



Memorandum on the Draft National Sustainable Waste Management Policy and Bill 2019

**To: The Principal Secretary,
Ministry of Environment and Forestry
NHIF Building, Ragati Road,
13th Floor, Room 1319,
P.O. Box 30126-00100,
Nairobi.**

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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. TISA submits this memorandum in response to the public notice for a National Validation for Waste Management Bill and Policy made by the Ministry of Environment in May 2019.

Review of the National Sustainable Waste Management Policy and Bill

We commend the Ministry of Environment and Forestry in its efforts to develop the National Sustainable Waste Management Policy and Bill prescribing the, “measures to be undertaken to ensure the country’s transition into circular economy and zero waste status through minimized waste generation, separation at source, enhanced waste collection, reusing waste, recycling, and disposal of unusable waste to secure sanitary landfills. The documents also prescribe waste governance and delineation of roles of the National and County governments.”¹ Although the draft Bill provides an opportunity for adoption of an overarching law that clarifies the roles of national government and county governments in respect to waste management regulation, we note with concern that the draft policy and Bill contains gaps as follows:

CONCERN	PROPOSAL
PART I - PRELIMINARY	
<p>Clause 3 of the Bill provides a list of related legislations that should be read together with the Bill once enacted into law. However, we note with concern the following:</p> <ul style="list-style-type: none"> i. The list is not comprehensive and leaves out key laws relevant to waste management ii. Some of the laws listed are outdated and not currently aligned with devolution. For instance, the Public Health Act that prohibits keeping waste that may be injurious to health 	<p>The Bill should include relevant sectoral laws to waste management including the following:</p> <ul style="list-style-type: none"> ✓ Urban Areas and Cities Act 2011 which provides for institutionalization framework for the management of urban areas and cities. It provides for the establishment of city and municipal boards and town committees to run urban areas and cities. These structures are mandated to undertake integrated development planning which among other things is intended to provide a basis for waste management. Its provisions on integrated planning for urban areas and cities provide the best opportunity for ensuring waste management matters are provided for in an integrated and sustainable manner.

¹ Ministry of Environment and Forestry - Website accessed on 23rd May 2019

<p>on any land or premises. The Act gives power to the Minister in charge of public health to order a municipal authority to discharge their public health duty including waste management.</p>	<p>NB: According to the Draft National Sustainable Waste Management Policy, waste is one of the imminent environmental challenges in the growing urban areas in Kenya today. Thus, the Urban Areas and Cities Act is a relevant law to waste management in urban areas.</p> <p>✓ Physical Planning law that provides for regulation of land use and building approvals which have a bearing on waste management facilities especially at the household and urban area level.</p>
<p>Clause 5 of the Bill lists down the principles to govern waste management. However, the Bill does not include key constitutional principles of public participation and decentralization.</p>	<p>Clause 5 should include public participation and decentralization/devolution among the general principles. NB: The Draft National Sustainable Waste Management Policy includes devolution and cooperative government among its guiding principles. This should be translated in the Bill.</p>
<p>Clause 5(a) of the draft Bill includes the right to clean and healthy environment as a key principle to guide the implementation of the Act. However, the draft Bill does not elaborate on the legal implications of having this right articulated as principle in law.</p>	<p>The Ministry should consider developing environmental and social rights standards for waste management in collaboration with the Kenya National Human Rights Commission.</p>
<p>PART II- POLICY, COORDINATION AND OVERSIGHT OF WASTE MANAGEMENT</p>	
<p>Clause 6, 7 and 8 of the Bill provide for the roles and responsibilities of the Ministry, NEMA and County Governments in waste management.</p> <p>However, the Bill does not establish an intergovernmental relations structure on waste management that will bring together both levels of government for joint planning and policy discussions. The Waste Management Council under clause 6(7)(c)(iii) is to only ensure coordination across the national and county government bodies engaged in activities related to sustainable waste management.</p> <p>Further, the Bill fails to elaborate on the regulatory powers of County Governments in waste management. Therefore, it reinforces an anomalous situation where NEMA will continue regulating wastes within counties thus undermining devolution of waste management function to counties.</p>	<p>The Bill should provide an Intergovernmental Relations Framework to promote effective intergovernmental relations on waste management issues between the Ministry, NEMA and the County Governments.</p> <p>Clause 6(1)(b) should require the Ministry when developing regulations to not only consult NEMA but also county governments.</p> <p>Clause 6(3) should include representatives from the informal sector as members of the Waste Management Council. According to the Draft National Sustainable Waste Management Policy, recovery of recyclable items is done by informal groups and street families. Among the policy objectives is to engage with all stakeholders the informal sector. These should be translated in the Bill, especially the Waste Management Council.</p> <p>Clause (7)(1)(d) should consider cooperative governance in waste management license applications.</p> <p>The Bill should rationalize regulatory authority between NEMA and county governments.</p> <p>There seems to be inconsistencies in the Draft National Sustainable Waste Management Policy licensing of waste transporters. Policy measure 3.2.4 for waste transportation provides that all waste transportation shall be licensed by NEMA while Policy measure 3.3.1 on strengthening institutional frameworks provides that county governments</p>

	shall license waste service providers including collectors and transporters.
PART III – MEASURES AND ACTIONS	
Clause 9(1) provides that the Cabinet Secretary shall in consultation with NEMA make policies and regulations for the proper management of the Act once it comes into force. However, the Bill does not require the Cabinet Secretary to consult with county government when making policies and regulations.	The Constitution establishes a cooperative system of devolved government which requires a system of intergovernmental relations. Cooperative government entails intergovernmental dialogue and the two levels of government should liaise and work with each other when conceiving, developing and implementing policy and legislation. This avoids conflict of legal provisions, enables to determine which part of the national law should be implemented by counties, ensure cost effective service delivery that is well coordinated with national priorities.
PART IV- DUTIES RELATING TO WASTE MANAGEMENT	
Clause 13, 14,15,16,17 and 18 of the Bill only provides for the duties of the Ministry, public entities, county government, private sectors and citizens in relation to waste management. It places more emphasis on duties of right-holders and duty bearers. It does not highlight rights of citizens, particularly on waste management matters, and this may undermine the process of exacting accountability whenever breaches occur.	The draft Bill should ensure there is also a strong focus on rights in waste management laws. Therefore, the draft Bill should include rights for which the listed duties are correlated. This will ensure balanced accountability measures in the said frameworks.
PART V- PUBLIC PARTICIPTION AND ACCESS TO INFORMATION	
Clause 19(2) of the Bill provides for access to information by the public of any records transmitted to NEMA but takes away this right by enabling NEMA to maintain confidentiality of records if the applicable circumstances require.	Access to such information should be a matter of right. Information contained in the national waste information system must be made available by NEMA subject to the Access to Information Act 2016.
Clause 20 of the Bill provides for public consultation and public participation in accordance with the procedures contained in the Statutory Instruments Act 2011 schedule. However, it is important to note that the Environment Management Coordination Act 1999 establishes the County Environmental Committees as structures to facilitate participation in environment decision-making. But these laws are weakly integrated in the absence of clear cross referencing and therefore implementers of waste management law may not necessarily utilize the structures, platforms and procedures provided for under the EMCA 1999. The delays in operationalizing the County Environment Committee may deny	There is need to align laws on public participation with the waste management law. This will promote better integration and synergy, thus improving on the weaknesses in the waste management law on the aspect of public participation. This can be achieved by cross-referencing relevant provisions of the pubic participation laws (platforms, mechanisms and procedures) and how these could aid in entrenching participation in waste management systems. There is need to fully operationalize structures of participation such as the County Environment Committee provided for under EMCA 1999. It must also be ensured that there is special focus on participation of vulnerable and disadvantaged groups. All waste management laws should include provisions that promote affirmative action for vulnerable and disadvantaged groups such as associations found in informal settlements and informal waste pickers. To ensure participation of the poor and most vulnerable in the waste value

stakeholders opportunity to influence decisions and planning related to waste management at the county-level.	chain, there is need to mainstream non-discrimination and equality through clear provisions.
PART VII- MONITORING AND COMPLIANCE	
Clause 22 and 23 of the Bill provides for monitoring and provision to be enforced by NEMA, these appear repetitive of similar provisions under the EMCA 1999.	The draft Bill should reference the relevant EMCA provisions on monitoring and inspection duties of NEMA which appear more elaborate.

In conclusion we wish to reiterate that the draft Bill does not establish an intergovernmental relations structure in waste management, which otherwise would bring together both levels of government for joint planning, coordination and policy discussions. The draft Bill ought to have provided a clear framework for improving intergovernmental relations on waste management issues.

Secondly, the draft Bill should have rendered guidance on decentralization of waste management at the county level. The Constitution gives a good basis for decentralization below the county levels. The enactment of the Urban Areas and Cities Act was done to facilitate decentralization of decision-making and service delivery to towns and urban areas. However, the draft Bill does not provide for this kind of decentralization.

Thirdly, the Bill should prescribe in general terms, the process and anticipated outcomes of waste planning at both the national and county levels. It should also provide mechanisms for integration of national and county waste plans with the national and county environmental action plans respectively and budget to ensure adequate financial provisions.

Lastly, while the term waste is defined to include both solid and liquid waste, the draft Bill mostly deals with the management of solid waste.

For further information, please contact Christine on:

Tel: +254 20 4443676

[Email: info@tisa.or.ke](mailto:info@tisa.or.ke)

P. O. Box 48353-00100, Nairobi

www.tisa.or.ke