The immediate impacts of devolution on the structure and financing of the WASH sector in Kenya

41st WEDC International Conference, Egerton University, Nakuru, Kenya, 2018

TRANSFORMATION TOWARDS SUSTAINABLE
AND RESILIENT WASH SERVICES

The immediate impacts of devolution on the structure and financing of the WASH sector in Kenya

Zachary White (UK)

PAPER 2969

This paper outlines the immediate impacts of devolution on the structure and funding of the WASH sector in Kenya. WASH was one of the 14 sectors for which functions were devolved from the National level to 47 newly formed County governments. This change in the WASH sector structure follows a series of wider sector reforms during the 2000s which established a wide range of institutions which are still in the process of establishing their relationship with the newly formed county administrations. This paper outlines the institutional structure of the WASH sector through key legislation in the last 20 years. The paper then briefly reviews the consequence of devolution for public financial management (PFM) as well as the impact this has on WASH sector funding and financing.

Introduction

In 2010 a new constitution was introduced in Kenya which has significantly reshaped the political and administrative landscape. It created 47 new county governments and devolved powers to them in line with citizen's rights established in the constitution. The aim of the devolution was to bring service delivery 'closer to the people'. This paper summarise recent changes to the WASH sector in Kenya as a result of devolution. It provides a view of the institutional structure pre-and post- devolution, focusing on how this has impacted public expenditure in the sector.

The WASH sector in Kenya is continuing to evolve in response to devolution; with the recent passing of legislation seeking to harmonise the institutional changes instigated by devolution with the sector structure established under pre-devolution legislation. As many processes and administration are still being established it is too soon following devolution to draw conclusions as to if it has been successful or not. This paper discusses the devolution process in Kenya and how this has affected public finances, public financial management (PFM) and the structure of the WASH sector.

The WASH sector in Kenya

The structure of the WASH sector in Kenya is currently evolving in response to devolution and recently passed legislation (the Water Act 2016). Previous sector structure reforms in the 2000s focused on professionalising the operation and management of water and sanitation services, creating independent utilities, known as Water Service Providers[1] (WSPs), 8 regional Water Service Boards[2] (WSBs) and a national regulator, the Water Services Regulator Board (WASREB). At the national level, responsibility for WASH is divided across two ministries: the Ministry of Water and Irrigation (MoWI) has responsibility for Water and the Ministry of Health (MOH) for sanitation. Under devolution the new county government ministries have responsibility for water and sanitation. Though there are currently some overlapping mandates that recent legislation is addressing.

Table 1. Key recent legislation in the WASH sector		
Legislation	**Year**	**Details**
Water Act	2002	The Water Act sets out the institutional structure for the water sector and grants mandates. This act laid the foundations for the water sector reforms of the 2000s that established the service delivery structure that largely remains intact today.
Constitution of Kenya	2010	The Constitution enshrines the right to water. It also gives national government the responsibility for national public works and county governments the responsibility for county public works, with specific reference to water and sanitation. As part of the promulgation of the constitution, the county administrations are formed.
Water Act	2016	This Water Act seeks to rationalise the role of the National and County governments' vis-à-vis one another as well as those established by the 2002 Water Act. Importantly, this legislation defines 'national public works', thereby partially clarifying the roles as set out in the constitution.

The WSBs are the asset holders for the water and sanitation infrastructure in their respective jurisdictions (usually several counties within one or more basins) and manage large-scale investments in WASH infrastructure. The WSPs are the service delivery agents in the water sector. All WSPs are commercialised, with the vast majority being state owned. Under a service provision agreement, the WSPs usually have a mandate to supply water (operate and maintain water and sewage infrastructure) and to collect tariff revenue in their service areas. The Water Services Trust Fund (WSTF) is a pooled fund which makes grants to NGOs/CBOs and the WSPs for developing infrastructure – the fund acts as a channel for donor funds into the sector, these funds are not subject to budgetary processes. However, following the adoption of the new constitution in 2010 and the promulgation of devolution from 2012, the newly formed county administrations also have a mandate for ensuring water and sanitation services in their jurisdiction. This has resulted in some overlapping responsibilities which the Water Act 2016 seeks to clarify, particularly clarifying that the national government retain responsibility for 'national public works' in water. The 2016 Act defines national public works as including: water storage; water works for bulk distribution and provision of water services; inter-basin water transfer facilities; and reservoirs for impounding surface run-off and for regulating stream flows to synchronise them with water demand patterns which are of strategic or national importance.

Figure 1**Error! Reference source not found.** presents a simplified map of the WASH sector in Kenya at the time of the passing of the Water Act 2016. Those institutions making investments in both water and sanitation are in dark blue, while those concerned exclusively with sanitation are in purple. It is important to note that this figure summarises the main flows in the sector considered in this analysis, and is a representation of key flows as opposed to a mapping of all flows. Prior to devolution the local implementing agents in the water sector were 'district water offices'; who received funding directly from the national ministry. Both in size and staffing these are comparable to the new county ministries (though there has been some centralisation within counties).

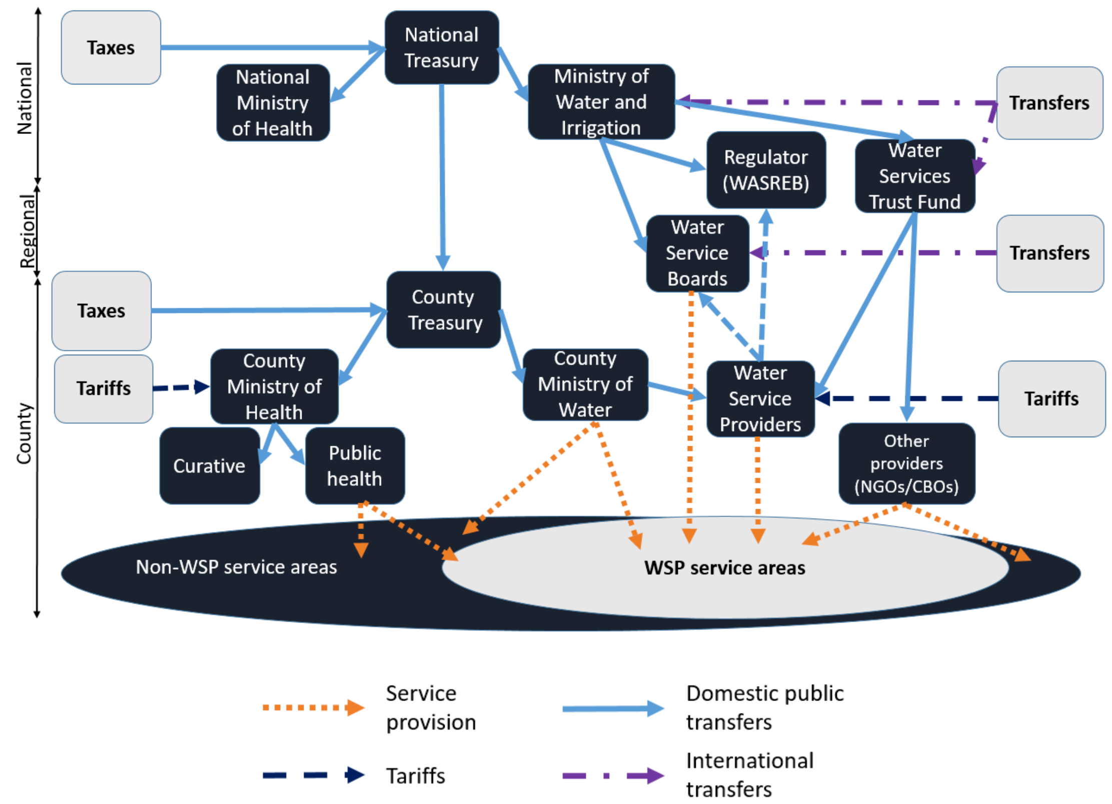

Figure 1. Map of the actors and flows of funds in the WASH sector in Kenya

Source: Authors own design

Note: this is a simplified map of key actors and fund flows accurate at the time of the passing of the Water Act 2016

Various features of this funding structure should be noted:

- First, there is an extremely limited flow of funds between the national ministries and the county ministries with responsibility for water.
- Second, the WSPs have the ability to collect revenue locally in the form of tariffs, which are retained by the WSPs for their operation (with a small proportion, ~4%, paid to the regulator).
- Third, few county governments receive international transfers or have access to commercial finance. Fourth, there is a difference in who provides services within WSP service areas and outside of them, with those living inside WSP service areas receiving funds from a wider range of sources – note, currently only roughly half of the Kenyan population live within a WSP service area.
- Lastly, service delivery functions are performed by a wide range of actors – some with overlapping responsibilities.

Devolution and Public Financial Management

Devolution has radically re-shaped the legislative and policy framework for sub-national finances. A key piece of legislation is the PFM Act (2012) which established the framework for PFM under devolution. In addition to granting county administrations the power to raise their own revenues from specific sources, the PFM Act (2012) also specifies how funds flow from the national to the county governments. The constitution mandates that 15% of the national budget is allocated to counties; this 15% is shared between the counties according to an allocation formula that takes into account population, poverty levels, land area, a ‘basic share’, and the level of fiscal responsibility. In total there are four main flows to county treasuries:

- Concessional transfers from the national government (equitable share): These funds are known as the ‘equitable share’ and account for over 70% of counties’ revenues for the past three years
- Conditional grants: In addition there are several conditional grants that are sent from the national government to the counties and have to be used for the purpose specified. For example, counties may receive a special grant for hospitals, or a special grant for road maintenance, based on a formula of

specific needs indicators. Counties also receive funds from the government's Equalisation Fund, in the form of conditional grants to bring basic services to marginalised communities.

- Locally collected taxes: Almost all major taxes are collected by the national government, except for property tax and entertainment tax, which are collected by county governments. Some fees for the use of services (such as hospitals, or charges for licences) are collected by counties. Locally generated revenues from taxes, fees and licences account on average for only 10% of county funding.
- Other sources of revenue: Counties may receive three other types of revenues: firstly, they may receive grants from donors, which they should then report in their budgets. Secondly, counties may receive loans from donors or investors. However, all loans received by a county must be guaranteed by the national government.

The high degree of fiscal decentralisation means county governments largely decide how much is spent in the 14 sectors devolved. In the WASH sector there are no conditional grants so sector allocations are almost completely at the discretion of the county administrations. There are some WASH services that receive funding form locally collected revenue– this is more common in sanitation as the environmental health departments in the ministry of health charge for some services (e.g. hygiene inspections) and are allowed to retain that revenue within the department by the county authorities.

Public expenditure in WASH pre and post devolution

Prior to devolution (2010-2013) the WASH sector received small budget allocations, with allocations to the water sector through the Ministry of Water & Irrigation, ranging from 3–4% of the total budget. A high share of the MoWI's budget was allocated to development expenditures - 83% on average – and budget execution was consistently above 80% (UNICEF&GoK 2018). During this period over 45% of the development budget was funded from external sources. Between 2010 and 2013 government budget allocations to the independent WSPs slowly decreased as they were increasingly expected to raise their own revenues from tariffs. Though there were concerns on the sustainability and efficiency of service delivery as spending on O&M of facilities and water service provision was low. Partially due to low cost recovery levels of the WSPs and limited allocations to O&M in the recurrent budget.

Post devolution (2013-2016) the nominal amount allocated to WASH sector ministries increased; driven by the rapid increases in allocations to county ministries (CECs) with responsibility for water. Though there was a slight fall in the amount allocated to the MoWI. Unlike the trends in GGE; WASH budgets at both the county and national levels are heavily weighted towards development expenditure. Post-devolution budget execution rates by the MoWI have fallen slightly. Execution at the county level is poor; though in most counties execution have improved dramatically - though they remain substantially lower than the county average and other social sectors. WSPs remain are an important source of expenditure - their collective turnover is greater than the expenditure by the MoWI WSP turnover has increased over the last three years – though many remain in a poor financial position (ibid).

Summary of the immediate impacts of devolution on the WASH sector

The constitution guarantees every Kenyan the 'the right and access to clean, safe and adequate water; and reasonable standards of sanitation', and as a devolved sector places the County Governments at the center of WASH service delivery. The Water Act (2016) sought to place the sector structure established in the Water Act (2002) in the context of the Constitution, and in doing so also clarify the responsibilities between these existing institutions, and the County Governments. Most notably through explicitly defining 'national public works'[3]. The definition employed by the Act is broad but clearly stipulates that national government retain responsibility for some aspects of WASH service delivery. This has been viewed by some as an effort to re-centralise certain service delivery functions. In practice, through an extended transition period the National-level ministries continued to perform some development projects in WASH; though the extent of their future role is somewhat dependent on the shape of the supporting regulations of the Water Act (2016). Similarly the ongoing role of the regional institutions is also dependent on how the act is implemented.

Under devolution many of the institutions established in the 2002 Act have retained a central role in water service delivery; most notably the WSPs. One of the decisions in devolution was to transfer the responsibility of their management from the WSBs to the new County Governments. During the first few years of devolution this created considerable confusion. More recently, county authorities have established new management structures and service level agreements with WSPs, adding clarity and improving efficiency. The WSPs collect tariff revenue from those they serve which is protected, and used by the WSPs for the provision of WASH services and is not subject to the budgetary process. This revenue is sizable and often greater than the counties' recurrent budget allocation to WASH. Despite this, many WSPs are in a dire financial position, with expenditure often far exceeding revenues. As a result, county governments are having to subsidise some aspects of WSP service delivery. Currently less than half of the population in Kenya live within a WSP service area, with even fewer actually provided with services by the WSP. Outside of service provider areas most counties report relying on communities to manage their own services through community-based organisations, whose responsibilities extend to collecting tariffs or fees for operations and maintenance (O&M). These are key dimensions when considering how equitably funds are allocated and how sustainable services are, especially outside of WSP service areas.

Since the promulgation of devolution in the financial year 2013/14 government expenditure in the WASH sector has increased, though not at rates as fast as in other social sectors. The balance of expenditure within the sector reflects the principles of devolution with the county governments' budgets increasing as a proportion of total government expenditure and sector budgets, while the national ministries budget fell sharply (UNICEF&GoK 2018). Though analysis of funding trends at the county level reveals a wide variations in the expenditure per person without access to improved water and sanitation services (ibid.). This is related to the fact that the transfers to the County Governments from the national level are unconditional and as such the counties have a high degree of fiscal autonomy; with allocations to WASH deeply rooted in county level politics. Furthermore, there are no conditional grants for water and sanitation service provision between the national and county levels raising some concerns over the equity of WASH financing under devolution.

Conclusions

Eight years after the adoption of the new Kenyan constitution and five since it was operatized the Kenyan WASH sector is still adapting to the radical re-shaping of the institutional structures. Particularly the harmonization of the roles and functions of the pre-existing WASH sector institutions and those institutions created by the constitution and While a picture is emerging of the impact of devolution on the WASH sector; many process and institutions are still being established. 2017 was a year of political uncertainty in Kenya; which has slowed the implementation of the legislation that harmonises sector functions. While some clarity is emerging there remain some areas of confusion.

Between 2012/13 and 2015/16 government budget allocations to the WASH sector increased in absolute terms and as a proportion of the overall budget – though not as rapidly as in other social sectors. Furthermore the limited financial accountability links between the country actors and the national ministry. Though budget execution in the WASH sector is poor compared to other sectors. This is partially a reflection of the fact that expenditure is heavily weighted towards development expenditures, and low budget credibility hampers the effective execution of these budgets. Though the low execution rates also raise questions about county level actor's capacity to execute budgets.

Lastly, county authorities do not consistently measure or track key WASH indicators. This hampers an analysis of both county performance against key national policy objectives as well as how equitably government budgets are allocated. For the impacts of devolution to be fully understood greater attention needs to be paid in the coming years to monitoring key indicators and tracking progress at the county level against key national policy goals.

Acknowledgements

This paper draws on work conducted under the auspices of a UNICEF funded public expenditure review (PER) of the Kenyan Health and WASH sectors. The views presented in this paper are the author's and do not reflect the position or policies of the Government of Kenya or UNCIEF.

The findings in this paper draw on insights from the team who conducted the review, notably: Florian Krätke, Laura Giles Álvarez, Alexandra Murray-Zmijewski, and Stanley Karuga. They also draw on reflections shared through over 120 interviews with government staff and key sector actors. I am extremely grateful to all those who gave their time and insights.

References

UNICEF and Government of Kenya (2018) *Public Expenditure Review Health, Water and Sanitation.*

Note/s

[1] The WSPs were formed following the Water Act (2002). There are currently 91 licensed WSPs, with roughly 20 million people in their service areas (WASREB, 2015).

[2] The Water Service Boards (WSBs) were formed following the Water Act (2002) and were established between 2003 and 2004.

[3] Defined as including: water storage; water works for bulk distribution and provision of water services; inter-basin water transfer facilities; and reservoirs for impounding surface run-off and for regulating stream flows to synchronise them with water demand patterns which are of strategic or national importance.

Contact details

Zach White is a Consultant with OPM's Water Team. As a consultant he has worked for a range of clients including DfID, the World Bank, UNICEF, and the Global Sanitation Fund. Previously Zach worked as a research officer for the Global and Delhi Policy teams of WaterAid.

Zachary White
OPM, Level 3 52 Cornmarket St., Oxford,
OX1 3JH, UK
Tel: +44 (0)1865 207 300
Email: zach.white@opml.co.uk
www: http://www.opml.co.uk