

Implementing the right to water - water policy choices with decentralised politics in Kenya.

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Abstract/Summary

To achieve universal access to water in line with the human rights criteria of sufficient quantity, potable quality, affordability, physical access and non-discrimination, we require a better understanding of how decision-makers interpret their mandate and translate it into implementation strategies. This research is the first of its kind that captures all 47 decision-makers charged with the service delivery mandate in Kenya’s newly devolved system. Understanding the political and socio-climatic factors influencing water policy choices is critical for private sector or non-governmental organisations to effectively contribute to improved water provision, especially in rural areas. This paper’s insights are transferrable across other countries that have decentralised systems of water provision. Achieving the SDG target on water starts with the acknowledgement and uptake of the mandate by decision-makers prior to measuring progress. If fast progress is to be achieved, adapting strategies to the socio-political realities of countries and their sub-national institutions is critical.

Introduction

One of the promises of decentralisation is improved service delivery (Lein & Tagseth, 2009; Nsibambi, 1998; Palotti, 2008; Uhlendahl et al., 2011). Another is higher levels of accountability between policy-makers and citizens (Faguet, 2014; Rogers & Hall, 2003; Shah & Huther, 1999). This paper examines Kenya’s decentralisation process and its implications for water service delivery – in particular to what extent decentralisation benefits the rural poor in accessing water services. It assesses a newly defined contract derived from the human right to water between duty-bearers and rights-holders, policy-makers and voters.

Approaching Kenya’s second general election in August 2017 in its newly decentralised system, the centre of attention is not only on the presidential campaigns but also on the race over the governors’ seats in the 47 counties. The election promise of easily accessible, safe and reliable water services has become an important policy tool for county governments in running for re-election. This paper examines factors that influence county water ministries’ policy choices in interpreting their new mandate, establishing their new water institutions and developing county water policy. It further examines how this mandate is translated into budget allocations and service provision arrangements and provides novel insights for third-party organisations working with county governments in advancing the water goal of the sustainable development agenda.

Context, aims and activities undertaken

International and national frameworks prescribe water policy choices. The political challenge of meeting sub-goal 6.1 of the sustainable development agenda – achieving universal and equitable access to safe and affordable drinking water for all by 2030 – is manifold. As part of its path towards a middle-income country (Government of Kenya, 2007), Kenya subscribed to advancing the Human Right to Water and Sanitation, including the attainment of the criteria of sufficient quantity, potable quality, affordability, physical accessibility and non-discrimination. These criteria became a constitutional right in Kenya with the 2010 constitution. The right to water is enshrined in article 43 1(d) as “every person has the right to clean and safe water in adequate quantities” (Government of Kenya, 2010).

This research evaluates a unique dataset covering responses of all 47 county water ministries (100%) in Kenya, and participant observation at the first summit of Kenya’s county water ministers in October 2015 organised by the Water Services Trust Fund, at which the framework for a prototype

County Water Bill was developed as basis for future water policy (Mumma & Thomas, 2016). The research was conducted in collaboration with the national government institution, the Water Services Trust Fund. County water policy choices are measured here in terms of subjective statements by county water ministries as counties are only in the process of establishing their policy strategies and county water laws. Whilst these responses do not constitute laws, they provide an indication of the interpretation of county mandates at the end of the three-year transition period. They are supplemented by semi-structured interviews at national and county level and data by the national regulator (WASREB, 2013).

The key objectives of this work are to investigate the water policy choices of the newly established 47 county governments and to learn which factors influence their decision-making process; to learn how the affordability criterion is translated into ‘fair tariffs’, and to test whether decentralisation leads to improved water services and really benefits the rural poor. These insights are deemed critical for any organisation working on water service delivery in Kenya.

Main results and lessons learnt

The central expectation of rights-holders is efficient and reliable service delivery – which places high political pressure on duty-bearers. Legal frameworks are currently being developed. Kenya’s national Water Bill, 2014, just passed through the Senate, is expected to be passed as Kenya’s new Water Act this year (Republic of Kenya, 2014). All 47 counties are also currently developing their own county legislation and translating international and national frameworks into their own laws. We examine the water policy choices of county water ministries, especially with regard to the five human rights criteria and service provision arrangements.

What are the priorities in the water sector?

With decentralisation the financial architecture for rural water service provision has changed in Kenya. Across all counties the water budget ranks fourth after health, transport and education. The majority of counties spend more than 75 per cent of their water budget on developing new water service infrastructure. This allocation has important implications for the maintenance of existing infrastructure and the sustainability of delivering water services. We found the allocations within the county water budget to be a significant factor in the level of responsibility county water ministries have with respect to the human rights criteria.

Do county water ministries’ policy choices align with their constitutional obligation?

The constitutional obligation of the right to water is unambiguous – but are the human rights criteria universally acknowledged across the 47 counties? Article 174 (f) states that the objectives of the devolution of government include “the provision of proximate, easily accessible services throughout Kenya” (Government of Kenya, 2010). However, when county water ministries were asked whether they acknowledge responsibility of the five categories of sufficient quantity, potable quality, affordability, physical access and non-discrimination for water services provision, the response was mixed.

We disaggregated the question for urban and rural areas. While none of the responses falls below the 50 per cent mark, there are some striking differences. Only about two-thirds of the counties acknowledge responsibility for providing “sufficient quantity” for urban areas and even fewer (59 per cent) for rural areas. Potable quality is slightly higher at 77 per cent for urban and 50 per cent for rural. Affordability is the most contested criterion: just over 50 per cent of

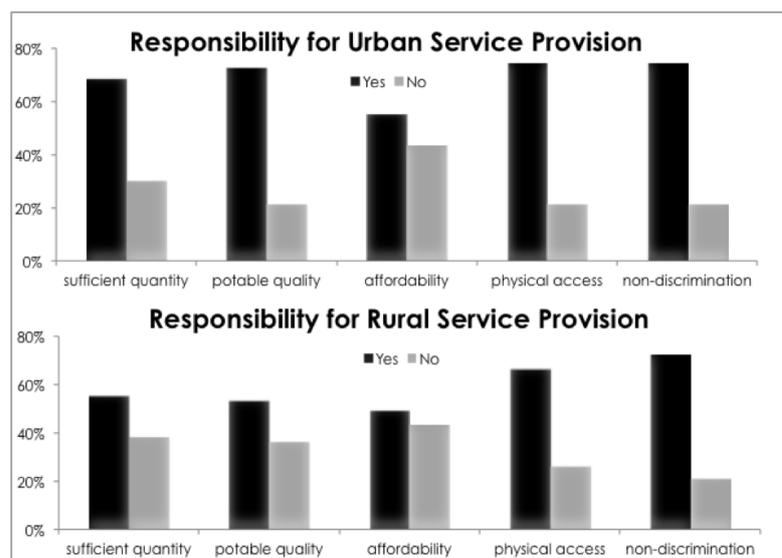


Figure 1. Water service responsibilities for urban and rural areas

water ministries consider affordability their responsibility across urban and rural. Physical access and non-discrimination constitute the most accepted responsibilities for urban and rural areas within the 70 to 80 per cent range. These variations have important implications for the SDG process and the longer-term impact of decentralisation on regional development, especially in rural Kenya.

Which factors influence water policy choices?

We examine a number of political and socio-climatic factors that may influence some of the water policy choices across the 47 counties. The analysis suggests that a wider election margin is associated with a lower degree of responsibility for the five criteria across urban and rural areas, a higher poverty rate and a higher level of urbanisation are associated with a higher degree of responsibility, a higher county water budget (as part of total county budget) as well as a higher degree of water service satisfaction are also associated with a higher degree of water service responsibilities. And higher baseline water coverage appears to be associated with a lower degree of water service responsibilities.

More specifically, a widening of the election margin from one to ten per cent as well as from ten to 30 per cent is associated with a decrease in the level of responsibility by ten per cent respectively. Literature supports this finding. For example, in an article examining primary education spending among 29 Mexican states (1999-2004), Hecock (2006) shows that greater electoral competition leads to increased spending. This is an important finding as it implies that decentralisation may have a positive impact on the accountability level of decision-makers.

How is the mandate translated into service provision arrangements?

We also examined how the water service mandate is being implemented across the 47 counties. 72 per cent of the counties opted for two (38%) or several (34%) utilities as the best service provision arrangement for their county. Rural utilities become a feasible option for many counties. Public provision is the preferred choice for both urban (81%) and rural areas (51%) with 28 per cent considering community management as the best arrangement for rural service provision. Private sector involvement through either PPPs or fully private companies is preferred by 28 per cent of the counties for both urban and rural areas.

Who pays for water services? Are rural and urban tariffs comparable?

It is striking that the average fair tariff for rural water provision (USD/m³) was defined 29 per cent higher than for urban, whereas a fair provision level was defined 12 litres per capita per day lower for rural. This difference may partially be accounted for by the fact that urban tariffs were asked per cubic metre and rural tariffs were provided per 20-litre jerrican. But it reflects the reality on the ground. Moreover, on average those counties that face high electoral pressure have lower tariffs, but so do those counties with lower poverty rates. This may be attributed to a number of reasons: First, affordability is relative; ‘fair tariffs’ may take into account the reality of given socio-climatic risks in each county and the cost to tackle them. Second, counties with mainly rural areas tend to have higher poverty rates. They also tend to be drier, which has effects on the cost of provision.

40 per cent of the counties state that users should pay the full cost of water provision. Of those counties supporting subsidies, the majority (57%) state that county governments should pay for the subsidy, followed by donors (26%) and the national government (23%).

Table 1: Fair tariffs and provision levels

Measure	Urban (n=46)				Rural (n=47)			
	Mean	SD	Min	Max	Mean	SD	Min	Max
Fair Tariff (USD/m ³)	1.15	1.05	0.49	>4.93	1.43	1.08	0.49	>4.93
Fair Drinking Water Provision Level (l/c/day)	43	12	10	>50	31	14	10	>50

The role of the regulator in streamlining water service provision across a nation:

The role of regulation is critical in managing the different expectations of the mandate for the right to water and the service provision arrangements across one country. 80 per cent consider the national government (WASREB) responsible for regulation while seven per cent consider it a shared function with county governments and the rest attribute it to county governments.

Conclusions and Recommendations

This research identifies important issues emerging in the devolved water sector that can contribute to the development of county legislation and water services sustainability in the future. The findings show that the counties are heading into the right direction, however, there are key implications that need to be taken into account when policies are developed and implemented that are also relevant for other countries in sub-Saharan Africa undergoing institutional transformations in the form of decentralisation:

First, county water policy choices need to be streamlined across the human rights criteria so that regional disparities do not grow and transformative development is sustained, especially for the rural, marginalised areas. *Second*, major investments are made in new infrastructure development for water services. However, without a higher priority on monitoring and maintenance provision, the sustainability of this infrastructure is not provided and SDG goal 6.1 is unlikely to be achieved in the long term. *Third*, it appears that a healthy level of democratic competition in the gubernatorial elections drives the water service agenda and the fulfilment of the constitutional obligations. It is certainly true that county water ministers (as appointed by the governors) drive their agenda with the view to fulfil the election promises to achieve re-election. This is why regulation at an overarching level is a key determinant in managing democratic processes and ensuring that all people are reached. *Finally*, responsibilities across the five categories are driven by a number of political and socio-climatic factors. Countries do not respond uniformly, especially if they have a devolved system of government. The question of achieving SDG targets starts with the acknowledgement and uptake of their mandate by decision-makers before we even start to measure progress. If we want to achieve fast progress, then adapting strategies to the socio-political realities of countries and their sub-national institutions is critical.

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Note: This paper draws on on-going research. For ethical reasons (anonymity) the underlying data of the figure cannot be shared as it would reveal county-by-county responses and can be tracked back to individual respondents. If another version of the figure is required, please do let me know and I will provide it in the required format. Thank you for your understanding.