

# Legislative and Institutional Summary of Sanitation in Kisumu, Kenya

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## ACRONYMS

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BOOT	-	Build Own Operate Transfer
CLTS	-	Community Led Total Sanitation
CPWD	-	County Public Works Department
ESH	-	Environmental Sanitation & Health
KeBS	-	Kenya Bureau of Standards
KNBS	-	Kenya National Bureau of Standards
LVSWSB	-	Lake Victoria South Water Services Board
MPHS	-	Ministry of Public Health and Sanitation
MWI	-	Ministry of Water and Irrigation
NEMA	-	National Environmental Management Authority
NESCRA	-	National Environmental Sanitation Coordinating and Regulatory Authority
WASREB	-	Water Services Regulatory Board
WRMA	-	Water Resource Management Authority
WRUA	-	Water Resources Users Associations
WSB	-	Water Service Board
WSS	-	Water, Sewerage and Sanitation
WSTF	-	Water Services Trust Fund

## **1 INTRODUCTION**

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The Constitution of Kenya and various legislative instruments such as the County Government Act 2012, the National Government Coordination Act 2013 and the Cities and Urban Areas Act 2011 have distributed and assigned sanitation and related functions to the national and county governments and to decentralized units at different levels of the governance and service delivery system. The functional and organizational assignment of sanitation functions and responsibilities extends from the individual to the national level.

Kisumu is Kenya's third largest city with an estimated population of 259,258 (Census 2009) with approximately 60% of the population living in informal settlements (UN-Habitat 2005). According to the Kenya National Bureau of Statistics (KNBS), this population is projected to reach 491,893 by 2017.

In 2015, 4.9 billion people globally used an improved sanitation facility; 2.4 billion did not (UN 2016). Among those lacking adequate sanitation were 946 million people without any facilities at all, who continued to practice open defecation. In 2015, 68% of the global population used improved sanitation facilities compared to 59% in 2000 (UN-Habitat 2015). Nevertheless, the unsafe management of faecal waste and wastewater continues to present a major risk to public health and the environment. However, as of 2011, a significant part of the population living in slums and informal settlements (estimated at 60% in Kisumu County) has no access to clean water and sanitation (UN-Habitat 2015). The people often use water from unimproved sources such as shallow wells, rivers, streams, ponds and drainage ditches—with their attendant health and safety risks. Even those who have access to improved water supply infrastructure do not necessarily receive adequate service (LVSWSB 2008).

Kisumu residents have access to sanitation, though it is not adequate. Sewer coverage in Kisumu is less than 10% (Millennium Cities Initiative 2010). Currently the majority of people in Kisumu's informal settlements use pit latrines as their main sanitation facility. Once the pits are full, landlords generally utilise the services of manual pit emptiers for emptying (research completed in 2016 indicated that 73% of the landlords use manual pit emptiers while only 6% used exhausters (vacuum tanker operators) for pit emptying).

## **2 OBJECTIVE**

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The purpose of this exercise is to identify and summarise the current national and county level sanitation situation in Kenya. This document will inform WSUP's ongoing work in cities such as Kisumu, and will be used a basis for further analysis of Kenya's sanitation legislation and institutional responsibilities and mandates.

### **3 NATIONAL LEGISLATION ON SANITATION**

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Article 43(b) of the Constitution of Kenya (2010) declares sanitation to be a basic human right and guarantees the right of every person to *'reasonable standards of sanitation.'* Article 42 also guarantees every person the right to a clean and healthy environment. The Constitution, therefore, confers the state with the obligation to prioritise ensuring the widest possible enjoyment of these rights.

The National Environmental Sanitation & Hygiene Policy 2016-2030 was launched recently. The Policy includes a number of positive changes from the previous situation as it:

- Explicitly embraces responsibility for urban sanitation and hygiene
- Recognizes private sector involvement in environmental sanitation and hygiene services as critical
- Acknowledges sustainable, appropriate and affordable technology options as key drivers to access
- Emphasises increasing public and private sector investment through public-private partnerships.

In Article 21(2), the state is also required to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43. In applying the right to sanitation as guaranteed under Article 43(1), the state is expected to take every measure to ensure that resources are made available to ensure the widest possible enjoyment of the right to sanitation.

Kenya Vision 2030 is the country's long term national development blueprint. On sanitation, Kenya Vision 2030 stipulates that every Kenyan should have access to clean, safe water and improved sanitation by the year 2030. In the medium term (2017), the goal is to attain 70% and 65% access to safe sanitation in urban and rural areas respectively, of which 40% and 10% are to have sewerage access respectively.

The Fourth Schedule of Kenya's Constitution devolves most sanitation functions and services to the 47 county governments, with the national government retaining responsibility for national policy, training, capacity building technical assistance and standards formulation. County governments are responsible for county sanitation services including licensing and control of bodies that sell food to the public, refuse removal, refuse dumps, solid waste disposal and storm water management in built-up areas.

### **4 NATIONAL INSTITUTIONS AND THEIR ROLES IN SANITATION**

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The Constitution and legislation such as the County Government Act 2012, the National Government Coordination Act 2013 and the Cities and Urban Areas Act 2011 have distributed and assigned sanitation and related functions to the national and county governments and to the decentralized units at different levels of the governance and service delivery system. The functional and organizational assignment of these sanitation functions and responsibilities extends across the whole spectrum from individual to national levels.

## 4.1 Principal sanitation public sector institutions

### **The Ministry of Health**

The Ministry of Health is the lead sector agency for environmental sanitation and hygiene affairs in Kenya as stipulated by the Cabinet memo of 24 September 2004, the Public Health Act Chapter 242 and the Foods Drug and Chemical Substances Act Chapter 254, Laws of Kenya. The key roles include:

- Formulation and review of national environmental sanitation policies and strategies
- Contributing to regulation and norms and standard-setting for Environmental Sanitation & Health (ESH)
- Developing and issuing technical guidelines on environmental sanitation services and their management
- Overseeing and coordinating the implementation of national sanitation and hygiene policy, legislation, regulations, guidelines and standards
- Coordination with other government departments on policy, legislation and other sector issues
- Formulation of national legislation including model county legislation and by-laws
- Direction and supervision of the National Environmental Sanitation Coordinating and Regulatory Authority (NESCRA)
- Developing promotional and marketing materials, communication strategies and providing leadership in sanitation marketing campaigns

### **The National Environmental Sanitation Coordination and Regulatory Authority**

Under a new Sanitation Bill that is currently being drafted, the Ministry of Health will be expected to establish a National Environmental Sanitation Coordination and Regulatory Authority (NESCRA). This would be an opportunity to improve the coordination between the actors who provide sanitation services, provided that the risks of overlapping responsibilities with WASREB and other licensing bodies are well managed. The Bill is expected to be introduced to Parliament in late 2017.

Once operational, NESCRA will have a clear Terms of Reference, structure and mandate for supporting environmental sanitation sector in both urban and rural areas. NESCRA will oversee the implementation of ESH policies and strategies relating to the provision of sanitation services, and develop and enforce rules, guidelines and standards that guide the sector, with the aim of coordinating and regulating sanitation services to ensure universal access in line with the Constitution of Kenya and Kenya Vision 2030. Specifically, NESCRA will be responsible for:

- Coordinating policy and ensuring effective communication and cooperation between the many different agencies involved in environmental sanitation, within the context of a coherent national ESH strategy.
- Coordinating, harmonizing, monitoring and evaluating sanitation sector performance.
- Expediting implementation of the national environmental sanitation policy.
- Overseeing the preparation of a national strategy and its related financing plan for investments in sanitation services in accordance with Kenya Vision 2030.
- Overseeing the performance of service delivery and related investments throughout the country.
- Issuing licenses for the provision of environmental sanitation services.
- Monitoring and regulating licensees and to enforce license conditions.
- Determining the standards for the provision of environmental sanitation services.
- Establishing procedures for handling complaints made by customers against licensees.

- Monitoring compliance with established standards for the design, construction, operation and maintenance of sanitation and sewerage facilities.
- Advising licensees on procedures for dealing with complaints from customers and monitoring the operation of procedures.
- Developing guidelines for the fixing of tariffs for the provision of sanitation services.

<b>Summary of roles and responsibilities of other actors in the sanitation sector</b>			
	<b>Institution</b>	<b>Role</b>	<b>Remarks</b>
1	Ministry of Water and Irrigation (MWI)	Water, Sewerage & Sanitation (WSS) policy formulation, resource mobilization, coordination and provision of technical standards for WSS	MWI deals with hardware (water supply and sanitation systems) e.g. water & sewage treatment works, sludge treatment facilities etc.
2	Ministry of Public Health and Sanitation (MPHS)	Policy formulation (sanitation and hygiene), resource mobilization, coordination and enforcement of hygiene and sanitation laws	MPHS deals with software (sanitation and hygiene promotion /education) e.g. Community Led Total Sanitation (CLTS) approach, school WASH programme, cholera management campaigns etc.
3	Water Services Regulatory Board (WASREB) <sup>1</sup>	Provides and enforces regulatory guidelines and quality standards for WSS services provision, licensing the WSBs	Water supply, sewerage services and onsite sanitation
4	Water Resource Management Authority (WRMA)	Protection of water resources from pollution by sanitation activities e.g. effluent/faecal sludge discharge into water resources	Effluent/waste discharge in water resources
5	Water Service Boards (WSBs)	Asset ownership and investment planning in WSS services provision, quality control, establishment of WSPs (Service Provision agreements)	This includes provision of onsite sanitation in schools and rural areas. However, it should be noted that the Counties have contested the New Water Bill and the delegation of this role to WSBs.

<sup>1</sup> Potential for overlaps with NESCRRA will need to be managed



6	Water Services Trust Fund (WSTF)	Pro- poor financing mechanism for water and sanitation including water resources protection (the latter potentially involving Water Resources Users Associations - WRUAs)	Financing rural and urban sanitation and community water resource management
7	National Environmental Management Authority (NEMA)	Enforcement of environmental protection laws (waste water, sludge and solid waste disposal, gas emissions)	Environmental protection from all pollution
8	Kenya Bureau of Standards (KeBS)	National quality standards	Water, effluent, sludge, etc.

## **5 COUNTY LEGISLATION ON SANITATION**

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The Fourth Schedule (Part II) of the Constitution assigns county governments a number of sanitation-related functions and powers. These include refuse removal, refuse dumps and solid waste disposal, licensing and control of undertakings that relates to storm water management systems in built-up areas, and water and sanitation services. The concurrent functions for which the county governments are responsible include: sanitation planning and financing, resource mobilization, public and private partnerships, intergovernmental relations, procurement of sanitation products and technologies, monitoring and evaluation, sanitation, information systems and human resource management and development. Currently, the Kisumu County Government (through support from partners) has initiated the process of domesticating the county prototype policy.

The Constitution also requires county governments to decentralize their functions and the provision of their services to the extent that it is efficient and practicable to do so. Section 48 of the County Government Act 2012 provides that the functions and provision of services of each county government shall be decentralized to the urban areas and cities within the county established in accordance with the Urban Areas and Cities Act (No. 13 of 2011) and the sub-counties equivalent to the constituencies within the county established under Article 89 of the Constitution.

## **6 COUNTY-LEVEL INSTITUTIONS AND THEIR ROLES IN SANITATION SERVICES PROVISION**

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### **County government**

County governments, through their relevant institutions, are expected to take responsibility for various aspects of county-level sanitation functions including planning for environmental sanitation services and securing financial resources for the development of environmental sanitation systems in both rural and urban areas. County governments shall in particular:

- Be responsible for issuing necessary legislation and by-laws to ensure effective sanitation regulations and enforcement
- Ensure the provision of safe, adequate and high standards of environmental sanitation services to all population of the counties without discrimination
- Be responsible for supervision and monitoring of all environmental sanitation projects at sub-county and community levels and facilitate coordination among sub-county and community stakeholders in all ESH-related issues
- Establish, by appropriate legislation, a county government agency with responsibility for actualizing the policy objective of achieving 100% Open Defecation Free (ODF) and access to improved sanitation access by 2030 at the county level
- Develop sanitation programmes for county capitals, including cities and towns in the counties in consultation with all stakeholders
- Provide technical assistance to households for the upgrading of on-site sanitation facilities such as traditional pit latrines and evacuation of septic tanks
- Set sanitation tariffs where applicable, considering affordability and households' willingness to pay for services.

### **Boards of cities and municipalities and town committees**

- a) **Waste management:** Waste management (covering collection and sanitary disposal of wastes - including solid wastes, liquid wastes, excreta, industrial wastes, health-care and other hazardous wastes - storm water drainage, cleansing of thoroughfares, markets and other public spaces) carried out by the respective waste management departments or through established sanitation services utilities within the jurisdictions of the city and municipality boards and town committees. This may be provided either directly or indirectly through private contractors or franchisees but an in-house capacity to provide at least 20% of the services directly should be maintained.
- b) **Public health management:** All other environmental sanitation tasks within the city and town jurisdictions, comprising the public health management functions, should be carried out by environmental health and management departments of the city boards and town committees, with private sector input where appropriate.
- c) **Environmental monitoring:** An environmental protection and standards enforcement division/unit within the environmental health and management departments, in collaboration with NEMA, in monitoring and enforcing environmental standards and regulations set by NEMA. This includes enforcing regulations for households to protect the public against the nuisance of overflowing septic tanks or unacceptable latrine construction.
- d) **Provision of works related to environmental sanitation facilities:** At the county level, the County Public Works Department (CPWD) is responsible for the development of sanitation infrastructure and facilities. This is either done directly or indirectly through private contractors or franchisees.

## **7 ROLES OF URBAN WATER AND SANITATION UTILITIES**

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In addition to the urban water and sanitation utilities currently established under the Water Act and other laws, the county governments (through city and municipality boards) are constitutionally empowered to establish sanitation and waste management service utilities to manage sewerage networks, treatment works, and the provision and management of on-site sanitation services including solid waste management. The utilities can engage purely in providing water, sanitation and waste management services to the residents within their jurisdictions. Their functions include:

- Operating, maintaining and repairing sewerage systems
- Extending sewer systems to new areas and customers
- Collecting and managing wastewater tariffs
- Regulating the discharge of septage from septic tanks into the sewerage network or wastewater treatment plants
- Supporting and financing the construction or management of on-site sanitation facilities such as latrines or septic tanks in partnership with private sector partners
- Managing solid waste
- Providing services and facilities for primary separation and removal of solid wastes at household, community, commercial, industrial and public levels
- Promoting the principle of reduce, reuse and recycle of waste management

To ensure maximum coverage, the city and municipality boards are also expected to encourage, enable, and permit private sector entities to build, operate and manage treatment works, solid waste management services, waste recycling and to manage on-site sanitation services.

## **8 PROCESSES AND REQUIREMENTS FOR SANITATION BUSINESSES**

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### **8.1 Role of the private sector**

The ESH policy mandates that private sector operators can be established to deliver services within the policies, regulations, supervisory and licensing arrangements set up by the public sector in order to promote efficiency and competitiveness, and their engagement should abide by the laws of Kenya. It is proposed under the ESH policy that, where possible, environmental sanitation services can be provided by the private sector on a full cost recovery basis, under franchise, license, and concession agreements or through contracting. Their functions can include:

- Carrying out sanitation marketing and campaigns
- Operating and maintaining all sanitation facilities
- Providing and managing vacuum tankers and safe sludge handling and transport from onsite sanitation systems on a fully commercial basis subject to licensing and the setting of maximum tariffs by the county government

- Providing solid and liquid waste collection from individual institutional or domestic customers, subject to the supervision and setting of maximum tariffs by the county government
- Providing and managing sludge and waste treatment, recycling and disposal facilities, transfer stations and bulk waste transfer to disposal under contract, franchise, build, own operate and transfer (BOOT or other arrangements)
- Leasing equipment and providing maintenance/workshop services
- Operating and maintaining sewage collection and treatment systems by contract, franchise or concession, supervised by county governments and boards of cities and towns.

## **8.2 Requirements for licensing**

### **Vacuum Tanker Operators**

The licensing regime is not well regulated and structured at county level due to the number of institutions involved in processing business licenses.

As established under the Environment Management and Coordination Act, NEMA is the principle instrument of government that implements all policies related to the environment. NEMA is responsible for providing waste handling certification which includes waste transportation and collection, and for issuing waste processing certificates which includes waste collection, waste sorting and waste reductions, waste recycling and reuse. These certificates require an Environmental Impact Assessment which takes a minimum of three months for approval.

When (and if) NESCR is established, operators will be required to obtain a license from them for the provision of environmental sanitation services. There has been no licensing system for manual operators and they have operated informally.

In Kisumu, licensing of exhausters (vacuum tanker operators) is done by KIWASCO under the following set conditions:

- The operator must possess a certificate of registration by Registrar General of Societies and a single business permit issued by the county government
- Business inspection i.e. exhausters are inspected by the Technical Manager from KIWASCO
- Submission of such annual returns as may be required by KIWASCO which must include the number loads exhausted and the source of these loads
- Payment of annual sewage discharge fees based on the load capacity of the exhauster tankers
- Observe and comply with the legal provisions to sewage handling operations which include: the Environmental Management and Coordination Act 1999, county by-laws, the Public Health Act and other written laws
- KIWASCO reserves the right to cancel the permit to discharge into its sewerage system

### **Pit Emptiers**

Manual pit emptying has not been legalized to date due to unprofessional and hygienic processes, and as such the majority of pit emptiers have organized into associations or self-help groups. With the enactment of the EHS policy, Kisumu County plans to develop a sanitation policy that will define standards and other regulations. Currently, any private operators willing to venture into this business require:

- A business permit from the county government
- A NEMA certification at county level
- A hygiene license for pit emptiers issued by the County Public Health Officer (vaccination of emptiers against hepatitis B, typhoid and cholera).

### **8.3 Challenges and Bottlenecks**

Though the National Environmental Sanitation and Hygiene Policy 2016-2030 has been adopted alongside an implementation strategy, Kisumu County has not developed its own policy and as such still lacks a regulatory framework that is consistent with national policy. Currently, the County lacks an enacted law that fosters private sector participation and investment in sanitation, particularly pit emptying, making it an illegal activity within the city due its perceived unhygienic process.

Potential bottlenecks for sanitation enterprises include institutional fragmentation of responsibilities from national level that might result in conflict, particularly regarding the role of WASREB and in the future NESCR. This may be replicated at the county level, making registration and licensing expensive for start-up businesses. The assessment also revealed the lack of a sustainable sanitation financing framework, making most sanitation activities uncoordinated at the county level.

## **9 ONGOING WORK**

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There is greater need for capacity building support to the utility (KIWASCO), the County Government of Kisumu and the private vacuum tanker operators in order to influence the formalization and recognition of sanitation services for low-income urban residents. This can be achieved through improved regulation and enhanced enforcement of regulation within the sanitation business environment in Kisumu as well as improved business practices. WSUP is currently working with KIWASCO and the government of Kisumu County to develop capacity and regulation.

1. There is potential for improving sanitation businesses if the business environment is well regulated. Streamlined regulation is therefore the key to providing an enabling environment conducive to encouraging the development of sanitation businesses.
2. The development of the National Environmental Sanitation and Hygiene Policy 2016-2030 provides a good platform for domestication and harmonization of the initiatives including building enabling legal and regulatory environment, but much remains to be done in this area. Kenya is in the process of a long and complex transition period as it continues to devolve power to counties, and this will continue to present both opportunities and potential complications.

This document sets out an overview of the national and county-level legislative and institutional sanitation framework in Kenya. Over the coming months, WSUP will build on this summary and analyse the regulations and institutions that guide sanitation in Kisumu in regards to improving access and provision for lower income communities.

## REFERENCES

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Laws of Kenya, County Government Act 2012, the National Council for Law Reporting, [www.kenyalaw.org](http://www.kenyalaw.org)

Laws of Kenya, Urban Areas and Cities Act 2011, The National Council for Law Reporting, [www.kenyalaw.org](http://www.kenyalaw.org)

Laws of Kenya, Public Health Act, the National Council for Law Reporting, [www.kenyalaw.org](http://www.kenyalaw.org)

Ministry of Health (2007) National Environmental Sanitation and Hygiene Policy

Ministry of Health (2010) National Environmental Sanitation and Hygiene Strategy 2010-2015

Kenyan National Bureau of Statistics (KNBS) website <http://www.knbs.or.ke/>

UN-Habitat (2005) Sanitation Analysis of informal settlements in Kisumu, United Nations Human Settlements Programme, Nairobi

Simiyu S (2015) 'Socio-economic dynamics in slums and implications for sanitation sustainability in Kisumu, Kenya'. *Development in Practice* 25:7, pp. 986-996