

A GLOBAL WATER BENCHMARKING STUDY FOR KENYA

Lessons of water sector transformation from around the world



THEMATIC REPORT:
GOVERNANCE

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Linkages between water service delivery and water resources management



Better Markets, Better Lives

THE GLOBAL WATER BENCHMARKING STUDY FOR KENYA

Kenya Markets Trust (KMT) undertook this study to capture examples of good practice from countries that have successfully transformed aspects of their water sector. The purpose of the study is to provide a rich source of information for Kenyan water stakeholders to draw upon while developing strategies for strengthening Kenya's water sector. The study will also inform KMT's work and how we might bring new ideas and practical recommendations to our partnerships.

The study consists of 5 reports:

3 thematic reports

- Governance
- Water Service Delivery
- Water Resources Management

2 country case studies

- Colombia
 - Republic of Korea
-

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ABBREVIATIONS

KMT	Kenya Markets Trust
PDA	<i>Plan Departamental de Agua</i> or Departmental Water Plan (Colombia)
RWAs	Regional Water Authorities (Netherlands)
WRM	Water Resources Management

CHAPTER

01

Introduction



As part of Kenya Market Trust's (KMT) ongoing mission to catalyse the transformation of the Kenyan water sector, it commissioned an international study of countries that have successfully transformed parts or aspects of their water sectors. Examples of good-practice and lessons from what has worked elsewhere will, it is hoped, provide useful insights as to how Kenya can continue to strengthen its water sector.

The benchmarking study looked at two in-depth country examples (Colombia and South Korea) and the two main sub-sectors of water resources management (WRM) and water service delivery, globally. Each of these two thematic studies consider governance and institutional coordination arrangements, both in terms of national intra-sectoral and intra-ministerial relations and the vertical integration between central and decentralised levels of government, particularly relevant considering the strong devolution process in Kenya.

Because of the critical linkages between WRM and the drinking water sector, particularly in governance at national level, this short paper examines the experiences and lessons from other countries in the way in which these two related sectors have been managed and coordinated.

Governance, and all that this entails in terms of balancing the competing demands between different consumers of water and of resource allocation, as well as different levels of government, is an inherently political process. It involves both government and non-state actors, with a range of different roles and incentives, some codified into law and policies, and others being driven by informal dynamics. Where coordination mechanisms, linkages and protocols are in place, these do not always function as intended and the often-asymmetrical balance of power between institutional stakeholders means that the most deserving are not always prioritised.

In Kenya, governance challenges have been thrown into sharp relief with the devolution process from 2010 onwards and are particularly acute in a sector that is heavily donor-dependent, meaning that a large share of financing is channelled first to central government and then passed on to County level.

As is the case with many other countries, the decentralisation of water resources management has amplified the challenges of coordination between hydrological and administrative boundaries, particularly for bulk water transfers and the associated heavy infrastructure investment required.

Although a clear framework has been set out for governance at multiple levels in Kenya, adherence to these structures, and related processes, has not always been adequate. Lack of capacity, competing powerbases and political patronage over the use of resources have all contributed to governance challenges, as well as lack of reliable data to inform critical decisions (with the exception of the urban water supply sector) (Kenya Markets Trust; 2019).

This briefing note sets out the lessons and insights gained from the water benchmarking study relating to governance, coordination and the linkages between water services and water resources management. Chapter 2 provides a summary of the positive examples from countries in which steps have been taken to address governance and coordination. Chapter 3 draws on these examples to synthesise common trends and characteristics as considerations for Kenya as it seeks to further develop its governance and coordination arrangements in the water sector.

Insights from Global Examples - Common Themes and Lessons

The benchmarking study looked at various examples of governance and coordination from a range of both more mature water sectors in higher income countries (including Israel, the Netherlands, Republic of Korea and Switzerland), as well as countries from middle income and lower-middle income groups such as Colombia and Vietnam. These cases illustrate important insights relating to the historical development of governance and coordination arrangements, including the factors that have driven their evolution and at what stage countries have responded to such challenges.

In terms of some of the solutions that have been arrived at, or are in their current state of evolution, it is possible to distinguish several outcomes from across these countries, which can be broadly grouped under the following:

- i. Countries which have arrived at a formalised structure for coordination and governance, which are grounded in legislation (acts of parliament) or legally binding agreements and which include formal sanctions (and conversely incentives) for participation of a wide range of stakeholders involved in many aspects of water; these include Israel, the Netherlands and Korea;
- ii. Examples from countries, including Colombia and Vietnam, in which relatively robust and well-adhered to coordination and governance mechanisms have been developed around the need for investment programming and have become de facto mechanisms for decision-making at different levels, in spite of the absence of legally binding frameworks; and
- iii. One-off cases, such as Switzerland, which has no formalised mechanisms beyond the broader three-tier institutional structure of government (i.e. Federal, Canton and sub-Canton) and which, given its highly devolved nature, relies on encouragement from national government for coordination, rather than on mandatory or binding mechanisms¹.

These different arrangements to address governance and coordination challenges have evolved as a response to different drivers or triggers.

For example, in Korea the national and basin-level committee structure came about as part of the latest phase of sector reforms, culminating in the Framework Act on Water Management 2018, which was developed in response to the growing impacts of climate change (see Box 1 below). The new Act is considered to be the supreme law related to water, thereby resolving conflicts and related disputes. It is expected to be able to improve efficiency in the sector and to regulate conflicts across different interests among the diverse ministries with roles in water quantity, water quality, agricultural water, and water-related disasters (Lee, 2019).

¹ Because of the political need to respect canton independence, the Federal Office for the Environment has sought to utilise a range of soft guidance and other instruments to encourage a more consistent, basin-oriented and integrative approach to water resources management and coordination, including policy guidance and use of monitoring and regular water audits.

By contrast the main driver behind the creation of the Water Authority Council in Israel was alleviating the frequent deadlocks that resulted from the diverging interests of each ministry, the involvement of many organisations in the water supply sector and the unclear division of responsibilities (OECD, 2017; World Bank, 2017).

Box 1: Korea: A Framework for Coordinated Planning and Governance

National Committee	Basin Committees
<p>The Framework Act requires the Minister of Environment to formulate a Master Plan for National Water Management every ten years, through consultation with the heads of related central administrative agencies and the chairpersons of the Basin Committees. The Master Plan must include the following:</p> <ol style="list-style-type: none"> 1. Basic objectives of, and direction-setting for, national water management policies; 2. Assessment of performance of national water management policies as well as changes in and prospects for water management conditions; 3. Preserving, managing, and restoring water environments; 4. Supplying, utilizing, and distributing water; developing and preserving water resources; and ensuring prospects for medium and long-term supply and demand; 5. Reducing and preventing disasters caused by droughts, floods, etc.; 6. Measures to respond to the vulnerabilities of water management to climate change; 7. Principles and criteria for reasonable cost-sharing concerning mediation of water disputes and use of water resources; 8. Direction-setting for medium and long-term investment of water management budgets; 9. Nurturing the water industry and enhancing its competitiveness; 10. Basic policy for comprehensive basin water management plans; 11. Any other matters prescribed by Presidential Decree for sustainable water management. 	<p>At the basin level, responsibility for formulating a Comprehensive Basin Water Management Plan every ten years, is assigned to the chairpersons of the Basin Committees. The Basin Plans are formulated in consultation with the heads of related central administrative agencies and the heads of local governments. The Basin Plans shall include the following:</p> <ol style="list-style-type: none"> 1. Changes in and prospects for the water-related conditions of the basins; 2. Developing, conserving, and diversifying basin water resources as well as supplying, utilizing, and distributing water; 3. Reducing and preventing disasters caused by droughts, floods, etc. in the basins; 4. Preserving, managing, and restoring the water environments of the basins; 5. Measures to respond to the vulnerabilities of basin water management to climate change; 6. Estimates of the cost of basin water management as well as measures to raise funds; 7. Participation by interested parties, including local residents, as well as promotion of water culture; 8. Any other matters prescribed by Presidential Decree for sustainable water management for the basins.

With its long history of water management and consensual politics, **The Netherlands**, has a more ‘flat’ approach to governance and coordination with Regional Water Authorities (RWAs) playing a central role, but with representation from other important stakeholders, including different levels of government and the water companies. Although there are provisions for coordination in successive water-related laws, policies and plans, which separate out roles and responsibilities, the relatively recent ‘Administrative Agreements’ which came into force in 2003, are designed to bring together all key stakeholders to coordinate around particular issues of concern. The initial Administrative Agreement set a clear norm for joint working and collaboration (Havekes et al. 2016), with a revised version in 2011 setting quantitative targets for economic efficiency gains through better coordination. Targeted savings, representing over 10% of total sector costs (EUR 750 million p.a.) by 2020, have been over-achieved (DWA, 2017).

Efforts for improved coordination between different levels of government in **Vietnam** has coalesced around a series of large-scale national investment programmes, spanning around 15 years and involving hundreds of millions of US dollars, which required more effective decision-making and coordination structures. Relying on the more hierarchical governance system in the country, the National Centre for Rural Water Supply and Sanitation acted as an apex body located within the Ministry of Agriculture and Rural Development to drive vertical coordination in the country's rural water sector.

In **Colombia** meanwhile, it was the poor experiences with early attempts at fiscal decentralisation for sector investment in the late 1990s and early 2000s (itself part of a broader central government response to the peace process with various guerrilla groups), that was the trigger for the emergence of the planning instrument entitled Plan Departamental de Agua (Departmental Water Plan or PDA) which was developed in 2007. Unlike the fragmented and relatively small investments made by each individual municipality (local government), the PDAs provided economies of scale and have become essential platforms for coordination and decision-making. The steering groups of the PDAs are formed by the departmental government, representatives of the participating municipalities and other participating entities, such as the Autonomous Regional Development Corporations, that are responsible for environmental management, including water resources management and pollution control.

The above of course only represents a small sample of mechanisms that have been developed to address governance and coordination concerns, therefore any broader extrapolation must be treated with caution. However, it does suggest that there may be a spectrum of outcomes, ending with an apex body that has the legal and political authority to enforce coordination across a wide range of stakeholders involved in the water sector writ large. It is also clear that this type of scenario has taken years to arrive at, even for well-performing sectors in relatively wealthy countries. By the same token, it is not clear that other countries, which are not yet at this level of development, will necessarily arrive at the same outcome in terms of institutional and coordination arrangements.



2.1 Positive examples of addressing governance and coordination

Of the governance and coordination responses which were reviewed for the study, the following three are considered to provide positive and relevant lessons for the Kenya sector going forward :

1. Republic of Korea: establishment of a National Water Management Committee (National Committee) under the jurisdiction of the President, and four Basin Water Management Committees (Basin Committees) that operate under the auspices of the National Committee.
2. Israel: establishment of a Water Authority Council, an independent inter-ministerial governance body coordinating a range of stakeholders from multiple sectors on behalf of the Israeli Water Authority.
3. The Netherlands: Regional Water Authorities which inter-face with other key sector actors and different levels of government to coordinate and take decisions related to water use and management.

These three examples illustrate the range of responses to governance and coordination challenges, with one developing a hierarchy of committees and protocols, the second a new institution and the third organising broadly around basin-level structures.

However, all three share a common characteristic in the establishment of formalised structures for coordination and management (i.e. not simply relying on MoUs, but having binding frameworks underpinned by legislation). Significantly, all three also have broad representation from both technical sectors, and different strata of government from national to local, all of whom have a role in decision-making.

In both the case of Israel and Korea, the mechanisms are linked to a host ministry, but include mechanisms for escalation to the highest (political) authority to overcome intra-institutional battles and power plays. For example, in Korea the National Committee is under the Office of the President and chaired by the Prime Minister. Table 1 on the next page provides a summary of the main characteristics of these three arrangements.

As well as having a range of drivers behind their creation, evidence from the study suggests that these different responses, including those in the relatively richer countries with more developed water sectors, have come about only relatively recently. Therefore, it may be expected that countries which are still struggling to meet basic targets (in terms of coverage) and efficiency in operations, will also find it challenging to develop such mechanisms in the near or mid-term future.

For example, in the case of Korea, which is a predominantly centralized country, development of the water sector was driven by the successful implementation of national plans and problem-solving over a four-to-five-decade period in response to diverse challenges, including efficiency drives, environmental degradation and latterly based on the need to promote adaptation to climate change following unprecedented droughts in the early 2000s.

Countries in transition, such as Kenya, can learn from these examples and the fact that although addressing governance and coordination is challenging, reform is a continual process which requires on-going effort and leadership to address.

It is also clear that the challenge in finding effective solutions for good governance and effective coordination is a common concern regardless of economic wealth and one that all countries face, both between sub-sectors and across different levels of government. Lastly, it should be noted that good – ‘or good enough’ – governance in the water sector is also a reflection of governance and culture in society more broadly and cannot be simply treated in isolation.

Table 1: Overview of governance and coordination mechanisms

	Israel	Korea	Netherlands
Institutional arrangement	Water Authority Council serves as the board of directors for the Israeli Water Authority, which itself has responsibility for all planning allocation, and tariff regulation for all water use. It falls under the auspices of the Ministry of Energy	Mandate for both water resources management and water service provision consolidated under one lead (Environment) in 2018, as well as establishment of committee structures at both national and basin levels	Coordination and governance functions distributed between five key stakeholders: <ol style="list-style-type: none"> 1. National government 2. Regional Water Authorities (21 RWAs) 3. Provincial government (12) 4. Municipal governments (388) 5. Water companies
Legal basis	Established in 2007 by national legislation	Framework Water Management Act 2018	Regional Water Authorities Act, 1992 (modernised by legislation in 2007 and 2014) <p>In addition, 'Administrative Agreements' came into force in 2003 to coordinate issues of concern and bringing together all five sector institutional stakeholders</p>
Composition	Government ministries, including Finance, Agriculture, Interior, Environment, Water, Energy and public/civil society representatives.	National Committee and basin committees comprised of 30 to 50 members, including representation from eight line ministries including Office for Government Policy Coordination. The majority are not public officials but sector experts e.g. from academia or water related organizations. National Committee is chaired by the Prime Minister and a person appointed by the President.	Coordination mechanism includes representation of all five stakeholders. <p>21 RWAs are not organised strictly on catchment basis, but boundaries primarily reflect hydrological factors and do not align with provincial or municipal boundaries. RWAs have own boards, partially selected through popular elections.</p>
Functions	Acts as the ultimate arbitrator and decision-making body in the sector. <p>Approves all policy-setting and decision-making by the Israeli Water Authority and the water sector more broadly. Any plan or policy proposed by the Israeli Water Authority – or any other Ministry – must be presented to the Water Authority Council for approval.</p>	Wide ranging set of functions relating to basin-level and national governance, including: <ul style="list-style-type: none"> • Development of national and basin master plans • Planning for water movement among basins • Mandate to evaluate compliance of water related plans from any ministry with the national and basin master plans • Mediation of water related disputes • Public consultations 	Between the five main actors, responsibilities include coordination of flood protection, surface water management, ground-water management, and drinking water services.

Considerations for Kenya

It is notable that at the onset of the reforms in 2002, Kenya took progressive decisions which provide a sound basis for governance and coordination, particularly considering the relative development of the sector at the time. These include decisions which some countries only arrived at years or decades later and partly still struggle to implement. One of the most critical decisions is to have one ministry at national level which consolidates the mandate for both WRM and water services, as has been the case only more recently in Korea. Secondly, Kenya went down the pathway of professionalization of utilities and not allowing urban water services to be provided by municipal departments (this is also what happened in a de facto manner in Colombia over a period of time, through a regionalisation, or consolidation process). This is one major way to ensure effective regulation of service providers and to move towards professional and efficient service delivery. By contrast, a number of country examples illustrate that once power is devolved to municipal authorities the water sector will find it very difficult to effectively regulate and that these municipalities are likely to reject merging of service providers into larger, more professionalised operational units (i.e. as the experience from South Africa, Israel and Korea shows).

However, in spite of these positive reforms and policy positions, Kenya still faces significant challenges in operationalising the coordination of water sector and decision-making frameworks that cut across different levels of government and the competing demands of different water users. The following considerations are provided to inform the on-going dialogue among sector stakeholders in Kenya about how to resolve some of the bottlenecks to improved coordination and decision-making:

- 1. Sector policy setting out governance and coordination on its own is insufficient; legislative and/or regulatory backing is required to ensure that the ‘rules of the game’ and associated mechanisms are respected and adhered to.** Where coordination works across different institutions at national level (i.e. competing ministries) and between different hierarchies of government (i.e. where there are significant levels of devolved power), cementing governance and coordination protocols in law and backing them up with regulatory instruments governing particular areas (for example surface water management, water quality management etc.) are essential measures for success.
- 2. To overcome competing powerbases, governance and coordination protocols and mechanisms need to be sanctioned by high level political authorities (e.g. the office of the President),** but political participation in the day to day functioning of the governance structures is not necessary, and indeed is not desirable. As such political control over the governance processes should not be vested in a single line ministry (i.e. it should not be led by the Ministry of Water, Sanitation and Irrigation).

- 3. Representation on governance bodies must include all parties with a major stake in the water sector (including agriculture, health, finance etc.) and very importantly all levels of government must be able to participate, not only central (i.e. Counties and sub-Counties).** Ensuring all voices are heard and can meaningfully participate in governance and coordination mechanisms on an equal footing is critical to long-term buy-in and success of governance decision-making. Guaranteeing full representation should not, however, come at the expense of efficiency and a pragmatic balance is needed, and may be achieved for example via some form of accountable representation arrangements.
- 4. With apex political cover in place, coordination bodies making decisions about water resource allocation and use should rely predominantly on technocrats with deep knowledge of respective sectors.** Debate and decision-making over critical water resources and service delivery must be based on technical knowledge, evidence and data, which all should be made available to inform strategic decisions that align with overall government policy directions (e.g. promotion of green agenda, response to climate adaptation etc.).
- 5. Governance and coordination processes should, wherever possible, include explicit mandates and incentives for participation and progress where participating bodies have different political and policy objectives.** Such incentives may include financial transfers to support investments relating to water resource protection or water service delivery infrastructure.

Both the Korea and, to an extent the Dutch, examples promote **basin-level governance and coordination** platforms; this is a growing trend more broadly and is supported by international norms such as integrated water resources management. However, in many countries work is ongoing and outcomes not yet fully clear.

Imposing basin-wise arrangements has often generated greater complexity, especially where it occurs alongside decentralisation of government more generally. However, there is the need for water (resource) governance to be based on hydrological principles which introduces additional, water-specific coordination challenges.

Horizontal and vertical coordination challenges are common to most other sectors, including water service delivery, and national entities have a key role to mitigate these challenges.

In water resources management, they also need to incentivise cooperation between political-administrative (county/ sub-county) and decentralised water management bodies (basin water resource committees; water resource users associations). This requires adequate fiscal, administrative and legal provisions for coordination of administrative entities within and across basins, and mechanisms and incentives to encourage this.



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