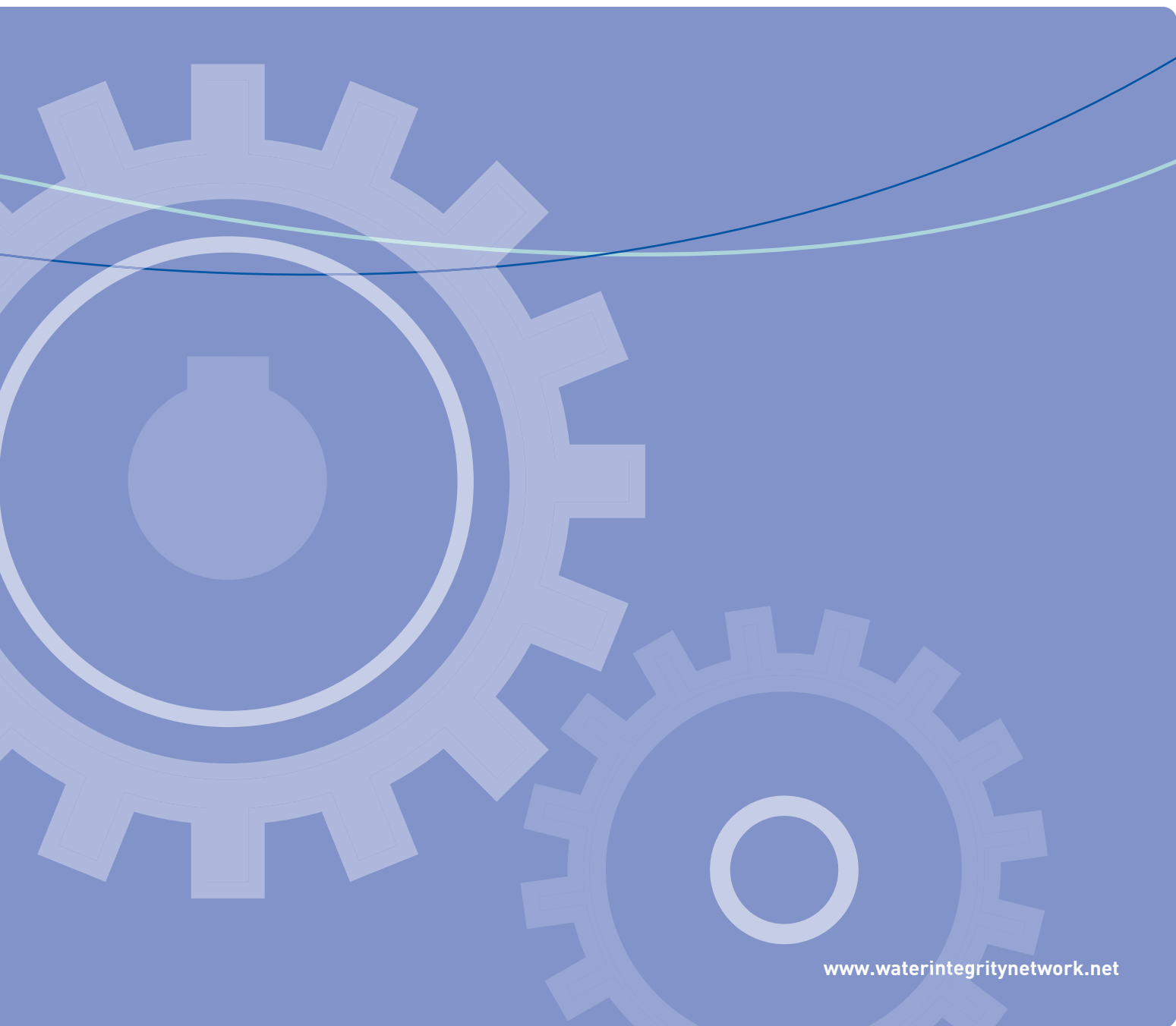


Annotated Water Integrity Scan Kenya 2011

Mombasa 9 December 2011



www.waterintegritynetwork.net

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The **Annotated Water Integrity Scan (AWIS)**, developed in 2009, was finalised and put into practice in 2010, offering a quick and relatively inexpensive way of gaining a picture of the level of integrity in a country's water sector. It includes workshops during which recognised experts from a country's water sector score and discuss various indicators to measure risks and institutional weaknesses that can lead to corruption in the sector. It also offers the opportunity to identify potential action for the future. An AWIS workshop in Kenya was organised in December 2011 by Transparency International-Kenya, the Water Integrity Network and the Ministry of Water and Irrigation of Kenya.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of May 2011. Nevertheless, the Water Integrity Network/TI Kenya cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

Contents

ACRONYMS	4
FOREWORD	5
1. INTRODUCTION	6
2. THE PARTICIPANTS	8
3. OVERVIEW OF THE INTEGRITY SITUATION	9
3.1. Assessment	9
3.2. Annotated overview	9
3.3. Conclusions and recommendations	15
4. EVALUATION AND FOLLOW-UP	16
ANNEX 1 SUMMARY OF THE ANNOTATED WATER INTEGRITY SCAN	17
ANNEX 2 LIST OF PARTICIPANTS	21
ANNEX 3 WORKSHOP PROGRAMME	22

ACRONYMS

ACL	Anti-corruption legislation
ACM	Anti-corruption measures
AWIS	Annotated Water Integrity Scan
CoK	Constitution of Kenya
CPI	Corruption Perception Index
IPP	Investment projects and programmes
IRC	International Water and Sanitation Centre
NGO	Non-governmental organisation
PL	Policy and legislation
R	Regulation
SP	Service provision
T	Transparency
TAP	Transparency, accountability and participation
TI	Transparency International
TI-K	Transparency International Kenya
TI-S	Transparency International Secretariat
TISDA	Transparency and Integrity in Service Delivery in Africa
WAG	Water Action Group
WIN	Water Integrity Network
WSB	Water Service Board
WSP	Water Service Provider

Foreword

This report on the Annotated Water Integrity Scan (AWIS) on urban water supply in Kenya is a result of collaboration between Transparency International-Kenya, the Water Integrity Network and the Ministry of Water and Irrigation comprising the implementation of an AWIS workshop and a follow-up process that includes the joint publication of this report.

Understanding the water sector's governance by assessing integrity gaps and risks is essential in preventing corruption. The Annotated Water Integrity Scan (AWIS) is a water governance tool that has been designed to quickly assess the integrity situation in the water sector by organising a one day multi-stakeholder workshop. One such workshop was held in December 2011 in Mombasa, Kenya, and its outcomes are the basis of this report. The aim of this specific AWIS workshop was to assess the status of integrity – meaning transparency, accountability and participation – of policy and legislation, regulation, investment projects and programmes, service delivery and the anti-corruption framework in regard to urban water supply in Kenya. During the workshop, the applicability of the AWIS methodology to the Kenyan water sector was explored. The AWIS workshop generated a snapshot of the integrity in urban water supply during the transition phase towards the operationalization of the new Kenyan Constitution. This information, as well as the innovative tool used to generate it, will serve to find practical solutions to improve the overall integrity of the water sector in Kenya.

It is important that the framework of Kenya's water sector allows for equitable and fair management of water resources that meets the needs of its population, economy and environment, considering the human right to water and anticipating future needs. To some extent the existing governance structure has addressed these issues. The results of the AWIS describe both the opportunities and weaknesses of urban water governance, which can help to operationalise the commitment of the Ministry of Water and Irrigation to improve water integrity as one of the means to assure the human right to water in urban areas. The AWIS results together with other findings on water governance will be used as the basis to develop an action plan, in which the different water stakeholders will have to contribute and fulfil their role to jointly increase the level of integrity in the sector.

The Constitution of Kenya, promulgated in August 2010, acknowledged that change was long overdue in many sectors and the society generally. As a result policies are being put in place aimed at strengthening governance in public service delivery, improving the reliability of the state's water supplies, and tightening water rights accounting and enforcement. The information that was generated tapping into the knowledge of experts from the Kenyan water sector through the results of the AWIS workshop need to be used to achieve the hard won goals set in the constitution of Kenya. Improving integrity in the sector will also contribute to achieving the government's commitment to assure access to water in line with the human right of water for all.

In order to achieve the goals that were set under the vision 2010 and to, ultimately, deliver on the demands created by the new constitution, it will be essential to increase water integrity, even more so because water scarcity can be largely attributed to weak governance, including corruption.

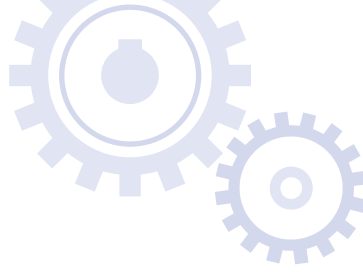
We believe that the report on the AWIS on urban water supply in Kenya will be of interest and use to regulators, policy-makers, managers and staff utilities, consumers, civil society organisations and for stakeholders beyond the water sector. The AWIS methodology will further be of interest to other sub-sectors of the water sector, such as rural water supply, irrigation and hydropower as the results will contribute to a better understanding of the situation and improvement of the integrity of the Kenyan water sector.



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Director Water Sector Coordination and Reforms

June 2012



Introduction

This report summarizes the results of the workshop on the Annotated Water Integrity Scan (AWIS) for the urban water supply sector in Kenya. The workshop was organized by TI-Kenya and the Water Integrity Network (WIN) on 9 December 2011 in Mombasa.

Transparency International Kenya is an autonomous chapter part of Transparency International, a global anti-corruption movement established in 1999, which carries out research, develops tools for the public and private sector, provides resources and advice to key stakeholders, facilitates sector initiatives, contributes to debates on integrity and accountable management. Through the Transparency and Integrity in Service Delivery in Africa (TISDA) project, TI-Kenya has engaged players in the water sector to promote integrity in the water sector.

WIN is an action oriented coalition of individuals and organizations working to enhance water integrity. It aims at benefiting poor people in developing countries by helping to prevent or reduce corruption in the water sector. Among other activities forges and supports to the development of country coalitions that actively work to improve integrity in the water sector. AWIS is a diagnostic (and monitoring) tools that can help such coalitions to identify priority areas for action and review progress (see for further information www.waterintegritynetwork.net).

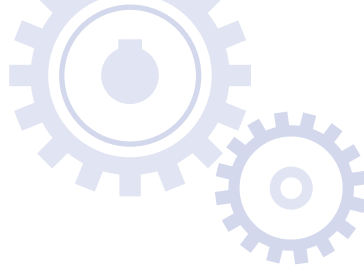
This report presents the results of the application of the AWIS to assess the integrity of urban water supply in Kenya and to identify priority areas for action (Annex 1). Urban water supply is an important sector in Kenya and further growth in investment is envisaged to enhance urban water coverage which is now estimated at 70% (Table 1). The table also gives some data that shows why it is important to explore the integrity situation. Kenya's rating on the Corruption Perception Index for example is quite low. It is also important to note that in view of the considerable investments other sub-sectors than urban water supply could benefit from a similar assessment (e.g. for rural water supply, sanitation and drainage, irrigation and hydraulic structures).

The workshop comes at a very opportune moment as the water sector in Kenya needs to respond to the new constitution of Kenya (COK, 2010), which recognizes water as a human right. This will require alignment of the sector and is also likely to result in institutional change. The AWIS is a tool based on dialogue of a small group of workshop participants with experience in the sector and in anti-corruption legislation. It provides a quick assessment of the integrity of the water sector in the country in terms of Transparency, Accountability and Participation (TAP). The definitions for TAP however differ from the way you normally would interpret them. They have been established

specifically to explore the mechanisms that govern the activities within the sector and to facilitate scoring TAP according to different integrity levels. The AWIS looks at five critical risk areas (Policy and Legislation, Regulation, Investment Projects and Programmes, Service Delivery and Anti-corruption Legislation). A summary description of the AWIS is presented in Annex 1 and more detailed information can be found at the website of WIN.

TABLE 1 Summary information on the situation in Kenya

ITEM	RESULT
Population (urban/rural)	Total 38610097; (Urban 32.3% Rural 67.7%) census 2009
Surface area	580370.00 km ² WB report 2008
GDP/capita:	USD 1635 : ranking 150 out of 180 countries (World Bank 2010) http://en.wikipedia.org/wiki/List_of_countries_by_GDP_(PPP)_per_capita
Water availability (m³/person/year)	600 m ³ /capita/year 2007 http://www.orgut.se/files/KWSP%20Lessons%20Learnt%20Final.pdf
Water supply coverage (total/urban/rural)	Overall 59%; urban 83%, rural 52% (data from 2008) http://www.wssinfo.org/fileadmin/user_upload/resources/KEN_wat.pdf
Sanitation coverage (total/urban/rural)	Overall 56%, urban 78%, rural 50 (data from 2008) http://www.wssinfo.org/fileadmin/user_upload/resources/KEN_san.pdf
Corruption Perception Index (2011)	Score: 2.2; ranking 154 out of 182 countries http://cpi.transparency.org/cpi2011/results/
HDI rating (+ ranking) year (2011)	Index: 0.509 (Ranking 143 out of 187) http://hdrstats.undp.org/en/countries/profiles/KEN.html

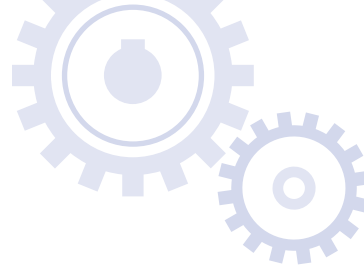


2

The participants

Participants at the AWIS workshop held in Mombasa were drawn from diverse backgrounds ranging from government and government agencies, NGOs as well as Development Partners (Annex 2). The participants expected to:

- » Understand the AWIS methodology as well as the thinking behind it;
- » Learn more about how AWIS could be implemented and rolled out;
- » What outputs can be generated in an AWIS workshop;
- » How it could trickle down to the various institutions;
- » Learn how the AWIS tool could assist in formulation of practical rules and regulations to curb poor governance and corruption in the water sector in Kenya;
- » See if the AWIS tool to be used in Kenya to enhance good governance in the water sector.



3

Overview of the integrity situation

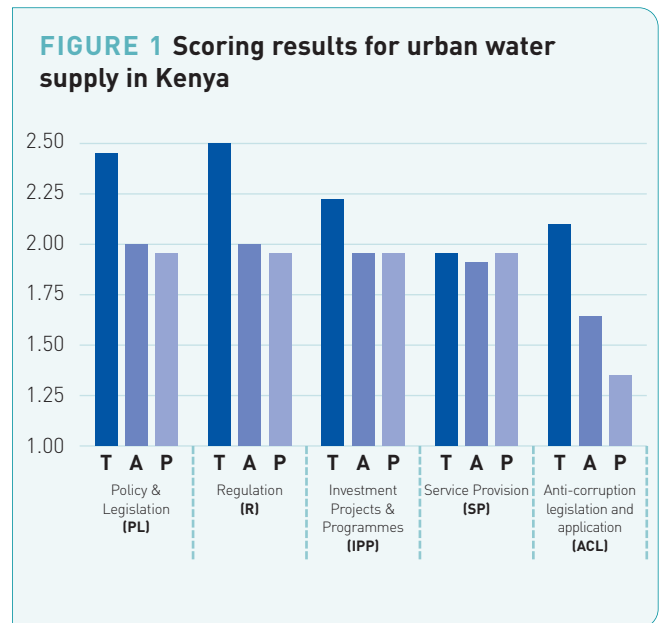
This section provides an overview of how the participants perceive the integrity of urban water supply in Kenya. It is important to realize that the sector has been subject to considerable change over the last years since the water act was adopted in 2002. This led to sector reforms including the establishment of new institutions, a process that was not yet completed when the new constitution was promulgated in 2010, which entrenches drinking water supply and sanitation as a human right. The new CoK also introduces the counties as new actors in the water sector. The existing legislation now has to be aligned with the new constitution and this may have an effect of the integrity of the sub-sector.

3.1. ASSESSMENT

The Annotated Water Integrity Scan (AWIS) was introduced explaining that the integrity is assessed in terms of Transparency, Accountability and Participation (TAP) of the urban water supply sector in Kenya (Annex 1). The approach implies that participants look at the TAP of the five main risk areas that are being explored in the AWIS. The participants initiated their work with an anonymous scoring of their perception of the situation which showed that differences exist in the TAP of the different risk areas. Average scores were established for TAP of each risk area (see Figure 1). The scores however showed considerable variations indicating that clearly different views existed among participants about the integrity situation.

3.2. ANNOTATED OVERVIEW

The average scores were presented as a basis for the following annotation process. As participants see the situation from their own perspective and may in fact only have partial information it is very common that their scores differ from the average scores. The problem is that integrity often is a difficult subject to discuss and participants may easily become defensive about their scores. To create a dialogue about the situation participants are therefore asked to collectively provide arguments that would make it plausible why people would feel that the situation could be better than the average score that is presented and thereafter they are asked to provide the arguments why the situation could be worse than the average scores. This approach was followed in the workshop in Mombasa and participants were very enthusiastic as it helped them to exchange views in an open dialogue. The results of this process are presented in tables 2.1 to 6.3.



- Transparency
- Accountability
- Participation

TAP for policy and legislation (PL) in urban water supply

On **average** the group **scored transparency** in policy and legislation with **2.4**. The T:P&L score is therefore between level 2 in which P&L is partly developed with important gaps and level 3 where only few improvements are needed and P&L is basically well established (pro-poor and gender sensitive). Table 2.1 provides the annotations collected by the group to explain and complement this scoring result.

The **average score** of **2.0** for **accountability** in policy and legislation indicates that P&L application is at the middle scoring level which is defined as it being applied to a fair extent, but still with important limitations and (sections of the) institutions being weak. Accountability-level 1 implies that PL is hardly applied and few institutions fulfil their role and level 3 implies that P&L is well applied and institutions fit their role and have Anti-Corruption Mechanisms in place.

Table 2.2 provides the annotations that were established by the group which could serve as arguments for people to score A:R higher or lower than 2.

With **1.9** the **average score** for **participation** in policy and legislation is slightly below the middle scoring level. The score 2 for P:P&L is defined as information is available but some may not be independently checked or not accessible to all. Stakeholders can express their views and complain. A 1 level would imply that stakeholders have no or very little access to information on P&L and no complaint mechanism. The definition of level 3 says that stakeholders have good access to information, are actively consulted (pro-poor and gender sensitive) and/or represented in decision-making bodies. The annotations for the P:P&L score are listed in table 2.3.

TABLE 2.1 annotations for average score on T:P&L = 2.4



Above		<ul style="list-style-type: none"> » Water act 2002 brought about water sector reforms » Commercial approach to urban water management » Human Rights Based Approach towards water provision is entrenched in the COK 2010 (Art 43) » Formalization of water service delivery by expansion of piped network to informal areas » Public participation established in the new constitution as a part of vision 2030 » Public offices are advertised hence inviting public to give views » Right to access to information is entrenched in COK 2010
Below		<ul style="list-style-type: none"> » Operational legislation has proved inadequate » Freedom of information legislation has not yet been enacted » The COK 2010 possess a challenge to continuation of water reform processes » COK 2010 does indicate the right to water supply, but not the responsibility that goes with it. » Informal water providers are not recognised by the law

TABLE 2.2 annotations for average score on A:P&L = 2



Above		<ul style="list-style-type: none"> » Roles & responsibilities are well spelt out & institutions are increasingly doing their jobs (MWI; Regulator; WARMA, WSBs, WSPs) » New COK 2010 transforms citizens to right holders » Existence of water action groups (WAG) and residents associations
Below		<ul style="list-style-type: none"> » WAGs lack adequate capacity » Small and weak WSPs that cannot sustain themselves » Inadequate implementation of pro poor legislation

TABLE 2.3 annotations for average score on P:P&L = 1.9

Above		<ul style="list-style-type: none"> » New COK 2010 has entrenched key stakeholder participation as a right » A vibrant civil society which is facilitated by freedom of expression rules » A sound complaints' mechanism is in place as well as an Ombudsman (recently constituted) » There is a parliamentary commission that deals with issues of water and sanitation » Consumer representation in WSB » Willingness to communicate with users/stakeholders
Below		<ul style="list-style-type: none"> » The Parliamentary Select Committee for Land and Natural Resources whose mandate includes water is not sufficiently aware of the issues regarding the water sector » Inadequate communication of P &L documents » Inadequate representation of the poor in policy making

TAP for regulation (R) in urban water supply

On **average** the group **scored transparency** in regulation with **2.5**. The T:R score is therefore between level 2 which implies that regulations and institutions are fairly well established but important gaps and weaknesses exist and level 3 where regulations and institutions are well established (pro-poor and gender sensitive) and only few improvements are needed). Table 3.1 provides the annotations collected by the group to explain and complement this scoring result.

The **average score** of **2.0** for **accountability** in regulation indicates that R application is at the middle scoring level which is defined as R being applied with limitations by more or less independent institutions with partial internal control mechanisms. Level 1 implies that R is hardly applied and only few institutions are partly established but weak and little ACM in place. The highest level (3) is defined through a comprehensive set of regulations which are quite actively

applied by institution(s) with considerable autonomy and credible internal control and ACM. Only few improvements may be needed. Table 3.2 provides the annotations that were established by the group which could serve as arguments for people to score A:R higher or lower than 2.

With **1.9** the **average score** for **participation** in regulation is slightly below the middle scoring level. The score 2 for P:R is defined as follows: 'Information is available but some may not be independent or not accessible to all. Stakeholders can express their views and complain'. The definition of level 1 says that stakeholders have no or very little access to information on PL and complaint mechanisms do not exist. A score of 3 implies that good quality information is available and accessible. Stakeholders are actively consulted (pro-poor and gender sensitive) and/or represented in decision-making bodies. Only few improvements may be needed. The annotations for the P:R score are listed in table 3.3.

TABLE 3.1 annotations for average score on T:R = 2.5



Above		<ul style="list-style-type: none"> » Rules and regulations are established » Clear chain of accountability exists as contractual agreements are clearly defined » The mandate of the regulator is clearly stated in the water act 2002 » At the regulator level, formal guidelines exist in written (corporate governance guidelines, standards of operation/ service provision among other regulatory tools)
Below		<ul style="list-style-type: none"> » Weak legal basis of rules and regulations at the regulators level as these are not gazetted » Lack of understanding (and acceptance?) of the guidelines » The scope of existing guidelines is 'good for now' but there is room for improvement » Institutional capacity needs strengthening to improve application of the guidelines

TABLE 3.2 annotations for average score on A:R = 2





Above		<ul style="list-style-type: none"> » Compliance to regulation has increased (e.g. increased reporting and decentralized operations through water boards and water action groups) » Socially acceptable commercialization of service provision is actually result (and application) of regulation » Regulation is a basis for consumer protection » Reduced political influence/interference has led to increased professionalism » Monitoring the progressive realization of the right to water as it is entrenched in the new CoK
Below		<ul style="list-style-type: none"> » Weak enforcement of the regulations that haven't been gazetted » Resistance to compliance to regulation with regards to some WSB, WSP's and even MWI » Inadequate political support for implementation of regulatory task » The MWI still maintains parallel channels of checks and balances which impedes independent monitoring

TABLE 3.3 annotations for average score on P:R = 1.9

Above		<ul style="list-style-type: none"> » Overall institutionalization of consumer engagement is on-going » Regular publishing of performance and benchmarking data » More proactive information sharing i.e. regulatory information through the web etc. » Regulator has set the requirement to report on pro-poor based performance of water providers » Statutory public consultation on key regulatory issues e.g. tariffs and licences
Below		<ul style="list-style-type: none"> » Weak link between the users and the regulator (bottom up link users → regulator → boards is weak) » Capacity of users to participate low. They are not really aware of rights and obligations to water services » Consumer engagement is weak on the side of the duty bearer » Service charters are not implemented by all WSP's & WSB's

TAP for investment projects and programmes (IPP) in urban water supply

On **average** the group **scored transparency** in investment projects and programmes with **2.2**. The T:IPP score is therefore between level 2 and level 3. The former implies fairly well established rules for design, procurement (tendering) and financial audits are fairly well established but have important gaps exist and few ACM are developed and level 3 where only few improvements are needed and rules are well established (poverty and gender sensitive); independent audits requested and benchmarking envisaged. Table 4.1 provides the annotations collected by the group to explain and complement this scoring result.

The **average score** of **1.9** for **accountability** in investment projects and programmes indicates that A:IPP is just below the middle scoring level which is defined as design and procurement rules and technical and financial audits are applied but with limitations, institutions are partly active and ACM are partly applied. Level 1 would imply that such rules and audits are not or poorly applied

by weak institutions with little ACM in place and a level 3 would indicate that rules and audits are actively applied and results are compared (benchmarking) by independent institutions and ACM are applied. On level 3 only few improvements may be needed. Table 4.2 provides the annotations that were established by the group to complement the A:IPP score of 1.9.

With **1.9** the **average score** for **participation** in investment projects and programmes is slightly below the middle scoring level. The score 2 for P:IPP means that information is available and accessible but perhaps not available to all and not independent. Stakeholders are informed and can express their views and complain. The definition of level 1 says that stakeholders have very little access to information and no complaint mechanisms. A score of 3 implies that stakeholders have access to quality information, can file complaints and are consulted (gender and pro-poor), and/or represented in decision-making bodies. Only few improvements may be needed. The annotations for the P:IPP score are listed in table 4.3.

TABLE 4.1 annotations for average score on T:IPP = 2.2



Above		<ul style="list-style-type: none"> » Requirements and guidelines are already established » Audit standards are available » Technical standards are available » Investment planning tool (for better investment) available for the sector » Water sector strategic plan is available
Below		<ul style="list-style-type: none"> » No overall water sector investment plan. » Insufficient or Inadequate investment plans of WSBs » No clear guidelines regarding value for money » Investments are informed by the availability of resources and not based on actual needs

TABLE 4.2 annotations for average score on A:IPP = 1.9





Above		<ul style="list-style-type: none"> » Accountability requirements follow from the bill of rights » Audits/inspections are carried out and followed through by the regulator » Performance problems are reported upon » Capacity to absorb increasing investment
Below		<ul style="list-style-type: none"> » Political priorities influence investments » Audits conducted but follow up is inadequate » Tracking of investment is not done » Duplication of projects and uncoordinated investment » No interest in proper investment planning » Monitoring of resource allocation is not combined with performance monitoring » Provisions of investment and investment planning are not enforced

TABLE 4.3 annotations for average score on P:IPP = 1.9

Above		<ul style="list-style-type: none"> » It's a statutory requirement to do public consultation before licences to provide water are issued, for budgets by minister of finance as well as to identify needs » Public reporting on investment. » Public consultation on investments takes place
Below		<ul style="list-style-type: none"> » Even with all positives in practice often public consultation doesn't happen » No systemic or ineffective public consultation to set priorities

TAP for Service Provision (SP) in urban water supply

The **average score** of **1.9** to **transparency** in service provision (SP) is just below level 2, in which rules for SP are established but have important gaps and few ACM are developed. Level 1 means no or few written rules are available about SP and rights and duties of suppliers, users and other key actors. Level 3 implies that comprehensive rules are in place. Little improvement may be needed. Table 5.1 provides the annotations of the participants for this result. The **average score** of **1.8** for **accountability** in SP is below the middle scoring level that is defined as rules, including audits and ACM, being applied but with important limitations. Level 1 implies that no or few rules, audits and water delivery (quality)

are applied, and no complaint mechanism exists. Level 3 means that rules, including audits and ACM, are applied to all providers and results are compared (benchmarking). Few improvements may be needed. Table 5.2 provides the arguments for scoring A:SP higher or lower than 1.8. With **1.9**, the **average score** for **participation** in SP is close to the middle scoring level that is defined as information being accessible but not necessarily to all and not independent. Stakeholders are informed and can express their views. Level 1 is defined as stakeholders having little or no access to information. A 3 score means that stakeholders have access to quality information, can file complaints and are consulted (gender and pro-poor), and/or represented in decision-making bodies. Few improvements may be needed. P:SP score's annotations are listed in table 5.3.

TABLE 5.1 annotations for average score on T:SP = 1.9



Above		<ul style="list-style-type: none"> » Majority of SP in the hands of commercial entities – WSPs which are licensed by the WSBs (this has reduced political interference); Earlier SP was done by a department in the local councils and proceeds were used to pay other issues and were not returned to the water system » Clear written mandate – Service Provision Agreement between WSBs and WSPs holds WSPs accountable » Customer care is formalized in many WSP (task descriptions, hotlines etc.) » Some WSPs have developed service charters (written commitments about service provision) » E-tools are being established for user registration and financial and information management
Below		<ul style="list-style-type: none"> » No rules in place about public reporting of annual accounts of WSPs » Inadequate procedure to appoint board members » Lack of gazetted water rules for service provision » No clear SP contracts with users that indicates rights and responsibility of both ends » No written plan to deal with/formalize informal SPs (although they are crucial in many places) » Few WSPs are having ACMs in place

TABLE 5.2 annotations for average score on A:SP = 1.8





Above		<ul style="list-style-type: none"> » Automated billing systems » Improved service level » Improved information availability » Improved compliance with standards » Improved professionalism and staffing » Nascent complaints mechanisms (also applies to Accountability and Participation)
Below		<ul style="list-style-type: none"> » No participation in civic engagements » Most WSPs do not report publicly » Weak customer orientation » Weak adherence to service charters » Funds for up-scaling water action groups still not adequate

TABLE 5.3 annotations for average score on P:SP = 1.9

Above		<ul style="list-style-type: none"> » Willingness to communicate with users stakeholders » Employ PR-professionals and campaigns in reaching out to stakeholders » Include stakeholder representatives in decision making processes » Some WSPs are contracting communities to run water kiosks, public toilets » Some WSPs are holding community forums, open days, mobile clinics » Formation of WAGs
Below		<ul style="list-style-type: none"> » Most WSPs do not report publicly but only send their annual account to WASREB » Poor or no participation in civic engagements » Weak customer orientation » Weak adherence to service charters » Funds for upscaling WAGs still not adequate

TAP for country situation: anti-corruption legislation and application (ACL)

On **average** the group **scored transparency** in ACL with **2.1**, just above level 2 which indicates that ACL is in place but has important gaps or may only partly apply. Level 3 implies that ACL is well established and comprehensive, only few improvements may be needed. Table 6.1 provides the annotations of the participants.

The **average score** of **1.6** for **accountability** in ACL is considerably below level 2. The middle level is defined through ACL which is applied but with important limitations and a limited number of cases brought to justice. Civil society plays limited role. Level 1 implies that ACL is hardly or not applied in the sub-sector and responsible control institutions are weak. Table 6.2 provides the annotations of the participants for a higher or lower score.

With **1.3** the **average score** for **participation** in SP is close to lowest scoring level which is defined as Information about ACL and its implementation is not or hardly available and filing of corruption cases is complex and does not receive support. The definition of level 2 indicates that access to information is reasonable but may not be independent. Some cases of corruption are reported but press, civil society and whistle blowers face difficulties. The annotations for the P:ACL score are listed in table 6.3.



TABLE 6.1 annotations for average score on T:ACL = 2.1

Above	<ul style="list-style-type: none"> » Good legislation in place (Public officers ethics act and the anticorruption and economic crimes act, procurement and disposal act) » The (political) Attorney's General (AG) office no longer has to agree if a corruption case is taken on » The office of the director of public prosecution is up and running » Chapter 6 of COK 2010 dedicates an entire chapter to matters of ethics and integrity in leadership
Below	<ul style="list-style-type: none"> » Diverse and conflicting legislation has a negative impact on accountability- if everyone is accountable, no one is accountable » Lack of clarity on institutional responsibilities and mandates on corruption related matters » Anti-corruption legislation not sufficiently suitable for the complex nature of the water sector

TABLE 6.2 annotations for average score on A:ACL = 1.6

Above	<ul style="list-style-type: none"> » There have been court cases that have been handled conclusively » The on-going judicial reform reduces potential for political interference » There is return of corruption proceeds » Public vetting of officials in place » There is performance contracting » Requirement for merit in key appointments established » Ratification of freedom of information right is underway and will encourage citizen engagement » Presence of a witness protection act
Below	<ul style="list-style-type: none"> » Duplication of responsibilities, it is not clear who is to address with what » Impunity (perpetrators not brought to justice or not sentenced) » Lack of adequate knowledge of the water sector institutions mandate to handle corruption cases » Legal officials who don't understand the water sector » High level conflict in constitutional law interpretations » Lack of institutional capacity to handle specific corruption cases » Lack of impetus in institutions to enforce anti-corruption legislation » No specific rules and regulations for the water sector » Political interference » Court cases are not dealt with conclusively and no one is apprehended » Rules of procedure taking precedence curtailing administration of justice » Inadequate information management that impedes adequate sharing of the same information » Presence of a witness protection act but not a whistle blowers protection act

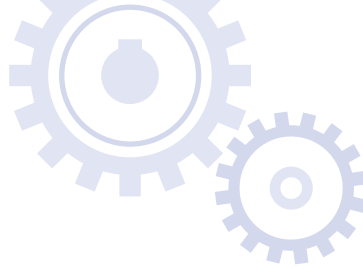
TABLE 6.3 annotations for average score on P:ACL = 1.3

Above		<ul style="list-style-type: none"> » Provision of public participation in the new constitution » Public offices are advertised hence inviting public to give views » Right to access to information in CoK 2010 but freedom of information legislation not yet enacted » Anti-corruption institutions in place and increasingly active
Below		<ul style="list-style-type: none"> » No quality information in public domain. Sometimes public discourse is based on rumour » There is a stigma on whistle blowers at times even extending to physical violence » Witness protection policy is not robust enough and witness protection act needs strengthening » Incidences of Corruption are generally under-reported in the media » Lack of capacities and adequate knowledge on Anti-Corruption Legislation » Poor management of public information which makes sharing of information a challenge

3.3. CONCLUSIONS AND RECOMMENDATIONS

Participants agreed on the usefulness of this first encounter, but felt that more time would be needed also because of the complex situation in Kenya with the establishment of the new constitution. The work in small groups proved quite effective, but a detailed review of the outcome is needed as well as a more in-depth reflection on the implications of the need to align the sub-sector to the new constitution.

It was suggested that it would be very important to organize a next encounter perhaps involving a few additional participants, to review and compliment the points raised and to identify priority actions to initiate the necessary priority improvements that are needed. Also for that encounter it would be very important to ensure good facilitation of the process to ensure positive dialogue and the development of constructive ideas to improve the situation.



4

Evaluation and follow up

Participants were appreciative of the AWIS and about the opportunity it had given them to discuss in an open and non-confrontational way strengths and limitations in the integrity of urban water supply in Kenya. The chairman of the Water Appeals Board for example stressed the need for more consultative forums such as the AWIS Mombasa workshop to address governance issues in the water sector and that this process needs to be gradual, realistic and strategic.

The Managing director of the Water Services Regulatory Board Managing also encouraged the wider implementation of the tool as it creates space for dialogue between key water actors.

The meeting was closed by the director Water Reforms of the MWI who shared the positive views of the other participants about the AWIS and stressed the importance of supporting the implementation of the tool, cascading it down to various sector levels and priming senior management on the same. He felt that the tool is very useful to ring fence the debate on corruption in the water sector. He also was appreciative of the facilitation that was provided and stressed the significance of having high level facilitation to gain consensus and bridge the gaps between the technical and non-technical actors on controversial issues. He proposed that he will explore the possibility of the MWI in consultation with TI-Kenya to establish a follow-up meeting to review and compliment the outcomes of the Mombasa workshop and identify priority action to improve integrity in the water sector.

Annex 1: Summary of the AWIS

Curbing corruption can make an important contribution to improving both the performance of existing water supply and sanitation systems and the development of new systems. The Water Integrity Network has developed the Annotated Water Integrity Scan (AWIS) as a tool to help reduce corruption in the sector. The AWIS is a tool that can be used to quickly assess the integrity in a specific water or sanitation sub-sector and identify practical steps for improvement. The AWIS explores the integrity of the water sector defined in terms of transparency, accountability and participation (TAP), and makes an assessment of the anti-corruption framework that is in place and its application. The heart of the implementation of the AWIS is a workshop with some 8-12 persons who are familiar with a specific water sub-sector (e.g. rural water supply, urban water supply, irrigation). Together they will make an annotated scan of the TAP in the main risk areas of a specific sub-sector and the anti-corruption framework, and make this available to the main water sector stakeholders for comments and follow-up action.

1. INTRODUCTION

The AWIS prepares for improved integrity by facilitating *constructive dialogue* amongst different water sector stakeholders on issues related to transparency, accountability, and participation (TAP) as well as the existing anti-corruption framework (ACF) and anti-corruption measures (ACM). This dialogue may help policy-makers, local government officials, utility staff, regulators, private sector providers and consultants, civil society organisations, international development agencies, and representatives of water-user communities to establish priority actions to enhance water integrity and governance. AWIS does not measure corruption directly, but rather sheds light on systemic weaknesses in the governance framework that leave the water sector vulnerable to corruption.

The AWIS serves three purposes that are especially important in context of economic poverty, poor water governance, and precarious water service delivery:

- 1. Establish an overview of the state of integrity in different sub-sectors of the water sector that shows potential risks of corruption.** The AWIS brings the views of a small but diverse group of experts together and helps to create a level playing field with regard to knowledge and perception of problems related to water integrity. This group provides an annotated overview of the integrity situation in a specific water sub-sector in terms of TAP and the related ACF.
- 2. Identify priority areas for action to enhance integrity.** With an AWIS, challenges to integrity in water governance are identified and analysed in one or more water sub-sectors. The methodology recognises that water supply entails different challenges than sanitation, and that both services are confronted with unique sets of problems in urban or rural areas. The expert group which needs to reflect the experience of different stakeholder groups jointly will be able to identify specific areas where measures should be taken to strengthen the water governance framework and improve water integrity. It is anticipated that the participation of experts with different backgrounds and links to different stakeholder groups will effectively neutralise biases and misinformation.
- 3. Increase awareness on the state of water integrity and stimulate action among sector stakeholders.** The results of the AWIS are documented and broadly shared with different stakeholder groups and decision-makers, allowing them to comment on the outcome. This will help to validate the findings and allow the results to be used to initiate action. The AWIS itself will only give priority areas for action. Usually a next step is needed to formulate specific actions to be taken. Therefore it is important to realise that the AWIS is not a stand-alone activity. It needs to be embedded in a process that ensures that results are discussed among stakeholders that have a mandate to improve the respective sub-sector(s). So ideally, the AWIS will become part of existing stakeholder initiatives and be used to strengthen them.

It is envisaged that the AWIS also can be used for monitoring change by properly documenting and repeating it, for example, annually and comparing results. Preferably this would be combined with the monitoring of specific activities for water integrity improvement that are being agreed upon among stakeholders. The use of AWIS as a potential monitoring tool will be subject to further analysis by WIN and by the community of practice being established.

It is important to be aware of some of the limitations of the AWIS. It is a quick scan of the integrity situation carried out by a relatively small group that collectively will know a lot but not everything about the sector and its stakeholders. By sharing the results with a wider group of stakeholders for comments, the effect of this limitation is reduced and the final report will provide a good insight into prevailing conditions and may also point to areas for further analysis. As the AWIS identifies risk areas that require improvement, leading stakeholders who are in a position to propose and approve sector improvement need to be engaged for follow-up action. So AWIS and the dialogue it promotes are important steps toward initiating improved integrity in the sub-sectors being reviewed. But they will have to be combined with other activities to enhance water integrity and water sector performance.

2. THE AWIS WORKSHOP

The core of the AWIS is an expert meeting – a facilitated workshop with important stakeholders who may hold different and opposing positions. The approach adopted in the workshop prevents this from leading to confrontational debate (with potential winners and losers). Instead, the AWIS methodology allows for dialogue to enhance common understanding that can form the basis for jointly seeking solutions for the most important problems.

First, the AWIS is explained with some examples. Then each participant anonymously attributes scores each to transparency, accountability and participation (TAP) of the five critical areas explored by the AWIS and gives the results to the facilitator. The scores are computed to obtain the average score of all participants for each of the TAP levels.

This result is shared with participants and is the basis for jointly establishing an annotation for the two levels that flank the resulting score. First, the participants collectively establish a fair description of arguments as to why the level below the score could apply (i.e. why someone could have scored transparency in regulation as 2 even though the average score is 2.4). Thereafter they will collectively give the arguments for the level above the score. This approach allows participants to anonymously present perceptions, as the question is what arguments can we think of that may make people perceive that the T, A or P integrity level is less advanced than the average level that was identified. Thereafter the same is done for the question of what facts could support a higher level. The advantage of this proceeding is that participants put themselves in the position of others, think of different arguments, and are more perceptive of the perspectives of others, as they do not have to agree on the specific score.

To enable joint discussion, the sometimes very complex concepts of TAP are reduced to simple and clear definitions as a basis for the scoring and annotation process. The culturally and context-specific interpretations of TAP concepts will then find consideration in the content of the annotations.

After the annotation process, another round of anonymous scoring can be done because participants may have gained a better understanding. The result of the scoring and the annotations needs to be properly documented, and the resulting report is then to be shared with a wider group of stakeholders for validation and to create adequate follow-up.

3. PILLARS OF INTEGRITY

In the AWIS context, integrity broadly refers to an **environment that evades corruption and enables good governance**. This includes the respect for the rule of law, but it also refers to rational, smart decisions and to a functioning and efficient administration in the water sector. In AWIS, integrity is based on three pillars: transparency, accountability and participation (TAP). These pillars are introduced in this section. An important difficulty will become apparent, in that these terms have different meanings and are used differently by different people. Some of these differences are briefly presented, and the specific definitions adopted in the AWIS for T, A and P as shown in Table 1 are clarified. In addition, the AWIS looks at the anti-corruption framework (ACF) that is in place in terms of policy and legislation and their application.

TABLE 7 Definition of the pillars of integrity used in AWIS

PILLARS OF INTEGRITY	EXPLANATION
Transparency	The existence of written procedures, agreements and contracts that explain the roles and responsibilities of actors.
Accountability	The application of the written procedures and agreements, where feasible also looking at possible compliance (internal accountability).
Participation	Access of the public, the users or their representatives (<i>including marginalised and resource-poor groups</i>) to information, their role in decision-making, and their right and possibilities to effectively file complaints and be heard (external accountability).

3.1 TRANSPARENCY

Transparency International states that transparency can be defined as a principle that allows those affected by administrative decisions, business transactions or charitable work to know not only the basic facts and figures but also the mechanisms and processes. It is the duty of civil servants, managers and trustees to act visibly, predictably and understandably.

In the AWIS, however, the term is used differently, with **transparency being narrowly defined as relating to the existence of written procedures, agreements and contracts**, as these are considered to set the basis for actors' understanding of the rights and obligations that govern their relationships. This approach is based on the principle-agent model of Huppert (2002). Access to information is taken out of transparency and is included in participation (see 3.3) because this makes it much easier to assess the integrity risk level for transparency.

3.2 ACCOUNTABILITY

Accountability is a broad concept that entails several dimensions and is often used in different ways. Some see it as a mechanism to hold people and institutions accountable, whereas others may see it as a concept referring to the actual application and implementation of rules and standards. Accountability in a democratic sense, according to SIWI (2011), means that an individual in a public function or a public institution must answer for their actions.

In the AWIS context, **accountability relates to the way in which written procedures and agreements are applied, where feasible also looking at possible compliance**. This assumes that if procedures and agreements are clear then the actors involved can hold each other accountable. This can also be understood as 'internal accountability' where actors involved in certain transactions check on each other.

3.3 PARTICIPATION

Participation is a term with many different meanings. Some stress that it refers to the most basic indication of democratic rule – that whoever is affected by a decision should, one way or another, directly or indirectly, have the chance of intervening in and influencing such decisions. It is also argued that participation fosters ownership, in the sense that decisions are increasingly accepted and implemented by involved actors. Studies show that actors who are affected by decisions and who are involved in the decision-making process tend to respect decisions more than those who are excluded from such processes.

Participation is sometimes also portrayed as important for public institutions and service providers because it enables them to better understand the needs and interests of the public and consumers, which is very important in an increasingly complex world.

In the AWIS context, **participation relates to access of the public, the users or their representatives (including marginalised and resource-poor groups) to information, their right and possibilities to effectively file complaints and be heard, and their role in decision-making.** It can be best seen as external accountability – through a third party – which avoids collusion among specific actors within a sub-sector.

The rationale is that without access to high-quality information (that can be checked by independent, third parties), stakeholders are not aware of what is going on. But availability of information is not sufficient; it also needs to be easily accessible by all stakeholders. In addition, mechanisms must exist to file complaints or protest. Another crucial aspect concerns the way decisions can be influenced.

3.4 ANTI-CORRUPTION FRAMEWORK

In the initial application of the AWIS, anti-corruption measures were included as a fourth pillar for the analysis. These were defined as specific measures that organisations and governments take internally and externally to reduce the risk of corruption, where feasible also looking at the application of sanctions. This led to repetition and overlap in the annotations provided by participants.

Based on this experience it was considered very useful to establish instead an overview of the overall anti-corruption framework that applies to the sub-sector, in

terms of policy and legislation and their active application. Most of this framework will be overarching and not sector-specific, as it relates to how issues such as the public procurement regulation, public financial administration, freedom of information and whistleblower protection are organised and implemented. This sets the context for improving sector integrity and therefore the AWIS must explore this framework, assess the presence of an active media that covers corruption, and understand how civil society is involved. So the initial AWIS model was adjusted and the assessment of the integrity of the anti-corruption framework was included in addition to the other four risk areas per specific sub-sector, as will be discussed in Section 3.

4. APPLYING TAP TO CRITICAL RISK AREAS

In the AWIS, several critical areas have been selected for the integrity (TAP) assessment. The five main risk areas that have been established are shown in Table 2. For each area, some further explanation about the application of TAP is provided in this section.

The principle adopted in the AWIS methodology is that for each risk area, three levels are established to characterise the performance regarding T, A and P. The three levels are (1 = low, 2 = medium and 3 = high). The lowest level will require the highest attention in order to improve upon the situation, but priority-setting also will need to explore the priority of a specific risk area and the cost-benefit ratio of possible measures.

TABLE 8 Main risk areas used in the AWIS

Policy and legislation	The official policy and legislation in place in the specific sub-sector
Regulation	Referring to the existence and application of concrete rules (water rights allocation, tariffs, quality standards, service standards, abstraction rates, etc.). Institutions (oversight bodies, water resources commissions or the equivalent) are in place and functioning.
Investment projects and programmes	Concerns the way in which financial resources in the specific sub-sector are spent and the institutions involved are controlled.
Service provision	Concerns the way in which service provision and institutions are controlled.
Anti-corruption framework	Refers to specific anti-corruption legislation in place in a specific country and its application.

Annex 2: List of participants

TABLE 9 List of participants

NUMBER	NAME	ORGANIZATION
1	Engineer Patrick Ombogo	MWI – Director of water sector reforms
2	Musyoka Annan	Water Appeals Board
3	Engineer Robert Gakubia,	WASREB
4	Engineer Mwalimu Musau	Director Kenya Water Institute
5	Job Fundi,	WASPA Water Services providers association
6	Samuel Kimeu	Director TI-Kenya
7	Dalmas Okendo	TI-Kenya
8	Phillip Pieters	GIZ
9	Daniel Norman	GIZ
10	Grace Kihumba Wangui	GIZ
11	Rebecca Alowo	Water Aid, Uganda
12	Jan Teun Visscher	WIN consultant
13	Janek Hermann	WIN
14	Sareen Malik,	TI-Kenya
15	Christine Were,	TI-Kenya
16	Collins Baswony,	TI-Kenya
17	Philip Odete	Ti-Kenya
18	Petra Brussee	IRC International Water and Sanitation Centre

Annex 3: Workshop programme

TIME	PROGRAMME ITEM
08:30 – 09:00	Registration
09:00 – 09:30	<ul style="list-style-type: none"> » Welcoming remarks » Introduction of WIN and TI-K » Introduction of participants » Agenda and expectations
09:30 – 10:45	<ul style="list-style-type: none"> » Presentation of the AWIS methodology » Scoring by participants » Explanation of annotation process with example
10:45 – 11:00	Coffee break
11:00 – 12:15	<ul style="list-style-type: none"> » Presentation of results of scoring » Annotation of one risk area
12:15 – 13:00	» Annotation of 2 risk areas (2 parallel groups)
13:00 – 14:15	Lunch
14:15 – 15:15	» Presentation and discussion of results
15:15 – 15:30	Coffee break
15:30 – 16:15	» Sharing of results and development of action points (way forward)
16:15 – 16:30	» Feed-back and closing



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