

# Promising Practices

## On the human rights-based approach in German development cooperation Water and sanitation: Ensuring access for the urban poor in Kenya

### Background

Kenya is a multi-ethnic society, with considerable difficulties in its transition to democracy. There are historic inequalities in the access of different ethnic groups to power and resources (particularly land) which have not been addressed and are prone to escalate into violent conflict as witnessed in the 2007 presidential elections. Corruption remains endemic. In the Corruption Perception Index 2012, Transparency International ranked Kenya on place 160 out of 176. Therefore, human rights and good governance are high on the agenda of all German support programmes in Kenya.

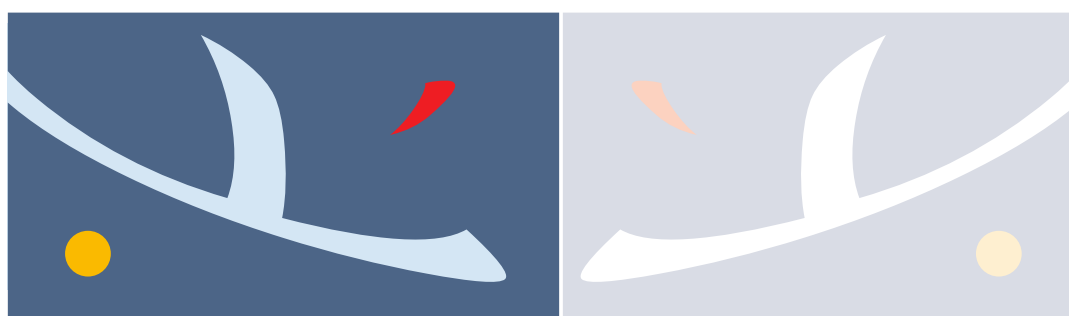
Kenya suffers from chronic water shortages due to the skewed relationship between limited available resources, population growth and environmental degradation. Women and children are particularly affected. According to a [survey at Maji-Data](#) only 38.7 % of the urban poor have access to water, and 46.8 % use some form of sanitation. Management of water resources is slowly improving due to a comprehensive water sector reform process started in 2002.

The objective of the German-Kenyan Programme „Reform of the Water Sector“ is to increase the sustainable access of the urban poor to water and sanitation and to improve the management of water resources. The programme works on the national and regional levels and in selected localities.

It has five components:

1. Support to the Ministry of Water and Irrigation in the implementation of sector reforms
2. Regulation of the water sector
3. Commercialisation of water and sanitation services
4. Improvement of water resource management
5. Support to up-scaling access to sanitation in urban low income areas

The programme is carried out in cooperation between GIZ and KfW and is financed by the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Bill & Melinda Gates Foundation. The programme started in 2003 and is expected to end in 2013.





Left to right:  
Operation of water kiosks, Athi River, Kenya  
Water Company Staff at Work, Webuye

### Human rights framework

Article 11 and 12 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) establish “the right to an adequate standard of living” and “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The right to water and sanitation is understood to be part of those two rights.

The UN treaty body watching over the implementation of the International Covenant on Economic, Social and Cultural Rights specifies the right to water: Water for domestic and personal use must be available, accessible, acceptable, and of an appropriate quality (General Comment No. 15 (2002)). A similar specification is currently under development for the right to sanitation.

Human rights standards are complemented with cross-cutting human rights principles: non-discrimination and equality of opportunities, participation and empowerment, transparency and accountability.

### Towards a human rights-based approach

Since 2002, the Kenyan Government has reformed the policy, legal and institutional framework in the water sector. It employed a stringent pro-poor-focus and adopted a human rights-based approach in 2005/2006.

To achieve fast track solutions for the poor in informal urban settlements, the programme supported the elaboration and implementation of up-scaling concepts of the Water Sector Trust Fund: Water service providers can apply for funding to e.g. extend services to informal settlements with low-cost technologies such as water kiosks, yard taps and shared sanitation facilities. In addition, progressive tariff structures were devised, and cross-subsidies made water affordable for the poor.

Water kiosks deliver water of controlled quality and price. Their establishment shifts informal to formal service provision. This has substantially improved living conditions of the urban poor in peri-urban and densely populated areas, as a 2010 [“Survey on the impact of formalized water kiosks on living conditions in Athi River and Ongata Rongai”](#) demonstrated.

In line with the human rights-based approach, kiosk facilities and their management concept actively involve the un- or underserved. In addition, the programme supported increased participation of raw water users through the establishment and strengthening of Water Resource User Associations and consumers through Water Action Groups.

Gender mainstreaming is a goal in the relevant Kenyan strategies, and measured by a sizable increase in women’s representation in decision-making in the water sector. The National Water Policy of 2012 prescribes that water institutions and water resource user associations must have at least 30% women members; it recommends that 50% of those operating water kiosks should be women. Women’s representation is also part of the application requirements for project financing to the Water Sector Trust Fund.

The programme supported the Ministry of Water and Irrigation to turn human rights standards and principles ([see Box 1](#)) into indicators and to integrate them into the strategies for national water resource management and national water services developed in 2007. The service providers are licensed and thereby regulated: Service provision has become formalised. Apart from the obligation to report on compliance with the standards, they need to document their performance annually. The programme supports the establishment of the necessary management information and benchmarking system. Based on these data, the regulator submits a yearly “Impact Report” to the public. This has led to more accountability and transparency.

Overall water governance was strengthened by supporting clear lines of responsibility within and between the water institutions: The Ministry of Water and Irrigation has the overall political responsibility for the water sector and its reform. According to the Water Bill 2012, the Water Services Regulatory Commission licences water service providers to ensure water services are sustainable and provided with increasing performance. Most providers are registered private companies in the ownership of municipalities. They are required to adopt a customer service approach and establish adequate complaints mechanisms, e.g. customer care desks. Providers are specifically required to report on progress in extending services to the settlements of the urban poor. Lastly, a Water Tribunal has been established to solve water disputes.

### Tariff reforms: Aim for affordable access and sustainability

Tariff setting was oriented towards criteria harmonised with human rights standards so that the essential amount of water and sanitation services would become accessible and affordable for the poor. At the same time the Kenyan water sector reform aims to better cover water costs. The coverage of the operation and management costs of service provision is a first step. Another important step is to create water service providers which can generate economies of scale, and better cross-subsidise water from big consumers to the poor.

### Process

The programme helped to introduce the human rights-based approach as a part of its advisory services to the Ministry of Water and Irrigation. The Ministry in turn adopted the human right to water as a guiding framework for the harmonisation of donor activities in the Kenyan water sector in 2007. Thus, the different Kenyan policy and strategy documents in the water sector, e.g. on water resource management, water services and sanitation, contain specific chapters on the human right to water and sanitation.

The Ministry adopted the human rights-based approach only after intensive dialogue and after key stakeholders had become familiar with the contents of the UN General Comment No. 15. This has helped to overcome the mistaken assumption that the right to water would entail free provision of drinking water to the poor.

On the policy level, the human rights-based approach supported a commitment to extend formalised water kiosks to urban informal settlements nation-wide. To do so, an innovative instrument that allows for the coordination of planning, funding and participation (the so called Urban Project Cycle) has been put in place. In the meantime, this instrument has become the national standard to promote low cost solutions for the urban poor.

Dialogue was also a key success factor within the sector. Thus, the water sector has become far more open to civil society participation. The general public can now participate in the elaboration of policies and strategies and has a right to be part of decision-making on water resources and services. The representatives of right-holders, e.g. in water user associations, have thus become regular dialogue partners of duty bearers.

### Impact

Results and impact have been achieved on different levels, to name the most important ones:

- The right to water and sanitation is meanwhile explicitly recognised at the highest legal level, in [Art. 43 of the Constitution of 2010 \(PDF, 1.3 MB, not barrier-free\)](#), and is also contained in Art. 46 of the Water Bill of 2012. The provisions of the Water Bill are expected to enhance the legal framework for equitable access to water supply and sanitation services and thus support the implementation of the new sector policy.
- Since the Kenyan Ministry of Water and Irrigation has adopted the right to water as the framework for its national water policy it expects that donors also comply with the criteria stemming from the right to water.
- Aid effectiveness in the sector has increased, as has the commitment of resources to the sector (investment funds were multiplied by ten within seven years of reforms).
- The establishment of a Water Sector Trust Fund, the use of innovative coordination instruments, and the participation of key stakeholders have helped to fast-track and up-scale access to service for the un- and underserved.
- The human rights-based approach promoted a comprehensive pro-poor orientation in the sector. With the Water Sector Trust Fund in place utilities can now extend services to areas of the poor that were long ignored by the formal service providers. Service providers can thus no longer define their own service areas which often left the urban poor out, or report only on the areas served by their network.
- Sector institutions, like the Autonomous Regulator, the Water Sector Trust Fund and the Water Resource Regulatory Authority have incorporated human rights aspects in their guidelines and service quality standards.
- The Water Bill 2012 will make stakeholder participation mandatory, with detailed procedural standards. This has helped to make strategies and key documents more comprehensive and focused on the needs of people – unlike the top-down approach dominating before.
- Overall, the ongoing up-scaling of access would not have been possible to such an extent without the human rights-based approach.

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## Challenges

There remain a number of challenges due to the complexity of the water sector. Despite the huge success (the Water Sector Trust Fund reached over one million people with quality-controlled water in four years) up-scaling access to water and sanitation services for the poor remains the biggest challenge. In addition, increased participation and empowerment of the un- and underserved in decision-making processes in the water sector should go hand in hand with more human rights awareness among right-holders. Civil society and community-based organisations are important partners to realise this.

Another challenge relates to monitoring: Although the regulators have a clear mandate to monitor compliance with human rights standards, it is difficult to make duty bearers report with the required details and quality.

And lastly, while the human rights-based approach has resulted in bringing sanitation higher up on the political agenda, up-scaling access to sanitation for the urban poor in dense settlements requires urgent further action.

## Lessons learned

A human rights-based approach should be incorporated into a water programme right from the start. The approach adds legitimacy and legality to pro poor strategies and can align the legal and institutional framework accordingly. This is particularly needed where commercialisation and private sector participation are called for and national authorities are unable to ensure that this is done in a socially responsible fashion. If the regulation of the water sector is based on human rights criteria, the private sector can contribute to human rights realisation (see [2010 Report of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation \(PDF, 188 KB, not barrier-free\)](#)).

All sector institutions, including non-governmental and community-based organisations, need to be involved in order to make duty bearers and right-holders to work towards the common aims. Formalisation of participation can lead to empowerment of right holders and is key to ensure effectiveness of improved accountability and transparency.

While the human rights-based approach appeared challenging in the beginning, it was after all, not so difficult to integrate it into policies and practices – and it has added demonstrable value. The positive Kenyan experiences are starting to get replicated in other countries in East Africa, as demonstrated in a collection of [Good practices by the Special Rapporteur on the human right to safe drinking water and sanitation \(PDF, 3.6 MB, not barrier-free\)](#).

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