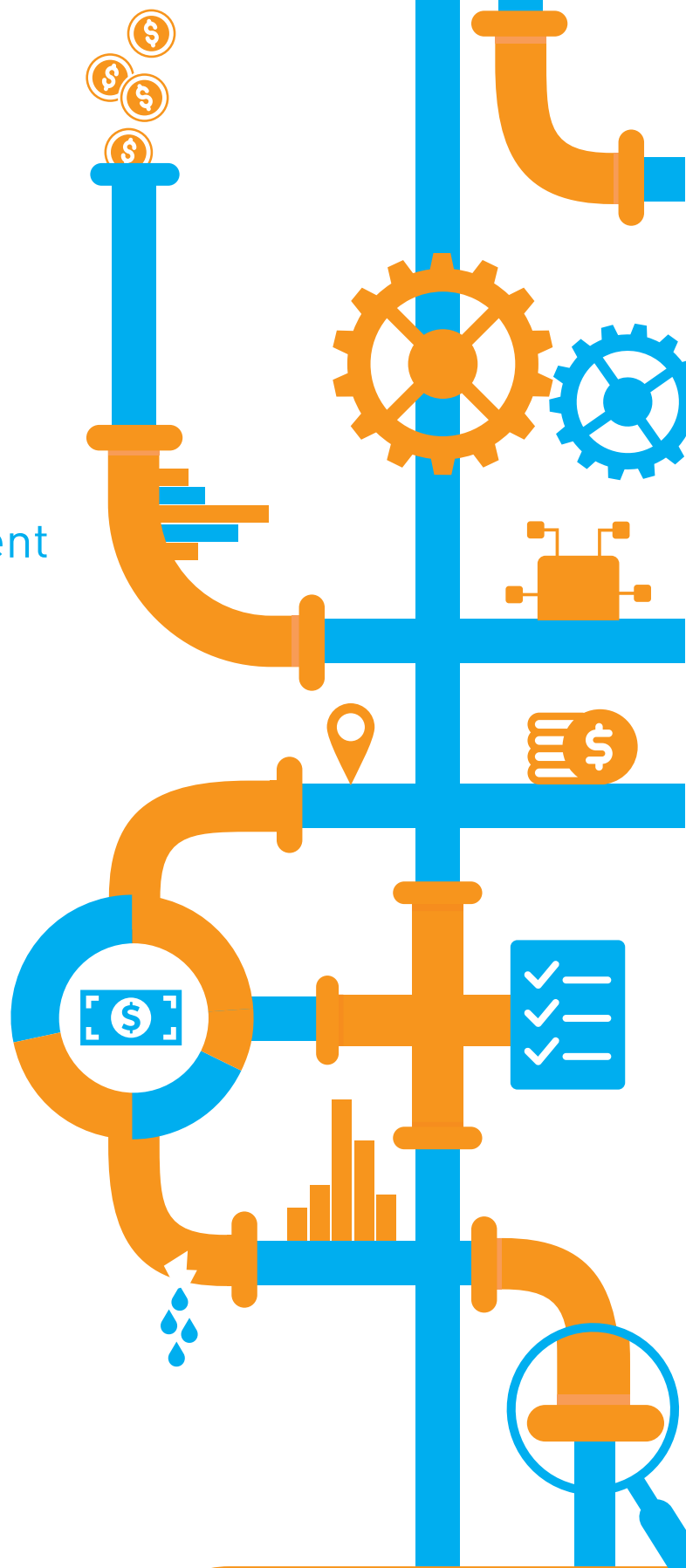


# Integrity in Water Sector Public Financial Management in Kenyan Counties

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# PIPES, POLICY, AND PUBLIC MONEY

Integrity in Water Sector  
Public Financial Management  
in Kenyan Counties

Final Report  
July 2019



## **Pipes, Policy, and Public Money: Integrity in Water Sector Public Financial Management in Kenyan Counties**

Final Report  
July 2019

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Recommended citation:

Folscher, A.; Liabwel, I.; Malik, S.; Moon, S.; Feuerstein, L. 2019. Pipes, Policy and Public Money: Integrity in Water Sector Public Financial Management in Kenyan Counties. WIN, KEWASNET.

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## Foreword

Over the years, the Government of Kenya has formulated financial management frameworks for the public sector in order to improve performance, stewardship and accountability. The legislation ensures responsibility for efficient, effective and ethical use of financial resources within all ranks of Ministries, Departments and Agencies. Government ensures that organisations have a robust financial management framework that assist managers to use resources efficiently and effectively.

Constitution of Kenya 2010 under bill of rights and Kenya's Vision 2030 under the social pillar aims at achieving universal access to water and sanitation. Further, as its development agenda the Government intends to create jobs, achieve food security, spur industrialisation, affordable housing and universal health care for citizen as these are key contributors to economic transformation and development.

In Kenya, water is a finite resource with an annual water availability per capita of about 452 m3 per year with a decreasing trend due to increasing population, expanding economic activities and increasing degradation of catchment areas. In rural areas where service provision is not commercially viable, services are often unsustainable and not adequately monitored or regulated. This requires sector actors to invest more and in a sustainable manner.

National and County Governments recognize that transparent and accountable management of finances and preventing wastage and misuse by public institutions, government-owned corporations and companies, as well as other sector actors is crucial. This is necessary as it ensures investments achieve value for money and result in improvements of the lives of millions of Kenyans who are suffering from lack of access to adequate water and sanitation services. Further this provides confidence to investors that financial resource availed for provision of water and sanitation services are governed through robust legal and regulatory framework and this guarantees continue access to extra financial resources for funding to bridge the gap.

Since early 2000s, the water sector has undergone substantial reforms including decentralization; separation between policymaking, regulation, investment and service delivery. The Water Act, 2016 advanced these reforms under the new dispensation of devolution and is currently under review for harmonization. Guided by the Constitution of Kenya 2010, the Ministry of Water and Sanitation and the Council of Governors through the Inter-Governmental Water Sector Coordination Framework have agreed on the way forward in implementing the reforms. Both levels of Government are committed to strengthen sector coordination, monitoring and reporting, and establish strong government-owned corporations and companies that are able to fulfil their mandates, exercise good corporate governance, accountability and deliver value for money. In doing so, we embrace partnership and collaboration among government institutions and with partners from external support agencies, civil society and private sector.

This study has produced commendable findings and conclusions on how integrity risks are currently undermining effective financial and operational performance in the sector as well as good practices that can be improved. Most importantly, it provides practical recommendations on how to address the challenges and ensure that water sector finances are used effectively and for the intended purposes. The Ministry of Water and Sanitation welcomes these recommendations and in line with its mandate will provide leadership for advancing their implementation.

**Hon. Simon Chelugui EGH,**  
Cabinet Secretary,  
Ministry of Water and Sanitation.

**H.E Samuel Kuntai Ole Tunai, EGH**  
Chairman, Tourism and Natural Resource Management  
Committee, Council of Governors.



## Preface

Since the early 2000s, the water sector has undergone substantial reforms including decentralization, separation between policymaking, regulation, investment and service delivery mandates. The Water Act, No. 43 of 2016 (Water Act) commenced application on 21st April, 2017 to align the sector with the new dispensation of devolution. These changes have resulted in important improvements in the lives of many Kenyans as coverage of water and sanitation services has increased and service levels improved. However, progress is not yet in line with the envisioned targets due to some challenges still predominant in the sector. The Annual Water Sector Review 2014/15 and 2015/16 in particular called for the Ministry and sector partners to address challenges around sector financing, economic viability of water service providers and governance.

This report contributes to implementing the Ministry performance contracting targets on good governance, prevention of public fund misuse and wastage. It also highlights commendable findings and conclusions on how integrity risks are currently undermining effective financial and operational performance in the sector as well as good practices that can be built on. With respect to devolved mandates, this report forms the basis upon which County Governments will prepare strategies to effectively and efficiently discharge their respective mandate on water and sanitation service delivery. Most importantly, it provides practical recommendations on how to address the challenges and ensure that water sector finances are used effectively, for the intended purposes and provide value for money.

Recommendations address priorities on strengthening sector coordination, monitoring and reporting, and establishing strong government-owned corporations and companies that are able to fulfil their mandates, exercising good corporate governance and accountability and delivering value for money.

The Ministry of Water and Sanitation welcomes these recommendations and in line with its mandate will provide leadership for advancing their implementation. WIN and KEWASNET will continue partnering with the Ministry and other National and County Government Institutions, external support agencies and private sector in supporting this process in order to enhance water and sanitation coverage.

**Ms. Winnie Guchu**  
Chief Administrative Secretary,  
Ministry of Water and Sanitation

**Mr. Ravi Narayanan**  
Chair,  
Water Integrity Network

**Mr. Daniel Kurao**  
Chair,  
KEWASNET





## Acknowledgements

This report assesses the water sector institutional framework and public finance systems in terms of integrity and governance, identifies risk areas and provides recommendations for addressing them. In recognizing the outstanding role of County Governments in water and sanitation services provision it focuses on the County level and the relations between National and County level institutions.

Above all, it would have not been possible to collect data and information for these findings without the continuous cooperation and facilitation from key partner institutions. We commend the Council of Governors' Water, Forestry and Mining CECs Caucus, Eng. F. K. Kyengo (Deputy Director for Water Services Development Programme, MWS), Eng. Robert Gakubia (CEO, WASREB) and Mr. Ismail Fahmy Shaiye (CEO, WSTF) for providing necessary coordination, guidance and feedback to facilitate the study. Our thanks also go to Mr Edwin Korir (Chief Manager, Internal Audit and Risk Management, WSTF) and Richard Cheruiyot (Inspectorate Services Manager, WASREB) with whom substantive technical discussions took place at the national level. We also thank Mr. Umrbek Allakulov of WIN for his keen review and useful comments.

We deeply appreciate the cooperation offered by the County Governments of Garissa, Kwale, Makueni and Nakuru, including departments and institutions responsible for water and sanitation services, finance, planning, budgeting and public service; and the selected WSPs, WRUAs, CBOs and WSBs in receiving the study team, organising meetings and discussions, field visits and providing information and documentation to the extent possible. Other partners like CESPAD are equally acknowledged for their coordination contribution during some of the case studies.

The report was prepared by a multi-disciplinary study team. We thank WIN and KEWASNET for providing the required financial and technical support to produce this report. In particular, we commend this process as a fruitful collaboration between government and civil society, whereby the study was closely coordinated and validated with both levels of government, while the independence of findings and recommendations was secured.

Lastly, we register gratitude for the professional input and personal commitment of the members of the study team particularly, Mr. Samson Shivaji, CEO, KEWASNET and Mrs. Lotte Feuerstein, Programme Manager WIN for continuous guidance to this study in terms of coordination and content.

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Ministry of Water and Sanitation.

**Eng. Festus Ng'eno**  
Chairman, CECs Caucus on Water, Forestry & Mining  
Committee, Council of Governors.

## Acronyms and Abbreviations

BoD	Board Of Directors
BR0P	Budget Review And Outlook Paper
CA	County Assembly
CBO	Community-Based Organization
CEC	County Executive Committee
CECM	County Executive Committee Member
CESPAD	Centre For Social Planning And Administrative Development
CFSP	County Fiscal Strategy Paper
CGA	County Governments Act
CIDP	County Integrated Development Plan
CO	Chief Officer
CoB	Controller Of Budget
CoG	Council Of Governors
CRA	Commission On Revenue Allocation
CRM	County Resident Monitor
CS	Cabinet Secretary
CSO	Civil Society Organization
DORA	Division Of Revenue Act
FY	Fiscal Year
IFMIS	Integrated Financial Management Information System
IBP	International Budget Partnership
IBPK	IBPbp Kenya
KEWASNET	Kenya Water And Sanitation Civil Society Network
KSH	Kenya Shillings
LVSWSB	Lake Victoria South Water Services Board
MIWASCO	Migori Water And Sanitation Company
MWI	Ministry Of Water And Irrigation (Now Ministry Of Water And Sanitation)
MWS	Ministry Of Water And Sanitation
NARUWASCO	Nakuru Rural Water And Sanitation Company
NT	National Treasury
OAG	Office Of The Auditor General
PFM	Public Financial Management
PFMA	Public Financial Management Act
SCOA	Standard Chart Of Accounts
WASREB	Water Services Regulatory Board
WOWASCO	Wote Water And Sewerage Company
WRA	Water Resources Authority
WRMA	Water Resources Management Authority
WRUA	Water Resources Users Association
WSB	Water Services Board
WSP	Water Services Provider
WSTF	Water Sector Trust Fund
WSUP	Water And Sanitation For The Urban Poor
WWDA	Water Works Development Agency
WUA	Water Users Association

# 1 Executive Summary

## Introduction

Despite recognition of the human rights to safe drinking water and sanitation and the ambition to achieve universal access to these as expressed in Vision Kenya 2030 and the Sustainable Development Goals, access to water and sewerage services in areas covered by regulated water service providers has only marginally increased since 2014/15; now being reported at 57 percent and 16 percent, respectively<sup>1</sup>. Public expenditure levels in the water sector are one-tenth of what is needed.<sup>2</sup>

This study identifies key integrity risks in public financial management (PFM) systems and practices in the water services sector at county level, and recommends measures which stakeholders can take to mitigate risks and strengthen integrity. The assessment considers to what extent the sector's *rules, institutions, and processes* for decision-making on the allocation and management of resources are transparent, accountable, participatory, followed, and contain safeguards to prevent and sanction corruption.

The study was undertaken by a multi-disciplinary team, supported by the Water Integrity Network and the Kenya Water and Sanitation Network. The inception phase comprised desk review of the legal framework and existing reports, and national-level interviews to identify key integrity risks for investigation at county level. The resulting query framework informed the research phase, guiding further collection of primary national and county records and fieldwork case studies in five counties.

## The Kenyan water sector

Following the 2010 Kenya Constitution, water and sanitation services as well as water conservation devolved to the 47 county governments. The Water Act 2016 realigns the sector to comply with this devolution, delegating service provision and development of county assets to county-owned, regulated water service providers (WSPs). Key changes at national level include the licensing of WSPs by the Water Services Regulatory Board (WASREB) and transformation of Water Services Boards (WSBs) into Water Works Development Agencies (WWDAs) responsible for development, maintenance, and management of national public water works in their areas of jurisdiction.

The water sector has also been affected by the shifts in governance and financial management systems following the 2010 Constitution. Key legislation establishing transparency and accountability requirements and creating space for public participation in public entities' allocation and management of public money includes the Public Financial Management Act, the Public Procurement Asset Disposal Act, and the County Governments Act. State corporations exercising key mandates at national level, like WASREB, the WWDAs, and the Water Sector Trust Fund, are subject to transparency and accountability requirements as per the State Corporations Act and the Mwongozo Code of Governance, while county-owned WSPs must comply with the revised Companies Act and WASREB regulations.

The main source of funding for the overall sector, and for the water services sub-sector, is nationally collected revenue, followed by tariff/user fees, with complex and fragmented financing flows. At national level, budgets for the water sector almost doubled from 2013/14 to 2015/16, but actual expenditure fluctuated in line with execution of the capital budget. In 2015/16, nearly 90 percent of public expenditure in the water services sector went to capital projects; only 8 percent was used for recurrent purposes.

<sup>1</sup>WASREB Impact 2017/18

<sup>2</sup> MoWI (draft) Annual Water Sector Review 2014/15–2015/16.

Studies show that counties invest 5–10 percent of budgeted expenditure in the water sector, but only about 1 percent in sanitation. Actual expenditure is much lower than budgeted due to lower disbursement from the treasuries and low absorption capacity.

A large proportion of the recurrent cost of water service delivery is financed through water tariffs, highlighting the importance of functional revenue collection systems for service providers. WSPs reported a turnover of about KSH 20.67 billion (USD 200 million) to WASREB for the 2016/17 fiscal year. More than 60 percent of reporting WSPs were unable to cover their operation and maintenance costs through their revenue. Expenditure by civil society organizations in the sector is small, at about one-tenth of WSP expenditure, but increasing.

### Main findings: integrity risks and emerging accountability in sector financing

While lack of resources is often blamed for poor public access to basic levels of water and sanitation, sluggish progress against this SDG can also be seen as a function of weak governance, management, and coordination of resources, and corresponding efficiency losses and integrity risks.

#### Integrity risks and emerging practices by county governments

While there is evidence of some progress on *transparency, participation, and accountability* to citizens in counties, significant challenges persist. Although public disclosure of information on county financial affairs is required, in practice budget estimates are more likely to be available than budget implementation reports.

Water expenditure is fragmented and difficult to track, as dedicated water departments as such do not exist; expenditure usually is divided between two or more county ministries. Variation in programme structures over time within and across counties makes comparisons difficult.

Over the study period, however, audit reports, which had been significantly delayed, were brought up-to-date. Counties also made efforts to improve public participation, especially during planning, and there is some evidence of meaningful links between public participation and operational and budget decisions. Public participation practices of counties were much stronger than those of WSBs.

Citizen capacity for meaningful participation remains weak, however, as knowledge of the budget process is low; therefore, participation is often limited to the planning stage. Community fatigue with participation can result when budget priorities are overturned by county legislatures, or from confusion around parallel participation processes for different institutions.

There are emerging examples of sanctions for integrity breaches through statutory accountability bodies such as the Ethics and Anti-Corruption Commission (EACC); via counties which have intervened with WSPs to strengthen governance and management; and via county assemblies which have raised queries, investigated misappropriations, and summoned officials to account. Even so, informal systems, local culture, and the local political economy can deter sanctions from being applied.

*Risks associated with county PFM systems:* County case studies confirmed that internal control, procurement, internal audit, and cash management systems remained weak and posed integrity risks. Many counties face overloaded wage bills and lack of key skills. The counties visited also lacked audit committees.

The implementation of programme budgeting is generally weak at county level. Counties typically submit and approve manually prepared programme budgets, which may not match exactly the programmes coded in the Integrated Financial Management Information System (IFMIS). This undermines coherence between policy and implementation, the reliability of reported information, and the ability to hold departments and office holders to account.

Late transfers from national government, mismatching project and budget cycles, and roll-over provisions mean that budgeting and budget implementation become disjointed, lowering transparency. County systems lack transparent and effective mechanisms to manage WSPs' financial failures, obscuring accountability for service delivery and resulting in county bail-outs of WSPs.

The study found systemic weaknesses in internal controls, accounting, and record keeping in budget execution. The Auditor General Reports for all five counties for 2015/16 expressed a disclaimer of opinion: auditors could not obtain sufficient appropriate audit evidence to support a finding on the financial statements. Audit findings directly related to the water sector signal breach of internal controls and due process, particularly in procurement. Reports from EACC and national-level interviews indicate that these weaknesses extend beyond the case study counties.

Many weaknesses in internal control and accounting are linked to problems in the transversal IT systems used in PFM processes. Significant challenges affect system design and implementation; the systems are not oriented to county needs, resulting in high risk practices and obscured accountability.

Asset management systems are also weak. They are still manual, with one system managed by the finance ministry and the other by the spending agency. The resulting poor record keeping places water sector assets at high risk. WSPs are responsible for water services asset management, and county governments are required to form cross-sectoral asset management committees, but these rarely exist.

### **Integrity risks associated with WSPs and other providers of water services**

County-level integrity risks associated with the companies or other institutions involved in water services provision arise from two main sources: implementation of and compliance with the 2016 Water Act, and weaknesses in the governance capacities of WSPs. These factors also affect the ability of county governments to oversee WSPs.

The shift in sector roles and devolution of expenditure responsibilities have in practice weakened understanding and operationalization of water resource management, water service delivery, and oversight roles and responsibilities. This is partly due to the conflicting legal interpretations of those competing for mandates and control over resources.

Relationships between counties and WSBs can be fraught, as WSBs continue to hoard water service provision roles. The issues involve availability and use of resources and accountability for assets and liabilities. The process for transferring existing (pre-Water Act 2016) assets and liabilities from WSBs to the WSPs and/or WWDAs is unclear. Lack of registers for these assets complicates the situation.

Counties distrust WSPs (which may still see themselves as WSB-linked bodies) and therefore are less willing to provide full support. Apart from offering ad hoc subsidies to WSPs, counties hold on to water infrastructure development projects and the associated resources, creating further confusion for users and citizens as to who is responsible for services.

There is confusion around whether WSPs are seen or see themselves as accountable to county governments, WSBs, or WASREB. The 2016 Water Act makes WASREB the regulatory authority for WSPs. The County Governments Act 2012 makes supervision of service delivery a function of the county executive. The status of WSPs as (public) companies means that WSPs' management is accountable to their boards, and that directors are accountable to shareholders, which should be, but in practice often are not, county governments.

Counties are also unclear on WSP accountability. County officials were not certain where the WSPs report, how they should budget and report, how to sanction any breaches, and whether they could impose standards and implement systems via seconded staff. As a result, counties were not aware of the full extent of WSPs' funding. The lack of continuous access of counties to WSPs' financial information raises the risk that funds will be misused, particularly as transparency to the public on WSP finances is also poor.

The public hold county governments responsible for water services, resulting in weak accountability for WSPs and pressure on counties to bail out WSPs facing financial difficulties. County governments intervene in WSP affairs in other ways, dismissing executives and board members and drafting legislation for sector governance. Sanctions, however, are exercised by direct intervention of the governor instead of county governments following due processes.

**Risks associated with the PFM systems of providers of water services:** A key study question asked whether the set-up, proceedings, and practices of WSPs, and providers of water services outside of

WSP areas, align with the provisions of the various acts to safeguard integrity. The study found weak WSP revenue management, budgeting, reporting, and oversight systems and weak WSP capacity, which translates into material risk of misuse of funds and/or power. **There was little evidence of WSPs getting sufficient guidance and support from counties to boost their financial management capacities. Indeed, counties typically lack the necessary skills themselves.**

Weak links between county planning and WSPs' investment planning lead to WSPs' projects not being made transparent to customers/citizens via counties. WSPs are much less transparent on resources and their use than counties, and have not invested much to develop participative planning and budgeting mechanisms, with social accountability being the result.

Community-based water schemes operate in regulatory limbo, informally and with weak or no accountability arrangements towards people, counties, or WASREB, posing a significant challenge to the ongoing operation of the community groups and their integrity. Water resource user associations (WRUAs) are recognized in the Water Act 2016 as having a mandate for collaboratively managing water resources at sub-catchment level, but the study found instances where they were also taking up water service delivery responsibilities without realizing that this was outside their mandate.

While training programmes are provided to community water supply groups and WRUAs, financial management content is limited. Committee members lack full awareness of their fiduciary responsibility for revenues collected from water users and tariffs, or for effective use of the funds. However, the team did find some examples of community-managed water schemes with emerging good-accountability arrangements.

## Recommendations

1. National government agencies should issue national, cross-county guidance on public investments, financial management, and reporting in the water sector, including for WSPs.
2. The Ministry of Water and Sanitation and the Council of Governors must agree on a clear division of roles and responsibilities in the development and management of water and sanitation infrastructure, including a timeline, process, and support mechanisms for transfer of responsibilities, assets, and liabilities from WSBs to counties/WSPs and WWDAs.
3. National and county governments must operationalize and align national sector oversight, monitoring, reporting, and coordination mechanisms.
4. Counties, WASREB, and others must operationalize and strengthen oversight, monitoring, reporting, and coordination mechanisms of water and sanitation services at county level.
5. Water sector actors must ensure quality and consistency in public participation and improve institutional coordination in mobilizing communities on water and sanitation.
6. County governments, with support from WASREB, must ensure that WSPs' boards have necessary expertise and knowledge, understand their role, and are appointed through due process.
7. County governments should pay immediate attention to improving transparency for more effective formal public and social accountability.
8. Counties must ensure that budgets and reports are comprehensive and include information on donor contributions and the financial affairs of WSPs.
9. National and county public finance institutions must strengthen PFM systems and ensure that financial statements present a reliable picture of county finances.
10. Water sector actors should strengthen collaboration among themselves as well as with anti-corruption and accountability actors to ensure full compliance with the existing framework for transparency, participation, and accountability in the management of resources for water service delivery.



## 2 Introduction

The human rights to safe drinking water and sanitation are recognized globally. The increased attention to water and sanitation issues in the global agenda is expressed in the establishment of Sustainable Development Goal (SDG) 6: to ensure availability and sustainable management of water and sanitation for all. In Kenya, access to water and sanitation is a key objective of its Vision 2030 document, and the country has committed itself to the achievement of the SDGs. Yet the Kenya Water Services Regulatory Board Impact Report no. 11 estimated in 2019 that water coverage of the population served by regulated water service providers was 57 percent in 2017/18, while sanitation coverage was 16 percent, marking up two and one percentage point respectively since 2014/15<sup>3</sup>. Furthermore, the UNICEF and WHO Joint Monitoring Project in the water, sanitation, and health sector, estimated that by 2015, 33 percent of the population still used surface and unimproved water sources, and 49 percent used unimproved sanitation facilities or practiced open defecation<sup>4</sup>.

The challenges facing the water and sanitation sector in Kenya are many, including water scarcity, infrastructure backlogs, institutional weaknesses, human resource capacities, and resource availability. This study focused on a key subset of institutional challenges in the water sector associated with the devolution of responsibility for water and sanitation service provision and water conservation to counties, as set out in schedule four of the 2010 Constitution of Kenya. The objectives of the study were to identify the key integrity risks in public financial management (PFM) systems and practices in the water services sector at county level in Kenya, and to recommend measures that different stakeholders can take to mitigate risks and improve integrity in these systems, as a key contribution to achieving universal access to safe drinking water and adequate sanitation.

Assessing the financial governance and integrity of a sector or system considers the extent to which its *rules, institutions, and processes* for decision-making on the allocation and management of resources, articulation of interests, and regulation of professional conduct are transparent, accountable, participatory, followed, and contain safeguards to prevent and sanction corruption. Integrity risks in this context are threats of damage or loss caused by unclear or inadequate rules, mandates, or processes in terms of transparency, accountability, participation, and anti-corruption, or practices which deviate from the rules and regulations. Integrity risks create room for poor governance practices, mismanagement, and corruption.

This report presents the findings and recommendations of the study on integrity risks in financial management in the water services sector, against the background of the water sector reforms of the early 2000s and the further devolution of responsibility for water services to 47 newly created counties in accordance with the 2010 Constitution and the 2016 Water Act.

### 2.1 Study methodology

The report is the result of primary and secondary research undertaken by a multi-disciplinary research team, supported by the Water Integrity Network (WIN) and the Kenya Water And Sanitation Civil Society Network (KEWASNET). The study was conducted in three main phases:

3. Water Services Regulatory Board. 2019. Impact Report issue no. 11. Nairobi: WASREB.

4 World Health Organization and United Nations Children's Fund. 2017. *Progress on Drinking Water, Sanitation and Hygiene: 2017 Update and SDG Baselines*. Geneva: WHO.

- An inception phase of document review, data collection and analysis, and preliminary interviews of water sector actors at national level. The objective of the inception phase was to identify key integrity risks in the water services sector, which could be investigated further through county case studies. The risks and associated key study questions were captured in a study framework (see Table 1). The preliminary findings on integrity risks and the study framework and questions were discussed in a workshop with national stakeholders, after which the framework was revised.
- A main research phase, which included further desk review and case studies of the water services sector in five counties (Garissa, Kwale, Makueni, Migori, and Nakuru). The counties were selected to represent a mix of socio-economic, fiscal, and water sector characteristics, as well as regional distribution. The case studies were undertaken by sub-teams with a mix of public financial management (PFM) and water sector expertise. The teams collected primary documents at county level, and interviewed respondents from county governments, county-level water sector institutions, county water services providers (WSPs), and civil society and community-based organizations active in the sector in each county. The research teams were supported by the KEWASNET regional coordinators and the Centre for Social Planning and Administrative Development (CESPAD).
- An analysis phase which comprised the preparation of a main findings and recommendations note, its validation and revision through a workshop of national and selected county representatives organized by KEWASNET, and submission of the note to key respondents who did not attend the workshop for comments. This study process concluded with the drafting of this report.

The study research framework is constructed according to four main sources of integrity risks identified in the inception phase. These are the transparency and accountability arrangements between key county institutions and citizens; the degree of compliance and implementation of the 2016 Water Act and other relevant laws ruling water sector institutions; the implementation of the public financial management system at county level; and the management of county WSP revenues and service provision. Table 1 provides the main research questions and identified integrity risks associated with each aspect.

**Table 1: Main research areas, questions, and associated risks**

FOCUS AREA: TRANSPARENCY AND ACCOUNTABILITY ARRANGEMENTS BETWEEN KEY INSTITUTIONS AND CITIZENS
<p>1. Is effective social and formal accountability for financial resources in the water sector in place or emerging at county level?</p> <p><i>Identified integrity risks:</i> Weak information on policies, plans, and budgets; gaps in policies and legal frameworks; weak policy-budget links; weak participation mechanisms; gaps in the accountability loop throughout the budget cycle</p>
FOCUS AREA: IMPLEMENTATION OF AND COMPLIANCE WITH THE WATER ACT 2016 AND OTHER RELEVANT LAWS GOVERNING WATER SECTOR INSTITUTIONS
<p>2. What progress has been made in implementing the Water Act and other acts and how does this affect integrity in financial resources management in the water sector at county level?</p> <p><i>Identified integrity risks:</i> Slow transformation of institutions and transfer of assets; duplication and competing interpretation of roles; roles outside of the mandates provided for in the Act; non-transparent and uncoordinated investments by different institutions undermining accountability</p>



## FOCUS AREA: PUBLIC FINANCIAL MANAGEMENT RISKS

3. To what extent and in what form do human resources gaps associated with integrity risks arise in the water sector at county level?

*Identified integrity risks:* Weak human capacity for the management of policies, resources, and services delivery in the water sector; undermining the proper implementation of budget systems, internal controls, reporting, and auditing requirements

4. In what way do factors associated with institutional capacity and process regularity affect integrity in the water sector?

*Identified integrity risks:* Weak or non-functioning internal control systems; weak revenue collection and cash management systems; inconsistent classification and budget structure, Integrated Financial Management Information System (IFMIS), and standard chart of accounts (SCOA) issues which undermine tracking of projects and cross-county comparisons; procurement and payment management system risks (due to information / technical system failure or non-compliance with the accounting rules and reporting processes, as well as vested political interests or misuse of authority)

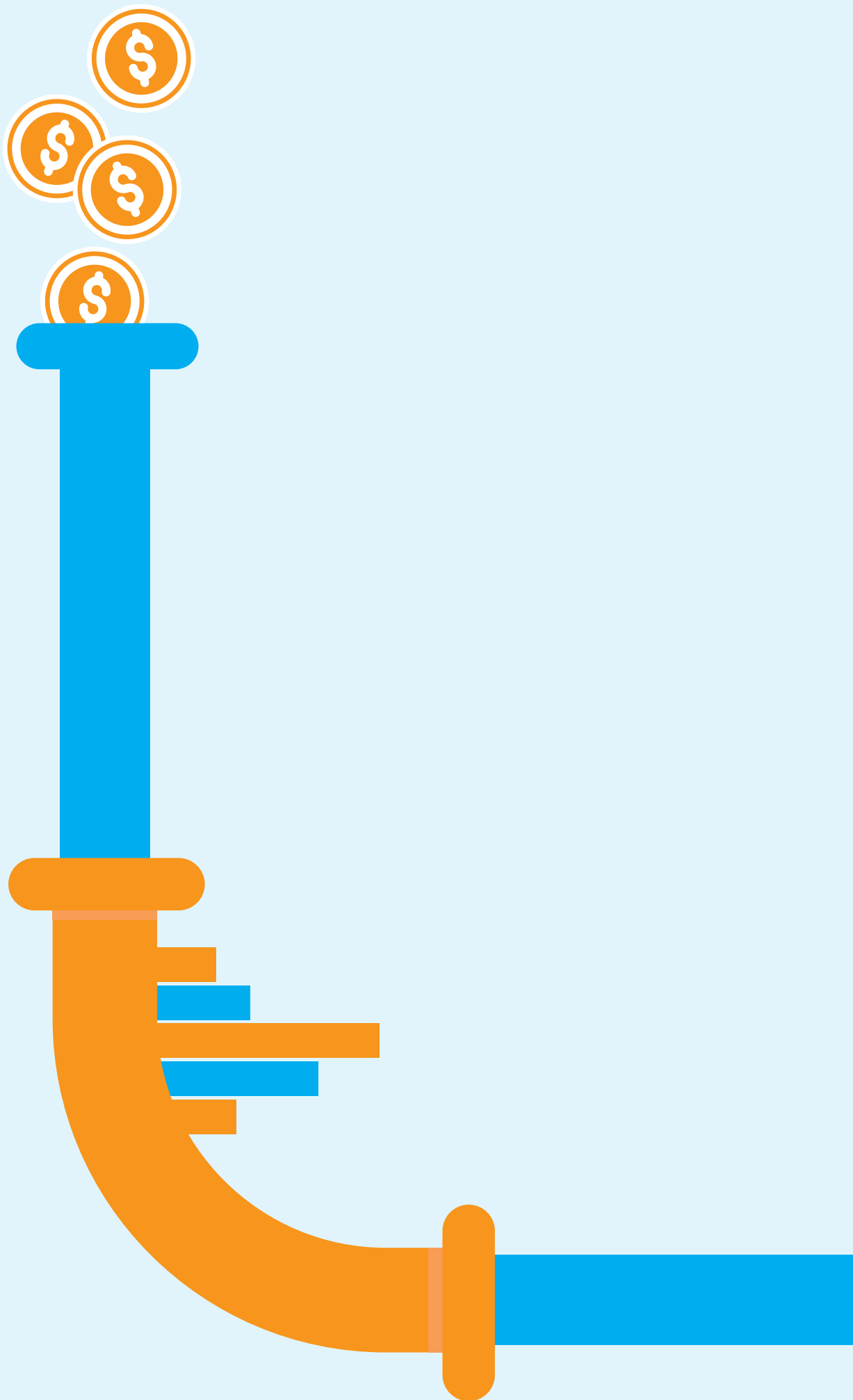
## FOCUS AREA: RISKS ASSOCIATED WITH THE MANAGEMENT OF WSP WATER REVENUES AND SERVICES PROVISION

5. What integrity risks arise from the management of water revenue and expenditure by WSPs? To what extent do corporate governance practices aggravate or mitigate these risks?

*Identified integrity risks:* Weak revenue collection, management systems, and controls for water and associated services; weak expenditure management and financial reporting of WSPs; weak oversight of WSPs by the boards of directors and lack of due process in appointments and sanctions (not only due to weak human capacity and economic factors, but also to lack of political will and managerial sanctions); political pressure causing moral hazards for county governments on sanctioning mismanagement in WSPs

## 2.2 Report structure

This report is structured in four main sections. Section 1 introduces the study objectives, methodology, and query framework. Section 2 provides an overview of the Kenyan water sector, with an emphasis on the evolution of and current framework for water sector institutions, financial flows, and the management of resources. Section 3 provides the main findings and conclusions of the study, and Section 4 discusses the recommended actions.



### 3 Overview of the Kenyan water sector

This section provides information on the evolution of the legal and institutional context of the Kenyan water and sanitation sector and its financing, as background to the findings reported in Section 3. It is comprised of three parts: a discussion on the evolution of the institutional structure of the water sector; a discussion on financial flows together with a broad picture on the scale and distribution of expenditure; and a discussion on the formal public financial management system context for county revenues and expenditures.

#### 3.1 The institutional structure of the water sector in Kenya

Kenya is classified as a water-scarce country, with one of the lowest natural water replenishment rates in the world<sup>5</sup>. The data on access to safe water supply in Kenya as reported by different sources vary<sup>6</sup>, but there is evidence from the WHO/UNICEF Joint Monitoring Team<sup>7</sup> that urban coverage has been declining in recent years whereas rural coverage is increasing<sup>8</sup>. Poorer population groups remain disproportionately vulnerable.

The Water Policy (1999) and the Water Act (2002) laid out a progressive approach to developing the water sector, separating policymaking, regulatory, service delivery, and resource management functions and establishing accountability lines between these. In 2007, the Vision 2030 initiative set targets to ensure clean water and sanitation for all, and the Constitution (2010) enshrines the right to clean and safe water. In addition, international commitments for the sector<sup>9</sup> establish service, financing, and accountability targets. However, public expenditure levels on the water sector are estimated to be only 10 percent of that required to meet the Vision 2030 targets<sup>10</sup>. While it is, therefore, important to increase financing to the sector, it is equally important to first ensure that existing resources are used efficiently and with integrity.

The 2010 Kenya Constitution was aimed at bringing services and accountability closer to the people. Water and sanitation services as well as water conservation were included in newly devolved functions. As a result, the sector has been undergoing substantial legal and institutional changes since the new Constitution came into force. The implications of devolution for the water sector made it necessary to replace the Water Act 2002 with a new law, the Water Act 2016. The new act upholds the basic tenets of the Water Act 2002, including the delegation of service delivery to dedicated water service providers, ring-fencing of revenues from water services, and decentralization of water resources management. Furthermore, it aligns the sector with the devolved responsibility for water and sewerage services provision to 47 county governments as per the 2010 Constitution, while locating responsibility for water

5 Kenya has a freshwater endowment of only 552 cubic meters per capita compared to the conventional universal minimum of 1,000 cubic meters. (Source: United Nations Development Programme and UNRESA. 2012. *Sustainable Development in Kenya*. Nairobi: UNDP.)

6 See, for example, United Nations Environment Programme DHI Centre on Water and Environment. 2018. Integrated Water Resource Management (IWRM) Data Portal: <http://iwrmdataportal.unepdhi.org/dataoverview.html>; and World Health Organization and UN-Water. 2017. *UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS)*. Geneva: WHO. [https://www.who.int/water\\_sanitation\\_health/publications/glaas-report-2017/en/](https://www.who.int/water_sanitation_health/publications/glaas-report-2017/en/)

7 See UN Joint Monitoring Programme <https://washdata.org/data#1/ken>. According to this study, safely managed, urban drinking water declined from 62.5% to 54.4% of the population between 2000 and 2015, while rural levels improved from 35.9% to 49.9% over the same period.

8 WASREB. 2016. *Impact Report Edition 9 for 2014/15*. Nairobi: WASREB.

9 Sanitation and Water for All (2014) and Ngor Declaration on Sanitation and Hygiene (2015).

10 Ministry of Water and Irrigation (MWI [now MWS]). 2016. *Annual Water Sector Reviews 2014/15–2015/16*. Draft. Nairobi: MWI/MWS.

sector policy development and regulation of water resources management and use, as well as water and sewerage services, with national government institutions.

Table 2 summarizes the assignment of responsibilities to institutions under the old versus the new dispensation.

**Table 2: Functions and evolution of institutions in the water sector**

Main function (as per Water Act 2016)	Old institution	New institution
Setting, monitoring, and enforcing regulations for water resources management and use	Water Resources Management Authority (WRMA)	Water Resources Authority (WRA)
Water resource management in the basin area	Catchment Area Advisory Committees	Basin Water Resources Committees
National public water works for water resource storage and flood control	National Water Conservation and Pipeline Corporation (NWCP)	National Water Harvesting and Storage Authority
Setting and monitoring of national standards for water services provision and asset development; evaluating, recommending, and approving tariffs; setting and enforcing license conditions for water service providers (WSPs); protecting the rights and interest of consumers of water services	Water Services Regulatory Board (WASREB) For licensing WSPs: Water Services Boards (WSBs)	WASREB
Financing the development and management of water services in marginalized and underserved areas, including community-level water resources management, research	Water Services Trust Fund (WSTF)	Water Sector Trust Fund (WSTF)
Water and sanitation service provision in commercially viable areas and development of county assets for water service provision (or county public water works)	WSBs (water service provision responsibilities), service delivery through licensed WSPs	County governments through licensed county or cross-county WSPs
Water and sanitation service provision outside of commercially viable areas	WSBs (water service provision responsibilities) through licensed WSPs	County governments through contracted community associations, public benefits organizations, a private person or licensed WSPs
Hearing and determining appeals on decisions of the national Cabinet Secretary for water, the WRA, or the WASREB	Water Appeals Board	Water Tribunal
Development, maintenance, and management of national public water works within the institution's area of jurisdiction, technical and capacity building support to county governments	WSBs	Water Works Development Agencies (WWDAs) <sup>11</sup>

<sup>11</sup> It should be noted that the WSBs were still operating during the conduct of case studies and are therefore referenced in the findings. They have since been replaced by the WWDAs, which were gazetted in February 2019.

In addition to these legal and institutional changes, the water sector has been affected by the overall shifts in governance and financial management systems that occurred after the 2010 Constitution. Key pieces of legislation controlling how all public entities (including ministries, departments, agencies, and public corporations) are managed were also replaced to align these systems with the new Constitution. New and revised acts include, for example, the Public Financial Management Act (PFMA, 2012), the Public Procurement Asset Disposal Act (2015), the County Governments Act (CGA, 2012), the revised State Corporations Act (2016), and the revised Companies Act (2015).

Furthermore, local civil society organizations (CSOs) and international non-governmental organizations (INGOs) play an important role in the water sector, both in terms of infrastructure development and service delivery, especially in hard-to-reach and marginalized areas. They are also involved in advocacy work and facilitate citizen participation in planning and policy processes. Coordination mechanisms for CSOs active in the water sector exist – for example, the Water, Environment and Sanitation sub-sector coordination group (WESCORD), which coordinates humanitarian support between multilateral, bilateral, and non-governmental and government institutions involved in emergency water and sanitation services; and the Kenya Water and Sanitation Network (KEWASNET), which coordinates CSOs working in the sector. At county level, the partnership between county governments and NGOs is spearheaded in some cases by committees known as the Water, Environment and Sanitation Committees, whose members are drawn from both government departments and NGOs.

### 3.2 Water sector financing and expenditure

The water sector at large can be defined as including water supply, sanitation, water resource management, and water in agriculture<sup>12</sup>. This research study is focused on water services, incorporating water supply and sanitation. In this section, we look at expenditure on the water sector as a whole in Kenya (using sources of aggregate expenditure data and analysis), and where available, on water services specifically.

The water sector overall is financed by revenue collected nationally and at county level, development partner loans and grants, civil society contributions, and user fees and charges. Commercial or private financing to the sector is still very limited. The main source of funding for the overall sector, but also for the water services sub-sector, is nationally collected revenue, followed by tariff/user fees. Generally, projected water sector finance allocations are insufficient to meet requirements<sup>13</sup>: government projections suggest a large and widening gap in sector funding. The projections also point to a continued dependence on external finance sources. Studies have shown that Kenya's investment in the water sector may lag behind other countries in the sub-Saharan region. Eberhard (2018), for example, shows that of five countries studied, investment per year in urban water and sanitation services was the lowest in Kenya as a percentage of gross domestic product (GDP) (at 0.09 percent) and the third lowest in spending per capita (at USD 5.6 in 2011 terms).

Public funding of the water sector is established in terms of the intergovernmental fiscal relations system developed under the 2010 Constitution. The key aspects of this system are set out in Box 1.

<sup>12</sup> The water sector is not formally defined as a separate sector of government under the classification of the functions of government (COFOG). Rather, sub-components of what is seen as the water sector fit into other sectors. Water services, for example, fits under the housing and community amenities sector, while sanitation fits under environmental protection. It is, however, common for governments to manage water supply, sanitation, water resource management, and water in agriculture in an integrated manner. Development partners may also manage their support to this sector as a whole.

<sup>13</sup> Ministry of Water and Irrigation (MWI [now MWS]). 2016. Annual Water Sector Reviews 2014/15–2015/16. Draft. Nairobi: MWI/MWS.

### Box 1: Devolution of revenue and expenditure competencies in Kenya

In Kenya, the devolution process is anchored in the new Constitution adopted in 2010. Altogether, 47 counties are established in Kenya. The Constitution mandates shared responsibility for some important areas of service delivery (including water), with the national government generally responsible for policy and county governments for implementation.

The Constitution separates revenue-raising powers by allocating income tax, value-added tax (VAT), and customs and excise taxes to national level, and property rates, entertainment taxes, and trade licenses to counties<sup>14</sup>. Both levels of government may impose charges for the services they provide, including water services. Conditional and unconditional transfers from national government, from nationally collected revenue, comprise the main source of financing for county expenditures.

Available national public revenue for the national and county levels, respectively, is determined by the vertical division of revenue (legislated through the annual Division of Revenue Act [DORA]). Over and above the Constitutional requirement that at least 15 percent of national revenue must be shared among counties, the determination of vertical division of revenue annually is a political decision informed by political priorities and the outcomes of the consultation processes set out in the Constitution and the PFM Act. It must also take into account factors (such as the national interest, debt obligations of government, and the development needs of counties) as set out by the Constitution and the recommendations of the Commission on Revenue Allocation (CRA). The National Treasury proposes the division (with an explanatory memorandum regarding deviations from the CRA's recommendations); Parliament approves it as the DORA.

The share which is available for each county within the total nationally available county resources is determined by the horizontal division, which is set by a formula approved by the Senate. Annually, this division, together with conditional transfers, is legislated as the County Allocation of Revenue Act (CARA). The Constitution provides that CRA must make recommendations on the formula to the Senate. The current formula revolves around five components, each with attached weight: (i) population, (ii) poverty, (iii) equal share, (iv) land area, and (v) fiscal responsibility<sup>15</sup>.

Conditional transfers are a typical feature of devolved funding arrangements, despite the fact that they limit the extent to which sub-national governments can freely decide over the types, quantities, and manner in which services are delivered. Along with unconditional transfers and payments, they complete the range of instruments through which the central level can support service delivery at the local level. Currently, there are no conditional grants flowing from national ministries to counties for the water sector.

Despite calls for devolution to be phased to enable a structured implementation<sup>16</sup>, a full transfer of constitutionally devolved functions occurred with the 2013/14 budget allocations<sup>17</sup>. The justification for the cost estimates of devolved functions in the text of the first Division of Revenue Act (DORA)<sup>18</sup> in 2013, refers to the previous expenditure on the functions implemented by the National Government and defunct Local Authorities. Setting the base for the aggregate county allocation in DORA, therefore, involved costing the devolved functions based on existing expenditure and adding additional funds to account for the new administrative functions.

Underlining the complexity of funding flows, Figure 1 sets out the flow of financing from Kenyan public and other sources to water projects and services on the ground – this is just one (although very large) part of the sector and does not taking into account other sub-sector like sanitation, water resources management or irrigation.

<sup>14</sup> See Annex 1: Constitutional revenue allocation to counties

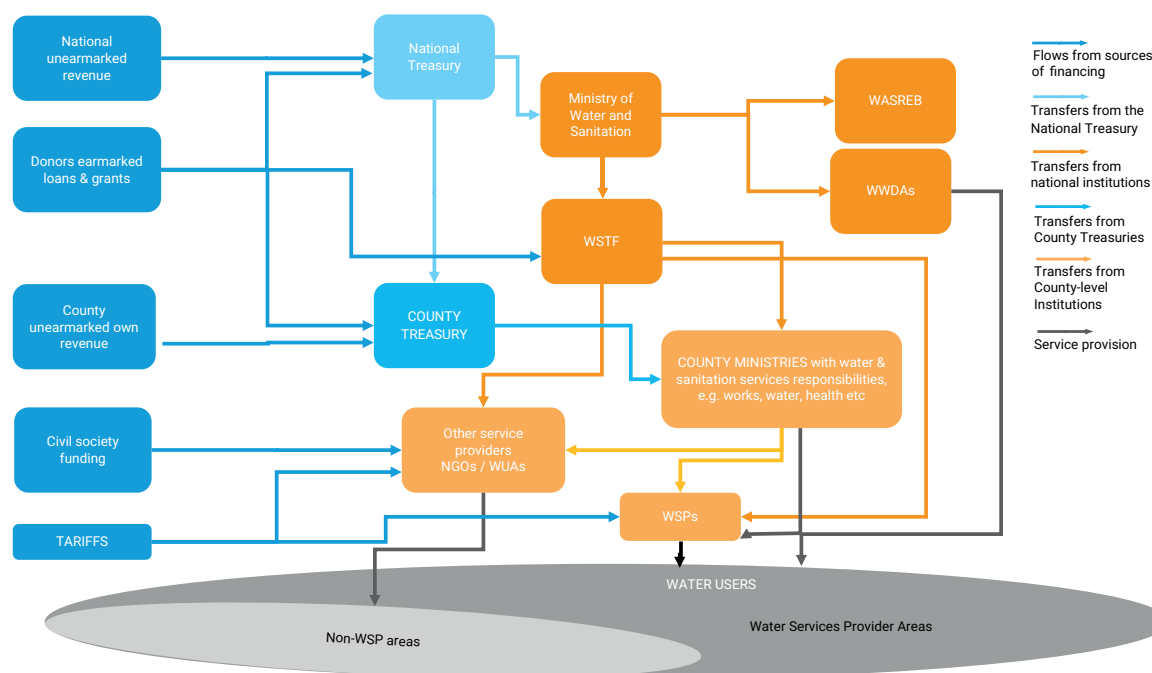
<sup>15</sup> World Bank. 2012. "The CRA Proposal: An Important Step toward Redistribution". In *Devolution without Disruption: Pathways to a Successful New Kenya*. Nairobi: World Bank.

<sup>16</sup> World Bank. 2012. *Devolution without Disruption: Pathways to a Successful New Kenya*. Nairobi: World Bank.

<sup>17</sup> Kenya, Republic of. 2013. Budget estimates. Nairobi: Government of Kenya.

<sup>18</sup> Republic of Kenya. 2013. Division of Revenue Bill 2013. *Kenya Gazette* supplement. Nairobi: Government of Kenya.

Figure 1: Financing flows to water service provision



Source: Adapted from CABRI 2017<sup>19</sup>.

It illustrates the multiple channels for and degree of fragmentation in water services expenditure in Kenya. A consequence of this is that there is no single, up-to-date source on the volume and distribution of water sector expenditure overall, and for the water services sub-sector across all institutions which finally spend budgets on the various functions in the sector, including policy development and regulation, infrastructure development, service provision, and monitoring and oversight. The study used a number of sources to provide a broad picture of the credibility of water budgets, the scale of expenditure, the share of water expenditure in overall expenditure, and the distribution of expenditure.

### 3.2.1 National water sector expenditure

According to the MWI (now the MWS) Annual Water Sector Review for the financial years 2014/2015 and 2015/16<sup>20</sup>, water sector (including irrigation) national budgeted expenditure was KSH 52 billion<sup>21</sup> in 2015/16, up from KSH29.3 billion in 2013/14, of which 63 percent was for water and sanitation services in 2015/16. The 2013/14 figure for the water sector as a whole represented a decline in national funding from the 2012/13 levels (at KSH 41.9 billion) due to the devolution of budgets in 2013/15 to counties.

Of the KSH 52 billion budgeted expenditure (for national ministries and departments and water sector institutions financed by national own revenue and donors) reported for 2015/16, only KSH 4.3 billion was for recurrent purposes. Actual receipts by the ministries, departments, and institutions from the National Treasury and donors were lower, at KSH 47.1 billion, with the shortfall being largely on account of lower-than-budgeted receipts from donors. In 2015/16, the sector had KSH 7.54 billion in outstanding bills, mostly under the development vote. Of the total available national budgeted expenditure in 2015/16, besides the 63 percent for water and sanitation services, 29 percent was for irrigation development and drainage, 4 percent was for water resources management, and 3 percent for water storage. It is noteworthy that the increase in water sector budgets and expenditure are primarily due to increased allocations for the irrigation and drainage sub-sector, which increased from KSH 4.5 billion in 2012/13 to KSH 15 billion in 2015/16.

19 Collaborative Africa Budget Reform Initiative. 2017. *Decentralisation of Water and Sanitation Services in Kenya*. Pretoria: CABRI.

20 MWI (2016), p40.

21 On average, in 2016, USD 1.00 was equal to KSH 101.45.



Another source of information on national government on-budget expenditure in the water sector is the BOOST database<sup>22</sup>. The BOOST data confirm the analysis that the most significant expenditure has been on water supply infrastructure, at about two-thirds in each of the years, even if the exact amounts differ. The data also show that about one-half of the expenditure recorded is financed by external loans and grants. Although there has been steady growth in budget allocations, actual expenditure fluctuated over the three years analysed, largely because of particularly poor development budget execution in 2015/16. Across the three years, development expenditure was never more than 76 percent of budgeted expenditure, while recurrent expenditure never rose above 52 percent, pointing to poor budget execution. Nominal expenditure growth from 2014/15 to 2016/17 was 80 percent (See Annex 1 for supporting tables).

### 3.2.2 Water Services Boards expenditure

The investment by the WSBs merits a specific look, insofar as they have the mandate to invest in major cross-county and county water storage and water service infrastructure and they managed about 40 percent of the national development expenditure in the sector<sup>23</sup>. Although the WSBs are now being replaced by the WWDAs, it is still unclear how their (historical) assets and liabilities, as well as the new loans taken on since 2017, will be transferred to WSPs which are now in charge of county asset development and the WWSAs which are taking over cross-county asset development. In 2014/15 and 2015/16, WSBs invested KSH 14.9 and KSH 16.5 billion, respectively, of which most was invested in urban areas (about 75 percent in 2014/15 and 85 percent in 2015/16). Despite these investments, however, the number of underserved people in urban areas has been growing steadily, due to high rates of urbanization.

### 3.2.3 Counties' expenditure on water services

The study's inception phase used three sources to provide an indication of the size of expenditure by county governments in water services: (i) the Water Sector Review Report for 2014/15 and 2015/16; (ii) a comparative study on county water and sanitation budgeting prepared by the International Development Institute – Africa (IDIA) for Water and Sanitation for the Urban Poor (WSUP)<sup>24</sup>; and (iii) the BOOST data. It is important to note that these different sources may not be directly comparable, as they used different sources and different methods to decide what would count as water sector expenditure. Nonetheless, they make clear significant trends in water sector expenditure at this level.

Key findings across the sources are:

- At county level, allocations to the water sector vary, but are in the region of 5–10 percent of budgeted expenditure. For example, for the 11 counties sampled by the IDIA study, allocations to the departments in charge of water and sanitation ranged from below 5 percent to about 10 percent of total budget. The Boost data suggest that county budget investment in the water sector totalled about KSH 3.4 billion per year between 2014/15 and 2016/17 (see Annex Table 4 for the water programme expenditure reflected in Boost by county). Given issues raised in the study on the programme classification of county expenditure, it should be noted that this figure may not be fully reliable.
- Despite expenditure in the water sector consisting mostly of development expenditure – also at county level – development expenditure in the water sector remains low relative to other development expenditure. For example, across reporting counties the Water Sector Review estimated that on average 15 percent of development budgets was invested in water-related projects. The purpose of county development expenditure was largely for investment in new water sources, such as the drilling of boreholes, excavation of water pans, and constructions of dams (see Annex Table 5 for data).
- However, there is also wide variation in terms of the allocations for recurrent versus development expenditure. The proportion of development budget allocations tended to be lower in the urbanized

22 World Bank. 2018. Boost Countries. Open Budget Portal. <http://boost.worldbank.org/country/kenya-0>.

23 Oxford Policy Management. 2017. *WASH and Health Public Expenditure Review*. Oxford, UK: OPM.

24 International Development Institute – Africa (IDIA). 2017. *A Comparative Study on County Water and Sanitation Budgeting*. Zero draft report. Prepared for Water and Sanitation for the Urban Poor (WSUP). Nairobi: IDIA.



counties. The per capita allocations analysis also shows very high disparities in allocations between counties. Generally, per capita investment allocations for water are higher in counties considered marginalized compared to other counties, and especially most highly urbanized counties. Although some counties did allocate money to sanitation, the level of investment is quite low, with allocations making up less than 1 percent to slightly more than 1 percent (1.2 percent) of the counties' total budget estimates. The investment was also primarily in solid waste management.

- Actual county expenditure is much lower than budgeted, partly because of lower disbursements (often due to underperforming revenue collection and/or weak cash management) to water and sanitation ministries, but also because of low absorption capacity within ministries. This is clear from the IDIA study (see Annex Table 6 and Annex Table 7 for data). The Boost expenditure database shows actual recurrent expenditure at 19 percent below budgeted expenditure, and actual development expenditure at 27 percent below budget (see Annex Table 8). While the development budget deviation is similar to the deviation for national MDA expenditure, for recurrent expenditure counties appear more likely to execute their budgets.

### 3.2.4 Expenditure by WSPs

There is little consolidated information available on WSP expenditure and the nature of expenditure. The WASREB impact report for 2016/17 showed that across the 88 utilities which reported, turnover had been KSH 20.667 billion, up from KSH 16.57 billion in 2015/16, which was slightly more than the amount spent by the WSBs (Water Sector Review data) and by national government MDAs (BOOST data), respectively, and more than three times the amount spent by counties (BOOST data). Hence, tariffs paid by water users make up a very substantial share of revenues for the sector.

These revenues collected by the WSPs are 'ring-fenced' according to section 131 of the Water Act 2016, meaning that they must be spent on operating, maintaining, and expanding water and sewerage services. This provision serves to protect the WSPs from being used as 'cash cows' by their owners, be it county governments or private shareholders.

The WASREB report distinguished between very large, large, medium, and small WSPs, and showed that large WSPs were far more likely to cover their operation and maintenance (O&M) costs through their revenue. Overall, more than 60 percent of the utilities were below 100 percent O&M cost coverage or had no, or no credible, data, and only one utility was above the national target of 150 percent. The report also noted that many WSPs continued to operate under tariffs that did not cover their costs, relying on unpredictable and unsustainable subsidies to continue operations. This is partially due to utilities not updating their tariffs – 65 percent of the assessed utilities were operating with expired tariffs. This is not unusual in the sub-Saharan context. Eberhard (2018) found that a large number of public water and sanitation utilities in the region fall into a low-level equilibrium trap. Tariffs are kept low for political reasons and utilities are starved of resources. These utilities are unable to access loan finance and must rely on unreliable transfers (grants) from government and, more typically, development partners. As a consequence of this, combined with rent-seeking management of utilities, services are unreliable and networks expand little, and slowly<sup>25</sup>.

### 3.2.5 Civil society expenditure

According to the CSO performance report developed by KEWASNET, 65 CSOs reported having invested KSH 1.6 billion in the water sector for the financial year 2014/15. In 2015/16, the investments captured in the report grew to KSH 2.9 billion invested by 96 reporting CSOs. This growth is mainly due to having more and bigger organizations participating in the report, which is conducted on a voluntary basis. Yet the report still only captured data from 50 percent of the organizations known to be active in the sector, and several big international NGOs do not report. Altogether, 78 percent of reported CSO expenditure is in rural areas and 28 percent in urban areas. CSOs invested almost 70 percent of the available funds to extend (safe) water supply coverage, significantly more than the investments into this type of infrastructure during the previous reporting period (50 percent). The data show that many water supply

<sup>25</sup> Eberhardt, R. 2018. *Access to Water and Sanitation in Sub-Saharan Africa: Review of Sector Reforms and Investments, and Key Findings to Inform Future Support to Sector Development*. Berlin: GiZ. p. viii.

projects combine water supply hardware and software activities with sanitation and hygiene promotion (see Annex Table 9).

### 3.3 Public financial management and other governance requirements for a devolved water sector

Kenya's integrated national and county PFM process is laid out in the Public Financial Management Act (PFMA, 2012) and the PFMA Regulations (2015) and works around a fiscal year (FY) which runs from 1 July to 30 June. The budget cycle, from expenditure planning through to audit, stretches over multiple years.

In the first stage of **planning and budget** preparation, counties prepare three-year medium-term fiscal frameworks and detailed budgets, which should be linked to their County Integrated Development Plan (CIDP), a legally required document prepared once every five years and coinciding with the county government electoral cycle. Kenya operates a programme-based budget at both national and county levels.

Kenya's legal framework lays out a relatively detailed set of requirements for **transparency of and public participation in county budgets**<sup>26</sup>. Table 3 provides a summary of the documentation requirements in the county budget cycle, tracking decision making and implementation. The participation requirements stem from the Constitution, the PFMA, the County Governments Act, and the Urban Areas and Cities Act, and include the specification of participation measures in the annual county budget circular, participation

**Table 3: County report requirements**

Report	Publication date
<b>Multi-year Strategic Planning</b>	
County Integrated Development Plan	Multi-year
<b>Annual Strategic Budget Phase</b>	
Annual Development Plan	1 September
County Budget Review and Outlook Paper (CBROP)	21 October
County Fiscal Strategy Paper	14 March
<b>Annual Operational Budget Phase</b>	
County Budget Estimates	30 April
County and National Finance Acts	30 September (latest)
Citizens Budget	
<b>In-year reporting</b>	
County Quarterly Budget Implementation Review Report	Within 1 month of the close of the quarter
Controller of Budget consolidated County Quarterly Budget Implementation Review Report	Within 1 month of the close of the quarter
<b>End-of-year and review reports</b>	
County Financial Statements to National Treasury	Quarterly not published (within 15 days of the close of the quarter)
Audit reports and annual financial statements	30 December of the year after the fiscal year

Source: Kenya School of Government 2015.

<sup>26</sup> Kenya School of Government. 2015. *Basic Requirements for Public Participation in Kenya's Legal Framework*. Working Paper 2. Nairobi: KSG.

in the drafting of the County Integrated Development Plan and sector plans, consultation with citizens for the county fiscal strategy paper and annual budget estimates, the establishment of county budget and economic forums, and the establishment of mechanisms for participatory monitoring.

The integrated financial management information system (IFMIS), a national transversal information technology (IT) system managed by the National Treasury, is key **in budget implementation and reporting**. The software modules include budgeting, accounting, reporting, procurement, asset management, auditing, and electronic funds transfer. Although development of the system began before devolution, implementation was adjusted significantly to enable the inclusion of county PFM within the tool. The standard chart of accounts (SCOA), applicable to national and county governments, provides the framework for consistent definitions in the IFMIS and enables the disaggregation of budget, revenue, and expenditure data by programme, economic item, location, and other aspects.

Legally, all administrators of public funds must publish a quarterly report which is reviewed and compiled by the Controller of Budget; it must include both financial data and non-financial performance information. Monthly financial reports to the National Treasury are not public but are a legal requirement.

In the **audit and review** phase, the Office of the Auditor General (OAG) publishes a report on the accounts of the national and county governments within six months of the close of the financial year. However, there is a backlog of audit reports, often blamed on late submission of financial reports by reporting entities and a lack of sufficient audit capacity.

Not all public or publicly owned institutional actors in the water services sector, however, are government entities and subject to the PFMA and public financial management systems in the same way that national and county level departments are. Some are constituted as state corporations (WASREB and the WWDAs for example, see Box 2 for a discussion) and are subject to the State Corporations Act. In principle, counties may also constitute entities to provide water services as county corporations (see Box 2 for a discussion on county corporations). The Water Act (2016) is in principle supportive of this: according to section 77 of the Act, WSPs may be ‘a public limited liability company established under the Companies Act, 2015 or other body providing water services as may be approved by the Regulatory Board’. In practice, the combination of counties inheriting WSPs set up as companies (although mostly as private companies)<sup>27</sup> in line with the WASREB model regulations under the 2002 Act and more explicit requirements in the Water Act for WASREB to set out model memoranda and articles of association for WSPs operating as companies, and for these to comply with these guidelines (section 72[e] and 77.4) without similar requirements for other bodies, has meant that in WASREB guidance and in practice the limited liability public company model is favoured. In the Corporate Governance Guidelines for the Water Services Sector published by WASREB in 2018<sup>28</sup>, the explicit statement is that the preferred model is of a company (see Section 3.2, Institutional Model) which would be governed under the Companies Act.

As public limited liability companies, WSPs will not have financial privacy. Public companies are, by definition, companies whose shares may be traded on an exchange. The financial accounts, statements (prepared in compliance with division 4 of the Companies Act 2015), and directors’ reports of public companies, therefore, are filed with the registrar and must be published (Division 8 of the Act). Public companies must also hold an annual general meeting for all its shareholders. Both public and private companies’ accounts and statements must be audited. The Companies Act also sets out rigorous corporate governance duties for the directors of both types of companies, including in regard to the solvency of the company.

In practice, however, many WSPs were established as private limited companies: this means that shares are held by private individuals, and that these individuals are restricted in trading the shares. Private companies also have more financial privacy: they are required to file financial statements and directors’ reports with the registrar, but these do not need to be published. The rights of shareholders in WSPs, however, for both private and public companies, include the right to be sent copies of a company’s annual financial statements and reports.

<sup>27</sup> See, for example, WASREB. 2002. *Model Water Services Regulations*. <https://wasreb.go.ke/downloads/Water%20Service%20Regulations.pdf>

<sup>28</sup> WASREB. 2018. *Corporate Governance Guidelines for the Water Services Sector*. <https://wasreb.go.ke/downloads/WASREB%20Corporate%20Governance%20Guidelines%20%20November%202018.pdf>

## Box 2: Financial management and governance of state corporations and county corporations

State corporations in the water sector, such as WASREB, WRA, WSTF, and WWDAs, are subjected to statutory governance requirements, including that they prepare budgets and financial reports. Key statutory requirements are set out in terms of the PFMA and the State Corporations Act.

The PFMA makes the accounting officers of state corporations accountable to the relevant Cabinet Secretary. In the water sector, this means that the chief executive officers of the corporations must submit expenditure estimates, quarterly reports, and financial statements to the Ministry of Water and Sanitation (MWS) Cabinet Secretary for approval. The Cabinet Secretary will then forward these to the National Treasury Cabinet Secretary. The MWS Cabinet Secretary is also responsible for issuing an annual report within four months of the close of the fiscal year (FY) in which the national government's shareholding, funding, cumulative loans, profit, loss, and performance of any state corporation is declared.

The State Corporations Act (2012) makes the board of the corporation accountable for the proper management of its affairs, including its financial affairs. It includes provisions regulating the boards of state corporations, including the appointment and dismissal of members and the chair and the regularity and procedures of board meetings. It also requires the submission of annual expenditure estimates to the relevant minister and the Finance Minister, for approval, and determines which state corporations are subject to the Public Audit Act.

In addition, the Mwongozo Code of Governance for State Corporations addresses matters such as the effectiveness of boards, transparency and disclosure, accountability, risk management, internal controls, ethical leadership, and good corporate citizenship, as well as stakeholder rights and stakeholder engagement practices of state corporations and their boards. The 2016 National Treasury Guidelines on Audit Committees (Gazette Notice No. 2690) require that all state corporations and county governments establish audit committees and provide further guidance on the responsibilities and operations of these committees.

County corporations are also addressed in the PFMA (sections 149 and 182-186) and its Regulations (2012). Rules are similar to the rules for state corporations. County-owned WSPs, however, as per WASREB

Sources: PFMA and State Corporations Act, Mwongozo Code of Governance.

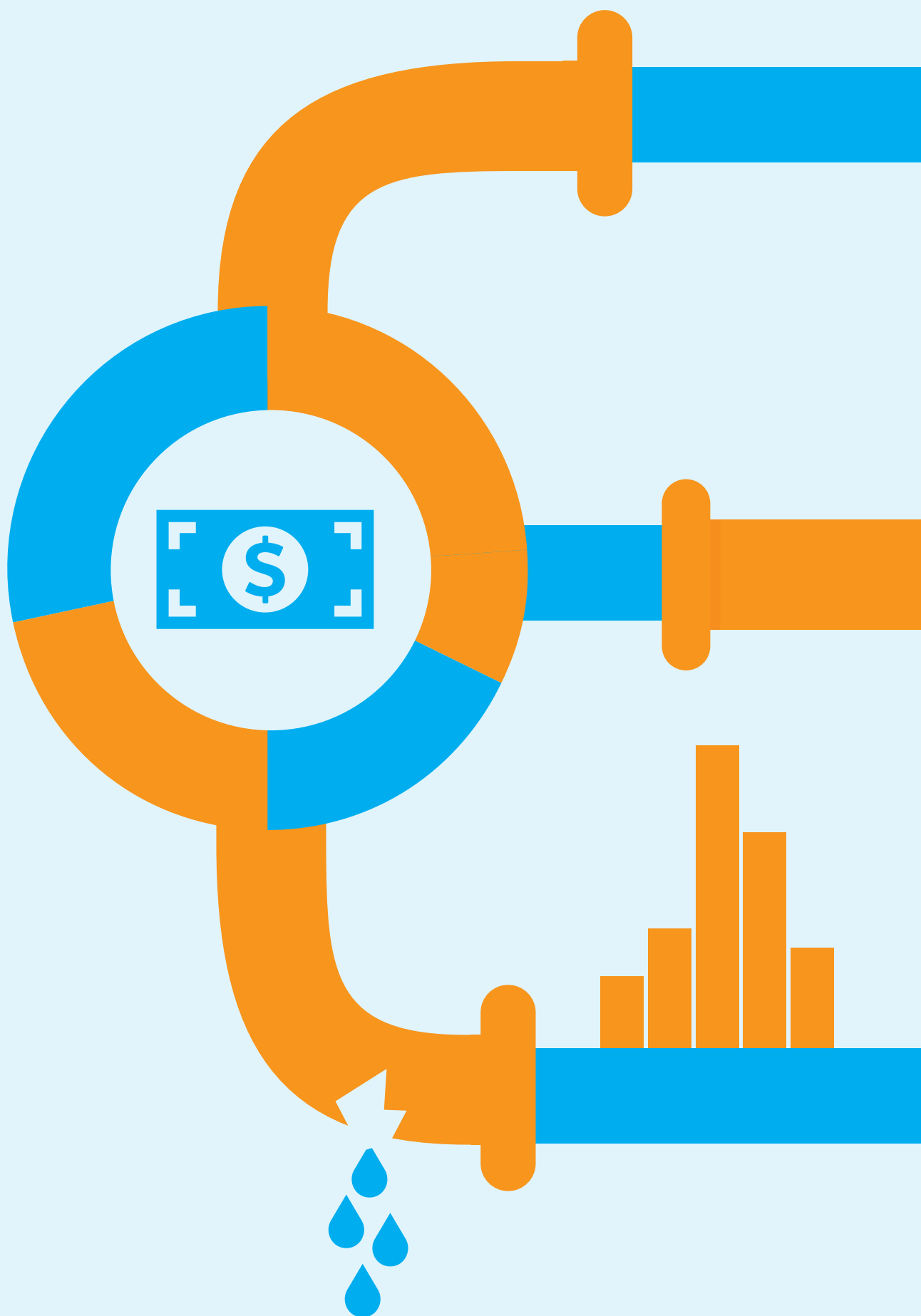
The WASREB Corporate Governance Guidelines set out how local authority-owned<sup>29</sup> WSPs operating as private limited companies or trusts (which were another governance model for WSPs licensed by the WSBs under the 2002 Act) must convert to public liability companies. The directive is that the county government should hold all class 'A' shares in trust for the people of the county, through the office of the county executive committee members (CECMs) in charge of finance and water and the county secretary (and not in the private capacity of individual incumbents to the posts). Furthermore, class 'B' shares should be issued to stakeholders 'from public and private registered institutions resident in the area covered by the WSP and who are key and primary stakeholders who would be negatively affected by the failure of the company or failure of water services and who are pillars of support to the company' (p11). These shareholders shall attend all shareholder meetings but will not vote to appoint directors at the annual general meeting, amongst other restrictions. Their main role is 'to provide robust participation in the affairs of the WSP at the general meeting' (ibid). WASREB also advises that in cases where national government has invested in the infrastructure assets of the WSP, or where it is a cross-county WSP, the National Treasury should be issued with a golden share, giving it the right to veto decisions that would compromise the financial liability of the company. The Guidelines also note that for cross-county WSPs,

29 The Guidelines acknowledge that there may be WSPs which are owned by private owners or the community. Such WSPs must show that their purpose is as water service agents for the county government and must provide water services in accordance with the standards prevailing in the water services sector. They also must adhere to the governance standards to the extent possible relative to their size. They should report within the framework provided by the county government.

these arrangements should be adjusted to reflect the usage of water and revenue generated by counties participating in the cross-county WSP in an equitable manner.

In terms of the Companies Act, and as emphasized by the WASREB Guidelines, the shareholders of the WSP exercise significant rights (and duties) in the governance of the WSP. These rights include the rights to audited statements and directors' reports, the right to vote in the annual general meeting, the right to receive notice of all meetings, the right to nominate directors to represent them, and the right to ask questions of the board, hold company directors to account, and dismiss directors. Any limits to these rights in terms of the class of shares should be set out in the memorandum and articles of association. The Guidelines also clearly emphasize the duty of counties to monitor service delivery, in terms of the County Governments Act of 2012, and incorporates this into their stipulation for the governance of WSPs.

In summary: The Companies Act provides a framework for the relationship between WSPs and counties which is framed in corporate governance terms, if not public financial governance terms. It includes key aspects of financial transparency, the right to information, and the right and duty as the shareholders of the company to hold directors to account. Up until now, not all WSPs assessed in the case studies have made these required changes in their articles of incorporation. The issue perhaps is that if the shareholders are now-defunct local authorities, and the articles have not been changed, there are no shareholders to demand these rights and perform corporate governance duties, and the rights of counties are legally ambiguous. The most relevant legally binding accountability relationship for these WSPs, then, is with the now-replaced WSBs, as stipulated in their still-valid articles of association.



## 4 Integrity risks in the water sector

The water sector in Kenya is exposed to multiple, coinciding integrity risks. Although lack of resources is often blamed for large numbers of people not having access to basic levels of water and sanitation, slow and variable progress against this SDG is also seen to be the result of weak governance, management, and coordination of resources, leading to efficiency losses and integrity risks. This study focused on the integrity risks, asking questions about the sources of risks and what can be done by whom to strengthen systems, reduce risks, and improve the efficacy of use of the resources that are available. This section of the report provides the study findings on the main sources of integrity risks at county level. It is structured in two main sub-sections. The first looks at integrity risks associated with counties and county governance, and the second at risks associated with the role of WSBs in practice, and WSPs as state-owned but at hand actors in the sector. The section is supported by Annex 2, which provides more extensive information on the findings of the five country case studies which are incorporated in the findings presented here.

### 4.1 Integrity risks of county governments

#### 4.1.1 Transparency and accountability arrangements between key institutions and citizens

Effective formal public accountability and social accountability require a number of conditions to be present:

- Reliable, timely, and useful information on the plans, budgets, budget implementation, and results related to the use of all public resources (own and donor revenue, as well as user charges) in the water services sector (focus of the study)
- Clear roles and responsibilities, so that accountability can be assigned
- Active public authorities, and empowered and active citizens, who are aware of information and hold actors to account
- Responsive authorities who enforce consequences for integrity breaches

While there is evidence of progress towards these conditions, there are also persistent and deep challenges to their full establishment, including challenges to the availability of information, participation, and responsiveness. The result is that accountability for integrity breaches is at best still very uneven and incomplete. This means that current accountability practices place only weak constraints on public actors to prevent them from making poor and/or rent-seeking decisions in the financing and provision of water services.

The following specific findings on the conditions for effective accountability support this study conclusion.

##### 4.1.1.1 Transparency

Although extensive information on county financial affairs should be available as required by law, in practice it often is not. The study found that websites have been created, and some documents are available, but consistent publication and online posting of key planning, budgeting, and reporting documentation are not occurring as required by law. In none of the five counties studied were all documents publicly available, even if available elsewhere.

This finding is echoed by the IBP Kenya County Transparency Survey, a regular survey of the availability of key county public documents, in line with the Public Financial Management Act. The survey tracks



whether County Integrated Development Plans, Annual Development Plans, Fiscal Strategy Papers, Programme-based Budget Estimates, and Budget Implementation Reports are regularly available.

Which reports are more likely to be available has significant implications for integrity risks. The study tracked the availability of documentation over four IBP surveys. While the budget estimates were available at least four of a possible 20 times (five counties in four instances), the budget implementation reports, essential for accountability, were not once available. The national Controller of Budget publishes budget implementation reports that can fill this gap, yet these contain only a short chapter per county and do not provide information at the level of detail which will support accountability or help prevent integrity breaches.

At the same time, however, the county study teams reported that, on request, officials provided hard copies of documentation in many cases. In some cases, however, the documents were promised but never received by the team despite their follow-up. An issue might be that officials are uncertain as to whether they may share documentation or not. Other studies have shown that information on request is not easily obtainable<sup>30</sup>. It should be noted that these challenges apply to all sectors, and the water sector is neither performing particularly weakly nor strongly in that regard.

**Water expenditure is fragmented and difficult to track.** An issue that affects the water sector specifically is that it is not necessarily easy to locate water sector expenditure in county budgets, because separate water departments as such do not exist. This difficulty is demonstrated in section 2.2 on water sector expenditure. The county study teams experienced this in practice, as they found information on responsibilities and expenditure of water services, sanitation services, and water resources management across departments and county budget documents. In terms of financial systems, this dispersion is mirrored by the fact that counties essentially use independent SCOA definitions which have drifted over time from the initial common national and county programme structure and definitions of five years ago. This drift has led to inconsistencies between counties and within the county over time. Further impeding transparency, not all changes to county programme structures have been accurately updated in the SCOA. This means that, in some cases, the programmes in the County Fiscal Strategy Paper and appropriated county budget do not align with the programmes in the budget executed on and reported through IFMIS. Indeed, the Controller of Budget is currently not able to analyse or report on government-wide budget execution by programme (national and all counties combined) despite a legal requirement to do so.

These factors make it extremely difficult to identify all public money which goes to the water sector at county level because it may partially be ‘invisible’ in other, environmental and public health programmes. One cannot easily compare allocations and expenditure across different counties and in some cases even within one county over time.

**External audit reports are available but have been delayed in the past.** Over the period of this study, the public availability of audit reports improved considerably. At the start of the study (in late 2017), only reports for the 2014/15 FY were available for county assemblies and governments’ on the OAG website. The AG reports for 2015/16 were obtained by the study team but were not (yet) available on the OAG website in mid-2018. However, by the time the study was finalized in early 2019, the website was up-to-date with reports for 2017/18. While the improved availability of reports is a positive trend, the risk of future delays in their availability remains a concern, as delays would hinder the county assemblies’ ability to close the accountability circle in a timely way. This is a particularly important finding given the severe and systemic nature of the issues raised by this assessment report, as set out in section 3.1.2 on public financial management systems.

#### 4.1.1.2 Participation

**Counties were making efforts to improve public participation approaches, especially during planning,** although they were not undertaking public participation within stipulated deadlines provided by the 2012 Public Finance Management Act, hindering the potential for incorporating citizen views in planning and budget decisions. Interview evidence with county governments suggests that counties are grappling with

<sup>30</sup> See, for example, African Network of Constitutional Lawyers. 2011. *Towards Promoting Access to Information in Kenya*. Cape Town, South Africa: ANCL. This study examined the challenges faced by citizens to realize their rights to information.



this problem, experimenting with how best they engage citizens in budgeting processes. For example, Nakuru first grouped wards but then found that this undermined effective participation, simply because effective participation requires more consultation with smaller groups, closer to the ground. Nakuru has also experimented and made progress by using CSOs as intermediaries to engage citizens. Makueni County has also made progress in effective public participation. The county engages its population annually. The 3,000 county villages each identify a key development project (including water projects); these are then prioritized at ward level, and finally, hundreds are selected and included in the county development budget to be funded by the relevant department<sup>31</sup>.

**There is some evidence of meaningful links from public participation to operational and budget decisions.** For example, in Nakuru and Makueni, the outcomes of public participation are managed by the technical departments, enabling a link to budget decisions. In Makueni, for example, more than 55 percent of funds allocated through participatory budgeting in 2017/18 went into water projects. Hence, citizens do effectively voice that water is their priority in the participation processes.

An emerging issue, however, is the relative influence of lobbying in the legislature, versus broader public participation processes run by counties. In two of the county case studies, county respondents noted that even if water issues may be prioritized by citizens during public participation processes in the planning and budgeting phase, leading to allocations in the executive budget proposal, lobbying of members of county assemblies – which has the power to change the budget – can lead to allocations shifting within and from the water sector. Accountability for these decisions is murky, as there is not sufficient transparency along the budget cycle. While the research data did not deliver clear examples of where this had occurred with quantification of the effect on the water sector, it was raised as a general issue in budget accountability which can affect the sector.

**The capacity of citizens for participation is, however, weak, affecting the effectiveness of processes.** Interview evidence with county staff in several counties underlined that the public is not well prepared for participation processes in terms of understanding water issues beyond demanding water services – for example, on sensitization on catchment conservation needs and sanitation, as well as in terms of knowledge on county budget processes and constraints. The fact that there was little evidence found of citizens exercising scrutiny on what happens to the projects selected through public participation further supports this point.

**Weak technical guidance by the institutions running participation processes can undermine sustainability of resulting services and value for money.** Public participation processes are usually coordinated by the county planning department with limited involvement of sectoral departments. Even where the preparation of communities for the process follows a structured, bottom-up process for prioritization of projects, including a light-touch feasibility assessment of priority projects by the county, as in Makueni, evidence from the case study underlines the challenges that still exist. For example, the technologies selected for projects were inappropriate or sub-optimal in terms of wider county infrastructure processes and economies of scale. Yet, communities tend to insist on specific solutions, such as wanting boreholes, and technical departments have too little role in the process to influence decisions or adapt technical options afterwards.

**Public participation does not occur or is weak when WSBs provide water services to citizens.** Some WSBs (now replaced by the WWDAs) assessed in the case studies – which should have passed on their water service infrastructure provision responsibilities to (county) WSPs for county infrastructure – have continued to hold on to their old mandate, or have not handed over infrastructure to WSPs for operation. Participation is non-existent or weak, because the same requirements for public participation practices are not applied by these bodies compared to counties (despite requirements as per Art. 4 of the Water Act 2016). Furthermore, in all counties studied, WSBs solicit funds to establish water works despite being detached from their consumers, and with only limited involvement of WSPs or county governments in the latter stages.

**There is a risk of community fatigue due to parallel participation processes by different institutions.** A key issue is that county assemblies have, in some cases, been pursuing their own participatory

31 See World Bank. 2017. *Inclusive and Effective Citizen Engagement: Participatory Budgeting in Makueni and West Pokot Counties*. Nairobi: World Bank.

processes after the initial consultation in the planning and budgeting phase carried out by planning and finance offices. While this is, in principle, laudable – as it could help address the risk of narrow-interest lobbying and provide incentives for county executives to take citizen views seriously – the demand on communities for participation should be coordinated to avoid fatigue, and managed so that communities understand whose decisions they are influencing and when, and get feedback on their concerns and/or proposals. Similar risks apply when several water sector institutions (e.g. WSPs, WSTF, WWDAs, county governments) run parallel public participation processes in the same area.

#### 4.1.1.3 Emergence of effective accountability pathways

The study found good examples of where accountability for integrity breaches was enforced. Pathways included:

- Via the functions of the EACC: in Garissa and Migori, the study team heard about cases for prosecution which originated from investigations by the EACC, including irregularities on the procurement of pump sets and water tanks, respectively.
- Via counties insisting on accountable management of WSPs and community-based schemes: There is evidence in two of case studies that the management of WSPs are held accountable, and that board members and managing directors have been dismissed. In one case, the reasons provided for the county's actions were poor financial performance and revenue collection; bloating of the payroll without commensurate gains in service provision; a collapse of systems; poor maintenance of water meters; and a lack of transparency on appointments and management of the board and oversight of the WSP. In the second case, besides dismissing the WSP board over issues including mismanagement and corruption, the County Governor also replaced the project management committee of a community-based scheme for alleged mismanagement of funds.

However, while this seemingly represents enforced accountability for governance and management weaknesses and integrity breaches, it was not clear to the study teams that due process was followed and that such actions could not present an integrity risk of a different kind unless due process, transparency, and justification of decisions are in place.

- Via county assemblies. County-level interview respondents noted that county assemblies do raise queries, investigate misappropriations, and summon officials to account. The team was able to track newspaper reports which confirmed these claims.

Even so, informal systems, local culture, and the local political economy can result in existing legal sanctions not being applied. Interview respondents noted that while the law, including the PFMA, provides for sanctions when breaches occur, local relationships, traditions, and power structures can be a strong influence on whether sanctions are implemented. These pressures result in weaker formal accountability than intended by the law. The result is that social accountability is still weak, despite some progress in processes to establish it. The case studies, including in Garissa, suggest that efforts should be made to counter existing practice and traditions, and lead accountability from a political level to change the prevailing culture.

#### 4.1.2 Risks associated with county public financial management arrangements

Effective PFM systems, combined with the human resource capacity to manage them, are key to preventing and detecting integrity breaches. The county case studies confirmed desk review findings that internal control, procurement, internal audit, and cash management systems at county level were still weak and posed integrity risks. Particular weaknesses in internal control and audit were found at county level, as well as weaknesses in procurement and contract management. The study found evidence that these weaknesses, combined with human resource gaps and issues in the control environment created by national transversal systems which are not fully adapted to county needs, can result in integrity breaches. Furthermore, the study found that lack of systems and guidance on how to manage contingent liabilities arising from WSPs financial challenges raise the risk of moral hazard – the likelihood of actors taking high risks because they are protected from the consequences of their actions – and blurred accountability and integrity in the relationship between counties and WSPs.

#### 4.1.2.1 Human resource gaps

**Many counties face a dual problem of overloaded wage bills and lack of key skills.** This is created by inheriting staff of the devolved sectors/functions of the national government on one hand, and staff of former municipal councils or district administrations on the other, in addition to recruitment emanating from new county needs in line with devolution (e.g. Nakuru, Garissa). County offices and WSPs, therefore, may be both bloated in terms of staff, and short of the necessary skills to establish and maintain robust resource management systems at the same time.

**There is significant evidence that weak technical capacity at county level prevents full implementation of integrity system requirements under the law.** This includes insufficient experienced staff for specific functions, such as planning, budgeting and monitoring, internal auditing, and procurement. County governments and WSPs are not able to easily acquire the necessary expertise, contributing to continued reliance on national institutions, such as the WSBs, for performing county functions, perpetuating the issues discussed on incomplete implementation of the 2016 Water Act.

Although integrity issues are the subject of this study, respondents in all five counties indicated that **capacity shortages** in WSPs and counties **also have efficiency and service delivery consequences**, as a result of weak capacity to plan, design, implement, run, and monitor water service delivery systems. For example, respondents confirmed findings by prior studies that weak analytical capacity in counties result in the ineffective and inefficient use of resources. One instance is the allocation of development budget funds. Many counties are currently providing equal development funding to each ward rather than targeting ward investments by population size, access level and/or need<sup>32</sup>, which goes against effort to target resources for reaching the most marginalized. This may be the result of political pressures to maintain equal funding, or a lack of capacity to design a needs-based allocation formula or process. The study also found high use of supplementary budgets to reallocate from development to recurrent budgets, to adjust for cash shortages overall and for weak capacity to absorb development funds. This has affected county water budgets disproportionately, given that county water spending is drawn primarily from the development budget.

#### 4.1.2.2 Budget formulation and credibility

**The implementation of programme budgeting, in line with national requirements, varies but is generally weak at county level.** Counties typically submit and approve programme budgets, which are manually prepared in a system which parallels administrative-based budget submissions and may not exactly match the programmes coded in the IFMIS. This means that requests through the system for funding by programme may be problematic, and reports will not be fully accurate. Guidance and training for preparing the programme-based budget and inputting the budget into the IFMIS have historically not been closely coordinated. Without embedding standards within the system or through rigorous training, it is difficult to enforce standards within or across counties. The mismatch between budget appropriations and the budgets recorded on the system negatively affects the coherence between policy and implementation, the reliability of reported information, and the ability of accountability actors to hold departments and office holders to account.

**Late transfers from national government, mismatching project, and budget cycles and roll-over provisions** mean that budgeting and budget implementation becomes disjointed, interfering with clear periodicity and unity in budgets, and decreasing transparency.

**County systems lack transparent and effective measures to deal with moral hazard from WSP's financial failures, obscuring accountability for service delivery.** As noted above, counties are likely to be held responsible for lack of service delivery when WSPs experience (short- or longer-term) financial crises. Political pressure then means that counties are forced to bail out WSPs, with accompanying moral hazard related to the WSPs' own financial decisions and management systems. In some cases, counties have started setting aside a contingency reserve to manage these contingent liabilities, which exacerbates the problem for the water services sector even if it protects county budget credibility overall.

32 Oxford Policy Management (2017).

#### 4.1.2.3 Internal budget execution and procurement controls and financial accounting

The study found significant evidence of systemic weaknesses in internal controls, accounting, and record keeping in the budget execution cycle. The Auditor General Reports for each of the five counties for 2015/16 expressed a disclaimer of opinion, meaning that the auditors were unable to obtain sufficient appropriate audit evidence to support a finding on the financial statements of the five counties. The basis for the opinion is the inaccuracy, invalidity, irregularity, impropriety, and incompleteness of the financial statements, including instances of unexplained variance, unauthorized waivers, and inconsistency of records. These problems point to significant shortfalls in the system capacity in counties on internal controls, accounting systems, and record keeping.

#### Box 3: EACC cases involving water resources management and water services

The study scanned reports of the Kenya Ethics and Anti-Corruption Commission to identify cases between 2011/2012 and 2016/17 which involve institutions and services in the water sector. The team was able to identify 42 cases of 15,892 cases relevant to EACC and involving a range of integrity breaches, including embezzlement of funds and fraud.

The table below provides a summary of 40 of these water-related cases reported by the Commission. The amounts refer to the total amount of funds involved in cases by institution by year. An additional two cases were reported in 2013/14, for which the amounts were not available, one involving Kenya Water Institute funds and the other Nairobi Water Company funds.

Institution	Amounts in KSH Million per financial year						Total
	11/12	12/13	13/14	14/15	15/16	16/17	
Ongoing Investigation	534	120	20	841	1,674	14,300	17,489
CDF		4					4
County			20		329	100	449
Development Authority	500				11		511
Kenya Water Institute		116			41		157
National Irrigation Board						13,000	13,000
Water Pipeline Company				588			588
Water Companies and Water Services Boards	14			223	1 283	1,200	2,720
Water Resources Management Authority					10		10
WSTF	20			30			50
Completed Investigation	60			427	141	223	851
CDF	1				57		58
County						223	223
Water Pipeline Company	33			423			456
Other	26						26
Water Companies and Water Services Boards					70		70
Water Resources Management Authority				4	14		18
<b>Grand Total</b>	<b>593</b>	<b>120</b>	<b>20</b>	<b>1,268</b>	<b>1,815</b>	<b>14,523</b>	<b>18,339</b>

The table below presents cases according to the kind of allegation reported. The increase in volume of resources affected from 2014 appears to be driven by increases in irregular payments, procurement irregularities, and embezzlement/fraud. The highest incidence was of procurement irregularities in 2015 (six) followed by misappropriation/mismanagement of funds (four).

Type of integrity breach	Amounts in KSH millions per financial year						Total
	11/12	12/13	13/14	14/15	15/16	16/17	
Ongoing Investigation	534	120	20	841	1,674	14,300	17,489
Corruption (general)		96					96
Irregular payment		4			1,200	1,200	2,404
Procurement irregularities	514	20		105	232	100	971
Embezzlement / fraud			20	104	165	13,000	13,289
Mismanagement / misappropriation of funds	20			632	77		729
Completed Investigation	60			427	141	223	851
Trace of unexplained assets				423		193	616
Procurement irregularities					70	30	100
Embezzlement / fraud	60			4	14		78
Mismanagement / misappropriation of funds					57		57
<b>Grand Total</b>	<b>593</b>	<b>120</b>	<b>20</b>	<b>1,268</b>	<b>1,815</b>	<b>14,523</b>	<b>18,339</b>

For the five county case studies, the findings that directly relate to the water sector in themselves signal breach of internal controls and due process, particularly in the procurement process. For four of the five counties (with Nakuru being the exception), the 2015/16 audit reports found irregularities in the procurement and payment processes for specific contracts in the water sector.

This is echoed in the reports from the Kenya Ethics and Anti-Corruption Commission (EACC), which were also examined for the study. A clear finding from this analysis is the increasing amounts of money involved in the cases investigated (both completed and uncompleted), particularly since 2014/15. Whether the increase is because of rising corruption, increased complaints of corruption, or stronger focus on counties by EACC is impossible to tell. However, excluding the outlier amount related to a case involving the National Irrigation Board, the increase appears to be driven by cases involving WSBs/WSPs and counties. Viewed in terms of the number of incidents, however, the most incidents by institution type in 2015 was for counties (6 of 14 cases).

Document review and interviews at national level confirmed that the breaches noted in the EACC reports are symptomatic of systemic weaknesses in the procurement system, from procurement initiation through to contract management and payment. Issues noted are that interpretation and understanding of the procurement law is limited; procurement processes are weak, with poorly managed and controlled selection of vendor; low use of price benchmarking; and weak management and record keeping of deliveries and stock. The interviews for the study also raised issues of collusion between vendors; of the expectation of interference and kickbacks deterring credible bidders; and of delays in payment having the same effect. Respondents noted that effective competitive procurement can be undermined by a lack of qualified contractors, especially in hard-to-reach areas. The study found that while better transparency in procurement could help address the issues in the system, generally, full information across the procurement cycle is not available. The county study teams found that there is often good information available on county (and WSP) websites on open tenders, but that information on awarded contracts and contract completion is less available.

#### 4.1.2.4 IT systems and integrity

Many of the internal control and accounting weaknesses are associated with systemic weaknesses in the transversal information technology (IT) systems used in public financial management processes at county level. In Kenya, all requests for release of funds and payment to vendors are made through IFMS; this is also true also at county level. Financial reports are required to be submitted through the system, as is account reconciliation and year-end financial reports. Procurement is undertaken using the e-procurement module of the IFMIS. Another key system for the water services sector is the e-PROMIS system, or the electronic project management information system. This system collects and collates information on investment projects. This system, however, is not mandatory in counties, and although counties have all been trained in the system, very few have actively used it for project management. The system was not used by the counties studied for this assessment.

Although the county study teams found positive examples where the national transversal systems have enhanced counties' capabilities for internal control, accounting, and reporting, the study overall found that significant challenges remain with the design and implementation of the systems. Key issues are summarized below.

**Because transversal IT systems are not designed for county needs, counties revert to using parallel manual systems, raising integrity risks.** County public financial management runs on transversal systems provided by national government. These systems aid integrity and accountability by providing automated checks and balances which raise the cost of rent-seeking or irregular behaviour while also increasing the chance of being caught. However, as these systems were not initially designed for county purposes, the study has found that the systems fulfil this role imperfectly. Issues include:

- **Inadequate coding for revenue sources, inadequate coding of expenditures:** The level of detail currently available in the coding structure of the IFMIS is considered inadequate by some counties. Counties prepare detailed budgets in Excel and then later manually input the figures to the budget preparation module of the IFMIS at a more aggregated level. This causes counties to populate the IFMIS hurriedly and often without great attention to accuracy. Problems then emerge later when adjustments to the IFMIS are required. The public expenditure review noted specifically the recording of expenditures financed by local revenues as a 'blind spot' which needs to be filled in IFMIS. This is because of inadequate coding of county revenue sources.
- **Inconsistencies between budget documentation classification and the IFMIS.** Makueni County, for example, has programmes listed in its appropriated budget for 2017/18 which differ from those listed in IFMIS. This means that even if budget implementation reports are available publicly, automatic reconciliation with the county appropriated budget would not be possible. Manual adjustments would need to be made to reflect the actual use of funds against the budgeted use, raising the risk of inaccuracies and arbitrary adjustments.
- **Unclear project definitions and no linkages between e-ProMIS and the IFMIS.** There are legal requirements for the financial and non-financial implementation review of county projects by the Controller of Budget. The definition of what would count as a project is not clear. Furthermore, in counties that do use the E-ProMIS system, the system does not integrate with IFMIS or use SCOA. Comprehensive and comparable data on projects are, therefore, not available and information for the Controller of Budget review cannot be generated reliably from the IFMIS system, with the result that counties provide manually collated information, using different definitions, and covering only the 10 largest projects by county. This results in incomplete reviews and the risk that problematic projects can be left out arbitrarily.
- **Weak capability to include structured non-financial information.** Budgets without the context of the expected results are difficult for citizens to scrutinize. While Kenya has shifted to a programme performance-based budget system, the capability for auditable reporting against non-financial performance targets, linked to budget allocations and spending, is limited.

Connectivity challenges also interfere with counties' effective use of national systems to manage revenue, expenditure, and procurement. This hinders the ability to ensure integrity through automation such as the use of IFMIS, as the system is not at any time automatically able to proceed with transactions

Inadequate training of county officials on the transversal systems was also raised as an issue contributing to implementation weaknesses of the systems at county level.



However, the study also found evidence that even when IT systems are used, they cannot fully protect against integrity breaches. Collusion between contractors, suppliers, and officials still occurs. The stubbornness of this challenge serves to reemphasize the importance of transparency; access to information which is not routinely published; active citizens; and particularly transparency around procurement and contracts, as much as for functional regulatory oversight and protection of whistle-blowers. In this regard, the study found that while e-procurement systems are being used to advertise tenders more effectively, they are not yet used for greater transparency on the award and cost of contracts. Weaknesses in contract management, understanding of contracts, and project supervision also affect integrity and efficiency in the sector, as in other sectors.

#### 4.1.2.5 Internal audit

**While the study found evidence of internal audit taking place in counties, capacity and incomplete roll-out was a problem.** In some cases, the deployment of internal auditors to departments and other entities was incomplete. There is a lack of experienced, qualified audit personnel. Operational internal audit systems are not complete or harmonized, as county-level audit committees are not necessarily formed and neither post-audit nor pre-audit practice is followed. In the counties visited by the study, audit committees had not been formed.

#### 4.1.2.6 Asset management

**Asset management systems are weak.** Asset management systems are still manual, with one system managed by the finance ministry and the other by the spending agency. The process of moving to a more automated system is still at a very early stage. Integrity around the retention and maintenance of assets is hampered in the absence of unique, consistently implemented systems.

Although the Water Act 2016 delegates management of county water (and sewerage) service assets to WSPs, and Kenya Gazette Notice No. 858 (2017) requires county governments to form cross-sectoral assets and liabilities committees and identify, validate and register all county assets, these committees and registers rarely exist. In case study counties, water departments did not maintain good asset registries for the sector. Such registries would be critical for tracking the transfer of assets from WSBs (which must have registries according to the terms of the State Corporations Act) to WSPs, which should have proper accounting for assets in terms of generally accepted accounting practice, but are not compelled to maintain asset registries in the same way that public entities are. A similar issue affects rural water supply assets outside of WSP service areas. Unless information on assets in these areas is maintained by counties, there is a significant risk of asset loss in the system.

#### 4.1.2.7 County Assemblies

**County assemblies may and do adjust budgets, with accompanying efficiency and integrity risks.** The study found some evidence that county assembly adjustments lead to less optimal allocation of resources, particularly when development funds are shifted to be allocated equally across wards without taking into account population and need. Although the study found no explicit evidence of rent-seeking behaviour, adjustments by the assemblies in fact do shift accountability from the county governments to the assembly for the results of spending, including public participation outcomes.

### 4.1.3 Summary on integrity risks of county governments

Public financial management and public accountability weaknesses are mutually reinforcing at county level, and strongly affect the governance of water services. On average, citizens have no, poor, or late information on water sector budgets and expenditure by counties, due to weaknesses in public financial management systems, and are not well capacitated to demand better information, creating incentives for better management of resources. Within counties, weaknesses in upstream and downstream management of county resources for the sector create integrity risks for investment in and the management of water services assets. Factors include human resource shortfalls, and mismatches between nationally designed transversal systems and county-specific needs. While this does affect integrity in the sector, it also has significant implications for the efficiency of financial resource use, with commensurate impact on access to water services. These issues are not unique to the water sector at

county level. However, the water sector is also affected by integrity risks that fall outside the scrutiny of and accountability for, such as it is, public resources that are on budget. These risks are exacerbated by weaknesses in county governments, but also by weaknesses which stem from issues internal to WSPs and with the transition from the 2002 to the 2016 water acts.

## 4.2 Integrity risks associated with WSPs and other providers of water services

Integrity risks in the water services sector at county level, associated with the companies or other institutions involved in water services provision, arise from two main sources: the implementation of and compliance with the 2016 Water Act, and weaknesses in the governance capacities of water services providers. These two factors affect the ability of county governments to oversee WSPs properly.

### 4.2.1 The Water Act 2016: implementation and compliance

The 2016 Water Act made major changes to the institutional arrangements and mandates in the Kenyan water sector, described in Section 2, but these changes have not been universally accepted by key actors in the sector. Over the course of the study, contention was ongoing as to whether the framework complies with the Constitution, and how suitable it is for improving sector performance<sup>33</sup>. A key issue is the transfer of mandates to develop cross-county water infrastructure from the WSBs to WWDAs, and the transfer of county assets for water service supply to (county-owned) water service providers. Overall, the study found that devolution under the Constitution 2010, combined with changed roles and responsibilities in terms of the Water Act 2016, have resulted in poor understanding and operationalization of water resource management, poor water service delivery, and weak oversight roles and responsibilities in practice. This is partially due to murky distinctions in the laws themselves, and partially due to conflicting interpretations of the laws by county governments, national institutions, and WSPs, driven by competing interests in terms of mandates and control over resources. Relationships between counties and WSBs can be fraught, as WSBs hold on to water service provision roles.

**Most interview respondents noted that the lack of clarity between water actors is the main problem deterring improved service delivery in the sector and the main issue affecting integrity.** There are different interpretations of the legal framework related to devolution in the water sector. Interview evidence suggests that whereas the WSBs believe that they still have a role to play in water service delivery, counties view this responsibility as one to be fully devolved to their level. This affects the management of WSPs particularly.

**The WSBs have not yet been legally transformed into WWDAs and have yet to hand over water service provision activities and assets,** as the related sections (152, 155, partially 153) of the Water Act were deferred by the Cabinet Secretary through Gazette Notice 59 in April 2017. The study found that WSBs held on to responsibility for developing infrastructure for water service provision, as well as asset ownership and service provision, offering the lack of capacity in counties/WSPs as an explanation. In February 2019, the Cabinet Secretary initiated the establishment of WWDAs by gazetting their boards through Gazette Notices 1239, 1240, 1242, 1243, and 1245–1249, which sparked sharp criticism by the Council of Governors (CoG), as publicly voiced during the Devolution Conference in March 2019. There are two issues related to the availability and use of resources, and accountability for assets and liabilities in particular, which are currently causing conflicts between national and county governments and which need to be resolved in order to establish clear responsibilities and accountability. These are:

- National and county governments have different interpretations of the responsibilities of the WWDAs in terms of infrastructure development. This discrepancy will also affect the transfer of loans which have been signed since gazetting of the Water Act 2016 from the WSBs to the WWDAs or the WSPs.
- The process for transferring existing (pre-Water Act 2016) assets and liabilities from the WSBs to the WSPs and/or WWDAs is not clear, and national and county government and WSPs have different interests in this. The study found instances where WSPs have to lease assets in addition to buying bulk water from WSBs or are expected to take on debt before assets are complete, contributing to their cost coverage challenges. National government expects the county governments/WSPs (as

33 Feuerstein, L. 2019. 'Where Does the 2016 Kenya Water Act Stand?' Berlin: Water Integrity Network. <https://www.waterintegritynetwork.net/2019/04/02/integrity-issues-at-the-heart-of-devolution-debate-in-the-water-sector/>



their delegated bodies) to accept all liabilities attached to county waterworks transferred to them, whereas county governments argue that they cannot accept this because (a) the WSPs are unable to repay the loans and (b) the assets may not be worth the liabilities attached to them as there may have been mismanagement in their development (which was managed by the WSBs, without the involvement of either county governments or WSPs). The fact that there are no comprehensive registers of these assets further complicates the situation.

**Counties, on the other hand, distrust WSPs and are therefore less willing to provide full support.** Apart from offering ad hoc subsidies to WSPs, counties hold on to water infrastructure development projects and the resources associated with them, further confusing the matter of who is responsible for services in the eyes of users and citizens.

**Counties also do not provide resources to WSPs for new infrastructure or undertake large-scale maintenance of existing infrastructure.** The budget analysis undertaken for this assessment report suggested that county governments do not provide direct financial support to WSPs as routine budget allocations. Instead, counties allocate funding and implement water projects themselves, which are handed over to WSPs for running and maintenance once completed. Due to low or non-existent allocations from counties to support WSPs, the WSPs depend largely on internally generated revenues. With high wage and operation and maintenance costs (which must, according to the regulatory framework, be funded through tariffs), the WSPs themselves then invest little in new infrastructure. In addition, weak coordination between counties and WSPs on infrastructure and service delivery mean that WSPs run into solvency and cash-flow problems, resulting in pressure on counties to provide emergency transfers or bailouts. The regulatory framework and conditions for asset development by WSPs and for direct financial support from counties is not clear, resulting in stop-gap measures without addressing of underlying problems.

**There are issues as to whether WSPs are seen or see themselves as primarily accountable to county governments, WSBs, or WASREB.** The 2016 Water Act makes WASREB the regulatory authority for WSPs, with responsibility for licensing, approving tariffs, and monitoring. The County Governments Act 2012 is clear in sections 34 and 36 that supervision of service delivery is a key function of the county executive and it must be in accordance with the law. At the same time, the status of WSPs as public companies means that WSPs' management is accountable to their boards, but that directors are accountable to shareholders, which in principle should be the county governments but in practice often is not. These different sets of authorities/accountabilities are not understood: the study found that WSPs often do not have a good understanding of how these different arrangements relate to one another. The picture is even more complicated for WSPs which pre-date devolution and the 2016 Act: these are still accountable to the WSBs according to their articles of incorporation, which in most cases have not been changed. The case studies found instances where WSPs have more allegiance to the WSBs and do not want to relinquish their relations with the boards. WSPs cite the lack of adequate support from counties as the reason. Combined with lack of clarity in counties on their role relative to that of the boards of WSPs, this means that accountability lines are unclear and ineffective.

**The public holds county governments to account for water services, resulting in weak accountability for WSPs.** While as per the 2010 Constitution and the Water Act 2016 county governments are the public duty bearers responsible for ensuring effective water and sanitation service delivery (and thus are accountable for the same to their people), they delegate this responsibility to the WSPs, which are accountable to county governments and the public. In practice the public and communities hold county governments to account. Although this is generally useful to activate the county government in exercising its oversight role, it often creates pressure on governments to intervene in an ad hoc manner when WSPs face financial difficulties or fail in providing services, strengthening the incentives for continued poor financial management and lack of effort towards self-reliance and sustainability of services by the providers. Generally, WSPs rarely undertake public participation processes, although the study team found some positive examples, including Nakuru.

County governments do intervene in WSP affairs, but they do not always follow due process. The study found various examples where county governments intervened significantly (e.g. in Garissa, Kwale, and Makeni), drafting legislation for the sector, dismissing executives and board members, and setting the pace for 'cleaning out' the WSPs. While such interventions in many cases take place for good reason,

the study also found that sanctions were exercised by direct intervention of the governor, instead of county governments following due process of using their seats on the WSP boards to hold management accountable. In one case, the county director for water was at the same time acting as managing director of the WSP, which created a conflict of interest in his role and undermined the autonomy of the WSP. Where legislation has been drafted, respondents for this study noted concerns with whether the county is overstepping its mandate and the legislation is compatible with the national institutional framework.

**Counties are also unclear on their mandates in terms of WSP accountability.** County officials stated that they were not certain where the WSPs report, how they should budget and report, how to sanction any issues, and whether they can impose standards and implement systems of seconded staff. Although county budget officials wanted regular revenue and expenditure reports from WSPs, they were not clear whether they could demand these. Incomplete transition of WSPs to publicly owned companies with counties as the registered shareholders contributes to this lack of clarity. As a result, counties were not aware of the full extent of WSPs' funding. The lack of continuous access of counties to WSPs' financial plans and results exacerbates the risk that funds will be misused, particularly as transparency to the public on WSP finances is low.

The most common approach to county oversight of WSPs is that counties are represented on the boards of directors. County officials noted that this is more effective if the representation is by technical officials, rather than political office holders. Some also noted, however, that they do not fully understand their role as board members of WSPs' boards of directors (BoDs).

**The situation has been undermined by lack of policy guidance from national level,** lack of devolved technical staff, and difficulties in acquiring new technical staff. Numerous integrity incidents and inefficiencies have been reported, some of which have led to somewhat asymmetric sanctions, as reported above in the cases of Garissa and Makueni. The study has noted the publication of the WASREB Corporate Governance Guidelines and model memorandum and articles of association for WSPs which are companies as of 2018. These guidelines provide some clarity on an institutional framework for WSPs and some guidance on the relationship with counties, but will require a lot of capacity building and awareness raising, as well as active efforts towards implementation, to overcome the lack of clarity and incentives associated with the access to resources for water services infrastructure development.

**The management of donor financed projects does not clarify the situation.** Cases were found where donors still opted to channel funding for water services infrastructure through the WSBs, presumably based on the argument that they pose lower fiduciary risks. However, the long-term programmatic risk of slow transition to the new dispensation, with commensurate accountability implications, is exacerbated by such actions. In view of continued weak coordination between actors, including counties, WSBs, WSPs, water resources users associations (WRUAs), and community-based organizations (CBOs), there is, however, an opportunity for the Water Sector Trust Fund county resident monitors to be pro-active in encouraging coordination between the different actors, linked to (large) flows of donor funds. These monitors could use the leverage to bring actors together, working with counties to ensure progress in service delivery.

#### 4.2.2 Risks associated with the financial management systems of providers of water services

A key question for the assessment research was whether the set-up, proceedings, and practices of WSPs and providers of water services outside of WSP areas are in line with the legal and regulatory requirements meant to safeguard integrity as explained in chapter 2.

##### 4.2.2.1 WSP integrity risks

This section looks at risks arising from the internal management of WSPs. There are substantial risks of misuse of funds and other resources, given weak WSP budgeting, reporting, and oversight systems as well as weak WSP capacity. These risks may be addressed at WSP level, but this conclusion together with the findings of the sections above show significant overall financial governance risks in WSPs. The lack of trust, and resulting limited interaction between WSPs and county governments, lead to WSPs seeking much needed support from the WSBs or other entities, and not seeing the counties as much of a partner. Until steps are taken to build trust between counties and WSPs, and WSPs and citizens,

there is limited scope for the county being more meaningfully involved, imposing stronger budgeting and reporting requirements, or for citizens to play a role in holding WSPs to account.

In relation to the internal financial management risks of WSPs, the study team made the following specific findings:

**Weak links between county planning and WSPs investment plan processes** lead to WSPs' projects not being made transparent to rights stakeholders (customers/citizens) via this route. Combined with very limited transparency on resources and their use, and low efforts to develop participative planning and budgeting mechanisms by the WSPs themselves, this has clear integrity risks. It also adds to the coordination gaps and low readiness of counties to invest in WSP infrastructure development.

**The human resource capacity of WSPs is variable.** Some WSPs interviewed were staffed in alignment with the WASREB norms. Others were under- or over-staffed. However, commonly having access to sufficient skilled and experienced staff is an issue, similar to the experience of counties. Some WSPs pointed out that scarce skills for effective public financial management, monitoring, and evaluation in WSPs were put to use in producing multiple reports for different purposes – that is, to counties, boards, and WASREB.

The team found evidence that separation of management duties from oversight duties between the WSP and its board is not always clear. Boards, for example, sign off on cheques. The technical systems of WSPs to collect and manage revenue, control expenditure, and control procurement are weak. In many cases, these systems are still manual, with clear integrity risks.

**Billing systems often are not automated,** with a predictable effect on the effectiveness of these systems but also on their transparency and the accountability of revenue managers for the revenues collected. In one instance, the county team found that the WSP did not have a comprehensive revenue management system. Bills were distributed through mobile telephone notifications, and payment was accepted by M-PESA, post bank payments, or cheque, without the systematic means to consolidate payments and link them to clients and bills. While a consolidated account on receipts is prepared manually by the WSP finance officer using spreadsheets, the reliability of the information is at risk, and the potential for misappropriation of funds or altering of invoicing and payment information is high.

Most WSPs recounted issues with vandalization of meters and unmetered water usage. This concern was mirrored by other respondents, some of whom said that they have never received a bill from the WSPs, despite regular flow of water to them. The WASREB Impact report for 2014/15 showed that non-revenue water is a significant issue for WSPs – across the reporting WSPs, over 40 percent of water on average was reported to be non-revenue water. While there is no data on how much of this is due to governance and integrity challenges (often referred to “commercial losses”) and how much is due to physical losses, senior WASREB staff have estimated that more than half of the non-revenue water is driven by the former; an WASREB has frequently underlined the need to improve governance for reducing non-revenue water. Furthermore, tariff (own-source revenue) collection is difficult to accurately audit and there are known issues of illegal reconnections, illegal distribution lines, and other revenue losses that are not tracked.

There are, however, also **good examples of the use of modern technology** (including M-Pesa and electronic meter readings) to improve revenue collection and management systems and reduce the risk of inefficiencies and corrupt behaviours.

Donor-funded projects can boost the capacities of WSPs, as they often come with investment in systems – for example, in terms of how to do procurement in a more rigid and transparent manner. These improved procedures are, however, often used only for the management of the donor funds in a parallel system, eliminating the opportunity for broader improvements in the underlying WSP systems.

There was little evidence of WSPs getting sufficient guidance and support from counties to boost their financial management capacities. This is also because counties themselves are too constrained in terms of the necessary skills to be able to pass on skills, knowledge, and guidance. Nevertheless, there are instances in which counties have attached/seconded staff to the WSPs (e.g. in Garissa).

There is some evidence that WSPs or bigger community-managed water systems can be a target for predatory behaviours, where private sector actors set up or take over WSPs, collecting revenue but without due regard to solvency in the management of expenditure, or service delivery in the allocation of resources. Once the situation is critical, the private sector actors withdraw, leaving a burden for counties to address. Small counties are likely to be targeted, where the capacity to counter such behaviour is lower. In addition, for these instances the oversight framework is even weaker than for county WSPs, because neither the Companies Act nor the Water Act 2016 (and the associated WASREB guidance) provide a clear legal framework for the role of counties. In the 2002 Act, the role of WSBs in licensing such providers was clear. This role has not been clearly transferred in the new legal framework.

#### 4.2.2.2 Integrity risks of community-based water sector organizations

**Community-based water schemes operate in regulatory limbo, informally, and with weak accountability arrangements.** Most schemes are managed by bottom-up, community-driven organizations which are registered as self-help groups rather proper associations. These groups often operate in isolation, are not aware of regulatory requirements, and very rarely have any formalized arrangements with county governments or WSPs, and certainly not with WASREB. It is difficult to enforce the formal procedures for accountability and regulation for funds used, pricing, and services delivered in these circumstances (e.g. reporting to their members regularly, and reporting to counties on services, revenues collected, and tariffs charged). This situation poses a significant challenge to the ongoing operation of the community groups and their integrity. WASREB and several county governments have started addressing this issue by developing regulatory guidelines for rural water services and piloting/formalizing accountability arrangements for or taking over of community managed water services (by WSPs). In addition, the division of roles between community water supply organizations and WRUAs is often not clear, which further weakens accountability and contravenes the separation of water resource management from service delivery, which the water legislation aims to establish.

**Water Resource User Associations are overstepping their mandates.** WRUAs are recognized in the Water Act 2016 as having a mandate for collaboratively managing water resources at sub-catchment level, but all case studies found instances where they were also taking up water service delivery responsibilities (Garissa, Kwale, Migori, Nakuru). Not all WRUAs were able to provide the paperwork on their licensing and some were unaware of licensing requirements.

**While training programmes are provided to community water supply groups and WRUAs, the financial management content of the programmes is limited.** Understanding and capacity, both to account for resources and to hold those in charge of water projects to account, are therefore still issues. Committee members are not fully aware of their fiduciary responsibilities for the revenues collected from water users and tariffs charged, or their responsibility for effective use of the funds.

However, **the team did find some examples of community-managed water schemes with emerging good accountability arrangements**, such as providing feedback to members through regular general meetings, even if this was done without clear, systematic, and comprehensive documentation. There was also an example of a scheme that had been operating for 20 years and had information on tariffs, income, and expenses written up on the wall of the scheme's offices.

#### 4.2.3 Summary on integrity risks associated with water service providers

WSPs emphasize that they have insufficient clarity on where to account for their activities and finances, a situation caused at least in part by incomplete transitions from previous accountability lines to new accountability lines. County governments are unclear on their rights relative to WSPs: some counties intervene heavily; others keep WSPs very much at arm's-length. Capacities are limited. In all, this results in weak oversight of WSPs by counties, with accompanying integrity risks.

### 4.3 Conclusion on integrity risks in the water sector

**Internal control, procurement, internal audit, and cash management systems at county level are still weak and pose an integrity risk.** Particular weaknesses in internal control and audit were found, as

well as in procurement and contract management. The study found evidence that these weaknesses, combined with issues in the control environment created by national transversal systems which are not fully adapted to county needs, can result in integrity breaches. Furthermore, the study found that lack of systems and guidance on how to manage contingent liabilities arising from WSPs' financial challenges raises the risk of moral hazard and accompanying blurred accountability and integrity in the relationship between counties and WSPs.

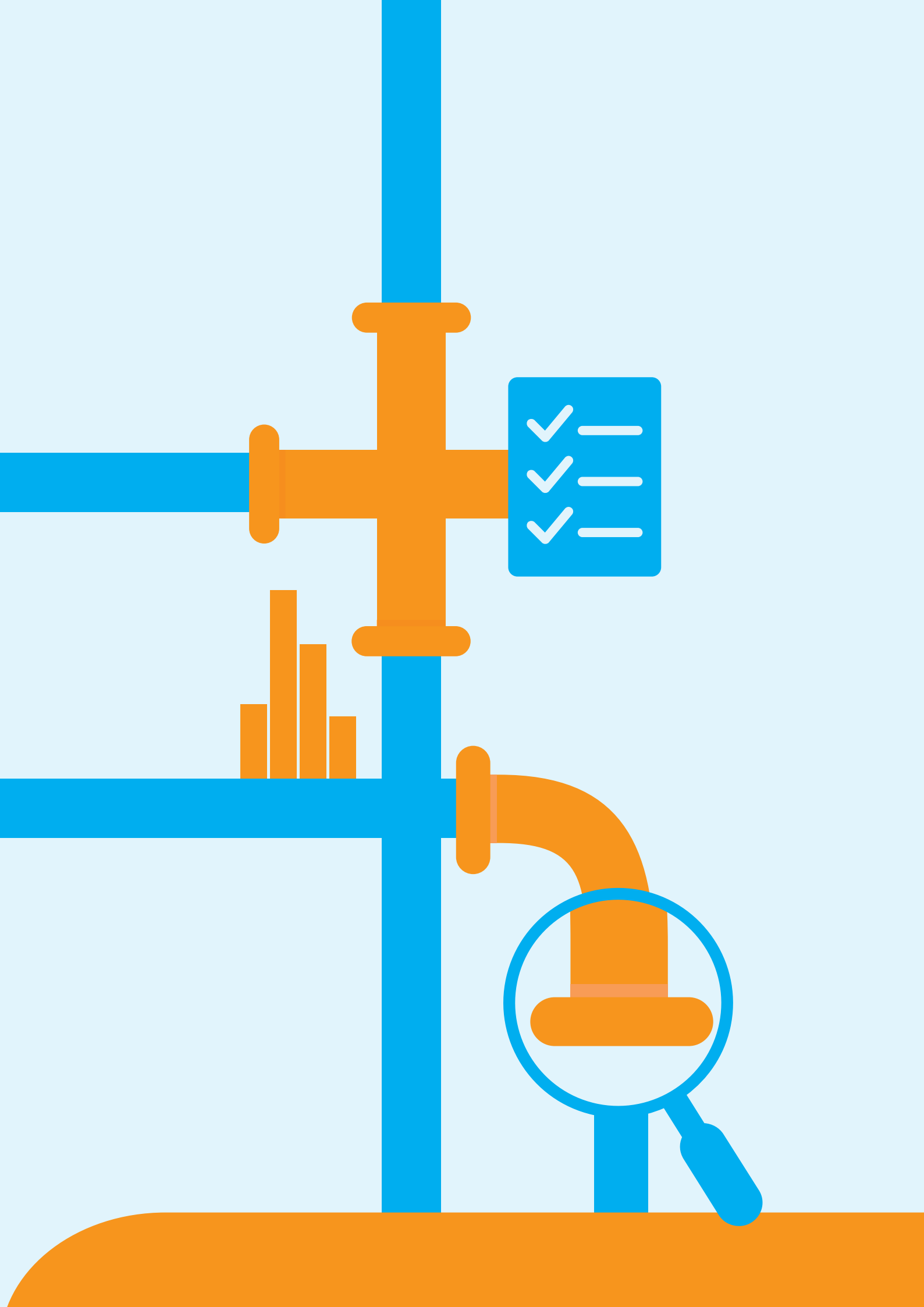
**While there is progress on the public accountability of counties through transparency and participation measures, deep challenges remain.** Effective formal public accountability and social accountability, as a risk mitigation measure, requires a number of conditions to be present:

- Reliable, timely, and useful information on the plans, budgets, budget implementation, and results related to the use of all public resources (own and donor revenue, as well as user charges) in the water services sector (focus of the study)
- Clear roles and responsibilities, so that accountability can be assigned
- Active public authorities, and empowered and active citizens, who are aware of information and hold actors to account
- Responsive authorities who enforce consequences for integrity breaches

The research team found both evidence of progress on these conditions, and deep challenges to the establishment of these conditions, including regarding the availability of information, participation, and responsiveness. Factors contributing to slow progress on strengthening formal and public accountability include the weak internal financial management systems.

**Weak systems and accountability at county level are exacerbated by the lack of clarity on reporting lines and accountability for WSPs,** which were largely inherited as private limited liability companies, previously owned by now-defunct local governments, but with accountability and reporting responsibilities to WSBs in their articles of association. While the new regulatory framework requires these companies to be wholly county-owned and formally constituted as public limited liability companies in line with the Water Act 2016, this process is lagging. The incomplete implementation of the Water Services Act with regards to the WSBs and their transformation and responsibilities relative to counties and WSPs, makes matters worse. The upshot is lack of clarity and understanding, and blurred accountability lines. Counties and WSPs are both unclear: in some cases, counties then intervene, but outside of a clear legal right to do so. With limited capacities, the result is weak oversight of WSPs.

**There is substantial risk of misuse of funds given the often weak budgeting, reporting, and oversight systems and capacities of WSPs** and other providers of water services. This situation is not helped by the significant lack of trust between the County Treasury and the WSPs. There is often very little interaction between the WSPs and the county government. The result is that, while integrity is clearly a major issue, WSPs seek much-needed support from the WSBs or other entities and do not see the counties as useful partners. Until steps are made to build trust between the two, there is limited scope for the county being more meaningfully involved in terms of imposing stronger budgeting and reporting requirements. However, resolving this mistrust does not deal directly with the underlying capacity issues of WSPs, which in themselves can be substantial.





## 5 Recommendations

The findings and conclusions above raised many specific and systemic issues related to integrity risks to the water services sector in Kenya, arising from weak capacities, weak systems, poor transparency, and ineffective (or sometimes over-effective) public participation, as well as (incomplete) implementation of the 2016 Water Act and (partially politicized) competition over responsibilities. This section provides the main recommendations from the study to address these issues. These may not be the only interventions required to address the broad range of issues discussed above. In selecting recommendations, the team favoured interventions which are most urgent or most likely to have an earlier impact, shifting the integrity and service delivery outcomes in the water services sector.

**Recommendation 1: National government agencies should issue national, cross-county guidance on public investments, financial management, and reporting in the water sector, including for WSPs.**

- **Clear written guidance and training from national agencies** is essential for clarifying to counties how they should instruct WSPs to budget and report, with clear templates for each. The MWS together with WASREB should take the lead in developing these sector-specific guidelines and training packages, with the National Treasury ensuring alignment with PFM legal frameworks, regulations, and formats. Where there are conflicting formats or non-aligned accounting practices, the Public Sector Accounting Standards Board needs to clarify this in collaboration with Government Investment and Public Enterprises (GIPE) department of the Treasury.
- **The National Treasury, through the Budget Department and Public Investment Management Unit, must provide clear systems, guidance, and training to enable counties to comprehensively budget, monitor, and report on individual projects within the IFMIS system** and in line with the PFMA and (draft) Public Investment Management guidelines. The systems should enable county governments to provide information on the implementation of individual projects in clear and accessible formats to stakeholders and citizens, including projects financed by development partners.
- **The National Treasury and WASREB should provide guidance on procedures and conditions/sanctions on bailouts and emergency financing of WSPs.** Counties should be responsible for implementing the guidelines, and for issuing county-level guidance to govern the process for bailouts and to regain some control for the county. WASREB and relevant National Treasury departments (including Budget, GIPE, and PIM) should contribute guidance for these procedures.
- **Similarly, there should be guidance on when WSPs' operations and maintenance (O&M) costs may be subsidized.** WSPs' subsidies for O&M should be based on a strict programme with time frame and guidance from WASREB, geared towards sustainability while ensuring equitable access to water and sanitation services. Financing to WSPs should be primarily for investment in infrastructure, so that they expand their service delivery base.

**Recommendation 2: The Ministry of Water and Sanitation and the Council of Governors should agree on a clear division of roles and responsibilities in the development and management of water and sanitation infrastructure, including a timeline, process, and support mechanisms for transfer of responsibilities, assets, and liabilities from WSBs to counties/WSPs and WWDAs.**

- In line with the provisions of the 2016 Water Act, MWS should consult stakeholders, most importantly the county governments (through the Council of Governors) and the WSPs (e.g. through WASPA), on the roles and responsibilities of the newly gazetted WWDAs and their relations and coordination mechanisms with county governments and WSPs in terms of asset management and development, including establishing and agreeing on clear definitions on what are national and what county public water works.

- MWS, Treasury, and CoG must agree on appropriate criteria and process for transferring ownership of existing assets and attached liabilities from WSBs to counties/WSPs and WWDAs (including criteria for determining which assets will become county assets held and managed by WSPs and which assets will be national assets managed by WWDAs; the process for registering, valuing, and legally transferring assets and liabilities to these entities; and potential financial support mechanisms for WSPs to serve liabilities for assets transferred to them).
- MWS, Treasury, CoG, and donors must agree on appropriate arrangements and coordination mechanisms for transferring loans and grants from ongoing external support programmes from WSBs to counties/WSPs and WWDAs, as well as for future external support programmes.
- MWS, WASREB, and WSTF in collaboration with CoG and development partners need to set up capacity development programmes to support WSPs in operationalizing their new role in management and development of county water supply and sewerage assets (including a review of needed capacities and possible hiring/secondment of additional staff).
- **Donors, WSTF, MWS, and counties must not provide funding for infrastructure development without ensuring engagement of the actors which will be responsible for managing related services.**
- **Counties should respect the clear separation of responsibilities between government (both national and county) and the management of water services and development of county assets for water and sewerage services by the WSPs, in line with capacity strengthening undertaken by the MWS, WASREB, and the WSTF.** This means they should allocate budgets to WSPs to support the development of infrastructure, rather than developing infrastructure as county projects.

**Recommendation 3: National and county governments must operationalize and align national sector oversight, monitoring, reporting, and coordination mechanisms.**

- MWS and CoG urgently need to operationalize the Intergovernmental Water Sector Coordination Framework and clarify how it will relate to existing multi-stakeholder sector monitoring, reporting, and coordination mechanisms such as the Annual Water Sector Conference and the Annual Water Sector Review. In consultation with the Ministry of Health, the framework should also integrate issues of management and governance of sewerage, onsite sanitation services, and faecal sludge management to prevent further fragmentation of the sector. Such sector reporting and coordination mechanisms should take into account the budget cycle for timing, and seek to actively involve public finance actors.
- MWS and MoH need to agree on integration of existing sanitation sector monitoring, reporting, and coordination mechanisms into such a framework, so as to prevent further fragmentation of the sector and ensure integrated management and governance of sewerage, onsite sanitation services, and faecal sludge management.
- MWS and WASREB need to ensure better data on water and sanitation investments and delivery of services in areas which are not served by the professional WSPs in national sector reports.
- **National state departments, regulators, and other state corporations responsible for water supply and sanitation and water resources management must work with the county governments to provide comprehensive guidance on the interlinked roles of WRUAs, water users associations (WUAs), service providers** (bulk water providers, county WSPs, community-based organizations, and private operators), and communities. They must ensure access to full guidance and training materials for these actors to support the understanding and establishment of the full necessary system of institutions required for communities to have functional and sustainable water management and provision.

**Recommendation 4: County governments, WASREB, and other actors must operationalize and strengthen oversight, monitoring, reporting, and coordination mechanisms of water and sanitation service provision at county level.**

- **WASREB and counties should establish a formal line of communication with established focal points for each county and dedicated staff in WASREB to rapidly respond and engage counties on regulatory issues.** This line of communication is seen as essential to pre-empt and avoid regulatory misunderstandings or misapplications.
- WASREB and county governments should agree on, implement, and institutionalize mechanisms to coordinate regulation and oversight of the WSPs. This would entail a dedicated approach from



WASREB to systematically and consistently engage with county governments to enhance the oversight capacity of county officials (such as following due process when terminating senior WSP officers or clustering WSPs).

- **County governments with guidance and support from WASREB should put in place accountability arrangements and monitoring systems for actors with delegated water service delivery functions in areas where such services are not commercially viable.**
- **County water departments should convene coordination meetings with other water sector actors at county level.** These meetings should systematically coordinate the development and operation of water and sanitation facilities throughout the planning, design, implementation, commissioning, and handing over of projects among the concerned institutions (e.g. county water departments, MWS, WASREB, WSB/WWDAs, WSTF, development partners, and CSOs) on one hand; and with the operators (such as WSPs, CBOs, and CSOs) on the other.

**Recommendation 5: Water sector actors must ensure quality and consistency in public participation and improve institutional coordination in mobilizing communities on water and sanitation issues and decision-making.**

- **Building on a coordination platform at county level, national institutions like WSTF could also make use of county and WSP public participation mechanisms in the planning of their infrastructure projects to lower the burden on communities and institutions.** WSPs, WWDAAs, WSTF, and other water sector actors should liaise more strongly with county planning departments to ensure the quality and alignment of their public participation processes.
- Public participation processes need to be combined with citizen education and guided by technical expertise to ensure they result in technically feasible and financially sustainable infrastructure and services. Communities should set priorities in terms of services they want and be consulted on technical designs, while technical departments should lead the decisions on technical options. CSOs should support these processes and engage with WSPs and county governments to sensitize and mobilize communities on water and budget issues.
- **WASREB and county governments can also provide guidance to WSPs on how to align and harmonize WSP public participation interventions,** mainly on tariff setting, with county budgeting and investment processes to ensure investments are responsive to O&M and consumer needs, as well as quality considerations.
- **CSOs specialized in water and in public finance should work with CBOs, communities, accountability institutions, and media to activate public oversight in budget execution and reporting, and maintain its quality and consistency.** Donors should support such processes. CSOs in water and in public finance need to:
  - Coordinate the CSO voice, demanding full disclosure of budget and financial documents. Coordination with actors outside of the water sector may strengthen the advocacy as many of the county documents are not water specific.
  - Demystify and analyse budgets, break down issues, and interpret the data for community leaders and other actors.
  - Use their analysis to engage citizen organizations, communities, the media, and other non-state accountability actors in the scrutiny of financing and service delivery, engaging state and service delivery actors and demanding feedback, further disclosures, or changes in policies.

**Recommendation 6: County governments with support from WASREB must ensure that the boards of WSPs possess necessary expertise and knowledge, understand their role, and be appointed through due process.**

- **CECMs responsible for water and finance should appoint qualified staff from their respective departments into the boards as members,** to ensure expertise and the doctrine of separation of powers, as reports are presented to them and issues are raised, including on the performance of the BoDs, as per their supervisory/oversight role.
- **Other board members must apply through public advertisements,** to represent the other sector stakeholders in complementary technical areas (including social, legal, and business). In selecting board members, county governments have to ensure adherence to WASREB corporate governance guidelines for the WSPs.
- **WASREB and CoG with support from development partners need to set up capacity development programmes for boards that include induction on corporate governance, integrity, and risk**

**management, and monitor their performance, including these aspects. Development partners should support this process and CSOs should seek to strengthen public oversight of the performance of state corporations and their boards.**

- **While this study focused on the county level and WSPs, the recommendation applies to the boards of national state corporations under MWS (in which case MWS and SCAC would be in the lead).**

**Recommendation 7: County governments should pay immediate attention to improving transparency for more effective formal public and social accountability.**

- County governments should proactively improve and maintain transparency in budget preparation, approval, and reporting.
- They should seek to incrementally ensure that they meet legal transparency requirements and disclose budget documents and report on their website.
- Given the intensity of the preparation of budget formulation and implementation documents and the frequency of publication required, county governments should consider setting up a separate team (possibly with initial technical assistance support) to publish all required documentation in a continuous manner, rather than depending on the Finance and Planning Department teams who are always bogged down by ministries' routines.
- County governments should sensitize county assemblies (CAs) through the committees in charge of budget and water, and where needed put in place a more strategic resistance to ensure pro-rata assignment of development funds.
  - There are compelling arguments around delivery, which can be made in favour of a pro-rata (i.e. in line with population density and need) and fair approach to 'equity'; and the planning, budgeting, and finance department as well as sector departments need to be able to make these firmly, and explain the reasons through budget documentation and public participation processes.
  - CAs should not alter budget proposed by county executive committees (CECs) beyond more than 1 percent (as per section 37 of the PFMA Regulations), so as not to influence the final selection and allocation of projects independent of technical considerations about population density and need. Should CAs adjust budgets outside of such considerations, they would compromise their oversight role on budget performance, as they would be actively engaged in budget making.

**Recommendation 8: Counties must ensure that budgets and reports are comprehensive and include information on donor contributions and the financial affairs of WSPs.**

- County budgets should identify all expenditures and revenues. On the revenue side, all transfers, own revenue flowing to the county revenue fund, donor funds flowing through county systems, and all appropriations in aid (donor support managed by donors or third parties and the fees and charges collected by county departments but not transferred to the county revenue fund) must be identified and accounted for. On the expenditure side, expenditure against donor funding must be accounted for, as this is a growing source of financing in the sector.
- Counties must ensure that the county department responsible for water presents the budgets of the WSPs to both the CECs and the CAs alongside their departmental budget, as the WSPs are public sector institutions even if they are autonomous, and their financial affairs are still a public concern. Where WSPs have limited capacity to prepare budgets and provide respective reports, the county treasury and water department should devise and provide adequate training in connection with the guidance discussed in Recommendation 1 above.

**Recommendation 9: National and county public finance institutions must strengthen PFM systems and ensure that financial statements present a reliable picture of county finances.**

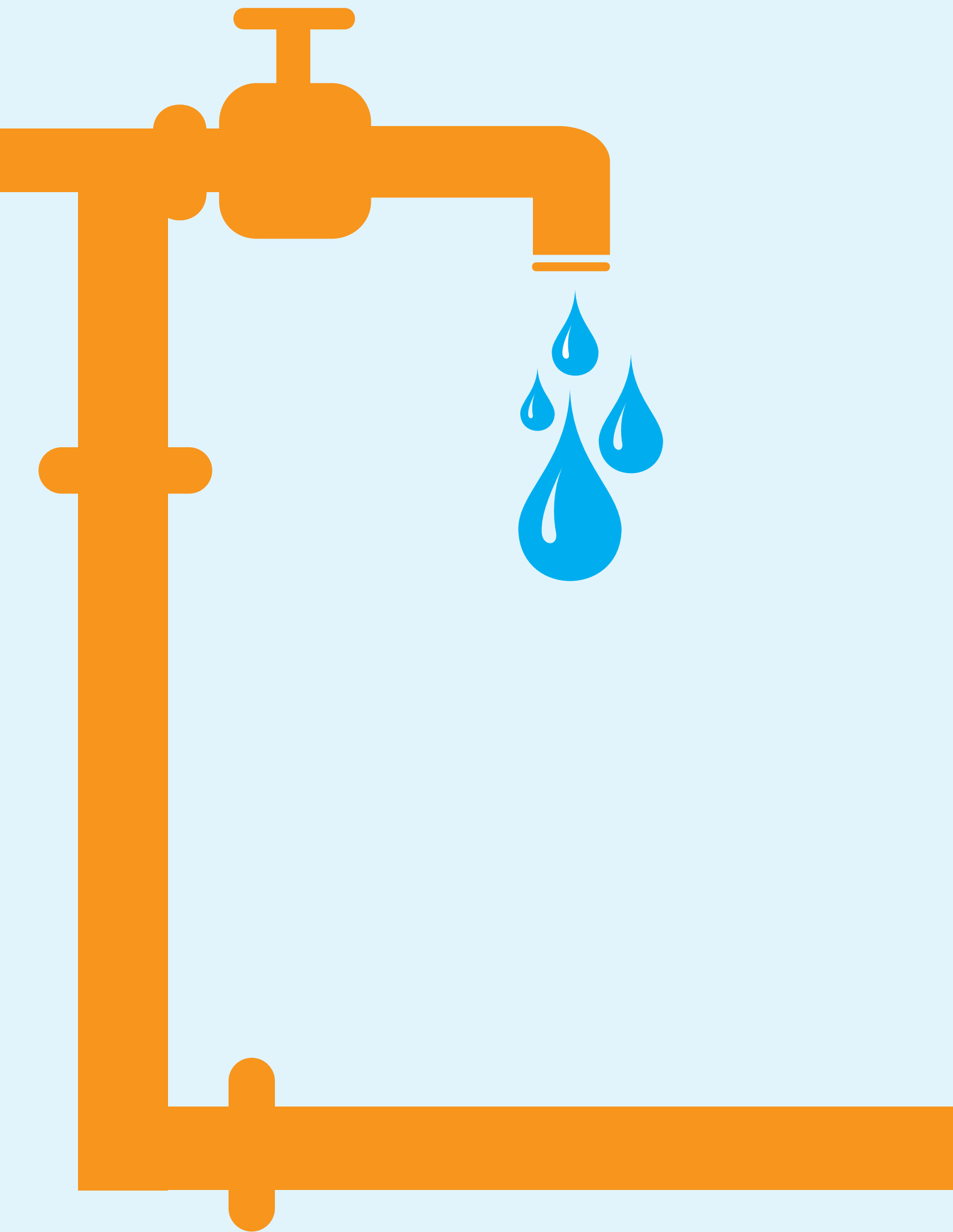
- **The National Treasury must adopt a proactive mechanism to continuously engage with treasuries in the counties,** in monitoring and enhancing their performance towards strengthening execution, accounting, and reporting (contracts, payments, and internal audit) at the county level, which could be achieved in the short-term through secondment of staff with special experiences, knowledge, and skills; and through recruitment of adequate required cadre in the medium-to-long term.
- **The National Treasury should address the systemic weaknesses in the IFMIS and SCOA to allow for comprehensive use of the system by county governments** to manage their full budgetary and financial affairs. Adequate and continuous training must be on offer to county government officials

to use the system towards more robust budgeting, cash management, internal controls, accounting, and reporting.

- **Expenditure control/internal audit capacity must be put in place at each spending agency of the county government;** and counties must establish audit committees as per 2016 Audit Committee Guidelines for County Governments by issued by the National Treasury, Gazette No. 2690. However, to avoid accumulation of mistakes/errors, and in view of capacities at county level in performing internal audit functions, it is recommended that counties consider a continuation of pre-audit practices. Risk-based internal compliance audits and audits of transactions where it was not possible to provide pre-audit advice can complement this practice, and should only be implemented if adequate capacity is in place.
- **Clear sanctions should be imposed on county departments on account of inaccurate, invalid, non-auditable, or incomplete financial statements, or irregular and inappropriate procedures** that lead to Auditor-General disclaimers, adverse, or qualified opinions in audit reports, especially as a result of unsupported receipts and payments. These sanctions could include withholding portions of funds until issues are addressed (such as by the Controller of Budget who has the power to do so), withdrawal of authority to procure, or handing over of cases for prosecution. This would be an incentive in shaping accounting and reporting systems in the counties and in reducing fraudulent acts by county authorities

**Recommendation 10: Water sector actors should strengthen their collaboration among themselves as well as with anti-corruption and accountability actors to ensure full compliance with the existing framework for transparency, participation, and accountability in the management of resources for water service delivery.**

- Actors, such as KEWASNET and/or WASREB, will take the lead in bringing together other national and cross-county government and non-state water sector actors and accountability actors to discuss this report's findings, conclusions, and recommendations and decide on a way forwards in terms of specific recommendations.
- Actors such as the MWS, WASREB, or the Council of County Governors should run sensitization programmes on the importance of citizens fulfilling their obligations to pay for water while also demanding accountability for the use of such charges to deliver services.
- Accountability / anti-corruption actors (such as EACC or the Kenya Leadership and Integrity Forum) should work with water sector CSOs (such as WIN and KEWASNET), and public actors such as WASREB to refine and tailor interventions to prevent or discourage integrity breaches (such as complaint lines and anonymous whistle-blower channels) and follow up on and refer breaches



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## Annex 1: Water Sector Expenditure Tables

This annex provides the tables and figures in support of section 2.2 on water sector expenditure.

Table 4: Expenditures of national ministries, departments and agencies by main water sector programme area (BOOST Data)

KSh million	Sum of 2014-15 Actual			Sum of 2015-16 Actual			Sum of 2016-17 Actual		
	National			National			National		
	Domestic Resources	External Resources	Total	Domestic Resources	External Resources	Total	Domestic Resources	External Resources	Total
Catchment rehabilitation and conservation	380.42	-	380.42	-	-	-	-	-	-
Integrated basin-based development	3 025.82	387.93	3 413.75	2 368.54	168.77	2 537.31	3 796.16	15.30	3 811.46
Land reclamation	-	-	-	-	-	-	35.74	-	35.74
Promotion of irrigation and drainage development and management	-	-	-	-	-	-	4 408.82	2 152.76	6 561.58
Water policy management	834.72	-	834.72	645.86	-	645.86	875.79	-	875.79
Water resources conservation and protection	1 067.82	501.76	1 569.58	954.15	547.52	1 501.67	1 672.90	996.16	2 669.06
Water storage and flood control	3 681.25	-	3 681.25	1 272.12	-	1 272.12	4 468.00	59.02	4 527.03
Water supply infrastructure	4 746.06	12 326.01	17 072.07	5 767.39	6 416.58	12 183.97	10 784.13	19 123.93	29 908.05
<b>Grand total</b>	<b>13 736.09</b>	<b>13 215.71</b>	<b>26 951.80</b>	<b>11 008.06</b>	<b>7 132.88</b>	<b>18 140.94</b>	<b>26 041.54</b>	<b>22 347.18</b>	<b>48 388.73</b>

Source: World Bank Group 2018

Table 5: Budget realization and expenditure growth (BOOST data)

KSh million	2014/15			2015/16			2016/17			Growth 2014/15 to 2016/17
	Budget	Actual	% budget spent	Budget	Actual	% of budget spent	Budget	Actual	% of budget spent	
Recurrent Expenditure	4 353.77	2 266.63	52%	4 139.26	1 851.27	45%	7 328.90	3 091.11	42%	36%
Development Expenditure	33 667.28	24 685.17	73%	36 762.23	16 289.67	44%	59 829.35	45 297.61	76%	84%
<b>Grand Total</b>	<b>38 021.06</b>	<b>26 951.80</b>	<b>71%</b>	<b>40 901.48</b>	<b>18 140.94</b>	<b>44%</b>	<b>67 158.26</b>	<b>48 388.73</b>	<b>72%</b>	<b>80%</b>

Source: World Bank Group 2018

Table 6: Investments by counties in 2015/16 (Water Sector Review data)

No.	County	Cost of completed projects (KSh millions)		Cost of ongoing projects (KSh millions)		Total for completed and ongoing projects	
1.	Homa Bay		290.0		219.0		509
2.	Kiambu		122.0		24.9		146.9
3.	Machakos		44.7		18.9		63.6
4.	Mandera		582.0		341.7		923.7
5.	Bomet		100.0		53.7		1,53.7
6.	Narok		73.6		46.5		1,20.1
7.	Trans Nzoia		101.3		85.1		1,86.4
8.	Tharaka Nithi		27.0		37.9		64.9
9.	Uasin Gishu		202.7		39.0		2,41.7
10	Kajiado		67.6		174.3		2,41.9
11.	Kitui		12.0		0.0		12.0
12.	Nakuru		76.3		0.0		76.3
13.	Kakamega		72.4		0.0		72.4
14	Nyeri		90.6		110.8		201.4
<b>Totals</b>		<b>1 699.2</b>		<b>1 041.0</b>		<b>2 740.2</b>	

Source: MWI, 2016



Table 7: Actual county expenditure on water programmes (BOOST Data)

	2014-15 Actual	2015-16 Actual	2016-17 Actual	Total over three years
Kwale County	-	437.70	419.78	857.48
Kilifi County	-	-	958.13	958.13
Tana River County	-	-	-	-
Garissa County	814.75	15.57	33.90	864.23
Wajir County	156.55	-	(0.01)	156.55
Marsabit County	424.46	48.23	176.79	649.48
Isiolo County	-	-	9.98	9.98
Meru County	52.08	16.51	27.77	96.36
Tharaka-Nithi County	-	57.27	72.20	129.46
Kitui County	610.87	174.91	324.70	1 110.49
Machakos County	-	46.89	283.17	330.05
Makueni County	1.59	28.89	93.28	123.76
Nyandarua County	192.20	280.59	263.50	736.28
Nyeri County	48.60	30.19	-	78.79
Muranga County	-	20.75	-	20.75
Kiambu County	33.68	45.58	62.61	141.87
Turkana County	0.29	-	-	0.29
West Pokot County	198.95	123.29	192.29	514.53
Samburu County	-	405.88	605.94	1 011.83
Trans Nzoia County	-	57.08	3.00	60.07
Uasin Gishu County	-	-	-	-
Elgeyo/Marakwet County	98.00	-	37.65	135.65
Baringo County	49.20	74.68	76.35	200.23
Laikipia County	83.76	31.55	59.94	175.25
Kajiado County	13.84	-	3.92	17.76
Bomet County	-	-	-	-
Kakamega County	7.90	14.74	9.38	32.01
Vihiga County	65.64	47.15	52.43	165.21
Busia County	238.52	216.42	46.74	501.67
Homa Bay County	5.42	-	-	5.42
Migori County	-	42.51	7.15	49.66
Kisii County	103.03	369.11	350.17	822.30
Nyamira County	149.49	99.46	-	248.96
Nairobi City County	4.58	168.44	-	173.02
<b>Grand Total</b>	<b>3 353.41</b>	<b>2 853.36</b>	<b>4 170.75</b>	<b>10 377.51</b>

Source: World Bank Group 2018

**Table 8: County development budgets for FY 2013/14 and water-related development budgets (KSh million, Water Sector Review data)**

County	Water- related	Total	% of Total	Category
Tharaka Nithi	313	1,314	24%	Agriculture, livestock and water services
Kitui	437	2,690	16%	Agriculture, water and irrigation
Nakuru	372	3,497	11%	Environment
Samburu	48	1,459	3%	Environment
Kisii	2,130	25,838	8%	Environment and natural resources (NR)
Kirinyaga	293	989	30%	Environment and NR
Nyamira	183	3,253	6%	Environment Protection, water and housing
Bungoma	1,027	3,637	28%	Health and sanitation
Busia	607	2,250	27%	Health and sanitation
Nandi	126	2,630	5%	Health and sanitation
Kwale	190	1,074	18%	Health and water
Garissa	422	1,571	27%	Health, water and sanitation
Lamu	371	1,367	27%	Lands, water, NR, infrastructure, planning and urban development
Kakamega	165	7,168	2%	Environment, NR, water and forestry
Vihiga	233	2,448	10%	Environment, NR, water and forestry
Wajir	1,450	4,172	35%	Water
Laikipia	459	3,203	14%	Water
Taita Taveta	151	1,215	12%	Water
Mombasa	110	11,192	1%	Water
Trans Nzoia	151	1,650	9%	Water and environment sector
Meru	166	6,572	3%	Water and Irrigation services
Makueni	165	2,245	7%	Water and Irrigation services

Source: MWI, 2016

**Table 9: Budgeted amounts vs amounts received from the exchequer for departments/ministries in charge of water and sanitation (IDIA data)**

Amount KSh million	2014/15			2015/16		
	Budgeted Amount	Receipt from Exchequer	Deficit	Budgeted Amount	Receipt from Exchequer	Deficit
Nairobi	1,000	-	(1,000)	1,958	-	(1,958)
Turkana	1,129	734	(395)	1,312	923	(389)
Nakuru	546	98	(448)	713	210	(503)
Kiambu	403	96	(307)	537	219	(317)
Mombasa	762	36	(726)	444	70	(374)
Kilifi	280	329	49	808	485	(324)
Kisumu	199	44	(155)	317	63	(255)
Wajir	1,101	944	(158)	1,123	935	(187)
Marsabit	636	271	(365)	753	775	22
Laikipia	334	141	(192)	166	125	(41)
Isiolo	256	201	(56)	215	51	(164)

Source: IDIA 2017

**Table 10: Absorption rate within department/ministries in charge of water and sanitation**

Amount KSh million	2014/15			2015/16		
	Received from exchequer	Actual expenditure	Absorption rate	Received from exchequer	Actual expenditure	Absorption rate
Nairobi	-	103.51	-	-	218.57	
Turkana	734.00	425.00	58%	923.00	952.23	103%
Nakuru	98.01	124.91	127%	210.33	168.55	80%
Kiambu	95.80	139.80	146%	219.25	131.09	60%
Mombasa	36.00	244.56	679%	70.00	41.20	59%
Kilifi	328.69	238.20	72%	484.64	586.79	121%
Kisumu	43.80	3.39	8%	62.53	43.12	69%
Wajir	943.60	943.60	100%	935.47	985.99	105%
Marsabit	270.97	355.71	131%	775.25	600.12	77%
Laikipia	141.20	97.78	69%	125.30	125.90	100%
Isiolo	200.70	172.68	86%	51.00	47.64	93%

Source: ADIA 2017

Table 11: County budget realization for water sector programme expenditure (BOOST data)

Percentage deviation from budgeted exp	2014/2015 Deviation from budget		2015/16 Deviation from budget		2016/17 Deviation from budget		Weighted Average Deviation from budget	
	Rec	Dev	Rec	Dev	Rec	Dev	Rec	Dev
Kwale County			-24%	17%	-28%	-21%	-26%	-2%
Kilifi County					-7%	-40%	-7%	-40%
Tana River County				-100%				-100%
Garissa County	-17%	-15%	-37%		-9%		-21%	-15%
Wajir County	-1%	-3%					-1%	-3%
Marsabit County		-20%		-2%		-13%		-12%
Isiolo County						0%		0%
Meru County		0%		-8%		-1%		-3%
Tharaka-Nithi County			-96%	-63%	-98%	-51%	-97%	-57%
Kitui County	-10%	-5%	-13%	8%	-4%	-1%	-9%	1%
Machakos County			-3%	-18%	50%	-3%	24%	-11%
Makueni County	-100%	-99%	-12%	-58%	0%	-33%	-37%	-63%
Nyandarua County	-1%	-1%	-33%	-9%	0%	1%	-11%	-3%
Nyeri County	-95%	-41%		-1%			-95%	-21%
Muranga County				-20%				-20%
Kiambu County	-91%	-23%		-46%		-8%	-91%	-26%
Turkana County		-94%						-94%
West Pokot County	1%	-1%	-13%	-2%	-7%	-2%	-7%	-2%
Samburu County			-2%	-4%	-8%	0%	-5%	-2%
Trans Nzoia County				-61%		-25%		-43%
Uasin Gishu County						-100%		-100%
Elgeyo/Marakwet County	23%	0%				-50%	23%	-25%
Baringo County	-5%	-36%	-5%	-22%	-7%	-5%	-6%	-21%
Laikipia County		-42%		-38%		-9%		-30%
Kajiado County	55%				-18%		19%	
Bomet County								
Kakamega County	-23%	-90%	-43%	-36%	-39%	-72%	-35%	-66%
Vihiga County	24%	-33%	-36%		-15%		-9%	-33%
Busia County		-5%		-1%		11%		2%
Homa Bay County		-64%						-64%
Migori County			-21%	-46%	-53%	-92%	-37%	-69%
Kisii County	-9%	-34%	-29%	-2%		-4%	-19%	-13%
Nyamira County	-9%	-28%	-4%	-4%			-6%	-16%
Nairobi City County	9%	-73%	-39%	-20%			-15%	-47%
<b>Weighted average all counties</b>	<b>-16%</b>	<b>-34%</b>	<b>-26%</b>	<b>-23%</b>	<b>-16%</b>	<b>-24%</b>	<b>-19%</b>	<b>-27%</b>

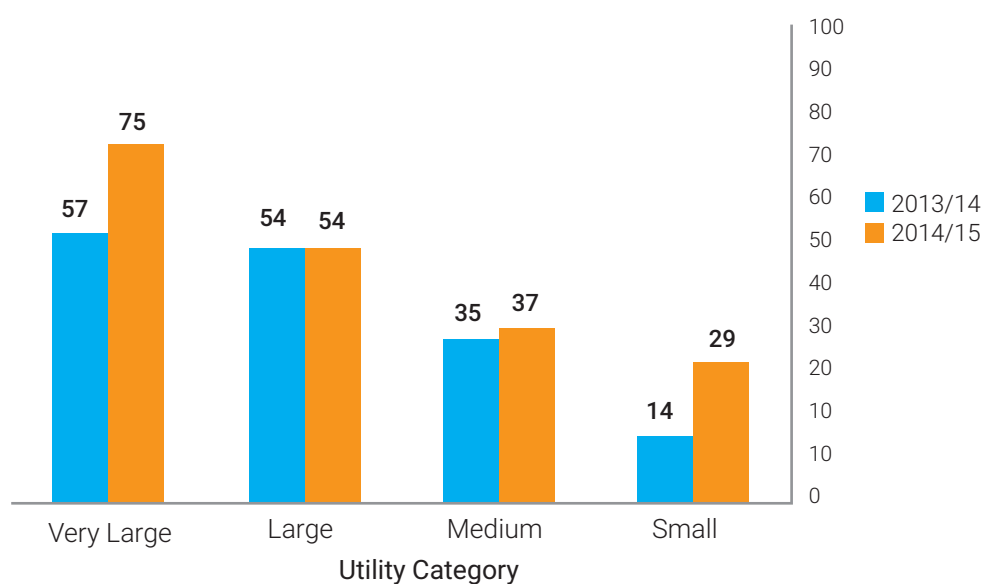
Source: IDIA 2017

**Table 12: Distribution of CSO expenditure 2015/16**

Total investment KSh2.95 billion	Shares 2015/16
Water supply	69%
Sanitation	10%
Capacity Development	6%
Awareness Raising	9%
Water resources management	5%
Advocacy and lobbying	1%

Source: KEWASNET 2017

**Table 13: WSPs operation and maintenance cost cover (2014/2015)**



Source: WASREB 2017

## Annex 2: Research questions and findings matrix

This annex provides more detailed evidence from the county case studies against the main research questions.

### FOCUS AREA: TRANSPARENCY AND ACCOUNTABILITY ARRANGEMENTS BETWEEN KEY INSTITUTIONS AND CITIZENS

Effective formal public accountability and social accountability requires a number of conditions to be present:

- (i) Reliable, timely and useful information on the plans, budgets, budget implementation and results related to the use all public resources (own and donor revenue, as well as user charges) in the water services sector (focus of the study).
- (ii) Clear roles and responsibilities, so that accountability can be assigned
- (iii) Active public authorities, and empowered and active citizens, who are aware of information and hold actors to account
- (iv) Responsive authorities who enforce consequences for integrity breaches

#### 1. Is effective social and formal accountability for financial resources in the water sector in place or emerging at county level?

*Identified integrity risks:* Weak information on policies, plans, and budgets; gaps in policies and legal frameworks; weak policy-budget links; weak participation mechanisms; gaps in the accountability loop throughout the budget cycle

### KEY FINDINGS ON THESE ARRANGEMENTS SPECIFIC TO COUNTIES AND WSPS.

The findings deal with information availability, before considering the accountability pathways that have occurred in practice, relating to conditions (iii) and (iv).

#### COUNTY INFORMATION AVAILABILITY

While information in principle should be available, in practice it is often not. While websites are created, and some documents are available, consistent publication of key planning, budgeting and reporting documentation is not occurring as required by law.

In the five case study counties, the team found that in all cases not all documentation was available, and that mostly the team could not find the documentation on the County's own website, even if available elsewhere and despite interview respondents claiming that the documents are uploaded. This finding is echoed by the IBP Kenya County Transparency Survey, a regular survey of the availability of County key public documents, in line with the Public Financial Management Act.

#### Requirements for publication of documents under the PFMA

The PFMA 2012 gives deadlines when County Governments should produce and table certain key budget documents in the County Assemblies throughout the budget cycle. The PFM regulations require that counties publish within seven days after tabling in their respective assemblies the following documents:

1. Budget implementation documents that cover the period between July and December, namely:
  - Approved County Program-Based Budget Estimates, which are critical documents that allow citizens to track expenditure against the formulated budget over the course of the year. Budget Estimates (proposed budgets) should be published enough in advance of enactment to provide citizens with

adequate time to review the estimates and provide their views to the budget committee in the county assemblies. The PFM Act regulations also require the assemblies to hold public hearings before tabling any amendments to the budget. They must be made available within 21 days of approval, i.e., by 21st July annually.

- County Budget Review and Outlook Papers, which review budget implementation during the previous year and set provisional ceilings for the coming year, hence allow the public to understand government priorities and permit government departments to prepare their proposals for the upcoming budget. The law requires that CBROPs be tabled in the Assembly by late October and published as soon as possible, i.e., by November.
- First and Second Quarter Budget Implementation Reports, which enable the public and county assemblies to monitor if money is being spent as planned. They also help to guide budget formulation for the coming year. They should be published within 30 days of the end of the quarter, i.e., by October 31 and January 31 respectively.

2. Budget formulation documents, namely:

- The Annual Development Plan (ADP), on which to anchor the budget, as per the Acts. The ADP should be published within one week of its tabling in the county assembly, i.e., within the week of September 1).
- County Fiscal Strategy Paper (CFSP), which sets out the total size of the budget, sectors' ceilings and identifies key priorities. It should be published within one week of its tabling in the county assembly, i.e., within the week of February 28.
- 3rd Quarterly Budget Implementation Report, which informs on considering the areas to get more money. The report should be published within one month of the end of the quarter, i.e., within the month of March 30.
- Budget Estimates, is where program and item level decisions are taken by the executive that must be reviewed by the public and assembly before approval. It should be published as soon as possible after tabling to the Assemblies.
- Citizen Budget, in which Counties should summarize their budget proposals into shorter, less technical versions that give the public a general view of each county's revenue and spending priorities. The Citizen Budget document is a key input for effective public hearings; and should be published at the same time as the budget proposal.

The next table summarizes the performance of the 5 case study counties over the last 4 years of the IBPK surveys. With the exception of County Integrated Development Plans (CIDPs), which the Survey reported on twice, the other documents were checked in each survey. From this data it appears that the County that provides the most information, at least in terms of documents published, is Makueni. On the other side of the scale is Migori, which has not had documentation available in any one of the surveys.

From the perspective of which reports are more likely to be available, the implications for integrity risks are especially significant. While the budget estimates were available at least 4 out of a possible 20 times (5 counties x 4 instances), the budget implementation reports, essential for accountability, were available not once. While the Controller of Budget publishes budget implementation reports that can fill this gap, these contain only a short chapter per County and does not provide information at the level of detail that will support accountability, or act as a constraint on integrity breaches in the water sector.

The Commission on Revenue Allocation noted in its 2013/14 annual report, that county governments face several challenges in preparing documents, especially plans and budgets, referring to these policy documents, the ADP, the CBROPs and the CFSPs. Some of the challenges include:

1. Most counties did not have the requisite capacity prior to preparation of the Strategy Papers.
2. Most county governments were not able to meet the required timelines for the Strategy Papers since the national government had not released the Budget Policy Statement from which the counties were expected to align their policies and objectives.

	No of times available 2015-18 for IBP Kenya County Transparency survey					Study team test
	County Integrated Development Plan (tested twice, but would be a standing document)	Annual Development Plan	County Fiscal Strategy Paper	County Programme-based budget / budget estimates	Budget implementation reports	
Garissa	1	0	0	0	0	Website is online but does not appear to have been updated and sometime lacks public documents
Kwale	1	1	0	0	0	Website could not be opened
Makueni	2	3	1	1	0	Website on line, but lacks key documents in line with IBP findings
Migori	0	0	0	0	0	Website on line, and CIDP & budgets estimates 2017/18 available, although no other
Nakuru	0	1	3	3	0	Website opened and the latest budget documentation is available in line with the IBP findings, but no implementation reports

At the same time however, the study teams reported that on request in many cases officials provided hard-copies of documentation. In some cases, though, the documents were promised but never received by team although follow-up was done. Issue might be that officials are uncertain as to whether they may share documentation or not.

The study team's experience that even if documents are not published on line, they are sometimes still accessible, does not reflect an access to information, as revealed by a study that assessed the ease and timeliness with which officials provide budget documentation on request. This study, conducted by the IBP together with 12 additional organisations, was done in early 2018. The organisations made formal requests in February 2018, for budget implementations' reports for the first two quarters of 2017/18 in 12 counties across the country. The study found that in most cases, bureaucracy challenges were witnessed in the applications process, where applicants were sent from one office to the next.



An issue that affects the water sector specifically is that it is not necessarily easy to locate water sector expenditure in county budgets, as separate water departments as such do not exist. This reflects findings in the inception phase, which highlighted that tracking water sector expenditure across Counties is a very difficult task, as expenditure occurs across County ministries in different formats.

County assembly and executive audit reports are available on the OAG website (2014/15 only, by the beginning of the study towards the end of 2017 and beginning of the 2018). The AG reports for 2015/16 were obtained by the study team, but was not (yet) available on the OAG website. While the availability of reports is a positive trend, the delay in their availability (a time lag of more than a year) is a concern, as it would not enable the County Legislatures to close the accountability circle in a timely way, to prevent any integrity breaches timeously through quick follow up. Furthermore, the findings on county financial statements themselves – commonly at the second worst audit finding level, namely a disclaimer of opinion – point to key drivers of integrity risks being the lack of proper record keeping. The basis for the opinion is the inaccuracy, invalidity, irregularity, impropriety and incompleteness of the financial statements, e.g. unexplained variance, unauthorized waivers, inconsistency revenue collection, etc. These statements comprise the statement of assets, receipts and payments, cash flows, etc. This points to significant shortfalls in the system capacity in Counties on internal controls. For the five county case studies, the findings that directly relate to the water sector in themselves signal breach of internal controls and due process, particularly in the procurement process. For four of the five counties (with Nakuru being the exception) the 2015/16 Audit reports found irregularities in the procurement and payment processes for specific contracts in the water sector.

**Conclusion: The lack of transparency on water sector budgets and expenditure – where transparency is defined as the availability in accessible formats to the public of reliable, useful, timely and regular information on the allocation and use of County budgets, and to water sector objectives – prevent the accountability mechanisms as envisaged in the public finance management legal framework in Kenya, from kicking in. It is unlikely that citizens, the legislatures and other stakeholders will hold County governments to account for delivery in the water sector, without regular information on decisions by the governments, and the consequences of such decisions on the funding of water.**

## WSP INFORMATION AVAILABILITY

WSPs that the teams looked at, were found to have websites that provide information on their activities, but this information is not budget or accountability cycle information. Rather, it is information on operational issues (e.g. providing information on services). The only integrity-related information is that tenders are advertised, but without commensurate information on who won the tender. While the websites therefore are important instrument for WSP service delivery, they fall short on providing routine, reliable, accessible information on the finances of the WSPs.

WSPs however provide this kind of information to their Boards, which in the case of County-owned WSPs, include representation from the county related government departments. Some counties, however, have reported that they do not receive reports from WSPs, because they are 'autonomous', e.g. finance ministry in Garissa.

This is not to say that there is no information on WSPs financing available. Firstly, WSPs report to WASREB on key operational and financial indicators. Secondly, a key strong point is that the audited statements of WSPs can be accessed on the OAG website. So, while there is some evidence of some processes that can lead to horizontal accountability (between the units of the state), there is very little evidence of enough information to ensure that vertical accountability is also activated.

## CAN CITIZENS PARTICIPATE

### Incidence and quality of participation

The CRA 2013/14 report noted that most counties were not adequately undertaking public participation within stipulated deadlines provided by the 2012 Public Finance Management Act (PFMA). Interview evidence with county governments suggest that counties are grappling with this problem, experimenting on how best they engage citizens in budgeting processes. E.g. in Nakuru earlier participation grouped

wards, then it was learnt that this might undermine the effectiveness of participation, so now wards are consulted one by one. (For the county budget as a whole, not specifically water as such).

Evidence that counties do more public participation around the budget, than around the CIDP – high burden, reduced effectiveness due to annual rather than multi-annual nature. If the participation is largely aimed at selecting priorities for initiating projects, would the CIDP not be a better point for it? Budget participation could then be thinner and aimed at prioritizing which projects are financed.

Some positive examples of WSPs undertaking public participation processes, e.g. in Nakuru.

### **Effectiveness of participation**

Some evidence of meaningful links from public participation into operational and budget decisions: e.g. Nakuru which noted that the outcomes of public participation is managed by the technical departments.

An emerging issue however, is the relative influence of lobbying in the legislature, versus broader public participation processes run by Counties.

In Makueni: Led from the Planning department, appraisal of new projects has been entered into the budgeting process and allow the ward to be involved in some strategic thinking around project selection. Technical staff from departments are involved in this process and it takes place during phases of the participatory process – allowing feedback to communities. The focus of this appraisal is more around the individual viability of a project than a broader strategic assessment.

### **Engagement of CSOs**

The engagement of CSOs is also positive: Nakuru has partnered with CSOs to engage citizens. This is one option for overcoming the lack of capacity/experience of public officials to implement the required public participation. Nakuru reported positive results from this. It has also formed a CSO forum.

### **Issues in participation (including risks)**

But there are also challenges from the other side, or the capacity of citizens for participation. Interview evidence with county staff suggest that the public is not well prepared for participation processes, which weaken them.

Weak capacity of the institutions running participation processes can be an issue: there is some technical capacity required to ensure that the requirements of citizens – particularly as participation is largely about identifying what will be initiated and financed than about checking that it was financed and implemented well – are technically feasible and efficient, given existing projects, etc. Example from Makueni where WRUAs handling participation and pressure for specific inappropriate technologies have contributed to sub-optimal outcomes. This is however not only an issue for WRUAs. It also affects county planning departments and WSPs. Also in Makueni, at these levels capacity may be insufficient to ensure appropriate strategic selection and technical design of projects. While efforts are being made to address the problem, it points to an issue across counties. The department is unable to clearly transmit the sectoral strategic approach firmly as well as dictate the technical specifications of projects as it should. Instead it bends to the technical preferences from communities. This has led to large numbers of small projects, focused on small areas/populations – and not on the bigger picture. Kwale appears to have more success in this, with interventions such as a Governor's monthly project review and their approach to participation which is multi-phased and involves adjusting publicly selected projects to conform better with strategy and then informing/consulting the community on this. Ultimately, too much reliance on public participation for project selection may lead to inefficient and piece-meal approach to investment that does not benefit from economies of scale. See also discussion on project and budget cycles below under system issues.

The continued design and implementation of water services projects by WSBs happen without public participation, as the public participation requirements that are on Counties, is not equally on WSBs. This poses an integrity risk around accountability for the choice of projects and less likely involvement of citizens in ensuring accountable project implementation.

Lack of documentation is not the only issue on public accountability for the allocation and use of County and WSPs' resources. Users and the public in general do not hold the WSPs accountable for water services delivery, but the County. Respondents noted that the media would report on integrity issues within the WSPs, so the public is not unaware of the issues. However, this is usually when integrity breaches have already matured to the point that it attracts media attention, rather than being prevented through the constraints that more transparent reporting would impose, or caught early through routine reporting / accountability mechanisms.

## **ISSUES RELATED TO NON-WSP WATER SERVICE DELIVERY ORGANIZATIONS (COMMUNITY WATER SCHEMES / CBOS)**

### **Formalization and accountability**

Most schemes are bottom-up community driven organisations, many are still informal and not registered as community organisations. It is difficult to enforce the formal procedures for accountability for funds used, pricing and services delivered in these circumstances (e.g. reporting to their members regularly). Community-based water schemes have been shown to be operating in regulatory limbo which is a significant challenge both to the on-going operation of the CBO, but also to their future. For example, in Makueni, Isololo CBO has been operating since 1986 but does not have a license from WASREB or maintain any formal relationship with the county as far as the chairman was aware, nor are the committee members legally registered as an association. This appeared to be an oversight/lack of sensitisation rather than deliberate non-compliance. Generally, community-based scheme's regulatory limbo affects accountability in a number of ways:

- There is no formal reporting to the county (and in most cases the water users/customers) on the service and the use of revenues that are collected or tariffs that are charged.
- It is not clear that the county incorporates unregistered community water schemes into Water Resource Management decisions;
- Coordination with other schemes that have been built around the same source is weak and seemingly unmanaged; and
- End users have no recourse if there is no service.

In the case of Isololo these issues have not surfaced (yet) as it appears to operate reasonably well (still going after 30 years). In terms of transparency, the committee had a tariff and service sheet on the wall and the names and duties of the different committee members. Formalizing the entity, professionalizing staff and putting it on track to possibly become a community WSP in the future would make sense. But this will not happen to Isololo or any other schemes, until schemes first register as community associations, then register as WSPs and then enter into contracts with the County Governments. Most schemes are managed by bottom-up community driven organisations and that many are still informal and not registered as self-help groups and not as proper community associations. These groups often operate in isolation and they are not aware of regulatory requirements and very rarely have any formalized arrangements with county governments or WSPs, let alone WASREB and WSBs.

### **Capacity**

Capacity of schemes is an issue. One scheme interviewed by team said that while they received training when set up, none of the training was related to financial management. The training was about operational issues. There is also inadequate training on management generally, besides financial issues. In Makueni for example, a dam failed and one of the contributing factors was lack of clarity by the chair of the community scheme on responsibility for design, and design requirements.

### **Some examples of accountability mechanisms found, but still largely incomplete**

However, the county case studies also suggest that

- In some cases, accountability is established through processes instituted by the schemes that hold general meetings to provide feedback to members. These in principle should be the forum where the

accountability cycle is closed, supported by accountability documentation. However, the team was not able to ascertain whether this occurs in practice.

- Some schemes' ex ante accountability documentation may be available to county governments at some level, e.g. budget documentation. But, the evidence also suggests that financial or operational reports may not be available. This is at best weak accountability through this pathway.

Overall, however, the opportunities for integrity breaches are high.

## ACCOUNTABILITY PATHWAYS

### Emerging accountability pathways are:

- Via audit reports: in Kwale and Migori, reference to Attorney General prosecuting cases based on AG reports
- Via Counties insisting on accountable management of WSPs: There is some evidence that MDs of WSPs are held accountable, and boards with MDs, directors and board members being dismissed (Garissa, Makueni). But also see discussion on whether this is a county function.
- Via County Assemblies. Some evidence – including newspaper reports tracked – that County Assemblies do raise queries and summon officials, investigate misappropriations

### Issues with sanctions and accountability pathways

Interview respondents however also noted that Law gives the right for sanctions, but local relationships and tradition are stronger. While sanctions are in place formally, this means that they are not necessarily enforced.

In Garissa there have been significant issues about the governance of the WSP and the ability of the County to intervene to ensure good governance. County is now drafting a bill – which in itself is an integrity risk given that its provisions might not be harmonized with the provisions of the national water act.

## FOCUS AREA: IMPLEMENTATION OF AND COMPLIANCE WITH THE WATER ACT INSTITUTIONAL ARRANGEMENTS – INCLUDING THE GOVERNANCE OF THE WATER SECTOR UTILITIES.

Different interpretations of and/or Incomplete /partial implementation of the 2016 Water Act roles and responsibilities results in unclear responsibilities in the Water Sector, with an impact on accountability of institutions and actors. This section reports findings on such incomplete or partial implementation, and the consequences.

### **2. What progress has been made in implementing the Water Act and other acts, what are the issues and how does this affect integrity in financial resources management in the water sector at county level?**

*Identified integrity risks:* Slow transformation of institutions and transfer of assets; duplication of roles; roles outside of the main mandates provided for in the Act

## FINDINGS

The key issue is that the continuation of the status quo on one hand, e.g., in the form of WSBs; and the taking over of roles without formal amendment/adoption of laws, e.g. involvement of WRUAs in service delivery without licensing are creating an integrity risk. This has several dimensions / manifestations:

### UNDERSTANDING OF ROLES AND RESPONSIBILITIES

There are different interpretations of the legal framework related to water sector devolution between WSBs and Counties. Interview evidence suggests that whereas the WSBs believe that they still have a role to play in water service delivery, Counties view this responsibility to be devolved fully to their level.

Most stakeholders met specifically mentioned the lack of clarity between water actors as the MAIN problem in the sector and the main issue affecting integrity. Water Service Providers particularly are supposed to be county entities, but for reasons of trust and unclear accountability (see discussion under last question), County staff are not certain where the WSPs report; how they should budget and report; how to sanction any issues; whether they can impose standards; systems of seconded staff; etc. County CECs also do not fully understand their role as Board Members of WSPs. This lack of clarity directly affects the already low levels of trust between actors in the water sector, and serves to keep the county from fully taking on and supporting the development of WSPs. The situation has been undermined by lack of policy guidance from national level, lack of devolved technical staff and difficulties in acquiring new technical staff, numerous integrity incidents reported, some of which have led to asymmetric sanctions.

### CLARITY ON REPORTING AND OVERSIGHT

The Governance discussion below raises issues about whether WSPs are seen or see themselves as primarily accountable to Counties, WSBs or WASREB. There are examples where the formal articles of incorporation of WSPs still have them being accountable to WSBs – e.g. in Makueni, where the WSP is still, in terms of its own legal documentation, accountable to the WSB. Combined with lack of clarity in Counties on their role relative to that of the Boards of WSPs, means that accountability lines are unclear and ineffective.

The Counties, WSBs and Funders do not coordinate among themselves on one hand; and with the WSPs on the other on building accountability capacity / reporting. In Kwale this impasse, resulted in:

- Nyalani Dam water treatment works facility being constructed without a clear idea of who should own, operate and manage it; hence it is running into a risk of underutilisation, if not completely going to be redundant.
- During the implementation of Mrima Borehole Water Users Association Project, one of the

beneficiaries of the J6P funds, the CRM raised a red flag on the project and requested a review of the project by the WSTF-HQ. This was due to the fact that there have been several monitoring visits from the CRM, in which it was noted that there had been several over-the-counter (OTC) withdrawals of large sums of money by the management of the Water Utility (WU).

For WSTF projects, the study team doubts whether the County Resident Monitors of the WTSF, together with all WSTF implementing partners (including the County Government, the Water Service Providers (WSPs), the Water Resources Management Authority (WRMA), the Water Resources User Associations (WRUAs) and Community Based Organizations (CBOs), at the project, Water Service Provider, sub-catchment and County levels) work together in a coordinated manner to monitor projects. They should be holding coordination meetings under chairing of the County Directorate of Water to compare notes. The minutes of such meetings would be used to brief leadership (CO & CECM) of the County Dept. responsible for Water. This way, an oversight function of the County Government will have been ensured. But disputes about roles, and expectations that the 2016 Act might be rolled back, stop these kinds of meetings from taking place.

### **INCOMPLETE OR PARTIAL IMPLEMENTATION OF THE LAW**

In principle, the WSBs have not yet been legally transformed into WWDAs (Kwale, Migori, Nakuru, Garissa), but this is still in compliance with the law as there is a provision in the Act that WSBs can continue to operate as a water services provider until the responsibility is handed over to county governments, joint committees / authorities or WSPs. The provision presupposes that this would be an interim arrangement, until such time when the CS responsible for water initiates the transformation and hand-over eventually occurs.

In some cases, WSPs have not changed their articles of incorporation to show that they are now County WSPs (Kwale, Makueni).

Assets have not been transferred to WSPs (Article 153.1). In practice, WSPs still pay a share of their revenue collection to the untransformed WSBs that is not for bulk water purchases, but for leasing infrastructure that should have been transferred to the WSPs under the counties, if the enactment was to be effected. This contributes to not covering their maintenance costs, with significant efficiency issues: result is also running up debts to the WSBs, with interest costs further affecting budgets.

WRUAs have been licensed by the WRA to collaboratively manage water resources, but some are also taking up water service delivery responsibilities (Kwale, Migori, Nakuru, Garissa). Not all WRUAs were able to provide the paper work on their licensing/some were unaware of licensing requirements.

### **UPTAKE OF SERVICE DELIVERY ROLES**

It is significantly evidence that WSBs are continuing the exercise, a mandate they may no longer have, to undertake in-county service delivery infrastructure projects. This often results in pressure on WSPs budgets/balance sheets: e.g. in Migori MIWASCO being asked to start paying loan of the projects that have not yet become operational, or in other cases WSBs not transferring assets to counties/WSPs, but requiring that WSPs lease the infrastructure used by the WSPs to deliver the services in addition to buying bulk water from the WSBs. Donors are part of the problem, channelling funds for water service delivery infrastructure via WSBs (which may be perceived as a safer institutional pathway for donor funds, than counties or WSPs in the meantime, in the absence of transformation).

WRUAs were being licensed by the former WRMA (now WRA), for the management of water catchments/sources; but now some of them are taking up service delivery (Kwale and Garissa).

### **CAPACITY ISSUES AS A RESULT OF CHANGING RESPONSIBILITIES**

Issues around human resource capacity and its development as newly devolved or created roles are taken up by county governments are covered below. This is however not the only place where this is an issue: it is also so for newly created institutions under the 2016 Water Act, which as yet may not have the capacity to manage their affairs adequately, to guard against integrity risks. This is in addition to the lack



of operational capacity. For example, in Migori, the LVSWB had established water services companies under districts, which counties took over as water services providers; and MIWASCO emanated from there. It is still struggling with meeting standard performance indicators, as per WASREB guidelines.

## **ISSUES FOR WSP GOVERNANCE**

Also see discussion in last question and previous heads under this question.

There is evidence that WSPs have more allegiance to Water Service Boards (WSBs) and they do not want to relinquish their relations with them. In Makueni county officials agreed with this and made it clear that there are still vested interests in the prior arrangements. The WSP agreed too, but noted that the issue is about the support from counties for the transition. While this has efficiency consequences (the Counties distrust WSPs and therefore are less willing to provide full support beyond emergency subsidies), it also has accountability consequences. This prompts Counties to step in and undertake water service delivery projects, in addition to ad hoc operational costs bailout interventions for WSPs, further obscuring who is responsible for what.

Another issue concerning lack of clarity, is that whereas the Water Act gives regulatory authority and monitoring responsibilities to WASREB for WSPs, the PFMA clearly provides for County governments to have oversight and monitoring responsibilities related to county WSPs. As companies owned by Counties, the PFMA provides the legal backing for the Counties to oversee and ensure proper conduct of the affairs of WSPs relative to financial management and investment. On the other hand, the Water Act provides for a strong role for WASREB, on licensing WSPs and approving their tariffs. That both of these are legitimate and separate but complementing reporting lines is not well understood, with the result that WSPs resist oversight by Counties and that even Counties do not see themselves as having significant rights to interfere, given that the WSPs are 'autonomous'. This means that County-level oversight is weakened.

In principle, while such dual reporting lines are tenable, it does require capacity in WSPs to report in different formats at different times to different oversight / monitoring agents (also see discussion in next sub-theme for this question).

## **COUNTY APPROACHES TO WSP OVERSIGHT AND MONITORING IN PRACTICE**

The most common approach is via County representation on the Board of WSPs. This has been noted to be more effective if counties are represented by technical officials rather than politicians. Reasons are that the political appointees might not have Water Sector careers, which would not provide the capacity of people with the needed technocratic backgrounds to play a full oversight role on the Board; the lack of time to scrutinize the documentation and attend board meetings; and the benefit of having degrees of separation between political considerations and the operations of a WSP. For example, it enables boards to discuss politically sensitive issues more openly.

An interesting case is that of Garissa, where the incoming Governor found several integrity breaches and high inefficiency at the existing WSP. Action that was taken was to fire the Board and appoint a new one (by the Governor), combined with seconding staff. In addition, the county is in the process of drafting a law to manage the relationship: it is not clear that this is conducive to accountability, as it may contravene or contradict provisions in national legislation, muddying the accountability waters.

This is despite the will being present in Counties to properly oversee WSPs. One finance director mentioned that the preference would be to insist on more regular budget and expenditure reports, and performance reports, but that it was not clear whether the County could demand that.



## FOCUS AREA: PUBLIC FINANCIAL MANAGEMENT RISKS OF COUNTY GOVERNMENTS

Effective PFM systems, combined with the human resource capacity to manage them, are key to deter and detect integrity breaches. In this theme, the study assessed county-level processes, systems and the human resource capacity to manage these systems.

### 3. What are the key human resource gaps that affect integrity / cause integrity risks in the water sector at county level? What are recommendations to overcome these gaps?

*Identified integrity risks:* Weak human capacity for the management of policies, resources and services delivery in the water sector, undermining the proper implementation of budget systems, internal controls, reporting and auditing requirements

## FINDINGS

Both overstaffing and understaffing exist. This dual problem is created by inheriting staff of the devolved sectors/functions of the national government from one hand, and staff of former municipal councils or district administrations on the other; in addition to recruitment emanating from new county needs in line with devolution (e.g. Nakuru, Garissa). County offices and WSPs therefore may be both bloated in terms of staff, but short of the necessary skills at the same time.

There is significant evidence that weak technical capacity at county level prevents full implementation of integrity system requirements under the law. Counties and WSPs face the twin problem of insufficient people overall / not enough senior / experienced people with the required skills; and high staff turnover.

- Insufficient experienced staff for specific functions such as **planning, budgeting and monitoring** weakens counties' ability to run adequate systems. For example, Nakuru county officials reported that they are unable to conduct M&E for tracking and reporting, due to understaffing. Kwale respondents noted that staff is often inexperienced, fresh out of studies, and that turnover is high. This was echoed elsewhere, including in Migori.
- Also for **internal auditing**, where the lack of auditors limits the assignment of internal auditors to spending entities at county level – this is crucial, given that expenditure controls are decentralised. In Migori for example, Water and Energy does not have an internal auditor in the department. WSPs also reported a shortage of internal auditing skills to support sound management systems.
- Experienced / skilled **procurement** officers are also in short supply in counties and WSPs. In Makueni, the WSP interviewed did not have a procurement officer until this year due to having no funds available. The new procurement officer has added significant value and set up the procurement process. They chose to employ a procurement officer over an internal audit officer (they could not afford both) and so rely on the national audit (external) instead of an internal audit. In Migori effective implementation of e-procurement was hampered by lack of skilled officers.
- County Heads of Budget and Planning (in their national gathering) identified one of the challenges in the planning process as **lack of spatial plans** as required under the CGA, 2012. This was blamed on lack of technical and financial capacity within the county governments and even beyond the county government in the case of technical capacity. Those counties that had spent tremendous resources on development of these spatial plans had no substantive results. In addition, nearly all counties had failed in preparing ten-year sectoral plans as required under the CGA, 2012. In the absence of plans it becomes more difficult to hold actors to account.

The lack of technical expertise also affect integrity indirectly. At county level institutions, including the County government and WSPs are not easily able to acquire the necessary expertise, contributing to continued reliance on national institutions such as the WSBs for performing county functions as a result, perpetuating the issues discussed in the previous question.

An issue is the devolution of water services to Counties without capacity to manage such a sector. There is an evidence that WSBs have seconded staff to Counties (Garissa County Department responsible for water services, which at the same time assign them to help GAWASCO), a scenario that demonstrate lack of capacity, too, prevents handover. There needs to be a concerted effort to build the capacity so that handover can proceed.

While integrity issues are the subject of this study, the team also heard from respondents in all five counties that capacity shortages have efficiency consequences, as a result of weak capacity to plan, design, implement, run and monitor water service delivery systems, in WSPs and counties.

There are also instances of WSPs that reported staffing in line with the norms set by WASREB (9 to 14 staff per 1 000 connection points, e.g. in Migori)

**4. What are the key governance, institutional capacity and regularity of processes factors at County Government level affecting integrity / causing integrity risks in the water sector? What are recommendations to overcome these gaps?**

*Identified integrity risks:* Weak or non-functioning internal control systems; weak revenue collection and cash management systems; classification, budget structure, IFMIS and SCOA issues; procurement and payment management system risks

## FINDINGS

### IT SYSTEM ISSUES AS A DRIVER OF INTEGRITY RISKS

Weak connectivity (e.g. Makueni), on-going roll-out (to county departments and WSPs) and weak human resource capacity are key issues undermining the effectiveness of nationally designed IT systems (e.g. IFMIS and e-procurement) in ensuring an effective control and reporting environment at County level.

This is in addition to the issues raised already in the inception report, on design of the system, versus county needs.

- The definition of what would count as a project is not clear, and data on projects are therefore not available. There are legal requirements for the financial and non-financial implementation review of county projects by the Controller of Budget. Information for this review cannot be generated reliably from the IFMIS system, with the result that county governments provide manually collated information, using different definitions, and only of the 10 largest projects by county. At the national level projects – particularly donor-funded projects – are managed through the e-ProMIS system. The system however does not integrate with IFMIS or use SCOA, and is not fully implemented / mandatory at county level.
- Inadequate coding options for revenue sources. This has a knock-on effect of stalling the completion of the budget in the system and consequently several downstream functions of the IFMIS including financial reporting and account reconciliation were not possible and counties were obliged to prepare these reports manually outside the system. One result of weak SCOA revenue capability is that expenditure that is financed by local revenues becomes a 'blind spot' as it is not tracked in IFMIS. If neither the revenue nor the expenditure side is captured within the protocols of IFMIS, local revenues can be more easily diverted / used inefficiently.
- The level of detail currently available in the coding structure of the IFMIS is considered inadequate by some counties. County governments prepare detailed budgets in excel and then later manually input the figures into the budget preparation module of the IFMIS at a more aggregated level. This causes counties to populate the IFMIS hurriedly and often without great attention to accuracy, problems then emerge later when adjustments to the IFMIS are required.
- Weak capability in IFMIS to include structured non-financial information. Counties run parallel, off-IFMIS systems which may not be fully consistent across years and traceable in the same way that IFMIS-based reporting is. This undermines county governments' ability to report on, and for citizens and their organisations to track, value for money and delivery in the water sector.

In summary, the requirement for manual parallel systems next to an IFMIS creates opportunities for integrity breaches, or just human error resulting in in-accurate entries and therefore inaccurate reports.

## DRIVERS OF INSTITUTIONAL CAPACITY ISSUES

Transfers from central government are late – again this is an efficiency rather than integrity issue. But, transfers remain with County Treasuries so they can be used the following year to finance projects. How such finances, which are spent through the so called supplementary budgets and pending bills, relate to annual budgets then become less clear, undermining integrity.

Lack of continuity from one government to another: when new CECs, etc. come on board, projects by previous CECs are abandoned and new ones started. This is high inefficiency, but also has integrity implications. If individual projects are not county projects, but projects of office holders, accountability for their implementation and results can be denied by the county officers who remain.

## SPECIFIC ISSUES AT POINTS IN THE CYCLE

In budgeting, roll over and extension budgeting (including in response to late transfers from national) poses a challenge. This is typically done by rolling over unpaid balances on contracts as pending bills and preparing a supplementary budget (this is prepared more or less in parallel to the next FY budget as the figures are typically known by the end of the FY and the funds are available as unspent balance on the previous year). Usually the Supplementary budget is in Assembly by the end of July.

While this system enables projects to be completed if they don't finish within the financial year, the use of a supplementary budget by default every year means that not only are public resources being planned at least partly in parallel in two budget processes, but it is also an opportunity for an additional internal negotiation around the budget every year from the very beginning which is less than ideal for integrity. It may now or in the future also undermine the focus on what to execute/finalize, the existing projects or the new ones.

The budget cycle isn't compatible with the project cycle, especially in the context of limited capacity in the departments. Feasibility, design and procurement take too long and project planning is not adequate to manage this against the budget cycle. This has efficiency consequences, but may also impair integrity as coherence of projects and clarity on their budget allocations and cost are undermined. Ideally, county water departments and WSPs would need to submit their activities phased clearly over time. 1) feasibility study, design and preparation of tender document; 2) construction of; 3) installation of ...; etc. The requirement for trying to undertake the full project cycle from identification to hand over in a single FY is not feasible, most likely accidental and derived from the participatory approach which specifically intends to budget for most projects in a single year. Instead of coming up with a new list of priority projects each year, a dynamic list that is updated with completed, cancelled and new projects each year would allow multi-year prioritisation and phased planning for each individual project.

WSPs have unpredictable and large subsidy requirements that are impossible to ignore as they quickly become political issues. This is related to inadequate information on their finances. Weak revenue bases / collection systems and poor cash management result in cash shortfalls with impacts on service delivery, e.g. when a WSP can no longer afford fuel to keep pumps running. Counties then have to step in. While a first consequence is efficiency losses, that WSP finances can deteriorate to such a point without early intervention by the county (in terms of its PFMA mandate for county WSPs), means that integrity breaches can also occur undetected. That bailouts will occur create moral hazard, and a higher chance that integrity breaches will go unsanctioned.

In Makueni there is now a proposal for a contingency fund in the budget to cover future bailouts needed, after the county had to bailout a WSP, with a large impact on the budget. It is not clear that this is efficient, but the politics of water are such that Counties will quickly be seen as ultimately responsible for any failure in water supply and will be obliged to step in. As a result, incentives for improved performance by WSPs are undermined and the Budget is likely to encounter significant future deviations from planned budget to unnecessary constraints caused by budgeting contingency funds. Furthermore, the County did not take the opportunity at the time to improve its governance arrangements with the WSPs, including for example providing the bailout in return for more complete and more regular reporting. There is no substantial mitigation of the circumstances that led to the initial problem and there is no reason to believe that it would not happen again.

In procurement, Counties have reported positive experiences with the central government e-procurement system. E.g. Nakuru reported that the process is initiated and completed online; and it is working well. In fact, complete tender documentation (but no reports on project completion) is uploaded on to their website.

The Procurement system in Mukueni is still manual but has some checks and balances. Procurement is partially decentralized with each Department Accounting officer appointing its own evaluation committee comprised of department staff, technical officer/advisor and user representative as well as seconded finance and procurement officers (from CT). Procurement plans must be entered into the current procurement module of the IFMIS. The Contract is finally prepared and signed by the county secretary and the county attorney may be consulted. The process is extensive and does cause timing delays but is considered to be rigorous enough to be fairly strong.

However, there has been a lot of resistance to the imminent establishment of an e-Procurement system (presidential requirement from 1 Jan 2019). The Governor has gone a step further to require all tenders and approvals, complete with applicants and winners to be available online within the system. Heavy resistance to this suggests there may be vested sectoral interests in the more manual system.

There are also however, evidence that the effectiveness of the system is undermined by poor connectivity (forcing Counties back to manual systems) and by lack of capacity at County level to use the system (e.g. Migori). The lack of connectivity was also noted by the CoB as an issue for the implementation of national IT-based control systems for County-level PFM, towards better integrity. Furthermore, not all counties are on the system and those that still have to join, are facing resistance.

Even when IT systems are effective, they are not a guarantee against integrity breaches. Even if e-procurement systems can guard against other forms of fraud, corruption and theft, preventing collusion is a far more difficult task. Using IT systems effectively to prevent collusion requires human intervention, including intelligent monitoring and verification.

A CEC who wishes to remain anonymous gave an account of how the system is still being circumvented leading to heavy losses in the sector. After completing the needs assessment of this county through public participation channels and the subsequent approval processes completed, one hundred water tanks were identified and ordered for schools in rural areas. During inspection of the consignment the CEC found that they did not meet the standards agreed, and that the tanks were not fit for purpose. After raising the issue with the Governor (who had run the campaign for election on a zero-tolerance-for-corruption ticket) and investigating further, it was discovered that the rents generated between the quoted high quality tanks and the substandard ones that had been delivered had already been paid out to some officials by the supplier even before payments had been approved. This is an example of collusion between suppliers and duty bearers and how the absence of physical inspection of goods and services provided, can result in integrity breaches even when IT systems are working well. The CEC further added that the specifications of goods and services in the sector are quite complex and easy to manipulate, increasing the risk of rent-seeking opportunities.

Regular (meaning in line with the provisions of the law and the contract) contract implementation is also hampered by lack of understanding of contracts and poor contract management at County level. This creates space for integrity breaches.

**Internal audit systems** were claimed to be operational (e.g. Nakuru, Kwale). The team could verify this claim in some cases by checking the availability of internal audit reports (e.g. Nakuru). However:

- The deployment of internal auditors to departments are incomplete (e.g. Nakuru).
- There is some evidence that even if internal audit is undertaken, it might not be fully effective. Besides the shortage of personnel that result in incomplete coverage of spending agencies, audit committees are not necessarily formed, so the counter-balance to ensure that internal audit findings do make their way into changing management behaviours, are short-circuited. A key distinction

between internal and external audit is that the former is a management function: it should not report to the legislature, this is where external audit reports. Internal audit is a process to identify integrity risks earlier rather than later, and report these to management for corrective action. The audit committees play a critical role, both in identifying risks that should be investigated, as well as ensuring that findings are heard by management. In the absence of an appointed committee, this system cannot function properly.

- In Kwale both the county and the WSP visited noted that internal auditors from the county audits the WSP. While this is resource efficient, it appears to be somewhat over-stepping the boundaries of separation between a county and its entities. As an internal management function, it is unusual for an internal auditor to be deployed from outside an organisation, in this case, specifically from the oversight organisation. It is arguable that internal management advice from an internal auditor deployed by the county, could undermine the county's capability to hold the WSP to account for its financial management systems.

**Asset management systems** are weak, e.g. in Makueni systems are still manual with one system managed by the finance ministry and the other by the spending agency. The intent is to move to a more automated system, but this is still in a very early stage. Integrity around the retention and maintenance of assets is hampered in the absence of unique consistently implemented systems.

### **Effective accountability and the role of CAs**

County Assemblies may adjust budgets. This creates an integrity risk, as it potentially disables one pathway of sanctions, namely via the CA. if the CA takes an overly active role in allocations, it can no longer hold the county to account for the service delivery results of spending. It is of course also potentially a barrier to efficiency, as much as it might be – if the power to adjust budgets is used as powers in the last resort – an enabler of efficiency.

## FOCUS AREA: RISKS ASSOCIATED WITH THE MANAGEMENT OF WATER REVENUE AND WATER SERVICES PROVISION IN WSPs (PUBLIC FINANCIAL MANAGEMENT RISKS OF WSPs)

### 5. What integrity risks arise from the management of water revenue and expenditure by WSPs? What are the recommendations to address these risks? To which extent do corporate governance practices aggravate or mitigate these risks?

*Identified integrity risks:* Weak water revenue management systems, controls and revenues; weak expenditure management and governance of WSPs

## FINDINGS

### LINKS BETWEEN WSP PLANS AND COUNTY PLANS

Most WSPs are often not participating in the drafting of the CIDP (e.g. Garissa/GAWASCO, Migori/MIWASCO, Makueni/WOWASCO & Kwale/KWAWASCAO). While this is not directly an integrity risk (rather a risk for efficiency), it does mean lower coordination between counties and WSPs, and possible non-inclusion of WSP projects in the CIDP, with consequences for the degree to which these projects are transparent for social accountability purposes. But, some do through their line departments responsible for water services (e.g. Nakuru), where the county government does call them (e. g. Nakuru/NARUWASCO), to present their proposals during CIDP process, some of which culminate in specific projects. Pity though is that they were carried out by the county water department without involvement of NARUWASCO on the supervision, i.e. Turasha Dam Desilting that was executed partially.

### HUMAN RESOURCE CAPACITY OF WSPs

Interview respondents pointed to issues with human resource capacity and low level of qualifications of staff / board members. Staff numbers may be high and increase, but that is often without the necessary technical capacity to fill key positions. This is true on the engineering / technical skills side, but also on the financial management / general management side.

- Garissa is a positive example of a county governor taking steps to address weak HR capacity in WSPs. County has seconded staff to WSP.
- Migori also has examples of better capacitated WSPs.
- County reporting system differ from that of the WSPs, so already scarce human resource capacity in WSPs are directed to producing the kind of reports that counties want (Garissa)

### SYSTEM CAPACITY

Systems capacity in WSPs can drive integrity risks. For example in Garissa, WSPs financial budgeting and accounting systems are weak: they are mostly manual (also procurement systems) and managed in excel. Billing systems were also not automated, although recently an incoming manager has started taking steps to automate systems (Garissa billing is at 80% of which 50% is collected).

Payment systems are also manual, coupled with manually prepared accounts. Furthermore, procurement systems are in their infancy. In Makueni for example, in one WSP the procurement officer has just been appointed. Asset management systems are non-existent, with high possibility of security breaches.

When large donor funded projects are present, these bring new capacities, but the capacities are used exclusively for managing the donor projects – a typical use of country systems issue with parallel systems taking up human resource capacity, with limited or no benefit for the strengthening of country systems themselves.



There are positive experiences with counties stepping in to address capacity constraints in WSPs – e.g. Garissa.

There are positive experiences with internal audit practices in WSPs, e.g. Nakuru, to strengthen systems. Pre-audit type checks as well as spot checks on processes of the WSP.

An issue may be that WSPs get no guidance on financial management systems: the Counties have little knowledge on how to guide them (as individual in counties do not necessarily understand the parastatal environment for governance versus a budget dependent county department context) and in any case, counties are not clear that it is their responsibility versus WASREB or the WSBs.

## **BILLING ISSUES AND INTEGRITY RISKS**

The lack of comprehensive and systematic revenue management systems is a significant issue for integrity in WSPs. A comprehensive billing system – with audit trails – is key to guard against integrity lapses in billing. In Makueni for example, in one WSP there is no comprehensive revenue management system. Bills are distributed by SMS and payment is accepted by M-PESA, post bank payments or cheque, no cash is accepted. A consolidated account on receipts is prepared manually using spreadsheets by the WSP finance officer.

There are issues with the vandalization of water meters (Garissa), resulting in flat rates. Vandalism of the equipment of water services providers is a general problem (also attested to in Kwale and Nakuru by the team).

Nakuru has good positive example of using modern technology to overcome challenges and integrity risks in billing. The use of M-Pesa for payments (also in other counties, e.g. Garissa), and then uploading meter readings via electronic means.

## **CORPORATE GOVERNANCE PRACTICES AND ISSUES**

In practice there are issues about the degree of autonomy that a WSP has from the county, on the one hand, and the powers that Counties have to intervene, on the other hand. What are the powers of the county to intervene when there are integrity breaches at the WSP, and what are the pathways to do so. These issues are not fully clear at local level. E.g. in Garissa, the county experienced the inability of the county to intervene in the practices of the WSP – which was leading to overstaffing with incorrectly skilled staff – as frustrating. Also, the Board of the WSP was appointed without oversight by the county. This Board was replaced by the incoming Governor who according to interview evidence, has taken significant corrective action to address various breaches, weak human resource capacity and weak systems. In Makueni too, the County intervened to replace the board/directors.

The duties and responsibilities of the Board, versus the operational responsibilities of WSP company management, is not clear in practice to WSPs. It appears that Boards for example, sign off on cheques. While this may seem like a pre-audit oversight duty, it may breach the border between effective oversight versus direct participation in the day-to-day management of the WSPs. If the boards get involved in this, they would not be able to practice oversight.

Capacities of Boards is an issue, but also some evidence of steps by WSPs to address the issue, e.g. the induction of new board members that are undertaken in Nakuru.

There is some evidence from interviews that the WSPs can be a particular target for predatory behaviours. Small counties may be targeted, where capacity is likely to be less. This is however due to the loopholes in the system (and overlapping provisions exacerbated by overhand of the legal framework of the past) between National, Boards and county in the management of WSPs.

One consequence and issue is that WSPs get funding from various sources, but because Counties do not have continuous access to WSP budgets and reports, this is without County knowledge. Other sources are the WSTF, WSBs and donors. Financial reports are received at the end of the year, but the information is inadequate.



**In conclusion: There are substantial risks of misuse of funds given the often weak budgeting, reporting and oversight systems and capacities of WSPs and this is not helped by the significant lack of trust between the County Treasury and the WSPs. There is often very little interaction between those bodies (WSPs) and the county government. The result is that, while integrity is clearly a major issue, WSPs seek much needed support from the WSBs or other entities and do not see the counties as much of a partner. Until steps are made to build trust between the two, there is limited scope for the County being more meaningfully involved as imposing stronger budgeting and reporting requirements. However, this does not deal directly with the underlying capacity issues. These all said, there are still stories of success, NARUWASCO for instance managed to graduate from subsidies as a result of good corporate governance, enabled by a well-informed CECM responsible for water.**





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