



The Human Right to Water and Sanitation

Translating Theory into Practice

Acknowledgements

The authors would like to thank Roland Werchota from the Kenyan-German 'water sector reform program' for his valuable contributions. We would also like to thank our colleagues from the GTZ programs 'Realising Human Rights in Development Cooperation' and 'Sustainable sanitation - ecosan' as well as Dirk Schäfer for their comments. Special thanks go to Franziska Grimm for undertaking the initial research for this publication.

Table of Contents



I.	Introduction	2
II.	Common misunderstandings	3
III.	Translating theory into practice	4
	Human rights obligations	5
	Human rights principles	6
	Human rights criteria	8
IV.	The strengths of a human rights-based approach	12
V.	References	14
	Abbreviations	16

I. Introduction

Earlier discussions about the human right to water and sanitation were dominated by controversial positions. More recently, we have seen a pragmatic approach, with this right taking concrete shape. Water sector practitioners are now focusing on ways of translating human rights theory into practice.

The right to water was recognised in 2002 with the adoption of General Comment No. 15 by the United Nations (UN) Committee on Economic, Social and Cultural Rights. It interprets Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹ to include the right to water as an implicit component of the right to an adequate standard of living and the right to health.

Moreover, the right to water has been linked with the right to sanitation ever since. The latter was not, however, explicitly addressed until 2006, in the guidelines on the realisation of the right to drinking water and sanitation adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights.

Water and sanitation are thus an integral part of a comprehensive international legal human rights framework that includes various international treaties and political declarations as well as national constitutions and national legislation. The framework covers rights to an adequate standard of living, adequate housing, health, education, work, life and physical security, the prohibition of inhuman or degrading treatment, and gender equality and anti-discrimination provisions.

In 2008, the United Nations appointed the first Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.² The Independent Expert is asked to clarify the content of the human rights obligations in relation to access to water and sanitation, look into best practices, and make recommendations to the realisation of these human rights.

Even though the right to water and sanitation is now anchored in international human rights law, there are still serious lags in implementation at the regional and national level. States, policymakers, international development partners and civil society groups working in the water and sanitation sector have often proved slow to act when it comes to making the right to drinking water and sanitation a reality.

In Kenya, an assessment of the water sector from a human rights perspective was conducted in 2007.³ The government of Kenya has formally recognised the human right to water and sanitation in its national strategies and policy documents. Indeed, Kenya has been progressively implementing this right by adopting specific pro-poor initiatives and embarking on a water sector reform under the Kenyan Water Act.

The experience in Kenya shows that a human rights-based approach to water and sanitation can be successfully pursued, gradually leading to sustainable benefits for all. The Kenyan experience highlights some of the misperceptions surrounding the right and illustrates the kind of steps that can be taken to implement a human rights-based approach. In seeking to explain how the rights theory can be translated into practice in the water and sanitation sector, we shall therefore refer in this paper to developments in Kenya.

¹ The ICESCR had been ratified by 160 countries by February 2009.

² Catarina de Albuquerque assumed her functions on 1 November 2008.

³ Deutsche Gesellschaft für Technische Zusammenarbeit: Realising Human Rights, 2007.

II. Common misunderstandings

The scope and content of the human right to water and sanitation has been set out in international human rights law. Apart from the unresolved practical implications, there are still a number of common misunderstandings concerning the actual legal position. They are summarised in Box 1.

Misunderstanding	Correct interpretation ⁴
The right to water and sanitation implies that water and sanitation services should be provided for free.	Water is a scarce and valuable natural resource. It is a social and an economic good. This means that those able to pay should do so in order to ensure the sustainability of water services. However, tariff systems must be adjusted to the ability of different groups of users to pay. The human right also requires access to a certain quantity of water necessary for survival – even in return for limited or no compensation. The latter applies only in exceptional situations, like extreme poverty or a refugee crisis. As for sanitation, States are not obliged to provide facilities free of charge. People who are in a position to pay for sanitation facilities can be expected to contribute financially or in kind.
A State violates the right to water if not everybody within its territory has access to sufficient and affordable water of acceptable quality.	A State compromises the right to water if the government does not undertake targeted steps within its available resources to move as expeditiously and effectively as possible towards fully realising the right. At the same time, it is necessary that the State continues to improve access to and the quality of other basic services, like education or health.
The right to water requires that water and sanitation services be provided through public, i.e. state-owned institutions.	Each country can choose a legal form of service provision – be it public or private, through NGOs or community-based organisations. Governments have to exercise effective control and are ultimately responsible for the availability, accessibility, affordability and quality of the services. They must ensure that services are delivered in accordance with existing national standards and human right obligations.
The right to sanitation requires States to construct household toilets and to provide access to sewer systems.	Governments are not obliged to build household toilets. The legal responsibility lies with the landlords or households themselves. However, governments have to provide support by creating an enabling environment, i.e. framework conditions which are conducive to progressively realising basic sanitation for all. The human right to sanitation does not dictate a certain technology.
The right to water cannot be fulfilled if there is not enough water for everyone.	A sufficient amount of water resources is not just a question of raw water availability, but a question of equitable distribution. The right to water only covers basic personal and domestic needs, i.e. the availability of at least 20 litres of water per person per day as an acceptable minimum.
The practical approach to implementing the right is offered by informal service providers since they offer services to those currently unserved.	States must ensure that service provision complies with the human rights standards. As long as service provision remains informal and thus unregulated, States do not comply with the human rights requirement to protect consumers effectively from refusal of physical access, from unsafe quality or from unaffordable prices, a very common problem of informal service provision.

Box 1:
Common misunderstandings of the human right to water and sanitation

⁴ United Nations (UN) Committee on Economic, Social and Cultural Rights, General Comment No. 15, 2002, and United Nations Sub-Commission on the Promotion and Protection of Human Rights, 2006.

III. Translating theory into practice

A comprehensive international legal framework for defining the human right to water and sanitation is already in place. However, this right will only turn into legal entitlements when it is embodied in national legislation. Only then it can actually be claimed effectively by individuals. A State's ratification of the treaties on international human rights already represents a significant step. For it means the States have committed themselves to the full realisation of human rights standards and principles.

In addition to the State, non-state actors - like individuals, private enterprises, and non-governmental organisations (NGOs) - also have a key role to play. Their roles and responsibilities need to be defined ('derived' obligations) and included in a human rights-based approach. However, the overall responsibility remains with the State.

The human right to water and sanitation is based on three pillars: the State's general obligations; three general human rights principles;⁵ and five criteria specific to water and sanitation.⁶ All of these are based on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its interpretation by the Committee on Social, Economic and Cultural Rights, monitoring implementation of and compliance with these treaties.⁷

Box 2:
How human
rights relate
to water and
sanitation

Human rights obligations:

- **Respecting:** The State must not inhibit people from accessing water and sanitation services.
- **Protection:** The State must protect people from interference by third parties who impede access to water and sanitation services.
- **Fulfilment:** The State and its institutions with delegated authorities must provide for an appropriate legal, administrative and financial framework.

Human rights principles:

- **Access to water and sanitation** must be in line with the principles of non-discrimination and equality.
- **Access to water and sanitation** implies meaningful participation in decision-making and empowerment.
- **Access to water and sanitation** requires accountability and transparency.

Human rights criteria:

- **Accessibility:** Water supply and sanitation facilities must be accessible within, or in the immediate vicinity of, each household, educational institution, workplace and public place. The time necessary to fetch 20 litres of water should normally not exceed 30 minutes (including waiting times), and the distance should be less than one kilometre (both ways).
- **Availability:** At least 20 litres per person per day, and basic sanitation facilities open for use at all times.
- **Quality:** Water must be free from substances hazardous to human health. Toilets must be hygienic and environmentally safe and ensure privacy.
- **Affordability:** The costs for water and sanitation services should not exceed 5 percent of a household's income.
- **Acceptability:** Water provision and sanitation facilities must be culturally acceptable.

⁵ The general human rights principles are cross-cutting issues in all human rights treaties www2.ohchr.org/english/law/.

⁶ United Nations Committee on Economic, Social and Cultural Rights: General Comment No. 15, 2002.

⁷ This Committee also issued General Comment 15, 2002 on the right to water, for details on the Committee see: <http://www2.ohchr.org/english/bodies/cescr/index.htm>

Human rights obligations

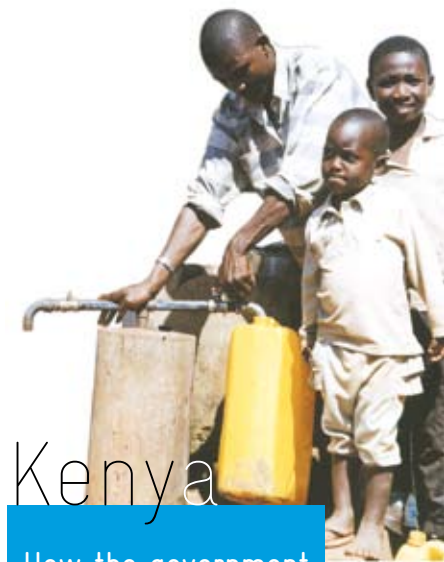
By ratifying human rights treaties, States assume a number of obligations. These are usually classified in three categories: the respect of human rights, their protection and the fulfilment of human rights.

The obligation *to respect* requires that the State does not interfere directly or indirectly with the enjoyment of the right. It includes refraining from engaging in any practice or activity that denies or limits equal access to water, e.g. by destroying water and sanitation infrastructure as a punitive measure during armed conflicts.

The obligation *to protect* requires the State to prevent third parties from interfering in any way with the enjoyment of the right. Third parties include individuals, groups, businesses and other (governmental) entities. The state's obligation includes effective legislation and enforcement mechanisms to restrain third parties, for example from charging unaffordable prices for drinking water or polluting water resources. To prevent this, the State must establish an effective regulatory system.

The obligation *to fulfil* includes the obligations to facilitate and promote. The obligation to facilitate requires the State to take specific measures within its available resources to assist individuals and communities to enjoy the right. The obligation to promote requests the State to take targeted steps, for example to ensure an appropriate education of how to hygienically using water, protecting water sources and minimizing water wastage. To this end, the State should adopt a national water strategy and a plan of action, as well as appropriate financing and pricing policies.

The legal basis for the right to water in national Kenyan law is the Water Act of 2002. It is the main legislation that regulates the water sector, in which Kenya committed itself to adopting a human rights-based approach. In the 2007 National Water Services Strategy (NWSS) safe water and basic sanitation are referred to as a basic human right and should therefore be accessible and affordable to all. The Water Act and the water sector reform together provide a framework for the development of and reforms to public policies and plans, to prioritise resources, and to monitor performance. In order to fulfil its human rights obligations the Kenyan government adopted specific initiatives to enhance the right to water and sanitation, such as the Pro-Poor Implementation Plan for Water Supply and Sanitation (PIIP-WSS). It also introduced a pro-poor water tariff structure to fulfil its obligation to facilitate access to water and sanitation services to those most in need. To protect its citizens from unequal access to water, the Ministry of Water and Irrigation (MWI) established a regulator. By regulating the sector, the Kenyan government has now provided for a legislative, administrative and financial framework for realising the human rights.



Kenya

How the government meets its human rights obligations

Human rights principles

Non-discrimination and equality

Everybody is entitled to be treated equally and without discrimination. The human rights principle of non-discrimination prohibits any distinction, exclusion, restriction or preference based on any ground (such as race, gender, religion, political or other opinion, national or social origin, property, or any other such status).

While wealthier households usually draw their water from the tap at home, the poor struggle to fetch the minimum amount of water needed for their families to survive. Many informal settlements are completely unserved by formal water supply and sanitation systems. They are neglected by policymakers and service providers alike. Realising the right to water and sanitation requires a stronger focus on women, children as well as vulnerable and marginalised groups, e.g. sick persons or ethnic minorities, as they bear most of the burden of fetching water and living under unhygienic sanitary conditions. To comply with the right, governments need to adopt a strategy for providing services and accelerating access by the very poor and the disadvantaged, for example through targeted pro-poor policies and instruments.



The Kenyan water policies are designed to prevent discrimination and to foster equitable access to water supply and sanitation. The national strategy details how to reach the urban poor, the marginalised and vulnerable groups in society. These groups are also considered in the institutional setup of the water services sector.

A special basket funding mechanism has been created to improve the situation of the poorest in urban and rural areas: the Water Services Trust Fund. Water service providers are encouraged to apply for funding to extend their services to informal urban settlements. The Trust Fund is rolling out a pro-poor strategy for up-scaling access in urban communities.

Participation and empowerment

Participation means everyone is entitled to take part in making the decisions that affect the exercise of their human rights. Extending far beyond voting in elections, it embraces the right to organise, freedom of speech and the right to be heard. Participation empowers people and enables them to articulate their rights.

Meaningful participation in the sector first of all requires having access to the relevant information, such as water quality data and tariffs. Decision-making processes should be open to participation at different levels and within formalised structures. In the case of excluded or marginalised people, however, capacities often need to be strengthened before people can fully exercise their right. So empowering the poor might require awareness-raising campaigns and capacity building.

In Kenya, the need for the participation of the unserved is now reflected in water sector legislation and in all official documents. Various participation mechanisms are in place at the national, regional and local levels. Important stakeholders must be represented on the boards of sector institutions. The reforms have opened up the water sector to greater civil society participation.

In rural areas, community-based organisations (CBOs) now participate in improving supply. While in urban areas, where water kiosks and shared toilets are a valuable first level of service provision, it is now mandatory that user groups participate in the process of identifying sites for these facilities. So the participation of users in both rural and urban settings has become a must for successful funding applications.

In addition, the Water Services Regulatory Board (WASREB) empowers consumers and the unserved to organise themselves in Water Action Groups (WAG) and thus become a formalised negotiating partner vis-à-vis the service providers. The groups provide feedback to sector institutions on unresolved consumer concerns. The institutions can then take appropriate corrective measures or enforce them through regulation.



Kenya

Enhanced participation of the unserved

Accountability and transparency

The right to water and sanitation is a spur to all efforts to embody accountability and transparency in sector institutions. Transparency ensures the overall integrity of the sector, not least by preventing corruption. It also helps people to hold sector institutions which fail to comply with sector rules and regulations accountable for their actions. For effective accountability, those affected must be entitled to legal redress before a court or other adjudicator. But formal entitlement is not enough. There is often a need to strengthen the capacities of legislative institutions at communal, regional or national level and the judiciary to create greater opportunity for redress. Likewise, the capacity of civil society organisations or community-based organisations (CBOs) must also be strengthened, along with the media, which might be required to act as a watchdog, e.g. against corruption.

The reforms have substantially improved the preconditions for asserting accountability in Kenya's water sector: The Water Act separated and clearly allocated responsibilities between the various institutions to establish checks and balances.

The national regulator WASREB is responsible for monitoring compliance with the human rights principles in every aspect of service provision in the sector. In addition, Kenya's National Commission on Human Rights and the Ministry for Water and Irrigation are now cooperating more closely in order to tackle any failures to implement the human rights-based approach in the sector.

Concrete measures of proven effectiveness have been employed to foster the accountability of water companies' vis-à-vis their customers. For example, the water companies are now required to adopt a customer service approach and set up adequate complaints mechanisms, e.g. customer care desks. Surveys are conducted to measure customer satisfaction and expose corruption, which would never have been done in the past. The results show there is still much work to be done, but customers are reporting changes in the right direction.



Kenya

Checks and balances for an accountable water sector

Human rights criteria

The human rights criteria related to water and sanitation offer guidance for water sector practitioners by setting a general framework for reforms, while leaving room for solutions specific to a national or local, urban or rural context.

Accessibility of water and sanitation

The human right to water implies that water supply must be accessible within, or in the immediate vicinity of, each household, educational institution, workplace and public place. Where this is impossible, a source must be provided close enough to allow people to collect sufficient water - at least the essential minimum of 20 litres of water. The time required to collect these 20 litres should normally not exceed 30 minutes (walking both ways, including waiting times), and the overall distance should be less than one kilometre. The water source should be located in a secure place, taking into account the needs of the most vulnerable groups using it. Threats to the security of women collecting water must be prevented.

Like water supply, the human right to sanitation implies that a sanitation facility is also accessible within, or in the immediate vicinity of, each household, educational institution, workplace and public place. Toilet locations must guarantee physical security, which is why the path to the latrine should be even and safe to walk along, especially at night time. It should be protected to reduce the danger of attack from animals or sexual assault, particularly against women and children. Public toilets and toilets shared between several households can be a valuable first solution, if they are well-managed and kept hygienic.



The Kenyan National Water Services Strategy has set ambitious targets for increasing sustainable access to drinking water supply and sanitation that comply with the human rights principles. In urban areas, access to drinking water is to be increased from 60 to 80 percent by 2015. It must meet defined standards for water quality as well as for the distance to source. The time needed to reach the nearest public outlet and return home is planned to be reduced to an average of 30 minutes. The target for rural areas is to increase access from 40 to 75 percent, and to decrease the maximum fetching distance to 2,000 metres. This figure takes into account that, unlike in urban situations, water collection in rural areas usually does not require queuing.

Crucially, Kenya has taken some specific measures to tackle the challenges facing informal and poor urban settlements, where sanitary conditions are the worst imaginable and leave very little, if any, room for privacy and dignity. These communities often lack any access to the infrastructure operated by a formal provider due to a variety of factors, such as dense settlement patterns and illegal tenure. So access to water and sanitation is mostly provided by the informal service providers, who often supply water of inferior quality and at far higher prices. As the current situation contravenes the human rights principles, Kenya has been increasingly supporting regulated water kiosks that are linked to the formal provider and operate in line with human rights criteria. The Kenyan policy is that the urban poor should have water services of the same standards (e.g. controlled water quality) as other customers. This generally means moving from uncontrollable informal to formal service provision. The water kiosks are linked to the

network in formal settlements. As a pro-poor financing instrument, the Water Services Trust Fund focuses exclusively on these areas in an effort to fast-track the up-scaling of access.

Access to basic sanitation is primarily addressed by the National Environmental Sanitation and Hygiene Policy and the Sanitation Concept for the Water Sector. Both strategies ambitiously aim to ensure that, by 2015, every school, institution, household, market, and other public place will be provided with hygienic, affordable, functional and sustainable toilets and hand-washing facilities.

Availability of water and sanitation

Water must be available to everyone. Its supply must be sufficient and continuous for personal and domestic use. The World Health Organization (WHO) states that access to drinking water means receiving at least 20 litres per person per day, although not all requirements can be met with this amount. It considers 50-100 litres per person per day as the amount necessary to meet most hygiene and consumption needs. 7.5 litres per person per day is regarded as the minimum for survival needs under most conditions. The WHO guidelines set standards which may not be immediately achievable in many developing countries. So we should bear in mind that the human right to water is to be progressively realized. States may take a stepwise approach, adapting the WHO guidelines to their national context.⁸ Additionally, to ensure the long-term availability of water, and protect the rights of present and future generations, wastage of water and pollution of the environment must be avoided.

The right to sanitation demands that facilities be available for use at all times, day or night, along with associated services such as sewerage or safe faecal sludge management. It demands protection from excreta. Not only single individuals, but also the people in their vicinity must therefore have access to hygienic toilets, use them and have arrangements to ensure that excreta and waste-water are safely stored and treated.⁹

20 litres per person per day is the minimum requirement set by the Kenya's National Water Services Strategy, which follows the WHO's recommendation. To ensure the availability of water supply for the needs of today's and tomorrow's generations, Kenya has taken several steps to enhance the complex political, legal and economic framework for the management of its water resources. Key elements are the licensing of abstractions (water withdrawal from natural water resources), metering of consumption, and the introduction of a pro-poor water tariff structure for the consumption of drinking water. These measures are designed to increase equitable access and reduce water wastage.



Kenya

Available water resources and sanitation facilities

⁸ A recent judgement by the South African Constitutional Court (Case CCT 39/09, 2009 ZACC 28) concluded that it is not appropriate for a court to define a quantity for what should constitute 'sufficient water', because this is a matter best addressed in the first place by the government, www.constitutionalcourt.org.za/site/Mazibuko.htm

⁹ On the criterion of availability and sufficiency, see United Nations Committee on Economic, Social and Cultural Rights: General Comment No. 15, 2002, para. 12 (a).

The 2008 Water Sector Sanitation Concept requires all water sector institutions to promote sanitation facilities on all levels and in all areas. The intention is to bring sanitation facilities closer to households in the informal settlements, to promote ecological sanitation for safer treatment of excreta and reuse of wastewater, and to make access safer for women and children. The Sanitation Concept explicitly requires all water sector institutions to comply with the human rights principles.

Water and sanitation quality

To fulfil the human rights criteria, water must be of acceptable quality.¹⁰ The WHO has issued guidelines on drinking water quality that require water to be free from substances hazardous to human health.¹¹ Governments therefore have to establish and enforce water quality monitoring guidelines for every kind of service provision. And since water quality is affected by human behaviour, governments are also required to take appropriate awareness-raising measures on the hygienic use of water and the protection of water sources.

Sanitation of acceptable quality means having safe and adequate facilities to protect public health and the environment. This implies that a toilet is hygienic and easy to clean, solidly built, prevents human, animal and insect contact with excreta, and ensures privacy. But it also means that excreta must be safely deposited and treated in ways that avoid pollution and public health risks.¹² The design of facilities should take into account the needs of women and children, as well as people with disabilities and the elderly.

In Kenya, water quality standards are set in line with the WHO Guidelines on Drinking Water Quality. Appropriate monitoring systems, combined with regulatory enforcement, are crucial to ensure their implementation. Kenya has taken some important steps to improve water quality monitoring of formalised water supply, not least by establishing clear responsibilities among the water sector institutions. Water service providers are now obliged to carry out regular tests on the quality of drinking water. The national regulator WASREB oversees the monitoring efforts of the service providers and demands corrective measures in cases of non-compliance.

The huge number of informal service providers poses, however, a challenge as drinking water supplies are difficult to monitor. To change this situation, Kenya is looking into ways of linking the informal sector to the utilities or replacing informal with formal service providers. They can then be brought within the regulatory regime.

Furthermore, efforts to improve performance of waste-water treatment facilities and the move towards sustainable ecological sanitation are helping to protect water from contamination and facilitate the provision of clean drinking water for all.

¹⁰ On the criterion of acceptability, see United Nations Committee on Economic, Social and Cultural Rights: General Comment No. 15, 2002, and United Nations Sub-Commission on the Promotion and Protection of Human Rights, 2006, World Health Organization: Guidelines, 2006, COHRE et al., Sanitation, 2008.

¹¹ World Health Organization, guidelines 2006.

¹² For more details on sustainable sanitation, see www.susana.org/lang-en/working-groups



Kenya

Improved water
quality monitoring

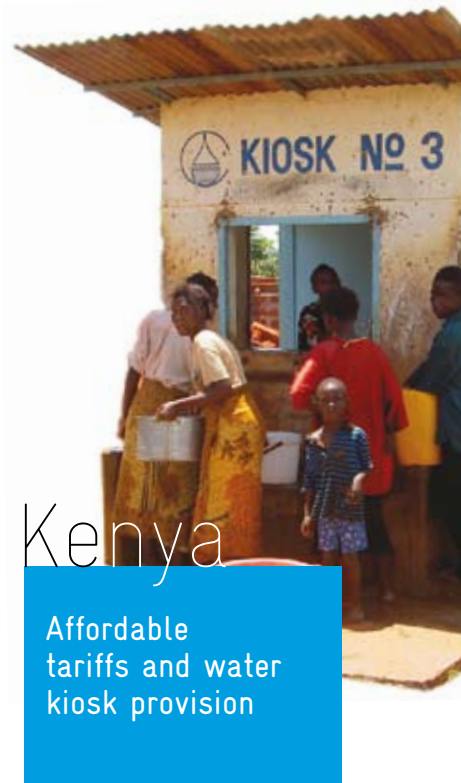
Affordability of water and sanitation

Water supply and sanitation must be affordable. According to international human rights law, the costs of acquiring safe water and paying for sanitation services shall not reduce any person's capacity to purchase other essential goods and services, such as food. Governments must therefore ensure that water and sanitation services are affordable by everybody, whatever their household income. Governments have a wide range of options, such as supporting appropriate low-cost technologies, employing appropriate pricing policies or arranging income supplements. Like water prices, paying for sanitation services must not inhibit people's capacity to acquire other basic goods and services. So it is important to design appropriate tariffs for pay-for-use community toilets or for the emptying of pit latrines, septic tanks or urine-diversion dehydration toilets.

Altogether, expenditure for water and sanitation services should not exceed 5 percent of a household's income. Subsidies for basic water supply and sanitation must be provided where necessary as part of a sustainable financing policy.

In urban areas, residents in informal settlements often lack access to infrastructure operated by a formal provider. The water kiosks sell clean water at controlled prices affordable for the poor as requested by the new Kenyan tariff guidelines. They offer a solution for those who cannot afford to pay a connection fee and a bill for monthly consumption.

Past efforts to increase access to sanitation facilities at household and institutional level by sensitisation and marketing have had very little impact on coverage. So the Ministry for Water and Irrigation in Kenya has chosen to use financial incentives to promote the construction of sanitation facilities under its 2008 Water Sector Sanitation Concept. The target, from 2009 onwards, is for approximately 500,000 people to gain access to sanitary facilities by 2013.



Acceptability of water and sanitation

The colour, odour and taste of water should be acceptable to the users. As for sanitation, in many cultures there are great sensitivities surrounding toilet use.¹³ Social acceptability needs to be considered when constructing and positioning facilities. Most cultures expect separate facilities for women and men in public places, and girls and boys in schools to ensure privacy and dignity. Many cultures and religions require that anal and genital areas be washed after toilet use. Hence the technology for sanitation also needs to fit in with the given cultural context.

¹³ United Nations Sub-Commission on the Promotion and Protection of Human Rights, 2006, and COHRE et al, Sanitation, 2008.

IV. The strengths of a human rights-based approach

The human rights-based approach derives its strength and unique quality from the underlying international human rights law, and from the strong recognition given to human rights within the international community. But practitioners are often quite sceptical as to whether it can really be implemented. Certainly, the approach alone cannot provide all the answers to the complex problems of the water and sanitation sector in developing countries. It should rather be seen as a powerful leverage and guidance for accelerating the efforts to prioritise the needs of the poor. Moreover, the human rights principles establish minimum standards for all, which at the same time leave ample room for practitioners to find context-specific solutions in progressively realising the rights.

Pro-poor improvements are no longer an act of benevolence but become a matter of legal entitlement that individuals can claim from their government. In fact, the entire sector (including governments, development partners and individuals) needs to focus on the unserved. The human rights approach puts substantial weight on governance and participation, which are important framework conditions for the sector and drivers of reform. The experience in Kenya has shown that international human right law, on which the human right to water and sanitation rests, is a strong driver for generating commitment on the part of donor agencies, NGOs as well as state institutions and private service providers.

The human right to water and sanitation strengthens the development of the water and sanitation sector by:

■ Promoting a comprehensive pro-poor orientation for the whole sector

The right prioritises improvements of access for the unserved. It has become a matter of legal entitlement for the individual. The right provides for clearly defined roles and responsibilities to facilitate pro-poor action. For example, it supports the development of pro-poor regulation, which is a new development, and the reinforcement of pro-poor financing mechanisms for up-scaling access.

■ Providing a comprehensive set of minimum standards for all actors

The human rights framework provides orientation and sets minimum standards while leaving room for context specific solutions. No actor should be allowed to ignore or fall short of these standards. The framework can also serve as a tool to facilitate national government coordination and donor alignment. In the same way it can also guide international sector policy dialogue, e.g. on MDG monitoring where important human rights criteria (e.g. affordability, sustainability) are not yet being taken sufficiently into account.¹⁴

¹⁴ Deutsche Gesellschaft für Technische Zusammenarbeit: MDG monitoring, 2007.

■ Guiding sector reform processes

The right provides practical guidance and an overarching framework for sector reforms, including the allocation of roles and responsibilities to sector institutions with regard to their human rights obligations. In addition, it stresses the importance of effective State oversight and sector regulation.

■ Establishing monitoring, accountability and transparency mechanisms

The human rights framework also covers monitoring, accountability and transparency criteria, which are important for initiating and maintaining progress in a dynamic sector. Monitoring and supervision of service provision, and the publication of verified sector information, are required for all human settlements, including informal settlements.

■ Ensuring a voice for the disadvantaged

The right helps to ensure a voice for the disadvantaged. It requires meaningful participation for the unserved, e.g. slum dwellers. Their opinions must be included in the planning and design of, for example, sustainable sanitation facilities. Encouraging right-holders to participate is a step towards more successful and sustainable solutions in the water and sanitation sector.

The process of implementing a human rights-based approach in the water and sanitation sector is still at an early stage. The right to water is being loudly demanded by the people, so governments cannot easily ignore their obligations. But sanitation is less strongly demanded by the unserved and has thus not yet become a top priority for politicians and donors alike. This situation might be rectified if sanitation were recognized as a distinct right.

The human rights-based approach may be relatively new, but there is nothing to be afraid of. The case of Kenya demonstrates that human rights standards can be implemented on the ground. Implementing a human rights-based approach will benefit, above all, the one billion people who are currently without access to improved water supply and the 2.6 billion who lack any form of improved sanitation.

V. References

Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ): Applying human rights in practice. Fact sheets on a human rights-based approach in development cooperation, TOPICS No. 195, December 2008, <http://www.bmz.de/en/service/infothek/fach/materialien/Materialie195.pdf>

Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ): German Development Cooperation in the Sanitation Sector, Special No. 157, February 2009, www.bmz.de/en/service/infothek/fach/spezial/spezial157.pdf

Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ): Water Sector Strategy, Strategy No. 152, September 2006, www.bmz.de/en/service/infothek/fach/konzeptel/konzept152.pdf

Center on Housing Rights and Evictions, Swiss Agency for Development and Cooperation, UN-HABITAT, WaterAid: Sanitation, A human rights imperative, Geneva, 2008, http://www.cohre.org/store/attachments/RWP%20-%20081229_sanitation_eng_web.pdf

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH: Case Study: Water Kiosks - How the combination of low-cost technology, pro-poor financing and regulation leads to the scaling up of water supply service provision to the poor, Eschborn, March 2009

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH: MDG monitoring for urban water supply and sanitation: Catching up with reality in Sub-Saharan Africa, (Authors: Dirk Schäfer, Roland Werchota, Kirsten Dölle), Eschborn, December 2007, 2nd print, <http://www.gtz.de/de/dokumentel/en-water-sanitation-mdg-monitoring-africa.pdf>

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH: Realising Human Rights in Development Cooperation: Kenyan-German development cooperation in the water sector, Assessment from a human rights perspective, Eschborn, 5 June 2007, <http://www.gtz.de/de/dokumentel/en-kenya-brwatersector-2007.pdf>

Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation: Frequently Asked Questions about Water, Sanitation and Human Rights, 2009, <http://www2.ohchr.org/english/issues/water/iexpert/docs/watersant.pdf>

Ministry of Water and Irrigation, Kenya: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH: Socially responsible commercialisation, March 2007

Ministry of Water and Irrigation, Kenya: Water Sector Reform in Kenya and the Human Rights to Water, October 2007, <http://www.gtz.de/de/dokumentel/en-kenya-water-human-rights-brochure-2007.pdf>

United Nations Committee on Economic, Social and Cultural Rights: General Comment No. 15, The right to water (E/C.12/2002/11), 2002, [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf)

United Nations High Commissioner for Human Rights: Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, 2007, (UN Doc. A/HRC/6/3), www2.ohchr.org/english/issues/water/index.htm

United Nations Human Rights Council: Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque (A/HRC/12/24), 1 July 2009, http://www2.ohchr.org/english/issues/water/iexpert/Ind_expert_DeAlbuquerque.htm

United Nations Sub-Commission on the Promotion and Protection of Human Rights: Draft Guidelines for the realisation of the right to drinking water and sanitation, in: Report of the Special Rapporteur, El Hadji Guissé, 57th Sess., 2005 (UN Doc. E/CN.4/Sub.2/2005/25), adopted in Sub-Commission on the Promotion and Protection of Human Rights (Res. 2006/10), Promotion of the realisation of the right to drinking water and sanitation, 24 August 2006, (UN Doc. A/HRC/Sub.1/58/L11), <http://www2.ohchr.org/english/bodies/subcom/57/aevdoc.htm>

World Health Organization: Guidelines for drinking-water quality, 3rd edition, 2006, www.who.int/water_sanitation_health/dwq/gdwq3rev/en/

Abbreviations

CBOs community-based organizations

COHRE Center on Housing Rights and Evictions

GTZ Deutsche Gesellschaft für Technische Zusammenarbeit
GmbH (German technical cooperation)

ICESCR International Covenant on Economic, Social and
Cultural Rights

MDGs Millennium Development Goal

MWI Ministry of Water and Irrigation (Kenya)

NGOs non-governmental organisations

NWSS National Water Services Strategy (Kenya)

PIIP-WSS Pro-Poor Implementation Plan for Water Supply and
Sanitation (Kenya)

UN United Nations

WAG Water Action Groups (Kenya)

WASREB Water Services Regulatory Board (Kenya)

WHO World Health Organization

Imprint

Published by:

Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH

International Water Policy and Infrastructure Program

Dag-Hammarskjöld Weg 1-5

65760 Eschborn, Germany

T +49 (0) 6196 -79-0

F +49 (0) 6196-79-7291

E wasserpolitik@gtz.de

I www.gtz.de/water

Responsible:

Dr. Franz-Josef Batz

Authors:

Thomas Levin

Mijako Nierenköther

Nina Odenwälder

Print:

W. B. Druckerei GmbH

Hochheim am Main

Photos:

Title: Water Supply & Sanitation Collaborative Council (WSSCC)

Title, p. 1, 2: [bilderbox - fotolia.com](#)

P. 5, 11: GTZ

P. 6: Gilles Paire - [fotolia.com](#)

P. 7 top: © Ulla Trampert / PIXELIO

P. 7 bottom: Gilles Paire - [fotolia.com](#)

P. 8: [africa - fotolia.com](#)

P. 9: Steve Evans, „Zimbabwe_n001“, CC-Lizenz (BY 2.0), source: www.piqs.de

P. 10: Eric Isselée - [fotolia.com](#)

Place and date of publication: Eschborn, December 2009

Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH

- German Technical Cooperation -

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

I www.gtz.de

