



## ROUNDTABLE 3: HARMONISATION

# HARMONISATION OF REFORMS IN THE WATER SECTOR AND THE HUMAN RIGHT TO WATER IN KENYA

## 1. COUNTRY CONTEXT: DEVELOPMENT PROCESSES AND PRIORITIES IN KENYA

The **Kenya Vision 2030** aims to transform Kenya into a middle-income country by reaching specific economic, social and governance goals. Having launched its **Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation** in 2004, the **Government of Kenya** has formulated a successor strategy to serve as the medium-term framework to implement Kenya's Vision 2030.

Donor assistance is less important in Kenya than in many other African countries, although it remains significant in some sectors. The Government mobilises 21 percent of GDP in revenue, a much higher proportion than in most developing countries. Donor funds have amounted to only about 5.0 percent of the government budget in recent years. Development partners fund activities in the current priority sectors, such as democratic governance, health and HIV/AIDS, water and sanitation, education, environment, social protection, agriculture and rural development. Major donors have been the World Bank, the African Development Bank, the European Commission, Canada, Denmark, France, Finland, Germany, Italy, Japan, the Netherlands, Norway, Spain, Sweden, the UK, the USA, and various UN organisations.

Donor coordination has continuously improved since 2003. The **Kenya Coordination Group** meetings, chaired by the Minister of Finance, have since 2004 provided regular opportunities for the government

and development partners to discuss matters of mutual concern. Development partners meet among themselves each month in the **Development Coordination Group**, chaired by the World Bank. The Harmonisation, Alignment and Coordination Group, which includes the Ministry of Finance and the Ministry of Planning and National Development, actively promotes the aid effectiveness agenda. All 17 of its members, providing some 90 percent of total official development assistance to Kenya, have joined together to formulate the **Kenya Joint Assistance Strategy**, which is organised around the three pillars of the Vision 2030. Even with such a large number of partners involved, the process has been exceptionally fast, partly because of the broad consensus that

has emerged through intense debate in recent years over a range of development issues in Kenya. Some 16 sector donor groups coordinate **dialogue** and programme support at the sector level. Three quarters of these are currently involved in developing Sector-Wide Approaches with government counterparts.

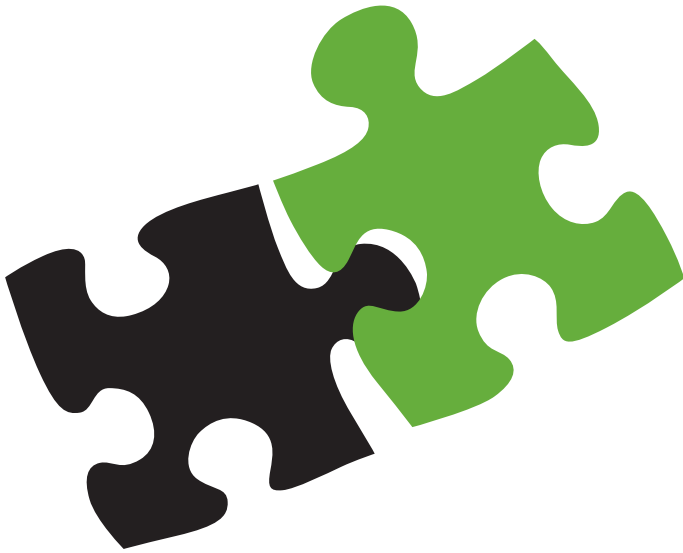
The Government's external resource policy provides an overall framework for donor assistance. The draft policy welcomes the role of development partners in Kenya and specifies how different types of external resources contribute to realising Kenya's development aspirations. It contains a set of **Partnership Principles** signed by the Government and development partners in September 2007.

## 2. HARMONISATION OF WATER ISSUES USING A HUMAN RIGHTS FRAMEWORK IN KENYA

### PRE-PARIS INITIATIVES: WATER SECTOR REFORM AS A PLATFORM FOR AN EVOLVING SECTOR-WIDE APPROACH

Expanding access to water and sanitation services has long been a priority for Kenya. A comprehensive water sector reform was commenced by the **Government of Kenya** in the late 1990s. The present legal and institutional framework is enshrined in the **National Water Policy on Water Resources Management and Development** of 1999 and the **Water Act** of 2002. The Water Act is remarkable in that it redefines the role of the Government away from service provision towards policy

formulation and regulation. It is also known for decentralising functions to lower-level state organs and involving NGOs in the management of water resources and service provision. The Water Act helped to set the pro-poor direction of sector management. For example, it provided for the establishment of the **Water Services Trust Fund**, which became operational in 2004. The Fund serves to channel funding for provision of water and sanitation services to communities without adequate water, with priority given to poor and disadvantaged groups. The resources for the Fund come from the government budget allocations, develop-



ment partners, and donations from institutions and individuals.

#### **HARMONISATION AFTER PARIS: STRENGTHENING THE SECTOR-WIDE APPROACH WITHIN THE HUMAN RIGHTS FRAMEWORK**

The process of implementing a Sector-Wide Approach in the water sector was initiated by the **Ministry of Water and Irrigation** in 2005. The respective Partnership Principles were signed by the Ministry of Finance, the Ministry of Water and Irrigation and the development partners working in the sector. The Sector-Wide Approach to Planning, launched by the end of 2006, includes the development of an **interim Sector Investment Plan** and a **Sector Information System**. The central policies in the sector reform process are included in the **National Water Resources Management Strategy (2007-2009)** and the **National Water Services Strategy (2007-2015)** to guide the provision of water services with an eye to meeting the targets of the Millennium Development Goals. An important aspect of the strategy is that it outlines support mechanisms for its implementation, which includes clarification of the roles of various actors, financial mechanisms, capacity building, applied research as well as monitoring and information systems. Special attention is given to sanitation and pro-poor measures.

Overall coordination in the water sector between the Government of Kenya and development partners takes place in the **Water Sector Working Group**. This includes

representatives from other ministries with links to the water sector, including the Ministry of Health. Since 2006, an annual **Joint Sector Review** reporting and sector conference has been held. Reporting includes performance rating according to 16 “golden indicators”. To consolidate the sector reforms, the Ministry of Water and Irrigation is being restructured to assist new sector institutions and to pave the way for a Sector-Wide Approach, based on an applicable **Medium-Term Expenditure Framework**.

### **3. BENEFITS AND EFFECTS OF HARMONISING WATER ISSUES IN A SECTOR-WIDE AND HUMAN RIGHTS APPROACH**

Sector-Wide Approaches are currently being developed in various sectors. The experience of the water Sector-Wide Approach might serve as a particular model for harmonising aid effectiveness: The Ministry of Water and Irrigation has found that using a human rights framework, rather than a straightforward poverty approach, has given them a stronger basis for addressing regulation of the water sector and has provided a stronger basis for donor alignment, harmonisation and increased aid flows to the sector.

#### **Establishing an institutional framework to separate water resources management from water and sanitation service delivery**

The institutional setup laid down in the Water Act 2002 foresees a clear division of tasks and responsibilities. A **Water Sector**

In the Kenyan water sector, the Ministry of Water and Irrigation, supported by German Development Cooperation and other development partners, applies an approach that aims at strengthening the right to water and sanitation within a framework of water sector policy, strategies, guidelines and contractual agreements with commercial water providers. Human rights standards are used by the ministry as a criterion for regulating supply and resource management.

**Reform Secretariat** was established immediately in 2002 to oversee the creation and operationalisation of the institutions. The **Ministry of Water and Irrigation** has overall political responsibility for the Water Sector and its reform. The **Water Services Trust Fund** finances provision of water and sanitation to disadvantaged groups. The **Water Resources Management Authority** has the responsibility for regulating water resources and supporting management by the Water Resource Users Associations. The **Water Services Regulatory Board** regulates and monitors service provision, sets standards and guidelines for provision of water services and carries out tariff negotiations. The regional **Water Services Boards** contract Water Service Providers and manage investment planning as asset holders. **Water Service Providers**, usually registered private companies owned by the

municipalities or users (associations), provide water and sanitation services. The **Water Appeals Board** arbitrates disputes and conflicts between sector institutions and individuals.

### Incorporating international human rights standards into water sector issues

Since 2006, the on-going process of adopting and implementing a human rights-based approach has been reflected in principles, targets and indicators included in the National Water Resource Management Strategy, the National Water Services Strategy (NWSS) and the Pro-Poor Implementation Plans. The guiding principles define sustainable and affordable access to safe water and basic sanitation as a human right. The NWSS sets out a commitment to include measurable indicators for human rights and water as part of the set of sector indicators. Specific targets and regulations relating to international standards include: Availability, access, quality, affordability, sustainability, non-discrimination, participation and empowerment, transparency and accountability.

### Translating standards into practice

Operators of water and sanitation facilities are asked to comply with minimum

standards through signing Service Provision Agreements with the relevant Water Services Boards and Water Services Regulatory Boards. It is proposed to establish and distribute a list of indicators and actions derived from the National Water Services Strategy and Pro-Poor Implementation Plans to all relevant institutions, and to collect feedback from these institutions on how these have been inserted into annual work plans and performance contracts. Monitoring the compliance and performance of all institutions involved is a key challenge. The Sector Information System initiated as part of the Sector-Wide Approach aims to address this challenge by supporting the development of management information systems for sector institutions and supplementing this with sample surveys and special studies. It is intended that results from the Sector Information System will be included in the annual sector report and annual sector conference.

### Including more actors on different levels in the framework for dialogue

Use of the human rights framework has, to a certain extent, provided a common framework for dialogue with civil society and opened up a basis for debate about pricing of services and sustainability of

supply. Donors and NGOs have been consulted during policy and strategy-drafting processes, and public hearings have encouraged broader engagement. However, although the Ministry of Water and Irrigation has made increased efforts to consult civil society organisations on policy, civil society representatives themselves do not think that they have participated adequately in the formulation of recent ministry strategies. Whatever the value of policy content in terms of acknowledging human rights standards and principles, civil society organisations do not feel ownership of the policy because they do not think they have made a sufficient contribution to its design, implementation and monitoring.

At community level, it is not clear that there have been sufficient efforts to ensure community-based organisations' participation in decision-making and monitoring or to inform people of their rights and set up functioning accountability mechanisms, including complaints procedures. It is difficult to find, for example, a clear outline of national service delivery standards that could be understood and used by all water consumers. In order to address these issues, communication and dissemination of information still have to be improved.

## 4. LESSONS LEARNED

The introduction of a human rights-based approach has provided a basis for increasing aid effectiveness in the water sector. Support for human rights-based approaches is included as one of the general features of the Partnership Principles. For the Ministry of Water and Irrigation, the

commitment towards the right to water and the water sector reforms is conducive to implementation of the Paris Declaration on Aid Effectiveness. The impact of the water sector reforms on aid effectiveness can be illustrated by the increase in contributions to the sector. Due to the above-

mentioned commitment and other factors, the donor budget allocation to the Ministry of Water and Irrigation doubled within one year from KSh 3.4 billion in 2006/2007 to KSh 6.8 billion in 2007/2008. In the current year 2008/2009, it has maintained this upward trend, standing at KSh 10 billion.

### LESSONS LEARNED BY THE PARTNER COUNTRY

- One of the primary implementation problems faced by the Ministry of Water and Irrigation continues to be the regulation of the private-sector providers in order to ensure a pro-poor orientation. The ministry has observed that private-sector involvement does not automatically reduce the number of non-served or under-served people. Project interventions by donors and NGOs aiming to improve poor people's access to water have sometimes exacerbated the underlying problems by supporting informal provision and inconsistent standards. Key challenges facing the ministry, then, are to increase its stewardship and coordination of the sector and regulate Water Service Providers to ensure both sustainability of supply and access by the poorest, according to the minimum requirements of the human right to water and sanitation.
- Despite progress, much remains to be done by the Kenyan Government, the Ministry of Water and Irrigation and the donor community to reach the targets of the Paris Declaration on Aid Effectiveness and meet the expectations of Kenyan stakeholders in the water sector. This includes in particular the updating of policies, laws, rules, regulations, strategies and guidelines at international, regional, national and local level, as well as further improving communication and coordination.

## LESSONS LEARNED BY THE DONOR COMMUNITY

- It is generally acknowledged that the water sector reforms have led to improvements in delivery. A primary concern, however, is the lack of progress in securing water supply for the most vulnerable, particularly those living in informal settlements. Challenges in this area include lack of infrastructure in informal settlements, the lack of experience of Water Service Providers in dealing with informal as opposed to regularised communities and the greater financial incentives to provide services for regularised customers because of tariff structures. The Ministry of Water and Irrigation acknowledges that despite progress, the proportion of non-served people remains more or less constant. This can partly be attributed to increases in population and particularly to the fast-growing settlements of the urban poor. However, extension into urban informal settlements and rural semi-arid areas has been limited. The ministry indicates that it intends to address this issue through
    - a) increased mobilisation of funds for the Water Services Trust Fund (in the urban areas supported by German Development Cooperation and the EU);
    - b) greater use of those funds in settlements of the urban poor and rural poor in arid and semi-arid areas;
    - c) promotion of low-cost technologies including water kiosks and basic on-site sanitation;
    - c) including pro-poor investment plans as part of the Sector Investment Plan.
- However, major improvements in service provision to the urban poor are often not achievable without simultaneously investing in rehabilitation and extension of the basic infrastructure, in order to increase the supply of safe water.
- There are some areas of the water sector planning and coordination process where human rights standards and principles do not appear to have been comprehensively applied. The 16 “golden indicators” agreed as the key indicators for the sector do not include any that are clearly related to human rights. A review of the water sector, for example, suggested that key sector indicators to be used in the Sector-Wide Approach framework should include one marker of whether spending for water and sanitation services exceeded 5% of household income, the internationally agreed standard on this issue. The available list of 16 key sector indicators does not yet include one on pricing.
  - Donor agencies should further encourage 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.

## 5. OUTLOOK: WHAT ARE THE CHANCES OF ENHANCED COORDINATION?

In Kenya, ownership in the water sector has been strong since the process of a water sector reform and the implementation of a coherent water policy started. In the past years, the Ministry of Water and Irrigation has been the driving force in orienting the reform towards internationally agreed standards and criteria. Underlining its commitment towards fulfilment of the Millennium Development Goals (MDG) and human rights, the ministry made human rights an important element of formal service provision and used the right to water as a mechanism to support mainstreaming sustainable progress towards the MDG. This commitment of the Government of Kenya has inspired confidence among the development partners and has contributed to a significant increase in investment. For example, technical assistance for sector

policies provided to the ministry by Sweden, Denmark, Germany and UNICEF is now managed in a pool under the chairmanship of the Ministry of Water and Irrigation.

Nevertheless, implementation of the water sector reform still faces considerable challenges. As the reform started simultaneously in all areas and institutions, and at all levels, initiatives in some areas have simply been overtaken by events. Strategies to mainstream cross-cutting issues in the water sector are still being developed. Human rights to water have helped the sector to focus better on the individual's entitlement to access to water and sanitation. The human rights approach therefore offers additional tools and incentives to concentrate on the underserved and poor. Hence, the expansion

of the activities of the Water Services Trust Fund (poverty funds) into urban slums, pro-poor regulation (e.g. through progressive tariffs, systemic low-cost solutions through kiosks etc.), the large participation of users, and increased efforts directed to informing the general public on water sector issues are considered logical steps towards realising human rights in Kenya. As human rights principles combined with MDG orientation have become some of the central themes that guide and facilitate the ongoing process of reforms in the Kenyan water sector, the Ministry of Water and Irrigation expects donors to align themselves with these universal principles by further harmonising their actions and programmes with the sector policy and strategies.