

Water – the most important subject of the World

Importance of Water in Kenya Challenges and Reforms

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1.0 Background information on Kenya

1.1 Area

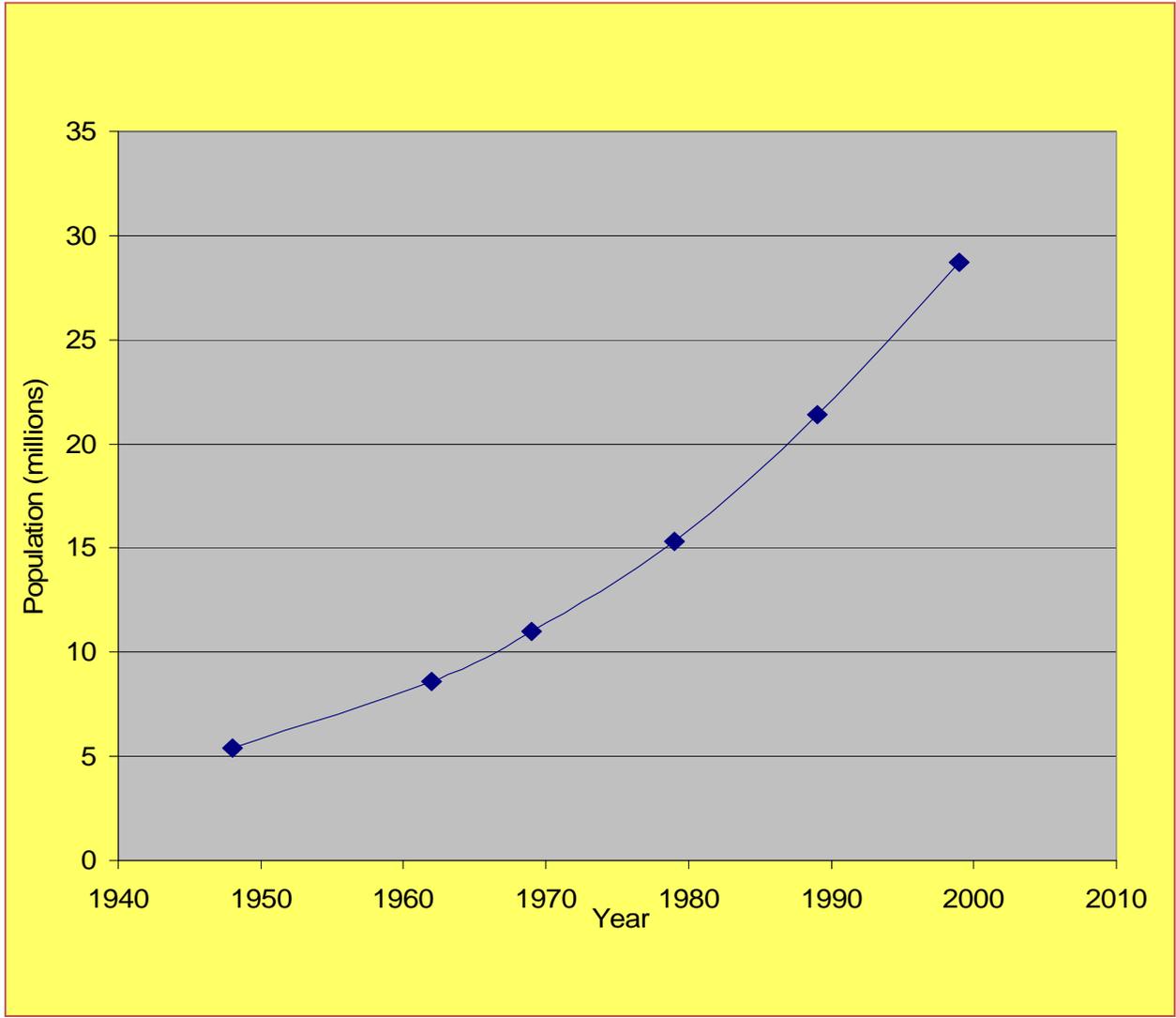
Kenya covers a total area of 582,646km²:

- Land surface constitutes 581,679km²
- Water 11,230km² representing 1.9%.
- Land of high and medium potential suitable for arable agriculture is 16%.
- The rest 84%, constitutes the arid and semi-arid lands (ASALs) suitable only for extensive livestock production, wildlife and irrigated farming.
- About 7,084Km² (1.2%) of the land is classified as forest, against a benchmark of 10% having decreased from about 17% in 1990.

1.2 Population growth

Kenya is experiencing rapid population growth.

- 1948 - 5.4 million
 - 2009 - 39 million
 - Estimated annual growth rate of 3 %.
 - Over the same period the per capita land availability decreased from 11 hectares to a mere 1.5 hectares.
 - Set to further decline to less than 1 hectare by 2030 when population is projected to be about 60 million.
- The challenge is to lay a foundation to



2.0 Ministry of Water Development

In 1972, the water development division was upgraded to a department and the Director became directly responsible for the provincial organizations. The water department was given the overall responsibility for water development in the country.

A fully-fledged Ministry in Charge of Water Development affairs was created in November 1974 a year after the recommendation by WHO.

One of the Ministry's first decisions was to take over the management of not only Government operated water schemes but also the self-help and County Council operated schemes.

- By late 1970s, development agency had realized that the Ministry of Water Development could not continue with business as usual. The ministry agreed with their observation and as a result a number of studies were commissioned.
 - The water use study of 1983 argued that the MOWD should be divested of operation and maintenance responsibilities.
 - The operation and maintenance study of 1983 made strong representations in favour of decentralization.

- Therefore, these reports called for reforms revolving around the initiation of changes in the management of schemes with a view to:
 - enabling the MOWD gain effective control over its schemes;
 - decentralizing management, operation and maintenance to appropriate levels for rapid and effective response to scheme specific happenings;
 - increasing the level of consumer participation and responsibility in the management;
 - increasing the level of equity in the social distribution of scheme waters; and
 - generating resources needed for operation and maintenance from the consumer.

These reports, however, warned that without these reforms the water sector shall increasingly find it difficult to operate and maintain the schemes; and generate the resources required for the much needed expansion of its investments to reach the majority of population without access.

In 1992, the Ministry of Water Development released two important documents that continued to guide the sector up to the end of the decade.

- Delineation Study
- The 2nd National Water Master Plan

- The main outcome of the Delineation Report
 - A defined and improved delineation of roles, functions and responsibilities of the principal actors in the sector, with special focus on those roles, functions and responsibilities which best suited the MOWD and NWCPC.
- The National Water Master Plan
 - Set out long-term plans for the much-needed reforms in the management and development of the water sector.

One of the most important recommendations to come from the two reports was that the Ministry should develop a water policy.

Between 1995 and 1999, the ministry was involved in a policy development process for the sector.

- This was published as Sessional Paper No. 1 of 1999 under the title “National Policy on Water Resources Management and Development”.
- This document is the blue print that has since then guided legal, administrative and investment reforms in the water sector.
- The document also proposed the necessary framework and provided a mechanism for mobilising resources to safe guard and develops the Country’s water sector.

The main problems facing water services delivery have tended to revolve around:

- lack of clarity with regard to the institutional framework,
- unsustainability of services and
- inadequate financing.

2.1 Water Resources

Kenya's economic performance and poverty reduction are dependent on the country's water resources. However, inadequate understanding and appreciation of how scarce water is and the important role water resource play in the economy have contributed water resources being poorly funded and to the weakening of the institutions responsible for implementing water resources management.

There are five high altitude-based water towers (903,962 hectares):

- Mt. Kenya (199,558 ha),
- Aberdares Ranges (103,315 ha),
- Cherangani/Tugen Hills (128,000 ha),
- Mt. Elgon (73,089 ha), and
- Mau Forest Complex (400,000 ha.): the most important water catchment.

2.1.1 Characteristics of Water Resources Crisis

- Extremely limited per capita endowment of freshwater resources and high hydrological variability, both temporally and spatially.
- Annual rainfall is highly variable - droughts are endemic and floods occur frequently.
- Poor Management of water resources – rapidly growing demand for water for most sectoral uses and inadequate storage capacity.

2.1.2 Trans-boundary Water Resources

Kenya shares about 50% of her water resources (rivers, lakes, and aquifers) with her immediate neighbours.

❑ Four lakes: Victoria, Turkana, Jipe and Chala.

❑ Ten rivers in the following basins:

➤ Lake Jipe/Chala and River Uмба between Kenya and Tanzania

➤ Lake Turkana – River Omo Basin between Kenya and Ethiopia

➤ Mara River Basin between Kenya and Tanzania

➤ Rivers Sio, Malaba, and Malakisi Basin between Kenya and Uganda.

➤ The Merti aquifer in north eastern part of Kenya extending into Somalia.



These towers continue to be severely damaged by:

- Encroachment by human settlements;
 - Agricultural expansion;
 - Rapid human population growth;
 - Destruction of forest vegetative cover due to illegal logging, charcoal burning, poorly planned tourist facilities, water pollution, over/illegal abstractions by industries and urban settlements.
- Thus, Kenya is classified as a water scarce country
 - Increasingly, the available surface and ground water resources are becoming polluted from both point and non-point sources.

These characteristics tend to complicate the management of water resources a factor that has implications for local and regional security and development.

2.1.3 Economic, Social, Political and Environmental Impacts

Kenya's water resources crisis carries significant social, economic, political and environmental risks.

- Growing demand of a limited endowment of water: Generates competition and causes conflict over water use, posing considerable social risks to the poor and communities without adequate representation in the allocation and decision-making.

- Hydrological variability: Creates uncertainty and constant economic risk to farmers, energy producers, manufacturers, and pastoral groups as is often the case with floods and droughts.
- Use of International waters: Cause political risks due to regional tensions and economic fragmentation. Managing numerous international waters requires very strong international relations and institutions.
- Environmental impact: Poor management of the nation's water catchments has led to excessive soil erosion, increased cost of water treatment, rapid siltation of reservoirs and a reduction in their economic life, reduced hydraulic capacity of conveyance systems, and disruption to water supply operations.

- Poor Planning: Need to invest in new water resources infrastructure (dams and reservoirs, pans, rainwater harvesting, boreholes, shallow wells, and inter-basin transfers) due to inadequate planning and consensus. A number of water projects, have experienced severe environmental and social problems and procurement controversies due to lack of systematic, responsible and transparent management processes.

- Poor Governance of water resources: Undermines livelihoods. This is illustrated by:
 - weak water allocation practices and lack of enforcement of decisions,
 - increasing water use conflicts,
 - severe catchment degradation and encroachment in floodplains,
 - growing pollution, and
 - proliferation of invasive weeds and exotic plants.

The poor bear the brunt of inequitable allocation decisions as well as floods and droughts, and are the ones forced to live with poor quality water for household use.

2.1.4 Way Forward for Water Resources

(i) Appropriate water resources policy, economic policy, and foreign policy responses are needed to reduce the cycle of risks. Water resources management policy and planning can ensure that appropriate institutional, economic and regulatory instruments are established for:

- The management of watersheds and water quality
- Efficient yet equitable water allocations between uses, and
- Sound investments in water conservation and storage.

(ii) Effective water resources management needs to be cross-sectoral: Reforms and investments in the agriculture, livestock, manufacturing, energy, transport, and communication sectors must be simultaneously supported by purposeful management of the underlying water resource base. The Ministry of Water and Irrigation needs to develop a co-ordinated approach to water resources management across all the relevant sectors and communities at both basin and local levels.

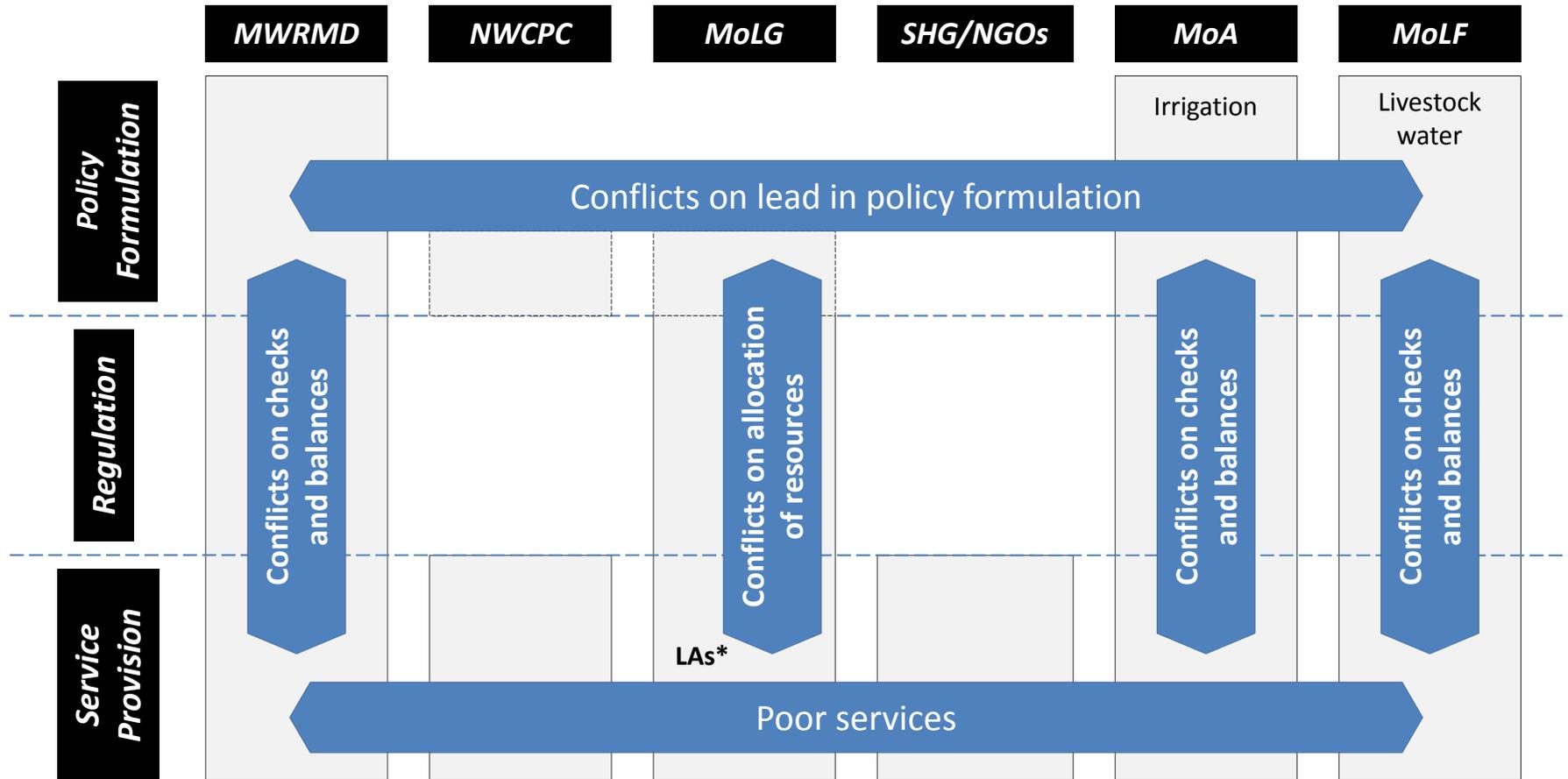
(iii) A co-ordinated approach can lead to effective, efficient and equitable water resources management.

The country could develop and implement effective multi-purpose infrastructure investments plans, catchment and riverine management plans, capacity building for institutional staff and community groups, and pilot projects.

(iv) The participation of the poor will be critical.

Environmentally sustainable management of water resources is linked to poverty eradication and wealth creation – strategies to eradicate poverty should not lead to further degradation of water resources while sustainable water use should contribute directly to reducing poverty.

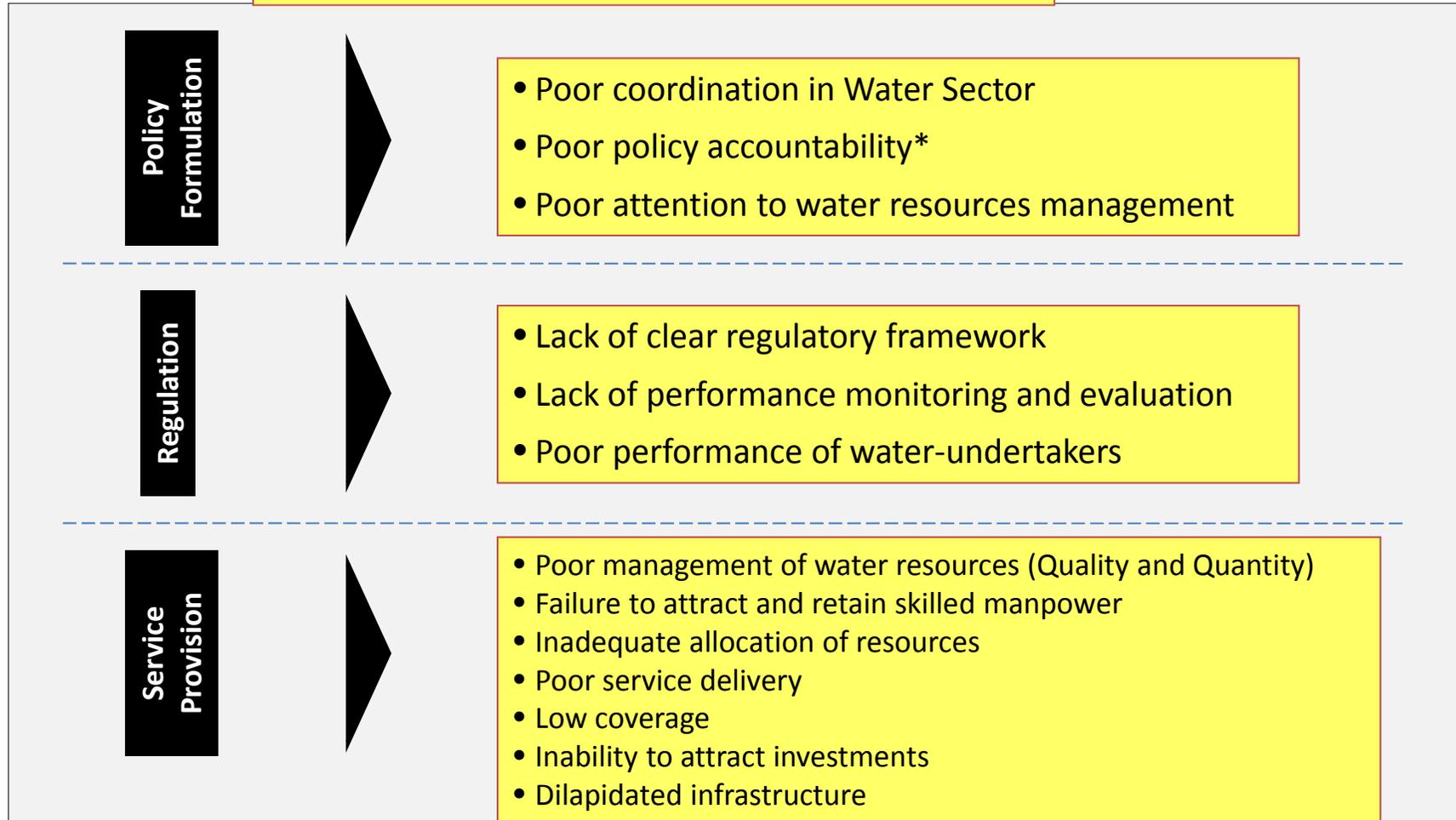
2.2 INSTITUTIONAL CONFLICTS (UNDER CAP 372)



* Local Authorities

2.3 Inadequate Institutional set-up

BOTTLENECKS IN THE WATER SECTOR (UNDER CAP 372)



* The absence of written policy in the past, prior to the Sessional Paper No. 1 of 1999, created room for sector actors to implement policies devoid of holistic approach to sectoral objectives

Source: WSRS

3.0 Water Sector Reforms

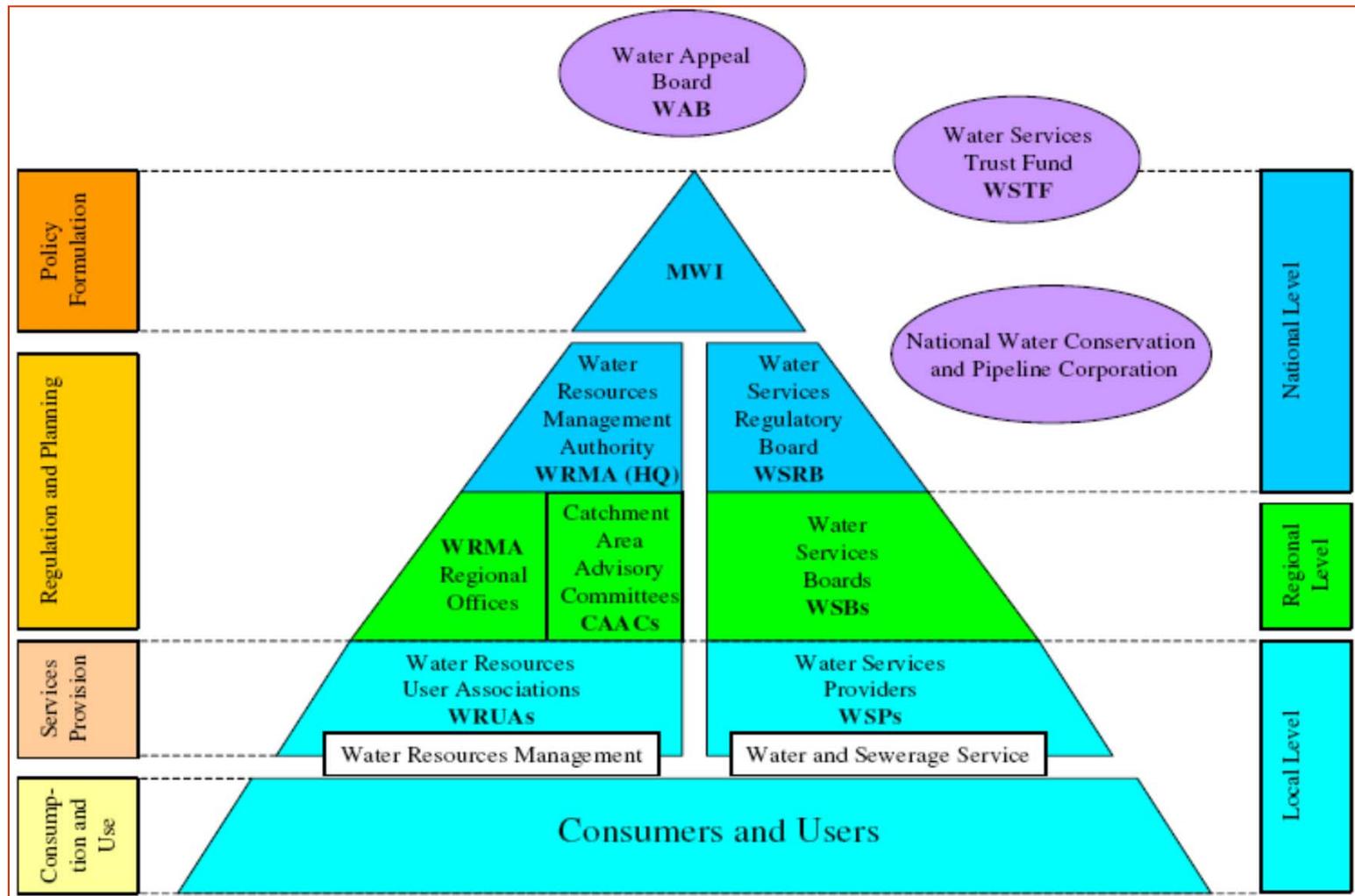
3.1 Aims of the Reforms

Previous approaches had failed to achieve water sector objectives. Hence, reforms were set to:

- Improve management of Kenya's water resources and provision of water and sewerage services to the satisfaction of the consumers.
- Improve the working of the sector to ensure objectives such as growing demand for services are adequately met.
- Attract more professionals to the sector.
- Attract investments for improved service delivery.
- Modernize the sector to conform with emerging challenges such as climate change, international protocols, increased water use conflicts, rapid urbanization and the challenges of low income areas.

Thus, the main intention of the reform is to institutionalise strong semi-autonomous water sector entities that will be able to operate on a market basis.

3.2 Institutional Setup



3.3 Reform Drivers

- Government policies (Water Policy, 1999) and strategies.
- The Water Act of 2002.
- The new Water Sector Institutions managed by Nationals.
- Donors providing technical and financial support.

3.4 Reform Achievements

- Most of the institutions provided for in the Water Act 2002 were established in 2004 and are fully operational and implementing their mandates.
- Restructuring of the MWI and NWCPC has been documented severally but not yet implemented.

3.5 Reform challenges

2.5.1 Institutional Development

- Each institution and sub-sector seems to be developing at its own pace, without an overall sector strategic allocation of resources to guide their development in line with their mutually supportive and complementary roles towards sector outcomes.

3.5.2 Investment and information flow

The greatest challenge is that most of the WSBs have not been able to mobilize adequate financial resources to much the requirements.

2.5.3 Corporate governance

One of the biggest challenges to the WSBs is to ensure that the principles of good corporate governance are applied and practiced by all in the sector players.

WSBs and WSPs have governance issues that are impacting negatively on their performance.

3.5.4 Capacity Building of WSPs

- The WSPs are and will always be the main organizations that will facilitate appropriate and efficient service delivery to customers.
- However, their capacity development is mostly addressed by WSBs and to a low extent by themselves.
- Poor performance of the WSPs in almost all WSBs clearly demonstrates that there is need of supporting the WSPs to develop the requisite management and operational capacities to make them effective and efficient.

3.5.5 Clustering of Water Service Providers

The clustering of WSPs is a major undertaking by WSBs.

❑ Politics

- Politicians perceive WSPs as an asset belonging to a certain community and many a times identify WSPs with their community.
- Politicians perceive clustering as a way of losing identity or sovereignty of the community to another community.
- Most WSPs also present opportunities to politicians to reward their supporters and they feel these opportunities will disappear when they merge with others.

❑ Social cultural barriers. Many WSPs especially in the rural areas are at the moment serving one homogeneous community.

3.5.6 Financial Sustainability of WSPs

- Most of the WSPs in the various WSBs are under heavy subsidization from the Ministry.

3.5.7 Collaboration in Water Sector Regulation

- The regulator under Water Act 2002 is vested only with power to regulate Water Services Boards and Water Service Providers.
- The Act is uncertain on how to deal with cross-cutting relationships and overriding issues that influence the water sector regulation.
- Hence, the regulator has a challenge to forge collaborations and consultations in these and other water sector development issues among the relevant water institutions and stakeholders.

3.5.8 Independence and Autonomy of Regulator

- Execution of regulatory mandate is dependent on the level of autonomy enjoyed.
- There is a prevalent perception that the regulator is not immune from political interference

3.5.9 Transfer plan

- To date, the **transfer of water supply and sanitation assets** from the MWI, NWCPC and Local Authorities to the new Water Services Boards (WSB) has still not been completed.
- Local authorities continue to collect “lease fees” from the WSPs or WSBs without re-investing in water infrastructures.

3.5.10 Monitoring and Enforcement Capacity

- Inspections by the regulator reveal that the WSBs have not fully complied with the provision of the license and SPA.
- Boards are not adequately inspecting WSPs as required

4.0 The New Constitution

- Section 43(1)(d) provides that every person has a RIGHT to clean and safe water in adequate quantities:
 - Sufficient water
 - Safe water
 - Acceptable water
 - Physically accessible water
 - Affordable water
- In Fourth Schedule Part 2, Section 11(b), County government have mandate to take over current delivery mechanisms being managed by others.

Under NC, rivers, lakes and other water resources are placed under National Land Commission (Article 67(1), 62(2)).

Fourth Schedule Part 1 Section 22(c) and Part 2, Section 11(a) and 11(b) place responsibility for water services under National and County Governments respectively.

- In Article 21(1), the State and its agents shall observe, respect, protect, promote and fulfil rights in Bill of Rights.
- In article 21(2), the State shall cause to be legislated and formulate policy and other measures that shall ensure the progressive realization of the right to water enshrined in the Bill of Rights.
- The NC requires formation of 14-22 ministries. Currently there are 42 ministries. Hence, the need to trim.

4.1 Challenges of the New Constitution

- The NC places greater demands and responsibility on National and County governments in the provision of clean and safe water in adequate quantities.
- WSBs being agents of the MWI, the WSBs are placed under greater focus to fulfill the Bill of Rights in providing clean and safe water in adequate quantities in their areas of institutional mandate
- Enormous resources are required to ensure everyone within the institutional mandate of Services Board have access to clean and safe water in adequate quantities.
- Legal challenges: Possibility of Boards to be sued by persons who are not accessing clean and safe water in adequate quantities are now a distinct possibility since Boards do not provide water in adequate quantities in their areas of institutional mandate.

- It is important to note that a big chunk of the policy making relating to the management of water catchments and water resources under the NC has been taken over by the land commission. This is likely to have far reaching implications on the structure of MWI because it will not have direct or full control over some of the current institutions e.g. Water Appeal Board, Water Resources Management Authority, and possibly National Irrigation Board.

5.0 Conclusions and Recommendations

5.1 Conclusions

- Historical trends clearly indicates that past measures and policies have not adequately addressed the problems in water supply and sanitation sector.
- It is evident that there has been lack of clear allocation of responsibilities, limited national economic growth, poor coordination and lack of adequate logistical and institutional capacity for effective service delivery.

- Following the promulgation of the New Constitution, new demands have been placed on the State and its Agents in the Bill of Rights. Responsibility for provision of safe and clean water in adequate quantities is placed on the National and County governments.
- Therefore, a number of alignments of the current water sector institutions need to be made in order to fit to the requirements of the New Constitution. This may lead to the current MWI becoming a department as it was over 30 years ago.
- A review of the NC leads to the conclusion that the State and its Agents at the National and County levels will be hard pressed to fulfil the Bill of Rights in order to stem an avalanche of possible suits from disaffected consumers who are not currently accessing safe and clean water in adequate quantities.

5.2 Recommendations

- To be able to contribute significantly to the future, the water sector needs to focus more on the Inter-ministerial coordination/cooperation
- The Water Sector Strategic Plan (2009-2014) which is envisaged to be the Apex body which brings together all water sector players. The current studies on the alignment of water sector institutions to the NC have not taken into account of the efforts towards that end. It is recommended that the learning lessons of the strategic plan are also incorporated in the efforts of aligning to the new constitution and thereafter undertake the review of the National Water Policy.
- A re-examination of the past to establish where the development path got obscure, would enable formulation of clear policies to guide reform process. Time bound programmes and mechanisms must be put in place to see the implementation of stated policies.

- Encouraging investment in rehabilitation and augmenting the water supply and distribution systems, consumer mapping and capacity building.
- Continue the harmonization and alignment of development partner's activities as part of the sector reform process.

- Introducing two independent spheres of government by the NC has significant implications of how water services are managed in the future. Counties will have an important say in how water services are managed.
- Careful thinking needs to take place on how to protect the important gains made in water and sewerage services provision.

- There is need for the creation of a legal mechanism to delegate the constitutional mandate given to the National Land Commission to be carried out by any other body such as the WRMA.
- The Water Act failed to harmonize its provisions with other statutes affecting the provision of water services. This has led to inter-agency conflicts e.g. between WRMA and NEMA, WRMA and KFS, WSPs and LAs etc. Therefore there is need to ensure that the amendments to the Act in line with the requirements of the NC should resolve these conflicts.

Thanks for the kind attention