



MEDIA STATEMENT ON URBAN AREAS AND CITIES AMENDMENT BILL (SENATE BILL NO. 4 OF 2017) AN ATTEMPT TO RECENTRALISE URBAN AREAS

19th September 2018

It has come to our attention that the Speaker of the National Assembly issued a notice to the general public of special sittings of the National Assembly on 18th and 20th of September 2018 to consider in Second and Third Reading of the *Urban Areas and Cities Amendment Bill 2017*.

Urban areas and cities play a significant role in economic and social development. Most economic transactions take place in the urban areas. Urban areas are therefore the key drivers of the economy.

Article 184 of the constitution provides that legislation on urban areas should provide for principles of governance and management of urban areas. Besides legislating on the principles and standards, governments managing urban areas ought to integrate them into the management and service delivery systems.

The Constitution provides principles of governance and management, which would apply to urban areas and include – Subsidiarity, Equality, Efficiency, Transparency, Accountability, Public participation, Security.

It is our observation that this **Bill does not meet the spirit and letter of the Articles 174 and 184 of the Constitution** of Kenya.

In several instances the Bill seeks to subjugate the authority of county governments to that of the national government through the subtle but significant encroachment of county functions.

It is our opinion that these proposals have to be made with the express intension of recentralizing the functions of urban areas and hereby call upon all stakeholders who support the rule of law to reject this Bill.

Detailed Observations:

1. **The Memorandum of Objects and Reasons** of the Urban Areas and Cities Amendment Bill 2017 is not adequately representative of the proposed amendments and therefore misrepresents the Bill by omitting significant proposed amendments.
2. The proposed criteria for residents is based on the number of residents based on the household survey and will by definition ignore trading numbers.
3. **Clause 3(2): National Urban Development Policy** The Bill proposes that in implementing the Act county governments shall comply with the National Urban Development Policy. Whereas the *Constitution Article 6(2) and 189* provides for cooperation between national and county

governments, and in operational terms this would include the adherence by counties to national policy principles norms and standards, and should not subjugate county governments to national legislation in the event such policy encroaches county mandates.

4. Clause 4A -Boundaries of urban areas and cities

The **Bill proposes to remove from the purview of cities the management of relevant national functions as anticipated in the Urban Areas and Cities Act and as practiced in other jurisdictions.** The process of delineation should be handled under the *Intergovernmental Relations Act*.

5. Clause 5 proposing to amend section 5 (c) of the Principal Act to include the words, “and other existing laws” introduces ambiguity.

6. Clause 6 (3) Criteria for classifying a municipality

The taskforce on devolved governance gave a recommendation that a municipal area should have a minimum population of seventy- five thousand residents. The Bill lowers this to 50,000. Whereas this may be in line with present urban settlement patterns, it does not respond to revenue sustainability question of urban areas.

7. Clause 10: Eligibility for grant of the state of market center

Clause 10 proposes to designate market centers and as such this proposal encroaches on the planning function of county governments.

8. Clause 14: Public Participation

The proposed amendment, “*and any other national legislation on public participation*’ introduces ambiguity.

9. Clause 16: Management of city county

In the case of Nairobi City County, the city is the same geographical location as the county. Consequently, there is no legal or administrative distinction between the city of Nairobi and Nairobi City County. In this regard, by vesting administrative, policymaking and service delivery powers to a City Board, the Act fails to address itself to the fact that the City is fundamentally to be governed as a county.

10. Clause 31A: Functions of a Town Committee

The proposal that a town committee shall perform the same functions as a city or municipality is functionally inconsistent with their lower establishment criteria and the risk for fragmenting county services to beyond unsustainable levels.

11. Clause 19: Repeal and replacement of the First Schedule

The bill proposes to amend the first schedule by removing relevant national sub-functions from the purview of cities as anticipated in the principal Act and practiced in other jurisdictions. This creates a functional disconnect.

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