

Privatisation of urban water service provision: the Kenyan experiment

O. A. K'Akumu* and P. O. Appida

Housing and Building Research Institute (HABRI), University of Nairobi P.O. Box 30197, Nairobi, Kenya.

**Corresponding author: E-mail: owiti.kakumu@uonbi.ac.ke*

Received 25 August 2004; accepted in revised form 21 June 2005

Abstract

One of the services that have been poorly provided in the urban areas in Kenya is water and sanitation. There are many reasons, which can be attributed to poor provision of water and sanitation as undertaken by the local authorities in Kenya.

The path to remedy the poor provision of water and sanitation has been charted in privatisation in the form of commercialisation. Commercialisation in Kenya was first implemented on an experimental basis in three urban areas: Nyeri, Eldoret and Nakuru. This involved formation of a publicly owned water company as an agent of the local authority. The companies formed as a result were set up and operated according to the provisions of the Companies Act chapter 486 of the Laws of Kenya. This paper looks at the genesis of privatisation of water services based on the contributions of GTZ, UWASAM and KFW to an experiment in formulating and implementing privatisation in the three urban areas. The outcome of the experiment is then compared to the current on-going exercise of water privatisation by local authorities.

Privatisation of water and sanitation services is expected to solve the problem of poor and inadequate service provision that hitherto characterised urban areas. It would do this by achieving its goals of decentralisation and economic viability. However, the outcome of the experiment indicated that privatisation failed to achieve these two fundamental goals. For that matter, privatisation failed to meet its intended objectives of solving the woes of service provision in urban areas.

A close examination of the current privatisation indicates that the operation has again failed to achieve its fundamental goals of decentralisation and economic viability. The failure of the current exercise in meeting the objectives of ridding the urban areas of water woes can therefore be predicted on this basis.

Keywords: Commercialisation; Kenya; Privatisation; Urban areas; Water and sanitation; Water policy

Introduction

One of the key directions advocated in water policy at the international level in the 1990s was reliance on private sector enterprises and market mechanisms to provide water and sanitation rather than depending on the public sector (UN-HABITAT, 2003). One of the forms privatisation of the water sector may take is commercialisation. Jaglin (2002) has defined commercialisation as the transformation of a public body into a private company with public capital. This is a form of privatisation common in English speaking countries (Jaglin, 2002). An UNCHS-Habitat publication has defined commercialisation in reference to the Kenyan example as: “a form of privatisation which entails establishing and registering of water and sanitation companies owned wholly by local authorities” (UNCHS-Habitat, 1998).

The concept of commercialisation of water service provision was first introduced to Kenya by the German Agency for Technical Co-operation (GTZ), the German Bank of Reconstruction (KFW) and the Urban Water and Sanitation Management (UWASAM) Project. This project involved commercialisation of Water and Sewerage Departments (WSDs) of three municipal councils on an experimental basis. The whole process of commercialisation of water services in the Kenyan urban areas started with a workshop that was held on 22 and 23 of November, 1995 in Nairobi. The workshop was followed by education tours in some African countries which had implemented commercialisation of water provision. This was arranged so that the Kenyan water officers could learn about successful transformation of public water enterprises into commercial entities.

The commercialisation of water and sanitation services was meant to decentralise water services and provide the services at a cost that would be economically viable and sustainable investment-wise. This would in turn help improve service delivery to the urban dwellers through rehabilitation and expansion of existing water schemes as well as implementing the planned water and sewerage projects. This paper follows up the entire process of privatisation of water in Kenya beginning with the reasons that led to privatisation. It covers the development of the privatisation policy, the process of privatisation, the results of privatisation and the dynamics of privatisation through policy formulation and change. The conclusion is that the pilot scheme failed to bring any structural change. However it precipitated the development of a policy framework for the privatisation of urban water service provision for the whole nation. Unfortunately policy makers failed to learn from the experience of the pilot schemes. Although water is now completely privatised in Kenya, the subsequent privatisation endeavour has still fallen into the “structural pitfalls” (to use Onjala’s words) experienced in the pilot scheme. Hence the success of the privatisation exercise in solving urban water woes is held in great doubt.

Statement of the problem

Prior to the advent of privatisation, the delivery of services associated with water and sanitation faced a number of bottlenecks. This prompted the introduction of commercialisation, which was expected to do away with the problems related to water and sanitation once and for all. Like any other developing country, urban water supply in Kenya faced a number of problems:

1. *Unaccounted for water:* Water loss in many urban areas in Kenya was estimated at 40–70% of water produced as compared to 10–20% in the developed countries. This loss was attributed to a number of

factors – leakages, theft (through illegal connections) and outright collusion between revenue collectors and consumers.

2. *Lack of metering*: Most water consumers in Kenyan urban areas who are connected to the network were not metered. According to the Ministry of Water Resources, only 25% of the consumers in Nairobi were properly metered and this translated into irregularity in consumer charges as well as loss of revenue that is owed to local authorities.
3. *Ineffective collection of water revenue*: The poor keeping of water consumer records, coupled with inefficient billing and revenue collection practices contributed to huge losses in terms of revenue. Only about 60% of revenue due on the 50% of the water that reached the consumer on average was actually collected (Republic of Kenya, 2000a). The loss of revenue was responsible for the sustained lack of funds needed to expand service or to maintain the water system.
4. *Uneconomic tariffs*: Urban water undertakers charged low tariffs on water provided to consumers. The level of tariffs was not in consonance with the economic cost of providing the service. The tariff policy was a major contributor to financial problems that faced water undertakers in the urban areas. This was mainly because the capital for expansion of the service and also for the maintenance was derived from user charges.
5. *Exclusion of the poor from the service*: The poor are usually left out of the service either because of their geographical location away from the nearest network or the apathy that is shown towards the poor by the water service providers who view them as commercially unattractive owing to their low income. However, this is unfair to this category of people because they end up buying water from vendors at higher prices than if they were connected. This behaviour by water service providers also goes counter to the norm of social justice as it entails discrimination against a section of the society.
6. *Overstaffing of water service providers*: Urban water provision in Kenya is commonly characterised by excess staff ratios of 25–50 employees per 1000 water connections (Republic of Kenya, 2000b). This is one of the contributors to low productivity in most urban authorities. Many employees can be removed in such circumstances without affecting the service output.
7. *Conflict of roles in water management*: There used to be no clear definition of roles in the urban water management system in Kenya. The Ministry of Water Resources was expected to play the role of a regulator and leave other players to provide the service. But the ministry got involved in the provision of the service and there are quite a number of water schemes that are still being run in this format, which has seriously compromised its regulatory role.
8. *Low connection to the municipal sewerage network*: Only 28% of urban dwellers were connected to the municipal sewerage system. The other urban dwellers used to dispose of their wastes through pit latrines, cesspools, septic tanks and streams. This method of waste disposal could lead to contamination of shallow ground water aquifers, which are also a source of water for many urban dwellers.

These were the problems that privatisation had intended to address in the water sector. The operational assumption was that the water sector was plagued by these problems owing to over-centralisation of institutions that dealt with the provision of water services. Secondly the situation was partly due to the fact that water was provided as a social rather than economic commodity. But water, being an essential commodity with great implications for development, attracted a great deal of attention from other development partners. However, the centralisation aspects made it difficult for water service providers to make independent, timely and appropriate decisions in response to local service needs and donor support opportunities. It was for this reason that development partners including GTZ, UWASAM and KFW felt

that there was a need for structural change in the water sector and that this change would come through privatisation. Privatisation in turn would achieve decentralisation and efficiency through commercial business practice.

The development partners arranged to put in place a scheme that was intended to privatise all the WSDs, but starting with a pilot or experimental programme of privatising three at first. These three were Nyeri, Eldoret and Nakuru. It would be interesting to evaluate the impacts of this experiment. Were the water woes solved by the pilot privatisation exercise? What lessons can we learn from the experiment?

Case study: privatisation of urban water service provision in Kenya

Urban water providers in Kenya

The main water undertakers in urban areas are as follows:

- The Ministry of Water Resources, through the Director of Water Resources operate 89 schemes, which account for 1.7 million m³ of water and 42% of the total urban water supply.
- The National Water Conservation and Pipeline Corporation (NWCP), which is a parastatal in the Ministry of Water Resources, operates 32 schemes, accounting for 2.8% of urban water supply.
- Individual local authorities provide water in 20 urban centres and of these, only eleven (11) urban centres have been granted full status as water undertakers. These include Nairobi City Council, Kisumu City Council and the following municipalities: Kitale, Eldoret, Kericho, Nakuru, Thika, Nanyuki, Nyahururu, Naivasha and Nyeri.
- Independent water providers operate in many urban areas in Kenya. The networks operated by the conventional undertakers in the urban areas coexist with a variety of independent providers who are also engaged in the provision of water services through resale of piped water by hand carts, trucks, stand pipes or cisterns. The independent providers also sell water from wells, boreholes and water harvested from roof catchment. The areas of operation of the independent providers are mainly informal settlements as well as areas that have not been covered by piped water networks. However, they are not recognised as official water undertakers.

Difficulty in the provision of water and sanitation infrastructure

There are a number of factors that have contributed to the difficulty in providing the necessary infrastructure for water and sanitation services in Kenyan urban areas. Most of the problems may be due to spontaneous urban development patterns (Collignon & Vézina, 2000).

The central government and the local authorities are the main bodies which control developments in urban areas through zoning of land use and also through enforcement of various legislation and by-laws regulating subdivisions, changes of use and extension of use. The central government and local authorities also provide the main arteries of infrastructure such as roads, sewerage, water, electricity, and so on. However, in the last two decades or so, development control has been almost non-existent, as most sections of urban areas are built up without any benefit of a plan for growth. Official land records do not exist for the larger sections of the urban areas and the majority of urban residents lack legal documents for their plots, especially in the informal settlements (K'Akumu, 2004). These conditions discourage water and sanitation providers from investing in these areas. A poor road network

discourages the laying of water pipes and sewerage lines, as these are normally done on road reserves, because laying them on private land would involve extra costs in terms of compensation.

Lack of proper land tenure discourages private infrastructure investors because such land can be taken over anytime either by private individuals or by central government or local authorities for their own purposes. This has led to slow expansion of such physical infrastructure services as water and sanitation because the infrastructure service providers and the donors have to tread cautiously on matters concerning land ownership. The reluctance of private infrastructure service providers and the donors is abetted by the official policy of labelling un-served areas as informal settlement or illegal structures (Collignon & Vézina, 2000). This kind of policy automatically cuts off such areas from benefiting from the provision of infrastructure, because even the provided infrastructure would also be labelled unauthorised.

The haphazard manner in which some developments in Kenyan urban areas have been carried out has also discouraged the provision of infrastructure services. In the informal settlements, proper planning has to be carried out fast to pave way for provision of infrastructure services and this would entail removal of some structures which might not be very popular with the residents of those settlements.

Privatisation policy

According to government sources, commercialisation of water services was ingrained in the 1979–83 National Development Plan (Republic of Kenya, 1999). However, this plan considered pricing of water services, but not at market rates; it only stated that everybody was to pay for water services (Republic of Kenya, 1979). Commercialisation of water services in Kenya was actually mooted in the *Sessional Paper Number 1 of 1986 on Economic Management for Renewal Growth* (Republic of Kenya, 1986a). The paper suggested decentralisation of water services and charging market-reflecting tariffs. However, the great push for commercialisation came with the advent of Structural Adjustment Policies (SAPs) in the early 1990s. SAPs involved the restructuring of public institutions that were responsible for service provision to make them market oriented. This involved the state in divesting from their institutions and settling into the role of facilitator rather than that of service provider. It also involved provision of the subject services at a market rate. These reforms are mainly seen in the neo-liberal development paradigm that swept the world in the 1990s (Budds & McGranahan, 2003). Privatisation of services in the water sector is therefore an international policy issue and not limited to Kenya (UN-HABITAT, 2003).

According to Budds & McGranahan (2003), the public water services providers in the developing countries had failed to improve their services despite funding possibilities that had been available for them from international donors. In Kenya, for example, certain donors were facing frustration with the service providers. The main issue was perceived to be the heavy control that the central government exercised over local authorities, which among other things interfered with the efficient running of the water and sewerage departments of the local authorities. This is why certain development partners (i.e. GTZ, KFW and UWASAM) felt that they could get around this problem by proposing commercialisation as a form of decentralisation of water services provision. Commercialisation meant forming independent companies that could make their own decisions in a fast and efficient way.

Privatisation process

Background. On 22 and 23 November 1995, a workshop was held to review the water and sanitation departments in various local authorities. The workshop was attended by officers from Ministry of Local

Government, Ministry of Land Reclamation, Regional and Water Development and Nairobi City Council. The water undertaking municipalities: Kisumu, Kericho, Kitale, Nakuru, Nyahururu, Eldoret, Nanyuki and Nyeri were represented in the workshop by their senior officers. One of the topics discussed at the workshop was the next step in commercialisation of water and sanitation departments in various municipalities (Republic of Kenya, 1996). In order that the participants could familiarise themselves with the concept of commercialisation, it was proposed that the GTZ and UWASAM should finance a study tour to Zambia where KFW had already helped in establishing the Chipata Water and Sewerage Company. The trip was successfully undertaken and as a result, in April 1996, a working group prepared a proposal for the Permanent Secretary of the Ministry of Local Government based on their experience in Zambia. GTZ and UWASAM supported the production of this report whose recommendations were wholly accepted by the Ministry of Local Government.

One of the recommendations of this report was that a management contract, combined with the establishment of a water and sanitation company, be accepted as the optimum institutional arrangement and that this option be implemented on a pilot basis in Eldoret, Kericho and Nyeri municipalities (Republic of Kenya, 1996). The report further recommended that: the Ministry of Local Government should authorise and support other municipalities which are willing to increase the degree of commercialisation of their water and sanitation services (Republic of Kenya, 1996).

This proposal was further discussed during the Kenya/German Governments consultative meeting, which was held in Nairobi on 14 May, 1996 and an agreement was reached qualifying this meeting as a basis for seeking financial support from the German government with the aim of implementing this proposal.

Another study tour to Zambia and Malawi funded by the GTZ-UWASAM project was undertaken from 20 to 23 May, 1996 and as a consequence, a workshop was held on 6 June, 1996 to discuss the report of this tour and also to finalise the report on the next steps in commercialisation of water and sanitation services in Eldoret, Kericho and Nyeri municipalities. This report was made to the Permanent Secretary of the Ministry of Local Government.

Principles of reorganisation. The form of commercialisation to be introduced in the pilot municipalities had already been decided (i.e. publicly owned enterprises like that one of Chipata Water and Sewerage Company). However, the following principles had to be included in the articles of association in order to shape the new organisations:

- The bodies formed had to enjoy some independence from the relevant local authority as well as from the central government. They had to be autonomous in fulfilling their responsibilities of managing water and sanitation, using financially sound and technically viable practices in their day-to-day operations.
- Since the infrastructure to be used by the companies in providing water and sanitation services belonged to the local authorities, the commercially operated water and sanitation companies were to remain in the ownership of the municipal councils.
- The new companies also had to benefit from having the legal status of public utility suppliers with tax exemptions, but are autonomously run by commercially experienced management teams, under the control of a board whose members are nominated by the councils and appointed by the Minister for Local Government (Republic of Kenya, 1996). This is because a public service, like provision of water and sanitation, is highly subsidised to make it affordable for urban dwellers. In the event that such

companies do not enjoy tax exemptions, then the additional costs would be transferred to the consumers who would find it difficult to meet the cost of the service.

- The water and sanitation companies had to be incorporated under the Companies Act and act as the municipal council's agent for the supply of water and sanitation services, having a legal agreement setting out the responsibilities of each party, until such time as the companies had been appointed water undertakers in accordance with the provisions of Section 124 of the Water Act chapter 372 of the laws of Kenya (Republic of Kenya, 1996). This was to forestall any conflict between the water companies and the local authorities.
- The companies were not obligated to continue with the existing staff but were given a freehand to hire their own staff if they so wished. Tying the hands of the new water companies to the existing staff would be tantamount to entrenching the inefficiency that had existed in the provision of water and sanitation.
- The reasons for establishing the companies to run water and sanitation services were also set out in the Memorandum and Articles of Association.

The new companies were set up and operated according to the provisions of the Companies Act (Republic of Kenya, 1978). The structure proposed was that of a private company, that is, comprising shareholders, a board of directors and the management.

The shareholders are the municipal council and any additional nominees, so as to conform to the requirements of Section 4 of the Companies Act. The shareholders direct the operations of the companies through annual general meetings.

Results of the privatisation process

Water companies. The following companies were formed as a result of the process:

- Nyeri Water and Sewerage Company, incorporated in 1997;
- Eldoret Water and Sanitation Company, incorporated in 2000;
- Nakuru Quality Water and Sanitation Service Company Ltd., incorporated in 2000.

The new enterprises were incorporated as private companies limited by shares under the Companies Act. Ownership of the companies remained 100% in the hands of the local authorities. However, in order to overcome the requirements that a company must have more than one shareholder, it was arranged that the top officials of the local authorities, that is the mayor, town clerk and town treasurer, hold one share each, in trust for the local authority. The number of shares was put at 5,000 each worth 20 Kenya Shillings, totalling a share capital of 100,000 Kenya Shillings. In the initial proposal the companies were to be formed for Kericho, Nyeri and Eldoret municipal councils (Republic of Kenya, 1996; UNCHS-Habitat, 1998; Onjala, 2002). However the Kericho case did not work out, while the Nakuru one came into being.

Table 1 shows the distribution of shares in each company.

Performance of the companies

The main objective of privatisation was to decentralise the operations of the WSDs of local authorities so as to enable them to operate as independent professional and technical enterprises with commercial

orientation. The commercialisation was simply meant to make the WSDs shed the dubious identity as a department of a public organisation that was characterised by inefficiency arising from all kinds of ills including corruption, uneconomic tariffs, overstaffed workforce, unaccounted for water and poor revenue collection. It was also intended to curtail the bureaucracy and dependence on government superstructure for decision making. In this way the water service organisations would improve management systems and business transactions and hence improve service provisions. But what was the outcome of commercialisation? Commercialisation did not bring any significant change in the management of water organisations. The new enterprises were still characterised by inefficiency and lack of professionalism. This was due to interference by central government, interference by local authorities themselves and indiscriminate transfer of personnel.

Interference by local authorities. Local authorities themselves interfered in the running of water companies that they had incorporated in order to be independent of them. Onjala (2002) reports that the chief officers of the respective municipal councils continued to use the company facilities as if they were still a department of the council. They also spent cash from the companies for their own needs as a council.

Indiscriminate transfer of personnel. The incorporation of the companies was only an administrative change, in other ways the personality of the water department remained in the new companies. This was because all the personnel who were working in the WSDs were transferred en masse to the new company without screening. These were the same people who had been accused of engaging in corruption and laxity in the WSDs. These were still the overstaffed workforces that dragged down the WSDs performance. Hence the expected change in the management system did not take place. The running of these new companies on a commercial basis was therefore not possible.

Interference by central government. Again the intention was to shake off the government bureaucracy and interference by chief officers of the central government in the affairs of water providers. But the central government was still able to interfere. Onjala (2002) has cited the case of Nakuru Municipal Council where a dispute had arisen between the new water company and government parastatals responsible for water provision and electricity supply. The former, NWCP, which was responsible for delivering water to the council so that the council could distribute it to consumers, demanded money owing for water deliveries. But the municipal council reiterated that it was also owed money by the central government and other parastatals. In this standoff, NWCP cut supplies to Nakuru Town for several days. In an attempt to resolve this impasse, the central government revoked the appointment of Nakuru Municipal Council as a water undertaker, a move that technically made the new company, which was simply an agent of the council, irrelevant.

Table 1. The distribution of share capital for water companies.

Shareholders	No. of shares	Percentage
The Municipal Council	4,997	99.94
The Mayor	1	0.02
The Town Clerk	1	0.02
The Town Treasurer	1	0.02
Total	5,000	100.00

Policy formulation and change

The greatest contribution of the Kenyan experiment with privatisation of water services is policy change. The pilot implementations got the policy makers to think about policy formulation for the privatisation of water in Kenya. The policy came up in *Sessional Paper Number 1 of 1999 on National Policy on water Resources Management and Development* (Republic of Kenya, 1999). The policy paper was informed by the National Water Master Plan Study conducted by the Japanese government between 1990 and 1992 (Republic of Kenya, 1992). The policy paper has made clear the need to decentralise WSDs but fell short of suggesting privatisation. It just states that, “The Government will endeavour to hand over urban water supplies and sanitation facilities to autonomous departments within the local authorities”.

In terms of tariffs, the policy paper makes it clear that water should be paid for at market rates. It specifically points out that water should be considered as an economic good and that all water consumers should pay for water on the basis of “the user-pays principle”. This, according to the policy paper, would involve charging tariffs that will make water provision self-sustaining. The policy paper also refers to such tariffs as “commercial tariffs” that would embody real economic cost of water supply.

The policy paper also contained an Action Plan on the National Water Policy, which indicated that the above issues were to be addressed through legislation. Legislation meant enacting a completely new statute on water and repealing the existing one.

Legal framework

The legal framework has come in the name of The Water Act, 2002 (Republic of Kenya, 2002). This piece of legislation has repealed the Water Act Chapter 372 of the laws of Kenya, which had been in operation since 1962 (Republic of Kenya, 1972). It has also repealed Sections 168–176 of the Local Government Act Chapter 165 of the laws of Kenya that had granted local authorities powers to engage in water services provision especially in urban areas (Republic of Kenya, 1986b).

Under Section 113, the new Act provides for the transfer of water services from the previous undertakers (local authorities) to the new entities created by the new Act. The new water service undertakers are defined by the new Act as Water Services Boards (WSBs), which are now responsible for management and operations of water services. The minister in charge of water is mandated by law to constitute the boards by naming them and appointing their members. The minister is also given powers to determine or vary the number and qualifications of members constituting a particular board. Each board is responsible for appointing a chief executive officer whose terms and conditions of service are to be determined by the minister in charge of water. The board has a free hand in appointing other members of staff.

The main responsibility of the board according to the law is “the efficient and economical provision of water services”. However, the water services actually are to be provided by an agent of the board. This agent is defined by the law at Section 55 as “water service providers”. The water service providers (WSPs) are required to apply for a licence from the Water Services Regulatory Board (WSRB). Among the conditions the applicant must meet include:

1. Proof of requisite technical and financial competence to provide the required services;
2. A sound plan for the provision of an efficient, affordable and sustainable service;

3. A proposal of satisfactory performance targets and planned improvements and an acceptable tariff structure;
4. Proof that water services would be provided on a “commercial basis and in accordance with sound business principles”.

Criticism of the new Act

The new Act actually does not entrench any structural change. In fact if there is any structural change then it is for the worse because it has introduced one bureaucratic step between the central government and the local government, namely the WSRB. Otherwise the situation apparently remains the same. The central government still controls the entire water sector through the minister. WSDs are being transformed into WSPs. The WSPs will remain agents of WSBs (equivalents of local authorities) just as “private” companies wholly owned by local authorities had served as agents under the experimental privatisation scheme. Indeed, again there is no significant change from the previous set up. The structure is quite illogical when it requires a WSB that is wholly appointed by the minister to apply for a licence from the WRSB that is also appointed by the same minister. Then the WSB can assign the licence to a WSP that is owned by the WSB so as to operate as a private company providing water services.

The Act also gives the minister undue powers on behalf of the central government to meddle in the operations of the water sector. The minister has a hand in everything. The case of Nairobi City best illustrates this situation. In Nairobi, a political activist without any corporate experience or any stake in the city was appointed to head the city water company apparently because the minister and the appointee came from the same political party. The appointee had lost a nomination in the last parliamentary elections in his rural area and was being handed the appointment more or less as a political consolation.

It is obvious that there has been no decentralisation of operations or ownership. In the same vein there has been no commercialisation. Commercialisation has only been alluded to in statements like “an acceptable tariff structure” and providing water “on a commercial basis and in accordance with sound business principles”. These are actually meaningless statements and in effect the Act does not provide any instruments or institutional structure for commercial water services provision in Kenya.

Recommendations

From the Kenyan case study or experiment with privatisation of the water sector, we can learn several lessons. The first lesson is that privatisation operations are donor driven. At local or national level, there is no political will to undertake privatisation of water services provision in Kenya in spite of the fact that there has been a long-term policy tendency towards it. This is primarily because there are lots of vested interests both at local and central levels of government. This is the reason why both the local and central authorities were interfering with the running of water companies that had resulted from privatisation.

Onjala (2002) has made the same observations concerning political influence and vested interests and cites the Nakuru fiasco which seems to have resulted because a lot of donor financial support was tied to the commercialisation and only those who were directly involved in the company would benefit from the process. Also cited as a reason for the fiasco is the lack of political will to change.

It was very clear that the local authorities concerned did not wish to relinquish the ownership of the water departments. It is for this reason that they could have insisted on owning 100% of the shares in the resultant companies. This actually meant no change. Radical change was particularly unacceptable to the interested parties and this is why all the personnel from the previous water undertaking departments had to crossover to the new companies, so perpetuating such problems as corruption, laxity and redundancy that commercialisation was meant to solve. It is therefore clear that the development partners are the ones who preferred change, yet at local and national level, change was abhorred and the latter actors found all ways and means to undertake pretence of change.

The privatisation exercise was also botched because of the lack of operational policy and legal framework. Things were being done more or less on a matter of trust without any binding commitment in terms of policy or legislation. In fact policy came about in 1999 after the commercialisation of the Nyeri water services. According to the Action Plan on National Water Policy, the policy was to be implemented through legislation, which came about in year 2002 after the Nakuru and Eldoret water companies had been incorporated.

One advantage that the pilot schemes presented to the policy formulation process was in taking cognisance of previous experience, which the policy makers could learn from in the process of formulating new policy. Indeed the purpose of a pilot scheme is to test a phenomenon on a limited scale so that if successful the scheme can be replicated on a large scale. If not successful the scheme has to be modified before replication on a large scale. However, the policy makers let this advantage slip through their hands and entrenched organisations similar to the previous ones that had failed to address water management problems under the pilot schemes.

The new legal framework has in fact given the minister in charge of water a free hand to meddle in the affairs of the “private” companies as water undertakers. The companies are still 100% owned by the local authorities that they are succeeding as water undertakers. The local authorities still stand a great chance of meddling in the affairs of the new companies. In this case there is no change, just as there was not in the pilot schemes.

Privatisation of the water sector in Kenya therefore still needs to be looked at afresh. The goal of decentralisation that privatisation was meant to achieve has not been met. Central government and the local authorities are still undertaking water services provision (now by proxy) and this is not likely to bring any meaningful benefit to the water sector. To this extent, therefore, the privatisation of the water sector still remains the donors’ pipe dream.

Conclusion

In this paper, we have discussed the process and outcome of privatisation of water services provision in urban areas in Kenya. Privatisation first began on a pilot or experimental basis and later on became an all-encompassing urban operation. On the experimental basis, only three municipalities privatised their WSDs. These were Nyeri, Eldoret and Nakuru. This was undertaken on no concrete policy platform. However, later on the policy was described in the form of a Sessional Paper of Parliament and a water statute. This has paved the way for a second round of privatisation. The second round of privatisation now involves all the local authorities that had been involved in water service provision.

The main goals of privatising water service provision were to decentralise it from the superstructure of the central government and to make service provision sustainable in an economic sense. This was

thought of as a panacea to the ills that hitherto afflicted the sector including unaccounted for water, lack of metering, ineffective collection of revenue, uneconomic tariffs, limited supply to the poor, an overstaffed workforce, conflicting roles of water institutions and limited sewerage service provision.

This paper essentially undertook the evaluation of the whole exercise of privatisation of the urban water service provision in Kenya. The results indicate that the privatisation of water service provision on an experimental basis invariably failed. This could be vouched for by the fact that there was still interference from central and local government and that there was no change in staffing and malpractices. However the second cycle of privatisation, then involving all the concerned local authorities, failed to learn from the mistakes of the experiment. The policy framework has created structures that do not enhance decentralisation. The policy framework has also failed to provide instruments for achieving the commercialisation that was intended. Based on the outcome of the experimental exercise, the main exercise was predictably bound to fail to meet its intended objectives of solving the water woes in the urban areas of Kenya.

References

- Budds, J. & McGranahan, G. (2003). Are debates on water privatisation missing the point? Experiences from Africa, Asia and Latin America. *Environment & Urbanization*, 15(2), 87–114.
- Collignon, B. & Vezina, M. (2000). *Independent Water and Sanitation Providers in African Cities, Full Report of a Ten Country Study*. Water and Sanitation Program, Washington DC.
- Jaglin, S. (2002). [The right to water versus cost recovery: participation, urban water supply and the poor in sub-Saharan Africa](#). *Environment and Urbanization*, 14(1), 179–199.
- K'Akumu, O. A. (2004). [Privatization of the urban water supply in Kenya: Policy options for the poor](#). *Environment and Urbanization*, 16(2), 213–222.
- Onjala, J. (2002). *Good Intentions, Structural Pitfalls: Early Lessons from Urban Water Commercialisation Attempts in Kenya*. CDR Working Paper 02.02, January, Centre for Development Research, Copenhagen.
- Republic of Kenya (1972). *The Water Act Chapter 372, Laws of Kenya*, revised edition. Government Printer, Nairobi.
- Republic of Kenya (1978). *The Companies Act*, revised edition. Government Printer, Nairobi.
- Republic of Kenya (1979). *Development Plan: 1979–1983, Part I*. Government Printer, Nairobi.
- Republic of Kenya (1986a). *Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth*. Government Printer, Nairobi.
- Republic of Kenya (1986b). *Local Government Act*. Government Printer, Nairobi.
- Republic of Kenya (1992). *The National Water Master Plan*. Ministry of Water Development, Nairobi.
- Republic of Kenya (1996). *Report on Next Step in the Commercialisation of Water and Sanitation Services in Eldoret, Kericho and Nyeri Municipal Councils*. Ministry of Local Government, Nairobi.
- Republic of Kenya (1999). *Sessional Paper No. 1 of 1999 on National Policy on Water Resources Management and Development*. Ministry of Water Resources, Nairobi, April 29.
- Republic of Kenya (2000a). *Nyeri Water and Sewerage Company, Monitoring and Evaluation Report, Period: July 1998 to June 2000*. Ministry of Water Resources, Nairobi.
- Republic of Kenya (2000b). I. Ministry of Water Resources, Nairobi.
- Republic of Kenya (2002). *The Kenya Gazette Supplement No. 107 (Acts No. 9): The Water Act 2002*. Government Printer, Nairobi, October 24.
- UNCHS-Habitat (1998). *Privatisation of Municipal Services in East Africa: A Governance Approach to Human Settlements Management*. United Nations Centre for Human Settlements (Habitat), Nairobi.
- UN-HABITAT (2003). *Water and Sanitation in the World Cities: Local Action for Global Goals*. Earthscan, London.