

DEVELOPMENT OF THE NATIONAL SANITATION MANAGEMENT POLICY (NSMP) IN KENYA

A narrative descriptive account of the journey



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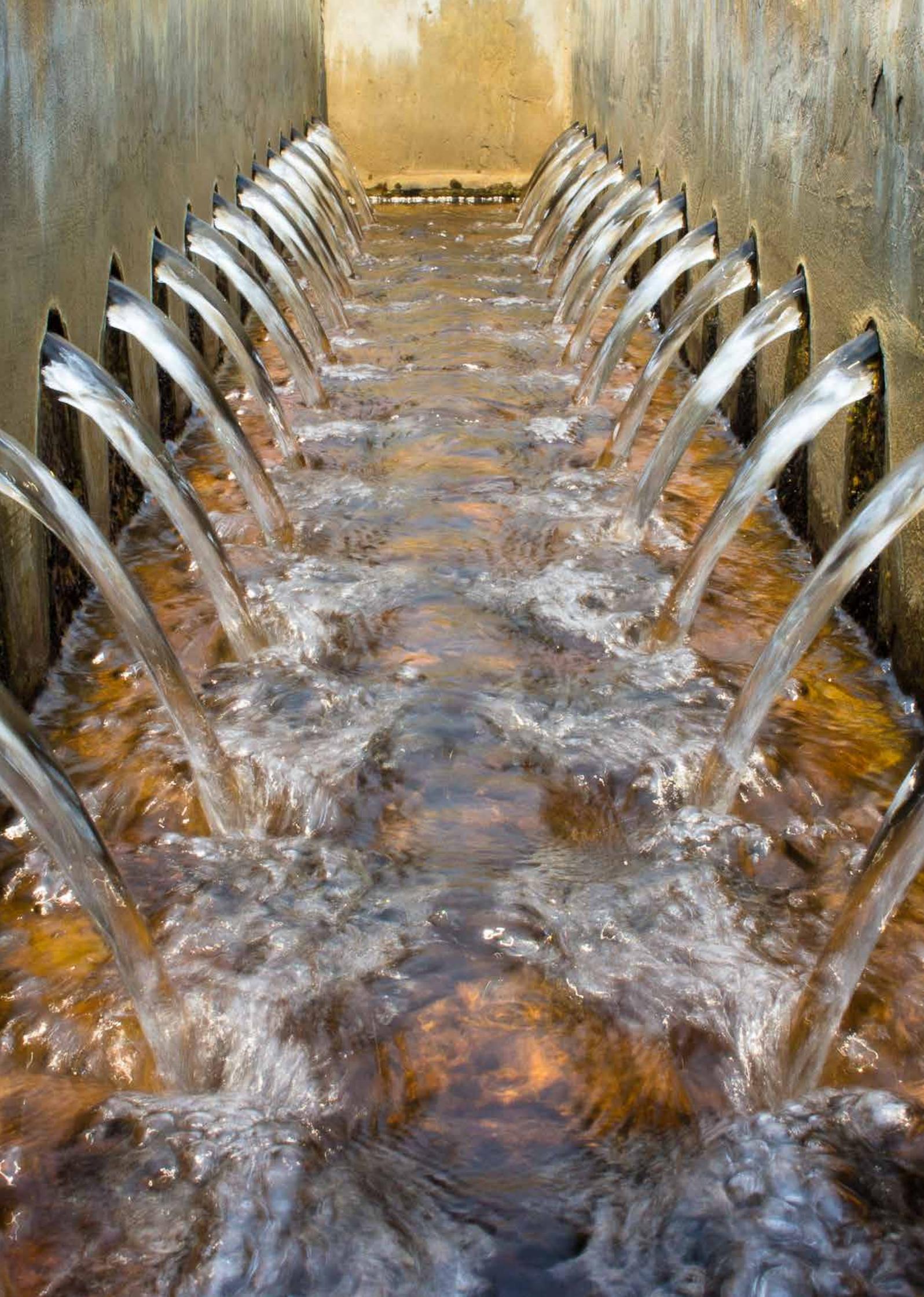
ABBREVIATIONS AND ACRONYMS

AMCOW	The African Ministers' Council on Water
ASAL	Arid and Semi-Arid Land
AU	African Union
CBOs	Community-Based Organizations
CC	Inter-Agency Coordinating Committee
CoG	Council of Governors
CSOs	Civil Society Organizations
EMCA	Environmental Management Coordination Act
GDP	Gross Domestic Product
KBS	Kenya National Bureau of Statistics
KEMRI	Kenya Medical Research Institute
KESHP	Kenya Environmental Sanitation and Hygiene Policy
KES	Kenya Shillings
M&E	Monitoring and Evaluation
MOH	Ministry of Health
MoWSI	Ministry of Water, Sanitation and Irrigation
NEMA	National Environment Management Authority
NESHISF	National Environmental Sanitation and Hygiene Intergovernmental and Stakeholders Forum
NGO	Non-governmental Organization
NSMP	National Sanitation Management Policy
ODF	Open Defecation Free
PPPs	Public-Private Partnerships
SDGs	Sustainable Development Goals
UNICEF	United Nations Children's Fund
WASH	Water, Sanitation and Hygiene
WASPA	Water Service Providers' Association
WSBs	Water Service Boards
WSPs	Water Service Providers



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EXECUTIVE SUMMARY

This report traces the journey taken in developing Kenya's National Sanitation Management Policy. It identifies the main actors and processes and further reflects on how various stakeholders engaged in development of the National Sanitation Management Policy (NSMP). Lessons are drawn on what future policy processes could borrow from this experience, given that Kenya is the first African country to develop a National Sanitation Management Policy based on the African Sanitation Policy Guidelines developed by the African Ministers' Council on Water (AMCOW).

The National Sanitation Management Policy (NSMP) was developed to provide an enabling policy framework that enhances universal access to equitable and sustainable, safely managed sanitation services across the service chain, thereby advancing efforts by the Kenyan government towards ensuring access to safely managed sanitation for all by 2030. The NSMP development process was broadly participatory and consultative, led by a Multi-Stakeholder Steering Committee under the direction of the Principal Secretary, Ministry of Health

The NSMP has its origins in the reorganization of functions between the Ministry of Health and the Ministry of Water, Sanitation and Irrigation. Previously, the sanitation management function had been domiciled in the Ministry of Health. In September 2019, the Ministry of Water, Sanitation and Irrigation constituted a Steering Committee which consisted of the parent Ministry (Water); Ministry of Health; Ministry of Transport and Housing (Department of Lands and Physical Planning); National Environment Management Authority (NEMA); Water Services Regulatory Board (WASREB); and civil society organizations (KEWASNET), among others. Most of the members of the Steering Committee had engaged in the long-term with water, sanitation, and hygiene issues, and therefore had a stake in seeing through the sanitation management policy development process.

The Committee commenced its work in early 2020, but its activities were soon disrupted by the COVID-19 pandemic, and the members resorted to virtual meetings. It commissioned a study to review existing policies, laws, regulatory mechanisms, and institutional frameworks. The outcome of the study was used to develop a discussion paper for further consultations with stakeholders across the different counties. In addition, the Committee mapped and developed an inventory of all the major stakeholders in the sanitation sector. To move the process forward, the Committee zoned the 47 counties in Kenya into regional groupings, and civil society organizations with institutional networks in the respective counties and regions were engaged to mobilize and facilitate stakeholder engagement. The discussion paper was shared with delegates during these meetings for inputs.

The stakeholder engagement platforms ensured that issues unique to a sector or region were highlighted and discussed at the appropriate platform, rather than in generalized forums where they would have been drowned out by multiple issues and voices. In essence, the legitimacy of the NSMP development process was derived in a decentralized manner and responsibility for the definition of problems and issues was devolved to lower-level stakeholders.

The views from stakeholder forums were consolidated by the consultant, who assessed, categorized, and harmonized the various inputs into a single document. This document was reviewed again by the regional groupings during validation meetings. Input from the public participation processes across the country was collated and used in developing a final draft of the National Sanitation Management Policy. This draft was reviewed by the Steering Committee and later subjected to a final national validation meeting held in Nairobi. Subsequently, the draft policy went through internal review and approval by the Ministry of Water, Sanitation and Irrigation. The process was concluded in December 2021, and all that remains is the final signing of the document by the Cabinet Secretary for the Ministry of Water.

A number of policy lessons can be drawn from the NSMP formulation process. These include:

a) Ownership and leadership by the government are key

The development of the NSMP enjoyed authentic ownership and support from the Ministry of Water, coupled with support from other government agencies, notably the Ministry of Health. The process was government-owned and driven by key officers in the Ministry of Water. There was internal agreement on the need for the policy, combined with a unity of purpose in having the policy formulated within the stipulated time.

b) Insider support and championship

Policy change requires the support of insiders who have a passion for the desired policy outcome and are willing to invest their efforts in driving the process. This insider support and commitment was critical for navigating inter-ministerial institutional processes and managing organizational politics.

c) Leveraging institutional networks of sector stakeholders

Civil society members marshaled and relied on their extensive networks in the water and sanitation sector across the country. Civil society networks mobilized key constituencies, facilitated public participation across the country, and brought these institutional networks to bear on the process.

d) A structured mechanism and approach to public participation is imperative

The consultant engaged to shepherd the process developed an approach to stakeholder consultations and engagement guidelines. The guidelines became useful in setting the frameworks and principles of engagement in addition to injecting an orderly, structured approach to receiving and processing feedback for formulation of the NSMP.

e) Timing and capitalizing on policy windows

The NSMP development process benefited from the confluence of several policy windows, including: the creation of a new department within the Ministry of Water; the need for a policy framework to operationalize the newly created department; the support and commitment of a cadre of senior staff within the Ministry who wanted to see the policy formulated, and the issuing of an Executive Order by the Office of President on Sanitation.

f) Building initial support for policy change and sustaining it through open and transparent public engagement mechanisms

There was sustained broad-based support on the need for policy formulation, partly owing to the deficiencies and gaps in existing policy frameworks in the sanitation sector. The initial interest built with key constituencies was sustained through engagements first in obtaining input into the discussion paper, and then in subsequent validation meetings across the country.

g) Getting the right technical expertise and buttressing it through sustained institutional support

The consultant hired for the development of the NSMP had extensive experience in the sanitation sector and had been involved in similar policy formulation processes. Because he understood the content and provisions of different policies, he was able to provide guidance on what each policy focused on thereby winning the confidence of majority of the stakeholders. Moreover, there was a lot of feedback from stakeholders. Processing all this information required someone who could quickly analyze, organize and synthesize it in a way that would be useful for policy formulation.



CHAPTER ONE: INTRODUCTION

1.1. Report Outline

This document traces the journey taken in developing Kenya's National Sanitation Management Policy. It identifies the main actors and processes and further reflects on how various stakeholders engaged in development of the National Sanitation Management Policy (NSMP). The Policy was developed over a relatively short period, six months, in the midst of the COVID-19 pandemic. This document provides a brief background on how the process unfolded, describes the policy windows that were present at the time of the policy development, and assesses how a group of sector stakeholders led by the Kenyan government worked together to develop the NSMP. Lessons are drawn on what future policy processes could borrow from this experience, especially since Kenya is the first African country to develop a National Sanitation Management Policy based on the African Sanitation Policy Guidelines developed by the African Ministers' Council on Water (AMCOW).

This report is based on document reviews and Key Informant Interviews with individuals who were engaged in the process. A total of seven interviews were conducted to trace the policy development process: two with government officials, four with civil society members, and one with the consultant who steered the process. From these interviews, a portrait of how the processes unfolded has been mapped out that weaves together patterns in the narratives of change and integrates these with key episodes and defining moments. Accounts of different respondents have been crosschecked through triangulation, to develop a complete account of the policy development process. The structure for the rest of the document follows.

The next section sets out the policy context by highlighting the state of sanitation in Kenya, existing policy frameworks for improving the quality and extending the coverage of sanitation, and the factors that necessitated the development of the NSMP. In this regard, a careful review of the NSMP has been done to illuminate the context in which the NSMP was developed and the rationale for its development. Section 2.2 provides a conceptual framework of how policy processes are perceived and models of the same that resonate with African policy processes. Section 2.3 presents a process-wise account of how the NSMP evolved, based on respondent accounts. In describing these processes, key principles that informed the development of the NSMP are highlighted. Section 3 presents case studies based on an interpretation of respondent accounts. The case studies are built around stakeholder participation and engagement as a key and defining pillar of the process; the disruptive effects of COVID-19; and the politics of the NSMP development process. Finally, Section 4 concludes by identifying key lessons that could inform future policy processes, and what other African countries could borrow and learn from the Kenyan experience.

1.2. The Need for Policy on Sanitation Management

In September 2019, the Ministry of Water, Sanitation and Irrigation (MoWSI) embarked on the process of developing a national policy on sanitation management. The policy intends to fill an institutional gap by establishing an enabling policy framework to ensure universal access to equitable and sustainable safely managed sanitation services across the entire chain. The

proposed policy aims to provide an inclusive overarching framework that will advance efforts by the Government towards ensuring access to safely managed sanitation for all by 2030. The National Sanitation Management Policy (NSMP) development process was broadly participatory and consultative, led by a Multi-Stakeholder Steering Committee under the direction of the Principal Secretary.

The development of the National Sanitation Management Policy is a significant policy milestone. Previously, sanitation was subsumed within the water sector policy, which historically resulted in sanitation receiving little attention in terms of prioritization, funding and development. The NSMP's development addresses this historical relegation of the sanitation function, by giving it the prominence it deserves in Kenya's development arena.

The decision to develop a national policy for sanitation management recognizes the guaranteed constitutional right to reasonable standards of sanitation as well as the devolved system of governance and the division of functions between national and county governments under the Fourth Schedule of the Constitution of Kenya. It was also developed to effect Executive Orders No. 1 of 2016, and 2020, which vested sanitation management functions in the Ministry of Water, Sanitation and Irrigation. The NSMP provides the institutional basis for the fulfillment of the commitments Kenya made towards the achievement of SDG 6.2, which advocates for access to safely managed sanitation for all.

The National Sanitation Management Policy also has its origins in the reorganization of functions between the Ministry of Health and that of Water, Sanitation and Irrigation. The President of Kenya transferred the sanitation management function from the Ministry of Health to the Ministry of Water, Sanitation and Irrigation vide Executive Order no 6 August 2019. The origins of the NSMP can be traced to an Executive Order issued by the President on Sanitation and the subsequent creation of Sanitation as a department within the Ministry of Water, Sanitation and Irrigation to spearhead issues on sanitation management. The need for a policy on sanitation management became more urgent and necessary following creation of the new department. These executive actions coincided with the desire to actualize national and international commitments, thereby acting as triggers for the policy formulation process to be initiated and concluded.

Internationally, Kenya has made commitments to achieve the Sustainable Development Goals (SDGs). Goal 6.2 in particular, requires all signatory countries to ensure the *achievement (by 2030) of access to adequate and equitable sanitation and hygiene for all and (to) end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations*. At the continental level, the African Ministers' Council on Water (AMCOW) developed guidelines to help African countries develop their sanitation policies. Kenya is the first African country to adopt the Guidelines in the preparation of its national sanitation management policy. At the national level, the Kenya Constitution recognizes sanitation as a guaranteed right in **Article 43(1) (c)**, by stating: "every person has the right to accessible and adequate housing and reasonable standards of sanitation."

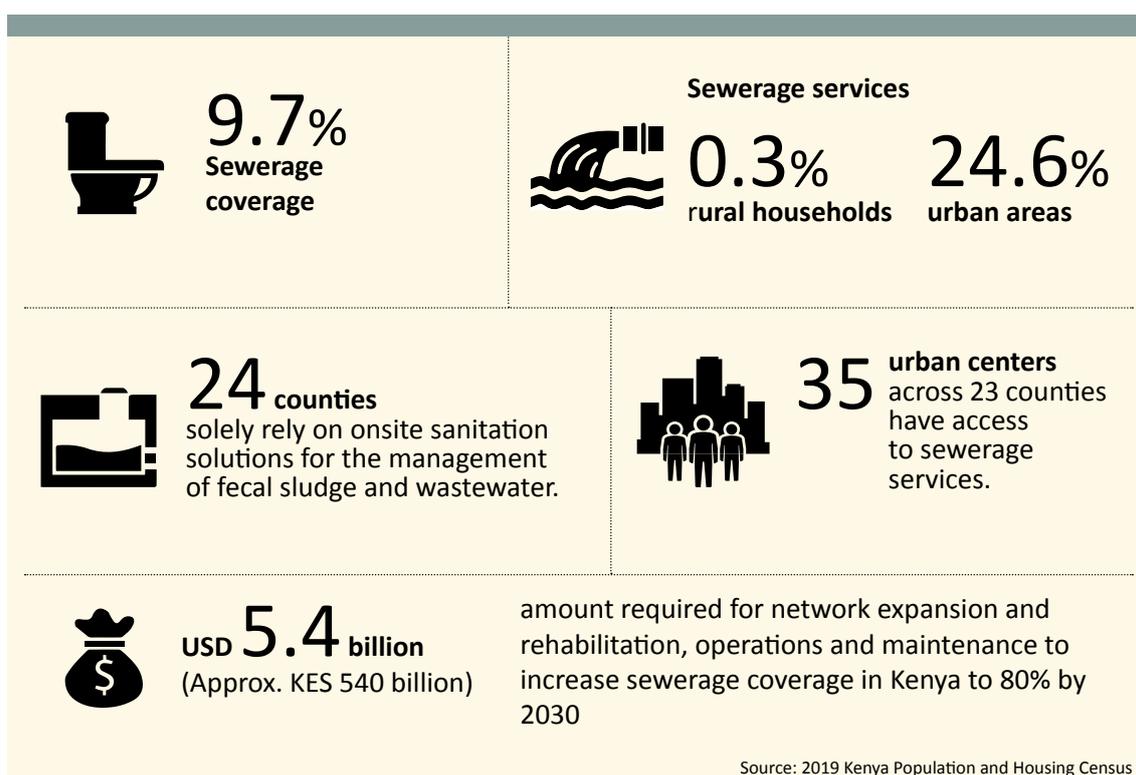
Other triggers and policy windows included the African Sanitation Conference (2018) which was attended by the former Chief Administrative Secretary (CAS) in the Ministry of Water, Sanitation and Irrigation. On returning to Kenya, the CAS rallied other stakeholders and a Kenyan Sanitation Conference was organized in 2019, where Kenya's Deputy President read the keynote address on behalf of the President. The issue of sanitation gained elevated visibility and prominence, with added momentum coming from the highest levels of the policy-making process in Kenya. A communique with several resolutions was issued at the end of the conference. Among these resolutions was the creation of a sanitation department within the Ministry of Water and the need for the development of a national sanitation policy framework.

In sum, it can be inferred that the creation of a new department acted as a major trigger for the initiation of the policy formulation process. This trigger was bolstered by the presence of a champion within the Ministry, the Chief Administrative Secretary, who was keen on seeing the policy formulated. The conference added salience and visibility to the issue, with the communique highlighting the necessary policy solutions, i.e., formation of a new department, and development of a national sanitation management policy.

To understand why policy interests converged around the need for a national policy on sanitation management, it is useful to briefly refer to how the NSMP assesses the sanitation status within the country. While acknowledging the paucity of reliable data on safely managed sanitation in Kenya, the NSMP nonetheless uses data from the Ministry of Water, Sanitation and Irrigation which estimates that safely managed sanitation coverage is about 26%ⁱ. The National Sanitation Management Policy (NSMP) also cites WASREB data, which estimate a sewerage coverage of about 15% of the total population within the utility service areas for the 2019/2020 period. This represents a decline from 17% in the 2018/2019 period and is a massive deviation from the Kenya Vision 2030 target of 80% sewerage coverage by 2030. Nationally, the 2019 Kenya Population and Housing Census revealed lower sewerage coverage at 9.7%, with 0.3% of rural households having access to sewerage services compared to 24.6% in urban areas.

Sewerage services are only available in 35 urban centers spread across 23 counties. This means that 24 counties solely rely on onsite sanitation solutions for the management of fecal sludge and wastewater. To increase sewerage coverage in Kenya to 80% by 2030, about USD 5.4 billion (approximately KES 540 billion) is required for network expansion and rehabilitation, as well as operations and maintenance.

The poor state of sanitation in the country will be compounded and worsened by the effects of climate change, rapid population growth and urbanization. In the absence of drastic measures to address these issues, government at both national and county levels, cities, as well as water and sanitation service providers will be unable to adapt to the pressures on sanitation infrastructure and services.







CHAPTER TWO: INSTITUTIONAL CONTEXT

2.1 Introduction

Kenya has constitutional provisions and guarantees on sanitation and a clean and healthy environment. However, the country lacks an overarching and enabling policy framework with a set of coherent normative principles for sanitation management, service provision, coordination, financing, investment, and regulation. The existing institutional framework for sanitation is complex and fragmented. Sanitation-related laws and structures are scattered across various legal instruments, most of which are only ancillary to sanitation with implementation and enforcement mandates distributed across diverse entities at the national, county, urban, utility, and community levels. For instance, at the national level, the institutional arrangements for Water, Sanitation and Hygiene (WASH) include ministries, departments, and agencies, including the ministries of Health, Water and Sanitation, and Environment, the Water Works Development Agencies (WWDAs), Water Services Regulatory Board (WASREB), National Environment Management Authority (NEMA), development partners and non-state actors such as NGOs and private sector actors.

This fragmented institutional landscape makes coordination difficult. It enables overlaps in policy, planning, fiscal, regulatory, and service delivery functions, which are distributed among multiple ministries, departments and agencies at various levels. The sanitation sector also experiences an acute shortage of qualified and competent human resources to deliver the ambitious goal of universal access to adequate, equitable sanitation and hygiene by 2030. Existing policy and regulatory frameworks have attempted to address these challenges. For example, the Environmental Health and Sanitation Bill (2020) was designed to provide an inclusive framework for the performance of National and County Government functions with respect to sanitation matters. It also sought to streamline the management and regulation of sanitation services; enforce environmental sanitation standards and regulations; and offer a framework for sustainable financing of sanitation functions and services.

The Kenya Environmental Sanitation and Hygiene Policy (KESHP) 2016-2030 specifically aimed to make Kenya Open Defecation Free (ODF) by 2030; achieve and sustain 100% access to improved rural and urban sanitation by 2030; and increase public investment in sanitation and hygiene from 0.2% to at least 0.5% of the GDP by 2020, and 0.9% of the GDP by 2030. From the foregoing, it is clear that the strong constitutional grounding for sanitation has not been matched with the existence of a coherent and inclusive national policy, legal and regulatory framework for effective sanitation management across the service chain, especially with regard to non-sewered sanitation and the attainment of safely managed sanitation for all. There was a need for the country to define the minimum service package, norms, standards, and indicators for achieving safely managed sanitation across the service chain in the context of the right to reasonable standards of sanitation guaranteed under Article 43 of the Constitution of Kenya. This formed the institutional basis for the development of the National Sanitation Management Policy (NSMP).

The NSMP provides an overarching sanitation management framework that addresses these gaps and challenges, as well as creates an institutional framework for fulfilling the country's national, regional and international sanitation commitments. The landscape of sanitation management is changing and the NSMP addresses the various aspects of the service delivery environment

and national development priorities. The Policy includes measures to accelerate access to safely managed sewerage and non-sewered sanitation services across the sanitation service chain. It seeks to enable all Kenyans to enjoy their right to the highest attainable standards of sanitation. The focus is on a range of complementary strategies that must be undertaken and sustained to ensure sustainable access to safely managed sanitation for all.

To reiterate, the Policy encompasses both non-sewered and sewerage sanitation systems and associated services across the sanitation service chain from containment, conveyance, and treatment to safe disposal or end-use. It seeks to do this across all settlement types in rural and urban areas including institutional, trade, public, and humanitarian settings. In this regard, the NSMP emphasizes integrated, inclusive, and safe sanitation management along the service chain, focusing on the entire water cycle to optimally protect sewerage systems, public health, water resources, and the environment.

To end open defecation and accelerate access to safely managed sanitation services for all across the service chain, the Policy outlines various strategies and measures, which include building resilient sanitation systems and technologies; provision of non-sewered and sewerage sanitation services; sanitation services in institutional, public and humanitarian settings; sanitation and hygiene education and behavior change; private sector participation; governance and institutional capacity building; human resources for sanitation; regulation; planning and financing; research and development; and monitoring and evaluation. To this end, the NSMP advocates for increased public and private sector investment in sanitation through responsive and sustainable public financing mechanisms, increased budgetary allocations, and public-private partnerships (PPPs).

the Policy encompasses both non-sewered and sewerage sanitation systems and associated services across the sanitation service chain from containment, conveyance, and treatment to safe disposal or end-use.

It therefore responds to the prevailing sanitation governance, management, regulatory, and service delivery challenges that undermine the country's goal of ensuring access to safely managed sanitation for all. It articulates and clarifies the roles and responsibilities of the diverse stakeholders and ministries, departments, and agencies involved in the sanitation ecosystem at the national, county, and local levels. The NSMP

proposes multi-sectoral national coordination and regulatory mechanisms for sanitation across the entire service chain.

2.2 Conceptual Understandings of the Policy Process

A helpful way to understand the process taken in developing the National Sanitation Management Policy will be to situate it within existing thinking and practice on policy formulation, implementation, evaluation, and policy practices in general. The section below thus reviews current thinking on the policy process. It highlights the role of actors and their influence on the policy process, to foreground the subsequent discussion on how the process unfolded in Kenya.

The dominant notion of the policy process has traditionally been the stages or cycles model, in which the policy process is seen as a series of sequential steps where ideas and policy proposals are compared systematically against clear value criteria and progress is made rationally towards a policy goal. Each step or cycle is treated as temporally and functionally distinct, and different stages involve different institutions and actors. Common criticisms of this model are that policy formation may proceed in stages, but the process can be derailed at any pointⁱⁱ. Additionally, it does not identify any causal mechanisms for policy development and neglects the historical and temporal dimensions of change. Moreover, it is descriptively inaccurate, and fails to properly theorize the significance of the wider world outside the immediate policy systemⁱⁱⁱ.

Changes in policy and policy implementation do not usually unfold in a neat linear process of generating research, laying out policy options, choosing between alternatives, and evaluating the implementation of the selected option.

Changes in policy and policy implementation do not usually unfold in a neat linear process of generating research, laying out policy options, choosing between alternatives, and evaluating the implementation of the selected option. Rather, policy changes occur within a web of interacting forces. Specific activities can only have an indirect and incremental impact on decision making^{iv}. Thus, however excellent information is, policy-relevant research seldom has an immediate or direct impact on government decisions; more typically its influence is indirect and incremental. New technical knowledge typically filters into the policymaking process, gradually altering the background assumptions and concepts that frame policy discourse^v.

The multiple streams model developed by John Kingdon (1984) has been proposed as providing a more robust approach to the understanding of policy processes. It is typically understood to entail three parallel streams of problems, solutions, and politics moving independently through the policy system. Occasions arise (sometimes predictably, other times fortuitously, and often quite unpredictably) where the three streams are joined. This could be due to changes in government, crises or disasters, focusing events, or concerted advocacy by policy advocacy activists. In the Kenyan case, these are reflected in the creation of a new department of sanitation, the issuing of a presidential Executive Order, the presence of the African Sanitation Policy Guidelines, and the communique from the 2018 Sanitation Conference, which all created a convergence of policy streams.

The *problem stream* in this model contains perceptions, opinions, and attitudes held by various members of the public and policy communities. The *policy stream* carries recommendations from researchers, advocates, analysts, and others in a policy community examining problems and using their (sometimes self-proclaimed) expertise to propose prospective solutions to them^{vi}. Independent of problem recognition or the formulation of policy proposals, political events move along at their own pace, and according to their dynamics and rules. Consensus in the *political stream* is generally built more by bargaining than by persuasion. Politicians typically employ a calculus of 'political feasibility' to determine whether a problem should be prioritized in the policy agenda. Often their agenda-setting decisions result more from an analysis of the political costs and benefits of attending to a problem or seriously considering a proposed policy, rather than from the analytical or technical significance of an issue or proposal^{vii}.

Revisions to the multiple streams model have been proposed, to move it beyond the agenda-setting stage for which Kingdon originally intended it. Michael Howlett, et al (2016)^{viii} propose a five-stream model, with additional streams in the *process* and *program* streams. Furthermore, Mukherjee and Howlett^{ix} additionally extend the usefulness of the model by linking it to the advocacy coalition framework and by describing the type of policy actors within the policy process, based on the model. To clarify how the three streams are brought together, the concept of 'policy entrepreneur' (best understood as a well-informed and well-connected insider who provides the knowledge and tenacity to help couple the 'streams'^x) was introduced into the model. Entrepreneurs can be organizations as well as individuals. They are heavily interlinked at times, and at other times, are quite distinct and separate, and most importantly, may also take on different roles depending on the problem, policy, or their political orientation.

Mukherjee and Howlett build on previous discussions on the subject to identify three types of policy entrepreneurs across the three policy streams. First, *epistemic communities* participate in deliberations as a diverse collection of policy actors including scientists, academic experts,

public sector officials, and other government agents who are united by a common interest in or a shared interpretation of the science behind a development policy dilemma. They can influence policy innovation both through their ability to frame issues and define state interests, but also through their influence in the setting of standards and the development of regulations. These problem-defining actors range from scientists to political partisans and others depending on the context. They are active beyond agenda setting and policy formulation as they engage in discourses within the problem stream, which lead to the definition of broad policy issues or problems. Knowledge regarding a policy problem is the ‘glue’ that binds actors within an epistemic community, differentiating it from those actors involved in political negotiations and practices around policy goals and solutions.

Secondly, *instrument constituencies* focus less on problems and more on solutions. They are normally involved in solution articulation, *independently* of the nature of the problem to be addressed. Instrument constituencies advocate for particular tools or combinations of tools to address a range of problem areas and hence are active in the ‘policy’ stream. These actors are united by their adherence to the design and promotion of specific policy instruments as the solutions to general sets of policy problems, usually in the abstract, which are then applied to real-world conditions.

Members of instrument constituencies are distinct and stay cohesive due to their unanimous adherence not to a problem definition or political agenda, but rather to their championing of a particular policy tool or a specific combination of policy tools. They may not necessarily be inspired by the same definition of a policy problem or by similar beliefs, rather, they come together to support specific policy solutions or instrument choices. They are usually networks of heterogeneous actors from academia, policy consulting, public policy and administration, business, and civil society, who interact and engage in the articulation, development, implementation, and dissemination of a particular technical model of governance.

Finally, *advocacy coalitions* are those involved in the political struggle surrounding the matching of problem definitions and policy tools. These actors compete to get their choice of problem definitions as well as solutions adopted during the policy process. Actors aggregate and coordinate their actions into coalitions based on shared policy core beliefs and several such coalitions can occupy a subsystem. Driven by their primary interest in advancing their beliefs, the realm of coalitions falls distinctly in the political vein of the policy process, as coalitions compete with rival coalitions to transform their beliefs into policies. Both external and internal factors affect the effectiveness of advocacy coalitions. Internal factors include the coalition’s financial resources, levels of expertise, and number of supporters. Coalition members employ knowledge about competing views on important policy problems or solutions in a variety of uses from argumentation with opponents to the mobilization of supporters.

Having briefly sketched the conceptual canvas of the policy process, this document moves on to describing how the process of formulating the National Sanitation Management Policy unfolded. It needs to be pointed out that the conceptual overview painted above is generic, and specific policy processes evolve quite differently from the portrait provided, even though there may be similarities to the conceptual model outlined above.

2.3 The NSMP Development Process

In September 2019, the Ministry of Water, Sanitation and Irrigation formed a Steering Committee which consisted of: the parent Ministry (Water); Ministry of Health; Ministry of Transport and Housing (Department of Lands and Physical Planning); National Environment Management Authority (NEMA); Water Services Regulatory Board (WASREB); and the civil society organizations – Kenya Water and Sanitation Civil Society Network (KEWASNET) among others. The Committee was provided with a Terms of Reference which outlined its composition, mandate, and timelines

The steering committee was multi-sectoral in its structure and composition. The members were drawn from government departments, ministries, and agencies in addition to representatives from the private sector, civil society, and research institutions.

for delivering on that mandate. The MoWSI officially gazetted the Committee, to give it legal force and backing within government structures.

The Committee commenced its work in early 2020, but its activities were soon disrupted by the COVID-19 pandemic, and the members resorted to virtual meetings. The original plan was to hold meetings every fortnight, but the tight schedules of committee members did not accommodate this. The default schedule became monthly meetings, which in principle were to be chaired by the Cabinet Secretary, but in practice were chaired by the Principal Secretary or any other senior official from the Ministry. Committee deliberations were documented and captured in minutes that provided a solid record base for reference and the preservation of institutional memory. The minutes were kept with MoWSI being the secretariat.

The steering committee was multi-sectoral in its structure and composition. The members were drawn from government departments, ministries, and agencies in addition to representatives from the private sector, civil society, and research institutions. Most of the members constituting the Steering Committee had engaged in the long-term with water, sanitation, and hygiene issues, and so could be said to be sector players with knowledge, experience, interest, and a stake in seeing through the sanitation management policy development process. In essence, most members shared an ideological affinity – forming what could be referred to as an epistemic community – with shared perceptions and views about the problems in the sector, and preferred solutions to the problems. Shared understandings of policy problems and possible remedies for such problems by an epistemic community make it easier to reach a consensus on policy problem definition, and the search for appropriate policy solutions.

But the structure and composition of the Committee also gave the process legitimacy. The Constitutional requirement of broad public participation was met right from the establishment of the Committee. Beyond meeting this legal requirement, there seems to have been goodwill on the part of the Ministry of Water, Sanitation and Irrigation as it deliberately reached out to key stakeholders in the sector and invited them to nominate representatives to sit on the Committee. This goodwill on the part of MoWSI added a layer of legitimacy to the process. It showed that the Ministry was willing to meaningfully engage with sector players in developing the sanitation management policy. An additional layer of legitimacy was added by anchoring the Committee institutionally within the Ministry, as well as by officially gazetting the Committee and its members. Thus, legitimacy was secured beyond the legal, normative requirement for participation in a politically engaged framework for policy development.

In addition to the steering committee, and as part of the preparatory process, a consultant was recruited to steer the process. The consultant developed stakeholder engagement and consultation guidelines for the policy formulation process. The guidelines described a 13-step, process-wise approach to the policy's development. The guidelines mirrored the African Sanitation Policy Guidelines (ASPG), with minor modifications and adaptations.

The Africa Sanitation Policy Guidelines counsel that the process of developing the sanitation management policies should be government-led, but multi-stakeholder in nature. The guidelines also recommend that unique national dynamics be taken into consideration when developing national sanitation management policies. Thus, the guidelines offer broad principles without insisting that countries adopt or apply them uncritically.

The Committee commissioned a study to review existing policies, laws, regulatory mechanisms, and institutional frameworks. The outcome of the study was presented to the Committee, and the consultant developed a discussion paper to be used for consultations with stakeholders across the different counties. A related situational analysis was commissioned by the firm, Sanergy, to review the status of sanitation in the country. Both studies shaped the initial analysis and thinking on what the issues were, and what possible policy responses would be suitable. In addition, the Committee mapped and developed an inventory of all the major stakeholders in the sanitation sector. Some of the stakeholders identified included ministries, departments, and agencies from the national government; county governments; civil society organizations; private sector actors, and academia. The stage was therefore set for preparatory processes that would eventually see the development of the National Sanitation Management Policy.

To move the process forward, the Committee zoned the 47 counties in Kenya into regional groupings, and civil society organizations with institutional networks in the respective counties and regions were engaged to mobilize and facilitate stakeholder engagement. The discussion paper was shared with delegates during these meetings, and delegates were encouraged to give their inputs as well as make suggestions. The discussion paper was provided in an editable format, and delegates were encouraged to contribute to the document and email it to the ministry. An email address was provided for that purpose.



In essence, the legitimacy of the NSMP development process was derived in a decentralized manner, and responsibility for defining the problems and issues was devolved to lower-level stakeholders.

Sector players with insights on sanitation issues and problems within the respective regions facilitated the consultative meetings. The meetings were attended by the principal players and organized groups in the sanitation management sector: NGOs, community-based organizations, water users' associations, stakeholders in fecal sludge management, and faith-based organizations working in WASH, including county government and local administration officials.

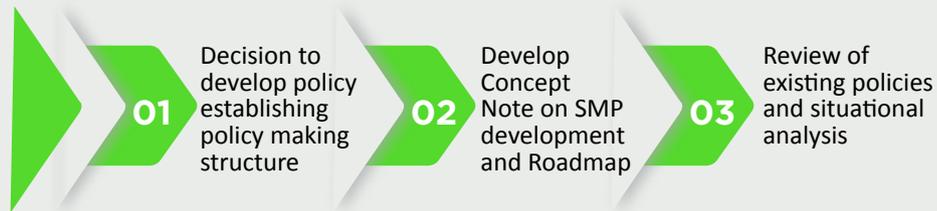
County governments were additionally engaged through the county executive committees' forums, and through the Council of Governors (CoG). In terms of the water utilities, a parallel consultation process was organized through the Water Service Providers' Association (WASPA) to give them a forum where they could discuss their unique issues. These engagement platforms ensured that issues unique to a sector or region were highlighted and discussed at the right platform, rather than in generalized forums where these would have been drowned out by the presence of multiple issues and voices. The format adopted by the Committee also ensured that diverse interests and voices were adequately captured and listened to. In essence, the legitimacy of the NSMP development process was derived in a decentralized manner, and responsibility for defining the problems and issues was devolved to lower-level stakeholders. Once again, the process transcended mere technical legal requirements to institute meaningful public participation.

These views were consolidated by the consultant, who assessed, categorized, and harmonized the various inputs. The Steering Committee reviewed the harmonized document and mandated the consultant to prepare a draft of the National Sanitation Management Policy. The harmonized document was once again reviewed in validation meetings within the regional groupings. At the regional meetings, delegates reviewed the draft policy document and gave further input in those instances where they felt the consultant had not fully captured the issues raised. The document was validated across all the regions, thereby, once again, obtaining legitimacy through broad-based public participation.

Input from the public participation across the country was collated and used in developing a final draft of the National Sanitation Management Policy. The finalized draft of the Policy was reviewed by the Steering Committee and later subjected to a final national validation meeting held in Nairobi. Subsequently, the draft policy went through internal review and approval by the Ministry of Water, Sanitation and Irrigation. The process was concluded in December 2021, and all that remains is the final signing of the document by the Cabinet Secretary for the Ministry of Water.

The next section takes a deep dive into some of the recurrent features and trends in the NSMP development process. A case study approach is used to ground the trends conceptually, and then to identify the actors, processes, and outcomes. It should be borne in mind that the cases are interrelated, having unfolded as part of the common process of the NSMP's development. They form pieces of the landscape and trajectory, rather than independent and isolated narratives of the policy formulation process

National Sanitation Management Policy Process



Collection and analysis of stakeholder input

STEP
06

Stakeholder consultations #1 - Collection of views (National and County)

STEP
05

Prepare policy Discussion Paper (Policy issues and framework for stakeholder consultations)

STEP
04



Monitor, evaluate and review, and revise

12

Parliamentary approval (Sessional Paper)

11

Cabinet approval

STEP
10



CHAPTER THREE: CASE STUDIES

3.1 Case study 1: Public Participation

The participation of citizens in key decisions and policies affecting their lives remains a core tenet of human rights principles. Principles of public participation now transcend national political cultures and are becoming a global phenomenon. Even repressive regimes make token gestures at allowing public participation. While the need for public participation is recognized across political cultures and ideologies, there remain serious contentions about what constitutes meaningful public participation, and whether the principles should be unique to political cultures and geographies, or universal. That said, analysts generally tend to identify the benefits of public participation to include improved governance, reduction in socio-political strife, informed decision-making, community ownership, better responsiveness and transparency among holders of public office, and increasing legitimacy of public decision-making. These demonstrated effects sparked by the public participation movement have been diffused globally, including to Kenya.

Kenya has a robust Bill of Rights which is expressed in the Constitution of Kenya (2010). The Bill of Rights enshrines values and principles which demand the participation of citizens in all aspects of the governance of public affairs. These values and principles are articulated in Articles 10, 118, and 119 of the Constitution, which require state agencies to facilitate public participation. Likewise, Kenya's County Governments Act (2012) provides for public participation at the county level. Specifically, Section 87 of the Act provides some principles for entrenching public participation in county government policymaking and implementation processes^{xi}.

These include among others:

- a. Timely access to information, data, documents, and other information that is relevant or related to policy formulation and implementation.
- b. Reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects, and budgets, the granting of permits, and the establishment of specific performance standards
- c. Reasonable balance in the roles and obligations of county government and non-state actors in decision-making processes to promote shared responsibility and partnership and to provide complementary authority and oversight.

The process of developing the National Sanitation Management Policy was highly participatory. The participatory nature of the process was reflected at several levels. As highlighted already, the Ministry of Water, Sanitation and Irrigation constituted a Steering Committee. The Committee drew its membership from several other ministries, departments and agencies. Two ministries with the shared mandate of water and sanitation, namely the Ministry of Water and that of Health were represented in the Committee, alongside other ministries, departments, and agencies. The Committee also had representation from civil society, particularly from Civil Society Organization (CSO) networks that had a long history of involvement in water, sanitation, and hygiene. The CSO representatives brought sector expertise and experience into the process as well as their networks with constituencies at the grassroots levels. One of the CSO network representatives mentioned that the network had a presence in 21 out of the 47 counties in Kenya. By joining the Committee, the network also put this vast grassroots presence at the disposal of the Committee.

A government official interviewed as part of this exercise observed:

.... engagements with the CSO partners enriched the process. Our CSO partners had intimate knowledge of their areas of operation. Many had worked in these areas for many years. They had a good knowledge of all the key stakeholders in these regions. They could mobilize their partners and other stakeholders easily, first, to be involved in the process, but more importantly, to give input into the content of the policy. So, for instance, if a partner is operating in the coastal region, that's fundamental to us and based on their experience, based on their work, they're fully aware of which of their partners are in sanitation and they invited those partners to participate.

The involvement of CSOs also injected efficiencies into the process. Relatively little time was spent in mobilizing people for public participation, given the institutional relationships and goodwill CSOs enjoyed with stakeholders at this level. It would have taken longer to conduct stakeholder mobilization, without this reliance on the CSO networks.

Furthermore, the private sector was also represented in the Steering Committee. The private sector was motivated to engage in the policy formulation process due to constraints they faced in the legal and regulatory environment. The absence of clear policies and guidelines around certain issues on sanitation, coupled with overlapping mandates of regulatory agencies had clouded the operating environment for private sector actors. These created inefficiencies and heightened costs of operation in the sector. The presence of actors from academia and research institutions, notably APHRC, also brought invaluable policy evidence to the process.

Other than formal representation in the Steering Committee, the Ministry of Water, Sanitation and Irrigation opened up other avenues of engagement for public participation. For instance, the public was engaged in forums organized at county levels, with counties grouped according to region. Regional meetings were held in Eldoret, Kisumu, Mombasa, Nakuru, Nyeri, and Nairobi. Delegates from the North-Eastern region had their meetings in Nairobi, due to logistical challenges.

The Ministry also opened up various avenues for engaging with key stakeholders such as the Council of Governors (CoG) through the CoG Caucus for Water and Sanitation, the Water Service Providers through WASPA, and development partners through the water and sanitation solutions (WATSAN) stakeholder forum. These different avenues became platforms for receiving input into the NSMP formulation process and for validating the Policy's content once it was formulated. For instance, in regional platforms, key concerns raised included providing clarification on: the mandates of the Ministry of Water and that of Health in sanitation management; whether the NSMP was not duplicating existing policies; the need for a differentiated approach to sanitation (sewered and non-sewered) in line with geographical specificities; and, the need to adapt technologies to the specific sanitation needs in different geographies.

Once delegates at the public participation forums provided their input, their contributions were reviewed and processed by the Steering Committee. The Committee endeavored to include all views and perspectives and to align them with the policy's goals. Once all the views received from public participation forums were collated, reviewed, and harmonized, the consultant was tasked with formulating these into a draft policy document. Once again, the Committee reviewed the draft policy before it was subjected to review and validation at the regional forums. Largely the same delegates who had participated earlier in the regional forums were involved in reviewing and validating the draft policy. Any additional inputs from the regional forums were further reviewed by the Steering Committee, and the consultant was mandated to refine the draft NSMP before it was reviewed in a final validation meeting at the national level.

In sum, what emerges from the above is an elaborate engagement process at various levels both in line with the constitutional requirement for public participation and in line with the current thinking on meaningful citizen engagement. Three things made this possible. First, goodwill and commitment by the parent ministry – the Ministry of Water, Sanitation and Irrigation – to facilitate broad-based meaningful participation in the policy formulation process. Secondly, the involvement of civil society networks with deep and extensive connections to various stakeholders in the different regions across the 47 counties in Kenya. The reliance on CSO networks in the process cut down costs and time, making the process of public engagement efficient and affordable. Thirdly, and finally, the availability of resources provided by APHRC. As an African-based organization, APHRC provided resources without conditionalities or paternalistic shepherding of the process, giving free rein instead to the Ministry and Steering Committee to coordinate public participation.

All respondents interviewed singled out public participation as the greatest achievement and the most outstanding aspect of the NSMP development process. The process was Kenyan-driven, with the government involving citizens and stakeholders across the sector to provide their inputs and validate the draft policy. The NSMP can therefore be said to have broad-based support and ownership by the government and the non-state actors within the sector. Public participation as practiced in this process represents a marked departure from conventional practices of centralized policy-making by technocrats and experts who then leave the implementation of those policies to lower-level government officials and other non-state actors.

3.2 Case study 2: Policy Making in the Context of COVID-19

The COVID-19 pandemic that broke out in late 2019 swept across the world, disrupting businesses, and economies and leading to massive unemployment. The public health safety regulations instituted by governments, particularly lockdowns, severely restricted the movement of people and physical interactions. While these restrictions helped in slowing down the spread of COVID-19 infections, they also disrupted the normal flow of human contact and activities. Policy formulation sometimes requires physical interactions and engagements among diverse groups of people, especially at the stages of obtaining inputs into the policy process and validating various policy outputs.

The National Sanitation Management Policy was developed during the COVID-19 pandemic. In the initial phases of the process, all Steering Committee meetings were virtual. The original plan was to have meetings every fortnight. However, this soon proved to be unfeasible as members of the Committee had full-time engagements in their regular jobs. The Committee therefore resorted to monthly meetings in the interest of pragmatism. Moreover, the Committee soon realized that virtual meetings were efficient and convenient in the midst of the COVID-19 restrictions on movement but were ineffective in terms of getting momentum for the policy formulation process. Some Committee members were easily distracted and would leave meetings halfway or engage in other pressing work issues. Moreover, with time, the Committee would face an even bigger dilemma, that is, how to convene public participation forums in the midst of a pandemic.

To circumvent the setting in of inertia in the policy formulation process, the Steering Committee interspersed virtual meetings with physical in-person meetings. The physical meetings had to meet the Government COVID-19 public health safety regulations.

The COVID-19 restrictions also meant that the numbers allowed at public participation forums had to be slightly restricted, even though most of these forums were held as COVID-19-related restrictions started to ease. However, large gatherings of people were still not allowed, and the Steering Committee had to manage the process within these constraints. Despite the precautions taken, in one such meeting, some Committee members got infected, as narrated by one Key Informant.

As one member of the Steering Committee explained:

I found the process to be quite elaborate; considering particularly that all this was happening - we started the process, then Corona set in, then after Corona set in, that meant a lot of barriers and this slowed down everything - and we couldn't meet as often as we wanted to. So, we had a few virtual meetings, after those, then a few, we could get some hotels that could allow a few people to come and meet and then come in and meet. So that is one thing that I would say that hindered the progress; but as the country opened up and a few organizations like ours, we were able to get - they called them emergency clearance or the essential services permit. So, we advised the other members to do likewise so that we have it as an essential service and I was so happy again the government saw the need for the water and sanitation to make it an essential service. Largely because of that, we were able now to meet regularly to move the formulation of the policy forward.

... we took the (COVID-19) protocols into account and in none of the places did we hear that there was an outbreak, except at the last meeting we had in Embu. I think we didn't take enough precautions, particularly in terms of the meeting space. Many of us who were in that Embu meeting ended up contracting COVID-19. There were many of us at that meeting, and it was in the basement. I think we overlooked the fact - it did not occur to us that the room was small and not properly ventilated. So, to answer your question, yes, COVID-19 was a constraint. However, we managed by innovating ways of working with it while observing the protocols, and with hindsight, I think we managed fairly well.

From respondent accounts, it was the ability to innovate ways of working and meeting that made it possible to work, despite the restrictions imposed by COVID-19. Besides, the commitment of the Ministry of Water, and the insistence of its leadership on the need to formulate the policy within a six-month period acted as major drivers to push the process forward. The government had put in place COVID-19 restrictions, and participating officials found ways of working within these restrictions without risking the health of Committee members and the delegates in public participation forums. Additionally (and paradoxically), it seems that the slowdown occasioned by COVID-19 created a less crowded government policy formulation agenda, thereby granting space for the NSMP development process. The continuation of the NSMP development process despite the presence of COVID-19 also speaks to the Steering Committee's commitment. Against all odds, they worked to formulate a policy in a record six months, including organizing two rounds of public participation forums across regions, and the additional national policy validation forums.

3.3. Case Study 3: The Politics of National Sanitation Management Policy (NSMP) Formulation

As outlined in the conceptual framework, every policy process is political, with contentions over problem and issue definition, preferred solutions, and whether or not policy should be formulated in the first place. Consensus over policy issues is never automatic, and various ideological and theoretical positions influence how policy issues are approached and defined. Debates continue to rage in major academic journals and within scholarly circles on the nature of specific policy problems and the genesis of the structural and systemic failures that give rise to them (e.g., widespread squalor and poverty, climate change, environmental degradation, etc.), and how these problems might be related to other policy issues or existing policy solutions. Given these varying scholarly and ideological positions, analysts posit that policymaking is never optimal, but a question of ‘satisficing’, that is, coming up with policies or policy solutions that meet the exigencies of the moment and politics of the time.

The politics around the development of the National Sanitation Management Policy were surprisingly subtle and devoid of much acrimony. This could be due to a shared discourse and policy narratives by those involved in the process, but it could also be due to the way the process was structured. In terms of the first factor, most players in the water and sanitation sector largely share similar perspectives of what the issues are, the factors giving rise to the poor sanitation status in the country, policy constraints that perpetuate the situation, and the preferred policy solutions for addressing these constraints. This became apparent in the broad range of issues covered by the NSMP. Nearly every major constraint in the sector is included, with proposals for formulating specific regulatory and institutional mechanisms to address them. Policy narratives that are mutually agreed on typically lead to more or less shared policy prescriptions that accord with the views, beliefs, and perspectives of dominant policy players.

There were subtle indications that some stakeholders had misgivings about the need for the NSMP. The first question that confronted the Steering Committee was, ‘*why are we having another policy when we already have the Kenya Environmental Sanitation and Hygiene Policy (KESHP)? Aren’t we duplicating KESHP?*’ Based on the findings of the situation analysis conducted at the beginning of the NSMP process, the Steering Committee provided sufficient evidence to show that KESHP had a more limited scope compared to the proposed policy, which would provide an overarching framework for both urban and rural sanitation, including sewerage and non-sewerage sanitation management.

The misgivings about the need for a National Sanitation Management Policy, and who should have the mandate for its development, would eventually emerge as subtle resistance towards the development of the NSMP by a section of stakeholders. The major bone of contention was whether or not the sanitation management function belonged to the Ministry of Health or the Ministry of Water. These misgivings seem to have originated much earlier. One respondent traced it to immediately after the 2018 conference.

So, bringing the two ministries together and having them at the discussion helped a lot. Before they came together, we had those hard questions. We kept asking: ‘where is the Ministry of Health? We are discussing sanitation, there is no way we can discuss sanitation and the Ministry of Health is not here.’ These debates had been simmering for quite a while; in fact, I think I can even trace it to the conference which we had in 2018 ...the executive order [that gave effect to transfer of sanitation function to Ministry of Water] itself was confusing to many of us.

These subtle almost muted questions would eventually morph into more or less open questioning of the process, and the intentions of those pushing for the formulation of the policy. Specifically, certain individuals from public health felt that sanitation was a public health function, not the mandate of the Ministry of Water, Sanitation and Irrigation. A key informant interviewed summed it up thus:

I think that it is natural to expect that people as much as possible would want to think first about their mandate, and want to ring-fence it, especially if they don't understand how the proposed change will benefit them. But once everyone understood that what we were trying to create would serve the larger public good and would clarify roles and mandates, they put aside their reservations. We had broad representation in the National Steering Committee, and as further proof of this, the consultations in Kisumu and Nakuru were chaired by somebody from the Ministry of Health.

Misgivings about the process also took the form of subtle territorialism and turf protection. Some key informants recalled an instance when some county government delegates who had been invited for public participation refused to accept their invitation letters, insisting instead that the letters be channeled to the County Executive Committees (CECs). Their main objection to the invitation was that being from public health, they could not accept invitations to attend a meeting organized by the Ministry of Water, to discuss sanitation, which they considered a public health function.

However, these objections were addressed and with time, they fizzled out. Much of the success in managing the dissenting views came in the way that the consultation processes were organized. The structure of the consultation process was designed to accommodate diverse views, build consensus and develop a document that would not only meet the requirements of technical feasibility but also political feasibility and broad-based ownership. People were encouraged to give their views freely, and the public participation forums were facilitated by individuals who were experienced in moderating public forums aimed at generating inputs for policy processes.

The public participation forums served a political function, namely that of sourcing and weaving public inputs into the policy process. They also served as platforms for negotiation and consensus building on issues in localized contexts where the issues were relevant to stakeholders at that level. This injected a sense of ownership but also practicality and pragmatism. The approach chosen by the Steering Committee offered a contextually grounded platform for building agency and collective action at the local level and thus actualizing the constitutional principles of citizen participation and public engagement on policy issues. While the questions about mandates and their associated nuances remain and might continue well into the implementation period, the fact that they were discussed openly and not ignored is a major plus for the Steering Committee. The NSMP makes very bold attempts to address these questions of mandate in the policy and regulatory mechanisms it proposes within the document.

CHAPTER FOUR: POLICY LEARNING OUTCOMES

4.1 Introduction

The policy learning outcomes that emerged are:

a) **Ownership and leadership by the government are key**



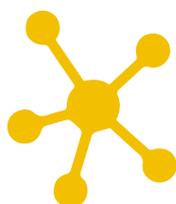
The development of the NSMP enjoyed authentic ownership and support from the Ministry of Water, coupled with support from other government agencies, notably the Ministry of Health. The process was government-owned and driven by key officers in the Ministry of Water. There was internal coherence on the need for the policy, combined with unity of purpose in having the policy formulated within the stipulated time. Government officials convened meetings, chaired and participated actively in these meetings. Moreover, top officials from the Ministry of Water became vision bearers and led from the front in rallying support within and outside government for the policy's formulation. In turn, this became one of the most distinguishing features of the process. Government ownership and leadership also gave the process political legitimacy.

b) **Insider support and championship**



Policy change requires the support of insiders who have a passion for the desired policy outcome and are willing to invest their efforts in driving the process. Key informants consulted for this report identified several top-level Ministry officials who became vision bearers for the NSMP. Their insider support and commitment were critical for weaving through inter-ministerial institutional processes and managing organizational politics. Their knowledge of government processes and their embeddedness also made it possible to overcome the bureaucratic hurdles that could have slowed down or altogether derailed progress towards completing the policy formulation process in time.

c) **Leveraging institutional networks of sector stakeholders**



The Constitution requires public participation and citizen engagement in all processes of public policy formulation, implementation, and evaluation. While it is possible that the Ministry and, by extension, the Steering Committee, could have managed to hold public participation forums across the 47 counties, it would have taken longer without the presence of civil society networks that supported this process. Civil society organizations marshaled and relied on their extensive networks in the water and sanitation sector across the country. They mobilized key constituencies, facilitated public participation across the country, and brought these institutional networks to bear on the process. The NSMP development process, therefore, benefited from and leveraged existing CSO networks to meet the public participation requirement. Nearly all who were consulted for this report extolled public participation as having been fully and meaningfully undertaken, earning the policy formulation process broad mandate and support from key players in the sector.

d) **A structured mechanism and approach to public participation is imperative**



The consultant engaged to shepherd the process developed an approach to stakeholder consultations and engagement guidelines. These guidelines became useful in setting the frameworks and principles of engagement as well as injecting an orderly, structured approach to receiving and processing feedback in the formulation of the NSMP. This made it possible to deal with divergent views and perspectives concerning aspects of the NSMP. For instance, as highlighted in the case studies above, there was some initial resistance towards the development of the NSMP from certain stakeholders who felt that it would duplicate the Kenya Environmental Sanitation and Hygiene Policy. There were also fears that the transfer of sanitation functions from the Ministry of Health to the Ministry of Water and the formulation of NSMP would somehow create confusion in the institutional mandates of the two ministries. However, the structured approach to consultations and engagement made it possible for different stakeholders to openly express these views, and for the NSMP to clarify these institutional arrangements in its contents.

e) **Timing and capitalizing on policy windows**



The process of the NSMP development benefited from the confluence of several policy windows: the creation of a new department within the Ministry of Water; the need for a policy framework to operationalize the newly created department; the support and commitment of a cadre of senior staff within the Ministry who wanted to see the policy formulated; and the issuing of the Executive Order on Sanitation. These catalytic events were then linked to continental and international commitments Kenya had made in the area of sanitation. Moreover, the relationship between civil society and government did not follow the typical conflictual modes of engagement taking instead a cooperative and collaborative approach to the policy development. Civil society networks were brought in as valuable partners, with some participating in the Steering Committee. In turn, civil society organizations mobilized their constituents and supported public engagement across the country. This coming together of different stakeholders made it possible to capitalize on the policy windows.

f) **Building initial support for policy change and sustaining it through open and transparent public engagement mechanisms**



There was broad agreement on the need for policy formulation, partly borne out of the deficiencies and gaps in existing policy frameworks in the area of sanitation. Even though various stakeholders had different interests in the sector, the Ministries of Water and Health worked hand in hand with the steering committee and managed to coalesce these diverse interests around specific policy goals. The initial interest built with key constituencies was sustained through engagements that sought to obtain their input into the discussion paper and later involved them in subsequent validation meetings across the country. The novelty in this approach is that the policy was being formulated amid the COVID-19 pandemic with very limited physical interactions in compliance with public health safety protocols. The lesson here is that policy processes that keep key constituencies engaged meaningfully stand a good chance of enhancing their legitimacy in the eyes of the public.

g) **Getting the right technical expertise and buttressing it through sustained institutional support**



The consultant hired for the development of the NSMP had extensive experience in the sanitation sector and had been involved in similar policy formulation processes. Because he understood the content and provisions of different policies, he was able to guide on what each policy focused on thereby winning the confidence of most stakeholders. Moreover, stakeholders provided volumes of feedback and processing this required someone who could quickly analyze, organize and synthesize it in a way that is useful for policy formulation. Time was of the essence, and the fact that the consultant had good facilitation skills also made it possible to obtain input from stakeholders in ways that were useful for drafting the NSMP.

The lesson in this regard is that selecting the right person with the requisite expertise simplifies an otherwise complex policy formulation process and makes it easy for diverse groups to engage in policy formulation. The consultant worked within the frameworks laid out by the Steering Committee and received institutional support from the Ministry of Water. This arrangement protected the policy development process from organizational politics and lent it legitimacy. It gave the consultant room to focus on the technical aspects of developing the NSMP while the government managed the politics and institutional aspects of policy formulation. Additionally, working with CSO networks created invaluable linkages to key sector players and made public participation possible.

ENDNOTES

- i. All the data cited are from the National Sanitation Management Policy
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- iii. Paul Burton, *Modernizing the Policy Process: Making policy research more significant?* Policy Studies, Vol. 27, No 3, 2006 ISSN 0144-2872 print/1470-1006 online/06/030173-23 – 2006 Taylor & Francis DOI: 10.1080/01442870600885974
- iv. Porter and Hicks, op. cit.
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- vi. Howlett, M. et.al., *Moving Policy Theory Forward: Connecting Multiple Stream and Advocacy Coalition Frameworks to Policy Cycle Models of Analysis*, Australian Journal of Public Administration, vol. 76, no. 1, pp. 65–79 doi:10.1111/1467-8500.12191 2016 Institute of Public Administration Australia
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- x. Cairney and Jones (2015), cited in Mukherjee and Howlett, op. cit.
- xi. <https://countytoolkit.devolution.go.ke/sites/default/files/resources/27.%20The%20Status%20of%20Public%20Participation%20in%20National%20and%20County%20Governments%20.pdf>



