Background
Kenya is a multi-ethnic society, with considerable difficulties in its transition to democracy. There are historic inequalities in the access of different ethnic groups to power and resources (particularly land) which have not been addressed and are prone to escalate into violent conflict as witnessed in the 2008 presidential elections. Corruption remains endemic.

Kenya suffers from chronic water shortages due to the skewed relationship between limited available resources, population growth and environmental degradation. Women and children are particularly affected. The urban poor have very limited access to water and sanitation. Management of water resources is slowly improving due to a comprehensive water sector reform process started in 2002.

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

It has five components:
1. Support to the Ministry of Water and Irrigation in the implementation of sector reforms,
2. Regulation of the water sector,
3. Commercialisation of water and sanitation services,
4. Improvement of Water resource management,
5. Support for ecological sanitation.

The Programme is carried out in cooperation between GTZ, the KfW, and the DED, and is financed by the German Ministry for Economic Cooperation and Development, SIDA and the EU. The programme started in 2003 and is expected to run until 2013.

Human rights framework

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

The Kenyan Water Act of 2002 contains useful provisions for equitable access to water supply and sanitation services. The policy and institutional set up enabled a stringent pro poor-focus which turned into a human rights-based approach in 2005/06. To achieve fast track solutions for the poor in informal urban settlements, the Programme supported the establishment of a Water Services Trust Fund: Water service providers can apply for funding to e.g. extend services to informal settlements. In addition, progressive tariff structures were devised, and cross-subsidisation made water affordable for the poor.

The new tariff guidelines were coupled with low-cost solutions in the form of water kiosks. These deliver water of controlled quality and price, and are able to rapidly upscale access to water for the urban poor in peri-urban and densely populated areas.

Gender mainstreaming is a goal in the relevant national strategies, and measured by a sizable increase in women’s representation in decision-making in the water sector. Women’s representation was also made part of the application requirements to the Water Services Trust Fund. However, water institutions currently still do not prescribe women’s representation, with some exceptions where a minimum of 30% women is mandatory.

Human rights standards, taken from the General Comment, and human rights principles (see Box 1) were turned into indicators and integrated into the National Water Resource Management and National Water Services Strategies. The service providers were asked to sign service provision agreements with the relevant Water Services Boards and the Regulatory Boards.

Apart from collecting feedback on compliance with the standards, the programme supports management information systems for sector institutions, so data on performance of water service providers and compliance with set targets, indicators, and benchmarks are more transparent and accessible.

Overall water governance and accountability was strengthened by supporting clear lines of responsibilities within the institutional landscape: The Ministry of Water and Irrigation

Tariff reforms: Aim for affordable access and sustainability

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

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

Water kiosks make it possible to replace informal service provision which is not controlled by the government and usually supplies water at much higher prices and inferior quality. In line with the human rights-based approach, kiosk facilities and its management concept actively involve the un- or underserved. In addition, the programme supported increased participation of water users through the establishment and strengthening of Water Resource User Associations.

The General Comment Nr. 15 (2002) specifies the right to water: water for domestic and personal use must be available, accessible, acceptable, and of an appropriate quality. A similar specification is currently under development for the right to sanitation.

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

Photo: Aquapix/Water Services Trust Fund: Operation of water kiosks, Athi River, Kenya
has the overall political responsibility for the Water Sector and its reform. The Water Services Regulatory Board licences regional Water Service Boards to ensure water services are sustainable and provided with increasing performance, for example through the contracting of commercially-oriented Water Service Providers. These are mainly registered private companies in the ownership of municipalities or user associations. Water companies are now required to adopt a customer service approach and adequate complaints mechanisms, e.g. customer care desks. Water companies are also required to report on the extension of services to the settlements of the urban poor.

Lastly, a Water Appeals Board has been set up to increase accountability. The Water Act has mandated the Appeals Board to act as a last resort within the water sector, and decide upon the violation of rights and proprietary interests stemming from decisions of other sector institutions.

**Process**

The Programme introduced the human rights-based approach as a part of its advisory services to the Ministry of Water and Irrigation. The Ministry in turn adopted the human right to water as a guiding framework for the harmonization of donor activities in the Kenyan water sector. Thus, the different Kenyan strategy documents in the water sector - such as the strategies on National Water Resource Management, on National Water Services, and the Sanitation Concept - contain specific chapters on the human right to water and sanitation.

A prerequisite for the adaptation of a human rights-based approach at Ministry level was an intensive dialogue and familiarization of key stakeholders with the contents of the UN General Comment Nr. 15. This has helped to overcome worries and misunderstandings about the right to water, for example that it would imply free provision of safe drinking water to the poor.

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

Dialogue was not only key with respect to the Ministry, but also within the sector. Thus, the water sector has become far more open to civil society participation than prior to the reforms. For example: The general public, the media, water users, representatives from government institutions and development agencies, civil society and the private sector came together for hearings in Nairobi to discuss the two national water strategies.

**Impact**

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

The Kenyan Ministry of Water and Irrigation has recognized the right to water as the framework for its national water policy and expects that donors also comply with the right to water.

Aid effectiveness in the sector has increased, as has the commitment of resources to the sector.

The establishment of a Water Services Trust Fund, the use of innovative coordination instruments, and the participation of key stakeholders have helped to fast-track and upscale access to service for the un- and under-served.

The human rights-based approach promoted a comprehensive pro-poor orientation in the sector. With the Water Services Trust Fund in place utilities can now extend services to areas of the poor long ignored by the formal service providers. Service providers can thus no longer define their own service areas leaving the urban poor out or report only on the areas served by their network.
Sector institutions, like the autonomous Regulator, the Water Services Trust Fund and the Water Resource Management Authority have incorporated human rights aspects in their guidelines and service quality standards.

Stakeholder participation is now much more common and goes beyond what the Water Act mandates. This has helped to make strategies and key documents more comprehensive and focused on the needs of people – unlike the top-down approach dominating before. The ongoing up-scaling of access with the participation of the service providers would not have been possible to such an extent without the human rights-based approach.

Challenges

There remain a number of challenges due to the complexity of the water sector. Up-scaling access to water and sanitation services for the poor remains the biggest challenge. In addition, increased participation and empowerment of the un- and underserved in decision-making processes in the water sector should go hand in hand with more human rights awareness among right-holders. Civil society and community-based organizations are important partners to effect this.

Another challenge relates to monitoring: in the long term, who should monitor the compliance with human rights standards as part of the National Strategies, Concepts and Service Provision Agreements of private providers and how?

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

Lessons learned

A human rights-based approach should be incorporated into a water programme right from the start. The approach adds legitimacy and legality to pro poor strategies and can gear the legal and institutional framework accordingly. This is particularly needed where commercialisation and private sector participation is called for and the policy level lacks capacity in ensuring that social responsibilities are taken up.

All sector institutions, including non-governmental and community-based organisations, need to be involved in order to make duty bearers and right-holders to work towards the common aims.

While the human rights-based approach appeared challenging in the beginning, it was after all, not so difficult to integrate it into policies and practices --and it has added demonstrable value. The positive Kenyan experiences are starting to get replicated in other countries in East Africa.