

Improving the framework?

Institutional reform and corruption in the water sector

It has been recognised that the world's failure to provide many of its citizens with access to water and sanitation is an issue of governance, and institutional reforms have been a constant feature in the drive for better sector performance. Reducing corruption is sometimes one of the objectives of decentralisation, privatisation, harmonisation and other reforms, but it is often not considered directly. Since institutional reforms may either reduce or even worsen corruption, it is important to include corruption risk assessments and mitigation measures in planning such interventions.

Introduction

"The crisis of water is a crisis of water governance, with corruption as one root cause" (Plummer 2008). The water sector has recognised that poor governance is one of the key underlying problems in improving access to water and sanitation. "Governance" refers to "how a country manages its affairs and the power and authority embedded in the mechanisms, processes, relationships and institutions through which groups and citizens express their interests and exercise their rights and obligations" (DFID 2007). Better governance requires an institutional framework where different interests come together to make informed decisions and to co-operate in the interests of the sector.

Institutional reforms in the water sector are primarily aimed at improving performance to achieve more efficient, effective and sustainable water and sanitation services, as well as better integrated water resource management. While improved transparency, integrity, and accountability are generally not key explicit objectives of institutional reform, there is an increasing focus in the water sector on improving mechanisms for accountability and integrity and also on applying anti-corruption measures. Country efforts to improve sector governance include a range of policy and legislative changes, institutional reforms such as decentralisation, seeking alternative service provision options, and the opening up of new funding approaches such as budget support and sector wide approaches (SWAs). To what extent might these different reforms provide a framework for reducing corruption and achieving greater accountability and transparency in the water sector? And when might they expose the sector to increased corruption risks?

This U4 Brief looks at how corruption can manifest itself when it comes to institutional reform in the water sector, providing examples illustrating the actors and processes involved. An underlying premise is that corruption is persistent and manifests itself dynamically, challenging any pursuit of an ideal set of institutional arrangements. It suggests that more effort should be focused on effective regulation and oversight in order to address corruption. It examines how donor support to water sector

institutional reform might potentially open space for corrupt practices and how donors can minimise or prevent these risks. Literature on institutional reform and corruption in the water sector is limited at best and the findings of this Brief should therefore be considered preliminary. Further research is needed to explore the impact of different types of institutional reforms on corruption.

Types of corruption in water institutions

The complexity of institutional environments in the water sector makes it difficult to summarise all the different forms of corruption that might be taking place, who is involved, what motivates corrupt practices and how to address them. Corruption can potentially be found "at every point along the water delivery chain" (Plummer 2008), involving all the major functions to provide water services including budgeting, planning, infrastructure development, establishing water service provider institutional arrangements, financial management and revenue collection, operations and maintenance, and in regulation. Contractual arrangements involve multiple and varied procurement processes because they are made with a whole range of players including implementing agents, construction companies, various consultants, technical assistance, and private or other water services providers. The complexity of some of these contractual arrangements is often beyond the capacity of those responsible for regulating the performance of the contracts and thus corrupt practices are easily concealed or overlooked. Those involved in corrupt activities in the sector may include national, international, public, private and civil society actors, as well as citizens. The conceptual framework of Plummer and Cross (see Table 1, next page) provides a valuable framework for understanding different types of corrupt interactions.

Institutional reforms in the water sector

Major trends in institutional reform in the sector have included separation of regulatory and operational roles, decentralisation, seeking alternative institutional options for service provision (such as private sector participation and corporatisation), and efforts to harmonise donor support under a single sector programme, called the sector wide approach (SWAp). These reforms have varying degrees of success, including in addressing corruption, which to a large extent depends on the institutional capacity in any particular setting.

Separating roles and functions

Separating policymaking and regulatory functions from the operational (provision) function has been one approach to improving accountability and strengthening regulatory oversight in the sector. This is relevant at both national as well as the local



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government level. South Africa is an interesting example and has legislated and implemented such a separation at the local government level. However, at the national level, the Department of Water Affairs and Forestry (DWAF)¹ has remained responsible for both the development and operation of raw water (including tariff setting) as well as for regulating the water sector. It has consequently been accused of being both referee and player.

The South African Water Services Act (Act 108 of 1997) sets the local institutional arrangements for water services provision and differentiates between the **water services authority** and the **water services provider**. The water services authority is any municipality with executive responsibility for water services. The authority function broadly includes: making bylaws (including monitoring and regulating water services provision); ensuring efficient, affordable, economical and sustainable access to water services for all consumers; preparing a water services development plan for the municipal area (including reporting to national government); and either performing the function of water service provider itself or contracting out this role. When the authority provides the water service itself, it must “manage and account separately”² for this function.

- This separation of the authority and provision roles resulted in a major effort by the water sector – and the DWAF in particular – to address what the authority function meant in practice and how to strengthen local government capacity to successfully fulfil this role. The authority function includes a number of accountability mechanisms such as:
- submission of a five year water services development plan to DWAF with annual reporting against the plan;
- reporting on stakeholder participation in the water and sanitation planning process;
- reporting on capital grants and progress against the water and sanitation targets with explanations for under or over-spending or slow progress;
- a consumer charter between consumers and water services provider which is regulated by the authority;
- financial accounting and reporting to the National Treasury including independent audits.
- Kenya is another case where the policy, regulation and service provision functions have been separated (TI Kenya and Maji na Ufanisi 2009). The Ministry of Water and Irrigation is responsible for policy formulation and guidance, while the Water Services Regulatory Board and Water Resources Management Authority are responsible for national and regional regulatory functions. The provision of water services is undertaken by water service providers which may be community based organisations, non-governmental organisations, the private sector, or autonomous entities established by local authorities.

This strategy to increase accountability is effective where the regulatory function is properly performed. In both the South African and Kenyan cases, however, weak regulation has resulted in poor performance, poor management, malpractices and inefficient services. In the South African case, corruption has been evident in water services at the local level where political interests interfere with the proper execution of the water services authority function. Corruption manifests itself primarily in the nepotistic awarding of infrastructure contracts to “family and friends whose experience in the construction industry starts with the tendering process”.³ In some municipal areas, social and institutional consultants have reported that unless they “pay back” up to ten percent of the contract value, they have no hope of securing consulting work.

A water governance study by Transparency International-Kenya and Maji na Ufanisi⁴ found that corruption in the Kenyan water sector was so severe that it “threatens security in the country” and also threatens the achievement of the water and sanitation MDGs (TI Kenya and Maji na Ufanisi 2009). Corruption is

reported to take the form of bribes, diversion of water from small to large scale users, lack of adherence to procurement procedures and the operation of cartels who control access to water in slum areas. Recommendations made include further institutional reforms in the sector such as decentralising water and sanitation services, engaging the private sector and civil society, and reforming procurement procedures and reducing complexity in the regulatory framework.

A good regulatory framework does not necessarily mean good regulation. Although a clear distinction of the functions of government (such as provider of services and regulator) can strengthen the regulatory position of government, effective regulation requires both the capacity to regulate and political will to ensure compliance.

SWAp and donor harmonisation

One of the key objectives of the sector wide approach (SWAp) is to increase aid effectiveness and to contribute to poverty reduction by addressing its structural causes. The SWAp responds to the Paris Declaration commitments of 2005, particularly the need to increase efforts to harmonise, align and manage development aid for results. Within the SWAp approach, developing countries take ownership by setting sector policy, by developing sector and poverty reduction strategies, and through preparing a medium term budget where provision is made for strengthening their institutions and addressing issues of corruption, poor governance, and lack of accountability. Donor co-ordination and alignment to the sector objectives, sharing of information, and the use of national administrative, financial management, monitoring and reporting systems are features of the SWAp through which the Paris commitments can be operationalised.

Within a SWAp, accountability is intended to be mutual between donors and countries, with donors making commitments to transparent and predictable aid, and the country making commitments to mutually agreed sector objectives and indicators. With the primary focus of donors and national governments on the MDGs, emphasis is given to the achievement and monitoring of water and sanitation targets and to the proper management of public funds. However, water and sanitation coverage figures provide no real indication of the quality of the service that users receive. Thus increased fiscal and outcome accountability does not address gaps in accountability between government and citizens. Accountability between government (policymakers), service providers and citizens forms a “virtuous” circle which needs to be reinforced. By placing greater emphasis on monitoring and reporting on the actual services provided, the SWAp can greatly enhance accountability between government and service users as well as between government, the service provider and users.

Many developing countries do not yet have the financial management, monitoring and reporting systems in place to satisfy the conditionalities for sector budget support. Thus part of the SWAp is to assist partner countries to put these in place to meet budgetary conditions and to increase transparency and accountability. In South Africa, the water SWAp primarily provided institutional support to the sector. This included support to local government to establish structures for co-ordination and stakeholder participation; strengthen local management, procurement and financial systems; enhance accountability and transparency mechanisms; and to address both their governance and provision capacity. As part of efforts to develop a common fund for rural water supply, the Mozambican national water directorate is currently developing a supporting anti-corruption strategy. In providing institutional reform policy considerations for donors, it argues that a sectoral approach should be taken which builds on the assessment areas of the SWAp to include accountability and anti-corruption measures at both the national and local levels.

Decentralisation

Increasingly, developing countries are devolving the authority and resources for basic service provision from the national to the local level. Thus many of the MDGs are dependent upon successful decentralisation, including political will and capacity at the local level to achieve the various sector targets. It is assumed that elected local governments, being closer to the users of the service, are better placed to plan services based on user preferences and needs, determine appropriate service levels, optimise financial resources, and provide more effective and sustainable services. There are concerns about decentralisation, however, mainly focusing on lack of capacity at local government level, the potential for corruption, poor planning and management, and the extent to which participative decision-making takes place in practice.

The assumptions behind decentralisation are not always supported by evidence. In India, for example, two studies have reported increased corruption risks associated with decentralisation (Astana 2004 and Davis 2004). Since the late 1980s, Uganda has pursued decentralisation of education, health and drinking water services with resources channelled to local councils. However, studies have found that any improvement in services was attributable to the increase in conditional funding from central government rather than improved decision-making at the local level (Robinson 2007). Mechanisms for ensuring participation in governance (including development planning) at the local level do not guarantee that the preferences and interests of the community will be prioritised. For example, the opportunities created for public participation at the local level in Côte d'Ivoire, did not result in the commune (local council) allocating budget to their preferences for water supplies, social facilities and roads. The mayors who continued to exert control and influence over the decisions chose to spend the budget on municipal buildings and secondary schools. In Ghana, a survey of two districts found that 70 percent of the respondents indicated that their preferences for water supplies, electricity, health facilities and road repairs were not provided for in the district assembly expenditure priorities.

Decentralisation has implications for addressing capacity at the local level as well as the capacity of the regulatory framework to ensure compliance with national policies, norms and standards. Addressing these capacity areas is likely to be an increasing priority over time.

Table 1: Framework to analyse corrupt interactions within the water sector (Source: Plummer and Cross 2007)

	Public-Public	Public-Private	Public-Consumer
Policy Making	<ul style="list-style-type: none"> Policy capture (competition and monopolies). 	<ul style="list-style-type: none"> Policy capture 	
Regulation	<ul style="list-style-type: none"> Poor services not regulated Bribery to prevent reporting 	<ul style="list-style-type: none"> Regulatory capture (e.g. waivers to regulations and licensing) 	
Planning and Budgeting	<ul style="list-style-type: none"> Distortions in decision-making by politicians (affecting location + types of project investments) Corruption in national and sector planning and budget management (misuse of funds, inter-ministerial bribery for fund allocation, collusion/bribery in selection and project approval) Corruption in local budget management (fraud, falsification of accounts/documents, village level collusion) 	<ul style="list-style-type: none"> Bribery to influence allocation of resources Bribery in sector budgeting management (influencing, distortions in funding allocation) (national and local) 	
Donor Financing	<ul style="list-style-type: none"> Donor-Government collusion in negotiations to meet spending /funding targets Donor-Government collusion/fraud wrt. progress and quality. Misspent funds not monitored /audited, or acted upon 	<ul style="list-style-type: none"> Donor and national private operator collusion (outside legal trade agreements) 	
Fiscal Transfers	<ul style="list-style-type: none"> Bribery, rent seeking and kickbacks to ensure fund transfers between MoF and sector ministries 		
Management and Program Design	<ul style="list-style-type: none"> Corruption in personnel management: payments for preferred candidates (e.g. utility directorships) & payments for promotions, and transfers, salary perks. Distortionary decision-making (collusion with leaders in selection + approval of plans/schemes) Corruption in LG and departmental planning and budget management 	<ul style="list-style-type: none"> Collusion between agency staff and consultants to bias the result of design and cost studies etc. as well as environmental and social assessments Inflated budgets for programmes and projects 	<ul style="list-style-type: none"> Influence project decision-making. Bribery for preferential treatment, elite capture Distortionary decision-making (project level-site selection, equipment, construction)
Tendering and Procurement	<ul style="list-style-type: none"> Administrative corruption (fraud, falsification of documents, silence payments) Inter-department / agency collusion over procurement and construction 	<ul style="list-style-type: none"> Bribery to influence contract / bid organization. Nepotism and favouritism in tender awarding Corruption in award of service provision contracts and concessions; decisions over duration, exclusivity, tariffs, subsidies. Corruption in procurement: Inflated estimates for capital works, supply of chemicals, vehicles, equipment Falsification of documentation 	
Construction		<ul style="list-style-type: none"> Not building to specification Failure to complete works Underpayment of workers Fraudulent invoicing 	<ul style="list-style-type: none"> Corruption in community based construction (with similar types of practices as for public-private interactions)
Operation and Maintenance	<ul style="list-style-type: none"> Fraudulent accounting Over billing on O&M function Corruption within utilities 	<ul style="list-style-type: none"> Over billing by suppliers, theft/diversion of inputs Avoiding compliance with regulations, specifications, health and safety rules. Falsification of accounts 	<ul style="list-style-type: none"> Installing/concealing illegal connections, avoiding disconnection, illicit supply Administrative corruption for speed (or preferential treatment) repairs/new connections.
Payment (for services)			<ul style="list-style-type: none"> Fraudulent meter reading, Overcharging

Institutional options for the provision of water and sanitation services

There are multiple institutional options for providing water and sanitation services. These include a business unit within the local government itself, a corporate entity, a utility, the national department responsible for water, the private sector, community based options and joint ventures. Country legislation will typically specify the types of entities that can fulfil the water and sanitation services provision function and the types of contracts or service delivery agreements that can be entered into. Different options tend to address a specific weakness or set of weaknesses in the provision of services. A lack of operational capacity, the need for increased investments, access to management expertise, improved performance, and improved accountability are among the main drivers for governments to seek alternative institutional options for the provision of water and sanitation services.

Corporatisation, for example, is an institutional option which separates the water provision function from local government and allows a more commercial orientation without privatizing.

It is a reform aimed at improving performance, accountability and finances. This is dependent, however, upon such companies producing good reports and accounts and monitoring thereof, since the corporate structure tends not to be subjected to the same level of audit as local government or other government structures. Accountability may actually decrease if the corporatised entity is off budget or under-performing and not properly regulated.

Privatisation is another institutional reform which aims to improve operational performance and access to much needed capital investments in the sector (Kenny 2007). While the private sector can address certain deficiencies in the sector such as limited creditworthiness, inadequate contract management capacity, poor risk management, and constraints in revenue raising, corruption also plays a major role where the public and private sectors interact (Transparency International 2008). The opportunities presented for corruption involving international companies have also been highlighted (Hall 1999).

Alternative institutional options are a necessary reform towards improving water services provision, but they also require government to adapt to increasing complexity and the potential for corruption. When addressing corruption, emphasis should be less on a particular type of option than on whether the option complies with the legislative framework and associated regulatory provisions, and – critically – with a government's capacity to effectively regulate the option. Proper regulation of the institutions, irrespective of the option, is key so that where there is corruption, it can be readily identified and tackled.

Some conclusions

Institutional reforms such as separating the provision and regulatory roles, decentralisation, and seeking alternative institutional options for the provision of water services, including corporatisation and privatisation all involve changes in the functioning of the water sector that aim to improve service delivery. When considering such reforms, a key recommendation is that consideration should be given not only to performance, efficiency and sustainability issues, but also to corruption risk assessment and mitigation. Effective regulation can also be complimented with programmes to fight corruption and improve governance.

Putting recipient countries in the driving seat through aid modalities such as direct budget support and sector budget support is in line with the Paris Declaration and is theoretically correct. However, these modalities presuppose a partnership based on efficiency, transparency, honesty and good governance, with minimal corruption. This is not always the case, as is amply documented in studies and reports, such as the *Global Corruption Report 2008*. While donors recognise that recipient countries need capacity support to strengthen their policy, planning, coordination, public financial management, and monitoring and reporting systems (so that the right conditions are in place for budget and sector budget support), this type of capacity support is not likely to be adequate to solve systemic corruption problems. Weak systems, lack of adequate skills and poor governance create a favourable environment for corruption, but are not themselves the *cause* of corruption.

Although many measures can be put in place to close the gaps for corruption and reduce risks in the sector, these are only likely to be successful in countries that have made progress in establishing an appropriate enabling environment to prevent and prosecute corruption. Tackling corruption at sector level is unlikely to solve the problem in countries where corruption is systemic across

government and anti-corruption measures are weak. Donors supporting the water sector will often need to take a pragmatic approach based on robust dialogue with their country partner. In agreements with recipient governments, donors have a duty to ensure that countries demonstrate that the sector is being effectively regulated. This implies much more than performance monitoring and performance based reporting. It also implies ensuring corruption is exposed and can be brought to account.

While national ownership, a single sector programme and harmonisation are objectives towards which the entire water sector should be moving, in practice mixed aid modalities and conditionalities will likely be used across different country contexts to mitigate against systemic corruption risks. This is far from ideal. Given the challenge and urgency of the water and sanitation MDGs – and efforts to improve aid effectiveness, national capacity and delivery (for example the Global Framework for Action) – it is critical that corruption be placed high on the political agendas of all key water sector stakeholders both nationally and internationally. ■

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Endnotes

- ¹ The department was called the Department of Water Affairs and Forestry (DWAFF) until April 2009 when it merged with Environmental Affairs and was renamed the Department of Water and Environmental Affairs (DWEA)
- ² Republic of South Africa (1997) Water Services Act, No. 108 of 1997.
- ³ Authors' interview with water services municipal official, South Africa, 2007.
- ⁴ Maji na Ufanisi is a Kenyan non-governmental organisation that aims to bring innovative water and environmental sanitation solutions to poor and disadvantaged people. www.majinaufanisi.org

This U4 Brief is the third in a three part series on corruption risks and the water sector. Two further U4 Briefs address corruption risks in major water infrastructure projects and in institutional reform in the water sector. Download all U4 Briefs at www.u4.no