

KENYA WATER FOR HEALTH ORGANIZATION KWAHO



Terms of Reference (TORs)

For Consultancy Services for

Assessment of Water Actors' Capacity to Understand and Participate Effectively and Meaningfully in the Water Sector Reforms in Bondo District

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1.0 Background

I.1 Situation Analysis

Reforms in the Kenya water sector

The Ministry of Water and Irrigation (MWI) has undergone various reforms geared towards streamlining the sector to enable it meet the water supply and resource needs of the un-served and marginalized populations. The reforms have included a coordinated series of structural changes to provide better water and sanitation services through sustainable and efficient management of water resources, existing systems, improved financial base and viability. The policy changes in the water sector are linked to the implementation of the Water Act 2002, an enabling legislation with clear roles and responsibilities of the key water institutions and the separation of water resource management (WRM) from water supply services (WSS) delivery. The MWI deals with policy and strategy formulation, mobilization of funds, coordination and monitoring. The legal and institutional framework for implementing the defined policies in the water sector is captured in the arrangements for the management, conservation, use and control of water resources; the acquisition and regulation of rights to use of water; and in the regulation and management of water supply and sewerage services.

The long-term goal of these water reform 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. The focus of these changes include: promoting efficient service delivery, consumer rights, financial sustainability, pro-poor policies to extend service coverage to the poor in both urban and rural areas. However, strengthening individual/managerial and institutional functionalities to the decentralized levels, particularly in enhancing the capacities of the newly set-up institutions to realize the right to water for the local communities and civil society is still required.

The right to water and the role in promoting Participation, Transparency and Accountability

"...the human right to water entitles everyone to sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic use"¹

Approximately 70 percent of the urban and 48 percent of the rural population have access to safe drinking water while only half of all households are connected to a sewerage system. Clearly, water being a

¹ The UN Committee on Economic, Cultural and Social Rights stated in its General Comment of November 2002

multi-purpose resource, its governance is based on multi-objectives and by definition requires different management and governance regimes at the different levels of access and allocation. One of the key guiding principles for the sector reform outlined in the NWSS is '*sustainable access to safe water and basic sanitation is a human right*'. NWSS therefore recognizes that human rights provide both standards for what are the minimum requirements for provision of WSS services.

With this provision in the NWSS, the institutions in the WSS sub-sector have a legal obligation to address the situation of the poor. The lack of access to adequate WSS services therefore becomes a violation of the right to water as spelt out in the NWSS. In addition NWSS views water as a social and economic good and proposes that water supply and sanitation service provision for the poor shall be enabled by social tariffs (for a minimum of 20lt/c/d) and users shall pay according to consumption – user pays principle. The WSTF promotes pro-poor projects for water and sanitation in the rural areas and the settlements of the urban poor on an increasing level. In addition, the sector development report gives provision to the key indicators for Human Right and Water: There is provision in the NWSS for developing an elaborate a pro-poor WSS strategy which also aims at the progressive realization of Human Rights and Water with measurable indicators for Human Rights and Water being part of the sector indicators. In this respect, investments in formalized service provision shall be a priority because it contributes to fulfilling requirements for Human Rights and Water.

Effective water governance goes beyond ensuring that policies and institutions are in place, and captures issues of access to resources, information and affordable technology while participating in the decision-making processes that affect the management and effectiveness of service provision.

Given the progress of the water sector reforms the use of the water resource in an honest and effective manner, rather than using more resources than is required or for the purpose for which not initially targeted, is arguably an answer to achieving the Millennium Development Goals (MDGs) for sustained water and sanitation services that reach the poor in Kenya. Key actors need to understand that any form of mismanagement undermines water and sanitation services and it is those without a voice, the poor or marginalized, who are systematically deprived by such systems. Where mismanagement exists, even well-intentioned plans to improve infrastructure and services can be disrupted and get undermined through dishonest practices at any level of administration. In the Kenya water sector such practices have been sighted to occur at various points in the service delivery chain: these range from collusion between managers and contractors over the award

of contracts and at the lower level, customers bribing for water re-connections, fresh connections or to avoid disconnections.

A very explicit ambition with the water reforms is to put in place and implement clear structures of accountability as well as openness and transparency and participatory approaches. While this is recognized it is clear that reform implementation will require intensification of capacity development, awareness raising and methodology development/application, particularly at local level and the roles and responsibilities of local actors as well as the individual consumers/citizens. In developing such a mechanism it is critical to combine it with raising awareness of right-holders specifically consumers, of their rights and responsibilities and lobby to the responsible Water Services Providers, the respective Water Services Board and the National Regulator on consumers' views. As a last resort consumers' complaints of the different actors may also be handled by a Water Appeals Board. How issues of consumer feed-back and civil society participation will work out in practice under the water reform is not yet fully explored and this human rights based approach to water and sanitation project will aim at achieving such an understanding.

1.2 Justification

a) Improving water governance as highlighted in Human Development Report 2006.

In 2006, the UNDP flagship Human Development Report (HDR) *"Beyond Scarcity: Power, Poverty and the Global Water Crisis"* presented important highlights of the global water situation and the dynamic interplay of various elements and the socio economic implications in attainment of the Millennium Development Goals (MDGs). UNDP recognizes the important and extensive reforms that have been going on in the water sector through the passing and operationalisation of the Water Act 2002 and the actual implementation of these reforms through the Sector Wide Approach in the water sector. A UNDP scoping mission in 2006 underscored the crucial need to apply a human rights-based approach to improving water governance, utilizing the moral and ethical values of the universally agreed legal standards to ensure safe and adequate water supply to all for a life with dignity. This is in recognition that human rights based strategies are crucial as they are concerned with the questions of **who** is affected by MDG progress for targets 10 and 11 and **how** targets are reached. It demands accountability and inclusiveness of the process. Human rights based approaches targets at changing **what** (the desirable outcome) the actors are doing, **how** (process) they work,

and in particular **why** (understanding) they do their work. In this respect, Right Based Approach (RBA) addresses the issues of duty bearers and claim holders, and mapping capacities will help define whether they are capable of undertaking a duty or claiming a right.

b) Stakeholder participation and engagement in water sector reforms in Kenya

The water sector is indeed making a contribution towards the attainment of the Millennium Development Goals and other national goals elaborated through the Vision 2030 and operationalized through the 1st Medium term Plan of the Vision 2030, through the established new water institutions. Each of the decentralized institutions has a Board which has a lot of influence on decision-making processes. One of the key accountability practices in the sector is the fact that all the new institutions operate under performance contracts and external auditing is compulsory. The MWI has an appropriate institutional framework and the law and policy in the Kenyan water sector has moved towards realizing the right to water both through the formal recognition of the right to water and the adoption of several pro-poor initiatives.

In particular, the sector reforms have revived public institutions dealing with water supply and water resource management to promote access to improved and effective service delivery to the poor and marginalized. The mandates of the new institutions, if achieved, are pre-requisites to the implementation of RBA. The MWI brochure (October 2007) on "*Water Sector Reform in Kenya and the Human Right to Water*" documents the progress of the Ministry of Water and Irrigation (MWI) and the water institutions in operationalising and implementing the right to water and outlines the growing investments made for sustainable development. Simplified and sector specific RBA information is required so that duty-bearers and claim holders can be fully informed, educated and trained on the human right to water and the linkages with MDG attainment. In addition, for the impacts of the ongoing reforms to be appreciated by the ultimate right holders in this case the consumers, it is very important that they are considered as key players in the reform process themselves rather than passive recipients of water services. Their role in respect to effective and meaningful participation in the reforms will ensure voices are heard and concerns aired through feedback channels that the project aims at enabling.

2.0 Objective and tasks for the Consultant

2.1 Objective

The major objective of the task is to identify capacity gaps/challenges that will lead to the development and implementation of strategy and tools for strengthening the capacity of duty bearers (the formal and informal water service providers and the regulators) and the right-holders (water users).

The work will involve the identification of the right-holders and duty bearers and collection, analysis, interpretation and documentation of information that will inform the development of a viable strategy for building capacity of the duty bearers and right-holders.

2.2 Specific Tasks

- a. Establish capacity gaps and or challenges by both duty bearers and right-holders in urban and rural areas of Bondo District
- b. Identify factors and constraints that hinder their effective and meaningful participation in the water sector reforms
- c. Establish the level of awareness of the Water Sector Reforms
- d. Produce a clear set of lessons learned and recommendations to KWAHO that will assist in planning and implementation of capacity building activities
- e. Prepare a report of the findings and share with the stakeholders
- f. Propose a strategy and methodology for building the capacity of the duty bearers and right-holders

3.0 Methodology and Approach

The Consultant will conduct interviews with both duty bearers and right holders and hold workshops to disseminate their findings. Thereafter, the Consultant will come up with a strategy and methodology for capacity building the duty bearers and right holders.

4.0 Expected results

The Consultant will be expected to come up with:

- A draft assessment report and proposed capacity building strategy presented to the stakeholders in workshop

- Final strategy and methodology for building the capacity of the right-holders and duty bearers
- A soft and 5no. hard copies of the final report forwarded to KWAHO.

5.0 Period of Contract and Time Frame

This Consultancy will be done during the month of June 2009 and will last for a period of 21 days upon signing the Consultancy Contract.

6.0 Reporting

At the field level the consultant will work closely with Water Governance Project Officer based in Bondo and to the Executive Director and Programs Manager based at KWAHO's Headquarters in Nairobi.