

Privatization of the urban water supply in Kenya: policy options for the poor

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1. *The Kenya Gazette* (2002), Supplement No 107 (Acts No 9), 24 October, pages 935-1053.

2. *The East African* (2003), May 14 and June 16.

SUMMARY: This paper considers how the government of Kenya's plans to privatize water supplies in urban areas could ensure that the needs of those living in informal settlements and of others with inadequate water provision are served. The need for reform in the water sector is evident from the years of poor performance and the growing numbers lacking piped provision. The government has chosen privatization as the main policy direction. However, privatization can cause the needs of the unserved and of low-income groups in general to be ignored. This paper discusses various policy options to secure advantage for these groups, within the framework of a privatized water sector. These include participatory sector planning, social tariffication, contractual clauses, water trust funds and support for alternative water suppliers.

I. INTRODUCTION

IN 2002, THE Parliament of the Republic of Kenya passed an important piece of legislation that proposed radical policy changes in the water sector, especially concerning water supply.⁽¹⁾ The law provided the *modus operandi* by which water supply is to be privatized. At the time, the critical issues in the Act escaped the attention of policy analysts, politicians, lobbyists and NGOs. This was probably because the whole country was absorbed in the politics of transition that culminated in the December 2002 elections. Since then, the minister in charge of water supply has expressed her intention to implement the Act. This has met with great resistance from local authority institutions (who are responsible for water supply and sanitation in urban areas) and from advocates for the poor.⁽²⁾ Local authorities are resisting the move because it will remove a substantial portion of their revenue base and their function as local service providers. Advocates for the poor suggest that privatization of the water supply will deny the poor access to this service. The fear is that those who cannot afford water under a normal market situation may have to do without, and this brings serious implications with regard to their health and livelihoods. The arguments have mainly been wrought within a political context.

This paper considers what can be done to ensure that the needs of the unserved and, more generally, of low-income households in urban areas can be met within privatization.

II. THE DIFFICULTIES IN IMPROVING URBAN WATER SUPPLIES

a. Difficulties in provision in low- and middle-income nations

WATER SUPPLY HAS long been seen as best provided by a piped system managed by a government agency. But governments in most low-income and many middle-income nations, including the Government of Kenya, have failed to provide for growing urban populations.⁽³⁾ They have failed to expand water supply systems – especially to serve those living outside the central districts – despite substantial funding available from international agencies. Their failure to manage existing supplies, including the maintenance of piped systems, usually led to large volumes of water lost to leaks and to illegal connections. Provision for collecting payments from those who were connected was often deficient, and tariffs were not increased (and often fell below the cost of provision).

The management of public utilities has often not been transparent and has been subject to political interference, which encouraged corruption at all levels. Managements have often recruited staff using criteria other than merit. Revenues have often been diverted away from the operation, maintenance and expansion of the system towards personal or political benefit. Overstaffing has been common at lower levels, while the technical and management levels have often faced a shortage of qualified personnel as a result of political interference and inadequate or unreliable remuneration.

There have also been problems with accessing finance. Public utilities have often lacked access to the capital needed for service improvement and expansion. Many have not been permitted to draw on private capital. Many public service providers also came to have large debt burdens to the point where they were financially insolvent. Most have become dependent on central government to bail them out.

The result of all this has been little or no capacity to expand to areas lacking services, replace obsolete technology, address leaks and ensure adequate water quality and quantity.

b. Urban water supply in Kenya

Rapidly growing urban populations have complicated the urban water supply situation in Kenya. Table 1 indicates that, by 1999, Kenya's urban population was close to 10 million, and included slightly more than one-third of the nation's 28,686,607 inhabitants. An increasing urban population implies increasing demand on urban service providers, including water providers. This takes place against a backdrop of a static institutional base, a dwindling revenue base, and obsolete technology for service providers in the public domain. It inevitably translates into inadequate services in the water sector.

The 1999 population census suggested that only 7 per cent of the population of the capital, Nairobi, lack access to piped water (Table 2). However, the tendency for official statistics to understate the level and adequacy of provision is well documented.⁽⁴⁾ For instance, having access to piped water and having a piped connection are two different things, especially in the informal settlements in which over half of Nairobi's population live. In these settlements, the poor rarely have piped water connections to their homes, and have to access piped water from kiosks or vendors, which is

3. This section draws on the following sources: UN-Habitat (2003), *Water and Sanitation in the World's Cities*, Earthscan, London; also Anton, Danilo J (1993), *Thirsty Cities: Urban Environments and Water Supply in Latin America*, International Development Research Centre, Ottawa; Budds, Jessica and Gordon McGranahan (2003), "Are debates on water privatization missing the point? Experiences from Africa, Asia and Latin America", *Environment and Urbanization* Vol 15, No 2, October, pages 87–114; Hardoy, Jorge E, Diana Mitlin and David Satterthwaite (2001), *Environmental Problems in an Urbanizing World: Finding Solutions for Cities in Africa, Asia and Latin America*, Earthscan, London; and Solo, Tova Maria (1999), "Small-scale entrepreneurs in the urban water and sanitation market", *Environment and Urbanization* Vol 11, No 1, April, pages 117–132.

4. See reference 3, UN-Habitat (2003); also reference 3, Hardoy, Mitlin and Satterthwaite (2001).

Urban centre	Population
Nairobi	2,143,254
Mombasa	665,018
Kisumu	322,734
Nakuru	231,262
Others	6,614,723
Total urban population	9,996,991

SOURCE: Central Bureau of Statistics (2001), *1999 Population and Housing Census, Volume I: Population Distribution by Administrative Areas and Urban Centres*, Ministry of Finance and Planning, Republic of Kenya, January, page 3-1.

Source	Number of households	Percentage
Pond	19,792	3.05
Dam	1,577	0.24
Lake	2,119	0.33
Stream/river	1,940	0.30
Spring	2,506	0.39
Well	2,654	0.41
Borehole	10,395	1.60
Piped	601,806	92.67
Jabias/tanks	6,637	1.02
TOTAL	649,426	100.00

SOURCE: Central Bureau of Statistics (2001), *1999 Population and Housing Census, Volume I: Population Distribution by Administrative Areas and Urban Centres*, Ministry of Finance and Planning, Republic of Kenya, January, page 7-

expensive and often inconvenient. The official statistics are also misleading, as they give only generalized statistics for the city. Adler's 1995 review of water and sanitation in Nairobi showed that in informal settlements, only 11.7 per cent of households have water directly available on plot and 85.6 per cent obtain water from kiosks.⁽⁵⁾ In addition, even when piped water connections are provided, there are often water shortages and the quality of the water is often in doubt.

There are also problems with regard to piped water management. In Nairobi, for example, during April–May 2003, there was no water in the piped system. This situation lasted for several weeks in some parts of the city. Other urban centres also have water shortage problems. Machakos, for

5. Alder, Graham (1995), "Tackling poverty in Nairobi's informal settlements: developing an institutional strategy", *Environment and Urbanization* Vol 7, No 2, October, pages 85–108.

example, experiences a permanent water shortage. In other cities, such as Kisumu and Mombasa, there have been several large-scale outbreaks of water-borne diseases.

For Nairobi, it is also estimated that only 50 per cent of the water can be accounted for.⁽⁶⁾ Corruption has also been reported in the water departments. As noted by Joseph Onjala: “... when the water rationing had taken root in Nairobi, it was discovered that many illegal structures ... had been built on top of water lines, and their owners have been siphoning the council water in collusion with council officers to provide car wash services etc. for many years.”⁽⁷⁾ He has also listed rampant corruption as one of the reasons why privatization of water had to be instituted in Kenya.

These deficiencies in provision and in the institutional structure needed for water management occur against the backdrop of a water policy that seeks to:

- supply water of good quality and in sufficient quantities to meet the various needs for water while ensuring safety; and
- establish an efficient and effective institutional framework to achieve systematic development and management of the water sector.⁽⁸⁾

According to one of Kenya’s high-ranking water officers, urban water supply in Kenya could not operate on a sustainable basis due to problems related to insufficient and unreliable revenue and government bureaucracy.⁽⁹⁾ The government therefore saw the need to reform the water sector and, in doing so, to de-link its own institutions from the provision of water and sanitation.

III. PRIVATIZATION AS A POLICY RESPONSE

a. Privatization of water in Kenya

THE GOVERNMENT CHOSE the path of privatization for its reforms. In this, it followed what has become a general response in the contemporary policy domain, namely the privatization of public sector enterprises in Kenya (and elsewhere). A UN study defined privatization as: “...the entire process of expanding the sphere of the market through a host of regulations that create an enabling environment for free enterprise to operate as a strategy for sustainable economic development.”⁽¹⁰⁾ This is expected to foster efficiency and encourage investment in infrastructure and services for the overall benefit of human settlements. A recent UN review of water and sanitation in cities highlighted the many different forms that privatization in the water sector may take, including service contract, management contract, affermage contract, lease contract, concession contract, build-own-transfer contract, divestiture, joint venture and multi-utility contract.⁽¹¹⁾ Water privatization has become a common response in much of sub-Saharan Africa, although the forms that this takes differ considerably.⁽¹²⁾

In Kenya, privatization in the water sector in the form of commercialization has been tried, but with no significant gains. Individual municipalities, including Eldoret, Kericho and Nyeri,⁽¹³⁾ took the initiative to form private companies to undertake water supply in their respective jurisdictions. This marked the initial attempts to address the problems in the water sector through privatization, at a time when no comprehensive policy framework had been put in place. It also demonstrates an earlier understanding that privatization is probably the policy makers’ preferred option in reforming the country’s water sector.

6. Onjala, Joseph (2002), “Good intentions, structural pitfalls: early lessons from urban water commercialisation attempts in Kenya”, CDR Working Paper 02.2, Center for Development Research, Copenhagen.

7. See reference 6.

8. Donde, Fredrick Odhiambo (1997), “Water supply situation in Kenya”, Partnership in the Water Sector for Cities in Africa, report of the Cape Town consultants, United Nations Centre for Human Settlements (Habitat), Nairobi.

9. See reference 8.

10. UNCHS-Habitat (1998), “Privatisation of municipal services in East Africa: a governance approach to human settlements management”, United Nations Centre for Human Settlements (Habitat), Nairobi.

11. See reference 3, UN-Habitat (2003).

12. See reference 3, UN-Habitat (2003).

13. See reference 10.

14. See reference 1

15. Bold emphasis added by author.

16. See reference 3, UN-Habitat (2003); also Johnstone, Nick, Libby Wood and Robert Hearne