Regulation of water and sanitation services in Kenya is well on track following the recent completion of a strategic plan for the Water Services Regulatory Board (WSRB). WSRB is the national agency charged with the responsibility of regulating water and sanitation services in Kenya, a function shared with the Water Services Boards (WSBs). Both WSRB and the WSBs operate under the policy direction of the Ministry of Water and Irrigation.

The strategic plan completed in April 2005 is the first major step taken towards defining the regulatory agency’s roadmap and articulating a supporting implementation framework for the regulator.

Through the strategic plan, WSRB has set its sights on distinguishing itself as a leading regulator for the provision of WSS services in Africa. The overarching concern of the water services regulatory framework in Kenya is to improve the overall living conditions by improving water and sanitation services. Consequently, the approach to water sector reforms embraces the devolution of government authority over the sector and empowers players operating at different levels. This, coupled with a decentralized institutional framework, underpins the Water Act 2002 which separates the sector’s roles of services provision, policy formulation, and regulation in the sector in order to deliver value to water consumers in an efficient and cost-effective manner.

As the national regulator of WSS services, WSRB oversees the implementation of government policies and strategies relating to the provision of WSS services, advising government on sector policies, setting standards and guidelines for tariffs and prices, providing mechanisms for handling complaints, monitoring the performance of WSBs as well as enforcing regulations on water quality and effluent disposal standards.

The recently-introduced function of regulating water and sanitation services in Kenya is shaping up fast, as reforms of the water sector continue to gather momentum. This issue of Kisima discusses some of the key challenges in regulation facing the new institutions established to manage delivery of water services in the country. The issue also compares experiences from regulating the water sector in Zambia, and the power sub-sector in Kenya.

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Kisima is Swahili for water well. The Kisima newsletter is a wellspring of knowledge and information to complement the regular Kisima series of seminars that have become a regular informal forum for water and sanitation stakeholders in Kenya. The aim is facilitate sharing of field experiences and lessons, good practices and breakthroughs on pertinent issues in the water and sanitation sector, especially those affecting poor and disadvantaged communities.
Regulation of utility services in Kenya is a relatively new phenomenon. In the water sector, regulation is enshrined in the sector reforms being implemented by the Ministry of Water and Irrigation since March 2003. The Water Services Regulatory Board (WSRB), which is the regulatory agency for WSS at the national level, is already in place. WSRB is run by an 11-member Board of Directors representing a large number of sector stakeholders. To enhance efficiency and deliver value to the stakeholders, the WSRB has a management staff of seven and several support staff.

At the national level, WSRB is responsible for implementing government policies and strategies on WSS. It is also responsible for issuing licenses to Water Services Boards, determining service standards, advising the Ministry on sector policies, providing a mechanism for handling complaints and providing tariff guidelines.

No doubt, this is a huge task for a new body, especially in view of the increased public interest and expectation for effective WSS services heightened by the radical changes in the water sector. Many challenges lie ahead for the regulatory body. For instance, WSRB will have to rapidly build its internal capacities in areas such as resource mobilization; recruitment of professional personnel and build strong governance structures to enable it discharge its responsibilities effectively in order to gain stakeholder support.

In relation to the stakeholders, WSRB will need to urgently advise government on policy options towards water provision and sanitation services given the current low coverage. It will need to put in place mechanisms for dispute resolution to resolve disputes which may arise between the Water Services Boards (WSBs) and WSRB and between WSBs and Water Service Providers (WSPs). There will also be need to address water tariffs with a view to meeting the different social needs of consumers, as well as create mechanisms for communicating with the sector stakeholders.

One of the approaches that WSRB can adopt is to benchmark some of the best practices locally, regionally or internationally. There are many lessons to be learnt from the electricity and communication sub-sectors locally, or from the Zambia water regulatory agency, NWASCO whose experiences are highlighted in this issue.

Obviously, regulation provides the water sector with a huge potential to substantially improve the lives of Kenyans by ensuring access to clean water. Effective and efficient performance of WSRB roles and responsibilities will go a long way in ensuring the government achieves its objective of providing water for all.

Prof. George Krhoda
Permanent Secretary
Ministry of Water and Irrigation

Established on March 18, 2003, WSRB has so far issued interim licenses to the seven WSBs in the country with Nairobi and Rift Valley Water Services Boards each, having a five-year license, while Lake Victoria North, Lake Victoria South, Central, Northern and Coast Water Services Boards have one-year licenses. WSRB intends to issue all WSBs with licenses of at least five-years after the process of transfer of assets to the WSBs by the Ministry of Water and Irrigation comes to completion on July 1, 2005.

WSRB’s scope is broad. The guiding principle is to improve WSS services. Water Service providers therefore have a responsibility to provide services at an agreed quality and in a sustainable manner. Herein lies the first challenge for the water services regulatory regime together with the WSRB. Given the number and diversity of schemes qualifying as WSPs, estimated to be between 2800 and 3500 countrywide, and the lack of reliable data concerning these schemes, the sector needs guidance from the WSRB on the process of establishing new WSPs and on how to transform the existing providers namely, the Ministry and National Water Conservation and Pipeline Corporation.

Closely related to this is the need for the regulator to identify the right type and institutional level of regulatory intervention for Small Scale Independent Providers (SSIPs) while striking
an effective balance between encouraging such flexible form of service provision and guaranteeing affordable prices and good quality services.

At the same time, WSRB will need to put in place mechanisms to deal with issues such as insufficient water quantity provided by the WSP to the SSIP in case of scarcity, or groups of WSPs or SSIPs colluding to charge excess tariffs. Already, results of a comparative study of independent service provider water rates in nine countries shows that Kenya’s SSIP prices are more volatile and higher than prices in other African countries.

From the onset, the regulator proposes to group the schemes into clusters to be able to achieve synergies in the operations as well as facilitate the performance setting and monitoring process. WSRB is currently working on details of the terms and conditions of service provision agreements for the different types of WSPs as well as the institutional responsibilities for performance monitoring, reporting and rule making. There is also need to harmonize the WSRB’s and WSBs’ roles and responsibilities in order to prevent conflicting responsibilities and contradictory processes.

One of the Agency’s priorities is to develop sector guidelines that will lead to the unbundling of tariffs to ensure that they meet the social and economic objectives of the sector. Currently, the average tariff charged on water is Kshs 25/- per cubic meter compared to a production cost of Kshs 40/- to 100/= per cubic meter for the same amount. Pressure is already mounting from some Providers who argue that they cannot service their loans based on the water tariffs currently in use.

However, tariff increases are not a panacea. In fact, it is priority for the regulator to ensure that the WSPs deliver more efficient services, so that tariff increases will not be necessary to achieve

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Water tariff adjustments in Zambia are linked to sustainability of the systems and to the performance of the providers. In so doing, the Zambia National Water and Sanitation Council (NWASCO) ensures that social interests are taken into account and that consumers do not pay for the inefficiencies of the service providers.

In a country where more than half the population is poor, NWASCO has successfully developed guidelines on mandatory WSS service provision to the peri-urban areas which account for almost 30 percent of the urban population. The guidelines are complete with service standards and tariff setting guidelines.

Together with this has been the establishment of the regulator-supported Water Watch Groups (WWGs) which provide a platform for addressing complaints between consumers and providers on the one hand, and represent the regulator on the ground on other hand. The WWGs are made up of volunteers who represent different community groups. In addition to playing watchdog, the WWGs sensitize customers on their responsibilities in the sector. Within the regulatory body itself, consumer interests are well represented.

NWASCO’s 16-member-Board is nominated by the Minister for Energy and Water Development, and comprises a mix of government, consumer and private sector representation. The Ministry of Local Government and Housing supervises the local authorities to ensure WSS provision through commercial utilities.

The representation of a large number of stakeholders in the Board ensures that the risk of capture is kept at a minimum and a high level of transparency is secured. NWASCO’s autonomy was demonstrated by the Board’s approval of a 100 percent tariff hike just before Zambia’s 2002 general elections. Though maintaining a Board of such composition ensures high transparency, it is costly to run and nomination of members is time consuming.

NWASCO is financed by commercial utilities which pay one percent of their turnover as licence fees to the regulator. Financing the Board through levying the commercial utilities gives NWASCO considerable financial autonomy, an approach that the regulator adopted from the beginning since government funds were only available during the start-off period. Sector information sharing is another key achievement precipitated by regulating the sector. Information on service provision is generated nationwide and yearly reports issued. The information also compares the providers through benchmarks, and is accessible to all interested groups.

Unfortunately, not all state institutions recognise the legal authority given to NWASCO. Consequently, when the providers are instructed by NWASCO, the instructions are often perceived as interfering with the powers of the ministries even when the objective of the action is well shared.

Besides, NWASCO has come under scrutiny several times since the regulator’s role of advocating for the poor, promoting low cost technology and harmonising low cost investment is seen as a conflict of interest to the water sector reform’s commercialization objective.

By Judy Gikaru, Development Communications Consultant
WHY REGULATE WATER SERVICES?

In Kenya, the first priority for regulation is to ensure that high levels of services are provided to all consumers at an acceptable price. Generally, regulation has to strike a balance between various potentially conflicting objectives. First, it has to ensure a balance between setting financially viable tariffs that provide sufficient funds for WSS infrastructure maintenance and new connections on the other hand, and the access and affordability of the services to the low income consumers, on the other hand.

It is often argued that given the scarcity of water as a resource, water prices must give the right signals to consumers. Experience shows that if water is availed too cheaply or for free, it may be easily wasted. Prices must therefore also reflect their value to the different consumer groups. The commercial versus the social concerns of fair and affordable WSS services are particularly important in Kenya, considering that the national coverage of access to safe drinking water by the urban and rural population is just 75 percent and 50 percent respectively.

Given the delicate nature of a regulator’s task in balancing diverging objectives, it is often argued that the regulator should be an ‘arm’s-length’ away from the government, the industry being regulated and lobby groups. This is because undue interference may divert the attention of the regulator from its key objective to seek long-term benefits for the sector and may result in the regulator becoming subject to short-term political considerations and powerful lobby groups’ interests.

Nevertheless, the efficiency of the regulatory agency is often synonymous with the regulatory tools adopted by the regulator. For example, where detailed licenses and, or contractual agreements are selected, the authority of the regulator encompasses monitoring and enforcement of the contracts. This set of agreements require significant amount of data at the time of drawing the agreements, but they also provide greater predictability from the operator’s perspective. A regulator who opts for a contract which specifies some aspects of regulation and leaves others open enjoys some discretionary decision-making power. This is a convenient way to go if not all data is available initially. Nonetheless, the approach requires the establishment of sound data collection mechanisms and predictable decision-making processes. On the other hand, regulators who use contracts with only few aspects of the regulation specified have a comprehensive scope of discretionary decision-making power. This framework requires significant level of regulatory capacity, thus it is not recommended for less mature regimes.

In order to ensure that a regulator fulfills their role and is efficient and effective, a control system has to be set up to ensure that the agency is accountable. At the same time, the control has to be policy-neutral and professional. The government or Ministry to which the regulator reports is only one option for regulatory accountability. Other options include the parliament, the media as well as an effective appeals mechanism that allows the regulated industry to challenge the regulator’s decision.

Regulation contributes to the right level of checks and balances if the regulatory agency can ensure its financial autonomy, builds strong governance structures, is able to create incentives for providers, and can mobilize public support for its mandate. When regulation is predictable and transparent, it contributes immensely to stability in the sector being regulated. In water and sanitation services, regulation should translate in a range of benefits for consumers and the sector in general. At the very least, water consumers should expect better services and improved living conditions.

By Judy Gikaru, Development Communications Consultant
Like the water sector, reforms in the electricity sub-sector in Kenya were precipitated by increased consumer demand and cries for improvement in the quality of service. The reforms in both sectors also sought to separate policy-setting from the regulatory and commercial functions; create competitive conditions in the sub-sector and invite private sector participation.

Rationalisation of the power sub-sector led to the creation of the Kenya Electricity Generating Company which oversees power generation, and the Kenya Power and Lighting Company (KPLC) responsible for power transmission and distribution. The Electricity Regulatory Board (ERB) was established in 1998 to regulate the generation, transmission and distribution of electric power. ERB’s functions include setting tariffs and tariff structures; enforcing environmental, health and safety regulations; investigating and resolving complaints; ensuring genuine competition; and approving power purchase, transmission and distribution service contracts. ERB generates revenue by levying a charge of three cents per kilowatt hour of power.

ERB is run by a seven-member board chaired by an executive chairman who is appointed by the president. Six members are nominated by the Minister for Energy, including the Permanent Secretary and two representatives from the private sector.

Notable about regulation in the electricity sub-sector is that the expected autonomy of the regulator is limited largely because there is an overlap of responsibilities vested by the two Acts which define the legal status of ERB, namely the Electric Power Act (EPA) and the State Corporations Act (SCA). For instance, licensing of electrical works contractors continues to be carried out by the Ministry of Energy, despite this being a regulatory function. This is a completely different practice from the water sector where the responsibility of licensing the Water Services Boards (WSBs) rests with the Water Services Regulatory Board, while the appointment of Water Providers is carried out by the WSB. At the same time, authority is vested in the Minister to impose fines on the licensees upon advice by the ERB, yet there exists no provision for recourse if the Minister fails to act on such advice.

A major achievement of the ERB has been the development of the Kenya Grid Code in 2004. The Grid Code sets out detailed arrangements for the regulation of the electricity supply industry to be observed by persons who generate transmit, distribute, supply or use electrical energy. Through a participatory process, the Grid Code was subjected to stakeholder review in mid 2004. The Board has also prepared a Retail Tariff Review Policy.

The presence of the ERB presents customers with a complaints handling mechanism. The ERB determines disputes through hearings at the Boards’ tribunal, although customers are advised to try and resolve their complaints with the service provider first, before going to the ERB. The ERB has asked KPLC to submit a Customer Charter for consideration and adoption. Attributes in such a charter would constitute invaluable performance measures and complaint’s procedures.

By Judy Gikaru, Development Communications Consultant
The Nairobi Water Services Board (NWSB) on June 29, 2005, entered into contracts with four more Water Service Providers (WSPs) that will be responsible for the provision of water and sewerage services in Kajiado, Kiambu, Machakos and Thika districts, respectively. The new WSPs include the Olkejuado Water and Sewerage Company for Kajiado District; Kiambu Water and Sewerage Company for Kiambu District; Masaku District Water and Sewerage Company for Machakos District; and Thika District Water and Sanitation Company for Thika District.

**Nairobi City water firm completes billing campaign**

The Nairobi Water and Sewerage Company (NWSC) recently wound up a five-week public campaign that has helped resolve over 40,000 water billing related problems for its consumers. The aim of the campaign was to resolve contentious bills, clean up customer data, and strike a bargaining note with its customers. Following the campaign, the Company hopes to increase revenue collection by 10 percent, to Kshs165 million a month, and reduce the Kshs1.2 billion debt owed by consumers by 50 percent.

**Shot in the arm for Water Services Trust Fund**

The Water Services Trust Fund (WSTF) has received Kshs 351 million from SIDA, Danida and the Government of Kenya for the period - April to June 2005. The funding is part of a five-year bilateral agreement between the two development partners and the Kenyan government in the ongoing water sector reforms. The funds will go towards supporting community-based water and sanitation projects in areas without adequate services. WSTF assists in financing the provision of water and sanitation services to poor populations. Projects funded by the WSTF therefore must be initiated by the community; have a focus on poverty eradication; be sustainable; and emphasize gender equity. During the last one year, WSTF has disbursed over Kshs 400 million to 54 water projects in Kenya.

**Water Service Boards sign performance contracts**

The boards of the 13 water institutions in the country on June 30, 2005, signed performance contracts with the Ministry of Water and Irrigation. In effect, heads of the institutions agreed to be held accountable by the government in the implementation of the various components of the water sector reforms in their dockets. The performance contracts were signed between the Permanent Secretary, on behalf of the Ministry of Water and Irrigation and each of the Chairmen of the seven Water Services Boards, the Water Services Trust Fund, the Water Resource Management Authority, the National Water Corporation, the National Irrigation Board and the Kenya Water Institute.

**Water managers wanted**

In an effort to appoint qualified and experienced staff to manage the water sector reforms process, most of the new water sector institutions have recently embarked on a management staff recruitment exercise. The Water Services Trust Fund (WSTF), the Water Services Regulatory Board (WSRB) and some Water Services Boards (WSBs) have advertised the positions of Chief Executives, Finance, Technical and Human Resource Managers. Many of these positions are currently held by staff seconded from the government. It is expected that the positions advertised will be filled during the third quarter of 2005.

**World Lake Conference coming to Kenya**

For the first time in close to 20 years, the World Lakes Conference (WLC) will be held in Africa, from October 31 to November 4, 2005. The theme of the 11th WLC is “Management of lake basins for their sustainable use: Global experiences and African issues”. This conference will review progress on ongoing lake basin initiatives as well as set future goals for lake-basin management in general and Africa in particular.
all revenues collected from consumers in addition to the funds allocated from the Government. These resources will allow the WSRB to recruit professional staff from the job market, a critical pre-requisite to the success of WSRB.

Regulation functions where the agency can ensure its financial autonomy, builds strong governance structures, is able to create incentives for providers, and can mobilize public support for its mandate. In this context, WSRB will need to move in urgently to mobilize the support of its key stakeholders many of whom are still unaware of the roles and responsibilities of the regulator, and how regulation of WSS services will impact on their businesses. It is paramount that the WSRB gains credibility in all these areas in the near future in order to be able to execute its mandate.

When properly implemented, regulation of WSS services in Kenya should translate in a range of benefits for consumers and the water sector institutions alike. As is the case of Zambia, water consumers should expect better services such as prompt attention to customer concerns as well as improved access for the poor.

On the other hand, the institutions being regulated will set clear targets for investments, improved operation and maintenance and greater customer satisfaction and be held accountable for underperformance.

However, it cannot be expected that water sector regulation will automatically lead to a situation where things are functioning more smoothly than before if the sector players are not aware of the need for increasing cooperation and consultation. These elements are crucial to activate the high potential of a new regulatory mechanism in the sector.

Understanding Small Scale Providers of Sanitation Services: A case study of Kibera
Water and Sanitation Program – Africa, June 2005

Little is understood of the work of Small Scale Providers of Sanitation Services and their central role in sanitation provision but now researchers and urban planners are starting to pay attention. Focusing on sanitation providers in the informal settlement of Kibera in Nairobi, this field note provides better understanding of who the SSPSS are, the range of services they offer, and recommends options for improving the quality and efficiency of their services. The field note was prepared by Sabine Bongi and Alain Morel, based on a working document “Les petits opérateurs indépendants de l’assainissement à Kibera (Nairobi)”. Information was gathered through field research in partnership with Maji Na Ufanisi.

Rogues no more? Water kiosks operators Achieve credibility in Kibera
Water and Sanitation Program – Africa, June 2005

This field note describes practical actions taken to formalize the independent marketplace of water kiosk operators serving poor households in a large urban settlement in Nairobi, Kenya. The establishment of an association enabled a large group of local water operators to find common ground and work together to improve their credibility, start a process of regulating their own service and begin to develop a productive dialogue with the utility. The field note was prepared from an original fieldwork report by Shagun Mehrotra, with final text by Clarissa Brocklehurst, under the team leadership of Alain Morel.

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This article is adopted from a presentation: “Regulation of Water Services in Kenya.” By Anja-Nadine Koenig, Economist, GTZ.
Q. What are WSRB’s priorities in its regulation function given Kenya’s current water supply and sanitation situation?

A. The current priority for WSRB is to recruit properly qualified staff to enable it discharge its responsibilities. The next priority is to develop standards and guidelines which WSBs and WSPs will be required to comply with in addition to conditions set out in the provisional licenses.

Q. What strategies will WSRB use to harness stakeholder involvement in order to gain acceptance and support?

A. WSRB intends to hold sensitization seminars and workshops with stakeholders with the aim of getting the stakeholders to understand the role of WSRB in the water and sanitation services industry and therefore the need for the stakeholders to support WSRB in the endeavor to regulate the industry.

Q. How will WSRB be funded?

A. WSRB is initially being funded through the parent Ministry of Water and Irrigation and eventually WSRB will charge levies on the basis of the quantity of the water sold to consumers by the WSPs through WSBs.

Q. How does WSRB intend to provide for the water needs of the poor in view of the fact that the poor in Kenya are currently paying almost 16 times more for water?

A. The WSRB intends to regulate the tariff regime to enable the poor especially those living in slum areas get wholesome water at affordable prices. This way WSRB intends to contribute towards the achievement of the MDG by 2015.

Q. What challenges do you envisage as WSRB strives to find an acceptable balance between commercial and social objectives?

A. The first challenge is to get people to accept the principle that water is not free and the user pays. The WSRB will endeavor to ensure that the poor communities are not denied access to water and sanitation services. It will be noted that the Water Services Trust Fund has been set up to address the needs of such poor communities.

Q. What will you do to ensure that WSRB does not become inefficient and too expensive?

A. The Water Act 2002 spells out the role of WSRB. The WSRB is required to sign a performance contract with the parent Ministry of Water and Irrigation and WSRB will therefore be required to deliver according to the agreed targets. This arrangement will reduce the possibility of WSRB becoming too expensive and/or inefficient.