

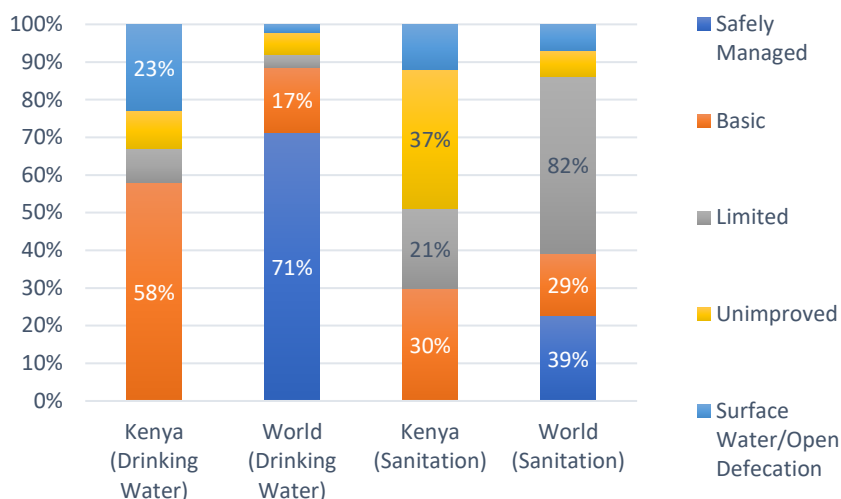


Legal country mapping

Kenya

07/2018

WATER AND SANITATION STATUS FROM JMP UPDATE 2017



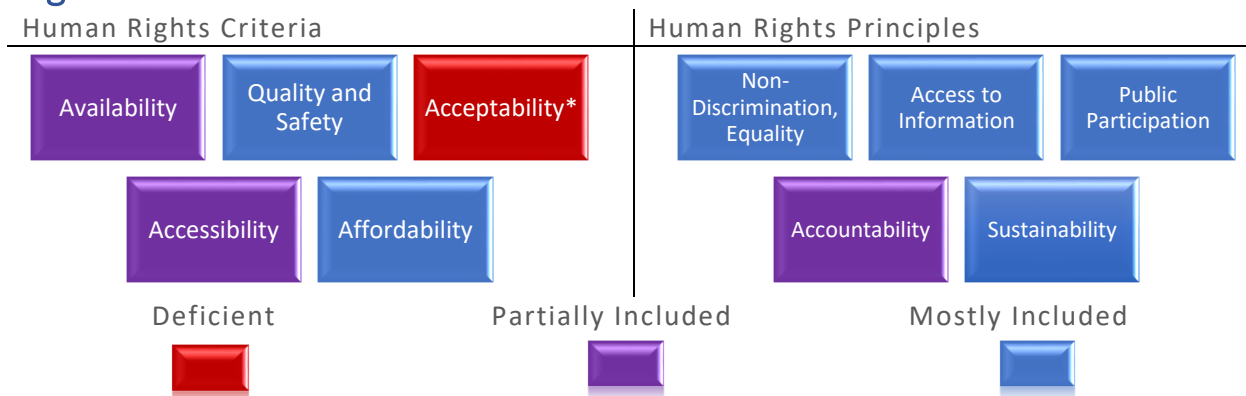
General Legislation

Member of a regional integration organisation	Yes (the AU)
State Organisation	Quasi-federal
Relationship between International and National Law	Quasi-Dualist
Supreme Law	The Kenya Constitution
Independent National Human Rights Institutions (NHRI)	Yes
Name of National Institution possessing regulation-making authority	Water Resources Authority
Popular consultation as part of governing/legislative process	Yes

Water Governance

Right to Water or Sanitation mentioned in Constitution	Yes
A water code or a law specific to water resources	Yes
National Strategy, Policy, Action Plan etc. on Water and Sanitation	Yes
Transboundary Water Resources	Yes
Priorities in the allocation of water for different uses	Yes

Legal Framework



* No law found on the matter.

Table of Contents

CHAPTER 1. WATER GOVERNANCE OVERVIEW	4
A- Preliminary questions:	4
B- The country is member of a regional integration organisation?	5
C- Water governance and administration:	5
CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES	7
A. Regional Multilateral/Bilateral treaties	7
B. Human Rights Conventions	8
C. International Environmental Treaties.....	9
CHAPTER 3: DOMESTIC LEGISLATION ON WATER	11
A. Water law	11
B. Extraction and/or use of water.....	11
CHAPTER 4. THE HUMAN RIGHTS TO WATER AND SANITATION:.....	13
A. Availability and accessibility	13
B. Quality and safety.....	14
C. Water pollution control.....	16
D. Affordability	18
E. Acceptability	19
F. Non-discrimination, equality and universal access	19
G. Right to information:.....	19
H. Public participation	22
I. Sustainability	24
CHAPTER 5. JUDICIARY SYSTEM.....	25
A. Preliminary questions.....	25
B. Remedies and complaint procedures/accountability	26
C. National human rights institutions	29
D. Regulation	29

CHAPTER 1. WATER GOVERNANCE OVERVIEW

A. Preliminary questions:

1. **What type of State is the country? (e.g. Federal, Unitary, etc)**

Although the constitution provided for two levels of government (the County and the National governments), Kenya appears to govern as a unitary state.

See Article 6(1) and (2) of the 2010 Kenya Constitution.

2. **Division of government powers exist? If yes, please elaborate on their functions.**

The constitution provides for the distribution of state functions between three arms of government: the Legislature, the Executive and the Judiciary.

See Article 1 (3) and (4) of the 2010 Kenya Constitution.

3. **Which institutions and levels of government have legislative powers?**

The national level the Parliament (the Senate and the National Assembly). At the County level, there is the County Assembly.

See Articles 93, 94, 95, 96(1) of the 2010 Kenya Constitution.

4. **Who has the power to ratify treaties?**

The Parliament (National Assembly and the Senate) has the power to ratify treaties, after the treaty has been approved by the Cabinet.

See Article 8, The Treaty Making and Ratification (Act), 2016.

5. **Is there popular consultation as part of governing/legislative process?**

The constitution provides for the Parliament and County Assembly to ensure public participation and involvement in the legislative and other business of Parliament and its committee.

See Article 118(1)(b); 196(1)(b) of the 2010 Kenya Constitution. See also Article 8(3) The Treaty Making and Ratification (Act), 2016.

6. **Has the country established a basin management agency? Is it autonomous?**

The Kenya Water Act provides for the establishment of the Basin Water Resource Committee (BWRC). The Committee shall be responsible for the management of water resources within a respective basin area. The Committee is not autonomous because they are established and managed through a government ministry, namely the Water Resources Authority.

See Articles 24, 25, 26, 27, 28 2016 Water Act.

7. **Does the country have transboundary water resources?**

The transboundary water resources of the Kenya includes the Lake Victoria basin (located in the upper Nile River Basin and shared with Uganda, Tanzania and Burundi); the Mara River Basin (shared with Tanzania); the Juba-Shebelle Basin (Shared with Ethiopia, and Somalia); the Natron Basin (shared with Tanzania); Lake Turkana Basin (shared with Ethiopia); Nile River Basin (Shared with Tanzania, Uganda, Burundi, Congo, Ethiopia, Eritrea, South Sudan and Egypt.)

8. **Where transboundary water resources exist, is there an established international institution for basin management? Does it have any responsibility in relation to drinking water?**

The Lake Victoria Basin treaty provides for the establishment of an institution for basin management. See Article 33 LVB Protocol.

There is the Nile Basin Initiative, an intergovernmental partnership of the Nile Basin countries, to provide a forum for consultation and coordination on management and development of the Nile basin water.

B. The country is member of a regional integration organisation?

1. Which countries form part of this organisation?

Kenya is a member of the main regional organisation of the African Union (AU with the other 54 African states) and several other regional blocks such as the Common Market for Eastern and Southern Africa (COMESA) formed with Zambia, Uganda, Egypt, Seychelles, Mauritius, Zimbabwe, Rwanda, Madagascar, Congo, Malawi, Burundi, Swaziland, Libya, Comoros, Djibouti, Eritrea, Sudan and Ethiopia;

The East African Community (EAC), formed with Uganda, Rwanda, Burundi and Tanzania, South Sudan; the Community of Sahel-Saharan States (CEN-SAD), formed with Cote d'Ivoire, Togo, Niger, Burkina Faso, Ghana, Gambia, Nigeria, Djibouti, Libya, Chad, Central African Republic, Comoros, Sudan, Sao Tome and Principe; and the intergovernmental Authority on Development (IGAD) in Eastern Africa, with Uganda, Djibouti, Ethiopia, Eritrea, South Sudan and Somalia.

2. Are the decisions of the organisation binding for the members?

In most of the cases, the decisions of the organisation are domesticated in the country through the parliamentary process or the policy enactment from the executive branch of the government.

3. What is the mandate of the organisation?

COMESA: "To be a fully integrated, internationally competitive regional economic community with high standards of living for all its people ready to merge into an African Community"

ECA: "... to develop policies and programmes aimed at widening and deepening co-operation among the Partner States ... for their mutual benefit." See Article 5, ECA Treaty.

CEN_SAD: "establishment of an overall economic union based on the implementation of a strategy by means of

development plans that are complementary to the national development plans of the member states and that include investment in the agricultural, industrial, social and cultural fields and in energy", Article 1 of the 1998 CEN-SAD Treaty.

IGAD: Promoting sustained economic growth by pulling its considerable natural endowment and human resources through appropriate, sustainable and practical arrangements for cooperation. Preamble, IGAD Agreement.

4. Does the regional organisation have the authority to regulate or make decisions which affect water and sanitation?

Some of the regional organisations provide for the management of freshwater resources. For instance, the COMESA provides for members to cooperate in the management of their freshwater and water supply. See Article 123 (4), 136(b) of the COMESA treaty; The EAC provides for irrigation and water Catchment management. See Article 109 of the EAC Treaty

C. Water governance and administration:

1. What is the structure of the government water administration (provide relevant organizational charts whenever available) and what power, role and responsibilities does the Government have at each level? At national/federal level?

At the national level, there is the Water Resources Authority (WRA). The mandate of WRA includes "to protect, conserve, control and regulate use of water resources through the establishment of a national water resources strategy, formulation and enforcement of standards, procedures and regulations for the management and use of water resources; policy development and setting, issuing and collection of water abstraction permits, and water use fees. There is also the Water Services Regulatory Board (WASREB), with the mandate "to approve tariffs, monitor and enforce water

services standard and issue licenses to water Service Providers.

At the intermediate level (state, river basin, other) There are 1. the Basin Water Resources Committee (BWRC) “to manage catchments, to facilitate establishment of Water Resources User Associations (WRUAs) and to play an advisory role to the WRA”; 2. Water Works Development Agencies (WWDAs) for “development, maintenance and management of national public works; operation of the national public waterworks and provision of water services as a water service provider; provision of technical services and capacity building to county government and water service provider within its region.

2. **At the local level?** There are the Water Resources User Associations (WRUAs) which operate as community-based associations for collective management of water resources and resolution of conflicts concerning the use of water resources and Water Services Providers (WSPs) which are responsible for the provision of water services within the area specified in their licenses and development of county assets.
3. **Which government ministries/agencies are directly or indirectly involved in governance of water and sanitation?**
The government ministries/agency involved in governance of water and sanitation includes the Water Resources Authority (WRA); Water Services Regulatory Board (WASREB); Basin Water Resources Committee (BWRC); Water Works Development Agencies (WWDAs), and Water Resources User Associations (WRUAs).
4. **Which agency is responsible for drinking water? What are its responsibilities?**
see questions 2 and 3
5. **Which agency is responsible for sanitation? What are its responsibilities?**
see questions 2 and 3

CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES

1. Has the country ratified the following international or regional treaties and declarations?
Please insert the date of the signature/ratification/accession.
2. Has the country made any declaration or reservation to the following instruments?

A. Regional Multilateral/Bilateral treaties

Table 1. Regional multilateral and bilateral treaties

Instruments	Signature	Ratification	Entry into force
Constitutive Act of the African Union	02.03.2017	04.07.2017	26.05.2017
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)	17.12.2003	06.10.2010	25.11.2005
The African Youth Charter (02.07.2006)	28.06.2008	23.01.2014	08.08.2009
Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) (1993)	05.11.1993	30.05.1994	08.12.1994
COMESA-EAC-SADC Tripartite Free Trade Agreement (2015)	10.06.2015	01.01.1970	01.01.1970
Protocol of the African Charter on Human and Peoples; Rights on the Establishment of the African Court on Human and People's Rights (1998)	07.07.2017	04.02.2017	01.01.1970
The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014)	27.01.2017	01.01.1970	01.01.1970
Treaty for the Establishment of the East African Community (EAC) (1999)	30.11.1999	07.07.2000	07.07.2000
The 2010 Nile Basin Cooperative Framework Agreement (2009)	19.05.2010	01.01.1970	01.01.1970

B. Human Rights Conventions

Table 2. International binding instruments

Instruments	Signature	Ratification
International Covenant on Civil and Political Rights (1966)	NA	1972
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	NA	NA
International Covenant on Economic, Social and Cultural Rights (1966) <u>Reservation/Declaration:</u> "While the Kenya Government recognizes and endorses the principles laid down in paragraph 2 of article 10 of the Covenant, the present circumstances obtaining in Kenya do not render necessary or expedient the imposition of those principles by legislation."	NA	1972
Optional protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	NA	NA
Convention on the Elimination of All Forms of Discrimination against Women (1979)	NA	2001
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	NA	NA
Convention on the Rights of the Child (1989)	1990	1990
The Convention on the Rights of Persons with Disabilities (2006)	2007	2008
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	2007	NA
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	NA	1997
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)	NA	NA
Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)		20.09.1966
Geneva Convention (IV) relative to the protection of Civilian Persons in Time of War (1949)	N.A.	20.09.1966
Protocol Additional (I) to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict (1977)	NA	23.02.1999
Protocol Additional (II) to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (1977)	NA	23.02.1999
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)	17.12.2003	06.10.2010

Instruments	Signature	Ratification
Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and Peoples' Rights (1998)	07.07.2003	04.02.2004
African Charter on the Rights and Welfare of the Child (1990)	NA	25.07.2000
African Charter on Human and People's Rights (1981)	NA	23.01.1992
Au Convention Governing Specific Aspects of Refugee Problems in Africa (1969)	10.09.1969	23.06.1992

Table 3. ILO conventions

Instruments	Signature	Ratification
ILO Forced Labour Convention, No. 29 (1930)		13.01.1964
ILO Recruiting of Indigenous Workers Convention, No. 50 (1936) (shelved convention)		Abrogated in 2018
ILO Food and Catering (Ships' Crews) Convention, No. 68 (1946) (instrument to be revised)		
ILO Plantations Convention, No. 110 (1958)		
ILO Hygiene (Commerce and Offices) Convention, No. 120 (1964)		
ILO Occupational Safety and Health (Dock Work) Convention, No. 152 (1979)		
ILO Convention No. 161 concerning Occupational Health Services (1985)		
ILO Safety and Health in Construction Convention, No. 167 (1988)		
ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)		
ILO Work in Fishing Convention, No. 188 (2007)		

C. International Environmental Treaties

Table 4. International Treaties about environmental matters concerning water and sanitation

Instruments	Signature	Ratification
Convention on the prevention of marine pollution by dumping of wastes and other matter (1972)	14.01.2008	13.02.2008
Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, (1996)	14.01.2008	13.02.2008
International Convention for the Prevention of Pollution from Ships, MARPOL (1973)		12.09.1975
International Convention for the Prevention of Pollution from Ships (MARPOL) as modified by the Protocol of 1978	07.03.1994	07.06.1994
United Nations Convention on the Law of the Sea (1982)	10.12.1982	02.03.1989
Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)	-	-
Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971)	01.01.1970	05.06.1990
Protocol to amend the Convention on Wetlands of International Importance especially as Waterfowl Habitat (1982)	02.01.2007	02.05.2007
Amendments to Articles 6 and 7 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (1987)	-	-

Instruments	Signature	Ratification
Convention on the Law of the Non-Navigational Uses of International Watercourses (1997)	-	-
Convention on the Protection of the Environment through Criminal Law (1998)	-	-
Nairobi International Convention on the Removal of Wrecks (2007)	14.04.2015	14.07.2015
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) – (“Aarhus Convention”)	-	-
Protocol to the Antarctic Treaty on Environmental Protection (1991)	-	-
United Nations Framework Convention on Climate Change (UNFCCC) (1992)	12.06.12	30.08.1994
Constitution of the Food and Agriculture of the United Nations (1945)	27.01.1964	01.01.1970
Paris Agreement (2015)	22.04.2016	28.12.2016

CHAPTER 3: DOMESTIC LEGISLATION ON WATER

A. Water law

1. Is the right to water or the right to sanitation mentioned in the Constitution?

The new Kenyan constitution provides for the right to water.

See section 43(4), 2010 Constitution.

2. Does the Constitution otherwise reference water and sanitation?

The Constitution also provides for the right to water for minorities and marginalised groups.

See, Section 56(e), 2010 Constitution.

3. Is there a water code or a law specific to water resources? Please specify.

In 2016, the government of Kenya enacted a Water Act.

4. Is there national strategy / policy, action plan or similar document on water?

There are the National Water Services Strategy (2007 - 2015) and the National Water Master Plan 2030.

5. Are there any other major regulations, decrees, orders, circulars, or similar official documents (such as pricing, water policing, utility easements, public domain occupation...etc.) related to the rights to water and sanitation?

There are several other water regulations, such as the Water (services regulatory) Rules, 2012; The Environmental Management and Co-ordination (Wetlands, River Banks, Lake Shores and Sea Shores Management Regulations, 2009; Environmental Management and Co-ordination (Water Quality), 2006); Forest Act, 2005; The Environmental Management and Co-ordination Act (Revised Edition 2012) (1999); The Environmental Management and Co-ordination (Amendment Act) (2015); The Environmental Management and Co-ordination (Waste Management) Regulations, 2006.

B. Extraction and/or use of water

1. Does the legislation regulate the right to abstract water? (surface, groundwater, etc.)?

According to the preamble of the 2016 Water Act, the use of water in relation of water resources, amongst other uses, includes abstraction. The Act also provides that "A permit is not required – (a) for the abstraction or use of water, ...from any water resources (including, reservoirs) for domestic purposes..."

Preamble; Article 37(a)(b)(c) 2016 Water Act. The Act also provides for the regulation of abstraction of groundwater water band and other abstractions.

see Fourth Schedule of the Act; Articles 51(a); 132; 142(2)(b); 143(1)(b); Third Schedule, Article 12 (1) 2016 Water Act.

2. Does the legislation distinguish between the extraction of drinking water and water for other uses?

In some instances, the legislation distinguishes between domestic use and other uses. For example, the extraction for domestic purpose does not require any permit, where for other purposes (commercial) there is need to request for a permit. See Article 37(a)(b)(c) 2016 Water Act.

3. Is the right to use water connected to land ownership?

For a water permit to be attachable to land, the permit must specify, as far as practicable, the particulars of the land.

See Article 45 (1), (2) (3), 2016 Water Act.

Secondly, a permit is not required for the "abstraction or use of water in a spring which is situated wholly within the boundaries of the land owned by any one landholder and does not naturally discharge into a watercourse abutting on or extending beyond the boundaries of that land."

See Article 37(1)(b), 2016 Water Act.

4. Are permits/licenses required for water use (e.g. domestic, agricultural, industrial)?

According to the Water Act, "A permit is not required – (a) for the abstraction or use of water, ...from any water resources (including, reservoirs) for domestic purposes...".

See Article 37(a)(b)(c), 2016 Water Act

Secondly, the following sustainable uses of wetland resources shall not be subject to these regulations -collection of water for domestic use.

Section 11(d), Wetlands Regulations 2009.

5. Can permits/licenses be suspended? Under what circumstances?

The regulatory Board may revoke the license of a water services provider on the following reason: (a) if the license was obtained by mistake, fraud, undue influence or misrepresentation (b) the service provider has ceased to meet the criteria for the licensing (c) the service has failed or neglected to provide the services for which they obtained the license (d) the holder has become insolvent or bankrupt.

See Article 76 (1), 2016 Water Act..

6. Can water abstraction licenses be transferred? Is transferability subject to restrictions?

Generally speaking, a licence does not confer any right of proprietorship and shall not be capable of being sold, leased, mortgaged, transferred, attached assigned demised or encumbered.

See Section 88(1), 2016 Water Act.

However, the regulatory Board may, on the application of the licensees, permit the transfer of water service, or a part of it from one licensee to another, for the purpose of securing a commercially viable water service, Section 97(1)(2), 2016 Water Act.

The board can also order a joint provision of water services or vary water services licenses for similar purposes.

See Sections 97(1)(2)(3)(4), 94, 103, 45(1)(b), 2016 Water Act.

7. Are there priorities in the allocation of water for different uses?

The Water Sector Trust Fund must be implemented in a manner to "ensure the efficient and equitable sharing of the resources of the Fund, giving priority to resources allocation in (i) rural and urban areas where access to basic water services is below the national average; and (ii) rural areas which are vulnerable to the degradation or depletion of water resources." See Article 113(1), 116(1)(d).

CHAPTER 4. THE HUMAN RIGHTS TO WATER AND SANITATION:

A. Availability and accessibility

1. Does the law ensure that a minimum essential level of water is available to all?

Where there is serious deficiency of water for essential domestic purpose, the Authority may declare an existence of crisis and provide for measure to address the situation.

See Section 140, 2016 Kenyan Water Act

2. What are the standards on the amount of water to be made available/is there any guidance in the law in this respect?

Our research did not find information in this regard.

3. Does the law ensure continuous supply of water for all?

Our research did not find information in this regard.

4. Does the law prioritize water for domestic uses over other uses?

A national public water works for domestic use shall take precedence over all other water works for the use of water.

See Article 8(1)(3), 2016 Kenyan Water Act

5. What are the grounds for disconnecting, interrupting or altering water supply and sanitation services (e.g., authorities may alter water supply in case of droughts or emergencies, in which cases are disconnections possible...)?

Interruptions are made upon inspection by the Authority or the Regulatory board, and the alterations are necessary for the security of the authorised works.

If the order is not complied with, the service permit/license may be cancelled or modified by the Authority or Regulatory Board.

See Second Schedule, Section 3(1)(2), 2016 Kenyan Water Act.

The Regulatory Board may also revoke the license of a water services provider on the

following reason: (a) if the license was obtained by mistake, fraud, undue influence or misrepresentation (b) the service provider has ceased to meet the criteria for the licensing (c) the service has failed or neglected to provide the services for which they obtained the license (d) the holder has become insolvent or bankrupt.

See Section 76, 2016 Kenyan Water Act.

6. What are the procedural standards/criteria for permitting interruption, disconnection or alteration of water supply and sanitation services?

The Regulatory Board may revoke the license of a service provider who persistently contrives the conditions of a license or the requirement of the Act.

In taking the action, (a) the licensee shall be given an opportunity to make presentations to the regulatory (b) the regulatory body may require the license to be under enhanced monitoring license and reporting (c) remove privileges from the license (d) revoke the license and appoint a special manager of the water services for a period.

In determining withdrawing of a license, the Authority shall consider the severity of the offence, the consequences of withdrawal of the license and the sufficiency of any alternative sanction.

Section 102 (1)(2)(3)(4), 2016 Kenyan Water Act.

Before a water license can be revoked, the Regulatory Board (a) shall give written notice of the revocation of the license to the Water Services within seven days of the revocation (b) a person whose license is revoked shall cease to provide the relevant service, (c) but may still apply for the review of the decision within fourteen days of the receipt of the notice of revocation.

See Section 76, 2016 Kenyan Water Act.

7. Are alternative ways of water supply and sanitation services provided for in case of alteration of supply and/or service?

Our research did not find information in this regard.

See Section 72(1)(a)(f) 2016 Kenyan Water Act

8. **Does the law provide guidance on:**

a. **the number of water outlets?**

Our research did not find information in this regard.

b. **the safety, distance and time from a dwelling or structure to reach water outlet or sanitation facilities (e.g., laws that specify water outlets must be available within a certain distance from a school or household)?**

Our research did not find information in this regard.

a. **technical safety of water outlets or sanitation facilities (e.g. law requiring that certain standards are applied in the constitution of those facilities or of buildings)?**

Where any well is being constructed within the proximity of an existing well at a distance to be specified by the Authority, the Authority may by notice require the person constructing the well to apply tests, to be specified in the notice to the existing well and to supply to the Authority the particulars of the results of such test including the rate of pumping and rest levels of the water. See Fourth Schedule, Section 4(1), 2016 Kenyan Water Act

The powers and functions of the Regulatory Board includes determining and prescribing national standards for the provision of water services and assets development for water services providers; monitoring compliance standards on design, construction, operation and maintenance of facilities for the provision of water services by water works development bodies and the water services providers.

9. **Is there provision in the law for availability and accessibility of water and sanitation facilities in non-domestic places such as schools, hospitals, work places, prisons, refugee camps, etc.?**

An employer or owner of institutions, including hospitals, factories, schools, hotels, research stations or other comparable institutions are authorised to provide water within their premises without any need of water licensing where the source of water supply is lawfully under the control of the institution.

See Section 85(1)(3), 2016 Kenyan Water Act.

B. Quality and safety

1. **Are there parameters of quality and safety for drinking water established under law?**

The Authority prescribes the criteria for classifying water resources for the purpose of determining water resources quality objectives for each class of water resources. The prescribed classification criteria shall take into account (1) transboundary consideration (2) strategic functions served by the water resource (3) the use or potential for use of the water resources for inter-basin transfers (4) ecological functions of the water resources (5) vulnerability to degradation or depletion and other related factors.

Section 20(1)(2)(a)(b)(c)(d)(e), 2016 Kenyan Water Act.

Besides the above, the Authority is also empowered to prescribe any other parameter from time to time.

See The First, Second schedule, 2006 Water Quality Regulations.

2. Is monitoring of drinking water quality or wastewater required by law? If so, which actor is required to monitor it and how often (according to the law)?

The Authority ensures the establishment of national monitoring and geo referenced information system on water resources, See Section 21(1), 111(1), 2016 Kenyan Water Act.

Moreover, the Regulatory Board monitors compliance with standards, including the design, construction, operation and maintenance of facilities for the provision of water services, Section 72 (1) (f), 2016 Kenyan Water Act.

It is also the duty of every county government executive to monitor and enforce the applicable Regulations made under the Water Act, Section 106(1), 2016 Kenyan Water Act.

The Authority in consultation with the relevant lead agency maintain water quality monitoring records for sources of domestic water at least twice every calendar year and such monitoring records are in the prescribed form as set out in the Second Schedule of these regulations, Section 9, 2006 Water Quality Regulations.

Every local authority or person operating a sewage system or owner or operator of any trade or industrial undertaking are guided by the monitoring guide for discharge into the environment as set out in the Fourth Schedule to the Regulations or as the Authority may prescribe, Section 12(2), 2006 Water Quality Regulations.

Every person who generates and discharges effluent into the environment under a license issues under the Act carries out effluent discharge quality and quantity monitoring in accordance with methods and procedures of sampling and analysis prescribed by the Authority and shall submit quarterly records of such monitoring to the Authority or its designated representative. Such discharge monitoring record would be

in the prescribed form as set out in sixth schedule of these Regulations, Section 14(1)(2) 2006 Water Quality Regulations.

The Authority also reviews monitoring records in order to verify compliance with these Regulations, Section 15. 2006 Water Quality Regulations.

3. Do laws/regulations include guidance on the safe construction of water and sanitation Infrastructure (e.g. to ensure no contact with excreta, ventilation, respect construction guidelines)?

The Regulatory Board monitors compliance with standards, including the design, construction, operation and maintenance of facilities for the provision of water services, Section 72 (1) (f), 2016 Kenyan Water Act.

4. Do laws/regulations include requirements or guidance on safe emptying of latrines as well as safe treatment and disposal of treated sludge?

The water regulations provides for a licensing regime on the discharge of effluent from sewage treatment works, industry or other point sources into the aquatic environment. Similarly, operators or suppliers of treated water, containerized water and all water vendors are to comply with relevant quality standards promulgated by lead agency, See Section 6(1), 8 2006 Water Quality Regulations.

5. Do laws/regulations establish requirements on household water treatment and storage (e.g. quality requirement with respect to water containers, rainwater harvesting limitations, etc.)?

The Cabinet Secretary has mandate to make Regulations with respect to rain water harvesting and household water storage. See Section 142(1)(2)(j) 2016 Kenyan Water Act. Similarly, operators or suppliers of treated water, containerized water and all water vendors are to comply with relevant quality standards promulgated by lead agency. See Section 8, 2006 Water Quality Regulations).

C. Water pollution control

1. **Are there legislative provisions concerning waste disposal activities? Which authorities are responsible for monitoring to determine if waste has caused pollution of bodies of water?**

Generally, it is prohibited to throw, convey, cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade water or other offensive matter or thing into or near to any water resource in such a manner as to cause, or likely to cause, pollution of the water resource.

See Section 143(1)(b), 2016 Kenyan Water Act.

Every person abstracting ground water by means of a well shall, in order to prevent contamination or pollution of the water, dispose of all return or waste water by means other than by return to the well, See Fourth Schedule, Article 15(c).

An inspector appointed by the Authority may, may enter into a land and inspect any water resources located within, in order to take such measure for the purpose of preventing the excessive or illegal diversion, water or pollution of the water resources. See Fourth Schedule, Article 58(1)(c).

An employee or agent of a licensee authorised by licensee for the purpose may enter on to any land and inspect any source of water supply which is located within, in order to take such measures for the purpose of preventing the excessive or illegal diversion, waste or pollution of the water See Fourth Schedule, Article 59(1)(c).

No person shall discharge or apply any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutant or permit any person to dump or discharge such matter into aquatic environment unless such discharge, poison, toxic, noxious or obstructing matter, radioactive waste or pollutant complies with the standards set out in the third schedule of these

Regulations. See Section 11. 2006 Water Quality Regulations.

No person shall be permitted to sue wastewater for irrigation purposes unless such water complies with the quality guidelines set out under the Eight Schedule of these Regulations. Section 19. 2006 Water Quality Regulations.

Every person shall refrain from any act which directly or indirectly causes or may cause immediate or subsequent water pollution. No person shall throw or cause to flow into or near a water resource any liquid, solid or gaseous substance or deposit any such substance in or near it, as to cause pollution. See Section 4(1)(2) 2006 Water Quality Regulations.

Every owner or operator of trade or industrial undertaking issues with a license by a local authority or sewage service provider to discharge effluent into any existing sewerage system shall comply with the standard set out in the fifth schedule of these Regulations. Regulations 13(1) 2006 Water Quality Regulations.

The Cabinet Secretary shall, on the recommendation of the Authority 'identify material and processes that are dangerous to human health and the environment; issues guideline and prescribe measures for the management of the materials and processes identified above; prescribe standards for waste, their classification and analysis, and formulate and advice on standards of disposal methods and the means for such waste; or issue regulations for the handling, storage, transportation, segregation and destruction of any water. See Section 86(1)(2)(3)(4) EMCA Act (Amended), 2015.

Every person whose activities generate wastes shall employ measures essential to minimize waste treatment, reclamation and recycling. See Section 87(4) EMCA Act (Revised 2012) 1999.

Any person intending to generate hazardous waste shall prior to the activity apply to the Authority in writing for the grant of an appropriate license. See Section 88(1) EMCA Act (Revised 2012) 1999.

2. Is there legislation which regulates the contamination of groundwater?

Yes.

The whole of the Fourth Schedule of the Water Act (the Act) deals with Abstraction of ground water. However, there are specific provisions dealing with contamination of groundwater. For instance, see Fourth Schedule, Article 15(a)(b)(c)(d)(e)(f)(g).

Every person abstracting ground water by means of a well shall, in order to prevent contamination or pollution of water (a) effectively seal off to a sufficient depth any contamination or polluted surface or shallow water in rock openings or soft broken ground (b)effectively seal the top of the well between the surface casing and the internal pump column and the suction or discharge (c)dispose of all return or waste water by means other than return to the well (d) extend the well casing to a point not less than twenty centimetres above the elevation of the finished pump house or pumped pit floor (e) use either welded or screw type well joints on the casing if made of metal (f) dispose of effluents or drainage from any household, stable factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or ground water and (g) carry out such other work as the Authority may by order direct from time to time for the prevention of contamination or pollution.

3. Is permission required to discharge effluents? What are the criteria used for considering applications and granting permits?

A permit is required for the discharge of a pollutant into any water resources, Article 36(c), see also Article 143.

Every person abstracting ground water by means of a well shall, in order to prevent contamination or pollution of water (f) dispose of effluents or drainage from any household, stable factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or ground water, Fourth Schedule, Article 15(f).

It shall be the duty of a licensee receiving trade effluent into its sewerage system to ensure that it has in place measure for the receipt and handling of the effluent without causing (a) pollution of the environment (b) harm to health (c) damage to the sewerage system; or a contravention of applicable laws or standards set by the Regulatory Board, Article 108((1)(a)(b)(c)(d).

A person shall not discharge any trade effluent from any trade premises into the sewer of a licensee without the consent of the licensee. While an application for consent shall be made to the license and shall state (a) the nature or composition of the trade effluent (b) the maximum quantity of the effluent which it proposes to discharge on any one day (c) the highest rate at which it is proposed to discharge the effluent (d) any other information required by the licensee, Article 108(2)(3).

Moreover, the licensee's consent may be given subject to conditions, including conditions requiring pre-treatment and payments to the licensee of charges for the discharge. And, any person who is dissatisfied with the decision of the licensee on an application may within thirty days of the decision, appeal to the Regulatory Board, Article 108 (4)(5).

For the purposes of the Act, "trade effluent" means any liquid, whether with or without suspended particles, produced as a by-product in the course of any trade or industry, Article 108 (7).

No person shall discharge any effluent from sewage treatment works, industry or other point sources into the aquatic environment without a valid effluent discharge license issued in accordance with the provision of the Act, section 6(a) 2006 Water Quality Regulations.

An application for an effluent discharge license under the Act shall be in Form A of the Seventh Schedule and accompanied by the prescribed fee as set out in Eleventh Schedule of these Regulations. See Section 16(1), 2006 Water Quality Regulations.

4. Can waste discharge permits be lost/suspended/modified during their lifespan? Under what circumstances? Is compensation payable?

An effluent discharge license issued under the Act shall be valid for such period of time as may be determined by the Authority. Section 17(1), 2006 Water Quality Regulations.

An effluent discharge license under the Act shall not be transferable. See Section 18, 2006 Water Quality Regulations.

5. Are instances of pollution of water sources subject to penalties / fines? Which institution is in charge of the administration of the penalties?

The cabinet secretary may make Regulations with respect to any matter for the giving effect to this Act. And regulation made under this section may create offences in respect to any contravention of the Regulations and may for any such offence impose penalties not exceeding one million shillings or imprisonment not exceeding two years, or both, Section 142(1)(3).

A person who commits an offence under this Act, or under any Regulations or made under this Act, shall if no other penalty is prescribed in respect of the offence, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or both, Section 147.

A person who neglects or fails to comply with any order or requirement given or imposed of him or under this schedule (abstraction of ground water) shall be guilty of an offence and liable on conviction to a penalty not exceeding one hundred thousand shillings. See Fourth Schedule, section 18(1).

Any person who contravenes any of these Regulations commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings. In addition, the court may give such other orders as provided for by the Act. See Regulations 27(1)(2), 2006 Water Quality Regulations.

D. Affordability

1. How does the law address affordability of water supply and sanitation services?

In making the application for obtaining license, the applicant shall be required to submit the particulars of the applicant's business plans for the provision of efficient, affordable and sustainable water services. See Section 86(2)(d).

The application shall not be granted unless the Regulatory Board is satisfied that the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable water service. See Section, 86(5)(c).

2. What mechanisms must be established by law to ensure affordability of water and sanitation services?

Our research did not find information in this regard.

3. How are tariffs established under law and what is the process for updating these tariffs?

The powers and functions of the Regulatory Board shall include: to evaluate and recommend water and sewerage tariffs to the Country water services provider and approve the imposition of such tariffs in line with consumer protection standards. See Section 72(1)(b).

4. **Does the tariff vary depending on the regions/circumstances?**

Our research did not find information in this regard.

5. **Which actor is responsible for and involved in setting and/or approving tariffs for water supply and sanitation services?**

The powers and functions of the Regulatory Board shall include: to evaluate and recommend water and sewerage tariffs to the Country water services provides and approve the imposition of such tariffs in line with consumer protection standards. See Section 72(1)(b).

A county Government shall take into consideration the requirement relating to tariffs gazetted by the Regulatory Board while imposing tariff. See Section 158 (b).

6. **Does the law allow disconnection from water supply and sanitation services for non-payment? What procedures must be followed in such cases prior to disconnecting the supply and service?**

Our research did not find information in this regard.

E. Acceptability

1. **Is there provision in the law or contracts with service providers that relate to the need to take into account cultural and social dimensions of acceptability (e.g. colour or odour of water, or the positioning of a facility)?**

Our research did not find information in this regard.

2. **Is there provision in the law or contracts with service providers that relate to the need to ensure dignity and privacy (e.g.in work places, but also in the design of shared sanitation facilities for certain communities)?**

Our research did not find information in this regard.

F. Non-discrimination, equality and universal access

1. **Is there any legislation about the prohibition of direct and indirect discrimination (on all grounds) and promotion of equality in accessing water and sanitation services?**

There is established a water sector financing institution to be known as the Water Sector Trust Fund. The object of the Fund is to provide conditional and unconditional grants to Counties, in addition to Equalisation Fund and to assist on financing the development and management of water services in marginalised areas or any area which is considered by the Board of Trustees to be underserved including (a) community level initiatives for the sustainable management of water resources (b) development of water services in rural areas considered not to be commercially viable for provision of water services by licensees (c) development of water services in the under-served poor urban areas and (d) research activities in the area of water resources management and water services, sewerage and sanitation. See Section 114(a)(b)(c)(d).

2. **Are there any specific provisions that address that seek to ensure (physical) access to water and sanitation services for persons with disability, children or the elderly?**

Our research did not find information in this regard.

G. Right to information:

1. **Is there any specific legislation about the right to seek, receive and impart information held by public authorities? Does the law expressly set out the right to seek, receive and impart information on water related issues?**

The Regulatory Board shall establish a national monitoring and georeferenced

information system on water resources.

For the purposes of the information systems, the Regulatory Board may by order, require any person within a reasonable time or on a regular basis, to provide it with information, documents, samples or materials.

The cabinet secretary may make Regulations to facilitate access to information by the public. The Regulation may specify requirement and the nature of information for the keeping of records and the furnishing of information to the Regulatory Board. A member of the public shall have access to the information contained in any national information system, subject to any law relating to access to information and upon payment of the prescribed fees. See Section 111(1)(2)(3)(4)(5).

The Authority shall have the powers to collect, analyse and disseminate information on water resources, section 13(1)(2)(b).

The Authority shall ensure that there is in place a national monitoring and geo referenced information system on water resources.

The Authority may require any person, within a reasonable time or on a regular basis, to provide it with specified information, document, sample or material in relation to the said national information system.

A member of the public on payment of prescribed fee shall have access to any specific information contained in any national information system and supplied with a copy of any document contained in the information system which is accessible to the public. See Section 21(1)(2)(3)(a)(b).

The powers and functions of the basin water resources committee shall be to advise the Authority and the County government concerning collection of data, analysing and managing the information system of water resources; information sharing between the basin area and the Authority. See Section 27(e)(i).

The function and powers of the Water Storage Authority shall include, to collect and provide information for the formulation by the Cabinet Secretary of the national

water resources and flood control strategies. See Section 32(1)(c).

The Authority shall establish and maintain a register of permits and the register shall contain the details of the permit holders, the respective terms and conditions of each permit and the results of any monitoring and enforcement action taken by the Authority in respect to each permit. The public may access the information contained in the register on payment of the prescribed fee. See Section 54(1)(3).

The powers and functions of the Board of Trustees shall be to maintain and make public available information on the projects financed and impact of such projects. See Section 116(1)(f).

2. **Does the right to information require the payment of a fee? Is there a provision on the affordability of such fee?**

Yes.

The Authority shall establish and maintain a register of permits and the register shall contain the details of the permit holders, the respective terms and conditions of each permit and the results of any monitoring and enforcement action taken by the Authority in respect to each permit. The public may access the information contained in the register on payment of the prescribed fee. See Section 54(1)(3).

Subject to any law relating to access to information and upon payment of a prescribed fee, a member of the public shall have access to information contained in any national information system. See Section 111 (5).

Subject to Article 35 of the Constitution, a member of the public on payment of the prescribed fee shall have access to any specific information contained in any national information system; and be supplied with a copy of any document contained in the information system which is accessible to the public. See Section 21(3)(a)(b).

The Regulatory Board shall maintain the register of all licensed services providers. The register of the licensed person shall be a

public document accessible for inspection at no charge and shall be published, placed or posted in accessible formats as such places as the Regulatory Board shall determine. See Section 75(1)(2).

A requirement imposed by or under this Act for a person in this section referred to as the designated person to undertake public consultation in relation to any application made or action proposed to be taken under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action. The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action which are in the possession of the designated person. See Section 139(1) (4).

3. Are there any exceptions with regard to who or what type of water and environment related information held by public authorities can be accessed?

A person constructing a well or owner or occupier of the land on which construction take place may give notice to the Authority requesting that any copy of or extract from, the record required to be kept under this Act; or any specimen taken or any other particulars connected with the well, be treated confidentially, Fourth Schedule, Section 6(1)(a)(b).

4. Which institutions are required by law to make information on water public? Does the law reference only the right to access information or also the obligation to make public such information on water related issues (e.g., are institutions obligated to provide information only upon demand, or are they obligated to publish or make available information at certain periodic intervals, on the occurrence of certain circumstances, etc.)?

The Cabinet Secretary may make Regulations to facilitate the access to information by the public. See Section 111(3).

Within three months after the end of each financial year, the regulatory Board shall

prepare an annual report of its work and activities and shall cause the report to be published and publicised. See Section 112.

The cabinet secretary may make Regulations with respect to any matter for the giving effect to this Act. Such regulation may make provision with respect to information to be made available to the public. See Section 142(1)(2)(g).

The Authority shall have powers to collect, analyse and disseminate information on water resources. See Section 13(1)(2)(b).

The Authority shall ensure that there is a national monitoring and geo referenced information system on water resources. On payment of the specified prescribed fee shall have access to any specific information contained in any national information system and be supplied with a copy of any document contained in the information system which is accessible to the public. See Section 21(1)(3)(a)(b).

The powers and functions of the basin water resources committee shall be to advise the Authority and the County government concerning collection of data, analysing and managing the information system of water resources; information sharing between the basin area and the Authority. See Section 27(e)(i).

The function and powers of the Water Storage Authority shall include, to collect and provide information for the formulation by the Cabinet Secretary of the national water resources and flood control strategies. See Section 32(1)(c).

The powers and functions of the Board of Trustees shall be to maintain and make public available information on the projects financed and impact of such projects. See Section 116(1)(f).

The Regulatory Board shall maintain the register of all licensed services providers. The register of the licensed person shall be a public document accessible for inspection at no charge and shall be published, placed or posted in accessible formats as such places as the Regulatory Board shall determine. See Section 75(1)(2).

5. **What are the requirements listed in the law in relation to the language, locations, format, timing and means used for providing water related information to the public? How does the law ensure that information is made available to all including to minorities?**

Our research did not find information in this regard.

6. **Are there any legal provisions requiring certain authorities to educate the population on water related issues?**

Our research did not find information in this regard.

7. **Are the legal requirements concerning informing the population about regulations, restrictions, prohibitions and discontinuations in water services? Does the law require that information be made available about the existence of complaint mechanisms for water supply and sanitation services to users of such services?**

Our research did not find information in this regard.

8. **Are there any requirements in relation to access to information in contracts with water and sanitation operators?**

The Cabinet Secretary will publish, in consultation with the county and public-sector institutions, a plan of transfer, assets, liabilities and contracts.

See Section 152(4) 2016 Kenyan Water Act.

H. Public participation

1. **Is there a law which addresses public participation?**

I have outlined instances where the national water law provide for public participation. For instance, the Cabinet Secretary shall, within one year of the commencement of this Act and every five years thereafter, following public participation, formulate a National Water Resources Strategy. See Section 10(1).

An application for a permit shall be the subject of public consultation. Section 40(4) The (water) charges shall be determined by reference to a schedule of charges published in the Gazette by the Authority following public consultation. See Section 42(2).

Where in the opinion of the Authority, it is desirable that water use in respect of one or more water resources, including ground water, within a specific geographic area be rationalised or reviewed. The proposed allocation schedule shall be subjected to public consultation. See Section 47(1)(3).

A permit holder may request the Authority to vary permit issues under the Act. However, a variation relating to the use of water authorised by permit; or a term or condition or a prescribed kind, shall not be made without public consultation. See Section 51(1)(2)(a)(b).

The Cabinet Secretary shall, within one year of the commencement of this Act and every five years thereafter, following public participation, formulate a water Services Strategy. See Section 64(1).

The powers and functions of the Regulatory Board, includes to report annually to the public on issues of water supply and sewages services and the performance or relevant sectors and publish the report in the Gazette. See Section 72(1)(m).

Prior to determination of the application for water service provider license, the Regulatory Board shall publicise the application and shall take into consideration the views of stakeholders, ..., Section 74(1)(2).

An application for water services provider license shall be subject to public participation. See Section 87(1).

The Regulatory Board, on the application of a license, vary the terms and conditions of the license. Except as otherwise provided by Regulations made under this Act, no such variation shall be made without prior public consultation. See Section 95(1)(2).

There is established a water sector financing institution to be known as the Water Sector Trust Fund. The powers and the function if the Fund shall be exercised and performed

under the direction of a Board of Trustee. The Board of Trustees of the fund shall, following public consultation, gazette the criteria for qualification for funding from the funding taking account of consideration of equity and may from to time following public consultation review the criteria. See Section 113,114, 115, 116, (1)(3).

As a contribution to the Water Sector Trust Fund, The Cabinet Secretary may, by Regulations following public consultations prescribe a levy to be paid by consumers of piped water supplied by licensed water services providers. See Section 117(2).

A requirement imposed by or under this Act for a person in this section referred to as the designated person to undertake public consultation in relation to any application made or action proposed to be taken under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action. The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action which are in the possession if the designated person. See Section 139(1)(4).

2. **What are the criteria listed in the law in relation to participation in water-related issues (e.g. allocated time to provide comments, invitation to public hearings, etc.)?**

General procedure and criteria on public participation can be outlined as follows: A requirement imposed by or under this Act for a person in this section referred to as the designated person to undertake public consultation in relation to any application made or action proposed to be taken under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action.

The designated person shall publish a notice, in relation to the application or proposed action. The notice shall invite written comments on or objections to the application or proposed action; specify the person or body to which any such comments

are to be submitted; and specify a date not earlier than thirty days after publication of the notice by which any such comments are required to be received.

See Section 139(1)(2)(c)(d)(e) 2016 Kenyan Water Act.

3. **Do the contracts between governmental authorities and operators of water and sanitation services impose upon the operators an obligation to ensure or provide for public participation at any levels at which the applicable services are delivered?**

Our research did not find information in this regard.

4. **Is the establishment of regional or local associations or other groupings of water users provided for and regulated by laws or regulations? How do they interact with or connect into other agencies or regulators?**

Primarily, the (water) Authority has the duty to coordinate with other regional, national and international bodies for the better regulation of the management and use of water resources. See Section 12(h), 2016 Kenyan Water Act.

The basin water resources committee, on the other hand, advises the Authority and County government, at the respective regional office concerning facilitation of the establishment and operations of the water resource user associations. See Section 27 (g).

Water resource user association may be established as associations of water resource users at the sub-basin level in accordance with Regulations prescribed by the Authority. See Section 29(1)(2).

The basin area water resources management strategy facilitates the establishment and operation of water resources users' association. While The basin water resources committees may contract water resources as agents to perform certain duties in water resources management. See Section 29(3)(4).

I. Sustainability

1. How does legislation ensure that water and sanitation services are delivered in a sustainable manner, considering the availability of water resources, competing demands and generally the needs of present and future generations?

According to the Water Act, the basin area water resources management strategy describes the measures to be put in place for the sustainable management of water resources of the basin area. See Section 28(3)(c).

In certain instances the water authority is empowered to rationalised or reviewed water use in respect of one or more water resources, including ground water, within a specific geographic area so as to achieve a sustainable allocation of water from a water resources which is under stress; achieve equity in allocation; promote beneficial use of water in the public interest and facilitate efficient management of water resources. See Section 47(1)(a)(b)(c)(d).

2. How does the legislation ensure that delivery of water and sanitation services are economically sustainable, with sufficient expenditure for operation and maintenance?

The Water Act provides several ways to ensure these. For instance, an applicant for the license for water services are required to submit business plans for the provision of efficient, affordable and sustainable water services. See Section 86(1)(2)(d).

An application for a water service license will not be granted unless the applicant has presented a sound plan for provision of an efficient affordable and sustainable water service. See Section 86(5)(c).

There is also the establishment of the Water Sector Trust Fund to provide conditional and unconditional grants for counties, in addition to the Equalisation Fund and to assist in financing the development and management of water services in marginalised areas or any area which is considered by the Board of Trustees to be underserved including community level initiatives for the sustainable management of water resources. See Section 113(1); 114(a).

Finally, the Board of Trustees are empowered to establish and manage subsidiary funds as may be necessary for sustainable financing towards water services and water resources management. See Section 116(1)(h).

CHAPTER 5. JUDICIARY SYSTEM

A. Preliminary questions

1. What is the relationship between international law and national law (i.e. is the state a monist or dualist system--how is international law interpreted in relation with domestic law)?

One of the changes by the new constitution is the recognition of international law as part of domestic laws of Kenya. See Constitution Section 2(5), indicating a shift from the former dualist approach. The exact application of the section is ambiguous. Hence, there is need to wait for judicial interpretation.

The case of international agreements is clear. They apply as part of Kenya's domestic law provided they have been ratified. See Sections 2(6).

The National Executive is responsible for initiating the treaty-making process and ratifying treaties. However, the Cabinet and the Parliament must approve all treaties before their ratification. See Section 3(2), 4(1), 12(1), 2012 Treaty Making and Ratification Act.

Once an international agreement is ratified, it binds Kenya in relation to other state signatories, and its provisions become authoritative law within the country.

2. What is the hierarchical structure of the legal system?

The Supreme Court is the highest Court in Kenya, all other courts are subordinate to it. It is the final arbiter and interpreter of the Constitution of Kenya. It has exclusive original jurisdiction to hear matters pertaining to the elections of the president. It also has appellate jurisdiction to hear appeals from the Court of Appeal. See Section 193, 140 of the Constitution.

The Court of Appeal has jurisdiction over appeal cases from the High Court as well as any other tribunal provided for by law. See Section 164.

The High Court has supervisory jurisdiction over all subordinate courts on all criminal and civil

matters and all administrative bodies. See Section 165.

The Constitution has established also the Industrial Court (dealing with labour and employment matters) and the Land & Environmental Courts dealing with environmental matters as well as appeals from tribunals dealing in land and environmental matters, at the level of the High Court.

The Magistrate Court is the court of first instances and has jurisdiction over criminal and civil proceedings. See Section 169.

The Kadhis Court is limited to the determination of questions of Muslim Law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhis's courts. See Section 170.

Has the State ratified the relevant international conventions establishing regional or international complaint mechanisms?

Kenya has ratified relevant international conventions establishing seven out of the eight complaint mechanisms of the UN human rights bodies. The UN treaty bodies, which are responsible for the individual complaints, are not courts of human rights. They cannot give enforceable judgements. However, their views guide States and they are used as an aid for interpretation of national law in other procedures.

Recognized UN-complaint mechanisms:

Kenya has ratified the International Covenant on Civil and Political Rights (ICCPR), which is monitored by the Human Rights Committee (CCPR). The Committee also monitors optional protocols to the convention (ICCPR-OP1 and ICCPR-OP2).

Kenya has ratified Convention on the Elimination of All Forms of Discrimination against Women, which is monitored by The Committee on Elimination of the Discrimination against Women (CEDAW). The Committee also monitors the

optional protocol to the convention (OP-CEDAW).

Kenya has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, which is monitored by the Committee against Torture (CAT) monitories compliance with CAT.

Kenya has ratified the International Convention on the Elimination of all forms of racial discrimination (ICERD), which is monitored by the Committee on the Elimination of Racial Discrimination (CERD).

Kenya has ratified International Convention on the Rights of Persons with Disabilities (ICRPD), which is monitored by the Committee on the Rights of Persons with Disabilities (CRPD). The Committee also monitors optional protocol to the convention (OP-CRPD).

Kenya has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is monitored by the Committee on Economic, Social and Cultural Rights (CESCR). The Committee also monitors optional protocol to the convention (ICESCR-OP).

Kenya has ratified the Convention on the Rights of the Child, which is monitored by the Committee on the Right of the Child (CRC). The Committee also monitors the optional protocols to the convention (OP-CRC-SC, PO-CRC-SC & OP-CRC-IC).

Lastly, Kenya has not ratified the International Convention for the Protection of all Persons from Enforced Disappearance (CPED), which is monitored by the Committee on Enforced Disappearances (CED).

B. Remedies and complaint procedures/accountability

- 1. Are there remedies provided by law to file complaints or other ways of accessing justice in reference to water and sanitation? Who may file them? Are the decisions appealable?**

Following a complaint made to or information received by a county government executive or regulatory Authority, the Regulator Board, may inquire into the matter. After the inquiry, the Regulatory Board may impose a special regulator regime on the water services provider for the purpose of remedying the default. A licensee declared to be in default by order and who fails to comply with the order within the time specified commits an offence. See Section 101(1)(2)(4).

A licensee declared to be in default and is dissatisfied with an order of the Regulatory Board may within thirty days after receipt of the order, appeal to the Tribunal. See Section 101(3).

Water services providers are mandated to establish a mechanism for handling consumer complaints which meets the standards set by the Regulatory Board. See Section 92.

The Water Act also establishes a Water Tribunal which exercises the powers to hear and determine appeals at the instance of any person or institutions directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of them.

The Tribunal also has power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism. See Section 119(1), 121(1)(2).

The Tribunal makes Rules governing its procedures and in determining an appeal, it may affirm, quash or vary the decisions or order. See Section 122, 123.

A person aggrieved by a decision of the Tribunal may appeal to the Land and environmental Court, established under article 162(2) of the Constitution on an issue of law. A decision of the water basin organisation, the Authority, the Regulatory Board and the Tribunal against which no appeal has been preferred shall be binding on all parties. See Section 124, 125.

If a person contravenes any provision under this Act, then, the Authority, the Regulatory Board, the county government or the licensee may by order require the person to remedy the contravention. Where the order has not be complied with, the concerned body or person may take necessary steps to remedy the contravention, and the expenses incurred in doing so shall be recoverable at the instance of the concerned body/ person through an application to the tribunal. A person aggrieved by an order may also appeal to the tribunal. See Section 144(1)(2)(3).

A person who neglects or fails to comply with any order or requirement given or imposed on him by or under this schedule (ground water abstraction) shall be guilty of an offence and liable on conviction to a penalty not exceeding one hundred thousand shillings. Section 18(1).

2. **Are such complaint procedures required to be provided in conformity with human rights principles (such as non-discrimination, equity)?**

Our research did not find information in this regard.

3. **Does the law provide for financial assistance for legal counsel in cases concerning water and sanitation?**

Our research did not find information in this regard.

4. **Who monitors the administrative level bodies and/or service providers?**

The powers and function of the Regulatory Board shall include monitor and regulate licensees and enforce license conditions; monitor compliance with standards including the design, construction, operation and maintenance of the facilities for the provision of water services by the water work development bodies and the water services providers. See Section 72(1)(d)(f).

The Regulatory Board may under a special regulatory regime require the licensee to be

under enhanced monitoring license and reporting. See Section 102(3)(a).

It shall be the duty of every county government to monitor and enforce the applicable regulations made under this Act, and the county government who fails to do so shall be liable to an order of the Regulatory Board to take such action to enforce such regulation as shall be specified in the order. See Section 106(1).

The powers and functions of the Board of the Trustees shall include to monitor the implementation of projects. See Section 116(1)(e).

The Authority shall have power to monitor compliance by water users with the conditions of permits and the requirements of the Act. See Section 13(1)(2)(c).

5. **Is there a possibility to appeal against the decisions of service providers? With whom would such an appeal be lodged, and under which conditions is such an appeal possible?**

see question 1, above

6. **What remedies are available at an administrative level?**

See question 1, above

7. **Are such administrative bodies legally independent entities according to the law?**

Our research did not find information in this regard.

8. **Is there any evidence (e.g., case law) that courts in the country have (or may have) jurisdiction to enforce any economic, social or cultural rights?**

The Constitution expressly provides the role of the courts in upholding and enforcing the bills of rights. It allows an individual or group to approach the court for appropriate remedies in relation to violation of fundamental rights, Sections 20.1, 22, 23(1) (3), 43, 2010 Kenya Constitution.

The Constitution of Kenya embeds international laws into the Kenyan legal system, making the whole contour of the international bill of human rights and other international human rights instruments applicable in Kenya, as well as enabling individuals to seek enforcement of internationally recognised human rights in Kenyan Courts, section 2(5)(6), 2010 Kenya Constitution.

Moreover, the court has ascribed to itself expansive jurisdiction in enforcement of the fundamental rights in environmental rights/matters, as a result of the above provisions of the Constitution. See Patrick Musimba v National Land Commission & 4 ors [2015] eKLR.

9. **Do courts in the country have jurisdiction to hear cases regarding the obligations to respect, protect and fulfil the human rights to water and sanitation? Is there any existing case law?** The obligation to respect, protect and fulfil the human rights to water and sanitation are an intrinsic part of the bill of rights and directly enforceable by the courts. See Sections 20.1, 23.1, 43, 2010 Kenya Constitution. See also response to question 8 above.
10. **Provide a brief overview of the judicial procedure involving a human rights violation case.**
Our research did not find information in this regard.
11. **Is there a Constitutional /Supreme Court? Cases are heard as the last appeal or may cases be referred directly?**
Yes, there is a Supreme Court.
Generally, Cases are heard as the last appeal at the Supreme Court.
12. **Have domestic courts applied international human rights law in past cases or have they referred to decisions from international human rights bodies?**
In Kenya Human Rights Commissions v Communications Authority of Kenya & 4

others (2018) EKLR, which as case of the right of privacy, they referred to the bill of rights as applicable in Kenya, according to article 19 of the Kenyan Consitution.

In Erika Githua Kiarie v Attorney General & 2 Others (2016) EKLR, which a case about right to education, the court referred to the ICESCR and the Universal Declaration of Huma Rights (UDHRs).

In MAO & Another v Attorney General & 4 Others (2015) EKLR, a case on the right to access and affordable health care, the court referred to the African Charter of Human and People's rights (articles 5, 12, 16), ICCPRs (Article 9(1)), ICESCR/CESCR and CEDAW (Article 12).

In Githunguri Residents Association v Cabinet Secretary-Ministry of Education, Attorney General & 5 Others (2015) EKLR, a case on the right to free and compulsory education, the court referred to the UDHR (article 26).

In Gabriel Nyabola v Attorney General & 2 Others (2014) EKLT, a case right to free and Compulsory basic education, the court referred to UDHR and ICESCR.

In Kenya Small Scale Framers Forum & 6 Others v Republic of Kenya & 2 Others (2013) EKLR, a case about public participation the court cited UDHR (article 21) and ICCPR (article 25).

In Satrose Ayuma & 11 Others v Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme & 3 Others, a case about the right to housing, the court referred to the UDHR (Article 25), African Charter of Human and Peoples' Right, CEDAW, CERD, ICESCR (Articles 11, 16), and CESCR (General Comment 4, 7).

13. **Are court proceedings conducted in only one principal language, or are they also conducted in local languages, including minority and indigenous languages? Does the law require that information is made available in local languages?**
Kenya is a multilingual country with over 42 languages, but two official languages. The English language is the official language of the court and provides interpreters for the

litigants who do not speak/understand English Language. (Criminal Procedure Code CAP 75 (1987)).

In practice and in the lower courts, it is either English or Kiswahili, depending on the linguistic setting and the competence of the judicial officers, while interpreters are provided for litigants who do not understand either of the languages. In addition, the law provides that litigants be informed of the charge against them in a language they understand and speak.

14. Have domestic courts applied (or referenced) recommendations of national human rights institutions?

Same as in question 14.

C. National human rights institutions

1. Is there an independent national human rights institution?

Yes. It is called the Kenya Human Rights Commission (KHRC). It is a body corporate registered under the Nongovernmental Organisation Act 1990.

2. Does the mandate of the national human rights institution cover the entire human rights framework, including economic, social and cultural rights?

Yes.

The mandate of KHRC is “enhancing human rights centred governance at all levels”

3. Is the national human rights institution authorized to receive and adjudicate complaints of violations of human right to water and sanitation ?

No

4. Does the national human rights institution have a legal basis or authority to initiate an action to address systemic human rights violations?

Yes

5. What type of remedies does the national human rights institution have the authority to impose?

No

6. Is the institution allowed to initiate investigations/hearings?

No

7. Does the national human rights institution have the authority to monitor how remedies for violations of rights to water and sanitation are implemented by governmental authorities, service providers or other agencies/entities?

No

D. Regulation

1. Is there a water regulator established by law?

There is the Water Services Regulatory Board whose principal objective is to protect the interests and rights of consumers in the provision of water services.

See Section 70(1) 2016 Kenyan Water Act.

Is the water regulator an independent entity?

No. for Instance, the powers and function of the Regulatory Board are exercised under the Board, which consist of a chairperson appointment by the President and four other members appointed by the Cabinet Secretary and the Chief Executive Officer. Section 71(1)(a)(b)(c), 2016 Kenyan Water Act.

2. What are the oversight mechanisms and responsibilities related to drinking water supply and sanitation services of the regulator?

The powers and function of the Regulatory Board includes monitoring and regulating licensees and enforcing license conditions; monitoring compliance with standards - including the design, construction, operation and maintenance of the facilities for the provision of water services by the water work development bodies and the water services providers. See Section 72(1)(d)(f) 2016 Kenyan Water Act .

The Regulatory Board may also under a special regulatory regime require the

licensee to be under enhanced monitoring license and reporting. See Section 102(3)(a) 2016 Kenyan Water Act.

Furthermore, county government monitors and enforces the applicable Regulations made under the Water Act – including rules on drinking water, supply and sanitation.

See Section 106(1), 2016 Kenyan Water Act.