



10 October 2017

**Review of the Nairobi City County
Solid Waste Management Draft Regulations, 2017
Submitted to the Kenya Alliance of Residents Associations (KARA)**

ABOUT TISA

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

Introduction

A social audit report conducted by The Institute for Social Accountability between May-June 2016,¹ identified the following gaps in solid waste management;

- a. Low rate of waste collection
- b. Lack of gazetted waste collection points
- c. Lack of accountability in solid waste management
- d. Lack of clarity on youth engagement into garbage collection
- e. Absence of visible development projects

A stakeholder meeting held at the Sarova Stanley hotel, on 25th August, 2016 and attended by among other members of the county assembly, residents' associations, professional associations and civil society organizations supported these findings. It was resolved during the meeting, among other things, to make recommendations to guide the implementation of the **Nairobi City County Solid Waste Management Act 2015**, and development of proposed regulations. We are grateful for the opportunity to make these recommendations and trust it will support the effective implementation of solid waste management in Nairobi City County.

Reflections on the Context of the SWM regulations 2017

Under the previous constitutional dispensation solid waste management was undertaken by the defunct Nairobi City Council. At the time, the overall waste situation in Nairobi was unsustainable, a challenge that was attributed to rapid urban population growth. Notably, at the time, as is the current situation there were observable differences in solid waste management in Nairobi, with affluent and middle income Neighbourhoods indicating that SWM services are well functioning whereas low income areas and informal settlement areas demonstrate that SWM services is either

¹http://www.tisa.or.ke/images/uploads/Social_Audit_Survey_Report_26th_Sep_2016.pdf

nonexistent or faces a huge problem. However, this challenge was and is being met by informal waste pickers who served the low-income areas. However, by laws at the time outlawed informal waste pickers in order to 'safeguard their health and safety and because it was alleged that the waste pickers interfered with the smooth operations of the council in solid waste management.² It is against this backdrop that the NCC Solid Waste Management Act and regulations are developed.

It is noteworthy that the regulations take considerable laudable steps in addressing this history. It is therefore necessary to refer to the Act in some instances, and where we find that the regulations are more progressive than the Act we have recommended review of the Act as a concurrent process of enactment of the regulations.

1. Environment Management and Coordination Act 2015

The **Environment Management and Coordination (Amendment) Act of 2015, Section 29³** provides that the county government shall establish a County Environment Committee that works as intergovernmental relations and consultative governance platform in the sector of environment and solid waste management. We note that the *Nairobi City County Solid Waste Management Act* does not provide for this committee.

Proposal: The Regulations should provide for the CEC proactively and that the regulations be accompanied by proposed amendments to the Act to make provision for this important body. However, the functions assigned to this committee should respect the devolved functional mandates of the county. The composition of the committees should provide for representation of residents as well as transparency to the deliberations, reports and budgets of the committee. Committee meetings should be open to the public.

2. Management of Solid Waste –Decentralization of sub-functions

There is need to decentralize the management of SWM effectively. The *Nairobi City County Solid Waste Management Act* should unbundle SWM sub-functions and retain those of a policy and legislative nature at the county level whilst delegating procurement, regulation and enforcement to sub-county and ward levels. Procurement would be guided by applicable thresholds, at the ward, sub-county and county levels. The coordinative administrative role of the county administrator should be recognized in the Act at respective levels of sub-county administration. Similarly, the mandates of county environmental officers should be recognized in the Act and detailed in the regulations.

Proposal: The regulations should provide for decentralization, and be accompanied by proposals for review of the Act as applicable.

²AnssiHiltunen (2010) Waste livelihoods and governance in Nairobi Kenya: A case study in Kibera informal settlement. Available < <http://su.diva-portal.org/smash/get/diva2:346501/FULLTEXT01.pdf>>

³ Section 29. (1) of the Environment Management and Coordination (Amendment) Act, 2015 The Governor shall, by notice in the Gazette, constitute a County Environment Committee of the County. (2) Every County Environment Committee shall consist of- (a) the member of the county executive committee in charge of environmental matters who shall be the chairperson; (b) an officer of the Authority whose area of jurisdiction falls wholly or partially within the county who shall be the Secretary to the County Environmental Committee; (c) one representative for each of the Ministries responsible for the matters specified in the First Schedule at the county level; (d) two representatives of farmers or pastoralists within the county to be appointed by the Governor; (e) two representatives of the business community operating within the concerned county appointed by the Governor; (f) two representatives of the public benefits organizations engaged in environmental management programmes within the county appointed by the Governor in consultation with the National Federation of Public Benefit Organizations; and (g) a representative of every regional development authority whose area of jurisdiction falls wholly or partially within the county.

3. Public Participation

Article 69 (d) of the **Constitution** of Kenya provides that the state shall encourage public participation in the management, protection and conservation of the environment. Under **Fourth Schedule**, the **Constitution** delegates the implementation of specific national legislation on environment to the county government. The county government has also enacted a law to govern refuse collection and handling. The right of citizens to participate in environmental matters is affirmed by the constitutional and legal framework. However, the community structures for engaging on these issues is lacking, and where it exists, it is ad hoc. There is need for structured engagement on environmental issues including provision of information and proper community consultation.

Recommendation: Establish County Environment Committee at the ward and sub-county community level to be known as Ward and Sub County Environment Committee respectively. These committees will be responsible for managing environment forums at the community level bringing together the members of public and other stakeholders to deliberate on matters of environment in the ward.

The specific functions of Ward and Sub County Environment Committee will be to:

- a) Sensitize citizens on their rights and responsibilities with regard to the sector
- b) Channel bottom-up feedback on the status and delivery of environmental services
- c) Facilitate the participation of citizens in decisions related to environmental issues
- d) Serve as an engagement partner for County Government in following up unresolved complaints and facilitate conflict resolution
- e) Assist the County Government in detecting and tackling unlawful practices that affect the provision of environmental services.
- f) Support the County Government in monitoring compliance of environmental laws through improved information flow from the grassroots level.
- g) Provide linkages between institutions that deal with environment and residents associations, civil society, community based organizations, faith based groups and other groupings within the community.
- h) Provide input from citizens during:
 - i) Environmental Impact Assessment of Projects in the Ward
 - ii) Licensing of Refuse collectors and handlers in the ward
- i) Lead in negotiation with the county government on modalities of community involvement in the provision of environment related services.
- j) Select contractors and development partners in line with provided thresholds and accountability requirements.
- k) Recommend disciplinary action against errant contractors and residents.
- l) Environmental committees at ward and sub-county level should also have the power to enter into agreements and engage contractors within stipulated procedures to ensure fairness and transparency.

The Ward and Sub County Environment Committee will be comprised of :

- I. Eight members elected to represent the registered neighborhoods and residential

associations in the ward.

- II. Up to three members appointed by the CEC in charge of environment to represent professional, business, and civil society organizations working in the environment sector in the ward.
- III. The officer in charge of environment in the ward
- IV. Other professionals working in the environment sector in the ward shall provide technical support to Ward and Sub County Environment Committee
- V. One representative from each ward will be nominated to the sub-county committee level

4. Interpretation of the draft Nairobi City County Solid Waste Management Regulations 2017

Regulation 2 on interpretation of 'waste collection point' as any premises or compound of any premises or any other designated place where solid waste is deposited temporarily before being collected and transported to a transfer station or waste disposal site lacks specificity, and fails to deal with the core problem of lack of designated waste collection points.

Recommendations:

- i. Waste collection points will be formally designated by the Sub-County Environment officer upon approval by the Sub-County Committee;
- ii. The county will ensure designated waste collection points are in proximate location to households and meet the demands of population numbers in respective areas;
- iii. The county will ensure review of waste collection points every two years to meet changing demands.

5. Payment and Administration of Waste Generation Charges

Regulation 6 on the requirement for licensed waste transporter of household waste to collect waste generation fee and remit the charge to the county government is vague. For sections that the collection is undertaken by private waste collectors, there is no justification for private collectors to remit charges to the Counties.

6. Transparency

The Act and regulations should contain provisions for proactive disclosure of information including mandatory disclosure of information on:

- a. Provide detailed list of all licensed garbage collection contractors in the county and their areas of designation, days of collection, name of company, year of registration, name of directors.
- b. Requirements of the contractors and details on the application procedure
- c. Conflict of interest provisions to ensure no county officers are involved in contracting
- d. Report of selection and appointment of the contractors (Tender report) made publically available
- e. Copies of contracts for the contractors made publically available
- f. Work allocations for the contractors including the vehicle registration, area assigned and days of responsibility.
- g. Detailed report of revenue generated from the solid waste management sector on monthly, quarterly and annual basis to be made publically amiable

- h. Quarterly performance reports generated through citizen audits through the ward level committees

Proposal: The regulations should provide details for access to information and transparency. Recommendations for inclusion in the Act should be provided as necessary.

7. Waste Segregation

Regulation 8 on waste segregation should specify that the primary responsibility for waste separation should be on the waste generator, and secondary responsibility is that of waste collector to ensure appropriate segregation of waste collected and to maintain segregated waste as collected. The regulations should require the service provider (county government/ private collector/ CBO/Communal groups) to provide color-coded garbage liner bags and litter bin service user.

8. Waste Prevention

Regulation 10 should include additional mechanisms to encourage minimization of waste generation, for example, introduction of volume based streamlined collection fee.

9. Waste Recovery, Reuse and Recycling

Beyond the provision that county executive member shall establish recycle waste transfer station, **regulation 11** should consider additional mechanisms to promote a culture of recycling such as investing in recycling infrastructure, offer incentive to waste recyclers, set up recycling incubation centers and introduce waste recovery technologies.

Proposal: The county shall designate and support the establishment recycle waste transfer station in each sub-county through partnership with community enterprise development initiatives.

6. Application for Solid Waste Transporter License –Regulation 16

In line with the county's stated objective to promote employment in the sector. The county shall designate a minimum of 30% of all transporter licenses to go towards youth community groups as an employment strategy. The county will enact specific regulations to operationalize this provision. The county will report quarterly on the performance of the 30% preferential transporter license.

7. Waste Collection and Transport by Communal Groups

Regulation 20 recognizes and gives formality to CBOs in waste collection especially in informal settlements. The regulations should consider zoning of waste collection operation areas of different private collectors, CBOs and the county government to reduce unhealthy competition of private collectors and CBOs in similar localities

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