes over ownership of water infrastructure assets and debt repayment obligations, contestations over the adequacy of county-level capacity to handle technical functions assigned to them and disputes over control over funds appropriated for water services, with national government control over more funds contested by the counties.

This finding aligns with literature indicating that a common challenge in decentralized governance systems is that the division of responsibilities across different levels of government is often unclear (Ostrom, 2010). This ambiguity can lead to inefficiencies and conflicts, as different tiers duplicate efforts or neglect certain duties. The contested delineation between national public works undertaken by waterworks development agencies (WWDAs) and county public works reflects broader debates on the appropriate scale for public services. Kim (2008) posited that the success of decentralization depends on achieving consensus regarding the typology of functions more efficiently provided nationally versus locally provided based on the subsidiarity principle. The

identified disagreement over county staff capacity for assigned water services echoes Ribot (2002) observation that local governments often lack expertise and resources to manage public services, creating tension with central government on the extent of decentralization.

4.3.2 Sources of contestation in the structure for intergovernmental functional assignment for water service delivery

The respondents were further probed to explain what they perceived as the sources of the contestation underlying the issue raised above. The responses are as summarized in table 4.4.

Table 4 4: Perception of respondents on the sources of contestation in the structure for functional assignment in water services delivery in Kenya

	Contested Issue	Reasons underlying the contestation between national and county governments
1	Clarity on concurrent functions in the water services	The national government exploits lack of clarity to encroach into county functions
		The national government designs and constructs county-level infrastructure without county involvement construction.
	Interpretation of functions that fall under the category of national public works	The national government unilaterally unprocedural designates some water services as national public works
		More county functions are being categorized as national public works handed to WWDAs
3	debt repayment obligations	Counties wants existing assets transferred to them but without debt repayment obligation
4	Adequacy of technical capacity	National government claims counties lack capacity for complex infrastructure; Counties accuses national government of not building their capacity, instead functions are taken away due to perceived low capacity.
5	Control of funds for water services functions	National government still retains most sector budgets despite devolution while counties wants greater control over donor funds

Source: Author, 2023

Table 4.4 provides an overview of the interviewees' perceptions regarding the underlying factors contributing to the contention in the five issues highlighted in the institutional structure for the assignment of functions between the two levels of government for the provision of water services. The analysis of the data is organized according to each of the five contentious issues in order to portray the responses of each respondent. Additionally, differences or similarities in respondents' opinions are identified. In instances where opinions differ, the character of these differences is clarified. In contrast, when there is agreement, the specific factors on which respondents agree are identified.

The first point of dispute in the allocation of functional responsibilities for water service delivery between the two tiers of government arises from the ambiguous delineation of roles and responsibilities. This lack of clarity has been predominantly noted by respondents from the county government. They attribute the confusion to the constitutional designation of water services as a concurrent function, which is not accompanied by explicit details regarding the specific responsibilities of each governmental level. For instance, an official from a county-operated water utility observed that the absence of clear legislative guidance on how overlapping functions should be managed concurrently by both levels of government has resulted in a void. This void has led to instances where both levels of government either contend for the same service responsibilities or disclaim accountability when a function is not satisfactorily fulfilled. The official pointed out that this ambiguity fosters a situation where, instead of assuming responsibility, the two levels of government engage in a blame game, particularly when there is a service delivery failure in a given area. The official further elaborated,

"The primary issue causing disagreement and contention is the lack of a clearly outlined concurrent list of functions for joint administration by the national and county governments. This ambiguity leads to confusion and disputes, as it allows the national government to take on county functions while impeding counties from carrying out crucial water resource conservation projects under the pretext that water resources fall under national jurisdiction. The absence of clarity on concurrent functions and their coordination between the two government levels is exploited by the national government, resulting in the appropriation of roles that rightfully belong to the counties."

(WSP official)

An official from the CoG articulated comparable concerns, stating,

"The past decade has evidenced that the system of shared functions culminates in a substantial overlap of actions by both tiers of government. This overlap invariably gives rise to power struggles and legal ambiguities."(CoG official)

Respondents from the community representative's category agree with the county government respondents that this lack of clarity on overlapping functions creates an accountability gap. One community representative stated that..

"Sometimes we don't know whether the person supply services are from county or national....but sometimes we see two different groups coming to work on the same project and when we ask, they say they were not there before only to learn that they are from this Tana Athi water people, not county water people. it is very confusing to us and also is a waste of resources....they need to agree and be clearer on the roles and responsibilities to avoid this wastage." (community based organization level representative)

County government policy actors interviewed are of the view that this lack of clarity in undertaking concurrent functions leading to overlapping roles has been exploited by the national government, which has taken on county functions while preventing counties from carrying out critical roles on grounds that these are functions assigned to the national government. One such example of functions specifically highlighted was on responsibility for financing and implementing water resources management services.

The complexity surrounding the allocation of concurrent functions is exacerbated by the contentious nature of the national government's supervisory role over water service delivery functions that are carried out by the counties. This issue has consistently sparked debate within the structure of intergovernmental functional assignment. A case in point is the authority granted to the national water sector regulator, WASREB, to sanction water tariffs set by WSPs at the county level, which has been identified as a particularly controversial matter. This regulatory prerogative is perceived as an encroachment on the autonomy of the counties. Furthermore, two additional respondents from the county water department, a CECM and a chief officer, have noted that the majority of counties have resisted this regulatory oversight.

They contend that the counties have a superior comprehension of their respective economic statuses and policy objectives, which justifies their position that they should have the decisive voice in establishing water rates within their own counties.

The second point of contention arises from the interpretation of water services functions which are to be executed by national government. According to the constitution, the national government is authorized to identify and assign specific functions as "national public works," and to fund and implement them through national government structures. However, numerous respondents at the county government level argue that the national government has misused this provision by unilaterally designating certain water services delivery functions as "national public works" without the consent of the counties. This unilateral action has enabled the national government to maintain control over the majority of resources and policy authority related to these functions, depriving the counties of the necessary funding to fulfill their responsibilities.

A county government water CECM stated that the national government has used the excuse of lack of sufficient technical capacity at the county level to abuse this provision to retain funding for responsibilities that should be undertaken by the counties, thereby denying the counties funding to carry out their mandate. Another chief officer of a county water department was of the view that because there is no clear definition of water service that should be designated as national public works, the national ministry of water affairs has even declared water infrastructure that are within one county and not cross-county bulk system as national public works to be undertaken by their WWDAs.

A former senior ministry of water official who was a key policy leader during the earlier water sector reforms in 2002 and agrees with the counties that the national has used this excuse to take over county functions, noted that the underlying source of the contention stems from the fact that the national government, rather than fully restructuring the institutional arrangements during the development of the post-2010 water act of 2016, by reorganizing the formerly basin water boards and other regional water bodies such as the National Water Conservation and Pipeline Corporation to align with the new constitution, simply changed the names of these organizations and gave them more functions that should be implemented by the counties under the new devolved governance regimes. He pointed out as follows;

“The constitution schedule IV gives water services and resources management to county government, including storm drainage and storm water. So, what the constitution stipulates is larger than what they are being told now if we are to maintain the structures which we had before the constitution; it is serious contradiction, and a waste of resources. The national government maintained regional river and lake basin authorities, intact, when one looks at the constitution and the act, they needed to configure these institutions and delete the unnecessary ones, rather than trying to maintain positions and jobs. The drafters of the 2016 act were keen on maintaining centralism of water despite the fact that it is a devolved unit.” (former senior ministry of water official)

The contestation around the definition of what constitute national public water works to be undertaken by the national government vis a vis water service delivery functions to be undertaken by counties remains a major source of tension between the two levels of government, as seen in a recent letter from the CoG to the Cabinet Secretary of Water. The letter expressed objection to the Ministry of Water's decision to grant a water service provider license to the Athi WWDA. The Council argued that licensing WWDA to operate as a water utility encroached on the constitutional mandate of counties to deliver water services. This presently on-going dispute is documented in Annex II.

The third source of contention is the contested ownership of water infrastructure and the associated debt repayment obligation. Several respondents noted that there is confusion and lack of clarity about the ownership of assets that were developed by national government agencies before decentralization, but now fall under the jurisdiction of county governments. There is disagreement about who should take ownership of these assets. According to

"on contested issues, the biggest one is the issue of handing over of assets still in possession by the national government agencies." (CSO/NGO respondent)

On the one hand, respondents from the national government ministry of water are of the view that it is willing to transfer ownership of the water supply infrastructures to the county governments for them to take over their management, provided that the counties agree to take over the repayment of the debt that the government incurred from external development finance institutions in order to develop them.

On the other hand, county government policy leaders are maintaining the position that the national government should transfer these assets without the debt obligation, since the counties did not exist at the time they were incurred and should not be burdened with the responsibility of repaying them.

The issue of transferring ownership of water assets developed before decentralization is closely linked to the dispute between the two levels of government over the continued existence and role of the regional WWDAs. County government respondents believe that these "middlemen agencies" are an illegality established by the national government to encroach on their functional mandates. However, the national Ministry of Water maintains that the WWDAs own the assets and will continue to exist until they are officially transferred to the counties together with the debt obligation.

One CSO/NGO respondent agrees with the national government's position on the grounds that the county-owned water companies are too weak to take on the debts incurred in developing water service infrastructure, so these debts should remain on the books of the WWDAs. The respondent stated:

“The biggest one is the issue of handing over of assets still in possession by the national government agencies. What this does is that in the book of accounts, the WSPs are so weak that they are unable to acquire loans, even from the local banks to expand service provision.”(civil society/NGO official)

Moreover, officials from the national Ministry of Water and the WWDAs, in rebutting the assertion made by counties that WWDAs are illegal entities and therefore irrelevant in the sector, argue that their ownership of the assets is justified due to the limited technical capabilities of most counties to operate and maintain these assets, some of which are highly complex. Consequently, the WWDAs should continue to manage these intricate water supply systems, and the counties should take advantage of this opportunity to enhance their capabilities through training and technical support from the WWDAs until they have demonstrated sufficient capacity and sustainable finances to assume management of the assets and repayment of their debts. A WWDA official expressed this viewpoint, stating,

"the counties are challenging the role of the WWDA, yet these are crucial for the development of water infrastructure, which is beyond the capacity of the counties. What we are advocating for now is the return of the water sector to the national government. The counties have not been able to demonstrate their ability to handle complex, high-capacity policy issues and public investment decisions." (WWDA officials).

The fourth source of contestation in the structures for intergovernmental functional assignment is adequacy of competent staff capacity at the county level to undertake water service functions assigned to them. All the respondents interviewed from both levels of government and non-state policy actors interviewed agree that county governments are yet to build the required levels of capacity and skills to undertake all the water services delivery functions assigned to them. However, there is contestation between policy actors from the national and county governments on how to address this capacity gap. On the one hand, the county government respondents argue that the national government has not done enough towards supporting the counties to build sufficient capacity to fully undertake the functions assigned to them, and that it has instead used the capacity gap as an excuse to retain control of water functions that are constitutionally assigned to the counties.

On the other hand, respondents from the national government argues that it has been working to bridge the capacity gap by providing technical assistance to county staff through the regional WWDA's. Their argument was that instead of the counties focusing on building the necessary systems, procedures, and staff capacity to undertake more functions, they have instead engaged in war over funds and functions with the national government with demands to take on management of complex water services for which they are not adequately prepared for.

One respondent from the national ministry of water said that the challenge has been the sudden transfer of several water functions to the counties before building sufficient county capacity to deliver on these mandates. He argued that there should have been a longer period of transition, during which only minor functions would have been transferred to the counties. More complex and demanding services, such as ownership and governance of water companies, would only have been transferred once the counties had demonstrated that they had the necessary structures and processes in place. An interviewee from one of the development partners agrees with the county's views on these issues of adequacy of capacity. He argued that the national government is using its

financial strength and superior technical expertise to retain control of water functions, rather than transferring skills and activities to empower the counties to take on these.

On the other hand, he also agreed with the national government that the counties have demanded for more than they are able to currently deliver on. He stated that....

“If you ask me power is still very much disproportionately wielded by the national level because they have the financial muscle and the technical skills on grounds that they do bulk systems, the counties can’t do. The counties demand for an immediate transfer to them of all water functions currently held by the WWDAs is ill advised. they need some more time to build the systems to take on these functions.”(development agency official)

The internal dynamics within county governments have also been a focal point of contention, particularly concerning the technical capacity required for water service delivery. This contention is primarily observed between the principal county water executive department and the officials from semi-autonomous, county-owned water companies. Officials from these water companies have expressed their dissatisfaction with the prevalent practice of appointing individuals to various roles related to water service delivery at the county level based on political patronage rather than merit and competence. Such appointments often result in individuals with limited capability assuming critical roles, which adversely affects the county's ability to effectively perform its assigned functions. A representative from a county water service provider company lamented:

"The process of appointing board members is flawed, with political appointees in county governments often lacking expertise in the water sector or in policy formulation and development. This stands in stark contrast to the previous system where national government appointees generally exhibited a certain degree of competence." (water service provider official).

Furthermore, respondents have identified the routine, unprocedural overhaul of water companies' senior leadership coinciding with the five-year electoral cycle and the advent of a new county government administration as another source of contestation. This practice undermines job security and stability among WSPs staff, leading to the dismissal of existing staff and the unprocedural appointment of new personnel, which does not align with the guidelines set by the WASREB. An official from a county water service provider company elaborated:

"Job security for top management is crucial for maintaining service quality. However, with the transition to devolution, the new leadership, asserting that water is a devolved function and under their purview, proceeded to replace board members without adhering to the WASREB guidelines."(water service provider official)

The fifth source of contention is the control of funds appropriated for water services delivery between the national and county governments, as well as within the county level between the county water departments and the semi-autonomous water companies. Several respondents from the county government expressed the view that the national government still wants to tightly control externally mobilized funds from donors for specific water projects, in addition to the government's own allocation, which they already control the majority of. The county policy actors interviewed believe that since these funds are 100% spent within the counties, the national government should simply act as a conduit for transferring them to the counties, rather than imposing controls on how they are spent on water services delivered locally by the counties.

A senior official from the national Ministry of Water disagrees with this view, arguing that the national government should control these funds because they come through the national treasury and are then distributed to counties as conditional grants, with the national government responsible for ensuring that the donor conditions are met by the counties.

At the county level, several respondents from the water companies believe that the key issue is that the county water department rarely provides funds directly to WSPs to expand water services. Instead, the county water department expects the water companies to share the fees they collect with the water department for its operations, which they argue is contrary to the expected autonomy of the companies, which requires that funds raised by the companies be ring-fenced for the operations of the companies.

These findings indicate that within the existing institutional framework in Kenya, there are five primary contentious issues perceived in the intergovernmental allocation of water sector functions between the national and county governments. These issues encompass overlapping roles and responsibilities in the water services sector, disputed definition of national public works assigned to the national government, contested ownership of water infrastructures and debt repayment obligations, disputes over the adequacy of county-level staff to undertake assigned water service functions, and contentions over the control of funds allocated for water services delivery.

The fundamental underlying source of contention for all these five disputed issues is primarily the lack of clarity regarding the overlapping roles and responsibilities of different levels of government in the water services sector, leading to a gap where both levels of government operate. This lack of clarity results in a situation where the two levels of government engage in a blame game regarding which level is ultimately responsible to the citizens for funding and providing personnel to carry out post-construction maintenance and repair functions of water systems installed by the WWDAs within a county, rather than assuming responsibility for water services delivery.

The allocation of functions between the national and county governments in Kenya is delineated in the fourth schedule of the constitution, which includes the assignment of functions related to the delivery of water services to both levels of government. However, it does not offer a clear definition of the extent of concurrent functions that should be jointly undertaken by both levels of government. Consequently, there is a dispute among stakeholders regarding the allocation of responsibilities. The findings reveal that the national government has taken advantage of the lack of a precise delineation of the boundaries between the two levels of government in terms of their respective responsibilities. As a result, the national government has assumed certain duties that would be more effectively executed by the counties. In comparison to other countries with similar decentralized governance systems such as South Africa and India, the institutional frameworks governing water services in Kenya create uncertainty regarding the allocation of functions between different levels of government. This uncertainty is the underlying factor causing the disputes, as established by the study.

While the fourth schedule of the Constitution of Kenya establishes that the county governments are responsible for water services delivery and implementation of national government policy related to water services and that the national government is responsible for national public water works, it does not provide specificity as to the extent of concurrency in the sharing of roles and responsibilities by both levels of government while undertaking their assigned functions. This is a key factor explaining the observed contestants overlapping functions. Compared to the institutional structure in the South African decentralized system of governance which the Kenyan constitution borrowed from, there exists a well-defined inventory of concurrent functions that are jointly exercised by the national and provincial governments in the South African Constitution. Additionally, there is a distinct inventory of exclusive provisional powers and functions, wherein

the national government lacks legislative authority, except in matters pertaining to national security, national standards, or minimum requirements. According to the Constitution of South Africa (1996), the management of water resources in the country is considered a shared responsibility between the many levels of government. The specific roles and responsibilities of each level are explicitly stated.

In Kenya, the national government possesses supreme legislative jurisdiction over the functions outlined in schedule four for counties. Consequently, counties are limited to the adaptation of national legislation, thereby precluding the independent formulation of water policies, laws, and regulations at the county level, as observed in South Africa. In a similar vein, it is worth noting that in India, the national water policies and regulations established by the central union government do not possess legally binding jurisdiction over the states. This is due to the constitutional autonomy granted to the states, allowing them to formulate and implement their own water policies, laws, and strategies pertaining to the provision of water services. Datta and Sodhi (2021) conducted an observation in India wherein they noted that the states had a tendency to reject the National Water Policy of 2002 due to a misalignment with their respective state-level objectives. Similar to the case of South Africa, the constitution of India explicitly outlines a comprehensive set of exclusive functions for both the central government and the states. Additionally, it specifies certain functions that are jointly shared by both levels of government, granting them the authority to enact laws. This provision effectively eliminates any potential ambiguities that may give rise to disputes over functional jurisdiction (Constitution of India).

These findings also align with the observations made by Stoa (2014), who asserts that the institutional frameworks governing decentralization in water management in Haiti were characterized by ambiguity. These frameworks often failed to provide explicit instructions regarding policy implementation, responsible actors, and the nature of institutional interactions. According to Stoa, the consequence of this was the persistence of numerous water sector functions being executed at the national level, notwithstanding the implementation of decentralized water resource management. The implication of these observations is that a more explicit definition of functions for different levels of government including clearly separating between explicit and concurrent functions may reduce the functional contestations and thus better governance outcomes

as compared to situations characterized by vague definition of functions in the primary constitutional frameworks established the multilevel governance system in place.

The contested definition of what constitutes national public works assigned to the national government arises from the fact that the Constitution of Kenya does not establish exclusivity of water functions to either level of government. The distinction between National Public Works and County Public Works is at the heart of this contestation. Article 65 of the Water Act of 2016 establishes Water works development agencies as agents of the national government to carry out the functions designated as "National Public water works." The implication is that any other functions not specified in this section 65 of the Act should be deemed as County public water works, except for the formulation and implementation of national policy and strategy and the Regulation, establishment of national standards for the provision of water services, which remain functions of the national government according to article 186 of the Constitution of Kenya.

The judicial interpretation of the Constitution by the courts has reinforced the notion that water provision is a responsibility to be shared between the national and county governments (Okiya Omtatah Okoiti and 3 others versus Nairobi City County and 5 others, 2014). This shared responsibility underscores the distinct yet interdependent nature of the two levels of government, as articulated in Article 6(2) of the Constitution, which mandates a collaborative approach through consultation and cooperation. Despite this constitutional directive, there is a perceived discrepancy in the actual execution of these functions, with reports suggesting that the national government often proceeds with little to no coordination with the county governments, diverging from the intended cooperative governance framework.

The results suggest that the perception of national government encroachment into county functions remains a significant underlying challenge in water services delivery in Kenya. These findings contrast with the experiences in India, where the central government does not directly carry out water infrastructure development for what they categorize as Centrally Sponsored Schemes (CSS), but allocates funds to states, which then handle the implementation, even if the funding originates from the central government (Datta and Sodhi, 2021). Nevertheless, some stakeholders have criticized the concept of Centrally Sponsored Schemes as being contrary to decentralization, as states are obligated to comply with the regulations established by the central union government and thus are unable to fully implement the projects at their own discretion.

Regarding the contested definition of concurrent functions and the allocation of national public works to be executed by the national government, the results differ from the findings presented by Bolleyer (2006), which demonstrate a consistent trend in federal systems where institutional structures designate certain policy functions as concurrent between government levels. Bolleyer provides a comparison of Germany with 62% concurrent functions, Switzerland with 18%, the United States with 14%, and Canada with 3%. The findings indicate a contested boundary line and a lack of clear definition of roles separation concerning the roles of different government levels in water services delivery. On the dispute over resource allocation between government tiers, the results of this study are in line with the argument made by Rohdewohld (2022) that the local resource mobilization capacity of subnational governments should not be a determining factor in assigning functions; rather, functions should be assigned based on the principles of efficiency, responsiveness, and local accountability.

4.4 Intergovernmental power dynamics in water service provision

This section presents and analyzes the findings on the power dynamics that underlie intergovernmental assignment of water provision functions in Kenya, and the subsequent impact on water services provision. The respondents were requested to articulate their perspectives on the power equilibrium between the two government levels, the ways this power is demonstrated, and the implications of this power manifestation on water services delivery. A summary of the responses is presented in Table 4.5.

Table 4 5: Perceptions of respondents on intergovernmental power dynamics in Kenya and how it affects water services delivery.

Dominant Actor	Respondent	Power Manifestations	Impact on Water Services Delivery
National Government (62%)	CoG, WSP, Ministry of Water, NGOs/CSOs, WWDAs, County Government, Development Partners	Control of financial resources; Formulation of laws and policies; Technical workforce for large projects; Oversight through national agencies; Primary recipient of external funds; Enforcement of conditional grants	Uncoordinated funding leading to service gaps and duplications; Delayed policy enactment due to county resistance; Varied service quality based on county competence; Centralized control limiting county investment decisions; Blurred accountability
County Government (22%)	WASPA, WASREB, County Government, Water Service Providers	Authority over local service delivery structure; Ownership of WSPs; Appointment of WSP boards and staff	Imposition of politically motivated, unviable tariffs; Appointment of unqualified board members; Interference with WSP operational autonomy
Neither (12%)	WSPs, WWDAs, NGOs/CSOs	Requirement for coordination between levels of government	Coordination required for exercising respective authorities within responsibilities

Source Author, 2023

Table 4.5 shows that 62% of the respondents interviewed believe that the national government has more power in water services delivery under the current institutional structure in Kenya. This is because the national government controls most of the financial resources for water services, sets and enforces national water laws and regulations which are to be domestic by the counties within their jurisdictions, and has a more technically skilled workforce. The national government also has a number of agencies, such as WASREB, that are responsible for overseeing the governance of WSPs. Additionally, the national government is the primary recipient of external funding from lenders, which it can use to influence the development of water services in the counties. The 22% of respondents who believe that the county government has more power in water services delivery

point to the county's mandate to determine the structure of service delivery units at the county level, its authority to appoint the boards and staff of WSPs, and its ownership of 100% of WSPs.

A small number of respondents (12%) believe that neither the national government nor the county government has more power in water services delivery. They argue that the two levels of government are interdependent and must coordinate their respective policy authorities within their respective responsibilities and are therefore equally powerful in this regard.

When asked to characterize the manifestation of power dynamics in the delivery of water services within the current institutional structure for water services, three primary trends are observable from the different responses given. First, contestations over the control of resources for water services delivery as a significant issue defining the power dynamics not only between the national and county levels of government, but also between key policy actors within the counties. A respondent from the CoG was of the opinion that the national government has used the excuses of lack of capacity at the county level and taken advantage of the clarity on functional assignment to deliberately retain control of the majority of the funding allocated for water, which they execute through their regional WWDAs, leaving the counties with insufficient resources to carry out their mandate. Another county government official corroborated this view, stating that;

"the willingness and appetite to decentralize power in practice is still very low among national government actors." (county administrative official).

A respondent from the CSO/NGO category asserted that the national ministry of water has used its powers to be too prescriptive to the counties which is contrary to the principle of subsidiarity.

In a similar manner at the county level, respondents from the county-owned water companies believe that the county governments have used their policy-making mandate at the county level to politicize the governance of the water companies, resulting in a decline in their performance relative to the pre-devolution period when these companies were under the powers of the national government. One respondent from the water companies was of the opinion that the county water departments and governors have used their ownership and policy-making authority over county level water services delivery to make ad hoc and poorly planned decisions over the operations of the WSPs, negatively impacting the finances and thus the capacity of the WSPs to fulfil their mandate.

The same as indicated;

“the counties do not appreciate professionalism and thus use their ownership powers over WSPs and mandate to do things unplanned and ad hoc which is not good for us.” (water company official)

Consequently, some WSPs officials are of the perception that the WSPs could be better off under the direct authority of the national government, which they believe would enforce greater professionalism and governance stability in the management of WSPs. As one stated:

“We wanted and still want to be under the National government because of interference from the county. The national government provides more resources and have competent staff who appreciate better professionalism in service delivery..... Most WSP MDs would prefer that WSPs be national government agencies, the counties do not appreciate professionalism and do things unplanned and ad hoc which is not good for us.” (water service provider company official)

A respondent from WASPA expressed similar sentiments regarding county abuse of power over WSPs to interfere with their operations, as well as proposals to transfer ownership of WSPs from counties to the national government. According to the respondent, WSPs resisted being transferred to county administrations, preferring to remain under the national government. He observed that while the structure for intergovernmental functional assignment allocates WSP shareholder powers to the county government, which gives them a great deal of control over the companies, these powers, including the power to appoint the WSP board of directors, have not been exercised in accordance with the regulatory guidelines provided by the national government, resulting in filling the WSPs with less qualified officials appointed only on the basis of a political reward scheme. He observes that these political appointees have interference with the day-to-day operations of the WSPs in a bid to control the revenues and procurement processes leading to a lack of autonomy that has had a negative impact on the performance of WSPs because management is unable to make independent decisions and is therefore less likely to be efficient and effective. Poor financial performance has also made it more difficult for WSPs to raise the capital they need to invest in infrastructure and maintenance.

Second, the power dynamics between the two levels of government have manifested as a struggle over institutional legitimacy between the national and county governments. Respondents from the county government have questioned the legitimacy of the WWDAs because, in their opinion, they

are unconstitutional bodies founded by the national ministry to maintain control over the water resources. Their assertion is that the national government is using WWDAs to encroach on their functional mandate. Similar sentiments were expressed by a respondent in the CSO/NGO category, who stated:

“the problem is that most county actors do not legitimize the WWDA and other rules that are seen as extending national government jurisdiction into the counties space, the persistent existence of the WWDAs gives the national more powers over the counties which the counties don’t like at all.” (CSO/NGO official).

The complex dynamics of water service provision in Kenya's devolved system of governance have led to significant challenges in regulatory oversight and institutional autonomy. This complexity is exemplified by the perspectives shared by the various stakeholders in the water sector interviewed. The governance and regulatory landscape of Water Service Providers (WSPs) in Kenya's devolved system presents a complex and often contentious scenario.

A representative from WASREB, corroborates the assertions made by WSP officials regarding the misuse of authority by county governments in their oversight of WSPs. However, in a noteworthy admission of institutional inadequacy, the WASREB respondent attributes this predicament not solely to county government overreach, but also to the regulator's own failure to effectively enforce compliance with the established corporate governance guidelines for WSPs.

The WASREB respondent elucidates that the core issue underlying regulatory shortcoming is the counties' fundamental questioning of the legitimacy of WASREB's oversight function over entities owned by county governments. Offering a contrasting viewpoint, a respondent from the CoG presents an argument grounded in the principles of devolved governance. This perspective posits that the very existence of a national regulator wielding approval powers over counties stands in contradiction to two fundamental tenets of devolution: the subsidiarity principle in governance structuring and the equality of both levels of government in policy-making matters. The CoG respondent's argument is anchored in the constitutional provision that designates service delivery as a devolved function, thereby calling into question the legitimacy of regulatory oversight at the national level. This perspective highlights the tension between the need for standardized national regulation and the constitutional imperative for devolved governance.

Further insights from the WASREB respondent reveal that this questioning of WASREB's legitimacy and approval authority has led to a situation where governors have acted with a degree of impunity. County executives have, in many instances, disregarded national government directives pertaining to the county's exercise of governance oversight powers over WSPs. This disregard for national directives has created a regulatory vacuum, compromising the effective governance and operation of WSPs across the country.

The research findings paint a picture of WSPs caught in a precarious position, effectively trapped in the middle of a power struggle between the two levels of government. Multiple interviewees express the view that WSPs require support and cooperation from both national and county governments to function effectively. However, the current situation frequently results in WSPs being pulled in opposing directions by these two levels of government, creating significant operational challenges.

These WSP officials interviewed describe an intricate legal and regulatory environment in which their organizations must operate. On one side, WSPs are legally obligated to adhere to the conditions of regulatory supervision issued by WASREB. This national regulator possesses the authority to issue operating licenses and approve business plans and tariffs, a regulatory framework designed to ensure standardized, efficient, and accountable water service provision across Kenya.

Conversely, the principal shareholders of WSPs – the county governments – hold the legal authority to establish and disband these entities. These same county governments, however, stand in opposition to the national government's regulatory oversight authority over county agencies, including WSPs. This opposition creates a challenging operational environment for WSPs, who must delicately navigate between compliance with national regulations and responsiveness to county government directives.

While WSPs are required by law to comply with WASREB's regulations, facing the risk of license revocation for non-compliance, county governments, despite their authority to establish and staff WSPs, lack the power to issue operating licenses to these entities. This discrepancy creates a potential conflict between the establishment and operational authority of WSPs, further exacerbating the challenges faced by these organizations.

The tension between national regulatory authority and county government autonomy in water service provision presents significant challenges for effective governance and service delivery in the water sector. These findings underscore the need for a more harmonized approach to water sector regulation and governance, one that balances the principles of devolution with the need for standardized and efficient water service provision across the country.

As stated by one interviewee.

“Schedule IV of the constitution of Kenya 2010 is what is eating us because the county says that water was devolved. Therefore, when WASREB tries to exert its regulations on water utilities we get lost since we don’t know whether we should be directed by counties or WASREB.” (water service provider company official)

A representative of the national ministry of water sympathizes with the WSPs affirming that this power struggle stems from an ongoing struggle between county governments and the national government ministry of water and its regulatory authority, WASREB, over the enforcement of national policies, standards, and regulations at the county level but cautioned that regulation should not be left entirely to each individual county government.

“I think most of the governance issues we are facing in the sector rise from the fact that actors at the county level question a lot the legitimacy of some of the actions of the national level actors such as WASREB and especially the WWDA which is unfortunate because most governors come into power with a feeling that they will be a law unto themselves. There must be stable systems in policy, regulations that should guide a uniform set of actions across the 47 counties otherwise we'll have total chaos in the sector. The counties must agree that there are overarching rules of the game that must be applied at county level even when some of these seem to be against their own interests. WASREB for example faces many problems bringing order in how water companies are run especially on-board appointments and staff recruitment. many counties only see the opportunities for employing their friends and sadly it done with little regard for the law. regulations and standards are developed by WASREB to unfirmly apply across board. we can’t have each county having its own rules against their own interests.” (ministry of water official)

A respondent from the CSO/NGO category echoed the sentiments of the official from the ministry of water, stating that while the counties are questioning the legitimacy of WASREB's regulatory

powers over them, there must be an overarching system of rules, standards, and regulations applicable to all counties for water services delivery to be rational.

“That regulatory and oversight power over counties gives them greater control which obviously the counties contest but the truth is that we can’t have every county being its own regulator.” (NGO/CSO official).

A third pattern underlying the power dynamics in the structure for intergovernmental functional assignment for water services delivery is the concomitant modification of the existing legal framework by both levels of government in order to further consolidate their authority over various water services delivery powers. A respondent from the category of development partners opined that policy leaders at the national government is taking steps to amend the existing water law in order to grant themselves more responsibilities, some of which are presently performed by the counties. On the other hand, he noted that concurrently, the counties, through the CoG, have proposed a slew of amendments to the existing laws that will grant the counties more policy powers and give them greater authority over several functions and responsibilities for water services delivery, some of which are currently being carried out by the national government. As he stated;

“there’s a current attempt to amend the water law by MoWSI with the proposed amendments largely being in favor of more functions and powers to the national government. to counter this, the CoG is also proposing their own amendments to the law to grant them more powers for water functions. Several clauses in both sets are conflicting each other and presents a significant political quagmire.” (development partner organization official)

The perceptions of the respondents, as outlined in Table 4.5, demonstrate a consensus regarding the power dynamics within the current institutional structures, which have led to various challenges in service delivery. These challenges include the duplication of services, limitations on county decision-making, and an accountability gap that perpetuates the quality-of-service delivery. According to a county government official, the national government's disproportionate control over a significant portion of the sector's resources impedes county decision-making on projects and investments, resulting in inaccurate resource allocation at the county level. This is due to the lack of firsthand insight into the distribution of needs within the county and the absence of coordinated service delivery planning with counties that possess a better understanding of local needs. The official highlighted the issue, stating,

"When national governments expend resources under their control without coordinating with county governments that similarly expend other additional resources under their control, duplication of services in the same locations occurs, while other, much more deserving regions go unserved" (County government official).

Conversely, respondents from CSOs/NGOs and development partners contended that the continued centralization of resources has created a situation where both counties and the national government deflect responsibility to each other, resulting in an accountability gap.

These respondents were of the view that community members and consumers of services provided by both levels of government are often unsure of who is ultimately responsible for a particular service. For example, one respondent described how a community group sought help from the county to repair their malfunctioning water system, only to be told that the county did not build the system and that the group should contact the WWDA, which did construct it. When the group contacted the WWDA, they were told to contact the county water department, as the national government's responsibility ended after construction when the system was handed over to the counties. Therefore, any problems with the system should be resolved by the county. Community representatives who were interviewed agreed, stating that this shifting of responsibility ultimately results in communities not receiving water services.

However, one CSOs/NGOs representative disagreed with the view that the national government's control over resources has only led to negative impacts on service delivery. He argues that the national government's continued control of resources has actually led to better services, as they have been able to develop better quality water infrastructure that ensures sustainable long-term services. This is in contrast to systems developed by counties, which are of poorer quality due to insufficient design capacity.

Respondents from the WSPs and national government ministry of water and WWDAs unanimously agreed that county governments' exercise of authority over the governance of WSPs has had a negative impact on service delivery. They were all of the view that county governments have used their authority to impose illegal and unviable tariffs for political gain. This has made it difficult for WSPs to generate enough revenue to operate effectively, leading to weak financial stability and substandard service delivery.

"County governments have used their authority over the governance of WSPs to impose illegal and unviable tariffs for political gain, negatively impacting company operations and resulting in substandard service delivery because the WSPs end up having insufficient funds to fully deliver on their mandate." - WWDA official

In addition, some respondents believe that the appointment of unqualified board members for WSPs by the county government, without following the regulator's guidelines, has led to these political appointees interfering unprofessionally with the operational autonomy of water service providers thus hindered the staff's ability to provide high-quality, professionally packaged water services. Furthermore, respondents from development partners and CSOs/NGOs explained that the power struggle between the national and county governments over the extent of the national government's oversight powers over counties on key water service policies and regulations has led to delays in the enactment of critical policies to expand water services. This is due to the county governments' resistance to national oversight powers.

For example, the signing of an intergovernmental coordination framework and the development of a joint investment plan for water services delivery, as required by law, have taken more than 10 years to be realized due to this power struggle.

The key finding from the examination of the power balance between the two levels of government in water service provision, how this power is manifested and how the manifestation of power has affected water services delivery is that the majority of respondents (62%) believe the national government has more authority in the delivery of water services is primarily attributable to their control over financial resources, their mandate to formulate and enforce national laws and regulations for water services, and their technically competent workforce. In contrast, 22% of respondents believe that the county government has more authority over the national government in the delivery of water services at the county level. This is primarily due to their responsibility to determine the structure of service delivery units at the county level including their ownership of water service providers, appointment of their boards and staff. The respondents who highlighted this were of the view that the national government have no such powers at county level hence less powerful in that sense. A small number of respondents (12%) believe that neither the national

government nor the county government has more power in water services delivery since both are considered equal governments according to the Constitution of Kenya.

It is also established that the national government exercises its authority over counties by controlling the greater proportion of resources allocated for the delivery of water services and exercising policy and regulatory supervision over the counties. The county government, on the other hand, exercises its authority at the county level through its ownership of WSPs, which grants it governance authority over the affairs of county owned WSPs, and through its authority to implement local policies and investments for water services. The county's contestation of the national government's oversight and regulatory approval powers over the county as well as their questioning of the legitimacy of some of the national government agencies who they see as predatory actors encroaching into their functional mandates, emerged as key manifestations of power dynamics between the two levels of government. The result also shows that county owned WSPs are caught between the power dynamics pitting the national government against the county governments, as they are accountable to both levels of government in various aspects, yet they are 100% owned by the counties. The power dynamics have impacted water service delivery in a variety of ways, including duplication of services, restriction of county decision-making leading to inefficient resource allocation, and delays in enactment of critical policies and investment plans limiting achievement of government water access objectives.

The lack of clarity in the institutional structure defining the roles and responsibilities of the national and county governments significantly influences the power dynamics between these two levels of government in the context of water services delivery.

This ambiguity is evident in three main ways: conflicts over control of budgetary resources, county governments questioning the legitimacy of newly established national agencies, and the national government's regulatory oversight of the counties. Both levels of government are also attempting to revise the legal framework to consolidate their powers, further contributing to the disorder in the institutional framework for water services delivery.

Morrison et al. (2019) demonstrates that the underlying power dynamics within the institutional structures moderate the interactions between policy actors at different levels of government, enabling certain actors to achieve their desired outcomes at the expense of others.

Article 189 of the Constitution of Kenya recognizes the autonomy of county governments as independent policy formulating centers exercising constitutional authority, stipulating that both levels of government must exercise their powers in a manner that respects the functional and institutional integrity of government at either level. A High Court ruling emphasized that neither the national government nor the county governments hold a position of subordination to the other (*Institute of Social Accountability v National Assembly*, 2015). This is based on the understanding that the legitimacy of the counties is not derived from the national government but is constitutionally established as equal to the national government. According to Article 1(4) of the Constitution, there are two levels of government – the national and county governments – each exercising power derived directly from the Constitution itself. The county government's authority is not derived from the national government, but directly from the people of Kenya and under the Constitution. In theory, these two levels of government are considered equal, with neither being subordinate to the other.

The study finds that intergovernmental power dynamics in the institutional structure for water services delivery in Kenya is dominated by a perception of the national Government's encroachment on County Government Autonomy. The counties, on the other hand, are challenging this national government's exercise of authority over them. They are also pushing for a restructuring of the institutional framework that would enshrine their autonomy and make it more difficult for the national government to exercise policy authority over them.

These findings are consistent with those of McCollum (2017), who observed that lack of clarity on the roles of policy actors at both levels of government can lead to opportunistic actors, mostly from the national level, using their resource control and superior technical capacity to manipulate the policy process and service delivery to align more with national government interests. The finding that the national government has continued to exercise powers over the counties in water services delivery contradicts the findings by other scholars who found that devolution led to reduced power of the national government and increased the power of the counties in the delivery of health services in Kenya.

The perception that the national government has used the rationale that county governments do not have sufficient technical capacity to undertake the functions assigned to them to encroach into water services mandates of the county governments is consistent with observations that higher

level governing units in multilevel government systems have often exercised pragmatic power and framing power by using narratives of the lower-level's lack of technical capacity and by disregarding rules in place and exploiting gaps in institutional structures to disempower and constrain authority of lower-level governing units from performing their assigned functions. The findings that the counties are contesting and resisting the national government's oversight and regulatory approval powers over them, as well as questioning the legitimacy of some of the national government agencies who they see as predatory actors encroaching into their functional mandates, are consistent with findings that state officials challenged and successfully resisted federal policies and directives. Dinan posited that the underlying factor behind this resistance was that the states felt they were not adequately engaged by the central government in the policy-making process but rather the national government overstepped its mandate and issued these policies and directives via executive and administrative action, which are contrary to the autonomy of states from federal administrative directives where they are not involved in the decision process.

These findings on the perceived encroachment of the national government into county government functional competencies are also consistent with conclusion made by other literature that there is a growing trend in multilevel governance systems where the central government's exercise of powers over subnational governments leads to re-centralization of power, despite the existence of constitutionally protected formal authority to subnational entities. Biyenu notes that the key factors driving this trend are economic factors, where the central governments use their regulatory oversight powers related to stabilization of the macroeconomy and standardization of policies across key sectors of the economy to enforce adoption of specific policies at the subnational level, sometimes which may appear contrary to the preferred policy directives of the subnational governments. Furthermore, he asserts that this trend is also driven by the weakness of the subnational entities to resist the center to expand its areas of responsibility into their domains due to weaker fiscal capacities, thus leading to more centralization in weaker decentralized systems compared to stronger ones.

4.5 National government Veto power and County Government Autonomy in water services delivery

This section examines the national government's authority to veto decisions made by county governments on water services delivery. It analyzes the data collected to identify patterns, trends, and relationships related to county governments' policy autonomy from the national government in water services delivery.

The section also presents findings on the conditions under which the national government can exercise its veto authority, the instruments it uses, and the impact of this authority on service delivery.

4.5.1 Conditions under which the national government can veto policy decisions made by county governments in water services delivery

To gather insights into the national government's veto power over counties and the extent of county autonomy under the current institutional structure for water services delivery, two questions were asked of the interviewees. First, they were asked to explain the conditions under which the national government can veto water decisions made by county governments, the specific instruments used, and the impact of this veto power on water services delivery. Table 4.6 summarizes the responses.

Table 4 6: Perception of respondents on conditions under which the national government can veto policy decisions on water services delivery made by county governments in Kenya.

Respondents perceptions	Instruments used	Category of respondent	Level of government
Using national regulation and standards	By means of sector regulatory instruments and service delivery standards	WSPs; Ministry of Water official; WASREB	National, County
When Counties contradict national policies and laws	By petitioning the courts to declare the county's actions unconstitutional	WSPs; CoG; WWDA; Transition authority; development partners, NGO/Civil society official	National, County
Deviance from project conditionalities	Through the application of conditional fiscal transfers from national to county governments for water services	County officers, ministry official, development partners	County, national

Source: Author, 2023

The responses in Table 4.6 which summarizes the perceptions of interviewed policy actors show that there is no consensus among respondents from both levels of government on whether the national government can veto county government decisions on water service delivery.

While most respondents believe that there are no clear conditions under which the national government can veto county decisions, some respondents pointed out that the national government can intervene in certain circumstances to substantially change the direction of the county government's actions. These circumstances are: when County governments adopt policies, laws, or service delivery approaches that contradict national policies, laws, or regulations for service delivery; when counties fail to meet the conditions set for the implementation of specific water projects; when the governance of WSPs contradicts national regulations for WSP governance. A respondent from the CSOs/NGOs category agreed with the view that the national government does not have veto power over counties. The argument advanced was that the two levels of government share responsibilities, and that the county's role is constitutionally assigned and protected thus there is no provisions for the national government to veto county policy choices and that the national government can only challenge policy choices adopted by the counties through a court process.

“it is not clear when this veto can happen. this is made difficult by this sharing of responsibilities between the two levels of government. it is not clear what aspects of water resource management and service delivery the counties should do thus difficult to tell when the national can veto county decisions.” (CSO/NGO official).

The CoG, county government officers, and national government officials all agreed that county water policies, laws, and mechanisms should not contradict national ones. However, the county and council respondents said that the national government does not have veto power over county policy decisions. They argued that only the Controller of Budgets can veto county decisions, and that the national government can only challenge such decisions in court.

“The national government does not veto decisions made by the county government; the only office that can veto decisions made by the county government is the controller of budgets. If the county government puts things on their budget that are supposed to be done by the national government,

they will not fund it. The court can veto, but it is an arbiter anyway, the auditor general can ask questions and the investigative agencies” (CoG official).

While some county-level interviewees agreed that the national government has ultimate policy authority over water services delivery and can intervene through the courts when counties violate national policies and laws, they criticized how the national government has used these powers to encroach on the functional competencies that the constitution assigns to counties. They claimed that the national government has used these powers to advance its own agenda and encroach on county government responsibilities. As one interviewee put it:

“the national government can intervene when they see a county government adopting policies and actions that contravene national water law and policy by requesting the court to declare the counties actions illegal according to the constitution. However, related to this, we have seen the national government deliberately circumventing devolution through bypassing counties to use alternative institutions like WWDA for what the counties should be doing i.e., creation of nationally controlled entities that undermine the role of counties even when there is no clear case for it.” (water service provider official)

A similar observation was made by an official from the CoG’ secretariat that;

“while we agree that by law the county systems and policies must not contradict national systems and if that happens the national can intervene, the unfortunate situation is that the national government is still consistently encroaching on policy and investments functions assigned to the counties through different form e.g., using the WWDAs and other national agencies like WSTF instead of giving the counties the one to undertake their functions.” (CoG official).

Respondents from both levels of government, including water companies, county water departments, and the national regulator, agree that the national government can exercise authority over the governance of WSPs through the use of national regulations and standards set by WASREB for water services delivery and for the governance of WSPs.

This means that the national government can influence county decisions on the governance of WSPs by means of sector regulatory instruments and service delivery standards.

One official from a county-owned water company said that the national government can use the overarching water services regulatory instruments through WASREB to veto county decisions that deviate from good governance practices. A senior official from the national ministry of water justified the national government's exercise of veto power over counties using these regulations by stating that most counties have not yet put in place stable policies, a competent civil service, and structures for the delivery of water services. Instead, they tend to make decisions based on the whims of the county governor in office rather than on a stable system. This is why there is a need for stronger national enforcement of policies and regulations at the county level. According to

“The big challenge is that the counties still lack sufficient strong staff capacity to deliver on their devolved functions. With most of them having poorly developed governance systems for decision making thus creating a situation where all county decisions revolve around one person, the governor, whose word is law as opposed to there being a decision system that goes beyond an individual. Most counties are still struggling to deliver their functions since needs a lot of oversight from the national level.”(ministry of water official)

Several water company respondents believed that the national government could veto county decisions by using conditional grants for specific water projects. These grants are financed by external donor funds and are appropriated through the national ministry of water. A county government water department respondent agreed that the national government has imposed implementation conditionalities on how counties can use the disbursed funds. However, they argued that these conditionalities constitute an unconstitutional exercise of veto power by the national government over counties. They pointed out that both levels of government are equal under the law and neither has veto power over the other.

“One area where we see the national in a way vetoing county decisions is through the use of conditional grants since the counties must do what the national want if not they will veto the county decisions.....Why would the national government hold funds meant for counties and only release it as conditional grants? This is the problem. These conditional and additional transfers have reinforced national government spending power contributing to much of these intergovernmental relations tensions. Through these conditionalities, they use their superior fiscal power to force counties into grant agreements that are in most cases defined as county functions on the basis that

the counties lack enough capacity and are unable to raise taxes and fully self-finance on these services.” (county government official)

Based on the foregoing analysis of the data in relation to the question as to whether the national government has authority to veto policy decisions made by county governments in the context of water services delivery, the finding is that there is no consensus among respondents on whether the national government has veto power over county water decisions. Some respondents believe the national government can intervene to change county decisions when they contradict national policies, laws or regulations. This can be done through the sector regulatory instruments and use of conditional grants given to counties. Others contend that the national government has no direct veto powers over counties and can only contest county decisions through judicial petitions. Some respondents believe the national government is justified to exercise oversight over counties due to weaknesses in county capacity and poor governance in order to guarantee the effective and efficient delivery of water services according to set standards.

These findings corroborate earlier discussions in Sections 4.2 and 4.3, which indicated a lack of clarity surrounding the division of power between the national and county governments in Kenya regarding water service delivery. The findings also reveal the complex challenge of implementing Kenya's devolved institutional structure, blurring lines of responsibility and creating mixed perceptions about the extent of national oversight and veto power over counties. Such ambiguity in the institutional structure has led both levels of government to make expansive claims about their roles in water service delivery, with the national government asserting more authority over counties than the constitution and legislation establish. Overall, the complexities around decentralization have resulted in uncertainty over which level of government is responsible for water services. The implication of this is that clarifying the division of power and responsibilities between the national and county governments will be important for improving water service delivery in Kenya.

The findings imply that decentralizing functions to local governments alone is insufficient if existing power structures, resource constraints, and capacity limitations facing local governments are not adequately addressed. As Bakker (2010) argues, decentralization often fails when local governments lack financial and technical capacity, which remains controlled by national entities. This is seen in Kenya where, despite the institutional framework assigning substantial water

service delivery roles to county governments, the national government has withheld significant fiscal resources needed by the counties to effectively deliver their mandate. The extant power imbalances related to financing, resource control, and oversight powers over counties as defined in current institutional structures for water services have allowed the national government disproportionate influence over county-level water services delivery. This has exacerbated tensions and disputes with counties, complicating resolution until reforms restructure power distribution between the two government levels.

The institutional structural design of water services delivery in Kenya presents a complex challenge, centered on the dilemma of whether to decentralize regulatory powers. This issue is intrinsically tied to the country's governance framework as established by the Constitution of Kenya. Unlike the pre-devolution era, where a hierarchical pyramid structure placed counties as subordinate tiers primarily tasked with implementing national policies under central supervision, the current institutional framework has fundamentally altered this dynamic.

In the present constitutional arrangement, counties derive their legal status and powers directly from the Constitution, rather than through parliamentary statutes. This constitutional empowerment grants counties and equality of governance authority within their jurisdictions, particularly in public service delivery. Consequently, the national government's role has shifted from direct control to collaborative coordination with counties. The central objective of this coordination is to ensure that devolved powers are not exceeded and that minimum national standards and values in service provision are maintained.

However, this new paradigm presents challenges in exercising authority. The national government lacks coercive powers over counties and must instead rely on incentives to influence county-level decisions. One such incentive, as evidenced by the research findings, is the use of conditional fiscal transfers that supplement the legally defined equitable share of national revenues. This approach exemplifies the dilemma surrounding the extent of national regulatory oversight over counties, particularly in matters such as water tariff setting.

The current institutional model for water services delivery bestows upon counties the authority to formulate local water policies and legislation. Additionally, under the fourth schedule of the Constitution, counties are tasked with implementing legislation and policies created by the national

government. This dual responsibility creates a complex interplay between national and county-level governance in the water sector.

Within this institutional structure, the intergovernmental assignment of functions delineates specific roles for each tier of government. The national government is primarily responsible for establishing national policy and strategy, providing technical assistance to counties, and overseeing bulk water services delivery. In contrast, county governments are charged with the actual delivery of water services at the local level.

This division of responsibilities, however, introduces potential risks. There is a high likelihood of misaligned incentives when the national government is mandated with allocating water rights, setting quality standards, and regulating various aspects of service delivery such as tariff levels, while the actual service delivery is left to county governments. The research findings corroborate this concern.

A significant issue arises when counties are not sufficiently involved in the implementation of national mandates. The rationale that these are national functions may lead to the national government underestimating both the costs to county governments and the implications for counties across their diverse circumstances. This disconnect can result in policies that are not fully aligned with local realities and needs.

Interestingly, policy actors from both county and national governments acknowledge certain shared perspectives. They concur that counties, being in the early stages of their formation, often lack adequate resources and expertise to fully operate and maintain complex water infrastructure. Simultaneously, both tiers recognize that the national government may be detached from on-the-ground realities, and that counties are better positioned to work with communities in prioritizing water service needs.

Despite this apparent consensus, the practical implementation reveals a different scenario. The national government continues to be heavily involved in local service delivery at the county level, but with minimal coordination with the counties, as indicated by the research findings. Several respondents highlighted that county and national governments do not always share the same priorities, leading to conflicts and an expanding accountability gap.

This complex situation calls for a reevaluation of the current institutional structure. There is a need to consider whether some policy and regulatory functions should be further devolved to counties. Such devolution could potentially allow for a better scale-match based on each county's discretion, thereby aligning governance more closely with local needs and capacities.

4.5.2 Conditions when the county government can make binding policy decision on water services delivery

To further explore the question of county governments' policy autonomy from the national government in water services delivery in Kenya, the respondents were asked a second question: "Explain the conditions under which county governments can make any binding decision on water services without facing sanctions from the national government. How does that affect water service delivery?" The responses are summarized in Table 4.7.

Table 4 7: Perception of respondents on conditions when the county governments can make binding policy decisions on water services delivery in Kenya.

Perceptions	Respondents Category	Level of government
Counties can establish new WSPs within legal framework	CoG, Ministry of Water, WASPA, WASREB, WWDAs, Development partners, County officials	National, county
Decisions on the structure of water service delivery models	WSPs, WWDAs	National, County
Mobilization of external funding for projects	WSPs;	County
Governance of WSPs including appointing boards, and senior staff	County officials, CSOs/NGOs	County
Decisions on location of water service projects within the county	County officials, WSP officials	County

Source: Author, 2023

The summary of respondents' perceptions shown in Table 4.7 suggests that county governments have some degree of freedom to make policy decisions over water services delivery at the county

level but not with full autonomy from the national government. As one interviewee from the water companies put it:

"it is almost impossible for counties to make binding decisions without seeking approval from national agencies especially WASREB." (water company official)

The responses of the interviewees suggest that a consensus exists among respondents from both tiers of government regarding the county governments' authority to make certain water services delivery policy decisions without seeking formal approval from the national government. This autonomy, however, is not absolute; it is constrained by the proviso that such arrangements must not contradict national laws, policies, and regulations. Interviewees from the national regulator WASREB were in agreement with county government and CoG' officials that counties have the autonomy to decide on the specific service delivery models to be adopted within the county level. This includes the choice of whether to establish a new WSP or to use other models such as community-based operators or private sector actors. However, even in this case, counties may still need approval from the national government through the regulator, WASREB, to ensure that the chosen model is aligned with national regulations, according to a respondent from the national WWDAs. The interviewed policy actor from the WWDAs was of the view that counties cannot make binding policy decisions without seeking approval from national agencies, especially WASREB.

He argued that even decentralized functions such as the establishment of WSPs, the appointment of WSP board members, approval of water tariffs, and the formulation of structures and models for water services delivery at the county level must be aligned with the national water law, policies, and most importantly, and thus must be subject to the approval of WASREB before official adoption by the counties. As one respondent stated;

"in practice, counties can make policy decision within their jurisdictions such as those related to how they structure their service delivery models but still for most of these they still need approval from WASREB to ensure that what is proposed is aligned to WASREB standards. This is something the counties don't like very much i.e., this requirement to get national level approval for almost everything be it on tariffs to charge, board appointments etc. in reality, I can say that while Kenya has devolved institutional structural, we still remain centralized to a large extent. Clearly there are persistent structural tensions in the design of Kenya's devolution considering the many court

cases by counties against the nationals supposed encroachment into what they see as county functions, take for example Murang'a taking MUWASCO and WASREB to court on what's counties role on setting tariffs, which the court ruled in the counties favor that they must be consulted before WASREB approves.” (WWDAs official)

This stance reflects a more centralized approach to water services governance, emphasizing the role of national agencies in maintaining oversight and ensuring consistency across county-level operations. Policy leaders at the county level contest this position, viewing it as an intrusion into the autonomy of county governments. One water company official was of the view that the Water Act 2016 gives counties the authority to make decisions on water services delivery, and that WASREB's approval is only required for certain specific matters like issuing of license to WSPs. He stated;

“unfortunately, still, many national agencies have supervisory, approval powers over the counties such as WASREB, WRA which the counties don't like. We at the counties see some of these highly interventionist role the national government is giving itself in attempting to control and direct activities at county level which sometimes override county government preferences. Example is WASREB controlling tariffs when the counties want to give lower tariffs and WASREB objects.”
(Water service provider company)

A respondent from the national ministry noted that although county decisions related to some water services, such as governance of WSPs, require regulatory approval, several counties have ignored these requirements and failed to comply. The respondent also noted that the regulator has been unable to hold these counties accountable for their infractions because they do not have the authority to fully veto county decisions.

“most counties have made decisions that are clearly outside of the water act 2016 and out of WASREB's regulations. for example, on the management of WSPs and even on the specific models for delivering services where you find many counties have approaches that are not sustainable and not following the regulations. this brings up the issue of the robustness of the accountability mechanisms in the current institutional arrangement. this has been questioned a lot by many actors; for example, WASREB seems to be toothless to punish counties who don't follow the laid-out laws and corporate governance rules in appointing directors of WSPs, or counties who fail to correctly adopt the water act in their local context , policies, regulations, or another example

counties recourse when the WWDA undertakes county functions without coordinating or collaborating with them.” (Ministry of Water official)

While a respondent from WASREB concurs with the ministry official's viewpoint regarding the challenges faced by the regulator in enforcing regulations at the county level due to the prevailing culture of impunity among governors and weaknesses of existing instruments to enforce these, the official also expressed disapproval of the national government's lack of accountability to the counties for encroaching upon their functional responsibilities. According to his perspective, this phenomenon fosters a climate of impunity inside governmental structures at both the national and county levels, hence posing challenges to the effective implementation of national policies and standards for water services delivery.

“what we hear from our interactions with the counties especially the CECMs are complaints that rules have been broken by the national government agencies but they have not been held accountable; there is a general feeling that the current institutional arrangement is weak to sufficiently sanction breaking the rules; an example is where a WWDA drills a single village borehole without engaging the county when the rules of intergovernmental collaboration is clear that this is a county government function and thus they should be held accountable. so, when this happens and the ministry ignores the counties complaints, it becomes difficult for us as WASREB to enforce issues with counties at a later time since a bad precedence has been set by the ministry in their dealings with the same county.” (WASREB official)

A water company official attributed these difficulties in enforcing the national regulations and standards for water services at the county level to a path dependency problem, in which the majority of officials at the national level are having difficulty adapting to the new governance changes, while the actors at the county level, who are new to the sector, do not yet have a complete understanding of how the institutions are structured and are expected to coordinate and work with each other in processes of water services delivery. As he stated;

“the foundation of this challenge is that the national government officials who have been at the ministry since the 1980s and 90s have a difficulty in adapting to the new institutional structure where they don't control all the powers as they have in the past. so, all this interference is them attempting to remain relevant even after things have changed under the new devolution. but I also think that the transitional phase from a centralized system towards a decentralized governance

system has been hurried while the people remain the same thus creating a path dependency, legacy problem that has significantly slowed down the pace of implementation.” (water service provider company official)

Respondents from both levels of government both concur that the tensions between the national and county governments over the extent of the national government's oversight powers over counties on key water service policies and regulations has led to delays in the enactment of critical policies to expand water services. This is due to the county governments' resistance to national oversight powers. These observations underscore the tension between the drive for local autonomy and the perceived need for national-level coordination and standardization in the water sector.

The realization of key water service delivery initiatives, such as the signature of an intergovernmental water sector coordination framework and the formulation of a cooperative investment plan for water services delivery, has been significantly delayed, spanning over a decade, primarily due to the ongoing power struggles related to the contested issues in the existing institutional structure. These factors have contributed to the delayed achievement of water coverage goals and the inadequate performance of Water Service Providers .

The key finding in response to the question under what conditions the county governments can exercise autonomy on water service decisions without facing any form of sanction from the national government, and how does this affect service delivery is that the county governments have some policy autonomy over local water services but still require alignment with and approval from national regulatory bodies, indicating limited decentralization in practice. The results indicate the existence of underlying tensions between the two levels of government over the appropriate balance of county autonomy versus national oversight.

These findings reveal the complex realities of decentralized governance in Kenya following the 2010 constitutional reforms aimed at devolving more power and resources to the county level. While counties were given greater responsibility over local services like water provision, national regulatory oversight remains in place, constraining full autonomy. This aligns with scholarship highlighting the partial and uneven decentralization in practice, where the central government tends to still exert control over subnational entities in water governance through regulatory mechanisms and conditional funding leverage (Habich-Sobiegallo, 2018).

An examination of relevant articles of the Constitution of Kenya, such as Articles 189 and the Fourth Schedule, as well as the subsequent design of institutional structures in the Water Act of 2016, reveals that the intent of the framers of the Constitution was to establish a polycentric governance system for water services. This system assigns policy and fiscal powers to the national and county governments through subsidiarity and scale-match in order to correct perceived failures of the centralized hierarchy that has dominated Kenya's governance since independence. However, despite these decentralization efforts, the results presented here demonstrate that policy actors from the national and county governments lack clarity on the division of authority. A trend persists where water service delivery functions remain significantly centralized, much to the chagrin of county policy actors.

Institutional governance comprises both structure, which defines formal rules and assigns functions, and process, which is how policy actors interact and engage under those rules. The findings suggest a path dependency problem where some policy actors, mostly from the national government, are reluctant to relinquish powers required under the new institutional structures. They have been part of the water service delivery system longer, prior to devolution.

In essence, institutional inertia and path dependency in the water sector have resulted in a disconnect between the goals of devolution and the persistence of centralized national power and control. This has constrained local water service delivery by county governments. Institutional inertia here refers to the tendency of institutions to resist change and maintain the status quo. These findings align with scholarly work showing that perceived benefits of decentralization reforms can be undermined by inertia if incentives remain tied to the old centralized system. This is evident in the governance of water services delivery in Kenya in various forms. These include the apparent further consolidation of power through use of regulatory rules requiring that the counties secure national government's approval over certain policy choices before these become effective, use of conditional fiscal transfers, and the perceived deliberate refusal to provide technical assistance and capacity building to counties so that they are capacitated to undertake more of their devolved water functions. The results suggest that the factors underlying this resistance are the fear of losing power which they have had for over 60 years since independent to totally new policy actors at the county level, and a lack of trust in the capacity of the counties to effectively undertake the functions assigned to them. The later factor seems plausible in the interest of ensuring that the citizens do

not feel a gap in service delivery. However, the result also shows that the national policy actors appear not to work towards addressing this capacity issue deliberately in effort to use it as a rationale to enhance their grip in the sector, which is all ironical. This interpretation agrees with conclusions that central government officials often tend to see little personal benefit in supporting reforms that reduce their own influence over policymaking, and thus will act in a manner contrary to the ideals of decentralization.

Effective institutional structures for water management requires not just decentralization of functions but needs attendant empowering of subnational governments to have a real voice in water decisions at the local level. These findings suggest this remains a key weak point in the current institutional framework for water services in Kenya.

The results indicate that county autonomy without financial self-sufficiency is not feasible. This is crucial to ensure the autonomy and vitality of decentralized decision-making. Under the current institutional framework, the county governments are heavily dependent on transfers from the national government hence significantly undermining their autonomy.

Although the constitution and the Water Act of 2016 delineate the functions, the counties have not developed adequate capacity to execute these functions. As a result, these responsibilities have to be shouldered by the national government, without a clear timeframe for the transfer of these functions. One of the pivotal determinants of the overall effectiveness of a governance system is the capacity and agency of the institutions and individuals within the governance framework. The potential of an institution or individual to reach their desired outcomes (their capacity) is shaped by the amount and type of resources (capital) they possess or can tap into. This may encompass human, social, financial, and physical capital. This is critical to note on the issue of intergovernmental power dynamics in Kenya where limited human capital among the counties remains a significant constraining factor. While on one hand the counties are holding the national government to account on their encroachment into their functional areas and retaining financial resources that ought to be allocated to them based on their assigned competencies, they have failed to address the issue of building professionalism and a competent bureaucracy that is predictable, stable and able to withstand political changes in the leadership of the county. The results showing a large extent of political appointments and arbitrary dismissal of staff by county Governors and appointment of unqualified personnel to key policy positions not only does not support the case of

the counties against the national government but further reinforces the national governments justification of their undertaking functions that are perceived by counties as theirs so as not to leave a service delivery gap to the citizens whose interest is ultimate access to services.

The principle of subsidiarity, which serves as a fundamental governance value supporting the rationale for decentralizing water service functions, emphasizes the expectation that decisions impacting individuals should, to the greatest extent feasible, be made by the level of government closest to the affected population. However, this principle has been overshadowed by conflicts arising from the need to reconcile centrally driven policies with the preferred policy choices of county governments.

This is evidenced through the conflicts in implementation of water rates, and other regulatory standards for water services. At a more micro-level within the counties, the administrative authority by county-owned water service providers has been significantly restricted, and not aligned with the neoliberal ideals of new public management that champion market-like systems for public services delivery.

The findings under this section, and in the chapter at large, contributes towards the merging scholarship in the governance of water services delivery from a coordination perspective. The evidence shows that the success of decentralization is not inherent in the policy and political philosophy behind it itself, but rather in the design and implementation of the institutional structure to operationalize the policy. The issue of institutional interplay emerges as a key institutional design consideration. Institutional interplay, the coordination between different institutions or organizations in a given policy area, is important for promoting effective and collaborative policymaking and implementation of water services delivery. Institutional interplay is evident as a major source of inefficiency in the water services policy arena in Kenya in different forms as the results have shown. These include the overlapping mandates which has led to competition for resources and policy authority, as well as the challenges in intergovernmental coordination resulting in duplication of effort, policy incoherencies and questioning of legitimacy of certain policy actors in the governance of water services delivery in Kenya. The institutional interplay in Kenya is largely occurring through functional linkages. The effectiveness of institutional interplay in implementation of water services delivery policy in Kenya is influenced by the balance of power and policy responsibility between national and county governments. This underscores importance

of the need for coordination and accountability. As such, the next chapter examines in depth the extent and effects of intergovernmental coordination in water services delivery in Kenya.

4.6 Chapter summary

This chapter presented and discussed the study's findings in response to the research question of how the intergovernmental assignment of functions within Kenya's institutional framework for water services has affected service delivery. The collection, analysis, and presentation of evidence to answer this question were structured around four interrelated themes, discussed in turn. First, the study examined whether the structure for intergovernmental functional assignment favors the national government over the counties. Second, the study explored the key contested issues underlying this structure. Third, I analyzed the power dynamics between the two levels of government related to how functions are assigned within the existing institutional framework. Fourth, we assessed the extent of national government veto power versus county autonomy in water service delivery given current institutional arrangements. The data were first presented based on an analysis of interviewee responses to generate specific findings. These were then interpreted to draw implications, with references to literature, about what the findings mean.

CHAPTER FIVE

INTERGOVERNMENTAL COORDINATION AND ITS EFFECT ON WATER SERVICES DELIVERY

5.1 Introduction

Chapter five presents the findings and discusses the impact of institutional coordination within the water sector between national and county governments on water services delivery in Kenya. The study posited that insufficient intergovernmental coordination within water institutions between the national and county governments in Kenya has had an adverse effect on water service delivery..

To test the validity of this hypothesis, qualitative data was collected and analyzed from a select group of individuals to obtain insight into this phenomenon. 32 individuals participated in semi-structured interviews. Participants included individuals from organizations involved in national and county-level water policy making and service delivery. In addition, representatives from nongovernmental organizations and community representatives were included in order to encompass a broader spectrum of perspectives into this phenomenon.

This chapter analyzes respondents' feedback on three key themes, based on a structured interview protocol (complete questionnaire is available in Annex I). The themes are as follows:

- i) Intergovernmental Coordination Mechanisms: An assessment of the existing coordination instruments between national and county governments in water services delivery, focusing on their nature and efficacy.
- ii) Functional Interdependence: An exploration of the degree to which national and county governments are functionally interconnected in water services provision. This theme also investigates how this interdependence (or its absence) influences the propensity for inter-governmental coordination.
- iii) Coordination Frequency: An examination of the regularity of institutional coordination activities between national and county governments regarding water service delivery. This theme also identifies factors that either encourage or discourage such coordination efforts.

Each section begins with a presentation of the results found from the analyzed data, followed by a discussion of these findings in connection with the particular interview query posed and existing

literature. The chapter concludes with a comprehensive synthesis that brings together the discussions under each of the themes.

5.2 Coordination mechanisms in water services delivery

This section examines the nature of the instruments and approaches established to facilitate institutional coordination between the two levels of government in Kenya in relation to water services delivery. It presents data and discusses findings on the nature of existing intergovernmental coordination instruments, their perceived effectiveness in facilitating coordination in this complex decentralized institutional framework, and the impact of this on water services delivery.

5.2.1 Existing coordination instruments

In order to establish the current mechanisms in place for coordinating the delivery of water services in Kenya, interviewees were asked to point out what they classify as the main channels for coordination. Table 5.1 summarizes perceptions of various categories of respondents.

Table 5 1: Perceptions on coordination mechanisms for water services

Coordination instrument	Frequency of this response (n)	Category of Respondent	From what Level of government
CoG frameworks (e.g., coordination summit, budget council, CECM caucus)	10	WSPs, WASPA, County officials, CoG, CSOs/NGOs	National, county
Intergovernmental Relations Technical Committee (IGRTC)	8	CoG, County officials, Ministry of Water, Transition Authority, Development partners	National, county
WASREB licensing and tariff approval process	6	WSPs, WASPA, WASREB, Development partners	National, county
Water Service Providers Association (WASPA)	4	WSPs, WASPA, Ministry of Water	National, county
WSTF funding agreements with WSPs	1	WSPs	County
Project management agreements (Counties, MoWSI, WWDAs)	1	WSPs	National

Source: Author, 2023

Table 5.1 shows that majority of the respondents stated that intergovernmental water sector coordination mechanism was coordination facilitated through the CoG and its affiliated entities. These CoG affiliated entities include the National and County Governments Coordination Summit, and the Budget and Economic Council which are wider multi-sectoral intergovernmental coordination forums at the highest level often chaired by the President or the Deputy President of Kenya, the CoG Water Committee which draws 5-6 county governors and chaired by one of the governor elected from among the governors, and the CECM Caucus for Water sector.

The IGRTC was cited by 8 participants, making it the second most frequently mentioned intergovernmental coordination mechanism. The IGRTC is a statutory board facilitates coordination between the national and county levels of government on a technical level. Both the CoG and the IGRTC are statutory bodies established through the Intergovernmental Relations Act of 2012.

In addition to the formal coordination mechanisms, several respondents from both the WSPs and WASREB were of the view that effective coordination also happens through the WASREB regulatory oversight of the licensing and monitoring of the governance of water services providers even though it is not stated formally as a coordination mechanism.

Other mechanisms that facilitate intergovernmental coordination in water services delivery between national government and county government agencies mentioned include coordination facilitated by the WASPA, technical coordination conducted by the WWDAs, coordination via specific funded projects between water service providers and the Water Services Trust Fund (WSTF), and collaborative water project design and implementation involving counties, the Ministry of Water, Sanitation, and Irrigation, and WWDAs. As one official from a WWDA stated;

“We often use the technical trainings as focuses for coordinating with counties. we train them, there is a lot of capacity built because at the end of the day the infrastructure is going to be handed to them. We follow up very closely where they may be lacking for example in the case where they may not have enough fund to buy the chemicals required and even after hand over the major maintenance still comes back to us (WWDA), so we walk with them all the way.” (WWDA official)

While the county-owned Water services provider companies identified the CoG and IGRTC as the primary mechanisms for intergovernmental coordination in water services delivery, majority of

the respondents from this category identified coordination facilitated via WASREB and the WASPA as important coordination instruments. This is attributed to first, the regulatory oversight role WASREB being a national government entity has over WSPs creating the need for coordination of WSP governance functions including formal issuance of operating license to WSPs, establishment of boards, setting of water tariffs. The WASPA, being a membership organization for WSPs also provides a coordination mechanism between the WSPs and national government.

“We sign water service provision/performance agreement between ourselves, the regulator (WASREB), and the county. This helps in coordinating activities done by different actors at the two levels.” (water company official)

The key finding in response to the question regarding the existing mechanisms for coordinating water services delivery across different levels of government is that while the CoG and its affiliated entities and the IGRTC are the two main formal statutory intergovernmental coordination mechanisms, there are also other non-statutory coordination mechanisms, such as: Coordination by the WASREB during licensing and tariff setting for WSPs, coordination through the WASPA, coordination facilitated through trainings by WWDAs, coordination through specific-purpose agreements between WSPs and the WSTF, and coordination through project agreements between counties, the Ministry of Water, and WWDAs.

The 2010 Kenyan Constitution devolved water services delivery functions to 47 newly established county governments, transferring policy-setting powers and resources to autonomous sub-governments, rather than simply decentralizing administrative responsibilities while retaining policy authority at the national level. The institutional structure also assigns significant regulatory oversight, water infrastructure development, and coordination functions to county governments, creating a complex web of authorities that requires careful coordination to achieve the intended goals of devolution. The findings show that the current institutional framework has clearly established formal institutionalized mechanisms to facilitate expected coordination between policy actors at the two levels of government. This finding is consistent with research by Poirier and Saunders (2015) who observes that multilevel governance regimes adopt a variety of intergovernmental coordination mechanisms, including formal intergovernmental agreements: Legally binding agreements between different levels of government that outline how they will

collaborate, share resources, and divide responsibilities on specific policy issues; Less formal intergovernmental partnerships: Non-binding agreements that rely heavily on goodwill and are mutually created to enhance coordination through joint planning, data sharing, and resource pooling around shared policy and service goals; Intergovernmental transfers: Fiscal exchanges between different levels of government, including conditional transfers of funds for specific purposes to support alignment of service delivery and policy goals; Ad hoc committees and working groups: Bodies with representation from different levels of government that are created to facilitate the development of shared priorities, and Informal networks among officials across governments: Networks that facilitate information sharing and identify opportunities for coordination on various policy issues. The finding that policy actors perceive that additional non-statutory mechanisms have facilitated coordination outside of these formal institutionalized structures is consistent with Poirier and Saunders (2015), who posit that personal contacts and professional networks have enhanced the efficacy of institutionalized instruments for intergovernmental relations.

5.2.2 Effectiveness of existing intergovernmental coordination instrument in water services delivery

In order to provide additional clarity on the initial inquiry, the participants were asked their perspectives on the efficacy and proficiency of the aforementioned intergovernmental coordination mechanisms in realizing the intended intergovernmental coordination within the institutional framework for decentralized water services provision. The summarized responses can be found in Table 5.2.

Table 5 2: Perception on the effectiveness of coordination mechanisms

Key Perceptions	Category of Respondents	Level of Government
Ineffective due to power imbalances	Ministry of Water, WASPA	National, county
IGTRC reactive rather than proactive in coordination	WASPA	National
Mistrust and competition hinder effectiveness, allegations of national intrusion	WASREB, NGO/CSO	National
County’s view IGTRC as biased and inefficient	CoG, Development partners, County officials	National, county
IGTRC lacks legislative backing and enforcement power	CSO/NGO	Non-state actor
CoG effective at macro-level, but water sector forum faces challenges	WWDA	National
The CoG is active only at macro-level of coordination	Former Transition Authority	National
CoG forums non-binding, unable to enforce coordination	Water Service Provider	County

Source: Author, 2023

Table 5.2 illustrates that while the CoG and IGTRC were frequently identified by a majority of respondents as the primary mechanisms for coordination in water service delivery, numerous participants highlighted significant deficiencies in their ability to achieve the intended coordination. Many interviewees, particularly from county governments, perceive the IGTRC as a biased advocate for the national government, casting doubt on its role as a neutral coordination instrument between the two government levels. This sentiment was echoed by a development partner official, who emphasized the committee's perceived alignment with national government interests, leading to delays in essential services reaching citizens.

Furthermore, criticisms were directed at the IGTRC for its reactive rather than proactive approach to coordination, lacking a structured schedule of planned coordination events. Conversely, a

ministry of water official from the national government expressed concerns about the CoG' adversarial relationship with the national ministry of water, hindering its effectiveness as an intergovernmental coordination platform.

A distinction was drawn between coordination instruments established under the Intergovernmental Relations Act of 2012, which are statutory, and those that are non-statutory. Some respondents noted weaknesses in the legal enforceability of decisions made through formal statutory instruments. On the other hand, non-statutory instruments, such as the CECMs caucus and the WASPA platform, were considered more effective in facilitating coordination due to their basis in shared goodwill and consensus, rather than strict legal requirements.

Due to the shortcomings in the legal enforceability of decisions made through formal coordination instruments, an interviewee from the CSO/NGO category expressed the opinion that the main weakness of the existing instruments is their apparent inability to hold accountable actors from both levels when they fail to provide coordinated water services as required by law. The interviewee highlighted the perceived weakness of the instruments in place and the challenges in legitimizing demands from both ends, citing the example of the water sector coordination framework led by Kiraitu in 2018, which was never implemented, and the delay in the new push for a new sector framework due to the national government's refusal to legitimize it.

Several respondents believed that the effectiveness of the different instruments for intergovernmental coordination in water services delivery between the national and county governments hinges on political goodwill from both levels of government, which has been lacking. For instance, a respondent from CSO/NGO pointed out that the initial water sector coordination framework, endorsed by senior officials from both the ministry of water and the CoG in March 2018, has not been implemented five years after its endorsement. This delay was attributed to a lack of political support to implement coordination, particularly from the national government, as indicated by respondents from the COG, CSO/NGOs, and development partners categories.

In addition to the established statutory coordination mechanisms involving the CoG and the IGTRC, respondents from the county-level WSPs as well as national government agencies such as WASREB, WSTF and some officials of the WWDA all concurred that specific direct agreements such as project-based financing instruments and Memoranda of Understanding between the WSPs and the WWDA as well as through the various regulatory engagement between the WSPs and

WASREB have also been effective in facilitating coordination. They all highlighted that the effectiveness of these arrangements as intergovernmental coordination mechanism lies in their focus on technical engagements level between technical professionals, rather than being dependent on broader political dynamics.

According to respondents from the CoG and a county government official, some national government entities, such as the Ministry of Water and the WWDA, believe that county governments lack the capacity and accountability to effectively deliver water services. As a result, they often bypass coordination mechanisms and take over water service functions at the county level, often without any form of coordination with the county governments. They are able to do this because the existing coordination instruments are not legally binding, according to these respondents. This encroachment into county functions by the national government exacerbates mistrust between the national government and county governments, which further stymies the effectiveness of existing coordination mechanisms.

Several respondents from the WASPA and WASREB concur with this view in describing the relationships between the counties and the national government as being characterized by competition and conflicts rather than collaboration. They are of the view that there's a prevalent lack of trust on both sides which has hindered the effectiveness of the various coordination instruments available within the existing institutional framework.

The findings indicate that most policy actors from both levels of government view the current intergovernmental coordination instruments for water services delivery as ineffective for achieving the intended intergovernmental coordination of the institutional structure for devolving water services. The CoG and the IGTRC, which have been identified as the primary coordination instruments, are deemed to have significant deficiencies. The IGTRC is perceived by county policy actors as biased towards the national government and lacking neutrality, while the CoG is seen by national government actors as adversarial rather than collaborative in enhancing coordination. The study also finds that these main statutory coordination instruments lack the legal enforceability necessary to bind policy actors at both levels of government. The ineffectiveness of these coordination mechanisms is compounded by a lack of political support and mistrust between the national and county governments, which is exacerbated by the perception that the national government is intruding on county functions. The findings also indicate that the non-statutory

instruments based on goodwill that have emerged to fill the coordination vacuum are viewed as being more effective at facilitating intergovernmental coordination.

The fourth schedule of the Constitution of Kenya of 2010 delineates the primary institutional feature of this decentralized governance system as the allocation of distinct functions to each level of government. This underscores the significant need for intergovernmental coordination to achieve policy objectives for the various public service functions. Chapter 4 illustrates that the provision of water services is a concurrent function for which both levels of government share responsibilities. Article 189 of the Constitution of Kenya delineates the nature of collaboration between the national and county governments in terms of respecting each other's constitutional authority, supporting policy implementation, exchanging information, coordinating administration, and developing capacity.

As evidenced in these findings, the CoG and the IGTRC emerge as the principal statutory mechanisms within Kenya's institutional framework for water services delivery, aimed at facilitating intergovernmental coordination in the execution of both explicit and shared functions. The CoG, established under the Intergovernmental Relations Act of 2012, functions as a platform for the 47 governors to exchange best practices and experiences, advocate for county government interests on national policy matters, and engage in consultations with the national government on issues relevant to county governments. Similarly, the IGTRC, also established under the Intergovernmental Relations Act of 2012, operates as a neutral committee comprising members from both tiers of government, providing a neutral platform for discussions on mutual interests, including resource allocation, policy implementation at the county level, and dispute resolution. The CoG primarily assumes a political role, focusing on advocacy and lobbying for county interests, while the IGTRC functions as a neutral technical body, concentrating on technical aspects of intergovernmental relations. Both the CoG and the IGTRC form part of the National and County Government Coordinating Summit, a high-level forum chaired by the President of Kenya, which convenes governors and the national Cabinet to deliberate on matters of national and county government significance. The IGTRC is tasked with ensuring the implementation of decisions made by the National and County Government Coordinating Summit, collectively forming the overarching structure for intergovernmental relations in Kenya.

The study findings reveal that the inefficacy of the CoG and the IGTRC in coordinating water services delivery in Kenya can be attributed to inherent factors in their institutional design and contextual factors within which they operate. According to the provisions of the Intergovernmental Relations Act, decision-making in Kenya's intergovernmental relations is based on consensus between the two levels of government, implying extensive collaboration among the involved parties to achieve consensus. However, as highlighted by respondents from both levels of government, a key factor undermining the effectiveness of these mechanisms is the non-justiciable and non-legally binding nature of their decisions, which are heavily reliant on goodwill. Consequently, if one level of government fails to fulfill its agreed obligations, the other level lacks legal recourse to ensure compliance. This was exemplified by the water sector intergovernmental coordination framework signed between the CoG and the national ministry of water in March 2018, which remained unimplemented for nearly five years due to the lack of commitment from the national government's ministry of water.

Furthermore, the susceptibility of the CoG and the IGTRC to changes in the political climate or leadership has been identified as another factor limiting their effectiveness. This was evident in the case of the re-signing of the water sector coordination agreement in August 2023, where a new CoG chair and a new minister of water, devoid of political differences, signed the agreement, unlike their predecessors during the signing of the March 2018 agreement. This suggests that changes in leadership can disrupt the effectiveness of these mechanisms, posing challenges for sustaining long-term planning and coordination. This instability in intergovernmental coordination in water services delivery may be exacerbated by the potential emergence of new political leadership at the CoG and the ministry of water in the future, likely leading to the disregard of previously signed agreements, given their non-legally binding nature and reliance on goodwill. The failure to implement or discard these agreements signifies a significant disruption in water services delivery, hindering the attainment of service delivery objectives. These findings align with Poirier's (2016) conclusion that the formal legal status of intergovernmental coordination instruments significantly influences coordination in multilevel governance systems, as legally binding decision outputs can be enforced by a court of law.

Poirier has also demonstrated that in jurisdictions where intergovernmental coordination mechanisms lack formal legal status, their effectiveness is contingent upon the political will and

commitment of the involved parties. The study findings indicate a lack of the requisite political will to render these mechanisms effective. Political contestations between the two levels of government regarding functional assignment and the allocation of corresponding resources, as demonstrated in the study's fourth chapter, have been identified as the primary impediments to the political commitment required from both tiers of government for the effectiveness of these mechanisms. At the core of this conflict lies the perception of national government encroachment into county government water services delivery functions and the retention of the majority of fiscal resources for water at the national level, perpetuating an ongoing antagonistic relationship.

The CoG, representing counties already aggrieved by the national government, and the national ministry of water, maintaining its mandate for water functions at the county level, come to the coordination table with an adversarial perception, diminishing the CoG's standing with the Ministry of water officials.

This lack of reputational power impedes the CoG's effectiveness as a coordination mechanism, as the national government does not view it as a reliable coordination partner, thereby disrupting coordination efforts. Consequently, national governments are increasingly disinclined to relinquish their authority or resources to facilitate consensus on various water services delivery issues discussed within the coordination mechanism.

The findings suggest that the CoG appears to primarily engage in political advocacy for county government interests, while the IGTRC is primarily tasked with the technical coordination of both levels of government. Envisioned as a neutral coordination body with equal influence from both levels of government, the findings reveal that the perception of the IGTRC as a mouthpiece for the national government, rather than a neutral body convened by both levels of government, is a key reason for its ineffectiveness. These issues highlight a structural design flaw in these two coordination mechanisms and a lack of political will from actors at both levels of government. Despite being institutionalized forms of intergovernmental coordination with supporting secretariats, the CoG and the IGTRC have not effectively achieved their intended coordination purpose. This contrasts with previous research, which has emphasized that institutionalizing intergovernmental coordination mechanisms, such as having a permanent secretariat and formalized rules of operation, significantly enhances their effectiveness in facilitating intergovernmental coordination.

The perception of the IGTRC being captured by the national government to advance its interests over the counties aligns with Schnabel's observation that safeguarding such coordination mechanisms from central government interference is crucial for maintaining the balance of power between the central government and subnational units. The findings suggest that the increased presence of the national government in the governance of the IGTRC has led to an imbalance of power, making it challenging to facilitate effective coordination and cooperation, as the national government appears to dominate the decision-making process on discussed issues.

The underlying contestations between the two levels of government regarding policy authority and functional encroachment, detailed in chapter four, negatively impact the effectiveness of these coordination mechanisms and can be attributed to the tension between county autonomy and centralization.

While counties advocate for greater transfer of functions and policy-making authority from the federal government to county administrations to enhance flexibility and local control over water delivery policies and investment projects, the federal government seeks to standardize policies and programs across states to achieve national policy objectives and ensure service delivery sustainability. The pursuit of greater autonomy by counties hinders intergovernmental coordination by causing policy divergence. The federal government's insistence on regulatory oversight and final approval role, in an effort to standardize policies and service delivery standards across counties, may result in a patchwork of policies and service delivery standards, making it challenging to achieve nationally coordinated policy goals.

Secondly, the findings suggest that an informal non-statutory mechanism, established by policy actors from both levels of government at a technical level, proved more effective in facilitating intergovernmental coordination than the formal mechanism, particularly concerning technical issues related to water services delivery. Despite not being formally incorporated into the institutional framework for intergovernmental relations, technical-level actors at both levels have relied on these informal mechanisms to achieve greater coordination, circumventing the political contestations that have hindered the effectiveness of the CoG and IGTRC in facilitating intergovernmental coordination. Even in cases where formal coordination mechanisms failed, these informal networks and agreements enabled collaborative action and information sharing. This underscores the critical role of building interpersonal trust and understanding among officials

at various levels of government in overcoming structural barriers within statutory mechanisms. This suggests that while many scholars advocate for the institutionalization of intergovernmental coordination mechanisms through legally enforceable statutes for their effectiveness, informal networks based on mutual trust and shared goals can yield comparable results without seeking legal repercussions in cases where this is lacking. Similar observations were made by Bolleyer (2011), who noted that non-binding agreements between administrators in Belgium were more frequently used to enhance coordination because they did not require parliamentary approval.

A surprising finding of the study was the effectiveness of the informal caucus of CECMs for water, established within the CoG's structure, in achieving coordination compared to the formal CoG secretariat instruments. This was primarily attributed to the technocratic professionalism and stronger interpersonal relationships among the caucus members from the counties and the technical policy actors from various national government agencies, such as WASREB and the WWDAs. This finding aligns with the work of Webb (2011), who emphasized the significance of personal relationships in policy coordination, asserting that these relationships are the most crucial factor in successful intergovernmental policy coordination.

The study's results, indicating that the informal horizontal water CECMs caucus was more effective in facilitating intergovernmental coordination in water services delivery than the statutory CoG, appear to contradict the findings of Phillimore and Fenna (2017) in Australia. In their study, they found that the Council of Australian Governments (CAG), equivalent to the CoG in Kenya, was more effective in achieving coordination than the horizontal caucus of water affairs portfolio ministers. Phillimore and Fenna attributed their findings to the formality of these instruments, arguing that the informal caucus of water portfolio ministers was less effective because it lacked formal coordination status, unlike the CAG.

Freeman & Rossi (2011) argue that while both formal and less formal coordination instruments have their strengths and weaknesses, formal statutory coordination arrangements with sufficient legal enforceability can be more effective in terms of accountability and stability than less formal non-statutory instruments because they can make it more difficult for parties to evade their responsibilities or break their commitments. Additionally, formal mechanisms for promoting intergovernmental interactions tend to be more stable, visible, and durable than informal networks.

5.3 Functional Interdependence

This section presents an analysis of the degree of interdependence between the two levels of government in processes of water services provision and the impacts on service outcomes. The outcomes of these interviews are summarized in Table 5.3.

Table 5 3: Perception of respondents on intergovernmental functional interdependence in water services delivery in Kenya

Perceptions	Category of respondent	Level of government
National policies and standards implemented at county level; mutual dependence for policy development and execution	WASREB, CoG, Ministry of Water, Development Partners	National, County
Counties rely on national treasury and donor funds; national government gains legitimacy through county-level service delivery	Water Service Providers	County
National government manages large infrastructure projects used by counties	CoG, Development Partners	County
Coordination necessary as both levels serve same citizens; counties lead public consultations	WWDAs, County Officials, Water Service Providers	National, County
Counties require national government approval for licensing and regulation of services	CoG, Development Partners	County

Source: Author, 2023

Table 5.3 shows that there are primarily five areas in which the national and county governments are functionally interdependent in water services delivery. These are namely, policy development and implementation, infrastructure development, licensing, regulation and service standards, funding of water services, and capacity building. However, the summary also highlights that the interdependence between the two levels of government has been hindered by in-fighting, flexing of muscles, and mistrust resulting in poor coordination, which affects water service delivery.

Respondent from the WASREB and national ministry of water was of the view that while it is the functional mandate of the national government to develop overall policies and strategies for water

services delivery which aggregates individual county needs and reflects national aspirations, these are largely implemented at the county level by county government developed structures in coordination with other national government agencies.

The county governments since are nascent and in their early developmental stages rely on superior technical capacity of the national government to develop policies and strategies to guide the sector. Without effective coordination and engagement between the two levels of government, these policies would not be reflective of the county needs and would not be implemented since the national government is not present at the county level. Several respondents from the CSO/NGOs and development partners categories highlighted this as a key area of interdependence.

A representative from the CoG articulated the perspective that the national and county governments exhibit functional interdependence in the realm of infrastructure development. The representative asserted that the national government bears the responsibility for constructing large-scale water infrastructure projects, such as dams, which span multiple counties. The output from these projects is subsequently utilized by the county governments. Due to their limited capacity to develop substantial infrastructure independently, county governments rely on the national government for the initial development phase, after which they assume responsibility for the distribution of water services to the final consumer.

Furthermore, the representative maintained that infrastructure development is a multifaceted process that encompasses additional tasks, such as land allocation and planning for wayleaves, which fall under the purview of county governments. Consequently, the national government requires the cooperation and approval of county governments to erect structures like pipelines that traverse county territories. County governments also necessitate various approvals from national regulatory bodies when they embark on public works projects related to water service delivery.

An official from the national WWDAs expressed the viewpoint that county governments, being the administrative level closest to the citizenry, are charged with the duty of leading public consultations, even in instances where the project is executed by the national WWDA. This underscores the reliance of the national government on the counties for such engagements. As one official from the CoG observed,

"County governments are subject to a multitude of licensing requirements from the national government, including those from the National Environmental Management Authority (NEMA) and the Water Resources Authority (WRA). While the construction of hydraulic infrastructure remains a national government function, the end-users are predominantly the county governments. This scenario exemplifies the interdependence that exists on multiple fronts. For instance, should there be a development within a town, the requisite authorization must be obtained from the county government."(CoG official)

The other key area where the two levels of government are functionally independent include that the county governments owned WSPs must secure regulatory approval from national government primary WASREB to operate water services at county level. The national government also sets the standards for water service delivery which must be implanted by the county government and its agencies. Respondents from several water companies and county government officials highlighted that the counties are dependent on the national government for funding for them to execute their water services delivery mandate. On the other hand, these respondents also noted that the national government needs to get its legitimacy from the citizens who are directly served by the counties hence they are mandated to fund the counties to delivery on these services which will give them this legitimacy with the citizens within a county.

Respondents from both the national ministry of water and the CoG concurred that capacity building is another key area where the two tiers of government are functionally interdependent.

They highlighted that the county governments need the national government's support with capacity building to build their structures and processes for service delivery in addition to technical assistance in developing complex water infrastructure systems.

A consensus was observed among all respondents that the national and county governments are functionally interdependent in achieving water services delivery objectives. However, several respondents pointed out that this interdependence is not reflected in the actions of policy actors. An official from the national government acknowledged the recognition of interdependence between the two levels of government but criticized the nature of their interactions. The official attributed the lack of collaborative approaches in water services delivery to individual differences among policy actors at both levels, stating:

"It is imperative to examine both the structure and its functionality. However, the individuals appointed to these structures are equally important. It is unjust to fault the entire structure when inappropriate appointments have been made. One must consider systemic issues separately. The interdependence is evident, as the national level requires the implementation of policies, regulations, and standards at the county level, where they are absent. Conversely, counties rely on national support for capacity building in large infrastructure and funding, particularly for mobilizing external resources. As previously mentioned, the internal conflicts and power struggles have hindered this necessary interdependence, resulting in inadequate service delivery to many citizens. The national government may focus only on cooperative counties, leaving others underfunded. Consequently, counties may resort to constructing substandard infrastructure that fails prematurely, disrupting services to consumers." (Ministry of Water official)

Echoing this perspective, a representative from the CoG stated:

"We are unequivocally dependent on each other. National policies and goals are formulated at the national level but executed at the county level. Counties require funding from the national government to achieve their objectives. Regrettably, despite the clear mutual need, actualizing this dependency has been challenging. National officials, who control the funds, often display indifference, giving the impression that they do not require county cooperation." (CoG official)

Some interviewees believe that despite the acknowledged interdependence, coordination efforts between the two levels of government are superficial and perfunctory, rather than being part of a deliberate and well-planned intergovernmental collaboration.

"Most national government agencies, particularly the Water Works Development Agencies (WWDAs), have not embraced an inter-agency collaborative approach. They continue to operate in isolation, consulting with county governments and, to a lesser extent, Water Service Providers (WSPs) merely as a formality, without any genuine intention to collaborate. Therefore, the Water and Sanitation function should be fully devolved, including the development of assets." (CSO/NGO)

The findings reveal that while there is a shared understanding among policy actors from both levels of government regarding their mutual dependency for various water services delivery functions—such as policy development, infrastructure creation, licensing, regulation, service quality, financial

support, and capacity building—this interdependence has not been effectively operationalized in their coordination practices. This is contrary to the principles outlined in the Constitution of Kenya (Government of Kenya, 2010).

Section 6(2) of the Kenyan Constitution outlines the relationship between national and county governments as one of distinctiveness yet mutual reliance, mandating that their interactions be guided by principles of consultation and cooperation. This constitutional framework is reinforced by findings indicating that policymakers at both the local and national levels recognize a symbiotic relationship in the provision of water services. This interdependence is evident across various domains, including policy formulation, infrastructure development and implementation, regulatory oversight, standardization and quality assurance, financial provisioning, and capacity enhancement. However, despite this recognized consensus, there is a lack of tangible improvements in the coordination of water service delivery between the county and national levels of government. This discrepancy highlights a persistent gap between the theoretical recognition of the need for intergovernmental coordination and the actual execution of collaborative efforts. The divergence between the acknowledged necessity for cooperation and the lack of actionable measures to realize it suggests that mere acknowledgment is insufficient for achieving effective coordination. It implies that the establishment of more robust institutional mechanisms may be necessary to foster and incentivize collaboration within the decentralized frameworks governing water services delivery.

The findings of this study contradict Bolleyer's (2006) observations on the impact of functional interdependencies in governance systems with decentralized institutional structures. Bolleyer argued that such interdependencies would lead to a greater likelihood of collaborative structures being established among different levels of government, fostering more intense patterns of coordination among policy actors in various policy domains. He also posited that the recognition of mutual interdependence would result in more non-hierarchical interactions among bureaucrats within both central and local government entities. Similarly, Schnabel (2020) concluded that governments from different levels in multilevel governance regimes coordinated more intensively when functional competencies were shared. This contradiction can be attributed to several factors, including contested institutional norms and individual political disagreements among key policy leaders at both levels. As detailed in Chapter 4 and Section 5.2, the underlying dynamics of

intergovernmental relations in Kenya indicate that county governments have expressed dissatisfaction with the functional assignment structures and decision-making norms of the current institutional framework, leading to competing authority conflicts arising from institutional interactions.

These conflicts stem from disagreements among policy actors about the best way to provide explicit and concurrent water services at the county level, resulting in a significant degree of overlapping responsibilities.

The results demonstrate that intergovernmental relations in governance systems where the central government shares policy powers and functional competences for service delivery with subnational government units are complex and involve a high degree of functional interdependence between different levels of government. Resource interdependence significantly shapes such intergovernmental relationships and coordinating behaviors, with more dependent actors potentially being influenced by those on whom they rely. The county governments in Kenya heavily rely on the national government for financial resources to carry out their mandates within their respective jurisdictions. However, the contestation underlying this fiscal allocation has hindered the counties' propensity to coordinate with the national government in water services delivery processes, despite their dependence on the national government. Political differences between policy actors, such as divergent objectives, have also made it difficult for both levels of government to communicate, negotiate, and share information, leading to intergovernmental coordination failures.

As Bolleyer (2006) demonstrated, the implementation of coordinated water services delivery is largely contingent on the enforceability of existing coordination instruments and the willingness and capacity of individual actors to adhere to the rules and norms outlined in these instruments. In the absence of both, certain opportunistic actors may prioritize their own interests over others. Despite the widespread acknowledgment of functional interdependence, the results indicate that this is a significant contributor to the limited coordination observed in the delivery of water services.

5.4 Frequency of coordination

This section presents an analysis of the nature and frequency of coordination activities between the two levels of government in processes of water services provision and the impacts on service outcomes.

5.4.1 The nature of coordination activities

The responses from the interviewees when asked about their perceptions on the frequency and nature of intergovernmental coordination activities for water services delivery over the past decade of implementing the decentralized institutional structure and how this has affected water services delivery is summarized in Table 5.

Table 5 4: Perception of respondents on the nature and regularity of intergovernmental coordination in water services delivery in Kenya

Type and Nature of intergovernmental coordination activities	Regularity of intergovernmental coordination activities	Category of Respondent	Level of government
During Project handover from national to county governments	Periodic/Project-based	WWDAs, WASPA, WSPs, CoG, Ministry of Water	National, county
During WASREB led Public consultations on tariffs and WSP licensing	Regular between WASREB and WSPs	WSPs, WASREB officials	National, county
New project design or launch by both levels	Infrequent	Development Partner	
Design/implementation of externally funded projects at county level	Project-based	Development Partner	

Source: Author, 2023

The data gathered from interviews, summarized in Table 5.4, indicates a variety of viewpoints on the nature and regularity of coordination between national and county governments in the delivery

of water services. A considerable majority of respondents perceive this coordination as being largely sporadic, reliant on ad hoc strategies, and reactive in nature, rather than occurring within a framework of regular, planned coordination events. From the analysis of the respondents' perspectives, four notable trends and observations concerning the nature and frequency of cooperation have emerged.

First, it is noted that coordination typically happens reactively, in response to specific issues or crises, rather than as part of a consistent, scheduled coordination strategy. Second, while there have been attempts to establish sector-specific collaborative frameworks to encourage regular coordination, these initiatives have often failed due to a lack of enforceability or have been hindered by various political and foundational challenges. Third, the coordination that does take place often focuses on high-level political discussions at the national macro-level, rather than on technical coordination within the water services sector. Lastly, a few examples of regulatory coordination were highlighted, such as the involvement of both levels of government in the WASREB licensing and tariff approval processes, which have been successful in facilitating regular interactions between WASREB at the national level and county-level WSPs.

Feedback from a broad spectrum of stakeholders suggests a consensus that coordination activities are sporadic, typically triggered by specific occurrences such as the commencement of donor-funded projects, financial transactions, or the resolution of disputes between governmental tiers. An official from the national Ministry of Water remarked that coordination is predominantly ad hoc, arising chiefly in the context of financial involvement or conflict resolution:

"Coordination is largely ad hoc, occurring mainly when financial stakes are present or in the face of conflicts." (National government respondent)

Representatives from both the national and county governments have pointed out the absence of systematic, forward-looking collaboration in the formulation and implementation of water policy and investments. Insights from various officials, including those from the CoG, the National Ministry of Water, and the Transition Authority—which was charged with overseeing the transition to a decentralized institutional framework—highlight that statutory coordination mechanisms, such as the CoG and the IGTRC, have predominantly engaged in high-level political coordination. This has resulted in a paucity of consistent technical-level coordination within the water sector. A former official of the Transition Authority observed:

"Coordination at the technical level within the water sector has been infrequent, whereas high-level forums such as the Intergovernmental Budget and Economic Council convene periodically. However, these meetings are too macro and not water-focused." (Former Transition Authority official)

Several respondents from both the county and national levels appeared to agree that agencies from the two levels of government rarely coordinate unless a new water project is being jointly planned, launched, or implemented. They also observed that coordination appears to occur only when there is a need for funds to be disbursed from the national to the county level, or when an emergent conflict must be resolved by actors from both levels of government. There are no other consistent or regular coordination meetings or mechanisms in the delivery of water services. As a respondent from a development partner category stated,

"While one would expect that better intergovernmental coordination would become a critical instrument at resolving tensions and conflicts on water between the two levels, it has not lived up to that expectation as the instruments are weakly implemented and non-binding, and again, the levels of coordination we've seen are largely piecemeal with interdependent policy and investment planning left to line ministries and bureaucracy to solve rather than a clear system of relations and coordination." (development partner)

Representatives from the WASREB and the WWDAs, which are national entities functioning under the aegis of the Ministry of Water, have indicated that their coordination with county governments, while frequent, is characterized by an ad hoc approach centered around specific activities such as licensing, tariff approvals, and capacity building. These efforts, although successful on various occasions, have not been part of a systematic and regular coordination framework. County-level WSPs have corroborated this perspective, noting that their most consistent coordination with WASREB is largely due to statutory regulatory requirements.

Furthermore, stakeholders from county governments, CSOs/NGOs), and development partners have expressed a consensus that coordination is often reactive, driven by immediate circumstances rather than proactive, strategic planning with the goal of enhancing water services delivery.

Despite widespread agreement on the need for more structured and regular coordination between the two levels of government, past attempts to establish such frameworks—evidenced by the

signing of the intergovernmental water sector coordination framework in Naivasha, Kenya, in 2018—have not been effectively implemented. The failure to operationalize these agreements is frequently ascribed to persistent underlying issues that impede collaborative efforts.

The key findings regarding the perceptions on the nature and frequency of intergovernmental coordination for water services delivery in Kenya is that intergovernmental coordination activities in water services delivery have been largely ad-hoc, reactive, irregular, and triggered by specific events/crises rather than being part of a regular, structured framework. The study also finds that coordination efforts have tended to prioritize high-level multi-sectoral political meetings at the national level over water services-specific technical coordination. Coordination efforts are conducted intermittently and are driven primarily by specific events, such as donor initiatives, fund transfers, or the need to resolve specific conflicts. Lacking is proactive, collaborative planning regarding water policy and investments between the national and county administrations. This lack of intergovernmental coordination has had several effects on water service delivery. Due to the lack of coordination between the two levels of government delivering water services in parallel within the same county, there has been inefficient use of limited resources and the formation of service gaps. Several respondents pointed out that the national government has undertaken the development of bulk infrastructure under the national public works category without concurrently coordinating with the county government in developing the distribution networks required to provide last-mile services to users, which is a county's responsibility. As a result of insufficient coordination and collaboration with the counties, some of these bulk water service assets have stayed idle without serving communities.

The lack of coordination has led to a lack of clarity regarding the ultimate responsibility for infrastructure operations and maintenance, resulting in infrastructure assets falling into disrepair and service disruptions. Several participants emphasized that after the initial capital expenditures, the national government exists with the expectation that the counties will assume the role of further service delivery, including operations and maintenance. There were instances in which a water facility failed after construction, and both levels of government deflected responsibility regarding which level should undertake repairs and maintenance of infrastructure, with the counties arguing that since the asset was developed by the national government, it is their responsibility to carry out the repairs. On the other hand, the national government maintains that their role ceased when they

transferred the infrastructure to the county. The counties respond that the national government developed the infrastructure without consulting them and did not transfer the operation and maintenance of the infrastructure through official intergovernmental agreements. This has resulted in developed assets sitting inactive and not serving their intended users, further impeding the achievement of water access goals and objectives.

The absence of coordinated intergovernmental joint planning and prioritization has led to misplaced investments and underserved communities. Several crucial investments to expand access to water services have been delayed for many years due to disagreements between the WWDAs and the county water departments.

Moreover, the lack of coordination has further constrained the national government's mandate of capacity building and technical assistance to county governments and WSPs, thereby exacerbating the problem of weak and insufficient technical capacity of counties and WSPs to deliver their assigned mandates in full. Because of this, the national government continues to undertake the majority of water services delivery, including those assigned to county government, which further hinders effective coordination as it was observed that persistent contestation of intergovernmental functional assignments, where counties believe the national government is encroaching on their mandates and retaining control of fiscal resources that should be allocated to them, has created enduring tension between the two levels of government.

The findings indicate a pronounced departure from the normative expectations of intergovernmental coordination in the delivery of water services, as outlined in prior sections. The constitutional framework in Kenya envisions a collaborative approach to the execution of water services delivery functions, predicated on the principle of non-subordination between the national and county governments. This is based on the legal understanding that both levels of government derive their authority directly from the Constitution, rather than through a hierarchical delegation of power. The legal case of the Institute of Social Accountability v National Assembly (2015) underscores that counties are empowered by the Constitution and other statutory enactments, similar to the national government, thus affirming their equal status within the governance structure.

It would be reasonable to assume that a governance system that delineates more concurrent functions would encourage stronger incentives for coordination than a system with more exclusive

functions. In the latter scenario, actors at various levels of government might exhibit a reduced inclination to coordinate, as suggested by scholars such as Bolleyer (2006). In more established federal systems, such as those in Canada, Switzerland, and the United States, sub-national governments enjoy greater legislative and fiscal autonomy, including the ability to levy local taxes and generate revenue. This autonomy grants them the discretion to sometimes forgo coordination with the federal government and pursue unilateral actions in areas where they have competence, especially when it is advantageous for them to do so.

The resistance shown by the counties to the budget imbalance can explain the intermittent instances of intergovernmental coordination activities that have been observed. The dependence of the county government on national government limits county autonomy and prevents them from taking independent action in their area of expertise, water services provision. While this would necessitate greater cooperation with the national government, their opposition to this fiscal dependence has reduced their willingness to collaborate with the national government in water services delivery. The counties believe that the national government is using its control of most water service funds and conditional grants to counties as tools to interfere with their mandate in water service provision.

5.4.2 Factors incentivizing intergovernmental coordination.

Table 5.5 summarizes the main perceptions of the respondents when asked what the main determinants of regularity in coordination in water services delivery are.

Table 5 5: Perceptions on factors affecting coordination in water services.

Respondents' comments	Category of Respondents	Level of government
Project planning necessity	CoG	County
National funding availability from development partners	WSPs, Ministry of Water, CSOs/NGOs, Development Partners	National, County
Professional relationships between engineers at both levels of government, allow them to coordinate on a technical level	Ministry of Water	National
County funding needs	WSPs	County
County exclusion from planning	WWDAs, WASPA	National
Perceived national encroachment	WSPs, Ministry of Water, CSOs/NGOs, Development Partners	National, County
Resource allocation disputes	Ministry of water official	National
Political differences between specific actors at both levels	Ministry of Water, WSPs, Development Partners	National, County

Source: Author, 2023

Table 5.5 reveals six primary factors that have either facilitated or impeded effective coordination between national and county governments in the domain of water service delivery. These factors are the financial needs of the counties, the mistrust between the two levels of government, the contestation of roles and responsibilities, the professional relationships between specific policy actors at both levels, the imperative of ensuring regulatory compliance, and the political differences between specific policy leaders.

Representatives from the national government, particularly from the Ministry of Water and the WWDAs, along with an official from a development partner organization, identified the primary impetus for the limited coordination activities as the necessity for funding. Counties, often financially constrained to deliver on their mandates, view coordination with the national

government as a means to access additional funding for water services delivery. An official from a development partner agency observed that the counties' need for funds to expand services makes them inclined to reach out to the national ministry, which, in turn, requires county cooperation to ensure sustained service delivery at the local level.

County government officials, on the other hand, perceive the retention of funds at the national level and their allocation through the WWDAs, rather than direct transfers to the counties for service delivery, as a key factor hindering coordination. This pattern of resource allocation is seen as disadvantaging the counties, which are responsible for water service delivery, and thus reduces their incentive to coordinate with the national government. This has led to a growing mistrust between the two levels of government, further impeding effective intergovernmental coordination. The importance of fiscal transfers in fostering coordination is underscored, with enhanced coordination more likely when there are clear incentives for resource mobilization.

An official from the national government's WWDAs acknowledged that a significant issue impeding good coordination is the counties' perception of being excluded and disrespected by national agencies. Instances where WWDAs undertake projects within counties, such as drilling boreholes or building treatment plants without county involvement, lead to maintenance issues and service disruptions. The lack of county engagement in these projects results in a lack of ownership and accountability, which is a significant problem in many counties.

Some respondents cited the lack of clarity regarding the roles and responsibilities of the two levels of government in water services delivery as a disincentive for coordination. A respondent from a county-owned water company highlighted the contested roles and the issue of resources not following functions, with most funding retained at the national level by the ministry through the WWDA, as a major problem hindering coordination. Several county respondents emphasized that the national government, through agencies like the WWDAs, encroaches on their mandates by undertaking water services delivery functions that fall within the counties' purview without proper consultation or coordination, breeding mistrust and hindering coordination. The issue stems from ambiguities in Schedule Four of the Constitution of Kenya, which lacks clarity on the specific functions to be undertaken by each level of government and does not define the nature of coordination needed for concurrent functions. One county respondent stated that the contestation of functions in water service delivery is why the Intergovernmental Water Sector Coordination

Framework, intended to define the nature and regularity of coordination between the two levels of government, has not been signed. The respondent pointed out that the existing intergovernmental institutions and instruments are weak and not legitimized by both levels, which has negatively impacted coordination efforts. The perception of the CoG as an adversary by the national ministry, especially when they raise complaints about the national government overstepping its mandate, affects coordination efforts negatively.

According to various respondents, coordination among officials has often depended on personal relationships and a willingness to engage through professional networks. Engineers from county-level water companies and the national WWDAs believe that sharing a common profession has fostered goodwill and facilitated coordination of specific activities, despite the existence of considerable mistrust at the political leadership level across different government strata.

Several respondents highlighted that the imperative for county-owned WSPs to adhere to regulatory and service delivery standards set by the WASREB acts as a significant catalyst for coordination in regulatory compliance and monitoring of WSPs.

Given that WSPs require certain approvals from the national government for compliance, there have been instances of increased coordination between the WSPs and WASREB.

Additionally, some respondents pointed to political disparities, individual personalities, and the quest for personal political gains by senior policy leaders at both levels of government as obstacles to the willingness and ability to coordinate in the delivery of water services. A respondent from the CoG noted that when the relationship between specific national and county political leaders is strained, it becomes challenging for the organizations they lead to cooperate in fulfilling their responsibilities. Interpersonal relationships seem to play a crucial role in enabling coordination. As articulated by a CoG official,

"Lack of transparency from both sides undermines trust, as there is often reluctance to exchange information. The personality of the leading actors is also significant. For instance, the previous minister was more amenable to working with the counties, which led to more frequent coordination, unlike the successor who had personal issues with the CoG, resulting in severely strained relations." (CoG official)

The key finding is that both structural and personal factors play a significant role in determining the level of intergovernmental coordination in water services delivery in Kenya. The need for funding by the county governments to delivery on their water service mandate, coupled with the need to comply with regulatory standards established by the national government drives coordination in areas of regulation and compliance monitoring. Professional networks between specific policy actors create good interpersonal connections that has also incentivized intergovernmental coordination. On the other hand, mistrust between the two levels of government caused by the contestation of roles and responsibilities and contestation of resource allocation patterns as a result of ambiguity in functional assignment and personal political differences between specific policy leaders has disincentivized effective intergovernmental coordination in water services delivery.

The results indicate that persistent disputes over functional assignment between the two levels of government and the extents of the national government's regulatory oversight on water services at the county level are also a major contributor to the observed irregularity and ad hoc nature of intergovernmental coordination in water services delivery in Kenya. In essence, the tensions between county autonomy and centralization in the delivery of water services. Parker (2012) argues that in multilevel government systems with a high degree of functional overlap, there is frequently a greater need for intergovernmental agreements to facilitate coordination and resolve conflicts between policy actors at both levels. Parker also argues that the degree of centralization in the constitutional allocation of powers and functions has a substantial impact on the frequency of coordination. He demonstrates that in highly centralized institutional systems, there may be less need for intergovernmental agreements because the national government has greater control over policy actions and is therefore less likely to coordinate with subnational governments. In contrast, in structures with a larger degree of decentralization, there may be a greater need for agreements to coordinate policy across different levels of government in order to ensure consistency in governance outcomes. The fact that there is less coordination between the two levels of government in the delivery of water services in Kenya, a country with a highly decentralized structure, confirms the contestation on functional assignment discussed previously.

One could argue that since the national government has taken on a larger role in service delivery, assuming even the majority of functions and controlling fiscal resources that should be allocated

to the counties, it has led to a re-centralization of the structure, resulting in less frequent coordination. If the decentralized structure were fully implemented, with the national government playing the role of sector strategy and policy setting, providing technical assistance to counties, and only undertaking the development of bulk water infrastructure as defined under national public works functions, one would anticipate an increase in the frequency of intergovernmental coordination. This explanation could be further supported by Ferrazzi and Rohdewohld's (2017) conclusion that genuine cooperation between government units in governance systems with shared functions can be difficult to achieve due to fears of losing control of resources and decision-making authority. As shown in chapter four, several respondents believed that the process of functional assignment in Kenya's governance regime occurred too quickly and under pressure due to political imperatives to disperse power from centralized control, leaving little time for good sequencing and conceptual preparation. Ferrazzi and Rohdewohld contend that this can further complicate the cooperation between national organizations, as it carries the risk of policy actors at the central government attempting to maintain the status quo of centralized control, while new subnational units fight for their autonomy. This results in contradictory circumstances that impede frequent intergovernmental coordination.

The creation of the 47 autonomous county government with broad powers over water services policy has led to increased local influence which emerge as an expression of a struggle over power distribution between the counties and the national government. As actors from both levels of government exercise their muscles against one another, this power struggle has significantly diminished the frequency and efficacy of coordination in water governance. Poirier (2016) demonstrated that subnational government regulatory oversight has a significant impact on the frequency of coordination. The observed resistance to coordination can also be further explained by the national government's regulatory oversight and approval powers over counties on water services delivery which has created a power imbalance, as the counties view regulation as a tool for centralization, concealing a power imbalance between actors in the Kenyan institutional framework for water services. This has created a situation in which county government policy actors believe they are being pressured into agreements that favor the national government's interests.

5.4.3 Measures to improve coordination of water services delivery

Table 5.6 summarizes the responses received from the interviewees when asked about their recommended measures to improve coordination in the provision of water services.

Table 5 6: Perceptions on measures to improve water sector coordination .

Responses	Category of respondents	Level of government
Regular national-county water sector symposiums	CoG, WASREB, CSOs/NGOs	County, National
Strengthen IGTRC's authority for accountability	Ministry of Water, WWDAs	National
Proactive coordination through COG and IGTRC	WASPA, CSOs/NGOs, Ministry of Water, WSPs	National, County
Legally enforce coordination requirements	CSOs/NGOs, WSPs	National, county
Reposition IGTRC as neutral coordination partner	Development Partners	

Source: Author, 2023

Table 5.6 shows that there are four main perceptions of respondents regarding how intergovernmental coordination for the delivery of water services could be enhanced. These include strengthening legal frameworks and policies for coordination, increasing communication, and sharing of information, establishing joint planning and periodic stakeholder forums, and capitalizing further on professional goodwill to drive effective coordination at the technical level of water services delivery.

A consensus among several respondents suggests that the current statutory provisions for coordination, as stipulated in the Water Act 2016 and the Intergovernmental Relations Act, require fortification. This enhancement could be realized through the incorporation of legally binding provisions, clearly defined coordination frequencies, and robust enforcement mechanisms for intergovernmental agreements. Representatives from county governments, including members of the CoG and county government officials, as well as officials from select development partner

organizations, advocate for a review and restructuring of the mandate and legal instruments that establish the IGTRC and the CoG.

The objective is to reconfigure these entities' instruments of engagement to function as neutral intermediaries for both levels of government, thereby dispelling the perception among county governments that the IGTRC operates solely on behalf of the national government, and the national government's view of the CoG as an adversarial advocacy and lobbying group with insufficient focus on promoting effective coordination.

A respondent from the CoG emphasized the critical role of frequent, transparent communication and information exchange between the national and county governments in enhancing coordination. He identified the withholding of information by policy actors at both levels of government as a fundamental flaw in the current coordination mechanism, which he believes undermines the trust necessary for effective collaboration. In support of this viewpoint, a representative from a WSP suggested that both levels of government should establish a culture of transparent communication goodwill to operationalize the existing, yet under-implemented, policies and institutional frameworks for coordination. Similarly, an official from the WASREB stressed the need to cultivate trust and promote information sharing between the two levels of government to prevent the duplication of efforts and the waste of resources by dismantling the silos that have obstructed effective communication. The official stated, 'Establishing transparent communication and collaboration frameworks is crucial. Frequent communication between different parties in all institutions related to the water sector is necessary. All institutions should work collaboratively, rather than in isolation, which leads to the duplication of duties and wastage of resources.'

Respondents from CSOs/NGOs expressed the need for more frequent joint planning meetings and broader stakeholder forums, including pre-scheduled quarterly roundtables, in contrast to the ad hoc intergovernmental coordination meetings that are convened to address problems as they arise. Respondents from both levels of government shared this view, suggesting that the IGTRC should develop a more defined coordination framework in conjunction with the CoG to facilitate more systematically planned coordination events and meetings, such as quarterly roundtables, rather than resorting to reactive arbitration or conflict resolution when issues emerge.

A few respondents noted the necessity of removing political influences and personal biases from the coordination process, positing that building upon the goodwill within professional networks for policy leaders at both levels of government would improve coordination. An official from the Ministry of Water stated,

“Officials should prioritize professionalism as part of their work ethics, rather than permitting political egos to impede sound judgment.” (ministry of water official)

The key finding of the study indicates that four primary measures are essential to enhance intergovernmental coordination in the delivery of water services. These measures include: strengthening the legal frameworks and policies for coordination, including a review of the mandate and instruments of engagement for the IGTRC and the CoG to make their decisions more legally binding on actors; increasing communication and information sharing between actors at the two levels of government; establishing joint planning and periodic stakeholder forums to transition from ad hoc, unplanned coordination meetings to proactive and regularly scheduled events; and enhancing the capacity of the IGTRC and the CoG.

5.5 Summary

investigated the perceptions and experiences of policy actors concerning intergovernmental coordination in the provision of water services in Kenya. It probed their understanding of the established mechanisms intended to facilitate intergovernmental collaboration, evaluates the effectiveness of these instruments, and examines their perceptions of the extent of functional interdependence in water service delivery and its influence on coordination efforts. Additionally, the chapter analyzes the frequency of intergovernmental coordination activities and identifies the factors that either impede or encourage such activities.

CHAPTER SIX

INSTITUTIONAL AUTONOMY OF COUNTY –OWNED WATER SERVICE PROVIDERS AND IMPACTS ON WATER SERVICES DELIVERY IN KENYA

6.1 Introduction

This chapter investigates the extent of institutional autonomy of county-owned water service providers (WSPs) and how this influences water services delivery. The working hypothesis is that insufficient autonomy from county governments has resulted in poor performance by these WSPs. This hypothesis was tested through qualitative data gathered through semi-structured interviews with 32 individuals from organizations engaged in national and county water policy and service delivery, as well as representatives of nongovernmental groups and community organizations. The presentation and discussion of the results in this chapter are structured around three key sections presenting and discussing first the nature of and extent of WSP autonomy from County Governments in water services delivery, secondly exploring the tensions between granting WSPs autonomy versus ensuring their accountability to the County Governments, and lastly the institutional interplay between Community-based water providers, WSPs and County government in water services delivery in Kenya.

6.2 Extent of WSP autonomy

This section examines the extent of the institutional autonomy of WSPs from the county government. Specifically, it looks at the WSPs' ability to make independent decisions as a semi-autonomous state-owned agency without first seeking the approval of the county government as its primary shareholder; their autonomy against the county government imposing unilateral decisions binding on them without their prior concurrence, and their protection from extra-procedural interference in their operations by the county government. The resulting impacts of these factors on service delivery are also examined. To establish these, the interviewees were asked a series of three questions with each subsequent question seeking to clarify the responses given to the preceding question. The responses to these interview questions are presented, analyzed, and discussed.

6.2.1 Perception of Respondents on Decision-making Autonomy of WSPs

Table 6.1 presents a summary of the main perceptions of respondents when asked about the extent of institutional autonomy held by WSPs from county governments and how this autonomy impacts water service delivery.

Table 6 1: Perception on decision making autonomy of WSPs.

Decisions the WSPs can make independently without seeking approval of the County Government	Decisions the WSPs must seek and secure approval of the County Government before making	Category of respondents	Level of Government
Hiring low-level employees, but not senior managers	Large procurement decisions	WSPs; (WWDA); Water Service Providers Association (WASPA); Development partner	County, National
Engineering/technical decisions including internal work processes and day to day technical operations services		WSPs; CoG; WASPA County Government; Ministry of water; Development partner (n=18)	County, National
Development of strategy and business plan		WSPs	County
	Downsizing of staff	WSPs	County
	Key policy decisions such as tariffs levels, subsidies amount, and taking of loans	Ministry of water	National

Source: Author, 2023

Table 6.1 shows that, according to the responses of various respondents, WSPs can make the following decisions without seeking county government approval: hiring low-level staff, performing day-to-day technical operations such as operating treatment plants and responding to breakages, establishing WSP business plans, promoting staff, defining internal work processes and standards that guide their day-to-day work, and deciding on routine ad hoc expenditures.

The majority of respondents, however, noted that the county government has a great deal of control over the WSPs, and that policy, hiring senior staff, setting water tariffs, provision of subsidies, taking of loans, dismissal of staff, major procurement of contractors or consultants, and strategic infrastructure development decisions require approval from the county government, and in some cases, national government agencies. Some respondents from the CoG and WSPA argued that since devolution, unlike before when the WSPs were under the control of the former national water service boards, even simple decisions such as hiring staff or setting water tariffs are now controlled by county governments, which impedes the WSPs' effective governance. According to the WASPA respondent,

"The WSP managing directors are incapable of making any independent decisions. Everything must be approved by the board or, occasionally, the county water CECM directly." (WASPA official)

Similarly, respondents from the development partners and the CSO/NGO indicated that the majority of WSPs with which they have interacted indicated that they exercise independent decision making only for internal operational decisions but are constrained when it comes to decisions such as hiring new staff, particularly at the management level, and decisions related to the procurement of contractors and consultants to provide services to the WSP. Several respondents from the water companies emphasized that they have less autonomy to make strategic decisions, such as water service expansion programs, accessing external commercial financing, and decisions to increase water tariffs, even when economic conditions require them to do so in order to remain financially sustainable. As one WSP official interviewed stated,

"We used to make decisions on downsizing of staff but now it's too political because the county comes in and prevents it even if the company has too many staff. What that means is that we can't meet our operations costs hence request for subsidy from them which makes services very unstable." (water company official)

A respondent from the national Ministry of Water and another from a development agency emphasized the importance of WSPs' autonomy in making decisions related to water tariffs, hiring of right capacity contractors, and hiring of competent staff so as to achieve the right staff ration as per regulations; however, they are largely constrained in this regard, with their parent counties

only allowing them autonomy in less strategic operational day-to-day decisions and budgeting of operational expenditures.

Several county government officials, on the other hand, argued that WSPs have a great deal of autonomy over their business operations, but cautioned that employment-related issues should be discussed with the county since the majority of WSPs rely on subsidies to pay their staff from the county government.

Several managing directors of the water companies argued that as a result of the county preventing the WSPs from making key business decisions such as hiring staff and changing water tariffs, the majority of WSPs were unable to raise sufficient revenues to cover their operational costs and have bloated staffing mandated by their parent counties, resulting in unstable service delivery. Respondents from the community water operators interviewed expressed similar sentiments, stating that the inability of WSPs to independent decisions on hiring of staff, water tariffs, and even simple matters such as employing casuals has led to poor water quality. They argued that county government control of hiring decisions has resulted in employment bias, as the county often prioritizes its own people over the most qualified candidates. This has undermined the workforce's competence and further limited the WSP's ability to deliver water services effectively.

A respondent from the WASPA stated that the control of the majority of WSPs by county governments has resulted in a decline in the performance of WSPs after devolution, arguing that interference from county governments in procurement processes has resulted in low-quality construction work performed by contractors with limited capacity who were pushed onto the WSPs by the counties. Without sanction from the county water department, the majority of WSPs are unable to access commercial financing from the private sector to expand their services, according to one respondent from a water company. This, he argued, has a negative impact on the delivery of water services because WSPs are unable to mobilize sufficient resources to expand into new areas.

A national government respondent from the WWDAs was of the view that since devolution, WSPs have been unable to independently establish water tariffs because governors frequently pledge free water as part of their election campaigns. This control over tariff setting has substantial implications for WSPs' financial viability. If WSPs are unable to set tariffs that allow them to recover their costs, they may struggle to maintain their equipment, leading to service interruptions

and a decline in water service quality. An interviewee from WASPA also raises the issue of political interference in tariff setting, arguing that this interference has led to the WSPs' inability to raise sufficient funds to cover the complete cost of their asset maintenance expenditures. This has resulted in service interruptions and a decline in the quality of water services due to frequent infrastructure failures caused by inadequate maintenance.

A respondent from WASPA believed that the county's restrictions on the WSP's procurement processes were motivated by corruption and favoritism. He believed that nearly every WSP contractor must be an associate of the governor or a member of the CECM. This favoritism and corruption frequently result in substandard work because the primary selection criterion is not competence but connections.

On the issue of limited autonomy of WSPs to make decisions on infrastructure development, one respondent from the WASPA provided an example in which Members of County Assembly (MCAs), rather than technical staff from WSPs, decide where pipelines are laid to benefit their constituents without proper feasibility, engineering design, and sustainability considerations. This decision, which is motivated by favoritism rather than technical considerations, frequently results in substandard work, leading to pipeline failures and leaving a large number of people without access to water.

The primary finding from the perceptions of respondents is that the water service providers WSPs have limited autonomy, particularly over strategic decisions, which limits their effectiveness and sustainability and is associated with poorer performance compared to the pre-devolution era, when WSPs were directly supervised by the national government. The study reveals that WSPs have autonomy over certain operational decisions, such as hiring low-level personnel, day-to-day technical operations, and devising business plans. However, county government approval is required for significant decisions such as senior staff hiring, procurement, infrastructure development, setting water rates, taking out loans, and staff reductions.

The lack of autonomy over crucial decisions hinders the efficacy and financial viability of WSPs. Inability to set tariffs that cover costs results in insufficient revenues. Uncontrolled recruiting and procurement results in unqualified personnel and contractors. Due to patronage networks, political interference in decisions such as tariff-setting and infrastructural development results in substandard work and service delivery problems.

This finding shows that the expected commercial and operational autonomy envisioned under the reforms that created WSPs in Kenya has not been achieved in practice and thus the performance of the WSPs remains poor. Several explanations and implications can be noted out of this. Commercialization of water services delivery, which was introduced through the Water Act of 2002, remains one of the most significant institutional reforms in Kenya's water sector (Water Act of 2002). The rationale for this reform was to recover the costs of water services from user tariffs, create a culture of professional business management in public service delivery, and shield water services delivery from negative political control. The water service companies registered as limited liability companies but wholly owned by the county government authorities were expected to be managed with financial and operation independence, free from bureaucratic dysfunction and undue political control. This would improve the efficiency of services delivery and enhance the financial sustainability of the utilities.

The WSPs' inability to operate efficiently and flexibly based on commercial principles is hampered by their lack of independence to make significant decisions without county interference. When county officials make unilateral decisions regarding personnel, budgets, and infrastructure without sufficient WSP input, their performance is compromised. Nyathikala & Kulshrestha, (2016) made similar observations and concluded that political pressures from local political leaders on water utilities lead to artificially low prices that do not reflect the utilities financial requirements, and interference with personnel management and recruitment policies led to bloated workforce that further undermined the performance of the utilities. This overbearing county control is compounded by the limited oversight from WSP boards, which are intended to provide governance supervision.

The factors underlying these observations of limited autonomy of WSPs in Kenya may be linked to how county governors and local politicians perceive the contribution of water services to their primary mission at the county level and how this perception influences their approach to governing the utility. The evidence suggests that county government's view water utilities as an opportunity to distribute patronage and concentrate political support through various means, such as lowering water rates charged by WSPs or directing WSPs to extend their water provision so as to maximize support for local politicians. Utility governance decisions (e.g., where to invest in new infrastructure, how to reduce non-revenue water, what tariffs to charge users, board appointments,

etc.) have been made with the objective of securing votes, rewarding, and sustaining patronage networks, rather than achieving utility efficiency and sustainability. This has impeded the institutionalization of professionalism and managerial autonomy envisioned by the 2002 commercialization reforms to improve the performance of utilities.

6.2.2 Circumstances under which the county government made unilateral decisions binding on the WSPs without consulting them

The respondents were further asked to explain their perceptions regarding the circumstances under which the county governments have made unilateral decisions binding on the WSPs without seeking their concurrence and how this affect water service delivery. The responses are summarized in Table 6.2.

Table 6 2: Perceptions of respondents on circumstances when the county government makes unilateral decisions binding on the WSPs in Kenya

Perception of respondents	Category of Respondent	Level of Government
The county governments dissolving the board without consulting the water service providers	CoG	County
The counties change the MDs and boards at will suddenly without consulting anyone. They manage the WSPs as personal properties of the governor.	Ministry of water; CoG; WSPs	National, County
County officials making unilateral decisions that water will be provide for free by the WSP. (n=10)	CSOs; WWDA; Ministry of water; Development partner; CSOs	National, County
Deciding where to construct water infrastructure without technical analysis by the WSPs	Ministry of water; WSPs	National, County
Hiring of staff without considering the recommended regulations. We have seen governors just sending people to the MDs and telling them to hire without considering the business needs of the WSP or its capacity to pay them (n=3)	Development partner; CSOs; WASREB	National, County

Source: Author, 2023

Table 6.2 shows that there are primarily four circumstances mentioned as instances where the county governments have impinged on the autonomy of the WSPs by making unilateral decisions binding on the WSPs without seeking their concurrence.

These include the process of appointment of the WSP board of directors and managing directors (MDs), as well as the employment of other personnel within the WSPs, decisions pertaining to infrastructure development, and water rates charged to users. The results also show a contestation of these four issues especially between the county government officials and CoG' officials on one side and the water company officials and national government officials on the other side. The other category of respondents, including community representatives, expressed views that cuts across both divides.

The CoG and county government officials have argued, on the one hand, that they have the authority and constitutional discretion to change the board of directors and remove the MDs of the WSP without consulting the WSPs. They highlight the fact that WSPs are ultimately owned by counties and that county governments are responsible for ensuring that they provide residents with high-quality services. On the other hand, water company officials and the national Ministry of Water have asserted that the counties' practice of making unilateral decisions regarding changes in the board and managing directors of WSPs has been done arbitrarily and without regard for proper procedures. They argue that this has resulted in management instability at the majority of WSPs, which has had a negative effect on service delivery. Interestingly, one respondent from the CoG agreed that it is within the mandate of the counties to hire and dismiss board members and senior management of the WSPs, but also concurred with the water companies and national government officials in criticizing that in some counties, this has been done politically rather than based on competence. As he stated,

“Water service providers belong to the county government, they can remove the board, they can dictate the removal of the CEO. The county government can remove the board without consulting the water service providers. The processes of removal are mostly political. the law says that if you are removing one person especially the MD the recommendation must come from the board itself, but this doesn't happen, the governor just wakes up and sacks people without consultation.” (CoG official)

Respondents from WASPA, the Ministry of Water have as well as community representatives also highlighted the problem of political interference in the appointment of WSP CEOs and board members. They argue that county governments prioritize political alignments over competence in appointing managing directors and boards.

The respondent from the Ministry of Water also criticized what he said is a common practice of governors treating WSPs as "personal properties" and indiscriminately replacing directors and boards as they see fit without regard for established corporate governance procedures. The Water Services Regulatory Board affirms this concern, stating that some boards appointed by counties lack the technical know-how to oversight governance of WSPs effectively causing their poor performance. According to a WASREB official:

"Instituting an incompetent board of directors that does not provide value to the WSP. Most do not have the technical capacity to oversight WSPs." (WASREB official)

While a WWDA respondent defended the county government's right to remove underperforming leaders by replacing managing directors at their discretion, a Ministry of Water official argued that the resulting leadership instability from politically motivated changes causes skilled water engineers and other experiment technical specialists to avoid county-level WSPs roles, thereby contributing to the observed capacity gaps in the counties. As stated by a Ministry of Water official

"because of this competent engineers prefer to work with the wwdas and national ministry rather than the counties. You end up not having the right match of skills for water services at counties which leads to poor quality to users." (Ministry of water official)

The involvement of county governments in staff hiring decisions for water service providers (WSPs) was cited as a contentious instance in which county governments have made unilateral decisions that are binding on WSPs without requesting their consent, thereby impinging on their autonomy. Several respondents were of the opinion that county governments have interfered haphazardly in recruiting processes, thereby jeopardizing the financial viability and service delivery capability of WSPs by having a bloated workforce. Several respondents from development partner agencies cited instances in which county governments unilaterally hired new personnel and moved them onto the WSP payroll without assessing the business requirements or financial capacity of the WSP to pay the attendant wage bill.

This has resulted in excessive personnel, financial dependence on the county government for subsidies, and a decline in service delivery. According to a development agency official,

"the governor just kept sending people to the WSP and telling the managing director to hire them leading to a bloated staffing who is just a conduit for giving salaries but doesn't deliver any services to people." (Development agency official)

A county government official, on the other hand, was of the opinion that the county's involvement in staff hiring is the county's way of ensuring that the WSPs are adequately staffed and that the right people are hired for the job, and that this will help ensure that the WSPs are accountable to the public since they are a public enterprise.

The allocation of specific water infrastructure investments also emerged as a key area in which the county government has violated WSP's autonomy by imposing suboptimal decisions on them. A respondent from an NGO/CSO and the national Ministry of Water noted that county governments frequently make decisions for WSPs regarding where they should invest in specific infrastructure without taking the technical implications into account. Unplanned infrastructure investments without appropriate feasibility studies have resulted in low-quality, unsustainable works, according to the respondents according to them. CSO respondents noted that in some counties, governors and MCAs have instructed WSPs to lay water pipelines without conducting proper design studies, resulting in the failure of water services sooner than anticipated due to poor infrastructure quality.

The determination of water rates to be charged by WSPs to water consumers was also cited as a primary area where county governments have impinged upon the autonomous management of WSPs. Several respondents, including those from development partner agencies and WWDA officials, were of the opinion that county governors frequently promise free water to users during campaigns without consulting the WSPs, then force the WSPs to drastically reduce water rates or demand that they provide water for free to users. This has resulted in a downward spiral of financial crisis for the WSPs, as they are unable to raise funds to cover their fundamental expenses, such as electricity bills, and are therefore perpetually dependent on the county for subsidies. This view was supported by water company and CSO/NGO respondents. While a number of respondents from CSOs and NGOs agree that water is a right, it should be provided at affordable rates, not for free, unless the county guarantees that it will subsidize the WSPs for the entire cost. This is

problematic, he noted, because most counties do not raise sufficient funds to fully subsidize water for their citizens.

However, some respondents from the community groups argued that the counties are justified in compelling the WSPs not to charge users for water, particularly when the water is produced and distributed from springs and flows by gravity, since these are low-cost methods.

A third follow-up question was posed to respondents to elicit their perceptions, experiences, and explanations regarding the relationship between the county government and the WSP board of directors as well as any other specific ways in which County governments have interfered with the operations of WSPs in ways inconsistent with the institutional autonomy requirements of WSPs as defined by the current institutional structure, and the impact this has had on water service delivery.

A WASPA respondent argued that while WSP boards should be the official channels for county governments to exercise governance supervision over WSP management, the majority of board members are political appointees who lack relevant skills, experience, and subject matter expertise. As a result, they are ineffective, allowing the county to govern the WSPs directly as it sees fit. In addition, the respondent noted that county governors frequently circumvent boards and issue unilateral decisions directly to WSP managing directors. Respondents from water companies stated that county governments violate WASREB's corporate guidelines for board appointments, which mandate the competitive selection of qualified candidates. In addition, they stated that WASREB has been unable to sanction county government executives who have violated these rules.

Several WSPs have lacked boards for more than five years, according to a respondent from the national ministry of water. According to him, this is a deliberate attempt by county governments to obtain unchecked control over WSPs, which is in violation of WASREB's corporate governance regulations. He also agreed with the view of the WSP officials that WASREB has been unable to hold governors accountable for these repeated violations of corporate governance regulations.

According to some respondents from the community groups interviews, despite the fact that the regulations require the WSP board to have specific community representatives, this is not being adhered to in the appointment of board members, as the majority of governors appoint board

members primarily based on a political reward scheme and without following due process. They asserted that this is a major reason for the poor performance of WSPs, as there is no appropriate governance oversight of their day-to-day operations, and board members only carry out the directives of their county government appointees.

A respondent from a CSO/NGO was of the opinion that, despite the fact that regulations stipulate that the WSPs' MDs must be appointed only by a duly constituted board of directors through a competitive process, the majority of MDs are actually appointed by county governments directly, which is against the rules. They believe that some counties have intentionally failed to appoint boards so that they can have a free hand to appoint MDs of the WSPs without interference. A CSO/NGO respondent gave the example of a county where the WSP has been without a board for nearly eight years and the MD has changed almost every three months due to the county water department's practice of rotating sub-county water officers into the MD position. This has considerably contributed to the poor performance of the referenced WSP by causing staff instability.

According to a respondent from the national WWDAs, the county government has interfered in the management and governance of WSPs by directly moving staff from other county departments to the water company without assessing their suitability for the role and by treating WSPs staff as regular county staff, which undermines the WSP's independence as an independent commercial agency. Similar sentiments were conveyed by a representative of one of the development agencies, who remarked that in some counties, it is nearly impossible to distinguish county government employees from water company employees due to the water departments' frequent staff turnover.

This, according to him, is contrary to the institution's structure, which mandates that the WSP's staff be appointed internally by the management and board of directors and be independent from the county's core bureaucracy so that the WSPs can exercise discretion in their human resource practices.

The key research finding is that county governments in Kenya frequently make unilateral decisions that bind the WSPs without consulting them. These decisions include dissolving the board without consultation, sudden changing of WSP managing directors without consultation, making commitments to provide water for free to all citizens without consulting the WSPs, deciding where

to construct water infrastructure without technical analysis by the WSPs, and hiring staff without considering recommended regulations.

These unilateral decisions undermine the autonomy of WSPs and negatively impacts their performance and financial viability, resulting in poor quality and inadequate water service delivery. The findings show that the political promises of free water to users during campaigns without consulting the WSPs in particular leads to a financial crisis for the WSPs since they become unable to raise funds to cover their expenses and become dependent on the county for subsidies which further perpetuates the cycle of interference from the county government.

The findings suggest that the observed limited WSP autonomy is driven by the contestations related to the structure for functional assignment between various policy actors at both national and county government in water services delivery and power dynamics between the WSPs and county governments at the county level. Although reforms ostensibly established WSPs as independent commercial entities, county governments continue to exercise direct control over them as if they are still a part of the county government water department bureaucracy. As discussed in chapter four regarding the power dynamics underlying the intergovernmental functional assignment in Kenya's decentralized institutional structures for the delivery of water services, the results indicated a reluctance by county governments to fully relinquish their direct control over water service providers, with a cross-cutting perceptions from national government respondents and interviewees from the county level water companies that county governments' exercise of authority over the governance of WSPs has had a negative impact on the performance of the WSPs. In addition, the county government's appointment of unqualified board members for WSPs without following the regulator's guidelines has resulted in these political appointees interfering in an unprofessional manner with the operational autonomy of water service providers, thereby impeding the staff's ability to provide high-quality, professionally packaged water services.

These findings compliment Beecher (2013) who concluded that institutional dimensions of governance, such as the existing economic regulation environment that defines the rules of the game, providing a framework within which utilities operate, and preventing the utility from abusing its monopoly power, have a greater impact on the performance of water utilities than autonomy alone.

The efforts of the national water sector regulator to enforce utility performance standards and corporate governance regulations represent a direct assault on local political patronage networks and have exacerbated tensions between national and county governments. The subterranean resistance of county governments to the regulator's efforts to control and sanction deviations from established regulatory standards has negatively impacted the performance of water utilities.

The finding indicating county government making unilateral politically driven decisions such as promises of free water and decisions concurs with Braadbaart et al. (2007), who noted that excessive government interference impedes the autonomy of utility managers, prohibiting them from making the decisions necessary to enhance performance. For example, they demonstrated that political interference leads to poor decision-making, such as the reluctance to increase water rates due to political sensitivity despite the need for cost recovery. Moreover, government interference can also result in corruption and mismanagement of resources, further diminishing the utility's performance. Similarly, Haug (2008) demonstrated that municipal-owned water utility companies, which operate at arm's length from the municipal executive and have independent corporate status demonstrated a better potential to realize productive efficiency gains due to more flexible personnel and financial management rules as compared to service delivery arrangement where the municipal bureaucracy was directly in charge of water utility services. These utilities were less subject to political control and consequently operated with greater technical efficacy, resulting in more sustainable service provision. According to Salazar-Adams (2021), reforms intended to increase the efficacy of water services delivery in Mexico through the establishment of decentralized autonomous water utilities did not appear to have the desired effect. This was attributed to the fact that despite efforts to decentralize and grant autonomy to water utilities, the majority of utilities remained overstaffed, and their costs exceed their revenues due to a lack of autonomy from their parent states, which meant that decisions regarding staff numbers, remuneration, recruitment, tariffs, investments, and disconnection for nonpayment of bills were made by state officials and not the utility executives who are most qualified to make these decisions.

Moreover, these findings suggest that the regulator WASREB inability to enforce the clearly outlined regulations for assuring good corporate governance of the WSPs, as county governors

who violate these regulations have not been punished, can be attributed to the political contestation of functions between national and county governments discussed in chapter four where the governors query the legitimacy of the national governments regulatory oversight over the counties.

6.3 Autonomy versus accountability of WSP to the County Governments in water services delivery

This section examines the tensions between the autonomy of WSPs as independent commercial entities and their accountability to the county government as agents of the county government in water service delivery. Specifically, it discusses the circumstances under which county governments are justified in interfering with the operations of WSPs in order to enforce their accountability in water service delivery. In other words, it examines the ways in which county governments can hold WSPs accountable while still allowing them to operate autonomously as independent commercial agencies.

The section also discusses the perceptions of the respondents on how the autonomy of WSPs from negative political interference from county governments can be improved. To establish these, the interviewees were asked a series of two questions. The responses to these interview questions are presented, analyzed, and discussed.

6.3.1 perceptions on when the county government can intervene in the WSP to hold them accountable while preserving their autonomy

The respondents were first asked to explain the circumstances in which county governments could justify interfering with the operations of WSPs in the name of enforcing accountability while still allowing them to operate autonomously as independent commercial agencies of the county government. The responses are summarized in Table 6.3.

Table 6 3: Perception of respondents on when county government can intervene in the WSPs to hold them accountable while preserving their autonomy.

Responses	Category of Respondent	Level of Government
Establish explicit Performance Agreements with WSPs and evaluate them based on those	CoG; WSPs; WASPA; Ministry of water; WWDA	National, County
Organizing and leading quarterly WSP assessment meetings through a countywide WASH forum involving multiple stakeholders	CSOs	National
Increase accountability through active board representation and periodic review of WSP progress	CSOs	National

Source: Author, 2023

Table 6.3 shows that most interviewees believe that county governments are required to intervene in the operations of WSPs under certain conditions. These circumstances include mismanagement of the WSP, declining performance, financial difficulties for the WSP, and failure to fulfil their mandate. Several respondents from both levels of government, including some WSP officials themselves, believed that county governments have the right to intervene directly if the WSPs are not managed in accordance with established policies and prudent management practices, resulting in widespread mismanagement and corruption in their operations.

While agreeing that counties should intervene in situations of declining service delivery performance of the WSPs, a number of respondents from water companies asserted that this should be done objectively based on clearly defined and jointly agreed performance targets, and if there is sufficient evidence that performance is not as expected, the county has the right to intervene directly, even if it means changing the management and boards of directors.

Some respondents, including those from development agencies and the national government's water ministry, believed county governments should intervene when WSPs are unable to pay their operational expenses, such as electricity bills or employee benefits.

They argue that this is necessary because the county government bears the ultimate political responsibility for ensuring that water services are delivered to consumers, and the WSPs are merely its agents.

Several interviewees, primarily from the CSO/NGO and community groups category and development agencies, were of the opinion that involving a broader range of stakeholders in evaluating the WSP's performance prior to deciding to intervene would be the best way for the county government to intervene appropriately in the WSP operations while allowing them autonomy in their operations. They argued that this would expand participation beyond the county government and include a broader range of stakeholders in order to enhance the WSPs' governance accountability.

One CoG official was of the view that county governments are permitted to intervene at any moment in the WSP operations so long as they do so in a structured and accountable manner, with Performance-based contracting being one option. As he explained,

“There is nothing like political interference it is a political role, a political decision and always there will be political decisions now it depends on the objective of the person making it. The human behavior is what determines how the governor, and the CECs will behave towards the WSP, so you will have WSP which are thriving like the Nyeri one because of the structure and the decision-making autonomy that they were given. The only thing that a county government needs to give to any of its institutions are parameters against which performance would be measured. Once you get the resources what are the performance parameters that will be measured. Let them make decisions if you are part of making decisions if anything goes wrong who will check who.” (CoG official)

The findings indicate that findings suggest that county governments in Kenya have the legal authority to intervene in the operations of WSPs in certain circumstances, but this should be done in a structured and accountable manner that respects the WSPs' governance autonomy. The majority of respondents concur that county governments have the right to intervene when there is mismanagement or corruption at WSPs or when WSPs cannot meet their operational expenses. Counties have the authority to intervene based on objective performance criteria against agreed-upon targets, as well as to replace management or boards if performance goals are not met.

This finding suggests that the underlying tensions on the allowable extent of county “interference” in the governance of WSPs stem from the dual role of WSPs as structured in the current institutional framework for water services delivery in Kenya. As independent commercial entities, they need autonomy to operate effectively and efficiently on a commercial basis. However, as agents of county governments in water service delivery, they are politically accountable to those governments. County government intervention is seen as necessary in certain circumstances, such as mismanagement, declining performance, financial difficulties, and failure to fulfill their mandate. However, such intervention can undermine WSP autonomy if it is politically motivated.

These findings also imply that institutional governance of water service delivery in Kenya has underlying frictions. On the one hand, is the lack of autonomy of WSPs from the county governments across significant areas of their operations that stymie their ability for independent commercial operations as normatively expected in institutional structures granting enterprise autonomy to state-owned enterprises. Beecher (2013) demonstrated that water utilities with a higher level of autonomy in their operations were those with a higher degree of freedom to manage their own finances, including ring-fencing revenues from operations and having the freedom to set water rates to cost-based fees related to service provision. The results shows that this is not the case with the WSPs in Kenya. Nonetheless, as highlighted by a number of respondents, a substantial number of WSPs are weak in their operations and thus still require financial transfers from their parent counties, in the form of subsidies or budget support. This provides an opportunity for the county to gain entry into the WSPs operations more directly since they put in a substantial amount of money in their operations to be used judiciously to achieve social equity objectives. Due to the fact that the WSPs not only depend on the county, but the county also needs the WSP to fulfil a number of electoral promises relating to water supply, the county's political oversight of WSPs then becomes a necessary component of decentralized governance of water services in Kenya to ensure accountability for water service delivery at the county level.

According to Nyathikala and Kulshrestha (2016), enterprise autonomy of specialized public service organizations such as WSPs must however be balanced with appropriate oversight and regulation to ensure that water supply services meet necessary standards and do not exploit their commercial orientation to the detriment of the right to water services.

Without proper oversight, there is a risk that autonomous water supply services will neglect their responsibilities or fail to provide adequate services, thereby putting the county government on the defensive against the citizens, since the WSPs are primarily agents of the county government but it is the county government that is ultimately politically accountable to the voters. Based on this ground, the county government seems justified to intervene when the business practices of WSPs appear to undermine this socio-political accountability (Herrera & Post, 2014). This thinking aligns with the rationale underpinning the World Development Report's social accountability triangle which posits that an institutional remedy to address poor service delivery performance is the need for the state policymakers to enforce that accountability of the service providers to the service users especially when the service users are not sufficiently capacitated to exercise direct client power over the service provider (World Bank, 2003).

The quest to strike a delicate balance between the autonomy of WSPs and the intervention of county governments to bolster accountability can be interpreted through the lens of public value theory. County governments are pivotal in safeguarding the public value inherent in the delivery of water services, bearing responsibility for the provision and oversight of water supply within their territories. The inception of WSPs as autonomous entities in the water services sector was prompted by advocates of the new public management (NPM) paradigm, who challenged the conventional governmental role as a direct service provider.

This challenge precipitated a shift in institutional reforms toward alternative service delivery models designed to emancipate water utilities from the direct dominion of governmental bureaucracy and political influence. Nevertheless, this shift toward a commercially driven, market-based approach for the delivery of public services has been critiqued for potentially eroding the intrinsic public value of these services. Critics of the NPM paradigm contend that its focus on economic efficiency and market orientation has resulted in a diminished organizational sensitivity to citizens as entitled service recipients, engendering conflicts with populist views that regard the provision of public services as a fundamental right of citizenship. This conflict emerges from the disparate perspectives of WSP managers, who perceive water users as customers and clients, and county government officials, who consider them as constituents whose votes are essential for political legitimacy.

Consequently, while WSP managers strive for efficiency in their operations, political figures are inclined to prioritize the establishment of trust and legitimacy to secure votes in forthcoming elections. This political pursuit for legitimacy often leads to undue interference in the operations of WSPs, which is at odds with the managerial pursuit of autonomy.

The legitimacy of public interventions is predicated on the alignment between the actions of public organizations and the public value recognized by society in those actions. Within the water sector, the debate centers on whether water services should be treated as an economic commodity subject to competitive market forces or as a social good that necessitates provision by the public sector. The discourse on public value is particularly relevant to this debate, as the public's perception of a service's value will dictate the most appropriate method of provision. The classification of water as an economic good is fundamentally a matter of value, subject to the prevailing values, traditions, and societal beliefs. One cultural standpoint regards water as a sacred, freely given resource, with its provision being a duty for the preservation of life, while another views water as a commodity, subject to ownership rights and allocated primarily on the basis of efficiency. Conteh et al. (2014) suggests that an in-depth understanding of citizens' appraisals and acknowledgments of public value can guide the determination of the most suitable management structure for a given context. They advocate for a discourse on water service management that transcends the binary opposition of public versus private management, considering instead the preferences and potential contributions of various stakeholders. This stance is corroborated by other scholars who have highlighted a trend in the management of urban water services in France transitioning from private operators to municipal ownership. The evidence indicates that the political class predominantly views water as a social good rather than an economic one, leading to significant control by county governments over the processes of water service delivery by WSPs.

The decentralization of water services in Kenya occurred against a historical backdrop characterized by post-colonial bureaucratic authoritarianism, politically dominated bureaucracy, a preference among governing leaders for policies with immediate, tangible benefits, and a culture of rent-seeking in the delivery of public services for personal enrichment and political patronage. This historical context provides a plausible explanation for the observed pattern of county government interference in the governance of WSPs.

The post-colonial legacy of a bureaucratic, hierarchical public administration in Kenya has shaped the design and delivery of public services and development initiatives to emphasize patron-client relationships, a dynamic that is reflected in the extent and nature of county government interference in the governance of WSPs.

Nevertheless, these findings, which complements existing scholarship suggesting that political factors have overshadowed public value creation or efficiency-oriented technical considerations in finding the right intervention strategy for the county government in the governance of the WSPs to enforce accountability while granting the right limits of authority to exercise their enterprise autonomy. The challenge in the current institutional structure for water services delivery is exacerbated by the fact that county governments have sole authority over the appointment of WSP board of directors. Institutional reforms measures are needed to reduce this political control. Several respondents suggested possible reforms could include outsourcing the appointment of board members to an independent agency, increasing the role of the national government in WSP governance by granting seats on boards, and granting WASREB more authority to enforce corporate governance regulations for WSPs and sanction counties that violate the regulations.

The results demonstrated that the current composition of the WSPs' boards violates regulations, resulting in boards that are too weak to effectively exercise governance oversight over WSP affairs. According to the corporate governance guidelines issued by WASREB, water utility boards should consist of seven to ten members appointed from various stakeholder segments within the service area of the WSP. Typically, a WSP board is expected to have two county government representatives, one being the Chief officer of the Finance department and the other being Chief officer of the Water department. Depending on the utility's operational environment, the remaining majority of directors are expected to be appointed from among stakeholder groups of interest such as Professional associations, large consumers, special interest groups such as women, people living with disabilities, etc. Theoretically, this should indicate that the county government does not have unilateral decision-making authority or excessive political influence in the committees, as they lack a majority vote. Directors must account to the constituencies they represent. If this were to be enforced, then the county political leaders' claim of excessive political interference should not arise.

One argument used by the political class to justify their excessive involvement in utility operations is that the county government has the authority to override the decisions of the independent directors and intervene in the management of the utility when deemed necessary to protect the public interest and preserve public value. The results, however, indicate that the nature of interventions has been haphazard, politically driven and not based on justifiable reasons. This begs the question: what is the optimal level of county government involvement in utility management that is not deemed "undue political interference"? Can this be empirically tested? Perhaps! This was the rationale of corporatizing water services provision in Kenya – that the new publicly owned organization's operations be sufficiently independent to maximize efficiency and unlock productivity. A possible solution based on the perceptions of the respondents is to explore a mixed ownership model for the WSPs with part ownership by county governments and part ownership by national government. The finding shows that this is one of the key suggestions made by policy actors especially from the national government to improve autonomy of WSPs in Kenya. The most practical solution seems to be finding a working governance arrangement within the current ownership structure and institutional setup.

6.3.2 perceptions on how the autonomy of WSPs from negative political interference from county governments could be improved

Table 6.4 summarizes the responses provided when the respondents were asked to share their views on how the autonomy of WSPs from negative political interference from county governments could be improved.

Table 6 4: Perception of respondents on how institutional autonomy of WSPs in Kenya could be improved.

Perceptions	Category of Respondents	Level of government
Establish clear performance goals for the WSP	CoG; Development partner; WWDAs; Ministry of water	National, County
Employ competent professionals to manage the WSPs	WSPs	County
Outsource the appointment of WSP board members and senior managers	Water company official	County
WASREB to enhance regulatory compliance	WSPs; CoG; Development partner official	National, County
Include WWDAs in WSP boards	Water company official; Development partner official; CSO/NGO official	National, County
Appoint additional Class B shareholders to the WSPs' Board of Directors.	Water Service Providers Association (WASPA)	National
Permit the WSPs to operate with more dynamic and cost-reflective tariffs that account for factors such as inflation, foreign exchange rate, and the cost-of-living index to reduce their reliance on the county for their operating costs	CSO/NGO official	National
Review the current laws that give county governments sole authority over the election of WSP directors to grant the national government concurrent authority	CSO/NGO official	National

Source: Author, 2023

Table 6.4 shows that respondents from both levels of government are unanimous in their perception that enforcing corporate governance guidelines can enhance accountability and provide checks and balances necessary for autonomous governance of the WSPs. About seven specific

actions were emphasized as necessary to improve the autonomous operation of WSPs. These include establishing clear performance targets for the WSPs and the county government holding them accountable on their performance; Employing competent professionals to manage the WSPs; county government outsourcing the appointment of WSP board members and senior managers to an independent agency devoid of political influence; WASREB enforcing regulatory supervision of compliance to corporate governance in board member appointments and performance; Amending the law so that the national government's water ministry, through the WWDAs, is represented on the WSP board of directors; increasing appointment of additional Class B shareholders to the WSPs' Board of Directors; Permit the WSPs to operate with realistic cost-reflective tariffs rather than stifling their flexibility in changing tariffs.

Several respondents from both levels of government, including water companies, national WWDAs, and WASREB, emphasized that the autonomy of WSPs should be reflected in the establishment of clear performance agreements with county governments, with the counties holding WSPs accountable for meeting these targets.

Some respondents from the development agency and CSO/NGO argued that reducing the current powers of the county over the WSPs by reviewing the law and regulatory guidelines that give the county government sole authority over the appointment of directors of the WSPs would significantly increase the institutional autonomy of the WSPs. This measure, they argued, would prevent political interference in the governance of WSPs and ensure that WSPs adhere to corporate governance best practices. To this end, some respondents from development agencies and WASPA believed that this could be accomplished by revising the 2016 Water Act to grant the national Ministry of Water and the WWDAs more authority over the administration of WSPs by granting them seats on WSP boards. Their reasoning was that this would distinguish the WSPs as not only county government agencies, but also essential government-owned enterprises. In addition, they proposed that appointing more non-county representatives to the Board of Directors would grant the boards greater decision-making authority from the county government. A WASPA interviewee was of the opinion that additional non-executive directors could provide a counterbalance to the unilateral decisions or directives of the county government, resulting in more objective governance oversight, in addition to bringing diverse perspectives and expertise to the boards. As a means of

enhancing the autonomy, county representative interviewees believed that community representatives should have a stronger voice on the boards of WSPs.

Several Water Companies and the CoG believed that outsourcing the hiring of county government board members to an independent state agency would reduce the prevalent political interference, thereby preserving the autonomy of WSPs and mitigating the negative effects of political interference on their governance. A second interviewee from the CoG and a number of respondents from development agencies concurred that granting WASREB more authority to enforce corporate governance regulations for the management of WSPs and to sanction counties that violate the regulations would significantly increase their autonomy.

An official of the CoG argued that political influence from county governments over the WSP should not be viewed as interference, but rather as a necessary component of the political process to ensure accountability for the delivery of water services at the county level. However, he added that this political oversight must be carried out in accordance with explicit good governance regulations that are agreed upon by both levels of government.

The key finding on measures to improve the institutional autonomy of WSPs from their county governments is to implement clear governance guidelines and accountability mechanisms that maintain political oversight. Specific measures include: Establishing clear performance goals for WSPs and holding counties accountable for their performance. Granting WSPs the freedom to hire competent professionals to manage them, rather than appointing incompetent political appointees. Outsourcing the appointment of WSP board members and senior managers to an independent agency to reduce political interference. Strengthening regulatory oversight by the WASREB to ensure compliance and punish non-compliant WSPs. Amending the law to include representation from the national government's water ministry on the WSP board of directors. Appointing additional class B shareholders to the WSP board of directors with decision-making authority. Giving community representatives a stronger voice on WSP boards.

These findings complement scholarly research on the political capture of public state-owned enterprises. The hypothesis that political capture of state-owned enterprises is detrimental to their expected market-efficiency-like enterprise performance is well documented in literature (Szarzec et al., 2020). According to the study findings, the county governments' interference in the governance of the WSPs has been used primarily to distribute political rents, which has been

detrimental to the performance of the WSPs. This has created a cycle of dependency of the WSPs on subsidies from the county government to meet their operational costs including staff salaries as they are not able to make autonomous operational decisions based on market commercial efficiency considerations needed to improve their financial performance.

In addition, the findings address an underlying normative perspective which suggests that "commercial/enterprise model" is good for public services and "political interference" is bad. Considering that the WSP while expected to operate on a commercial efficiency basis in water services delivery, the county government is ultimately politically accountable to the electorate for the affordability, equitable sharing and sustainability of water services provided through the WSPs. On this rationale, the county is justified to intervene in one way or another in the operations of the WSPs. The contestation then becomes finding the right extent of this intervention so that both commercial and political values and objectives inherent in water services delivery are realized. The argument advanced in this thesis is that the problem might be not to dichotomize or elevate one (namely commercial as it seems) over the other but to establish what a right institutional model for a public service with strong social/public dimensions such as water services and one with a monopolistic market condition would look like.

The delivery of water services in Kenya is governed by a polycentric institutional structure involving multiple policy actors nested within an overarching national institutional structure. In such a setting, it is anticipated that conflicts will arise due to the conflicting incentives and interests of policy actors, which may negatively impact the performance of service delivery. While the nesting of different policy actors at different levels of governance within an overarching institutional rule system is intended to provide checks and balances and mitigate the negative effects of these actor-centred conflicts, the evidence in this chapter and those presented in chapters four and five demonstrate that the institutional nesting has not been effective to this end as the contestations between the two levels of government of various issues including resources sharing and functional boundaries of the different actors overshadow the normatively expected sound practices in water services delivery

6.4 Institutional interplay between Community-based water providers, WSPs and County government in water services delivery

This section explores the institutional interplay between community-based water service providers, county-owned WSPs, and county governments in water services delivery in Kenya. It specifically discusses the extent of independence that community-based water service providers have from county governments and WSPs, as well as the factors that underlie the observed conflicts between communities and county governments over the policy of dissolving community-based water service providers and transferring of their operations to the county-owned WSPs. To establish these, the interviewees were asked a series of two questions. The responses to these interview questions are presented, analyzed, and discussed.

6.4.1 Perceptions on institutional relationship between the county government, WSPs and community-based water service providers

The respondents were asked to explain their perceptions regarding the extent of autonomy of Community-based water operators from the county government and how the county should engage with them in water services delivery. The responses are summarized in Table 6.5.

Table 6 5: Perception of respondents on institutional relations between county government, WSPs and community-based water operators

Perceptions of Respondents	Category of respondents	Level of Government
County water departments should register and regulate community water operators,	WSPs; CoG; WASREB); WWDA; Ministry of water; CSOs	National, County
County governments should support community water operators to become WASREB-licensed WSPs	WSPs	County
Community water operators' lack of formal structure hinders accountability; counties should manage water services through regulated WSPs instead.	WSPs; Former Transition Authority official	National, County
Numerous small community operators overwhelm WASREB's regulatory capacity.	Ministry of water	National
The Water Act mandates counties to create rural water companies with community board representation, eliminating the need for separate community-based providers.	CoG; Ministry of water	National, County
Implement uniform regulations for small community providers, with WSPs enforcing rules and aiding in effective management.	County government	County
Community groups can govern effectively using traditional structures and social norms when free from elite or political interference. However, frequent political abuse negates these benefits. In such cases, counties should transfer asset operation to professional WSPs.	Development partner	National
WASREB's guidelines for managing services without WSPs and with community operators are comprehensive. Full implementation by counties should resolve governance issues.	Development partner	National

Source: Author, 2023

Table 6.5 shows that all respondents concur on the need for regulation and supervision of community water operators. On the level of autonomy these operators should have and the role of county governments in their management, there is disagreement. The general consensus was that increased regulation and monitoring of compliance with water service delivery standards are essential for ensuring that community water operators provide quality water services, and that county governments can play a crucial role in enhancing the capacity of community water operators through their WSPs.

A CoG respondent advocated for the need to support institutional autonomy of community water operators as a viable model for water services delivery, arguing that local decision-making and community responsibility based on a strong sense of ownership of the water supply schemes can result in better services than when communities only play a marginal role in water services delivery at the county level.

He expressed skepticism regarding the efficacy of county governments in providing water services directly to each community within the county, given the vast geographical scope of the majority of counties, and suggested that community-based companies or organized groups could be more effective due to their local presence. As the respondent stated,

“ there are different schools of thoughts on community water operators. There are those who think they should be handed to counties. I am of a completely different view. There are those like me who think they should be given to the community to manage but using effective instruments, with close monitoring. For the simple reason that it localizes decision making. It makes the local community responsible for whatever benefits they are getting. Giving them to the counties have implications of personnel, because you need personnel for running them, they need to be run in a manner that does not increase the fixed costs to the county.

The county government themselves are not effective in running the service directly themselves that's why the law is insistent of water service providers. My interactions with the county governments and the institutions that they run I don't see them being very effective, I'd rather we have those community-based companies, or you can give some of those things to informal organized groups, like youth and women groups.” (CoG official)

This view was echoed by several respondents from some water companies who also advocate for the autonomy of community water operators, albeit with adherence to guidelines and standards established by WASREB. On the other hand, a number of respondents from other water companies voiced concerns about the improper use of informality by some community water operators and recommended that these operators be disbanded, and their assets transferred to WSPs for the delivery of professional services. Some interviewees from a few WWDAs were of the opinion that community water operators should be managed by professionals and have clear registration and monitoring arrangements with county water departments, as opposed to operating informally without clear governance as the majority do currently.

Contrary to these opinions, a respondent from the WASPA believed that community water operators should not be completely disbanded. However, he advocated for county governments and WSPs to oversee community water operators as a means of improving professionalism and sustainability in service delivery.

In a similar vein, interviewees from the national Ministry of Water and the Transition Authority suggested that community water operators should be closely monitored and educated on water supply compliance regulations. In addition, they emphasize the need to include these operators in stakeholder functions alongside regulated WSPs. Several respondents from development agencies and national WWDAs believed that counties should assist community operators in implementing regulatory compliance in services delivery issued by WASREB, along with a clear transition plan to fully regulated WSPs once their organizational capacity to operate water utility services has been enhanced.

“they (community based operators) serve communities where the WSPs are struggling to reach. I think the small ones can have partnership MoUs or delegated contracts with WSPs or county. WASREB has provided the guidelines for this, but for the bigger ones can be strengthened to transition into WSPs licensed directly by WASREB.” (water company official)

Several of the community group respondents interviewed shared the opinion that the county water department should collaborate with the community operators to provide technical support and capacity building in order to transition them to formally registered service providers.

A respondent from one of the water companies was of the opinion that the community water operators should work under a formal delegated service agreement with the county governments in order for the county to enforce adherence to service guidelines and standards, thereby acting as on a delegated regulatory arrangement. He noted that because community operators are numerous and dispersed across the country, WASREB may not be able to effectively regulate all of them, so the county government can work with WASREB to establish a plan for being the regulator's enforcer at the county level. However, he believes that this is only possible if the county enforces a legally binding contract with the various community operators, ensuring their formal registration with the water department as service providers. A representative from one of the development agencies added that since WASREB has provided very clear regulatory guidelines on how county governments can oversee the proper governance of community water operators, all that needs to be done now is to implement these regulatory guidelines, implying that there should be no governance issues with community operators if these guidelines are fully implemented by counties.

The interviewees from community water operators asserted that the strength of community-based water governance resides in the use of time-honored, effective, and enduring traditional governance structures. According to them, this has resulted in the long-term viability of a number of community-based schemes, some of which are as ancient as 50 years since independence, while some newer schemes managed by commercial WSPs fail within a short period of time despite being promoted as being more professionally managed.

This sentiment was echoed by a representative of a development agency, who remarked that community-based water governance has generally been effective, unless elite or political capture comes into play, which contradicts the collective action ideals espoused by such models, causing some of them to fail to deliver.

“the community groups use traditional governance arrangement which work well when there is no elite or political capture. The problem is that most of them fall to politician’s misuse, hence derailing their benefits. In such cases, the county should hand over the assets to professional WSPs for operation. where the community rules are respected and working well, the county water department should strengthen them through licensing and readily available technical support.”

(development partner official)

The study found that there is general agreement on the need to regulate and supervise community-based water operators (CBOs) in order to ensure that they provide quality water services. However, there is disagreement about the level of autonomy that CBOs should have and the role of county governments in their management. Some respondents argue that CBOs should have more autonomy as independent stand-alone WSPs, as local decision-making and community ownership can lead to better services. Others believe that CBOs should be disbanded, and their services administered by county governments via water service providers (WSPs), or that CBOs should only operate under delegated authority from WSPs. Overall, the findings suggest that it is essential to strike a balance between community participation and ownership in the delivery of water services and increased professionalization and adherence to service standards, under direct supervision by county governments.

These findings suggest that while acknowledging the shortcomings of some community providers, many stakeholders believe they play an essential role in remote areas and should thus remain a key player in the institutional structure for water services delivery in Kenya but with clearer formal registration mechanisms, and capacity building through technical support from the larger WSPs.

The implication of these findings is that the challenge of institutionalizing community-based water service provider models in Kenya lies in finding the right institutional arrangement that allows communities to manage their own water schemes while still being accountable to the county government and the water sector regulatory board (WASREB). Policy actors are divided over whether community-based water operators should remain independent actors registered as community-based organizations or whether they should be converted to formally regulated commercial water service providers (WSPs) registered as commercial water service providers.

The observed conflicts between communities, water service providers, and county government regarding the role of community groups in water services delivery reflects the underlying tensions between neoliberal, market-driven policies for public services delivery versus traditional commons governance approaches to natural resources management. On the one hand, most policy actors, including several from the WSPs and county government water departments, concur that, if well-structured and supported, community-led structures have the potential to ensure efficient and sustainable water services delivery by leveraging the strengths of collective action and strong community ownership of water supply infrastructure.

On the other hand, there is a subset of policy actors who view community-led service provision arrangements as informal mechanisms frequently susceptible to elite or political capture and not based on the technical and commercial efficiency and professionalism required to deliver sustainable water utility services, thus discrediting them as a viable institution for service delivery.

6.4.2 Community-based water service providers

A key issue raised in the research problem statement is the growing trend of county water departments and county-owned WSPs seeking to disband and forcibly take over water supply services provided by community-based water service providers. The respondents were asked to share their views on whether community-based water service providers (CBOs) should be disbanded as an institution for water services, and their views on the attempts by county governments to dissolve existing CBOs and hand over their operations to water service providers (WSPs). Their responses are summarized in Table 6.6.

Table 6 6: Perceptions on dissolution of CBOs

Respondents' perspectives		Category of respondent	Level of government
No	Train them, and register them as WSPs	CoG; Development partner official	County, national
No	Build their capacity	Water company official	County
No	Let them have WSPs delegated service agreements with WSPs	WSP; Ministry of water official	National, County
No	Community-based operators should be permitted to continue serving remote rural areas.	CSO/NGO official	National
Yes	WSPs to take over but employ individuals from the community	WSP	County
Yes	Let formal regulated WSP oversee service delivery even in rural areas	WWDA; Former Transition Authority official	National
Yes,	Most of these groups are controlled by political cartels who have other sinister interests other than water service delivery.	WASPA	National
Yes,	Every service provider must be regulated and therefore putting them under WSPs is the best option	CSO/NGO	National
Yes,	Small operators are not financially viable due to the size and operating costs. There is also a lot of unprofessionalism among them. this needs to be changed for the sake of the vulnerable and marginalized	County government official	County

Source: Author, 2023

Table 6.6 shows that there is a diversity of opinion from respondents from both levels of government on the disbandment of community water operators. Some respondents advocate for disbandment in cases of misuse or inefficiency, while others argue for their strengthening and enhancing a collaborative approach to service delivery with the counties and the WSPs, particularly in areas where Water Service Providers (WSPs) struggle to reach with services due to remoteness of the locations.

On one hand, some respondents were of the view supporting the disbandment of community water operators. A respondent from the CoG was of the perception that most of these operators suffer from political capture by local politicians and thus not able to effective work as regulated service providers thus hey should be disbanded and the assets handed over to the county owned WSPs who would provide regulated services. He states,

“Service to the population must be regulated and be sustainable. Small utilities are not financially viable due to the size and operating costs shooting beyond the roof. There is also a lot of pilferage and toxic cultures among the small utility management. There is also a lot of unprofessionalism among them. this needs to be changed for the sake of the "small man" or the vulnerable and marginalized.” (county government official)

A similar view was expressed by one respondent from development agency in stating that,

“in my opinion the counties are right. You cannot have unprofessional and unregulated groups all over offering services. The county should regularize rural wspas and hand these assets over to them for professional management.” (development partner official)

On the other hand, several other respondents argued against disbandment of community-based operators, emphasizing that they still play a significant role in filling the gap through reaching remote rural areas where WSPs consider non-commercially viable and will struggle to provide services. Some of the respondents who support this view are from water companies as well. A respondent from one water company noted that the community-based operators serve communities where the WSPs are struggling to reach and suggested that the small operators can have partnership MoUs or delegated contracts with the WSPs serving in the same area to enhance capacity building rather than disbanding them.

A respondent from one WWDA was of the view that the law, the water act of 2016, allows for the community models as an option for water services delivery especially where there is low commercial viability so the counties should strengthen them instead of seeking to disband them.

“the law allows for community management models. Where the county can’t reach with the rural WSP, they can have O&M agreement with the community for a fee. Disbanding them will not help because they have a space in the water act 2016 as a water service provider.” (WWDA official)

This sentiment was echoed by an interviewee from the CSO/NGO category who was of the view that the county government should formally register the operators as service provide and then work closely with WASREB to bring in more professional management in their operations. He argued that community service providers should be guided and sensitized on their roles and the importance of their services, and that they should be brought under the regulation of WSPs or the county government. This perspective is echoed by a respondent from a development agency, who argue for the need for clear mechanisms for monitoring performance and financial accountability.

Several respondents from water companies supported the view of not dissolving the community operators but emphasized that they should operate based on a clear collaboration plan between the WSPs, the community service providers and the county government water department arguing that the two entities should complement each other in sharing information, collaborating in water infrastructure projects, and engaging with citizens. They argue that community-based providers can share real-time information on specific issues affecting water quality and distribution, while WSPs can provide technical and financial resources where needed. This view was also emphasized by several of the community group respondents interviewed.

“Crafting a collaboration plan between public WSPs and community service providers can improve service delivery. The two entities should complement each other in sharing information, collaborating in water infrastructure projects, attending training seminars and engaging with citizens. Community-based providers share real-time information relating to specific issues affecting water quality and distribution whereas WSPs can provide technical and financial resources where needed in boosting service delivery to members of the community.” (water company official)

Respondents from one development agency and CSO/NGOs expressed concerns about the attempted forceful takeover of community service providers by county governments and WSPs, arguing that this approach is not the most effective since these communities have a strong personal attachment to these water systems which some were developed through community collective action and by NGOs support and not the county government. They suggest that instead the county should have a clear registration and monitoring arrangement with these community groups to ensure that they have access to technical assistance when needed.

“the forceful takeover is not the most effective approach since these communities have a very strong personal attachment to these systems. Some of them were constructed in the 1980s and have been transferred across generations. The county should have a clear registration and monitoring arrangement with them to ensure that they have access to technical assistance when needed.”

(development partner official)

The findings show that there are no disagreements with varying opinions across both levels of government on whether community water operators should be disbanded or strengthened through partnerships and capacity building support. Some respondents advocate for the dissolution of community operators on the grounds that their political capture renders them unviable as professional service providers, that they lack financial viability, and that they operate outside of service standards regulation. Supporters of dissolution contend for the transfer of assets and operations to county-owned WSPs, which are viewed as more professional and are subject to WASREB's regulatory oversight. On the other hand, the study reveals that several respondents argue against disbanding community operators because they play an important role in reaching remote rural areas where WSPs struggle to provide services and because their operations are based on a strong historical attachment to the water assets, as some of these have been passed down from generation to generation and thus cannot be simply transferred to WSPs. Opponents of dissolution propose community operators can enter into partnership agreements with WSPs for capacity building and collaborative service delivery as an alternative to their dissolution.

The implication of this finding is that there is strong recognition among policy actors at both levels of government that communities are essential stakeholders in the delivery of water services in Kenya, and their role in constructing institutions for this purpose should not be undervalued. These findings show a strong belief among communities that commercialization, which would entail

dissolving their community-led operators and clustering them under the management of commercial WSPs, is an unnecessary attempt by the county government to seize their valuable assets. These communities possess a strong sense of asset ownership and are demanding for further decentralization within the county, as supported by the devolution structure. This motivates their opposition to the community-schemes being clustered under water service providers, which they perceive as a loss of community proprietorship under the guise of enhancing professionalism; they would prefer to maintain their autonomy as service providers. These findings concur with those of other researchers who have indicated that the most significant challenge and limitation confronting community management of water services is that community water management is frequently viewed as an unsustainable informal approach to services delivery based on self-help community mobilization initiatives with unclear performance due to limited data and challenges to their sustainability (Obosi, 2017).

The results suggest that the emergence of community-based water operators is the result of an institutional gap in which the WSPs and county water department are unable to provide adequate service delivery to remote rural communities. In response to the inaccessibility of formal government service providers, an institutional bricolage emerges where communities draw on their existing social fabric based on collection action movements to establish an emergent institutions, i.e., community-based water service provider organizations, which are neither completely traditional nor formal, but rather a pragmatic hybrid that combines elements of modern formal rules for water services delivery borrowed from market-led mechanisms and traditional mechanisms for community resources allocation and sharing. Obosi (2017) demonstrated the efficacy of community-managed water services in showing that community-managed water provision arrangements in partnership with private sector actors in western Kenya significantly improved service delivery, with community water projects outperforming county-owned WSPs in comparable circumstances.

The main policy issue under consideration related to the debate about the role of community-based water services delivery model is whether and how they can be integrated into the overall strategy and institutional framework for reliable water services delivery. Based on the perceptions of policy actors at both levels of government, the conclusion is that community-based water service providers are crucial policy actors whose role should be strengthened rather than eliminated from

the institutional framework. One respondent from the CoG summed up these sentiments by stating that community-based structures not only localize decision making, which contributes to the values of decentralized governance espoused in the objects of devolution in the Constitution of Kenya of 2010, but also provide a viable solution for ensuring water services delivery reaches every citizen, given that county governments are already institutionally stretched and cannot afford to hire personnel to manage every water system within their jurisdiction.

This perspective is consistent with the principles of decentralizing the delivery of water services through sustainable delegated management approaches. Decentralization should be conceptualized as not limited to the county government delegating service delivery to commercial WSPs they own; it can also leverage delegation to other organizations, such as community-based operators, to accomplish the same goals, albeit with contextualized compacts between the county and the communities being served.

Finding an institutional arrangement that embeds the strong commons governance principles of collective self-management within the larger formal institutions for managing and regulating the delivery of water services remains the remaining challenge for water services delivery in Kenya. This requires policy leaders, particularly those in the county government, to acknowledge the social and political tensions that underlie community resistance to commercialization and to investigate how both institutions can collaborate to ensure the sustainability and accountability of water service delivery in rural communities.

6.5 Summary

In this chapter, data was presented and discussed focused on the examination of the perceptions of policy actors on the extent of WSP autonomy, discussed the dilemma of how county governments can hold WSPs accountable while at the same time allowing them to operate autonomously then concluded by examining the institutional interplay between community-based water service providers, the county government, and WSPs.

CHAPTER SEVEN

CONCLUSIONS AND RECOMMENDATIONS

Introduction

This chapter summarizes the main findings from this study and draws conclusions about how they relate to the overall research objective. It also makes suggestions for further research and policy changes to improve the institutional governance of water service delivery in Kenya.

7.1 Summary of Findings

The overall objective of this research study was to establish how the current institutional structure has affected water service delivery in Kenya. This was achieved through three specific objectives as follows; To examine the effects of water sector intergovernmental functional assignment within the current institutional structure on water service delivery, to investigate the effect of water sector intergovernmental institutional coordination on water services delivery in Kenya and to examine the effect of institutional autonomy of county-owned WSPs on water service delivery. The following are the key findings against each of these objectives.

7.1.1 Impact of intergovernmental functional assignment on water services delivery

The study's first objective aimed to investigate the impact of the assignment of intergovernmental functions within the existing institutional architecture on the provision of water services. Data was gathered through semi-structured interviews and subsequently analyzed and delineated across four distinct sections within the fourth chapter. The first section assessed the potential bias of the intergovernmental functional assignment structure in favor of the national government as opposed to county governments. The second section delved into the contentious issues at the heart of the intergovernmental functional assignment framework. The third section probed the power dynamics inherent between the two tiers of government concerning the allocation of functions within the existing institutional framework. The fourth section evaluated the degree of national government veto power in contrast to county government autonomy in the realm of water service delivery under the current institutional arrangements.

The majority of respondents indicated that the current institutional framework for the assignment of intergovernmental functions in Kenya's water service delivery is skewed in favor of the national government. Specifically, the national government maintains substantial control over pivotal

elements such as resource distribution, staffing, policy formulation, and regulatory oversight. This dominance curtails the autonomy and effectiveness of county governments in executing their responsibilities.

The principal contentious issues within the intergovernmental functional assignment structure that contribute to this perceived imbalance include ambiguity in delineating the roles and responsibilities of water service delivery between national and county governments, disputes regarding the definition of national public works, contention over ownership of water infrastructure and the associated debt repayment responsibilities, and debates concerning the adequacy of technical capacity at the county level to discharge their designated functions.

The study suggests that the power dynamics within the institutional structure for water service delivery in Kenya are characterized by a prevailing sentiment of national government encroachment into county government autonomy. The counties' resistance to the national government's dominance is a salient feature of these dynamics.

Furthermore, the study uncovers a lack of consensus among policy actors from both levels of government on the national government's right to veto county government policy decisions pertaining to water service delivery. While some actors maintain that the national government can intercede when county decisions are at odds with national legislation and policies, others assert that the national government has no dominion over the counties, as the Constitution enshrines county autonomy. Hence, any challenge to county decisions by the national government should be pursued through judicial avenues. This discord has engendered tensions between the two levels of government over the appropriate equilibrium of autonomy, policy, and regulatory oversight within the extant nested institutional framework for water service delivery.

The study also reveals that the national government's foray into the functional domains of county governments has engendered dual pathways for investments, thereby stymieing county-level decision-making on initiatives and investments in water service delivery. This has led to inefficient capital deployment due to resource misallocation at both levels of government, with the national government lacking granular insight into each county's specific needs, and the counties making investment decisions with scant regard for national government investments within their jurisdictions. The ongoing contention over functional responsibilities has precipitated an accountability void in water service delivery to citizens, with both levels of government more

inclined to assign blame than accept responsibility, especially when service delivery falters in a given locality. The resistance of counties to national regulatory oversight of water services at the county level has further exacerbated the conflict over the national government's authority to supervise county water policies and regulations, thereby stalling the enactment of vital policies aimed at service expansion. Crucial water delivery initiatives, such as an intergovernmental coordination framework and a joint water sector investment plan, have been significantly hindered, predominantly due to power struggles over contested aspects of institutional structure. These issues have collectively contributed to the shortfall in achieving targeted water coverage goals and the subpar performance of Water supply services.

7.1.2 Effects of institutional coordination on water services

The second objective of this study was to examine the influence of intergovernmental institutional coordination within the water sector on the delivery of water services in Kenya. Data was garnered through semi-structured interviews and subsequently analyzed and presented across three sections within Chapter five. The first section presented the current mechanisms in place to facilitate intergovernmental collaboration and assessed their efficacy. The second section probed into the degree of functional interdependence in water service delivery and its impact on coordination efforts. The third section addressed the regularity of intergovernmental coordination activities, identified factors that either impede or encourage these activities, and outlined the perceptions of policy actors on strategies to augment the efficacy of intergovernmental collaboration in water service delivery in Kenya.

The research reveals that the mechanisms for intergovernmental coordination in Kenya's water service delivery encompass both statutory and informal frameworks. Statutory mechanisms, such as the CoG and the IGRTC, are largely deemed ineffective by a majority of policy actors from both governmental tiers, due to a lack of legal enforceability and political backing. Conversely, informal mechanisms, facilitated by entities like the Water Services Regulatory Board and the Water Services Providers Association, are perceived as more successful in fostering intergovernmental coordination.

There is a shared understanding among policy actors from both national and county governments regarding their interdependence for the execution of water service delivery functions. Nevertheless, this interdependence has not been effectively mirrored in coordination practices.

Coordination efforts are predominantly sporadic, reactive, and inconsistent, with a tendency to prioritize high-level political engagements over technical coordination specific to water services. This shortfall in coordination has resulted in the inefficient allocation of resources, service delivery gaps, and underutilized water infrastructure.

Both structural and informal mechanism are influential in shaping the degree of intergovernmental coordination in water service delivery. Structural elements, such as the lack of clarity in role assignment and distrust between government levels, act as deterrents to effective collaboration. On the other hand, informal mechanism, including professional networks and individual relationships among policy actors, serve as motivators for coordination. The study establishes that four pivotal measures are necessary to enhance intergovernmental coordination in water service delivery: fortifying the legal frameworks and policies for coordination, including a reassessment of the mandate and engagement instruments for the IGRTC and CoG to render them more legally compelling; amplifying communication and information exchange between actors at both levels of government; and instituting joint planning and regular stakeholder forums to transition from the current sporadic approach to a more systematic and proactive coordination strategy.

The study concludes that suboptimal intergovernmental coordination in Kenya has precipitated various challenges in water service delivery. These include the concurrent execution of services by different entities, inadequate maintenance of water infrastructure leading to diminished functionality and a setback in access targets, the overlapping provision of water services in certain areas, and substandard service quality at the county level due to persistent technical capacity deficiencies. These challenges are exacerbated by the failure of the two levels of government to collaborate effectively in enhancing county-level capacities.

7.1.3 Impacts of water service providers' autonomy on water services

The third objective of the study aimed to evaluate the influence of the institutional autonomy of county-owned WSPs on water service delivery. Data was gathered through semi-structured interviews and subsequently analyzed, presented, and discussed across three sections in Chapter 6. The first section scrutinized the extent of WSP autonomy from their parent county governments. The second section delved into the challenge of how county governments can ensure accountability of WSPs while also permitting them to operate autonomously as commercial entities. The third

section examined the interplay among community-based water service providers, the county government, and WSPs in the delivery of water services.

The study revealed that WSPs in Kenya have limited decision-making autonomy from county governments, particularly in strategic areas such as infrastructure development and rate setting. This lack of autonomy hampers the effectiveness and financial sustainability of WSPs, resulting in inferior service delivery compared to the pre-devolution era when WSPs were under national supervision. The study demonstrated that county governments frequently make unilateral decisions that bind WSPs without consulting them, such as altering leadership and providing free water. These uncoordinated decisions undermine the autonomy and sustainability of WSPs, leading to service disruptions. In particular, political commitments to provide free water without consulting WSPs result in financial crises and increased reliance on unreliable county subsidies. The findings indicated a consensus among policy actors that county governments may legitimately intervene in WSP operations under certain circumstances, such as mismanagement, but should do so through structured, accountable processes that respect the governance autonomy of WSPs.

Several measures were proposed as necessary to enhance the autonomy of WSPs, including establishing clear performance objectives for WSPs and holding counties accountable for their performance, granting WSPs the freedom to recruit competent professionals rather than imposing incompetent political appointees, outsourcing the appointment of WSP board members and senior managers to an independent agency to reduce political interference in the recruitment process, strengthening regulatory oversight by the WASREB, amending the Water Act of 2016 to include representation from the national government's water ministry on the WSP board of directors, and giving community representatives a stronger voice on WSP boards.

The study also found widespread consensus on the need to regulate and oversee community-based water operators (CBOs) to ensure the delivery of high-quality water services. However, there is disagreement regarding the extent of autonomy CBOs should have and the involvement of county governments in their management. Some respondents argued that CBOs should have greater autonomy as independent WSPs, while others believed that they should be disbanded or operate under the authority of WSPs. There was also variation in opinion across government levels on whether CBOs should be disbanded or strengthened through partnerships and capacity-building support. Some respondents advocated for the dissolution of CBOs due to political influence,

financial unsustainability, and non-compliance with service standards regulations. They suggested that their assets and operations should be transferred to county-owned WSPs, which are more professional and subject to regulation by the WASREB. Others argued that CBOs play a crucial role in providing water to remote rural areas where WSPs face challenges in reaching, and that their operations are deeply rooted in a strong historical connection to the water assets.

7.2 Conclusion

In conclusion, this study has established that institutional governance has significantly influenced water service delivery outcomes in Kenya, primarily through the interplay of functional assignment structures, intergovernmental coordination mechanisms, and the autonomy granted to water service providers. The decentralized institutional framework, while designed to enhance local responsiveness and accountability, has instead led to a contested reinforcement of centralized control over water service delivery, weak coordination, and limited operational autonomy for water utilities. These governance challenges have manifested in inefficient resource allocation, service delivery gaps, and suboptimal performance of water service providers.

The study suggests that improved water service delivery outcomes are more likely under circumstances where there is clear delineation of responsibilities between national and county governments, robust and legally enforceable intergovernmental coordination mechanisms, and a balance between political oversight and operational autonomy for water service providers. Conversely, poor service delivery tends to occur in contexts of ambiguous functional assignments, weak coordination, and excessive political interference in water utility operations.

7.3 Recommendations

The following specific recommendations for future research as well as Policy recommendations are made.

7.3.1 Policy reforms recommendations

Based on the evidence provided in the document, the following policy reforms are recommended to improve the institutional governance of water services delivery in Kenya:

- (i) The Ministry of Water, Sanitation and Irrigation, the IGRTC and the CoG secretariat should jointly undertake a review and amendment of the existing institutional structures and legal frameworks in order to establish clarity of the explicit roles of each level of

- government in water services delivery vis a vis the concurrent roles to be undertaken jointly by both levels of government.
- (ii) The Ministry of Water, Sanitation, and Irrigation should implement a strategic restructuring of the form and purpose of the WWDAs by consolidating the existing nine regional WWDAs into a single national WWDA, with a dual mandate of developing only cross-county bulk water supply systems and providing technical capacity building for county water departments. By centralizing the WWDA structure, rather than having them as regional bodies, county concerns about national encroachment on their within-county constitutional mandates will be mitigated. This restructuring will also involve the redeployment of high-caliber staff from the current WWDAs to county water departments. This strategic redistribution of human resources would significantly enhance the decentralization of expertise, aligning with the constitutional imperative of devolved governance in water service delivery hence resolving the persistent "capacity wars" by facilitating knowledge transfer and skill development at the local level.
 - (iii) To strengthen the effectiveness of intergovernmental coordination in the delivery of water services, the Ministry of Water, Sanitation and Irrigation, the IGRTC and the Council of County Governors secretariat should jointly undertake a review of the legal frameworks governing intergovernmental collaboration to incorporate legally binding provisions and enforcement mechanisms. In addition, the frequency of stakeholder coordination should be improved by establishing regular forums for joint planning and progress reviews, such as quarterly roundtable meetings and an annual meeting between the CoG and the Ministry of Water and Sanitation to report on service delivery achievements and challenges. This combination of binding frameworks and frequent joint planning and monitoring will enhance accountability and collaboration between national and county governments in providing reliable and equitable water services.
 - (iv) The Ministry of Water, Sanitation and Irrigation, the Council of County Governors secretariat and WASREB should jointly undertake a reform the water sector regulatory framework to enable for greater county autonomy in matters such as tariff setting, while preserving national oversight of water services delivery standards to control for wide variations across counties.

- (v) The Ministry of Water, Sanitation and Irrigation and the Council of County Governors secretariat should jointly undertake a review and amendment of the existing institutional structures and legal frameworks in order to strengthen the role of community-based water service providers by requiring each county to have a legally binding compact on services delivery with each community-based water service provider. WASREB to develop a framework and regulations for such compacts.

7.3.2 Further research recommendations

Based on the findings presented and discussed in this study, the following are suggested as areas for future research:

- (i) The study demonstrates that informal coordination mechanisms have been more effective at facilitating intergovernmental coordination, contrary to existing literature showing that formal institutionalization of coordination instruments improves coordination in multilevel governance systems. Future research could explore the causes of this phenomenon and its implications for multilevel governance.
- (ii) This study's data provides a snapshot of a single point in time. A comparative study of the preceding two periods of devolution (2013-2018; and 2018-2022) to determine whether there have been changes in the perceptions and experiences of policy actors related to intergovernmental functional assignment, coordination, and relationships between county governments and WSPs is recommended.
- (iii) Conduct additional empirical research on the optimal level of county government involvement in the governance of water utilities that does not constitute "excessive political interference." This could aid in determining the optimal equilibrium between commercial and political values in the delivery of water services.

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APPENDIX I: ADDITIONAL DATA/EVIDENCE SUPPORTING THE STUDY.



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way,
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/2/8 Vol.13 (41)

25th September 2023

Hon. Alice Wahome
Cabinet Secretary
Ministry of Water, Sanitation & Irrigation
NAIROBI

Dear

OBJECTION TO THE DESIGNATION OF NATIONAL PUBLIC WATER WORKS UNDER LEGAL NOTICE NO. 102-KENYA GAZETTE SUPPLEMENT NO. 43 DATED 21ST JULY 2023 (the "Impugned Legal Notice")

Greetings from the Council of Governors.

The Council wish to refer you to part 2 (11) (b) of the Fourth Schedule of the Constitution of Kenya 2010 that assigns the function of water and sanitation services provision to County Governments. Further, Section 77 as read with section 78 of the Water Act, 2016 (the "Act") provides for Water Service Providers (WSPs) as entities established by County Governments for provision of water services and county assets development for water service provision.

The Council notes with great concern the repeated unconstitutional actions by the Cabinet Secretary, Ministry of Water & Sanitation to designate National Public Water Works without undertaking mandatory public consultation/participation contrary to Article 10 of the Constitution.

This follows another unconstitutional action by the Ministry to allow issuance of a License to Athi Water Works Development Agency (WWDA) to operate as a WSP for Karimenu II Dam water supply system which undermines the constitutional functions of County Governments in water and sanitation services provision and which was vested on a transitional clause.

We note that WWDA's continue to implement projects without involvement of county governments contrary to the principles of co-operation and coordination envisaged under Article 189 of the Constitution. Further, WWDA's are yet to transfer and hand-over Water Assets to County Governments, Joint Authorities or WSPs as envisaged under Section 68 and 69 of the Act due to delay in finalization of the water assets transfer plan. This delay has posed major challenges on the counties and respective WSPs to benefit from the autonomy and improved management contemplated under the Act.

In light of the above concerns, the Council wish to issue an objection to the impugned Legal Notice that designates various water works to be National Public Works under the maintenance of WWDAs specified therein. This is because the designation of the said Water Works does not meet the criteria set out under section 8 of the Act. Moreover, the scope of work stated in the impugned Legal Notice threatens to impede the jurisdiction of the WSPs in water service provision by entrenching WWDAs to undertake bulk water supply contrary to the provisions of the Constitution and the Water Act 2016.

This move also sets a precedence for WWDAs to claw back on the role of County Governments in water service provision that is a devolved function. Bulk supply and or bulk water services ought to be undertaken by either the county water services providers established under section 77 of the Act or joint authorities under section 69 of the Act. The said entities should be supported and facilitated to implement projects including Public Private Partnership (PPP) projects in the water sector. In the case of license for bulk water service provision, WASREB should be guided by the requirements in section 100 of the Act wherein the bulk supply arrangement must be undertaken by two licensed water service providers.

The Council of Governors therefore objects to the unilateral gazettment of water schemes as "national public water works" and hereby recommends the following:

1. De-gazettment of the designated national public water works through revocation of Legal Notice No. 102 as contained in the Kenya Gazette Supplement No. 43.
2. Mandatory consultation of County governments and the general public participation be undertaken as required under the Constitution of Kenya. The requirement for public consultation was elucidated by the court in the recently delivered *Constitutional Petition Number 004 of 2020; Peter Koira Kimani Vs Water Services Regulatory Board and Another* where Gazette Notice 11346 of 2019 publishing the Corporate Guidelines for Water Service 2018 was quashed because the procedure violated Article 10 of the Constitution.
3. Fast track transfer of Water Assets to the County Governments, Joint Authorities or WSPs to enable them adequately undertake water service provision and benefit from the autonomy contemplated under the Water Act, 2016.
4. WWDAs to cease any exercise and performance of water service provision which is a devolved function as stipulated in the Fourth Schedule of the Constitution.

Finally, we implore the Ministry of Water, Sanitation & Irrigation to commit to upholding the division of functions under the Fourth Schedule of the Constitution, the principle of public participation under Article 10 of the Constitution and the delineation of functions between WSPs and WWDAs. We further urge the Ministry to align with the spirit of the Water Sector Intergovernmental Coordination Framework signed on 17th August 2023, during the Devolution Conference 2023.

Please accept the assurance our highest esteem and consideration.

Yours



H.E Andrew Mwandime
Chairperson, Water Forestry and Natural Resources Management Committee

Copy: All Excellency Governors



Principal Secretary Water and Sanitation

Chief Executive Officer Water and Sanitation Service Providers

APPENDIX II – INTERVIEW GUIDE

I. INTRODUCTION

My name is James Origa. I am a PhD in Public Policy Candidate at the University of Nairobi's Department of Political Science and Public Administration. I am undertaking a research study exploring the influence of institutional governance on water service delivery in Kenya. As part of my doctoral dissertation, I am kindly requesting to ask you a few questions about several issues related to the challenge of water governance and its influence on water services outcomes in Kenya. I request your utmost honesty in answering the questions since the outcome of the study will provide critical evidence for reforming Kenya's water sector policy and current institutional structure for delivering water services.

Whereas there is nothing wrong in refusing to answer the questions, there is everything wrong in providing wrong answers. Although you are free to discontinue the interview at any time, only completed interviews/responses will be considered.

Your response to the questions shall be kept confidential and used only for the purpose of the research. Neither shall they be divulged to any other person outside this research assignment. The mention of your name as a contributor to this study is optional.

The interview shall take about forty (40) minutes.

II. GENERAL BACKGROUND

1. Name (Optional) _____
2. Sex/Gender:
3. Organizational Responsibility/Position:
4. Organization:
5. Organization's mandate:

III. INSTITUTIONAL STRUCTURE AND THE ROLE OF COUNTY GOVERNMENTS IN PROVIDING WATER SUPPLY SERVICES

1. In the assignment of functions between the 2 levels of government, do you think there are areas where the current institutional structure favor national government over county governments in terms of water service delivery considering that water services delivery is constitutionally a devolved function? Probe. How? - policies, regulations, delays etc.

2. What are the contested issues/areas in the assignment of water sector functions between the 2 levels of government? What is the source of this contestation?
3. What are the perceptions of water service actors regarding the power balance between the two tiers of government in water service provision? Which one is more powerful? Where is the power manifested? How does it affect service provision?
4. Under what conditions can the national government veto water decisions made by the county governments? Prompt. Using what instruments? Probe. How does this affect service delivery?
5. Explain the conditions under which the county governments can make any binding decision on water services without facing sanctions from the national government? Probe - How does that affect water service delivery

IV. INTERGOVERNMENTAL COORDINATION IN THE DEVELOPMENT AND IMPLEMENTATION OF CRITICAL WATER SERVICE DELIVERY POLICIES

1. Briefly describe the nature of the existing intergovernmental coordination instruments for water service delivery using the guidance below. (Probe: provisions under article 6, To achieve the intents of this article, what are the practical instruments/approaches put in place to ensure inter-governmental coordination of water services delivery processes?)
2. Explain major water service actors' perception regarding the effectiveness and efficiency of the above coordination arrangements. Probe more in terms of effect on service delivery
3. To what extent are the national government and county government functionally interdependent? Probe. In what areas? How has this interdependence (or lack of it) affected propensity for (inclination towards) coordination? How does it affect water service delivery?
4. How regular are the coordination activities between the national and county governments in matters of water service delivery? Probe. Explain.
5. What factors motivate the regular coordination (or disincentive the irregular coordination) between the national and county governments regarding water service activities? Probe.
6. What do you think could be done to improve intergovernmental coordination for water services delivery? Probe. (What should be and can be done differently?)

V. THE AUTONOMY OF WATER SERVICE PROVIDERS (WSPs) AND ITS EFFECTS ON PERFORMANCE IN WATER SERVICE PROVISION

1. Explain the decisions which WSPs have made or can make independently without referring to the county government? (Or national government agencies) Probe. How does this affect water service delivery?
2. Explain the circumstances which the county governments have made unilateral decisions affecting WSPs without seeking their consent. Probe. How does this affect water service delivery?
3. Based on your experience and observations, in what ways has the County governments (or even the national government) interfered unduly in the management and governance of WSPs? Probe. What is the relationship between WSP Board of directors and the County governments? What was the effect on water service delivery?
4. Under what circumstances can the county governments be justifiable to interfere with the operations of the WSPs? Probe. How can the County governments hold the WSPs accountable but at the same time allowing them to operate autonomously as an independent commercial agency?
5. What do you think could be done to improve the autonomy of WSPs from negative political interference from the County governments (or even the national government?)?
6. How should independent Community water operators be handled? Do they have greater autonomy from county governments and does that make them have better services?
7. In recent past, there have been challenges with public WSPs seeking to take over/oversee community service providers with the community-based providers resisting such attempts. What are your perspectives on this issue?
8. Do you have any further comments/recommendations regarding the subject?

We have come to the end of our interview session. Thank you very much for your participation. I once again wish to assure you that responses will be kept very privately and confidentially.