



A prototype Water Services Bill for County governments in Kenya

2022

Note: This document is based on a County Water Bill submitted to the Kitui County Assembly in 2020 (V7_07/02/2021). It draws upon research and practice in the county since decentralisation in 2013, including discussions in quarterly WASH forums and county-led stakeholder consultations in the eight sub-Counties in 2019.

It develops new ideas to strengthen the design and delivery of water policy in the context of a semi-arid County with a high proportion of rural water users living in scattered and remote communities.

The County Executive Committee Member for Agriculture, Water, and Livestock, Mr. Emmanuel Kisangau (2017-2022), led this process with staff from his ministry to coordinate stakeholder collaboration with local water users and managers, other government agencies, donors, NGOs, the private sector, and academic partners from Kenya and the UK.

Presented here as a general template, each county water bill will require local technical and contextual adaptation and public scrutiny.

Steps in policy and bill-making in Kitui County included: (a) the formation of a technical working group; (b) a desk review and a situation analysis of the policy environment by solicitating for inputs from various departments within the Kitui County Government; (c) consultative and technical drafting of the county water policy and the water bill including input from Kenyan legal expert on water issues; (d) a county assembly committee workshop to mediate political aspects of the bill; (e) public consultations in the form of public actor validation workshops held in November 2019 at the eight sub-counties and at the county level. 755 people (528 men and 227 women) participated in the sub county workshops, including (i) chairpersons of major water schemes, (ii) representatives of NGOs, (iii) representatives of CBOs, (iv) rural administration (county and national government), (v) religious leaders, (vi) key institutions, (vii) political leaders (MCAs and MPs) and (viii) advocacy groups. The public participation process aimed to create awareness of the policy and the bill, and obtain critical views of the public and other WASH actors at the sub county level. The various views were then considered for the preparation of the final drafts of the policy and water bill.

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PROTOTYPE COUNTY WATER SERVICES BILL KENYA

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**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF
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SCHEDULE 2

**INSTITUTIONAL AND COORDINATION FRAMEWORK FOR THE [NAMED]
COUNTY WATER SERVICES SECTOR**

A BILL for –

AN ACT of the County Assembly of [County Name] to provide the legal and institutional framework for provision of water and sanitation services in the county and for connected purposes

ENACTED by the County Assembly of [County Name] as follows-

PART 1 – PRELIMINARY

Citation.

1.This Act maybe cited as the [County Name] County Water Services Act, 2021

Interpretation.

2. In this Act, unless the context otherwise requires —

“County Chief Officer” means the County Chief Officer provided for under Section 45 of the County Governments Act.

“Community Based Organization” means a community organization registered under the Societies Act or other written law to advance the objectives of the group on a self-help basis.

“County water assets” are physical infrastructure to provide water services which are held in perpetuity by the county to deliver water services without prejudice to maximise past and future investments in the public interest.

“Community water service” means water services provided by a community-based organisation.

“County entity” means an entity of the County Government recognized as such under the provisions of the Public Finance Management Act, 2012.

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for water and sanitation services in the county.

“County Executive Committee” means the county executive committee member provided for under Article 179 of the Constitution of 2010.

“County water services provider” means a water services provider established by the county government for the provision of water and sanitation services within the county as per Section 77 of the Water Act 2016.

“County Water Service Fund” is a fund established under this act to pool and manage public, private, and donor funds to finance specific activities that support the county’s long-term goals to deliver sustainable universal access to safe and affordable water and sanitation services.

“Directorate” means the section within the water department of the county government responsible for water and sanitation services.

“Gazette” means the Kenya Gazette published by the Government Printer.

“Governor” means the County Governor of in terms of Article 179(4) of the Constitution of Kenya 2010.

“Inspector” is a person appointed by a water service provider to inspect the water works including connections to customers for which entry into the said premises is required.

“Institutional stakeholder” includes public benefit organizations, international organizations, non-governmental organisations, academic and research institutions, community-based organizations, private sector, religious institutions, and societies active in water and sanitation sectors in the County.

“International development partner” means a registered institution representing or affiliated to a foreign government or any international development or charitable agency rendering or supporting the delivery of services in the County.

“Maintenance service provider” is a public or privately-owned legal entity providing professional and affordable preventive or responsive maintenance and repair services to installed water supply infrastructure.

“Private water service provider” is a privately owned legal entity providing water services.

“Public officer” means a person serving as a public officer in the County Government of [County Name] or any of its agencies.

“Regulatory Board” means the Water Services Regulatory Board established by the Water Act 2016, or its successor.

“Sanitation services” means the provision of services for the collection, transport and or disposal of wastewater and faecal sludge.

“Sanitation” means treatment and or final disposal of wastewater on site through latrines, septic tanks, conservancy tanks, soakaway pits, and similar systems but does not include sanitation services.

“Water action group” means an organization registered by WASREB representing consumers of water services within a specified area.

“Water Resource User Association” (WRUA) is a legally registered organization that has fulfilled the requirements under the Water Act 2016 and whose purpose is to participate in the collaborative management of water resources including catchment conservation, protection and management and the resolution of water use conflicts in the County.

“Water services” include bulk and untreated water services used for agriculture, construction and some industries as well as ‘treated’ water services for human consumption in homes, communities, schools, clinics, hospitals and places of worship.

“Water services provider” means an entity providing safe, reliable, affordable and non-discriminatory drinking water and or sanitation services as a business but excludes an establishment providing water services to persons resident within the premises of the establishment; such entity may be a county, community or private owned entity.

Objectives of the Act.

3. The objective of this Act is to provide for —

- (1) A comprehensive legal framework to establish and regulate water supply, sewerage and sanitation services in the County including;
 - (a) an effective administration of sustainably delivering safely-managed and universal water supply and sanitation services;
 - (b) the water works and water service provision assets on behalf of the County;

(c) the regulation of water services within the county.

(2) The coordination, monitoring and oversight of the activities of institutional stakeholders in water services provision in the County.

(3) The promotion of public participation in water supply, sanitation and sewerage services delivery and regulation in the County.

Application and purposes of the Act.

4. (1) This Act shall apply to the provision of water and sanitation services in [Named] County.

(2) The Act gives effect to the Constitution and national law as regards the provision of water and sanitation services by the County Government of [County Name].

(3) The rights conferred and duties imposed by this Act are in addition to those conferred and imposed by any other law.

Guiding Principles.

5. (1) A **constitutional principle** to meet the national goals of providing every citizen with safe and affordable water and sanitation services as described in the Constitution of Kenya Section 43(1)(b) and (d).

(2) An **environmental principle** to recognize surface water and groundwater resources are fragile and critical resources to be conserved, protected, monitored and allocated for sustainable growth and human development under conditions of increasing climate variability and extreme events.

(3) An **institutional principle** to promote the collective responsibility of all institutional stakeholders to work together collaboratively and transparently to meet and sustain constitutional goals by sharing technical, financial and operational resources with a common purpose in the public interest.

(4) An **equity principle** to accelerate and maintain water service delivery for marginalized and vulnerable areas and people without prejudice by gender, geography, disability, age or ethnicity.

(5) A **performance principle** to respond to the opportunity of new delivery models, technologies and data, and financing instruments, which can deliver and sustain services where investments create and sustain value.

(6) A **commercial viability principle** which recognizes that reliable and affordable water services are provided by professional, efficient and financially secure water service providers in which capital, operation and maintenance costs are met from water revenue taking into account costs of providing the regulated service, the extent of non-revenue water, the consumer base, the efficiency of service, the need for targeted subsidies where consumers are unable to afford full water tariffs and applicable national and international benchmarks for sustainable water service delivery.

Application of Guiding Principles.

6. (1) The County Government shall put in place measures to ensure the progressive realization of the right to water and sanitation as stated in Part (5).

(2) The County Government may partner with local communities, faith-based organizations, international development partners, public benefit organizations, the National Government, private sector or any other persons to facilitate the realization of the right to water and sanitation and the provision of water for other purposes.

(3) The County Government will strive to establish and support water service providers that are financially sustainable and where poor communities are unable to afford cost recovery tariffs, the County Government will put in place measures to ensure consumers can obtain the water service including support to the service provider to mitigate the financial risk of providing services to the poor.

(4) The County Government recognizes that the systems required to deliver climate-resilient water and sanitation services involves strong well-coordinated institutions operating under good governance practices, efficient and effective utilization of public and private financing, effective stakeholder participation, monitoring and information management systems, and strong technical capacity.

Vulnerable groups.

7. (1) The Directorate shall take special measures to ensure the provision of water and sanitation services to vulnerable groups, including but not limited to —

- (a) Ensuring the presence of age and gender sensitive water and sanitation for children in schools;
- (b) Provision of services to internally displaced persons, persons with disabilities, refugees or victims of drought;
- (c) The promotion of appropriate hygiene and sanitation programmes among communities;
- (d) Rural poor and marginalized communities.

(2) Appropriate measures contemplated in part (1) include-

- (a) Setting investment priorities and tariff policies that are responsive to the needs of vulnerable groups;
- (b) Ensuring water service providers deliver services to vulnerable groups of a standard equal to that of other groups.

PART II: POLICY, COORDINATION AND OVERSIGHT OF WATER SERVICES

**Powers and Duties of
County Executive
Committee member.**

8. (1) Subject to the provisions of this Act, the County Executive Committee member shall exercise control and oversight over the development and provision of water and sanitation services within the county.

(2) Without prejudice to the generality of the foregoing, the County Executive Committee Member shall have responsibility to —

- (a) Formulate and periodically review county policies, strategies, regulations, standards and plans for the development and provision of water services;
- (b) On behalf of the county government put in place and maintain measures and arrangements to implement and give effect to the Constitution, national laws, and national standards and guidelines on the provision of water and sanitation services;
- (c) Coordinate and oversee the development and provision of water and sanitation services within the county;
- (d) Mobilise financial and other resources for the provision of water and sanitation services;
- (e) In consultation with the County Public Service Board, determine the staff establishment for the Directorate;
- (f) Prepare quarterly reports for the County Assembly to be submitted no later than one month after the end of the quarter which shall contain:
 - (i) Up-to-date information on the operational status of water

- and sanitation services in the county; and
- (ii) The progress of water and sanitation infrastructure projects financed by the County, National Government and other stakeholders.
- (a) Prepare an annual report for the County Assembly no later than two months after the end of the financial year which shall contain;
 - (i) Information on the state of water and sanitation services in the county; and
 - (ii) The performance of each water service provider and the Directorate against agreed performance targets.

(3) In the performance of [his][her] functions and duties under this Act the County Executive Committee member shall —

- (a) Consult and coordinate with Directorates, agencies and entities of the national and county governments whose functions affect the development and provision of water and sanitation services; and
- (b) Consult with relevant stakeholders including non-governmental organisations, the private sector and consumer groups.

(4) In the discharge of [his] [her] duties and functions under this Act, the County Executive Committee member shall be assisted by the Directorate of Water and Sanitation Services established under this Act.

Powers, Duties and Appointment of County Chief Officer.

9. (1) Subject to the provisions of this Act, the County Chief Officer for Water shall be responsible to the County Executive Committee member for the administration of the county department for water.

(2) The County Chief Officer for Water will be appointed in accordance with the provisions of the County Government Act, 2012.

County Water and Sanitation Services Strategy.

10. (1) Following public consultation the County Executive Committee member shall formulate a County Water and Sanitation Services Strategy.

(2) The County Water and Sanitation Services Strategy shall provide —

- (a) Information on areas within the county in which access to basic water and sanitation services is inadequate;
- (b) Sustainability objectives of the county and plans for achieving this, especially for rural water services.
- (c) Plans and measures for the development and continuous improvement of water and sanitation services within the county, and specifically in unserved or under-served areas;
- (d) An investment programme and a timeframe for the development, expansion and improvement of water and sanitation services in the county;
- (e) Institutional and financial arrangements and measures for the improvement of access to basic water services within the rural areas and underserved urban areas;
- (f) Measures to facilitate the provision of water and sanitation services in urban and rural areas including the use of contracted service delivery models;
- (g) Criteria and procedures for the provision by the county government of financial, technical and other assistance to urban and rural service providers including contracted service delivery models.

(3) The strategy shall be published in the Gazette after approval by the County Executive Committee Member.

(4) The county water services strategy shall be reviewed periodically and, in any case, not later than every five years.

(5) Every county public officer and every county organ shall give effect to the gazetted county water and sanitation services strategy in the discharge of [his][her] or its duties under this Act.

(6) Every urban, rural, county, community and private water services provider shall take account of the county water and sanitation services strategy in its plans and programmes.

**The Directorate of
Water and Sanitation
Services.**

11. (1) There is established the County Directorate of Water and Sanitation Services, which shall have the overall responsibility of overseeing the provision and management of water supply, sewerage and sanitation services in the County.

(2) The Directorate shall comprise of —

(a) Director(s), deputy and assistant director(s) recruited and assigned to the Directorate by the County Public Service Board;

(b) Water officers appointed by the County Public Service Board and deployed by the Chief Officer to the Directorate, with the approval of the County Executive Committee member; and other officers appointed by the County Public Service Board.

(3) The Directorate shall decentralise its services to the lowest possible unit of the county's administration to ensure the provision of safe and adequate water and effective sanitation services throughout the County.

(4) The duties and functions of the Directorate shall be to —

(a) Provide technical support and advice to the County Executive Committee member in the discharge of [his][her] functions;

(b) Implement and give effect to the County Water and Sanitation Services Strategy;

(c) Develop county water and sanitation services infrastructure including water works and public works that may be used by county, community or private water service providers in accordance with regulations made under this act;

(d) In collaboration with other agencies, develop and manage public infrastructure for storm water management;

(e) Design, implement and monitor water safety plans to identify and mitigate water quality risks for drinking water services as part of regular monitoring and regulatory activities supported by trained staff with good quality laboratory facilities;

(f) Subject to national legislation, implement a system and requirements for registration of water services providers operating within the county, including any community or private water service providers;

(g) Formulate rules, standards and guidelines for the provision of water services within the county not inconsistent with the national legislation;

(h) In consultation with the Water Services Regulatory Board, enforce rules, guidelines and standards for the provision of water services within the county;

- (i) Establish and maintain an information management system for water and sanitation services which covers the acquisition, collation and analysis of information on the nature and performance of water and sanitation services in the county, and which supports the dissemination of water and sanitation information;
- (j) Undertake and maintain an inventory of all the assets, facilities and other infrastructure used for the provision of water and sanitation services to the public in [Named] County, including the origin of the assets;
- (k) Provide operational, technical and other support to water service providers;
- (l) Provide guidance on water and sanitation services planning for the county and nationally, including:
 - (i) The County Integrated Development Plan;
 - (ii) The County Water and Sanitation Sectoral Plan and plans for other sectors;
 - (iii) The County annual Plan; and
 - (iv) The County Fiscal Strategy Paper;
 - (v) National investment and financing plans.
- (m) Support arrangements established within this Act to coordinate institutional stakeholders in the County;
- (n) Coordinate relationships with institutions of the national government and other counties in matters relating to water and sanitation services, and the conservation of water catchments and aquifers. The Second Schedule presents the proposed coordination mechanism;
- (o) Receive and address complaints regarding the provision of water services;
- (p) Facilitate public awareness and participation in the development of strategies, policies and rules on water and sanitation, storm water drainage and water resource management; and
- (q) Perform such other duties and functions in relation to the provision of water and sanitation services as are assigned to it by the County Executive Committee member.

Qualifications of a Director.

- 12.** (1) A person shall not be eligible for appointment as a Director unless the person
- (a) Holds minimum of a Bachelor of Science Degree in Civil Engineering, Agricultural Engineering, Water Engineering, Soil, water and Environmental Engineering, Integrated Water Resources or equivalent qualification from a recognised University;
 - (b) Has received training on leadership for a course duration lasting not less than six (6) weeks from a recognised institution;
 - (c) Has Ten (10) years relevant work experience in water and sanitation or related field, and at least three (3) as Deputy Director JG (Q) Water or served in a comparable and relevant position in the public/private sector;
 - (d) Meets the requirements of Chapter 6 of the Constitution;
 - (e) Has registered with the relevant professional body in Kenya, including Engineers Board of Kenya or Institute of Engineers of Kenya or the Kenya Engineering Technologists Registration Board;
 - (f) Meets any other qualification set by the County Public Service Board.
- (2) Any panel constituted for the purpose of evaluating candidates for the position of director must comply with Section 27 on gender balance.

PART III: STAKEHOLDER PARTICIPATION AND COORDINATION

County Water Sanitation and Hygiene Coordination (WASHCOORD) Forum.

13. (1) There is established a County Water Sanitation and Hygiene Coordination Forum (WASHCOORD) that shall be a consultation forum for all the institutional stakeholders in the County on matters related to water and sanitation.

(2) The membership of the County Water Sanitation and Hygiene Coordination Forum (WASHCOORD) will be open to all county stakeholders in the water sector and in particular shall include —

- (a) Representatives of the County Directorates of Water, Agriculture, Livestock and Irrigation;
- (b) Representatives of the County Directorate of Health Services;
- (c) Representatives of the County Directorate of Education;
- (d) Representatives of the County Directorate of Lands and Urban Planning;
- (e) Representatives of the County Directorate of Planning and Economic Development;
- (f) Representatives of the County Directorate of Environment and Natural Resources;
- (g) Representatives of the County Directorate of Coordination and Administration;
- (h) All Non-Governmental Organisations, Faith Based Organisations, and Community Based Organisations implementing water and sanitation services, including community water service providers;
- (i) Private Sector entities involved in water and sanitation services;
- (j) Water Action Groups;
- (k) County Water Service Providers;
- (l) Registered Maintenance Service Providers in the County;
- (m) Water Works Development Agency
- (n) Water Resources Users Associations;
- (o) International Development Partners;
- (p) Relevant National Government ministries and institutions.

(3) The Chairperson of the WASHCOORD Forum shall be the County Executive Committee member for Water;

(4) The WASHCOORD Forum shall convene at least quarterly per year and more frequently in case of an emergency;

(5) The Directorate shall provide secretarial services to the County WASHCOORD Forum;

(6) The Directorate shall make budgetary provision for the meetings of the County WASHCOORD Forum.

County WASHCOORD Technical Committee.

14. (1) There is established the County WASHCOORD Technical Committee which shall comprise of the following persons —

- (a) The County Director of Water Services who shall be the chairperson of the committee;
- (b) The County Deputy or Assistant Director of Water Services;
- (c) County Director of Public Health;

- (d) One Managing Director representing the county water service providers;
- (e) One representative of National government institutions;
- (f) One representative of Non-governmental organisations engaged in the provision of water, sanitation or hygiene services in the county;
- (g) One representative of academic or research institutions with active programs in water or sanitation in the County;
- (h) One representative of community water service providers;
- (i) One representative of private sector organisations engaged in the provision of water and sanitation services within the county;
- (j) One representative of water resource user associations.

(2) Unless otherwise specified in this Act, members of the County WASHCOORD Technical Committee representing stakeholder groups shall be appointed by the County Executive Committee Member for Water in accordance with guidelines developed by the County WASHCOORD Technical Committee and after consultation with members of the respective stakeholder group.

(3) In appointing members to the County WASHCOORD Technical Committee the County Executive Committee member will be guided by the constitutional requirements for gender balance.

(4) The Directorate shall provide secretarial services to the County WASHCOORD Technical Committee.

(5) The Directorate shall make budgetary provision for the meetings and activities of the County WASHCOORD Technical committee.

Functions of the County WASHCOORD Technical Committee.

15. The functions of the County WASHCOORD Technical Committee shall be to

- (a) Organize meetings and develop the agenda of the County WASHCOORD Forum;
- (b) Provide technical advice to the County and Sub-County WASHCOORD Forums;
- (c) Monitor and coordinate emergency water and sanitation provision in the county in line with the county steering group directives;
- (d) Monitor progress towards the delivery of the County Water and Sanitation Strategy and report to the WASHCOORD Forum on the same;
- (e) Monitor the activities of stakeholders including water service providers, private sector, non-governmental organisations, and national and county government bodies and evaluate these activities with respect to efficiency, coordination, and improvements to water and sanitation services and report to the County WASHCOORD Forum;
- (f) Coordinate the activities of stakeholders in the County;
- (g) Develop guidelines on the activities to be undertaken by stakeholders in the County;
- (h) Provide a forum for reporting the activities of stakeholders;
- (i) Deliberate on issues related to water supply and sanitation services presented by County and Sub- County WASHCOORD Forums;
- (j) Assign duties to stakeholders based on the project priority list;
- (k) Advise the County Government on relationships with stakeholders;
- (l) Accredite persons and institutions seeking to act as Institutional Stakeholders in the County;

- (m) Advise on policy matters relating to water, health and sanitation in the County;
- (n) Develop criteria for screening projects for climate resilience;
- (o) Provide linkages between the County Executive Committee Member and the Stakeholders in the County;
- (p) Provide reports on water and sanitation services and WASHCOORD Forum deliberations for the Sub-County WASHCOORD Forums; and
- (q) Any other duty assigned to it by the County Executive Committee Member.

Conduct of the affairs of the County WASHCOORD Technical Committee.

16. (1) The County WASHCOORD Technical Committee shall convene at least two meetings each quarter of the year to be held between the WASHCOORD Forum meetings or more frequently in the event of an emergency.

(2) The County WASHCOORD Technical Committee shall develop its own guidelines for the conduct of its meeting which shall be approved by the County Executive Committee Member.

(3) The County WASHCOORD Technical Committee may appoint an Executive Committee or such technical working groups as may be necessary for the better performance of its functions.

(4) The County Executive Committee Member may co-opt a person with relevant technical expertise to participate in the County WASHCOORD Technical Committee.

(5) The membership of the County WASHCOORD Technical Committee shall be non-remunerative provided that the members shall be entitled to an allowance in accordance with the guidelines issued by the County Executive Committee Member responsible for finance in the county;

(6) The Directorate shall make budgetary provision for the meetings and activities of the County WASHCOORD Technical Committee.

Sub-County WASHCOORD Forums.

17. (1) There is established in every sub-county a Sub-County WASHCOORD Forum.

(2) The Sub-County WASHCOORD Forum shall comprise of —

- (a) The Sub-County Administrator and the Sub County Health Officer who shall alternately be the Co-Chairpersons of the forum;
- (b) The Sub County Water Officer who shall be the secretary to the forum;
- (c) One representative each from the Directorates of Livestock, Agriculture, Lands, Education, Environment and Natural resources working in the County;
- (d) One representative of the County water service providers operational within the sub-county;
- (e) One representative of the institutional stakeholders or the Water Action Group active on water, sanitation and hygiene within the sub-county appointed in accordance with this Act;
- (f) One representative of the community water service providers active within the sub-county appointed in accordance with this Act.

(3) Unless otherwise specified in this Act, members of the Sub-County WASHCOORD Forum representing stakeholder groups shall be appointed by the Sub-County Water Officer in accordance with guidelines developed by the

County WASHCOORD Technical Committee and after consultation with members of the respective stakeholder group.

(4) The Sub-County WASHCOORD Forum shall hold at least one meeting every quarter of the year; such meeting shall be held at least two weeks prior to the County WASHCOORD Forum meeting.

(5) The conduct of the affairs of the Sub-County WASHCOORD Forum shall be determined by guidelines developed by the County WASHCOORD Technical Committee.

(6) The members referred to in sub-section (2) (c), (d) and (e) shall be entitled to an allowance in accordance with the guidelines issued by the County Executive Committee Member responsible for finance in the county.

Functions of the Sub-County WASHCOORD Forum.

18. The functions of the Sub-County WASHCOORD forum shall be to —

- (a) Provide a forum for reporting the activities of county and national government, non-governmental organisations, water service providers and other stakeholders within the sub-county;
- (b) Deliberate on issues related to water supply and sanitation services in the sub-county;
- (c) Guide provision of emergency water and sanitation services to communities affected by disasters;
- (d) Recommend persons and institutions seeking registration as an Institutional Stakeholder in the sub-county;
- (e) Provide linkages between the County Executive Committee Member, County WASHCOORD Forum and the stakeholders in the Sub County; and
- (f) Any other duty assigned to the Sub-county Forum by the County Executive Committee member or the County WASHCOORD Technical Committee.

Appointment of County WASHCOORD Forum members.

19. The County WASHCOORD Technical Committee shall develop guidelines for the appointment of representatives of Institutional Stakeholders, community water service providers, maintenance service providers, Water Action Groups and water resource user associations for the County and Sub-County WASHCOORD Forums.

WASHCOORD Secretariat.

20. (1) The County Executive Committee Member shall designate staff within the Water Directorate to form a WASHCOORD Secretariat.

(2) The functions of the WASHCOORD Secretariat shall be to —

- (a) Organize and provide logistical and secretarial support to County and Sub-County WASHCOORD Forums and Technical Committee meetings;
- (b) Record the minutes of the County WASHCOORD Forum and WASHCOORD Technical Committee and make minutes of meetings available within two weeks of each meeting;
- (c) Coordinate the registration of Institutional Stakeholders, community water service providers, and water resource user associations;
- (d) Compile a report of the activities of institutional stakeholders in each ward and sub-county every financial year and submit the same

to the County Assembly, through the County Executive Committee Member;

- (e) Develop a budget to be approved by the County Executive Committee Member or the Fund Advisory Panel for the activities of the County and Sub County WASHCOORD Forums;
- (f) Provide an information desk for receiving, compiling and communicating data and information to/from stakeholders on the water and sanitation services sector in the County; and
- (g) Perform any other responsibility relevant to the coordination of the activities and functions of the stakeholders in the County.

(3) Institutional Stakeholders may hire staff at their own cost to provide technical support as part of the WASHCOORD Secretariat.

(4) Not later than two months after the end of each financial year, The County Executive Committee Member shall prepare and submit the report referred to in subsection (2)(d) to the County Assembly.

Registration and reporting of institutional stakeholders.

21. (1) Institutional Stakeholders in the County shall register with the WASHCOORD Secretariat and provide relevant details including —

- (a) Information on the organization's identity;
- (b) The main sources of funds of the organization;
- (c) The key staff of the organization;
- (d) The current contact details of the organizations; and
- (e) The nature of projects completed, ongoing and planned by the organization.

(2) Institutional stakeholders shall furnish the County WASHCOORD Forum with workplans detailing the nature and scope of specific projects and reports on activities every financial year.

(3) The County Executive Committee Member shall publish regulations for the better administration of this section.

Registration of water resource user associations.

22. (1) Notwithstanding the requirements within the Water Act 2016 for Water Resource User Associations (WRUAs) to register with the Water Resource Authority, the Directorate shall develop modalities for WRUAs to register with the County Government in order to coordinate and support catchment conservation activities within the county.

(2) A Water Resource User Association contemplating registration under this Act must first be duly registered with the Water Resources Authority.

(3) The Directorate shall develop regulations not inconsistent with regulations under the Water Act 2016 on the registration and conduct of the affairs of Water Resource User Associations including -

- (i) The eligibility for registration;
- (ii) The procedure for registration;
- (iii) Requirements for good governance;
- (iv) County representation in WRUA meetings;
- (v) Criteria for financial, technical or other support to a WRUA by the directorate;
- (vi) Reporting the activities of the WRUA to the directorate; and

(vii) Any other issues relevant to the performance of the functions of the WRUAs.

(4) A potential water resource user association shall only be registered upon meeting the criteria set out in the regulations developed under sub section 3.

Annual Reporting Requirements.

23. (1) Water resource user associations and water action groups shall provide quarterly reports to the Directorate with details of activities, meetings, performance, progress against annual workplans and complaints.

(2) The submission of detailed quarterly reports shall be a condition precedent to the issuance of an annual Compliance certificate.

Annual Compliance Certificates.

24. (1) Community water service providers, water resource user associations and water action groups shall, prior to 31st March each year, make application to the County Executive Member for a compliance certificate.

(2) The Directorate shall conduct an inspection within a period of twenty-one days upon receipt of an application in subsection (1), to determine its compliance with respect to statutory requirements, regulations made under this Act, performance and good governance practices and may —

- (a) Issue a compliance certificate;
- (b) Issue a provisional compliance certificate for a period not exceeding six months specifying necessary conditions to achieve compliance, or
- (c) Decline to issue a compliance certificate stating the reasons for declining and any possible remedial measures.

(3) No community water service provider, water resource user association or water action group shall receive any support from the County Government or structures under this Act without a compliance certificate.

Sub-County representation of community water service providers.

25. (1) The Sub-County Water Officer shall convene a forum in the respective Sub-County for community water service providers in the Sub-County, whose purpose shall be to elect one representative of the community water service providers in the sub-county.

(2) The forum in subsection (1) shall be attended by the chairpersons of the community water service providers in the sub-county or their delegated representative.

(3) The County Executive Committee Member shall issue regulations for the better administration of this Part.

(4) Each community water service providers shall submit to the Directorate an annual report on its performance and as guided by regulations.

Financial support to water service providers, maintenance service providers, water action groups, and water resource user associations.

26. (1) County, community and private water service providers, maintenance service providers, water action groups and water resource user associations with compliance certificates shall be eligible for financial and technical support from the County Government subject to compliance with relevant regulations under this Act.

(2) Financial support contemplated in sub-section (1) may be in the form of grants or subsidies for the development and rehabilitation of infrastructure and

for operation and maintenance of services.

(3) The County Executive Committee Member will develop regulations for the better administration of financial support contemplated under this section.

Requirements for gender balance.

27. (1) No one gender shall occupy more than two thirds of the membership of any management board or committee of a county water service provider, or any committee appointed by the Directorate to represent different stakeholders.

(2) No one gender shall occupy more than two thirds of the membership of any management board or committee of a community water service provider.

(3) The failure by a community water service provider to comply with sub-section (2) shall constitute a breach of the conditions for good governance and the Directorate shall withhold the Certificate of Compliance.

PART IV: ESTABLISHMENT AND OPERATION OF WATER SERVICES PROVIDERS

Establishment of county water services provider.

28. (1). The county government may, following a resolution of the County Assembly, by notice in the Gazette, or through incorporation of a limited liability company, establish one or more county entities as a water and sanitation services provider or providers as the case may be.

(2) A county water services provider established under this section shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of —

- (a) Suing and being sued;
- (b) Taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) Borrowing money;
- (d) Entering into contracts; and
- (e) Doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The County Executive Committee Member shall assign to each county water services provider established under this section a water supply area which may cover the whole or a portion of the area of geographical jurisdiction of the county government.

(4) In determining the area of supply of a county water services provider the County Executive Committee Member shall take account of and give effect to the operation within the whole or part of the proposed supply area of community or private water services providers.

(5) Following the establishment of a county water services provider the County water assets being the assets, facilities and other infrastructure used for the provision of water and sanitation services within the water services provider's water supply area which belong to the county government shall be transferred or leased to the water services provider.

(6) Any lease fees contemplated in sub-section (5) shall be approved by the Water Services Regulatory Board and shall be sufficient only to cover any financial

obligations relating to repayment of loans acquired for the development of those assets.

(7) Where the assets for the provision of water and sanitation services in the supply area belong to and are managed by a community water services provider the county water services provider may enter into an agreement with the community water services provider for the use and or acquisition of the assets the terms of which may provide that the community water services provider continues to provide water services as an agent of the county water services provider and that the community water services provider may purchase water in bulk from the county water services provider.

Functions of the county water services provider.

29. (1) Any water service provider established and registered under this Act shall be responsible for the development, maintenance, operation and management of water supply and sanitation services in the areas under their jurisdiction as shall be determined by the Directorate.

(2) In addition to functions assigned under subsection (1), a water service provider shall be responsible for —

- (i) Development and provision of water supply and sanitation services within its service area;
- (ii) Collection of water use revenues in its service area;
- (iii) Collection of water use data in its service area;
- (iv) Management of water works in its service area developed by the Directorate or the Water Works Development Agency;
- (v) Implementing pro-poor policies as regards access to water;
- (vi) Maintaining a database with regard to water and sanitation services within its service area;
- (vii) Providing regular reports on its performance as required by the Directorate.

Service provision agreements.

30. (1) A county water service provider must enter into a service provision agreement with the Water Services Regulatory Board and the county government which shall be the basis for assessing the performance of the Board of Directors.

(2) The Service Provision Agreement shall contain time-based deliverables related to —

- (a) The population to be covered by the Water Service Provider;
- (b) Volume of water to be delivered;
- (c) Water quality indicators;
- (d) Asset management;
- (e) Technical and commercial operations efficiency
- (f) Consumer feedback;
- (g) Revenue collection;
- (h) Sanitation and;
- (i) Any other relevant issue.

(3) The Board of Directors and the Managing Director of the county water service provider may be removed from office in accordance with the Articles of Association of the Water Service Provider for failing to comply with the Service Provision Agreement.

The governance of county water service providers.

31. (1) Each county water services provider shall have a board of directors who shall be appointed by the County Executive Committee Member to guide and direct the performance of its functions.

(2) The number of board members shall be not more than five (5) members where the water service provider receives grants and or subsidies from the county government and otherwise shall be not more than seven (7) members.

(3) The rules and procedures of the county government on the appointment, composition and qualifications of members of the board of directors of a county water services provider shall give effect to standards and guidelines prescribed by the Water Services Regulatory Board.

(4) Notwithstanding sub-section (3), the Board of Directors shall comprise of the following members —

- (a) A chairperson who shall be appointed by the Governor upon recommendation by the County Executive Committee Member and approval by the County Assembly;
- (b) Provided that such a person appointed in (a) above shall not be an employee of the County Government, National Government or a State officer;
- (c) The Chief Officer in charge of Water Services in the County;
- (d) The Chief Officer in charge of Finance in the County;
- (e) One representative from the business community;
- (f) One representative of persons with disability or youth or women;
- (g) One representative of the Institutional Stakeholders;
- (h) One representative of a relevant professional body.

(5) A person shall be qualified for appointment as board chairperson or director appointed under subsection (4) if the person -

- (a) Is a resident within the supply area of a county water service provider;
- (b) Holds at least a degree qualification from a university recognized in Kenya; and
- (c) Has experience of at least five years in matters relating to water and natural resource management or any other related field;
- (d) Meets the requirements of leadership integrity set out in chapter six of the Constitution of Kenya.

(6) Members of the Board referred to under subsection 3(d) to (i) may attend to board matters in person or through their appointed representatives who shall be senior County public officers at a level no lower than that of an Assistant Director.

(7) The appointment of persons to serve in a Board of Directors of a water service provider, while aiming to achieve a board with the skillset, knowledge and experience appropriate to the functions of the Board, shall take cognizance of regional, ethnic and gender balance including affording equal opportunities to persons with disabilities, youth, marginalized groups and ethnic and other minorities in the County.

(8) The term of the Board of the county water and sanitation services provider shall be three years renewable once which term shall not be affected by the expiry of the term of office of the county government.

(9) The annual expenditures of the Board, including the sitting allowances and other expenditures of the board and its committees, shall not exceed 5% of the annual turnover of the respective county water service provider.

Meetings and Procedure of the Board.

32. (1) The First Schedule shall have effect in relation to the meetings and procedures of the Board.

(2) A representative of the CEO of the respective WWDA shall sit in attendance at the board where loan obligations for asset development are owed by the WSP to the WWDA or its successor body primarily to protect the loan repayment stake.

(3) As part of its inspectorate duties WASREB may at its discretion attend any board meeting for a WSP that is in material noncompliance of the law and is under the special regulatory regime under section 102 of the Water Act 2016.

Managing Director and other employees of county water services providers.

33. (1) A county water services provider shall employ a Managing Director who is competitively recruited by its Board.

(2) The terms and conditions of service of the Managing Director shall be set by its board of directors taking into account any national standards set by WASREB and specified in an instrument of appointment.

(3) To qualify for appointment as a Managing Director, a person shall at a minimum —

- (i) Possess at least a first degree in civil/water engineering, business related field, environmental sciences or equivalent plus training in management;
- (ii) Have had experience in management for a period of not less than ten years;
- (iii) Meets the requirements of leadership integrity set out in chapter six of the Constitution of Kenya.

(4) The Managing Director shall, in accordance with this Act, and under the general direction of the Board, be responsible for the daily management and performance of the functions and duties of the county water services provider.

(5) The Managing Director shall be an *ex officio* member of the board of directors with no voting rights.

(6) The Managing Director may —

- (a) At any time resign from office by issuing a three month notice in writing to the chairperson of the Board of Directors;
- (b) Be removed from office by the Board of Directors on either of the following grounds —
 - (i) repeated failure to achieve the agreed performance targets for the water service provider;
 - (ii) breach of terms and conditions of employment contract;
 - (iii) violation of the Constitution or any other written law;
 - (iv) gross misconduct, whether in the performance of the functions of the office or otherwise;
 - (v) physical or mental incapacity to perform the functions of office;

- (vi) incompetence;
- (vii) bankruptcy.

(7) The Managing Director may only be removed from office under sub-section (6) after being accorded an opportunity to be heard.

(8) A county water services provider may engage such employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions of service as the Board may approve.

(9) A person employed by a county water services provider shall be a public officer and subject to the laws governing the conduct of public officers.

Finances of county water service providers.

34. The funds and assets of a county water services provider shall consist of —

- (a) Such monies as may be appropriated by the County Assembly for the purposes of the county water services provider;
- (b) Any monies or property which may in any manner accrue or vest in the county water services provider in the course of the exercise of its functions under this Act;
- (c) Such monies as may become payable to the County water services provider by way of fees and other charges in respect of services rendered by or through it; and
- (d) All monies from any other sources provided whatsoever donated, lent or granted to the county water services provider.

Annual estimates of county water services provider.

35. (1) Not less than six months before commencement of each financial year, the board of a county water services provider shall cause to be prepared estimates of the revenue and expenditure for that year.

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of a county water services provider for the financial year concerned.

(3) The annual estimates shall also make provision for such amounts as are required to pay any portion of the principal and or interest of loans or advances if any secured by or on behalf of the water services provider to finance the capital costs of developing and or rehabilitating infrastructure and or facilities and or acquiring equipment and other assets for the provision of water services.

(4) The Managing Director shall submit the estimates to the Board for approval, who shall present the estimates to the County Executive Committee Member for consideration and approval by the County Assembly.

(5) No expenditure shall be incurred for the purposes of a county water services provider except in accordance with the annual estimates approved under this section.

Accounts and audit.

36. (1) The Managing Director and the Board of a county water services provider shall keep proper books of account of its income, expenditure, assets and liabilities.

(2) Within three months after the end of each financial year the board of each county water services provider shall submit to the Auditor-General the accounts in respect of that year, together with —

- (a) A statement of the income and expenditure during that year; and
- (b) A statement of the assets and liabilities on the last day of that financial year.

(3) The annual accounts of a county water services provider shall be prepared, audited and reported upon in accordance with the provisions of Article 226 and 229 of the Constitution and applicable national and county government laws.

Register of water service providers.

37. (1) The Directorate shall maintain a register of all water service providers operating within the area of jurisdiction of the county including county, community and private water service providers.

(2) For purposes of the register each water services provider shall, within 12 months of commencement of the Act or, in respect to water service providers established after the commencement of the Act, of its establishment or such longer period as the Executive Committee Member may allow, submit to the Directorate information on:

- (a) its area of supply;
- (b) the number and location of customers served;
- (c) an inventory of the facilities and infrastructure available to it for the provision of water services;
- (d) particulars of its board of directors or management committee and staff including the technical qualifications of its staff;
- (e) the tariff charged;
- (f) particulars of liabilities;
- (g) its licence status with the Regulatory Board and, if licensed, a copy of the licence;
- (h) plans and programmes for the improvement of water services it provided; and
- (i) such other information as the Executive Committee Member may by regulations prescribe.

(3) By the end of March of each calendar year the water services provider shall notify the Directorate of material changes to the information provided in the previous year and the Directorate shall as soon as practicable thereafter update the register.

(4) The register shall be open to inspection by members of the public during normal working hours.

Maintenance Service Providers.

38. (1) In the progressive transition to professional Water Service Providers, the county will recognize the role of Maintenance Service Providers with a remit for preventive and/or responsive repair and maintenance to keep water supply infrastructure functioning on a daily basis.

(2) Any person or entity intending to provide repair and maintenance services for water supply infrastructure across an effective geographic scale with a mandate to include all communities, schools, healthcare facilities, hospitals and other rural facilities must register with the Directorate.

(3) The application for registration as a maintenance service provider must show:

- (i) legal registration;
- (ii) professional capacity;
- (iii) tools, equipment and plant for the services to be provided;
- (iv) a description of the services and terms to be offered for the services to be provided.

(4) A county water service provider may engage, through a competitive procurement process, a Maintenance Service Provider to provide maintenance services across a specified service area on terms that recognize consumer willingness and ability to pay and the commercial viability of maintenance provision.

(5) Maintenance Service Providers will not be accountable for the quality of water in installed water infrastructure, which predates their contracted responsibilities.

(6) Maintenance Service Providers are required to monitor the quantity and quality of water from infrastructure for which he/she is responsible for the maintenance of and shall present quarterly reports to the Directorate on the same.

Private water service providers.

39. (1) The County will allow water service provision by private persons on terms and conditions set out within this Act or by regulations made under this Act.

(2) A private water service provider —

- (a) shall be responsible for the provision of water supply and or sanitation services, including maintenance services, within limits specified in the water service provision agreement; and
- (b) may be contracted to develop, install, operate and or maintain waterworks for purposes of the provision of water supply and sanitation services.

(3) No person shall, unless issued with a permit by the County government under this Act —

- (a) provide water services to more than ten households; or
- (b) supply—
 - (i) more than five thousand litres of water a day for domestic purposes; or
 - (ii) more than one hundred thousand litres of water a day for any purpose, in the County.

(4) A person who provides water services in contravention of this section commits an offence and shall be liable to a fine of not less than twenty thousand shillings or a jail term of not less than six months or both such fine and jail term.

(5) Nothing in this section prohibits —

- (a) The provision of water services by a person to his or her employees; or
- (b) The provision of water services on the premises of any hospital, factory, school, hotel, brewery, research station or institution to the occupants thereof, in cases where the source of supply of the water is lawfully under its control, or where the water is supplied to it in bulk by a permit holder.

Community water service providers.

- 40.** (1) The County shall allow the establishment of community water service providers, subject to compliance with the requirements specified in Section 41.
- (2) Community water service providers —
- (a) May legally own and manage works related to the provision of water services;
 - (b) May provide water services in rural areas within limits specified in the service provision agreement;
 - (c) May charge such fees or tariffs for their services as shall be approved by the County Executive Committee Member.
- (3) A community water service provider will enter into an agreement with the County Water Service Provider in whose area of jurisdiction the community water service provider is located;
- (4) A community water service provider may enter into an agreement with the county water service provider or a maintenance service provider or a private entity for the operation, management and or maintenance of the water supply scheme.
- (5) A community water service provider shall nominate a management committee that shall:
- (a) Not exceed seven members;
 - (b) Comply with the requirement of Section 27 on gender balance;
 - (c) Shall manage its affairs and the provision of water services in accordance with guidelines issued by WASREB.
- (6) Committee members for a community water service provider shall:
- (a) Have a valid Certificate of Good Conduct issued by the Department of Criminal Investigations;
 - (b) Be competent in matters related to the provision of water services;
 - (c) Be persons of integrity;
 - (d) Shall be individually and collectively liable for the financial and physical assets belonging to the community water service provider.
 - (e) Make a conflict of interest declaration and have no personal or family interests which might conflict, or be perceived to conflict, with his/her duties as Committee member or any other matter which may give rise to a potential conflict of interest.
- (7) The sub-county water officer shall be an ex-officio member of the management committee.
- (8) Where a community water service provider fails to obtain a Certificate of Compliance as required in Section 24 for a period of 12 months, the County Executive Committee Member may appoint a Water Service Provider or other operator to manage the water service as informed by guidelines for rural water service provision established by WASREB.
- (9) An operator appointed under Part (8) shall be appointed on a competitive basis to establish competence and capacity to manage the water service.
- (10) An operator appointed under part (8) shall be entitled to take over such revenues as derived from fees and tariffs for the provision of services.
- (11) The County Executive Committee Member shall develop regulations and guidelines for the formation, membership, governance, management and reporting obligations of community water service providers.

**Registration of
Community Water
Service Providers.**

41. (1) Any community based civil or welfare organisation intending to provide water services in a given geographical area must register with the Directorate and fulfill the requirements to be a community water service provider.

(2) Any entity intending to register as a community water service provider must be registered as a legal entity under national legislation with stated objectives specific and exclusive to water and sanitation services.

(3) The County Executive Committee Member shall develop regulations for registering community water service providers.

(4) An application for registration as a community water service provider shall be in writing and based on regulations developed by the County Executive Committee Member governing registration of community water service providers which shall include requirements on —

- (i) Eligibility for registration;
- (ii) Process of registration;
- (iii) Governance structure;
- (iv) Supply Area;
- (v) Business Plan;
- (vi) Tariff;
- (vii) Performance targets and monitoring;
- (viii) Consumer complaints managements;
- (ix) Reporting framework.

A potential community water service provider shall only be registered upon meeting the criteria set out in regulations developed under sub-section (4).

**Functions of community
water service providers.**

42. The functions of community water service providers shall include —

- (a) Participating in the development and provision of water and sanitation services;
- (b) Facilitating public participation for water services related issues;
- (c) Advising the Directorate on water project priorities within their respective jurisdictions;
- (d) Participating in water and sanitation health education within their respective jurisdictions;
- (e) Facilitate negotiation, arbitration and transfer of land for development of water supply infrastructure, including resolution of land related conflicts.
- (f) Participating in water and sanitation service related dispute resolution within their respective jurisdictions; and
- (g) Any other function assigned by this Act or by any other law.

**Water service provision
agreement for
community and private
water service providers.**

43. (1) The Directorate may issue service provision agreements for community and private water service providers on terms and conditions not inconsistent with requirements of the Water Services Regulatory Board.

(2) The County Executive Committee Member shall issue regulations prescribing the terms and conditions by which community and private water service providers shall be bound including but not limited to —

- (a) The right of access for private water service providers supplying water to schools or health facilities;

- (b) The acceptable quality of water as may be determined by the Directorate and in line with national legislation, policies and standards;
- (c) Water service provision tariff ceilings; and
- (d) Public consultation and, where applicable, environmental impact assessment in accordance with the relevant national legislation on environment management.

(3) A water service provider shall be responsible for the efficient provision of water services while fulfilling any other conditions specified in the service provision agreement.

Certificate of Compliance for community and private water service providers.

44. (1) Community and private water service providers must maintain a valid Certificate of Compliance issued by the Directorate.

(2) The Certificate of Compliance will be issued by the Directorate to community and private water service providers that have submitted annual performance reports to the Directorate which have documented-

- (a) Performance against set indicators including the area served, number of consumers, technical efficiency of services provided, and quality of water provided;
- (b) Cost of services and commercial efficiency of services provided;
- (c) Number and nature of complaints;
- (d) Compliance to corporate governance guidelines.

(3) A community or private water service provider who fails to comply with good governance practices and who fails to maintain a Certificate of Compliance may be subjected to a financial and technical audit at any time as approved by the County Executive Committee Member.

(4) In the event that the technical and/or financial audit specified in sub-section (3) above determines that the management committee has failed to present accurate records or has failed to provide acceptable water services due to acts of negligence or fraud then the cost of the audit shall be borne by the committee members.

(5) In the event of non-compliance with this act or mis-management water services or fraud or negligence following the audit contemplated under sub-section (4), the management committee shall be held individually and collectively liable and be guilty of an offence and, on conviction, shall be liable to a sentence of not less than six months imprisonment or a fine of not less than One Hundred Thousand Shillings or both such fine and imprisonment.

Cancellation or variation of service provision agreement.

45. (1) The Directorate may cancel or vary the terms of the service provision agreement if the service provider —

- (a) contravenes any condition of the service provision agreement, or
- (b) fails to make beneficial use of the agreement as determined by the Directorate.

(2) A service provision agreement shall not be cancelled or varied under this section unless notice of the proposed cancellation or variation has been served on the service provider and the service provider has been afforded a reasonable

opportunity to show cause to the Directorate as to why the agreement should not be cancelled or varied.

(3) Where a service provider fails to comply with the terms of the service provision agreement the Directorate may take appropriate and necessary measures to ensure the uninterrupted delivery of water services.

(4) Measures contemplated in sub-section (3) may include the imposition of a professional manager or maintenance service provider, lease of assets on reasonable terms, compulsory utilization of assets on fair terms, and control over revenues derived from the water services.

Clustering of community water service providers.

46. (1) The County Executive Committee Member shall facilitate the development and operation of community water service providers in areas within which the county water service providers do not provide adequate water services.

(2) Where, following viability studies, it is recommended that certain community water service providers should cluster into bigger associations in order to better achieve technical and commercial viability, the County Executive Committee Member shall put in place appropriate measures to encourage such community water service providers to cluster; consolidate and outsource to a common services provider services such as billing services, repair and maintenance services and or other similar services; or engage the services of a contractor to provide professional management services.

(3) The County Executive Committee Member shall develop guidelines for clustering of community water service providers not inconsistent with the county water and sanitation services strategy and the guidelines for rural water service provision established by WASREB.

(4) A community water services provider which takes steps to enhance viability through clustering, outsourcing of services and or engagement of professional management services shall be eligible for financial, technical and other support from the county government during the period before it achieves financial viability.

Water quality control.

47. (1) The Directorate shall establish mechanisms for water quality control in the County.

(2) The quality control mechanism referred to under subsection (1) include —

- (a) establishing a water quality monitoring programme;
- (b) strengthen water safety planning in the county;
- (c) plan for and make investments in water quality control within the county;
- (d) establish a water quality control laboratory;
- (e) build partnerships in research on water quality in the County;
- (f) liaise with national government agencies with relevant expertise on water and sanitation quality control; and
- (g) publicize information on water quality in the County and take necessary steps to ensure that such information is readily available.

(3) Water service providers shall conform to water quality standards adopted by the Water Services Regulatory Board.

PART V: COMMERCIAL VIABILITY AND SERVICE DELIVERY

Tariffs for water and sanitation services.

48. (1) Subject to the national policy and such requirements as may be imposed under national law, tariffs for the provision of water services to urban areas shall be set on the basis of full recovery of capital, operation and maintenance costs while tariffs for the provision of water services to rural areas and low income areas or informal settlements may be set on the basis of the full recovery of operation and maintenance but not capital costs.

(2) The county government may in appropriate cases provide financial assistance to enable a water services provider which satisfies the criteria stipulated in the water services strategy meet a portion of its operation and maintenance costs.

(3) Subject to national legislation a water services provider may impose a charge for accepting into its sanitation system and treating wastewater from industrial and other trade premises within its supply area.

(4) A water services provider which provides desludging and or exhauster services may impose a charge for treating the sludge and or wastewater.

(5) Not less than 10 days prior to the due date of payment a water services provider shall avail a water bill or other invoice to each of its customers prepared whenever practicable on the basis of metered supply.

Ring fencing of revenues.

49. (1) All funds of a county water services provider and all revenues arising from provision of water and sanitation services by a county water services provider shall not form part of the general revenues of the county government but shall be retained by the water services provider for its purposes.

(2) Any excess of revenue over expenditure at the end of the financial year shall not be paid over to the county government but shall be retained by the county water services provider to be used for the improvement of water services within the area of supply of the county water services provider.

(3) Every water services provider, whether public or private, shall establish and maintain a contingency fund into which it shall pay a portion of its revenues to be used to pay for emergency repairs and meet the costs arising from unforeseen occurrences which can disrupt the provision of water services.

(4) All funds and revenues arising from the provision of water services by community water service providers shall be used exclusively for the development, rehabilitation, operation and maintenance of the water services and no more than 5% of total annual revenues shall be paid to management committee or board for sitting allowances.

(5) Sitting allowances shall only be paid to the management committee or board of county or community water service provider for meetings held and that are consistent with the county and national regulations and guidelines.

Private sector participation.

50. (1) Subject to compliance with the requirements of applicable national law a county water services provider may, in an appropriate case, engage in a public private partnership for development of water services infrastructure and or the provision of water and or sanitation services.

(2) Any assets, facilities and infrastructure developed under a public private partnership to be used for the provision of water and or sanitation services shall be deemed to be public property and upon the expiry or other termination of the public private partnership agreement shall be vested in and be owned by the county government or county water services provider as appropriate.

(3) The county government may with the approval of the county cabinet and the Regulatory Board and subject to compliance with applicable national and county legislation divest itself of the assets and liabilities for the provision of water services to a private water services provider or community water services provider.

Customer relations.

51. (1) A water services provider shall at all times maintain a customer relations system including a feedback and grievance resolution system.

(2) A water services provider shall formulate and regularly review a service delivery charter, including implementation mechanisms.

Establishment of County Water Action Group(s).

52. (1) The Directorate shall develop modalities for registering and supporting water action groups in the County, in line with guidelines established by the Water Services Regulatory Board, to provide a system for consumer participation and feedback on water services within the County;

(2) Water action group (s) shall be duly registered as community-based organisation association(s) under national legislation.

(3) The Directorate shall develop regulations not inconsistent with guidelines established by the Water Services Regulatory Board on the establishment and conduct of the affairs of water action groups including —

- (i) The eligibility for registration;
- (ii) The procedure for registration;
- (iii) The identity of water action groups;
- (iv) The Constitution for water action groups;
- (v) The qualifications, elections, transition and removal of leaders;
- (vi) The membership of water action groups;
- (vii) The jurisdiction of water action groups;
- (viii) The meetings of water action groups;
- (ix) Reporting the activities of water action groups; and
- (x) Any other issues relevant to the performance of the functions of the water action groups

(4) An application to the Directorate for registration as a water action groups shall be in writing and based on regulations governing registration of water action groups.

(5) A potential water action groups shall only be registered upon meeting the criteria set out in regulations developed under sub section 3.

Functions of County Water Action Group(s).

53. (1) The functions of water action groups shall include —

- (a) Providing consumer feedback on the performance of water service providers in their respective areas of jurisdiction;
- (b) Facilitating public participation for water services related issues;

- (c) Advising the Directorate on water project priorities within their respective jurisdictions;
- (d) Participating in water and sanitation health education within their respective jurisdictions; and
- (e) Resolving conflicts involving water services within their respective jurisdictions;
- (f) Monitoring customer complaints submitted to the water service providers;
- (g) Escalating unresolved water service-related complaints to the Directorate and the Water Services Regulatory Board;
- (h) Facilitating negotiation, arbitration and transfer of land for development of water supply infrastructure, including resolution of land related conflicts.
- (i) Any other function assigned by the County Executive Member or by any other law;

Complaint Escalation Mechanism.

54. (1) Any person or Water Action Group may lodge a complaint with the local sub-county water office, having first lodged the complaint with the local water service provider and reasonably pursued the grievance resolution mechanism provided by the water service provider.

(2) The sub-county water office shall maintain an up to date register of complaints filled at its office with details of which complaints have been resolved.

(3) It is the duty of the sub-county water officer to make reasonable efforts to investigate and resolve any complaints lodged at the office within three months.

(4) Where a complaint remains unresolved for more than three months, the complainant may lodge the complaint with the head of the Directorate and the Water Services Regulatory Board.

Interruptions in water services.

55. (1) On each occasion of a planned interruption a water services provider shall notify its customers who are likely to be affected by the interruption not less than 24 hours prior to the planned interruption and shall indicate the expected duration of the interruption.

(2) Where an unplanned interruption occurs to water services, the water services provider shall notify its customers as soon as reasonably practicable and in any event not more than 12 hours after the discovery of the interruption, and keep customers fully apprised on the progress being made to redress the cause of the interruption and the expected time and or day of resumption of normal service.

(3) Where an interruption in services extends for a period longer than 14 [*or other appropriate period*] days the water services provider shall take remedial measures to the extent practicable to provide consumers with a basic supply of water through bowsers and other mobile means.

(4) Where such interruptions arise from damage to pipes or other infrastructure by a contractor carrying out works the contractor shall repair the damaged pipes or infrastructure at his cost within such time as the Directorate stipulates and, pending the restoration of the water supply, the contractor shall provide an alternative water supply to the affected consumers at his cost.

PART VI: INSPECTION, EVALUATION AND MONITORING

Power of entry and inspection.

56. (1) A water services provider shall establish and maintain an inspectorate office with adequate resources and staff.

(2) An inspector employed by the water services provider may enter any premises to which it provides water and or sanitation services in order to inspect and monitor

- (a) the distribution system;
- (b) the water meter(s);
- (c) water storage systems;
- (d) the sanitation system;
- (e) such other elements of the water and sanitation services and administrative aspects as the County Executive Committee member, may, through regulations, consider appropriate for service delivery.

(3) The hours within which a normal inspection may be undertaken by an inspector shall be specified by each water service provider.

(4) Any inspection undertaken by an inspector outside of the normal hours for an inspection shall only be undertaken in the case of an emergency or where the water service provider has reasonable cause to believe that the water service is being tampered with unlawfully.

(5) A water services provider shall communicate to its customers the recommended methods and procedures of verifying the identity of inspectors seeking entry into premises and maintain at all times a customer help line to which customers may telephone to verify any information provided to them by the inspector.

(6) Where the water and sanitation services provider has knowledge of, or suspects the illegal or unauthorized access to, and use of its water and or sanitation services in any premises, it shall apply to the appropriate court for a warrant to enter and search the premises.

(7) Nothing in this sub-section (6) shall prevent a water services provider from disconnecting and terminating the water services from a point outside the premises in question.

Evaluation and monitoring of water service providers.

57. (1) The County Executive Committee Member shall, on an annual basis, with the technical assistance of the Directorate and in consultation with the Regulatory Board, undertake monitoring and evaluation of the performance of each water services provider to ascertain the extent of compliance with the county and national water services policy and performance targets.

(2) Any person who knowingly provides false information to the Directorate regarding the performance of a water service provider, whether county, community or private, shall be guilty of an offense which shall be punishable by a fine of not less than fifty thousand shillings or a jail term of not less than one month.

(3) The monitoring and evaluation reports on water service providers undertaken by the Directorate shall be documents available for public inspection in compliance with the Constitution of Kenya, 2010 and The Access to Information Act, 2016.

(4) The County Executive Committee Member shall, on the basis of recommendations of the monitoring, evaluation and learning report, take appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and or sanitation services provided by water services providers operating in the county.

PART VII – DEVELOPMENT AND MAINTENANCE OF WATER WORKS

Waterworks regulation and development.

58. (1) The Directorate shall develop water works in the County.

(2) The water works referred to under subsection (1) include —

- (a) water supply infrastructure;
- (b) surface runoff control infrastructure;
- (c) water harvesting and storage facilities;
- (d) water pans;
- (e) dams;
- (f) sewerage and waste-water drainage infrastructure; and
- (g) any other waterworks in the County.

(3) Subject to the national legislation governing the regulation, management and development of water resources, water and sewerage services the Directorate may issue a ‘no-objection’ to persons other than the County government, seeking to develop waterworks in the County.

(4) The Directorate shall develop a waterworks priority schedule for the County in every financial year detailing the waterworks that are of strategic importance to the County.

(5) The Directorate may develop standards for water and sanitation works in [Named] County that are not inconsistent with national standards for water works.

(6) The Directorate shall develop guidelines for the standardization of water and sanitation equipment and technologies installed or to be installed in the county.

(7) The Directorate shall monitor the compliance status for waterworks developed in the County by any person.

Water project design approval.

59. (1) The Directorate shall approve all water project designs that are to be implemented in the County for public domestic water services, whether by the county government, water service provider, community-based organization, non-governmental organization, religious organization or private entity.

(2) Any design submitted to the Directorate for approval must —

- (i) comply with standards established by the County and National Government agencies;
- (ii) establish a budget for the maintenance of the infrastructure;
- (iii) determine whether the revenues to be derived from the operation of the infrastructure are sufficient to maintain the infrastructure;
- (iv) demonstrate what provisions or arrangements have been made for the proper maintenance of the infrastructure contemplated;

- (v) demonstrate that the design has considered the potential impacts of climate change and has incorporated any mitigation measures necessary.

(3) Project designs for waterworks shall incorporate security and safety measures to prevent unauthorized access and accidents, including but not limited to fencing, lockable access, security lighting, labels, and markings, among others.

(4) The Directorate may re-design a project submitted for approval by any person.

(5) Any persons who implements a project that has not been approved by the Directorate commits an offence.

(6) The County Executive Committee Member may issue regulations for the better administration of this Part, including the qualification of persons eligible to develop and approve designs.

Community participation in monitoring project implementation.

60 (1) The implementer of a project for public water supplies shall consult with the Sub-County WASHCOORD Forum and the Sub-County Water Office to establish a Project Implementation Committee (PIC) to monitor the development of water infrastructure in the community;

(2) The Project Implementation Committee shall consist of —

- (i) One representative of the Directorate;
- (ii) One representative of the Sub-County administration and coordination office;
- (iii) Two representatives of the beneficiary community (one man and one woman) selected by the local community and knowledgeable on local water issues;
- (iv) One representative of a local non-governmental organization appointed by the Sub-County WASHCOORD Forum.

(3) The Project Implementation Committee shall —

- (i) Monitor the implementation of the project to confirm compliance to the approved design, location, WRA conditions, and NEMA requirements;
- (ii) Report any discrepancies to the Directorate and the relevant authorities;
- (iii) Provide communication between community members, contractor and the project proponent;
- (iv) Approve the Certificate of Completion to confirm that the works have been completed in accordance with the approved design and any design changes approved by the Directorate.

Tagging of Water Works.

61. (1) The Directorate shall develop a system for tagging water infrastructure with unique identification numbers linked to the inventory contemplated in

Section 11(sub-section 4j).

(2) The directorate or any organization developing water supply infrastructure shall ensure that the unique identification number is fixed in close proximity to the infrastructure so as to be permanently visible.

Community water works to be held in trust by County Government.

62. (1) Any water works wholly developed or to be developed by a non-governmental organization, international development partner, faith-based organization, or private philanthropist on behalf of a community and where the entity to operate and manage the works is a community water service provider, shall be held in trust by the county government.

(2) Where there is insufficient evidence of the ownership of assets for community water works, the Directorate shall arrange for a public meeting of interested parties to be held at the said water works to obtain a fair record of the origin of the assets.

(3) The minutes of the public meeting contemplated in sub-section (2) will be adopted by the Directorate as the official record of the origin of the assets unless evidence to the contrary is produced.

(4) The County Government shall hold in trust all the water works in the county unless there is evidence of the origin or ownership of the assets for the water works.

(5) The Directorate shall, after public consultation, determine the entity best suited to operate and manage the water works referred to in sub-section (1).

Compulsory acquisition of land.

63. (1) The County may compulsorily acquire land within its jurisdiction to develop waterworks or to guarantee continued operation of existing water supply infrastructure for public purposes.

(2) In undertaking compulsory acquisition of land referred to under subsection (1), the County shall comply with the provisions of the Land Act, 2012.

National Government licenses and permits.

64. (1) Subject to national legislation governing water services, the County Executive Committee Member shall facilitate quick access and provision of National Government permits and licences necessary for the development of waterworks in the County.

(2) The County Executive Committee Member shall initiate discussions with relevant National Government institutions under this Part to ensure expedient issuing of National Government permits and licences.

PART VIII –FINANCIAL PROVISIONS

County Water Services Fund.

65. (1) There is established a Fund to be known as the [Named] County Water Services Fund established and administered in accordance with section 116 of the Public Finance Management Act, 2012.

(2) The funds of the Water Services Fund shall consist of —

- (a) Such moneys as may be appropriated by the [Named] County Assembly; which shall not be less than ten percent of the annual development budget of the ministry of water;
- (b) Revenues from levies issued under this Act;
- (c) Revenues from penalties and compensation given under this Act; and
- (d) Grants and donations from lawful sources.

(3) The funds placed in the Fund shall be ring fenced and used exclusively for purposes described in sub-section (4).

(4) The Fund shall be applied to the following purposes:

- (a) performance-based long-term financial support to county, community and private water service providers and maintenance service providers for the operation, repair and or maintenance of drinking water supply and sanitation infrastructure, equipment and facilities in areas considered not to be commercially viable;
- (b) provision of drinking water services in under-served and marginalized areas;
- (c) provision of water and sanitation services in public institutions such as health centres and schools;
- (d) supporting water service providers serving rural areas to improve the climate resilience of their services, in line with the county climate change policy;
- (e) support to community water service providers and water resource user associations for source protection measures;
- (f) financing the activities of the County WASHCOORD Forum, County WASHCOORD Technical Committee, WASHCOORD Secretariat, and Sub-County WASHCOORD Forums;
- (g) financing the activities of the County Water Action Group(s);
- (h) building the human resource capacity of the Directorate;
- (i) providing funds, including the allocation to reputable independent funds, to leverage external funding in order to co-finance activities and services for which the County Water Services Fund was established.

Fund Administrator.

66. (1) The Fund Administrator shall be a County Government officer designated by the County Executive Committee member for Finance.

(2) A person shall not be eligible for appointment as the Fund Administrator unless the person –

- (a) Holds at least a degree qualification from a university recognized in Kenya;
- (b) Has at least 5 years professional experience related to financial management.

(3) The Fund Administrator will report to the County Executive Committee member for Finance;

(4) The Fund Administrator shall be responsible for:

- (a) Receiving monies into the Fund;
- (b) Disbursing monies from the Fund in accordance with the Fund Utilisation Framework through grants approved by the Fund Advisory Panel;
- (c) Maintaining all financial records of the Fund;
- (d) Preparing accounts of the Fund for each financial year;
- (e) Preparing Fund Financial Statements on a quarterly basis for review by the Fund Advisory Panel and the County Executive Committee member for Water;
- (f) Not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General;

- (g) Arranging for an independent annual audit of the Fund by an auditor approved by the County Executive Committee member for Finance who shall submit the audit report no later than the end of February of the following year;
- (h) Present the financial statements to the county assembly upon approval by the County Executive Committee Member for Water;
- (i) Perform any other duty in fulfillment of the provisions of Section 116 of the Public Finance Management Act, 2012.

Fund Advisory Panel.

67. (1) The County Executive Committee Member for Water, in consultation with the County Executive Committee Member for Finance, and the approval of the County Assembly shall constitute a Fund Advisory Panel of not more than seven members.

(2) The function of the Fund Advisory Panel will be to:

- (a) Establish and periodically review the Fund Utilisation Framework;
- (b) Ensure that the Fund is used efficiently and effectively to support the purposes set out in Section 62;
- (c) Approve the annual budget;
- (d) Approve grant requests;
- (e) Receive reports from the Fund Secretariat and Fund Administrator.

(3) The members of the Fund Advisory Panel shall consist of:

- (a) The Director for Water Services who shall be the chairperson of the Fund Advisory Panel ;
- (b) The Director for Public Health;
- (c) The Director for the Environment;
- (d) Two members drawn from non-governmental organisations, private sector or development partners who have contributed funds into the County Water Services Fund;
- (e) Two members from non-governmental organisations, private sector or development partners who are implementing water and sanitation programs in the county and who have been nominated by the County WASHCOORD Forum.

(4) The members of the Fund Advisory Panel shall not be reimbursed for serving on the Panel.

(5) The Fund Advisory Panel shall meet not less than once every three months.

Fund Secretariat.

68. (1) The Directorate shall provide a Secretariat to support the Fund Administrator with technical services to:

- (a) Prepare an annual budget for the Fund;
- (b) Receive and evaluate requests for funding;
- (c) Monitor utilization of the sub-grants;
- (d) Provide communication to prospective grantees;
- (e) Prepare reports on fund utilization.

Fund Utilisation Framework.

69. (1) The Fund Advisory Panel shall formulate a fund utilization framework for approval by the Executive Committee Members for Water and Finance to guide the utilization of the Fund.

(2) No funds shall be disbursed from the Fund without an approved Fund Utilisation Framework.

(3) The Fund Utilisation Framework will set out:

- (a) Apportionment of the funds to be spent on different purposes;
- (b) Arrangements and formats for funding requests;
- (c) Maximum value and timeframe for grant disbursements;
- (d) Eligibility and technical criteria for evaluating fund requests;
- (e) Contracts for grant disbursement;
- (f) Reporting requirements for grantees;
- (g) Monitoring and evaluation arrangements.

(4) Notwithstanding sub-section (3), at least 50% of the annual budget of the fund shall be spent on operation, repair and or maintenance of drinking water supply and sanitation infrastructure, equipment and facilities in areas considered not to be commercially viable, and no more than —

- (a) 10% of the annual budget of the fund shall be spent on the WASHCOORD Forum expenses;
- (b) 5% of the annual budget of the fund shall be spent on building the human resource capacity of the Directorate.

PART IX: OFFENCES RELATING TO CONDUCT OF EMPLOYEES OF A WATER SERVICES PROVIDER

Offences by employees. **70.** (1) Employees of a county, community or private water services provider shall have immunity from liability and prosecution for any losses arising from action taken in good faith in execution of lawful duties.

Cap 63
Cap 65
Cap 183 (2) Notwithstanding (1) above, any actions of employees of a county, community or private water services provider involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act or their replacement or amendment.

(3) It is an offence for an employee of a county, community or private water services provider to willfully fail to —

- (i) read a meter when it is [his] [her] duty to do so;
- (ii) disconnect water services to a customer who has defaulted in making payment contrary to rules set by the water services provider;
- (iii) notify the water services provider of an illegal or unauthorized access and utilization of the water and or sanitation services;

(4) It is an offence for an employee of a county, community or private water services provider to collude with other persons to allow or assist such persons illegally to access and use water and or sanitation services contrary to rules set by the water services provider.

(5) Upon conviction for an offence under this section the person shall be liable to a sentence of at least six months imprisonment or a fine not less than Twenty Thousand Shillings, or both such fine and imprisonment.

(6) For purposes of this section, an employee of a county, community or private water services provider includes a person engaged on casual terms of service, as well as a contractor when performing duties falling within the scope of this section.

PART X: GENERAL OFFENCES

Impersonation of staff of the County Directorate or the water services provider.

71. Any person who impersonates an employee of a county, community or private water services provider shall be guilty of an offence and, upon conviction, be liable to a sentence of at least six months imprisonment, or a fine not less than Twenty Thousand Shillings, or both such fine and imprisonment.

Vandalism of water and sanitation services infrastructure.

72. (1) Any person, entity or institution that willfully vandalizes, damages, or destroys infrastructure or a facility of a county, community or private water and sanitation services provider shall be guilty of an offence and, on conviction, shall be liable to a sentence of at least six months imprisonment or a fine of not less than Twenty Thousand Shillings or both such fine and imprisonment.

(2) Upon conviction for a second or subsequent offence involving the willful destruction or vandalism of infrastructure or facilities belonging to a county, community or private water services provider the offender shall be liable in addition to any other prescribed penalty to a surcharge of an amount equivalent to the value of the vandalized infrastructure which surcharge shall be recoverable as a civil debt through a suit in a court of competent jurisdiction.

Illegal connection to and use of water services.

73. (1) Any person, entity or institution that connects to, diverts and or utilizes for any purpose, water and or sanitation services provided by a county, community or private water services provider without obtaining necessary approvals and making required payments shall be guilty of an offence and upon conviction shall be liable to imprisonment for a term of at least six months or a fine of not less than Twenty Thousand Shillings, or both such fine and imprisonment.

(2) Upon conviction the offender shall additionally be liable to a surcharge of the full value of the water services illegally utilized, with interest computed at the rate of 12% per annum until paid in full, which surcharge shall be recoverable as a debt owed to the water services provider.

Contamination of water and supply to domestic premises

74. (1) Any person, entity or institution that willfully contaminates or pollutes water which is used or intended to be used for domestic supply by discharging contaminants into it, throws waste or other contaminating matter into it or otherwise handles such water in such a manner as to contaminate it shall be guilty an offence and upon conviction shall be liable to imprisonment for a period of at least six months or to a fine of not less than Twenty Thousand Shillings or both such fine and imprisonment.

(2) Any person or institution that supplies water to domestic premises which he knows or ought to know is not fit for domestic consumption without issuing a warning to persons who are likely to consume it to the effect that the water is not fit for consumption and must be treated prior to being consumed is guilty of an offence and liable on conviction to imprisonment for a period of at least six months or a fine of not less than Twenty Thousand Shillings of both such fine and such imprisonment.

PART XI: ADMINISTRATION OF WATER SUPPLY AND INFRASTRUCTURE SERVICES

Raw water abstraction permits and access rights.

75. (1) A county water services provider shall ensure the availability and development of water sources for sustainable abstraction as necessary to enable the water services provider supply adequate quantities and quality of water to its consumers.

(2) A water services provider shall apply for and secure an abstraction permit from the relevant national regulatory authority, access rights, easements and source development agreements as may be necessary to enable it obtain such raw water as it requires for the performance of its functions.

(3) Where the water services provider does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall, with the support of the County Executive Committee Member, make arrangements for the purchase of water in bulk.

Faecal Sludge Management.

76. (1) The County Executive Committee member in consultation with the County Executive Committee member in charge of public health shall, as soon as reasonably practicable following coming into effect of the Act, make regulations governing the sustainable management and safe disposal of faecal sludge, including the development and operation of decentralized treatment facilities, licensing of exhauster service providers, and disposal of faecal sludge after collection from septic tanks by exhauster service providers.

(2) Regulations made under this section may require one or more county water service providers to establish and maintain facilities for the disposal and treatment of faecal sludge and waste water from exhausters operating within the area of supply of the county water services provider.

Easements, access rights etc.

77. (1) The acquisition of easements for purposes of water services infrastructure shall follow the procedure set out in Land Registration Act 2012.

(2) The Directorate or a holder of a permit from the Directorate which authorises the construction of waterworks that would, when constructed, be wholly or partly situated upon lands not held by the permit holder shall acquire an easement on, over or through the land on which the works would be situated and, unless the works have previously been lawfully constructed, shall not construct or use the works unless and until such an easement has been acquired.

(3) A water services provider which acquires easements, access rights and or property rights over land on or over which its facilities and infrastructure is constructed shall ensure that it has obtained and registered the property or access rights in its name and it has in its custody the relevant land ownership documents.

(4) A water services provider shall take steps to obtain and maintain in its records “as built” drawings of its facilities and infrastructure, geo-referenced maps and plans and other relevant documents which show the location and layout of the water infrastructure.

(5) The County Executive Committee Member shall prescribe rules for protecting access rights to point water sources enjoyed by community members on traditional or other non-statutory basis.

(6) Any land granted or leased by a community or an individual for the purpose of development of water and sanitation works shall be formalized through a written agreement between the parties in a standard template to be developed by the Directorate. All land agreements presumed in this sub-section shall be registered at the national land registry and any compensation payable, where applicable, shall not be in the form of free water access to the lessor or donor.

(7) Where community access rights are disputed or have not been previously documented, the Directorate shall arrange for a meeting of interested parties at the water works to document the terms of the community access rights;

(8) The minutes of the meeting contemplated in sub-section (6) shall be adopted by the Directorate as the official record of the community access rights unless subsequently amended by a written agreement signed by all the interested parties.

Construction of boreholes within supply area.

78. (1) Subject to national legislation every application to the Water Resources Authority for the construction of a borehole for domestic water consumption within the area of supply of a water services provider shall be submitted for a “no-objection” to the water services provider within whose area of supply the borehole is to be constructed.

(2) In considering an application for a “no-objection” the water services provider shall take account its ability to provide the water services in respect to which the application for the borehole has been made and, if it reasonably believes that it can provide the required water services within a period not exceeding one year, it shall decline the request for a “no-objection.”

(3) Where the water services provider wishes to take water from the borehole for supply to its customers it shall enter into a contract with the owner of the borehole for the bulk purchase of water from the owner of the borehole.

(4) The water services provider shall maintain an inventory of boreholes constructed within its area of supply and in the event of an emergency the water service provider may require the owner of any borehole to offer the water from the borehole to the public on terms and conditions approved by the County Executive Committee Member and in which the tariff shall not exceed 150% of the operation and maintenance cost of running the borehole.

(5) Any dispute between the owner of the borehole and the water services provider over the use of the borehole by the water services provider for the provision of water to the water service provider’s customers shall be submitted to the Directorate for determination and if any party is dissatisfied with the decision of the Directorate he/she may appeal to the Water Tribunal established under the Water Act, 2016.

Regulation of water vending kiosks.

79. (1) The County Executive Committee Member shall, within six months of this law coming into effect, make regulations on the operations of water vending kiosks and water trucking in the county.

(2) Without prejudice to the generality of subsection (1) such regulations may make provision with respect to —

- (i) the water quality, operations and licensing of water kiosks and water trucking;
- (ii) sources of water and tariffs chargeable for water sold and purchased at water vending kiosks and for water trucking services;

- (iii) optimal location of water vending kiosks and water trucking; and
- (iv) restriction of ownership of water vending kiosks and water trucking services by employees of water service providers and the Directorate.

PART XII: APPROVALS OF CONSTRUCTION WORKS AFFECTING WATER AND SANITATION INFRASTRUCTURE

Approval of construction works.

80. (1) In all cases where a person is undertaking road, water or other civil construction works which affect water and sanitation infrastructure operated by a water services provider, the approval of the water service provider shall be obtained on terms and conditions set by the water service provider, which may include the payment of a fee.

(2) It is an offence for a person to undertake the works contemplated in section (1) without the approval of the water services provider and upon conviction, such person shall be liable to a fine of not less than Twenty Thousand shillings or imprisonment for a period of at least six months or both such fine and such imprisonment.

(3) Where water and sanitation infrastructure operated by a water services provider is improperly sited and liability for its relocation rests with the water service provider, sufficient time shall be provided by the person responsible for the construction works to such water service provider for relocation.

(4) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works the person responsible for the construction works shall, in addition to any other prescribed penalties, be liable to a surcharge of the full cost of repairs or replacement and it shall not be a defence to any action taken against the person responsible, whether civil or criminal, that the water services provider had approved the works.

(5) Any person, entity or institution undertaking road, water or other civil construction works in the county shall allocate a budget for the relocation of existing utilities which affect water and sanitation infrastructure operated by a water services provider

(6) The provisions of this section shall apply equally to public entities undertaking construction works as they do to private contractors undertaking works for private persons or under a contract with public bodies.

Certification of property development works connecting to water service line.

81. (1) In every case where a developer of property is undertaking plumbing, sanitation and related works for connection of a private property to the service line operated by a water services provider —

- (i) The developer shall present the plans for such plumbing and sanitation works to the water services provider for inspection, prior to commencement of construction;
- (ii) Upon completion of the works, the water services provider shall inspect the works and if the works comply with the plans, certify the works as approved for connection to the service line; and
- (iii) All connections to a private property from the service line shall be undertaken by the water service provider in accordance with its customer charter and terms and conditions of service.

(2) A developer who undertakes plumbing, sanitation and related works for connection of the private property to the mains operated by a water services provider without presenting the plans for certification as required under this section shall be guilty of an offence and on conviction shall be liable to imprisonment for a period of at least six months or a fine of not less than Twenty Thousand Shillings or to both such fine and imprisonment.

PART XIII: PROTECTION AND CONSERVATION OF WATER RESOURCES

Storm water drainage. **82.** (1) Before undertaking works for the development of property in an urban area the person shall prepare and submit for approval by the [Named] Municipality a storm water management plan.

(2) The plan shall outline measures taken to ensure stormwater harvesting and make provision for short term storm water storage, retention and augmentation of groundwater resources before discharge into storm water drainage channels of the urban authority.

(3) The arrangements made by the urban authority for the disposal of storm water from rooftops and paved areas of the urban area shall not increase the risk of erosion or flooding of private property.

(4) The powers of the Municipality to approve a storm water management plan under this section shall be exercised in consultation with the directorate in charge of county urban planning.

Rainwater catchment. **83.** (1) The County Executive Committee Member in consultation with the County Executive Committee Member in charge of infrastructure and urban development shall make regulations requiring householders to install rainwater catchment systems with a storage capacity capable of meeting at least 5,000 litres for rural areas and at least 10,000 litres for urban areas, for domestic water supply.

(2) For vulnerable or poor households, the rules may make provision for enabling the county government to offset a portion of the capital cost of installing the storage systems subject to such terms and conditions as the County Executive Committee Member in charge of the County Treasury shall approve.

(3) A householder who, having received financial assistance from the county government to do so, willfully fails to install a rainwater catchment system contrary to the rules shall be guilty of an offence and on conviction shall be liable to imprisonment for a term of at least three months or a fine of not less than Fifty Thousand Shillings or both such fine and such imprisonment.

(4) The Directorate shall advise householders on the household drinking water treatment and other handling requirements for rainwater which is to be consumed.

Catchment conservation. **84.** (1) The County Executive Committee member, in consultation with the County Executive Committee member in charge of environment, shall formulate a plan for the conservation by the county government of catchments and other sources of water from which county water service providers take water for supply.

(2) The plan shall provide for measures and institutional arrangements of the county government for the conservation of catchments and water sources.

(3) The plan shall provide collaborative arrangements between the county government and water resources users associations in the formulation and implementation of catchment or sub-catchment management plans.

(4) Water service providers, both county and community, shall register and participate in catchment conservation activities of their respective water resource users association.

(5) The County Executive Committee Member may, following consultations with the County Executive Committee Member in charge of the County Treasury, and with approval of the Water Services Regulatory Board, impose a levy on water consumption to be used exclusively to finance part of the implementation of catchment management plans prepared by the water resources users associations.

(6) Funds derived from levies imposed under sub-section (5) shall be transferred to the County Water Services Fund for administration of the funds.

Regulations.

85. (1). The County Executive Committee Member shall make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made under this Act shall be subjected to public consultations and be approved by the County Assembly and the County Executive Committee member for Water.

(3) Regulations made under this Act shall be published in the Gazette and shall come into effect upon publication.

SCHEDULE 1

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF BOARDS OF COUNTY WATER SERVICES PROVIDERS

1. Meetings

The Board shall meet for the dispatch of business at such times and places as it shall appoint, or failing any such appointment, as the Chairman shall appoint:

Provided that the Board shall meet not less than four times in any financial year.

2. Special meetings

The Chairman or any three directors may, by not less than twenty-four hours' written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time.

3. Notice of meetings

Except where a shorter period is appointed notice of the date, time and place of each meeting shall be given in writing at least fourteen (14) calendar days beforehand to every director at such address in Kenya as he shall have notified to the Corporation from time to time:

Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

4. Quorum

The quorum necessary for the transaction of business by the Board shall be not less than two thirds of the members of the Board.

5. Chairperson

The Chairperson shall preside at meetings of the Board:

Provided that if he is not present at the start or at any time during a meeting, the Vice Chairperson shall chair, and if both absent, the directors present, if a quorum, may choose one of their number to act as chairperson during the Chairperson's absence from that meeting.

6. Voting

Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting:

Provided that in the case of any equality of votes, the Chairperson of the meeting shall have a second or casting vote.

7. Minutes

The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat.

8. Other procedures

Subject to the provisions of this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

9. Disclosure of interest

(1) If a director is directly or indirectly interested in any contract, proposed contract, or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

10. The common seal

The affixing of the common seal of the Corporation[company] shall be authenticated by the signatures of the Chairperson or some other director authorized generally or specially by the Board to act for the purpose, and of an employee of the Corporation [company] authorized generally or specially by the Board to act for the purpose.

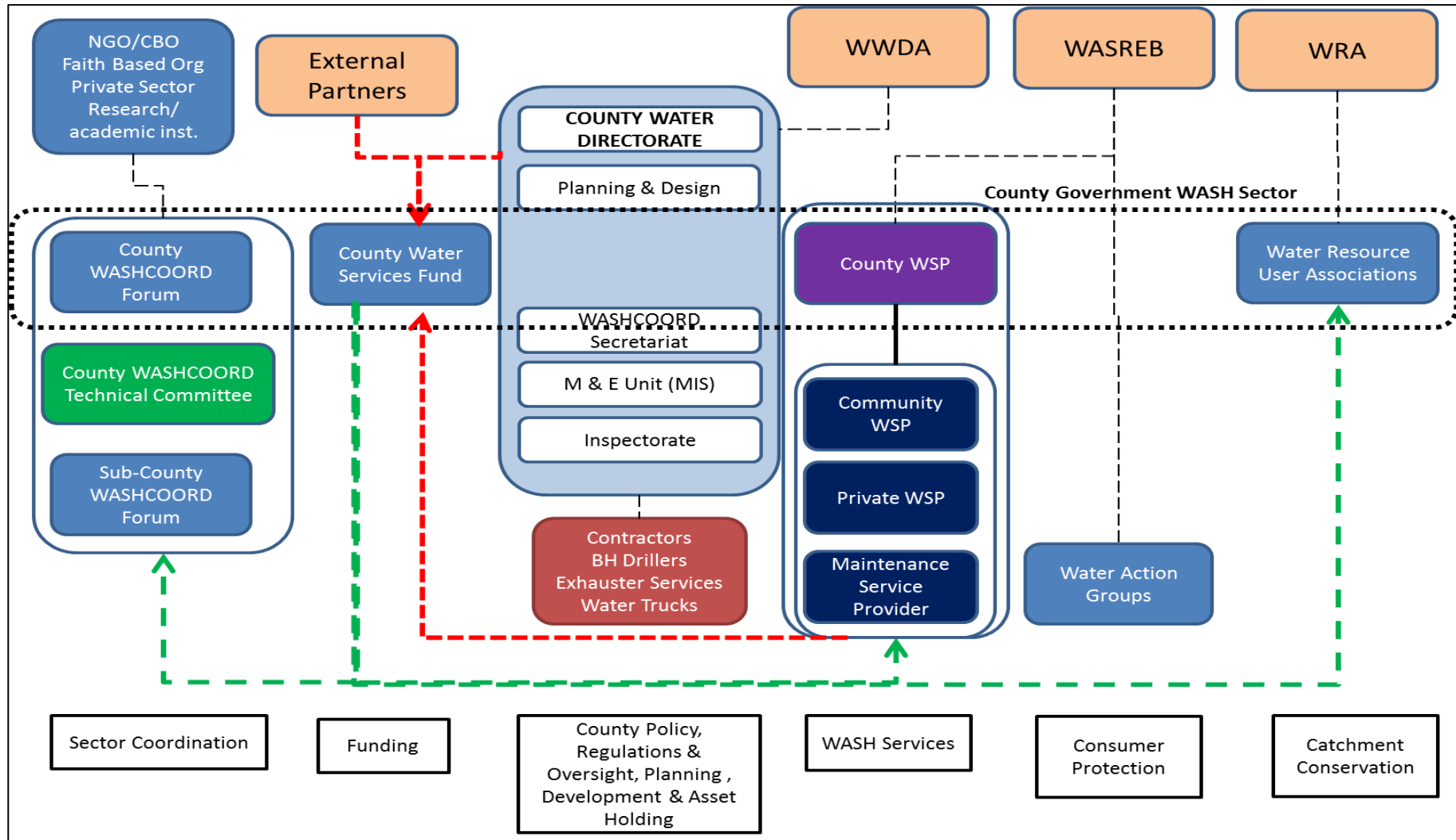
11. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Corporation [company] by any person generally or specially authorized by it for that purpose.

12. Proof of documents issued or executed

Any document purporting to be a document duly executed or issued under the seal of the Corporation [company] or on behalf of the Corporation [company] shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

SCHEDULE 2: INSTITUTIONAL AND COORDINATION FRAMEWORK FOR THE [NAMED] COUNTY WATER SERVICES SECTOR



MEMORANDUM OF OBJECT AND REASONS

The Bill is a framework legislation. It is intended to provide for a comprehensive legal framework to establish and regulate water supply, sewerage and sanitation services in the county, coordination, monitoring and oversight of the activities of institutional stakeholders in water service provision in the County and the promotion of public participation in water supply, sanitation and sewerage services delivery and regulation in the county. More specifically, the Bill is structured as follows:

Clause 1 provides for the short title and commencement of the Act.

Clause 2 provides for the interpretations of terms used in the Bill. This is intended to provide clarity during the implementation of the Act.

Clause 3 provides for the objects and purposes of the Act which are: to provide a comprehensive legal framework for the establishment and regulation of water supply, sewerage and sanitation services in the county, provide for the coordination, monitoring and oversight of the activities of institutional stakeholders in water services provision in the County and provide for the promotion of public participation in water supply, sanitation and sewerage services delivery and regulation in the County.

Clause 4 provides for the application and purposes of the Act. It provides that the Act shall apply to water and sanitation services provision in [Named] County and that the Act gives effect to the Constitution of Kenya and national laws as regards provision of water and sanitation services by the County Government of [County Name]. The rights conferred and duties imposed by the Act are in addition to those conferred and imposed by any other law.

Clause 5 highlights the guiding principles of development and implementation of the Act. These are: constitutional, environmental, institutional, equity, performance and commercial viability principles.

Clause 6 provides for the application of the guiding principles identified in Clause 5.

Clause 7 provides for the special measures to be taken by the directorate to ensure provision of water and sanitation services to vulnerable groups.

Clause 8 provides for the powers and duties of the County Executive Committee Member in charge of water. The County Executive Committee Member shall exercise control and oversight over the development and provision of water and sanitation services within the County and shall be assisted by the Directorate of Water and Sanitation Services established under this Act.

Clause 9 provides for the powers, duties and appointment of the County Chief Officer for water. The Chief Officer shall be responsible to the County Executive Committee Member for the administration of the county department of water.

Clause 10 provides for the formulation of a County Water and Sanitation Services strategy by the County Executive Committee Member and provides a guideline on: the contents of the Strategy, its publication, review and implementation.

Clause 11 establishes the Directorate of Water and Sanitation Services and sets out its composition, duties and functions.

Clause 12 sets out qualifications of a director of the directorate.

Clause 13 establishes a County Water Sanitation and Hygiene Coordination Forum (WASHCOORD); a consultation forum for all institutional stakeholders in the County on matters related to water and sanitation. The membership and leadership of the WASHCOORD forum is provided.

Clause 14 provides for the establishment of the County WASHCOORD Technical Committee and sets out the technical committee membership, appointment of members and documentation of meetings.

Clause 15 provides the functions of the County WASHCOORD Technical Committee.

Clause 16 sets out the conduct of the affairs of the County WASHCOORD Technical Committee.

Clause 17 establishes the Sub-County WASHCOORD Forums. Members of the Sub-County WASHCOORD shall be appointed by the Sub-County Water officers and in line with the guidelines developed by the County WASHCOORD Technical Committee.

Clause 18 sets out the functions of the Sub-County WASHCOORD Forum.

Clause 19 provides for appointment of County WASHCOORD Forum members while **Clause 20** sets out the functions of the WASHCOORD secretariat.

Clause 21 provides for the registration and reporting of institutional stakeholders who shall be required to provide the County WASHCOORD Forum with workplans detailing the nature and scope of specific projects and reports on activities every financial year.

Clause 22 provides for the registration of water resource user associations with the County Government in order to coordinate and support catchment conservation activities within the County. The Clause also sets out the registration criteria.

Clause 23 provides the annual reporting requirements of the Water Resource User Associations while **Clause 24** provides for the application of compliance certificates to the County Executive Committee Member by Water Resource User Associations. It also provides for inspection of Water Resources User Associations to determine compliance with statutory requirements and regulations under this Act.

Clause 25 provides for the selection of a representative of the community water services providers in the sub-county. The Clause also provides for annual reporting to the Directorate by each community water service provider.

Clause 26 provides for financial and technical support, from the County Government, to water service providers, maintenance service providers and water resource user associations with

compliance certificates. The financial support may be in the form of grants or subsidies. Administration of the financial support shall be guided by regulations developed by the County Executive Committee Member.

Clause 27 provides for the requirements for gender balance in the membership of: any management board or committee of a county water service provider or any committee appointed by the Directorate, management board or committee of a community water service provider.

Clause 28 provides for the establishment of county water services providers and transfer or lease of County water assets to the water services providers

Clause 29 sets out the functions of the county water services providers.

Clause 30 makes it mandatory for County Water Services Providers to enter into service provision agreements with the Water Services Regulatory Board and the County Government.

Clause 31 sets out the governance structure of County Water Service Providers while **Clause 32** sets out guidelines for meetings and procedures of the Board of Directors of the County Water Service Providers.

Clause 33 provides for the employment of a managing director and other employees of a County Water Services Provider. It also sets out the procedure for removal from office of the managing director.

Clause 34 outlines the sources of funds and assets of a County Water Services Provider.

Clause 35 provides for the preparation of revenue and expenditure estimates by the Board of a County Water Services Provider whereas **Clause 36** provides for keeping of books of account by the Managing Director and the Board of a County Water Services Provider as well as submission of the accounts to the Auditor-General.

Clause 37 provides for the registration of water service providers operating within the County and including County, community and private water service providers. The register of water service providers shall be maintained by the Directorate and shall be open to inspection by members of the public.

Clause 38 provides for the recognition and registration of water infrastructure maintenance service providers and also sets out the rules of their engagement.

Clause 39 provides for the provision of water services by private persons and sets out requirements for operation as well as penalties for contravention of the terms of engagement set out by this Act.

Clause 40 provides for the establishment of community water service providers subject to compliance with the requirements specified in **Clause 41** which makes it mandatory for any community-based civil or welfare organization intending to provide water in a given geographical to register with the Directorate.

Clause 42 sets out the functions of community water service providers.

Clause 43 provides for the Directorate to issue service provision agreements for community and private water service providers on terms and conditions not inconsistent with the requirements of the Water Services Regulatory Board. The Clause also confers the responsibility of developing regulations prescribing the terms and conditions by which community and private water services shall be bound to the County Executive Committee Member.

Clause 44 makes it a requirement for community and private water service providers to maintain a valid Certificate of Compliance issued by the Directorate upon submission of annual performance reports. It also sets out measures to be taken in the case that a community or private water service provider fails to comply with good governance practice or fails to maintain a Certificate of Compliance.

Clause 45 provides for the cancellation or variation of the terms of a service provision agreement and procedure for the cancellation or variation of the terms of a service provision agreement. It also confers upon the Directorate the responsibility of ensuring uninterrupted delivery of water services within an area where a service provider fails to comply with the terms of the service provision agreement.

Clause 46 provides for the clustering of certain community water service providers into bigger associations in order to achieve viability and determines that such water service providers shall be eligible for financial, technical and other support from the County Government during the period before it achieves financial viability.

Clause 47 provides for establishment of mechanisms for water quality control by the Directorate and requires that water service providers conform to water quality standards adopted by the Water Services Regulatory Board.

Clause 48 provides for the basis of tariff setting for water and sanitation services in urban and rural areas.

Clause 49 provides for ring fencing of funds and revenues arising from provision of water and sanitation services of a county water services provider.

Clause 50 provides for county water service providers to engage in public private partnerships for development of water services infrastructure and or the provision of water and or sanitation services. It also provides for the ownership of assets developed under a public private partnership upon expiry or other termination of the agreement.

Clause 51 provides for the maintenance of a customer relations system by a water services provider and formulation and review of a service delivery charter.

Clause 52 provides for the establishment of County Water Actions Group(s) and their recognition and support by the County through registration, monitoring and reporting.

Clause 53 provides the functions of County Water Actions Group(s) in facilitating consumer participation in water services improvement and complaints escalation.

Clause 54 provides a mechanism for complaint escalation from the water service provider, to the sub-county water office and to the County water office in the case that a complaint remains unresolved for more than three months.

Clause 55 provides for the issue of notification of planned and unplanned interruptions to water services by water services providers to their customers.

Clause 56 provides for the establishment and maintenance of an inspectorate office by a water services provider, stipulates aspects to inspect and monitor upon entry into any premise for inspection and monitoring purposes and provides procedures for monitoring and inspection.

Clause 57 provides for annual evaluation and monitoring of the performance of water service providers and confers this responsibility to the County Executive Committee Member, with technical assistance of the Directorate and in consultation with the Regulatory Board.

Clause 58 provides for the development and regulation of waterworks in the County.

Clause 59 provides for the approval of all water project design by the Directorate and sets out the criteria to guide approval of project design.

Clause 60 addresses community participation in monitoring project implementation. It provides for a Project Implementation Committee with local community representatives to monitor new water services infrastructure being developed in the community.

Clause 61 provides for the development of a system for tagging water infrastructure with unique numbers which should be permanently visible.

Clause 62 provides for the County Government to hold in trust all the water works in the County unless there is evidence of the origin or ownership of the assets for the water works.

Clause 63 provides for the County to compulsorily acquire land within its jurisdiction to develop water works or guarantee continued operation of existing water supply infrastructure for public purposes. Such acquisition shall comply with the provisions of the Land Act, 2012.

Clause 64 confers the responsibility of providing quick access and provision of national government permits and licenses necessary for the development of waterworks in the County upon the County Executive Committee Member.

Clause 65 provides for the establishment of the County Water Services Fund and sets out the sources of funds and purposes of the Fund.

Clause 66 sets out the qualifications and responsibilities of the County Water Services Fund administrator.

Clause 67 provides for the constitution, function and membership of the County Water Services Fund Advisory Panel. The constitution of the panel shall be determined by the County Executive Committee Member for Water and the County Executive Committee Member for Finance.

Clause 68 provides for the provision of a Fund Secretariat from the Directorate and sets out the technical services the Secretariat will provide to the Fund Administrator.

Clause 69 provides for the Fund Advisory Panel to formulate a Fund Utilization Framework for approval by the Executive Committee Members for Water and Finance.

Clause 70 provides for offences and penalties by employees of county, community or private water services provider.

Clauses 71, 72, 73 and 74 set out the penalties for impersonation of staff of the County Directorate or the water services provider, vandalism of water and sanitation services infrastructure, illegal connection to and use of water services and willful contamination of water and supply to domestic premises respectively.

Clause 75 provides for water services providers to apply for raw water abstraction permits, access rights, easements and source development agreements.

Clause 76 provides for the Executive Committee Members for Water and for Public Health to make regulations governing sustainable management and safe disposal of faecal sludge, development of decentralized treatment facilities, licensing of exhauster service providers and disposal of faecal sludge.

Clause 77 provides for acquisition of easements for purposes of water services infrastructure following the procedure set out in the Land Registration Act, 2012.

Clause 78 provides for the construction of boreholes within the supply area of a water services provider, sets conditions for such undertakings.

Clause 79 provides for the County Executive Committee Member to make regulations on the operations of water vending kiosks and water trucking in the County.

Clause 80 provides for water service providers to provide approval of construction to persons undertaking road, water or other civil construction works which affect water and sanitation infrastructure operated by a water services provider and provides for application of the provisions of the Clause.

Clause 81 provides for certification of property development works connecting to a water service line operated by a water services provider and sets out penalties for non-compliance.

Clause 82 provides for preparation of a stormwater management plan by developers of property in urban areas and approval of such plans by the [Named] Municipality.

Clause 83 provides for the County Executive Committee Member for Water and the County Executive Committee Member in charge of infrastructure and urban development to make regulations for household level rainwater harvesting.

Clause 84 provides for the County Executive Committee Member for Water and the County Executive Committee Member in charge of environment to formulate a plan for the conservation by the county government of catchments and other sources of water from which county water service providers take water for supply.

Clause 85 provides for the County Executive Committee Member in charge of water to make regulations for this Act.

The First Schedule sets out the provisions as to the conduct of business and affairs of boards of county water services providers.

The Second Schedule provides the institutional and coordination framework for the [Named] County water service sector.

.....
[Name]
[Chairperson, Relevant County Committee]