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*Water Privatization in Kenya*

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## Executive summary

Whereas the Kenya government seeks to move away from direct provision of water services in favour of ceding control to autonomous water service providers, this policy shift is fraught with ambiguities that may not augur well for the consumers, especially the poor.

The Water Act 2000 broadly sets out the legal implementation framework for implementing this policy but is weak on clearly elaborating and outlining government policy on privatisation in the water sector.

The Act recognises the role of independent water service providers and identifies the Water Services Regulatory Board (WSRB) as the statutory organ established to regulate their functions principally through developing guidelines on applicable tariffs for the provision of water services.

At the level of local Authorities in Kenya, the impetus appears to be more towards commercialisation under which efficiency in service delivery can be attained whilst ensuring that respective Local Authorities retain a measure of control. It is now a common trend for Local Authorities to form municipal companies run on strict commercial lines under “agency contracts” from the parent Local Authority.

The emphasis by local authorities is towards ensuring that under the framework of commercialisation, companies formed to provide water plough back the bulk of their earnings into improving service delivery while allowing local authorities to retain part earnings to cover costs such as personnel expenses.

This is primarily geared towards ring-fencing water revenues from diversion to non-water areas. However, this policy while helping ensure a better and more efficient management of water resources, cannot ensure large-scale commercialisation of water services. Local Authorities would need to invest substantially in improving the infrastructure to cover substantial numbers of consumers who are critical to the viability of commercialisation.

Different stakeholders have suggested various views on how this can be achieved. For instance, the Kenya Basic Rights Campaign – a coalition of civil society groups campaigning for access to basic rights like water– maintains that municipal water companies can expand their share holding through sale of equity to other parties which would guarantee access to resources to improve on service delivery.

There have been suggestions that foreign firms involved in provision of water services could also play a role. However, there is caution and fear that such companies could end up pocketing a disproportionately large chunk of water revenues for providing non-capital intensive services such as billing and revenue collection which Local Authorities, through municipal companies, could manage with a more efficient management. Even though this may necessitate such foreign firms injecting substantial investment on water projects, their entry would require clear reflection on the implications to Local Authorities.

This study documents that water companies formed by various municipal authorities can deliver economically viable services given a clear institutional and operational framework. Articulating such a framework is therefore an important starting point.

Still, there is need for serious consideration of governance issues in the management of the water sector and towards defining of a sound regulatory mechanism which does not compromise service delivery, the ecology and national sovereignty.

The example of both Nyeri and Eldoret – two Kenyan towns that have commercialised water services – demonstrates an important window of opportunity for Local Authorities which presents important lessons for other key Local Authorities such as Nairobi. The workings of municipal companies involved in water provision provides opportunity for improving efficient service orientation. The engagement and involvement of foreign firms should therefore be based on a clear assessment of value addition that this would have over and above municipal companies.

To inform the Kenyan water debate, the study examines difficulties encountered in water privatisation in Ghana and advises on the need for caution and reflection to avoid the pitfall of increasing costs which burdens the poor without adequate safeguards.

The experiences of Germany, South Africa and Nigeria are also examined to provide a contextual review on challenges and opportunities. Ultimately, it must be recognised that countries like Kenya must contend with pressure and prescriptions from a host of actors under both bilateral and multilateral arrangements in re-organising the water sector. This necessitates greater vigilance and clarity in taking decisions on the management of water resources.

## **1.1 Historical context**

Kenya gained independence in 1963. At the time, existing water supply systems were largely sufficient in meeting the needs of the country's population. However, as the population grew, demand began to outstrip supply.

The Ministry of Water Development was thus formed to develop and oversee the country's water resources. The government emphasised a policy of implementing water projects on self-help basis in which local communities took control.

By the 1990s however, it emerged that this strategy was inadequate and the government lacked sufficient resources to match communities' water needs. It was against this background that need arose to revise the national water policy. This culminated in the *National Policy on Water Resources Management and Development Sessional Paper No. 1 of 1999*, which was first drafted in 1992. Other policy blueprints include the *Water Act 2002*, the *Country Strategy on Water and Sanitation Services* and *Country Strategy on Integrated Water Resources Management*.

## **1.2 General overview**

This study reviews and analyses the status of water privatisation in Kenya. Since independence, the provision of water has been largely vested in local authorities and the central government. However,

economic reforms initiated at the behest of the World Bank and IMF since the late eighties have laid greater emphasis on government divestiture from service delivery in many sectors based on a greater recognition of the role of the private sector.

Water is one of the strategic sectors that has been targeted for reform as part of this wider divestiture by government from service delivery in the public sector. The policy framework paper on privatisation published in 1992 and subsequently updated in 1994 and 1996 by far represents the clearest determination by government to privatise the water sub-sector alongside other sectors such as telecommunications. Since then, other policy and legislative frameworks principally, the Water Act 2002, have been developed to strengthen and clarify the government's views on infusing efficiency in the water sector.

But for a long time, the absence of a law on privatisation establishing legal parameters and framework on divestiture has been a major area of weakness and concern often creating uncertainty and vacuum. This could partly explain the problems encountered on water privatisation. The draft bill on privatisation which is due to be tabled before parliament represents the government's determination to elaborate on management of the privatisation framework.

In spite of these steps, it must be recognised that Kenya is yet to develop a well spelt out policy on water privatisation and management of water resources. The role and relationship of various government departments is still not well defined often resulting in conflict and competition over control and autonomy. As already noted, the absence of a well ventilated statute on privatisation has left the legislative framework spread across a multiplicity of often competing and contradictory statutes. This is an area that requires immediate and early attention to ensure a better defined framework on managing the process of water privatisation. There are indications of determined efforts in this respect.

Since the articulation of the policy framework on economic reforms (1996-98), the National Development Policy (1997-2001) and the National Water Policy (1998), the government's emphasis has favoured increased community and private sector participation. At the same time, there has been emphasis on evolving an enabling institutional framework that vests increasing autonomy on Local Authorities in the management of water resources.

However, there are still outstanding concerns over the suitability of full-fledged privatisation of Kenya's water sector. Complete privatisation in the form of ceding control over supply of water to private enterprises has been opposed on the basis that it would disadvantage the poor at the expense of consumers with purchasing power.

Understandably, the focus in Local Authorities involved in privatisation has been a focus on emphasising commercialisation based on an application of business principles of sustainability in managing water resources. Most Local Authorities are convinced that commercialisation would ensure efficient provision of water at affordable prices.

In the main, the predominant challenge facing Kenya in the privatisation of her water resources is the need to strike a balance between achieving market efficiency vis-à-vis promoting social equity on access to this vital resource especially by the most vulnerable sections of the population.

### 1.3 Introduction

Kenya's development of the water sector has been based on the fact that water is a fundamental human right and basic need essential for ecological and socio-economic development.

Notwithstanding the government's determination to supply adequate water in both urban and rural areas, efforts have been hampered by administrative incompetence, bad governance and dwindling of funds against an ever-increasing demand for water to meet consumption, industrial and agricultural needs. For instance, only 540,000 hectares is under irrigation against a potential 690,000 land that can be irrigated. UNEP's projects Kenya's irrigation requirements will reach 10.7 billion cubic metres by 2030 which further compounds the existing challenge given that most of the country's irrigation schemes are dormant.<sup>1</sup>

These schemes include Hola, Kano, Bunyala, Yatta, Perkerra, Ahero, and Mwea. After registering impressive performance in the 1960s and 1970s, these schemes lapsed and can no longer secure national self-sufficiency.

Currently, Kenya is a net importer of the grains even though existing water resources can be used to irrigate more land for grain production. Overall, a dwindling in government spending on water has reduced access because growing demand has been met with limited investment either in new water projects or maintenance and rehabilitation of existing water facilities.

In past years, the government showed little enthusiasm in forging close links with civil society organizations to improve water provision. For example, efforts to fence off the Entarara Springs in Loitokitok, Kajiado whose water emanates from Mt Kilimanjaro were frustrated.<sup>2</sup>

The Netherlands Development Organization (SNV) invested millions of shillings to protect the springs but the Provincial Administration was reluctant to assign personnel to guard this ecologically sensitive area. On the contrary, fencing material was routinely stolen thus frustrating this project.

In view of this neglect over the years, it is now estimated that Kenya needs to invest Kshs Sh300 billion (\$4 billion) to ensure access to clean and safe water by all Kenyans. This is almost the equivalent of the country's total annual national budget.<sup>3</sup>

Nairobi alone requires a staggering \$150million (Sh11billion) while Mombasa, Kenya's second largest city and a major tourist attraction requires \$ 200 million (Sh15 billion). Kisumu, Kenya's third largest city which lies on the shores of Africa's largest fresh water mass, Lake Victoria!, requires \$50 million (Sh4 billion).

The paltry annual government spending of Ksh200 (\$2.5) per Kenyan on water would need to be vastly improved through greater investment on improving access to water.

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<sup>1</sup> *Africa Environmental Outlook*, UNEP, 2001

<sup>2</sup> A personal experience as a journalist

<sup>3</sup> *East African Standard*, July 28, 2003, tabulated Kenya's water woes with these figures

Over and above this limited government spending, inefficiency and corruption have been further blamed for the current situation. Even in cases where commercialisation has taken off on a sound note, there are still governance issues that remain to be addressed. For instance, the Nyeri Water and Sewerage Company, a private company fully owned by the Nyeri Municipal Council to manage water supplies in the town continues to lose an estimated 40 per cent of its water to leakages and diversion.

According to a joint report prepared by the World Bank and Ministry of Water, “ only about 42 per cent of households have actual connections serviced by Nairobi City Council Water and Sewerage department. Unaccounted water is in excess of 50 per cent”.<sup>4</sup>

#### **1.4 Privatisation of public goods and services: A Kenyan overview**

Privatisation is the generic term used to describe a range of policy initiatives meant to alter ownership or management away from the Government in favour of the private sector.<sup>5</sup> It is the nature of privatisation to entail a massive and radical reallocation of available productive resources, as it is a tool of attaining the expansion of private markets and business consensus.

Privatisation is well exemplified in the workings of transnational corporations and global business conglomerates which seek buying out public goods, which traditionally, have been the preserve of the public sector.

It has been argued that privatisation of public goods and services injects efficiency since governments are traditionally not suited for business. Privatisation is said to enhance efficiency and financial discipline. However, for many governments, privatisation is seen as an opportunity for injecting more investment in the public sector.

In Kenya, privatisation first became a major policy tool in the 1980s but the results were mixed. Corruption and a lack of a clear framework frustrated efficient disposal of assets such as the sale of staff houses by the Kenya Railways Corporation in the 1990s. The houses were sold at below market rates in insider trading before being disposed off at colossal sums.

At the same time, and as a consequence, the corporations 6,400 Kenya Railway workers who were retrenched from service could not be paid their terminal dues because the Ksh1.6 billion (about 20 million Euros) meant to finance their 'retrenchment' arising from the sale of the state corporation's assets was unavailable.

In other instances, strategic state assets have been sold off to persons other than the highest bidders as was the case with the sale of the Kenya-Milling Corporation, Sirikwa Hotel and Kericho Tea Golf Hotel shows. (Anyang Nyong'o *et al*).

The Kenya Tourist Development Authority for example, sold its shares through pre-emptive rights in Kericho Tea Hotel for Ksh15 Million. The buyer, Sololo Investments, was associated with big

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<sup>4</sup> The East African Standard, February 29, 2004

<sup>5</sup> *The context of Privatization in Kenya* (Anyang' Neon' (Ed) *et al*, Academy Science Publishers, 2000, Nairobi

names in the then government. Even though the lack of transparency in this sale was questioned by the Auditor and Controller General, the government refused to initiate any prosecution as recommended.

Often, privatisation is confused with liberalization. In the latter, the government can retain ownership of public enterprises but commercialise them in pursuit of efficiency. This could be done through improved management and pricing-based criteria. The bottom line in such cases is that neither public ownership nor public management shifts. This appears to be Kenya's chosen path on the provision of water services as opposed to outright privatisation through ceding control to private enterprises.

In Kenya privatisation has been undertaken through different frameworks which have included:

Public offering of government shares in a state - owned enterprise as was the case with Kenya Airways; private sale of shares as was the case with the sale of the Kenya Seed Company or pursuit of private investment in public enterprise as was the case with Vodaphone in Kenya Extelcoms.

Privatisation has also been pursued through the sale of the assets of an enterprise by government.

Other methods of privatisation feature reorganization or breaking up of an enterprise into component parts pending the big sale. The giant Kenya Power and Lighting Company (KPLC) has already undergone such breaking up.

Privatisation began with the IMF - World Bank imposition of structural adjustment programs (SAPS) in the 1980s that forced governments to free markets and pull out of loss making state enterprises whose lifeline was government subventions.

State divestiture was meant to strengthen the market economy by removing distortions in the market occasioned by the presence of the government. Joseph Stiglitz a former World Bank chief has poked holes on this thinking, pointing out that Western countries have pushed poor countries to undertake reforms they themselves are not willing to for fear of political backlashes.<sup>6</sup>

## **1.5 Kenya's water policy framework**

In the years immediately after independence, the Kenya government embarked on improving access to safe and clean water. In subsequent years, a goal was set to secure *water for all by 2000*. This ambitious target was however missed and today only an estimated 1 million Kenyans out of a total population of 31 million have access to clean water.

The move towards privatisation and redefining the role of government in provision of water can therefore be seen as a recognition of its own limitations and shortcomings. Even though the government indicates that privatisation does not constitute a policy component on the sector, it is a discernible feature of its shift on water provision.

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<sup>6</sup> *Globalization and Its Discontents*, Stiglitz, Joseph, WW Norton & Company, New York, 2002



But the government has been at pains to distinguish between privatisation and commercialisation. It favours the latter and is keen on the formation of autonomous and competent water service providers under which Local Authorities still maintain leverage and control.

Through commercialisation, the Water Act requires local authorities to form autonomous water and sewerage companies with independent boards of directors to provide water services and re-invest (ring fence) water revenues in service delivery improvement.

However, the companies will not own the water resources but their licensors currently constituted as regional Water Service Boards. The boards are also vested with powers to license private water companies which could be a potential source of conflict with Local Authorities.

Increasingly, more bilateral donors are providing funding support to Local Authorities. The French government has for instance released to the Kisumu Water and Sewerage Company, Sh1.3 billion out of a Sh1.8 billion grant to fund the city's privatisation of water and sewerage services.<sup>7</sup> The balance of Sh500million is scheduled to be released to the local authority in April 2004.

This interest by bilateral donors could veil the enthusiasm of foreign private firms keen on investing in water provision in various Local Authorities. In 2002, the French water giant Generale des Eaux's proposed to take charge of Nairobi's chaotic water billing system. The offer was rejected because there was little interest in rehabilitating the dilapidated infrastructure through which the city council continues to incur massive losses.

The experiences of Local Authorities which have embarked on commercialisation such as Nyeri, Eldoret and Kisumu (*see case studies*) are often cited as examples of how efficiency can be infused without ceding away control to private enterprises.

## **1.6 The legislative framework governing the water sector**

### **1.6.1 The Water Act**

This Act sets out the key elements of Kenya's legislation on the water sector. It has been in application since October 17, 2002 when it received presidential assent.

Its preamble says it is an Act of Parliament, "*To provide for the management, conservation, use and control of water resources and for the acquisition and regulation of rights to use water; to provide for the regulation and management of water supply and sewerage services; to repeal the Water Act (Cap.237) and certain provisions of the Local Government Act; and for related purposes.*"

The Act seeks to address all the shortcomings that resulted in wastage, manipulation and abuse of water sources and services.

It creates the Water Resources Management Authority (WRMA) to oversee the use of water resources which are all vested in the State.

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<sup>7</sup> Daily Nation, October 8, 2003

According to the Act, WRMA is a body corporate which is charged with, among other duties:

- a) Developing principles, guidelines and procedures for the allocation of water resources;
- b) Monitoring and from time to time, reassessing the national water resources management strategy;
- c) Receiving and determining applications for permits for water use;
- d) Regulating and protecting water resources quality from adverse impacts;
- e) Managing and protecting water catchments;
- f) Determining charges to be imposed for the use of water from any water resource in accordance with guidelines in the National water Resources Management Strategy;
- g) Gathering and maintaining information on water resources and publishing forecasts, projections and information on water resources.
- h) Liasing with other bodies for the better regulation and management of water resources (meaning it can not easily lock out civil society groups in matters concerning water (emphasis mine)
- i) Advising the Minister concerning any matter in connection with water resources.

### **1.6.2 Inclusiveness**

The Act emphasizes the role and participation of local communities. For instance, the Minister responsible for water is required to formulate and publish in the *Kenya Gazette* a National Water Management strategy based on the outcome of public consultations. The policy of inclusiveness and grassroots participation in water conservation is further highlighted by the fact that the Act provides for the existence of Catchment Area Advisory Committees of not more than 15 members in respect of each catchment area.

Such committees which have been constituted since the Act became operational are expected to oversee the use, development, conservation, protection and control of water resources within each catchment area.

### **1.6.3 Regulation**

The Water Act establishes the Water Services Regulatory Board (WSRB) whose core responsibilities include licensing providers of water services and determining standards for the provision of water services to consumers.

Other statutory duties of the WSRB include:

- a) Monitoring compliance with established standards for the design, construction, operation and maintenance of facilities for water services;
- b) Monitoring and regulating licensees and to enforce license conditions;
- c) Advising licensees on procedures for dealing with complaints from consumers and to monitor the operation of these procedures;
- d) Developing guidelines for the fixing of tariffs for the provision of water services;
- e) Developing model performance agreements for use between Water Service Boards and water service providers;
- f) Monitoring the operation of agreements between Water Service Boards and water service providers taking appropriate action to improve that effectiveness.

In addition, the WSRB has statutory obligations on: dissemination of information about water services; promoting conservation and demand management measures in accordance with the National Water Services strategy.

Other functions of the regulatory board are determining fees, taxes, premiums and charges to be imposed for water services including initiating prosecutions subject to consent from the Attorney General.

However, there is concern that Act does not adequately safeguard against price increases. Its effectiveness would be largely dependent on continuous monitoring on its implementation.

#### **1.6.4 Water Services Trust Fund**

The Water Act also establishes a Water Services Trust Fund (WSTF) to support finance the provision of water services to areas lacking adequate water services through funds appropriated by Parliament.

#### **1.6.5 The Water Appeals Board (WAB)**

The Water Appeals Board is tasked with the responsibility of arbitrating over any disputes arising from the implementation of the Act such as disputes over proprietary rights.

#### **1.6.6 Other Aspects of the Act**

the Act empowers the Minister powers to declare a water emergency caused by rainfall failure, accidents, or any other unforeseen circumstance. In the circumstances, the Minister may direct any person who has a supply of water in excess of their needs for domestic purposes to supply the areas concerned. Non-compliance would constitute an offence.

### **1.7 Should Kenya Privatis Water?**

The experience of many countries shows that water privatisation inevitably invites the participation of TNCs. With the support of the World Bank and the IMF, the corporations insist on what is termed as full cost recovery. This entails picking on the lucrative aspects of the water business, such as supplying it to the richer sections of the society while abandoning the poor.<sup>8</sup>

The corporations inevitably leave out the less lucrative sewerage and sanitation services to local companies.

In order to ensure that their fortunes are not tied to the performance of the local economy, some water TNCs have indexed their performance to the US dollar in the countries of operation safeguarding their profits from the fluctuation of local currencies.

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<sup>8</sup> For this I am indebted to *Stalling the Big Deal* by Ghanaian Water activist Amenga-Etego

A sticking issue of concern has been the loss of control over revenues by Local Authorities that privatisation could portend notwithstanding the fact that most have been very inefficient and ineffective.

Inevitably, the experience of many countries shows that privatised water is more expensive because it often involves ceding control over ownership and control of water resources by the people or their government to profit-driven private concerns. Often, under privatisation, the commercial tenets of supply and demand determine price and availability.

### **1.8 Kenya's Civil Society Position**

The Kenyan civil society is largely opposed to commodification of water without elaborate consideration of its implications especially on the poor and vulnerable sectors of the population. The Basic Rights Campaign, a coalition of Kenyan NGOs that advocate on greater recognition of basic rights by government, is wary over a rushed a poorly sequenced privatisation of water without adequate consultation.

The Coalition warns that whereas government have a social contract with its citizens, corporations don't and are therefore more amenable to pursuing profit as opposed to social goals. It warns that autonomous companies formed under the Water Act 2002 as separate legal entities from local authorities stand a risk of eventual privatisation being corporate business entities.

Inevitably, the involvement of various stakeholders including donors, civil society and local communities is critical in defining the way forward on Kenya's water sector paying due regard to the interests of the poor.

### **1.9 The views of international civil society**

The international civil society is also involved in the water privatisation debate with some offering what one may refer to as pro-people solutions.

For example the UN-HABITAT supports community based water initiatives while calling for increased funding of urban water programs instead of the rural ones. According to the organization's publication, "*The Way Forward: Local Action for Global Goals*" the water crisis is worse in urban areas compared to rural areas due to population pressure on available water resources.

HABITAT observes that even though water and sanitation services are much worse in urban areas than previously thought, many local authorities underestimate the importance of inclusive practices on good governance in prioritising the delivery of services to the urban poor.

It supports water demand management at the level of the local authority to secure maximum benefits for local communities. The organisation's program billed *Water for African Cities*, is establishing an effective demand management strategy to encourage efficient water use by domestic users, industry and public institutions.

Some cities, it says, have reduced water consumption by 35 percent through efficient utilization of water resources. In Kenya, UN-HABITAT in partnership with the Nairobi City Council and the University of Nairobi is introducing gadgets that drastically cut the amount of water wasted through flushing of toilets.

With regard to conservation of resources, the UN-HABITAT favours a policy whereby local governments allow community based organizations, especially those representing the urban poor play a greater role in determining policies and projects, the living conditions of the urban poor can be improved.

It has endorsed public-private partnerships that prioritise small-scale community level investments in developing cost effective ways to solve the immediate problems of the urban poor.

It believes that effective demand management strategies can provide considerable water savings and help increase incomes for local authorities through which the needs of the urban poor can be met.

In the thinking of its Executive Director, Dr Anne Tibaijuka, "we must wake up to the realities of the urban age. The international community has set the targets [UN Millennium Goals], but if we are to meet this challenge, then we must be prepared to look at everything anew".

Considering that, half the world's population — 3 billion people — live in urban areas and that among them, almost one billion are desperately poor and live in slums without even the most basic services like sustainable sanitation, Dr Tibaijuka, says something must be done to address the urban water and sanitation crisis.

In Africa, says UN-HABITAT, as many as 150 million urban residents representing up to 50 percent of the urban population do not have adequate water supplies, while 180 million, or roughly 60 percent of people living in urban areas lack adequate sanitation. Nairobi is part of this African water and sanitation crisis.

The lack of sanitation and access to water in developing cities is far from being the only problem. Affordable water is also a major problem. More than half of the urban poor in some countries denied access to municipal water supplies are dependent on private vendors.

In certain cases UN-HABITATAT warns that poor communities living on less than US \$1 per day, pay as much as five to seven times the price paid by an average US citizen for a bottle of water. The agency favours channelling more aid to water and sanitation in the poor countries.

## 2 Case Studies on Local Authorities' experiences

### 2.0.1 Nyeri Water and Sewerage Company

The Nyeri Water and Sewerage Company (Nyewasco) is regarded as a success story on commercialisation of water services in Kenya.

Nyewasco was incorporated as an independent company owned by the Nyeri Municipal Council in 1997. That was after the council realized it could not offer efficient water services to the residents of the Central Kenya town.

The Council had taken over the provision of water services from the Central Government in 1982 and continued to offer inadequate water service to local taxpayers through 1999 when it was gazetted as a water undertaker.

The formation of Water and Sewerage Department in the Council 1995 did not make matters any better because water revenues went to the Nyeri Municipal Council Treasury and were often diverted to non-water areas. This meant that burst pipes could not be repaired in time. It also meant that the water service could not be expanded to match population growth as revenues were not ploughed back to develop the sub-sector.

The desired result of service improvement and sustainability had failed. Adoption of commercialisation as the alternative management approach became unavoidable.

In June 1996, the Nyeri Municipal Council put a request to The Germany Agency for Technical Cooperation (GTZ's) Urban Water and Sanitation Management Program (UWASAM) for support in its privatisation alongside two other Kenyan towns, Kericho and Eldoret. GTZ, which had helped in setting up the water and sewerage, came in handy and has been involved in advising many other Kenyan municipalities on commercialisation.

Through GTZ's technical inputs and the willingness of Nyeri Municipal Council to free its grip on the water department, Nyewasco started its operations in 1998. In its board sat a Chairman and a corporate management team comprising of a Managing Director, Commercial Manager and Technical Manager.

Legally, Nyewasco is an agent of the Nyeri Municipal Council. Under the agency agreement signed in 1999, to regulate the relations between the Municipal Council and Nyewasco, water infrastructure valued at KSh509,716,093 was passed on to Nyewasco. Nyewasco also absorbed all staff from the Municipal Council's water department.

Nyewasco is being touted as a success because:<sup>9</sup>

- It is run on strict corporate lines with water revenues being ploughed back into improving water and sewerage provision.
- Its Kamakwa Water treatment works production capacity has increased by 50% from 6000m<sup>3</sup> / day to 9000m<sup>3</sup> per day.
- Complaints of water turbidity have been eliminated.

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<sup>9</sup> *Nyeri Water & Sewerage Company Limited*, 'Company Profile & Performance 2003

- Reported water pipe bursts are attended to promptly 24 hours a day.
- It is continuously employing new workers to improve on service delivery.
- Number of new registered connections increased from 6586 in 1999, to 8318 in March 2003.
- Over the same period metered connections jumped from 9271 to 6721.
- It has established retail water kiosks for the poor sections of the municipality while slum residents pay Ksh12 for a cubic meter of water or 12 cents for 20 litres. On the other hand rich neighbourhoods and corporations e.g. Mt. Kenya Bottlers (a Coca-Cola subsidiary) and tourist lodges using 100m<sup>3</sup> of water daily pay Ksh75 per cubic meter or 50litres per cent above the domestic tariffs.
- It has created employment without taxing the poor by selling water to kiosk operators who sell it to poor residents at affordable rates.
- It has ensured lower rates for public institutions e.g. local schools and medical facilities.
- It has pursued need driven commercial policies for instance, interrupting supply to the local golf club in times of scarcity.
- Environmentally conscious undertaking: It changed its main service of water from Nairobi River which was drying because of farming activities upstream to Itooni river hence saving the river that flows all the way to the Kenya capital.
- Has cut down water losses from 55% to 36-40% which is the most efficient example by any Local Authority in Kenya to date.
- Because of these practices, Nyewasco is boasting of water surplus of 1000m<sup>3</sup> per day and is negotiating for a loan from KFW for expansion.
- It collects over Ksh8 million per month and serves 50- 60,000 people.
- 91.6% of its clients express satisfaction with its front desk attendance. More significantly, 81.1% are satisfied with the quality of water supplied. 41.6% percent are not happy with its prices while 76.8 get their monthly bills promptly.
- In 1990 the Municipality could produce only 2,171,309 M<sup>3</sup> of water, selling 1,388,687 meaning it was losing over 700,000M<sup>2</sup> while earning Ksh8,864,109. In 2003, Nyewasco produced 908,469M<sup>3</sup> and sold 516,442 for Ksh24,692,305 indicating improved efficiency.
- The company has extended sewerage services to parts of Nyeri town not previously served, replaced submersible pumps

However, the company needs to develop an elaborate conservation plan for sustainable management of water resources.

## **2.0.2 The Eldoret Water and Sanitation Company (ELDOWAS).**

The concept of the company dates back to 1994 when the Eldoret Municipal Council separated revenues of its water department from the general rates. One can thus say the municipality was among the first ones in Kenya to ring-fence its water revenues.<sup>10</sup> The municipality established the water and sewerage department as a separate entity from the engineers department to boost efficiency.

Eldowas was incorporated in 1997 and started operations in 1999.

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<sup>10</sup> Eldoret Water & Sanitation Company Limited, ' Company Profile & Performance 2003

Looking at the objectives of the company one is stuck by its focus on sustainability. “The company’s vision is that of supplying clean water and rendering sewerage services to all residents, industrial and commercial interests in Eldoret in a sustainable manner,” indicates its profile.

Since incorporation, the company has substantial control over its finances meaning that less of it can be diverted to non-water uses but instead be re-invested in improving service provision. Dividends to the municipal council strictly conform to the financial regulations of the company. Its key successes can be listed down as:

- There are fewer consumer complaints compared to the past when the municipal council was in charge of service provision. Efficiency in revenue collection has gone up from 60 to 85%. Against a target of collecting 90 % of total revenue due.
- There is greater recognition of consumers as stakeholders evident from the establishment of complains and customer service offices under its commercial and finance division.
- Its tariff structure has differentiated between the poor and rich. The poor pay Ksh10 per cubic meter of water. Kiosks have also been opened in the slum areas of Langas, Kipkaren, Kamukunji and Huruma. In this high-density population but low-income areas 20 litres of water goes for 50cents. On the other hand, rich clients like the Rift Valley Bottlers (Coca-Cola subsidiary) pay Ksh54 per cubic meter of water.

The Eldowas board is inclusive and includes representative of all consumer groups such as the Kenya National Chamber of Commerce and Industry (KNCCI) representing the business community and the Kenya Consumer organization taking care of the interests of ordinary and poor consumers. On its part, Maendeleo ya Wanawake represents women’s interests while the Law Society of Kenya is on board in the interest of public welfare. Other groups represented include the academia and NGOs.

### **2.0.3 Conservation**

Eldowas has been conscious of environmental conservation and spearheaded the formation of the Moiben River Catchment Protection and Conservation Association. Its members are the Marakwet County Council, Marakwet Community representatives, the Lake Victoria Environmental Management Program (LEVEM) and the Eldoret Municipal Council.

The association has established tree nurseries from which seedlings are provided to local farmers and landowners in the water catchment areas to help preserve the environment.

These are very encouraging words from a water concern that is satisfied with revenues of Ksh50m (50,000 Euros) per month. In 2002 profits jumped to Ksh32.8m from Ksh8.6m of the previous year.

### **2.0.4 Other positive performance indicators**

- Water loss cut from 60 to 38% through repairs and maintenance.
- Strict policy adopted of prosecuting illegal connectors.
- No authority to use water for farming.
- There has never been water rationing since Eldowas came into being.



- Absorbed all the 160 staff inherited from the municipal council but providing better services.
- Provision of water to the town's industries (RaiPly) Ken Knit, Coca Cola has ensured that indirectly, it is helping maintain at least 10,000 jobs.

### **2.0.6 The case of Nairobi's Water supply**

Nairobi's first water source was commissioned in 1899 based on the Nairobi River in the Athi (River) catchment. It yielded inadequate and low quality quantities. Subsequently, the Kikuyu springs were developed between 1900 and 1906 to produce a million gallons (4500 cubic meters a day).

Still the quality was inadequate for the 1930s. In 1938, the development of the first phase (in-take weir and pipeline) was completed on the Ruiru River. By 1949 a third pipeline was serving the city from the same river.

The next major development in Nairobi's water supply was the Sasumua Dam, initially fed by water from the Sasumua River and supplemented by a diversion from the headwaters of the Chania River. Later Kiburu River would be diverted into the dam. When the Sasumua waters were finally and fully taken up, Chania became the next source.

By 1986, Kikuyu Springs (4000 cubic metres/day), Ruiru Dam (21000 cubic metres/day), Sasumua Dam 46,000 cubic metres/day and Chania, at Mewangu intake, provided Nairobi with a total of 192,000 cubic meters/day. The supply was still insufficient water as the city's population had increased tremendously, placing severe pressure on the water supply and the sewerage system. Unplanned settlements on the suburbs and expansion of dwellings in the poor sections of the city, created further pressure on water supplies.

The Third Nairobi Water Supply Project (1985) helped relieve the situation but later proved inadequate. The subsequent commissioning of Thika Dam in 1996 did not meet the water deficit either mainly due to inefficiency in managing existing supplies.

Even though Nairobi has constituted a water company modelled along the lines of similar companies in Eldoret and Nyeri, it is yet to commence operations. Once operational, the company will seek to stem from the current 40% and contain billing and debt collection efficiencies. It is estimated that water revenue collections will double from the current Sh140million (1.4m Euros) to Sh300m (3m Euros) per month.

The possibility of involving corporations with expertise in highly technical fields, such as billing computerization, has not been ruled out.

However, concern remains over possible award of water revenue contract to Vivendi's subsidiary, Seureca Space/Generale de Seaux, which as early as January 2000, had entered into an agreement with the Nairobi City Council under which Seureca and another firm, Tandirani, were to take over

the council's water billing and accounting system. Their commission had been agreed at 17 per cent commission of the amounts collected.<sup>11</sup>

However, in the face of strident opposition, the contract was never effected although the company is still pushing for its implementation. Had it succeeded, reports indicated that the cost of water in Nairobi would have increased even though the companies would not have undertaken any heavy capital expenditure, such as engineering or maintenance, which would have remained the duty of the council.

The proposed contract raised eyebrows because the French firm undertook to collect between Sh50million and Sh80million when Nairobi City Council potential is estimated at Sh350million per month.

Irrespective of how commercialisation is pursued, there is need to create efficiency in revenue collection granted that the council's water revenue collection efficiency is below 30%. Out of every 100 metered water users in Nairobi, less than 30 users pay their bills!<sup>12</sup>

Half of the water from Ruiru, Ndakaini, Sasumua and Kikuyu springs is unaccounted for. This means the city's daily requirement of 450,000m<sup>3</sup> per day, the 1986 project sought to provide, cannot be met.

Sasumua Dam, with a yield of 4600m<sup>3</sup>, suffers an annual fluctuation of nearly 50% because population upstream has no access to clean water due to the collapse of rural water supply projects. Consequently the pipeline to Nairobi from the dam is dotted with illegal water connection. Nairobi's water problems are such that they require a radical overhaul considering the following:

- The 1986 study on the Third Nairobi Water Project (TWSP) made far – reaching recommendations but its implementation left a lot to be desired. Its initial cost was Ksh2.69billion but it ended up costing Ksh4.65 billion.
- Experts say there is little to show for the money as universal indicators used to measure efficiency in water service delivery tell a different story. A USAID and African Academy of Sciences study reveals that:
  - 50% of the city's pumped water cannot be accounted for.
  - Less than 30% of total consumers are metered and the meter reading is an *ad hoc* affair.
  - Of the 40 to 50% of the water that eventually reaches the consumer, less than 60% of the revenue is collected.
  - The council's workforce is bloated to 30 to 50 employees per 1,000 connections. Privately managed water systems have 4 workers for a similar number of meters.

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<sup>11</sup> *The East African* , January 24, 2000

<sup>12</sup> Opon, Caleb, *The Impact of Privatization on municipalities, The Case of Water* , A USAID and African Academy of Sciences study , 2003

### **2.0.7 Dams have been neglected.**

January 2003 year saw the near collapse of Sasumua Dam after intake pipes were washed away after heavy down pour. Its embankments had been neglected for years after which they developed major structural weaknesses indicating serious problems in maintenance of water reservoirs.

The catchment area for Kikuyu springs has been compromised by illegal connections which poses threat of contamination and reduction in volumes. At one time, the Ruiru Dam with a capacity of 21000m<sup>3</sup>/ day could only produce 15000m<sup>3</sup> / day due to similar illegal connections.

### **2.0.8 Management**

The Nairobi City Council's Water and Sewerage Department is heavily centralized and lacks autonomy. The entire structure is designed in a way that it lends it vulnerable to political manipulation leading to gross inefficiency.

No master plan exists for the city's water supply in the face of the mushrooming of unplanned settlements in Nairobi. Estimates put the city's annual population growth rates at 8% p.a.

Concerns over the functioning of the city's Water and Sewerage Department a few years ago resulted in a landmark court ruling under which the High Court ordered the council to set up a joint account with the Karen – Langata (residents) Association to ensure transparency in revenue use.

Revenue efficiency is the amount of water supplied as a ratio of revenues collected. It has been as follows: 1994/95-(22%), 1993/1994-(32%), 1992/1993-(27%) 1991/1992-(28%), and 1990/1991-(29%). This happened as arrears ran into billions of Shillings.<sup>13</sup>

## **2.1 Conclusion**

Kenya's water sector faces many challenges principally, the need to improve efficiency in service delivery. The experiences of some Kenyan towns like Nyeri and Eldoret indicate the window of opportunity that well thought out commercialisation can create in service provision. It is an example that Kenya's capital city, Nairobi, will need to pay clear attention to.

Ultimately, commercialisation must take into account, the needs of poor consumers. The ability to pay must be fully considered and differentiated tariffs developed to ensure an adequate supply of clean, safe water across the board.

The commercialisation of the water sector should never be allowed to fall prey to the TNC ruse of providing technology in inseparable bundles. This has made it easy for the corporations to introduce pre-paid metres in South Africa even when they have been outlawed in the UK. Water is a human right and, should therefore be treated carefully compared to any other commodity.

The 2002 Argentine fiscal crisis, which left Suez with a \$500,000 loss as the government refused to peg water prices on the US dollar, served as an eye opener on the operations of water TNCs.

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<sup>13</sup> (Aligua 1996 as cited by Opon) *ibid*

Consequently, for example, Suez's new action plan is to reduce, by 30 cent, its exposure in "emerging countries."

Suez companies are now instructed to make profits within three years of operation. *This means they must make a quick buck, which would inevitably be at the expense of consumers especially in countries where there is a weak regulatory mechanism such as Kenya.* ♦

Kenya, alongside other countries, will increasingly come under pressure to privatise water resources. At the WTO talks in Cancun, Mexico, in 2003, the EU had requested the US, Mexico and Switzerland to commit their water services under the WTO negotiations on the General Agreement on Trade in Services (GATT). □ It was only after substantial pressure from the public that the US rejected the request.

This study therefore reiterates that Local Authorities must retain control over water even under commercialisation. There must be great caution to safeguard against burdening the poor in accessing water under privatisation. A World Bank project involving the selling of water to villagers by private kiosk owners has resulted in a situation where each of the 2000 homesteads along the 80- kilometer Galana–Mombasa pipeline is spending 20 per cent of its daily expenditure on water – a great strain given their low incomes.

## **2.2 Appendices**

### **2.2.1 The German Experience**

The German experience clearly shows that water need not be privatised for consumers to enjoy an efficient service.

The country has efficient supplies even though the service is provided by a state based system. Municipalities are in charge of providing water services and therefore determine tariffs, take responsibility for the quality of the water. They are also in charge of catchment management.

The main problem cited in so far as water service provision in Germany is that of contamination by agricultural concerns arising from the use of fertilizers and pesticides. Consequently, the municipalities and environmental lobbies are demanding a different agricultural production system.

Every house is metered and the revenue collection has been described as very efficient. However, water prices in Germany are among the highest in Europe.

This is not necessarily bad. The profitability of the service enables the municipalities to cross subsidize other services, particularly public transport, which is a very expensive undertaking with little or no profit. The German water service is however under pressure in view of falling incomes by the consumers.

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♦ emphasis mine

□ *Suez a Corporate Profile*, Public Citizen, 2003/ [www.wateractivist.org](http://www.wateractivist.org)

Some municipalities like Berlin are considering selling off their profitable water departments but this is being opposed by many stakeholders who see it as a temporary solution to a large national problem.

Privatisation is also running into most unexpected problem. Corporations have realized that there is no money in water due to the prohibitive cost of establishing the requisite infrastructure and the complications involved in costing a social good that also happens to be a human right.

There is also the commercial spectre of falling per capita consumption which means that water corporations will find themselves selling less. As a result, water giants such as Suez are divesting by selling their water subsidies.

### **2.2.2 Nigerian Experience**

In Nigeria, it is generally felt that privatisation and commercialisation is the next stage in water service provision due to the inefficiency of state water corporations.

There exist two three-year private sector participation discussions with the International Finance Corporation (World Bank Private Sector leading arm) which have divided Lagos which has a population of 12 – 14 million into a commercialisation zone and another that would not be commercialised.

### **2.2.3 South African Experience**

Water supply in Nigeria is closely tied to experiences in the apartheid era where white settlers had realiable supplies compared to the Bantustans where most Africans lived. The South African government has now nationalized water and the country's constitution even defines the basic water requirement pegged at 25 litres per person per day.

Beyond this amount citizens are required to pay. Although water is treated as a common good, South Africa has, nevertheless privatised its supply. Vivendi, Biwater and Saux are already active there but there is concern about the secrecy surrounding the concessions especially in Johannesburg.

The use of pre-paid metres is a source of concern, especially in the low-income area of Soweto, where a strong social and civil society has waged a strong campaign – especially against Bi-water. The High Court in Kwa-Zulu Natal has banned pre-paid meters but Vivendi to still using them in the poor neighbourhood of Orangefarm. All the same, it plans to introduce them in Soweto.

Trade unions, especially, the South Africa Municipal workers Union (SAMWA) have also been very vocal against water privatisation.

### **2.2.4 Ghana's experience**

Below is a paraphrased experience of water privatisation in Ghana based on an article entitled *Stalling the Big Deal* by Amenga-Etego a farmer by upbringing, a lawyer by profession and an activist for social, political and economic justice by choice.

Ghana's water privatisation debacle shows why Kenyans should think a million times before jumping into privatisation bandwagon. The West African state has been paraded for all who cared to listen as the 'successful' example of a country embracing structural-adjustment programs. But, it seems, writes Amenga-Etego, "What we were not quite told about are the costs of the so-called success."

### ***World Bank's culpability***

Since 1995 when the World Bank pushed the Ghanaian Government to develop specific options to privatise the country's water service, the poor have been systematically deprived of their right of access to safe water. Consequently, the price of water has been increasing at an alarming rate, in order to set the stage for the Bank's treasured principle of 'full cost recovery'

### ***How?***

Pro-privatisation consultants hand-picked by the World Bank are peddling it for all they're worth, turning the Bank's involvement into a front for the transnational corporations interested in taking over Ghana's water.

### ***Anglo-French Connection***

Leading the pack are French companies Vivendi, Suez Lyonnaise and Saur. In hot pursuit is Biwater of Britain. Recently, the IMF stated that Ghana would get the next tranche of its loan under the so-called Poverty Reduction and Growth Facility if it aimed for full cost recovery in all public utilities, including water.

### ***Why full cost recovery?***

The World Bank has to protect the interest of the corporations from the onset by carefully designing a business framework that cherry-picks the lucrative urban water service for the incoming corporations, leaving the less tempting sewerage and sanitation bits and rural water provision for local authorities and communities to manage.

### ***How it was done***

The IMF complemented this by imposing automatic tariff-adjustment formula that effectively indexed the price of water in Ghana to the US dollar. No wonder a distraught Ghanaian Susanna Mensah summed it up when she observed that, 'the rain does not fall only on the roofs of Vivendi, Suez, Saur and Biwater, neither does it fall only on the roofs of the World Bank and the IMF; it falls on everyone's roof. Why are they so greedy?'

### ***The tragic result***

Faced with dwindling revenues, increasing poverty and deeper cuts in social expenditure by the central government, Ghana's local authorities have been unable to cope with the costs of managing wastewater and sanitation. Open sewers have become commonplace in all the cities of Ghana. Mountains of garbage compete with residential buildings for space. Typhoid and cholera have become leading killers in the cities. The Ministry of Health has estimated that 70 percent of diseases

in Ghana are water related. Yet projects to expand water services to the urban poor were frustrated by the World Bank and the British Department for International Development who withheld funding pending the signing of the deal giving the water transnationals the go-ahead.

### ***Privatisation already on***

This despite the fact that privatisation has already effectively begun through exorbitant pricing.

### ***No concern for the poor***

Most bizarrely, the proposed terms of the contract for privatisation contains no obligation on the part of the incoming transnational corporations to provide water to urban low-income communities (in World Bank speak); that burden remains with the highly indebted Ghanaian Government and the communities themselves. The Bank and the corporations are only interested in supplying water to affluent communities who have the ability to pay so-called 'market tariffs'.

### ***Shifting Responsibility to the poor***

The plan for impoverished rural areas is even more absurd. The intended privatisation has shifted responsibility for providing drinking water through the construction and maintenance of wells and boreholes from the national government to local communities. This is a masterstroke of IMF/World Bank policy, intending to downsize the national budget in order to save some money for loan repayment. It's a radical departure in policy terms for Ghana.

In the past the Government practiced a needs-driven policy that targeted the most needy communities in order to promote public health. These were communities with a high prevalence of diseases such as guinea worm and were invariably very poor. This policy ensured that those with the least ability to provide for themselves had a right of access to safe water.

### ***Bullying***

Through open arm-twisting and naked bullying this policy was reversed in 1995 with the World Bank's insistence on full cost recovery. Water was transformed from a human right into a commodity to be traded on the open market. From that time onwards, clean water became available only to those who could pay for it. Today communities are required to pay 5 to 10 per cent of the capital costs upfront before wells or boreholes are constructed for them and thereafter bear all the ongoing operation and maintenance costs. Because poor rural communities cannot afford to pay, several especially in the northern and central regions are without safe water. These are either due to the lack of clean wells and brotels or because those installed earlier on are in disrepair.

### ***Result?***

Ghana, which was on the way to eradicating guinea worm, has become the second most endemic country in the world, following only war-torn Sudan.

### **2.3 The issue of TNCs in water provision**

Even as the opposition to water service privatisation mounts TNCs future role is increasingly being clouded in doubt as water privatisation becomes a less profitable area to venture into. For instance, in 2002, Suez, the French water giant and one of the biggest water corporations in the world was \$29 billion in debt and posted a \$9 million loss. In the previous year, its stock had lost two thirds of its value.

Unstable economies are also throwing a spanner into the water works. Due to the Argentine economic crisis Suez wrote off \$500million.

As part of reducing debt, Suez's action plan now entails reducing, by one-third, its exposure in emerging countries and instructs its companies to make profits in the first three years of investment.

Weak currencies have also mated it impossible for the corporations to increase water rates in compliance with contracts to compensate for devaluation of depreciation effects. Governments have simply refused to honour such obligations while others have found themselves unable to do so in view of their weak economies. In Manila, Philippines, Suez worked out on realizing it could not hike rates by 700 percent in December 2002. In Argentina, its attempt to link water prices to the US Dollar was rejected by the government's emergency decree during the 2002 fiscal crisis.

Weak regulatory 'partners' realizing that there are limits to which they can offload costs to the consumer when the water business goes awry. As a result, Suez is getting rid of investments in "risky" areas, which contradicts the World Bank's thinking that the private sector is the ultimate thirst quencher. Suez has thus turned into the European and American markets, but again, Atlanta has shown that even the rich want value for their money.

Suez has also sold its 75 percent holding in Northumbrian Water in order to reduce its debt. This has released it from the demands of British regulator OFWAT.

Suez also walked away from a privatisation deal in New Orleans (US) fearing a requirement that voters must OK any contract.

At the same time, its subsidiaries Ondeo and United Water are struggling trying to cut operational costs in pursuit higher revenues against a challenge of maintaining the water infrastructure at great cost to remain profitable.

Increasingly, the trend is towards private concerns delaying investment in infrastructure – as a way of cutting down on expenditure – and instead seeking more money from government. Higher tariffs have meant that customers end up paying more for less.



## 2.4 List of abbreviations

<b>ASAL</b> .....	Arid and Semi Arid Lands
<b>ELDOWAS</b> .....	Eldoret Water and Sanitation Company
<b>HBF</b> .....	Heinrich Böll Foundation
<b>GATT</b> .....	General Agreement in Trade in Services
<b>GTZ</b> .....	Deutsche Gesellschaft für Technische Zusammenarbeit (German Technical Co-operation)
<b>LGWU</b> .....	Local Government Workers Union
<b>KANU</b> .....	Kenya African National Union
<b>LEVEM</b> .....	Lake Victoria Environment Management Program
<b>KNNCI</b> .....	Kenya National Chamber of Commerce and Industry
<b>NAWASCO</b> .....	Nairobi City Water and Sewerage Company
<b>NEMA</b> .....	National Environmental Management Agency
<b>NYEWASO</b> .....	Nyeri Water and Sewerage Company
<b>SAMWA</b> ... ..	South Africa Municipal Workers Association
<b>SNV</b> .....	Schweizerische Nomen-Vereinigung in Winterthur (Netherlands Development Organization)
<b>TNC</b> .....	Transnational Corporation
<b>UNEP</b> .....	United Nations Environmental Program
<b>UWASAM</b> .....	Urban Water and Sanitation Management Program
<b>WST</b> .....	Water Services Trust
<b>WRMA</b> .....	Water Resources Management Authority
<b>WSRB</b> .....	Water Services Regulation Board
<b>WTO</b> .....	World Trade Organization

Some of the people interviewed in the course of this study

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Action Aid Kenya	September 10, 2003	Kariuki, Peter	Coordinator, Basic Rights Campaign	<a href="mailto:Admin@actionaidkenya.org">Admin@actionaidkenya.org</a> , Website: <a href="http://www.actionaidkenya.org">www.actionaidkenya.org</a> P.O. Box 42814-00100, Tel.4440440 AACC Building, Waiyaki way, Nairobi
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