

*A reflection on the development and implications of the
Kenya Environmental Sanitation and Hygiene Policy
2016-2030*

Charles Oyaya, International Development Institute-Africa (IDIA)

1 INTRODUCTION

The Ministry of Health with the support of the World Bank Water and Sanitation Program Africa Region (WSP-AF) initiated and led an elaborate process of developing the Kenya Environmental Sanitation and Hygiene Policy 2016-2030 between February 2014 and May 2016. The objective was to review and align the national environmental sanitation and hygiene policy 2007 and Strategy with the new Constitution of Kenya 2010 and its devolved system of government. The writing of the policy was to take full cognisance of the fact that most sanitation powers and functions were devolved to the new created 47 County Governments vide the Fourth Schedule of the Constitution of Kenya 2010. It was also to take into account both regional and global sanitation commitments and declarations including Ngor Declaration (2015), the Sanitation and Water High Level commitments and the global sustainable development agenda.

2 RATIONALE OF THE POLICY

The development of the policy was set in the context of the fundamental changes brought about by the promulgation of the new Constitution of Kenya 2010. The new Constitution with its devolved system of governance and human rights framework required far reaching

re-alignment of the existing legislative and policy instruments to accord with the new matrix of governance and service delivery. Functionally, the Fourth Schedule Part II Articles 2(c) (d) (f) (g) and 11(a) (b) of the Constitution devolved most sanitation functions and services to the 47 newly established County Governments with the National Government retaining such responsibilities as national policy, public investment, capacity building, technical assistance, national regulation and standards formulation. Under the Bill of Rights, Articles 42 and 43 of Constitution entrenched the right of every person to a clean and healthy environment and reasonable standards of sanitation of which the State was required to take necessary legislative and policy measures including setting of standards to ensure progressive realization of the rights. However, it became evident that many of the newly established county governments were neither aware of the veracity and depth of the sanitation functions, powers and obligations vested in them nor the constitutional requirement for enabling policies and legislation to implement the right to sanitation guaranteed under Article 43 of the Constitution. Thus the focus on sanitation became a much larger challenge than originally thought.

The policy was further expected to address the diverse societal, structural and systemic bottlenecks to achieving universal coverage of improved sanitation. Some of the bottlenecks included negative cultural beliefs and practices, low prioritization of sanitation in national development agenda, low public investment in sanitation, institutional fragmentation, inadequate multi-sectoral coordination mechanisms, inadequate information management system to support evidence based decision making, and insufficient human resource capacity among others.

3 HOW WAS THE POLICY WRITTEN?

The process of developing the Kenya Environmental Sanitation and Hygiene Policy 2016-2030 was elaborate going through several steps in which various stakeholders from national government ministries, departments and agencies, and the Council of Governors , county government officials, civil society organizations, community and user groups, development partners, private sector including formal and informal service providers, academia, and the association of public health professionals made contributions. The policy formulation process was government led through the Ministry of Health. The Ministry of Health with support of the World Bank contracted a team of Consultants to work with the Environmental Health and Sanitation Inter-Agency Coordinating Committee Technical Working Group to facilitate the policy development process. Clear terms of reference with time-bound deliverables were developed for the consultants.

3.1 Enabling Factors

The promulgation of the Constitution of Kenya in August 2010, the establishment of the devolved system of government in 2013 and the failure of Kenya to achieve the MDGs 2015 targets provided unique window of opportunity to review and enact enabling policies and legislation to support the acceleration of access to improved sanitation in the post MDG sustainable development era. At the same time, there was real possibility of losing or reversing the gains so far made if there was no new invigorated effort and framework for managing transition to the new devolved system of service delivery and post MDG era. Moving the responsibility for sanitation to the counties meant that policy and strategy needed to be revised, and likewise capacity had to be redistributed and strengthened in each of the 47 counties.

The Ministry of Health was therefore particularly concerned that without new sector policies, strategies and national legislation, a major bottleneck for progress in the sanitation sector would be created and there would be a strong likelihood that some county governments would, at best, develop their own programmatic activities and approaches not aligned with the overall national priorities and commitments and, at worst, neglect sanitation altogether in their programming and resource allocation.

3.2 Stakeholder Involvement

The Kenya Environmental Sanitation and Hygiene Policy 2016-2030 was an outcome of a highly participatory and consultative process. The process involved vibrant and committed engagements of various stakeholders throughout the country. The key players in the process included:

- Members of all the ESH-ICC 12 Technical Working Groups (TWGs) of the ESH-ICC;
- All the relevant National Government Ministries, Departments and Agencies (MDAs) including Ministry of Water and Irrigation, Ministry of Environment and Natural Resources, the National Environmental Management Authority (NEMA), Water Services Regulatory Board, and Water Services Trust Fund (WSTF), Public Health Officers and Technician Council;
- All the 47 County Government Health, Water, Environment, Physical Planning and Urban Development Departments;
- Water Service Boards and Utilities;

- National and local civil society organizations including Kenya Water for Health Organization (KWAHO), AMREF Health Africa, WASH Alliance Kenya, SNV, WASH United, Water and Sanitation for the Urban Poor (WSUP), PS Kenya, FHI 360, Plan International, Kenya Red Cross, World Vision, Association of Public Health Officers of Kenya (APHOK); and
- Private sector stakeholders such as Sanergy, SIL Africa, financial institutions etc.;
- Universities and research institutions such as KEMRI;
- International development partners including World Bank, UNICEF, USAID and Water Supply and Sanitation Collaborative Council (WSSCC) among other stakeholders.

3.3 Steps in the development of the policy

The development of the Kenya Environmental Sanitation and Hygiene Policy went through an elaborate ten step process based on multi-stakeholder participation and consensus building model outlined in Figure 1 below and described hereinafter.

4 WHAT ARE THE KEY IMPLICATIONS OF THE POLICY?

The Kenya Environmental Sanitation and Hygiene Policy 2016-2030 is an inclusive framework policy that provides guidance and reference to both public and private sector actors on sanitation and hygiene matters at all levels of governance, regulation and service delivery. The policy commits the Government at national, county and local levels to pursue a robust strategy that will enable all Kenyans to enjoy their rights to sanitation and a clean and healthy environment. The policy therefore advocates for an inclusive, integrated, multi-sectoral and multi-level delivery strategy to ensure access to adequate, equitable, improved and safe sanitation for all. To this end, the policy pitches for increased public and private sector investment through public-private partnerships, international partnerships, national and county government exchequer allocations, community and individual spending.

To operationalize the Policy, two key strategy documents were prepared and launched including the Kenya Environmental Sanitation and Hygiene Strategic Framework (KESHFSF) 2016-2020; and the Kenya ODF Campaign Roadmap 2020. The policy recognized that there are many institutions and stakeholders involved in promoting and implementing sanitation and hygiene activities at different levels of the service chain. These include government ministries, departments and agencies, public utilities, private sector, NGOs, development partners, communities, households and citizens. The policy therefore sought to articulate and clarify the

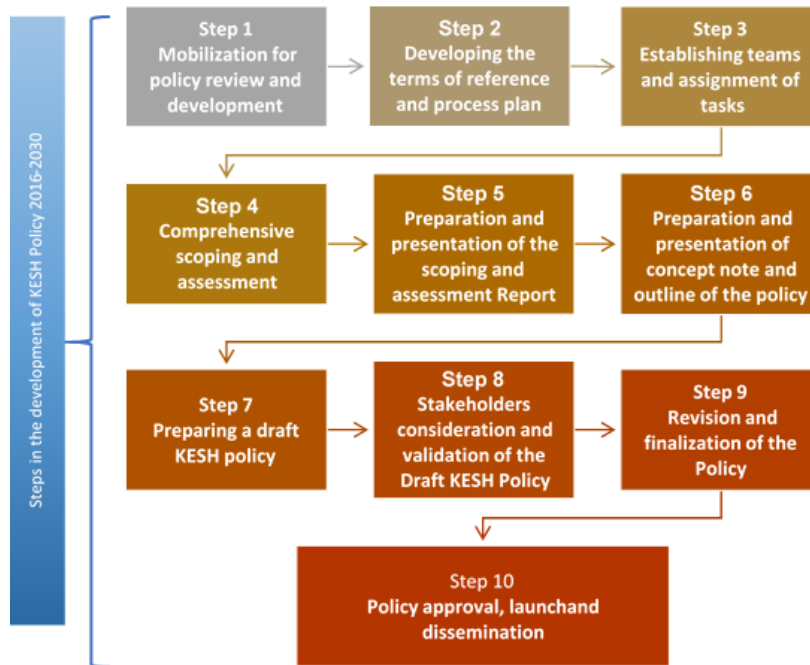


Figure 1: Kenya Environmental Sanitation and Hygiene Policy development Process

roles and responsibilities of the many stakeholders and agencies involved in the sanitation sector at various levels.

However, against the backdrop of institutional, legal and regulatory fragmentation and financing bottlenecks that characterize the sanitation landscape, and in order to galvanise the political leadership to accelerate sanitation investment towards the 2030 targets and ensure one approach adhered to by government, partners and stakeholders at all levels, the policy proposed sector reform and action agenda including the following:

- Enactment of enabling national environmental health and sanitation legislation
- Establishment of one regulatory framework for sanitation under a National Environmental Sanitation Coordination and Regulatory Authority (NESCRA)
- Establishment of multisectoral, multi-agency and intergovernmental coordination mechanisms at national and county levels

- Establishment of National Sanitation Fund (NASF) and county sanitation funds to ensure sustainable sanitation financing
- Enactment of enabling county environmental health and sanitation legislation in each county jurisdiction based on the Prototype County Environmental Health and Sanitation Bill published along side the KESH Policy;
- Development and implementation county and urban environmental sanitation and hygiene strategic and investment plans (CESHSIPs) in all the 47 counties
- Establishment of one M&E framework to ensure multi-level tracking, monitoring and evaluation of performance and ensuring accountability among different stakeholders for policy outcomes and impacts.

The overall implication of the KESH Policy was, and still remains to usher in a paradigm shift in conducting ‘sanitation business’ not just in terms of its expanded scope as a constitutional function, a human right and a basic service but more importantly, as a shared constitutional and international obligation. The KESH Policy therefore established a solid foundation for wide ranging interventions across sectors to accelerate the scale up of safe sanitation and hygiene towards universal coverage by 2030.