



## **Nairobi City County Community and Neighborhood initiatives Facilitation and Regulation Bill, 2014**

### **Memorandum by The Institute for Social Accountability (TISA)**

**28<sup>th</sup> November 2014**

The bill is a commendable effort and seeks to address a critical area in the implementation of the constitution particularly Articles 174 c and d. However we have noted several concerns which need to be addressed prior to the publishing of this bill.

1. The bill needs to be contextualised in the constitutional framework and the context of the devolution laws particularly CGA, UACA and PFM. There are a number of functional inconsistencies and overlaps due to this lacuna.
2. The bill addresses weighty matters of waste management, environmental control, and security among others. Without adequate policy context the enforcement of this bill will be a challenge. It requires to be accompanied by a policy on the respective service delivery areas.
3. Under its objects and objectives (sections 3 and 4) the bill is focused on the realisation of county objectives and does not capture citizen needs, key of which is the creation of employment opportunities and ensure proximate delivery of services.
4. The bill fails to provide provisions for transparency. It does not pay attention to prevention of corruption , and does not contain provisions for the same.
5. Public participation and accountability: The bill does not provide for public participation and accountability. It does not address the issue of accountability within associations nor accountability to the wider public who may not be in an association.
6. The bill introduces some unfavorable regulatory provisions which can be used to favour preferred associations and perpetuate corruption and capture of the processes. e.g. Sec 8,9,11.
7. The bill does not make provision for civic education which is an obligation of the county government and will be necessary for effective implementation of the bill.
8. Section 5(e) provides a threshold of 60% which will marginalize special interest groups and minorities. This is unconstitutional. All resident associations who comply with their founding statutes should be eligible under the bill.

9. The bill deals with private-public-partnerships (section 6,9,10)without consideration of the Public Finance Management Act (PFM) and Urban Areas and Cities Act,(Section 33).
10. Section 7: The zoning criteria does not take cognizance of service delivery in effecting article 174 on proximate services and appears arbitrary. It also fails to provide public participation in the process.
11. Section 13: The granting of waivers must comply with the PFM requirements on the same. Again there is no transparency or public participation in this process.
12. Section 11. (Forum with associations) How does this body interact with the county forums created under the County Government Act (section 91)?
13. Section 10. Termination- this section appears only anticipates the breach on the part of an association and does not address a breach on the side of the county government. Section (5-3) cited within does not exist in the bill.
14. Section 15. Dispute resolution- mediators must be agreeable to both parties. This clause should be accompanied by a clause that it does not deny individual or association from using legal process which is a constitutional requirement.

We therefore recommend the bill be overhauled to provide:

- An accompanying policy to address policy objectives to provide employment, proximate services
- Alignment to the national devolution legislation
- Public participation and accountability
- Civic education
- Inclusion of minorities and special interest
- A section on public private partnerships

Given the critical importance of this bill the bill should be informed by a comprehensive public participation process including sub-county forums and online contributions.

---

The Institute for Social Accountability, (TISA)

Westlands Avenue, Wendy Court, Hse No. 1

David Osieli Rd, Westlands

P O Box 48353, 00100

Tel: +254 20 444 3676/2445489

[www.tisa.or.ke](http://www.tisa.or.ke)