



REPUBLIC OF KENYA

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS

REGULATORY IMPACT STATEMENT

FOR

THE URBAN AREAS AND CITIES (GENERAL) REGULATIONS, 2022

MARCH, 2022

This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of 2013).

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1 ABBREVIATIONS

CoK	-	Constitution of Kenya, 2010
CGA	-	County Governments Act, 2012
CSP	-	County Spatial Plan
DRA	-	Distress for Rent Act (Cap 293)
EMCA	-	Environmental Management and Coordination Act, 1999
KUSP	-	Kenya Urban Support Programme
KNBS	-	Kenya National Bureau of Statistics
LCA	-	Land Control Act (Cap 302)
LTA	-	Landlord and Tenant (Shops, Hotels and Catering Establishments Act (Cap 301)
MTP	-	Medium Term Plan
NEMA	-	National Environmental Management Authority
NUDP	-	National Urban Development Policy, 2016
PLUPA	-	Physical and Land Use Planning Act, 2019
RIA	-	Regulatory Impact Assessment
RIS	-	Regulatory Impact Statement
RRA	-	Rent Restriction Act (Cap 296)
SIA	-	Statutory Instruments Act, 2013
UACA	-	Urban Areas and Cities Act, 2021
UACB	-	Urban Areas and Cities Boards
SDGs	-	UN Sustainable Development Goals, 2015
UDG	-	World Bank Urban Development Grants
USD	-	United States Dollars

2 INTRODUCTION

2.1 REGULATORY-MAKING AUTHORITY AND THE LEGAL MANDATE OF THE MINISTRY

The Constitution of Kenya (CoK 2010) ushered in a paradigm shift in the structure of governance and management of the urban areas and cities by requiring the enactment of national legislation to provide for the criteria for classifying areas as urban areas and cities, the principles for governance and management of urban areas and cities and the participation of residents in management of urban areas.

Pursuant to the Constitutional requirement under Article 184(1), Parliament enacted the Urban Areas and Cities Act, 2011 (UACA) as the principal legislation guiding the governance and management of urban areas and cities in Kenya.

Section 53(1) of the Act obligates the Cabinet Secretary to make regulations, for the better carrying out of the provisions of the Act, or for prescribing anything which is required to be prescribed there under.

In exercise of the above powers, the Cabinet Secretary has prepared the Urban Areas and Cities (General Regulations). The proposed Regulations are intended to give full effect to the provisions of the UACA.

The Statutory Instruments Act, 2013 (STI), is the primary legislation in Kenya, governing the development of subsidiary legislation. It provides for a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments.

The Act requires regulation-making authorities to adopt high standards in the drafting of statutory instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users; undertake appropriate consultation before making statutory instruments and establish improved mechanisms for parliamentary scrutiny of statutory instruments.

Additionally, Sections 6 and 7 of the Act require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a Regulatory Impact Statement about the instrument.

This Regulatory Impact Statement (RIS) is therefore prepared to fulfil the requirement of section 6 of the SIA.

2.2 SPECIFIC REQUIREMENTS OF THE STATUTORY INSTRUMENTS ACT

The Statutory Instruments Act, No. 23 of 2013 is the legal framework governing the conduct of Regulatory Impact Statement (RIS) in Kenya. Sections 6 and 7 require that *if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.*

The Act further sets out certain key elements that must be contained in the RIS namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

Section 5 of SIA requires that a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

2.3 WHAT IS A REGULATORY IMPACT STATEMENT?

Regulatory Impact Statement is a systematic policy tool used to examine and measure the likely benefits, costs, and effects of new or existing regulations. A RIS is an analytical report to assist decision makers to arrive at an informed policy decision. As an aid to decision making RIS includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit. Typically, the structure of a RIS should contain the following elements:

- (a) title of the proposal;
- (b) the objective and intended effect of the regulatory policy;
- (c) an evaluation of the policy issue;
- (d) consideration of alternative options;
- (e) assessment of all their impacts distribution;
- (f) results of public consultation;
- (g) compliance strategies, and

(h) processes for monitoring and evaluation¹.

RIS is usually conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation to assess whether the regulation is likely to achieve the desired objectives. RIS promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, the RIS should confirm whether a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. RIS therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

¹ Regulatory Policy Division Directorate for Public Governance and Territorial Development: Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers. OECD, 2008

3 PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS

3.1 BROAD OBJECTS OF THE URBAN AREAS AND CITIES ACT

The general objective of the Urban Areas and Cities Act, 2011 (as amended) is to actualize Article 184 of the Constitution of Kenya which provides for the governance and management of urban areas and cities. Section 3 of the Act on particular, sets out the objects and purpose of the Act to include the establishment of a legislative framework for classifying areas as urban areas and cities, governance and management of urban areas and cities and for participation by residents in the governance of urban areas and cities.

Specifically, the Act articulates the modalities of classifying cities, municipalities, towns and market centers. In the classification, emphasis is on the ability of the referenced area to provide for certain listed services and the existence of named services to be provided by the National Government. However, notwithstanding the enumerated thresholds, the Act does provide for the conferment of a special purpose city to an area due to its significant cultural, economic and political importance. Similarly, an exemption does extend to the headquarters of a county where it is amenable to the conferment of a special municipality despite not meeting the threshold. The procedure for the delineation of boundaries for the respective urban areas and cities, has also been outlined and the players in this process named.

The governance and management of urban areas and cities are premised on set principles which includes recognition and respect of constitutional status of county governments amongst others. Their management is vested in the county governments but administered on their behalf by the Boards (cities and municipalities) and Committees (towns and market centers). The Boards have been assigned functions (with requisite delegation) and have powers to enable them deliver services to the residents including through operational sectors, service delivery entities, partnerships and joint ventures with the necessary approval. The Act does articulate the qualifications and removal process of the chairperson and members of the Boards.

Participation by residents in the governance of urban areas and cities is very deliberate under the Act with participatory governance structures running all through. The Citizen Fora has been duly anchored in the Act to provide a forum for the citizens to participate in the affairs of an urban area or a city. The Act also articulates the rights and duties of the residents for instance in the decision making process including creating appropriate conditions for the envisaged participation.

Thus, objective of the Urban Areas and Cities (General) Regulations is to fully operationalize the Act in terms of section 53 thereof. Specifically, the Regulations are

geared to provide clarity by unpacking the Act for ease of implementation and coherence in running of urban areas and cities for optimal benefits to the residents. In essence, the scope of the Regulations covers all the aspects of the Act, those to be prescribed and also where clarity and certainty is to inbuilt.

3.2 REALIZATION OF KENYA'S NATIONAL URBAN DEVELOPMENT POTENTIAL

The link between urbanization and development is undisputable as is characterized by the relationship between urbanization and per capita incomes. Urban areas and cities constitute important nodes of transformation towards sustainable development and catalysts for economic productivity, inclusion, innovation and creativity. Indeed, it is in urban areas and cities where health, education, manufacturing and infrastructure facilities are conveniently concentrated.

Kenya's urbanization is dominated in the five largest urban areas and cities namely: Nairobi, Mombasa, Kisumu, Nakuru and Eldoret which together account for the bulk of urban population and contribute about 70% of the GDP. Smaller towns are growing up more rapidly and this calls for an urgent and sustained intervention on the governance and management of urban areas and cities.

In order to fully realize Kenya's urban development potential, the following measures have been put in place:

- (a) Article 184 of the Constitution required Parliament to enact legislation to provide for the governance of urban areas and cities. This requirement was fulfilled through the enactment of the Urban Areas and Cities Act, 2011.
- (b) Kenya's Vision 2030 highlights rapid urbanization as one of the four challenges facing the country. The first Medium Term Plan (MTP) (2008-2012) emphasized on promoting sustainable urbanization by creating well planned, vibrant and efficient urban centres.
- (c) Kenya continues to map, domesticate and localize the UN Sustainable Development Goals, (UN SDGs) 2015 which has, as one of the specific goals, to "*make cities inclusive, safe, resilient and sustainable*".
- (d) Kenya is part of the New Urban Agenda agreed upon at the Habitat III conference in Quito, Ecuador, in October 2016. The agenda will guide urbanization process for the next 20 years and lay the groundwork for policies and approaches that will extend, and impact, far into the future.
- (e) National Urban Development Policy, 2016 seeks to strengthen urban governance and management, development planning, urban investment, delivery of social and physical infrastructure throughout the country. The long term goal of the policy is to guide urbanization by providing a framework for sustainable urban development, accelerate economic development, eradicate poverty, promote equity and help achieve Vision 2030.

However, despite these high level initiatives, urbanization process in Kenya is still faced with the following challenges:

- (a) UACA, the enabling legislation for governance and management of urban areas and cities is not being fully embraced and implemented at the county level.
- (b) Lack of properly synchronized governance structures between governance and management of urban areas and county governments creating a perception that they are parallel governance structures.
- (c) Lack of defined structures for resident participation in governance of urban areas and cities.
- (d) There is no legal and policy framework to guide the establishment and management of metropolitan areas in Kenya.
- (e) Inadequate service delivery due to inadequate budgetary allocations at the county level, lack of accountability mechanisms and inadequate economic planning.
- (f) Historically, urban areas and cities status were conferred without supporting resource base.
- (g) Non-existence of requisite instruments e.g. City and Municipal Charter to support full implementation of UACA.

The proposed Regulations seek to address these challenges in order to ensure full implementation of the UACA.

3.3 SCOPE OF THE PROPOSED REGULATIONS

The scope of the proposed Regulations is to:

- (a) facilitate neighbourhood associations to play a participatory role in the management of urban areas and cities;
- (b) provide the parameters of delineation of urban areas and cities boundaries;
- (c) prescribe matters required to be prescribed under the Act;
- (d) establish mechanisms for more effective service delivery;
- (e) streamline the role played by county governments in the governance and management of cities; and
- (f) generally, facilitate full implementation of UACA.

3.3.1 General Objective

The general objective of the proposed Regulations is to give full effect to the Urban Areas and Cities Act No. 13 of 2011 by providing a framework to ensure governance and management provisions are implemented.

3.3.2 Specific Objectives

Specifically, the proposed Regulations seek to:

- (a) facilitate the proper coordination of neighbourhood associations;
- (b) provide for modalities for the delineation of boundaries for urban areas;
- (c) facilitate the classification of urban areas and cities;
- (d) design city and municipal charters;
- (e) promote delivery of services; and
- (f) promote governance and management of urban areas and cities.

4 BACKGROUND AND CONTEXT OF THE PROPOSED REGULATIONS

4.1 BACKGROUND

The enactment of UACA was intended to give effect to Article 184 of the Constitution; by providing for the governance and management of urban areas and cities. Specifically, the Act provides the criteria of establishment and classification of urban areas cities and sets out the principles of governance and management.

The Act was assented to on 27th August, 2011 and was expected come into force in 2013 after the first general election under the CoK. However, between 2013 and 2017 county governments did not make significant effort to implement the provisions of the Act resulting into a situation where the urban institutions were not established. Since its enactment in 2011, no regulations have been developed.

4.2 CONTEXT

In 2017, the State Department for Housing and Urban Development under the Kenya Urban Programme which is the implementing strategy for the National Urban Development Policy commenced the Kenya Urban Support Programme (KUSP) in partnership with the World Bank. KUSP was a USD 300 Million facility which largely aimed at supporting counties in the establishment of Urban Institutions as well as development of key urban infrastructure and services. Kenya Urban Support Program (KUSP) is a six-year World Bank and Government of Kenya funded program. The program aims at strengthening urban management and improvement of urban infrastructure in selected urban areas in forty-five (45) counties excluding Nairobi City and Mombasa. The Program Development Objective (PDO) is to establish and strengthen urban institutions to deliver improved infrastructure and services in participating counties in Kenya. The program became effective on 11th January, 2018. It is a hybrid program combining Investment lending and performances results. Through KUSP, some 59 municipalities were established in 2018 and support for infrastructure development offered through the Urban Development Grants (UDG).

According to the 2019 Kenya Population and Housing Census, over 300 urban centres registered a population of 2000 and above, while a study commissioned by the State Department for Housing and Urban Development estimated the number of urban centres at over 1000. Going by the census data, only 59 out of a possible 300 urban centres have been established translating to only 19% of Kenya's urban institutions.

It is evident from the foregoing that urbanization process generally and the implementation of the Urban Areas and Cities Act specifically has been below the expected levels. This is partly due to the complexity of the current urban institutional

arrangement especially coming from the previous regime under the local government act and also due to the absence of the regulations to facilitate UACA's full implementation.

Section 53(1) of the Act provides that the Cabinet Secretary may make regulations, for the better carrying out of the provisions of this Act, or for prescribing anything which is required to be prescribed under this Act.

5 RATIONALE AND JUSTIFICATION FOR THE PROPOSED REGULATIONS

5.1 WHY HAS UACA NOT BEEN FULLY EMBRACED?

It is instructive that from 2013 when the UACA came into force, no urban areas were established until 2018 when the KUSP facilitated the establishment of some urban areas. While these efforts have so far enabled the establishment of 59 municipalities, the process of establishing urban institutions is far from accomplished.

5.1.1 Historical development of Cities in Kenya

Nairobi municipality was granted City status in March 1950, vide a Royal Charter of Incorporation. After independence in 1963, Nairobi became the capital of the Republic of Kenya. The CoK designates the Nairobi city as a county government while section 6 of UACA declares that Nairobi is the capital city of Kenya and that it shall be governed and managed in the same manner as a county government.

Section 60 of UACA further deems the cities of Mombasa and Kisumu to have been established under the Act. The section provides thus:

“Notwithstanding any other provisions of this Act, the municipalities of Mombasa and Kisumu existing immediately before the commencement of this Act shall be deemed to be cities established under this Act”.

In December 2021, Nakuru municipality was conferred city status making it Kenya's fourth city after Nairobi, Mombasa and Kisumu. Section 7 of UACA provides that the President may, on the resolution of the Senate, confer the status of a city on a municipality that meets the criteria set out in section 5, by grant of a charter in the prescribed form. It is notable that no Regulations prescribing a city charter have been gazetted.

5.2 DOES UACA NEED TO BE AMENDED?

While the proposed Regulations will go a long way in realizing full implementation of UACA, there may be need in future to amend the Act to provide for gaps that may not be addressed under the regulations. These include the following:

5.2.1 Governance and Management of metropolitan areas

Major cities like Nairobi, Mombasa and Kisumu have grown beyond the administrative boundaries of their respective counties. Given that governance and management of these urban areas are urban based, there is need for a framework to provide for their special governance structures. UACA does not provide for governance and management of metropolitan areas. There is therefore the need to amend UACA or enact a separate legislation to provide for this gap.

5.2.2 Criteria for classification of cities and urban areas

The considerations to be taken into account in classifying an area as a city, municipality or town is set out under the First Schedule of UACA. The considerations are however not clear. The Schedule for instance requires that for an area to be classified as a city, it must have an airport, an air strip and an international airport. Taking a municipality like Thika which qualifies for a city status on the basis of population size and other criteria, it is not clear whether an airport will be necessary taking into account the proximity with the capital city.

5.2.3 Composition of Board of cities and municipalities

The inclusion of the county executive committee member as a member of the Board of cities and municipalities creates conflicts of interests since these Boards are expected to exercise delegated powers from the same officer. There are also instances where the Boards are expected to report to the county executive committee member. This arrangement is not neat and may occasion conflicts.

5.2.4 Harmonizing UACA and PLUPA

Under UACA Urban Boards and Committees are designated as the Planning Authorities while under PLUPA, the County Executive Committee Members in charge of planning is the designated Planning authority. There is need to harmonize the two pieces of legislation.

5.2.5 Composition of Ad-hoc committee

The chairperson of an Ad-hoc committee for delineation of urban boundaries should not be restricted to the IEBC representative since the institution may not nominate their representative in good time. There should also be included a provision for appointment of a vice-chairperson to ensure the assignment continues in absence of the chairperson.

5.3 WHAT WOULD THE REGULATIONS ACHIEVE?

It is therefore necessary to fully implement UACA. It is appreciated that substantive matters will need to be addressed through amendments to the Act. There are however fundamental concerns which will be achieved through the gazettment of the proposed Regulations. These include:

5.3.1 Compliance with the National Urban Development Policy

The National Urban Development Policy is the national strategy for urban development which aims to “secure, well governed, competitive and sustainable urban areas” that contribute to the realization of the broader national development goals articulated in the Constitution of Kenya 2010, Vision 2030 and Kenya’s international commitments. The Urban Areas and Cities Act in Section 3(2) requires county government to comply with the National Urban Development Policy in the implementation of the Act. The proposed regulations provide the framework for monitoring compliance with the National Urban Development Policy.

5.3.2 Proper delineation of boundaries of urban areas

The boundaries of urban areas under UACA do not necessarily coincide with political and administrative boundaries as was the case under the repealed Local Government Act. Boundaries under UACA simply demarcate service and planning jurisdictions for the respective urban institutions. Currently, apart from Nairobi and Mombasa which are city counties, all other cities and urban areas do not have officially gazetted boundaries. There are some Counties who have initiated the process of delineation of boundaries of their urban areas under the Act, however this was undertaken without the benefit of the proposed regulations which propose to provide the key parameters to be applied during the delineation of boundaries of urban areas.

The variance between the number of urban areas captured during the census and the number captured during the study by State Department for Housing and Urban Development is because the KNBS has not been given the official gazetted boundaries of all urban areas.

5.3.3 Delegation of functions by county governments to Boards

Under Sections 20 and 21 of UACA, county governments are envisaged to delegate functions to the Boards. So far only a handful of Counties have formally delegated functions to the Boards of their municipalities. Even where such delegation has been undertaken, the functions have not been matched with the requisite resources to enable them to effectively execute the delegated mandate. The proposed regulations will guide the process of delegation of functions as well as the instruments of transfer of these functions to the urban entities.

5.3.4 Urban Planning

Given the ambiguity created by lack of reference to UACA by the Physical and Land Use Planning Act, in designating the proper planning authority, it is necessary to assert the role of the Urban Boards and Committees as the Planning Authorities with regard to Urban Planning. Of essence, even under PLUPA, the County Executive Committee Members in charge of planning should delegate the role of urban planning to the urban entities in compliance with UACA. These regulations will provide a guide on the urban planning process.

5.3.5 City and Municipal Charters:

Sections 7 and 9(1) of UACA require that upon conferment of city or municipal status, a charter in the prescribed form shall be granted. While Kenya has 59 municipalities so far established, their establishment are based on a prototype charter developed under KUSP since the required regulations under UACA were not yet in place. The proposed regulations are expected to set out the requirements of a charter including a description of boundaries, powers, management structures, tax and fees collections and borrowing powers. The proposed regulations will also prescribe the form of the city and municipal charters.

5.3.6 Establishment of Service Entities and resident participation

There various spheres of municipal services which would best be handles by dedicated service entities wholly owned by the city/municipality. Such service includes but not limited to waste management, urban transportation systems and services just to mention a few. UACA in sections 32(2) and 33 provides for establishment of service entities and partnerships and joint ventures respectively. Section 35 provides a window for objection to a partnership or joint venture by a resident. These provisions require regulation for their effective operationalization

5.3.7 Classification and the attendant services

Sections 5, 9(3),10(2) and Schedule 1 provides the criteria for classification of cities, municipalities and towns. Some of the provisions under these sections and the schedule require to be qualified or unpacked, for instance in the First Schedule, “street lighting” is listed as a service requirement in a city. From this listing it isn’t clear what this means, the regulations may expound by providing that at least a certain percentage (say 30 percent) of all the streets in the city should be covered by street lighting.

5.3.8 Citizen Forum:

Article 184(1)(c) calls for UACA provide for participation by residents in the governance of urban areas and cities. The regulations thus provide for a framework for citizens within the city/urban areas to be clustered to facilitate their participation in the governance of the urban areas

5.3.9 Procedure for removal of a Board Chair from office

Section 18(2) provides that a resident of a city or municipality may file a writing petition with a board for the removal of a chairperson or vice chairperson. Section 18(3) provides that the procedure for the removal or petition for removal of a chairperson or vice chairperson under subsections (1) and (2) shall be provided by regulations

5.3.10 Decentralization of functions in the capital city

Section 6(4) provides that the capital city shall decentralize its functions and the provisions of its services to the extent that it is efficient and practicable to do so. There

is need for the regulations to guide on the form of decentralization that will facilitate efficient service delivery

5.4 CONCLUSION

Based on the above, it is clear that the proposed regulations are necessary in order to fully implement the UACA.

6 POLICY AND LEGAL FRAMEWORK FOR THE PROPOSED REGULATIONS

6.1 LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED URBAN AREAS AND CITIES REGULATIONS

An evaluation of the legal and policy frameworks relating to urban areas and cities management is intended to assess whether there is a legal basis for developing the proposed Regulations. It is also intended to bring out the context and legal environment within which the proposed regulations are being developed. Regulatory processes should be structured in a way that all regulatory decisions respect the principles of rule of law. The regulations should be aligned to the Constitution and the ratified treaty obligations. In addition, they should complement other legal requirements and ensure statutory harmony with related legislation.

6.2 CONSTITUTIONAL PROVISIONS RELATING TO URBAN AREAS AND CITIES

6.2.1 Constitutional dictates on urban areas and cities

The constitution provides that the urban areas and cities shall be governed separately. This is to allow improved management, growth, and employment creation in the urban areas and cities.

Article 184 states that—

(1) National legislation shall provide for the governance and management of urban areas and cities and shall, in particular—

(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.

(2) National legislation contemplated in clause (1) may include mechanisms for identifying different categories of urban areas and cities, and for their governance.

Under the Fourth Schedule to the Constitution, the national government is responsible for general principles on land planning and the co-coordinating of planning by counties while the county governments are responsible for county planning and development.

Article 10 on national values and principles of governance provides for sharing and devolution of power, participation of the people, inclusiveness, good governance and sustainable development.

6.3 RELEVANT LEGAL FRAMEWORKS

6.3.1 The Urban Areas and Cities Act, 2011

UACA the parent Act upon which the Regulations under consideration are based. The Urban Areas and Cities Act deals with the establishment and governance of urban areas.

Section 11 of the Act provides principles for the governance of urban areas. These include:

- (a) recognition and respect for the constitutional status of county governments;
- (b) recognition of the principal and agency relationship between the boards of urban areas and cities and their respective county governments including—
 - (i) the carrying out by a board of such functions as may be delegated by the county government;
 - (ii) financial accountability to the county government; and
 - (iii) the governance by each board for and on behalf of the county government;
- (h) promotion of accountability to the county government and residents of the urban area or city;
- (i) institutionalized active participation by its residents in the management of the urban area and city affairs;
- (j) efficient and effective service delivery; and
- (k) clear assignment of functions.

Part II of the Act deals with classification of urban areas and provides that urban areas shall be classified into Cities, Municipalities or Towns based on criteria set out under the First Schedule to the Act. The criteria for classification include:

- (i) population;
- (ii) existence of urban area or city development plan;
- (iii) capacity to generate income for sustainability;
- (iv) prudent management;
- (v) effectiveness and efficiency in delivery of services;
- (vi) availability of infrastructural facilities such as roads; and
- (vii) capacity for effective waste disposal.

Section 13, 14 and 20 of the Urban Areas and Cities Act provides for the establishment and composition of urban Boards. Board composition in Cities: Not more than 11 members; 6 appointed through a competitive process by the County public service, 5 nominated by eligible groups.

Board composition in Municipalities: Not more than 9 members to manage Municipalities; 4 appointed through a competitive process by the County public service Boards and 5 nominated by eligible groups.

The groups eligible to nominate members to the board include:

- (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 urban areas and cities.

The Second Schedule provides for rights of residents to participate in the affairs of their city or urban area. These include the right to:

- (a) contribute to the decision-making processes of the city or urban area by written or oral submissions to the city or municipal manager or town administrator; and to receive prompt responses to their written or oral communications.
- (b) be informed of decisions of a board, affecting residents' rights and property, etc.
- (c) regular disclosure of the state of affairs of the city or urban area, including its finances;
- (d) the use and enjoyment of public facilities; and
- (e) have access to services which the city or municipality provides.

The Act places a responsibility on the Board to establish means by which residents can participate in the Board's affairs of the respective cities and urban areas.

6.3.2 [Physical and Land Use Planning Act, 2019](#)

This repealed the Physical Planning Act, Cap 286 and provides the framework on matters relating to land use development planning, development control, enforcement, and dispute resolution.

This Act provides for planning, use, regulation, and development of land. The Act seeks:

- (a) to ensure orderly physical and land use development;
- (b) to ensure optimal land use;
- (c) to ensure the proper execution and implementation of approved physical and land use development plans;
- (d) to protect and conserve the environment;
- (e) to promote public safety and health.
- (f) to promote public participation in physical and land use development decision-making;
- (g) to ensure orderly and planned building development, planning, design, construction, operation, and maintenance; and
- (h) to promote the safeguarding of national security.

The Act further provides that where the development involves the erection of a building, the county government will consider the following—

- i) the use of the building;
- ii) the sitting of the building within the plot;
- iii) the elevations of the building, plinth area, canopies and height of buildings;

- iv) the design, shape, civic design and facade and appearance of the building;
- v) the set back and the building line;
- vi) access to and parking on land which the building is to be erected;
- vii) loading bay;
- viii) density;
- ix) plot coverage.
- x) provision for rainwater harvesting facilities and water storage tanks in every building;
- xi) landscaping;
- xii) ventilation and lighting;
- xiii) infrastructure adequacy;
- xiv) environmental, health and cultural considerations; and
- xv) any other matter that a county government considers necessary for purposes of planning.

The Act further provides that where building plans submitted to a county government do not meet the required standard, a county government shall communicate the areas of improvement to the applicant who shall amend the buildings plans or drawings accordingly and resubmit to the county government.

The Act vests the power to undertake development control and grant development permission to the county governments which have the power within their areas of jurisdiction to—

- i) prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- ii) control or prohibit the subdivision of land;
- iii) consider and approve all development applications and grant all development permissions;
- iv) ensure the proper execution and implementation of approved physical and land use development plans;
- v) formulate by-laws to regulate zoning in respect of use and density of development;
- vi) reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical and land use development plans; and
- vii) consider and determine development planning applications made in respect of land adjoining or within reasonable vicinity of safeguarding areas.

6.3.3 The County Governments Act, 2012

Section 37 sets out the roles of the County executive committee in urban area or city planning as including:

- (a) monitoring of the process of planning, formulation and adoption of the integrated development plan by a city or municipality within the County;

- (b) assisting a city or municipality with the planning, formulation, adoption and review of its integrated development plan;
- (c) facilitating the coordination and alignment of integrated development plans of different Cities or Municipalities within the County and with the plans, strategies and programmes of national and County Governments; and
- (d) Taking appropriate steps to resolve any disputes or differences in connection with the planning, formulation, adoption or review of an integrated development plan.

Section 48 (1) enumerates the decentralized units in a county among them, the urban areas and cities. Sub Section 2 further provides that If the constituency or part of a constituency falls under urban areas or cities, that constituency or part of the constituency, as the case may be, shall be considered as falling under subsection (1).

6.3.4 Environmental Management and Coordination Act, 1999 (EMCA)

The Act is the national legislative framework on environmental coordination and establishes the National Environment Management Authority (NEMA) as well as the Environmental Management and Co-ordination (Waste Management) Regulations, 2006 which provide for guidelines, procedures and standards for the environmental governance to ensure compliance.

6.3.5 Public Finance Management Act

The PFMA is the national law guiding management of public finance. Sections 169 to 181 specifically provide the legal framework for Financial management in urban areas and cities.

6.3.6 Land Control Act (LCA)

Regulates transactions affecting agricultural land and establishes the Land Control Boards.

6.4 POLICY FRAMEWORKS

6.4.1 The National Urban Development Policy (NUDP), 2016

The National Urban Development Policy provides for a framework within which cities, towns and metropolitan regions will play a critical role in national socio-economic development. The aim is to strengthen governance, planning, urban investments, and delivery of social and physical infrastructure under a devolved system of governance that will see cities and counties become engines of growth and development. The long-term goal of the Policy is to reduce poverty and inequality and to make Kenya's urban areas productive, sustainable, livable, and inclusive

The Policy recommends for Identification and acquisition adequate land for urban development; and Formalization of land ownership in informal neighborhoods.

The NUDP seeks to create a framework for sustainable urban development in the country and addresses the following thematic areas: urban economy; urban finance; urban governance and management; national and county urban planning; land, environment and climate change; social infrastructure and services; physical

infrastructure and services; urban housing; urban safety and disaster risk management; and marginalized and vulnerable groups.

The Policy creates a framework for the planning, development and management of education and health facilities, and public open spaces, parks and recreational facilities, including sports amenities. Cities and urban areas are also characterized by poor physical infrastructure and services, making it difficult to deliver competitive and livable cities. The Policy has prioritized planning and development of the much-needed physical infrastructure and services for sustainable urbanization. In addition, in the face of rapid urbanization, informal settlements have come to epitomize housing in urban areas cities. On average, informal settlements cater for 60% of the total urban population. In response to fast growing demand for appropriate urban housing the Policy recommends mechanisms to deliver affordable housing of acceptable quality.

6.4.2 National Land Use Policy Sessional Paper No. 01 of 2017

The overall goal of the national land use policy is to provide legal, administrative, institutional and technological framework for optimal utilization and productivity of land related resources in a sustainable and desirable manner at national, county and community levels. The policy is premised on the philosophy of economic productivity, social responsibility, environmental sustainability and cultural conservation. Key principles informing it include efficiency, access to land use information, equity, elimination of discrimination and public benefit sharing.

The policy is cognizant of numerous factors that affect land use in Kenya which include geographic and ecological features, population distribution, social, historical, cultural, and economic factors. Other key factors are administrative, institutional and policy instruments, investment, urbanization, and land tenure. Key measures shall be taken by the government (both national and county) and all land users to ensure efficient, productive, and sustainable use of land, These include sound land use practices, conservation and enhancement of the quality of land and land-based resources and the proper management of demographic and health parameters.

6.4.3 National Housing Policy Sessional Paper No. 3 of 2016

The overall goal of the Housing Policy is to facilitate the provision of adequate shelter and a healthy living environment at an affordable cost to all socio-economic groups to foster sustainable human settlements. this will minimize the number of citizens living in shelters that are below the habitable living conditions. It will also curtail the mushrooming of slums and informal settlements especially in the cities and urban areas.

The specific goals are to develop an effective housing delivery system that aims at meeting the needs of the populace; and to establish a housing delivery system that maintains balance in the economic development and environmental sustainability of

communities. The overall objective of this policy is to implement the provisions of the Constitution on housing delivery and improving the living environment of Kenyans.

6.4.4 The National Spatial Plan (2015 – 2045)

The NSP proposes measures such as:

- (a) Alleviation of the wastage of land in informal settlement and encouraging of infill and mixed development;
- (b) Repossession of all illegally acquired land for roads infrastructure; and
- (c) Upgrading of slums.

6.4.5 National Slum Upgrading and Prevention Policy Sessional Paper No. 02 of 2016

The overall objective of this policy is to promote, secure and protect dignified livelihoods of the poor living and working in slums by strategically integrating them into the social, political and economic framework in line with the Constitution.

6.4.6 The National Land Policy (2009)

The Policy was developed with the overall goal to provide legal, administrative, institutional, and technological framework for optimal utilization and productivity of land related resources in a sustainable and desirable manner at National, County and community levels. In order to ensure efficient, productive and sustainable use of land, the Policy proposes measures to be taken by the National Government and County Governments such as sound land use practices.

The Policy also proposes the development of land use plans at both National and County levels with full participation of all stakeholders. The Policy recognizes the Constitutional mandate of the NLC in relation to land and land use and its principal responsibility for ensuring the sound implementation of planning policy.

6.5 CONCLUSION

The above analysis of the Constitutional, statutory and policy frameworks related to cities and urban areas bring out the following salient issues:

- (a) Urban areas and cities are constitutionally recognized as devolved units which should have special governance structures informed by good governance and sustainable development.
- (b) Management of urban areas should be informed by orderly planning, environmental concerns and effective land use practices.
- (c) Investments, service delivery and use of public resources should be effectively coordinated.
- (d) Governance and management structures should take into account the broad national government policies, laws and Kenya's international commitments.

7 PUBLIC PARTICIPATION AND CONSULTATIONS

Public Participation refers to the process by which citizens, as individuals, groups, or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives.²

It is a constitutional requirement that policy and law-making should be done in an open and transparent manner, with appropriate procedures for effective and timely input from professionals and persons affected by the policy instruments.

7.1 LEGAL BASIS FOR PUBLIC PARTICIPATION AND CONSULTATION

Participation of the people, inclusivity, transparency, and accountability are constitutional requirements whenever a State organ, public officer or other person applies or interprets the Constitution, enacts or applies any law, or makes or implements a public policy decision³. This requirement is premised on the sovereignty principle⁴ which vests all sovereign power to the people of Kenya. This power entitles the people to unfettered access to the process of making public decisions through their involvement.

Transparency of public finances and performance is ensured through rules, mechanisms, and capacities for sharing information on government programs, budgets, expenditures, and results with citizens.⁵ Participation mechanisms enable citizens to participate in setting budget priorities and monitor expenditures and assess service delivery performance. They also include feedback systems, which provide citizens with the opportunity to provide comments and grievances.⁶ Accountability mechanisms include both direct and indirect relationships, where service providers are sanctioned if they fail to meet an established standard.⁷

² Kenya Draft Policy on Public Participation, 2018 at pg. 6.

³ Constitution of Kenya, 2010: Article 10.

⁴ *Ibid*, Article 1.

⁵ Constitution of Kenya, 2010: Articles 35, 201 and 132; County Governments Act, 2012: Sections 94, 95 and 96; Public Finance Management Act, 2012, Section 207.

⁶ Constitution of Kenya, 2010: Articles 174, 201 and 232; County Governments Act, 2012: Sections 47, 91, 99 and 100; Public Finance Management Act, 2012: Sections 125, 128, 131 and 137; Urban Areas and Cities Act, 2011: Sections 21 and 22.

⁷ Constitution of Kenya, 2010: Articles 174 and 201; County Governments Act, 2012: Section 89.

The objects of devolution⁸ give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development. The values and principles of public service⁹ require the involvement of the people in the process of policymaking and include transparency and provision to the public of timely and accurate information.

Regarding the subsidiary legislation making process, the Statutory Instruments Act¹⁰ requires that the regulatory making authority shall undertake public consultations before making statutory instruments (Regulations), and particularly, where the proposed Regulations are likely to have a direct or a substantial indirect effect on business or restrict competition.

The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation: drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be lesser than fourteen days or be invited to participate in public hearings concerning the proposed instrument.

7.2 THE PROCESS OF PUBLIC PARTICIPATION AND CONSULTATIONS

Pursuant to section 5 of the Statutory Instruments Act¹¹, the Ministry identified specific stakeholders whom it engaged in a consultative process. These include the main professional and specialist institutions and individuals who will be directly or indirectly affected by the proposed statutory instrument.

7.2.1 Stakeholders Mapping

The stakeholders identified for purposes of developing the proposed Regulations included:

⁸ Constitution of Kenya, 2010: Article 174(c).

⁹ *Ibid*, Article 232 (1).

¹⁰ No. 23 of 2013.

¹¹ Institutions from where there can be drawn knowledge of persons having expertise in fields relevant to the proposed statutory instrument and persons likely to be affected by the proposed statutory instrument.

7.2.2 Public Consultation Approach and Methodology

The Ministry adopted the following methodology for purposes of public participation and inclusivity:

- (a) The Draft Regulations and the Regulatory Impact Statement were posted onto the Ministry's website inviting representations generally and specifically from the identified stakeholders;
- (b) The stakeholders were notified of the Regulation-making process and invited to give submissions on the draft Regulations within a specified reasonable period;
- (c) A Gazette notice and a newspaper advert were published inviting all persons to submit their views; and
- (d) Physical and virtual meetings with select stakeholders were held to discuss the drafts.

Based on the above approach, a total of meetings were held between the Ministry and key stakeholders. The Ministry also received..... written representations. The following is the full list of persons and institutions consulted in February 2022.

7.2.2.1 UACA REGULATIONS STAKEHOLDERS PARTICIPATION LIST

VENUE	DATE	ACTIVITY	S/NO.	ORGANISATIONS PRESENT
1				
Kenyatta University Conference Centre (KUCC) – Kenyatta University	16 TH -20 TH OCTOBER 2020	Formulation of roadmap for developing UACA regulations	1.	Council of Governors
			2.	Kenya Law Reform Commission
			3.	Civil Society Urban Development Platform
			4.	Board chairs' Caucus
			5.	Caucus of municipal managers
			6.	Nairobi Metropolitan Services
			7.	Eco-build Africa
			8.	UBNA
			9.	State Department Housing and Urban Development
			10.	
2				
Rainbow Resort- Ruiru	13 TH -24 TH SEPTEMBER 2021	Layman drafting of UACA regulations	1.	Council of Governors
			2.	Kenya Law Reform Commission
			3.	Civil Society Urban Development Platform
			4.	Board chairs' Caucus
			5.	Caucus of municipal managers
			6.	The Kenya Alliance of Resident Association
			7.	UBNA

			8.	State department Housing and Urban Development
			10.	
3				
Kisumu Hotel -Kisumu 28 TH FEB-4 TH MARCH 2022 Incorporating stakeholders' inputs			1.	Council of Governors
			2.	Kenya Law Reform Commission
			3.	Civil Society Urban Development Platform
			4.	Urban board
			5.	Caucus of municipal managers
			6.	Kenya Institute of Planners
			7.	Law Society of Kenya
			8.	Town and County Planners Association of Kenya
			9.	CECMs responsible for urban development
			10.	Architectural Association of Kenya
			11.	State Department Housing and Urban Development

1.1.1 Report on Stakeholder Consultative Process

A report on the stakeholder consultative sessions containing an analysis of comments and how they were considered and incorporated into the draft Regulations was prepared. The report also explains how the consultative process was conducted. The report is annexed to this report as a separate document.

8 AN OVERVIEW OF THE PROPOSED URBAN AREAS AND CITIES (GENERAL) REGULATIONS, 2022

The proposed Regulations provide for the following salient features:

8.1.1 Accreditation of Neighborhood Associations by City Boards and Urban Area Committees

The Regulations require every Board or Urban Area Committee to keep and maintain a register of accredited neighborhood associations who meet the criteria set out under the Regulations. A neighborhood association, being registered cluster of residents groupings actively representing the interests of a recognized constituency of urban citizens within the defined urban jurisdiction, is expected to be the avenue through which residents participate in the governance and management of a city or urban area.

8.1.2 Delineation of City or Urban Boundaries

Delineation of the boundaries of urban areas or cities may be initiated by the Cabinet Secretary or by the relevant county government making a written request to the Cabinet Secretary to appoint the ad hoc committee. An ad hoc Committee comprising representatives of the representatives specified under Section 4A of the Act shall be put in place not later than 35 days from date Cabinet Secretary receives a request from the county government.

Once constituted the ad hoc Committee shall be facilitated by the county government and shall notify the public of the intended delineation and allow the public at least 21 days to make their representations. It shall then prepare a work plan of activities and set out technical standards for the assignment. Thereafter it will propose preliminary boundaries of the proposed urban area and undertake a structured public consultation exercise before reviewing its proposals. Finally, it will prepare a report on the proposed boundaries, accompanied by a map of the area.

The parameters to guide the process of delineation of boundaries shall include:

- (a) Urban population density where the proposed boundary of the urban area should result in an urban population density which is not less than fifty percent of the urban population density of the county as per the last results of the Population and Housing Census;
- (b) balance between urban and rural development;
- (c) environmental sustainability;
- (d) cultural, historical, physical and social factors;
- (e) economic factors;
- (f) international and local best practices in delineation of urban areas and cities;
- (g) the relevant physical and land use plans at both national and county levels;
- (h) ability to provide services;
- (i) the built-up area guide; and
- (j) any other emerging parameters that may arise from time to time.

The ad hoc committee shall submit its report to the county executive committee and if the county executive committee determines that the application under review meets

the requisite criteria for classification, it shall be transmitted to the county assembly for approval. In the case of a city, where the county assembly approves the recommendation for conferment of city status to a municipality under this section, the clerk of the county assembly shall transmit the resolution to the senate for consideration. If the senate approves the recommendation, the clerk of the senate shall forward the resolution to the President for conferment of city status.

8.1.3 City charter

The Regulations prescribe model city and municipality charters. They provide that a charter should contain as a minimum the set out the particulars including powers, boundaries, governance and management structures, departments, borrowing powers, taxes and fees, among others.

8.1.4 Governance and management of urban areas and cities

Part IV of the Regulations provides for the governance and management of urban areas and cities by guiding on the process for petitioning for the removal of Chairperson, Vice-chairperson or member of a City or Municipal Board, accountability, staffing and promotion of active citizenship and public participation.

8.1.5 Responsibilities of the county governments

Part V of the Regulations provides for the responsibilities of the county government in service delivery within cities and urban areas and further provides for the procedure to be applied in establishment of service delivery entities in cities and urban areas.

8.1.6 Rights of residents

Part VI of the Regulations operationalizes section 35 of the Act that provides for the right of residents to object to partnerships and joint ventures initiated by the Boards or Committees of cities and urban areas.

8.1.7 Urban planning process

Part VII of the Regulations operationalizes Part V of the Act by providing for the urban planning process and the process of adoption of the integrated development plan by the Board and Committee of urban areas and cities. The part further provides for the approval process to be followed pursuant to section 36(1)(g) on development control within urban areas and cities.

Part VIII of the Regulations provides for the savings and transition provisions that is relevant to the existing cities and urban areas existing prior to the coming in force of these Regulations

Lastly, the Regulations provide in the Schedule, the relevant forms and certificates to be used in operationalizing provisions of the Regulations besides providing the template for city and urban area charters.

8.2 COMPARISON OF THE PROPOSED REGULATIONS WITH THE STATUS QUO

Issue	Gaps under status quo	Relevant provisions in the Regulations
Implementation of salient provisions in UACA	The whole process of application, classification, delineation on boundaries and actual conferment for conferment of city or municipal status is ridden with legal gaps and uncertainties.	Regulations seek to streamline the process of application, classification, delineation on boundaries and actual conferment for conferment of city or municipal status
Delineation of boundaries	Apart from Nairobi and Mombasa which are city counties, all other cities and urban areas do not have officially gazetted boundaries. There are no clear parameters to be applied in the determination of these boundaries. There are several disputes of owners of properties claiming they are not within the designated boundaries	The proposed Regulations provide tangible parameters to be applied during delineation of boundaries of urban areas.
Issuance of city and municipality charters.	No prescribed city and municipality charters. Cities and municipalities are being conferred on basis of un-prescribed charters.	Prescribes model city and municipality charters. Sets out the particulars of city and municipality charters including powers, boundaries, governance and management structures, departments, borrowing powers, taxes and fees, among others
Delegated functions	UACA contemplates that county governments should delegate a number of functions to Boards of cities and municipalities. However, only a handful of counties have formerly delegated these functions.	The proposed regulations will guide the process of delegation of functions as well as the instruments of transfer of these functions to the urban entities.
The designated planning authority	Both UACA and PLUA designate different entities as the planning authorities in urban areas.	The proposed regulations will provide a guide on the urban planning process in terms of the role of the county

		executive committee members in charge of planning to delegate the role of urban planning to the urban entities in compliance with UACA.
Service delivery entities	In urban areas which traverse over two county jurisdictions, it is not clear who should provide such services like waste management, urban transport and water services.	The proposed Regulations aim to promote the establishment of service entities and through partnerships and joint venture.
Resident participation	Participation of residents in the governance and management of urban areas remains low.	The Regulations seek to meaningfully involve neighbourhood associations through registration and accreditation. They also provide for citizen forum.
Procedure for removal of non-performing management personnel.	No clear procedures to replace non-performing management teams.	Regulations provide for removal procedures

9 CONSIDERATION OF ALTERNATIVES TO THE PROPOSED REGULATIONS

This Part evaluates the possible alternatives to addressing the identified problem. In this Part three options namely maintenance of the status quo, putting in place administrative measures and promulgating Regulations have been considered. Based on the evaluation of each option, the best form of government action is recommended. The evaluation of these options is in line with the Statutory Instruments Act, 2013 which requires a regulator to evaluate other options including non-regulatory ones.

9.1 THE ALTERNATIVES

9.1.1 Option One: The Status Quo

Maintaining the status quo means that no Regulations will be developed and therefore challenges facing the full implementation of the Urban Areas and Cities Act, 2011 will not be addressed.

9.1.2 Option Two: Application of Administrative Measures

The second option that may be used to implement the Act is through administrative measures. This usually takes the form of issuance of Executive Orders, Ministerial orders and circulars prescribing guidelines and administrative measures to address the identified challenges. The issuance of such measures is not only cheap but also time saving. However, the implementation of administrative measures is dependent the good will of the concerned public officers and may not be sustainable since they do not have the force of law. This presents a major risk in terms of enforcement and the possibility of not getting implemented at all. The non-binding nature of administrative measures suggests that it cannot be a reliable avenue to give full effect to the salient provisions contained in the Constitution and the Act of Parliament.

9.1.3 Option Three: Adopting the Proposed Regulations

Pursuant to the powers conferred by section 53 of UACA, the Urban Areas and Cities (General) Regulations are intended address the challenges that have faced the full implementation of the Act. Once gazetted and approved by the Senate, the Regulations shall become part of UACA and facilitate its full implementation. This will translate to accelerated rate of urbanization together with all the attendant benefits. The full benefits, costs and impacts of all the options considered are analysed in Annexure 1.

9.2 COST-BENEFIT ANALYSIS

The analysis of the expected costs, benefits and impacts of the above three options is contained in *Annexure 1*. The analysis seeks to answer the question whether the benefits of each option justify the costs. This would enable the Regulator to estimate the total expected cost and benefit of every aspect of the Regulations. This will in turn inform the decision makers since the cost of government action should be justified by its benefits before action is taken.

9.3 CONCLUSION: THE PREFERRED OPTION

Based on the analysis in *Annexure 1* it is clear the third option (development and adoption of the proposed Regulations) is the preferred option. The other two options have little or no impact in addressing the problem.

10 COMPLIANCE AND IMPLEMENTATION

As different aspects of the proposed Regulations are evaluated and analysed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect, and design responsive implementation strategies that make the best use of them.

The costs, benefits and impacts of their implementation is contained in Annexure 1.

10.1 CONFORMING TO LEGAL REQUIREMENTS IN DEVELOPING THE PROPOSED REGULATIONS

Based on the above analysis, the following matters are apparent:

- (a) Regulatory-Making Authority has the legal mandate: Section 53 of the UACA, empowers the Cabinet Secretary to make regulations generally to give effect to the Act. The Cabinet Secretary therefore have the required legislative powers to propose the Regulations.
- (b) Requirements of the Statutory Instruments Act: Section 5 requires that a regulation-making authority to conduct public consultations and to drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that an RIS be prepared where a statutory instrument is likely to impose significant costs on the community. The RIA must contain certain key elements namely:
 - (i) a statement of the objectives of the proposed legislation and the reasons,
 - (ii) a statement explaining the effect of the proposed legislation,
 - (iii) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
 - (iv) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
 - (v) the reasons why the other means are not appropriate.

The public consultation and RIA structure requirements have been fully met.

- (a) Other existing legal frameworks: The proposed Regulations does not propose to have any new legislation to be enacted or any of the existing laws to be amended. It harmonizes with other laws making their implementation more effective.
- (b) The proposed Regulations as drafted are clear, consistent, comprehensive, and comprehensible enough to cover all matters.

10.2 CONCLUSION AND RECOMMENDATION

This Regulatory Impact Assessment concludes that the proposed the Regulations are necessary to operationalize UACA. The Regulations further create a system for Parliament to oversight the governance and management of urban areas and cities.

It is recommended that the proposed Regulations be adopted.

11 ANNEXURES

11.1 ANNEXURE 1: COST BENEFIT AND IMPACT ANALYSIS

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Summary of key concerns from Pre-consultations	Risks	Compliance and enforcement
Option One: Doing Nothing/ Maintaining Status Quo	Maintaining the status quo means that no Regulations will be developed.	Challenges facing the full implementation of the UACA will persist.	No additional funding required.	Impact on the economy: slow urbanization translates to reduced economic growth, low per capita incomes and less macro-public goods and services. Impact on society: Reduced integration,	Vision 2030 postulates that Kenya's urbanization will hit 50% in 2030. This will present potential socio-economic and environmental opportunities as well as significant challenges.	Urban poverty. Informal settlements and sprawling of slums. Rising inequalities between the rich and the poor. Gender inequality. Environmental degradation. Traffic congestion on roads.	Full implementation of UACA in the absence of enabling regulations appears unachievable.

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Summary of key concerns from Pre-consultations	Risks	Compliance and enforcement
				<p>inclusion and gender equality.</p> <p>Impact on environment: urban areas and cities are environmental and climate change centers; their restricted growth means environmental and climate change challenges will not be adequately addressed.</p>			

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Summary of key concerns from Pre-consultations	Risks	Compliance and enforcement
Option Two: Application of Administrative Measures	Issuance of Executive Orders, Ministerial orders and circulars prescribing administrative measures to address the identified challenges.	Creating the requisite political good will and willingness to commit resources.	Administrative measures are cheap and fast to put in place.	Impact on the economy: uncertain in the long run. Impact on society: Short term measures to solve long-term matters. Impact on the environment: Lost opportunity to address environmental concerns	Administrative measures usually get overturned, changed or even revoked by successive leaderships to suit their priorities.	No guarantee for full implementation of the Act. Lack of good will and adequate capacity. Possibility of getting revoked altogether. Some administrative measures can be challenges in court for lack of legal basis	Implementation of administrative measures depend on the prevailing political will and could be abandoned based on changing priorities. Some administrative measures may be unenforceable for lack force of law.

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Summary of key concerns from Pre-consultations	Risks	Compliance and enforcement
Option 3: Development and Implementation of the Urban Areas and Cities (General) Regulations	Invoking the powers conferred to the Cabinet Secretary under Section 53 of UACA to make Regulations necessary to give full effect to the Act.	Constitution of an inter-departmental working team. Undertaking public participation.	Providing for matters necessary for full implementation of the Act including provisions relating to facilitation of neighborhood associations to participate in governance of urban areas, delineation of urban boundaries, classification of urban areas and cities, city charters, delegation of functions and	Impact on the economy: Increasing urban areas and cities translates to making our urban areas and cities centers of economic growth. Impact on society: the urban areas and cities will become centers of governance and places of national integration, inclusion and	The Regulations will afford an opportunity to fully implement UACA and achieve the following benefits: (a) Give full effect to Article 184 of the Constitution (b) Help realize Kenya's Vision 2030 component on rapid urbanization and promote sustainable	County governments perception of looking at urban areas and cities governance institutions as parallel or competing authorities.	UACA is a national legislation affecting county governments and therefore is expected to be implemented jointly by the relevant national and county government agencies.

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Summary of key concerns from Pre-consultations	Risks	Compliance and enforcement
			<p>delivery of services among others.</p>	<p>gender equality.</p> <p>Impact on the environment: According to UN Habitat, cities consume 78 per cent of the world's energy and produce more than 60 per cent of greenhouse gas emissions. Yet, they account for less than 2 per cent of the Earth's surface.</p>	<p>urbanization by creating well planned, vibrant and efficient urban centres. (c) Domesticat e and localize the UN Sustainable Development Goals, (UN SDGs), to “make cities inclusive, safe, resilient and sustainable”. (d) Realize the New Urban Agenda (e) Implement the National</p>		

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Summary of key concerns from Pre-consultations	Risks	Compliance and enforcement
				<p>However, ecologists have found that by concentrating their populations in smaller areas, cities and metros decrease human encroachment on natural habitats. The cities themselves are also major centers where environmental programs are run.</p>	<p>Urban Development Policy, 2016</p>		

11.2 ANNEXURE 2: THE URBAN AREAS AND CITIES (GENERAL)
REGULATIONS, 2022

11.3 ANNEXURE 3: STAKEHOLDER REPORT AND ATTENDANCE
REGISTERS

11.4 ANNEXURE 4: PUBLIC NOTICE ON PUBLIC PARTICIPATION FOR
THE PROPOSED REGULATIONS
