

Ministry of Transport, Infrastructure Housing and Urban Development
State Department of Housing and Urban Development
Urban Development Department



PROGRAMME OPERATIONS MANUAL

KENYA URBAN SUPPORT PROGRAMME (KUSP)

Volume II

(Final draft)

November 2017

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Koinange Street
Nairobi - KENYA

Preamble

This Programme Operations Manual (POM) is prepared to operationalize, from the side of the Government of Kenya, the implementation of the support to be received from the World Bank under the Kenya Urban Support Programme (KUSP). KUSP seeks to support the implementation of the Kenya Urban Programme (KenUP), which is the Kenya government's development strategy emanating from and giving life to the Kenyan National Urban Development Policy (NUDP). Latter was approved by a special cabinet committee in October 2016, and presented to parliamentary and senator committees in February and March 2017.

KUSP has different targets. First it addresses the basic steps as provided for in KenUP, namely the establishment of urban governance as well as management structures, and secondly providing funding, to and through the county governments, to allow those urban structures to fulfil their mandates. Thirdly, the programme is providing capacity development support to central government, notably the State Department of Housing and Urban Development for it to better assist and support the county governments in addressing urban issues in the spirit of the Constitution of Kenya (2010). Overall, it seeks to emphasise the pivotal role urban areas are supposed to be playing in terms of development, prosperity and modernisation.

POM is presented in two volumes. This first presents, in chapter 1, the context, the vision and the concrete objective of the programme. Chapter 2 provides an overview of the overall project design and implementation modalities, including the principles of the overall flow of funds. Chapters 3 to 5 describe in detail the three programme components, with one chapter for each window. Chapters 3 and 4 deal with the urban institutional grant (UIG) and the urban development grant (UDG) respectively, and are specific to the county governments and their urban boards. Chapter 5 describes the capacity development and support component. Chapters 6 and 7 deal with institutional issues, from a county and national perspective respectively. Chapter 7 discusses the roles and responsibilities of the various national level stakeholder parties in the programme whilst identifying the lead parties for each set of activities. Chapter 8 deals with issues related to public financial as well as environmental and social management, followed by a concluding chapter (Chapter 9). Volume II contains, as a series of annexes, a range of technical formats, specific guidelines as well as terms of reference related to actions and provisions as referred to in Volume I.

The target audience for the POM are all those involved in the implementation of the programme, both at national level and notably at the county level. It involves members and staff of the county governments, notably those responsible for urban development; members of the urban boards and staff of the urban administrations under those boards. For the counties and their Council of Governors (CoG), the POM serves as the KUSP programme document. At national level, and next to the CoG, the POM is relevant to participating ministries, including the Ministry of Transport, Infrastructure Housing and Urban Development and the Ministry of Finance.

Updates of this document and its annexes will be posted on the UDD/KUSP website, where also the MS Word versions of the various annexes to be used by the counties and municipalities can be found. At the same time, the reader is referred to the World Bank website <http://projects.worldbank.org/P156777?lang=en> for all publicly disclosed World Bank documents on KUSP, including the Project Appraisal Document (PAD) on which this POM is based.

Finally, the POM is and will remain a *living document*. It will be further improved during the lifespan of the programme. Users are invited to address any observations, suggestions and/or questions in this regard to the Programme Coordination Unit within the Urban Development Department.

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List of Abbreviations

APA	Annual performance assessment
BROP	Budget Review Output paper
CARA/B	County Allocation of Revenue Act / Bill
CEC	County Executive Committee
CIDP	County Integrated Development Plan
CoB	Controller of Budget
CRA	Commission on Revenue Allocation
CT	County Treasury
CUIDS	County Urban Institutional Development Strategy
DLI	Disbursement Linked Indicator
DoRA/B	Division of Revenues Act/Bill
EACC	Ethics and Anti-Corruption Commission
FY	Fiscal Year
GoK	Government of Kenya
GSDRC	Governance and Social Development Resource Centre
IDA	International Development Association
IDeP	Integrated Development Plan
IFMIS	Integrated Financial Management Information System
IGFR	Intergovernmental Fiscal Relations
IGRTC	Intergovernmental Relations Technical Committee
IPF	Investment Project Finance
KenUp	Kenya Urban Program
KES	Kenyan Shilling (KES 101 ~ USD 1; 15May 2017)
KNBS	Kenya National Bureau of Statistics
KUSP	Kenya Urban Support Programme
M&E	Monitoring & Evaluation
MC	Minimum Condition
MDP	Ministry of Devolution and Planning
MTEF	Medium Term Expenditure Framework
MTIHUD	Ministry of Transport, Infrastructure, Housing, and Urban Development
NACCSC	National Anti-Corruption Campaign Steering Committee
NEMA	National Environmental Management Authority
NPCT	National Programme Coordinating Team
NT	National Treasury
NUDP	National Urban Development Policy
OAG	Office of the Auditor General
PCT	Programme Coordinating Team
PforR / P4R	Programme for Results
POM	Programme Operations Manual
PS	Performance Standard
PSC	Programme Steering Committee
PTC	Programme Technical Committee
SDHUD	State Department of Housing and Urban Development
UACA	Urban Areas and Cities Act
UDD	Urban Development Department
UDG	Urban Development Grant
UIG	Urban Institutional Grant
WB	World Bank

Participation Agreement Template

On the following pages is provided the template for the KUSP participation agreement to be signed by counties, indicating their interest to join the Kenya Urban Support Programme and their readiness to abide by the provisions of the Programme Operations Manual

The county having signed a participation agreement is a Minimum Condition for accessing the Urban Institutional Grant and the Urban development Grant.

INTERGOVERNMENTAL PARTICIPATION AGREEMENT



REPUBLIC OF KENYA

INTERGOVERNMENTAL PARTICIPATION AGREEMENT

[INSERT DATE]

THE KENYA URBAN SUPPORT PROGRAM (KUSP)

BETWEEN

THE NATIONAL GOVERNMENT OF THE REPUBLIC OF KENYA

AND

COUNTY GOVERNMENT OF

.....

[INSERT COUNTY SYMBOL]

INTERGOVERNMENTAL PARTICIPATION AGREEMENT

This Agreement is made between the National Government of the Republic of Kenya acting through State Department of Housing and Urban Development (“the National Government”) on the one part, and the County Government of..... (“the County Government”) of the other part (the National Government and the County Government are hereinafter collectively referred to as “the Parties”).

INTRODUCTION

- [A] **WHEREAS** in cognisance of the role played by the urban areas and cities under Kenya’s constitutional dispensation and the existing problems facing urban areas and cities in Kenya, the Government of the Republic of Kenya developed the National Urban Development Policy aimed at bolstering the financial, institutional and managerial structures of urban areas and cities to adequately fulfil their functions.
- [B] **WHEREAS** the Cabinet of the Republic of Kenya duly approved the National Urban Development Policy in 2016.
- [C] **WHEREAS** the State Department of Housing and Urban Development has designed the Kenya Urban Program (KenUP) in order implement the National Urban Development Policy.
- [D] **WHEREAS** Article 6 of the Constitution provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations based on consultation and cooperation.
- [E] **WHEREAS** Article 189 of the Constitution requires that Government at either level shall:
- (i) perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and in the case of county government, within the county level;
 - (ii) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
 - (iii) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

- [F] **WHEREAS** Article 200 required parliament to enact legislation to *inter alia* provide for the governance of the capital city, other cities and urban areas.
- [G] **WHEREAS** Section 11 of the Urban Areas and Cities Act provides that governance of urban areas and cities shall be based *inter alia* on principles of recognition of the principal and agency relationship between the board of urban areas and cities and their respective county governments.
- [H] **WHEREAS** the State Department of Housing and Urban Development intends to implement the National Urban Development Policy with the cooperation of the County Governments to effect the Policy recommendations.
- [I] **WHEREAS** The World Bank under the Kenya Urban Support Program (“KUSP”) has agreed to partially support KenUP by providing grants to eligible county governments, access to which is conditional on the performance of the counties, measured through the Annual Performance Assessment (“APA”) and other details as per the requirements of KUSP.
- [J] **WHEREAS** through KUSP) the State Department of Housing and Urban Development undertakes to establish activities aimed at:
- (a) establishing and strengthening the institutional and policy framework for urban management;
 - (b) supporting the management and administration of urban finances;
 - (c) providing backstopping for urban planning, urban infrastructure delivery and for the provision of basic urban services;
 - (d) ensuring that the County Government is provided with guidance and capacity building to enable to establish and operate urban management institutions for its urban areas by;
 - (i) providing templates for municipal charters;
 - (ii) providing training for urban boards; and
 - (iii) providing procedural guidelines on municipal management
 - (e) conducting reviews of policy and legislation, as well as coordinate policy on a variety of urban development issues;
 - (f) ensuring sound Program management;
 - (g) providing support to the County Government for the formulation of urban development plans, the establishment and operation of urban institutional arrangements and for the initial preparation of urban infrastructure investments through:

- (i) providing Urban Institutional Grants (UIGs) and Urban Development Grants (UDGs) to the County Government; and
 - (ii) specifying the Minimum Conditions and Performance Standards for accessing the UIGs and UDGs.
- (h) providing support to urban boards and administrations (through their respective county governments) for financing infrastructure investments in urban areas.

NOW, PARTIES HEREUNTO enter into this Participation Agreement to define their roles and obligations to facilitate eligibility to KUSP and make the following undertakings.

A. OBLIGATIONS OF THE NATIONAL GOVERNMENT

1. The National Government undertakes to establish activities aimed at:
- (a) establishing and strengthening the institutional and policy framework for urban management;
 - (b) supporting the management and administration of urban finances;
 - (c) providing backstopping for urban planning, urban infrastructure delivery and for the provision of basic urban services;
 - (d) ensuring that the County Government is provided with guidance and capacity building to enable it to establish and operate urban management institutions for its urban areas by:
 - (i) providing templates for municipal charters;
 - (ii) providing training for urban boards; and
 - (iii) providing procedural guidelines on municipal management.
 - (e) conducting reviews of policy and legislation, as well as coordinate policy on a variety of urban development issues;
 - (f) ensuring sound Program management;
 - (g) providing support to the County Government for the formulation of urban development plans, the establishment and operation of urban institutional arrangements and for the initial preparation of urban infrastructure investments through:
 - (i) providing Urban Institutional Grants (UIGs) and the Urban Development Grant (UDG's) to the County Government; and
 - (ii) specifying the minimum conditions for accessing the Urban Institutional Grants (UIG's) and the Urban Development Grant (UDG's).

- (h) providing support to urban boards and administrations (through their respective county governments) for financing infrastructure investments in urban areas.
 - (i) Providing support as may be required for the proper implementation of the KUSP
2. The Accounting Officer, Principal Secretary (Ministry of Transport, Infrastructure, Housing & Urban Development), in consultation with the World Bank may suspend and/or terminate the right to County Government to use or benefit from the Urban Institutional Grants and the Urban Development Grant (UDG's) upon failure by the County Government to complying with the minimum conditions for accessing the Urban Institutional Grants.

B. OBLIGATIONS OF THE COUNTY GOVERNMENT

1. In the fiscal year 2018-2019, the Urban Institutional Grant's will be allocated to the County Government upon compliance with the minimum conditions including;
- - (a) Signing this Intergovernmental Participation Agreement and depositing a copy with the Speaker of the County Assembly.
 - (b) Ensure compliance to the Minimum Conditions and Performance Standards for grant of the Urban Institutional Grants and the Urban Development Grants.
2. The County Government undertakes to; -
- (a) ensure adherence to the KUSP Operations Manual
 - (b) ensure adherence to the Minimum Conditions and Performance Standards for grant of the Urban Institutional Grant and the Urban Development Grant;
 - (c) use the funds within the eligible expenditure areas and adhere with Environmental and Social Management System, with due diligence and efficiency and in accordance with sound technical, economic, financial, managerial environmental and social safeguard practices;
 - (d) maintain adequate records in accordance with sound accounting practices and proper coding of the revenues and expenditure of the operations , resources, expenditure;
 - (e) ensure that the goods, works, services financed from the proceeds of the Urban Institutional Grants and the Urban Development Grants shall be

procured in accordance with the procurement procedures established by law on the Republic of Kenya;

- (f) ensure that the World Bank shall have the right to obtain all information as it shall reasonably request regarding the administration, operation and financial management of the Urban Institutional Grants and the Urban Development Grants and otherwise under KUSP;
- (g) report on the utilization of funds from the grant;
- (h) submit any complaints or evidence of fraud involving the Urban Institutional Grants or the Urban Development Grant expenditures to the Ethics and Anti-Corruption Commission.
- (i) provide information and support in terms of documentation, disclosure of materials etc to the World Bank annually; performance assessment teams and participate actively in providing the team with all the requested information, needed meetings to achieve the results in the assessment, etc;
- (j) ensure that all reporting-financial as well as progress reports are compiled and submitted as per the KUSP guidelines and ensure a proper compilation of complaints on issues of environmental and social safeguards, procurement, fraud and corruption; and
- (k) use the Integrated Financial Management Information System (IFMIS).

C. DISPUTE RESOLUTION

1. Subject to the Intergovernmental Relations Act (Chapter 5G, Laws of Kenya), any dispute between the Parties shall be resolved in accordance with Part IV of the Intergovernmental Relations Act.
2. This Agreement shall be governed and construed in accordance with the Laws of Kenya.

D. TERMINATION

Unless otherwise extended by consent in writing between the parties herein, this Agreement shall lapse on the first anniversary thereof.

IN WITNESS WHEREOF the County hereto, acting through its duly authorised representative, has caused this Participation Agreement to be signed in its respective name as of the day and year first herein before written.

SIGNED BY THE GOVERNOR

OFFICIAL SEAL

NAME:

COUNTY GOVERNMENT OF:

SIGNATURE:

DATE:

FOR AND ON BEHALF OF THE NATIONAL GOVERNMENT OF THE REPUBLIC OF KENYA

CABINET SECRETARY:

MINISTRY:

SIGNATURE:

DATE:

Establishing Municipalities

Guidance note

1. INTRODUCTION
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2. PRELIMINARY ISSUES FOR CONSIDERATION
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3. PROCEDURAL STEPS IN ESTABLISHMENT OF A MUNICIPALITY
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1. INTRODUCTION

1.1. Historical Background

Prior to the promulgation of the Constitution of Kenya in 2010, Kenya had a centralized system of government. This system of government was headed by the President who assisted by a Provincial Administration system that ran through to villages in Kenya. Municipalities were established for purposes of delivering services to the people of Kenya.

Kenya's first formal Local Government was established in 1902. However, over time, the number of Local Governments has increased. Prior to the promulgation of the Constitution in 2010 and the enactment of the Urban Areas and Cities Act in 2011, the management of urban areas and cities in Kenya was governed by the provisions of Local Government Act, Cap 265 Laws of Kenya (now repealed).

Under the said legislation, urban areas and cities were categorized as follows:

- (a) Municipality¹;
- (b) County; or
- (c) Township.

The Local Government Act empowered the Minister for Local Government, in consultation with the Electoral Commission, to establish urban areas either:

- (a) on receipt of proposals from municipal council, county council or town council; or
- (b) by an order.

The Minister also had powers to name an urban area, delimit its boundaries, alter the boundaries of an urban area or amalgamate one or two urban areas.

¹ Section 5 of the Local Government Act

1.2. The Constitution of Kenya, 2010

On 27th August 2010, Kenya promulgated a new constitution. The new Constitution introduced a new system of governance. The Constitution introduced the devolved system of governance. A devolved system of government assigns sovereignty to national and sub-national governments by distributing power and resources between the levels of government. In Kenya, these two levels of government are the national government and the county government.

The two levels of government are distinct and inter-dependent although they conduct their affairs on the basis of mutual consultation and co-operation.² To that end, the functions of the various levels of government are as set out under the Fourth Schedule of the Constitution of Kenya 2010.

The devolved system of governance in Kenya is exemplified by Article 6 of the Constitution which provides:

“The territory of Kenya is divided into the counties specified in the First Schedule”

The guiding principles of devolution are as set out under Article 174 of the Constitution which include: to promote democratic and accountable exercise of power; to foster national unity by recognising diversity; *to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; to recognise the right of communities to manage their own affairs and to further their development;* to protect and promote the interests and rights of minorities and marginalised communities etc³.

In furtherance of the principles of giving powers of self governance to the people and recognizing the right of communities to manage their own affairs, county governments are mandated to decentralize their functions and the provision of their services to the extent that it is efficient and practicable to do so.⁴ Urban areas and cities including municipalities are further decentralized units of county governments⁵.

Together with the devolved system of governance, the constitution of Kenya introduced a new legal framework on the governance and management of urban areas and cities including municipalities. Article 184 of the Constitution mandated parliament, within one (1) year of the date of the promulgation of the Constitution, to enact a legislation providing for among other things the criteria for classifying areas as urban areas and cities; establishing the principles of governance and management of urban areas and cities and to provide for participation by residents in the governance of urban areas and cities. The said legislation was also intended to provide for mechanism to provide for identifying the different categories of urban areas and cities and their governance. The legislation contemplated by the framers of the Constitution of Kenya 2010 was enacted in 2011.

The purpose of the Act is captured in the preamble to the Act which provides;

“An Act of Parliament to give effect to Article 184 of the Constitution; to provide for the, classification, governance and management of urban areas and cities; to provide for the criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes.”

² Article 6 (2) of the Constitution of Kenya 2010

³ Article 174 of the Constitution of Kenya, 2010

⁴ Article 176 (2) of the Constitution of Kenya 2010

⁵ Section 48 of the County Governments Act

Under the Urban Areas and Cities Act, urban areas are categorized into three categories as follows;

- (a) Cities;
- (b) Municipalities; and
- (c) Towns.

The Act also provides for the mechanisms for establishment of the various urban areas. The following note will highlight the procedural steps in the establishment of municipalities as provided under the Urban Areas and Cities Act.

2. PRELIMINARY ISSUES FOR CONSIDERATION

2.1. Qualifications for conferment of a Municipality status

Save for “special Municipalities” established by the County Governor as headquarters of the respective counties as set out under the Third schedule of the County Government Act⁶, the Urban Areas and Cities Act requires towns intending to be considered for grant of a municipality status to fulfill the following criteria⁷:

- (a) a population of at least at least between seventy thousand and two hundred and forty-nine thousand (70,000-249, 000) residents;
- (b) must have an integrated urban area or city development plan;
- (c) must have a demonstrable capacity to generate sufficient revenue to sustain its operations;
- (d) capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule to the Urban Areas and Cities Act.
- (e) institutionalised active participation by its residents in the management of its affairs
- (f) sufficient space for expansion
- (g) infrastructural facilities, including but not limited to street lighting, markets and fire stations
- (h) capacity for functional and effective waste disposal

3. PROCEDURAL STEPS IN ESTABLISHMENT OF A MUNICIPALITY

3.1. Passing a resolution to apply for conferment of the status of a municipality

The Town Committee of a town intending to apply to the County Executive Committee for grant of a municipality status passes a resolution for this purpose. The passing of the resolution shall be governed by the rules and regulations of the concerned Town Committee⁸.

The resolution is forwarded to the County Executive Committee for consideration.

⁶ Municipalities established as headquarters of counties are exempted from the fulfilling the criteria set out under section 9 (3) of the Urban Areas and Cities Act

⁷ Section 9 of the Urban Areas and Cities Act

⁸ Section 9 as complemented by Section 8 (1) of the Urban Areas and Cities Act

3.2. Consideration and approval of the request by the County Executive Committee

Upon receipt of a resolution from a Town Committee for the grant of a municipality status in respect of a specific town, the County Executive Committee reviews the same and may either approve or decline the same.

It is noteworthy that the Act does not set out the matters to be considered by the County Executive Committee in approving the resolution for grant of a town a municipality status. However, we are of the view that compliance with the criteria set out under Section 9 of the Act may guide the County Executive Committee.

The Act does not also prescribe the procedure to be followed in case a resolution from a Town Committee is declined by the County Executive Committee. Equally, we are of the view that the provisions of the Fair Administrative Actions Act requiring *inter alia*, the grant of an opportunity to make representations before arriving at a decision and the furnishing of a statement of reasons whenever a public entity arrives at a decision should be observed.

Where the County Executive Committee, after consideration of the resolution, approves the resolution by the Town Committee, it makes a recommendation for the conferment of a municipality status on the concerned town⁹.

3.3. Formation of an ad hoc committee

Where the County Executive Committee makes a recommendation for the conferment of a municipality status on a qualifying town, the County Governor constitutes an *ad hoc* committee to consider the recommendation by the County Executive Committee and advise as appropriate.¹⁰

The membership of the *ad hoc* committee constituted by the County Governor as described above is set out under the Act and includes relevant professionals in good standing nominated by the following institutions taking account of regional, ethnic and gender diversity and representation of persons with disability¹¹:

- (a) Institution of Surveyors Kenya;
- (b) The Kenya Institute of Planners;
- (c) The Architectural Association of Kenya;
- (d) The Law Society of Kenya;
- (e) The Association of Urban Areas and Cities;
- (f) The Institute of Certified Public Accountants of Kenya; and
- (g) The business community.

The *ad hoc* committee considers whether the concerned town satisfies the criteria set out under section 9 of the Urban Areas and Cities Act for the grant of a municipality status. Where the *ad hoc* committee determines that the concerned town meets the statutory criteria, the recommendation for grant of the concerned town a municipality status is forwarded to the County Assembly by the County Governor for approval.¹²

3.4. Approval by the County Assembly

Once a recommendation is received from the County Governor for the conferment of a concerned town with the status of a municipality, the same is debated by the County Assembly and passed or declined in line with the standing orders of the relevant County Assembly.

⁹ Section 9 as complemented by Section 8 (2) of the Urban Areas and Cities Act

¹⁰ Section 9 as complemented by Section 8 (2) of the Urban Areas and Cities Act

¹¹ Section 9 as complemented by Section 8 (3) of the Urban Areas and Cities Act

¹² Section 9 as complemented by Section 8 (4) of the Urban Areas and Cities Act

If approved, a resolution is drafted and forwarded to the County Governor requesting the County Governor to confer the concerned town with the status of a municipality by grant of a municipality charter in the prescribed form.

It is noteworthy that the Act seems to suggest some element of discretion on the County Governor in granting a concerned town a municipality charter. The employment of the word “MAY” in Section 9 of the Act is unclear as to whether or not it is obligatory for the county governor to grant the municipality charter or not. Local authorities in Kenya have interpreted the meaning of the word “MAY” when used in respect of performance of public duties with varied results.

The High Court in *Mohsein Mohammed Albeity vs. Peter Mucheru Njuguna [2003] eKLR* interpreted the use of the word “may” as *not creating an option for the exercise of a right in law*. This definition was reiterated with approval in the high court case of *County Government of Nyeri v National Environment Management Authority [2014] eKLR*.

However subsequently in *Jimmy Mutinda v Independent Electoral and Boundaries Commission & 2 others Ex parte Shaileshkumarnata Verbai Patel & 2 others [2013] eKLR* the High Court was of the view that the use of the term may is to be interpreted with regard to the intention of the legislators. The court stated as follows:

“In my view the mere fact that an Act uses the word “may” rather than “shall” does not necessarily connote that the requirement is not mandatory. The intention of the legislature has to be examined before a determination is made as to whether the procedure is mandatory or merely directory. In Velji Shahmad vs. Shamji Bros. and Popatlal Karman & Co. [1957] EA 438 it was held:

“Such expressions as “may”, “shall be empowered”, “may be exercised”, in certain circumstances are to be construed as having a compulsory or imperative force. The test is whether there is anything that makes it the duty on whom the power is conferred to exercise that power. Where a statute confers an authority to do a judicial act, in a certain sense there would be such a right in the public as to make it the duty of the justices to exercise that power: to put it another way where the exercise of an authority is duly applied for by a party interested and having a right to make the application, the exercise depends upon proof of the particular case out of which the power arises...”

This view was subsequently upheld in *Republic v Non-Governmental Organisations Co-Ordinations Board & 4 others Ex Parte International NGO Safety Organisation (INSO) [2016] eKLR*.

In a different case before the Employment and Labour Relations Court the court adopted Black’s Law dictionary’s definition of “may” to the effect that ‘may’ could be construed as having the same effect as ‘shall’ usually in an effort to effectuate legislative intent.

Unfortunately, we have not sighted any judicial pronouncement on the provisions of section 9 (1) of the Act to give clarity on the obligation of the county governor in that respect.

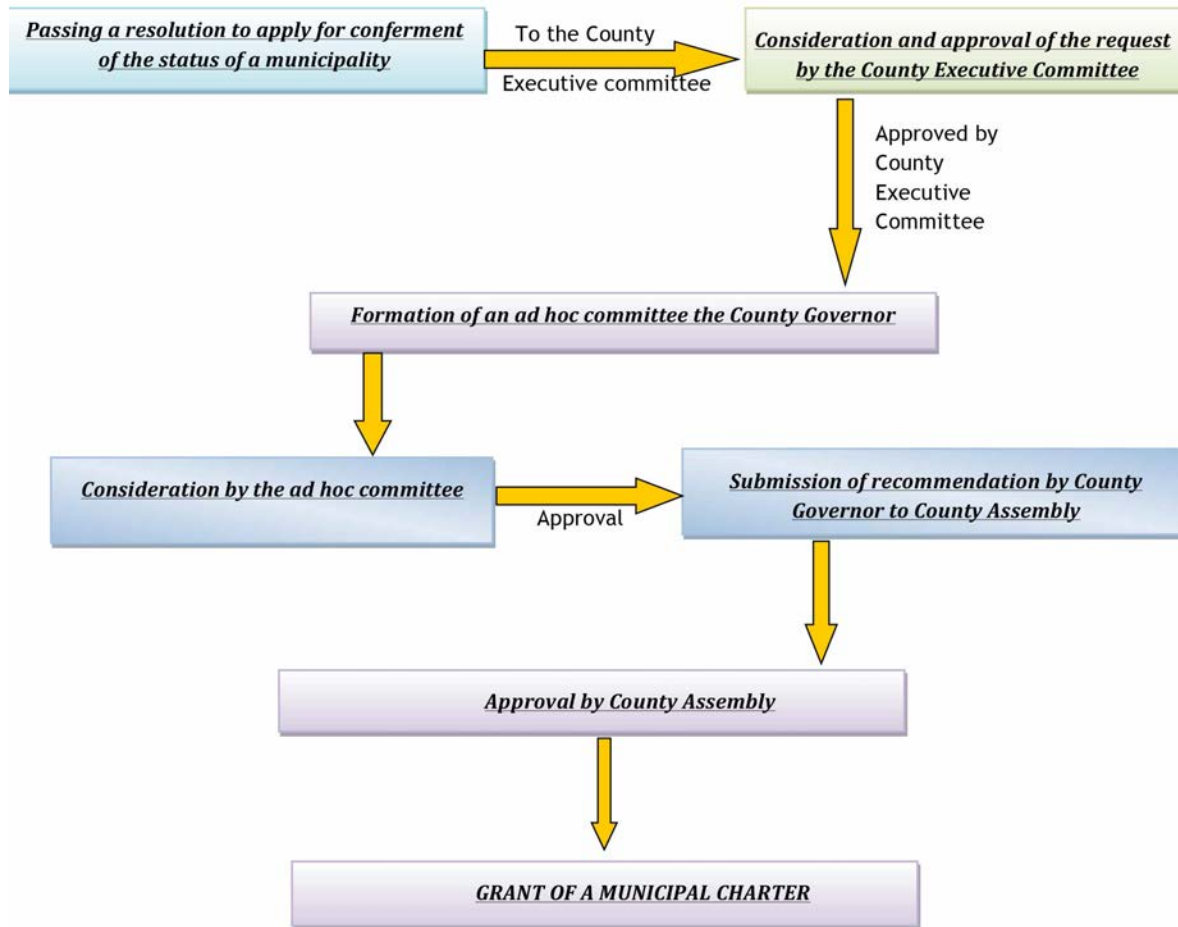
Further, the Act speaks of the grant of a municipality charter in the prescribed form. Noteworthy, the Act does not provide any form a municipality charter. It might have been the intent that the form shall be prescribed in the Regulations to the Act which to date have neither been drafted nor passed.

However, it should be pointed out that the lack of the prescribed form of the charter contemplated under section 9 of the Act is no bar for the grant of a charter to a qualifying

town. The provisions of section 72 of the Interpretations and General Provisions Act (Cap 2) allows for substantial conformity in the absence of rules in the following terms:

“Save as is otherwise expressly provided, whenever a form is prescribed by a written law, an instrument or document which purports to be in that form shall not be void by reason of a deviation therefrom which does not affect the substance of the instrument or document, or which is not calculated to mislead.”

4. DIAGRAMATIC REPRESENTATION OF THE PROCESS OF ESTABLISHMENT OF A MUNICIPALITY IN KENYA



Drafting a Municipal Charter

Guidance note

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1. INTRODUCTION

The Urban Areas and Cities Act is an Act intended to give effect to the provisions of Article 184 of the Constitution which required parliament to (within one year of promulgation of the Constitution) enact a legislation to provide for among other things:

- (a) establish criteria for classifying areas as urban areas and cities;
- (b) establish the principles of governance and management of urban areas and cities; and
- (c) provide for participation by residents in the governance of urban areas and cities.

The Urban Areas and Cities Act provides for the procedure on establishment of the various categories of urban areas and cities under the Act, their management and functions. In particular, section 9 of the Act provides for the establishment of Municipalities by the County Governor, on a resolution by the County Assembly, by grant of a Charter in the prescribed form.

However, the Act does not provide for the form of the Municipal Charter to be granted to Municipalities established under the Act. The template Municipality Charter prepared under the World Bank Kenya Urban Support Programme (KUSP) has been developed in substantial conformity with the provisions of the Urban Areas and Cities Act, the County Government Act and all other enabling provisions of law.

The following guidance note highlights the contents of the Model Municipal Charter, the statutory basis, the substantive provisions and areas of amendments/additions by County Governments establishing Municipalities within their jurisdiction.

2. BACKGROUND

An effort is made throughout the Model Municipal Charter to indicate the range of choices open to the County Governments, by describing in the commentary, the option approaches that are available. It is important to remember, however, that the appropriateness of any particular provision will depend upon several variables, including the unique problems and resources of the Municipality for which a Charter is being drafted.

3. CONTENTS & COMMENTARY ON PROVISIONS OF THE MODEL MUNICIPAL CHARTER

3.1 Preamble

- The Model Municipal Charter shall have a preamble. The preamble is not a mandatory requirement of law.

Commentary

- The Preamble outlines the statutory basis of the Municipal Charter.
- The preamble also recognizes that the Model Municipal Charter is in substantial conformity with the provisions of the Urban Areas and Cities Act and all other complementary statutes regulating the operations of Municipalities.
- In addition, it captures the powers of the County Governor to issue the Municipal Charter as provided under Section 9 (1) of the Urban Areas and Cities Act.
- To evidence the authority of the County Governor in granting the Municipal Charter, the Preamble provides for the execution of the Municipal Charter by the County Governor and the affixing of the Seal of the County Governor.

3.2 The Symbol

- The Model Municipal Charter shall have a symbol of the Municipality. The Municipal Symbol is not a mandatory requirement of law.

Commentary

- To distinguish every Municipality established within the County, every Municipal Charter granted to a Municipality shall bear a symbol specific to the Municipality.
- The decision to prescribe the Municipal Symbol is intended:
 - (a) to provide the distinct symbol that will identify every Municipality established under the Act; and
 - (b) to provide a symbol to be used by Municipalities in their official documents, by-laws or resolutions.
- The form of the symbol is to be developed by each Municipality. A format of the symbol was not included as it was felt that the same should be developed by the individual Municipalities who will adapt them to their respective characteristics and preferences.
- However, it may be the case that instead of adopting a new Municipal Symbol, existing and qualifying Town Committees adopt the existing symbols of the town. Where a Town Committee intends to adopt its former symbol, the same should be included in the resolution to the County Executive Committee for grant of a Municipality status for deliberation by among others the County Governor and the County Assembly.

3.3 Incorporation, name and Boundaries

- Article 1 of the Model Municipal Charter provides for the name, boundaries and establishment of the Municipality. It is a mandatory requirement of law that corporate bodies have distinctive names. However, it is mandatory that the boundaries of the Municipality be set out. It is mandatory for the County Governor to append his signature to the Charter.

Commentary

- Article 1 provides the basic structures of the Municipality. It establishes a Municipality, grants the same a name and delineates its boundaries.
- The Model Municipal Charter has opted to maintain the boundaries of existing towns in order to avert any delays in establishment of Municipalities on grounds of lack of definite boundaries. This Article however leaves room for alteration of the Municipality boundaries.
- The language adopted also leaves room for adaptation by the respective Municipalities if the established Municipality will amalgamate two or more towns or will annex other areas outside the existing towns. Article 1.2.1 may thus be amended as appropriate.
- The Model Municipal Charter adopts a language to be used by qualifying towns transitioning into Municipalities under the Urban Areas and Cities Act. The following may be adopted for existing Municipalities seeking to come under the Urban Areas and Cities Act.

Article 1: Incorporation and Name

1.1 Name

The Municipality of [...] .now existing and known as the [...] shall remain and continue as the Municipality of [...].

1.2 Boundaries

The boundaries of the Municipality of [...] shall be those existing at the date of this Charter. The boundaries of the Municipality of [...] may be altered to the extent and in the manner provided by law.

1.3 Rights and Liabilities, Existing By-laws and Officers

The Municipality of [...], shall remain vested with and continue to have, hold and enjoy all property, rights of property, and rights of action of every nature and description now pertaining to this Municipality, and is hereby declared to be the successor of the same.

The Municipality of [...] shall be subject to all the liabilities that now exist against the existing Municipality; all valid Municipality by-laws, resolutions, order and regulations in force at the time this Charter takes effect, and not in conflict with its provisions, shall remain in force until amended or repealed; and the term of elective officers in office at the time this charter goes into effect shall end upon the election and qualification of their successors.

3.4 Powers, Objects and Functions of the Municipality

- Article 2 of the Model Municipal Charter provides the powers, objects and functions of the Municipality. While the functions of Municipalities are set out under the Urban

Areas and Cities Act¹ and thus a mandatory requirement of the Charter, the powers and objects of Municipalities are not.

Commentary

- This Article sets out the powers of the Municipality. It vests the Municipality with all the powers conferred upon the Municipality by the laws of Kenya. A specific enumeration of the powers of the Municipality can be included although this is already provided for in law.
- The Article also has a descriptive provision on the objects of establishment of the Municipality. The provision highlights the mission, visions and objects of establishing the Municipality. The contents of Article 2.2 are intended to offer some guidance to County Governments on the things to include in this provision. The contents of this provision may be changed to suit the respective Municipality established under the Act. It is important to highlight at this point that neither Article 2.1 nor 2.2 of the Model Municipal Charter are provided for by statute or required of any Municipality established under the Urban Areas and Cities Act.
- The Article also provides the functions of the Municipality. These functions are separate from those vested in the Municipal Boards. They provide a general indication of the functions to be performed by the Municipality to residents of the Municipality. The listed functions in the Model Municipal Charter are the based on best practice functions list for Municipalities. Depending on the functions delegated to the respective Municipality, Article 2.3 may be amended by the County Government.

3.5 The Board of the Municipality

- Article 3 of the Model Municipal Charter has provisions on the Board of Municipalities. It is mandatory that a Municipality has a Board². The Board must be established as a corporate body.³ The Board must be established as subordinate to the County Government.⁴ The Board must be vested with the powers provided under article 3.2.4.⁵ In addition to any other functions as may be delegated by the County Government, the Board must be vested with the functions set out under Article 3.2.6.⁶ The Board must be composed of nine members appointed in the manner provided under Article 3.3.⁷ Each Board must have a chairperson and a vice-chairperson of different gender⁸. The Board may opt to employ a Secretary. Members of the Board or committees of the Board shall not be entitled to a salary.⁹ It is mandatory that the Board meets at least once in every three months.¹⁰ Every member of the Board must sign a confidentiality agreement.¹¹ It is not mandatory for a certain number of Board

¹ These are functions set out under the First Schedule to the Urban Areas and Cities Act

² These Boards are required under section 12 of the Urban Areas and Cities Act.

³ Section 12 (2) of the Urban Areas and Cities Act

⁴ Section 11 (b) of the Urban Areas and Cities Act

⁵ Section 21 (1) of the Urban Areas and Cities Act

⁶ Section 20 (1) of the Urban Areas and Cities Act

⁷ Section 14 as read together with section 13 of the Urban Areas and Cities Act

⁸ Section 17 (2) of the Urban Areas and Cities Act

⁹ Section 25 of the Urban Areas and Cities Act

¹⁰ Section 23 of the Urban Areas and Cities Act

¹¹ Section 24 (5) of the Urban Areas and Cities Act

members to be present for any meeting of the Board to take place-the County Government may set the number.¹²

Commentary

- The Board of the Municipality is established as a corporate body vested with all powers of corporate bodies. This provision mirrors Section 12 (1) of the Urban Areas and Cities Act.
- The vesting of the Board of the Municipality with the corporate status is essential to ensure functioning of the Municipality through its governing entity-the Municipal Board. The relationship between the Board and the County Government is also well set out with the Board being designated as an agent of the County Government in line with Section 11 of the Act.
- The designation of the Board as an agent of the County Government will allow the delegation of functions and powers by the County Government as contemplated under the County Government Act.
- The Model Municipal Charter also vests all powers of the Municipality in the Board. This is intended to complement the proposal of this Charter (in subsequent sections) of the Municipal Manager being subject to the Board. The Article also delineates the powers of the Board of the Municipality. These powers mirror the provisions of Section 21 of the Urban Areas and Cities Act. The language adopted in the Model Municipal Charter is broad to allow further delegation of powers by the County Government. The functions enumerated under this Article are those provided under Section 20 of the Urban Areas and Cities Act.
- The Article also provides for the composition of the Board of the Municipality. The number and mode of appointment of members of the Board of the Municipality conforms to the provisions of section 13 as amended by section 14 of the Urban Areas and Cities Act.
- The term of the members of the Board as provided in the Model Municipality Charter is also prescribed by statute. Similarly, the qualification requirements for the members of the Board are prescribed by section 13 (4) of the Urban Areas and Cities Act.
- The Model Municipality Charter also provides for the positions of the Chairperson and Vice-chairperson of the Board as contemplated under the Urban Areas and Cities Act.
- The functions of the Chairperson are drawn from corporate governance good practices. The Act does not provide for the term of the Chairperson and Vice-chairperson of the Board.
- The Model Municipal Charter proposes a similar term to that of other members. Noting that the term provisions for the Chairperson and Vice-chairperson of the Board are not provided in statute, they could be amended to provide inter alia, for occupation of the position of the Chairperson and Vice-chairperson of the Board on a rotational basis.
- The Article also provides for the procedure to be adopted in removing the Chairperson and Vice-chairperson of the Board. While the persons who may remove the Chairperson and Vice-chairperson of the Board are provided under section 18 of

¹² There are no quorum requirements for holding Board meetings

the Urban Areas and Cities Act, there are no provisions on the procedure to be followed.

- The Model Municipal Charter suggests the procedure to be provided by Regulations under the Urban Areas and Cities Act and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.
- The language adopted on the procedure of removal of the Chairperson and Vice-chairperson of the Board is broad to allow County Governments choose from a variety of procedures under Kenyan law but with a requirement to observe fair labour practices which will require grant of an opportunity to be heard, furnishing reasons for a decision etc.
- The Article has also provided for the office of the Secretary of the Board to assist the Board in its functions. The Secretary position has not been provided by the Urban Areas and Cities Act. The Article also empowers the Board to establish Committees for better carrying out of its functions as provided under Section 26 of the Urban Areas and Cities Act.
- The Article also includes the prohibition for payment of salaries to members of the Board. The Article also includes statutory provisions on the persons who can remove members of the Board and the grounds of their removal. The procedure for the removal has however been left to the Regulations to be developed under the Urban Areas and Cities Act.
- The Article also replicates the statutory provisions on the frequency of holding Board meetings as provided under section 23 of the Urban Areas and Cities Act. The Article has however included provisions allowing public access to the meetings of the Board except where privacy is necessary. This is intended to promote transparency of the affairs of the Board.
- The Article also includes quorum requirement provisions for purposes of conducting meetings of the Board. It has also borrowed from the good corporate governance principle restricting the voting by members of the Board with an interest in a matter to be considered by the Board.

3.6 Legislative Authority

- Article 4 of the Model Municipal Charter has provisions on the legislative authority of the Board of the Municipality. The Boards must be vested with legislative powers.¹³ It is not mandatory that bye-laws be passed in two sittings of the Board. It is mandatory to provide the effective date of any bye-law passed by the Board.

Commentary

- Provisions on legislative authority are not provided under the Urban Areas and Cities Act.
- The Article provides for the exercise of this power by way of passing By-Laws. The Article provides that By-laws shall be passed in two meetings of the Board. However, where a By-law has been made available to members of the public one week before being considered by the Board, the same may be passed by a unanimous decision of members of the Board at a meeting where quorum is present.

¹³ Section 21 (f) of the Urban Areas and Cities Act

- Amendments to By-laws are required to be availed to the public before the same are passed by the Board. The authenticity of the By-laws shall be evidenced by the signature of the Chairperson of the Board and the date of passing. By-laws passed by the Board are proposed to take effect after 30 days. These provisions may be adopted with necessary modifications by the County Governments.

3.7 Executive Authority

- Article 5 of the Model Municipal Charter has provisions on the executive authority of the Board of the Municipality. The Board must also be vested with executive authority.¹⁴ It is also mandatory to provide for the manner of approving resolutions. Although no specific period for the coming into effect of resolutions of the Board, it is necessary to provide when resolutions approved by the Board shall come into operation.

Commentary

- Similar to Article 4, these provisions are not provided under the Urban Areas and Cities Act. The Article provides for the exercise of this power by way of approving resolutions.
- The Article provides that resolutions shall be passed in one meeting of the Board. These resolutions and other administrative decisions of the Board shall take effect on the day passed or the date stated in the resolution or the administrative decision. These provisions also may be amended in accordance with the directions of the County Government.

3.8 The Municipal Manager

- Article 6 of the Model Municipal Charter has provisions on the Municipal Manager. Every Municipality must have a Municipal Manager.¹⁵ It is mandatory that the Municipal Manager satisfy the eligibility criteria set out under Article 6.3. No person shall be appointed as an Acting Municipal Manager without fulfilling the eligibility criteria set out under Clause 6.3. The Municipal Manager must implement decisions of the Board and be answerable to the Board.¹⁶

Commentary

- The Article creates the office of the Municipal Manager and designates him/her as the administrative head of the Municipality.
- The decision to make the Municipal Manager as the administrative head of the Municipality was informed by the fact that the Board meets intermittently and may not be able to oversee the affairs of the Municipality properly.
- The mode of appointment and qualifications of the Municipal Manager as provided under the Charter mirrors the provisions of Section 28 and 30 of the Urban Areas and Cities Act. The Urban Areas and Cities Act however does not provide for the term of the Municipal Manager. The Article proposes that the Municipal Manager be

¹⁴ Section 21 (1) (a) of the Urban Areas and Cities Act

¹⁵ Section 28 of the Urban Areas and Cities Act

¹⁶ Section 28 of the Urban Areas and Cities Act

employed on a contract basis depending on the preference of the respective County Governments.

- The Article also provided for the overall function of the Municipal Manager as provided under Section 28 of the Urban Areas and Cities Act namely to implement the decisions of the Board. However, the Model Municipal Charter has provided for additional specific functions to ensure the smooth running of the Municipality. These functions are not provided by statute and may therefore be amended by the County Governments in accordance with the powers and functions delegated to the Municipalities.
- The Article empowers the County Public Service Board as the appointing authority to set the remuneration of the Municipal Manager.
- The Act does not provide for the manner of removal of the Municipal Manager. The Model Municipal Charter proposes the County Governor, the members of the Board and the residents of the Municipality to be the persons empowered to remove the Municipal Manager. The grounds on which a Municipal Manager may be removed have been imported from the statutory provisions on removal of members of the Board.
- The procedure to be followed in removal of the Municipal Manager is proposed to be provided by the Regulations under the Urban Areas and Cities Act and in the absence, in accordance with any written law having regard to fair labour practices. The wording of this provision on the procedure for the removal of the Municipal Manager is broad to allow amendments and adoption of various methods of removal of the Municipal Manager by the County Governments.
- The Urban Areas and Cities Act does not contemplate the position of an interim Municipal Manager. However, the Model Municipal Charter, cognizant of the important role played by the Municipal Manager, contemplates the casual filling of the position of Municipal Manager whenever it arises by the County Governor. This role is given to the County Governor in furtherance of the principle of the principal-agent relationship between the County Government and the Municipality. The article intends to ensure continuity of the operations of the provision of services to the residents of a Municipality.

3.9 Municipal finances and financial management

- Article 7 of the Model Municipal Charter has provisions on the Municipal finances and financial management in the Municipality. It is mandatory to provide for the financial management in the Municipality. A Board shall not source for funds from other sources other than those set out under Article 7.1.¹⁷ Each Municipality shall have a Municipality accounting officer¹⁸. It is also mandatory to provide for the budgeting of the Board of the Municipality. All monies received for and on behalf of the Municipality and the Board must be deposited in an account maintained with a financial institution approved by the County executive member for finance.¹⁹ Every Municipality must be audited once every year.²⁰

¹⁷ Section 43 of the Urban Areas and Cities Act and Section 172 of the Public Finance Management Act

¹⁸ Section 170 of the Public Finance Management Act

¹⁹ Section 179 of the Public Finance Management Act

²⁰ Section 46 and 47 of the Urban Areas and Cities Act

Commentary

- This Article replicates sources of funds for Boards of Municipalities as provided under Section 43 of the Urban Areas and Cities Act and Section 140 and 172 of the Public Finance Management Act. It is noteworthy that financial matters of public entities are regulated under the law (the Public Finance Management Act) and these sources should be retained as stipulated in the Model Municipal Charter.
- The article also has provisions on the appointment of the accounting officer of the Municipality which replicates the provisions under section 170 and 148 of the Public Finance Management Act.
- The financial year of the Municipality as provided in the Model Municipal Charter is as set out under section 44 of the Urban Areas and Cities Act.
- The Article also aligns the budget making process under the Model Municipal Charter to the provisions of the Urban Areas and Cities Act and the Public Finance Management Act which substantively provide for the method of budget making process.
- The Article also makes provisions on how Municipality finances will be handled. The model provides that the Municipality shall open a bank account in its name into which all monies received by the Municipality shall be deposited. The account shall be operated by the Municipality's accounting officer who shall be answerable to the County Government. This is provided under section 179 of the Public Finance Management Act.
- The Charter also makes provision on the powers of the Municipality to borrow from the prescribed sources under the Act. The list is conclusive and may not be amended.

3.10 Municipality personnel

- Article 8 of the Model Municipal Charter has provisions on the Municipality personnel.

Commentary

- The Article empowers the Board to employ employees to facilitate service delivery and the performance of its functions. This Article may be amended to provide for the establishment of the various departments under which the employees shall be deployed.

3.11 Municipality property

- Article 9 of the Model Municipal Charter has provisions on the Municipality property.

Commentary

- This Article empowers the Municipality to acquire property through the various legal methods of acquisition of property. There are provisions on compulsory acquisition of land and the protection of municipal buildings.

3.12 General provisions

- Article 10 of the Model Municipal Charter contains the general provisions.

Commentary

- This Article contains the general provisions on the charter including the oath of office and the manner of amendment of the charter.

3.13 Transition provisions

- Article 11 of the Model Municipal Charter contains the transition provisions.

Commentary

- These are the transitional provisions of the Charter. It preserves the existing departments of the Municipality, employees and by-laws in force before commencement of the Charter.

Model Municipal Charter Template

[.....] MUNICIPALITY

[MUNICIPALITY SYMBOL]

MUNICIPAL CHARTER

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PREAMBLE

WHEREAS

Article 2 of the Constitution provides that the Constitution is the supreme law of the Republic of Kenya and binds all persons and all State organs at both levels of government.

WHEREAS

Article 184 of the Constitution of Kenya 2010 mandated parliament to enact a legislation to provide inter alia the criteria for classifying areas as urban areas and cities; establishing the principles of governance and management of urban areas and cities and to provide for participation by residents in the governance of urban areas and cities within 1 year of the promulgation of the Constitution.

WHEREAS

Parliament enacted the Urban Areas and Cities Act in the year 2011 which legislation had an effective date falling after the first elections held under the Constitution of Kenya 2010.

WHEREAS

Section 9 of the Urban Areas and Cities Act empowers the County Governor, on the resolution of the County Assembly, to confer on a qualifying town, the status of a Municipality by grant of a Charter in the prescribed form.

WHEREAS

The Urban Areas and Cities Act does not have the prescribed form of a Municipal Charter.

WHEREAS

No regulations have been promulgated under the Urban Areas and Cities Act providing the prescribed form of a Municipal Charter under the Urban Areas and Cities Act.

WHEREAS

Section 72 of the Interpretations and General Provisions Act allows for substantial conformity of any instruments required to be in a prescribed form under any statute in Kenya.

WHEREAS

The County Assembly of [...] duly approved the request by the Town Committee of [...] for grant of this Charter to the now Municipality of [...].

NOW THEREFORE IN EXERCISE of the powers conferred by section 9 (1) of the Urban Areas and Cities Act, (No. 13 of 2011) as complemented by section 72 of the Interpretations and General Provisions Act (Chapter 2) and all other enabling provisions of law, the County Governor of [...] County **HEREBY GRANTS** the Municipality of [.....] this Municipal Charter on this [...] day of [....] 201[..].

[SIGNATURE OF COUNTY GOVERNOR]

.....

[INSERT NAME OF COUNTY GOVERNOR]

THE COUNTY GOVERNOR OF [.....] COUNTY

SEAL OF THE COUNTY GOVERNOR OF [...] COUNTY

1. INCORPORATION, NAME AND BOUNDARIES

1.1. Incorporation and Name

- 1.1.1. This Charter is the Municipal Charter of the Municipality of [...], within [...] County, Kenya.
- 1.1.2. All processes affecting the Municipality shall be served on the Municipal Manager or acting Municipal Manager, in the absence of both of said officers, on the Secretary of the Board of the Municipality.

1.2. Boundaries

- 1.2.1. The boundaries of the Municipality of [...] as now existing or as may subsequently be altered shall be the boundaries of the Municipality of [...].

2. POWERS, OBJECTS AND FUNCTIONS OF THE MUNICIPALITY

2.1. Powers of the Municipality

- 2.1.1. The Municipality of [...] shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by municipalities under the Urban Areas and Cities Act, the County Government Act and the County of [...] By-laws.
- 2.1.2. No enumeration of specific powers in this Charter shall be held to be exclusive. All such powers shall be exercised in the manner prescribed in this Charter, or, if not prescribed herein, in such manner as Board of the Municipality may determine, or, unless a contrary intent appears in this Charter or in the By-laws and Resolutions of the Board of the Municipality, in such manner as may be provided by the County of [...] By-laws.

2.2. Objects of the Municipality

- 2.2.1. The objects of the Municipality of [...] are to:-
 - (i) Provide for efficient and accountable management of the affairs of the Municipality.
 - (ii) Provide for a governance mechanism that will enable the inhabitants of the Municipality to:
 - a. Participate in determining the social services and regulatory framework which will best satisfy their needs and expectations.
 - b. Verify whether public resources and authority are utilized or exercised, as the case may be, to their satisfaction.
 - c. Enjoy efficiency in service delivery.
 - (iii) Vigorously pursue the developmental opportunities which are available in the Municipality and to institute such measures as are necessary for achieving public order and the provisions of civic amenities, so as to enhance the quality of life of the inhabitants of the Municipality.

- (iv) Provide a high standard of social services in a cost effective manner to the inhabitants of the Municipality.
- (v) Promote social cohesiveness and a sense of civic duty and responsibility among the inhabitants and stakeholders in the Municipality in order to facilitate collective action and commitment towards achieving the goal of a harmonious and stable community.
- (vi) Providing for services, laws and other matters for Municipality's benefit.
- (vii) Fostering the economic, social and environmental well-being of its community

2.3. Functions of the Municipality

2.3.1. The Municipality of [...] shall, within the boundaries of the Municipality, perform the following functions:

- (a) Promotion, regulation and provision of refuse collection and solid waste management services;
- (b) Promotion and provision of water and sanitation services and infrastructure (in areas within the Municipality not served by the Water and Sanitation Provider);
- (c) Construction and maintenance of urban roads and associated infrastructure;
- (d) Construction and maintenance of storm drainage and flood controls;
- (e) Construction and maintenance of walkways and other non-motorized transport infrastructure;
- (f) Construction and maintenance of recreational parks and green spaces;
- (g) Construction and maintenance of street lighting;
- (h) Construction, maintenance and regulation of traffic controls and parking facilities;
- (i) Construction and maintenance of bus stands and taxi stands;
- (j) Regulation of outdoor advertising;
- (k) Construction, maintenance and regulation of municipal markets and abattoirs;
- (l) Construction and maintenance of fire stations; provision of fire-fighting services, emergency preparedness and disaster management;
- (m) Promotion, regulation and provision of municipal sports and cultural activities;
- (n) Promotion, regulation and provision of animal control and welfare;
- (o) Development and enforcement of municipal plans and development controls;
- (p) Municipal administration services (including construction and maintenance of administrative offices);
- (q) Promoting and undertaking infrastructural development and services within municipality;
- (r) Any other functions as may be delegated by the County Executive Committee.

3. THE BOARD OF THE MUNICIPALITY

3.1. Establishment of the Board

- 3.1.1. There shall be a Board of the Municipality of [...]¹.
- 3.1.2. The Board of the Municipality shall be a corporate body with perpetual succession and a common seal and shall in its own corporate name, be capable of²:
- (a) Suing and being sued;
 - (b) Taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
 - (c) Borrowing money or making investments within the limits imposed by law
 - (d) Entering into contracts; and
 - (e) Doing or performing all other act or things for the proper performance of its functions in accordance with the Urban Areas and Cities Act or any other written law which may lawfully be done or performed by a body corporate.
- 3.1.3. There shall be a principal and agency relationship between the Board of the Municipality and the County Government of [...].³

3.2. Powers and Functions of the Board of the Municipality

- 3.2.1. The Board of the Municipality shall have all the powers and perform all functions vested in boards of municipalities under the Urban Areas and Cities Act, the County Government Act and the Municipality By-laws.
- 3.2.2. Except as this Charter otherwise provides, all powers of the Municipality shall be vested in the Board of the Municipality.
- 3.2.3. The Board of the Municipality shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the Board of the Municipality.
- 3.2.4. Subject to the Constitution and any other written law, the Board of the Municipality shall, within the boundaries of the Municipality of [...]-
- (a) exercise executive authority as delegated by the County Executive Committee of the County of [...];
 - (b) ensure provision of services to its residents;
 - (c) impose such fees, levies and charges as may be authorised by the County Government for delivery of services by the Municipality;
 - (d) promote constitutional values and principles;
 - (e) ensure the implementation and compliance with policies formulated by both the National and County Government;
 - (f) make By-laws or make recommendations for issues to be included in By-laws;
 - (g) ensure participation of the residents in decision making, its activities and programmes; and
 - (h) exercise such other powers as may be delegated by the County Executive Committee of the County of [...].

¹ Section 12 (1) of the UACA

² Section 12 (2) of the Urban Areas and Cities Act (UACA)

³ Section 11 of the UACA

3.2.5. Notwithstanding any other provision of law or this Charter, the Board of the Municipality shall exercise such executive authority as may be delegated by the County Executive Committee for the necessary performance of its functions.

3.2.6. The Board of the Municipality shall perform the following functions:

- (a) oversee the affairs of the Municipality;
- (b) develop or adopt policies, plans, strategies and programmes and set targets for service delivery;
- (c) formulate and implement an integrated development plan;
- (d) control land, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centers, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the Municipality as delegated by the County Government of [...];
- (e) promoting and undertaking infrastructural development and services within Municipality as delegated by the County Government of [...];
- (f) developing and managing schemes, including site development in collaboration with the relevant national and county agencies;
- (g) maintaining a comprehensive database and information system of the administration;
- (h) administering and regulating its internal affairs;
- (i) implementing applicable national and county legislation;
- (j) entering into contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions;
- (k) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the Board of the Municipality;
- (l) preparing and submitting its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
- (m) collecting rates, taxes levies, duties, fees and surcharges on fees as delegated by the County Government of [...];
- (n) settling and implementing tariff, rates and tax and debt collection policies as delegated by the County Government of [...];
- (o) monitoring the impact and effectiveness of any services, policies, programs or plans;
- (p) establishing, implementing and monitoring performance management systems;
- (q) promoting a safe and healthy environment;
- (r) facilitating and regulating public transport
- (s) performing such other functions as delegated by the County Government of [...];

3.3. Composition and term of the Board of the Municipality

- 3.3.1. The Board of the Municipality shall be composed of nine (9) members⁴.
- 3.3.2. Four (4) members of the Board of the Municipality shall be appointed through a competitive process by the County Executive Committee and approved by the County Assembly⁵.
- 3.3.3. Five (5) members of the Board shall be nominated by the following umbrella bodies⁶:
- (a) an umbrella body representing professional associations in the area;
 - (b) an association representing the private sector in the area;
 - (c) a cluster representing registered associations of the informal sector in the area;
 - (d) a cluster representing registered neighborhood associations in the area; and
 - (e) an association of the Municipality.
- and appointed by the County Executive Committee with the approval of the County Assembly.
- 3.3.4. In appointing members of the Board of the Municipality, the County Executive Committee shall ensure gender equity, representation of persons with disability, youth and marginalised groups.
- 3.3.5. The term of the members of the Board of the Municipality shall be five (5) years on a part-time basis⁷.

3.4. Eligibility for appointment as member of the Board of the Municipality

- 3.4.1. Each member of the Board of the Municipality shall have the following qualifications⁸:
- (a) be a Kenyan citizen;
 - (b) be ordinarily resident or have a permanent dwelling in the Municipality;
 - (c) carry on business in the municipality; or
 - (d) have lived in the municipality for at least five years.

3.5. Chairperson of the Board

- 3.5.1. At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Chairperson of the Board of the Municipality.⁹
- 3.5.2. The Chairperson of the Board shall hold office for a term of five (5) years¹⁰.

3.6. Powers and functions of the Chairperson

⁴ Section 14 of the UACA
⁵ Section 13 as amended by Section 14 of the UACA
⁶ Section 13 as amended by Section 14 of the UACA
⁷ Section 15 of the UACA
⁸ Section 13 (4) as amended by Section 14 of the UACA
⁹ Section 17 of the UACA
¹⁰ Section 17 (4) of the UACA

3.6.1. The Chairperson of the Board of the Municipality shall have the following powers and shall perform the functions set out below:

- (a) The Chairperson shall be the head of the Board of the Municipality;
- (b) Chairing the meetings of the Board of the Municipality; and
- (c) Perform such other duties as may be delegated by the Board of the Municipality.

3.7. Vice-Chairperson of the Board of the Municipality

3.7.1. At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Vice-Chairperson of the Board of the Municipality.¹¹

3.7.2. The Chairperson and the Vice-Chairperson of the Board of the Municipality shall at all times be of different gender.

3.7.3. The Vice-Chairperson shall, in the absence of the Chairperson, perform the functions of the Chairperson and shall perform such other functions as may be delegated by the Chairperson.

3.8. Removal of the Chairperson and Vice-Chairperson

3.8.1. The Chairperson and the Vice-Chairperson of the Board of the Municipality may be removed by:

- (a) a majority decision of the members of Board of the Municipality at a duly convened meeting where quorum is present; or
- (b) upon petition by a resident of the Municipality.¹²

3.8.2. The procedure for the removal of a Chairperson or Vice-Chairperson of the Board of the Municipality under 3.8.1 above may be provided by Regulations under the Urban Areas and Cities Act and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.

3.8.3. Any vacancy arising out of the removal of a Chairperson or the Vice-Chairperson of Board of the Municipality may be filled in the manner provided under Article 3.6 and 3.7 respectively.¹³

3.9. Secretary of the Board of the Municipality

3.9.1. At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves a Secretary of the Board of the Municipality.

3.9.2. Where the Secretary of the Board of the Municipality is absent from any meeting, the members of the Board of the Municipality shall appoint a Secretary of the Board from amongst themselves for purposes of that meeting.

3.10. Committees of the Board of the Municipality

¹¹ Section 12 (2) of the UACA

¹² Section 18 (3) of the UACA

¹³ Section 19 of the UACA

3.10.1. The Board of the Municipality may:

- (a) Establish such Committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under the Urban Areas and Cities Act;¹⁴
- (b) delegate to such Committee such functions as are necessary for the efficient performance of its duties in respect to the whole or any part of the area under the jurisdiction of the Board of the Municipality;¹⁵ and
- (c) include persons who are not members of the Board in any Committee¹⁶.

3.10.2. The Committees of the Board of the Municipality to which members of the Board of the Municipality delegate any of their powers and functions must follow procedures which are based as far as they are applicable on those provision of this Charter which govern the taking of decisions and performance of functions by the Board of the Municipality.

3.11. Remuneration of the members of the Board of the Municipality

3.11.1. The Board of the Municipality shall not be entitled to a salary.

3.11.2. However, members of the Board of the Municipality shall be paid such allowances as the County Executive Committee shall, with the approval of the County Assembly, and on the advice of the Salaries and Remuneration Commission, determine.¹⁷

3.12. Removal of members of the Board of the Municipality

3.12.1. A member of the Board of the Municipality shall cease to hold office if the member¹⁸:

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the County Governor;
- (e) without reasonable cause, the member is absent from three consecutive meetings of the Board or Committee of the Board of the Municipality within one financial year;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) fails to declare his or her interest in any matter being considered or to be considered by the Board or Board Committees;
- (i) engages in any gross misconduct; or
- (j) dies.

3.12.2. A member of the Board of the Municipality may be removed from office by¹⁹;

¹⁴ Section 26 (1) of the UACA

¹⁵ Section 26 (2) of the UACA

¹⁶ Section 26 (3) of the UACA

¹⁷ Section 25 of the UACA

¹⁸ Section 16 of the UACA

- (a) the County Governor;
 - (b) a resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality; or
 - (c) petition by the residents of the Municipality.
- 3.12.3. The procedure for the removal or petition for removal of a member of the Board of the Municipality under 3.11.1 above shall be provided by Regulation under the Urban Areas and Cities Act²⁰.
- 3.12.4. Any vacancy arising out of the removal of a member of the Board of the Municipality may be filled in the manner provided under Article 3.3 above.²¹

3.13. Meetings of the Board of the Municipality

- 3.13.1. The Board of the Municipality shall hold its sittings to transact the business of the Board once every three months.²²
- 3.13.2. Notwithstanding Article 3.12.1, the Chairperson of the Board of the Municipality may, and upon request in writing by at least one-third of the members of the Board of the Municipality shall, convene a special meeting to transact any urgent business of the Board of the Municipality.
- 3.13.3. All regular meetings of the Board of the Municipality called for the purpose of transacting public business, where a majority of the members elected are present, shall be open to the public.²³
- 3.13.4. The Board shall have the privilege of holding executive sessions from which the public is excluded, however, no by-laws, resolution, rule or regulation shall be finally adopted at such an executive session.²⁴

3.14. Quorum

- 3.14.1. A majority of the members of the Board of the Municipality is a quorum to conduct business, but a smaller number may meet and compel attendance of absent members as prescribed by Board of the Municipality Rules.²⁵
- 3.14.2. A member of the Board of the Municipality who is interested in any discussions or decision-making regarding any subject or transaction under consideration by the Board of the Municipality, shall not to be counted as participating in the discussions or decision-making, and is not entitled to vote on or agree to the subject or transaction relating to it.

3.15. Rules of the Board

¹⁹ Section 18 of the UACA

²⁰ While the UACA provides persons who may remove a member of the Board of a Municipality, the procedure for removal or petitioning for removal is not provided. The Charter proposes that the same be provided in the regulations.

²¹ Section 19 of the UACA

²² Section 23 of the UACA

²³ This is not provided for under the Act. However, in line with the principle of transparency, the same has been included.

²⁴ This provision will allow the Board of the Municipality exclude members of the public where necessary. It may also be appropriate where sensitive matters are being discussed.

²⁵ This is not provided in the Act. However, a majority of the members of the Board of the Municipality is sufficient to constitute quorum.

3.15.1. The Board of the Municipality shall by resolution adopt rules to govern its meetings.

3.16. Record of information of the Board

3.16.1. The minutes and other information of the Board of the Municipality shall be kept by the Secretary of the Board of the Municipality.²⁶

3.16.2. Access to information on the activities and resolutions of the Board of the Municipality shall be as provided under the Urban Areas and Cities Act.

3.17. Citizen Fora

3.17.1. The Board of the Municipality shall ensure the development of mechanisms for the participation of the residents of the Municipality of [...] in the management and administration of the Municipality.

3.17.2. All recommendations from the Citizen Fora of the Municipality of [...] shall be forwarded to the Board of the Municipality for resolution.

3.17.3. All recommendations on issues raised in the Citizen Fora and addressed by the Board of the Municipality shall be forwarded to the Municipal Manager for implementation.

4. LEGISLATIVE AUTHORITY²⁷

4.1. By-laws

4.1.1. The Board of the Municipality shall exercise its legislative authority by passing Municipality By-laws.

4.2. Passing of By-laws

4.2.1. Except as authorized by Article 3.2.2, passing of By-laws shall require approval by a majority of the Board of the Municipality at two meetings.

4.2.2. The Board of the Municipality may adopt a By-law at a single meeting by the unanimous approval of at least a quorum of Board, provided the proposed By-law is available in writing to the public at least one week before the meeting.

4.2.3. Any substantive amendment to a proposed By-law must be read aloud or made available in writing to the public before the Board of the Municipality adopts the By-law at that meeting.

4.2.4. After the adoption of a By-law, the vote of each member must be entered into the Board minutes.

4.2.5. After adoption of a By-law, the Chairperson of the Board must endorse it with the date of adoption and his title.

4.3. Effective date of By-laws

²⁶ This is equally not provided but is crucial for the continuity of the functions of the Board of the Municipality.

²⁷ The legislative powers of the Board of the Municipality are not set out in the Act.

- 4.3.1. By-laws shall take effect on the 30th day after adoption, or on a later day provided in the By-law.
- 4.3.2. A By-law may take effect as soon as adopted or other date less than 30 days after adoption if it contains an emergency clause.

5. ADMINISTRATIVE AUTHORITY ²⁸

5.1. Resolutions

- 5.1.1. The Board of the Municipality shall exercise its administrative authority by approving resolutions.

5.2. Approval of resolutions

- 5.2.1. Approval of a resolution or any other Board administrative decision requires approval by the Board of the Municipality at one meeting.
- 5.2.2. Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the Board adopts the resolution at that meeting.
- 5.2.3. After approval of a resolution or other administrative decision, the vote of each member must be entered into the Board minutes.

5.3. Effective date of resolutions

- 5.3.1. Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolution.

6. THE MUNICIPAL MANAGER

6.1. Office of the Municipal Manager

- 6.1.1. There is established the office of the Municipal Manager.²⁹
- 6.1.2. The Municipal Manager shall be the administrative head of the Municipality of [...].

6.2. Appointment and term

- 6.2.1. The Municipal Manager shall be competitively recruited and appointed by the County Public Service Board.³⁰
- 6.2.2. The Municipal Manager may be appointed for a definite or an indefinite term.³¹

6.3. Qualifications

²⁸ The administrative powers of the Board of the Municipality are vital yet not set out in the Act.

²⁹ Section 28 of the UACA

³⁰ Section 29 of the UACA and Section 59 (1) (b) of the County Governments Act.

³¹ The term of the Municipal Manager is not provided for in the Act. The model Charter proposes that the appointment be contractual.

- 6.3.1. The Municipal Manager shall³²:
- (a) Be a citizen of Kenya
 - (b) Hold a degree from a university recognized in Kenya or its equivalent
 - (c) Have served and had proven experience in administration or management either in public or private sector for a term of at least five years.
- 6.3.2. In appointing the Municipal Manager, the County Public Service Board shall ensure:
- (a) gender equity;
 - (b) the inclusion of minorities and marginalised communities; and
 - (c) the person satisfies the requirements of Chapter six of the Constitution.
- 6.3.3. The Municipal Manager need not reside within the Municipality.

6.4. Functions and powers of the Municipal Manager

- 6.4.1. The Municipal Manager shall implement the decisions and functions of the Board of the Municipality and shall be answerable to the Board.³³
- 6.4.2. The Municipal Manager shall perform the following functions³⁴:
- (a) Act on behalf of the Board of the Municipality-
 - (i) In ensuring the execution of the directives of the Board of the Municipality;
 - (ii) During all intervals between meetings of the Board of the Municipality;
 - (b) Prepare and present for approval of the Board of the Municipality, an annual estimate of revenue and expenditure to fund and carry out the programmes and operations of the Board;
 - (c) Be principally responsible for building and maintain a strong alliance and effective working relationships between the Board of the Municipality and the civil society, private sector and community based organizations;
 - (d) Cause to be prepared, transmitted to the Board of the Municipality, and distributed to the public at least an annual report on the activities and accomplishments of the departments and agencies comprising the executive branch of the Municipality.
 - (e) Act as an ex-officio member of all committees of the Board of the Municipality; and
 - (f) Such other functions as the Board may, by order, confer upon the Municipal Manager.
- 6.4.3. The Municipal Manager shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the Municipality. The Municipal Manager shall have the power and shall be required to:
- (a) Exercise supervision over all departments and agencies of the Municipality and provide for the coordination of their activities;
 - (b) Enforce the provisions of this Charter, Municipal By-laws, and all applicable laws;

³² Section 30 of the UACA

³³ Section 28 of the UACA

³⁴ The enumeration of the powers and functions of the Municipal Manager is not provided under the Act. A sample of the powers and functions of the Municipal Manager is provided here.

- (c) Exercise powers granted to the Municipal Manager in this Charter, By-laws and applicable laws concerning the appointment and removal of certain officers, employees, and members of committees of the Board of the Municipality;
- (d) Exercise such other powers as may be prescribed by this Charter, by-laws and applicable laws.

6.4.4. The Municipal Manager must:

- (a) Attend all Board of the Municipality meetings unless excused by the Chairperson of the Board or the Board of the Municipality;
- (b) Make reports and recommendations to the Board of the Municipality about the needs of the Municipality;
- (c) Administer and enforce all Municipality By-laws, resolutions, franchises, leases, contracts, permits, and other Municipality decisions;
- (d) Appoint, supervise and remove Municipality employees;
- (e) Organize Municipality departments and administrative structure;
- (f) Prepare and administer the annual Municipality budget;
- (g) Administer Municipality utilities and property;
- (h) Encourage and support regional and intergovernmental cooperation;
- (i) Promote cooperation among the Board of the Municipality, staff and citizens in developing Municipality policies and building a sense of community;
- (j) Perform other duties as directed by the Board of the Municipality;
- (k) Delegate duties, but remain responsible for acts of all subordinates.

6.4.5. The Municipal Manager shall have no authority over the Board of the Municipality.

6.4.6. The Municipal Manager shall be entitled to attend meetings of the Board of the Municipality but shall not be entitled to vote.

6.5. Remuneration

6.5.1. The County Public Service Board shall set the compensation and determine the conditions of employment of the Municipal Manager.

6.6. Removal of the Municipal Manager

6.6.1. The Municipal Manager may be removed from office by³⁵;

- (a) the County Governor;
- (b) a resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality; or
- (c) petition by the residents of the Municipality.

6.6.2. The Municipal Manager shall cease to hold office upon the lapse of the employment term of if he/she:

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

³⁵ This is not provided for in the Act. The provisions on removal of the Municipal Manager are of persuasive value only.

- (d) resigns in writing to the County Governor;
 - (e) without reasonable cause, is absent from three consecutive meetings of the Board of the Municipality;
 - (f) is found guilty of professional misconduct by the relevant professional body;
 - (g) is disqualified from holding a public office under the Constitution;
 - (h) engages in any gross misconduct; or
 - (i) dies.
- 6.6.3. The procedure for the removal of the Municipal Manager may be provided by the Regulations made under the County Government Act (No. 17 of 2012) and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.
- 6.6.4. Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Article 6.2 above.

6.7. Acting Municipal Manager

- 6.7.1. When the Municipal Manager is temporarily disabled from acting as Municipal Manager or when the office of the Municipal Manager becomes vacant, the County Governor shall appoint a qualified person to be an Acting Municipal Manager.
- 6.7.2. The County Governor shall inform the County Public Service Board of such appointment within seven (7) days.
- 6.7.3. The Acting Municipal Manager shall have the authority and duties of the Municipal Manager, except that the Acting Municipal Manager may appoint or remove employees only with approval of the Board of the Municipality.
- 6.7.4. An Acting Municipal Manager shall hold office until such a time as a new Municipal Manager shall be appointed by the County Public Service Board.

7. MUNICIPAL FINANCES AND FINANCIAL MANAGEMENT

7.1. Sources of the Municipality's funds and revenue

- 7.1.1. The Board of the Municipality shall derive its revenue and funds from³⁶:
- (a) monies allocated by the County Assembly for the purposes of the management and service delivery of the Board;
 - (b) monies or assets that may accrue to the Board in the course of the exercise of its powers or the performance of its functions;
 - (c) all monies or grants from any other legitimate source provided or donated to the Board;
 - (d) revenue arising from rates, fees, levies, charges and other revenue raising measures which is retained by Municipality for the purpose of defraying its costs for providing services;
 - (e) investment income; and
 - (f) borrowing.

³⁶

Section 43 of the UACA and Section 172 of the Public Finance Management Act

7.2. Appointment of the Municipality Accounting Officer

7.2.1. The Municipality Accounting Officer shall be designated by the County Executive Committee Member for Finance in the manner provided under Section 148 of the Public Finance Management Act.³⁷

7.3. Functions and Powers of the Municipality Accounting Officer

7.3.1. The Municipality Accounting Officer shall have all the powers and perform all the functions of accounting officers as provided under the Public Finance Management Act.

7.3.2. Without prejudice to the foregoing, the Municipality Accounting Officer shall be responsible for managing the finances of the Municipality.

7.4. Financial year

7.4.1. The Municipality shall operate on an annual budget.

7.4.2. The financial year of the Board of the Municipality shall be the period of twelve months ending on the thirtieth June in each year.³⁸

7.5. Budget

7.5.1. The budget of the Board of the Municipality shall be developed in the manner provided under Section 175 of the Public Finance Management Act.

7.6. Management of Municipality Finances

7.6.1. The Board of the Municipality shall, with the approval of the County Executive Committee member for finance, open and maintain a bank account in the name of the Municipality.

7.6.2. All monies received by the Board of the Municipality shall be paid into the Municipality's bank account promptly and in accordance with the Public Finance Management Act.³⁹

7.7. Borrowing by the Municipality

7.7.1. The Board of the Municipality may only borrow from⁴⁰:-

- (a) from the County Government;
- (b) through the County Government; or
- (c) by way of a bank overdraft.

and subject to such terms as may be imposed by the County Assembly or such terms as provided by law.

7.8. Audit

7.8.1. The audit of the Board of the Municipality shall be as provided under Section 46 and 47 of the Urban Areas and Cities Act.

³⁷ Section 170 of the Public Finance Management Act

³⁸ Section 44 of the UACA

³⁹ Section 179 of the Public Finance Management Act

⁴⁰ Section 177 of the Public Finance Management Act

8. MUNICIPALITY PERSONNEL⁴¹

8.1. Municipality Personnel

8.1.1. The Board of the Municipality may subject to the approval by the County Public Service Board, employ such officers and employees as it deems necessary to execute the powers and duties provided by this Charter or other any other law.

8.2. Management of Municipal Personnel

8.2.1. Employees of the Municipality shall be under the general guidance of the Municipal Manager.

8.3. Retirement systems

8.3.1. The Board of the Municipality may do all things necessary to include its officers and employees, or any of them within any retirement system or pension system under the terms of which they are admissible, and to pay the employer's share of the cost of any such retirement or pension system out of the general funds of the Board of the Municipality.

8.4. Compensation of Municipal Personnel

8.4.1. The compensation of all employees of the Municipality shall be set by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

9. MUNICIPALITY PROPERTY⁴²

9.1. Acquisition, possession and disposal

9.1.1. The Board of the Municipality is a body corporate and may acquire real, personal, or mixed property for any public purpose by purchase, gift, bequest, devise, lease, or otherwise and may sell, lease, or otherwise dispose of any property belonging to the Municipality.

9.1.2. All town property and funds of every kind belonging to or in the possession of the town (by whatever prior name known) at the time this Charter becomes effective are vested in the Municipality, subject to the terms and conditions thereof.

9.2. Compulsory acquisition

9.2.1. Whenever the Municipality deems it necessary to acquire private land for its purposes, it shall request the County Executive Committee Member to request the National Land Commission to acquire the land on its behalf.⁴³

9.2.2. The provisions of the Land Act shall apply to any intended compulsory acquisition by the Municipality of property within the Municipality.

⁴¹ The following provisions are not provided in statute.

⁴² The following provisions are not provided in statute.

⁴³ Section 107 of the Land Act

9.3. Municipal Buildings

9.3.1. The Board of the Municipality may acquire, obtain by lease or rent, purchase, construct, operate, and maintain all buildings and structures it deems necessary for the operation of the Municipality.

9.4. Protection of Municipality Property

9.4.1. The Board of the Municipality may do whatever may be necessary to protect municipal property and to keep all municipal property in good condition.

10. GENERAL PROVISIONS

10.1. Oath of office⁴⁴

10.1.1. Before entering upon the duties of their offices, the Municipal Manager, the Chairperson and Vice-Chairperson and the members of the Board, and all other persons elected or appointed to any office of profit or trust in the Municipality, as determined by Board, shall take and subscribe to the following oath or affirmation:

“I, [...], being called on to exercise the functions of [Municipal Manager/Chairperson, etc.] of the Municipality of [...], do swear/solemnly affirm that that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic, that except with the authority of the Board of the Municipality of [...], I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the Municipality committed to my secrecy, except as may be required for the due discharge of my duties as [Municipal Manager/Chairperson, etc.] of the Municipality of [...] or otherwise under the law. (In the case of an oath-- So help me God.⁴⁵.”

10.1.2. The Municipal Manager shall take and subscribe to this oath or affirmation before the County Governor or before one of the sworn deputies. All other persons taking and subscribing to the oath shall do so before the Municipal Manager.

10.2. Amendments to the Charter

10.2.1. The County Governor may at any time, after consultation with the Board of the Municipality, amend any provision of this Charter.

10.2.2. The County Governor shall cause a copy of the Amended Charter to be laid before the County Assembly within 30 days of its amendment for approval.

10.3. Separability

10.3.1. If, at any time, any provision of this Charter is or becomes illegal, invalid or unenforceable in any respect under Kenyan law, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired.

⁴⁴ Section 18 of the Oaths and Statutory Declarations Act

⁴⁵ The form of the oath is not provided by statute. A model from the constitution is adopted in this Model Charter.

11. TRANSITIONAL PROVISIONS

11.1. Effective Date of Charter

11.1.1. The provisions of this Charter shall be in effect from and after [...]

11.2. Rights and Privileges Preserved

11.2.1. Nothing in the Charter except as otherwise specifically provided shall effect or impair the rights or privileges of persons who are Town Officials, Officers or Employees at the time of its adoption.

11.3. Departments

11.3.1. All Town Departments shall continue to operate with the same powers, duties, activities, budgets, and employees as were in effect at the time this Charter becomes effective until changed by the Municipal Manager with the approval of the Board of the Municipality.

County Urban Institutional Development Strategy (CUIDS) Template

Within the framework of KUSP, counties will need to draw up County Urban Institutional Development Strategies (CUIDSs), which:

- outlines the county's overall approach to the management of urban areas within its jurisdiction;
- spells out the process whereby the county will integrate urban development into county-wide planning;
- provides an annual action plan and budget for achieving the above.

Drawing up a CUIDS is a condition that counties need to meet in order to access their Urban Institutional Grants (UIGs).

Typically, a CUIDS

- will be between 10 and 15 pages.
- is prepared under the supervision of the CEC member responsible for urban issues by the department(s) responsible for urban issues
- Is prepared within the first year of a county government taking office, is valid for a period of 3 years, but reviewed and updated annually prior to the approval of the county plan and budget for next financial year.
- Is approved by the county government and presented to the County Assembly for discussion.

This annex to the POM provides counties with a CUIDS template and guidance on its substance and contents.

Sections 1 and 2 of the CUIDS as outlined on the following pages are to be integrated into the County Integrated Development Plan (CIDP) as part of an Urban Development Chapter or as (part of) an annex.

SECTION 1: **URBANIZATION, URBAN MANAGEMENT & URBAN DEVELOPMENT IN THE COUNTY** [suggested maximum of 3-4 pages]

This section of the CUIDS should provide an overview of levels of urbanization, urban management and urban development in the county. In drawing up this section, the county should use available sources of information and consult with all relevant departments and stakeholders. For writing this section use the Urban Area Matrix (see attachment 1)

1.1. Urbanization and urban development in the county

- Urbanization trends
 - What % of the county's population lives in urban areas, and what are the projected trends?
 - What are the main urban areas in the county?
- Urbanization and county socio-economic development
 - What are the principal economic activities of the county's urban areas?
 - What is the role of urban areas in the county economy?
 - What is the nature of rural-urban linkages in the county?
- Urban development challenges
 - What infrastructure (transport, drainage, waste disposal, socio-economic) exists in the county's urban areas? And how adequate is this infrastructure?
 - What are the basic urban services that are provided in the county's urban areas?
 - What does the urban scorecard say?
 - What urban planning and urban land use management exist in the county's urban areas?
 - What is the state of housing in the county's urban areas?

1.2. Legal and regulatory systems for urban management in the county

- What are the national laws and regulations that govern urban management
- Are there any county-level laws and regulations that govern urban management

1.3. County-wide planning and urban development

- County Integrated Development Plan (CIDP):
 - Does the CIDP address urban development issues?
 - If so, how?
 - If not, what are the gaps?
- Other county planning instruments:
 - Do they address urban development issues?
 - If so, how?
 - If not, what are the gaps?

1.4. Current status of urban areas in the county

SECTION 2: DEVELOPING INSTITUTIONS FOR URBAN MANAGEMENT

[Suggested maximum of 5-7 pages]

This section should provide an overview of how, in general, the county envisions institutional arrangements for its urban areas and, more specifically, what institutional arrangements will be put in place for each urban area in the county. In addition, and if necessary, this section could include a description of any legal and regulatory reforms that the county will need to undertake in order to implement proposed institutional arrangements in its urban areas. Finally, this section could include, if necessary, a brief description of the capacity building actions that will be needed to establish the proposed institutional arrangements in its urban areas.

2.1 Institutional development for the county's urban areas

- County policy on urban institutional development:
 - What does the county plan to do in terms of urban institutional development? Does the county intend to grant municipal or city status to all urban areas that are eligible for either municipal or city status? Or does the county prefer to establish other institutional arrangements (e.g. town administrations) for such urban areas? Does the county intend to establish town committees and/or town administrations for smaller urban areas?
 - What will be the general relationship between the county government and urban areas? In particular, what will be the nature of the administrative interface in the following areas:
 - planning and budgeting for the urban areas (including presentation of the budget to the county assembly);
 - flow of funds between the county government and the urban boards;
 - recruitment of staff for the urban boards;
 - accountability of the urban boards to the county government;
 - organizing for joint/collaborative development and service delivery improvement initiatives, including the development of urban investment plans.
- For each urban area in the county (use Urban Area Institutional Development Matrix, see attachment 2): what is the future institutional status (municipality, town, status quo) of each urban area in the county? Management and staffing arrangements? Finance and budget arrangements? Boundary demarcation? Implementation plan and steps to be taken to set up the municipality/town?

2.2 Legal and regulatory reforms at the county level

- Are there any county-level legal and regulatory reforms required for urban management, such as:
 - Domesticating the UAC Act and any national regulations and/or implementation guidelines?
 - Legislating for urban planning and development control?
 - Legislating for basic services delivery standards in the urban areas (including legislation to support implementation of the urban areas' solid waste collection and disposal policies)?
 - Legislating for resource mobilization (including local taxation, fees and user charges) by the urban areas boards and committees (if applicable)?
 - Legislating for citizen engagement, public participation and accountability by the urban boards and committees?

2.3 Capacity building actions

- What capacity building actions will be required to support changes in urban management?

SECTION 3:
ANNUAL ACTION PLAN AND BUDGET

[Suggested maximum of 1-3 pages]

In this section of the CUIDS, the county should provide a detailed annual action plan and budget (use CUIDS Annual Action Plan and Budget, see attachment 3) for the activities that it will undertake urban institutional development (as outlined in Sections 2 and 3). This should include a projection of the available budget (UIG and any other funds).

Annual updates: After the first year, and at least for the first three years of KUSP, the CUIDS is likely to be in need of annual updating as the status of the urban areas is expected to change.

Even if the status (sections 1 and 2) do not change, the county is expected to produce a new version of the third section to proposed allocation of the UIG for the next financial year (see also Vol II, Annex 4, with a template for section 3 as stand alone document).

ATTACHMENT 1
URBAN AREA MATRIX: CURRENT SITUATION
[MAP SHOWING URBAN AREAS TO BE ATTACHED]

Name(s) of urban area	Geographical and demographic data			Institutional status		Urban management						
	Location	Estimated Population	County capital (Y/N)	Pre-2010 administrative status	Current administrative status and/or current urban management arrangements	Board or Committee (Y/N)	Town or city manager or administrator (Y/N)	Office (Y/N)	Staffing of municipality or town administration	Budget and finance	Urban planning	Infrastructure and service delivery responsibilities
Official and other names of the urban area	GIS coordinates Longitude and latitude	Use most recent official data (e.g. census)	Is the urban area in question the admin HQ of the county?	Municipality?	Chartered city or municipality? Town? Does the urban area have a town administration?	Does the urban area have an urban board or town committee?	Does the town have an officially designated town administrator or town manager?	Does the urban area administration have an office?	If the urban area has a board or an administration, does it have staff? If so, how many professional or technical staff?	Does the urban area have a separate budget? If so, is this budget: - a separate vote in the county budget - part of the vote of a CEC department? What was the annual budget of the urban area in FY 2016-17	Does the urban area have any urban plans? If yes, what plans currently exist and when were they completed? - IDeP (date) - Spatial (town) plan (date)	What are the specific infrastructure and service delivery responsibilities of the urban area board or administration or administrator?

ATTACHMENT 2

URBAN AREA INSTITUTIONAL DEVELOPMENT MATRIX - Proposals for 3 -5 year horizon

Name(s) of urban area	General		Specific							
	Current institutional arrangements	Planned institutional arrangements?	Board or Committee Y/N Timelines	Town or city manager or administrator Y/N Timelines	Office Y/N Timelines	Staffing of municipality or town administration Numbers Timelines	Budget and finance Budget status? Timelines	Urban planning Timelines	Infrastructure and service delivery responsibilities Timelines	Demarcation of urban area? Y/N
Official and other names of the urban area	None Chartered city or municipality? Town? Does the urban area have a town administration?	Y/N Y = urban area to be granted city or municipal status or to be classified as town N = no change in existing status of urban area	Y/N or N/A Y = either board or committee to be established Deadline N = no board or committee to be established N/A = no changes proposed in current arrangements	Y/N or N/A Y = either manager or administrator to be appointed Deadline N = no manager or administrator to be appointed N/A = no changes proposed in current arrangements	Y/N or N/A Y = office to be set up Deadline N = no office to be set up N/A = no changes proposed in current arrangements	Y/N or N/A Y = staff to be appointed N = no staff to be appointed N/A = no changes proposed in current arrangements What staffing arrangements and numbers? Deadline	Y/N or N/A Y = urban area to have separate budget - Separate vote in county budget? - Sub-component of existing vote in county budget? Deadline N = urban area will not have separate budget N/A = no changes proposed in budgeting arrangements	Y/N or N/A Y = urban area to have its own plans - IDeP? - Spatial plan? Deadline N = urban area will not have its own plans N/A = no changes proposed in planning arrangements	Y/N or N/A Y = urban area to be assigned specific infrastructure and service delivery functions - which functions to be assigned? Deadline N = urban area will not be assigned specific infrastructure and service delivery functions N/A = no changes	Y/N Y = demarcation of urban area N = no planned demarcation of urban area

ATTACHMENT 3

COUNTY URBAN AREA INSTITUTIONAL DEVELOPMENT - ANNUAL ACTION PLAN & BUDGET

County: _____ FY: _____

CUIDP Section	Activity	Timeframe												Implementation modality	Cost elements	Proposed budget (KES)
		J	A	S	O	N	D	J	F	M	A	M	J			
Section 3: Developing institutions for urban management	Examples: - Hold consultations with residents in urban areas - Draw up municipal charter for urban area 1 - Select and appoint municipal board members for urban area 1 - Select and appoint municipal manager for urban area 1 - Orientation for municipal board and municipal manager - Select and appoint town committee - Select and appoint town administrator - Establish municipal/town office - Prepare investment project pipeline for urban areas - Undertake urban spatial plan -													Examples: - External consultants to be hired - In-house county government staff to be used - UDD staff and support needed	Examples: - Consultancy fees - Meeting costs - Per diems for travel - Local travel costs - Office equipment (for municipal office) - Training materials	
												Total annual budget				
												Resources	County contribution			
													Other budget contributions (including UIG)			
													Total resources			

County Annual Institutional Development Plan & Budget Showing the allocation of Urban Institutional Grant Template

Introduction

The County Urban Institutional Development Strategy (CUIDS), the outline for which is provided in the previous annex, sets the broader urban institutional objectives against an analysis of the actual situation. Against that background, the Annual Institutional Development Plan and Budget is the justification for use of the Urban Institutional Grant in a particular Financial Year. As the UIG is only available for three years, also the annual plan is only to be prepared for the first three years of the programme (FY 2017/18, 2018/19 and 2019/20).

The Annual County Institutional Development Plan and Budget is part of the county's budget for next financial year and as such will need to be approved by the county assembly. It should be made public by posting it on the county's website. It is not expected to be more than 2-3 pages in length.

On the next page, the template for the annual Institutional Development plan and budget is provided. Availability of the plan & budget by 31st of March of each year is a minimum condition to access the UIG for the following financial year.

[County seal]

Institutional Development Plan and Budget - FY 20../...

1. Introduction

- *Indicate who prepared / wrote the plan*
- *Briefly indicate how the plan was made, and who were consulted / Involved*

2. Context

- *Summary of the objectives and strategy as outlined in the CUIDS*
- *For years 2 and 3: summary of the activities undertaken so far and indication of what remains to be done*
- *Mention and explain any deviation from the original CUIDS*

3. Brief description of proposed activities for FY .../....

- *Highlight the priorities for the year, against the CUIDS and the remarks made under the introductory section.*
- *Briefly describe the various proposed activities and provide justification.*
- *Indicate the expected outcomes by end of the year.*

4. UIG Budget FY 20../ 20...

- *Brief indication of the budget, supported by a table listing the different intended activities and the corresponding budget.*
- *The total available budget is USD 200,000 for the first two years and USD 100,000 for the third year (provided the Minimum conditions are met)*

Table: Budget UIG FY 20... /20...				
#	Activity	Responsible party for implementation	Timing from -to (months)	Budget (in KES)
1.				
2.				
3.				
4.				
5.				
<i>Total :</i>				

5. Implementation arrangements

- *Describe who will be responsible for implementation of the proposed activities and who will manage the budget (requisition officer) and expenditure (authorising officer). Make a distinction between the role of the county and the role of the urban board(s)/administration(s) as appropriate.*

Municipal Annual Investment Plan & Budget Including the allocation of the Urban Development Grant Template

Introduction

The five year Municipal Investment Development Plan (IDeP), as prescribed by the Urban Area and Cities Act, provides the framework for priority actions and investments for a county government. County Governments elected in August 2017 are expected to make such a plan in the first months after coming into office. It is expected to guide actions and investments over the 5 year period of their reign. The IDeP is expected to be reviewed annually.

Against that background, the Annual Municipal Investment Plan and Budget is the more specific annual justification for urban investments in particular year. Apart from other sources, it would also include the Urban Development Grant (UDG) for the next Financial year.

The Annual Municipal Investment Plan and Budget needs to be approved by the Urban Board. Its budget needs to be within the budget ceiling provided by the county government.

The Annual Municipal Investment Plan and Budget is part of the county's budget and will, as part of the overall budget discussion, need to be approved by the county assembly.

The Annual Municipal Investment Plan and Budget should be made public by posting it on the county's website. It is not expected to be more than 3-5 pages in length, exclusive of the annexes with pre-feasibility studies. Latter to include the results of the social and environmental impact screening (See POM, Vol II, Annex 18).

On the next page, the template for the annual Institutional Development plan and budget is provided. Availability of such a plan by 31st of March each year is a minimum condition to access the UDG next financial year.

[County and/or Municipal seal]

Municipal Annual Investment Plan and Budget - FY 20../...

1. Introduction

- *Indicate who prepared / wrote the plan*
- *Briefly indicate who were consulted / Involved in preparation of the plan; Explicitly describe how citizens were engaged and describe the role of the citizen fora.*

2. Context

- *Summary of the main objectives as identified in the 5-year Urban IDeP.*
- *[except for year 1] Provide a brief overview of the activities already undertaken in the context of the Urban IDeP*
- *Describe changes -if any- to the IDeP following review by the urban board - and provide a description of the rational and considerations for such changes.*

3. Investment prioritisation

- *Re-iterate the priorities as identified by the Urban Board*
- *Summarize priorities raised by the county government (Assembly and executive)*
- *Summarise priorities and issues raised during citizen fora*
- *Describe consensus reached - priorities as retained*

4. Urban Investment Plan and Budget FY 20../ 20...

- *Present in table format (see Table below) the proposed list of projects and the tentative estimate of costs*
- *Describe under this heading each of the projects in brief, and provide the rational and justification for their inclusion in the plan.*
- *At least as far as UDG funded projects are concerned, show that the projects suggested meet all UDG criteria, in terms of eligibility, minimum project size (USD 500,000), need to complete the project(s) within one FY (no partial funding), and the social and environmental screening.*
- *Attach as annexes detailed pre feasibility studies that include a social and environmental impact screening (See POM, Vol II, Annex 18).*
- *Make in the table a distinction between detailed design and other preparatory work and actual implementation in terms of timing and budget (i.e. treat these as two separate projects).*
- *Add a Gantt chart (as shown below)*

5. Expected outcomes

- *Describe the expected outcomes of the projects and indicate how they relate to the priorities as expressed by citizens, the urban board and the county government (as discussed under Section 3 above).*

6. Implementation modalities and timeframe

- *Describe who will be responsible for implementation of the proposed activities*
- *Indicate how procurement will be organised*
- *Make a realistic assessment of what can be completed in the FY and what need to be scheduled for the subsequent FY. Reflect this in the Gantt chart*
- *Make a distinction between the role of the county and the role of the urban board(s)/administration(s) as appropriate.*

Annexes: Pre-feasibility studies for each proposed project, including the social and environmental check-list (see POM, Vol II, Annex 18)

Table1 : Municipal Investment Budget FY 20... /20...							
#	Activity*)	Timeframe		Budget			
		Start date	End date	UDG	Other-1	Other-2	Total
1.							
2.							
3.							
4.							
5.							
	<i>Total</i>						

*) Separate detailed design- and other preparatory work from actual project implementation (treat in the table as two separate projects)

Table 2: Gantt Chart Municipal Investment Budget FY 20... /20...													
#	Activity	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE
1.													
2.													
3.													
4.													
5.													

Scoring guideline and Scoring card

Minimum Conditions and Performance Standards

Introduction

On the following pages detailed scoring guidelines are provided for each of the Minimum conditions (MCs) and the performance standards (PSs), to be assessed by the external and independent Annual Performance Assessment (APA) consultant.

The sheets shall be filled for each county and each eligible area. In the last column brief notes shall be made regarding the 'judgement' made as well as the date the MC or PS was assessed (as not all need to be assessed at the same time).

All MCs and PSs are binary and can only be answered with 'met' or 'not met' (yes or no). This also applies for the Performance standards where a 'met' results in a 5 points. No part of the five shall be awarded; it is either zero points or five points. This is because the indicators and the scoring guidelines are straight forward, with no scope for 'interpretation' or 'subjective appreciation'.

Once completed each form shall be sign by the concerned staff of the APA consultant who conducted (or was in the lead for) the assessment.

The information on the sheets attached for individual counties and municipalities is summarised in the tables as presented in the next Annex (POM, Vol II, Annex 7).

County name: _____

Score Card: MINIMUM CONDITIONS - URBAN INSTITUTIONAL GRANT (UIG)			assessment in FY n-1 for grant in FY n		
Indicator - UIG Minimum Conditions	Source of information	Scoring guide	MET	NOT MET	Date / comment
UIG/MC-1: KUSP participation agreement <ul style="list-style-type: none"> The County Governor has signed a letter of participation in the prescribed format (see POM Vol II, Annex 1) stating that the county government signs up to KUSP and that it will adhere to the provisions of the Operations Manual 	<ul style="list-style-type: none"> UDD files 	Met: By end of March in the year of the assessment, UDD has a duly signed letter on file that the county has willingly agreed to participate in KUSP for FY n. Not Met: No such letter is available by 31/3/n-1 (year n being the year of grant).	✓	X	
UIG/MC-2: County urban institutional development strategy <ul style="list-style-type: none"> The county government has prepared a County Urban Institutional Development Strategy (CUIDS) that is reflected in or annexed to the (5-year) CIDP The county government has prepared a brief annual County Urban Institutional Development Plan & Budget for FY n that entails a proposal for use of the UIG in compliance with the UIG expenditure menu and other provisions of the POM 	Various documents to be found at county level, including: <ul style="list-style-type: none"> County Urban Institutional Development Strategy (CUIDS) 5 year County Integrated Development Plan Annual County Urban Institutional Development Plan & Budget for year n (the year of the grant) 	Met: By end of March in the year of the assessment (or earlier), the County government: <ul style="list-style-type: none"> can show a 10-15 page Urban Institutional Development Strategy (CUIDS); can show evidence that this CUIDS is either reflected in or annexed to the (5-year) County Integrated Development Plan; Has prepared a (short) annual plan and budget for use of the UIG in the next FY according to the format as shown in Annex 4 of Vol II of the POM. Not Met: As soon as one or more of the three above conditions is not met by end of March n-1.			
UIG/MC-3: UIG spending in accordance with the eligible menu <ul style="list-style-type: none"> Use of previous year's UIG (FY n-2) was consistent with UIG eligible expenditure menu (to be validated through annual report on UIG budget implementation) 	<ul style="list-style-type: none"> Annual County Urban Institutional Development Plan & Budget FY n-2 Two UIG half yearly physical and financial progress reports for FY n-2 	Not applicable for APA in FY 2017/18 Met: If both of the following two conditions are met <ul style="list-style-type: none"> Both sources of information are available; All UIG funded projects/activities for FY n-2 are in line with the list of UIG eligible activities (POM, Chapter 3, Table 3.2). Not Met: if, for FY n-2, there is a single UIG funded project or activity that falls into the category of non-eligible activities; or if information is not available to make the assessment.			

The county has met all applicable UIG minimum conditions (circle) : YES / NO

Date : ____ / ____ / ____ Signature APA personnel: _____

County: _____ Urban area: _____

Score Card: MINIMUM CONDITIONS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicator - UDG Minimum conditions	Source of information	Scoring guide	MET	NOT MET	Date /comment
Urban Institutional					
<p>UDG/MC-1: Municipal status</p> <ul style="list-style-type: none"> The County governor, upon resolution of the county assembly, has granted municipal charter to the eligible urban area 	<ul style="list-style-type: none"> Minutes of county assembly meetings Draft charter / Signed charter 	<p>Met:</p> <ul style="list-style-type: none"> FY2017/18: Minutes of assembly meetings show that prior to 31/3/18 the county governor has submitted a proposal to the county assembly to grant municipal charter to the urban area; Other FYs: By 31/3/n-1, the urban area has been granted municipal charter and a signed charter is available. <p>Not Met:</p> <ul style="list-style-type: none"> FY2017/18: By 31/3/18, no proposal has yet been forwarded to the assembly to grant municipal charter to the urban area; Other FYs: By 31/3/n-1, Municipal status has not been granted and/or no signed charter available. 	✓	X	
<p>UDG/MC-2: Municipal Board</p> <ul style="list-style-type: none"> An Urban board has been appointed by the county governor, in line with the provisions of the UACA, upon approval by county assembly 	<ul style="list-style-type: none"> Minutes of county assembly meetings Nomination letters 	<p>Met:</p> <ul style="list-style-type: none"> FY2017/18: Minutes of assembly meetings show that prior to 31/3/18 the county governor has submitted a proposal to the assembly for the appointment of the persons to constitute the urban board; Other FYs: By 31/3/n-1, an urban board has been duly appointed, after approval by the assembly, with representative from 5 stakeholder parties, in line with provisions of the UACA (see POM, Vol I, textbox 6.1). <p>Not Met:</p> <ul style="list-style-type: none"> FY2017/18: By 31/3/18, no proposal has yet been forwarded to the assembly to appoint persons to the urban board; Other FYs: By 31/3/n-1, no urban board has been appointed, or it has been appointed but lacks the representation of 5 stakeholder parties as stipulated. 			

County: _____ Urban area: _____

Score Card: MINIMUM CONDITIONS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicator - UDG Minimum conditions	Source of information	Scoring guide	MET	NOT MET	Date /comment
<p>UDG/MC-3: Municipal administration</p> <ul style="list-style-type: none"> A municipal manager has been appointed and is, together with his/her staff, paid out of municipal budget vote 	<ul style="list-style-type: none"> Observations (is there an urban administration office?) Letters of appointment County budget FY n-1, with details for the urban vote 	<p>Met:</p> <ul style="list-style-type: none"> FY2017/18: By 31/3/18 an urban administration (manager and some key staff) is recruited, appointed and in place; Other FYs: By 31/3/n-1 (starting 31/3/19), an urban administration (manager and staff) is in place and they are in the FY n-1 (first time FY 18/19) paid from the county's municipal budget vote. <p>Not Met:</p> <ul style="list-style-type: none"> FY2017/18: By 31/3/18 no urban manager has yet been appointed and also staff is not in place; Other FYs: If by 31/3/n-1, at least one of the following two conditions is not fulfilled: (i) urban administration in place; (ii) staff is paid from the urban budget vote. 			
<p>UDG/MC-4: Municipal budget vote</p> <ul style="list-style-type: none"> A Municipal budget vote -in which UDG is budgeted- is included in the county budget for FY n 	<ul style="list-style-type: none"> Draft County budget FY n Minutes assembly meetings 	<p>Met:</p> <ul style="list-style-type: none"> In the County's budget for FY n there is a special budget vote for the urban area; UDG for FY n is budgeted under this urban vote. <p>Not Met:</p> <ul style="list-style-type: none"> By 31/1/n-1 there is no evidence that for FY n the county will have the provision in its budget for a separate budget vote for the urban area. 			
<p>UDG/MC-5: Municipal finance reporting</p> <ul style="list-style-type: none"> The County government reported on the municipal budget vote for FY n-2 to the Controller of Budget (as part of the counties overall financial report for FY n-2) 	<ul style="list-style-type: none"> County financial reports Submission letters to controller of budget [Files Controller of Budget] 	<p>Not applicable for APAs in FYs 2017/18 and 2018/19</p> <p>Met: if both of the following conditions are complied with:</p> <ul style="list-style-type: none"> for FY n-2 four (4) quarterly financial reports were submitted to the Controller of Budget; and in those reports UDG expenditure is explicitly reflected. <p>Not Met: if any or both of the following applies:</p> <ul style="list-style-type: none"> Less than four reports were presented; and/or In those reports UDG is not reflected. 			

County: _____ Urban area: _____

Score Card: MINIMUM CONDITIONS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicator - UDG Minimum conditions	Source of information	Scoring guide	MET	NOT MET	Date /comment
Programme and fiduciary risks					
<p>UDG/MC-6: The County government has committed itself to participation in KUSP</p> <ul style="list-style-type: none"> ▪ The County Governor has signed a letter of participation in the prescribed format (see POM Vol II, Annex 1) stating that the county government signs up to KUSP and that it will adhere to the provisions of the Operations Manual 	<ul style="list-style-type: none"> ▪ UDD files 	<p>Same as UIG/MC1 - results may just be copied</p> <p>Met: By end of March in the year of the assessment, UDD has a duly signed letter on file that the county has willingly agreed to participate in KUSP for FY n.</p> <p>Not Met: No such letter is available by 31/3/n-1. (year n being the year of grant)</p>			
<p>UDG/MC-7: An annual urban investment plan is available</p> <ul style="list-style-type: none"> ▪ The annual Urban investment plan for FY n is available and provides the budget for the UDG investments, whilst feasibility (or pre-feasibility) studies for the proposed investments are completed and attached to the document 	<ul style="list-style-type: none"> ▪ Annual Urban area investment Plan & Budget for FY n (the year of the grant) 	<p>Met: By end of March in the year of the assessment (or earlier), the Urban board</p> <ul style="list-style-type: none"> • Has prepared an annual plan and budget for use of the UDG in the next FY according to the format as shown in Annex 5 of Vol II of the POM ; • Said (draft) document is available on the website of the county or urban board <p>Not Met: By 31/3/n-1 no plan & budget for use of the UDG in FY n is available; and/or it does not conform to the prescribed format and/or is not available on the websites.</p>			
<p>UDG/MC-8: Use of previous annual UDG</p> <ul style="list-style-type: none"> ▪ UDG for FY n-2 has been used in accordance with the eligible [positive] and non-eligible [negative] investment menus and the minimum size thresholds as described in the KenUP/KUSP POM - Table 4.5 below) 	<ul style="list-style-type: none"> ▪ Annual Urban Area Investment Plan & Budget FY n-2 ▪ Two UDG half yearly physical and financial progress reports FY n-2 	<p>Not applicable for APAs in FYs 2017/18 and 2018/19</p> <p>Met: If all the following three conditions are met</p> <ul style="list-style-type: none"> • Both sources of information are available • All projects have minimum size of USD 500,000 • All projects are in line with the list of eligible activities (POM, Chapter 4, Table 4.5). <p>Not Met: if there is a single UDG funded project that falls into the category of non-eligible investment areas; if there is a project below the threshold of USD 500,000; if information is not available to make the assessment.</p>			

County: _____ Urban area: _____

Score Card: MINIMUM CONDITIONS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicator - UDG Minimum conditions	Source of information	Scoring guide	MET	NOT MET	Date /comment
<p>UDG/MC- 9: Municipal absorptive capacity</p> <ul style="list-style-type: none"> Over 50% of the UDG allocation in FY n-2 had been spent by end of FY n-2 	<ul style="list-style-type: none"> Original county assembly approved annual urban area investment plan & budget FY n-2 UDG half yearly financial progress reports FY n-2 End of the year financial statement of the County, also showing UDG expenditure 	<p>Not applicable for APAs in FYs 2017/18 and 2018/19</p> <p>Met: If the following two conditions are met</p> <ul style="list-style-type: none"> All three sources of information are available Total UDG expenditure for FY n-2 is over half of the original county government approved UDG budget. <p>Not Met:</p> <ul style="list-style-type: none"> If total UDG expenditure for the FY n-2 is less than half of the originally approved UDG budget; and/or If any of the indicated sources information is not available 			
<p>UDG/MC-10: Municipal procurement and contract management</p> <ul style="list-style-type: none"> The Procurement method(s) applied in FY n-2 for the UDG funded project(s) were consistent with the procurement rules for the applicable tender amounts (i.e. ICB) 	<ul style="list-style-type: none"> Annual Urban investment FY n-2 Complete Procurement dossiers (from tender to award) Contracts register 	<p>Not applicable for APAs in FYs 2017/18 and 2018/19</p> <p>Met: if</p> <ul style="list-style-type: none"> The documentation to make the assessment is available and All procurement for UDG in FY n-2 was done following GoK procurement rules (see www.ppoa.go.ke), notably, with regards to <ul style="list-style-type: none"> The Procurement method (ICT, NCT and restricted tendering) The Class of the general / specialist contractors <p>Not Met: If for any of the UDG funded projects tendered in FY n-2, the procurement method used was not conform the estimated tender amount and/or when the source of information (including procurement dossiers) are not available or incomplete.</p>			

The Municipality has met all applicable UDG minimum conditions (circle) : YES / NO

Date : _____ / _____ / _____ Signature APA personnel: _____

County: _____ Urban area: _____

Score Card: PERFORMANCE STANDARDS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicators - UIG Performance standards	Source of information	Scoring guide	MET	NOT MET	Date /comment
Urban Administration and Governance					
Municipal administration					
PS-1: The Municipal Manager has a publicly available job description		Met: If the following two conditions are met <ul style="list-style-type: none"> The Municipal manager has a job description The job description is publicly available, e.g. on the website of the county or urban board Not Met: If the manager has no job description; or if the job description is not publicly available.	✓	X	
Municipal board and citizen engagement					
PS-2: Past 4 quarters (period 01/04/n-2 to 31/3/n-1), at least 4 urban board meetings were held and at least one (1) in every quarter (for 1 st assessment only last two quarters)	<ul style="list-style-type: none"> Minutes of urban board meetings 	Met: If in the 12 months ending 31/3/n-1 <ul style="list-style-type: none"> The urban board met at least once in every quarter Minutes of those meetings are available Not Met: If any of the following applies: <ul style="list-style-type: none"> In at least one quarter the urban board did not meet Minutes of one or more meetings are not available 			
PS-3: Past 4 quarters (period 01/04/n-2 to 31/3/n-1), at least 4 citizen fora (public consultation between urban board and residents on plan, budget, budget execution and other areas of public interest) were held, and at least one (1) in every quarter (for 1 st assessment last two quarters)	<ul style="list-style-type: none"> Minutes of urban fora 	Met: If in the 12 months ending 31/3/n-1 <ul style="list-style-type: none"> An urban fora was held at least once in every quarter, by and large as per the schedule announced at the beginning of the year Minutes of those fora meetings are publicly available (eg. on website) Not Met: If any of the following applies: <ul style="list-style-type: none"> In at least one quarter no urban fora was organised; The original schedule was ignored; 3 or 4 fora meetings were held on a different date than initially announced; Minutes of one or more fora are not available. 			

County: _____ Urban area: _____

Score Card: PERFORMANCE STANDARDS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicators - UIG Performance standards	Source of information	Scoring guide	MET	NOT MET	Date /comment
Public disclosure and transparency					
<ul style="list-style-type: none"> ▪ PS-4: The Municipality has made key public documents available on line 	<ul style="list-style-type: none"> ▪ Websites of the County and Urban board 	<p>Met: If by 31/3/n-1 all of the following is available on the website of the county and/or urban board:</p> <ul style="list-style-type: none"> • Municipal charter • Contact Information for board and key officials • Five-year Urban Investment Development Plan • Annual urban Investment Plan and Budget • Board meeting minutes for last 12 months • Financial statement for the Municipal vote for FY n-2 • Budget proposal Municipal vote (including annexes) for FY n <p>Not Met: If any of the above documents is NOT available on the website of the county or the urban board by end of March FY n-1 (or if the website is not accessible).</p>			
<ul style="list-style-type: none"> ▪ PS-5: The Municipality has published its annual calendar of Citizens Fora with urban area residents, including plan and budget consultations (i.e. announced in local media and on county government website) 	<ul style="list-style-type: none"> ▪ Paper clippings local media ▪ Screen shots websites ▪ Websites of the County and Urban board 	<p>Met:</p> <p>FY 2017/18: If there is evidence that the county announced the annual calendar of urban fora (for Q2, 2 and 4) before the end of September 2017.</p> <p>Later years: If there is evidence to proof that the urban board (or county) announced the annual calendar of urban fora (one for every quarter) at the beginning of the FY, latest by end of August.</p> <p>Not Met: If the calendar was not announced or not announced before the indicated dates.</p>			

County: _____ Urban area: _____

Score Card: PERFORMANCE STANDARDS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicators - UIG Performance standards	Source of information	Scoring guide	MET	NOT MET	Date /comment
Planning, Infrastructure and Service delivery:					
Municipal budgeting					
<ul style="list-style-type: none"> PS-6: The Urban board has adopted an urban area budget for FY n based on the budget ceiling provided by the county government (by 30/4/n-1as per the UAC Act) 	<ul style="list-style-type: none"> Minutes of the Urban board meetings County documentation showing the budget ceiling given to the urban board for FY n 	<p>Met: If, latest by 30/4/n-1, the urban board has deliberated and adopted the urban budget, and said budget is within the ceiling as provided by the county government.</p> <p>Not Met: In case</p> <ul style="list-style-type: none"> By end of April the urban board has not yet voted the urban budget for FY n ; or The total budget adopted is inconsistent with the budget ceiling provided by the county government (if any). 			
Municipal Planning					
<ul style="list-style-type: none"> PS-7: The Urban IDeP has been reviewed, and where deemed necessary modified - as evidenced by minutes of the Board meeting and a revised version of the IDeP 	<ul style="list-style-type: none"> Minutes of the Urban board meetings IDeP and, for later years, revised versions of the IDeP 	<p>Met:</p> <p>FY 2017/18 : A five year Urban Investment Development Plan (IDeP) was prepared prior to 31/3/2018</p> <p>Later years: If there is evidence to proof that</p> <ul style="list-style-type: none"> during the FY n-1, prior to end of March, the urban board has revisited the Urban IDeP to consider the need for any changes; and, if yes, such changes were indeed made. <p>Not Met: If no IDeP was prepared or reviewed prior to the indicated dates.</p>			
<ul style="list-style-type: none"> PS-8: An Urban spatial plan is completed and available 	<ul style="list-style-type: none"> Spatial plan for the urban area 	<p>Met: A urban area spatial plan is available, not older than 10 years or updated over the past 10 years</p> <p>Not Met: No such plan is available, or is older than 10 years and has not been updated over the past 10 years.</p>			

County: _____ Urban area: _____

Score Card: PERFORMANCE STANDARDS - URBAN DEVELOPMENT GRANT (UDG)			assessment in FY n-1 for grant in FY n		
Indicators - UIG Performance standards	Source of information	Scoring guide	MET	NOT MET	Date /comment
Municipal Services					
<ul style="list-style-type: none"> ▪ PS-9: The Municipal board has adopted a solid waste collection and disposal policy; and ▪ An operational waste collection and disposal plan is being drawn up and implemented 	<ul style="list-style-type: none"> ▪ Municipal Solid waste policy ▪ Municipal solid waste plan ▪ Evidence the plan is being implemented 	<p>Met: FY 2017/18 : by 31/3/18, the Municipal Board has</p> <ul style="list-style-type: none"> • a waste disposal policy • a operational waste collection and disposal plan <p>Later years: In addition to the above two documents by 31/3/n-1,</p> <ul style="list-style-type: none"> • there is evidence (to be provided by the urban board) that the plan is being implemented <p>Not Met: FY 2017/18 : no solid waste policy and/or plan is available by 31/3/18</p> <p>Later years: if any of these applies:</p> <ul style="list-style-type: none"> • no policy; no plan; no implementation 			
Municipal Infrastructure delivery					
<ul style="list-style-type: none"> ▪ PS-10: Past 12 months, (period 01/04/n-2 to 31/3/n-1), all UDG funded projects that were completed, were <ul style="list-style-type: none"> ○ On time (within 3 months of plan); ○ According to design and fit for purpose; ○ Within the budget (with a 5% margin up and down). 	<ul style="list-style-type: none"> ▪ List of all UDG funded projects and their status of implementation by 31/3/n-1 ▪ Annual Urban Investment Plan and Budgets ▪ Project design specifications ▪ Half yearly UDG physical and financial progress reports ▪ Financial statements (to the controller of budget) 	<p>Not applicable for APAs in FYs 2017/18 and 2018/19</p> <p>Met: If the sources of information are available and showing that all UDG funded projects that were completed over the past 12 months prior to 31/3/n-1 were</p> <ul style="list-style-type: none"> ▪ Completed on time - as per the plan (less than 3 months delay max) ▪ Completed according to the design ▪ Ready for use (if not already in use) and suited for the intended purpose ▪ Within 95 and 105% of the original budget <p>Not Met: if for any of the completed projects any of the above conditions is not met.</p>			

The Municipality scored a 'met' on _____ performance standards

Date : _____ / _____ / _____

Signature APA personnel: _____

Communication of Annual Performance Assessment results to the PSC Template

Introduction

This annex has the template to be used for communication of the results of the Annual Performance Assessment (APA) to the Programme Steering Committee (PSC).

After completion of the APA, the APA consultant will submit a draft of the attached, together with an accompanying report as specified in the Terms of reference for the APA (see POM, Vol II, Annex 13) to the Urban Development Department for review by the Programme Technical Committee (PTC). Latter may request the APA consultant to review and if needed rectify mistakes, anomalies and inconsistencies. The PTC, however, can not request the APA consultant, who is independent to carryout the assessment, to alter the results themselves; this remains the sole prerogative of the appointed APA consultant.

After discussion and review by the PTC and revision of the draft of the attached Tables, th APA consultant prepared a final version of the APA results for that particular year.

Once confirmed by the PSC, these APA results (the tables for which the template is presented in this Annex) will be used to calculate the grant (UIG and UDG) for each county and each urban area. The APA, consultant, however, has no role in calculating those amounts. The end products to be delivered by the APA consultant are the assessment results for (i) UIG Minimum Conditions by county (first table); the (ii) UDG Minimum conditions by urban area (second table); and (iii) the UDG performance standards, also by urban area (third table).

APA FY 20.../.... - Results of the Assessment for UIG/MCs

#	County	UIG MC1	UIG MC2	UIG MC3	Final Result
1.	Baringo county				
2.	Bomet county				
3.	Bungoma county				
#	Example 1	✓	✓	✓	Met all MCs (Qualifies for UIG)
#	Example 2	X	✓	✓	Did not meet all MCs (does not qualify for UIG)
#	Example 3	✓	X	✓	Did not meet all MCs (does not qualify for UIG)
#	Example 4	X	X	✓	Did not meet all MCs (does not qualify for UIG)
#	Example 5	X	X	X	Did not meet all MCs (does not qualify for UIG)
#	Example 6	✓	✓	✓	Met all MCs (Qualifies for UIG)
44.	Wajir county				
45.	West Pokot county				

Out of 45 counties, have met all applicable UIG/MCs.

Signature : _____

Name Teamleader APA consultant: _____

Place / Date: _____ / _____ / 20____

UIG/MC1: KUSP participation agreement signed
 UIG/MC2: CUIDS and annual UIG Plan & Budget available
 UIG/MC3: UIG spending within the eligible menu

Note: UDG/MC3 will only be assessed starting APA in FY 2018/19. For the APAs in 2017/18 the third column for MC3 shall remain empty (or filled with N/A), and the final result shall be based on MC1 and MC 2 only.

APA FY 20.../.... - Results of the Assessment of UDG MINIMUM CONDITIONS

#	Urban Area	UDG MC1	UDG MC2	UDG MC3	UDG MC4	UDG MC5	UDG MC6	UDG MC7	UDG MC8	UDG MC9	UDG MC10	Final Result
1.	Kabernet municipality											
2.	Bomet municipality											
3.	Bungoma municipality											
#	Example 1	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Met all MCs (Qualifies for UDG)
#	Example 2	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	Did not meet all MCs (does not qualify for UDG)
#	Example 3	✓	✓	X	✓	✓	X	✓	✓	✓	✓	Did not meet all MCs (does not qualify for UDG)
#	Example 4	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Did not meet all MCs (does not qualify for UDG)
#	Example 5	✓	✓	✓	X	X	X	✓	✓	✓	✓	Did not meet all MCs (does not qualify for UDG)
#	Example 6	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Met all MCs (Qualifies for UDG)
58.	Wajir municipality											
59.	Kapenguria municipality											

- UDG/MC1: Municipal status established
- UDG/MC2: Municipal board established
- UDG/MC3: Municipal administration in place
- UDG/MC4: Municipal budget vote instated
- UDG/MC5: Municipal finance reporting completed
- UDG/MC6: KUSP participation agreement signed
- UDG/MC7: Annual Municipal investment plan & budget
- UDG/MC8: UDG spending within the eligible menu
- UDG/MC9: UDG absorption capacity
- UDG/MC10: Procurement and contract management

Note: Note: UDG/MC5, MC8, MC9 and MC10 will only be assessed starting the APA in FY 2019/20. For the APAs in 2017/18 and 2018/19, the respective columns shall remain empty (or filled with N/A), and the final result shall be based on the applicable MCs only.

Out of 59 eligible urban areas, have met all applicable UDG/MCs.

Signature : _____

Name Teamleader APA consultant: _____

Place / Date: _____ / _____ / 20____

APA FY 20.../.... - Results of the Assessment of UDG/PERFORMANCE STANDARDS

#	Urban Area	UDG PS1	UDG PS2	UDG PS3	UDG PS4	UDG PS5	UDG PS6	UDG PS7	UDG PS8	UDG PS9	UDG PS10	Final Result - performance points
1.	Kabernet municipality											
2.	Bomet municipality											
3.	Bungoma municipality											
#	Example 1	✓	X	X	X	X	X	X	X	X	n/a	1 out of 10 : 5 points (out of 50)
#	Example 2	✓	✓	X	✓	X	X	✓	X	X	n/a	4 out of 10 : 20 points (out of 50)
#	Example 3	✓	X	X	✓	✓	X	X	X	X	n/a	3 out of 10 : 15 points (out of 50)
#	Example 4	✓	X	X	X	X	X	X	✓	X	n/a	2 out of 10 : 10 points (out of 50)
#	Example 5	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	9 out of 10: 45 points (out of 50)
58.	Wajir municipality											
59.	Kapenguria municipality											

UDG/PS1: Job description for the Municipal manager

UDG/PS2: Quarterly meetings of the Municipal board

UDG/PS3: Quarterly Municipal fora

UDG/PS4: Publication of information on website

UDG/PS5: Publication of annual calendar of Municipal fora

UDG/PS6: Approval of the Municipal budget

UDG/PS7: Annual Review of the 5 year Urban Investment Development plan (IDeP)

UDG/PS8: Urban spatial plan

UDG/PS9: Solid waste policy and implementation

UDG/PS10: Infrastructure delivery as per plan

Note: UDG/PS 10 3 will only be assessed starting the APA in FY 2019/20. For the APAs in 2017/18 and 2018/19, the respective column shall remain empty (or filled with N/A), and the final result shall be based on the applicable PSs only.

Signature : _____

Name Teamleader APA consultant: _____

Place / Date: _____ / _____ / 20____

Half yearly progress reports

Templates

Introduction

This annex provides formats for the programme specific half yearly progress reports. It concerns the following three reports:

- a. Counties to report to UDD on use of UIG
- b. Urban Boards to report to their counties on the use of UDG for its consolidated submission to UDD
- c. UDD to report on KUSP to World Bank

The first two reports form the basis for the major part of the third report (i.e. windows 2 and 3). For these windows 2 and 3, reporting by the county government and the urban boards respectively, is done against the annual plans and budgets for UIG and UDG respectively (formats for which are presented in POM, Vol II, annexes 4 and 5, respectively).

The objective of the progress reports is two-fold. Firstly, it serves as a tool of self-reflection, for county and urban management to take stock whether progress (for UIG and UDG respectively) is on track. Secondly, it provides few key indicators for programme management at the national level, to monitor progress and to see where bottlenecks, in terms of physical spending and in terms of spending are. Respecting the autonomy of the county governments, the information to be provided is kept to a bare minimum.

The reporting deadline for counties (window-2) and the urban boards (window-3) for submission of their reports to UDD is one month after the end of each semester. UDD then has one month to prepare a consolidated report (all three windows) for submission to the World Bank (to be presented before end of February and end of August, respectively).

All three reports have a narrative on physical progress as well as a section with financial information (i.e. expenditures vs budget).

For all three reports it is suggested to start with compiling that two tables in the annexes of the report and then prepare the text, which is then based on the information in those annexes.

Page left empty by purpose

Half yearly progress reports UIG County government to UDD template

[County seal]

Half yearly progress report on use of the Institutional Development Grant (period from ... to ...)

[Start with filling the tables in the Annex (see next page) that are linked to the annual plan - then wrote the text along the lines as suggested below]

1. Introduction [half a page]
 - Provide a 'flavour' of the situation
 - Highlight one or two main achievements to-date

2. Overview of activities undertaken [1 page max]
 - Briefly describe activities undertaken to date
 - Describe any major problems and bottlenecks and how these were overcome
 - Describe the outcomes for each activity - what was achieved

3. Overall assessment of progress and Outlook for next 6 months [half a page]
 - Assess progress overall: is implementation on track or behind schedule?
 - If behind schedule, what will be done to rectify the situation?
 - Describe the priorities for IUG implementation over the next 6 months

4. Support from UDD requested / required (if any) [one or two paragraphs]
 - Mention here if any specific support from UDD is expected or required

5. Concluding remarks [half a page max]
 - Mention anything the county would like to raise (in the context of UIG)

[Although counties are free to elaborate more, the total length of the half yearly UIG report is not expected to exceed 3-4 pages maximum]

Annexes to the half yearly UIG report:

Annex 1 : Summary UIG physical progress, county , as per 31/12 or 30/06					
	Activity	Planned Timing from-to /months	Assessment of progress	Estimated % of completion	Comments
1.				%	
2.			Delayed	%	
3.			On schedule	%	
4.			Ahead of schedule	%	
5.				%	
Overall estimated % of UIG annual plan completion by reporting date:				%	

Annex 2 : UIG budget expenditure overview, county , as per 31/12 or 30/06					
#	Activity	Budget execution			Comments
		Budget (in KES)	Expenditure by end of 6 months period	% budget execution	
1.				%	
2.				%	
3.				%	
4.				%	
5.				%	
Total for FY by reporting date:				%	

Note: Data in the first three columns of both Annex 1 and Annex 2 above, to be taken straight from the annual UIG and IDG plans, respectively (see POM Annexes 4 and 5)

Half yearly progress reports UDG Municipal Boards to UDD (via the county government) template

[County seal]

Half yearly progress report on use of the Urban Development Grant (period from ... to ...)

[Start with filling the tables in the Annex (see next page) that are linked to the annual plan -
then wrote the text along the lines as suggested below]

1. Introduction [half a page]
 - Highlight one or two main achievements of the past 6 months

2. Detailed Overview of progress [half to one page per project]
 - For each of the UDG funded projects describe briefly
 - Activities completed past 6 months
 - Status of implementation (as compared to Gantt chart in the annual plan)
 - Major problems and bottlenecks encountered and how these were overcome and/or what is needed to overcome them
 - Project specific priorities for the next 6 months

3. Overall assessment of progress and Outlook for next 6 months [half a page]
 - Assess progress overall: is UDG implementation on track or behind schedule?
 - If behind schedule, what will be done to rectify the situation?
 - Describe the priorities for UDG implementation over the next 6 months
 - Indicate need for rescheduling of activities, if any

4. Support from UDD requested / required (if any) [one or two paragraphs]
 - Mention here if any specific support from UDD is expected or required

5. Concluding remarks [half a page max]
 - Mention anything the county would like to raise (in the context of UDG)

[Although counties are free to elaborate more, the total length of the half yearly
UDG report is not expected to exceed 3-4 pages maximum]

Annexes to the half yearly UDG report:

Annex 1 : Summary UDG physical progress, Municipality, as per 31/12 or 30/06					
	Activity	Planned Timing from-to /months	Assessment of progress	Estimated % of completion	Comments
1.				%	
2.			Delayed	%	
3.			On schedule	%	
4.			Ahead of schedule	%	
5.				%	
Overall estimated % of UDG annual plan completion by reporting date:				%	

Annex 2 : UDG budget expenditure overview, Municipality, as per 31/12 or 30/06					
#	Activity	Budget execution			Comments
		Budget (in KES)	Expenditure by end of 6 months period	% budget execution	
1.				%	
2.				%	
3.				%	
4.				%	
5.				%	
Total for FY by reporting date:				%	

Half yearly progress report KUSP

[UDD to Programme Steering Committee and World Bank]

Report template in form of 'minimum' Table of Content

[SDHUD / UDD letterhead]

Half yearly progress report on KUSP (period from ... to ...)

1. **Executive summary** (listing decisions that need to be taken)
2. **Introduction**
3. **Summary of activities achievements by programme component**
 - 2.1 **UDD / Window-1**
 - *Provides an overview of the activities undertaken under window-1, supported by Annex 1 (see template below)*
 - *Provides an overview of budget execution (based on data as presented in Annex 2 (see template below)*
 - 2.2 **UIG / Window-2**
 - *Provides an overview of progress with use of UIG - based on the (45) reports to be received from the counties - to be summarised in Annex 3 (see template below).*
 - *Summary of achievements and issues to be tackled with regards to the UIG from a UDD management perspective.*
 - 2.3 **UDG / Window-3**
 - *Provides an overview of progress with use of UIG - based on the (45) reports to be received from the counties - to be summarised in Annex 4 (see template below).*
 - *Summary of achievements and issues to be tackled with regards to the UDG from a UDD management perspective.*
4. **Annual Performance Assessment**
 - *Progress with the exercise*
 - *Overview of the results and outcomes - and what implications that has e.g. in terms of KUSP/Window-1 activities to support Counties and Municipalities; other actions that may need to be taken*

5. Assessment of cross cutting issues

- *Placeholder to pay explicit attention to the following:*
 - *Financial Management*
 - *Procurement*
 - *Societal and Environmental issues*
 - *Participation and inclusiveness (including gender)*

6. External relations, Steering Committee and Technical Committee

- *Placeholder to describe initiatives, undertaken or needed, to engage with other partners, departments and agencies.*
- *Placeholder to describe discussions and decisions of PTC and PSC (including APA - also discussed under 2.1 and Chapter 3 above)*

7. Overall assessment of progress and Outlook for next 6 months

- *Establishment of Municipal institutional structures*
- *Establishment of dedicated municipal budget votes*
- *Counties taking charge of urban development*
- *Describe KUSP management priorities for next 6 months*

8. Summary of issues that need attention and resolve (WB, PSC, other)

- *Summary of issues that need attention - and/or need to be discussed in the PSC, with WB, with other departments/agencies in government*

9. Concluding remarks

- *Placeholder for any other relevant remarks*

ANNEXES:

Annex 1: Overview of physical progress Window-1 (based on activity items in budget)

Annex 2: Budget - expenditure over view window-1

Annex 3: Estimated rate of implementation and budget use for UIG, by County

Annex 4: Estimated rate of implementation and budget use for UDG, by Municipality

[the total length of the half yearly KUSP UIG report is not expected to exceed 8-10 pages - excluding annexes]

Annexes to the half yearly KUSP report:

Annex 1 : Summary Window-1 physical progress, as per 31/12 or 30/06					
	Activity (as per plan/budget)	Planned Timing from-to /months	Assessment of progress	Estimated % of completion	Comments
1.				%	
2.			Delayed	%	
3.			On schedule	%	
4.			Ahead of schedule	%	
5.				%	
6.					
7.					
8.					

Annex 2 : Window-1 budget expenditure overview, as per 31/12 or 30/06					
#	Activity	Budget execution			Comments
		Budget (in KES)	Expenditure by end of 6 months period	% budget execution	
1.				%	
2.				%	
3.				%	
4.				%	
5.				%	
6.					
7.					
8.					
Total for FY by reporting date:				%	

Annex 3: UIG - Estimated rate of implementation and budget use, as of 31/12 or 30/06

#	County	County estimated % of UIG implementation	UIG Budget for the FY in KES	UIG expenditure by 31/12 or 30/06	% of budget used	Comments
1.	Baringo county					
2.	Bomet county					
3.	Bungoma county					
44.	Wajir county					
45.	West Pokot county					

Annex 4: UDG - Estimated overall physical progress and budget use, as of 31/12 or 30/06

#	County	County estimated % of UIG implementation	UIG Budget for the FY in KES	UIG expenditure by 31/12 or 30/06	% of budget used	Comments
1.	Kabernet municipality					
2.	Bomet municipality					
3.	Bungoma municipality					
58.	Wajir municipality					
59.	Kapenguria municipality					

Terms of Reference

KUSP Steering Committee

Background and overall objectives

The KUSP Steering Committee is the highest decision making organ for the program. It is in charge of policy setting and overall strategic guidance on the implementation.

The Steering Committee is especially important in confirming the annual assessment results and thus assuring the integrity of the assessment system by safeguarding lower levels of the administration from undue pressure with regards the independently established assessment results that have a direct bearing on the amounts to be received by each municipality/city.

The Steering committee deliberates and takes decisions on the basis of recommendations made by the KUSP technical committee.

Specific Tasks of the steering committee

- Provide the overall policy guidelines for the programme in terms of management, planning and execution of activities, and review and modify if/when needed
- Deliberate and endorse, on the basis of recommendations by the technical committee, the annual performance assessment (APA) results, and officially confirm the ensuing allocation of funds for each participating municipality and city
- Ensure coordination between all parties involved in the implementation of the programme, and recommend action if the collaboration is sub-optimal
- Deliberate and make decisions on any issue raised by the technical committee

Members of the Steering Committee

The Steering Committee is chaired by the Principal Secretary in charge of urban development.

Other members of the steering committee will include

- The Chair of the Council of Governor's committee on urban development (co-chair)
- the Chair of the Intergovernmental Relations Technical Committee (IGRTC)
- the Principal Secretary of the national treasury
- the Principal Secretary responsible for devolution
- the Chair of the Commission of Revenue Allocation (CRA);
- the Controller of Budget.

The Director of UDD, being the chair of the KUSP technical committee, serves as secretary to the steering committee, with the UDD providing the services of a secretariat, if / when needed.

The committee may (by majority decision) co-opt any other person as member.

The World Bank task team leader for KUSP will be invited to meetings of the steering committee as observer and resource person.

Meetings of the Steering Committee

Meetings of the KUSP steering committee will be convened on the suggestion of its secretary, by the cabinet secretary in charge of urban development and/or the chair council of governors.

The committee's secretary will propose a draft agenda for each meeting, after consultation to the chair. Prior to each meeting, or at the beginning of the meeting, members can propose amendments and additions to the proposed agenda.

The secretariat of the committee will be provided by the KDSP Secretariat that will also be in charge of keeping records of the committee and financing of the cost of the committee meetings from the secretariat operation funds.

The committee will meet at least once a year during the first half of June, and more often in case of need following a request by any of the members through the secretariat or at the request of the KUSP Technical Committee.

Terms of Reference

KUSP Technical Committee

Background and overall objectives

The KUSP technical committee is the advisory and technical review body of the programme that prepares proposals for decision-making by the KUSP steering committee, which is the decision making body (and the ToRs for which are found in Annex 9).

A most important task of the KUSP technical committee is to provide oversight on the management of the Annual Performance Assessment process, from the establishment of the ToR and procurement of the APA consultant up to the final draft of the assessment report, that is to be confirmed as 'final' by the steering committee.

Another important role of the technical committee is to provide a platform for coordination, and if needed resolution of issues, between government partners involved in the Program.

Finally, the technical committee may deliberate on any technical matter related to the implementation of the programme and make subsequent proposals for improvements of Programme performance to the steering committee.

Specific Tasks of the Technical Committee

- Review the report of the APA consultant as well as the results of the assessment of the minimum conditions and performance assessment. The Technical Committee is to verify and ascertain the assessment *process* and not supposed to change the results as presented by the APA consultant. It may, however, formulate a request for clarification after which the consultant may modify the report and correct obvious errors, on condition that it remains an independently established assessment report.
- Review any complaints regarding the APA process as lodged at the secretariat of the technical committee or with any of its members. The committee may either dismiss the complaint, if it finds it has no merit, or recommend action to the steering committee.
- Establish the calculated allocation of funds for each participating municipalities on the basis of the assessment results.
- Technically review the past APA and provide advice on any changes, adjustments and modifications for the next cycle. Such changes, however, should be limited to absolutely necessary modifications.
- Review and approve the terms of reference for the next annual performance assessment
- Review the report on procurement of the APA consultant
- Make recommendations to the steering committee with regards to overall policy guidelines for the programme to enhance management, planning and execution of activities
- Encourage coordination between all parties involved in the implementation of the project and recommend action if the collaboration is sub optimal
- Deliberate and make recommendations on any other technical matter related to programme implementation.

Members of the Technical Committee

The Director of the Urban Development Department will serve as the chair of the Technical Committee.

Members of the technical committee include:

- The Secretary to the urban committee of the Council of Governors (co-chair)
- A representative from the National Treasury
- The responsible for the Kenya Devolution Support Programme (KDSP) in the Ministry of Devolution and Planning
- The Chief Executive Officer of the Intergovernmental Relations Technical Committee (IGRTC)
- The Chief Executive Officer of the Commission on Revenue Allocation (CRA)
- A representative from the office of the Controller of Budget

The KUSP coordinator will serve as secretary to the technical committee.

The committee may (by majority decision) co-opt any other person as member.

Meetings of the Technical Committee

The KUSP technical committee will meet at least once a year in the last week of May, once the assessment results are available. A second meeting could be foreseen in Late July, in case the committee wants to review the procurement process of the APA consultant prior to contract signing. Apart from this the committee can meet if and when required.

Meetings of the KUSP technical committee will be convened by the Principal Secretary in charge of urban development (being the chair of the Technical committee), on the suggestion of the committee's secretary (the head of the UDD).

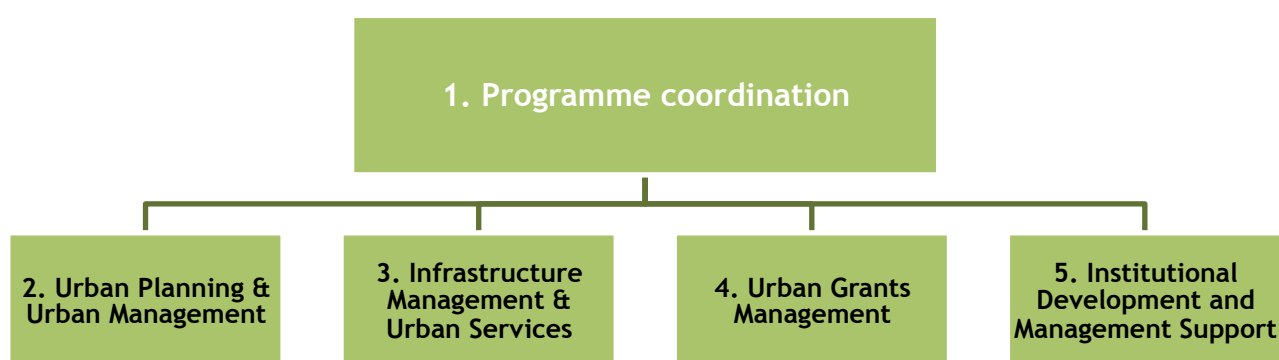
The committee's secretary will propose a draft agenda for each meeting, after consultation with the chair. Prior to each meeting, and/or at the beginning of the meeting, members can propose amendments and additions to the proposed agenda. Through the secretary, the UDD will act as the committee's secretariat, if/when needed.

The recommendations made by the technical committee will, in principle, be based on consensus. In case this fails, decision-making on the recommendations to the steering committee will be by voting and simple majority of those present at the meeting. However, the committee may than also decide to present different options to the steering committee for the latter to make a decision.

Composition and Tasks of the Programme Coordination Team (within UDD)

Structure:

This annex presents the structure, key functions, team compositions and basic tasks for the UDD project co-ordination team (PCT) that will implement Window 1 of KUSP.



Functions:

1. PROGRAMME CO-ORDINATION

1.1 COMPOSITION

- Coordinator
- All Component Heads

1.2 TASKS

- Overall coordination and reporting
- Secretary to the Technical & Steering Committees
- Liaison with World Bank, The National Treasury and other stakeholders
- CTAT recruitment and deployment.

2. URBAN PLANNING AND MANAGEMENT

2.1 COMPOSITION

- Component Head
- Planner
- Surveyor
- Environmental Officer
- Social Planners
- Engineers

2.2 TASKS

- Provide capacity building support for integrated development planning (5-year urban IDePs - refer to supporting handbook)
- Provide capacity building support for spatial urban planning (10-20 year town plans)
- Provide practical guidelines and technical capacity building on development control processes
- Provide capacity building support for establishing municipalities and urban boards (supply & demand driven)
- Prepare capacity building support for urban board management
- Prepare guidelines for establishing municipalities and urban boards
- Orientation for establishing municipalities and urban boards
- Update guidelines on operating modalities for executive, legislative, and urban boards of county governments
- Prepare guidelines on the demarcation of urban areas (counties have responsibility for actual demarcation).

3. INFRASTRUCTURE MANAGEMENT

3.1 COMPOSITION

- Component Head
- Engineers
- Architects
- Solid Waste Engineer
- Disaster Management Officer

3.2 TASKS

- Provide guidance on the technical standards for urban infrastructure designs (roads, pavements, drainage, green spaces, etc.)
- Provide guidance on procurement (tender documents, procedures, etc.) and contract management tailored to urban infrastructure
- Conduct annual technical audit on urban infrastructure projects (from 3rd year of KUSP)
- Provide guidance on urban infrastructure operations and maintenance issues (including cost recovery and user charges)
- Provide guidance on environmental and social management tailored to urban infrastructure
- Provide guidelines on solid waste management (SWM).

4. GRANTS MANAGEMENT

4.1 COMPOSITION

- Component Head
- Finance Officer
- Economist
- ICT Officer
- Accountant
- Auditor

4.2 TASKS

- Prepare guidelines and templates for municipal budgets and budget votes
- Prepare guidelines for municipal accounting and financial reporting
- Include UIG and UDG allocations in CARB and DORB
- Include UIG and UDG allocations in UDD MTEF and annual budget submissions
- Authorize release of UIGs and UDGs
- Disseminate and publicly disclose annual performance assessment results, UIG allocations and UDG allocations to relevant stakeholders
- Validate and confirm assessment results with the Technical and Steering Committees
- Coordinate and supervise the actual assessment process in all counties.
- Contract an independent team of consultants to carry out the annual performance assessment.

5. INSTITUTIONAL DEVELOPMENT + PROGRAM MANAGEMENT SUPPORT

5.1 COMPOSITION

- Component Head
- Finance Officer
- Economist
- Procurement Officer
- Human Resource Officer

5.2 TASKS

- Manage and supervise the procurement and conduct of the APA.
- Coordinate Supply and demand driven Capacity building
- Liaison with County coordinators
- Establish and operationalize Program Steering and Technical Committees
- Conduct Annual Program Reviews (including technical audit of infrastructure delivery)
- Develop UDD communications and disclosure (for example, website, dialogue with counties, publication and dissemination of KenUP guidelines and manuals and the like)
- Develop annual work plans, budgets, and procurement plans
- Conduct program M&E and reporting (DLIs, narrative, and financial)
- Undertake continuous professional development of UDD staff
- Operational budget preparation and management
- Establish and continuously operate grievance redress procedures.

Annual Performance Assessment (APA)

Terms of Reference

Terms of reference for conducting the first full annual assessment of 45 potential participating counties, for both the UIG and UDG, in the proposed Kenya Urban Support Programme (KUSP).

1. BACKGROUND

The Government of Kenya is preparing a proposed Kenya Urban Programme (KUSP), to be financed in part by the World Bank. The World Bank's Board is expected to approve its portion of the programme (KUSP) in the third quarter of fiscal year 2017/18.

2. OBJECTIVES AND PRINCIPLES OF SKUSP

Program Development Objectives. The development objective of the proposed programme is to support the establishment and strengthening of urban institutions and systems to deliver improved infrastructure and services in participating municipalities in counties in Kenya through KUSP. The objective applies to 45 counties: the cities of Nairobi and Mombasa are not part of SKUSP.

Program Description. SKUSP will offer grants to national government entities, county administrations, and potentially, urban administrations that opt in to the programme and meet agreed minimum conditions and performance measures. Specifically, the programme will:

- **Support national government entities** to implement the National Urban Development Policy (NUDP), provide capacity building support to national-level entities and to county administrations, and to manage annual county-level performance assessments; Window 1.
- **Support county government administrations** to develop and implement county-level urban development policies and integrated strategic plans, establish urban management systems, develop legislation and regulations to better manage urban areas, help to build the capacity of urban administrations, and implement and enforce county policies and legislation; Window 2. The proposed Urban Institutional Grant (UIG) for counties will be through this window.
- **Support urban administrations**—through their counties—for the development of urban plans, systems, and the delivery of urban infrastructure and services; Window 3. The proposed Urban Development Grant (UDG) for establishment of physical investments and provision of basic services at the urban board level will be through this window.

Urban Institutional Grants (UIGs)

This preliminary assessment concerns Window 2's two MCs towards UIGs, only. UIGs are intended to achieve two objectives:

- (a) Provide eligible and qualifying counties (and their urban institutions) with some of the financial resources needed to meet UDG Minimum Conditions and Performance Standards and thus access funding via the UDGs for urban infrastructure and service delivery. This is the primary objective of UIGs;
- (b) Enable eligible and qualifying county governments to integrate urban development challenges and opportunities into county-wide development plans and strategies. This is the secondary objective of UIGs.

Forty-five counties are eligible to receive UIGs, subject to meeting MCs. Counties that comply with UIG Minimum Conditions will qualify for a UIG allocation of \$200,000 each in FY 2018-19.

Urban Development Grants (UDGs)

KUSP will provide eligible county governments with Urban Development Grants (UDGs) in order to finance investments in urban infrastructure, which have been identified as priorities by each county with participation of citizens through their municipal board. The UDGs are structured to provide incentives for counties and urban boards to strengthen their institutional, governance, and service delivery performance.

All urban areas that potentially qualify as municipalities or cities under the UAC Act will be eligible for UDGs, with the exception of urban areas in the city counties of Nairobi and Mombasa. This includes all urban areas with a population exceeding 70,000, and all designated county headquarters. This universe includes 66 urban areas which are home to a total population of 6.5 million residents.

The indicative UDG allocation for each urban area is determined entirely on the basis of urban population; in other words, each urban area is allocated KES 2,000 per urban resident (see table 3 below) per year. This is the simplest, most objective, and most transparent formula possible, and ensures that resources are distributed in accordance with the best available measure of urban development needs. The lack of more detailed data precludes the use of a more complex formula at the current time. There is a minimum indicative UDG allocation per urban area) of KES 50 million, intended to ensure that investment projects funded by the UDG are of a minimum scale.

UDGs are allocated to specific and eligible urban areas within counties, provided that certain MCs are met. Where all UDG MCs are met, the urban area in question will achieve a score of 50 (out of 100) and thus qualify for 50% of its indicative (maximum) UDG allocation. Once Minimum Conditions have been met, the urban area in question can then qualify for additional percentages of its indicative (maximum) UDG allocation as a function of the degree to which it is able to meet Performance Standards.

To illustrate: an urban area with 100,000 urban residents is eligible to receive an indicative (maximum) UDG allocation of KES 200 million each year. If the urban area (and its parent county government) complies with all UDG Minimum Conditions, then 50% (KES 100 million) of its indicative UDG will be awarded. If the urban area, for example, is also able to meet 4 (out of 5) Institutional and Governance Performance Standards but none of the Planning, Infrastructure and Service Delivery Performance Standards (see below), then it will receive an additional score of 20, and will thus

be awarded with a further 20% (KES 40 million) of its indicative UDG. In total, then, the urban area in question would have achieved a score of 70 (out of 100) and would thus qualify for 70% (or KES 140 million) of its indicative UDG allocation.

It is important to underline that MCs must be met fully (for FY 2018/19) before Performance Standard scores apply in the following annual assessment (for FY 2019/20).

3. OBJECTIVE OF THE ASSIGNMENT

The primary objective of the consultancy is to assess the performance of eligible counties with respect to:

- the **Minimum Conditions** applicable to **UIGs**. Counties that demonstrate compliance with these Minimum Conditions will qualify for their UIG allocations in FY 2018-19.
- the **Minimum Conditions** applicable to **UDGs**. Counties and their urban areas that demonstrate compliance with these Minimum Conditions will qualify for 50% of their UDG allocations in FY 2018-19.

A secondary objective of the consultancy is to establish (in year 1) and then allow for the client's updating (in each subsequent year) a performance baseline for all 45 counties concerning both UIG and UDG MCs as well as the UDG performance standards (PSs).

The full assessment framework is in Part 6 below.

4. SCOPE OF WORK AND TASKS

The Government of Kenya seeks a firm of consultants to conduct the first full Annual Performance Assessment of the 45 counties eligible to participate in the programme. The city counties of Nairobi and Mombasa are excluded.

The consultants will be expected to assess county compliance with UIG Minimum Conditions, UDG Minimum Conditions and UDG Performance Standards in order to calculate UIG/UDG allocations for Year 2 of KUSP (FY 2018-19).

This ToR will be applicable for the first year, with the possibility of extension into a second year, subject to satisfactory performance.

Specific tasks are as follows:

- (1) Conduct fieldwork in all 45 counties in order to collect data on the performance of each county government (and any urban institutions established by those counties), to be measured in terms of: (a) compliance with UIG and UDG Minimum Conditions, and (b) meeting UDG Performance Standards, using the template in Annex 6 to the POM.
- (2) Analyze all field data in order to assess the performance of each county (in terms of MC compliance and meeting PSs) using the template in Annex 6 to the POM.

- (3) Establish, for each county/urban area, initial UIG and UDG allocations (for FY 2018-19) on the basis of:
 - UIG MCs that have and have not been met
 - UDG MCs that have and have not been met
 - UDG PSs that have and have not been met
- (4) Following the above, provide a detailed, county-by-county, list of:
For UIGs:
 - MCs that have been met at the time of fieldwork;
 - MCs that had not been met at the time of fieldwork and identify what needs to be done in order to meet them by 30 April 2018;***For UDGs:***
 - MCs that have been met at the time of fieldwork;
 - MCs that had not been met at the time of fieldwork and identify what needs to be done in order to meet them by 30 April 2018;
- (5) Subsequent to the above, and over the period 1 December 2017 to 30 April 2018, receive and assess any documentary evidence submitted by counties (and their urban areas) intended to provide proof of compliance with UIG and UDG MCs that had not been met at the time of fieldwork. Where needed, contact counties to request clarification or further documentation.
- (6) On the basis of fieldwork data and adequate documentary evidence submitted by counties (and their urban areas) prior to 30 April 2018, establish a final listing of all counties that have or have not complied with UIG and UDG Minimum Conditions and (consistent with MC compliance) a calculation of UIG/UDG allocations for all counties for FY 2018-19.

5. DELIVERABLES

- (a) Inception Report, outlining the consultants' understanding of the assignment and proposed approach to meeting UDD requirements;
- (b) Following fieldwork, a draft assessment report for each county, detailing compliance (or non-compliance) with UIG/UDG MCs and the extent to which PSs have been met;
- (c) Following fieldwork, a draft report for each county, detailing:
 - compliance (or non-compliance) with UIG/UDG MCs and the extent to which PSs have been met; and
 - the documentary evidence that counties need to submit (by 30 April) in order to meet UIG/UDG MCs.
- (d) Following 30 April, a final assessment report, using the template in annex 7 of this POM :
 - detailing compliance (or non-compliance) with UIG/UDG MCs, based on either fieldwork data or documentary evidence submitted by counties prior to 30 April;
 - indicating UIG and UDG allocations (for FY 2018-19), based on MC compliance.

A guide to the level of effort

Preparations:

3 assessment teams of two persons x 7 days = 42 person days

1 coordinator x 7 days = 7 person days

Fieldwork:

3 assessment teams of two persons x 3 days per county x 15 counties = 270 person days

1 coordinator x 15 days per team x 3 teams = 45 person days

Fieldwork analysis:

3 assessment teams x 2 persons x 5 days = 30 person days

1 coordinator x 5 days = 5 person days

Fieldwork-based reporting:

1 coordinator x 5 days = 5 person days

1 assistant x 5 days = 5 person days

County submissions and assessment:

1 coordinator x 15 (intermittent) days = 15 person days

1 assistant x 15 (intermittent) days = 15 person days

Final report:

1 coordinator x 5 days = 5 person days

1 assistant x 5 days = 5 person days

Total level of effort:

Fieldwork assessment teams = 342 person days

Coordinator = 82 person days

Assistant = 25 person days

Timeframe/calendar:

Possibly October 2017 until May 2018

6. PERFORMANCE REQUIREMENTS

The consultant shall determine how best to convey each county's APA, in the light of the following MCs, PSs and their indicators.

For UIG: the MCs are as follows:

UIG Minimum grant access conditions	
UIG Minimum Condition	Indicator - to be met by 31/3/n-1 latest (year n = year of grant)
UIG/MC-1: The County government has committed itself to participate in KUSP	<ul style="list-style-type: none"> ▪ The County Governor has signed a letter of participation with the Ministry of Transport, Infrastructure, Housing & Urban Development (MTIHUD) stating that the county government signs up to KUSP and that it will adhere to the provisions of the Operations Manual

<p>UIG/MC-2: The County government has drawn up (and is implementing) its county urban institutional development strategy</p>	<ul style="list-style-type: none"> ▪ The county government has prepared a (10-15 page) County Urban Institutional Development Strategy (CUIDS) that is reflected in or annexed to the (5-year) CIDP ▪ The county government has prepared a brief annual County Urban Institutional Development Plan & Budget for FY n that entails a proposal for use of the UIG in compliance with the UIG expenditure menu and other provisions of the POM
<p>Starting UIG 2019/20 (assessment in FY 2018/19) - 31/3/n-1</p>	
<p>UIG/MC-3: UIG spending in accordance with the eligible menu</p>	<ul style="list-style-type: none"> ▪ Use of previous year's UIG (FY n-2) was consistent with UIG eligible expenditure menu (to be validated through annual report on UIG budget implementation)

For UDG: the MCs and PSs are as follows

UDG Minimum grant access conditions, for each eligible urban area	
Minimum Condition	Indicator - to be met by 31/3/n-1 latest (n is year of grant)
Urban Institutional	
<p>UDG/MC-1: Municipal status established</p>	<ul style="list-style-type: none"> ▪ The County governor, upon resolution of the county assembly, has granted municipal charter to the eligible urban area ¹
<p>UDG/MC-2: Municipal Board established</p>	<ul style="list-style-type: none"> ▪ An Urban board has been appointed by the county governor, in line with the provisions of the UACA, upon approval by county assembly ²
<p>UDG/MC-3: Municipal administration in place</p>	<ul style="list-style-type: none"> ▪ A municipal manager has been appointed and is, together with his/her staff, paid out of municipal budget vote ³
<p>UDG/MC-4: Municipal budget vote established</p>	<ul style="list-style-type: none"> ▪ A Municipal budget vote -in which UDG is budgeted- is included in the county budget for FY n
<p>For FY 2020/21 onwards (assessment in FY 2019/20 onwards):</p>	
<p>UDG/MC-5: Municipal finance reporting done</p>	<ul style="list-style-type: none"> ▪ The County government reported on the municipal budget vote for FY n-2 to Controller of Budget (as part of the counties overall financial report for FY n-2)
Programme and fiduciary risks	
<p>UDG/MC-6: (same as UIG/MC1) The County government has committed itself to participate in KUSP</p>	<ul style="list-style-type: none"> ▪ The County Governor has signed a letter of participation with the Ministry of Transport, Infrastructure, Housing & Urban Development (MTIHU) stating that the county government signs up to KUSP and adhere to its Operations Manual
<p>UDG/MC-7: An annual urban investment plan is available</p>	<ul style="list-style-type: none"> ▪ The annual Urban investment plan for FY n is available and provides the budget for the UDG investments, whilst feasibility (or pre-feasibility) studies for the proposed investments are completed and attached to the document

¹ For the first assessment in FY 2017/18, this is to read: "The county governor has submitted a proposal to the assembly to grant municipal charter to the eligible urban area". The actual granting of municipal status becomes part of the MC for year-2 of the grant.

² For the first assessment in FY 2017/18, this is to read: "The governor has made a proposal to the county assembly for the appointment of the persons to constitute the urban board. The actual appointment becomes part of the MC for year-2.

³ For the first assessment in FY 2017/18, this is to read: "Key municipal staff (as mentioned) has been appointed." Payment of their costs from the urban budget vote becomes part of the MC for year-2 of the UDG.

For the grant in FY 20/21 onwards only (assessment in FY 2019/20)	
UDG/MC-8: Use of previous annual UDG	<ul style="list-style-type: none"> ▪ UDG for FY n-2 has been used in accordance with the eligible [positive] and non-eligible [negative] investment menus and the minimum size thresholds as described in the KenUP/KUSP POM - Table 4.5 below)
UDG/MC- 9: Municipal absorptive capacity	<ul style="list-style-type: none"> ▪ Over 50 percent of the UDG allocation in FY n-2 had been spent by end the FY (n-2)
UDG/MC-10: Municipal procurement and contract management	<ul style="list-style-type: none"> ▪ The Procurement method(s) applied in FY n-2 for the UDG funded project(s) were consistent with the procurement rules for the applicable tender amounts (i.e. ICB)

Performance standards

UDG Performance standards for municipalities, indicators & scores		
Performance area	Performance standard measured by 31/3/n-1 ⁴ for grant yr n	Max. Score
Urban Administration and Governance		
Municipal administration	<ul style="list-style-type: none"> ▪ PS-1: The Municipal Manager has a publicly available job description 	5
Municipal board and citizen engagement	<ul style="list-style-type: none"> ▪ PS-2: Past 4 quarters (period 01/04/n-2 to 31/3/n-1), at least 4 urban board meetings were held and at least one (1) in every quarter (for 1st assessment only last two quarters) 	5
	<ul style="list-style-type: none"> ▪ PS-3: Past 4 quarters (period 01/04/n-2 to 31/3/n-1), at least 4 citizen fora (public consultation between urban board and residents on plan, budget, budget execution and other areas of public interest) were held, and at least one (1) in every quarter (for 1st assessment last two quarters) 	5
Public disclosure and transparency	<ul style="list-style-type: none"> ▪ PS-4: The Municipality has made available on line all of the following key public documents: <ul style="list-style-type: none"> ○ Municipal charter ○ Contact Information for board and key officials ○ Urban IDeP (and other plans, as relevant), ○ Board meeting minutes for last 12 months ○ Financial statement for the Municipal vote for FY n-2 ○ Municipal vote Budget proposal (including appropriate annexes for FY n) All the above needs to be online to qualify the 5 points 	5
	<ul style="list-style-type: none"> ▪ PS-5: The Municipality has published its annual calendar of Citizens Fora with urban area residents, including plan and budget consultations (i.e. announced in local media and on county government website) 	5
Planning, Infrastructure and Service delivery:		
Municipal budgeting	<ul style="list-style-type: none"> ▪ PS-6: The Urban board has adopted an urban area budget for FY n based on the budget ceiling provided by the county government (by 30/4/n-1as per the UAC Act) 	5
Municipal Planning	<ul style="list-style-type: none"> ▪ PS-7: The Urban IDeP has been reviewed, and where deemed necessary modified - as evidenced by minutes of the Board meeting and a revised version of the IDeP 	5

⁴ Unless specified otherwise, as for PS #6 where the deadline for meeting the indicator is 30th April

	<ul style="list-style-type: none"> ▪ PS-8: An Urban spatial plan is completed and available 	5
Municipal Services	<ul style="list-style-type: none"> ▪ PS-9: The Municipal board has adopted a solid waste collection and disposal policy; and ▪ An operational waste collection and disposal plan is being drawn up and implemented 	5
For the grant in FY 20/21 onwards only (assessment in FY 2019/20)		
Municipal Infrastructure delivery	<ul style="list-style-type: none"> ▪ PS-10: Past 12 months, (period 01/04/n-2 to 31/3/n-1), all UDG funded projects that were completed, were <ul style="list-style-type: none"> ○ On time (within 3 months of plan); ○ According to design and fit for purpose; ○ Within the budget (with a 5% margin up and down). All three criteria to be met to gain the 5 points; Zero points if no project was completed in the period 	5
Total performance points		50

7. MANAGEMENT OF THE ASSIGNMENT

The consultants shall report to the Coordinator of the KUSP preparation team and will be expected to work closely with members of UDD in ensuring timely and accurate delivery of the objectives and outputs of the assignment.

8. QUALIFICATIONS & EXPERIENCE REQUIRED

The firm of consultants will have the following profile:

- Coordinator (team leader):
 - Qualifications: a post-graduate degree in public administration, public finance, economics, the social sciences or a related field
 - Experience: at least 15 years' of experience in working on public administration and/or public sector service delivery, with demonstrated experience in working at the sub-national level. Proven familiarity with Kenya's current (post-2010) devolution reforms would be a major asset. Demonstrated track record of providing consultant deliverables on a timely basis.
- Field assistants and assistant to the coordinator:
 - 3 teams of 2 field assistants: required profiles
 - Team member 1:
 - Qualifications: at least a graduate degree in public administration, public finance, economics, the social sciences or a related field
 - Experience: at least 5 years' of experience in working on public administration and/or public sector service delivery, with demonstrated experience in working at the sub-national level. Proven familiarity with Kenya's current (post-2010) devolution reforms would be a major asset. Demonstrated track record of providing consultant deliverables on a timely basis.
 - Team member 2:
 - Qualifications: at least a graduate degree in engineering, environmental sciences or a related field

- Experience: at least 5 years' of experience in working on public sector infrastructure and service delivery, with demonstrated experience in working at the sub-national level. Proven familiarity with Kenya's current (post-2010) devolution reforms would be a major asset. Demonstrated track record of providing consultant deliverables on a timely basis.
- Assistant to the coordinator
 - Qualifications: at least a graduate degree in public administration, public finance, economics, the social sciences or a related field
 - Experience: at least 5 years' of experience in working on public administration and/or public sector service delivery, with demonstrated experience in working at the sub-national level. Proven familiarity with Kenya's current (post-2010) devolution reforms would be a major asset. Demonstrated track record of providing consultant deliverables on a timely basis.

9. RESPONSIBILITIES OF THE CLIENT

The Client will provide office space for the consultants in the same location as the KUSP preparation team to facilitate close cooperation/consultation with their counterparts. The Client will avail all relevant documents to the consultants and will facilitate meetings with stakeholders. The Client will organize and finance any stakeholder workshops. The Client will reimburse the consultants for expenses related to any approved travel undertaken for the purposes of carrying out the assignment.

10. RESPONSIBILITIES OF THE CONSULTANTS

The consultants shall be responsible for the provision of ICT equipment required to carry out the assignment, such as computers and mobile phones.

11. POSSIBILITY OF EXTENSION

This APA contract may be renewed for a second year, subject to performance in the first year's APA.

Documents to be provided by the client:

- A. Project appraisal document (PAD)
- B. Project operations manual (POM)
- C. Financial management manual (FMM)
- D. County urban-institutional development strategy template (CUIDS)
- E. Any other material considered relevant during

Annual Programme Audit

Terms of Reference

EXTERNAL AUDIT BY OFFICE OF AUDITOR GENERAL (OAG) OF THE KENYA URBAN SUPPORT PROGRAM FOR RESULTS (KUSP)

I. BACKGROUND

Annual Financial Statements

The Kenya urban Support Program for Results (KUSP) is implemented by the Ministry of Transport Infrastructure Housing & urban Development (MTIHUD) under the State Department for Housing and Development. The objective of the Operation is to establish and strengthen urban institutions to deliver improved infrastructure and services in participating counties.

The Program is a hybrid with component 1 being an IPF and component 2 and 3 being P4R operations. *The MTIHUD will therefore prepare 2 separate annual program financial statements (PFS)- one for the IPF and the other for the P4R operation. The IPF AFS will consist of the IPF activities under the Designated Account (DA) opened for component 1, while the P4R PFS will consist of the consolidated Program-specific activities for components 2 and 3 as per the Special Purpose Accounts (SPA) for each of the participating counties under the financial year under review.* The format of the 2 sets of annual financial statements will be in line with the IPSAS Cash basis of accounting format issued by the National Treasury under Public Sector Accounting Standards Board (PSASB) for Bank projects. A copy is attached for easy reference.

MTIHUD is required to share, discuss and agree on the audit scope as per this TOR with the OAG at least 3 months ahead of the first financial year end of June 30 2018 (i.e. by March 31 2018). MTIHUD should share copies of the Financing Agreement, PAD, Operations Manual, Financial Procedures Manual and all other relevant Project documents, with the OAG as part of the TOR package.

Program Activities

The activities to be undertaken under the Operation fall under the following results areas: (a) Support to national government level for policy formulation and implementation, institutional development (capacity building) and county-level performance assessments (monitoring for coordination) - window 1; (b) support to county government level for the development of county-level urban development policies, the establishment of Municipal Boards (legislation and regulations), and the implementation and enforcement of county policies and legislation (capacity building and urban development) - window 2; and (c) support to urban institutions for the development of urban plans, systems and the implementation of urban infrastructure and services, window 3.

Audit Period and Scope

An annual external audit will be conducted on the KUSP covering the normal government fiscal year which ends in June of each calendar year.

The FM arrangements for the KUSP are aligned to country PFM systems. For the IPF (component 1), the audit will be conducted in accordance with the World Bank FM Policies and Guidelines. For the P4R (component 2 and 3), the audit will comply with the applicable GOK laws, regulations and procedures.

The audit will be sector-based and program-based in line with the Financing Agreement and the PAD. The audit, to be conducted by the Kenya National Audit Office (KENAO) or under its express authority.

The audit will comprise a Financial Statements audit, Efficiency and Economy review, and Compliance audit.

In addition, the auditors will also issue a Management Letter on systems and internal control weaknesses, if any, identified in the course of the audit.

The program financial statements (PFS) for audit will be drafted by MTIHUD on the basis of the GOK budget and chart of accounts (SCOA).

The PFS will be prepared and submitted to OAG within 3 months after the end of the financial year to which these relate.

MTIHUD will submit to the World Bank copies of the audit certificate, the audited financial statements and the management within the six months statutory deadline after the end of the end of the relevant fiscal year (i.e. on or before December 31).

MTIHUD will publicly disclose the Program audit report on its Ministry website. The World Bank will similarly publicly disclose the said audit report. This is in line with the Bank's Access to Information Policy.

II. OBJECTIVE OF THE AUDIT

The objective of the audit of the Program Financial Statements (PFSs) is to enable the auditor to express a professional opinion on the financial position of the program at the end of each fiscal year based on PFS, and on funds received and expenditures incurred for the relevant accounting period.

The program accounting system, the chart of accounts (SCOA), and other GOK books of account provide the basis for preparation of the PFSs by the program implementing agency and are established to reflect the financial transactions in respect of the program. The implementing agency maintains adequate internal controls and supporting documentation for transactions.

III. PREPARATION OF ANNUAL PROGRAM FINANCIAL STATEMENTS

Responsibility for preparation of the program financial statements including adequate disclosures is that of the implementing agency.

The implementing agency MTIHUD will prepare the PFSs in accordance with International Public Sector Accounting Standards (IPSAS) cash basis of accounting.

The auditor is responsible for forming and expressing an independent opinion on the program financial statements. Accordingly, the auditor will carry out the audit of the program in

accordance with the International Standards on Auditing (ISA), as promulgated by the International Federation of Accountants (IFAC). As part of the audit process, the auditor may request from the implementing agency written confirmation concerning representations made in connection with the audit

IV. SCOPE OF THE PROGRAM AUDIT

As stated above, the audit of the program will be carried out in accordance with ISAs and will include such tests and auditing procedures as the auditor will consider necessary under the circumstances. Special attention should be paid by the auditor as to whether:

- I. All program financing has been used in accordance with the World Bank FM Policies and Guidelines (for IPF component 1), and GOK financial laws, policies, regulations and procedures (for P4R component 2), with due attention to economy and efficiency, and in line with program objectives;
- II. Goods, works and services financed have been procured in accordance with the relevant Bank and government laws, procedures, policies and regulations.
- III. All necessary supporting documents, records, and accounts have been maintained in respect of all program activities.
- IV. Bank and National laws and regulations have been complied with, and that the financial and accounting procedures approved for the program.
- V. Financial performance of the program is satisfactory.
- VI. Assets procured from program funds exist and there is verifiable ownership by the implementing agency or beneficiaries in line with the government policy and procedures.
- VII. Inappropriate and questionable expenditures included in the program financial statements are identified and separately noted in the audit report.
- VIII. Review of areas deemed to have material audit risk.
- IX. Any debarred firms have been granted contracts under the program.
- X. As appropriate, audit reviews will include selected on-site field visits of program sites at county level on a sample risk-based approach.

In complying with International Standards on Auditing (ISAs), the auditor is expected to pay particular attention to the following matters, among others:

- a) **Fraud and Corruption:** Consider the risks of material misstatements in the program financial statements (PFSs) due to fraud as required by ISA 240 - The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements. The auditor is required to identify and assess these risks (of material misstatement of the financial statements) due to fraud, obtain sufficient appropriate audit evidence about the assessed risks; and respond appropriately to identified or suspected fraud;
- b) **Laws and Regulations:** In designing and performing audit procedures, evaluating and reporting the results, consider that non-compliance by the implementing agency with laws and regulations may materially affect the financial statements as required by ISA 250 - Consideration of Laws and Regulations in an Audit of Financial Statements;
- c) **Governance:** Communicate audit matters of governance interest arising from the audit of financial statements with those charged with governance of an entity (implementing agency) as required by ISA 260 - Communication of Audit Matters with those Charged with Governance.
- d) **Risks:** In order to reduce audit risk to an acceptable low level, determine the overall responses to assessed risks at the financial statement level, and design and perform further audit procedures to respond to assessed risks at the assertion level as required by ISA 330 - The Auditor's Procedures in Response to Assessed Risks.

V. PROGRAM FINANCIAL STATEMENTS (PFSs)

The auditor will verify that the PFSs have been prepared in accordance with the agreed accounting standards and give a true and fair view of (or present fairly, in all material respects) the financial position of the program at the relevant date, and of program resources and expenditures for the fiscal year ended on that date

The Program Financial Statements (PFSs), in an agreed format, should include:

- a) A statement of actual funds received, separately showing government and external sources of funds, and of the actual expenditures incurred;
- b) The statement of funds received and expenditures incurred will include: (i) budgeted figures; (ii) comparative figures for the previous fiscal years; and (iii) cumulative receipts and expenditures;
- c) A summary of the principal accounting policies that have been adopted, and other relevant explanatory notes; and
- d) A statement of material assets acquired or procured and liabilities to date with program funds.

As an Annex to the IPF PFSs (component 1), the auditor should ensure that a reconciliation is included of the amounts shown as “received by the Program from each external financiers”, with those shown as being disbursed by each of the external financiers.

VI. AUDIT REPORTS

In respect of each fiscal year under audit, the auditor will issue an opinion on the Program financial statements (PFSs). For the IPF PFS, the auditor will also issue audit opinion on the management of the funds in the Designated bank account (DA).

The financial statements, including the audit report, management letter and management responses should be submitted to World Bank no later than six (6) months after the end of the fiscal year to which the audit relates.

VII. MANAGEMENT LETTER

In addition to the audit report, the auditor will prepare a Management Letter, in which the auditor will:

- a) Give comments and observations on the accounting records, systems and controls that were examined during the course of the audit;
- b) Identify specific deficiencies or areas of weakness in practices, systems and controls, including payroll and PSP controls, and make appropriate recommendations for improvement;
- c) Communicate matters that have come to the auditor’s attention during the audit which might have a significant impact on the implementation of the program;
- d) Give comments on the extent to which past and present outstanding issues/qualification issues have been addressed;
- e) Give comments on previous audits’ recommendations that have not been satisfactorily addressed or implemented; and
- f) Bring to the recipient’s attention any other matters that the auditor may consider pertinent for improved program implementation.

Ideally, the Management Letter should also include ‘Management Responses’ from the implementing agency to the issues highlighted by the auditor.

VIII. ACCESS TO INFORMATION

1. The auditor will have unimpeded access to all legal documents, correspondences, accounting records and supporting documents, and any other information associated with the program and deemed necessary by the auditor.
2. The auditor will also obtain confirmation of amounts disbursed and outstanding from all external financiers of the program.
3. In addition, the auditor will also seek and obtain independent confirmatory information from all other critical third party participants in program implementation, including the financial intermediaries (payment service providers).

Environmental & Social Safeguards Compliance Audit of KUSP funded projects

Terms of Reference for consultancy services

Introduction

The Kenya Urban Support Program (KUSP) will assist the Government of Kenya in operationalizing its National Urban Development Policy (NUDP) and achieving medium term planning goals in the urban sector. The KUSP will provide three sets of inputs (or disbursement windows).

- Window 1: Support to the national government for establishing and strengthening the institutional and policy framework for urban management, supporting the management and administration of urban finances, and providing backstopping for urban planning, urban infrastructure delivery and for the provision of basic urban services
- Window 2: Support to county governments level for the formulation of urban development plans, for the establishment and operation of urban institutional arrangements (charters, boards, administrations, and the like), and for the initial preparation of urban infrastructure investments
- Window 3: Support to urban boards and administrations (through their respective county governments) for financing infrastructure investments in urban areas. The Urban Development Grants (UDGs) would be used to finance a range of infrastructure projects, defined by an eligible investment menu as per the Project Documents (Project Appraisal Document, Project Integrated Document). Investment projects would be of a minimum size (indicatively US\$ 0.5 million), so as to maximize strategic or transformative impact and avoid fragmentation. Eligible investments would be limited to a sub-set of infrastructure items, which either underpin key urban service functions or improve connectivity and economic facilities.

The proposed menu of investments includes but not limited to the following: water and sewerage reticulation, waste management (liquid and solid), storm water drainage, connectivity (roads, non-motorized traffic and street lights), urban social and economic infrastructure, and fire and disaster management projects. Investments financed by UDGs will exclude high risks projects Category A projects (projects that have significant negative environmental and social impacts that are sensitive, diverse, or unprecedented).

Environmental and Social Systems Assessment

KUSP will be financed through a hybrid of the Investment Project Financing (IPF) (for Window 1) and Program for Results (PforR) instruments (for Windows 2 & 3). As part of programme preparation an Environmental and Social Systems Assessment (ESSA) was undertaken with the aim to review the capacity of existing government systems to plan and implement effective measures for environmental and social impact management and to determine if any measures would be required to strengthen them as per the requirement of the PforR Financing Policy. The assessments were carried out through a comprehensive review of relevant government policies, legislation, institutional roles and capacities, program procedures, and assessment of the available capacity in all 47 Counties of the Republic of Kenya to implement the existing systems consistent with Bank PforR Financing Policy.

The ESSA was to ensure consistency with the six “core principles” outlined in paragraph 8 of the World Bank’s PforR Financing Policy in order to effectively manage Program risks and promote sustainable development. The six principles are:

- i. *Core Principle 1: General Principle of Environmental and Social Management:* Promote environmental and social sustainability in the Program design; avoid, minimize, or mitigate adverse impacts, and promote informed decision-making relating to the Program’s environmental and social effects
- ii. *Core Principle 2: Natural Habitats and Physical Cultural Resources:* Avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources resulting from the Program
- iii. *Core Principle 3: Public and Worker Safety:* Protect public and worker safety against the potential risks associated with: (i) construction and/or operations of facilities or other operational practices under the Program; (ii) exposure to toxic chemicals, hazardous wastes, and other dangerous materials under the Program; and (iii) reconstruction or rehabilitation of infrastructure located in areas prone to natural hazards
- iv. *Safety Core Principle 4: Land Acquisition:* Manage land acquisition and loss of access to natural resources in a way that avoids or minimizes displacement, and assist the affected people in improving, or at the minimum restoring, their livelihoods and living standards
- v. *Core Principle 5: Indigenous Peoples and Vulnerable Groups:* Give due consideration to the cultural appropriateness of, and equitable access to, Program benefits, giving special attention to the rights and interests of the Indigenous Peoples and to the needs or concerns of vulnerable groups
- vi. *Core Principle 6: Social Conflict:* Avoid exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes.

In analyzing programs for consistency with the sustainability principles in Program for Results financing Policy, the ESSA was intended to ensure that Projects supported by PforR operations are designed and implemented in a manner that maximizes potential environmental and social benefits, while avoiding, minimizing, or otherwise mitigating environmental and social harm.

Objectives of the Consultancy

The objective of this assignment is to assess, evaluate and ascertain individual sub-project’s compliance with the relevant National systems in regard to Environmental and Social safeguards.

The Consultant is expected to amongst others

- i. establish likely gaps (institutional, operational, policy) in preparation and implementation of safeguards tools;
- ii. identify and document any negative impacts that may have arisen as a result of the project activities;
- iii. establish number of affected persons (PAPs) and nature of negative impacts where applicable and recommend appropriate mitigation measures;
- iv. propose appropriate guidelines and safeguards monitoring tools to be applied in future projects to improve compliance and performance.

The consultant is expected to undertake the assignment in close liaison with the beneficiary urban area authorities and adequately consult all the relevant stakeholders including government agencies.

Scope of the assignment

This assignment shall be limited to sub-projects in all urban areas where UDG funded projects have been undertaken.

The consultant will prepare a list of UDG investments either completed, under implementation or planned; large or small, under the project and determine whether the sub-projects have met the minimum safeguard requirements as defined in the PforR six (6) core principles.

In particular, the consultant will assess whether (but not limited to the following):

- Environmental screening for all investments were applied prior to the selection and/or in parallel with the respective urban area project identification/ feasibility study;
- Environmental assessments (EAs) were conducted along with preparation of environmental management plans (EMPs) for investments as determined by the screening and government regulations;
- Integration of ESMPs into detailed engineering design, bid and contract documents prior to award of works;
- Whether the initial screening, social impact assessments, baseline census surveys were conducted to assess likely displacement and/or relocation of persons; permanent and/or temporary;
- Establish whether any of the investments called for land acquisition and/or led to loss of property and assets, or interfered with livelihood activities. If yes, were ARAPs prepared, reviewed, disclosed, and implemented? ;
- How many persons were affected and what is the magnitude of impact to the PAPs on all the projects. How many of them were documented in the census? How many were not captured in the census;
- If the ARAPs were not prepared what measures were put in place to handle the PAPs? What compensation, livelihood restoration and other compensation was offered? ;
- If ARAPs were prepared and not implemented and reasons if no implementation were done
- If county governments were responsible for implementation of Safeguards and ARAPs, was it clear how this could be undertaken?;
- Were county government trained on ARAP implementation and the social safeguards as per PforR? ;
- What PAPs stakeholder's engagement measures were put in place? ;
- Did individual investments and implementation arrangements include the outline of grievance redress mechanisms?
- Does the UDD and beneficiary Counties KUSP teams have the appropriate expertise and capacity to manage adverse environmental and social impacts of the investments?
- What was the safeguards support for KUSP within the PMU as compared - determine gaps /challenges and how to resolve them;
- What is the proposed institutional capacity to enhance Urban Development Department and the County Governments to handle environmental and social safeguards? ;
- Recommend appropriate interventions for enhancement of Safeguards compliance on future projects by the Department of Urban Development.

Clustering of Urban Areas

For the purpose of this assignment, the participating urban areas have been grouped into the following clusters:

Cluster 1: XXX - To be inserted

Cluster 2: XXX - to be inserted

Cluster 3: XXX - to be inserted

Scheduling / Timetable

It is expected that the work will start shortly after the signing of the contract, potentially in (XXXX - Insert Date). It is envisaged that the assignment will be completed within Three (3) months from commencement date.

Outputs and Deliverables

At the end of the assignment, the Consultant is expected to submit a concise report and analysis of the status as per the ToR above, including a matrix reflecting all the UDG investments, completed, under implementation and planned with the status of safeguard performance.

The Consultant will submit Four (4) Hard Copies and two (2) Soft Copies of each report in the table below and at the time indicated.

S/No	Description of Report	When to be Submitted after commencement of services
1	Inception Report	Two weeks
2	Report on consultations with the beneficiary Urban areas authorities, relevant stakeholders and government agencies.	Six weeks
3	Draft Safeguard Compliance status report with project implementation status, safeguards instruments required, prepared/not prepared, implemented/not implemented as well as resultant negative impacts (where applicable), number of PAPs, and appropriate mitigation measures as per the ToR above	Ten Weeks
4	Final Safeguard Compliance report as described above and including recommendations for future projects, safeguards implementation guidelines and monitoring tools/templates	Twelve weeks

Team composition and Qualifications

The suitable Consultant must possess the following minimum qualifications:

- i. Extensive experience and knowledge of environmental and social impacts of urban projects.
- ii. Familiarity and experience of the World Bank's PforR safeguards principles and their application.
- iii. Familiarity of the Government of Kenya's policies and procedures regarding land acquisition, resettlement and environmental policies
- iv. Ability to analyze data and write concise reports in English.
- v. Good understanding of structures and operations of County Governments

Team Composition

It is envisaged that the Consultant's Team will have a core team of the following appropriately qualified experts:

- a) Team Leader (Environmental or Social Development expert)
- b) Environmentalist
- c) Civil / Infrastructure Engineer expert
- d) Health and Safety expert

Staff months

It is estimated that the required staff input is 14 staff-months. This is only indicative.

Accountability and Reporting relationships

The Ministry of Transport, Infrastructure, Housing and Urban Development is the Client for these services. The Principal Secretary, State Department of Housing and Urban development, has appointed the Programme Co-ordinator for KUSP to whom the Consultant will report on contractual matters.

The KUSP Programme Co-ordinator will also be responsible for all payments to the consultants once the work has been accepted and cleared for payment by the Component Leader for Component 3.

The Consultants will report on technical matters to the Component Leader for Component 3 and will work in liaison with his team, ensuring compliance with agreed assignment work plan and involvement of Government Officers wherever practical.

Institutional arrangements

The Consultant shall be responsible for the provision of all the necessary resources to carry out the assignment and shall make arrangements for the establishment of office, supporting office equipment and furniture, vehicles, accommodation, utilities, communications, stakeholder consultations and any other required resources.

Inputs provide by the client

The following documentation relevant to the assignment and Scope of Work will also be provided by the Client:

- a) KUSP Project Appraisal Document (PAD)
- b) Project legal document
- c) Environmental and Social Systems Assessment (ESSA)
- d) KUSP Program Operation Manual (POM)
- e) KUSP Quarterly Environmental and Social safeguards management reports

Any other documents deemed relevant and necessary for the assignment.

Financial Management Procedures manual

Presented as a separate (stand alone) document

Checklist

Environmental and Social Impact Assessment

Applicable for all projects funded under window-3 (UDG)

1. Introduction

Once, through the consultative process (involving the citizen fora, the county assembly as well as the views and ideas of CEC members and county staff) a short-list of potential projects for funding under the Urban Development Grant has been identified, all these shortlisted projects have to be assessed, in different phases of project preparation, using environmental and social impact assessment checklists.

The objective of this Annex is to provide a guidance to be applied for Kenya Urban Support Program (KUSP) to ensure that the projects undertaken by the program avoid or minimize impacts to humans and the environment during the implementation stages. This annex also outlines the roles and responsibilities of each stakeholder in order to effectively manage program safeguards risks and promote sustainable development.

The annex outlines the roles and responsibilities of the implementing agency, counties, NEMA, and other agencies at each stage of the project cycle. Where the systems were identified weak, measures to strengthen the gaps have been integrated in the Annex to manage any environmental and social risks of the Program.

This annex should also be used with reference to other applicable sections of the POM, especially with regards to Public Participation and Consultation, Grievance Redress mechanisms, and Monitoring and Evaluation Guidelines.

2. Program Environmental and Social Risks

This annex outlines a framework for conducting Environmental and Social Assessments of each of the KUSP sub-projects. Given the significant geographic dispersion of the participating counties, different scale of proposed investments, concentration of focus on urban areas, and the cumulative potential environmental and social impacts associated with the program, the overall environmental and social risk of the program is **significant**.

The program will exclude the following: -

- a) high risks projects Category A projects (projects that have significant negative environmental and social impacts that are sensitive, diverse, or unprecedented);
- b) Where compulsory acquisition is employed, more than 10 households in total, both titled and untitled (informal settlers/squatters), physically displaced on any one sub-project;
- c) On any given sub-project, more than 200 informal vendors physically relocated;
- d) Projects that are likely to adversely create or exacerbate conflict within communities or neighboring counties; and
- e) Projects that have significant impacts on vulnerable and/or marginalized/indigenous groups.

3. Environmental Assessment and Management Guidelines

The environmental impact assessment for the Program will be conducted in accordance with the general environmental impact assessment guidelines and sector EIA guidelines set out in the Third Schedule to the Regulations under the EMCA Act 1999 (Amended 2015).

3.1 Environment mitigation measures

While no high-risk projects will be approved under the program, the screening process will include criteria to exclude certain categories of projects as well as projects that would include high risks and significant negative impacts that are sensitive, diverse, or unprecedented on the environment and/or affected people. The screening procedure will be done during the sub-project appraisal (mainly at identification stage) and will be guided by the NEMA's Environment and Coordination Act (EMCA 1999) and its amendment (2015). This exercise will be carried out by the counties in coordination with State Department of Housing and Urban Development (SDHUD) and NEMA.

Other than requiring that all project investments under the KUSP to be subjected to screening and further environmental analysis after screening, the program has developed a set of principles that will act as measures to minimize project risks at the concept level.

The principles that will apply to all investments as a mechanism for mitigating adverse environmental impacts shall include exclusion of projects that are likely to:

- Generate irreversible environmental impacts on affected parties and third parties;
- Impact on natural habitat;
- Impact on physical and cultural resources; and
- Cause serious occupational or health risks.

Further, post screening assessment and audit will be undertaken annually and during the mid-term review by an independent party to carry out the Safeguards Audit will be recruited to ensure that all selected projects meet the outlined criteria.

3.2 Screening Procedures for Environmental impacts

Screening for all infrastructural investments under KUSP will first be done at project identification stage to determine which projects are eligible under the KUSP as describes in section 3.1 above. After the projects are deemed eligible, more screening will be done at preparation/design stages to prepare the required instruments as required by the laws and legislation under the Kenya Constitution.

The screening guidelines are as described below.

3.2.1 Screening of proposed KUSP Investments as part project Identification

The program shall screen all projects during identification stages to determine whether these projects qualify under the KUSP for UDG disbursements. The screening process will result in either the sub-project qualifying to go to the next stage of preparation and design or not. Review of the screening at the identification stages shall be approved by NCPT to determine if the projects are eligible for UGD funds or not.

Annex 1 at the end of this POM provides a sample template that will be used in determining eligibility of projects that will be funded under the KUSP.

3.2.2 Screening of proposed KUSP Investments as part project preparation and design

Screening at preparation stage will be done to determine which projects will require a full or partial impact assessment. Screening will be undertaken for all projects, regardless of the category of risk. Screening of these investments will commence as soon as the specific investment details are known, including nature and scope, proposed location and area, among other parameters.

The screening process could result in any of the following determination; -

- i. Full ESIA
- ii. A stand-alone ESMP or
- iii. No further environmental study

NEMA will be the institution designated to make a decision on whether a full scale ESIA is necessary for proposed investments or otherwise. A project screening report will be submitted to NEMA for review in order to make this decision, which forms the part of the project screening. Appendix 2 of this annex provides a sample template to be used for screening at this stage (The template can however be changed to add more screening features depending on the nature of the projects).

Project screening reports for proposed investments under KUSP will be prepared by environmental and social County focal points in beneficiary Counties, with support from NEMA registered Lead EIA and audit experts, then submitted to the NEMA for further determination.

It must be noted that the KUSP will not support projects of high risks as categorized under the amended EMCA (2015), often projects under Schedule 2. However, some projects under Schedule 2 may not require an EIA, for example roads infrastructure projects that are simple and require less machinery and intensive civil works and are related to rehabilitation, re-carpeting and so forth. NEMA can allow Counties to go ahead with the civil works without a full EIA study if there are no major environmental or other economic or socio-cultural impacts expected. EIA regulations allow for approval of proposed projects at the project report stage and have been effectively used by NEMA to grant EIA license to low/medium risk projects without requiring a full EIA study to be done.

3.2.3 Preparation of ESIA Project report

If the project screening calls for a full ESIA study, as a minimum, Regulation 7(1) of Legal Notice 101 under EMCA 1999 (amended 2015) stipulates content of Project Reports to include but not limited to the following;-

- The nature of the project;
- The location of the project including the physical area that may be affected by the project's activities;
- The activities that shall be undertaken during the project construction, operation, and decommissioning phases;
- The design of the project;
- The materials to be used, products, by-products, including waste to be generated by the project and the methods of disposal;
- The potential environmental impacts of the project and the mitigation measures to be taken during and after implementation;
- An action plan for the prevention and management of possible accidents during the project cycle;
- A plan to ensure the health and occupational safety of the workers and neighboring communities;

- The economic and socio-cultural impacts to the local community and the nation in general;
- The project budget;
- Any other information that the approving Authority may require.

3.3 Expected results from the Environmental Safeguards Guidelines

The expected results from the environmental safeguard guidelines are shown in

Table 3.1.

Table 3.1: The Environmental Assessment Process: Objectives and the Expected Results

Stage	Objective	Expected Result
Screening at Project identification	Determine whether a project is eligible for UDG funds	Approval or rejection of identified projects Identification of Eligible projects
Screening at Project design stage	Determine whether a project complies with the KUSP eligible projects Identification of the potential environmental impacts and extent of assessment	Screening report of identified projects Assessment requirements for the eligible projects (ESMP or full ESIA)
Development of Environmental and Social Management Plan (ESMP)	Preparation and development of an ESMP for projects that are determined to have minimal environmental impacts	ESMP project document to be used in managing environmental and social risks of the project
Environmental Assessment	Study aimed at carrying out a full ESIA study: <ul style="list-style-type: none"> ○ Identifying potential impacts ○ Determining their magnitude / extent /likelihood, etc ○ Determining how significant or acceptable these impacts are (by comparing against standards or acceptability criteria) ○ Recommending ways of preventing, minimizing, reducing, compensating, managing and monitoring unacceptable impacts. 	ESIA Project report Approval and license (or rejection) of ESIA report by NEMA

3.4 Roles and responsibilities for Environmental Risks Management

The roles and responsibilities of each party involved in the management of the environmental risks are described in the Table 3.2 below.

Table 3.2: Roles & Responsibilities - implementation and management of Environmental Risks

#	Role	Implementation agency responsibility	Institutional responsibility
1.	Screening at Project identification	Environmental and Social Officer (ESO) in respective Counties, Environment and Social Specialist at NPCT	County government, Implementing Agency, NPCT
2.	Screening at Project design	Environmental and Social Officer (ESO) in respective Counties, Environment and Social Specialist at NPCT	County government, Implementing Agency, NPCT

#	Role	Implementation agency responsibility	Institutional responsibility
3.	Development of ESMP	Environmental and Social Officer (ESO) in respective Counties, Environment and Social Specialist at NPCT	County government, NEMA
4.	Preparation of ESIA Project report	Environmental and Social Officer (ESO) in respective Counties, Environment and Social Specialist at NPCT, Consultant appointed by implementing agency or county	County government, NEMA
5.	Implementation of ESMP	Environmental and Social Officer (ESO) in respective Counties, Environment and Social Specialist at NPCT, supervising consultant	NEMA, County Government, Implementing Agency, NPCT
6.	Monitoring of ESMP	Independent consultant	NEMA, NPCT

4. Social Assessment and Management Guidelines

The adverse social risks associated with the program have been identified as significant due to the geographic dispersion of the participating counties, different scale of proposed investments, projects focus on urban areas, and the cumulative potential physical and economic displacement of persons by the program.

The main social risks to be screened for the projects will include but not limited to ;-

- a) Physical displacement due to land acquisition,
- b) Loss of livelihood due to economic displacement,
- c) Loss of access to natural resources, property and assets,
- d) Exacerbation of Social conflict,
- e) Impact on vulnerable and/or marginalized groups.

4.1 Social mitigation measures

Temporary or permanent land take, and adverse impacts on livelihoods, including those that may occur through restriction of access to natural or physical resources will be excluded from the Program. Land acquisition option of willing buyer - willing seller will be explored before land acquisition is implemented for the construction and expansion of infrastructure works, and any acquisition will be guided by the National Land Commission (NLC) procedures.

On social conflict, the ESSA concluded that there is little risk on the Program itself that would be a source of social conflict. However, some cases of social conflict (such as dispute on the location/selection of the projects, project benefit sharing, labour influx, pre-existing or historical social issues in host communities, etc.), may occur during project implementation between communities and/or Counties. The design of the Program includes measures to minimize social conflict which includes the development and/or strengthening of consultation of the vulnerable and marginalized groups, and grievance redress mechanisms with the communities and Counties.

This annex included measures to be used by the National Program Coordination Team (NPCT) and the Counties to screen sub-projects on potential conflicts between the communities and counties. The program would not undertake any investments where social conflict is anticipated between or within communities or Counties. See Appendix 1 and 2 for screening items and process.

The principles that will apply to all investments as mechanisms for mitigating adverse social impacts shall be **exclusion** of projects that:

- Where compulsory acquisition is employed, more than 10 households in total, both titled and untitled (informal settlers/squatters), physically displaced on any one sub-project;
- On any given sub-project, more than 200 informal vendors physically relocated;
- Likely to adversely create or exacerbate conflict within communities or neighboring counties; and
- Have significant impacts on vulnerable and/or marginalized/indigenous groups

To screen out for these exclusions, the Program will rely on existing country legislation and systems and the guidelines provided in this manual, which will include a rigorous sub-project screening process to be done by the NPCT and the Counties.

Post screening assessment will be undertaken annually by an independent party to carry out the Safeguards Audit will be recruited to ensure that all minimum standards have been met.

4.2 Screening Procedures for Social impacts

Based on initial project information (goals, components, activities, outputs, and description of the project area), and initial screening identified during the project preparation stages, the projects will be assessed whether resettlement or impacts to marginalized and/or vulnerable groups is likely to occur.

The screening guidelines are as described below.

4.2.1 Land Acquisition Guidelines

Land acquisition process will be guided by procedures as set out by the Constitution of Kenya, the Land Act (2012), and facilitated by the National Land Commission (NLC).

Land acquisition option of willing buyer - willing seller will be explored before compulsory land acquisition is implemented for any UDG funded project. One condition that needs to be fulfilled for this arrangement is that the price is reasonable, both in the eyes of the seller and in the eyes of the buyer.

The government's right to acquire land compulsorily will only be used where it is unavoidable. Instances where compulsory acquisition may be unavoidable include, but are not limited to, road rehabilitation, construction of new roads, water and sewerage systems.

Where compulsory acquisition is to be employed, evidence must be obtained and documented in the project file that attempts were made to acquire land via the marketplace. In case there are alternatives, a compelling reason why alternative land, available in the market, could not be found and purchased must be documented.

In cases where the Counties will purchase land through a willing-seller willing-buyer approach or in cases of voluntary land donation, the Counties will need to document the agreement between the two parties. For all cases of land acquisition, compulsory or not, the actual purchase and agreement will require approval of the urban board and endorsement of the county assembly. Minutes of urban board and/or county assembly meeting approving the purchase and/or start of the process of compulsory land acquisition, shall be added to the project file. These approvals and endorsements shall be obtained prior to detailed project design.

Land issues shall be resolved and will not have any encumbrances for any sub-project under KUSP, whether land is occupied informally or formally. This will require a formal document such as letter/agreement from the owner with the county government, or documentation

showing proof of land ownership from the county land office. The table below shows the land acquisition requirements under KUSP.

Regardless of the nature of land acquisition, displacements requirements as described in Section 4.2.2 below shall apply.

Table 4.1: Land Acquisition Requirements under KUSP

Type of acquisition	Acquisition Requirements
Willing buyer - willing seller	<ul style="list-style-type: none"> • Rationale / need for land purchase • Consideration of alternative options • Independent assessment reports indicating the market value of the land, based on recent similar sales in the area (the land valuer has a right to hire their own independent valuer for comparison); • Minutes of the negotiations
Compulsory acquisition	<ul style="list-style-type: none"> • Same as for above, providing evidence that willing buyer - willing seller option failed. • A memo arguing the case that no alternatives (of willing buyer and willing seller) are available. • Justification of compulsory acquisition, to be done, once approved and endorsed, according to land acquisition procedures as set out by the National Land Commission • Approval by Urban board/ county assembly

4.2.2 Physical and Economic Displacement Guidelines

To mitigate against social risks brought about by displacement of project affected persons (PAPs), no physical displacement of more than 10 households will be allowed for any sub-projects under the KUSP. In addition, the maximum number of economically displaced PAPs has been limited to a maximum of 200 informal vendors per sub-project.

Before approval of the sub-project as prescribed in the UDG guidelines, any economic displacement will require an Abbreviated Resettlement Action Plan (ARAP) or to be prepared, approved by the relevant authorities (including the NEMA, NLC, UDD), and publicly disclosed. The following table shows the displacement requirements under KUSP.

Table 4.2: Displacement Requirements under KUSP

Type of Displacement	Displacement Requirements
Physical Displacement	<ul style="list-style-type: none"> • Where compulsory acquisition is employed, more than 10 households in total, both titled and untitled (informal settlers/squatters), physically displaced on any one sub-project; • Incorporated in the ARAP
Economic Displacement	<ul style="list-style-type: none"> • Not allowed for more than 200 informal vendors for a sub-project; • Incorporated in the ARAP

4.2.3 Social Conflict Guidelines

The design of the Program will include measures to minimize social conflict such as the development and/or strengthening of consultation of the vulnerable and marginalized groups, and grievance redress mechanisms with the communities and Counties.

This manual includes measures to be used by the National Program Coordination Team (NPCT) and the Counties in screening sub-projects on potential conflicts between the communities and counties.

The program will not undertake any investments where social conflict is anticipated between or within communities or Counties. The Program aims to include vulnerable and marginalized groups into the Program design, which shall include consultation with these groups during project selection and monitoring, and the development of the appropriate social accountability systems (including GRM mechanisms).. This shall be done as per the Kenyan Constitution which has put in place robust requirements for citizen participation process as developed under the Kenya Devolution Support Program (KDSP).¹ Any project that will be determined to have significant negative impacts on vulnerable and/or marginalized/indigenous groups during the screening process shall not be eligible for funding under the program.

Table 4.3: Social conflicts Requirements under KUSP

Type of Social conflict	Social Conflict Requirements
Social conflict between or within communities or Counties	• Not allowed under KUSP
Social impacts on Vulnerable and or marginalized groups	• Not allowed under KUSP

See Appendices 1 to 3 of this annex for the sample screening checklists for the above guidelines.

4.3 Expected results from the Social Safeguards Guidelines

The expected results from the Social safeguard guidelines are shown in the table below.

Table 4.4: The Social Assessment Process: Objectives and the Expected Results

Stage	Objective	Expected Result
Screening at Project identification	Determine whether a project is eligible for UDG Identification of the potential social impacts and extent of assessment Determine if there is need for land acquisition, the type and number of displacements - physical or economic displacements	Identification of Eligible projects Approval or rejection of identified projects Determine if there is need for land acquisition Type of displacement and number of PAPs
Screening at Project design stage	Determine whether a project complies with the KUSP eligible projects Identification of the potential social impacts and type of assessment required	Screening report of identified projects Assessment requirements for the eligible projects (Social Assessment (SA) report, ARAP
Development of respective reports (SIA report, ARAP)	Preparation and development of relevant Social Impact Assessment reports Resettlement Action Plan: to identify the number of physical and economically displaced persons, including their entitlement matrix for any loss of assets and property due to the project location. Social Impact Assessment: to determine if the project causes a negative impacts on marginalized and/or vulnerable groups living in the project area of influence	SIA, ARAP project documents to be used in managing social risks of the project. Approved reports by NLC, NCPT, WB, NEMA county office Approved reports by NCPT, WB, affected communities / groups

¹ <http://www.devolutionplanning.go.ke/?p=1632>

4.4 Roles and responsibilities for Social Risks Management

The roles and responsibilities of each party involved in the management of the Social risks are described in the table below.

Table 4.5: Roles and Responsibilities for implementation and management of Social Risks

Role	Implementation agency responsibility	Institutional responsibility
Screening at Project identification	Social Officer in respective Counties, Social Specialist at NPCT	County Government, Implementing Agency, NPCT
Screening at Project design	Social Officer in respective Counties, Social Specialist at NPCT	County Government, Implementing Agency, NPCT
Preparation of ARAP/SA	Consultant appointed by implementing agency or county /Social Officer/s in respective Counties, Social Specialist at NPCT	County Government, Implementing Agency, NPCT, WB
Implementation of ARAP/ SA	Consultant appointed by implementing agency or county /Social Officer/s in respective Counties, Social Specialist at NPCT	County Government, Implementing Agency, NPCT
Monitoring of ARAP/ SA	Independent consultant	NPCT

5. Public Consultation and Participation

Public consultation and participation has been strengthened through the devolution process under the Kenya Constitution, which has put in place robust requirements for citizen participation in project and budget development process. Public consultation and participation shall be part of the ESIA and ARAP process, and shall be done according to the requirements of the Kenyan Constitution and requirements under EMCA 1999 (amended 2015). The program shall use the published public participation guidelines that have been developed for KDSP under the Bank support.²

6. Monitoring of Safeguards Performance

The KUSP monitoring objective is to ensure that the borrower implements the appropriate environmental and social safeguards policies which;

- a) Promote environmental and social sustainability in the Program design; avoid, minimize, or mitigate adverse impacts, and promote informed decision-making relating to the Program's environmental and social effects;
- b) Avoid, minimize, or mitigate adverse impacts on natural habitats and physical cultural resources resulting from the Program
- c) Protect public and worker safety against the potential risks associated with the projects during construction and operation
- d) Manage land acquisition and loss of access to natural resources in a way that avoids or minimizes displacement and assist the affected people in improving, or at the minimum restoring, their livelihoods and living standards;
- e) Gives due consideration to the cultural appropriateness of, and equitable access to, Program benefits, giving special attention to the rights and interests of the Indigenous Peoples and to the needs or concerns of vulnerable groups; and
- f) Avoids exacerbating social conflict, especially in fragile states, post-conflict areas, or areas subject to territorial disputes

² <http://www.devolutionplanning.go.ke/?p=1632>

The counties and NEMA will play a critical role in monitoring the implementation at sub-project level. The Independent consultants appointed by MoTIHUD will supervise, monitor and review the implementation of safeguards plans during and after project execution.

Monitoring and reporting will take place at both national and county levels of government. The Safeguard specialists in the participating county governments will be part of the county-level PIT. They will be responsible for reporting the progress of safeguards implementation for all infrastructure investments done using the Program funds. They will also facilitate access to key data required for the APA, the findings of which will be the key source of information to track the indicators presented in the Safeguards results framework.

The specialists will also prepare progress reports twice a year (a midyear report and an annual report) containing agreed actions and implementation progress and transmit them to the SDHUD. Safeguards specialists at the SDHUD will consolidate such input into a single progress report for presentation to the PSC, NPCT, and the World Bank for review and comment. The specialists at the SDHUD will provide training and back-stopping support to staff at the county/urban levels to ensure that the reports are timely, comprehensive, and accurate.

The SDHUD will integrate monitoring activities for safeguards performance into the disbursement plan agreed between the counties and MoTIHUD. Monitoring results must show that safeguard actions planned within any disbursement phase have been completed and compliance certified before subsequent disbursements can be approved.

The monitoring activities of the KUSP will be conducted using the following methods:

- Review of monitoring reports prepared by the counties and by independent consultants appointed by the MoTIHUD;
- On-site reviews by the NPCT safeguards team to confirm information provided by the county and the independent consultants is accurate

The counties will receive subsequent disbursements if they meet requirements of the DLIs as set out in KUSP Safeguards Action Plans.

7. Grievance Redress Mechanisms

Grievance Redress Mechanisms that will be set up under the Kenya Devolution Support Program (KDSP) will be used for the KUSP program that will allow for transparent, timely and efficient redress process. The program shall carry out dissemination and awareness raising activities amongst the SDHUD, Counties, and the implementing agencies on the grievance redress mechanisms procedures.

8. Contractual Obligations - Pre/Post tender

Before tendering, the borrower must ensure that contractual obligations to safeguard environmental and social issues are included in the tendering and contract documents. The key areas to be covered in the pre and post tender documentation includes;

- Compliance with key environmental, social and labour obligations;
- Contractor's capacity to implement safeguards requirements;
- Gender and prevention of sexual and gender based violence;
- Occupational Health and Safety

See Appendices 4 and 5 of this manual for the sample screening checklists for the above guidelines.

Appendix 1: Project Identification Screening checklist

File to be opened for each tentative sub-project

Name of the project:				
Location of project:				
Brief description of the project:				
PROJECT IDENTIFICATION STAGE - PRIOR TO DETAILED PROJECT DESIGN				
Questions to be answered (boxes to be ticked) prior to projects being added to the shortlist or included in a plan or budget:		NO	YES	MAYBE
Assess possible adverse environmental impact				
1.	Could the project lead to irreversible environmental impacts for the beneficiaries of the project or for third parties?			
2.	Could the project If implemented have a negative and irreversible Impact on the natural habitat?			
3.	Could the project If implemented have a negative Impact on any cultural resources?			
4.	Is there scope for any concerns that the project, during implementation, or once completed, may cause unmitigable serious occupational or health risks?			
Assess possible adverse social impact				
5.	Does the project require physical displacement of households?			
6.	Does the project require economic displacement of more than 200 persons?			
7.	Is the project likely to create or exacerbate conflict within communities or neighbouring counties?			
8.	Is there a possibility that the project would have significant negative impact on vulnerable and/or marginalized and/or indigenous groups?			
9.	Does the project require acquisition of land ?			
<ul style="list-style-type: none"> • If any of the questions 1 to 8 above is answered with 'Yes', the project can NOT be funded under UDG - and should not progress to a detailed design phase. • If question 9 is answered with 'yes', special procedures need to be follow as outlined in this POM • For every question answered with 'Maybe' the situation need to be further investigated before taking a decision to go for full design and before including it in any budget for UDG funding. • Projects for which all answers 1-9 are 'No' - could go for detailed design. 				
Filled by : Name : _____ Position : _____ Date : __/____/____		Signature: _____		
Verified by : Name : _____ County social and environmental safeguards officer Date : __/____/____		Signature: _____		

Appendix 2: Project Preparation Screening checklist

Name of the project:	
Location of project:	
Brief description of the project:	

#	Answer if the Project ?	✓ Tick one Yes / No	
Environmental Impacts			
1.	Adversely affect natural habitats nearby, including forests, rivers or wetlands?		
2.	Require large volumes of construction materials (e.g. gravel, stone, water, timber, firewood)?		
3.	Use water during or after construction, which will reduce the local availability of groundwater and surface water?		
4.	Affect the quantity or quality of surface waters (e.g. rivers, streams, wetlands), or groundwater (e.g. wells, reservoirs)?		
5.	Be located within or nearby environmentally sensitive areas (e.g. intact natural forests, mangroves, wetlands) or threatened species?		
6.	Lead to soil degradation, soil erosion in the area?		
7.	Create waste that could adversely affect local soils, vegetation, rivers and streams or groundwater?		
8.	Create pools of water that provide breeding grounds for disease vectors (for example malaria or bilharzia)?		
9.	Involve significant excavations, demolition, and movement of earth, flooding, or other environmental changes?		
10.	Affect historically-important or culturally-important site nearby?		
11.	Require land for its development, and therefore displace individuals, families or businesses from land that is currently occupied, or restrict people's access to crops, pasture, fisheries, forests or cultural resources, whether on a permanent or temporary basis?		
12.	Result in human health or safety risks during construction or later?		
13.	Involve inward migration of people from outside the area for use of services or other purposes?		
14.	Increase tension/ conflict or disputes among or within communities?		
15.	Affect indigenous people, or be located in an area occupied by indigenous people?		
16.	Be located in or near an area where there is an important historical, archaeological or cultural heritage site?		
17.	Disposal of bush clearance residue may cause spreading of invasive species?		
18.	Has potential to introduce a non-native animal or plant species?		
19.	Involve directly or indirectly handling of veterinary drugs and vaccines?		

#	Answer if the Project ?	✓	Tick one Yes / No
Social Impacts Assessment			
20.	Does the project require acquisition of land ?		
21.	Does the project require physical displacement of households?		
22.	Does the project require economic displacement of persons (less than 200 persons)?		
23.	Is the project likely to create or exacerbate conflict within communities or neighbouring counties?		
24.	Is there a possibility that the project would have significant negative impact on vulnerable and/or marginalized and/or indigenous groups?		
25.	Result in a significant change/loss in livelihood of individuals?		
26.	Cause increased settlement or degradation of surrounding areas?		
27.	Adversely affect the livelihoods and /or the rights of women?		
Public Participation and Consultations and Grievance Redress Mechanisms			
28.	Has not extensively consulted and included beneficiaries and project affected persons in the selection, planning and project benefits?		
29.	Maintenance and management responsibilities have not been defined and accepted by concerned parties?		
30.	Has setup Grievance Redress Mechanisms?		

Filled by : Name : _____ Position : _____ Date : __/___/___	Signature:
Verified by : Name : _____ County social and environmental safeguards officer Date : __/___/___	Signature:

If Yes to any of the above, then a ESIA project report or Environmental and Social Management Plan (ESMP) should be developed, submitted and approved by NEMA as described in the POM as per annex 3 below. In addition, other necessary instruments i.e. Abbreviated Resettlement Action plan (ARAP) should be developed and approved by NLC and other relevant authorities/stakeholders as described in the POM.

Appendix 3: Contents of Abbreviated Resettlement Action Plan (ARAP)- A Template

This template provides the recommended contents of a ARAP document to be prepared for any physical or economic displacement of the sub-projects under KUSP.

1. **Socio-economic profile:** A summary of the existing demographic, social, economic and other characteristics of households and communities that are directly and indirectly affected by the Project. The profile establishes a context to define issues and needs for resettlement planning and serves as a baseline for monitoring the outcomes of the implementation of ARAPs. The profile is based on socio-economic data collected during the PAP census, the results of community consultations and other socio-economic surveys conducted.
2. **Scope of land acquisition and resettlement:** A description and tables summarizing all categories of impacts and the households, institutions, businesses, etc. that are affected by the Project. This information summarizes the Inventory of Losses (IOL).
3. **Legal and policy framework:** A summary of the updated gap analysis of national legal frameworks and identification of Project-specific measures to address conflicts between these frameworks and World Bank policies.
4. **Entitlement and compensation matrix:** Definition of eligibility; identification of the entitlement policies for compensation and other assistance for each category of impact; specification of special assistance for vulnerable PAPs; description of the methods of valuation used for affected land, structures, trees and other assets.
5. **Public participation, consultation and grievance redress:** A summary of the scope and results of consultations and disclosure activities during ARAP preparation and other measures to ensure the participation of PAPs; specification of the scope, objectives and methods for consultation, participation and disclosure mechanisms to be incorporated into the implementation of the ARAP; identification of grievance redress policies and procedures.
6. **Compensation packages:** A summary of the compensation packages, allowances and other measures to be provided to PAPs, disaggregated by types of losses for the communities and districts in the Project area.
7. **Relocation options:** A summary of options to relocate housing, businesses and other displaced structures, and to assist PAPs to establish at new sites; alternative relocation sites and site development plans, as relevant; measures to integrate relocated PAPs into host communities; arrangements to ensure tenure security; timetables and costs.
8. **Income restoration and rehabilitation strategies:** A summary of income restoration programs and modalities, including investments, training and other options; special measures to support vulnerable groups and/or to address gender issues.
9. **Institutional arrangements:** A summary of the roles and responsibilities of agencies at the national, district and local levels; the role of NGOs, women's organizations and other groups in ARAP implementation; institutional capacity building requirements and measures. Included in this section will be an institutional assessment of the capacities of national, district and local authorities to carry out and coordinate their mandated responsibilities for resettlement, and identification of institutional strengthening and capacity building requirements.
10. **Resettlement cost estimates and budget:** An estimated budget, by item and cost, for all resettlement costs including planning and implementation, management and administration, monitoring and evaluation and price and physical contingencies; mechanisms to adjust cost estimates and compensation payments for inflation and currency fluctuations; sources and flow of funds for resettlement.
11. **Implementation schedule:** detailed, time bound implementation schedule for all key resettlement and rehabilitation activities; discussion of linkages between resettlement implementation and initiation of civil works, in the case of the project and ancillary works, and between the filling of the reservoir, the implementation of relocation and rehabilitation strategies and the displacement of PAPs.
12. **Monitoring and evaluation:** A summary of roles, responsibilities and activities for internal monitoring by national, district and local authorities, including indicators to measure inputs, outputs and outcomes; identification of recruitment procedures, methodology and verifiable indicators for external monitoring.

Appendix 4: Pre-Tendering Process checklist
 File to be opened for each tentative project

PRIOR TO PRE-TENDERING			
Questions to be answered (boxes to be ticked) prior to tendering for infrastructural works		NO	YES
1.	Are appropriate standard operating procedures and construction management practices to prevent or mitigate any environmental and social impacts during project implementation (i.e. construction) clearly stipulated in the tender documents?		
2.	Are requirements for mitigation of occupational or health risks taken care of in the bidding document?		
3.	Ensure the team skills in the terms of reference clearly include key staff qualified and experienced in managing similar projects, and demonstrated capacity to manage social and environmental issues		
Only in case the above are answered with a 'YES' can the project file be forwarded for tendering			
	Filled by : Name: _____ Position : _____ Date : ___/___/___	Signature:	
	Verified by : Name : _____ County social and environmental safeguards officer Date : ___/___/___	Signature:	
	Verified by : Name : _____ NCPT safeguards specialist Date : ___/___/___	Signature:	

Appendix 5: Contract Signing Process checklist

PRIOR TO CONTRACT SIGNING			
Questions to be answered (boxes to be ticked) prior to launching the tender for the works		NO	YES
1.	Are all the safeguards instruments (ESIA, ARAP, SIA, etc) completed/approved?		
2.	Has the contractor prepared contractor's environmental and safety management plan (CESMP) ?		
3.	Has the contractor prepared contractor's health and safety management plan ?		
4.	Are requirements for mitigation of occupational or health risks taken care of in the bidding document?		
5.	Has a code of conduct been established for contractor employees and contract workers, acknowledging a zero-tolerance policy towards child labor and child sexual exploitation (with contractor/RE/implementing agency held accountable for enforcement)?		
6.	Are there adequate mechanisms in place to protect local vulnerable population (especially women/minors) from risks associated with influx of workers (harassment, underage sex)		
All the above questions have to be answered "YES" before execution of the contract			
	Filled by : Name: _____ Position : _____ Date : __/____/____	Signature:	
	Verified by : Name : _____ County social and environmental safeguards officer Date : __/____/____	Signature:	
	Verified by : Name : _____ NCPT safeguards specialist Date : __/____/____	Signature:	

Risk Management Register

Description and Template

Introduction

A Risk Register is a tool that helps to track issues and address problems as they arise in the course of project/programme implementation. It is usually shared with project/programme stakeholders, allowing those involved in the project or programme to be kept aware of issues and providing a means of tracking the response to issues. It can be used to flag new project or programme risks and to make suggestions on what course of action to take to resolve any issues.

All projects and programmes face risks at one time or another. Having a Risk Register in place simply provides a better means of responding to problems as they arise. The Risk Register is there to help with the decisions making process and enables managers and project stakeholders to handle risk in the most appropriate way. A risk does not need to be a threat to the project or programme, but an issue that can arise; if effectively managed, it should not prevent the project/programme from attaining its goals and objectives.

The Risk Register is a document that contains information about:

- The identified project risks
- A assessment of the risk severity (i.e. its impact if it occurs);
- The likelihood of occurrence e.g. Medium (31-70%) or H-High (>70%); and
- A listing of the possible and preferred solutions to be applied.

By presenting the above information in a spread-sheet is an easy way to enhance awareness of risks and to be pro-active in addressing them.

Setting up a Risk Register would start by recording all active risks along with the date the risk was identified, the date information is updated, the target for the risk to be minimized and the closure date. Other information to include in the register are a description of the risk, the severity of risk, its impact, possible response action and the current status of risk.

Creating a Risk Register helps to be proactive in managing the programme/projects and handling any risks associated with them. Any issues that are likely to impact upon the success of the programme or project(s) and the timely completion should be categorised as risk. Strategies to handle this, such as a risk register, will help to prevent risks from becoming issues that may cause significant delays or even lead to the programme or project failing.

On the next page a template for a risk register is provided. Risks registers should be kept for KUSP as a whole (by UDD) as well as for each of the UDG funded projects (by the manager of the urban boards/administration).

Risk Management Register (template, to be kept in a spread-sheet)

#	Date raised	Description of the risk	Likelihood of occurrence Medium/ High	Impact (scale 1 - 3)	Severity (likelihood x impact)	Mitigation strategy/strategies	Progress on action	Status
1.								
2.			Low (green)	Low (green)	Low (green)			Closed
3.			Medium (amber)	Medium (amber)	Medium (amber)			Open
4.			High (red)	High (red)	High (red)			
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								