

# ENHANCING WATER AND SANITATION GOVERNANCE IN KENYA



## Human Rights Based Approach to Reforms in the Kenya Water Sector

Kenya Water for Health Organisation (KWAHO)

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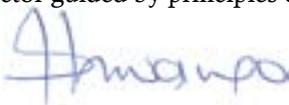
In 2002 the Water Sector Reforms momentum in Kenya culminated in the enactment of the Water Act 2002 which was gazetted in October 2002. The Act introduced new water management institutions to govern water and sanitation issues in Kenya. With the enactment of the Water Act and subsequent water sector reforms, the Kenya government committed herself to adopting a Human Rights Based Approach (HRBA) in the sector as expounded in the National Water Services Strategy (NWSS).

This booklet contributes towards clarifying how the implementation of a HRBA in the water and sanitation sector encourages the Kenyan Government and other water service providers to ensure the right to water and sanitation for all people regardless of background, income or living conditions.

International human rights treaties and conventions consider access to water and sanitation as a human right. This means that all individuals are entitled to have access to sufficient amount of safe drinking water and to basic sanitation facilities. Under HRBA, everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. HRBA to water and sanitation demands accountability of governments, the international community and the private sector, requiring information sharing and genuine participation in decision-making by the most vulnerable and marginalized individuals, who have been historically discriminated against or neglected such as residents of informal settlements and the poor rural communities.

This booklet is an outcome of a pilot project on water governance enhancing Human Based Approach in Bondo district of Nyanza province that was a joint initiative between key partners namely UNDP, Water Governance Facility (SIWI), KWAHO, MWI, KACC, LVSWSB and KNCHR. To become knowledgeable and act on a basis of information I encourage you to read this booklet.

It is my sincere hope that as a society we will realize Millennium Development Goals and Vision 2030 with a functional, efficient and effective water and sanitation sector guided by principles of human rights.



**Mrs. Catherine Mwangi**, Executive Director, KWAHO

## Kenya, a Water Scarce Country

Kenya surface water coverage is only 2%, a water scarce category of 647m<sup>3</sup> per capita against the global benchmark of 1000m<sup>3</sup>.

According to the Ministry of Public Health and Sanitation, the sanitation coverage for urban areas is 68% and for rural areas is 28% and about 50% of water borne illnesses are related to poor sanitation and hygiene.

Kenya's water resources are threatened by pollution, over exploitation and degradation of catchments areas.

### *Dirty water sources*



*A water vendor collects water from a pan that is also a source of water for domestic animals. Users (right-holders) are consuming water from any source due to water scarcity.*

All water bodies in Kenya; including rivers, springs, streams, dams and underground water abstracted through drilling wells or sinking boreholes belongs to the Republic of Kenya.

Water actors facilitated the enactment of laws to sustain and regulate the use of water resources for the benefit of the public.

The first water law to be enacted was the Water Ordinance 1927, the second law was the Water Act Cap 372 of 1974 while the third and most current law is the Water Act of 2002.

## The Water Act 2002

The Water Act 2002 provides the framework for water sector reforms. The reforms revolve around the following four themes:

- Separation of the management of water resources from the provision of water services.
- Separation of policy making from day to day administration and regulation.
- Decentralization of functions to lower level state organs.
- Involvement of non-government entities in the management of water resources and in the provision of water services.

The long-term intention of these water reforms processes is to contribute to poverty reduction in the country, particularly in the rural and urban poor areas, through the establishment and development of a well managed and sustainable water sector.



*An overburdened Ministry of Water and Irrigation before the implementation of the Water Act 2002*

## Water Sector Reforms

The Government of Kenya is committed to water and sanitation governance as demonstrated by the following public documents:

- (a) Water Act 2002.
- (b) National Water Services Strategy.
- (c) National Water Resources Management Strategy.
- (d) Water Services Regulatory Board Tariff Guidelines and Model.
- (e) Pro-poor Implementation Plan for Water Supply and Sanitation.

Water sector reforms are intended to:

- Enhance water resource management.
- Increase efficiency in water and sanitation services provision.
- Improve customer care and increase customer satisfaction.
- Increase development and investment.
- Improve professionalism in the sector.

## Reform Principles

The key principles underlying the Water Sector Reform are:

- Stakeholder involvement and participation.
- Decentralized decision making; separation of policy, regulation and service provision.
- Socially responsible commercialisation of water services and private sector participation.
- Cost-recovery principle that takes into account a pro-poor pricing policy that meets equity,
- economic, financial and environmental concern.
- Delegation of responsibilities for water actors and separation of Water Resource Management from Water Services Provision.



*Does this overworked woman have any rights?*

## 2 WATER SECTOR INSTITUTIONS

### New Ministry of Water (MWI) Structure

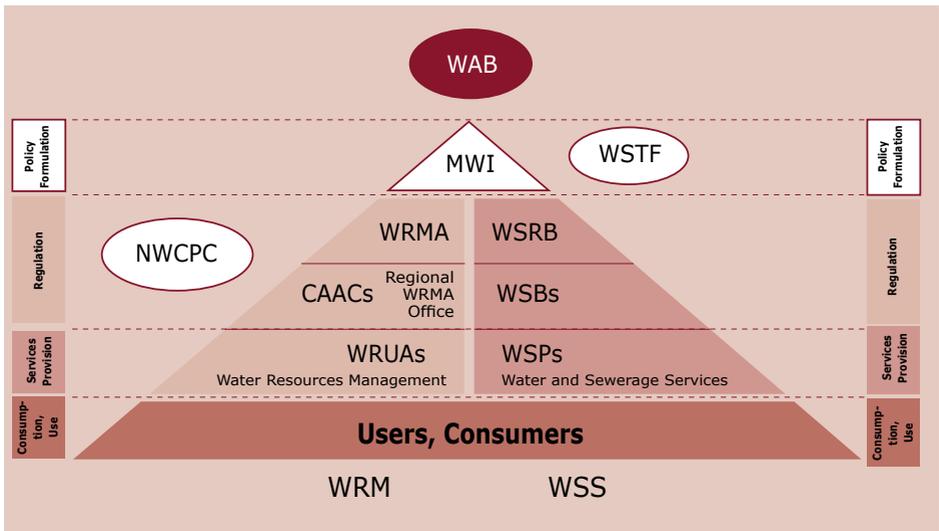
The water sector reforms necessitated restructuring MWI thus its functions are:

- Policy development and coordination of sector development.
- Monitoring and evaluating policy implementation.
- Irrigation and land reclamation functions.

In the new structure, MWI has decentralized its traditional role to regional and grassroots institutions.

Its regulatory role has been delegated to public regulatory agencies. Implementation of these roles has been assigned to communities, private sector and voluntary sectors.

### Institutional Framework Water Act 2002



MWI has established the following institutions as part of the sector reforms process:

1. Water Reform Programme, whose role is to manage the implementation of the reform programmes.
2. The Water Resources Management Authority, which is responsible for the management of water resources as provided in Section 8(i) of the Water Act, 2002.
3. The Catchment Area Advisory Committee, that has the responsibility for management of water resources, conservation, use and apportionment of water resources in a defined catchment area as presented in Section 16(i) of the Water Act, 2002.
4. The Water Services Regulatory Board, whose role is to license and manage the supply of water and sewerage services in accordance with Section 47 of the Water Act, 2002.
5. Water Services Boards and Water Services Providers, whose service delivery roles are provided in Section 5 of Water Act, 2002.
6. Water Services Trust Fund, which has the mandate to mobilize financial resources for development and rehabilitation of water and sewerage services resources infrastructure, especially to unserved areas.
7. Water Appeals Board, whose mandate is conflict resolution within the sector management.

Section 83 of the Water Act 2002 mandates Water Services Trust Fund (WSTF) to assist in financing the provision of water services to areas without adequate water. The functions of WSTF include:

- Mobilizing.
- Ensuring compliance with the rules of funding
- water services.
- Ensuring disbursement of funds; Monitoring
- implementation of projects.
- Carrying out technical and financial audits of
- projects; Appraising applications and proposals for financing of projects.
- Establishing links with Water Service Boards in all parts of Kenya and other stakeholders in the water sector .
- Facilitating the efficient administration, management of activities and operations of the Trust Fund.

The functions of Water Appeal Board (WAB) as outlined in section 85 and 87 of the Water Act 2002, include:

- Hearing and determining appeals from decisions or orders of the Authority, the Minister or Regulatory Board.
- Hearing and determining disputes in the water sector.
- Performing other judicial functions that pertain to the use and development of water resources;
- making and varying rules of their procedures from time to time.

The Kenya Water Institute (KEWI) is responsible for the following functions within the water sector;

- Conducting training to the middle level personnel in the water sector.
- Carrying out relevant research in the water sector and producing their publications.
- Providing consultancy and producing related services specific to the water sector.
- Providing commercial related training to the water sector.

The National Water Conservation and Pipeline Corporation (NW-CPC) has the following functions:

- Construction of dams
- Drilling of boreholes
- Bulky water supply

## Drainage Basic Office (DBO)

The functions and responsibilities of Drainage Basin Offices are to ensure that Government policies are implemented, rules are followed and work programmes are coordinated, monitored and evaluated. Furthermore, Drainage Basin Offices provide ministerial representation at the regional level, including coordinating with other ministries through interministerial coordination committees, of which the Permanent Secretary is a member. The Seven (7) Drainage basin Offices are namely: Rift Valley region, Northern region, Lake Victoria North region, Lake Victoria South region, Central region, Nairobi region and Coast region.

## National Irrigation Board (NIB)

The National Irrigation Board is responsible for the following:

- Coordination of construction and rehabilitation of major irrigation and drainage infrastructure.
- Operation and maintenance of major irrigation and drainage infrastructure.
- Administering land in the public schemes and provide technical advice on maintaining a cropping calendar in consultation with the scheme.
- Irrigation expansion.

The Water Act has provided for the separation of management of Water Resources from that of Water Supply and Sewerage. Key Functions of Water Resource Management Authority (WRMA) under the water Act 2002 include:

- Developing principles, guidelines and procedures for the allocation of water resources.
- Monitoring and periodically reassessing the national water strategy.
- Issuing, verifying, transferring and cancelling water permits.
- Monitoring and enforcing the conditions attached to the water permits.
- Regulating and protecting water resources quality from adverse impacts.
- Managing and protecting water catchments.
- Determining charges and levying water use fees.
- Gathering and maintaining water information and publishing the same periodically.
- Liaising with other actors for better regulation and management of water resources.

Section 47 of the Water Act 2002 spells out the function of the Water Services Regulatory Board (WASREB) as follows:

- Issuing licenses for provision of water services.
- Determining standards for the provision of water to consumers.
- Establishing procedures for handling complaints made by consumers against licences.
- Monitoring compliances with established standards for the design, construction, operation and maintenance of facilities for water services.
- Monitoring and regulating licenses and to enforce license conditions.
- Advising licenses on procedures for dealing with complaints from consumers and to monitor the operations of the procedures.

- Developing guidelines for fixing of tariffs for the provision of water services.
- Developing model performance agreements for use between licensees and water service providers.
- Monitoring the operation of agreement between water service boards and water service providers and taking appropriate action to improve their effectiveness.
- Develop guidelines on regulations of water services to be adopted by licensees, publish forecast, projections and information on water services.
- Disseminate information on water services.
- Promote water conservation and demand management measures.
- Monitor and from time to time reassess the national water services strategy.
- Determine fees, levies, premiums and other charges to be imposed on water services in accordance with the national water services strategy.
- Gather and maintain information on water services and from time to time publish forecasts, projections and information on water services.
- Liaise with other bodies for the better regulation and management of water services.
- Advise the Minister on matter related to water services.

## Catchment Area Advisory Committes (CAACs)

Key functions of Catchments Area Advisory Committee (CAACs) are advising the Water Resource Authority at the catchments level on the following:

- (a) Water resource conservation, use and apportionment.
- (b) Issuance, cancellation and variation of water permits at catchments level.
- (c) Any other matter pertinent to the proper management of water resources.

The established CAACs are:

- Lake Victoria North Advisory Board
- Lake Victoria South Advisory Board
- Rift Valley Advisory Board
- Athi Advisory Board
- Ewaso Ng'iro Advisory Board.

Water Service Boards have delineated areas of supply to ensure the provision of water services to all parts of the country. These are: Athi Water Services Board, Tana Water Services Board, Coast Water Services Board, Lake Victoria South Water Services Board, Lake Victoria North Water Services Board, Northern Water Services Board, Rift Valley Water Services Board and Tana-Athi Water Services Board.

Functions of the WSBs, as outlined in Section 53 of the Water Act 2002, are:

- (a) Efficient and economical provision of water services as authorized by licence
- (b) Custodianship of Water Services Provision Assets
- (c) Contracting, monitoring and enforcing agreements between WSBs and WSPs, in accordance with the regulations set by WSRBs in the licences.
- (d) Maintaining and acquiring assets, planning development and management.
- (e) Ensuring efficient and economical provision of water services authorized by the licence.

Lake Victoria South Water Services Board (LVSWSB) covers an area of 21,720km comprising of the following districts in Nyanza and Rift Valley province: Bomet, Bondo, Borabu, Bureti, Chepalungu, Gem, Gucha, Gucha South, Homabay, Kenyenia, Kericho East, Kericho West, Kipkelion, Kisii Central, Kisii South, Kisumu East, Kisumu West, Konoin, Kuria East, Kuria West, Manga, Marani, Masaba North (Keroka), Masaba South (Gesusu), Mbita, Migori, Muhoroni, Nandi East, Nandi South, Ndhiwa, Nyakach, Nyamache, Nyamira, Nyamira North (Ekerenyo), Nyando, Nyatike, Rachuonyo North, Rachuonyo South, Rarieda, Rongo, Siaya, Sotik, Suba, Tinderet, Transmara, Transmara East, Ugenya and Uiri.

The LVSWSB mission statement is: ***“To ensure the provision of safe, adequate and sustainable water and sanitation services for economic growth by developing viable Water Service Providers (WSP’s) and facilities.”***

The Board’s mandate is to ensure efficient and economical provision of water and sanitation services in its area of jurisdiction in line with the Water Act 2002.

LVSWSB core functions revolve around its mandate to undertake the following activities in its area of jurisdiction:

- Plan and develop water service infrastructure in the area; to increase access to water and
- sanitation services.
- Own and manage water related assets in the area.
- Develop and enter into Service Provision Agreements with Water Service Providers as agents
- of the Board and continuously supervise and monitor that their operations meet the standards set by the Water Services Regulatory Board.
- Build capacity of Community Based Organizations and support them to access funding from Water Services Trust Fund and other funding agencies for the development of their water and sanitation facilities.
- Collecting, maintaining and managing information on water and sanitation.
- Regulating and collaborating with all other actors in the water and sanitation sector.
- Exercise such other powers and functions as may be centered or imposed on it by or under the Water Act 2002 or any other Act.

## Role of Water Service Providers (WSPs)

The Water Act 2002 defines Water Service Providers (WSPs) to include companies, NGOs, community groups and person(s) who must be formally registered under the Societies Act, Chapter 108 of the Laws of Kenya. WSP act as agents of Water Service Boards (WSBs). The main role of WSPs is to:

- Provide water and sanitation services.
- Develop, rehabilitate and maintain water and sanitation facilities of the WSB in their area of jurisdiction.

WSPs found in LVSWSB region are:

Kisumu Water and Sewerage Co Ltd. (KIWASCO), Kericho Water and Sanitation Co. Ltd (KEWASCO), SIBO Water and Sanitation Co. Ltd, Gusii Water and Sanitation Co. Ltd, Mikutra Water and Sanitation Co. Ltd, Chemosit Water and Sanitation Co. Ltd, Nyanas Water and Sanitation Co. Ltd, South Nyanza Water Services Co. Ltd and Gulf Water Services Co. Ltd.

## Water Users Role and Responsibilities

- Familiarize themselves with the provisions of the legal instruments governing water, irrigation and arid land reclamation sectors.
- Observe high level of competitiveness in doing business with the water sector officials.
- Provide regular feedback on quality of service through designated “suggestion boxes”, correspondences or verbally.
- Not to compromise the water sector officials in any way for rendition of services.
- Give information on adverse incidents on the water sector such vandalism of infrastructure, bursts etc.
-

## Water Users Role and Responsibilities

- Demand an official receipt for any payment made for delivery of goods and services.
- Prompt payment of fees and bills for water resources and services as the case may be

Take initiative to protect water sources and use water prudently..

### National level institutions.

- Ministry of Water and Irrigation (MWI)
- Water Services Trust Fund (WSTF)
- Water Appeal Board (WAB)
- National Water Conservation and Pipeline Corporation (NWCPC)
- Kenya Water Institute (KEWI)
- National Irrigation Board (NIB)
- Water Resource Management Authority (WRMA)
- Water Services Regulatory Board (WASREB)

### Regional level institutions.

- Catchment Area Advisory Committees (CAACs)
- Water Service Boards (WSBs)

### Local level institutions.

- Water Resource User Associations (WRUAs)
- Water Services Providers (WSPs)

**Service:** Users have a right to quality service.

**Information:** Users are entitled to complete and accurate information.

**Courtesy:** Users have the right to get services and to be treated with courtesy at all times.

**Presumption of honesty:** Users are presumed to be honest in all matters until there is sufficient evidence to the contrary.

## International Regulations To Water and Sanitation

The Ministry of Water and Irrigation has undergone various reforms geared towards streamlining the sector to enable it meet the supply and resource needs of the un-served and marginalized population. International standards adopted in the sector include:

**Millennium Development Goals (MDG 7)** which focuses on the fight against poverty and seeks to *“halve by 2015 the proportion of people without sustainable access to safe drinking water and sanitation.”*

The **Human Rights Principle** states that the *“right to water entitles every person to have access to sufficient, affordable water and sanitation of acceptable quality for personal and domestic use.”*

## Human Rights Based Approach (HRBA) Defined

A Human Rights Approach to development means empowering people to make their own decisions, rather than be passive objects of choice. It focuses on empowering all people to claim their rights to opportunities and services through pro-poor development.

A Human Rights Based Approach:

- Promotes human-centred development.
- Recognizes the inherent dignity of every human being.
- Recognizes and promotes equality between women and men, the minority and majority.
- Promotes equal opportunities for all.
- Promotes mutual respect

## Acceptable Standards - Human Rights to Water

**Safe:** Water supplied for domestic use should be free from micro-biological, chemical substances and physical contaminants and be of acceptable color, odour and taste.

**Accessible:** Water facilities must be within physical reach and accessible to vulnerable or marginalized sections of the population. It should not take more than 30 minutes in urban areas or more than two kilometers in rural areas to collect water.

**Sufficient:** A continuous supply of water for drinking, personal sanitation, washing clothes and food preparation; at least 20 litres per person per day.

**Affordable:** The cost of securing water services should not exceed 5% of the household income.



## Acceptable Standards - Human Rights to Sanitation

**Safe:** Sanitation infrastructure must be in a private, safe and dignified environment.

**Accessible:** Toilets must be within, or immediate vicinity of, each household, educational institution or workplace and available for use day or night with appropriate facilities for use by children, disabled and elderly.

**Sufficient:** The basic infrastructure for sanitation and sewerage system for households and public use must be functional and culturally acceptable, providing privacy for both men and women.  
For shared toilet facilities not more than four households.

**Affordable:** The cost of sanitation and water should not exceed 5% of the household income.





*Pit latrine and hand wash is simple and efficient.*

# Water and Sanitation Governance Defined

*Good governance' has attributes of accountability and transparency, is effective, equitable and promotes the rule of law.*

*Governance, according to the United Nations Development Programme (UNDP) is 'the exercise of economic, political and administrative authority to manage a country's affairs at all levels.'*

*Water and sanitation governance can be defined as: "the range of political, social, economic and administrative systems that are in place to develop and manage water resources, and the delivery of these services, at different levels of society."*

## What We See (2009)

- General lack of awareness about Water Reforms and human rights.
- Inefficient and ineffective communication between water service providers, users and stakeholders.
- Uncoordinated water and sanitation activities.
- Stalled water and sanitation infrastructure

## Project Vision (2012)

- Active participation in implementation of Water Sector Reforms within HRBA.
- Demonstrated efficient and effective communication between all stakeholders.
- Functional WASH coordination units.
- Users will have safe, accessible, sufficient and affordable water and sanitation services.

## Attributes of Bad Governance

- Lack of professional integrity, transparency and accountability systems to manage water and sanitation projects.
- Non-enforcement of the law on offenders.
- Communities that cannot stand up for their rights.
- Poorly managed water and sanitation of water.
- Inherent corruption in water management.

## Cycle of Bad Governance

Bad governance is one of the root causes of the prevalence of water and sanitation related diseases. Bad governance may influence donors to withdraw development funds. Withdrawal of funds stalls projects. Stalled projects do not have the capacity to supply sufficient water. The consequence of insufficient water supply is increase in demand for water. The increase in demand causes increase in cost of water.

The high cost of water makes it hard for users to access safe, affordable, sufficient water and sanitation services.

The outcome of this is the supply and use of water from dirty sources. The use of water from dirty sources propagates water-borne and sanitation related diseases.

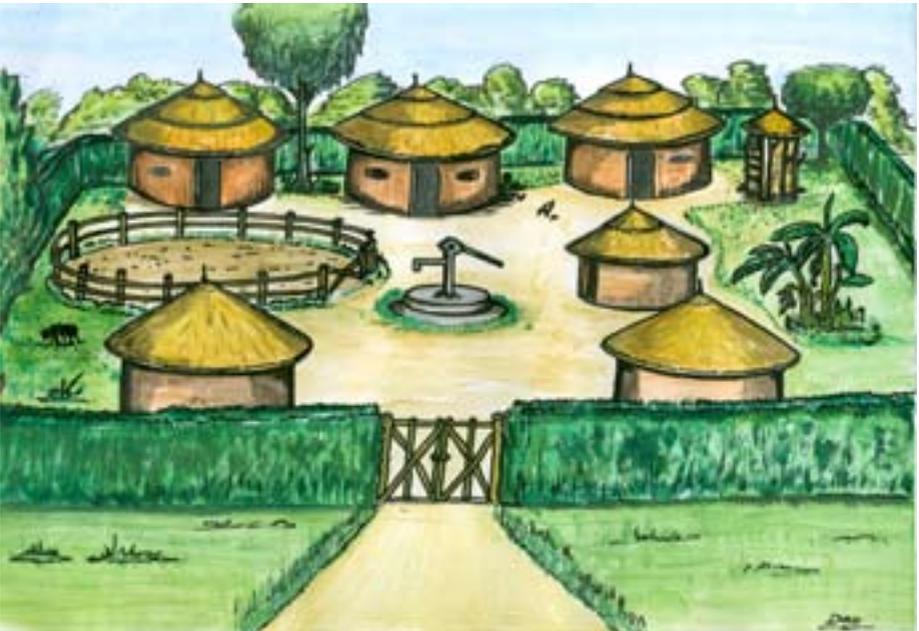
## Governance in a Traditional African Homestead

*As difficult as it is to govern a polygamous home, the traditional Luo homestead was managed by clearly defined roles and responsibilities. For example a homestead with three wives would be governed as shown on the illustration overleaf.*

*Mikayi - first wife house - 1. Nyachira - second wife house - 2. Hera - third wife house - 3.*

First son's house at the left hand side when you are entering the homestead and at the right hand while facing the gate from Mikayi's house - 4.

Second son's house at the right hand while entering the homestead and at the left while standing facing the gate from Mikayi's house - 5.  
*Dero - 6. Abila - 7. Kul - 8.*



*An organised traditional Luo homestead - model to emulate in Water Governance*

## A Culture That Condones Corruption

A research carried out by in June 2009 by Kenya Water for Health Organisation (KWAHO) in Bondo district for the project 'enhancing water and sanitation governance through a human rights perspective' identified the following as catalysts of corruption:

- Water scarcity is a catalyst for corruption. Desperate water users often practice corruption to accelerate service provision.
- The autonomy that water service providers enjoy to construct water projects without the involvement of community members propagates corruption.
- The unwilling attitude by leaders to take positions that protect the interest of the general public is a catalyst for corruption.
- Strong involvement by religious leaders and political leaders in water projects inhibits complaints and feedback channels which creates a conducive environment to practice corruption.

## Forms of Corruption

- Withholding/denying/misinforming customers on policies and structures that govern water and sanitation.
- Illegal connections, water theft, vandalism of pipes, tampering with water metres, inflating water bills and accepting/giving bribes.
- Refusal to remit collected revenue to water company.
- Conspiracies and thereafter the use of water project resources by contractors, committee members and technical officials for personal gain.
- Inflating engineering costs estimates that inflates the actual cost of the water and sanitation project.

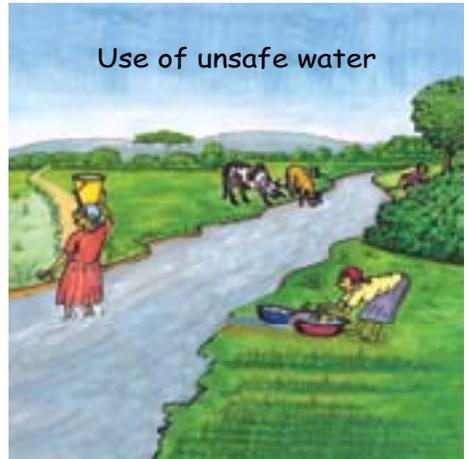
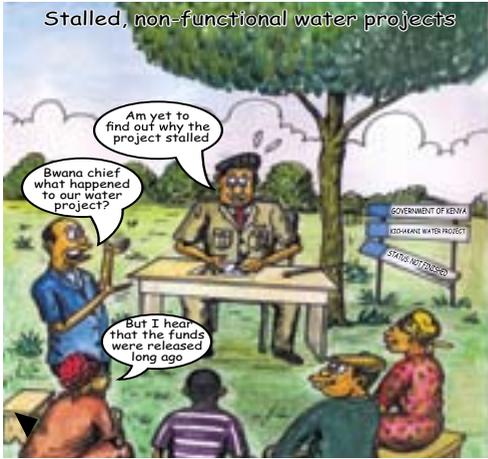
# Effects of Corruption

- Projects that are great on paper but do not exist on the ground.
- Stalled water projects.
- Unsafe, inaccessible, insufficient water and sanitation services.
- Decrease in donor funding.
- Poverty cycle.

## Pictorial Forms of Corruption



# Pictorial Effects and Impacts of Corruption



- Talk to everyone about the evils of corruption.
- Advice and suggestion methods to fight corruption in your community.
- Reward hard work, honesty and trustworthiness.
- Stigmatize ill-gotten wealth, name and shame corrupt people.
- Refuse to be pressurized to act irregularly and unlawfully.
- Correct and reprimand bad behavior.
- Respect and protect public property.
- Never give or receive a bribe or falsify a claim.
- Report cases of corruption to KACC.
- Be a role model; teach children the virtues of honesty, hard work, integrity and self discipline.

YES YOU CAN!.

FISH CORRUPTION OUT OF THE WATER SECTOR.

- Seek information!
- Know your role and right!
- Uphold transparency, integrity and accountability!

And Stand Up For:

***Safe, Accessible, Sufficient, Affordable  
Water & Sanitation For Health.***

*(SASA-WASH Campaign)*



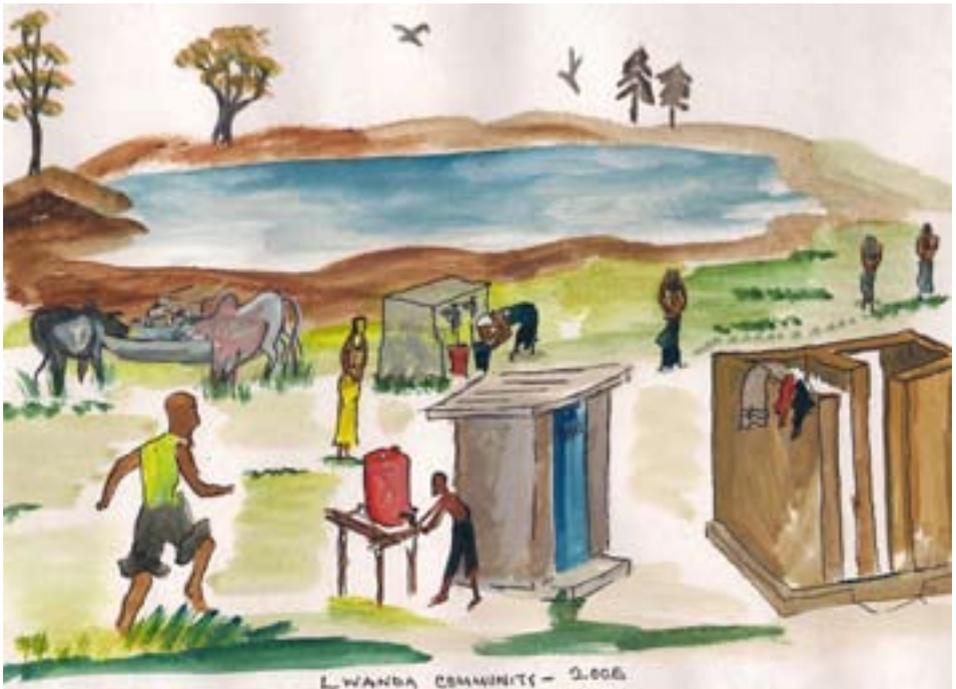
*Fish corruption out of the water sector.*

## Safe, Accessible, Sufficient, Affordable Water and Sanitation for Health. (SASA - WASH Campaign).

SASA - WASH campaign is the slogan for the Bondo district pilot project on Enhancing Water Governance Through a Human Rights Based Approach (HRBA).

The aim of the project is to promote good relationship between water providers and consumers and improve transparency, accountability and participation.

The project is implemented by KWAHO in conjunction with United Nations Development Fund, Ministry of Water and Irrigation, Lake Victoria South Water Services Board, Kenya Anti-Corruption Commission, Kenya National Commission on Human Rights, water service providers and water users.



*(SASA - WASH) campaign promotes participation, transparency and accountability.*

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*Or visit KWAHO's Bondo Office*

**Water Governance Project Partners**

The project Enhancing Water Governance through a Human Rights Based Approach (HRBA) is a joint venture among several stakeholders namely



Ministry of Water  
and Irrigation



Kenya Water for Health  
Organisation



Lake Victoria South  
Water Services Board



Kenya Anti Corruption  
Commission



Kenya National Commission  
on Human Rights