

CENTRE ON
HOUSING RIGHTS
AND EVICTIONS



RAPID ASSESSMENT OF THE WATER AND SANITATION SITUATION WITHIN INFORMAL SETTLEMENTS IN NAIROBI

Centre on Housing Rights and Evictions (COHRE) March 2008

INTRODUCTION	3
SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS	4
2.1 OBJECTIVES OF THE RAPID ASSESSMENT	5
2.2 METHODOLOGY.....	6
2.3 LIMITATIONS ON METHODOLOGY EMPLOYED.....	7
3.1 FINDINGS	7
3.2 THE AFFORDABILITY OF WATER	7
3.3 THE AFFORDABILITY OF TOILET FACILITIES.....	8
3.4 WATER SHORTAGES	8
3.5 DISCRIMINATION IN ACCESSING WATER AND TOILET FACILITIES	8
3.6 UNUSUAL FEAR TO USE FACILITIES.....	9
3.7 WATER CARTELS	10
3.8 INFRASTRUCTURE DAMAGE	11
3.9 REPORTED DAMAGE AND RESPONSE OF THE NCWSC	11
3.10 WATER QUALITY	12
3.11 FEAR OF THE SPREAD OF DISEASE	13
4.12 COMMUNITY SOLUTIONS	14
4. CONCLUSIONS AND RECOMMENDATIONS.....	15
4.1 LEARNING FROM THE PAST AND PLANNING FOR THE FUTURE	15
4.2 INTERIM RELIEF	16
4.3 FORMALISE SERVICE PROVISION	17
4.4 COMMUNITY ENGAGEMENT IN INFRASTRUCTURE CONSTRUCTION & MAINTENANCE.....	18
4.5 DISCRIMINATION AND CARTELS.....	18
4.5.1 DISCRIMINATION.....	18
4.5.2 CARTELS	19
4.6 THE ROLE OF CIVIL SOCIETY ORGANISATIONS AND RESIDENTS.....	20
5. ANNEX.....	21
5.1 THE HUMAN RIGHT TO WATER AND SANITATION	21
5.2 UNITED NATIONS EXPERT REPORTS.....	23
5.3 NATIONAL RECOGNITION OF THE RIGHT TO WATER AND SANITATION	25
5.4 DUTIES OF GOVERNMENT	25

Introduction¹

The widespread social upheaval and violence following the December 2007 election in Kenya saw at least 1,000 people killed, over 100,000 internally displaced² and a general breakdown in social order in many areas of the country. Areas that experienced the worst of the upheaval were towns and settlements with populations of mixed tribal backgrounds, especially those represented by the key political leaders and parties.

The informal settlements of Nairobi or people's settlements, as they are preferably known by the local community, often with mixed tribal populations, experienced repeated outbreaks of the most severe violence, discrimination, looting and mass displacements. These settlements are home to over half of Nairobi's population where poverty, unemployment and crime levels are high, and where access to clean water and adequate sanitation is very poor.

According to Government statistics, approximately 57% of households that have access to water use water from sources considered safe.³ Sustainable access to safe water is estimated at 60% in urban areas, with a decrease to 20% within the informal settlements and 40% in the rural areas. In Nairobi, 58% of total households, mostly residing in informal settlements, obtain water from water kiosks, informal water delivery services, such as hand carts and illegal water connections. With respect to basic sanitation the Ministry of Water and Irrigation estimates a national coverage of 50% with sanitation coverage estimated at 55% in urban areas.⁴

This report details the particular impacts the post election crisis had on access to water and sanitation for the population living within informal settlements by analysing monitoring forms completed by 53 active community members and leaders from settlements throughout Nairobi. Kibera, a settlement with over 700,000 inhabitants and home to over half of people living in such settlements within Kenya's capital and a flashpoint for violent outbreaks, receives particular focus.

Whilst the post election violence did not lead to a totally unmitigated crisis involving epidemic outbreaks or a total breakdown in water and sanitation services, the crisis certainly highlighted and intensified the failings of the current infrastructure and services. Vandalism, overcrowding and shortages stressed already struggling infrastructure. Waste and garbage built up, decreasing water quality and increasing the risk of disease. Fleeing residents sought refuge among friends and family members, with the majority forced to seek accommodation, food and security in camps for the internally displaced where water and sanitation facilities were equally stressed or wholly inadequate.⁵ Water cartels and gangs tightened their grip on services, raising prices and vandalising competitor's infrastructure. In some instances members of criminal gangs perceived to have provided "security" to communities at the height of the crisis gained unprecedented legitimacy with select communities.

¹ The Rapid Assessment monitoring forms on which this report is premised are on file with the principal authors Kerubo Okioga and Reece Turner. Contact Kerubo Okioga on kerubo@cohre.org for more information.

² The Kenya Red Cross estimated that the over 100,000 internally displaced persons sought refuge in churches, schools, police stations and makeshift camps. These facilities were ill equipped to provide clean drinking water and adequate sanitation facilities which would have created secondary problems such as disease outbreaks.

³ Ministry of Water and Irrigation, the National Water Services Strategy 2007-2015 p.1. The policy notes that estimates depend on reference line/standards which have not yet to be defined on a national level.

⁴ Ministry of Water and Irrigation, the National Water Services Strategy 2007-2015.

⁵ See generally UNHABITAT, Rapid Assessment on the Impact of Post Election Violence in Nairobi, Preliminary Report January 16, 2008. The report provides detail on six camps in Nairobi; the Nairobi Show Grounds, Riruta Camp, Orthodox Church, Moi Air Base, Baba Ndogo Primary School, Dandora Catholic Church and F. Kiambui.

Summary of key findings and recommendations

1. **The affordability of water and toilet facilities:** There was a reported increase of the cost of water within all areas monitored. Prior to the post election crisis the average cost of a 20 liter jerry-can of water was 2.5 KSH, typically purchased at water kiosks. This rose to around 4.9 KSH for the same quantity representing an increase of almost 100%. The highest increase was reported in the Dagoretti constituency (representing the Githembe, Kanolelo and Congo settlements) where costs reportedly rose from around 5 KSH to 20 KSH, a 300 % increase.
2. **The affordability of toilet facilities:** Approximately 40% of residents in the survey areas reported an increase in the cost of accessing toilets from an average 3 KSH to 10 KSH per visit. These included villages in Kibera (Kianda, Gatwikeru), Makadara (Mukuru Kayaba, Mukuru Kwa Rueben), Kambi Muru and Mathare 4C.

Key Recommendation: The implementation of temporary price reductions to bulk supply by the Nairobi City Water and Sewerage Company and the dissemination in a variety of media, authoritative information on recommended water supply prices to mitigate exploitation of residents.

3. **Water Shortages:** 70.1% reported water shortages and increased water rationing during the height of the post election crisis.

Key Recommendation: An overwhelming majority of residents in informal settlements do not have the ability to store water or access alternative water supply when water supply is rationed. The Nairobi City Water and Sewerage Company should provide alternative water supply to informal settlements when rationing water supply.

4. **Discrimination:** 50% of residents in the survey areas reported facing discrimination in accessing water and toilet facilities. The incidences of discrimination were reported as tribally or ethnically based. Discrimination manifested itself in price increases (often a doubling of the normal rate) and outright refusals to sell water and allow access to toilet facilities based on tribe and political affiliations.

Key Recommendation: The acknowledgement that discrimination is taking place within the settlements with respect to the provision of water and sanitation of services and develop concrete steps to deter discrimination. In addition Civil Society Organisations should take the lead in undertaking extensive educational advocacy campaigns against discriminatory practices that have been solidified by tribal tensions.

5. **Fear:** A direct result of the post election violence was an increase in insecurity in all informal settlements. 64% of residents reported fear of direct threats and violence when accessing toilets and water points. Fear of violence was especially felt at night and by women.

Key Recommendation: With the input of residents the Provincial Administration and Local Government should take urgent measures to ensure security for residents accessing water and toilet facilities, particularly for women and particularly after dark.

6. **Water Cartels:** Findings indicated that only 38% of residents surveyed reported price hikes manipulated or controlled by water cartels. These included villages in Mukuru, Korogocho, Kisumu Ndogo, Dagoretti, Kibera and Kariobangi.

Key Recommendation: The government should undertake prompt investigations into increased cartel/gang control over basic services in informal settlements and take decisive action in stamping out the cartels. The Nairobi City Water and Sewerage Company should implement a program to formalise and legalise current illegal water infrastructure by allowing a grace period within which illegal vendors must improve their facilities to set standards.

7. **Infrastructure Damage:** Residents in 75% of all villages monitored reported damage to water, toilets and sewerage facilities. 60% indicated that damage was reported to Nairobi City Water and Sewerage Company. Of these 50% reported that no action taken by the Company. In majority of the cases, the Company was unable to carry out repairs due to high levels of insecurity.

Key Recommendation: The Nairobi City Water and Sewerage Company should urgently prioritise and increase funding to informal settlements to construct additional facilities in areas worst hit by the violence.

8. **Water Quality:** Residents in 60% of all villages monitored reported a decline in water quality. The leading explanation was damage to infrastructure.
9. **Disease:** Residents in 79% of all villages monitored reported fear of spread of disease also linked to broken or damaged water pipes being contaminated with soil, sewerage, debris and garbage. In addition in Korogocho, Huruma, Kibera, Makadara, fear of renewed violence caused mass displacements and overcrowding. In some villages within these settlements, water quality dramatically decreased in villages where refuge was sought by fleeing communities.

Key Recommendation: The Nairobi City Water and Sewerage Company should support water operators through hygiene training and/ or regulation in order to improve services.

Within a human rights framework and using the community suggestions as a starting point, the report finally makes recommendations based upon COHRE's and Hakijamii's knowledge of on-the-ground services, previous investigations and reports and an understanding of the policy challenges faced by government in realising the human right to water and sanitation.

2.1 Objectives of the rapid assessment

- To assess the impacts of the post election crisis on access to water and sanitation, particularly with respect to affordability, physical accessibility and water quality and hygiene within informal settlements in Nairobi.
- To evaluate the extent of infrastructure damage occasioned by widespread violence within informal settlements in Nairobi.
- To gather community ideas on the solutions to the current problems with water and sanitation access in informal settlements.

- To develop recommendations on appropriate action based on the rapid assessment findings to prevent severe negative impacts to water and sanitation access in recovering from the post election crisis.

2.2 Methodology

53 monitors who live within informal settlements around Nairobi were involved in collecting information and providing data on the impacts of the political upheaval to water and sanitation services as well as their own personal views and recommendations.

The participants were selected from “Amani Mashinani: Civil Societies Peace Initiative for Nairobi Settlements”, a group formed by Civil Society Organisations (of which COHRE and Hakijamii are members) and community leaders from informal settlements in Nairobi at the height of the post-election violence to respond to and bring much needed peace to the settlements. The participants were all community leaders or actively involved within their respective communities and thus have a unique insight and connection to the settlements.

The Monitoring Form, developed through consultation with the community representative, consisted of 8 close-ended questions and 9 open-ended questions.⁶

The Rapid Assessment covered events which had taken place between December 27 2007 and January 31 2008. The information was obtained within the first 2 weeks of February in the aftermath of the most violent scenes of the post-election crisis. At this time, tensions were still high, particularly in the informal settlements which witnessed the most brutal violence in Nairobi.

All of the major informal settlement areas are represented within the sample of monitors although there is a strong representation Kibera, the largest of the informal settlements in Nairobi and a focus area for water access and sanitation reform.

The breakdown per constituency, settlement and where applicable village is as follows:

Constituency	Settlements/ Villages	Monitors
Dagoretti	Riruta Kawangware, Githembe, Congo, Kanolelo, Kabiria, Waithaka	4
Embakasi	Maili Saba, Mukuru kwa Njenga, Mukuru kwa Rueben, Kware, Kariobangi South.	7
Kamukunji	Kiambiu	1
Kasarani	Korogocho (Highridge, Korogocho “A”, Korogocho “B”, Ngomongo, Kisumu Ndogo, Nyayo, Ngunyumu, Grogon, Gitathuru) Kariobangi Light, Kariobangi North, Kariobangi Industrial Area, Mathare 4A.	13
Langata	Kibera (Makina, Mashimoni, Gatwikera, Silanga, Lindi, Makongeni, Kianda, Kambi Muru, Soweto East) and Mitumba village, Wilson Airport.	19
Makadara	Mukuru Kayaba	2
Starehe	Huruma Kwa Miako, Mathare 4B, 3C, New Mathare, Huruma Ward	4
Westlands	Dam Village, Kibagare and Deep Sea	3
	Total	53

⁶ Sample of the Rapid Assessment form on file with authors.

2.3 Limitations on Methodology Employed

From the onset it was understood by the community representatives that their assessment and findings were tentative. It is hoped that this report will nonetheless stimulate further discussion and discourse on the access to water and sanitation within Nairobi's informal settlements following the post election crisis. For these reasons the drafting team welcomes input from all stakeholders and community representatives. In brief some of the challenges faced by the monitors were captured as follows⁷;

1. The information was obtained when tensions were still high in most settlements and some monitors expressed fear in conducting the research beyond villages or select areas they felt comfortable in. This report can therefore not be viewed to adequately capture the situation or wholly represent the situation in the region.
2. Due to time and funding constraints, the assessment allowed for limited interaction with organizations and residents within the settlements.
3. Due to the broad nature of the assessment and the limited time within which to complete it, the monitoring form was designed to address general issues and lacked the necessarily specificity in dealing with substantive issues around water and sanitation.
4. The findings while indicative of the general impact on access to water and sanitation, the collated statistics are not scientific and a more focused study would have to be undertaken to indicate actual realities in informal settlements.

3.1 Findings

3.2 The affordability of water

Monitors were asked to investigate whether the cost of water had increased following the post election violence. Of the 53 monitors, 31 reported that the cost had increased and provided details of the cost rise. Immediately before the outbreak of the violence, the average cost of water was just over 2.5 KSH for a 20 liter jerry-can of water, typically purchased at a water kiosk. This rose to around 4.9 KSH for the same quantity during the violent outbreaks representing an increase of almost 100%. The highest increase reported was in the Dagoretti constituency (representing the Githembe, Kanolelo and Congo settlements) where costs reportedly rose from around 5 KSH per 20 litre to rates of up to 20 KSH for the same quantity, a 300 % increase amount. Increases from 3 KSH to 10 KSH were common for many participants from Kibera and similar increases were also reported in Embakasi.

Water Price Increase

Yes	31
No	22
No Response	0
% reporting increase	58.49%
Mean Former Price (KSH)	2.59
Mean Current Price (KSH)	4.78
Mean Price Variation (KSH)	2.20

⁷ Based on observations and feedback received Kerubo Okioga (COHRE) and Reece Turner (COHRE Volunteer) between February 25, 2008 to February 29, 2008.

% of Former Price	84.85%
Highest Increase (KSH)	5 to 20

3.3 The affordability of toilet facilities

A smaller number of monitors reported a rise in the cost of toilet facilities. Of those who responded, nearly 40% reported an increase in the price of toilet facilities with prices rising on average from around 3 KSH to 5 KSH. The highest increase, frequently recorded, was in Kibera from 3 KSH to 10 KSH.

Toilet Price Increase

Yes	20
No	31
No Response	2
% reporting increase	39.22%
Mean Former Price (KSH)	3.26
Mean Current Price (KSH)	5.00
Mean Price Variation (KSH)	1.74
% of Former Price	53.23%
Highest Increase	3Sh to 10

3.4 Water shortages

A high proportion of monitors (70%) reported unusual water shortages during the post-election violence. Although water shortages are quite common in informal settlements, it is understood that additional rationing of water supplies occurred during the conflict and the high rate of vandalised or damaged water pipes further contributed to the shortages.

Question: Shortages. Residents experiencing unusual water shortage.

Yes	38
No	14
No Response	1
% reporting Water Shortages	71.70

3.5 Discrimination in accessing water and toilet facilities

Just under half of all monitors reported that residents experienced discrimination in accessing water and toilet facilities.

Question: Discrimination.

Due to recent violence residents complain that they are facing discrimination in accessing water and toilet facilities

Yes	26
No	27
No Response	0
% reported discrimination	49.06%

A large percentage of those that reported discrimination made reference to the discrimination being tribally or ethnically based. Discrimination manifested itself in price increases (often a doubling or trebling of the normal rate) and outright refusals to provide water. An explanation from a resident in Mathare 4A:

“After (the) post election violence, which rocked the community, some people take advantage of selling water through tribalism. If you do not belong to their tribe then no water for you”. (Respondent #12)

A significant proportion of monitors also reported that self-discrimination was occurring. A resident of Silanga village in Kibera simply reported in Kiswahili that

“Kama Mujaluo huendi kununua maji kwa Kikuyu” (If (you are) Luo you don’t buy water from a Kikuyu) (Respondent #19)

It is also noted that many monitors who did not report discrimination in accessing water and toilet facilities pointed to the homogenous make-up of the respective community.

Discrimination - Explanation

No Explanation	20
Discrim based on tribe, politics or religion	16
No discrim because people coming from the same tribe	7
Very tight-knit, diverse community	2
Discrim & Self-discrim	5
Discrim based on gender	2
Because the targeted tribes have moved	1
Total	53

3.6 Unusual fear to use facilities

The participants were frequently reminded to consider whether the situation with regards to access to water and sanitation was *unusual*. This was again emphasised in this question.

Unusual Fear of Accessing Water or Toilet Facilities

Question: Residents express UNUSUAL fear to use the toilets and water points.

Yes	32
No	18
No Response	3

A high proportion (64%) of monitors reported that residents experienced *unusual* fear in accessing toilets and water points. Not surprisingly, as with the case of discrimination, the fear of using the facilities was directly related to the tribal and political conflict. Many monitors indicated that the fear of violence was especially felt at night and by women. In areas where *no* unusual fear of accessing facilities was reported, monitors pointed to a high number of individual with household access to water points and latrines and the availability of community run facilities.

Unusual Fear of Using Facilities - Explanation

Fear of violence motivated by tribal, political conflict	12
--	----

Fear of violence, particularly at night	11
Fear of poisoned of water	5
Toilet and/or water unusually unhygienic	1
Community run facilities	2
Household access to water points and toilets	1
No Explanation	21

3.7 Water cartels

Monitors were asked whether water cartels were causing the water price to be higher than usual and whether they were prohibiting people accessing water. More than a third (38%) of Monitors said that this was occurring in their monitored area.

Water Cartels

Question: Water Cartels are causing the water price to be high and stop more people accessing water.⁸

Yes	19
No	31
No Response	3

The most common explanation of how water cartels were interfering with the supply of water and toilet facilities was to increase the price of water.⁹ Some Monitors noted that the cartels or suppliers blamed rising prices on the Nairobi City Water and Sewerage Company. A high proportion of monitors who provided an explanation of the role of cartels provided examples of cartels and gangs acting more maliciously.

“When these village gangs want to claim extra money and attention they vandalise water systems and toilets. You know some toilets in Lindi have an outlet that releases the waste to a river. So what they do is to block these outlets and then the toilets start to overflow making it impossible to enter. In Lindi, area I have an evidence of four toilets that has been blocked making the residents not to enter them because they are overflowing.” (Respondent #25)

Cartels - Explanation

Cartels are exploiting the instability by increasing prices	8
Cartels/gangs involved in damaging pipes to increase prices	5
Most have self sufficient water and toilet facilities	2
Landlords	2
Cartels were forced out during violence	1
No Explanation	35 ¹⁰

⁸ Note that the question was not framed as a closed question.

⁹ For discussion on water cartels, see generally Munguti Katui Katua et al, Kenya-German Development Cooperation in the Water Sector, Assessment from a Human Rights Perspective (2007).

¹⁰ These results are telling. During the formulation of the monitoring form, the question of investigating water and sanitation cartels was hotly contested. In some instances members of cartels and other gangs perceived to have provided “security” to communities at the height of the crisis gained unprecedented legitimacy with some residents. In other instances, these same cartels who were allegedly responsible for acts of violence and looting which had caused fear and apprehension most residents.

3.8 Infrastructure damage

Nearly three quarters of all Monitors reported incidents of vandalism to water and sanitation facilities.

Infrastructure Damage.

Question: There are reports of vandalism to water and sanitation facilities.

Yes - instances	37
No	14
No Response	2

The vast majority of monitors reporting vandalism explained that it was motivated by the tribal/political conflict. Other reasons included destruction of water pipes in order to fight a house fire, water meters stolen and gangs taking advantage of the chaos to destroy competitor's infrastructure.

"In Ghetto village we had only one toilet that was serving the whole community of about 2000 people. It was burned down by outsiders. It had 7 rooms. 3 for men and 3 for women and one store." (Respondent #10)

"A group of youths who were reported to have come from Silanga and Laini Saba village attacked our village and vandalised all pipes that were connecting water to Soweto east village and Silanga village." (Respondent # 18)

Monitors were also asked to provide details of where the damage occurred. Unfortunately details of the responses varied to an extent which does not allow for a valuable comparison.

3.9 Reported damage and response of the NCWSC

Monitors were asked whether they knew if damaged or vandalized infrastructure had been reported to the Nairobi City Water and Sewerage Company (NCWSC). A surprisingly number of monitors answered that the damage was reported (60%).

Question: Infrastructure damage Reported to NWSC?	
Yes	22
No	13
No response or no damage	18

Of the Monitors who reported that infrastructure damage had been reported to the Nairobi City Water and Sewerage Company, just over half who elaborated said that Nairobi City Water and Sewerage Company had been contacted but had failed to take any action. Some Monitors explained that company workers had not yet reported back to work or feared to come into the informal settlements due to the ongoing violence. A number of Monitors (5) explained that as the facilities were community owned and run, the locals had undertaken repairs or that as the Nairobi City Water and Sewerage Company had failed to make repairs the community had acted to make the repairs themselves.

"The reports from Kibagare say that the water point owners have reported to the Nairobi Water Company about the damages in January and February. There has been nothing done by the Company. The people do the repairs for themselves." (Respondent #23)

Other Monitors explained that the damage occurred to private or illegal pipes and for that reason the Nairobi City Water and Sewerage Company was not contacted.

“Because the community treat it normal as some fear of taking the action. Also there are some illegal water connection the owners fear losing the business.” (Respondent # 30)

It should be noted that a number of Monitors reported that the Nairobi City Water and Sewerage Company had made repairs or had at least made efforts to address the situation (e.g. sending a representative to a community organised meeting).

Furthermore, a considerable selection of the respondent’s expressed the futility of the Nairobi City Water and Sewerage Company coming to make repairs when the destruction was still occurring.

“About the vandalism of the water system, the reports are usually made but it takes time for them to come and repair. I think it’s like a game of cat and mouse because the NWSC can come and repair in the morning and even before the day ends the gangs have already broken the pipe because they want to sell water using that point.” (Respondent # 25)

NWSC Explanations

NWSC contacted but they have failed to repair	13
Community owned and run	4
The damage is to private pipes	3
They have 'done their best' to rectify it	1
Company workers feared to come into repair due to violence	2
NWSC not acting but community has made repairs	1
NWSC attended community organised meeting	1
No response	28

3.10 Water quality

When asked whether water quality had declined in the area monitored, the majority (65%) of monitors agreed.

Water Quality

Question. Water Quality. There has been a decline in water quality. Yes / No

Yes	32
No	17
No Response	4

The main cause attributed was broken or damaged pipes being contaminated with soil, sewerage, debris and other garbage. A number of Monitors made mention of chronic garbage build-up during the upheaval which had blocked drains and was causing toilets to overflow.

Boiling water became a necessity in the eyes of many residents but as one respondent pointed out:

“The people who cannot afford enough charcoal to boil water are in the highest risk of getting diseases.” (Respondent #2)

One respondent also mentioned that the water supply in her area (Embakasi) became contaminated by tear canisters.

Water Quality Explanation

Water pipes damaged and/or contaminated with sewerage, debris or garbage	23
Water visibly dirty	2
Blocked drains, lack of supply	1
Leaking pipes, low pressure	2
Extra chemicals in water	1
Water contaminated from tear-gas canisters	1
No Response	21

3.11 Fear of the Spread of Disease

Monitors were asked whether residents in their areas held fears that the poor quality in water and sanitary services caused by the upheaval was leading to an increased risk of disease infection. Overwhelmingly, this was the case with 79% answering yes.

Water Quality

Question: Water Quality. There has been a decline in water quality. Yes / No

Yes	42
No	8
No Response	3

The main reason cited by monitors for the fear of increased disease was damaged water pipes being contaminated. Overcrowding of some areas as people moved around to avoid the conflict also contributed to this fear.

“This is because there was over congestion, thus attracting people with different diseases especially contagious ones, thus there was high risk of disease contraction. There was migration from one estate to another like from Ngomongo to Grogon.” (Respondent #1)

Without empirical evidence it is certainly difficult to assess whether these factors contributed to an actual increase in disease outbreak. Currently water quality standards and monitoring in Kenya adheres to the WHO guidelines as provided in the Kenyan water quality standards developed by the Kenya Bureau of Standards. Nonetheless, people’s perception of safe water is core to the very concept of clean water as recognised by the WHO guidelines.¹¹

The existing inadequate infrastructure was further stressed by garbage and waste build-up.

“First, toilets are not clean. They get filled up to the brim and the children are on a high risk of getting diseases. Including that water problem, we fear for our lives / health. The hygiene now is too poor.” (Respondent #2)

Explanation for fear of increased disease

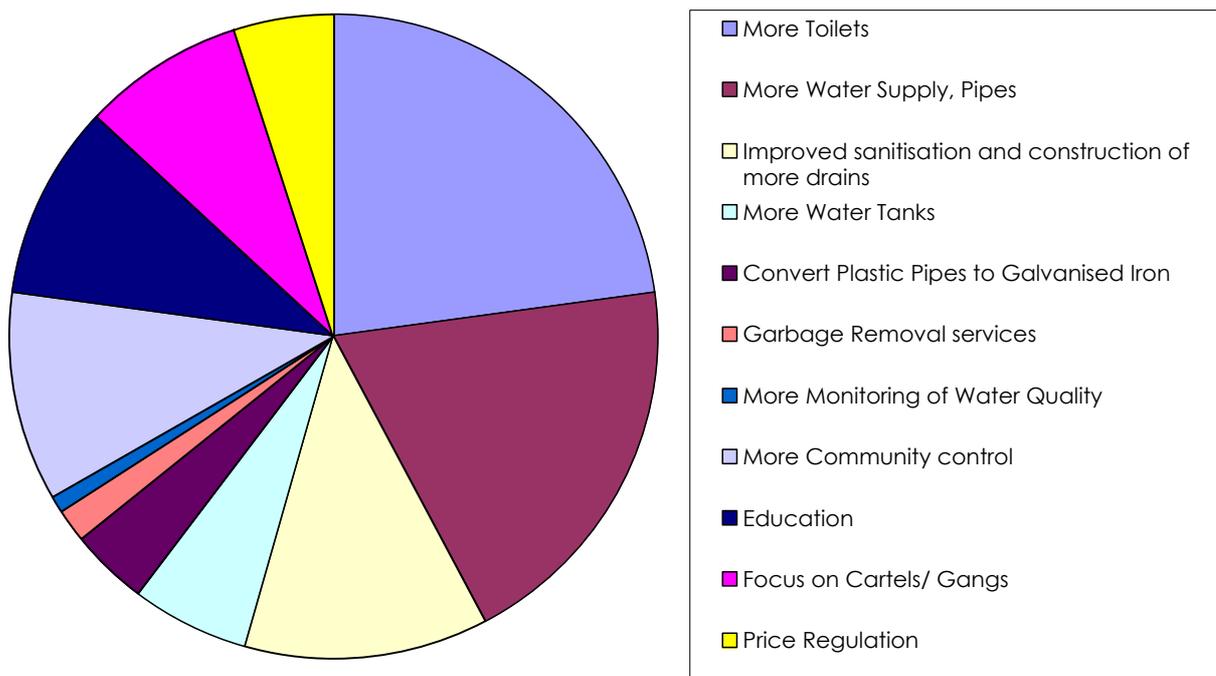
Water pipes damaged and/or contaminated with sewerage, debris or garbage	12
Overcrowding could lead to disease outbreak	7

¹¹ Clean water; Safe water that, in particular is free from hazardous substances that could endanger human health and whose colour, odour and taste are acceptable to users. General Comment No. 15 Para 12 (b).

Due to lack of toilets people are using open drains	5
Reduced supply has led to decreased hygiene	5
Increased garbage/waste has contaminated water/blocked drains	4
Alternate unsafe sources of water	1
Water visibly unclean	1
No Response	18

4.12 Community Solutions

The final question asked monitors to provide ideas on how to improve water, toilets and drainage in their areas following the post election violence. The responses were enthusiastic with most monitors offering numerous suggestions. An amalgamation of the suggested solutions along broad categories provides a clear picture of the priorities of residents within the settlements.



First and foremost, residents see the need for more infrastructure. The two most common suggestions call for the provision of more toilets (28 monitors) and more water supply/pipes (24 monitors) with 5 monitors specifically calling for the conversion of supply networks from plastic to galvanised iron pipes. A further 7 suggestions were made for more water tanks. There was also a significant call for a more thorough and co-ordinated garbage and waste removal system, often cited as the reason for drain and toilet blockages. Monitoring of water quality was also suggested.

Secondly, monitors also see the need for more community control and input in service provision and management (15), and more education, mostly on sanitation and hygiene matters (13). Thirdly, residents saw a greater need for government agencies to combat organised cartels and associated gangs involved in water and sanitation services (10), and to tackle price fluctuations through regulation and enforcement (6).

Some examples of the monitors' suggestions:

"The Company should work with other organisations so as to improve the drainage systems. The company should assist in price control amongst the cartels." (Respondent #7)

"As per my opinion I would congratulate the water and sewerage company for the prompt response that they have been putting across when needed arise. On the other side the residence have been complaining about the situation of insanitation this is due to large collection of garbage on the specified places I have raised before." (Respondent #12)

4. Conclusions and Recommendations

4.1 Learning from the past and planning for the future

A political crisis such as the one experienced by Kenya in the aftermath of the December 27 2007 elections creates added challenges for Government and other authorities. As political resolve is sought, all people in Kenya should at this critical juncture also benefit from political will, focused on enshrining and upholding human rights and the dignity of the individual. Water is essential to the well-being of humankind, vital for economic development, and a basic requirement for the healthy functioning of all the world's ecosystems. Clean water, together with hygienic sanitation, is necessary to sustain human life and to ensure good health and human dignity.

With noticeable improvements in service provision following the water sector reforms in Kenya from 2002, the need to critically address the acceleration of access to water and sanitation for the poor, especially within the informal settlements, has been highlighted by the post election violence. The denial of economic, social and cultural rights and past historic injustices were at the core of the post election violence. Voiced concerns included inequitable distribution of resources, the widening gap between the poor and the rich and the continuing neglect to focus on the provision of basic services to informal settlements. As the country moves forward in bridging political and tribal divides, political will is necessary to simultaneously address the historic and contemporary failure in ensuring that every person in Kenya enjoys all human rights including the right to water and sanitation.

In the wake of the unprecedented post election violence, a humbling observation was the lack of capacity not only on the part of Government and water sector institutions, but also on the part of Civil Society and Community Based Organisations to respond to the looming water and sanitation disaster. If contingency plans were actually available to ease the water and sanitation crisis, there were not visible or implemented. The Government and indeed water and sanitation institutions have a responsibility to plan for such contingencies so that the worst impacts of such crisis can be averted or at least mitigated. (See articles 11, 12 of ICESCR and General Comment No. 15 para 34).

A full evaluation by the Ministry of Water and Irrigation and the Nairobi City Water and Sewerage Company on the impact of the conflict on infrastructure, and access to water and sanitation is necessary. This would be an instructive and highly desirable first step towards

developing future emergency or disaster management protocols that would mitigate against a possible repeat.

Recommendation 1

- **The Nairobi City Water and Sewerage Company in cooperation with the Ministry of Water and Irrigation to undertake a review of the impact of the post-election conflict upon water infrastructure and access to water and sanitation facilities within the informal settlement in Nairobi.**

From such a study a strategy can be developed to ensure that in the case of a similar situation where water and sanitation infrastructure is stressed and/or residents face social or political upheaval, the negative impacts to water and sanitation access are mitigated. Both an emergency plan for ensuring water and sanitation services remain ongoing and a longer-term strategy that builds into the overall water management plan for informal settlements should be undertaken. A number of recommendations that follow in this report should be considered in the preparation of such a strategy.

Recommendation 2

- **The Ministry of the Office of the President (Special Programmes) and the Ministry of Water and Irrigation in cooperation with all stakeholders should establish mechanisms to respond to emergency situations to ensure that every person has access to sufficient amounts of water and adequate sanitation.**
- **The Athi Water Services Board should within its service provision agreement with the Nairobi City Water and Sewerage Company include provisions that would outline the disaster management strategy of the Company in the event of emergencies.**
- **In the alternative, if the current service provision agreement concluded between the Athi Water Services Board and the Nairobi City Water and Sewerage Company includes provisions for disaster management, the provisions should be made public.**

4.2 Interim relief

Of course, much of the effects of the post-election conflict are still being felt. There are still a high number of internally displaced people within the settlements. Distrust amongst ethnic groups also remains high and discrimination remains widespread. Much of the damaged infrastructure, particularly private and informal infrastructure which accounts for more than 50% of the total water and sanitation infrastructure remain un-repaired.

This is coupled with increased prices and a reduced ability of residents to pay for these services. The residents' ability to pay was generally reduced by the ongoing economic fallout from the upheaval experienced country wide and the rampant destruction of business premises and livelihoods with the worst case being the destruction of Kibera's Toi Market.¹² All of this leads to an ongoing denial of basic water and sanitation facilities to many people living in the informal settlements. Affordability of water and sanitation services is crucial to accessibility, but is all too

¹² See generally UNHABITAT, Rapid Assessment on the Impact of Post Election Violence in Nairobi, Preliminary Report January 16, 2008. The report provides a useful account of the extent of damage to small scale businesses, markets and public infrastructure.

often ignored. Unless water and sanitation services are affordable to all, access to an adequate quantity of safe water and sanitation is threatened.

Recommendation 3

The Nairobi City Water and Sewerage Company should in consultation with affected communities coordinate a review of, and implement interim relief options for residents of informal settlements with regards to access to water and sanitation. Options to consider could include:

- **Urgent rehabilitation of water point installations.**
- **In consultation with the Water Services Regulatory Board enforce temporary price reductions in water supply.**
- **Additional measures to ensure security for residents accessing water and toilet facilities, particularly for women and particularly after dark.**
- **An urgent investigation into irregular price increases and increased cartel/gang control over facilities.**
- **Provide and widely disseminate in a variety of media authoritative information on recommended water supply prices to mitigate exploitation of residents.**
- **Establish a maximum price rate for water supplies.**

4.3 Formalise service provision

The Nairobi City Water and Sewerage Company is contracted as the sole water services provider by the Athi Water Services Board to be responsible for the supply of water and sewerage facilities in Nairobi and its environs. The Company is expected to extend its services progressively to areas that are still served by informal providers either by linking up with informal providers to ensure fulfilment of minimum requirements, or by extending their own systems in order to guarantee the same advantages to the poor that the presently connected consumers have.¹³

The current position however remains that “service provision for the urban poor is largely left to the informal sector, leading to very high, unjustified and uncontrolled water prices and insufficient control of water quality.”¹⁴ The impact of the post election violence gives added reason to place renewed focus on addressing the problem of informal and illegal water and sanitation infrastructure. It is estimated that 58% of the total households in Nairobi, mostly residing in informal settlements, obtain water from water kiosks, water delivery services and illegal water connections.

From the results of the monitoring, it is clear that widespread damage, mainly through vandalism, impacted heavily on access to water and sanitation and the quality and supply of water. The previous sub-standard level and quality of water and toilet infrastructure enabled more rapid and thorough damage to occur and added increased stress to the remaining facilities. From the suggested solutions contributed by the monitors it is abundantly clear than more formalised and improved infrastructure is the clear, number one priority of residents.

Recommendation 4

- **Through established initiatives such as the Water Services Trust Fund, fast track**

¹³ Ministry of Water and Irrigation, The Water Services Regulatory Board Tariff Guidelines and Model p.5.

¹⁴ Ministry of Water and Irrigation, The National Water Services Strategy, p. 31

the extension of services to the informal settlement.

- The Nairobi City Water and Sewerage Company should urgently prioritise and increase funding to the informal settlement to construct additional facilities in areas worst hit by the violence.
- In consultation with both formal and informal water providers, progressively upgrade water connections and install secure piping. Efforts should be made to meaningfully engage informal providers and residents in determining how to proceed. Suggestions include
 - Implement a program to formalise and legalise current illegal water infrastructure by allowing a grace period within which illegal vendors must improve their facilities to set standards.
 - Support water operators through hygiene training and/ or regulation in order to improve services.

4.4 Community engagement in infrastructure construction & maintenance

Residents strongly recommended that government and donor funded water and sanitation projects and planning be more closely aligned and involved with residents and Community Based Organisations. There are some instances of this happening however these efforts should be intensified. Community run water and sanitation facilities were shown in the findings to have experienced less vandalism or other damage and when this occurred, reparations were often expeditiously completed by community organisations.

Recommendation 5

- The Ministry of Water and Irrigation, the Nairobi City Water and Sewerage Company and other agencies should ensure that all water and sanitation planning and construction receive strong input and collaboration with residents of the informal settlements.
- The Nairobi City Water and Sewerage Company should install contact addresses and free telephone number shields on infrastructure to allow residents to register damage or leak detection.
- The Nairobi City Water and Sewerage Company should increase its institutional capacity to engage residents in provision of water and sanitation services and to effectively regulate and monitor service providers.
- The Nairobi City Water and Sewerage Company should undertake marketing and awareness campaigns through meetings, distributed leaflets and media targeting residents of informal settlements on hygiene practices, cost structure of water systems, rationale for tariffs and the rights and responsibilities of the company and service operators.

4.5 Discrimination and cartels

4.5.1 Discrimination

The right to equality and the principle of non-discrimination are among the most fundamental elements of international human rights law. These principles have been enshrined in the

Constitution of Kenya; national water sector policies and practices. A crucial aspect of the human rights framework is that everybody is ensured access to water and sanitation, including the most vulnerable or marginalised groups, without discrimination.

Non-discrimination means that there is no distinction, exclusion, restriction or preference, which is based on any ground (e.g. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) that differentiates without legitimate reason. As detailed in the findings of the Rapid Assessment, monitors reported rampant discrimination in water and sanitation pricing along tribal lines. In some instances residents were denied access to facilities; in most cases however prices were fixed along tribal and political affiliations. Diminished access was also largely attributed to the real and perceived physical threats to residents when attempting to access water and sanitation facilities.

The Government of Kenya is under the obligation to guarantee that no persons, public or private institutions engage in discriminatory practices that would impact and limit the access to water and sanitation. (See Article 2 para 2 of the ICESCR) This present situation cannot be allowed to continue as it threatens on going peace building and reconciliation efforts at the informal settlement.

Recommendation 6

- **The Government of Kenya should acknowledge that de facto discrimination is taking place within the informal settlement with respect to the provision of water and sanitation of services and develop concrete steps to deter discrimination.**
- **The Nairobi City Water and Sewerage Company should provide and widely disseminate in a variety of media authoritative information on recommended water supply prices to mitigate exploitation of residents and warn against discrimination.**
- **The Nairobi City Water and Sewerage Company should on an interim basis require formal service providers to display recommended prices in conspicuous locations in facilities.**
- **The Company should encourage community monitoring of services and provide discreet and confidential mechanism for complaints on price discrimination to be registered.**

4.5.2 Cartels

Tackling cartels and corruption could prove to be the single most cost efficient way of ensuring greater access to water and toilet facilities for people living in settlements. It is clear that cartels and gangs play a major role in controlling illegal water points and toilet facilities.

There is substantial evidence that during the post election upheaval these groups expanded their influence by taking over facilities and exploited their power by increasing prices and discriminating against tribes or other groupings they found unfavourable. In this way, the role of illegal operators, gangs and cartels exacerbated tribal conflicts and restricted water and sanitation access to many of the neediest.

However, illegal connections can not simply be removed. They continue to provide benefits to communities that otherwise would not be able to access these services. Indeed, some of the illegal connections are now even more important to residents following the widespread destruction of infrastructure. It is therefore important and necessary that residents are involved in the determination of initiatives to address illegal water connections.

Recommendation 7

- **The Nairobi City Water and Sewerage Company should ensure that residents and service providers are involved in the determination of initiatives to address illegal water connections.**
- **The Government of Kenya should demonstrate political will to stamp out cartels through;**
 - **Ensuring the provincial administration effectively keeping law and order to avoid criminally run cartels from extending their illegal influence in settlements;**
 - **Increase the number of police outposts and station within settlements;**
 - **Intensify intelligence gathering to identify and prosecute members of criminal gangs and cartels.¹⁵**

4.6 The role of civil society organisations and residents

While this report has focused more on the duties and obligations of the Government of Kenya and water sector institutions particularly the Nairobi City Water and Sewerage Company, residents of informal settlements and Civil Society Organisations partnering with the informal settlements in Nairobi have a crucial role to play. The report therefore concludes with the following recommendations.

Recommendation 8

- **Civil Society Organisations should take the lead in undertaking extensive educational advocacy campaigns against discriminatory practices in the provision of water and sanitation that have been solidified by tribal tensions.**
- **Monitor and promptly report all cases of infrastructure damage and vandalism.**
- **Monitoring and reporting price increases.**
- **Conduct training on the normative content of the Water Act and policies developed by water sector institutions to increase awareness of the residents' rights and responsibilities.**
- **NGOs should strengthen the capacity of community groups to negotiate and articulate their demands for improved service provision and where necessary, assistance with carrying out their own water and sanitation projects.**
- **Carry out activities geared towards the promotion of peace and reconciliation, particularly through networking between CSOs to engender understanding between the different factions.**

¹⁵ In a follow up workshop to share the draft findings of the assessment, monitors expressed their doubts whether the provincial administration could be relied upon to curb water cartels. Participants at the workshop also pointed to a general mistrust in the police, who they stated profited from their collusion with established cartels.

5. Annex

5.1 The human right to water and sanitation¹⁶

The legal basis for the right to water and sanitation is the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR was adopted on 16 December 1966 and came into force on 3 January 1976.

Article 11(1) of the ICESCR, regarding the right to an adequate standard of living, provides:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

Kenya was amongst the first countries to accede to the ICESCR on 1 May 1972. To date virtually all States that have ratified the ICESCR have stated twice that the right to an adequate standard of living implicitly includes water and sanitation. The Programme of Action of the 1994 Cairo Conference on Population and Development, endorsed by 177 States, recognises in Principle 2 that:

Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, **water and sanitation**.¹⁷

The Habitat Agenda, adopted in the framework of the Second United Nations Conference on Human Settlements (Habitat II) held in Istanbul in 1996, provides in almost identical terms in Principle 11 that:

Everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, **water and sanitation**, and to the continuous improvement of living conditions.¹⁸

Access to water and sanitation for all is also required in order to realise other human rights explicitly contained in the ICESCR, including the right to the highest attainable standard of health (article 12 (1))¹⁹ The right to adequate housing (article 11 (1))²⁰ and the right to education

¹⁶ For a detailed treatment of the human right to water and sanitation please refer to COHRE, Manual on the Right to Water and Sanitation available at www.cohre.org/water.

¹⁷ Available at: http://www.unfpa.org/icpd/icpd_poa.htm. For a list of participating countries, see the Report of the International Conference on Population and Development, A/CONF.171/13, 18 October 1994, available at: <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

¹⁸ The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, available at: <http://www.unhabitat.org/content.asp?ID=1176&catid=10&typeid=24&subMenuId=0>. The Habitat Agenda was adopted by consensus of all 171 UN member States represented at the conference. For a full list of participants, see UN Doc. A/CONF.165/L.4 (1996).

¹⁹ A core obligation of the right to health is for the State to ensure access to basic sanitation, and an adequate supply of safe and potable water, see Committee on Economic, Social and Cultural Rights, General Comment No. 14: *The right to the highest attainable standard of health*, UN ESCOR, 2000, para. 43 (c). See also paras. 11, 12, 15, 36.

²⁰ Access to safe drinking water and sanitation is an element of the right to adequate housing, see Committee on Economic, Social and Cultural Rights, General Comment No. 4: *The right to adequate housing*, UN ESCOR, 1991, UN Doc. E/1992/23, para. 8 (b).

(article 13(1)),²¹ as well as the right to life contained in the International Covenant on Civil and Political Rights (article 6 (1)).

The UN General Assembly Resolution on the Right to Development in 2000 recognised the right to clean water.²² The Non-Aligned Movement, which consists of 118 countries, including Kenya, also recognised the right to water in 2006.²³

In 2002, the Committee on Economic, Social and Cultural Rights (CESCR), the body of independent experts responsible for interpreting and monitoring implementation of the ICESCR by States parties, adopted General Comment No. 15 on the right to water,²⁴ in which it states:

Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living, including adequate food, clothing and housing. The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.

General Comment No. 15 makes reference to sanitation, where it states with respect to the right to adequate housing and the right to health:

In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.²⁵

Access to water and sanitation for all is also required in order to realise other human rights explicitly contained in the ICESCR, including the right to the highest attainable standard of health (article 12 (1))²⁶ the right to adequate housing (article 11 (1))²⁷ and the right to education

²¹ Sanitation facilities for both sexes and safe drinking water are required in schools as part of the right to education; see Committee on Economic, Social and Cultural Rights, General Comment No. 13: *The right to education*, UN ESCOR, 1999, UN Doc. E/C.12/1999/10, para. 6 (a).

²² General Assembly Resolution 54/175 (2000) para. 12(a) which states the “rights to food and clean water are fundamental human rights, and their promotion constitutes a moral imperative both for national Governments and for the international community.”

²³ The Non-Aligned Movement acknowledged the right to water in September 2006: “The Heads of State or Government recalled what was agreed by the UN Committee on Economic, Social and Cultural Rights in November 2002, recognised the importance of water as a vital and finite natural resource, which has an economic, social and environmental function, and acknowledged the right to water for all” (14th Summit Conference of Heads of State or Government of the Non-Aligned Movement, Final Document, 16 September 2006, NAM 2006/doc.1/rev.3, para. 226).

²⁴ General Comment No. 15 is not legally binding per se, but it constitutes an authoritative interpretation of the provisions of the ICESCR by the competent body. The Committee on Economic, Social and Cultural Rights sought the authorisation of the United Nations Economic and Social Council to develop General Comments, and received encouragement from the Council to “continue using that mechanism to develop a fuller appreciation of the obligations of State Parties under the Covenant.” Economic and Social Council Resolution 1990/45, para. 10, General Comment No. 15 has received wide acceptance by States parties.

²⁵ General Comment No. 15, para. 29.

²⁶ A core obligation of the right to health is for the State to ensure access to basic sanitation, and an adequate supply of safe and potable water, see Committee on Economic, Social and Cultural Rights, General Comment No. 14: *The right to the highest attainable standard of health*, UN ESCOR, 2000, para. 43 (c). See also paras. 11, 12, 15, 36.

²⁷ Access to safe drinking water and sanitation is an element of the right to adequate housing, see Committee on Economic, Social and Cultural Rights, General Comment No. 4: *The right to adequate housing*, UN ESCOR, 1991, UN Doc. E/1992/23, para. 8 (b).

(article 13(1)),²⁸ as well as the right to life contained in the International Covenant on Civil and Political Rights (article 6 (1)).

5.2 United Nations expert reports

The right to water and sanitation was recognised in the 2006 Guidelines for the realization of the right to drinking water and sanitation adopted by the Sub-Commission on the Promotion and Protection of Human Rights.²⁹ In addition, the legal basis for this right was set out in the 2004 report of the UN Sub-Commission on the Promotion and Protection of Human Rights Special Rapporteur on the Right to Drinking Water Supply and Sanitation³⁰ and the 2007 Report of the UN High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to drinking water and sanitation (OHCHR Report). The OHCHR Report concluded that “it is now time to consider access to safe drinking **water and sanitation** as a human right.”³¹ The OHCHR report was based on an explicit mandate of the Human Rights Council in a decision taken without a vote to carry out: “a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.”³²

General Comment No. 15 and the Sub-Commission Guidelines, taken together, explain that the right to water and sanitation includes the following:

Sufficient water: Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.³³

Clean water: Safe water that, in particular, is free from hazardous substances that could endanger human health,³⁴ and whose colour, odour and taste are acceptable to users.³⁵

Accessible water and sanitation: Water and water and sanitation services and facilities that are accessible within, or in the immediate vicinity, of each household, educational institution and workplace, and which are in a secure location and address the needs of different groups, in particular threats to the physical security of women collecting water.³⁶ According to the Sub-Commission Guidelines, sanitation must be safe, adequate and conducive to the protection of public health and the environment.³⁷

The term ‘sanitation’ in General Comment No. 15 and the Sub-Commission Guidelines is not defined. However, the description of the relevant entitlements and State obligations implies that sanitation comprises at least, a toilet or latrine, along with associated services such as sewage or

²⁸ Sanitation facilities for both sexes and safe drinking water are required in schools as part of the right to education, see Committee on Economic, Social and Cultural Rights, General Comment No. 13: *The right to education*, UN ESCOR, 1999, UN Doc. E/C.12/1999/10, para. 6 (a).

²⁹ Available at: <http://www2.ohchr.org/english/issues/water/index.htm>.

³⁰ Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, E/CN.4/Sub.2/2004/20, paras. 40-44.

³¹ Available at: http://www2.ohchr.org/english/issues/water/docs/HRC_decision2-104.pdf. At para 66. Emphasis added.

³² UN Doc. A/HRC/2/L.3/Rev.3.

³³ General Comment No. 15, para. 12(a).

³⁴ General Comment No. 15, para. 12(b), referring to the respective WHO Guidelines.

³⁵ General Comment No. 15, para. 12(b).

³⁶ General Comment No. 15, paras. 12(c)(i), 29, Sub-Commission Guidelines s. 1.3(a)-(c).

³⁷ Sub-Commission Guidelines, s. 1.2.

latrine exhaustion. The criterion of ‘conducive to the protection of public health and the environment’ in the Sub-Commission Guidelines indicates that wastewater drainage channels are required for situations where piped water, but not sewage, is available in urban and peri-urban areas. It also implies that wastewater and excreta is treated or disposed of in a manner that avoids threats to public health and damage to ecosystems.

Affordable water and sanitation: Both the direct and indirect costs of securing water and sanitation should not reduce any person’s capacity to acquire other essential goods and services, including food, housing, health services and education.³⁸

As outlined in General Comment No. 15 and the Sub-Commission Guidelines, the right also incorporates requirements that apply to all human rights, such as non-discrimination and inclusion of vulnerable and marginalised groups,³⁹ access to information and participation,⁴⁰ and accountability.⁴¹

Non-discrimination and inclusion of vulnerable and marginalised groups: This means that access to water and sanitation is ensured for everybody, including vulnerable or marginalised groups, and without discrimination. Non-discrimination implies that there is no distinction, exclusion, restriction or preference - which is based on any ground (e.g. race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status) - which has the intention of effect of impairing the equal exercise of the right.⁴²

Non-discrimination also includes proactive measures to ensure that the particular needs of vulnerable or marginalised groups, such as women, persons with illnesses (e.g. HIV/AIDS) and people living in informal settlements and excluded minorities.⁴³

Access to information and participation: Each policy, programme or strategy concerning water and sanitation is to include, as an integral element, the right of all people to participate in decision-making processes that may affect their rights.⁴⁴ Special efforts are made by governments 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 to manage those services.⁴⁵ All people will have full and equal access to information concerning water, sanitation and the environment.⁴⁶

Accountability: Persons or groups denied their right to water and sanitation have access to effective judicial or other appropriate remedies, for example courts, national ombudspersons or human right commissions.⁴⁷

³⁸ General Comment No. 15, para 12(c)(ii); Sub-Commission Guidelines, s. 1.3(d).

³⁹ ICESCR, Art. 2 (2), General Comment No. 15, paras. 12 (c)(iii), (13), (16); Sub-Commission Guidelines, s. 3.

⁴⁰ General Comment No. 15, para. 12 (4), 48 and 55; Sub-Commission Guidelines, s. 8.1.-8.3.

⁴¹ General Comment No. 15, para. 55; Sub-Commission Guidelines, s. 9.

⁴² ICESCR, Art. 2 (2), General Comment No. 15, paras. 12 (c)(iii), (13), (16); Sub-Commission Guidelines, s. 3.

⁴³ ICCPR General Comment No. 18, para. 10.

⁴⁴ General Comment No. 15, para. 48; Sub-Commission Guidelines, s. 8.1.

⁴⁵ Sub-Commission Guidelines, s. 8.2.

⁴⁶ General Comment No. 15, paras. 12(4), 48; Sub-Commission Guidelines, s. 8.3.

⁴⁷ General Comment No. 15, para. 55; Sub-Commission Guidelines, s. 9.

5.3 National recognition of the right to water and sanitation

The Constitution of Kenya does not include explicit provisions with regard to the right to water and sanitation. The bill of rights however includes the right to life⁴⁸ which implicitly encompasses clean and sufficient water as a right and includes provisions of non discrimination⁴⁹ through which explicit recognition and protection of the right against discrimination can be drawn. The Bomas Draft Constitution of Kenya,⁵⁰ and subsequently the Proposed New Constitution of Kenya address issues of unavailability of clean water, inadequate drainage and sanitation and environmental degradation.⁵¹

The Proposed New Constitution of Kenya provided in section 65 for the right to water and a reasonable standard of sanitation. It further stated that water “...should be in adequate quantities and of reasonable quality”.⁵² The Proposed New Constitution of Kenya was however not passed during the November 2005 national referendum rendering it un-operational.

With the passing of the Water Act in 2002 a number of key policies in Kenya recognise the right to water and sanitation. These include the National Water Services Strategy 2007 – 2015; Pro Poor Implementation Plan for Water Supply and Sanitation; Economic Recovery Strategy for Wealth and Employment Creation; Vision 2030 of the Government of Kenya.

5.4 Duties of Government

The Government of Kenya as a signatory to the ICESCR has the overall duty to “respect, protect and fulfil” all human rights. The role of the Government in the water and sanitation sector is redefined with emphasis on regulatory and enabling functions as opposed to direct service provision. In realising economic, social and cultural rights, governments must take the necessary steps to ensure that everyone has access to these rights as soon as possible. Some steps can be done immediately, such as preventing discrimination and putting in place a targeted plan to achieve the right. Other steps can take time to implement. But governments must demonstrate that they are doing everything possible with their resources.

- **Respect:** To refrain from any action that would result in the violation of the right to water and sanitation. In some isolated incidences during the post election violence, residents were denied access to basic water supply when exits out of settlements were cordoned off by anti riot police to prevent political demonstrations.
- **Protect:** Safeguard people from interference by others; for example, by stopping unaffordable price increases by corporations or individuals. This is particularly relevant in times of major political or social upheaval as was experienced in many areas of Kenya in the post election violence.
- **Fulfil:** Adoption of legislative, administrative and promotional measures to secure the protection of the right to water and sanitation.

⁴⁸ Constitution of Kenya, Chapter V.

⁴⁹ Constitution of Kenya, Article 70.

⁵⁰ Bomas Draft Constitution of Kenya, 2004.

⁵¹ The Proposed New Constitution of Kenya, 2005.

⁵² Similar provisions were provided under the Bomas Draft Constitution of Kenya, 2004.