



# Talking Human Rights

## Human Rights meet Water: A Conversation

For the last couple of years, the GTZ Water Sector Reform Programme in Kenya has been working with a human rights-based approach in water sector reform, accompanied by advice from human rights lawyers based at GTZ and the German Institute for Human Rights. Thomas Levin, from the Competence Center Water at GTZ, and Andrea Kämpf, German Institute for Human Rights, reflect on their respective perspectives and experiences with regard to a human rights-based approach in the water and sanitation sector.

**Thomas Levin:** When the human rights-based approach came up, GTZ had already been working with a pro-poor approach in the water and sanitation sector, e.g. in Zambia and Kenya. We focussed on urban slums, where living conditions are devastating, and supported pro-poor regulation and financing mechanisms for low-cost technologies such as water kiosks. Therefore, we were initially quite sceptical if a human rights-based ap-

proach can add value to the work we were already doing. In addition, we were hesitant to become part of the polarised discussions around the human right to water. But step by step, we realized that many of our reservations were based on misunderstandings, such as the claim of some NGOs that water service provision should be for free and that private sector participation in service provision will necessarily compromise human rights.



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Once we had clarified these issues, our experience in Kenya has indeed shown the value of a human rights-based approach. It helped to focus the entire sector (including donor agencies) on the un- and underserved. The pro-poor improvements made were no longer an act of benevolence but a matter of legal entitlement that individuals can claim from the government. We also found that the binding international standards on the human right to water and sanitation were a strong tool to create commitment of donor agencies, NGOs and partner institutions such as private service providers and to hold them accountable to these commitments.

**Andrea Kämpf:** It is impressive how you used the human right to water to unite state and non-state actors. However, human rights law primarily addresses the relationship of the individual as a right-holder and the state as the duty-bearer, obliged to respect, protect and fulfil human rights. Addressing other actors, whatever their importance in the water sector is, as if they had the same type of legal obligation as the state, appears to blur the state's human rights obligations. Now: if all actors relevant for the water sector have a human rights obligation to guarantee access to water, the human right to water would be little more than the right to claim the right to water from anyone in society.

**Thomas Levin:** I think we have to distinguish between the legal question – “who has human rights-based rights and obligations?” and the practical question how human rights can best be implemented and fulfilled. I understand that human rights law refers to duty-bearers (states) and right-holders (individuals) to clarify the roles and responsibilities of the main “poles” of the human rights based approach. But to streamline the whole sector towards service provision for the un- and underserved you need to define the roles and responsibilities of **all** relevant actors under one - the human rights’ – umbrella.

For example: we argue that NGOs are obliged by the right to water to stop informal (and generally non-quality and non-price controlled) service provision in order to let the state assume its duty to institute formal service provision, be it public or private. Otherwise states compromise their human rights obligation to protect consumers from unaffordable water prices or unsafe drinking water quality. We also hold that individuals have responsibilities if the human right to water and sanitation is to be fulfilled. Individuals should e.g. not divert water by illegal means and they

should use the sanitary installations available, since otherwise they endanger the benefits of improved sanitation for the whole community. If you focus the discussion about human rights only on the state as the duty-bearer, how do you bring service providers on board? They will always shift responsibilities (e.g. service provision to the urban slums where service providers are not interested to invest) to the government. As I said, I totally agree to the differentiation in legal terms, but in practice this is not the decisive question. So what we do in practice is to derive the different rights, obligations and responsibilities of all relevant actors from the human right to water and sanitation, and use it as an overarching framework uniting and tying all actors. And this is the core issue of all sector reforms – you cannot define only one duty-bearer and one group of right-holders because you will miss out important players in the sector.

**Andrea Kämpf:** In my view, a distinction between state obligations and responsibilities of other actors would express this point very well. Meeting rights and responsibilities on all levels is, of course, essential for any society to work; human rights are specifically addressing one set of these necessary relationships but obviously acknowledge that there numerous other responsibilities and rights. Actually, to define and monitor fulfilment of many of those rights and responsibilities is part of the state's obligation to protect human rights. Within this obligation states have policy choices, e.g. whether to take private service providers or NGOs on board for service provision. If they do, the “obligation to protect” entails that states need to monitor quality and affordability of water provision undertaken by private providers who in turn, as you say, have certain responsibilities vis-à-vis the state and the consumer. You raised the point of NGO involvement in service provision: It is interesting to note that some NGOs have started to reflect on this issue. They argue that the adoption of a human rights-based approach will lead them to align their service delivery more closely to the state's obligations to fulfil rights.

**Thomas Levin:** In my opinion, the discussion about implementation strategies for the human right to water and sanitation need to be based on why the human right to water and sanitation has been introduced. Its *raison d'être* is to facilitate access to sustainable and safe water services for all, especially the marginalised and poor. What do we need for this to happen? We need a comprehensive,

sector-wide approach. We need institutions like an autonomous regulator who has the responsibility to protect consumers. We need instruments: guidelines, tariff negotiation procedures and publicly available benchmarks of water service providers which aim to improve performance (especially in relation to the human rights' criteria availability, quality, accessibility and affordability). In addition to transparency, we also need enhanced participation and accountability, e.g. by Water Watch Groups or Water Action Groups, as were introduced in Zambia and Kenya respectively. These groups represent the connected and the underserved, have the authority to negotiate with the service providers and provide feedback to the regulator.

By providing water services within a formal system and with the support of parastatal institutions such as autonomous regulators, we found it possible to move from a system of constant confrontation between consumers and state institutions to a situation of constructive dialogue. Instead of going to court trying to solve isolated cases, it is possible to scale up affordable quality service provision on the ground -- as we experience presently in countries like Zambia and Kenya.

**Andrea Kämpf:** You are right: the implementation of the right to water for all cannot be left to the courts. Courts get active only after violations have occurred and usually only deal with single cases. This runs counter to the "preventive" sector-wide approach of public policy planning you describe, which is endorsed, by the way, by the expert committees watching over the implementation of human rights treaties. But courts do have a role for the human rights-based approach: effective and efficient judicial remedies will motivate a state to provide services in a way that will make turning to judicial remedies unnecessary. As you say, the human rights-based approach defines accountability in broader terms than just judicial remedies.

To me, your experience in Kenya sends two very important messages about of the human rights-based approach. Firstly: human rights can function as an umbrella for different actors, and thus unify efforts at sector reform and improved services. Secondly: human rights principles -- non-discrimination, participation and empowerment, broad notions of accountability -- are of utmost relevance for pro-poor reform. The principles give very practical guidance how to support the change of relationships between individual right-holders, the state as duty-bearer and all other relevant actors such as civil society, the private sector, and regulators in the water sector.

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Dag-Hammarskjöld-Weg 1-5  
65760 Eschborn, Germany  
T +49 61 96 79-0  
F +49 61 96 79-11 15  
E [info@gtz.de](mailto:info@gtz.de)  
I [www.gtz.de](http://www.gtz.de)

#### Contact

Juliane Osterhaus  
T +49 61 96 79-1523  
E [juliane.osterhaus@gtz.de](mailto:juliane.osterhaus@gtz.de)  
I [www.gtz.de/human-rights](http://www.gtz.de/human-rights)

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