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Analysing governance in the water sector in Kenya

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Acronyms

CAAC	Catchment Area Advisory Committee
CBO	Community Based Organisation
CDF	Constituency Development Fund
CEO	Chief Executive Officer
CSO	Civil Society Organisation
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
INGO	International Non Governmental Organisation
IWRM	Integrated Water Resources Management
MDGs	Millennium Development Goals
MOU	Memorandum of Understanding
MP	Member of Parliament
MWI	Ministry of Water and Irrigation
NGO	Non Governmental Organisation
NSA	Non-State Actors
ODA	Official Development Assistance
WAG	Water Action Groups
WRM	Water Resource Management
WRMA	Water Resources Management Authority
WRUA	Water Resources Users Associations
WS	Water Services
WSB	Water Services Board
WSP	Water Service Provider
WASREB	Water Services Regulatory Board
WSTF	Water Service Trust Fund

Executive Summary

In 2002, the Kenyan government launched an ambitious programme of reforms for the water sector. It passed new enabling legislation with clear roles for the key water institutions, increased public spending to the sector, and pursued other governance improvements such as separation of water resources management from water supply services delivery. The 2002 reforms are acknowledged to be one of the most advanced and comprehensive in the whole of Africa. Yet, despite the far-reaching and promising reforms and the financial resources put aside, its key objectives are far from being realized. So what factors are responsible for holding back progress? And how can actors – including external ones such as donors – contribute to improvement in water sector outcomes?

In seeking answers, ECDPM tried to make the various governance dimensions and actors in the Kenya water sector more visible. In order to do so, it used an analytical tool that the European Commission (EC) developed to better understand actors and factors that determine development outcomes in sector operations. This Discussion Paper presents the core findings of a two-week programme of structured interviews with a broad range of Kenyan stakeholders and external actors, as well as a literature review of governance of the water sector in Kenya[1].

This paper highlights some of the most important issues that hamper progress in improving water sector governance in Kenya. In order to do so, the paper mapped a number of key actors, the power they hold, the interests they have and some of the incentives that influence their behaviour. It also traced some of the governance and accountability relations within the institutional context they operate in. The EC's analytical sector tool proves to be very useful for helping to identify key actors, stakeholders and governance issues that merit attention for how they block or contribute to improving water governance. Moreover, most interlocutors where interested in the findings, but more importantly in discussing them. So the analysis framework and the output of such analytical process also prove to be a relevant dialogue tool.

While the mission report addresses some of the governance deficits, the mission team was not able to drill down to sufficient levels of detail into the sector problems, and hence refrains from formulating recommendations for external partners and domestic stakeholders. This was not the purpose. What it did manage to do is provide clarifications why mere technical support and more financial resources won't improve governance in the water sector in the short term. It demonstrated for example that there was a broad interest in the findings of this mission, and an interest to debate it more openly and more widely. The findings of such diagnostics can only *come alive* when they are debated, and when some of the ideas about how to improve sector governance can be discussed and contested. For this reason, the mission and desk study point to areas where additional knowledge, targeted research and stakeholders' dialogue will be helpful for identifying response strategies.

1 The abundant literature on the Kenyan water sector, including academic journals, government documents, independent reports, newspapers articles and other relevant documents, was reviewed as additional source of information and to strengthen the analysis. The analysis draws on qualitative data gathered during interviews and conversations with a comprehensive range of stakeholders in Kenya: officials from key ministries and water-related institutions, donors, INGOs, CSOs and local experts, the private sector, informal community-based organisations.

2 Political economy is the study of both politics and economics, and specifically the interactions between them (for a full definition see footnote 9 below).

3 In strictly financial terms, the return on investment in water and sanitation cannot be overestimated: economic benefits range from $3 to $34 for each dollar invested (depending on the nature of the intervention and the

Context matters: complexities of a sector continuously evolving after ambitious reforms

A key feature of the water sector in Kenya and its institutional set-up after the 2002 reforms is the separation between ‘water resources management’ and ‘water services’. The analysis of sector dynamics and discussions with stakeholders points to the fact that these two parts are characterised by very different governance features. The management of water resources is more related to traditional customary arrangements, with water seen in this sense as a public good by most actors. While the provision of water services is more related to profit-making activities, with registered companies, consumers and ‘market arrangements’ taking centre stage. Dealing with water means facing a 'dual governance' system: resources management and service provision are strictly interlinked; but institutional, political, accountability arrangements, and incentives and interests tend to differ substantially, making governance particularly complex. This 'dual' system has also consequences on the political attention, pressure for results and investment levels that characterise service provision and the overall management of the resource itself.

Despite these very peculiar features of the water sector, this paper also shows that the general governance conditions in Kenya play a crucial role as well in determining opportunities and bottlenecks for sector development. There is consensus on the fact that unless certain dimensions of the overall governance context improve, the water sector reforms -perceived to be the right improvements needed- will fail to deliver on their ambitious objectives. Patrimonial governance is the default approach in Kenya: “tribalism”, “corruption” and “nepotism” are “rampant” and “endemic” in all sectors, according to Kenyan actors.

The most striking feature of the water sector in Kenya is probably the huge increase in overall resources invested in the sector in recent years. The 2002 reforms and subsequent increased spending by national government, private investors, and donors resulted in a booming interest by a wide range of actors for water related issues in terms of accessing the enlarging pot of financial and non-financial resources available within the sector. Such “scramble”, particularly dramatic in the service provision sub-sector, greatly affects water governance, as the booming investments and proliferation of public and private agencies dealing with water created very strong incentives to 'join the race'. We analysed stakeholders' relations, formal and informal dynamics, commercial behaviour, and policy decisions. We also listened to the comments expressed by the various actors about each other. Both highlighted that such strong political economy[2] driver for the water sector involves a wide range of institutions and groups, as well as various 'rent-seeking' activities’, often leading to tensions or conflicts. Tensions from conflicting interests, as well as ‘corruption and capture’ issues, can be observed in the traditional market arena of commercial water service providers (WSPs). Such tensions were also observed among CSOs who compete for public and donor resources, Water Services Boards (WSBs) vying for political attention, government subsidies and aid flows, as well as other parastatals competing for functions, projects and jobs. Also new actors that were not traditionally involved in water, sanitation and sewerage activities sought different avenues to enter the booming water business. The WSBs, introduced through the 2002 reforms, were often referred to as powerful centres of a dense network of formal and informal relations and both a 'target of' and a 'means to' the scramble for water-related resources.

The 'scramble' is partly due to the new sector policy landscape, as the 2002 reforms introduced the commercialization of water services and unleashed the entrepreneurial spirits in the sector. This to some extent strengthened the ‘dual governance’: the very different 'willingness to pay' and average 'disposable

[2] Political economy is the study of both politics and economics, and specifically the interactions between them (for a full definition see footnote 9 below).

income' make the commercial drive in urban and rural areas two completely separate races. In the cities, both large and small 'invisible hands' determine the outcomes of the market forces, with formal and legal transactions, but also informal arrangements, strong rent-seeking efforts, illegal commercial activities and other governance dynamics. The commercial drive in rural areas is hampered instead by structural problems such as lack of capacities and physical fragmentation of the water sources and the communities. This urban-rural divide has financial and management consequences: of the total sector funding, Kshs. 28 billions in 2009, it is estimated that more than 20 billions went to water services and supply while less than 4 billions to water resources management, mostly a rural-based endeavour.

Institutional, governance and accountability arrangements: incentives, interests and stakeholders' relations

Against this background of multiple and multi-layered relationships and political economy drivers, the paper digs deeper only into few of these relationships and arrangements, providing relevant examples of the key governance bottlenecks to be addressed for the smoother and more equitable development of the Kenyan water sector. The 2002 reforms clarified the roles of different actors and the mandates of water institutions. Still, the intense engagement by many stakeholders in the sector - together with the weak regulatory arrangements - lead to over-institutionalization, overlapping roles, lack of coordination, and uncertainties about the implementation of reforms. The Ministry of Water and Irrigation heads most of the policy processes and dialogue platforms that proliferate in the water sector, but real coordination remains very weak, with other eleven ministries entrusted with some competence on water in one form or another. After 2002, new institutions were established, including thirteen new parastatals, and decentralised decision-making translated into autonomous regional bodies and more conflicts on 'competence'. These policies have resulted in a "the more the merrier" situation, which also affects the non-state actors, with many entering the water sector with non-profit operations in mind but ending up providing the same services as registered WSPs.

Vested interests, blurred stakeholders' roles, and relatively small circles of those making decisions combine to become strong disincentives for real transparency and independence. Apparently, the extreme personalization of roles, still unclear governance functions and the need to survive in a highly competitive environment generate a "feeling of guilt", the sense of ultimately sharing the responsibility for the problems of the sector. It is not easy to find one actor or institution considered by all to be "without sin", even if some drivers of change can be identified within the government, civil society as well as private sector.

Another key governance bottleneck is the fact that the many strong voices in the water sector do not translate into real accountability. Daily media reports on water corruption are accompanied by very frequent launches of new 'sectoral reviews' (CSOs in particular seem to have strong skills and solid experience as 'watchdog'). However there are serious problems of enforceability. Stories in the press and agitation by civil society actors don't seem to add up and result in changes in policy or corrupt or ineffective practices. Communication and information management systems for the sector are inadequate. Complaint and feedback mechanisms are extremely weak, often cumbersome, and are also undermined by the non-transparent arrangements so common in the sector.

Political economy drivers, obstacles and opportunities for incremental progress

Serious difficulties exist for real drivers of change to emerge and for more effective reforms to be designed and kick-started in the Kenyan water sector. There are too many dimensions and sensitivities, with different stakeholders representing too different priorities, to expect linear solutions. Rather, permutations of different efforts and approaches by many actors towards gradual progress is a more realistic scenario. Accordingly, this paper has no ambition to provide 'magic bullets', and only offers examples of routes to incremental change, focusing on two general macro-problems of the water sector and suggestions for further work and in-country dialogue that in the future could contribute to sector development.

The first problem is the most classical one for political economy: government and business elites tend to prioritise urban over rural areas. Defence of the ‘status quo’, short-sighted public policy, and profit-led private decisions contribute to make the countryside a secondary concern. It is not by chance that probably the only exception to the 'lack of rural voice' in Kenya is the power and influence of the booming horticulture industry (and its water users), which in fact has recorded very significant export-driven growth in the past five years and is now the largest sub-sector in terms of contribution to agricultural GDP. The urban water sector is a profitable business, attracting a lot of political attention and a mix of quality professionals, with the government raising substantial money from taxation. Naturally, the 'voice of the cities' is loud and clear. Rural areas on the contrary do not have a strong voice. The rural water sector is where interests of different users (domestic, agriculture, livestock and industrial water users) clash more openly, leading to tensions and “cross-fire” obstacles by one stakeholder against the other. Rural water is also less regulated, monitored, and reported, making it more difficult to intervene for improvements. It seems therefore clear that one of the priorities to be addressed in the Kenyan water sector is in general paying more attention to the voice of the countryside, and in particular increasing the access to water services in rural areas, given the low coverage rates there.

Discussions with stakeholders show that rural water user associations have an important role to play and strengthening them would be a welcomed step. Further national dialogue on exactly how to do this could lead to positive change and a first step to incremental improvements could be the establishment of a 'National Platform’ of these associations. Providing more government and donor funding for the expansion and improvement of current rural water network providers and promoting the emergence of new WSPs in the countryside, especially small-scale entrepreneurs, would be another important priority action for incremental change.

The second general macro-problem of the water sector in Kenya is the sustainable management of the resource. The country is seriously water-scarce, and nonetheless water is neither understood, treated, developed nor managed as a scarce resource. There are strong incentives, including for the government, parastatals and donors, for achieving immediate results on access to water services, while conservation and long-term sustainability of the resource does not seem to be an immediate priority. It is much easier to get finance for water-sector hardware than for ‘software’ such as watershed management, research, policy-making, monitoring, environmental and pollution control, training, and public awareness. This trend is also externally reinforced by the MDG priority focus on access for all to safe drinking water, while much less international attention is dedicated to natural resources sustainability. An exclusive focus on access today without attention to the long-run sustainability of the resources risks to lead to a lack of water tomorrow.

According to many stakeholders, the institutions in charge of water resources management should be strengthened, starting with the Water Resources Management Authority. Moreover, an Integrated Water Resources Management Plan guiding all the sectors impacting on water emerged as another area where further dialogue and multi-actor cooperation could lead to incremental change. Political leadership, with possible direct backing by the Prime Minister's Office could lead to swift implementation (such a Plan was approved in 2007, but is dormant, and several stakeholders indicated it should be urgently resuscitated).

Emerging suggestions on other areas for incremental progress, to be targeted by further governance analysis work and/or relevant in-country dialogue on sector development, include: more investment by all stakeholders in the governance functions for the sector; unified political will (and a new communication strategy) to revamp the original 2002 reform spirit; creating windows of opportunity for transforming voice into accountability; building up consensus on specific change needed in key institutions (such as WSBs); revisiting the donors' coordination strategy and alignment to government policies (revitalizing the 'sector-wide approach').

Applying the “Governance Analysis Framework” to the water sector: some methodological suggestions

The field-work and research to apply the ‘Analysing and Addressing Governance in Sector operations’ framework to water in Kenya was also an interesting opportunity to provide insights on how to better tailor this tool to the features of the water sector. Certainly, the exercise show that the framework is a very relevant and useful approach to frame the governance analysis of the water sector and the in-country work (discussions and interviews), as well as to present results in a concise way. For very complex sectors like water, most stakeholders, including donors and civil society, do need a tool that can clarify and summarize the structures, operations, formal and informal dynamics of a sector which otherwise will always be perceived as “a mess”, with bottlenecks too intricate to be solved. Such complexity also suggests that it is very difficult to apply the Framework to the whole water sector in one go, and that a two-step approach may be useful: undertake one first open-ended general analysis to let areas of major concern on the sector emerge from discussions with the full range of stakeholders, and then apply the Framework to a narrow set of sub-problems. The first step is important to keep the tool flexible, as different stakeholders probably are interested in governance analysis for different reasons and would use results in different ways. For the second step, one must be very precise about the purpose of the exercise and what its results will be used for, possibly testing directly a ‘way forward’ with stakeholders in the country.

Another key consideration is that it is difficult to present a comprehensive set of operational recommendations directly out of this ‘Framework’. What Kenyan stakeholders expressed was a desire to discuss scenarios and suggestions openly as to a way forward on specific bottlenecks, and not so much about 'governance analysis' or abstract principles of “good governance”. Such operational tool could be a sort of ‘action matrix ’, indicating for instance for each key bottleneck: i) what each actor or institution could be doing (which specific action and for what objective); ii) under what realistic timeframe and political capital involved; iii) with what budget given those specific governance obstacles; and iv) how this would realistically interact with overall country governance conditions, ongoing reforms and policy changes.

Finally, there are a few methodological considerations that matter in the application of a sector governance analysis. In our field-work in Kenya we experienced the importance of: building an informal network of stakeholders throughout the mission and always keeping an ‘off-the-record’ mood; taking into account that the driver of change may not be an institution but the people within the institution; the team undertaking the analysis being perceived as fully independent from any specific group of actors or interests within the sector (including donors); for the composition of the team, striking a balance between experts external to the country and sector (as they are not embedded inextricably into governance relations and dynamics there) and ‘internal’ experts (longer experience and deeper knowledge of specific problems).

Introduction: the water sector in Kenya

Evidence points to water and sanitation conditions as perhaps the world's largest single cause of disease and to improvements in this sector as being critical to sustainable progress across a broad spectrum of development outcomes, including the MDGs and food security. Safe water and improved sanitation provides a basic level of human security that, once reached, enables families and individuals to work to increase their standards of living.[3]

For many years Kenya has recorded positive economic growth rates and the opening up of democratic political space, but serious concerns remain regarding the increase in the number of people living below the poverty line of less than US$1 per day, which rose from 13.87 million (48 percent of the population) in 1997 to 20.6 million (57 percent) in 2006. In terms of rural poverty and food security, Kenya is a country with great unexploited potential to feed itself, including through improved **water resources management**. However, the country faces serious challenges in the water sector, both in the long term availability and sustainability of fresh water resources as well as in the levels and inequality of access to safe drinking **water and sanitation** facilities.

For these reasons, in 2002 the Kenyan government has launched an ambitious programme of reforms for the sector, passing new enabling legislation with clear roles and responsibilities of the key water institutions, increasing public spending to the sector, and pursuing other governance improvements such as the separation of water resources management from water supply services delivery. The **2002 reforms are acknowledged to be one of most advanced and comprehensive** institutional designs and intervention packages for the water sector in the whole of Africa. All Kenyan stakeholders seem to agree that the 2002 reforms were a key step to improve water and sanitation in the country, and that the sector is experiencing significant progress[4].

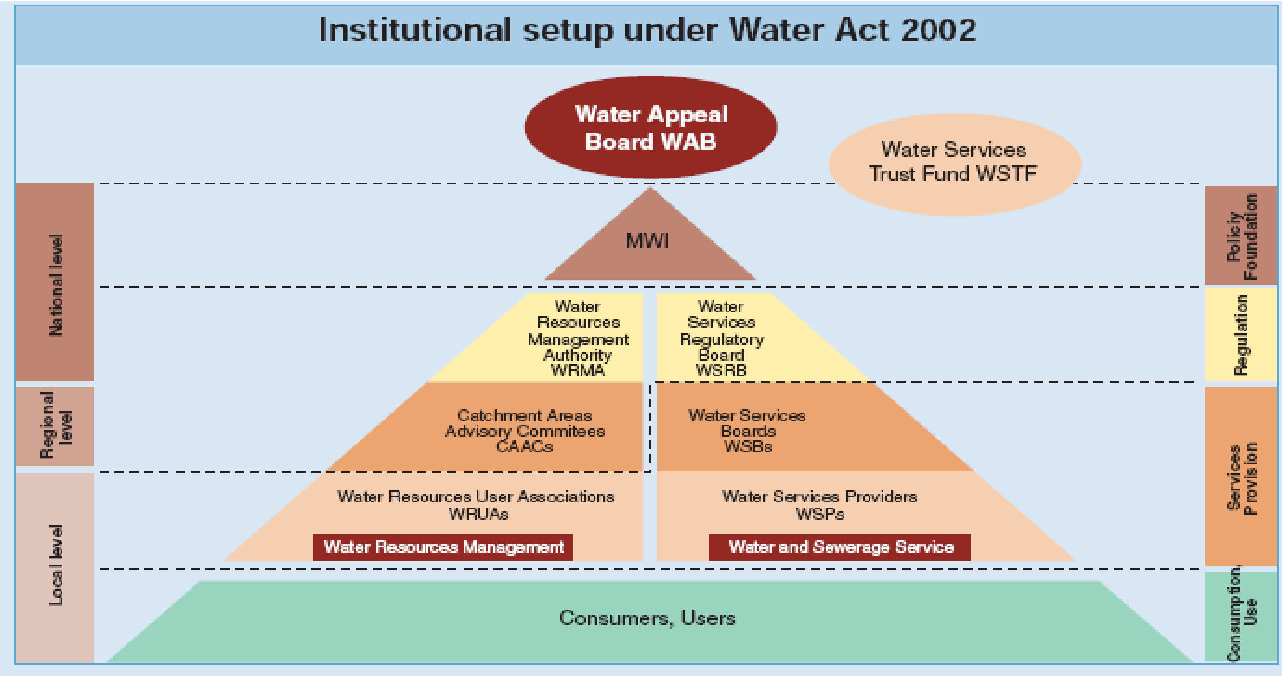
This widespread approval for the underlying objectives and features of the new laws and policies translates in a consensus around the appropriateness of the new institutional design for the sector[5], well known as the 'sector pyramid'. This diagram, often referred to and utilized by most stakeholders, is also useful to give an overall **picture of the sector:**

Kenya provides a particularly relevant case for applying governance analysis to the water sector: since the **objectives of the 2002 reforms** are far from being realized (see Box 1), scratching beyond the surface of what seems to be a well reformed sector -on its way to good progress- is crucial to clarify the real dynamics on the ground and to identify priority bottlenecks and possible routes to incremental change.

3 In strictly financial terms, the return on investment in water and sanitation cannot be overestimated: economic benefits range from $3 to $34 for each dollar invested (depending on the nature of the intervention and the country).

4 In December 2010 a perception survey found that 56% of the respondents felt "services were better now than before the commercialization of water & sewerage services" (www.digital-development-debates.org/03-development-cooperation/water-management/the-water-sector-reform-in-kenya-is-bearing-fruit.html). Summary of recent progress is also found: www.wsp.org/wsp/sites/wsp.org/files/publications/Kisima_Newsletter__Issue_5.pdf

5 For a list of key institutions and actors, their acronyms and mandates, see Annex 1



Box 1: Objectives and problems

The main objectives of the 2002 reforms were:

- preserve, conserve and protect available water resources and allocate them in a sustainable, rational and economic way;
- supply of water of good quality in sufficient quantities to meet the various needs, including poverty alleviation, while ensuring safe disposal of wastewater and environmental protection;
- establish an efficient and effective institutional framework; and
- develop a sound and sustainable financing system for effective water resources management, water supply and sanitation development.

Despite improvements along these lines are taking place, all stakeholders agree that those objectives are far from being achieved. This is confirmed by few figures often quoted by the Ministry of Water:

- Kenya is still categorized as a water scarce country, with 647m3 per capita;
- 50% of the population lack safe reliable water and basic sanitation;
- all water resources are threatened by pollution, degradation and over exploitation.

The **aim of this report** is to present in a concise format the application to the water sector in Kenya of the 'sector governance analysis framework' developed by ECDPM for the European Commission, to test the relevance of such tool for addressing specific problems in specific contexts. Given the limited temporal scope of this exercise, the context analysis, mapping of actors, and assessment of reform readiness focused on a limited set of dimensions and problems of the water sector in Kenya, rather than covering the whole range of complex issues involved.[6] The report concentrates on the areas of major concern as emerging from discussions with the full range of stakeholder groups that were interviewed: water services provision and water resources management, as well as the type of incentives, interests, stakeholders' relations and formal and informal dynamics around them. Many other important dimensions of the water

6 See Annex 2 for the tables summarizing the Framework application and underpinning the analysis in this report.

sector, such as health and sanitation, irrigation, climate change, land tenure, gender or infrastructure development, could not be analysed in depth.

The **first part** of the report presents a **summary of the analysis** of the sector context (section 1), the specific institutional, governance and accountability arrangements in the sector in Kenya (section 2), as well as the political economy[7] drivers, obstacles and opportunities for progress (section 3). The **second part** outlines a preliminary assessment of whether the 'Governance Analysis Framework' and its **methodology** need to be altered or adapted when applied to the water sector, with few suggestions for improvements.

1. Governance in the water sector in Kenya

1.1. Analysing the context: complexities of a sector continuously evolving after ambitious reforms

1.1.1. The two sides of the pyramid: dual governance?

A simple glance at the 'sector pyramid' diagram reveals the complexity of the water sector in Kenya, with its numerous institutions, layers of geographical interventions and competencies, and the intersection between policy formulation, regulation, service provision and consumption of the resource. A key feature of the sector, and its institutional set-up after the 2002 reforms, is the separation between water resources management (WRM, left side of the pyramid) and water services (WS, right side). The analysis of sector dynamics and the discussions with stakeholders point to the fact that these **two sides of the pyramid are characterised by very different governance features**. Water resources management is more related to traditional customary arrangements, in other words the management of rivers, lakes and other water sources located mostly in rural areas, belonging to customary land, without formal property rights. Management practices and skills are passed on from one generation to the next, with water seen by most actors purely as a public good. The provision of water services is more related to profit-making activities, the demand and supply of drinking water or water for agriculture and manufacturing, as well as sanitation and sewerage facilities. This is mostly a phenomenon of cities and other urban settlements, with clear, often legally recognised property rights, and where management practices and skills are the prerogative of registered companies and more or less formal commercially oriented service providers.

These two completely different systems are underpinned by different governance dimensions and characteristics, with different stakeholders bearing different interests, specific organizations responding to a different logic, as well as very different accountability arrangements and dynamics. It could be argued that dealing with the water sector means facing a **'dual governance' system**, where of course resources management and service provision are strictly interlinked; but institutional, political, accountability arrangements, and incentives, interests and stakeholders relations may differ substantially, making governance (and its analysis) particularly complex.

[7] "Political economy is the study of both politics and economics, and specifically the interactions between them. It focuses on power and resources, how they are distributed and contested in different country and sector contexts, and the resulting implications for development outcomes. PE analysis involves more than a review of institutional and governance arrangements: it also considers the underlying interests, incentives, rents/rent distribution, historical legacies, prior experiences with reforms, social trends, and how all of these factors effect or impede change" (World Bank, 2011).

An example of such complexity is the fact that the Water Act 2002 does not recognise the existence in Kenya of a **pluralistic legal framework** and is premised exclusively on a formal statutory legal system, which is deemed by some observers inappropriate to the needs and circumstance of Kenyan rural poor since they have not been integrated into the private land tenure and other formal regimes upon which the Water Act 2002 is premised (Mumma, 2007)[8]. Requirements for permits for water use, which are open only for those with formal land title, tend to exclude the majority of Kenyan people living under customary land tenure, and traditional water management practices often clashes with formal water licensing practices and regulations, hence creating uncertainties in management responsibilities.

The sections below will show more in detail that this 'dual governance' system, with different governance arrangements and political economy drivers, has consequences in terms of the political attention, pressure for results and investment levels characterising the two sides of the pyramid; and that looking at the Kenyan water sector from this angle can contribute to a better understanding of its governance bottlenecks.

1.1.2. No sector is an island

Despite the very peculiar characteristics of the water sector, including a 'dual governance' system, it is also clear from the analysis of the 2002 reforms process and the discussions with stakeholders in Kenya that the **general governance features of the country play a crucial role** as well in determining opportunities and bottlenecks for sector development. There is widespread consensus on the fact that unless certain dimensions of the overall governance context improve, the water sector reforms -generally supported and perceived to be the right improvements needed- will fail to deliver on their ambitious objectives. “Tribalism”, “corruption” and “nepotism” are “rampant” and “endemic” (these are the terms used by Kenyan actors)[9] at all levels of society, involving both public and private activities and behaviours, and affecting all sectors, including water.

Patrimonialism is a key governance feature in Africa and in Kenya[10]. And in this particular historical moment, with a Grand Coalition government which brought together the ruling party and the opposition after the post-electoral violence of 2008, it seems to be compounded according to most stakeholders by a “looting spree”, apparently undertaken by all politicians and many public officials, who see all parliamentary and government activities as part of the campaign for the 2012 elections[11]. No sector can function smoothly and develop in isolation from the rest of the society, and even the most advanced institutional, policy and legal innovations face serious difficulties and governance bottlenecks in being successfully implemented in a context of widespread “tribalism”, “corruption” and “nepotism”. This seems to be the case for the Kenyan water sector, as described in more detail in the following sections.

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8 'Kenya’s New Water Law: an Analysis of the Implications of Kenya’s Water Act, 2002 for the Rural Poor' (Mumma, 2007)

9 Quotation marks appear in this report to refer to specific comments by stakeholders and are used in the text when that particular expression captures the argument, especially an assessment on governance dimensions, better than rephrasing the stakeholder's words.

10 See 'Understanding governance mechanisms in Kenya and the implications for the agricultural sector', Box 7 in 'Analysing and Addressing Governance in Sector Operations' (EuropeAid, 2008)

11 Apparently, all decisions and allocation of funds, public and parastatal jobs, private and state-owned projects, follow interests related to the main political parties and ethnic groups, to secure electoral gains for the next round of parliamentary and presidential elections. In Kenya, in addition, the government and parliament currently tend to coincide with half of MPs holding minister or vice-minister positions as a result of the need to satisfy all members of the Grand Coalition formed in 2008.

1.1.3. The scramble for water-related resources

The most striking feature of the water sector in Kenya is probably the **huge increase in the overall resources invested in the sector** in recent years. The 2002 reforms and the subsequent increased spending by national government, private investors, and international donors brought funding levels for water from Kshs. 2 billions in 2002 to 28 in 2009 to Kshs. 32 billions in 2010. This has resulted in a booming interest by a wide range of actors for water related issues, with a view to access the enlarging pot of financial and non-financial resources available for the sector. Such “scramble”, particularly dramatic in the service provision sub-sector, is also one of the central governance features of the Kenyan sector, as the booming investments and proliferation of public and private agencies dealing with water create very strong incentives to 'join the race' and nurture serious commercial interests and dynamics.

Analysing stakeholders' relations, formal and informal dynamics, commercial behaviours, policy decisions, and listening to the comments expressed by the various actors about each other, show that such strong political economy driver for the water sector involves a wide range of institutions and groups, as well as various 'rent-seeking' activities[12], often leading to tensions. **Tension from conflicting interests** can be observed not only in the traditional market arena of commercial water service providers (WSPs), but also among: CSOs competing for public resources and Official Development Assistance (ODA); Water Services Boards (WSBs) for political attention, government subsidies and ODA; other parastatals competing for functions, projects and jobs; actors not traditionally involved in water, sanitation and sewerage activities who seek different avenues to enter the booming water sector.

The fact that water is a very “lucrative sector” is confirmed by the large number of actors operating in the water service provision business (see Box 2). Water prices and profit margins can be high, reflecting water scarcity and/or lack of information among consumers, but competition is fierce. In general, low revenue collection and some degree of donor dependency in the sector, combined with little capacity for strategic planning and commercialization, make it often impossible for WSPs to raise sufficient funds to ensure effective and efficient provision of water services. The weak commercial and financial viability of many newly established **WSPs**, together with the fact that the small-scale independent service providers sector remains unregulated, lead to unsustainable business practices, opportunities for non-transparent “side deals”, as well as widespread corruption and capture involving the more powerful, or unscrupulous, actors in the sector transactions.

Box 2: Many providers for a lucrative business

Many types of actors are WSPs in Kenya:

- 'water companies', i.e. the large public utilities owned by the City Councils (the water that runs through everyone's taps);
- registered companies of small and medium providers, establishing water kiosks to distribute the piped water on behalf of the 'water companies' or operating trucks that go round in all parts of the country selling water when there are shortages;
- water kiosks operated by community-based-organisations;
- illegal vendors, mostly operating in informal settlements, who illegally connect to the pipes of 'water companies' and charge high prices;
- other retailers, selling bottled mineral water in shops.

[12] Rent-seeking occurs when an individual, organization or firm seeks to earn income by capturing economic rent through exploitation of the economic or political environment (and its weaknesses such as lack of transparency and integrity or weak procurement systems), rather than by earning profits through economic transactions and the production of added wealth.

Many of the interviewed stakeholders refer to a “survival fight” among the **civil society** groups and community-based-organisations (CBOs) who are active, or attracted, in the sector, and have to increasingly compete for funding, being government resources or aid. In the case of advocacy NGOs this competition leads to a proliferation of activities and reports about the water sector which often overlap and duplicate existing efforts, and also creates a disincentive for sharing information and best practices. In terms of CBOs, an emerging trend is that they apply for formal licenses as WSPs. This, despite reassurances from involved CBOs that they are not “business minded”, tends to blur the governance picture, with a mixture of profit and not-for profit motivations and behaviours which can contribute to the lack of transparency and confusion over 'who does what' in this complex sector. On the one hand obtaining the WSP license allows CBOs to kick out the illegal vendors from the market and improve their water infrastructure; on the other however, a more formal business implies upgrading managerial skills and facing harsher competition. An additional possible reason for tensions, arising from informal dynamics within the civil society sector, is the risk that, in the competition over funds, the larger NGOs or national CSO umbrella which support CBOs operating at local level may crowd out these from accessing much needed resources.

Of the **parastatals** introduced through the 2002 reforms, the most talked about are the WSBs which the large majority of stakeholders perceive as the “weakest link” of the whole water sector. The eight WSBs have the overall responsibility of planning for improvement in provision of water supply and sewerage services at regional level as well as of appointing and contracting the water services providers. This makes them the powerful centre of a dense network of formal and informal relations and both a 'target of' and a 'means to' the scramble for water-related resources. WSBs are particularly targeted for political appointments, with politicians, or their associates, being nominated to technical positions which would instead require engineering and economic management skills[13]. In one case, the CEO of a WSB was changed three times over a short period of time, mainly for political reasons: the CEO first left his position to contest the parliamentary elections, was reappointed after losing them, and then ended up suspended from office over fraud allegations. WSBs are also seen by some as a powerful means to access resources and influence investment decisions, and the incentive is there for a proliferation of the boards to create more opportunities for political appointments and regional projects. On the 1st December 2010 for instance, the parliament passed a motion to approve the establishment of four additional WSBs (Daily Nation, 2nd December 2010). WSBs are criticised not only for the “political attention” they receive, but also for their focus on influencing the WSPs and on regional sector investment rather than coordinating and monitoring the sector. The boards raise revenues through the fees WSPs pay for their license, compete for government subsidies and direct access to ODA, and some face corruption allegations (the Tanathi WSB for instance is currently under investigation by both parliament and the anti-corruption commission)[14].

1.1.4. Commercial drive in urban and rural markets: many 'invisible' hands

The 'scramble' for water-related resources is partly due to the new sector policy landscape, as one of the major **objectives of the 2002 reforms was the introduction of commercialization** of water services. It is well known by sector practitioners in Kenya that the basis for those reforms was the work of consultants supported by the World Bank, and their original proposals included the full privatisation of water

[13] See for instance 'Scandals in Kenya taking Water Down the Drain' (IN2EASTAFRICA, 20/09/2010, http://in2eastafrica.net/scandals-in-kenya-taking-water-down-the-drain)

[14] In 2010 both the 'Kenya Anti-Corruption Commission' and the 'Parliamentary Committee on Lands, Water and Natural Resources' have “launched investigations into allegations of fraud at the Tanathi Water Services Board, whose directors were recently suspended following claims of corruption and conflict of interest in procurement” (The Standard, 02/12/2010, www.standardmedia.co.ke/oddnews/InsidePage.php?id=2000023860&cid=4&).

infrastructure and services (Heinrich Böll Foundation, 2004)[15]. Despite the Kenyan government rejected full privatisation, the 2002 Water Act and the new policies explicitly aimed at pushing for a commercial drive, unleashing the entrepreneurial spirits in the sector.

The commercialization of water services picked up particularly quickly and intensively in the urban areas, and to some extent has strengthened the dual governance characterising the water sector, with booming water markets in cities and possibly leaving rural water providers on the “wrong side of the sector pyramid”. Indeed, the very **different 'willingness to pay' and average 'disposable income'** make the commercial drive in urban and rural areas two completely separate races: in Kenya the five largest cities together generate around 70 percent of the country's GDP, while poverty is mainly a rural phenomenon, with 68 percent of the poor living in the rural areas.

The mapping of actors, the analysis of their relationships, their formal and informal behaviours show that in **the urban areas** there are both large and small 'invisible hands' determining the outcomes of the market forces, which include formal and legal transactions, but also informal arrangements, strong rent-seeking efforts, illegal commercial activities and other interesting governance dynamics. For instance, in the cities, providers of water for drinking or sanitation obtain large profit margins from high prices, reflecting both the water scarcity and the inefficient way in which the limited available water is managed. Here complex relationships are at play between the utilities ('water companies') and the providers that, in many cases, are shaped by personal connections with utility staff rather than the utility’s established policy toward different types of WSPs. The high prices can be charged either by illegal vendors connecting to existing pipes, often creating cartels especially in the informal settlements, or by legal water kiosks that, in many cases, do not transfer on to consumers the discount that kiosks receive from public utilities.[16] These are very relevant dynamics considering for example that Nairobi generates over half of the country’s GDP, and that sixty percent of the population there live in informal settlements.

The market forces in urban areas are facing bottlenecks but also further economic drivers. Due to the political obstacles put in place by the Kenyan municipalities, the ownership of water infrastructure and assets remains with the 'water companies', owned by the city councils, despite according to the 2002 reforms assets should have been transferred to WSBs. The entrepreneurial spirits would be even stronger if these monopolies preserved by local politics were to be broken. On the other hand, the **commercial drive often finds his way around formal arrangements** and legal frameworks. The 'water companies' recently entered the informal settlement markets (where they could not officially operate since there the land and housing tenure is not legally recognised or registered), thank to the fact that NGOs, CBOs and self-help groups are increasingly entering into management arrangements with the WSBs regarding the control of water services facilities owned and used by them. So in informal settlements like Kibera or Kiambiu these *de facto* service providers without licence, but with a Memorandum of Understanding (MOU) with the 'water company', pay monthly bills to the utility. This is the outcome of clear incentives on the three parties involved: the 'company' benefits from a new market, the newly established vendors extract an income (big or small depending on how 'profit-oriented' they are), and consumers pay a lower water price thank to the lower price that most CBOs' kiosks charge compared to illegal vendors (which are the only actors suffering from this as they risk being pushed out of the market).

Rural communities are also very active, with water services provision marked by a system of “harambe” (a Swahili word that roughly translates to “let’s all work together”). This widespread voluntary-based system

[15] 'Global Issue Papers, No. 8: Water Privatization in Kenya' (Heinrich Böll Foundation, 2004)

[16] In other cases, families in informal settlements suffer because some landlords have illegally continued to control access as well as the cost of water without approval from the water service provider or the regulator (TISDA, 2011).

brings benefits in terms of water access, but the commercial drive in rural areas is hampered by physical fragmentation of the water sources and the communities, no access to credit for providers, lack of managerial skills which also leads to inability to access government or donors funding, difficulties to deal with procedures and relations with key actors like the WSBs. These bottlenecks reflect generally low capacity levels, as opposed to increasing capacities in the cities where the water sector is attracting a “quality professional mix”, with engineers, other technical staff, and managers from the urban elites.

In rural areas it also more difficult to measure water use, which means that prices are charged on a flat-rate basis, while in cities providers can differentiate pricing according to 'willingness to pay' and intensity of use, with obvious positive gains in profitability. **Rural price levels only allow WSPs to recover operating costs**, leaving little or no resources to cover maintenance or improve services.

This urban-rural divide in the water sector commercial drive also has consequences on the **way the two 'sides of the pyramid' can be financed, managed and staffed**. Of the total sector funding, Kshs. 28 billions in 2009, it is estimated that more than 20 billions went to water services and supply while less than 4 billions to water resources management, mostly a rural-based endeavour[17]. The respective regulators of the two sides of the pyramid also reflect the underlying divide in the sector. The Water Resources Management Authority (WRMA), compared to the Water Services Regulatory Board (WASREB), is financially weaker (both in terms of government funding and because its water abstraction permit fees generate much less revenues than water service licenses), and also lacks skilled personnel (since WRMA is perceived by the MWI officers who were supposed to be transferred there under the 2002 reforms to be a “poor” institution, affording lower salaries than WASREB or the WSBs, which are then attracting better professionals).

1.2. Analysing institutional, governance and accountability arrangements: incentives, interests and stakeholders' relations

The analysis of the general governance context and the mapping of key actors and major trends presented in section 1 show the complexities of a sector in continuous evolution and highlight that from many points of view, despite ambitious reforms, the water sector is “still a mess”. Against this background of multiple and multi-layered relationships and political economy drivers, section 2 digs deeper only into few of these relationships and arrangements, providing relevant examples to shed light on three key governance bottlenecks that need to be addressed for the smoother and more equitable development of the Kenyan water sector: over-institutionalization and lack of coordination (2.1); personalization of roles, blurred governance functions and difficulty for drivers of change to remain “honest and candid” (2.2); strong voices without real accountability (2.3).

1.2.1. Who does what and why? I'll do it, the more the merrier!

Despite the 2002 reforms clarified the roles of different actors and the mandates of water institutions, the **intense engagement by many stakeholders in the sector**, partly explained by the commercial drive and the scramble for resources -together with the still weak regulatory arrangements- lead to over-institutionalization, lack of coordination, and uncertainties on the implementation of reforms.

[17] See for instance 'Annual Water Sector Review 2009' (Ministry of Water and Irrigation, 2010)

There are several cases of over-institutionalization and overlapping roles. The Ministry of Water and Irrigation (MWI) heads most of the policy processes and dialogue platforms that proliferate in the water sector, but real coordination remains very weak, also due to the insufficient number of MWI staff who can focus on coordination and to the fact that other eleven ministries on top of MWI have some competence on water in one form or another (e.g. the ministries of 'Forestry & Wildlife', 'Fisheries Development', 'Public Health and Sanitation', etc.). In addition to the ministries, after 2002, new institutions were established, including thirteen new parastatals, and decentralised decision making translated into autonomous regional bodies. Of these, the WSBs exemplify **coordination and duplication problems**. The boards have not adopted the five-year sector plans they were supposed to design to guide water services planning, and do not engage in coordination activities in line with their mandate[18]; rather, they concentrate on investment, projects allocation and oversight of WSPs' work, areas where there are "more gains to be made". In some regions, citizens do not even know yet the existence and role of the WSB operating there, while in others a typical comment is "we see their cars, not their services". The boards, growing both in political influence and number as seen in the previous section, contribute to the confusion on "who should be doing what"[19]. In the city of Kisumu, for instance, WSPs have openly complained about the undue influence by WSBs and the interference on their activities. Other cases were mentioned where district offices of MWI[20] report on their activities to the WSB of that region, perceived as the key actor there, without informing directly MWI headquarters in Nairobi; and the WSB does not share the information with MWI either. After the 2002 reforms, the role of the National Water Conservation and Pipeline Corporation (NWCPC) should be limited to only certain tasks with reduced funds (mainly building of large dams), but it still receives substantial government resources and implements in many parts of Kenya projects outside its mandate, such as drilling boreholes, thus contributing to confusion in the rural sector[21]. Finally, lack of coordination also affects the 'checks and balances' functions, for instance both the Kenya Anti-Corruption Commission and the Parliamentary Committee on National Resources are currently investigating corruption allegations within WSBs, but without cooperating and exchanging information.

The overall incentive for the **proliferation of bodies and positions**, partly explained by a very powerful civil servant class in Kenya, affects other parts of the water sector. Each catchment area has a Catchment Area Advisory Committee (CAAC) with fifteen members drawn from stakeholder groups from the respective areas. WRMA also has offices at catchment levels for decentralised decision-making, and there are now talks of splitting WRMA into a national office only for regulation and regional ones for implementation. Many thus have the feeling that government institutions focus on supporting and creating more regulators rather than facilitating and assisting the water providers themselves. 'Water Action Groups' (WAGs), volunteering organizations made up of citizens, provide other examples of confusion on mandates and overall implementation of 2002 reforms. The WAGs, recently created and supported by MWI and WASREB (and some of the donors, especially the WB and GIZ)[22], are supposed to ensure that consumers' views are taken into account on matters related to water service provision, but some interviewed actors commented that WAGs "do not really exist" or are "a project being phased-out". In addition, they seem to overlap with CBOs and some 'water resources users associations' (WRUAs) which also deal with consumer protection,

18 For an analysis of the WSBs performance, see 'Impact: A performance Report of Kenya's Water Services Sub-Sector, Issue No. 3' (WASREB, 2010).

19 For instance a member of a water company is also the chairman of the Rift Valley Water Services Board (see KEWASNET Press Statement on the State of Kenya's Water Sector Governance, 08/06/2010, http://lists.anewafrica.net/pipermail/anew_lists.anewafrica.net/2010-June/000132.html)

20 District offices of MWI should have been eliminated under the 2002 reforms but are still operational, and a relatively large amount of government funds is still channeled through these offices, which contribute to the confusion of roles in the sector and conflict with the spirit of the reforms.

21 NWCPC is perceived by many stakeholders as lacking both transparent procurement and project selection systems (see for instance KBC News, 09/11/2010, www.kbc.co.ke/news.asp?nid=67492)

22 See www.wsp.org/wsp/sites/wsp.org/files/consumerparticipat_water_service_delivery.pdf

but with WAGs displaying even less capacity and knowledge of procedures, leading to less results on consumers' complaints follow-up.

Devolution of responsibilities for water resources management and water service provision to the local level has meant that also at that level problems emerge. 'Chiefs' (local officers of the provincial administrations) and 'councillors' (elected representatives for the 'wards', the lowest administration level), try to play a role in sector development within the communities, generating overlaps and tensions, as the Chief has formal competence but no funds and viceversa (councillors have an influence on the Constituency Development Fund, CDF, created to redistribute national resources at the community level). The approach “the more the merrier” seem to be a feature of the whole sector, characterising also the **non-state actors**, and is partly caused by a “lack of basic awareness and understanding” on the 2002 reforms as well as still missing regulations enacting those reforms. Many new actors enter the water sector with another operation in mind but end up providing the same services as registered WSPs. For instance there is a growing number of consulting firms working on 'facilitation' and building trust at community level but also engaging in small infrastructure building (kiosks) and provision of data to WSBs on behalf of small providers. Moreover, as seen in section 1, many interpret the increasing number of CSOs applying for licenses as a sign that NGOs also want to provide services instead of helping communities to create their own service providers. The uncoordinated proliferation of water projects by other national and international NGOs, especially in rural areas, adds to these trends of duplication of efforts and allocation inefficiencies, as well as inability for the government to properly monitor the sector in order to further improve it.

1.2.2. “Let Him Who Is Without Sin Cast the First Stone”

Analysing stakeholders' behaviours and relationships and assessing their reform readiness helps realize that vested interests, blurred stakeholders' roles, and relatively small circles of those who really makes decisions, all combine to become **strong disincentives for real transparency and independence** in the water sector. Apparently, the extreme personalization of roles, still unclear governance functions and the need to survive in a highly competitive environment generate the sense of ultimately sharing the responsibility for the problems of the sector, perceived my many as a “feeling of guilt”. It is not easy to find one actor or institution considered by all to be “without sin”.

This is partly explained by the participation and membership in the many policy processes, coordination platforms and task forces that proliferate in the water sector. **MWI** heads most of them, leading for instance also the Kenya Water Partnership that worked on a national 'integrated water resources management plan', and hosting the National Association of WSPs. The membership of such platforms and processes point to a “small circle of friends”, for example: NGO leaders seat in ministerial committees and policy reviews or some even in companies' boards and task forces (while other actors will never even be informed of the existence of such processes); the previous CEO of WSTF became current CEO of the Rift Valley WSB, and both of them together with the WASREB CEO come from MWI and have contributed to the early steps of the 2002 reforms; in some cases, CSOs working on awareness raising on the role of the WSBs were approached by the WSB management and invited to nominate a member of the CSO for a position at the board itself (in exchange of 'favourable' awareness raising); etc. Real independence is indeed a crosscutting issue in a country where 45 percent of the MPs hold a Cabinet position (to please everyone, the Grand Coalition comprises forty Ministers and fifty Assistant Ministers), with risks of blurring the executive and legislative powers and the 'checks and balances' system.

In this context, when discussing with a wide range of stakeholders, different perceptions emerge on who the drivers of change are, but all concur that it is very **difficult for any driver of change to remain "honest and candid"**. Others mentioned that this is also due to the fact that those considered drivers of change follow a "preservation approach" helping each other to survive in a "cut-throat environment", making though full transparency and independence problematic. **WASREB** for instance seems to most interviewees a driver of change but receives criticisms as its success would be mostly due to the highly efficient staff together with the substantial resources received from donors and government, with related problems of independence.[23]

The **Minister of Water** herself is a controversial figure. An "icon of Kenyan politics" according to some media, first woman in Kenya to run for President, a strong role in the democratic transition, she recently faced allegations of: i) favouring her Ukambani region (critique says the related WSB gets fifty percent of total government funding for WSBs, but she responds that she is "fighting marginalisation and historical injustices" because her region is arid and was neglected by previous governments); ii) fraud (for securing water-related contracts to firms owned by her relatives).[24] A Parliamentary Committee cleared the Minister in April 2011, establishing that there was no evidence linking her to graft. The Committee however found instances at the **Ministry** of irregular awarding of tenders and in the procurement of goods and services and recommended the prosecution of some water officials. In August also the Anti-Corruption Commission presented the Director of Public Prosecutions with files and evidence that will be used to prosecute several MWI officials suspected of corruption.[25]

Another potential driver of change, the **civil society**, is also criticised for not playing fully its role, but rather ending up caught often in the same "non-transparent and personalized system" it advocates against. CSOs are not immune to the risk of being affected and involved by the political and ethnic cleavages in Kenya, a problem that apparently fully emerged after the Moi regime fell, when several leaders of CSOs became members of Parliament, the government or the public administration ("civil society died in 2003" according to many). Apparently, this is compounded by the inability of CSOs to effectively coordinate their water-related actions and positions, with "proliferation of meetings with little results", jealousies often arising on who should take lead at technical level (and questions about each other's knowledge of the sector), many organizations producing their own separate reports on water but without consensus on how to bring them together into one single sectoral annual CSOs review. The perceptions on the umbrella organisation of water NGOs (Kewasnet, 70 members but only 20 active) also differ, with some feeling it is too confrontational against the government, and others mentioning the risk of Kewasnet becoming politicized. Other interviewees observe that also the **private sector** providers, including some CBOs going commercial, do not simply run efficiently their business but, more or less consciously, contribute to the non-transparent, uncoordinated and messy operation of the water sector. Many companies, including the "multi-tasking consultancies" playing the facilitator role, provide services to the poor, but have to have direct links and informal relations with MWI, utilities as well as the WSBs; act both at consumer and provider levels; assist informal (and illegal) entrepreneurs to become registered and get water-related contracts, with potential conflicts of interests arising.

The 'water resources users associations' (**WRUAs**) are seen by some as potential drivers of change, especially for the long run sustainability of the water sector in Kenya, but are also not immune to criticism. Some mentioned WRUAs do not know exactly what their mandate is, many starting with conservation

[23] Others mentioned that ethnicity or "tribalism" is "written everywhere" and even when WASREB puts forward a critique on a particular WSB, the reactions are that the regulator decided to target and monitor closely that one because it "belongs to another tribe".
[24] See for instance 'Corruption probe' (Daily Nation, 03/12/2010, www.nation.co.ke).
[25] 'KACC Probe Targets Ngilu's Ministry' (Nairobi Star, 20/08/2011, http://allafrica.com/stories/201108221019.html)

awareness in rural areas and cooperation for conflict resolution at community level, but then moving into commercial activities, including provision of infrastructure and water services. Other stakeholders pointed to the risk of WRUAs becoming, like other bodies in the sector, “money-making machines”, as they have been recently encouraged to collect fees on behalf of WRMA (for water use and for water abstraction permits).

Some think the **WSTF** is doing a “great job” in assisting water investment in marginalised areas of Kenya, others that is a donors' concept (“full of German technical assistants”, being ninety percent donor funded) and anyway too small in terms of investment to have any impact. Certain CBOs complained that in many cases applicants receive funds smoothly and timely (even getting the second tranche of support before the evaluation on the first one is concluded) while others wait for eight months, and others do not receive any response on their project proposals (or on second support tranche) at all, with allegations of “side deals” at the WSTF.[26] According to some in the sector, the WSTF tends at times to crowd out private WSP investments and initiatives, blurring the incentive system in marginalised areas.

Finally, also the role of **donors** have been questioned. They face serious coordination challenges, with no real joint initiatives (mostly few cases of joint statements on governance issues like non-transparency in appointments by the government), only some elements of co-financing through the WSTF, and no major progress for many years with the 'sector-wide approach' (slowed down even further with the Grand Coalition). It is difficult for some actors to see how the donors could not be considered as co-responsible for at least parts of the problems of the sector given that donors have “driven the 2002 reforms” (in particular the WB and GIZ) and that they influence the sector daily through their ODA allocations. Providing forty percent of the sector funds, they contribute to the 'scramble' for resources, largely determine which institution performs well (e.g. large support to WSTF and WASREB and little to WRMA), and are accused by some to be pushing a “too ambitious agenda for the sector too fast”.

1.2.3. Many strong voices but no real accountability

Another major feature of the water sector, including for its governance implications, is that it is currently **one of the most hotly discussed issues in Kenya**. Daily media reports on corruption are accompanied by very frequent launches of new progress reports or sectoral reviews (“everyone seems to have produced a report on water”). In general, all actors in the sector have a clear idea of what accountability is and how it should work, and CSOs in particular seem to have strong skills and solid experience in performing a 'watchdog' role. Scratching below the surface, however, shows that these are public voice exercises that do not lead to real accountability and are not followed up, as in Kenya there are serious problems of enforceability. Many talk about an “impunity culture” whereby also criminal investigations are thorough and reports are widely publicized but “nothing happens after them”.[27]

The government system “loves and produces” numerous policies, acts, reports, reviews, but “everyone knows there is no control and specific mechanism to follow-up” on them and monitor their enforcement. The regulator, WASREB, is perceived to be very good and contributing heavily to improving transparency in the water sector, with many seeing it as driver of change also thank to its “very public exercises”. The very lively civil society community in Kenya puts **a lot of pressure** to the government to make information public and available, not only demanding accountability **to politicians but also to civil servants**. The

[26] In a specific example, a WSTF official approached one CBO leadership promising them more WSTF projects in exchange of a bribe; this became public and the official got sacked.
[27] See for instance ‘Actions in tenth Parliament show it is full of masters of impunity’ (by Njoki Ndung’u, Advocate of the High Court, The Standard, 27/11/2010, www.standardmedia.co.ke)

media are free, quite competent and play a very positive role to hold the government accountable, also pointing out possible cases of corruption and integrity and generating a “public opinion” on many issues in the sector, working closely with CSOs (including Kewasnet).

However, **inadequate communication and information management** systems, lack of real sector monitoring and evaluation, blurred stakeholders' roles which makes it difficult to know who is accountable for what, together with perceptions of ultimately sharing responsibility for the problems of the sector (“**everyone has something to hide**”), do not allow those strong voices to become enforceable accountability. There are first of all serious problems of availability of credible and independent information on the sector, including about water use, service provisions trends, ongoing development projects, performance of different actors. Communication between water service providers, users, public agencies and other stakeholders is inefficient and ineffective. WSBs should be key in collecting information on many aspects of water services provision and activities but most stakeholders believe WSBs simply receive any type of data from whoever makes it available (WSPs, consultancies, MWI district offices, few NGOs) without checking it independently, and especially without any policy in place to improve the flow and transparency of information. WASREB continues pushing for more accountability, and its annual sector report is the most referred to, and possibly appreciated; but it is also criticised for focusing only on the urban water sector and for not linking the monitored performance of WSBs and WSPs to the funds they actually spend for their activities, hence not contributing to accountability of expenditures in the sector.[28] Many CSOs also fail to significantly contribute to transparency and accountability, as they generally report on their projects directly only to their funders, often international NGOs, donors, or the WSTF, but very little information from them goes to the government agencies. Other local NGOs and CBOs acting also as service providers at rural level do not report their activities to anybody, and this increases difficulties of the government in targeting and knowing what is going on in the sector.

The **complaint and feedback mechanisms are extremely weak**, often cumbersome and undermined by the informal arrangements so common in the sector. The formal mechanisms often do not work, for instance the Water Appeals Board, mandated to handle disputes in the water sector “hardly exists” and has not heard any case since its establishment with the 2002 reforms. Even the informal feedback systems seem to fail. In many cases, 'checks and balances organisations' and CSOs point out bad governance issues, but do not act, or have no power to do so, to sanction or 'punish' the wrongdoers, like the cartels of illegal water vendors. In one specific instance, a WSB attached economic incentives to the filing of anti-corruption complaints, but the call did not to produce any single complaint application.

1.3. Political economy drivers, obstacles and opportunities for change: examples of routes to incremental progress

The complexities of a sector in continuous evolution and the key governance bottlenecks analysed in Section 1 and 2 provide a clear picture on how difficult it is in the Kenyan water sector for real drivers of change to emerge and for more effective reforms to be designed and kick-started. There are too many dimensions, sensitivities and complexities, with different stakeholders representing too different -at times conflicting- priorities, to expect linear solutions in this sector. Rather, permutations of different efforts and approaches by many actors towards gradual progress is a more realistic scenario. Accordingly, this report

[28] WASREB does not collect independent information and relies on information submitted by the WSBs and WSPs. But its advocacy for more transparency and accountability in the sector is well known, including demands for regulation of investment planning to monitor the achievements with regard to long-term policy objectives. Moreover, in order to better link performance and expenditure, WASREB proposed that the Regulator should be given the role of approving any grant or subsidy to WSPs.

has no ambition to provide 'magic bullets', and the following sections only offer examples of routes to incremental change, focusing on two general macro-problems of the water sector, and suggestions for further work and relevant in-country dialogue that in the future could contribute to sector development.

1.3.1. Countryside VS City: a classical political economy analysis problem

What emerges from this report is the picture of a sector characterised by the most classical problem of political economy: **government actions and business trends tend to benefit more the urban than the rural areas**. Political elites, their defence of the political status quo, barriers to innovation and short-term horizon public policy, together with subsequent profit-led private decisions, support the development of cities as a priority, leaving the countryside as secondary concern. Few figures show what problems lie behind this urban-rural divide: poverty is mainly a rural phenomenon, with 68 percent (14 million people) of the poor living in the rural areas and the remaining 32 percent (6.6 million people) in cities; an estimated 60 percent of all households are engaged in farming activities and agriculture contributes about 24 percent of GDP, but the five largest cities in Kenya together generate around 70 percent of the GDP (with the capital accounting for half of it). It is not by chance that probably the only exception to the 'lack of rural voice' in Kenya is the power and influence of the booming horticulture industry (and its water users), which in fact has recorded very significant export-driven growth in the past five years and is now the largest sub-sector in terms of contribution to agricultural GDP.

As section 1.4 emphasized the commercial drive makes the urban water sector a profitable business, attracting a lot of political attention and a mix of quality professionals, with the government raising substantial money from taxation. It is natural that the 'voice of the cities' is loud and clear, with development needs and complaints receiving careful consideration by political elites and decision-makers. **Rural areas** on the contrary **do not have a strong voice**. The gap between government and citizens in rural areas is generally wider, and communities there are culturally less used, and prepared, to demand improvements from public agencies. The rural water sector, in particular, is where interests of different users (domestic, agriculture, livestock and industrial water users) conflict more openly, leading to tensions and “cross-fire” obstacles established by one stakeholder against the interest of another. Rural water is also less regulated, monitored, and reported, making it more difficult to intervene and work for improvements. WSBs for instance lack sufficient data from the countryside, and are also composed mostly of professionals and officials coming from an urban background and experienced with solving urban bottlenecks.

It seems therefore clear that one of the priorities to be addressed in the Kenyan water sector by all stakeholders is in general paying more attention to the voice of the countryside, and in particular increasing the access to water services in rural areas, given the low coverage rates there. Rural water user associations have an important role to play in maintaining local water networks, mobilizing communities in general, and could also play a significant role in strengthening capacities for water management and services, including for a more commercial approach and better defence of consumers interests. WRUAs could significantly enhance the rural voice but, unlike WSPs who have an association hosted at MWI that can lobby regularly, do not have an umbrella organization. Hence a first step to incremental improvements could be the establishment of a '**National Platform of WRUAs**'. This platform could also help clarifying and agreeing upon a common mandate and agenda for the WRUAs. Stronger voice would also be achieved through other measures and regulations, such as an increase in the number of representatives of farmers, pastoralists, and rural non-governmental organizations serving on the WSBs; and a specific chapter on rural areas in all water sector reports produced by different actors. With a stronger voice and clearer demands, the government would be forced to respond more timely and effectively to the problems of the rural citizens.

Providing more government and donor funding for the expansion and improvement of current rural water network providers and **promoting the emergence of new WSPs in the countryside** would be another important priority action for incremental change. The MWI, WSBs, with the support of all other stakeholders, should work immediately to expand water service coverage and improve service quality (for example, by introducing water treatment processes) to serve a larger portion of the rural population. With their knowledge of local conditions (e.g. procurement, production and employment) and trust by the communities, the support to rural small-scale entrepreneurs to become WSPs would be an effective way to do so, as they have a significant role to play in pumping station operations, maintenance and care-taking, leakage control, repairs and maintenance of local piped networks, establishing standpipes and household connections, and water quality surveillance. The expansion of services in the countryside would also require an improved registration process for rural water providers, which is not clearly defined in the Water Act 2002 and currently contributes to a large variety of stakeholders implementing their own activities without clear supervision and sufficient legal certainty on their investment.

1.3.2. Access now … but water tomorrow?

Water in Kenya is scarce because of the limited endowment, rapid population increase, impacts of climate variability, neglect of the management of the water resource base, continued decline in public expenditure for developing water sources, and the consequential serious degradation of the resource. Some interviewees mentioned that every single catchment is getting degraded in Kenya, and that even before the current extremely severe drought, there were already *water refugees* in the Rift Valley going to Tanzania as well as water conflicts erupting with populations from other neighbouring countries[29]. In spite of this, many think that Kenyan "lives in denial" and **water is neither understood, treated, developed nor managed as a scarce resource**.

Obviously, there are strong **incentives**, including for the government, parastatals and donors, for achieving **immediate results on access to water services** ("people have to drink first"), while conservation and long-term sustainability of the water resources does not seem an immediate priority. It is easier for the government to raise money from services, through taxation, than on conservation activities. In general, it is also much easier to get finance for water-sector hardware than for 'software' such as watershed management, research, policy-making, monitoring, environmental and pollution control, training, and public awareness. While some of these might not seem as essential as infrastructure and frontline services, neglecting them will adversely affect all water users in the future. Also in terms of external pressure, the MDGs and access to safe drinking water are the priority for all, while much less international attention is dedicated to natural resources sustainability (though increasing of course with the climate change debates).

Exclusive focus on access today and no attention to long-run sustainability of the resources risks to lead to **lack of water tomorrow**. This problem is exemplified by the comparison between WASREB and WRMA. The first, in charge of water services, gets substantial support both by government and donors (under pressure for results on access to services), and collects additional resources from *licenses*, the second, in

[29] See for instance 'Water Conflict: Violence Erupts Along Ethiopia-Kenya Water-stressed Border', June 2011 (www.circleofblue.org/waternews/2011/world/water-conflict-violence-erupts-along-ethiopias-and-kenyas-water-stressed-border)

charge of resources management (WRM) and conservation, receives less attention by government and donors, and is also facing more difficulties with domestic resource mobilisation since *water permits* are less “fashionable”, with the rural mindset less inclined to pay for accessing water (while in cities it is perceived as many other goods and services).

This is not to say that water service access improvements should not be a priority, e.g. in slums where majority of urban population lives, the levels of inequality are dangerously high (60-70 percent of urban population lives there but is allocated only 5-10 percent of urban water). However, the government and all other stakeholders should put **much more substantial efforts for water resources management**, starting with **strengthening the institutions** in charge of it. Despite the 2002 reforms provided for the establishment of catchment councils for management of water resources, these councils are not functional as of now. The Catchment Area Advisory Committees, mandated to provide WRM advisory functions at water catchment level, are very weak. On top of general capacity and financial bottlenecks, WRUAs also still face general problems for their establishment, due to local forces at play, and should get bolder political support at all levels. In addition to the slow registration process, cases are reported of the establishment of WRUAs blocked by councillors, or other influential politicians because as legal entity they could take problems of local management to court and provincial administration, detracting power.

More action on WRM goes beyond the water sector, the MWI and other public water agencies. Many stakeholders recognise the need for **Integrated Water Resources Management** (IWRM), a process which promotes the coordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems. Water has an intense mutual exchange of physical and governance inputs and outputs with other sectors, and the full collaboration of stakeholders outside the water sector should be sought and enforced. Neglects lead to tension and conflict, for instance deforestation in upper catchments causes the sedimentation and drying up of the springs in lower catchments, compromising the availability of water for downstream users.

A national IWRM strategy was the objective of a multi-stakeholder process that endorsed an IWRM Plan in 2007, but both the process and the final document are dormant and not operationalised. The difficulties of an IWRM approach are obvious given that much simpler reforms involving only one sector are not working smoothly and that such approach would require even more political will and inter-sectoral coordination. However, the full support to long-term sustainability of water resources is too important to be left neglected and the IWRM process and Plan should be urgently resuscitated in Kenya. According to some interviewed actors, there is a **need to go back to the original spirit of 2002 reforms.** The separation of water services delivery and WRM was to strengthen the latter (while delivery is business and “can walk alone”), but de facto it has been the opposite, due mainly to 'invisible hands' at play in the sector as well as the overall governance conditions. Some believe that the implementation of the **IWRM Plan ideally should be led directly by the Prime Minister's Office**, as issue of “national security”, and should be spearheaded by all Ministers as a priority. The example of current efforts for the conservation of Lake Naivasha could be followed, with a new initiative driven by the Prime Minister's Office (“Imarisha Naivasha”) which will have overall responsibility for developing and enforcing a management plan for the Lake.[30]

[30] The possible leadership by the Prime Minister's Office on a IWRM Plan would necessarily concern the political drive, the overall coordination as well as the monitoring of how each involved public and private agency performs its mandated function; but not the implementation and daily operation of the IWRM Plan itself. This would require specific expertise and dedicated resources for water policy, regulatory and service provision aspects, which would be likely to remain with MWI. It is also important to note that in the case of “Imarisha Naivasha”, the personal interest by Prince Charles of Wales to assist in restoring and conserving Lake Naivasha did play a role in bringing the issue to the highest political level in Kenya.

Suggestions on **other areas for incremental progress**, that could be targeted by further governance analysis work and/or relevant in-country dialogue on sector development, include:

- **More investment by all stakeholders in the governance functions** for the sector: as shown in different parts of this report, it is difficult to effectively support governance improvements, and costs of governance functions are often unknown, but there is no doubt that better governance can reduce investment needs, promote more efficient use of existing resources, and enhance the ability of the water sector to attract the needed finance. Indeed as recognized by MWI officials in Kenya, the key bottlenecks for implementing the 2002 water reforms are about governance, different types of resistance that emerged within the sector itself, and the fact that such resistance was largely underestimated.[31] Better financial support to the reforms and to the 'software' elements of water resources management, starting with enhanced coordination, would certainly help overcoming resistance.

- **Unified political will to revamp the original reform spirit**: given the need for more transparency and order in this over-institutionalized sector, and to reduce the inequality of services throughout the country and the gap of attention and investment between WRM and service provision, bold political solutions (e.g. taxes, incentives, stakeholder participation, attacking vested interests, etc) will need to be put in place, and not only technical solutions (more wells and pipes, new policy papers, etc). Political leadership was key to initially spearhead reform and fight early resistance, but is seems now largely lost; Kenyan politics, the "good" politics, need to support the water sector through strategic leadership, including without any fear to change some parts of the ongoing reforms if needed and relevant.

- **Re-thinking the communication strategy** for the 2002 reforms and any additional policy innovation in the sector: much more basic awareness is needed on the water sector, its dual governance, dynamics and bottlenecks, as well as mandates and functions of different stakeholders group. Change should be prepared more carefully and communicated better.

- **Creating windows of opportunity for transforming voice into accountability**: all stakeholders should increase their efforts to promote in the sector, starting within their own organisations, the much needed progress in communication and information management systems as well as complaint and feedback mechanisms, through better regulatory oversight, incentives structure and transparency of budgets and decisions of all agencies and groups, whether public or private. Both the supply and demand side of accountability should be strengthened and promoted from both the top, with Cabinet and parliament, and the bottom: in particular CSOs are building up alliances and collaborations with 'checks and balances' organisations and these initiatives should be supported at all levels[32]. The annual 'water sector stakeholders' forum' should be re-established as a key multi-actor venue to monitor performance, build consensus on required action and follow-up on ongoing reforms.

[31] The 2002 reforms, according to MWI officials, are still facing three major obstacles: transfer of water-related assets to newly established institutions, like WSBs (due to politics of local governments); transfer of personnel and skills to such institutions, like WRMA (due to perceived threat to current salaries and pensions); financial sustainability of such institutions, including WSPs.

[32] For an example of the benefits in terms of accountability from wide community-level collaborations see the case of Mombasa, where the water company and local users signed in May 2011 an agreement to work together towards improving water service delivery (http://tisdakenya.wordpress.com/2011/05/23/the-mombasa-mou-pact-for-impact/).

- **Building up consensus on specific change needed in key institutions** for the sector: most actors feel the WSBs are the “weakest link” and should be “freed” from political interference, getting rid of direct appointments by the Water Minister and adopting clear guidelines and criteria for WSB management recruitment, based on merit; others suggested the WSBs should be made more accountable directly to people in each region and not only report to WASREB and MWI. Similar improvements and suggestions should be identified for other key agencies for the water sector, such as WRMA.

- **Revisiting the donors' coordination strategy and alignment** to government policies in the sector. Given the importance of aid allocations, donors should contribute to better streamlining, coordination and coherence within the water sector, including by: enhancing efforts to coordinate and establishing joint donor initiatives (including co-financing); more effectively providing financial support to the ongoing reforms (since 'software' for the sector management may be as important as physical 'hardware' upgrading); improving predictability of donor support; working more closely to the Kenyan government in line with MWI-led coordination process. All this is likely to require the revitalizing of the 'sector-wide approach', starting from more regular political dialogue between the national government and donors, including on respective roles and initiatives for the development of the sector.

2. The 'Governance Analysis Framework' and the water sector: some methodological suggestions

Governance – conceived as issues of power and mechanisms of accountability, distribution of resources among multiple state and non-state actors, the way institutions create incentives, etc. – is everywhere, including in the donors’ sector operations. In order to better understand how these governance dimensions affect sector performance and determine development outcomes, the EC developed an analytical tool. The Governance Analytical Framework (GAF) was designed to make these dimensions visible or tangible. The emphasis of this tool was both on content and on process. The ways in which data can be gathered, analysed, discussed and shared is also presented in this EC Reference Document (EC, 2008). Often governance issues are not that clear, or there are divergences of interpretation and understanding, and the implications for donors or for domestic stakeholders may not seem obvious. In fact, the document warns for a too normative approach and invites external actors (such as donors) to try to understand the local conditions, context and stakeholders, and to adapt their engagement strategies accordingly. ECDPM had contributed, together with Nils Boesen, to the collaborative drafting of this analytical tool.
The field-work and the analysis to apply the GAF to the water sector in Kenya raise important methodological considerations and provide first insights on how to better tailor this tool taking into account the features of the sector. Two ECDPM facilitators who are familiar with the GAF and with broad governance issues in this particular sector facilitated this two-week exercise. It involved numerous stakeholder interviews, both with external and domestic actors. It was presented as a ‘voluntary exercise’, whereby there was no set purpose except to enable key governance issues and dimensions that block or favour sector development to emerge and become debatable.

It transpired that all stakeholders were prepared to share perspectives during the semi-structured interviews, and were also keen to be involved in discussing the findings further among different actors. Indeed, the value of such an initiative is possibly more in the process (interviewing, bringing various perspectives together, enabling different actors to debate and discuss, disagree, but also find or explore areas of common ground) than in the product (a paper). Interviewees also appreciated that this was an 'open exercise'. There were no pre-conceived ideas about how to go forward in the water sector, or about the outcomes.

The first part of this report show that **the Framework is a very relevant and useful approach to frame the governance analysis of the water sector** and the in-country work (discussions and interviews), as well as to present in a concise way the results of investigations on: key actors and institutions in the sector; governance and accountability arrangements and weaknesses; incentives, interests and stakeholders' relations; drivers of change and trends in reform readiness by different stakeholder groups (Annex 2 below shows examples of use of the standard tables in the Framework, together with a new table summarizing the three steps of the analysis for the case of Kenya).

A first methodological consideration from this exercise on Kenya is that for very complex sectors like water most **stakeholders**, including donors and civil society, **do need a tool that can clarify and summarize** the structures, operations, formal and informal dynamics of a sector which otherwise will always be perceived as "a mess", with bottlenecks too intricate to be solved. Such complexity also suggests that:

1. It is very **difficult to apply the Framework to the whole water sector in one go** (water services provision, resources management, health and sanitation, irrigation, climate change, infrastructure development, abstraction of different types of water, etc), unless the exercise can last several months and it is deemed useful to produce a report, or study, of hundreds of pages;
2. One option would then be a **two-step approach**: undertake one first open-ended general analysis to let areas of major concern on the sector emerge from discussions with the full range of stakeholders, and then apply the Framework to a narrow set of sub-problems; for this second step, one must be very precise about the purpose of the exercise and what its results will be used for, possibly testing directly a 'way forward' with stakeholders in the country.

Indeed, as this exercise did not want to pre-empt discussions with stakeholders in Kenya, the field-work did not indicate from the outset the focus of the analysis in terms of a limited set of water sectors sub-problems, but it became immediately clear from that problems of the sector must be narrowed down. Multi-actor consultations led in this case to concentrate on water services provision and water resources management, addressing also general sector governance conditions affecting them and what type of informal dynamics are behind them. This report only identifies the broad problems to be addressed there, and the above sections aim to show the major bottlenecks for implementing the 2002 reforms and how complex it is, exactly due to governance dynamics, to move from innovative policies and reforms to real progress in terms of service delivery and natural resources conservation. But **the same in-country work could lead to a very different 'study'** or 'report' with focus and deeper investigation of other specific problems of the water sector and related issues of policy effectiveness, institutional capacities, political vulnerabilities and opportunities for addressing them. For instance one could have analysed these topics with the objective of understanding how the new 2010 Constitution would change the picture in the sector and the prospects for the ongoing 2002 reforms (not touched here for sake of brevity).

In fact, it is important to note that **there are many ways to present results of the Framework** (GAF) **in a narrative format**, depending on the final objective of the governance analysis. Hence the need to be specific on what its results will be used for, in a possible two-step approach to the Framework application. **Different stakeholders probably are interested in governance analysis for different reasons** and would use this tool and its result in different ways, so one should not be too normative about that. There is certainly value in a flexible tool, and for this reason it is important to start with a first open-ended general analysis of the water sector. A blue-print 'process' (in terms of preparation, participation, ownership, and dissemination) should not be imposed on sector governance analyses or assessments.

This leads to the next important methodological consideration: in general, more could be done to make the "Governance Analysis Framework" immediately relevant to **move from sound analysis of governance bottlenecks to operational recommendations** on how to address them. On the one hand, a general governance analysis in Kenya provides an important picture of the country situation and power relations, but it is difficult to get operational recommendations out of it; while sector analysis allows drawing concrete recommendations, but risks missing some of the 'big picture' elements. Both are need then, as "no sector is an island". Indeed, during consultations in Kenya, it seemed that what stakeholders on the ground would need is suggestions for a way forward on specific bottlenecks, and not only a good 'governance analysis'. Such operational tool could be a sort of **'action matrix'**, indicating for instance for each key bottleneck: i) what each actor or institution could be doing (which specific action and for what objective); ii) under what realistic timeframe and political capital involved; iii) with what budget given *those* specific governance obstacles; and iv) how this would realistically interact with overall country governance conditions, ongoing reforms and policy changes[33].

Another preliminary methodological suggestion is that the **Framework could better distinguish specific analytical steps for two types of sectors**: areas like water, or food security, where very specific physical, cultural, and scientific features make the nature of the bottlenecks very peculiar to one country or even district, the number of involved stakeholders very large, and the dynamics at play very complex (e.g. "water sector issues change immensely whether the water is there or not"); other sectors like trade facilitation or NSA support, more crosscutting, where bottlenecks may be expected to be more similar across countries, range of stakeholders more limited and dynamics possibly less intricate (e.g. "trade facilitation activities in different countries can move similar goods in a similar way"). The methodological issues to address governance bottlenecks in the two types of sector may be very different and it may be worth exploring this, starting with a clearer definition of sectors in the Framework and more analytical insights on their fundamental features, to better guide mapping, governance relations investigation, and the subsequent steps. For example, at present the only element of 'international context' and 'external pressure' relevant to the Kenyan water sector seemed to be the 'safe drinking water target' of the MDGs, and the only actors who mentioned it in Kenya were the donors. The opposite is true for trade facilitation for instance, where the 'international context' and 'external pressure', in terms of international legal frameworks and trade arrangements obligations, are one of the fundamental issues to be analysed.

Similarly, it is probably worth looking also at how the Framework could **better frame from the outset the issue of corruption**, "a symptom of dysfunctional governance system" as defined by some in Kenya, another area where countries and sectors vary substantially. It could be possible to distinguish, in some parts of the methodology, those countries where "corruption is endemic and not a specific governance feature of the sector" from other cases where "corruption only affects specific sectors" (e.g. infrastructure); without suggesting of course that where it is endemic corruption should not be addressed, in the latter case the Framework could go deeper in the analysis of corruption and its causes.

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33 These are only preliminary ideas for an 'action matrix' which could be elaborated further. For instance the matrix could also report for each 'action' what are its chances of success or its 'rate on return' in investment terms, in an attempt to maximise 'value for money'. An 'action matrix' exercise would also certainly benefit from other existing sector policy tools, such as 'Strategic Financial Planning' which allows to better link the sector financing needs to the mix of available financing sources (the '3Ts' of taxes, transfers and tariffs) and to clarify which forms of water management and services will attract public expenditure and ODA and which are left to the market and private sector (see www.euwi.net/files/EUWI_Strategic_Financial_Planning.pdf).

A final set of methodological suggestions relate to the **field-work**:

- given that consulting the full range of sector stakeholders is fundamental, the team undertaking the analysis should be ‘pushy’ on meeting the whole spectrum of actors groups, **insisting diplomatically** in case someone is resisting to meet or is sharing too generic comments on governance problems;
- **build an informal network of stakeholders** while in the country and throughout the mission, getting advice from local actors on who is best to meet and express views on a certain range of topics or group of stakeholders, and always keeping informality and an ‘off-the-record’ mood;
- institutions are made of people, so **often addressing governance bottlenecks is also about generations and change of mentality**; sometimes the driver of change is not an institution but the people within the institution and the application of the Framework should take this into account;
- the team undertaking the analysis should be perceived as **fully independent from any specific group of actors or interests within the sector**; “donors are donors” and particularly in a situation of 'scramble for resources' like in the Kenyan water sector only an independent team is likely to get frank views and honest comments from stakeholders;
- **prudence should be exercised when using the word ‘governance’** in the country, and it is important not to put too much emphasis on the ‘investigation of governance’ or ‘analysis of corruption’ when dealing with certain stakeholders; ‘political economy analysis’ probably makes discussions smoother, as it is perceived better in many countries than ‘governance’ which makes some nervous during the discussions;
- **there are limits to what the team undertaking the analysis can do**: probably a trade-off exists between the team being composed of experts external to the country and sector (as they are not embedded inextricably into governance relations and dynamics, also personal, of the sector) versus ‘internal’ experts (who hold longer experience and deeper knowledge of specific problems); in applying the Framework one should strike a balance, building the analysis and field-work carefully and taking appropriate time, but without spending too long and intense period in the country, to avoid becoming ‘embedded’ in the governance dynamics one is trying to analyse.

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Annex 1: Mandate of the institutions under Water Act 2002

Who is Who: Mandate of Institutions under Water Act 2002	
Institution	**Mandate**
Ministry of Water and Irrigation (MWI)	Policy formulation, sector coordination, monitoring, financing and supervision
Water Resources Management Authority (WRMA)	Water resources management regulation
Catchment Area Advisory Committees (CAACs)	Provide water resources management advisory functions at water catchment level
Water Resources Users Association (WRUAs)	Co-operative management of water resources and conflict resolution at sub-catchment level.
Water Services Regulatory Board (WASREB)	Regulation of water and sewerage services
Water Services Boards (WSBs)	Water and Sewerage services planning and provision at regional level
Water services providers (WSPs)	Direct provision of water and sewerage services as agents of the WSBs
Water Services Trust Fund (WSTF)	Support financing of water services for under served rural areas
Water Appeal Board (WAB)	Handle disputes in the water sector
National Water conservation and pipeline Corporation (NWCPC)	Bulk water supply, dam construction, flood control, land drainage, ground water development and MWI reserve WSP.

Source: www.wsp.org/wsp/sites/wsp.org/files/publications/Kisima_Newsletter__Issue_5.pdf

Annex 2: The three steps of the analysis: a summary

	Stakeholder Relevance	**Incentives/Interests**	**Informal dynamics/links**
National issues **(Step 1 - governance context)**	• Central Government- Ministers (appoint all relevant positions) • Weakened civil society • Some overlaps government positions • parliament membership • ...	• Competition for $ (including aid) • "Looting spree" ? (elections in 2012) • Political patronage • ...	• "Tribalism & nepotism" • Informal settlements • Dysfunctional accountability system • neopatrimonialism? • Ethnic cleavage • Culture of impunity? • Endemic corruption? • ...
Sectoral issues **(Step 2 - sector mapping)**	• Donors have driven 2002 reforms & influence via ODA allocations (donors stronger in water sector than at overall national level) • over-institutionalization and overlapping roles: Ministry of Water and Irrigation,Water Services Board, Regulator • ...	• Increased financial resources: investment from 2 to 32 bn in few years • Commercial drive • Dual Governance system • Inequality of access to services • ...	• Strong voices but no real Accountability • "Small circle of friends" ? • Weak state-CSOs dialogue processes • Informal channels to influence government • Informal accountability relations • ...
Actor-specific issues **(Step 3 - power/drivers of change/weak links)**	• Drivers of change: WASREB, some CBOs and other CSOs, WRUAs • The Minister ? • The WSTF? • Anti-corruption Commission? • ...	• WSBs: weakest within 2002 reforms, but powerful (attention by all, incl. MPs) • GoK &donors incentive to deliver quickly on access to services, not conservation • Incentive to set up WSP business due to available financial resources • ...	• Conflicting strategies among CSOs • Relations of loyalty among CSOs • WRUAs: money-making or LR resource sustainability? • Unaccounted-for-water & illegal vendors • Access to politicians based on friendship and ethnicity • ...

Annex 3: Mapping of actors' importance for governance, interests, linkages, incentives for change

Cluster of actors	Key actors	Role and importance for actual governance/ accountability	Interests Pursued	Power and resources for influencing	Key formal and informal linkages	Incentives
Political System	A) The Minister	A) could be very important for Supply (S) of accountab. but unclear role at present (both MWI staff and Minister involved in fraud investigation)	A) focusing on her region in water resource allocation (also because it is one of the most arid areas in the country and to "fight marginalisation")	A) very powerful, takes most decisions on appointments (eg. for WSBs) and MWI funding	A) formal: appointment of parastatal CEOs; informal: close relation to many parastatal heads?	A) both performing as transparent Water Minister (for all) & potential presidential candidate (strong politician for her region) → may be conflicting incentives?
	B) MPs	B) Important (e.g. Parliamentary Committee on Nat.Resources investigating corruption at WSB), but enforcement/political will?	B) driving overall anti corruption official mood, but also re-election in 2012	B) No specific power in water sector; can finance/influence water projects (via C.D.F.)	B) formal: Parl.Committee + motions to establish new parastatal, eg. WSBs ; informal: influence parastatals' appointments, project allocation?	B) support proliferation of parastatals; limit power of Minister
	C)…	C)…	C)…	C)…	C)…	C)…

Core public agencies	A) Ministry of Water and Irrigation (MWI)	A) Key both for S of accountab. & Demand (D) for better govern. in sector/by parastatals, but serious allegations of corruption → unclear role	A) keep reforming the sector and attracting more resources; some officials: keep centralized decision-making at MWI	A) very powerful: policy formulation, coordination, monitoring, and financing of the sector	A) formal: chair & supervise all sector bodies; informal linkages by many officials with all sector actors	Incentive for all: maintain status quo and further over-institutionalization? A) keep status quo, perform on water access progress, avoid too much transparency; no incentive for WRM/conservation
	B) Water Services Boards (WSBs)	B) key as overall coordin. at regional level, but weak link within 2002 reforms	B) no coord.& services planning at reg.level, as "no resources to be gained there" ; concentrate on investment & asset ownership (not yet)	B) powerful: approve & appoint WSPs	B) formal: collect info on performance of WSPs; informal linkages with all sector actors	B) keep status quo; career of management
	C) ...	C) ...	C) ...	C) ...	C) ...	C) ...
Non-public sector	A) National NGOs	A) a lot of pressure to make information public and available, not only demanding accountability by politicians but also civil servants	A) mixed, 'fight for survival'	A) may overcrowd CBOs access to funds	A) mixed	A) many depend on donors
	B) KEWASNET	B) umbrella organisation of water CSOs (70 members, but only 20	B) make sector voice heard, influence policy making and pointing	B) unclear	B) informal links with media	B) restore the initial financial support from donors

		actives)	potential cases of corruption/rent-seeking.			
Grey areas	C) CBOs/local NGOs	C) important both D/S, eg through awareness raising (meetings, notice boards, etc), conflict resolution	C) lower water price for consumers/communities, ...	C) closer to communities and know what "inability to pay" is	C) mixed	C) feel their proposals are accepted only if linked to larger NGOs & are service provider focused
Frontline providers	A) Facilitators/consultants	A) unclear	A) keep proliferating bodies like WSB which constitute sources of jobs and funds	A) unclear	A) mixed	A) mixed
	B) Water services providers (WSPs)	B) should provide their data to WSBs	B) Direct provision of water and sewerage services	B) weak resources, but national WSPs association to lobby for them	B) national WSPs association based within MWI	B) some need change to expand business, others are happy & rent-seeking
	C) Water Resources Users Association (WRUAs)	C) should be key but weak	C) Co-operative management of water resources and conflict resolution	C) no national representation → voice is weak	C) formal links with WRMA, little informal linkages	C) strongest incentives for change, and for more attention to WRM
	D) Nairobi Water Company	D) important, as public-private agency providing key access to water	D) Generate profits by providing and selling water	D) significant financial resources; well-connected with many actors in the sector	D) direct line with local authorities (it was part of Nairobi municipality); informal and formal meetings with service providers in the slums;	D) Status quo?

Check and Balances	A) Water Services Regulatory Board (WASREB)	A) key, performing well	A) Regulation of water and sewerage services	A) powerful for raising issues, little staff and enforceability mechanisms	A) formal monitoring of WSBs; informal linkages with MWI	A) enlarge consensus around its reports
	B) Water Resources Management Authority (WRMA)	B) key, but weak: water resources data & monitor but little capacity;	B) Enforce permits for water use	B) little resources; determine applications for permits for water use; no resources to protect water	B) limited linkages, both formal & informal	B) could become powerful agency if more attention in future to WRM
	C) Anti-Corruption Commission	C) Important (e.g. by following-up budget expenditure they found some incoherence that they are investigating).	C) To strength transparency of budget allocation and reinforce the work of Parliamentary committees by further investigations	C) Not specific power in water sector, but power of influence exercised by monitoring budget spending and allocation in government policies.	C) It is a well recognized agency; informal linkages may be related to the high turn over of state institution staff and CSOs?	C) amend legislation so that the Commission can follow-up on its findings
	D) Parliament	D) Dedicated commission that follows up implementation of water policies and puts parliamentary questions to the ministry on budget allocations in water sector	D) To scrutinize the executive; budget allocation in various areas of the country.	D) unclear (45% of MPs are part of the executive: confusion of roles?)	D) Formal relations with Anti-Corruption Commission; informal links with members of CSOs	D) mixed (political patronage?)
	E) Civil Society	E) Central to governance and accountability	E) Ensure that people that they represent have	E) Some CSOs may have increased their	E) Formal dialogue with the government	E) access financial resources for water

		relations (CS in Kenya has traditionally been strong and organized)	access to water facilities; quite organized in the urban areas under umbrella organizations, but not well organized in rural areas → urban voices and claims are pursued better than those from rural areas.	capacity to influence but not all. Consequently strategies for influence diverge, some organisations confront government; others dialogue → lack of coordination decreases power to influence	via various processes; informal links and access to government based on ‘friendship’	projects as well as organization survival;
Development Agencies	A) Water Services Trust Fund (WSTF)	A) not central, but wants to be demandeur of account.; good in supplying governance and transparency	A) Remain transparent ; convince donors to keep funding	A) Support financing of water services for under served rural areas, but not huge resources	A) formal funding contributions from several donors (SWAP), apparently “donors' darling”; informal: direct line with the Ministry?	A) pressure by politicians to spend funds in their constituencies; promote project application and select a high number of projects to maintain and increase financial resources from government and donors
	B) Donors	B) Important for D, but could be doing more for coordinated action on governance.	B) MDGs; effective allocation of resources; enhance aid effectiveness & coordinate via SWAP ?	B) large funds & influential in the sector (though in general as the country is not aid dependent, capacity of donors to influence is limited).	B) formal links via SWAP (though process is slow); informal links with some NGOs, CBOs, WSBs	B) unclear

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