Implementing the Right to Water – Water Policy Choices with Decentralised Politics in Kenya

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Human Right to Water & Constitutional Obligation

Kenya’s Constitution of 2010 states in Article 43(1) (d) that every person has the right to clean and safe water in adequate quantities.

The Constitution defines the contract between the duty-bearers and the rights-holders.

Criteria for evaluating water service policy choices

1. Sufficient quantity
2. Potable quality
3. Affordability
4. Physical access
5. Non-discrimination
Objectives

- Which factors influence decision-makers’ interpretations of their constitutional mandate?
- Do close elections drive water service responsibility levels?
- How is the ‘affordability’ criterion translated into ‘fair tariffs’?
- Does decentralisation lead to improved water services for the poor?
Methodology

- Survey of 47 County Water Ministries (100%) in October to December 2015.

- 27 semi-structured interviews with national and county stakeholders in April to May 2015.

- Other sources:
  - General election results from 4 March 2013 (IEBC 2013),
  - 2015 Afrobarometer survey,
  - Global Aridity Index (CGIAR-CSI 2009),
  - 2011/12 WASREB data on water coverage,
  - 2005/06 Kenya Integrated Household Budget Survey (KNBS 2012),
Socio-Political Risk Framework

Political Risk

Low

High

Socio-Climatic Risks

Low

High

ignored

monitored

recognised

mitigated

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Do County Water Ministries’ policy choices align with their constitutional obligation?

Responsibility for Urban Service Provision
- Sufficient quantity: Yes (60%), No (40%)
- Potable quality: Yes (80%), No (20%)
- Affordability: Yes (70%), No (30%)
- Physical access: Yes (80%), No (20%)
- Non-discrimination: Yes (90%), No (10%)

Responsibility for Rural Service Provision
- Sufficient quantity: Yes (60%), No (40%)
- Potable quality: Yes (80%), No (20%)
- Affordability: Yes (70%), No (30%)
- Physical access: Yes (80%), No (20%)
- Non-discrimination: Yes (90%), No (10%)
Factors influencing water policy choices

Constitutional mandate:
• Water Service Responsibility Index

Political and socio-climatic risks:
• Election Margin
• Aridity
• Baseline Water Coverage
• County Water Budget
• Poverty Level
• Urbanisation Level
• Citizen satisfaction
## Responsibilities across the risk zones

<table>
<thead>
<tr>
<th></th>
<th>Low Poverty</th>
<th>High Poverty</th>
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<tbody>
<tr>
<td><strong>Electoral Pressure</strong></td>
<td></td>
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<tr>
<td>High &lt;10% margin</td>
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<td>Low &gt;10% margin</td>
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<thead>
<tr>
<th></th>
<th>Urban</th>
<th>Rural</th>
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<tbody>
<tr>
<td><strong>Sufficient Quantity</strong></td>
<td>78%</td>
<td>50%</td>
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<tr>
<td><strong>Potable Quality</strong></td>
<td>89%</td>
<td>50%</td>
</tr>
<tr>
<td><strong>Affordability</strong></td>
<td>56%</td>
<td>33%</td>
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<tr>
<td><strong>Physical access</strong></td>
<td>89%</td>
<td>78%</td>
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<tr>
<td><strong>Non-Discrimination</strong></td>
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<td>80%</td>
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<tr>
<td><strong>Potable Quality</strong></td>
<td>100%</td>
<td>80%</td>
</tr>
<tr>
<td><strong>Affordability</strong></td>
<td>60%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Physical access</strong></td>
<td>100%</td>
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<tr>
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<tbody>
<tr>
<td><strong>Sufficient Quantity</strong></td>
<td>64%</td>
<td>46%</td>
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<tr>
<td><strong>Potable Quality</strong></td>
<td>64%</td>
<td>30%</td>
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<tr>
<td><strong>Affordability</strong></td>
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<td><strong>Physical access</strong></td>
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<td>46%</td>
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<tr>
<td><strong>Non-Discrimination</strong></td>
<td>75%</td>
<td>64%</td>
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<td>63%</td>
<td>63%</td>
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<tr>
<td><strong>Potable Quality</strong></td>
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<td><strong>Affordability</strong></td>
<td>53%</td>
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<td><strong>Physical access</strong></td>
<td>68%</td>
<td>79%</td>
</tr>
<tr>
<td><strong>Non-Discrimination</strong></td>
<td>68%</td>
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## Fair Tariffs & Provision Levels

<table>
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<tr>
<th>Measure</th>
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<th>Rural (n=47)</th>
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<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>SD</td>
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<tr>
<td>Fair Tariff (USD/m3)*</td>
<td>1.15</td>
<td>1.05</td>
</tr>
<tr>
<td>Fair provision of Drinking Water (l/capita/day)</td>
<td>43</td>
<td>12</td>
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### Electoral Pressure

**High**
- <10% margin

**Low**
- >10% margin

### Poverty

**Low**

**High**
Who would be best placed to maintain DW supply infrastructure in your County?

- Public provision
- PPP
- Private companies
- Community

Which of the following options would best work for your County?

- One utility
- Two utilities
- Several utilities

72% of Counties opt for 2 utilities or more
One of the dangers of decentralisation is reinforcing regional disparities.

On the one hand, those counties that have a closer election margin tend to have a higher sense of responsibility for serving their electorate.

On the other hand, those counties that face higher socio-climatic risks, and have a lower baseline, tend to also respond with a higher sense of responsibility as they acknowledge the need for catching up.

**Relevance**

- **For Kenya’s upcoming election:** Does a higher level of democratic competition in the gubernatorial elections drive the water service agenda and the fulfilment of constitutional obligations?

- **For the SDG agenda:** Countries do not respond uniformly, especially with a devolved system of governance. If we want to achieve fast progress, then adapting strategies to the socio-political realities of countries and their sub-national institutions is important.
Further Information

Related publications:

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