

THE BUSINESS

ADVOCACY FUND

Supporting Private Public Dialogue



Formulating public policy

Business Advocacy Fund

- ↔ **Aims to support business membership organisations to advocate reform of public policy**
- ↔ **Provides support through training, mentoring and grant aid**
- ↔ **Backed by DANIDA**



Introduction

- ↔ **Training is organized and facilitated by Business Advocacy Fund (BAF) with support from Danish International Development Agency (DANIDA)**
- ↔ **BAF provides support to Business Member Organizations (BMOs) through mentoring, training and grant aid for policy advocacy**



Introductions

- ↔ **Your Name**
- ↔ **Name of Business Member Organization you are representing**
- ↔ **Position you hold**
- ↔ **Your learning expectations from the training**




Ground rules

- ↔ **Keep time**
- ↔ **We put a premium on listening**
- ↔ **Understanding is better than persuasion**
- ↔ **The games and exercises are important**
- ↔ **Please turn mobile phones to silent**
- ↔ **No such thing as stupid questions**
- ↔ **Have fun!**



Learning objectives

-  **The objectives of the training sessions are to –**
- **provide a description of the process of formulating and reforming public policy**
 - **build a foundational understanding of the meaning and concepts associated with public policy, types of public policy, public policy process and public policy institutions**



Learning outcomes

 **On completion of the Unit, it is anticipated that you will:**

- **have gained an understanding of public policy process**
- **have acquired knowledge on how public policies are formulated**
- **be able to identify and explain the process of formulating policies**
- **have gained understanding of why, when and how policies are reformed**
- **have acquired knowledge on the role of various policy actors in formulating and reforming policy**



Session 1

Theory





Understanding policy formulation



Definition and concepts: exercise


- ↔ **Share personal knowledge and understanding of public policy formulation**
 - **Discussions in groups of 2 or 3 followed by plenary responses**



Understanding policy formulation

- ↔ **Conceptually, policy formulation can be described as**
 - **specific stage (3rd stage) in policy process**
 - **process of developing legislation which would entail the first 3 stages of policy process (agenda setting, policy formulation and policy adoption)**
 - **framing or drafting of the content of policy instruments**
- ↔ **The Unit focuses more on the second description related to the process of developing legislation. However, there will be foundational emphasis on the third aspect in terms of some issues of consideration on forming content of the policy**





Theoretical approaches to policy making



Theoretical approaches in policy making

↔ **Process of making policies is shaped by perspectives, worldviews and values**

↔ **Theoretical approaches –**

- explain how policy making is influenced and shaped
- are shaped by political system which also shape policy process

↔ **3 influential models on policy formulation**

- Structure-based models
- Institutional-based models
- Interest - based models



Theoretical approaches in policy making

Structure-based models

- Based on how social economic structure in society shapes public policy

2 main approaches

- socioeconomic school
- cleavages



Theoretical approaches in policy making

Structure-based models

socioeconomic school

- Based on understanding that public policy seek to respond to social and economic problems facing a society
- Takes into consideration that social and economic development may lead to social stratification and inequality
- As a result, policy formulation is initiated to resolve the stratifications and inequalities in areas such as social welfare, health care, economic regulation



Theoretical approaches in policy making

Structure-based models

Cleavages approach

- Socioeconomic problems existing in society results in divisions between social groups called social cleavages
- Depending on political system, political parties or policy makers may pursue or adopt policies that identify or seek to solve problems associated to specific social cleavages
- Social cleavages influence policy direction and goals as groups within a cleavage compete on values
- 6 common social cleavages

—



Theoretical approaches in policy making

Structure-based models

Cleavages approach

- Centre-periphery – based on divergent ideologies on whether power and administrative structure should be centralized or decentralized
- State-church (religion) – based on whether there should be preservation or separation of state-church relationship
- Rural-urban – based on social groups residing in rural areas and which depends on traditional subsistence activities; and groups residing in urban areas which depend on modern economic activities



Theoretical approaches in policy making

Structure-based models

Cleavages approach

- **Workers-employers – based on labour (workers rights and welfare) and capital relations (investment and business environment)**
- **Materialists-post materialists – based on groups' value of materialism and post materialism. Materialist values concern groups which have experienced political and economic insecurity. Post materialist values concern groups with exposure to political and economic security and may pursue other needs such as citizen engagement or equality of opportunity**



Theoretical approaches in policy making

Structure-based models

Cleavages approach

- **Open-closed societies – based on divergence of ideology in relation to freedom of movement of capital, labour, goods and services**
 - Examples include –
 - » pro and anti free trade movement
 - » pro and anti-immigration



Theoretical approaches in policy making

- ↔ **Institutional-based models**
- ↔ **Entails recognition of formal government institutions and rules based system as the key drivers of policy process**
- ↔ **Political system based on rules and institutionalism promote for adoption of policies that promote formal system of governance**
- ↔ **Institutions shape behaviour through processes and rules**
- ↔ **Promotes democracy, accountability, separation of powers**



Theoretical approaches in policy making

↔ **Interest based models (rational choice approach)**

↔ **Rational actor**

- **Makes policy choices in order to maximize his or her anticipated utility**
- **Must be faced with alternatives that can be ranked in order of utility or priority**
- **Must have appropriate information and be able to use the information**



Theoretical approaches in policy making

↔ **Interest based models (rational choice approach**

↔ **Bounded rational actor-**

- **Is presumed to be goal oriented and pursues the concept of “satisficing” where the actor settles on a solution that is satisfactory**

↔ **Rational choice model is used to explain the behaviour of elected officials, bureaucrats and interested groups**

- **Elected officials are deemed to be vote seeking, office seeking and policy seeking**
- **Elected officials seek power to control policy process and government systems and structures**



Theoretical approaches in policy making

↔ **Interest based models (rational choice approach-**

↔ **Bureaucrats may seek to –**

- **maximize departmental budgets through increasing quantity of services so as to increase salaries and prestige**
- **reorganize internal systems so as to strengthen in their policy-making roles**
- **reorganize internal work practices through increasing status of monitoring activities**
- **redefine relationship with external partners so as to maximize their control over policy**
- **compete with other bureaus over defense of policy oriented responsibilities or transfer to other bodies functions and tasks that do fit with their preferred bureau shape or assumed purpose**



Theoretical approaches in policy making

↔ **Interest based models (rational choice approach-**

↔ **Private actors–**

- **seek to influence public policy through participating in the process of financing, specialist knowledge and engagement in political campaigns**
- **Influence public policy depending on their access to policy makers, their financial and informational capacity and degree of competition from other competing actors**



Exercise

 **Identify a policy in your industry and describe how any of the social cleavages apply to it**



Session 2

Public policy process or cycle

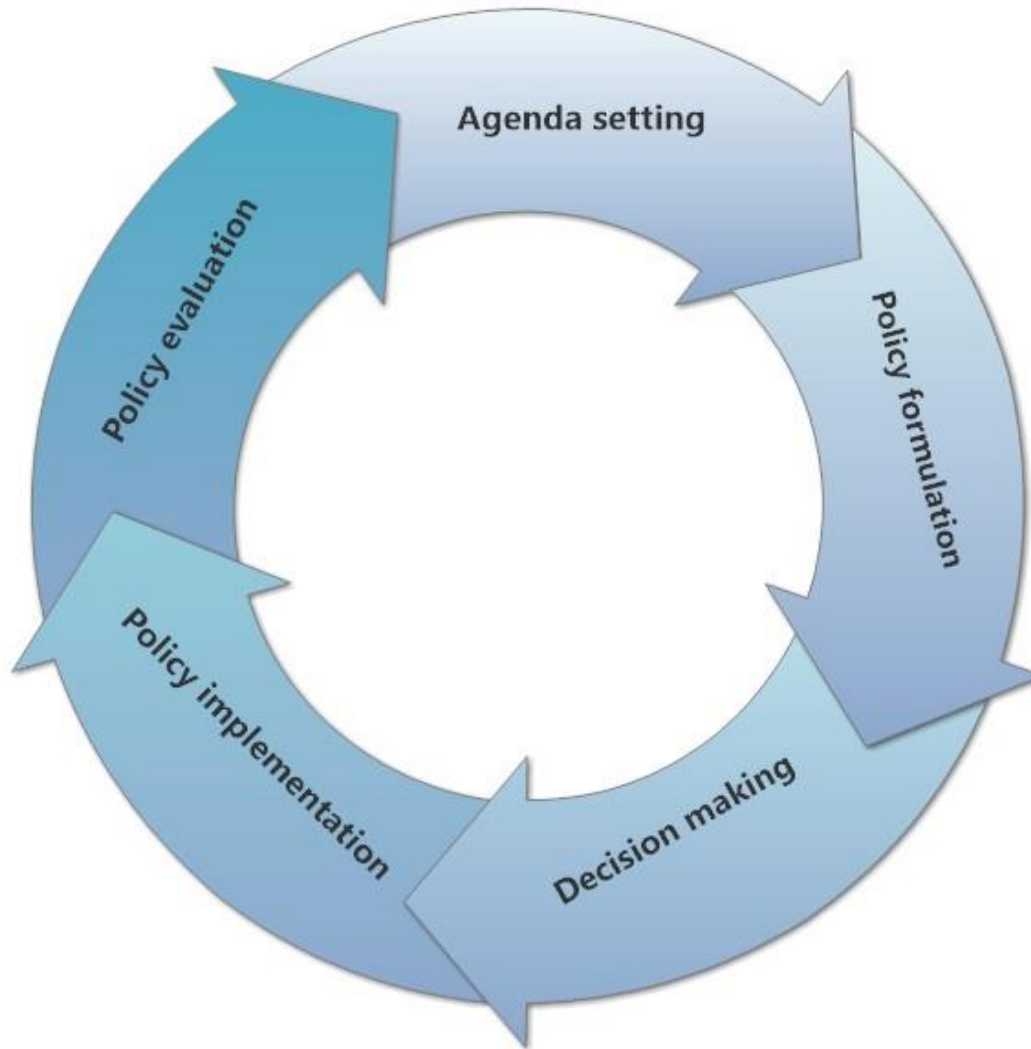


Public Policy Process or Cycle

	Stage in Policy Cycle	Applied Problem Solving	Key Actors
1.	Problem identification, definition and agenda-setting	Problem recognition	Policy universe* ¹
2.	Policy formulation	Proposal for solution	Policy subsystem* ²
3.	Decision making or Policy adoption	Choice of solution	Authoritative government decision makers* ³
4.	Policy Implementation	Putting solution into effect	Policy subsystem
5.	Policy evaluation	Evaluation and monitoring for results	Policy universe
<p>*1 Policy universe means all policy actors involved in defining the policy problem or demanding government action</p> <p>*2 Policy Subsystem means the actors with sufficient knowledge of a particular problem area, or a resource at stake to allow them to participate in the policy process.</p> <p>*3 Authoritative Government Decision-Makers include elected official, judges or bureaucrats</p>			



Public Policy Process or Cycle



Policy Cycle: Problem identification and definition

- ↔ **Policy formulation commences with identification and definition of a policy problem**
- ↔ **Problem definition follows a causal relationship process which identifies–**
 - **the problems**
 - **describes what causes them**
 - **assigns blame to those causing them**
 - **the claims that the government is responsible for stopping the problems**



Policy Cycle: Agenda setting

- ↖ **Agenda in public policy may be defined as the list of subjects or problems to which government officials, political leadership and people outside government closely associated with those officials, are paying serious attention at any given time**
- ↖ **Agenda setting is concerned with the way problems emerge as candidates for government's attention**



Policy Cycle: Agenda setting

- ↔ **Government is always faced with time and resources constraints in regard to solving public problems.**
- ↔ **For public problems to attract government action, they must be part of the government agenda**
- ↔ **Two types of agendas**
 - **Systemic agenda**
 - **Institutional agenda**



Policy Cycle: Agenda setting

Systemic agenda

- refers to all societal problems that demand public action and which qualify to form public discussion agenda
- problems may be of a general nature with no specific concrete solutions and may exist at different levels of political system



Policy Cycle: Agenda setting

Institutional agenda

- contains problems that are being considered for action by decision makers
- It is the action agenda where problems and their solutions are considered by government in a more detailed and concrete manner
- Once a problem has been included in the institutional agenda, the government prepares potential proposals and measures to address the problem
- The aim should always be to move problems from systemic agenda to the institutional agenda so that government can address them



Policy Cycle: Agenda setting

- ↔ **Four approaches to agenda setting**
- ↔ **The process perspective**
- ↔ **The power distribution perspective**
- ↔ **The institution based perspective**
- ↔ **The contingency perspective**



Policy Cycle: Agenda setting

Four approaches to agenda setting

The process perspective

- the agenda may be set as an outside initiative, through mobilisation or as an inside-access initiative e.g. by BMOs
- government actors may initiate institutional agenda from inside system while excluding public participation
- institutions or political leaders may seek to move a systemic problem to the institutional agenda through mobilisation of the public on the issue



Policy Cycle: Agenda setting

Four approaches to agenda setting

The power distribution perspective

- Refers to the contestation between different policy actors on having an issue form part of institutional agenda
- The main issue of consideration is the power play between different actors
- Each actor seeks to gain power through mobilisation of other like-minded actors, use of well thought out information such as data and statistics and framing or presentation skills



Policy Cycle: Agenda setting

Four approaches to agenda setting

The institution based perspective

- refers to the role of institutional structures in forming the institutional agenda and consequently setting the agenda to be followed
- refers to the role of institutions in resolving power and conflict issues in problem solving



Policy Cycle: Agenda setting

Four approaches to agenda setting

The contingency perspective

- refers to the setting of agenda at the moment of the problems happening as opposed to prior planned processes
- takes into consideration that policy problems and solutions are constructed and debated independently and sometimes may take place at different times
- Only when pre-determined solutions are coupled with perceived problems that a problem becomes part of institutional agenda



Exercise

- ↔ **Identify two policy problems or issues of concern in your industry that you would consider for advocating to form part of governmental institutional agenda for resolving**
- ↔ **Identify the relevant government organizations responsible for adopting the issues as part of their institutional agenda**



Policy Cycle: Policy Formulation

- ↔ **Process of generating and selecting options on what to do about a public problem**
- ↔ **Identification and setting out of the course of action to be adopted in solving the problems identified**
- ↔ **entails defining and weighing the merits and risks of various options and the identification of the alternative options in solving the problems**



Policy Cycle: Policy Formulation

Policy instruments

 When selecting the policy proposals, the government officials select the policy instruments, which are also referred to as the policy tools, or the governing instruments

Four categories of most common policy instruments–

- Information-based policy instruments
- Authority-based policy instruments
- Treasure-based policy instruments
- Organizational-based policy instruments



Policy Cycle: Policy Formulation

- ↔ **Policy instruments**
- ↔ **Policy instruments are framed in a policy documents (especially sessional papers) as policy statements**
- ↔ **Policy statements articulate the policy measures and actions that government will pursue in solving the problem**
- ↔ **Policy statements in legislation are framed in the form of legislative provisions**



Policy Cycle: Policy Formulation

- ↔ **Examples of Policy statements (sessional Paper)-
National Trade Policy, 2016**
- ↔ **Information-based policy instruments – “The national government in collaboration with county governments and private sector shall facilitate the sector to design and institutionalize skills upgrading programs for owner managers and employees, with special focus on wholesale trading” (p 13)**
- ↔ **Authority-based policy instruments – “The national government and the county governments and the private sector willdevelop an enabling and business friendly legal and regulatory framework for retail trade subsector” (p 16)**



Policy Cycle: Policy Formulation

- ↔ **Examples of Policy statements (sessional Paper)**
- ↔ **Treasure-based policy instruments – “The County Governments in collaboration with National Government and the Private Sector will thus endeavour to promote Public-Private Partnerships (PPPs) in the development and maintenance of wholesale hubs, markets and general infrastructure” (p 12)**
- ↔ **Organizational-based policy instruments – “A one stop office for accessing all National and County Governments’ business information and licences for whole sale trade shall be established” (p 11)**



Policy Cycle: Decision-making (policy adoption)

- ↔ Entails the process of officially approving the policy options as the official government action**
- ↔ The policy decisions lead to formal statements of intent to be followed by a public actor or to govern a particular sector**
- ↔ Mainly undertaken at national level by Cabinet and Parliament and at the county level by the county executive committee and the county assembly**



Session 3

Procedures & templates



Process of formulating sessional papers





Procedure formulating policy and legislative instruments

- ↔ **Opportunities for BMOs**
 - ↔ **Problem framing and agenda setting**
 - ↔ **Support to technical committee through submission of policy position papers**
 - ↔ **Submission of memorandum when requested by ministries or departments**
 - ↔ **Submission of memorandum to cabinet or county executive committee where ministry or department failed to take into consideration their issues**
 - ↔ **Submission of memorandum to Parliament or county assembly where cabinet or county executive committee failed to take into consideration their issues**
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Procedure formulating policy and legislative instruments

Statutes (Bills)

-  After finalisation of the Bill, a ministry or department submits the draft legislative proposals to the Attorney General for drafting and county assembly to county legal office for drafting and thereafter to the cabinet or county executive committee
-  The Cabinet (or county executive committee) reviews and considers the proposed legislation and adopts it where the legislation where it meets all necessary conditions




Procedure formulating policy and legislative instruments

Statutes (Bills)

 The chairperson of the departmental committees under which the Bill is related become the sponsors of the Bill

 A Member of Parliament or county assembly can sponsor a Bill since the legislative authority vests in the legislative bodies

 This presents an opportunity for BMOs to prepare Bills and seek an individual legislator to sponsor the Bills

 When a Bill is introduced in the National Assembly but relates to county governments, it is submitted to the Senate where it is subjected to the same legislative process



Procedure formulating policy and legislative instruments

Statutes (Bills)

1st reading

Committal of the Bill to the Committee

- Committee report is very persuasive on whether the Bill will have support of the House as well as what amendments to be made. Private actors e.g. BMOs should actively engage the committee through presentations of evidence and policy recommendations

2nd reading

- The sponsor of the Bill as well as other members have the chance to comment in support or opposition of the Bill. There are no amendments to the Bill made at this stage



Procedure formulating policy and legislative instruments

Statutes (Bills)

Committee of the whole house stage

- The Bill is read and passed clause by clause. Amendments to the Bill are made at this stage
- BMOs have an opportunity to engage through legislators to propose amendments

3rd reading

Assent (President or Governor)

Publishing in the Kenya Gazette



Procedure formulating policy and legislative instruments

↔ Regulations and Rules

↔ Regulations and rules are prepared in accordance with the powers granted under the substantive legislation



↔ The Statutory Instruments Act, No. 23 of 2013 provides for procedure of preparation of statutory instruments

↔ Once the Regulations have been prepared, the respective ministry publishes them in the Kenya Gazette (and county Gazette in the case of county assembly)



Procedure formulating policy and legislative instruments

Regulations and Rules

-  After publication, the respective ministry submits a copy of the Regulations or Rules to Parliament (or county assembly) for consideration and adoption
-  The respective departmental committee (mainly committee on delegated legislation or the substantive departmental committee) scrutinizes the Regulations or Rules to ensure conformity with the substantive Act, Statutory Instruments Act and other statutory and constitutional requirements



Procedure formulating policy and legislative instruments

- ↔ **Policies at multilateral/regional level (UN, AU, EAC & COMESA)**
- ↔ **The treaties establishing the respective organs contain the administrative mechanism for making policies and legal instruments**
- ↔ **The bodies have secretariats that are responsible for coordinating all affairs including development of policies and legal instruments**



Procedure formulating policy and legislative instruments

- ↖ Policies at multilateral/regional level (UN, AU, EAC & COMESA)
- ↖ A member state may initiate the process of development of a legal instrument through preparation of a text (e.g. legal text on a specific protocol) which is submitted
- ↖ The heads of states and government may during their ordinary meetings authorize by resolution, commencement of preparation of legal instruments or policies



Procedure formulating policy and legislative instruments

- ↔ **Policies at multilateral/regional level (UN, AU, EAC & COMESA)**
- ↔ **The national technical experts in the respective state ministries prepare and negotiate at technical level the texts of the respective instruments**
- ↔ **Different states may prepare texts on parts of the instruments as well as their policy positions**
- ↔ **National ministries engage their national stakeholders on development of the national policy position in respect of the legal or policy instrument being prepared**



Procedure formulating policy and legislative instruments

- ↔ **Policies at multilateral/regional level (UN, AU, EAC & COMESA)**
- ↔ **Once the technical experts build consensus on the provisions of the legal instruments they submit the instrument to the council of ministers who review and adopt the legal or policy instrument (negotiations are mainly conducted through Conference of Parties)**



Procedure formulating policy and legislative instruments

- ↔ **Policies at multilateral/regional level (UN, AU, EAC & COMESA)**
- ↔ **Once the council of ministers adopts the legal instrument, it is submitted to the ordinary meeting of heads of state and governments for adoption**
- ↔ **Once a legal or policy instrument is adopted, each individual state is required to ratify the document by sending notification to the secretariat of its intention to ratify**



Procedure formulating policy and legislative instruments

- ↔ **Policies at multilateral/regional level (UN, AU, EAC & COMESA)**
- ↔ **States are allowed to ratify instruments with reservations. Once a state ratifies a legal instrument, its bound by the instruments and its expected to keep the commitments**
- ↔ **Private actors should engage with respective line ministries on development or review of international instruments**



Procedure formulating policy and legislative instruments

- ↔ **Policies at multilateral/regional level (UN, AU, EAC & COMESA)**
- ↔ **Private actors, depending on the status granted by international bodies have direct access to the international bodies during the entire policy process**
- ↔ **The Treaty Making and Ratification Act, 2012 provides for procedures for ratification of treaties into which Kenya is entering**



Reforming public policy

- ↔ **Policy reforms are part of policy process**
- ↔ **Policy reforms are initiated by political leadership as part of commitment in manifestos made during political campaigns (especially where there is drive for regime or fundamental policy changes)**
- ↔ **Policy reforms may also be initiated by government (public service) in the ordinary course of public service delivery where there is need to make improvements in specific sectors**
- ↔ **Private actors may have an influence on the process of setting the government agenda in policy reforms**



Exercise

- ↔ **Identify one business or trade policy issue in your industry that is affected by international trade (e.g. import or export rules related to another country) that requires reform. Describe how international trade affects the issue**
- ↔ **Identify the relevant national government and international organizations that your industry could target in order to resolve the issue**



Reforming public policy

- ↔ **Examples where private actors have played significant role in policy reforms in Kenya include reforms in financial services (banking services and mobile money transfers), telecommunications, business licensing, tax procedures and administration (especially automation simplification of tax procedures) and technology and innovation**
- ↔ **Policy reforms are mainly culminated or associated with public sector reforms**



Reforming public policy

The reforms involve among others

- **public sector management reforms e.g. performance management, accountability, transparency and efficiency**
- **public service (or civil service) reforms e.g. human resource management reforms**
- **public institutional restructuring or transformation e.g. setting up of new public organizations, re-organizing or restructuring the existing ones**
- **specific sector reforms e.g. investment and business climate reforms in specific sectors as it has happened in the energy, technology and telecommunications**



Reforming public policy

Policy reforms mainly seek to–

- improve efficiency, effectiveness and governance in public sector
- promote value for money especially in public service delivery
- promote innovation for the purpose of sector development and public service delivery
- promote and facilitate process improvement (process re-engineering) in public sector
- promoting and facilitating private sector growth and development through reforming sector processes



Template for memorandum on proposed changes

Section or part	Issues of concern	Proposals or recommendations	Justification
Indicate the section of the provisions or parts sessional paper, Bill, Regulation e.g. S. 8 or Chapter 3	State the issue of concern that you have with the provision i.e. what is the problem with the provision	Indicate the specific changes that you propose to be adopted. The provisions should be in the same form and language in the sessional paper or Bill	Describe your justification for the proposed changes



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