



# POLICY BRIEF

Review of Draft Makueni County  
Sustainable Solid Waste Management  
Policy 2019





# **POLICY BRIEF**

Review of Draft Makueni County  
Sustainable Solid Waste Management  
Policy 2019

© 2020 The Institute for Social Accountability (TISA)

This report is prepared by TISA for Makeni County Government.

**Design | Layout | Print**

Endless Inspiration

+254 722 659 368 | [hello@endlessinspiration.org](mailto:hello@endlessinspiration.org)

## Acronyms

<b>CEC</b>	County Environment Committee
<b>CECM</b>	County Executive Committee Member
<b>CoK</b>	Constitution of Kenya (2010)
<b>EMCA</b>	Environmental Management & Coordination Act
<b>HRBA</b>	Human Rights-Based Approach to Development
<b>SWM</b>	Solid Waste Management
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>OSHA</b>	Occupational Safety and Health Act
<b>TISA</b>	The Institute of Social Accountability



# CONTENTS

1. Introduction	6
2. Framework for Analyzing the Revised Policy Draft	7
3. Overview of the Revised Draft Policy	9
4. Assessment of the Revised Policy	12
4.1 Integrated and sustainable waste management approach	12
4.2 Assessment of the HRBA in the revised policy	13
4.3 Assessment of the entrenchment of key constitutional principles for effective waste governance & decentralization	15
5. Recommendations	17

## 1. Introduction

The Institute for Social Accountability (TISA) is currently implementing a project that seeks to promote social enterprise frameworks and models based on a human rights-based approach to green, sustainable zero-waste circular economy centered on integrated solid waste management in selected counties in Kenya. The project is currently focused on Makueni County, as aims at realizing integrated solid waste management and enhanced livelihoods through new and innovative social enterprises.

In pursuing this initiative, TISA entered into a partnership with the County Government of Makueni (CGM) which sought to leverage on the '*mwene nthi*' approach to entrench the human rights-based approach and promote popular participation in marketization of wastes. Some of the key priorities to be pursued under this partnership include review and adoption of a policy on solid waste management for the Makueni County to lay a framework for marketization of wastes with environmental protection integrated therein.

In early 2019, the CGM drafted a policy on SWM under leadership of the Physical Planning Department. The mandate for driving the policy process shifted to the Department of Water, Sanitation, Environment and Climate Change. The Department entered into consultations with TISA with a view to ensuring the policy reflected to key concerns undergirding the partnership and as well, promoting stakeholder engagement in the process.

The policy was reviewed by TISA and the findings were presented at a stakeholder workshop held in Wote in early September 2019. The workshop found that the policy was inadequate in many aspects and did not meet the drafting guidelines established by the Kenya Law Reform Commission. Using the Model County Solid Waste Policy, the staff of the Department redrafted the policy extensively, with technical support from TISA. The next step is the validation of the draft ahead of the mandatory public participation process.

This brief therefore provides a broad overview of the revised draft SWM policy, analyzes the policy against the key principles and recommends appropriate amendments and other suggestions to strengthen the framework before subjecting the same to public participation and the eventual adoption processes.

## 2. Framework for Analyzing the Revised Policy Draft

This review is based on three analytical dimensions. The first dimension is based on the concept of integrated and sustainable waste management (ISWM). According to Wilson et al, the concept of “integrated” is taken to mean ensuring all physical and technical components of a waste management system work as a whole, or the various levels of the waste hierarchy (prevention, recycling and disposal) are implemented in a coherent manner.<sup>1</sup> The notion of ‘sustainable’ is considered manifest in a solid waste management system if the economic, social and environmental dimensions of waste are adequately addressed in a holistic manner.<sup>2</sup> An analytical framework for ISWM comprises two elements; physical and governance. The physical elements include facilities, technologies and human resources to ensure separation, collection, transfer, treatment and final disposal.<sup>3</sup> The physical elements are meant to ensure public health, environmental protection and implementation of the waste hierarchy.<sup>4</sup> The governance elements focus on stakeholder involvement, ensuring sustainable financing and establishing sound institutions as well as proactive policies.<sup>5</sup>

---

1 David Wilson, Costas Velis & Ljilijana Rodic, 'Integrated sustainable waste management in developing countries' (2013) 116 *Waste Management Research*, 53

2 Sintana Vergara & George Tchobanoglous, 'Municipal solid waste and environment: a global perspective' (2012) 37 *Annual Review of Environment and Resources* 280; the authors also include holistic management of waste flows in society as their various forms- water, solid, gaseous- as integral to sustainability

3 Lilliana Guerrero, Ger Maas and William Hogland, 'Solid waste management challenges for cities in developing countries' (2013) 33 *Waste Management* 221

4 Wilson et al, *Integrated sustainable waste management* 55

5 Ibid

The second analytical dimension is based on the concept of human rights based approach (HRBA). According to the United Nations, HRBA is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting human rights.<sup>6</sup> In practical terms, HRBA seeks to ensure development project, programmes and policies are designed and implemented in a manner which supports realization of human rights.

HRBA is undergirded by principles which include participation, accountability, non-discrimination, empowerment and linkage with human rights norms (also known as PANEL principles).<sup>7</sup> In Kenya, these principles reflect the content of the principles of governance that are enumerated under Article 10 of the Constitution (2010) and therefore providing a legal foundation for HRBA.<sup>8</sup> Within the context of SWM, entrenching HRBA is meant to secure socio-economic and environmental rights of citizens.

The third dimension of the analytical framework is derived from the constitutional principles that aim to promote effective waste governance and decentralization of SWM institutions. These have been prioritized by TISA and they include: transparency, accountability, public participation, intergovernmental relations, decentralization, social and economic development and a public procurement system that is fair, transparent, and provides for inclusion of disadvantaged groups.

Based on these three dimensions, the review seeks to address the following questions:

- a). How does the policy promote integrated and sustainable waste management in Makueni?

---

6 OHCHR & United Nations, *Frequently asked questions on a human rights-based approach to development cooperation* (United Nations, 2006) 15

7 Ibid

8 Kenya National Commission on Human Rights, *Guidelines for a human rights-based approach to public policy and law making at national and county levels* (KNCHR, 2015) 16

- b). To what extent does the policy embrace the human rights-based approach and its principles?
- c). To what extent does the policy give effect to the key constitutional principles for promotion of effective governance and decentralization of SWM institutions?

### 3. Overview of the Revised Draft Policy

The revised draft policy- “The Makueni County Sustainable Solid Waste Management Policy, 2019”- is organized into 5 chapters, namely; background and introduction; contextual analysis; legal framework analysis; policy framework and; institutional and implementation arrangements.

The introduction provides a brief on the state of SWM in Makueni county out of which the rationale for the policy is established and the policy scope and development process is described accordingly. The document acknowledges the environmental and public health importance of waste management, while underscoring the economic importance of waste as a resource. The document notes that due to the rural profile of the County, significant volumes of waste are generated in urban centers (Wote, Emali, Nunguni, Makindu, Kibwezi, Mtito Andei, Tawa) but inadequately collected and disposed with minimal environmental safeguards (if any). Whereas small-scale recycling and trade in wastes has been going on, there is potential for upscaling the same. Thus the policy seeks to streamline waste management to ensure environmental conservation, full exploitation of waste as a resource and prevention of outbreak of diseases associated with poor waste management. The policy also seeks to operationalize and institutionalize waste management as a devolved function in line with the Constitution and Makueni County Integrated Development Plan (2018-2022).

In the contextual and situational analysis section, the policy document provides the profile of the county and describes the conceptual framework for the proposed waste management approach. The framework is solely based on the integrated solid waste management analytical framework. It identifies the physical and governance elements of the framework as described in the previous section as well as the waste hierarchy approach. An analysis is provided of the gaps and opportunities for implementing the ISWM framework in Makueni County. The most significant gaps are identified in generation, collection and transfer of wastes, pointing to weak capacity in this area. The potential for waste valorization across the hierarchy is also evident. The section also provides a stakeholder analysis which presents the key state and non-state actors the CGM ought to engage for the successful implementation of the ISWM framework.

In the legislative framework section, the policy provides an analysis of applicable global, national and county laws and the extent to which these facilitate implementation of the ISWM approach in Makueni. The analysis underscores the enabling role which the Constitution portends and the central place for the Environmental Management and Coordination Act (EMCA), Cap 387 in successful implementation of ISWM approach. It is also evident that the County is yet to enact policies and laws which have significant bearing on ISWM, such as SWM law, planning law, building code and public health law. There are several national laws which have a bearing on SWM regulation at the county level (Traffic Act, Water Act, Occupational Safety and Health Act and Forest Act) and this points to the need for the CGM to coordinate and cooperate with the respective national agencies in ensuring effective enforcement at the county level.

The policy framework is summarized by the table below:

<b>Vision /Goal</b>	To realize a waste-free environment with healthy and prosperous communities in Makueni County
<b>Mission</b>	To protect public health and environment while creating wealth through sustainable and integrated solid waste management in Makueni County
<b>Objectives</b>	<ul style="list-style-type: none"> <li>a. Promotion of a cost-effective, equitable and sustainable delivery of waste management services in line with waste hierarchy</li> <li>b. Strengthening stakeholder involvement, partnerships and collaboration through participatory process in solid waste management</li> <li>c. Promotion of enterprises, markets and incentives for solid waste products for socio-economic development</li> <li>d. Strengthening policy, legislative and institutional framework and capacity for effective solid waste management</li> </ul>
<b>Principles</b>	<ul style="list-style-type: none"> <li>a. Proximity principle</li> <li>b. Self-sufficiency principle</li> <li>c. Polluter pays principle</li> <li>d. Precautionary principle</li> <li>e. Inter-generational equity</li> <li>f. Intra-generational equity</li> <li>g. Waste hierarchy approach.</li> <li>h. Affirmative action.</li> <li>i. User pays Principle</li> <li>j. Public participation principle</li> </ul>

A raft of policy measures are provided in respect to each policy objective. The highest number of action proposed are under the objective on marketization of wastes, underscoring the level of investment required to achieve this priority.

With regard to institutional arrangements, the revised policy domiciles waste management function within the Department of Water, Sanitation, Environment and Climate Change. The County Environmental Committee provides overall oversight and policy coordination in terms of implementation of the policy whereas the climate change committees at the sub-county levels and below provide similar functions at the respective levels. This approach is taken to avoid creation of new structures thereby resulting in fragmentation through multiplicity of structures. The enforcement function is to be undertaken through the environmental administration and governance units headed by sub-county environment officer in all sub-counties of Makueni.

The policy proposes a monitoring and evaluation framework linked to the county integrated monitoring and evaluation system as provided for under the CIDP 2018-2022 to avoid duplication. The Policy is to be reviewed every three years by the County Executive Member upon the advice and recommendation of the County Environment Committee.

## **4. Assessment of the Revised Policy**

### **4.1 Integrated and sustainable waste management approach**

The County has evidently embraced the ISWM as its analytical approach in various ways. First, the policy provides a good analysis of the gaps in the physical elements of the SWM system in Makueni and provides concrete policy actions towards addressing the same. Secondly, the waste hierarchy approach is clearly prioritized and evidently guides the proposed actions. Thirdly, stakeholder engagement strategies are linked to the stakeholder

analysis and this hopefully will facilitate inclusivity and affirmative action for the vulnerable and marginalized (poor, waste pickers and informal traders etc.). Fourthly, has provided for an institutional framework which leverages on existing structures to provide oversight and coordination in the implementation of the policy. Fifth, the policy now recognizes the resource value of wastes and provides for measures to promote marketization of wastes.

However, several gaps are evident in the articulated ISWM approach. First, even though the policy prioritizes waste prevention as an integral element of the waste hierarchy, it does not outline clear strategies for realizing this important aspect. For a county with low waste collection rates and over-reliance on dumping as the disposal method, waste prevention is very critical in promoting sustainability. Secondly, the financial aspects of sustainability are not clearly articulated. The baseline on the current funding and expenditure levels for waste management are not provided for as this could provide a good basis for establishing targets. In the same vein, funding mechanisms to secure predictable and stable financing model for SWM system are not articulated.

Thirdly, even though the policy has identified policy and legislative gaps which if addressed could provide the basis for proactive policies to complement the policy, there are no measures adopted to ensure progressive review or enactment of the said policies and laws. Thus, despite enacting a county waste law and policy, the CGM will struggle to harness the effective support and coordination of other sectors due to weak policy and legislative environment. Fourth, the stakeholder analysis carried out is rather weak, since key entities such as NEMA, physical planning department, Kenya National Highways Authority, transporters associations among others are missing. These organizations are key to the achievement of the policy objectives

## **4.2 Assessment of the HRBA in the revised policy**

Even though the policy does not expressly adopt HRBA as its analytical framework, various aspects of the approach are ingrained in the document.

First, the policy upholds the principle of participation and outlines policy measures which promote stakeholder engagement in the waste management processes. Secondly, the policy designates institutional responsibility for waste management to a specific department (water, sanitation, environment and climate change) and this ensures accountability for the discharge of this function. The policy also highlights other institutional structures and the roles they play within waste management. This allows for stakeholders to identify with precision, actors against whom accountability can be exacted in cases of dereliction of obligations.

Thirdly, the policy promotes non-discrimination by acknowledging affirmative action as a guiding principle and outlining actions aimed at promoting the participation of vulnerable groups (including informal waste actors) in the waste value chain. Fourth, the Policy prioritizes capacity building of all actors as a way of empowering them to discharge their duties and effectively participate in the processes (under policy objective 1). Fifth, the policy is linked to human rights norms in that it seeks to promote right to clean and healthy environment as per the Bill of Rights.

However, the policy contains some gaps which may undermine its potential to advance HRBA. First, the policy does not clearly articulate the linkage with existing county policies on public participation. Without such linkage, the policy may end up fomenting overlaps and duplication with existing public participation structures in Makueni, thus undermining the principle of participation. Secondly, the policy does not clearly set out the responsibilities of citizens and non-state actors and hence it may be difficult to exact accountability from these important actors. The policy also lacks an implementation framework and this may complicate attempts to exact accountability for specific strategies since there are no designated duty-bearers nor performance indicators to assess level of achievement/compliance.

Thirdly, the policy is rather weak on promotion of transparency in the sense that it does not contain explicit provisions on establishment of and

maintenance of accessible SWM information management system. The policy also fails to highlight complaint handling mechanisms in the event of denial of information in the SWM processes.

Fourth, does not clearly outline how affirmative action is to be translated into access to procurement opportunities within the waste value chain, particularly for vulnerable groups. Since procurement opportunities are dominant in the waste management processes, this is a significant oversight.

### **4.3 Assessment of the entrenchment of key constitutional principles for effective waste governance & decentralization**

In its rationale, the policy aims at operationalizing the constitutional provisions related to principles of governance, devolution of SWM as a devolved function and entrenchment of the right to clean and healthy environment. As such, the policy embarks on the pursuit of constitutional elaboration of principles through sub-national policy articulation in various ways.

First, the policy has articulated principles of governance such as participation and provided useful provisions to actualize notions of affirmative action (in public procurement) accountability and transparency as highlighted in the preceding section on HRBA. Secondly, in the analysis of legal framework, the policy has interrogated the application of national laws to regulation of SWM at the county level in a manner which brings out clear basis for inter-governmental relations and cooperation. The centrality of EMCA in waste regulation at the county level necessarily mandates NEMA (a national agency) to play an important role in SWM governance at the County level. By vesting the County Environmental Committee with policy coordination and oversight role in SWM, the policy provides opportunity for NEMA to engage with county officials and non-state actors on waste governance issues and thus promoting vertical integration.

Fourthly, the policy provides as a measure, the establishment of a framework for inter-county cooperation and coordination of wastes under the auspices

of the South Eastern Kenya Economic Bloc (SEKEB). If well elaborated and operationalized, this framework will promote horizontal integration of waste governance concerns within the region.

Fifth, the policy has proposed a rather robust decentralization framework for waste governance, which rather than creating new institutions has leveraged on existing structures responsible for climate change governance and general environmental enforcement at the sub-count levels. This is meant to avoid multiplicity of structures and mechanisms which result in redundancies and duplication.

Notable gaps however, are evident in the policy. First, the framework fails to identify in its stakeholder analysis, duty bearers responsible for implementation of national laws at the county level (e.g. police, Kenya forest service, water resources authority etc) who have a clear role in waste governance. This omission is likely to translate into an implementation gap, where these important duty bearers are ignored in operational aspect of waste governance.

Secondly, the policy lacks specifics on how the inter-county framework for cooperation on waste governance is to be achieved. This could be resolved by developing an elaborate implementation matrix as an annex to the policy. Thirdly, the policy does not clearly provide linkage between the proposed waste governance structures and the existent public participation mechanisms in the county. Makueni has a remarkable public participation mechanism, which is very influential in key governance processes such as planning, budgeting, project oversight and legislation. Lack of clear linkage may undermine efforts to decentralize waste decision-making by encouraging potential conflicts in prioritization of resources and oversight of project implementation at local levels.

Fourth, the relationship between the Department (responsible for implementing this policy) and the recently established municipal and urban area boards in waste governance is not clear. These boards are not provided

for the proposed institutional framework. There is need to integrate the boards in the framework and articulate their roles vis-à-vis the Department for Environment and its sub-county structures.

## 5. Recommendations

The revised policy has key elements of a typical policy. However, the following general recommendations are made to strengthen the current draft

- a). Conceptual framework: The CGM should consider expanding the conceptual framework to include HRBA and key constitutional principles articulated in this brief.
- b). Provide baseline information: The policy should beef-up with the contextual and situational analysis section with relevant waste data. TISA has separately commissioned baseline study of SWM and commercialization of wastes respectively. These will provide useful information as well.
- c). Develop a robust implementation framework: This should elaborate on the policy measures, apportion responsibilities and time frames as well identify budgetary implications. Performance indicators should be provided as well.
- d). Financing arrangements: The policy should provide Details on how financial sustainability is to be achieved in SWM.
- e). Implications of the policy on existing legal and policy arrangement: The policy should elaborate on the changes that are necessary to ensure policy and legislative coherence.
- f). Waste planning: develop guidelines for waste planning and annex the same to the policy

In addition, the following specific changes are recommended for the following sections:

Section	No.	Proposed change	Comments
SWM context	1.2	Include baseline data on waste profile of Makueni County	This enhances appreciation of the necessity of the policy
Policy scope	1.3	Expound on how the policy will relate with existing laws and policies on SWM.	This provides a basis for proposing review/ amendments/ repeal of existing policies & laws
Geographical location and size	2.1.	Provide locations of key waste facilities in the county	
Human development index	2.3.2	Relate poverty with key waste issues facing the county	Waste facilities are likely to be cited in poor neighbourhoods thus imperiling health status of poor; exploiting waste as a resource may address poverty

Section	No.	Proposed change	Comments
Demographic context	2.3.4	Update population figures with recent census results and provide projections into the future; link population growth with growth in waste generation (provide per capita estimates)	
Urbanization	2.4.1	Provide figures on waste generation, collection, potential for waste markets etc	
Integrated solid waste management	2.5	Consider moving this to the introduction section and expand it to include HRBA and key constitutional principles underpinning waste governance and decentralization	
Analysis of functional element solid waste in Makueni County	2.6.1	Under waste generation, analyze gaps and opportunities for waste prevention and minimization	This provides basis for recommending policy actions on waste minimization

Section	No.	Proposed change	Comments
Stakeholder analysis	2.7	Expand the analysis to include national government actors; neighboring counties;	This will ensure robust discussions on inter-governmental cooperation
Environmental impacts of waste management	2.8	Provide baseline information	This will indicate level of significance of the impacts and the rationale for addressing them through specific policy actions.
Physical Planning Act	3.7.4	Replace with Physical and Land Use Planning Act	Provide the relevant analysis of the new law
Promotion of a cost-effective, equitable and sustainable delivery of waste management services in line with waste hierarchy	4.6.1	Insert procurement of appropriate waste facilities and equipment; construction of sanitary land fills and; effective enforcement; decentralization of waste functions to municipal boards; as specific policy measures	

Section	No.	Proposed change	Comments
Strengthening stakeholder involvement, partnerships and collaboration through participatory process in solid waste management	4.6.2	Insert development of solid waste information management system as an intervention.	This will promote transparency
Promotion of enterprises, markets and incentives for solid waste products for socio-economic development	4.6.3	Insert engagement with Public Procurement and Disposal Authority on establishing waivers and preferences in public procurement for informal waste actors and locally recycled products  Include additional recommendations from the Commercialization of wastes study	This will orientate the public procurement and disposal system to support marketization of wastes

Section	No.	Proposed change	Comments
Strengthening policy, legislative and institutional framework for and capacity effective solid waste management	4.6.4	Insert: undertake an audit of laws and policies that require review/enactment to facilitated integrated and sustainable SWM	This will enable the County Executive Member to advise the Governor on appropriate legal and policy changes required for other sectors
Institutional organization of solid waste	5.0	<p>Provide for municipal and urban area boards within the institutional framework</p> <p>Provide linkage between the Climate change committees and the county public participation forums</p> <p>Introduce the County Inter-governmental forum as a possible institution that would bring other national government agencies with a mandate on SWM regulation in the County</p>	

Section	No.	Proposed change	Comments
Implementation Matrix	6.0	Insert this chapter and develop a matrix indicating the specific policy actions, responsibility, timeframe and budgetary implications	
Financial sustainability	7.0	Provide elaborate arrangements for promoting sustainable financing of SWM functions within the County	





The Institute for Social Accountability (TISA)  
P. O. Box 48353-00100, Nairobi, Kenya  
Office Tel: + 254 20 444 3676/ +254 757 129 700  
Website: [www.tisa.or.ke](http://www.tisa.or.ke) | Email: [info@tisa.or.ke](mailto:info@tisa.or.ke)

 TISA Kenya

 @TISAKenya

 22416 Subscribe to \*416# for county updates

