

Strengthening Kenya's institutions for urban sanitation

Quick read

- This briefing note summarises the findings and policy recommendations from comparative research into how Indonesia, South Africa and Tamil Nadu State in India have reformed their institutional frameworks for urban sanitation in the context of decentralisation. This research is being carried out by ODI, IDIA and AguaConsult under the Urban Sanitation Research Initiative Kenya.
- We focus here on three key institutional challenges for Kenya: 1) ensuring coordination between the lead ministries, departments and agencies at both national and decentralised levels; 2) incentivising county governments to commit policy attention and resources for urban sanitation; and 3) ensuring cooperation through appropriate regulatory arrangements, particularly for on-site sanitation.
- The three international models (Indonesia, South Africa and Tamil Nadu) show lessons from both success and failure, and following our consultations with leading institutions and experts in Kenya, we put forward three areas for particular consideration by policy-makers:
 - How best to design and structure the National Environmental Health and Sanitation Coordination and Regulatory Authority (NESCRA) within the national government executive formation so as to have sufficient authority: (a) to coordinate other line ministries responsible for sanitation; and (b) to coordinate activities of county governments.
 - Whether additional incentives and support are required to encourage county governments to prioritise urban sanitation, beside the constitutional right to sanitation and establishment of National Sanitation Fund (NASF).
 - How on-site sanitation can be properly regulated through establishment of NESCRA in collaboration with others including the Water Services Regulatory Board (WASREB), National Environment Management Authority (NEMA) and county governments.

Rationale

Decentralisation in Kenya presents both opportunities and difficulties for the urban sanitation sector. Political, administrative and fiscal powers and responsibilities are already devolved to counties, including for urban sanitation. The next step is further delegation to city and town authorities and service providers. Meanwhile, the Kenya Environmental Sanitation and Hygiene Policy 2016-2020 (KESHP) proposes major institutional changes within the sector, including establishing NESCRA and the NASF.

As decentralisation unfolds, a strong institutional framework can help secure better urban sanitation outcomes by coordinating action, ensuring cooperation and generating commitment among the many responsible organisations and individuals at different levels. To help secure these benefits, this policy note examines the experience of other countries, which have evolved the institutional setup for urban sanitation alongside wider decentralisation reforms.

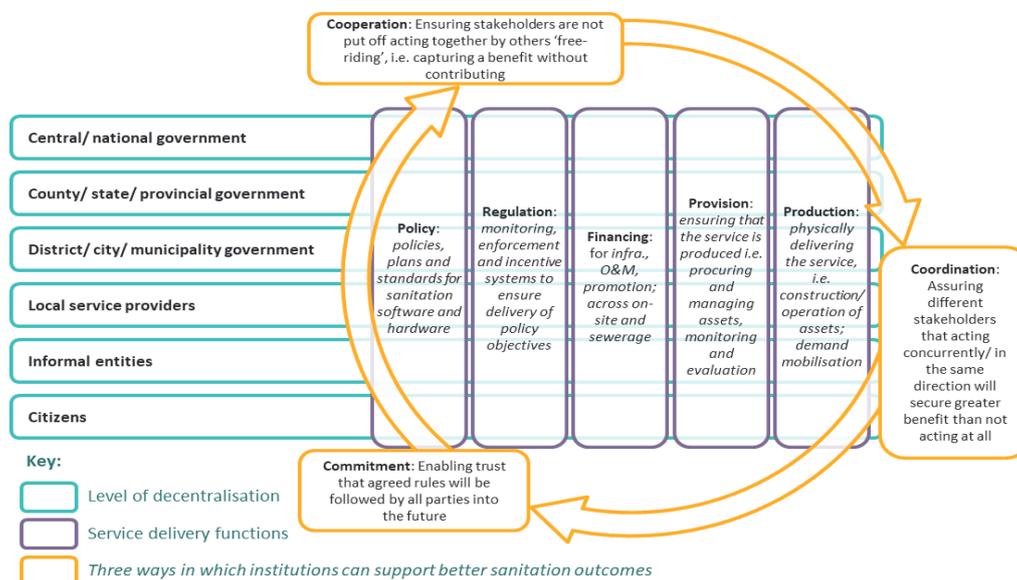
Methods

The research comprised (i) a scoping study to identify institutional challenges for urban sanitation in Kenya, in the context of decentralisation; and (ii) a political economy analysis of how national and subnational policy makers have sought to respond to comparable specific challenges in other contexts: in India (focusing on the State of Tamil Nadu), Indonesia and South Africa. Both stages of the research draw on key informant interviews with stakeholders including representatives from government, civil society, private sector, research and development partner organisations, as well as desk studies of relevant academic and grey literature. Analysis was guided by a novel conceptual framework which draws on recent work by the World Bank (2017 World Development Report and WASH Poverty Diagnostic Initiative), and maps different functions for sanitation across the levels of decentralised governance arrangements. The framework also helps examine the ways in which the institutional setup enables, or undermines, *commitment*, *cooperation* and *coordination*.



These ‘3Cs’ are explanatory concepts which can be used to explore *how* and *why* institutions support better outcomes. See the diagram below for further explanation and definitions. Recognising that every context is different, we aim to provide Kenya’s sanitation leaders with a range of options, rather than a specific blueprint.

Conceptual framework – how institutions at different decentralised levels (green) can deliver the key functions for urban sanitation (purple) by enabling coordination, cooperation and commitment (orange)



Source: Authors, drawing on World Bank Group. 2017a. World Development Report 2017: Governance and the Law. Washington, DC: World Bank; and World Bank Group. 2017b. Reducing Inequalities in Water Supply, Sanitation, and Hygiene in the Era of the Sustainable Development Goals: Synthesis Report of the WASH Poverty Diagnostic Initiative. World Bank, Washington, DC.

Findings

The comparison countries were selected through a two-stage screening process using qualitative and quantitative data. The three selected have (i) undertaken decentralisation for a period of at least a decade; (ii) made progress on extending access to urban sanitation services in that period; and (ii) done so without significantly greater per-capita wealth than Kenya. The comparative cases present lessons from failure as much as success. With significant differences between states in India’s federal context we focus on the urbanised state of Tamil Nadu.

Data on decentralisation, urban sanitation, GDP and urban population for the four case study countries

	Government Closeness Index Rank	GDP per capita, PPP current (international \$)		Urban population (% of total and in millions)		% of urban population with at least basic sanitation	
	2005	2000	2015	2000	2015	2000	2015
Kenya	99 th	1,690	3,020	20% (6.3)	26% (12.1)	34%	35%
India	68 th	1,978	6,127	28% (291.3)	33% (428.7)	50%	65%
Indonesia	40 th	4,602	11,040	42% (88.9)	54% (138.7)	66%	77%
South Africa	54 th	7,561	13,165	57% (25.5)	65% (35.6)	70%	75%

Source: The Government Closeness Index ranks 182 countries on decentralisation and localisation mainly with 2005 data (see Ivanyna, M. and Shah, A. 2012. How Close Is Your Government to Its People? Worldwide Indicators on Localization and Decentralization. Policy Research Working Paper; No. 6138. World Bank, Washington, DC, p.6). Data on urban sanitation are from the World Health Organization and UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene (JMP), available at <https://washdata.org>; accessed 21 March 2018. Basic sanitation is defined as ‘improved facilities’ (those designed to hygienically separate excreta from human contact) that are not shared with other households. Data on GDP and urban and slum population are from World Bank Open Data portal, available at: <https://data.worldbank.org>; accessed 21 March 2018.

The scoping study of the situation in Kenya identified three key challenges for the institutional framework for urban sanitation:

1. **Overlaps and competition around sector leadership at national and devolved levels**, which prevent urban sanitation from commanding political attention and resources, and articulating and delivering on a clear vision and plan. KESHP proposes NESCRAs as a new coordinating entity but

it will need to manage relationships with other ministries, departments and agencies which may have competing interests, for example over infrastructure development resources (potential coordination problem).

2. **Weak incentives for county governments to commit policy attention and finance**, meaning that constitutionally responsible entities may not prioritise pro-poor urban sanitation services. Constitution assigns rights (to citizens) and responsibilities (to counties) for sanitation and the establishment of NASF should streamline and direct financial resources. However, county (and national) politicians may not commit to fund urban sanitation because it is not a politically salient issue compared to e.g. medical services and water supply (potential commitment problem).
3. **Limited regulatory oversight of on-site sanitation service provision used by majority of the urban poor**, presenting risks to customers (expensive/ poor service) and workers (health and safety). KESHP proposes establishment of NESCRA for oversight and guidance on sanitation regulation, excluding sewerage services, and assigns counties most of the direct regulatory functions (e.g. monitoring and enforcement). However, functional boundaries between NESCRA and other regulatory agencies will need to be clearly defined and demarcated, in a wider context in which national and county-level powers and responsibilities are contested, and compliance of informal sanitation providers and users is in doubt (potential cooperation problem).

To reduce overlaps and competition around sector leadership, as well as related risks (e.g. neglect of sanitation altogether) the comparison countries have attempted a range of strategies to improve coordination of sector leadership functions (e.g. preparing policy, plans and legislation). These reveal two important considerations: (a) determining which entity has the authority to coordinate across different sectoral ministries/ departments/ agencies involved in sanitation (e.g. health, water, environment) and (b) deciding how to liaise with the entity responsible for supporting decentralised local governments.

- Indonesia assigns the sanitation coordination function to the relatively powerful national planning ministry and the equivalent department at local government level. This ministry/ department has no particular sectoral bias, but does not control sector budgets. As a result its ability to coordinate the responsible line ministries, as well as the ministry supporting local governments, depends on individual personalities.
- South Africa assigns coordination functions to a dedicated ministry for water and sanitation. A key challenge for this ministry is coordinating with the ministry responsible for supporting local government, which channels the main conditional capital grant for sanitation infrastructure.
- Tamil Nadu has integrated sanitation within a department responsible for water supply and supporting urban governments. This in principle aids liaison with the decentralised entities responsible for sanitation provision, but means sanitation is one part of a large portfolio.

To incentivise subnational governments to commit policy attention and resources, the comparison countries have found that simply 'moving government closer to the people' is insufficient to increase voters' or politicians' attention to urban sanitation . Other incentives are required.

- South Africa, with a larger economy than Kenya's, has been able to transfer financial resources to local level in the form of conditional capital grants that must be spent on infrastructure for basic services, including sanitation. Combined with constitutional rights and a normative commitment to address the injustice of apartheid, these have driven expansion of access to unserved households. It has been much harder to incentivise local government to spend discretionary resources on sustaining full-chain sanitation services. In eThekweni, a professional municipal service provider was able to push local politicians to address urban and rural sanitation services when a cholera crisis sharpened their attention.
- Indonesia faces similar challenges, but has experimented with incentive mechanisms to encourage mayors and local legislatures to increase attention and funding for urban sanitation. National government provides results-based financing, whereby local governments are reimbursed for providing pro-poor sewer connections. It also requires urban local governments to develop city-wide sanitation strategies as a condition for funding – these have been widely produced, but ensuring quality and transitioning to implementation are a challenge.
- Tamil Nadu has pioneered State-level financing facilities that aim to help urban local bodies to borrow funds, including smaller municipalities through a pooling mechanism. However, a pervasive bias towards toilet construction, from the national campaign downwards (Swachh Bharat Urban), has undermined progress on full-chain sanitation; signs of high level policy change on this are emerging but are only recent.

To ensure oversight of onsite urban sanitation provision the three case study examples have taken less direct approaches to regulation than Kenya, with its autonomous agencies for water and sewerage (WASREB) and environmental management (NEMA) and proposed regulatory authority for sanitation (NESCRA). However, they face similar challenges in oversight of local level provision, and securing the cooperation of different ministries, departments and agencies involved, as well as the cooperation of the regulated entities.

- In Tamil Nadu, public health officials have responsibility for monitoring sanitation standards. This puts responsibility with a technically competent department, in which local officials are accountable to senior technical staff, rather than local politicians. Given the technical dimensions and low political salience of sanitation this is sensible, but the public health cadre have multiple responsibilities and limited time to closely monitor performance of sanitation systems once they are constructed.
- In Indonesia there are some examples of local governments innovating their own approaches to regulation, for example by allowing licensed sludge emptying providers to discharge waste via manholes rather than at a distant waste treatment plant, easing compliance and monitoring.
- In South Africa, the ministry responsible for policy leadership is also the regulator. Given limited capacity to monitor and enforce at local level, it initiated a risk- and incentive-based system to encourage compliance with wastewater standards. There is a high level of (voluntary) participation by municipalities and, following a gap in published results, performance is now being shared via an online portal. However, South Africa's programme overlooks onsite sanitation and a strong emphasis on 'co-operative government' prevents the national water and sanitation ministry from intervening directly when municipalities fail to provide adequate or safe services.

Policy implications

In the light of the other countries' experience, Kenya's urban sanitation policy makers may wish to consider:

- **How best to design and structure NESCRA within the national government executive formation so as to have sufficient authority: (a) to coordinate other line ministries responsible for sanitation; and (b) to coordinate activities of county governments.** National and county governments could jointly explore alternative options through intergovernmental mechanisms, for example, placing NESCRA under a more prominent policy coordination ministry such as the Ministry of Devolution and Planning which is not part of the existing line ministry/ departmental structures involved in sanitation matters.
- **Whether additional incentives and support are required to encourage county governments to prioritise urban sanitation, beside the constitutional right to sanitation and establishment of NASF.** These might include facilities to support project development and financing; conditional finance, with parallel capacity support, to incentivise policy development (e.g. city sanitation planning) or implementation (e.g. results-based finance); or networks to empower and train local technical leadership (county departments/ service providers) to advocate to politicians.
- **How on-site sanitation can be properly regulated through establishment of NESCRA in collaboration with others including WASREB, NEMA and county governments.** Risk- and incentive-based regulation could help to focus regulatory attention from national level on the worst-performing counties, cities and towns, while respecting the autonomy of county governments. However, this will require concurrent investment in local level capacity for monitoring urban sanitation service provision and environmental health outcomes. Policy makers may also wish to consider how to enable smarter monitoring and enforcement at local level, to make compliance for providers and citizens easier.



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