



Kenyan-German development cooperation in the water sector

Assessment from a human rights perspective

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Executive Summary and Core Recommendations

The objective of the mission was to assess German development cooperation (GDC) with Kenya in the water sector from a human rights perspective, including the contributions by Deutsche Gesellschaft für Technische Zusammenarbeit (German Agency for Technical Cooperation, GTZ), Kreditanstalt für Wiederaufbau (German Bank for Reconstruction and Development, KfW) and Deutscher Entwicklungsdienst (German Development Service, 'DED'). Therefore the main basis for this report is the right to water and sanitation as established in international law and policy. The central focus of Kenyan-German development cooperation in the water sector is sector reform. German development cooperation has supported the reform process from its commencement and at all levels, covering sector-policy (macro), service delivery (meso) and water consumers (micro) in the sub-sectors of Water and Sanitation Supply and Water Resource Management.

The overwhelming majority of States, including the Republic of Kenya and the Federal Republic of Germany, have committed themselves to move as expeditiously and effectively as possible towards the full realisation of the right to water and sanitation. Such realisation should include the creation of a supporting institutional and political framework. Every person is entitled to sufficient clean water for personal and domestic use. Each person is entitled to physically accessible and affordable water and sanitation. Governments are obliged to progressively realise this right to the maximum of available resources. As with all human rights, the right to water and sanitation is guided by a set of common principles, namely, non-discrimination and inclusion of vulnerable groups, participation and empowerment and transparency and accountability.

(i) Political and institutional framework and right to water and sanitation

Kenyan law and policy has recently moved towards realising the right to water in Kenya, both through formal recognition of the right to water and the adoption of several initiatives that are pro-poor. The water sector reforms have revived public institutions dealing with water and greatly improved their effectiveness. This achievement was a prerequisite to the implementation of a rights-based approach in the sector. GDC with its focus on sector reform can be credited as a key actor that significantly contributed to this reform through financial and technical support.

The institutional set-up appears to be working well at the national level and the transitional phases of the reforms are ongoing. Capacity of staff in the water sector institutions at national level has significantly improved, which can be attributed to a large extent to long-term support by GDC. However, additional capacity development is needed at the service level and in mainstreaming human rights and pro-poor approaches throughout staff in the water sector. In order to better target the poor, information on access to water and sanitation has to be improved. In addition, the cooperation between water sector and health sector institutions needs to be intensified.

(ii) Water Availability

The Water Act includes useful provisions to ensure sustainability of water supplies through abstraction licensing, metering and reform of tariff structures. The improvements to water resource management can be expected to enhance the availability of water. The Water Act as well as the National Water Resource Management Strategy (NWRMS) prioritise water availability for personal and domestic use, thus strengthening the realisation of the right to water in Kenya. The National Water Services Strategy includes the minimum target of 20 litres per person per day. This legal and political framework provides a good fundament to deal with the difficulties existing at the implementation stage.

(iii) Water quality

Water quality standards in Kenya comply with international standards. In regard to formalised water supply, water quality monitoring has been improved by the reforms. Further

improvements, including an obligation to inform consumers of water quality are expected due to the requirements set out in Service Performance Agreements ('SPAs'). Challenges remain in water quality monitoring for the informal sources used by a large sector of the population. The adoption of the 'polluter pays' principle by the Water Resource Management Authority ('WRMA') and the increase in its enforcement powers relating to pollution control are a positive development. The Ministry of Health (MoH) carries out insufficient education of users on hygiene, water testing, purification and storage. However, hygiene campaigns are foreseen in the National Environmental Sanitation and Hygiene Policy (NESHP) adopted in December 2006.

(iv) Access to water and sanitation

The water sector institutions are beginning to make progress towards extending access to the poor, particularly in rural areas. In urban areas, efforts have focused on rehabilitation of the system. However, recent developments, including the significant contribution of GDC to the Water and Sanitation Trust Fund, and its decision, supported by GDC, to expand into urban areas, is a welcome development and will lead to significant progress in realising the right to water for the urban poor. It will be important for such initiatives to address the problems of large urban informal settlements. However, the Water Services Trust Fund's (WSTF) capacity still has to be strengthened to realise this objective.

The Service Performance Agreements currently established by the Water Services Regulatory Board (WSRB) impose obligations upon Water Services Boards (WSBs) and Water Service Providers (WSPs) regarding to access to water for the poor and are a good example of human rights consistent regulation. Rigorous enforcement of these obligations will be necessary to ensure that the reforms lead to increases in access for the poor. One of the primary gaps in relation to the realisation of the right to water and sanitation is access to basic sanitation, which needs far greater priority from the Government of Kenya (GoK) and could be promoted by GDC in the health and water sector.

(v) Affordability of water and sanitation

The water reforms, with the support of GDC, aim to increase cost recovery (operation/maintenance [O/M] costs in a first step), in order to ensure the sustainability of the system and to free up government and donor funding that could then be directly targeted towards investments improving access for the poor. This approach is sound and indeed necessary from a human rights viewpoint. At the same time, it is necessary to ensure that tariffs for the essential amount of water (and by extension for sewerage) are kept affordable for the poor. The March 2007 draft WSRB tariff guidelines suggest useful mechanisms to achieve this objective and generally adopt a human rights approach. However, further measures could be implemented to reduce the financial obstacles to access. Likewise, the first proposals on revised tariffs submitted by Lake Victoria North WSB are considerably advanced in regard to affordability for the poor, and could serve as a model for other WSB tariff proposals.

Water tariffs will be reduced for those using small amounts, thus increasing the proportion of people who will be able to afford water. However, it will be necessary to consider solutions to address the inability to pay of the poorest of the poor. These may require a cross-sectoral approach, rather than one limited to the water sector. Kenyan water policies do not stipulate any procedural requirements before a disconnection can occur, such as prior notice. In some localities, WSPs try to prevent disconnections through prior warnings and finding flexible solutions on an individual basis. These could serve as a model according to which guidelines could be drafted on this issue.

(vi) Non-discrimination and inclusion of vulnerable and marginalised groups

The mission did not have sufficient information to assess whether particular groups have been denied access to water and sanitation on the basis of their group identity, though budgetary allocations to some areas of Kenya are very low in comparison with others. However, the water sector has historically failed to address the particular needs of groups that face difficulties in access to resources, including water and sanitation and therefore need special support to realise

their rights: women, children, pastoralists, people in informal settlements and people with disabilities, illnesses and the elderly. The emphasis on pro-poor approaches in the water sector reforms should be beneficial in particular to women and children living in poverty but this will require constant attention in practice. The reforms have also led to greater resources being directed towards informal settlements and the arid and semi-arid lands (ASALs). However, lack of capacity has hindered efforts to improve the situation in the latter area, and this needs urgent attention. It will also be necessary for the water sector to determine ways in which it can ensure that services are designed to meet the needs of women, children and the disabled.

(vii) Participation and empowerment

Participation of relevant stakeholders is recognised as a crucial element in official documents such as the Water Act. The water sector has become far more open to participation from non-governmental organisations (NGOs) than was the case prior to the reforms and this has enhanced decision-making. However, ongoing efforts to include communities and civil society in the reform process should be enhanced, so as to involve the representatives of poor communities who are underserved in regard to water and sanitation. The lack of such representation will make it more difficult for the reforms process to achieve its pro-poor objectives. In contrast to the water sector, grassroots groups were better represented in the development of the Kenyan Land Policy. At the local level, there are good practices in Kenya that can be mainstreamed to the urban sector, such as the formation of Water Resource User Associations (WRUAs) with the support of the GDC, and the Community Project Cycle used by the Kenya Water and Sanitation Programme.

(viii) Transparency and accountability

The water sector is now far more accountable to users than was the case prior to the reforms. Water companies have adopted a customer service approach and the structure of complaints mechanisms and access thereto has been considerably improved, particularly for those connected to a network. However, awareness of complaints procedures is not well established among those without a household connection. Monitoring is undertaken by the WSBs and, to an extent, by the Kenya National Commission on Human Rights ('KNCHR'). As both institutions face capacity gaps, it is important to provide support to advocacy NGOs and community-based organisations (CBOs) who can monitor performance of institutions in the water sector.

Conclusions

The Kenyan water sector reforms, supported by GDC, are very promising in terms of reflecting a human rights approach. **Five of the most positive points are the following:**

1. There is explicit recognition of the right to water and sanitation in most key documents. This is most clear in the tariff guidelines. Kenya may in fact be a regional leader in explicitly reflecting a human rights approach and the lessons learnt here will be of great importance internationally, in particular for other developing countries.
2. The reforms have created increasingly effective and professionally run institutions – a prerequisite for realising the right to water and sanitation.
3. The water sector policies have a clear pro-poor focus and emphasis on extension of access to affordable water for the poor.
4. The water sector has become more open to participation of civil society.
5. Significant improvements in water resource management will help ensure the sustainability of water supplies.

From a human rights point of view, **the five points of weakness in the reforms are the following:**

1. Representatives of the poor have not sufficiently participated in water sector reform processes.
2. There is insufficient information reaching the poor about the reforms and the opportunities open to them.

3. Large urban informal settlements – the sites of some of the worst levels of poverty in the country – are not yet being addressed by WSPs.
4. There is insufficient capacity and funding provided to the WSTF for extension of access to the poor.
5. Hygiene education and assistance to communities for basic sanitation remains too low on the list of GoK priorities, a point mainly relevant to the MoH. However, as the health sector did not fall within the mandate of this mission, detailed analysis of basic sanitation was not possible.

The mission made 28 recommendations in relation to the above areas, which are addressed in the chapters below. The **10 core recommendations** of this report are set out below. These recommendations, and the analysis on which they are based, are intended to catalyse – rather than attempt to settle - debate on how to best realise the right to water and sanitation in Kenya. It is the hope of this mission that these recommendations can be discussed and refined by GDC and its partners, in particular GoK institutions and civil society.

1. **German development cooperation (GDC)** should continue to systematically support the process of pro-poor water sector reform, but encourage the mainstreaming of a more explicit rights-based approach.
2. It is recommended that **German development cooperation** financially and technically supports a baseline study on access to safe water and sanitation in Kenya, potentially in the context of the sector-wide approach (SWAP) with partners. Such a survey would help to specifically target the poor and vulnerable groups.
3. The **Ministry of Health (MoH)** should prioritise the implementation of nation-wide information and education campaigns on hygiene awareness, as set out in the NESHP. Water sector institutions should assist in the design of such a campaign and assist in its implementation, as appropriate. Such a campaign should also include education on how communities can monitor water quality and on household level treatment and storage, with assistance from **Water Resource Management Authority (WRMA)** and **Water Resource User Associations (WRUAs)** **GDC**, in its work in the health and water sectors, could encourage the **Government of Kenya (GoK)** to put more emphasis on education of users on hygiene issues and offer financial and technical support.
4. The **GoK** and **development partners** should ensure that extension of access to water and sanitation for the poor is treated with the equivalent priority to the need to achieve cost-coverage. **Water Service Providers (WSPs)** should be further subsidised where they are extending access to low-income areas.
5. The **Water Services Boards (WSBs)** and **WSPs** should actively seek to provide low-cost formal services to large urban informal settlements, including linking existing community-based projects to the formal system. A mapping exercise should be carried out on successful initiatives that improved access to water and sanitation in such settlements in Kenya. **GDC** should consider providing support for such a study.
6. **German development cooperation** should continue and if possible intensify its engagement in the urban component of the **Water Services Trust Fund (WSTF)**, including the large urban informal settlements, and strengthen the capacities of the relevant actors.
7. The **Water Services Regulatory Board (WSRB)**, through the Tariff Guidelines and tariff negotiations, should require WSPs to offer the option of instalment payments and to permit demonstration of payment capacity rather than a deposit. They should also consider subsidies for connections that would particularly benefit the poor. **GDC** could encourage initiatives in that direction.

8. **All actors in the water sector** must make a strong case for continued, and increased, central government and donor investments for extension of access to water and sanitation, and caution against unrealistic expectations of levels of financing from cross-subsidisation.
9. The **Ministry of Water and Irrigation (MWI), WSRB, WSBs** and **WRMA** should develop and support mechanisms at the national, regional and local level for civil society representing poor communities and other vulnerable groups to participate in policy formulation, ensuring that women are adequately represented. It is recommended that **GDC** through its role in the sector reform process continues to provide the necessary support to such institutions, and supports grassroots groups to participate in the policy-making process.
10. **Donor agencies**, including **GDC**, should provide further support to national civil society organisations in order to ensure that they are able to hold public institutions accountable with regard to the right to water and sanitation.

1. Introduction

1.1. Background, objectives, course of the mission

In 2004, Kenya was chosen by the German Federal Ministry for Economic Cooperation and Development (BMZ) as one of two countries to pilot a human rights-based approach in German development cooperation. The GTZ cross-sectoral project 'Realising Human Rights in Development Cooperation' commissioned by BMZ, and launched in June 2005, offers advisory services in achieving a stronger human rights orientation. Its services are based on the understanding that external support is of a facilitating nature, accompanying ongoing processes of the participating actors in development cooperation.

An initial advisory mission on Kenyan-German development cooperation in the water sector took place from 10 to 17 October 2006, focusing on the KfW-supported Nyeri water supply project and, to a limited extent, the GTZ supported programme on water sector reform. A second advisory mission was carried out from 5 to 21 March 2007, with the aim of assessing the overall Kenyan-German development cooperation in the water sector (at the macro-, meso- and micro levels), from a human rights perspective. The mission also assessed the contributions of GTZ, KfW and DED in terms of technical, financial and personal cooperation. The mission was tasked with indicating both strengths and weaknesses, pointing out good practices aspects and lessons learned from elsewhere and making concrete recommendations for future action.

At the *meso-* and *micro-levels*, the mission visited the Lake Victoria North region, where it met with the Chief Executive Officer (CEO), Technical Manager and the Finance and Administrative Officer of the Lake Victoria North Water Services Board (LVN WSB). This was followed by meetings with the Area Managers of the Western Water Services Company (Western WSC), responsible for Nambale, Busia and Mumias. The mission then visited kiosks and standpipes owned by private vendors and community organisations in Mumias and Busia and interviewed the operators. Meetings were then held with the CEO and Technical Coordinator of Nzozasco Water Services Company (Nzozasco) and Nzozasco consultants from the consultancy of Gauff Ingenieure, supported by KfW. Nzozasco is responsible for Webuye, Bungoma, Kitale and Kimilili. Members of the mission team visited Nzozasco kiosks and standpipes in Webuye and Bungoma together with the Nzozasco area managers for these towns, and interviewed the operators of these kiosks and outlets. The mission also met the Deputy District Public Health Officer for Bungoma as well as the Director of Araweto, a Bungoma-based NGO that assists rural communities implement projects under the Water Services Trust Fund.

The Tana River region was also visited and meetings were held with the Water Resource Management Authority (WRMA) Coordinator in Maua, the water rights officer for Maua and the Secretary of the Bwathonaro Water Resource Users Association (BWAWRUA). The mission team visited the Mporoko wetland and several sites at the Bwathonaro river where water was being abstracted and a site being considered for potential kiosks. The mission met with the Regional Manager, Regional Technical Manager, Catchment Areas Advisory Committee Chairman and Deutscher Entwicklungsdienst (German Development Service, DED) staff member for Tana Catchment, as well as the Public Health Officer for Embu.

At the *macro-level*, meetings were held with key government departments in the water sector, including the following officials.

- CEO, Water and Sanitation Trust Fund (WSTF)
- CEO, Water Resource Management Authority (WRMA)
- Inspectorate Services Manager of the Water Service Regulatory Board (WSRB)
- Director of Water Sector Reforms, Ministry of Water and Irrigation (MWI)
- Deputy Director for Water Services (in charge of partner programmes), MWI
- Principle Economist, MWI
- Chief Public Health Officer in the Ministry of Health

The mission also met with a Commissioner of the Kenya National Commission on Human Rights and representatives of four non-governmental organisations - Umande Trust, Hakijamii Trust, Basic Rights and Misereor.

In addition to these interviews, members of the team reviewed the extensive documentation provided by each of the institutions during the meetings, as well as other relevant legal and policy publications produced by the Government of Kenya and documents relating to negotiations and discussions between the Government of Kenya and Germany and other donors and those describing the work of German Development Cooperation in Kenya's water sector. The mission members also drew on previous work relating to the Kenyan water and sanitation sector in both urban and rural contexts.

On 16 March 2007, preliminary observations were presented to an audience consisting of the Coordinator of Kenyan-German development cooperation in the water sector/head of KfW support programme, the DED Programme Manager of the Water Sector, the Programme Manager of the MWI/GTZ Water Sector Reform Programme, the CEOs of the WRMA and Water Services Trust Fund and representatives of German Agro-Action and Misereor. Feedback from participants is reflected in the current report. Detailed comments on a draft mission report were provided in April 2007 by experts working in the water sector of German Development Cooperation with Kenya, which are taken into account in the present draft. The findings on the mission are based on these discussions, documents and side-visits. However, any errors and omissions are the responsibility of the mission alone.

The findings and recommendations of this mission should not be seen as a judgement or formal evaluation of Kenyan-German Development Cooperation in the water sector. Rather, this report aims to assist in the mainstreaming of rights-based approaches in the water sector and to suggest points of entry for this approach. It therefore aims to catalyse – rather than to attempt to settle - debate on how to best realise the right to water and sanitation in Kenya. It is the hope of this mission that these recommendations can be discussed and refined by GDC and its partners, in particular GoK institutions and civil society.

1.2 Kenyan-German development cooperation in the water sector

1.2.1 Kenyan-German cooperation plays a key role for sector reform

The central focus of Kenyan-German development cooperation in the water sector is 'water sector reform'. German development cooperation has supported the reform process from the initial stage and at all levels, covering sector-policy (macro), service delivery (meso) and water consumers (micro) in the sub sectors of Water and Sanitation Supply (WSS) and Water Resource Management (WRM). The main objectives of the German contribution in the water sector is the successful implementation of the sector reform, including the operationalisation of the new Water Policy and Act and the sustainable functioning of the new sector institutions. These measures are intended to result in improved access for populations in secondary towns, improved quality and efficiency in the provision of urban WSS Services, sustainable operation of the water supply and sanitation infrastructure and in improvement of the Water Resources Management System.

German development cooperation contributed considerably to the sector reform process through policy and institutional advice to the Ministry for Water and Irrigation and other relevant institutions, for example supporting the WSRB in drafting guidelines, implementing a sector information system etc. and the MWI in formulating the national sector strategies such as National Water Resource Management Strategy (NWRMS) and National Water Service Strategy (NWSS). One of the major objectives of German support in these areas is to strengthen a pro-poor approach with a focus on urban areas.

German assistance to the sector reform process is complemented by capacity development at the meso and micro level for the new institutions established under the Water Act 2002. Technical support for WSBs and WSPs at the meso level takes place in *Central, Lake Victoria North and South*. In the past financial support has been provided for the development of the water supply and sewerage system in the secondary town of Nyeri in Central province and for Malindi in Eastern (coast) province. Currently loans are provided for office equipment in the offices of the

Water Service Boards and Water Resource Management Authorities of Lake Victoria North, and for the development and rehabilitation of the drinking water and sewerage disposal infrastructure in secondary towns in this area, including Eldoret - the fourth largest urban centre in Kenya. The assignment of long-term technical advisors from DED to newly established institutions on the micro and meso level completes the implementation of advisory and investment.

Furthermore, German development cooperation has facilitated the expansion of the WSTF into urban areas with the grant of 5.5 million euros to the fund. Currently, the first pilot projects are undertaken in peri-urban areas in Naivasha, and in the Nairobi area in Olollaiser and EPZ-Mavoko for consideration by the Water Services Trust Fund.

Since the central task of German development cooperation is to contribute and to provide support to the sector reform most of the observations and recommendations are closely related to the work of the new institutions, such as the WSRB, the WSBs, the WRMA and the WSTF. The formal addressee of the findings of this mission is GDC, which would then have to encourage and support the relevant institution to undertake the suggested steps. However, since German development cooperation and the process of sector reform are so intrinsically linked it is sometimes more comprehensive to directly address the relevant institution at the national level. This has the advantage that the relevant actor and recommended actions are clearly identified.

1.2.2 Focus on the poorer areas could be intensified

It was a joint decision by the Kenyan and German government at the political level that the German contribution primarily targets peri-urban areas in middle-sized towns, but this decision has also included selected investments for bigger peri-urban areas in Malindi (water supply) and in Eldoret (sanitation), which have been completed. The middle sized towns selected were Nyeri in Central Province and the following towns in Lake Victoria North in Western Province: Kitale, Bungoma, Webuye, Kakamega, Busia, Nambale, Butere, Mumias, Kapenguria, Makutano, Malakisi and Kimili.

In these towns, the German contribution aims at strengthening the 'poverty focus' in water and sanitation supply, e.g. though encouraging low cost solutions for informal areas in the form of kiosks and basic sanitation services. Hence, in that regard German development cooperation assists in realising a pro-poor approach. It takes into account that regular and sustainable supply of water in peri-urban and urban areas requires the establishment and maintenance of a network. In most situations the right to water and sanitation for poor and marginalised groups can best be realised in a systemic context, i.e. as part of a wider network including middle class and commercial users who would be able to cross-subsidise the establishment of the network and thereafter subsidise supply

However, a pro-poor as well as a human rights approach has geographic implications for Kenyan-German development cooperation. Such approaches require the investment of limited resources in a way that prioritises the most striking *existing inequalities* in access to water, whether across regions (rural, urban, peri-urban areas or informal settlements) or across groups according to their degree of marginalisation - e.g. social or economic background. It is arguable that the Kenyan- German cooperation does not necessarily fully address the most striking inequalities. For example, 44.6 per cent of residents in Western province have a water source less than 15 minutes distance from their home, while this figures drops to 22.1, 31.6 and 38.7 respectively for North Eastern, Nyanza and Eastern provinces.¹ The mission team was unable to discern from the Matrix of Donor Activities in the Water and Sanitation Sector any focused support for Northern WSB Region. With the exception of Busia, it is doubtful whether the other cluster towns where German investment takes place are among the poorest and most disadvantaged locations in Kenya in regard to access to water and basic sanitation. Therefore, it would be useful for Kenyan-Germany cooperation to consider increased cooperation in areas not addressed by other donors, including the Northern Region and districts of other Regions with low levels of access.

¹ Society for International Development, *Pulling Apart, Facts and Figures on Inequality in Kenya* (Nairobi, 2004), p. 19, table 3.7 b.

1.3 The human right to water and sanitation under international law

1.3.1 Legal basis for the right

The basis for this human rights study is the right to water and sanitation as established in international law and policy. The right to water and sanitation is contained in a number of international human rights treaties and declarations.² The most significant is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by 156 countries, including Kenya and Germany, and binds all levels of government in the State.³ The treaty includes the right to an adequate standard of living and the right to health, which implicitly comprises the right to water and sanitation. In 2002, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 15: The Right to Water, which provides the most detailed description of the right to water and State obligations to implement them.⁴

With regard to sanitation, the UN Committee on Economic, Social and Cultural Rights has affirmed that there is an entitlement to sanitation under the right to housing and the right to the highest attainable standard of health. In 2006, the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that reports to the UN Human Rights Council, has also set out a description of the right to sanitation in its Guidelines on the Realization of the Right to Drinking Water Supply and Sanitation (Sub-Commission Guidelines).⁵ The Convention on the Rights to the Child and the Convention on the Elimination of All Forms of Discrimination Against Women, also effectively treat access to water and to sanitation as a human right. In 2006, the 'global water crisis' was also the subject of UNDP's annual Human Development Report, which called for explicit rights-based approaches.⁶ The Programme of Action of the International Conference on Population and Development, Cairo, 1994 stated that all individuals have the right to an adequate standard of living for themselves and their families, including water and sanitation.⁷

At the regional level, the African (Banjul) Charter of Human and People's Rights (1981) recognises that every individual shall have the right to enjoy the best attainable state of physical and mental health and that all peoples shall have the right to a general satisfactory environment favourable to their development.⁸ This treaty therefore implicitly provides for a right to water and

² See also Mar del Plata Declaration, United Nations Water Conference 1977, preamble; Commission on Human Rights resolution 2004/17, /CN.4/RES/2004/17; Commission on Human Rights Resolution 2005/15, E/CN.4/RES/2005/15; Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment: Development Issues for the 21st Century, UN Doc. A/CONF.151/PC/112 (1992); Agenda 21, Report of the United Nations Conference on Environment and Development 1992; Principle No.2, Programme of Action of The United Nations International Conference On Population & Development; European Parliament, Resolution on water management in developing countries and priorities for EU development cooperation, 4 September 2003. For a discussion on the legal background on right to water, see M. Langford, Tragedy or Triumph of the Commons? Human Rights and the World Water Crises", *Human Rights 2006: The Year in Review* (University of Monash, 2007), <http://www.law.monash.edu.au/castancentre/events/2006/conf-06-langford-paper.html>.

³ Kenya ratified the treaty in 1972.

⁴ Committee on Economic, Social and Cultural Rights, *General Comment No. 15, The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003), available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/a5458d1d1bbd713fc1256cc400389e94?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/a5458d1d1bbd713fc1256cc400389e94?Opendocument). The Committee has a mandate from the UN General Assembly to monitor State implementation of the Covenant and to issue general comments in order to provide States with a greater understanding of their obligations under the Covenant. The General Comment therefore serves as the single most authoritative interpretation of the ICESCR. United Nations human rights treaties are accessible at <http://www.ohchr.org/english/law/index.htm> and General Comments by UN human treaty bodies can be accessed at <http://www.ohchr.org/english/bodies>.

⁵ Sub-Commission on the Promotion and Protection of Human Rights, Draft Guidelines for the realization of the right to drinking water and sanitation, contained in the 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 realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11.

⁶ See *Beyond Scarcity: Power, power and the global water crisis*, United Nations Development Report (New York, UNDP, 2006), p.1.

⁷ <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

⁸ Available at: <http://www1.umn.edu/humanrts/instree/zlafchar.htm>.

sanitation. The African Charter on the Rights and Welfare of the Child (1990) specifically calls on governments to implement the right to health by ensuring the provision of safe drinking water.⁹ In Europe, the Committee of Ministers of the Council of Europe has explicitly recognised water as a human right in international law.¹⁰

1.3.2 Obligations of governments in relation to the right to water and sanitation

The following describes the obligations of all governments that have ratified the International Covenant on Economic, Social and Cultural Rights. Every person is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.¹¹ The content of each of these elements is set out at the beginning of each of the relevant chapters in this report. Equally, everybody is entitled to access to adequate and affordable sanitation in or near their homes as well as schools, hospitals, and places of work.¹² As with all human rights, the right to water and sanitation is guided by a set of common principles that are grounded in widely ratified human rights treaties,¹³ namely, non-discrimination, inclusion of vulnerable groups, participation and empowerment, transparency and accountability (the “human rights principles” - see below under sections 7-9 in more detail).

Government authorities of each country have the obligation to respect, protect and fulfil the human right to water and sanitation, without discrimination, with regard to their people.¹⁴ The obligation to *respect* requires that governments refrain from interfering directly or indirectly with any person’s right to water or sanitation without substantial justification. The obligation to *protect* requires that governments should ensure that no private individual or organisation interferes with any other person’s right to right to water and sanitation. They are required to establish a regulatory system for service providers that include mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations.¹⁵

The obligation to *fulfil* requires that a government take steps, within its maximum available resources, to assist people to secure their right to water and sanitation, including through provision of education and public services.¹⁶ The State is obliged to take steps that are deliberate and targeted towards moving as expeditiously and effectively as possible towards the full realization of the right.¹⁷ Such steps should prioritise the realisation of the minimum essential levels of the right, in particular access to essential levels of clean water and to adequate sanitation.¹⁸ Where regional or local authorities are responsible for water and sanitation, the State is responsible to ensure that these authorities have sufficient resources and do not deny services on a discriminatory basis.¹⁹ In implementing the right, governments can legitimately expect that users will also do their part in ensuring access to water and sanitation for all, for example, by paying for water and sanitation to the extent that it is affordable.²⁰

International human rights standards also require governments that have available resources to provide international financial and technical assistance to developing countries with a view to ensuring that everyone has access, as promptly as possible, at least to basic water and sanitation

⁹ Available at <http://www1.umn.edu/humanrts/africa/afchild.htm>.

¹⁰ Council of Europe, Recommendation of Committee of Ministers to Member States on the European Charter on Water Resources, Recommendation 14 (2001), paras. 5 and 19.

¹¹ See General Comment No. 15 (n. 4 above), para.2.

¹² General Comment No. 15, *ibid.*, para. 29.

¹³ See GTZ-paper on human rights in development cooperation for further details of these principle, which are (<http://www.gtz.de/de/themen/politische-reformen/demokratie-rechtsstaat/14902.htm>).

¹⁴ General Comment No. 15, *ibid.*, paras. 21 and Sub-Commission Guidelines, (n. 6 above), s. 2.3 (d). In relation to implementation of the General Comment, see Ashfaq Khalfan, ‘Implementing General Comment No. 15 on the Right to Water in National and International Law and Policy’, Discussion Paper, Bread for the World Germany and Centre on Housing Rights and Evictions, March 2005, available at www.cohre.org/water

¹⁵ General Comment No. 15, *ibid.*, para. 24, Sub-Commission Guidelines, s. 2.3 (d)-(e).

¹⁶ General Comment No. 15, *ibid.*, paras. 17-18, 25-26, Sub-Commission Guidelines, s. 2.

¹⁷ International Covenant on Economic, Social and Cultural Rights, art.2, General Comment No. 15, *ibid.*, para. 17.

¹⁸ General Comment No. 15, *ibid.*, para. 37.

¹⁹ General Comment No. 15, *ibid.*, para. 51, Sub-Commission Guidelines, s. 2.1-2.2.

²⁰ General Comment No. 15, *ibid.*, para. 27.

services. Such assistance should not interfere with the realisation of other human rights and should focus on bringing tangible benefits to those with no basic access to water and sanitation.²¹ Governments, as members of inter-governmental organisations, should ensure that these organisation's policies and actions are consistent with the right to water and sanitation.²²

Although the human right to water has been legally binding upon Kenya and Germany since 1976 (when both States ratified the International Covenant on Economic, Social and Cultural Rights), it has only become clearly expressed since 2002 with the passage of General Comment 15. There is therefore a challenge for all countries, including developed and developing countries, to consider necessary reforms to their water sectors.

²¹ General Comment No. 15, *ibid.*, para. 34, Sub-Commission Guidelines, s. 10.2-10.3.

²² General Comment No. 15, para. 36, Sub-Commission Guidelines, s. 10.4.

2. Political and institutional framework for the right to water and sanitation

The UN Committee on Economic, Social and Cultural Rights (CESCR) has stated that legally binding international human rights standards “should operate directly and immediately within the domestic legal system of each State party”.²³ In addition, States parties must adopt an appropriate national strategy or plan of action to implement the right to water, review existing legislation for consistency with the right to water, examine whether a framework law should be adopted, and ensure sufficient coordination between the various government national ministries, regional and local authorities. The right to water should be monitored through the use of indicators, benchmarks and disaggregated data collection.²⁴

2.1 Political commitment in Kenyan law and policy for the right to water and sanitation

The current Kenyan constitution makes no provision for the right to water and sanitation. However, a number of constitutional rights – namely the right to life (Article 72) and right to non-discrimination (Article 82) - can be interpreted to protect many aspects of the right to water and sanitation.²⁵ However, all official drafts of the new Kenya constitution contain the right to water and sanitation.²⁶ Article 65 provides that, ‘Every Person has the right to water in adequate quantities of satisfactory quality.’ Article 66 provides that, ‘Every Person has the right to a reasonable standard of sanitation.’

At the operational level, water sector reform, which commenced in the late 1990s, was driven by an orientation towards improvements in access to water. German development cooperation in Kenya was, and still is, among the main facilitators and supporters for this process. The core legislation emanating from this reform process was the Water Act 2002. It establishes a legislative framework for more effective management, conservation and regulation of rights to use water and provides for the regulation and management of water supply and sewerage service.²⁷ The right to water and sanitation is not mentioned in the Act, but the legislation contains objectives of serving areas without basic water supply and basic sewerage.²⁸ Thus, the Water Act provides some legal basis for the supply of water and sewerage services to all Kenyans, including the poor.²⁹

The National Water Resource Management Strategy (2006 to 2008) contains an explicit human rights based approach in the area of water resource management. The overall objective of the water policy in Kenya is expressed by the aim of achieving equal access to water for all Kenyans,³⁰ and its principles include the statement that, “Water required to meet basic human needs and to maintain environmental sustainability will be guaranteed as a right”.³¹ It is made clear that water resource management has a direct link to the human right to water in terms of equal access and

²³ Committee on Economic, Social and Cultural Rights, *General Comment 9, The domestic application of the Covenant* (Nineteenth session, 1998), U.N. Doc. E/C.12/1998/24 (1998), para. 4, and General Comment No. 15 (n. 4 above), para. 57.

²⁴ See General Comment No. 15 (n. 4 above), Part V.

²⁵ In India, Nepal, Pakistan and Ireland, the right to water was implied from the right to life: see *Nimimaya Maharjan vs. His Majesty of Government NKP*, 2053, Vol. 8, p. 627 SC; *General Secretary West Pakistan Salt Miners Labour Union, Khewra, Jhelum v. the Director Industries and Mineral Development, Punjab Lahore* 1994 SCMR 2061; *Hussain v Union of India*, High Court of Kerala OP 2741/1988 (26/02/ 1990); *Ryan v AG*. [1965] IR 294, at 315. See I. Byrne, ‘South Asia’, in M. Langford, *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (New York: Cambridge University Press, forthcoming).

²⁶ Both Drafts, the draft of the Attorney General, Kenya Gazette 2005, Supplement No. 63, and also the Bomas draft (National Constitutional Conference, Draft Constitution of Kenya 2004).

²⁷ According to the definition contained in Art. 2 Water Act “water service” comprises the supply of water and the provision of sewerage.

²⁸ Cp. Art. 49 (4) Water Act 2002.

²⁹ See also Art. 49 (3) and art. 57 (b) Water Act 2002.

³⁰ National Water Resource Management Strategy 2006 to 2008, Section 2, p.4.

³¹ *Ibid.*

affordability³² and that water resources should therefore be considered as a “common property” resource³³ and that insufficient water resources should be equitably distributed.³⁴

The National Water Services Strategy (Draft NWSS 2007-2015) provides further and more specific anchorage for a human rights focus at the political level. The overall goal of the Draft NWSS is to “offer sustainable access to safe water and basic sanitation to all Kenyans”.³⁵ Sustainable access to water and to sanitation as a human right is the first and key principle of the NWSS.³⁶ Other key principles are a focus on poor and vulnerable groups. Therefore the human right to water, with its focus on the poor, is integrated into the various targets and topics of the NWSS. The NWSS furthermore entails the commitment to develop indicators for human rights and water, as key indicators.³⁷

Both the former and the incumbent Minister for Water and Irrigation have stated their firm commitment towards achieving progress in the realisation of the right to water. In his speech during the opening address for the East African Regional Conference on accelerating water supply and sanitation for the urban poor, Minister John Katuku reiterated that “access to adequate water is a fundamental right, which should not be denied for any reason.” Senior staff in the Ministry and in the WRMA, WSRB and WSTF all made comments in support of the right to water and the need for improvements in access including for the poor.

The National Environmental Sanitation and Hygiene Policy (NESHP), developed under the auspices of the Ministry of Health (MoH) indicates the central role of hygiene promotion for human health and emphasises “that all Kenyans should enjoy a quality of life with dignity in a hygienic and sanitary environment as a basic human right”, recognising this as the foundation for Kenya’s hygienic and sanitary policy.³⁸ This is a welcome step as basic sanitation and hygiene has generally been neglected and has not benefited from the strong political commitment seen in the water sector reforms.

The documents cited in this section also address substantive components of the right to water and sanitation, which are dealt with in this report in sections titled according to the relevant component of the right.

Recommendation 1

German development cooperation should continue to systematically support the process of pro-poor water sector reform, but encourage a more explicit rights-based approach. (***Core recommendation***)

2.2 Institutional mechanisms

The Water Act assigns clear responsibilities to the different actors at the national level:

- The Ministry of Water and Irrigation (MWI) has the overall political responsibility for the Water Sector and its reform.³⁹
- The Water Resources Management Authority (WRMA) has the responsibility of managing water resources.⁴⁰
- The Water Services Regulatory Board (WSRB) licences regional Water Service Boards (WSBs)⁴¹ to ensure water services are sustainable and provided with increasing performance,⁴² mostly through the contracting of commercially-oriented WSPs. The water services include the

³² Ibid. Section 5.8.

³³ Ibid. Section 5.2 ,p.13.

³⁴ Ibid. Section 5.2.2., p.13.

³⁵ National Water and Sanitation Strategy (June 2007), para. 2.3.

³⁶ Ibid. para. 2. 4.

³⁷ Ibid. para. 6.3.

³⁸ National Environmental Sanitation and Hygiene Policy, Foreword, Executive Summary, 1.1. Vision.

³⁹ Art. 4 of Water Act 2002.

⁴⁰ Art. 7 Water Act.

⁴¹ Art. 47 (a) Water Act.

⁴² Art. 57 (5) (d) Water Act.

duty to supply water and sewerage, maintain the necessary networks, and regulate the conditions for the provision of water, including tariffs, within the framework of national guidelines.⁴³

- The WSTF is to provide financial support for provision of water services to unserved areas.
- The Water Appeals Board⁴⁴ has the competence under the Water Act to decide, as a last resort within the water sector, upon the violation of rights and proprietary interests stemming from decisions of the MWI, WSRB, and WRMA.⁴⁵

The separation and clear allocation of functions between the different institutions makes it easier to hold the relevant actors accountable for their actions, and in that regard contributes to the realisation of a human rights-based approach. In practice, delineation of responsibilities in the water sector appears to function well at the national level, but they are less clear at the Board level. Although the position of 'district water officer' has been abolished under the reform process and the functions been taken over by other institutions, mostly the WSB (Water Services Boards), some of the officers are still in office and even receive budgetary allocations from the Ministry of Water as the transitional phase is not yet complete. However, the institutions should operate properly upon the completion of the transitional phase.

The National Environmental Sanitation and Hygiene Policy (NESHP) clarifies that the general promotion of basic (on-site and off-site) sanitation and hygiene falls under the MoH, which will be the lead agency in this sector. The MWI is responsible for the provision of water and sewerage systems to complement environmental sanitation and hygiene activities.⁴⁶ The NWSS, however, sets out a larger role for the MWI in basic sanitation than that indicated in the NESHP. It states that water sector institutions have a role in basic sanitation, which must be defined, that MWI must closely collaborate with other relevant Ministries and that the WSTF should finance basic sanitation.⁴⁷ However, as discussed in Section 4.2, hygiene and sanitation issues appear to be currently neglected at the service level. Therefore, it would be useful for water sector institutions to encourage the MoH to devote greater attention and resources to basic sanitation and hygiene and to provide assistance. The water sector has a strong interest in this since the potential gains secured by greater access to water would be reduced if they are not accompanied by sanitation and hygiene awareness. In addition, lack of basic sanitation would lead to pollution of water sources. Closer coordination would avoid conflicts between staff in each sector. For example, in Bungoma, conflicts between the district health officer and Nzowasco on sewage fees of the local hospital were even taken to court. This conflict appears to have been settled. However, in Tana Catchment the mission was able to see close cooperation between WRMA and the local district health office on the issue of water quality monitoring.

Such cooperation should be closely coordinated to avoid duplication of resources and conflict between the two sectors. The establishment of the inter-departmental Environmental Sanitation and Hygiene Working Group (ESHWG) and preparations of a memorandum of understanding between the MOH and the MWI on sanitation and hygiene point in the right direction.

Recommendation 2

The **Ministry of Water and Irrigation (MWI)** and **the Ministry of Health (MoH)** should expeditiously conclude the **Memorandum of Understanding (MoU)** currently under negotiation on basic sanitation and hygiene. On the basis of the agreed arrangements, the **Water Services Regulatory Board** should actively supervise and support the Water Services Boards on the issues of sanitation and hygiene. **Water Services Boards (WSBs)** and **Water Service Providers (WSPs)** should coordinate closely with district health officers. **GDC**, in the framework of policy advice to water and health sector reform, could encourage this process, and provide support on basic sanitation and hygiene.

⁴³ Art. 53 Water Act.

⁴⁴ Art. 84 ss.

⁴⁵ Art. 85 (1) Water Act.

⁴⁶ National Environmental Sanitation and Hygiene Policy (2006), s. 6.1, p. 20.

⁴⁷ National Water and Sanitation Strategy (June 2007), p. 13.

2.3 Data collection and use

The successful expansion of water supply and sanitation, targeting of the poor and the efficient allocation of resources requires baseline data. This challenge is particularly evident in the case of the WSTF who has been targeting those without adequate water services on the basis of the 1999 census. However, this census is neither up to date nor does it provide specific information on access to water. There is unreliable data on hygiene and sanitation.⁴⁸ Therefore a comprehensive baseline of the status of the water sector with regard to availability, quality and sustainable access depending on the mode of delivery (household connection, kiosks, standpipe) and the different groups of the population, including the poor and people in informal settlements, is urgently needed. It would be helpful if specific data could also be integrated on access of women, children, persons with disabilities and those who are suffering from illness to assess the extent to which such groups are assisted or not by government interventions. From this standpoint, the progress of sector reform should be continuously monitored, including with data on access to water and sanitation for the urban and rural poor. The Water Regulation Information System (WARIS), implemented with the support of GTZ, and the Water Sector Information System (SIS) is a step in the right direction,⁴⁹ though it will only produce comparable results if preceded by a baseline study.

In order to address the need for baseline data on water and sanitation for the urban poor, GTZ submitted a proposal to the EU Water Facility in 2005 and 2006. Unfortunately, the proposal for a baseline study from 2006 was qualified by the EUWF panel as not significant and sustainable.

Recommendation 3

It is recommended that *German development cooperation* financially and technically supports a baseline study on access to safe water and sanitation in Kenya, potentially in the context of the *sector-wide approach* (SWAP) with partners. Such a survey would help to specifically target the poor and vulnerable groups and thereby improve their access to water and sanitation. (*Core recommendation*)

2.4 Capacity development

High capacity and skills of staff in the relevant institutions at national level, which have been improved with support of GDC, have contributed to the significant achievements of the water sector reforms. At the national level, there is a strong awareness amongst high-level government officials about the right to water, the need to maintain a poverty focus and a frank acknowledgment of the remaining challenges in advancing the reform process. At the level of the WSBs and the WSPs, capacity is weak and greater knowledge on human rights is necessary. Within the WSBs, the focus is often principally on ensuring the efficient and economic provision for water services,⁵⁰ and the pro-poor and human rights focus is less evident. It is therefore important that the draft National Water Services Strategy clearly embodies these principles. Sensitisation and training of the members of the WSB might further contribute to a stronger human rights understanding and focus in the work of the WSB.

Recommendation 4

German development cooperation should continue to support capacity development, in particular on the practical relevance of human rights issues in the water sector.

⁴⁸ National Environmental Sanitation and Hygiene Policy (2006), p. 9.

⁴⁹ Cp. Final SIS Report of November 2006.

⁵⁰ Art.53 (1) Water Act.

3. Water Availability

General Comment No. 15 indicates that the water supply for each person must be sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.⁵¹ The World Health Organization (WHO) states that basic access requires 20 litres per person per day, although it states that at this level not all requirements may be met and there is a medium level of health concern. The WHO also states that 50-100 litres per person per day is required to meet most hygiene and consumption needs (where there is a low level of health concern),⁵² while 7.5 litres per person per day will provide sufficient water for survival needs under most conditions. Securing sufficient water also requires a source within a short distance and time.⁵³ The manner of the realization of the right to water must also be “sustainable, ensuring that the right can be realized for present and future generations” according to the General Comment (para. 11).

3.1. Targets for water availability

As indicated in the box directly above, 20 litres of water per person per day should be the absolute minimum, increasing to 50/100 litres where resources permit. These are critical targets for water policy to achieve human rights standards.⁵⁴

The newly adopted National Water Services Strategy (NWSS) now contains a national minimum standard on availability.⁵⁵ The draft tariff guidelines take into account water quantity requirements by stipulating that the lowest block tariff is for the 0-6 cubic metres range (see Section 6 below: Affordability). This amount works out to a maximum of 200 litres per connection per day for lifeline consumption (subsidised tariff), which would translate to 25 litres per person if there are eight people at that connection.⁵⁶

3.2 Sustainability of water supplies

A key aspect of availability of water is ensuring the sustainability of water supplies and managing demand. From this perspective, cost recovery for water use and avoiding over-abstraction of water can help ensure its availability. Kenya’s Water Act and relevant policies make important movement towards these goals by:

- Establishing a system of water abstraction licensing to avoid uncontrolled and excess water withdrawals.⁵⁷ The NWRMS highlights the objective of the system of licensing: i.e., to prioritise the availability of water for basic human needs and to achieve environmental sustainability.⁵⁸

⁵¹ General Comment No. 15 (n. 4 above), para. 12 (a).

⁵² See G. Howard & J. Bartram, *Domestic Water Quantity, Service Level and Health* (Geneva, WHO, 2003) p. 22. General Comment No.15, para. 12 (a) refers States to this document, which is also cited in the WHO Guidelines for Drinking Water Quality (2004), p. 90.

⁵³ See the first table in Ch. 5 on Accessibility.

⁵⁴ Even though the mission is aware of the fact that reality in situations of water supply through kiosk is not able to achieve these targets, since with a household of 6 20 l/c/d is wishful thinking because no women or child can carry 120 lt per day. Hence, kiosks and other low income sources are generally only able help realising the essential minimum for survival: consumers buy 5-10 lt/c/d from the kiosk for drinking and cooking and the rest is collected from a nearby informal water source. However, kiosk and other low-income solutions are essential to secure access to a minimum amount of water of an acceptable quality for the poor.

⁵⁵ NWSS 3.4., p.6.

⁵⁶ The South African free basic water supply programme aims to provide 200 litres per day per household, and assumes an average of 8 persons per household.

⁵⁷ Art. 25 ss. Water Act.

⁵⁸ Principles of the WRMS, sec. 2.

- Authorising fees for the abstraction of water⁵⁹ and recommending tariffs for water supply.⁶⁰ Both the NWRMS⁶¹ and the Draft Tariff Guidelines⁶² consider metering and charges for water important tools to generate stronger consciousness on the value of water.
- The NWRMS emphasises reduction of unaccounted-for water, recycling of water and conjunctive use of water as means to increase access.

Recommendation 5

The **Water Resource User Associations (WRUAs)** in collaboration with regional **Water Resource Management Authorities (WRMAs)** should continue efforts towards ensuring sustainability through abstraction licensing and pricing and carry out further measures, such as: public education on water conservation, promotion of appropriate conservation technologies, and potentially restrictions on water use beyond an acceptable consumption threshold, particularly in water-scarce regions. The **Water Services Regulatory Board (WSRB)** and the **Water Service Boards (WSBs)** shall continue to promote clustering of systems in order to achieve economy of scale and also promote socially responsible commercialisation in order to foster sustainability and ensure that the benefits also reach the poor. German development cooperation in its activities on water resource management and water and sanitation supply could support these efforts

3.3 Prioritisation of essential domestic water use

In order to ensure availability of water, it is necessary to prioritise essential amounts of water for personal and domestic uses over other uses of water (including non-essential domestic uses, industrial use and irrigation).

The Water Act as well as the NWRMS emphasise the priority of water availability for personal and domestic use: under the Water Act abstraction and use of water for domestic purposes in general does not require a permit.⁶³ The NWRMS states: “Water required to meet basic human needs and to maintain environmental sustainability will be guaranteed as a right, whilst water use for all other purposes will be subject to a system of administrative authorisations.”⁶⁴

However, the reality at the *municipal level* is often challenging. Demand for all water uses (essential and non-essential) exceeds supply in most Kenyan urban areas, leading to frequent water shortages. WSP tend to address this challenge by cutting off supply to specific areas (where this is technically feasible) and/or for specific portions of the day.⁶⁵ Rationing is normally announced in the daily newspapers. However, it is important that announcements are made in a way that those who rely on other media (such as vernacular radio) are also made aware. Announcements could also be made via authorised kiosk operators. It should be noted that rationing of this kind has the greatest impact on the poor, since they are less able to store water that can last for more than a day. Since residents of low-income areas are less able to cope with water shortages, and generally use small amounts of water, WSP should avoid cutting-off supply to such areas for periods longer than a few hours. However, the block tariff pricing system, and the pressure on companies to generate revenue, can create an incentive for companies to prioritise the provision of water to high-volume users as opposed to low-volume uses. As a result, it will be necessary for the WSRB to stipulate a pro-poor approach to rationing Service Provision Agreements (SPAs) with WSBs and WSPs.

The best approach to ensure water for domestic purposes is to improve water resource management to such a point that rationing is no longer necessary. Current initiatives, such as those supported by GDC in Lake Victoria North and at the national level aim at increasing tariffs for consumption blocks above essential amounts and at enhancing the use of metering. These

⁵⁹ Art. 30 (4) (b) Water Act.

⁶⁰ Art. 47 (g) Water Act.

⁶¹ WRMS 5.5.2.

⁶² Draft of March 2007, 3.1.

⁶³ Art. 26 (1) a).

⁶⁴ Ch. 2.

⁶⁵ This was the method carried out by Western Supply Company.

ongoing efforts can be expected to reduce the need for rationing, and are therefore welcome. Additional progress could be reached if WSBs were empowered and in fact, encouraged, to restrict specified non-essential uses of water in times of scarcity. It would be necessary to carry out an assessment of the most wasteful uses of water. In certain countries, such as United Kingdom and Australia, this objective is met through bans on the use of sprinkler water systems or hoses for car washing, non-compliance with which leads to a stiff fine.

In the case of *water resource management*, it is necessary to ensure that water remains available for those who rely on groundwater or rivers. It is therefore useful for Water Resource Management Authorities (WRMAs) and Water Resource User Associations (WRUAs) to assess how many people rely on these sources. They should then explicitly integrate the need for continued availability of such water sources into their licensing systems, including in allocation and pricing, in order to prevent groundwater levels from substantially falling. If there are situations in which high levels of abstraction are required, it is necessary for Boards to provide some remedy for the communities that are negatively affected by assisting such communities to secure alternative systems.

In taking measures to ensure availability of water, it is important that the WRMA and WRUAs ensure that other human rights are not infringed, such as the right to food, right to earn a living through work and right to housing. In particular:

- Marginalised or disadvantaged farmers and pastoralists, including women, should be given equitable access to water for productive purposes.⁶⁶ This requires a licensing system that does not involve complex application criteria and which ensures that low-income farmers and pastoralists are not excluded.
- Relocation of communities from catchment areas, where necessary in order to protect that area, should be carried out in conformity with UN standards on evictions, and alternative land provided.⁶⁷

Recommendation 6

The **WRMA** should implement the provision for rationing of water supply in situations of scarcity factored into the Catchment Management Strategy (CMS) (90 days provision) and the WSRB and WSBs shall require companies to refrain from distributing the burden of rationing in a way that prefers any particular communities over others. GDC could provide useful advice in that area.

Recommendation 7

When demand exceeds supply for domestic uses, **WSPs** should intensify their ongoing efforts to adopt approaches that do not impact on the ability of residents to secure essential amounts. In particular, they should avoid cut-offs to low-income areas, announce rationing in advance via the media used by consumers and consider bans on non-essential uses to equitably ration available water. The **WSRB** should include such requirements in Service Provision Agreements (SPAs) with WSBs and WSPs. **GDC** could support these initiatives at the national level and in Lake Victoria North through its long-term technical advice provided to the WSPs.

Recommendation 8

The **WRMA** and **WRUAs**, with the support of **GDC**, should implement the Catchment Management Strategy concerning continued availability of water sources through licensing systems. However, they should ensure that marginalised or disadvantaged farmers and pastoralists, including women, have equitable access to water and that any relocation of communities from catchment areas is carried out only

⁶⁶ General Comment No. 15 (n. 4 above), para. 7.

⁶⁷ See Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), available at [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument); and United Nations Comprehensive Guidelines on Development-Based Displacement (1977), available at <http://www1.umn.edu/humanrts/instree/forcedevictions.htm>.

where necessary and in full conformity with United Nations standards on forced evictions and displacement.

4. Water quality

General Comment No. 15 provides that water must be safe, in particular free from hazardous substances which could endanger human health.⁶⁸ The WHO has developed guidelines on drinking water quality⁶⁹ and States are required to ensure provision of appropriate education concerning the hygienic use of water and protection of water sources.⁷⁰

4.1 Water quality and monitoring

Water quality standards in Kenya follow the WHO guidelines on drinking water quality. Several agencies have a mandate to deal with water quality. The Ministry of Water and Irrigation has a division that deals with water quality and pollution. The WRMA has the responsibility of monitoring raw water quality (shallow wells, dams/pans, rivers). For instance in Tana Catchment, 50 monitoring stations have been established for physical/chemical and bacteriological analysis. The parameters to be used in monitoring have been determined in line with WHO guidelines on drinking water quality. The MoH also has responsibilities on water quality and carries out water quality surveillance in a number of districts.⁷¹ In Tana Catchment, the WRMA was in close cooperation with local Public Health Officers and lent them water quality testing equipment.

The WSBs in collaboration with the WSPs are responsible for water quality at water points and piped systems. The WSBs have responsibility for monitoring water quality during the selection and extraction from a new water source / water points. The WSBs mandate the WSPs with responsibility for monitoring water quality in their networks. The quality of water from boreholes is tested after successful drilling. Testing can be done by the government chemist or an authorised laboratory. The WSPs have the responsibility of ensuring that water supplied to consumers meets the Kenyan water quality standards. The WSBs and WSPs are accountable to the WSRB for the quality of water supplies to consumers.

There is insufficient water quality monitoring for informal and small-scale provision, either by government actors or by users. The media has reported serious consequences including death resulting from consumption of unsafe water from rivers and other informal sources, e.g. in Nyeri.⁷² It is therefore necessary for MoH and WSRB to increase efforts for water quality monitoring, including testing of informal sources. The results of water analysis should be made public so that the users can know the quality of their water.

Water quality monitoring by government bodies is not sufficient because it is difficult to enforce standards for informal provision. There must also be public educational campaigns on the dangers of poor quality water, how to identify it and on simple household level treatment methods, including boiling and use of purification tablets. Such activities should be carried out by the MoH. (See also Recommendation 11 in Section 4.2 below.)

Recommendation 9

The **WSRB**, with the assistance of **GDC**, should ensure that planned guidelines on water quality monitoring are enforced by the WSBs. The **WSRB** should also proceed with its plans to require service providers to provide information to their consumers on water quality.

⁶⁸ See General Comment No. 15 (n. 4 above), para. 12 (b), referring to the respective WHO Guidelines.

⁶⁹ Available at http://www.who.int/water_sanitation_health/dwq/gdwq3/en/.

⁷⁰ General Comment No. 15 (n. 4 above), para. 25.

⁷¹ National Health Sector Strategic Plan 2 (2006), s. 2.3.4.

⁷² Daily Nation of 13 October 2006, p. 4, Pollution takes its toll on Mt. Kenya rivers.

Box 4.1 Community water monitoring in Ecuador⁷³

Indigenous and some non-indigenous communities in Ecuador had been struggling with oil pollution for over a decade, but their efforts were stymied by a lack of scientific knowledge and institutional leverage. The Center for Economic and Social Rights helped to organise the network of settler communities to give them an organised voice on issues of oil and development. They were trained on how to do simple observation and recording and some very simple water tests to look for damage from oil not only by Texaco, but the many other new oil companies coming in. The communities and NGOs were then able quickly to draw attention to oil spills or emissions from oil companies.

4.2 Hygiene education

The Ministry of Health is the lead agency responsible for ensuring that hygiene education and awareness is carried out in order to achieve high standards of personal, domestic and environmental hygiene. The NESHP indicates that about 50 per cent of all diseases have some relationship with poor access to water, sanitation and hygiene.⁷⁴ The NESHP gives a strong emphasis on hygiene education, for example, by stating that all households should be aware of hygiene practices by 2015.⁷⁵ However, a key official document of the Ministry of Health – the Second National Health Sector Strategic Plan of Kenya (2006) - lists good personal hygiene as an objective, but does not set out substantive measures to achieve this goal.⁷⁶ The draft Health SWAP does not mention hygiene awareness, even though the Water SWAP accepts the lead of the MoH regarding this issue (The NESHP was elaborated with the support of UN agencies). In Lake Victoria North (LVN), the district health office aims to carry out hygiene education, but is extremely poorly resourced. Only few persons among those met at the kiosks in Lake Victoria North and in Nyeri appeared to see the advantages of access to sanitation.

The Ministry of Health, with support from UNICEF and the World Bank-UNDP Water and Sanitation Programme has been promoting Participatory Hygiene and Sanitation Transformation (PHAST), which has been taken up as a major component of Community Project Cycle (CPC) under the Kenya Water and Sanitation Programme (KWSP). PHAST is a community management tool designed to ensure user involvement in the planning, designing, implementation and monitoring of sanitation solutions for the population. However, PHAST has so far only been piloted and not yet fully mainstreamed throughout the water and health sectors. The NESHP envisages among other things: a nation-wide gender and culture-sensitive campaign for hygiene promotion, information on safe sanitation option, training for public health officials and technicians and increased public funds for this work. These objectives are welcome, but will need to be implemented.⁷⁷ Although the water sector institutions do not have a formal role in hygiene promotion, they can assist. For example, WSBs and WSPs could contribute to the sanitation and hygiene challenge, for example by integrating hygiene messages into public outreach.

Recommendation 10

The **Ministry of Health (MoH)** should prioritise the implementation of a nation-wide information and education campaign on hygiene awareness, as set out in the NESHP. Water sector institutions should assist in the design of such a campaign and assist in its implementation, as appropriate. Such a campaign should also include education on how communities can monitor water quality and on household level treatment and storage. **GDC**, in its work in the health sectors, could encourage the **Government of Kenya (GoK)** to put more emphasis on education of users on hygiene issues and offer financial and technical support. **(Core Recommendation)**

⁷³ Taken from interview with Chris Jochnick in M. Langford, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (Geneva: COHRE, 2003), pp. 80-86.

⁷⁴ NESHP (2006), p. 7.

⁷⁵ NESHP (2006), p. 5.

⁷⁶ Second National Health Sector Strategic Plan of Kenya (2006), p. 10.

⁷⁷ NESHP (2006), P.5.

4.3 Pollution control

The mandate to deal with pollution of water sources lies with WRMA. The National Environment Management Authority (NEMA) has a strong oversight over all matters concerning the environment. The division of roles between these two agencies is not clear. Discussions between these two agencies are ongoing in order to harmonise these responsibilities. The WRMA has the power to “regulate and protect water resources quality from adverse effects.”⁷⁸ This responsibility has been delegated to the WRMA Regional Offices and also to the Water Resources User Associations that will take on the monitoring role on the ground (see Box 4.2 below).

Box 4.2 Arrest of Chemical Polluter at Bwathonaro River by BWARUA

The community within the Bwathonaro catchment area are mainly miraa (Khat) farmers. They also grow other cash crops, such as tea and coffee, as well as food crops. During dry spells, there is competition for the water to irrigate miraa and as a result, down stream users are often denied the necessary water resources. The farmers resolved in September 2005 to form an association which would address water issues, which resulted in the creation of the Bwathonaro River Water Users Association (BWARUA) with support from German Technical Cooperation.

On 25 January 2006, members of the public noticed a person washing large containers in the river and suspected the containers contained a harmful chemical, judging from the foam forming in the river. They telephoned the Chairman of BWARUA, who in turn called District Water Office (Meru North). WRMA staff together with Public Health Department, Administration and BWARUA officials arrested the person identified. His containers (numbering over 100) and the vehicles were confiscated and held at Maua Police Station. Samples were taken to a government chemist for analysis to determine the chemical in the containers. The accused person, M. Nganga, was released on bond pending the results of the analysis.

The local public is therefore aware that BWARUA is in place and will take action. As a result of BWARUA's creation, illegal abstractions, indiscriminate felling of trees and cultivation along the river line, planting of eucalyptus and other activities that are likely to affect the quantity and quality of water in Bwathonaro River, have been drastically reduced.

The WRMA has adopted the ‘polluter pays’ principle and is awaiting the gazetting of rules and regulations, which have been approved, but are not yet in force (action expected by July 2007), to effect these changes. Industrial and agricultural pollution of water sources pose great challenges as some of the institutions may find it easier to pay than to adopt alternative methods of dealing with the waste that causes pollution. Such scenarios must not be allowed to continue as they infringe on the right of water and environment by others. Where a system of fine-based penalties will not affect pollution levels, resort to other forms of sanction will be needed. As indicated to the mission in Tana Catchment, WRMA has been active in taking polluters to courts for their actions.

⁷⁸ Sec. 8 (1) e) Water Act.

5. Access to water and sanitation

General Comment No. 15 provides that sufficient, safe and acceptable water and adequate sanitation must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. Water and sanitation facilities should be in a secure location and address the needs of different groups, in particular the threats to physical security of women collecting water.⁷⁹ Sanitation must be safe, adequate and conducive to the protection of public health and the environment.⁸⁰ Where it is not possible to ensure access to water within, or in the immediate vicinity of the household, it is necessary that the distance and collection time allows people to collect at least the essential amount of water. Thus, in order to collect up to 20 litres, it should normally take no more than 30 minutes (both ways, including waiting times) to collect water and the distance to be covered, going and returning, to a water source should be no more than one kilometre (see Table 1 below).

5.1 Targets and standards

According to the National Water Services Strategy (NWSS), access to safe water is estimated at around 60 per cent in urban areas and 45 per cent in rural areas. No information is given on the state of access to basic sanitation due to the lack of available data on sanitation. The lack of base line information means that these figures are not necessarily reliable. The access figures may overestimate levels of access by failing to adequately take into account the big underserved population (over 7 million) in urban areas, and the poor state of rural schemes. In some cases, these figures are based on design capacities rather than the actual census, and could be misleading. Better data would provide a clearer and more differentiated picture, e.g. distinguishing between rural and urban areas as well as household connections and other sources like kiosk or boreholes.

The Government of Kenya identifies “sustainable access to safe water and basic sanitation to all Kenyans” as the overall goal of the Strategy and has established the WSTF to specifically target the poor parts of the population and to improve their access.⁸¹ One of the core targets of German development cooperation in the water sector in Kenya is to provide support for a pro-poor focus.⁸² Therefore GDC takes an active role in the formulation of policies such as the NWSS.

The NWSS aims to increase access to drinking water supply that complies with Kenyan standards for drinking water quality to 80 per cent in urban areas by 2015, in line with the MDG target of reducing the time to the nearest public outlet and back home to an average of 30 min. Defining access to water in a way that takes into account collection time reflects international standards and at the same time the increasing orientation of Kenyan water policy along the human right to water.⁸³

⁷⁹ General Comment, para. 12 c) i), Sub-Commission Guidelines, s. 1.3 (a)-(c).

⁸⁰ Sub-Commission Guidelines, s. 1.2.

⁸¹ See Fact Sheet “Clean Water for the Poor” (2006) and chapter 2 above.

⁸² See e.g. Aura-Angebot PN. 2004.2027.3, KV Programme for the Reform of the Water Sector Kenya. There are specific indicators on access for the poor: The number of poor people, who are supplied from a centralised and decentralised water supply and sewerage system in the area of responsibility in the three regional Water Services Boards, rises from 2007 in residential areas with especially poorer populations by at least 5 per cent annually.

⁸³ Likewise the final report on the development of a MWI information system echoes this concern and accordingly defines the standard for basic access to water as “persons being able to use a minimum of 20 litre of clean water from an improved drinking water source ... with a maximum collection time of 30 minutes.” (Ministry of Water and Irrigation, Water Sector Working Group, Water Sector Information System, Development of the MWI Information System, Final Report, November 2006, p. iii.) GDC is currently leading a process on the formulation of “golden indicators” (in the context of SWAP) which is encouraging. These indicators will be attached to the NWSS and also provide measurements for access.

For rural water supplies, the target is to increase access to 75 per cent by 2015, and decrease the maximum distance to the nearest public stand pipe to 2000 meters. Unlike in urban situations, water fetching in rural areas generally does not require queuing. Thus, the distance to be overcome to reach a water source within 30 minutes can be comparatively longer.

The NWSS aims to increase access to water borne sewage collection, treatment and disposal from 30 per cent to 40 per cent in urban settings and from 5 per cent to 10 per cent in the rural setting.⁸⁴ It also aims to ensure that no more than four households shall share a basic sanitation installation.⁸⁵ The National Environmental Sanitation and Hygiene Policy (NESHP) sets as a target for 2015 that all households, educational institutions, markets and other public places should have “Access to ... hygienic, affordable, functional, and sustainable toilet and hand washing facilities”,⁸⁶ but it does not define what constitutes such access.⁸⁷ The draft MWI information system states a possible definition of access to sanitation: use of an improved sanitation facility by one household only.⁸⁸ This definition, which draws on the Millennium Development Goal indicator, is lacking, particularly from a gender perspective, since it does not address crucial elements such as distance from household, and therefore safety.

The current targets on access to water and sanitation can generate noticeable improvements on access to water and sanitation provided that progress is made on the following: first, baseline information (including defining access), and second, implementation of targets at the service level.

First, as indicated in section 2.3 above, the lack of baseline data on access to water and sanitation is a huge problem in Kenya and a necessary endeavour. Second, it is important to translate targets on accessibility of water and sanitation at the WSB and WSP level. In order to prevent WSBs and WSPs from being focused solely on revenue generation targets, it is important that they have specific, quantifiable and monitorable targets for extension of access which are set by the WSRB during tariff negotiations.

Recommendation 11

German development cooperation should continue to encourage the GoK to ensure that its definitions and targets include collection time, in the case of water, and distance in the cases of sanitation.

Recommendation 12

The **WSRB** should ensure (as is currently planned) that national targets contained in the NWSS are broken down to the service level (WSBs and WSPs), thus strengthening the poverty focus for these institutions. **GDC** could provide specific advice to the WSBs in their programme areas, i.e. Central, Lake Victoria North and South.

5.2 Extending access to the poor by the WSBs and WSPs

Development partners currently support the water sector reform process through coordinated funding, which is leading towards a Sector-wide approach (SWAP), and Germany is currently the lead donor. Donor support is aligned with national sector reform and commits itself to contribute towards “pro-poor strategies, human rights-based approaches and other interventions that support provision of services to the poor”.⁸⁹ Within these overall objectives, interventions are mapped and coordinated to cover those areas where demand for cooperation is expressed by the Kenyan government and to avoid overlaps. At this stage, access to water in larger urban

⁸⁴ A target date is not specified, but it is likely that 2015 is the intended date.

⁸⁵ National Water Services Strategy (June 2007), p.8.

⁸⁶ National Environmental Sanitation and Hygiene Policy. s. 1.2, Goal 2, p.5.

⁸⁷ An earlier draft of the policy defined minimum standards for safe sanitation services as: “provision of appropriate health and hygiene education and a toilet that is safe, reliable, environmentally sound, easy to clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents the entry and exit of flies and other disease-carrying pests to every household.”

⁸⁸ Ibid. pp.11-13.

⁸⁹ Partnership Principles, para. 51.

settlements is addressed through some initiatives by UNICEF (Managing Water for African Cities), UN-HABITAT (Kisumu Water and Sanitation Project) and AFD (Mombasa Water and Sewerage Project). KfW supports water supply in Malindi⁹⁰ and access to basic sanitation in Eldoret.⁹¹ Only UNICEF specifically targets urban slums.

As noted in chapter 1, from a human rights perspective, resources should be invested to address the most striking inequalities in the access to water with priority. A systemic approach linking access for the poor to the establishment of a network – as followed by Kenyan-German Development Cooperation - will generally be the most sustainable way to realise the right to water for the urban poor. But this is not immediately possible in many large informal settlements in Nairobi (with more than 200 settlements), Kisumu and Mombassa where infrastructure is lacking. While it is sometimes argued that the issue of tenure must be addressed first, it is notable that the UN CESCR Committee in General Comment No. 15 indicated that a persons' housing status should not be used as an excuse to deny water supply.⁹² It is incompatible with a human rights perspective and a pro-poor approach to leave out a very large segment of the poor population because they are living in informal settlements.

The pace with which the water companies are proceeding suggests that they are unlikely to meet the MDG-related targets. There is a strong preoccupation with raising income revenues and targeting formal areas of higher density at the expense of peri-urban areas and informal settlements altogether, at least in the short term. This is partly due to limited funding, lack of staff capacity, poor infrastructure, and the fact that some corrupt officials have reportedly maintained their jobs in the new water companies. The block tariff system which is applied by the WSP and WSB has the unintended side-effect of reducing the incentive to expand the networks into poor areas since rehabilitation and investment in 'richer' areas promise, at least in the short-run, higher returns and are therefore more compatible with the objective to achieve cost coverage.⁹³ In spite of this side effect, block tariffs are necessary in order to increase cross-subsidisation and thus the amount of funds available for extension of service provision to the poor. The key ingredient to ensure access to the poor is strong regulation of the water companies. It should be noted, however, that personnel of Western WSC, Nzwasco and Nyewasco showed interest in human rights and pro-poor issues and willingness to follow such an approach.

The NWSS indicates that the WSRB and the WSBs shall oblige the WSPs to extend services with low-cost technologies, like water kiosks, as a first step to serving the poor.⁹⁴ The WSRB is intending to impose specific targets for extension of access for each Board, which will be guided by the MDGs. There will be a specific time-table negotiated with each WSB and WSP, to be included in the relevant SPA.

The Water Services Trust Fund (WSTF) is key for the poorer urban and rural areas. The WSTF is one of the key mechanisms in the Water Act for extending coverage.⁹⁵ Its overall goal is to "provide financial support for provision of water services to ... people in areas of Kenya without adequate water services, especially the areas with poor and disadvantaged peoples and thereby contribute to alleviating poverty".⁹⁶ After becoming operational in 2004, the WSTF supported water supply and basic sanitation services for people living in poverty in rural areas. Since the beginning of 2007, with the support of German development cooperation, the mandate of the WSTF has been extended to serve poor urban areas. The German government has given the WSTF a 5.5 million Euro grant for such initiative areas; further 16 Mio. Euros have been pledged by other donors. GTZ has commenced organising three pilot kiosks projects in peri-urban areas as a test case and to build capacity at the WSTF, WSB and WSP for large-scale implementation.

The WSBs have the responsibility of improving access in rural areas not designated as target locations and that are therefore left out of funding by WSTF. However, most WSBs and WSPs

⁹⁰ Malindi Water Supply Project.

⁹¹ Eldoret Sanitation Project.

⁹² General Comment No. 15 (n. 4 above), para. 16(c).

⁹³ See Water Act: Art. 53 (1), Art. 57,5 d.). Cost-coverage of water provision is also a Guiding Principle of the NWSS for urban water supply and a tariff objective in the Zero Draft (March 2007) of the tariff guidelines (4.1).

⁹⁴ NWSS, p.17.

⁹⁵ Art. 83 of Water Act.

⁹⁶ As stated in the Strategic Framework of the WSTF 2005 to 2008, 3.1.

have only recently become fully operational. Lake Victoria North WSB, founded in March 2004, only commenced operations in 2006, while Western Water Service Company, established in November 2005, only commenced work in 2007. Extension to the urban poor has already commenced in some areas, for example the expansion of the network system currently being carried out by Nzowasco in Lake Victoria North, supported by German development cooperation. It includes consideration of low budget solutions for poor people.

For the WSTF and WSPs to ensure increased access to water and sanitation, they will need to develop procedures that enable them to identify the poor and to ensure that their access is improved. Statistical information is sorely lacking or misleading. Identification of the poor could be done through specific socio-economic surveys including stakeholder consultations and participation. The solutions that have been found for investment of WSTF funds in the rural areas with the help of the Community Project Cycle (CPC) could serve as a model for urban areas - a point that the WSTF has recognised and is taking up as it develops urban guidelines.

In the large urban informal settlements, it should be possible to ensure formal provision of water, for example through licensed kiosks. In many informal settlements, particularly inner-city settlements, trunk infrastructure is located within the settlement and only distribution outlets are necessary. In Makina and Gatwikira zones in Kibera (more than a 100,000 persons), an older World Bank project brought trunk infrastructure to, and even into, the settlement, but corruption stalled the distribution phase of the project. These 150mm pipes could be used to support a licensed kiosk system complemented by some household connections and standpipes. However, action would need to be taken against some informal 'mafia' networks which reportedly have protection from some officials in the Nairobi Water Company and many others such as politicians, police.

The current approach of the WSTF for urban initiatives is to link with systemic formalised solutions offered by WSP and to expand supply in a low-cost manner to informal settlements, e.g. through kiosks. Although formalised solutions within a systemic context are usually the most feasible approach to improve access in a sustainable way, it is necessary to note that many of such areas are already served by water vendors and community groups, who are already using water provided by the WSP and in some cases also operating public toilets. These small-scale providers should be integrated into the licensed kiosk system in cases where they are capable of complying with WSP regulations and providing good service. The Managing Director of the WSTF is aware of the problem and the need to look for alternative solutions for those urban areas where constructing an entirely new formal networks may not be appropriate. To gather additional information will be an essential element for any potential piloting activities by the WSTF in some large settlements.

Particular interventions should be customised to the prevailing situation within each particular informal settlement, which requires consultation with the relevant community or communities (see also Section 7.2 and 7.3 on Participation).

It will be necessary to ensure that WSTF resources and other investments actually reach the urban poor. WSTF funds for urban areas will be channelled through the WSPs, and the WSPs have to approve and manage the expansion into poor urban areas through low-cost solutions. To make expansion more attractive WSTF is currently considering the creation of a performance enhancement fund. Thereby the WSP could benefit from incentives e.g. water meters, billing collection systems, management information systems and computers should they invest in the poor areas.

In terms of access to sanitation, it would be useful for WSPs to consider providing public toilet facilities, linked to the water and sewerage networks, where this would be financially sustainable (for example in high density areas) and there is a demand for these from the relevant community. Such facilities could be run on the same commercial principles as water kiosks.⁹⁷ Once established, such a fund should support community based sanitation solutions, such as the bio-latrine being built in Gatwikira, Kibera by community groups with the assistance of Umande

⁹⁷ Although such facilities would not meet the definition for 'improved access' under the MDGs, from a human rights perspective, the needs and interests of the communities concerned are more important.

Trust, an NGO. The NWSS indicates that the WSTF should open a window for basic sanitation in 2008 and finance at least 7 pilot projects by 2009.⁹⁸

Access to basic sanitation is primarily addressed in the National Environmental Sanitation and Hygiene Policy (NESHP). The NESHP sets an ambitious target of ensuring, by 2015, that every school, institution, household, market and other public place will have access to, and make use of hygienic, affordable, functional and sustainable toilet and hand washing facilities.⁹⁹ The NESHP contemplates the creation of an 'Environmental Sanitation and Hygiene Trust Fund' by the MoH.¹⁰⁰ The Second National Health Sector Strategic Plan (2006) sets out a target to be reached by 2010 for 50 per cent of the population to have access to 'good sanitation'.¹⁰¹ However, it does not set out any substantial measures to achieve progress on basic sanitation. The Annual Operational Plan (July 2006-June 2007) states that the MoH Division of Environmental Health should develop environmental sanitation and hygiene guidelines and disseminate these to 72 districts. The Health SWAP does not mention basic sanitation, even though the Water SWAP accepts the lead of the MoH regarding this issue. The mission was not able to conduct a detailed analysis of the plans of the MoH and the Ministry of Local Government as they relate to sanitation. However, it appears that significant work needs to be done to achieve the targets in the NESHP.

Water sector institutions should consider addressing this problem following the approach for cooperation between the health and water sector institutions discussed in Section 2.2 above. The lack of sanitary facilities (and lack of adequate latrine exhausting services) leads to water pollution. Water sector institutions, in particular the MWI, are entitled to encourage the MoH to put greater priority on sanitation and to offer assistance as is appropriate. GDC's current pilot project on ecological sanitation could also help address the issue of basic sanitation.

The mission did not focus on access to water and sanitation in rural areas. The mission was informed that significant progress has been achieved in rural water supply and sanitation in locations targeted by the Kenya Water and Sanitation Programme. The WSTF, which until recently worked only in rural areas, is functioning well after some initial setbacks. Improvements have occurred in relation to accountability for contracted partner organisations, reorganization of management at the WSTF and changes in the implementation process. There is an increased role of the Water Service Boards in supervision of contracted support organizations and Quality Control Agents who are working with the target communities.

Recommendation 13

The **GoK** and **development partners** should ensure that extension of access to water and sanitation for the poor is treated with the equivalent priority to the need to achieve cost-coverage. WSPs should be further subsidised where they are extending access to low-income areas. (**Core recommendation**)

The **WSRB** should, as planned, require the WSBs and WSPs to commit to specific extensions of access to underserved areas, with timelines for each area and proposed processes for moving forward. The SPAs should be made public. The **WSTF** should implement its plan to create an enhancement fund to reward those WSPs that improve access to the urban poor. **GDC** could support these initiatives at various levels: through political advice to the WSRB and WSTF, technical advice to the LVN, LVS, Central WSBs and WSPs in Lake Victoria North

Recommendation 14

The **WSBs** and **WSPs** should actively seek to provide low-cost formal services to large urban informal settlements, linking existing community-based projects to the formal system. A mapping exercise should be carried out on successful initiatives that improved access to water and sanitation in such settlements in Kenya. **GDC** should consider providing support for such a study. (**Core recommendation**)

⁹⁸ National Water Services Strategy, p. 15

⁹⁹ National Environmental Sanitation and Hygiene Policy, p. 5.

¹⁰⁰ National Environmental Sanitation and Hygiene Policy, p. 1, 16, 17.

¹⁰¹ Page x.

Recommendation 15

The **MoH** should ensure that future National Health Sector Strategic Plans, the health SWAP and other relevant plans (e.g. those of the Ministry of Local Government in regard to local authorities and sanitation activities) set out concrete measures to increase access to basic sanitation. **Water sector institutions**, in particular **MWI**, should encourage the MoH and Ministry of Local Government to increase the priority given to basic sanitation and offer assistance.

5.3 Developing capacity of WSPs to serve informal settlements

The WSPs have traditionally dealt mainly with consumers living in regularised areas, rather than informal settlements. However, extension of access to the poor in informal settlements, generally requiring formalised kiosk systems, will require WSPs to engage with communities rather than with individual consumers. One obstacle is that WSPs in urban areas lack experience in community mobilisation and partnerships. WSPs should rely on partnerships with organised community groups providing water services where they exist. Such groups could also provide useful insights to WSPs on the challenges of providing services in informal settlements and lessons learnt. However, such partnerships will not be possible in all cases. For example, the Nairobi Water Company has indicated that one of the obstacles to extension of access to Kibera is the lack of sufficient credible community groups with which it can partner. Community groups currently serve at most 5 per cent of the population in Kibera (with the balance being served by structure owners and vendors).¹⁰²

In this regard, it is encouraging that GDC has prepared a Kiosk Handbook which sets out detailed guidelines for WSPs on establishing kiosks in a participatory manner to provide affordable service. Capacity will need to be developed at the WSP level, involving the recruitment of staff experienced in community partnerships or the training of current staff for this purpose. Training on human rights approaches would also assist WSPs to engage with communities. However, it will also be necessary to avoid underestimating the level of time required to develop effective community partnerships, and therefore allocate a reasonable number of full-time staff to this purpose. This approach will require additional resources for staff costs. However, such costs are justified as they can help avoid wastage of resources through inappropriately designed projects that may not meet the needs of the intended users.

Recommendation 16

The capacity of WSPs to enable local participation in informal settlements, including improved accountability mechanisms should be supported by **GDC**, building on successful experiences in Kenya and existing civil society organisations.

5.4. Increasing capacities for the WSTF

The welcome decision to spread the activities of the WSTF into urban areas has the potential to assist in improving access to water for the urban poor. German development cooperation is the lead donor in this area and supports the urban activities of the WSTF with a grant of 5.5 million euros and through pilot initiatives in peri-urban areas of Nairobi and Naivasha. This is a substantial contribution, which has the perspective of being matched by other donors, which have already pledged 16 Mio. euros, and by the Government of Kenya.

Even with a better implementation framework, the WSTF **needs increased capacity** for implementation in order to reach increasingly significant numbers of the underserved population in the urban setting. In 2003/2004, it was reported that the Fund disbursed Ksh.209 million to 19 community projects targeting an estimated 310,000 Kenyans. With over 10 million rural Kenyans without access to water, there is an urgent need to adopt alternative ways of accelerating access to water and therefore to strengthen the implementation capacities of the WSTF and the WSP. The WSPs have to be able to provide adequate services for the informal urban settlements and a perspective to integrate these areas into their networks.

¹⁰² Interview with the Nairobi Water Company Social and Environment Department, contained in: Umande Trust, COHRE and Hakijamii, *Basic Services and Human Rights in Kibera* (Draft, April 2007).

Recommendation 17

German development cooperation should continue and if possible intensify its engagement in the urban component of the WSTF, including the large urban informal settlements, and strengthen the capacities of the relevant actors. (***Core recommendation***)

6. Affordability of water and sanitation

According to international standards, the costs of securing water and sanitation should not reduce any person's capacity to purchase other essential goods and services, including food, housing, health and education.¹⁰³ Governments must therefore adopt measures to ensure affordability that are appropriate for their financial circumstances, selecting from a wide range of options such as: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as subsidized water; and/or (c) income supplements.¹⁰⁴

6.1 Establishing a target for affordability

The draft of the March 2007 tariff guidelines, prepared with the assistance of GDC, stipulates that the tariffs at the kiosk should not be significantly higher than what the consumers pay for lifeline consumption at household connections. The guidelines also indicate that the lifeline tariff must be justified by WSPs during tariff negotiations with tariff studies including surveys on affordability and willingness to pay.

Discussions on the golden indicators and other relevant definitions elaborated in the framework of the SWAP/SIS suggest that a) spending for water and sanitation services should not exceed 5 per cent of the household income and b) that the water tariff at kiosks shall not be higher than 2 times the tariff for lifeline consumption at household connections (this also to satisfy the 5 per cent of income criterion). The golden indicators could be a useful indicator for the MWI and the WSRB to include into the NWSS and Tariff Guidelines. It will be necessary to conduct socio-economic surveys to determine whether the 5 per cent figure is accurate in various settings, taking into account the costs paid for health care, food and education, as well as other essential goods.

A target for affordability may also need to take into account unwillingness to pay due to lack of awareness as to the benefit of water from piped sources and on the benefits of adequate sanitation facilities. There may be a good argument for lowering the threshold target for water and sanitation costs below a 5 per cent target in order to make the formal system more attractive and induce willingness to pay, at least for basic access and in the short-term. By inducing 'buy-in' by users, formal water supply and sanitation systems may be able to expand their scale and thereby potentially achieve greater economies of scale in the long run and greater cost coverage. Ensuring that costs are at a level commensurate with willingness to pay also has positive public health and economic implications. Use of unsafe water and inadequate sanitary methods has a negative impact on the whole community in terms of public health and also imposes a heavy burden on the public health system.

Recommendation 18

The 'golden indicator' relating to affordability should be integrated by the *MWI* into the National Water Services Strategy and/or by the *WSRB* into the Tariff Guidelines in order to guide water pricing and subsidy schemes. Socio-economic studies should consider whether the 5 per cent benchmark is appropriate. In some situations, a lower threshold than 5 per cent should be considered. *GDC* could support these processes through political advice.

6.2 Reducing costs of securing access to water and sanitation facilities

First, low-cost technology that meets the needs of the relevant communities should be fully utilised. WSPs should consistently consult with communities to determine what is the most affordable way to provide services. Options may include:

¹⁰³ General Comment, para 12 c) ii). Sub-Commission Guidelines, s. 1.3 (d).

¹⁰⁴ General Comment, para. 27, Sub-Commission Guidelines, s. 6.

- kiosk systems established close to where there is demand,
- connections that are shared by a number of households on a street,¹⁰⁵ and
- permission granted to an owner of a small business to sell water at kiosk rates to neighbours (if regulated).

Of the above options, several WSBs and WSPs appear to be considering establishing water kiosks. However, greater attention needs to be given to the full range of options and, as noted in Chapter 5 on Accessibility, on ensuring that these options are designed based on user input.

Second, WSPs can consider means to reduce the barriers to affordable access imposed by up-front costs for connections. For example, the Western Water Company informed the mission that those requiring a connection had to bear the full cost of the meter, pipe, labour as well as a deposit (refundable only once service was no longer required). In some cases, instalment payments are permitted on an ad hoc basis, but there is not yet a generalised policy. The WSRB informed the mission that this issue is addressed in the tariff guidelines that are currently being drafted by the WSRB with the support of German technical cooperation. The tariff guidelines draft of March 2007 recognises that a one-off payment may be too high for users who do not have the necessary liquidity and recommend facilities such as instalments payments.¹⁰⁶ This is a very welcome positive measure that would allow households to use the expected savings from networked access to fund the connection fee. It would be useful for the Guidelines to require, rather than solely recommend, that WSPs permit instalment payments over a reasonable period.

Further measures could be included in the tariff guidelines or during tariff negotiations, such as:

- considering demonstration of payment capacity, such as a limited deposit
- consideration of partial subsidies for connection fees for low-income persons, and for kiosks and standpipes
- permitting intermediate payments if money is available to the consumer

In view of the substantial savings in daily costs of accessing water, there is a strong human rights argument for subsidising connections costs for those who are not connected as a priority over subsidising tariffs for those who currently do have access (particularly above the minimum amount). However, if a household would not be able to afford tariff charges once connected, providing a connection may be self-defeating if this will lead to disconnection. In such circumstances, it is more important to utilise the available funds to establish kiosks or to provide a subsidy or loan to a community group or entrepreneur to establish a facility that can charge a regulated and affordable price.

Finally, the greater levels of professionalism in the sector can be expected to reduce demands for bribes from water company employees, which impact on affordability. Kenyan NGOs informed the mission that at the water company level, significant levels of corruption continue to exist. Stronger measures for participation and accountability, discussed in Sections 8 and 9 of this report can help to increase professionalism among water sector employees. Nevertheless, it has been noted that Nairobi Water Company has commissioned a study on corruption in its company carried out by Transparency International. This should be seen as a very positive step in the right direction and the willingness to curb corruption in the water sector.

Recommendation 19

The *WSRB*, through the Tariff Guidelines and tariff negotiations, should require WSPs to offer the option of instalment payments and to permit demonstration of payment capacity rather than a deposit. They should also consider subsidies for connections that would particularly benefit the poor. *GDC* could encourage initiatives in that direction. (***Core recommendation***)

¹⁰⁵ This may only be practical if it is possible to create a special tariff category for such connections, analogous to kiosk rates. Concerns about potential corruption in the billing process may make this approach impractical.

¹⁰⁶ Section 5.12.

6. 3 Financing extension of access to water and sanitation

An important objective and precondition for sustainable access to water and realisation of the human right to water is that the system of supply seeks to become 'cost coverage-effective', at least for the operational and maintenance costs. Cost recovery can in fact be a mechanism to finance some of the costs required to subsidise consumption of water for the poorest and a portion of extension costs. In this regard, the Kenyan water reforms appear to be on the right track.

However, it is necessary to avoid creating unrealistic expectations in regard to what can be achieved in regard to cross-subsidies and cost recovery. The Kenyan water sector faces many challenges, which include old, improperly functioning networks, low proportion of metered connections and high unaccounted for water. The current water sector reform process is addressing some of these concerns. It is unlikely that revenues generated from water and sewerage will be sufficient to rehabilitate the system, extend networks and ensure affordable access to the poor. In this regard, the Kenyan government and the donors appears to have taken positive steps in this direction by respectively doubling and quadrupling the amounts devoted to water programmes since 2003.¹⁰⁷ Water sector institutions, and GDC, will need to encourage the GoK and donors to maintain this commitment in order to finance extension of access to the poor.

Recommendation 20

All actors in the water sector must make a strong case for continued, and increased, central government and donor investments for extension of access to water and sanitation, and caution against unrealistic expectations of levels of financing from cross-subsidisation. (*Core recommendation*)

6.4 Setting tariffs to ensure affordability

The March 2007 draft of the WSRB Tariff Guidelines takes on board some of the core requirements of the human rights approach. It stipulates that the tariff structure include a 'pro-poor policy that allows for the provision of a lifeline tariff for poor households, including through a "social block tariff", that charges a lower percentage of the average tariff (e.g. 50-70 per cent) for the consumption of up to 6 m³.¹⁰⁸ The draft considers that the use of water for commerce, industry and administration should be charged at full cost recovery.¹⁰⁹ The Guidelines strongly encourage WSBs and WSPs to propose a rising block tariff for metered residential customers, where higher tariffs apply for customers that consume beyond a threshold volume such as 6 m³/month) in order to allow for cross subsidisation and at the same time for cost recovery.¹¹⁰ The Guidelines state that in order to avoid unfair charges, the WSP must separate existing shared connections and replace these with individual connections or individual metering.¹¹¹

The document furthermore suggests a pro-poor investment charge as a percentage of billing to be used to expand the networks to the poor.¹¹² For those who cannot afford household connections, but have to rely on kiosks and standpipes, the tariff guidelines specify that the price paid by users per cubic metre should not be substantially higher than the social tariff for household connections plus the standing charge divided by the cubic metres of the first block. At the same time, the guidelines recommend that the margin for the kiosk operator be covered within the charge to the user where possible and that kiosk owners be permitted to engage in appropriate income generating activities additional to water selling.¹¹³

¹⁰⁷ Interview with Eng. Mangiti, Deputy Director for Water Supply, MWI.

¹⁰⁸ Section 5.5.

¹⁰⁹ Section 5.10.

¹¹⁰ Section 5.7.

¹¹¹ Section 5.7.

¹¹² Zero Draft of February 2007, 5.2.4.

¹¹³ Section 5.9.

In addition, the lowest tariff block will be reduced from 10 m³ to 6 m³. As households are charged a fixed amount for the full amount of the lowest tariff block, this has the effect of reducing costs for those who use only 6 m³. Tariffs for consumption over 6 m³ will increase in order to cover operations and maintenance costs. They consider that tariffs for commercial customers must not reach such a rate that they look for alternative water sources instead of contributing to the system.

The Lake Victoria North WSB is the first Board to propose revised tariffs to the WSRB. These proposals are based on a tariff study supported by German development cooperation. The proposals take on board many requirements of the right to water on the question of affordability. They propose that the costs of water at a kiosk be decreased from current (nationwide) 2 KSH per jerry can (20 litres) to 1 KSH. The kiosk operator will have to pay 10 KSH per cubic metre. This means that the operator would keep 40 KSH for each cubic metre sold. This system appears to promote affordability of tariffs while maintaining a margin that appears to provide an adequate incentive for kiosks operators to provide service.

6.5 Addressing affordability concerns for the poorest of the poor

A significant challenge will be to address the poorest of the poor who may not be able to afford 2 KSH or 1 KSH for a jerry can of 20 litres. From a human rights point of view, basic consumption of water should be subsidised, and even provided free where possible in such extreme situations. In principle, it is feasible for such small levels of consumption to be subsidised, either fully or to a significant degree. The problem, however, is practical, in terms of identifying the poorest of the poor as Kenya does not have a social security system. A formalised subsidy scheme involving waivers of payment would be open to misuse and carry the danger of seriously disturbing the formalised supply system.

The kiosk operators consulted by the mission gave some useful information in this regard. In Nyeri and Bungoma, those who say that they are unable to pay, and whose situation is credible to the operator are sometimes given some drinking water and are in most cases even allowed to take a jerry can. In these situations the kiosk managers usually ask for the commitment to pay for the water at a later stage, being aware that payment will often never be realised. One Nzwasco operator in Bungoma said that he did not give free water, but rather advises the person to purchase a 10 litres jerry can, which is 1 KSH. Some users who cannot afford to pay for water often either feel ashamed to beg for water at a kiosk or do not see the advantage of getting water from the kiosk. They resort to rivers or wells which are generally polluted and carry the danger of waterborne diseases.

It will be necessary for the Kenyan water sector and other sectors in the country dealing with cross subsidisation to devise a strategy to deal with the poorest of the poor, taking account of the fact that water is a right and the absence of a general social security system. While resources are limited, it should be emphasised that the long-term costs in terms of ill-health and lost productivity to society outweigh the minimal resources normally needed to assist the poorest.

It would be inappropriate for the mission to make specific recommendations on this issue, but it suggests that the following options be examined:

- Community-rooted self-help programmes might be able to find adequate solutions for the poorest to offer an essential amount of clean water of an acceptable quality. The approach of the kiosk managers, who were met during the missions, can provide guidance for an informal approach. Community groups in low-income areas could receive outside support for these efforts, including a small budget for such situations.
- A basic system could be put in place to grant subsidies to vulnerable groups that are easily identified, for example, child-headed households, those suffering terminal illnesses, single parent households. A system of this nature would need to be discussed across government ministries as it could be used for health, food and other rights. Examples from countries such as Brazil and South Africa could be examined for their applicability to a Kenyan context.

- Hygiene education, as addressed in Section 4.2, is also relevant in this regard. Communities that are fully aware of the consequences of using unclean water may be more willing to assist neighbours secure access.

There may be a variety of solutions that could be adopted differently by individual WSBs, on the basis of which a national policy could be put in place.

Recommendation 21

The *MWI*, the *WSRB* and the *WSBs* should develop approaches in cooperation with other relevant sectors such as the health sector to ensure the poorest of the poor can access water and sanitation. Likewise, *GDC* could apply a cross-sectoral approach on this, including health and water programmes. The *WSBs* should ensure that the WSP implement their social responsibility and contribute to solutions for the poorest of the poor.

6.6 Disconnections of water

According to the General Comment No. 15, when a household cannot pay for water, disconnection should only proceed if there is an alternative source that ensures access to the minimum essential amount of water. It also requires that the following be instituted before any disconnection: opportunity for genuine consultation with those affected; timely and full disclosure of information on the proposed measures; reasonable notice of the proposed actions; legal recourse and remedies for those affected; and legal assistance for obtaining such remedies.¹¹⁴

Box 6.1 Disconnection Procedures in South Africa

Under the Water Services Act (1997), procedures for the limitation or discontinuation of water services must-

- (a) be fair and equitable;
- (b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless-
 - (i) other consumers would be prejudiced;
 - (ii) there is an emergency situation; or
 - (iii) the consumer has interfered with a limited or discontinued service; and
- (c) not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services ...¹¹⁵

Kenyan national policies currently permit full disconnection when bills are unpaid. According to the WSPs met by the mission, the new customer service ethic introduced with the reforms aims to ensure that customers are fully warned about disconnections in advance and that any billing problems will be resolved in advance. Managers from Western Water Company advised the mission that where customers face payment difficulties, they try to be flexible where they feel that a customer only faces temporary difficulties and would be able to pay. However, this rests at the discretion of an individual manager. The managers felt that it would not be appropriate to advertise a policy of flexibility since this could lead to significant levels of defaults, which appears to be a reasonable concern.

Recommendation 22

In order to meet international standards in the context of non-payment, it is advisable that the *WSRB* includes into the planned guidelines for customer relationship:

1. Minimum procedural requirements prior to any cut-off, including written notice, a stipulated waiting period prior to cut-off (where a small fine may be levied for delay, rather than immediate cut-off), a second request to pay and an opportunity to make representations to the company that the customer is informed of.

¹¹⁴ General Comment No. 15, para. 56.

¹¹⁵ *Water Services Act, 1997* (Act 108 Of 1997), s. 4 (3).

2. A requirement that where a cut-off to a household is carried out, the company should ensure that there is a nearby source of clean water within reach of that household. This requirement is normally met if a kiosk or standpipe is nearby or if the customer can afford an alternative source (for example if the customer in question is a commercial establishment). If this is not the case, the company should be required to establish or license a standpipe or kiosk in the area if this would be economically sustainable. It would be useful if **GDC** within its policy advice backed these ideas.

7. Participation and empowerment

The human rights aspects of participation can be seen in civil and political rights, such as rights to vote and freedom of expression and association. More recently, participation has been viewed as a key element of all human rights and a human right in itself. The African Protocol on the Rights of Women states, “The participation of women at all levels in the conceptualization, decision-making, implementation and evaluation of development policies and programmes shall be ensured”. The right to information is contained in the African Charter on Human and Peoples’ Rights.

General Comment No. 15 states that each policy, programme or strategy concerning water and sanitation should include, as an integral element, the right of all people to participate in decision-making processes that may affect their rights.¹¹⁶ Special efforts must be made to ensure the equitable representation in decision-making of marginalised groups, in particular women. Communities have the right to determine what type of water and sanitation services they require and how those services should be managed.¹¹⁷ All people should be given full and equal access to information concerning water, sanitation and the environment.¹¹⁸

Policy formulation and use of governmental resources are the result of bargaining processes within society. From a human rights point of view, it is essential to establish structures to ensure that vulnerable and marginalised groups actively participate in the planning, implementation and monitoring of development projects and programmes. This would also more likely ensure that the needs of the poor are met over the long term. It is also important to realise that there is a spectrum of participation by either the grassroots, communities or civil society (see Box 7.1) and over-reliance on weak forms of participation can be dangerous.

Box 7.1 Levels of participation¹¹⁹

Passive involvement: Greatest dependence on outsiders

Information received, but no opportunity to express views.



Information giving

Answer questions from outsiders, but no opportunity to decide on questions or influence later decisions because the information gathered is not shared.



Consultation

Views are taken into account, but decisions are made by others.



Functional participation

Involvement in groups set up by outsiders to meet objectives set by outsiders.



Interactive participation

Involvement in planning, needs analysis and information gathering, and decision-making phases of the process. Outsider favours these viewpoints.



Self-mobilisation: Greatest control by people

People take the initiative in planning, needs assessment and information gathering, setting of objectives, and collective action. Outsiders provide technical support and play a facilitating or catalytic role, rather than directing the activities.

¹¹⁶ General Comment No. 15, para. 48, Sub-Commission Guidelines, s. 8.1.

¹¹⁷ Sub-Commission Guidelines, s. 8.2.

¹¹⁸ General Comment No. 15, paras. 12 (4) and 48, Sub-Commission Guidelines, s. 8.3.

¹¹⁹ Adapted from R. Jackson, 'Community Participation: Tools and Examples', taken from from S. Worah, D. Svendsen and C. Ongleo, 'Integrated Conservation and Development: A Trainer's Manual' (ICDP et al, 1999).

7.1 National level

Participation of relevant stakeholders is recognised as a crucial element in official documents such as Water Act,¹²⁰ National Water Services Strategy,¹²¹ Water Resources Management Strategy¹²² and the Integrated Water Resource Management (IWRM) Plan, which provide for participation as a key aspect of the reforms.

At the national and regional levels, there are numerous mechanisms for stakeholder participation, e.g. through various workshops and conferences. For instance, in November 2006, a stakeholder consultation conference took place in Nairobi, and was attended by decision makers and users of water to discuss the finalisation of the Water Resources Management Strategy. In March 2007, another consultative forum brought stakeholders in the water sector together in Nairobi to give comments on the NIWRM/WE Plan before it is adopted as a national document. Yet there is concern that the invitations tend only to reach those individuals and groups already in touch with the MWI and other water sectors institutions who are aware of the reforms.

Lessons could be learned from the land sector, where donors gave support to the Kenya Land Alliance to effectively represent a wide range of community and civil society groups concerned with land issues, and to ensure that those groups were also able to 'come to the table'. Support could be given to a new Kenya Water Alliance or a coalition of groups, and they should have the right to regularly meet with the Ministry of Water and Irrigation, the WSRB and the WRMA in the same way that donors regularly engage with these institutions. Such support should ensure that women are adequately represented in national policy discussions. Attempts are necessary to reach ordinary consumers who have little knowledge of the reforms by broadening the network of those consulted to bring in lower level structures such as community-based organisations (CBOs) and self-help groups.

7.2 Boards (and WSTF)

Stakeholder consultation is equally relevant for other forms of access. Accordingly, relevant documents for the sector emphasise the need for stakeholder consultation. This holds true for the Water Act, the NWSS and also the respective Draft Licences¹²³ or Model Service Provision Agreements.¹²⁴ These documents should clearly state the obligation of WSBs and WSPs to include low-income groups in consultations, and could potentially refer WSBs and WSPs to documents providing clear operational guidelines on participation (such as, potentially, the GDC-supported Kiosk Handbook and the CPC model, both of which adopt a participatory approach).

The Service Charters of the Lake Victoria North Water Services Board and of the Tana Water Services Board, both contain commitments towards stakeholders' participation in decision-making processes.

Within the Water Services Boards, the principle of participation has been given considerable emphasis. Stakeholder consultation meetings have taken place to popularise and deliberate on the water sector reforms, including the expected roles of the WSBs, the WSPs and water consumers in the respective areas. Possibilities to expand and intensify participation might be through enhanced interactive communication, in order to express the diversity of ideas and opinions that exist in the communities, and ensuring the participation of women. One of the purposes of participation and information sharing is to assist the water users to articulate changes that they would find useful and to negotiate with the WSBs and WSPs for their fulfilment. This could involve all relevant topics, including new tariffs, siting of kiosks or representation in the Boards. In Lake Victoria North Water Services Board, which is supported by German

¹²⁰ Sec. 107.

¹²¹ Sec. 3 (4). The key principles of the National Water and Sanitation Strategy have a strong focus on participation in rural water and sanitation supply and also sets some standards for urban areas.

¹²² WRMS, 6.1. For example, it requires adequate stakeholder consultation in all phases of catchment planning, Section 5.4.1.

¹²³ For the Water Service Boards.

¹²⁴ Between the WSBs and the WSPs.

development cooperation, the views of the poor were sought through socio-economic studies. This is a useful step.

Associated with physical and economic access to water is the right to information on plans and progress towards provision of water to those who do not have it. The WSPs and WSBs need to provide updates on what they are doing to reach areas that have not been served, while the poor (underserved) have a right to seek information concerning water issues. In relation to access to information, it is not clear whether SPAs with particular WSBs would be public. It would be helpful that such SPAs are public in order to ensure that users with a particular service area can hold the WSPs accountable. In LVN, German development cooperation is attempting to provide support to the WSB to implement a communication strategy. Progress on such a communication strategy will be a crucial contribution to inform the public, in particular those in low-income and remote areas, about the existence of the WSBs, and their responsibilities.

Box 7.2: Case Study, Porto Alegre, Brazil

In 1990, state and municipal governments of Porto Alegre, Brazil, initiated an infrastructure project that developed into a sustainable, participatory pro-poor approach to urban management that adapted technical standards for slum-upgrading. The project started out with the goal of adapting public services to the needs of the communities of five slum areas in Porto Alegre, approximately 60,000 inhabitants, by strengthening their self-management capacities through three especially developed decision-making entities:

(1) The *PRORENDA Council* consisted of a balanced number of representatives from the affected communities, the municipal government, the German development agency (GTZ), and the Brazilian implementation agency (METROPLAN). The Council met monthly and discussed conceptual and procedural issues concerning community funding, neighbourhood offices, local development plans and improvement measures. Though the implementation agencies had more decision-making rights, communities were able to exert influence given the regularity of the meetings.

(2) *Local Development Committees* (LDC's) were established that united representatives from all existing neighbourhood associations, clubs and community groups. Each Local Development Committee was headed by two elected, non-partisan leaders and its work assisted by project staff without any further membership rights. The LDC's tasks included managing community funds, drafting neighbourhood development plans, and accompanying the execution of infrastructure improvements in the area. Training enabled LDC members to plan and account for small-scale technical interventions, and to articulate a long-term development strategy.

(3) The *PRORENDA Forum* existed as an independent forum of community leaders, that could be consulted by the Council and also develop its own activities. The *PRORENDA Forum* proved to be effective at mobilising its members when the project as a whole was in danger, although, apart from that, its influence diminished once the Local Development Councils were created.

This participatory management approach was complemented by participatory budgeting at the Council. Public and community members were able to work with local councillors and officials on budget priorities. Within a decade, home water supply rose from **78** to **99** per cent; sewage collection from **46** per cent to almost **83** per cent, while garbage collection reaches all residences.

7.3 Local level

There is good practise relating to participation in relation to rural water supply and water resource management. For rural water supply, the Community Project Cycle (CPC: adopted under the Kenya Water and Sanitation Programme) defines the participation process through which CBOs in target locations work with support organisations to develop their own proposals for

funding and implementation of their projects. Capacity-building processes leading to empowerment are key aspects of community participation. Local participation is also prominent in the formation of Water Resource User Associations (WRUAs) - with the support of the GDC.

Within the *water companies*, there is recognition that participation of stakeholders is crucial for their push towards an increased customer base and higher revenues. In Nyeri and Lake Victoria North Nyewasco, Western WSC, Nzowasco supported by GDC have produced brochures and distributed them to users, resulting in numerous stakeholder meetings. These consultations are important contributions to realising informed participation. Yet it has to be ensured that the poor are particularly targeted. German development cooperation, through its assistance in the formulation of effective communication strategies in the water sector, and in the context of capacity development at service level has the potential to generate progress on participation of the poor at the service level, which is crucial from a human rights perspective.

At the *scheme level*, in Lake Victoria North, managers of particular schemes stated that they saw participation as a relevant precondition for decision-making. They noted that in areas with dilapidated infrastructure such as leaking pipes and taps, it will be pointless to reinstate supply without negotiations with the consumers since readiness of the consumers to pay their charges is an important precondition for the functioning of the system.

Sector reform provides numerous entry points for participation. They should be systematically used at all project stages to improve access to water. From experiences during the mission, particular challenges still exist when it comes to kiosk planning and participation of the poor. Experiences by the mission with newly-built kiosks in Webuye and Mabanga (Nzowasco area) suggest that community participation and protection of projects from undue political influence can be greatly improved. These kiosks, supported by German development cooperation, were placed close to boreholes, but far from the settlements, so that on some days there were no users at all.

On the other hand, good practices were seen in neighbouring Bungoma, where German development cooperation is assisting with expanding the network.¹²⁵ All four kiosks (one of them a borehole used as kiosk) visited by the mission team were well-frequented. Similarly, four kiosks and standpipes seen in Busia were also responding to demand, two of them having been initiated by community initiatives and still collectively run. German assistance for Busia is still focusing on rehabilitation of networks.¹²⁶ However, it is crucial that future expansion will be built upon well-functioning community service structures and integrate them into the formal system, rather than trying to replicate or replace them.

The issue of participation in local decision-making is being dealt with by GDC through the Kiosk Handbook that also adopts participatory approaches, including the representation of women. GDC has now helped to widely distribute the kiosk handbook in Kenya and national partners are very interested in adopting the approach including community participation. WSTF is currently planning to develop a project cycle similar to the CPC. These initiatives will be useful contributions to the goal of ensuring participation by the urban poor in local decision-making. GDC has considerable potential to provide advice on these issues through successful experiences in other countries. GDC can also assist water sector institutions to develop the capacity to ensure and manage such participation.

GDC should continue to make the case for community participation in all project phases, from planning over implementation to monitoring. They should select the mechanism, i.e. whether kiosk or standpipe, the location and also be involved in the selection of the operator of the facility. This approach is necessary both in order to recognise the human right to participation and to ensure that the kiosks respond to demand and are located in accessible areas.

Recommendation 23

¹²⁵ Kitale, Webuye and Bungoma are Phase I of the Water Sector Development Programme and thus, stage 2 of the programme, i.e. expansion of WSS systems has already begun.

¹²⁶ Kakamega, Busia and Nambale are Phase II of the Water Sector Development Programme and therefore still at the rehabilitation stage.

The **MWI, WSRB, WSBs** and **WRMA** should develop and support mechanisms at the national, regional and local level for civil society representing poor communities and other vulnerable groups to participate in policy formulation, ensuring that women are adequately represented. It is recommended that **GDC** through its role in the sector reform process continues to provide the necessary support to such institutions, and support grassroots groups to participate in the policy-making process. **(Core recommendation)**

Recommendation 24

The **WSRB** should prepare a common protocol, comprising minimum standards for WSBs relating to public information dissemination so as to ensure that all people, including the poor are made aware of the responsibilities of the various government institutions, their programmes and the applicable complaints mechanisms. **GDC** could offer policy advice to the WSRB on this point.

Recommendation 25

The **WSBs** should improve the accessibility of information about water sector reforms through specific targeting of local communities and the use of more interactive forms of communication in order to reach all sectors of the population, e.g. sector concepts, radio (including vernacular radio), community information meetings. **GDC** could encourage these initiatives in its programme areas.

Recommendation 26

The **WSPs** should strengthen local forms of participation including sessions in which they consult with communities and their representatives on planned developments, report on progress to local communities and address the questions and concerns. Active support by **GDC** for these processes in LVN and in areas selected for investment under the urban component of the WSTF would be useful.

8. Non-discrimination and inclusion of vulnerable and marginalised groups

Everybody is entitled to have access to water and sanitation, including the most vulnerable or marginalised groups, and without discrimination.¹²⁷ The principle of non-discrimination is a fundamental human right in itself and is included in all international human rights treaties.¹²⁸ It prohibits any distinction, exclusion, restriction or preference, which is based on any ground (such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) which differentiates without any legitimate reason.¹²⁹ The principle of non-discrimination does not only require the avoidance of active discrimination against particular groups. It also obliges governments to proactively take measures to address the particular needs of vulnerable or marginalised groups, such as women, persons with illnesses such as HIV/Aids, poor people living in informal settlements and excluded minorities. This normally requires governments to temporarily adopt special measures to reduce or eliminate the conditions that cause or help to perpetuate discrimination.¹³⁰

The mission did not have sufficient information to assess whether particular groups have been denied access to water and sanitation on the basis of their group identity, though budgetary allocations to some areas of Kenya are very low in comparison with others. However, the water sector has historically failed to address the particular needs of groups that face difficulties in access to resources, including water and sanitation and therefore need special support to realise their rights: women, children, pastoralists, people in informal settlements and people with disabilities, illnesses and the elderly. Each of these groups is discussed in the following sections.

8.1 Women

Given that women bear the most significant burden of carrying water, in terms of time and lost opportunities, improvements in access to water will be of primary benefit to women, in particular those of low-income. German development cooperation in Kenya explicitly addresses the specific relevance of improvements in the water sector for the situation of women.¹³¹

The NWRMS¹³² and the Draft NWSS¹³³ as the relevant policy frameworks for the water sector, the Community Project Cycle and the GDC Kiosk handbook, all raise the topic of representation of women in decision-making as an important cross-sectoral topic to be mainstreamed in water sector policies. In addition, it is necessary to ensure that all water policies and programmes consider the particular needs of women in the area of water and sanitation, including the issue of security when using water and sanitation facilities. (See Section 5.1 on the need to measure distance to toilets).

The current water institutions are gender neutral in their design. This fact, combined with social norms and practices in the country, has meant that women are marginalised in the governance institutions of the water sector. It will be necessary to formally require the representation of women in such institutions.¹³⁴ A dialogue between the water sector institutions and women's civil society groups

¹²⁷ International Covenant on Economic, Social and Cultural Rights, Art. 2 (2), General Comment No. 15, paras. 12 c). iii, 13, 16, Sub-Commission Guidelines, s. 3.

¹²⁸ International Covenant on Civil and Political Rights (ICCPR), arts. 2, 3, 26, International Covenant on Economic, Social and Cultural Rights (ICESCR), arts. 2 (2), 3.

¹²⁹ General Comment No. 18 (1989) of ICCPR, Non-discrimination (para. 6 f.), International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, International Convention on the Elimination of All forms of Discrimination against Women, art 1.

¹³⁰ ICCPR General Comment No. 18, para. 10.

¹³¹ GTZ-Aura-Angebot. 2004.2027.3, KV Programme for the Reform of the Water Sector Kenya, para.3.1.: "...Women, who traditionally are responsible for the provision of water, are particularly negatively affected by this situation. In the event of water borne diseases they carry the main burden to support the household (care, temporary jobs etc.)."

¹³² NWRMS, ch.5.3.

¹³³ NWSS, 6.4.

¹³⁴ P. Kameri-Mbote, *Gender Issues in the Management of Water: An Analysis of Kenya's Legal and Institutional Framework*, University of Nairobi and International Environmental Law Research Centre (Draft, 2007), p.21.

should be carried out to develop the way forward in mainstreaming gender into the water sector reforms.

8.2 Children

Provision of water and sanitation is a primary tool for improving the health of children and increasing their schools attendance. Extension of access to water and sanitation is therefore an important element of enhancing children's rights. One of the 'golden indicators' is the proportion of schools with improved water and sanitation facilities.¹³⁵

There are two particular areas in which the particular needs of children could be better taken into account. First, the Pro-Poor Implementation Plan, and the requirements imposed by the WSRB, should ensure that facilities, in particular public sanitation blocks, include child-friendly units. Second, water sector institutions should prioritise provision of water and sanitation in schools, including separate sanitation facilities for boys and girls. While securing water and sanitation in schools is of course the primary responsibility of the Ministry of Education, and individual educational institutions, water sector institutions can be pro-active by working to sensitise educational institutions to the benefits of water and sanitation and by prioritising educational institutions in their extension plans. German development cooperation could support this work in its advice to WSRB, WSBs and WSPs and provide support to WSPs to develop the necessary capacity.

8.3. Pastoralists/People in Arid and Semi-arid Areas

Areas of 'low-potential' have historically been neglected in Kenya as a policy choice originally reflected in a government Sessional Paper of 1969. As a result, people living in such areas, in particular the arid and semi-arid lands, many of whom are pastoralists, have historically been neglected in the allocation of public resources and capacity. Since 2003, the amount allocated to such areas has been significantly increased. However, it appears that much of the new resources remain un-spent. As such, it appears that significant investments in administrative and implementation capacity are required in the ASAL regions.

It is also necessary for the water sector to specifically consider how the water and sanitation needs of pastoralists can be met, in particular those who engage in regular migration. It is necessary to ensure that services and facilities serving pastoralists are designed in consultation with them.

8.4 People in Informal Settlements

As discussed in Section 5, urban informal settlements have consistently been neglected by the government. This deficiency requires, firstly, greater attention in terms of resources and capacity and, secondly, a commitment to provision of water and sanitation irrespective of whether residents are legally settled.¹³⁶ In regard to the latter aspect, the Nairobi Water Company has advised Kenyan NGOs that it does not consider the lack of secure tenure of informal settlements such as Kibera an obstacle to provision of services since these are situated on government lands.¹³⁷ This is a positive development that should be recognised, and it is hoped that this reflects the approach of WSBs and WSP throughout the country.

The new legal and institutional framework and its poverty focus have led to a greater focus on informal settlements. The MWI has started to explicitly address access to water for people in informal settlements (planned or unplanned, legal or illegal) in the NWSS¹³⁸ and also through the expansion of the WSTF into urban areas. German development cooperation in the Water Sector encouraged and supported these developments, e.g. recently through grant to the urban component of the WSTF.¹³⁹ These new priorities should also be reflected in the Sector Investment Plan.

8.5. Disabled/ Seriously Ill/Elderly

¹³⁵ The reference to 'improved water and sanitation facilities' could be revised in line with the recommendations relating to the measurement of access discussed in Section 5.1.

¹³⁶ General Comment No. 15 states in this regard, "No household should be denied the right to water on the grounds of their housing or land status," para. 16.

¹³⁷ Interview with the Nairobi Water Company Social and Environment Department, contained in: Umande Trust, COHRE and Hakijamii, *Basic Services and Human Rights in Kibera* (Draft, April 2007).

¹³⁸ Chapters 4, 6.3.

¹³⁹ 5,5 Mio. Euro.

The NWRMS recognises the special needs of persons with HIV/Aids¹⁴⁰ at the political level, however, without making specific recommendations. The NWSS includes a chapter on HIV/Aids sensitisation¹⁴¹, but does not address potential special consumption demands of those infected. However, the MWI with the assistance of its development partners, including Germany, currently plans to draft a Pro-poor Implementation Plan which intends to address the specific needs of other vulnerable groups that may have difficulty securing access to water.

Box 8.1 Special Provisions in United Kingdom Water Legislation

The Water Industry Act (1999) provides that certain types of buildings may not be disconnected from water services. These include, among others, homes occupied by the elderly, nursing homes, school and hospitals. In addition, the Act permits lower tariffs or tariff exemptions for particular classes of people, on the basis of age, ill-health or disability or financial circumstances.¹⁴²

Important issues for discussion in such a document are the specific demands in access to water of persons with disabilities, the elderly and those who are ill:

- Difficulties in collecting water. A target that is specified solely in terms of distance (e.g. 300 metres) would be inadequate to meet their needs
- High levels of required consumption, in particular those suffering from HIV/AIDS.

The Pro-poor implementation plan should also include directions for WSBs and WSPs to assess the special demands of vulnerable groups in their service area and to consider how they may be feasibly met.

Recommendation 27

The Pro-poor implementation plan (SWAP undertaking 2007) should consider how WSBs and WSPs could feasibly address the particular needs of women, children, elderly, seriously ill and disabled people in the provision of water and sanitation, based on consultation with representatives of these groups.

¹⁴⁰ NWRMS. 1.1.SS

¹⁴¹ Ch. 6.6.

¹⁴² Sections 4A and 143 A.

9. Transparency and accountability

Human rights standards envision the establishment of appropriate procedures (administrative, regulatory and/or judicial) for complaint and redress so as to ensure that human rights are enforceable.¹⁴³ Such institutions can (i). Provide for the accountability or government actions to the public, (ii). Enhance the participation and influence of disadvantaged individuals and groups and (iii). Reduce the ability of public bodies to engage in corruption.

9.1 Complaints Mechanisms

The water companies have established customer care desks, and thus complaints can be made to them. Where a customer is unsatisfied with the company (or support organisation), or where neither of these organisations operate, they can make a complaint to the relevant WSB, which has the power to sanction a company or support organisation. If a customer is not satisfied with the decision of the WSB, they can subsequently bring a complaint to the WSRB.

Access to the companies and the WSB is relatively straightforward. However, the mission was informed by the Lake Victoria North WSB that only those who are connected to a network would come with complaints. The role of the WSBs as instruments for accountability is not well known by the public. It will be necessary for the LVN WSB communication strategy, supported by GDC, to address this problem.

The utility of the WSBs as an instrument for accountability is reduced by the lack of specific individual and group rights under the Water Act, thus creating a possibility that decisions will be made without reference to human rights standards. As a result, the implementation of human rights remains reliant on the goodwill of political institutions, and is therefore difficult to guarantee. In this vein, it is relevant that low-income communities are not represented on the Board, making it likely that their priorities may be ignored. However, the right to water and sanitation has been contained in all versions of the draft Constitution of Kenya, and therefore once the Constitution is established, all laws and policies will be justiciable. More immediate progress could be achieved by the guidelines from the WSRB on corporate governance and consumer relations - both in the making - which would be legally binding on WSBs and WSPs. If these guidelines ensure a pro-poor approach, this would be useful from a human rights point of view.

9.2 Monitoring Bodies

As discussed in Section 9.1 above, the WSBs play the role of monitoring the work of companies and support organisations on an ongoing basis. The WSRB has also a crucial role in monitoring WSBs and WSPs. As such, the water sector reforms have put in place a system to monitor acts of responsible water institutions.

In addition, the Kenya National Commission on Human Rights (KNCHR) has the power to address non-implementation of the right to water and sanitation. The KNCHR has thus far assessed the implementation of the right to water in Kenya in one of its annual reports.¹⁴⁴ It has also been present in a variety of multi-stakeholder dialogues and made a formal intervention in regard to the Rules relating to water management. However, due to the significant demands of work on it, the KNCHR has not as yet been able to deal with any specific cases relating to the right to water and sanitation.

One of the areas in which donor support will be most relevant is that of capacity building and support to independent NGOs and CBOs so that they can monitor performance of public bodies, support organizations (SO) and vendors (implementation of commitments) and act as a safeguard

¹⁴³ General Comment No. 15, paras. 55-56, Sub-Commission Guidelines, s. 9.

¹⁴⁴ Kenya National Commission on Human Rights, The State of Human Rights Report 2003-2004 (Nairobi 2005).

against corruption (e.g. watchdog groups with local people and local authorities). In order to ensure the independence of such institutions, such funding should not be disbursed through government bodies. DED will shortly be providing support to a Kenyan human rights NGO that will work on water issues. This is a good example that could be followed by other agencies.

Recommendation 28

German development cooperation should support independent civil society organisations in order to ensure that they are able to hold government institutions accountable with respect to the right to water and sanitation. ***(Core recommendation)***

A. Glossary of acronyms and abbreviations

AFD	L'Agence Française de Développement (French Agency for International Development)
Art.	Article (e.g. section of treaty)
BMZ	German Federal Ministry for Economic Cooperation and Development
BWAWRUA	Bwathonaro Water Resource User Association
CAT	Convention against Torture
CBO	Community-based organisation
CCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	Chief Executive Officer
CMS	Catchment Management Strategy
Cp.	compare
CPC	Community Project Cycle
CRC	Convention on the Rights of the Child
DC	Development Cooperation
DED	Deutsche Entwicklungsdienst (German Development Service)
ESHWG	Environmental Sanitation and Hygiene Working Group
EU	European Union
GDC	German development cooperation
GNP	Gross National Product
GoK	Government of Kenya
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (German Agency for Technical Cooperation)
HHC	Household Connection
ICESCR	International Covenant on Economic, Social and Cultural Rights
IWRM	Integrated Water Resource Management
KfW	Kreditanstalt für Wiederaufbau (German Bank for Reconstruction and Development)
KNCHR	Kenya National Commission on Human Rights
KSH	Kenyan Shilling
KWSP	Kenya Water and Sanitation Programme
LVN WSB	Lake Victoria North Water Services Board
MDGs	Millennium Development Goals
MoH	Ministry of Health
MoU	Memorandum of Understanding
MWI	Ministry of Water and Irrigation
NESHIP	National Environmental Sanitation and Hygiene Policy
NEMA	National Environmental Authority
NGO	Non-governmental organisation
NWRMS	National Water Resource Management Strategy
NWSS	National Water Service Strategy
NYEWASCO	Nyeri Water & Sewerage Company Limited
NZOWASCO	Nzoia Water Services Company
P.	Page
Para.	Paragraph
PHAST	Participatory Hygiene and Sanitation Transformation
SIS	Sector Information System
SO	Support Organisation
SPA	Service Provision Agreement
SWAP	Sector-wide approach
UN	United Nations
UN-HABITAT	United Nations Human Settlement Programme
UNICEF	United Nations Children's Fund
Vol.	Volume
WARIS	Water Regulation Information System
Western WSC	Western Water Services Company
WHO	World Health Organization
WRM	Water Resource Management
WRIMS	Water Resources Information Management System
WRMA	Water Resource Management Authority
WRUA	Water Resource User Associations
WSB	Water Services Boards
WSRB	Water Services Regulatory Board
WSP	Water Service Providers

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