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KISUMU COUNTY BILLS, 2017

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THE KISUMU COUNTY DEVOLVED UNITS BILL,
2017

A Bill for

AN ACT of Kisumu County Assembly to implement Article 174 of the Constitution providing for the establishment of administrative devolved Units and for connected purposes

ENACTED by County Assembly of Kisumu, as follows—

PART 1— PRELIMINARY

1. This Act may be cited as the Kisumu County Devolved Units Act, 2017, and shall come into operation upon the expiry of thirty days from the date of publication.

2. In this Act—

“administrator” means the person appointed as such under section 7;

“Clerk” means the Clerk of the Kisumu County Assembly;

“community” means residents of a particular area or region as a Ward, Village and having common interests;

“county executive committee member” means the Executive Committee Member responsible for matters related to devolution, Planning and development;

“committee” means the Sub-County, Ward and Village Committee established by section 4;

“officer of the fund” means the Public official seconded by the County Government to the Committees;

“units” means the Devolved Units established by section 4;

“unit fund Account” means the account maintained for every sub county, ward and village in accordance with section 16.

“village” means a cluster of human settlement or community smaller than a town with approximate population of 500-1000 people.

“ward” means an administrative jurisdiction as assigned in the County Government Act, LOK;
3. The object and purpose of this Act is in line with the constitution 2010 and Urban Areas and Cities Act 2011 and related Acts, that requires the counties to be devolved into units through legislation for the purpose of service delivery and accountability and that a specific portion of the county annual budget is devoted to the Sub County, Wards and Villages for purposes of operations, maintenance and development and in particular the alleviation of poverty at the grassroots level.

**PART II—ESTABLISHMENT AND ADMINISTRATION OF THE UNITS**

4. (1) There is established a committee to be known as the Sub-County Ward and Village Committees.

(2) The Committees shall consist of—

(a) The composition of Sub-County Committee occasions;

(i) the sub county administrator who will be the secretary to the committee;

(ii) ward administrators;

(iii) the county assembly members;

(iv) special interest group representatives;

(v) religious organizations;

(vi) representative of chamber of commerce,

(vii) representative of the civil society organizations and Non-Governmental Organizations; and

(viii) the area member of parliament.

(3) The chairperson will be elected from amongst the members of the Committee.

(4) The Committee shall consist of not less than ten and not exceeding 15 members.

(5) Members representing special interests shall be appointed by the Committee secretary in consultation with the Committee members.

(b) The composition ward committee occasions—

(i) the ward administrator who shall be the secretary;
(ii) the village administrators;
(iii) the county assembly member as the Patron;
(iv) the representative of marginalized groups,
(v) the representative of religious organizations.
(vi) representatives of the community based organizations
(vii) representative of youth, women and persons living with disabilities (1 No.).

c) The ward shall also establish various sectoral committees to handle relevant sectoral issues such as: Health; Education (Bursary etc.); Environment; Water & Sanitation; Agriculture; Social services, Gender and Persons living with disability

d) The ward Committee shall also be responsible for various projects and programs in line with ward and Village development requirements

e) The ward Committee shall be responsible for Ward disaster coordination programs and bound by other Acts of the county assembly on devolved funds, functions and services as stipulated in the said respective laws, subject to oversight and approval by the sub county Committee.

(4) The names and curriculum vitae of the persons competitively and transparently nominated as members of the Sub County Ward and Village Committees pursuant to paragraph (d) of subsection (5) shall be submitted to the County Assembly for approval before appointments are made. The composition Village committee constitutes—

(i) the Village administrator who shall be the secretary;
(ii) the village elder;
(iii) the county assembly member as the Patron;
(iv) the representative of marginalized groups;
(v) the representative of religious organizations;
(vi) representatives of the community based
organizations;

(vii) representative of youth, women and persons living with disabilities (3 No.).

5. (1) The conduct and regulation of the business and affairs of the Sub County Ward and Village Committees shall be as provided in the Regulations.

(2) Except as provided in the Regulations the Sub County Ward and Village Committees may regulate its own procedure.

6. (1) The functions of the Sub-County Ward and Village Committees shall be to—

(a) ensure allocation and disbursement of funds in every Sub County, Ward and Village;

(b) ensure prudent management of the Fund

(c) receive and discuss the annual reports and returns from the Sub County, Wards and Village;

(d) ensure the compilation of proper records, returns and reports from the Sub-Counties, Wards and Villages;

(e) ensure timely submissions to County Assembly of various returns, reports and information as required under the Act;

(f) consider project proposals submitted for various wards in accordance with the Act and make appropriate recommendations to the County Assembly;

(g) consider and report to the County Assembly with recommendations, names of persons required to be approved by the County Assembly under this Act;

(h) Continually, review, oversee the implementation, policy framework and legislative matters that may arise in relation to the Fund; and perform such other functions as may be provided for in this Act.

7. (1) There shall be an Administrator of the Fund who shall be appointed from the county public service and
The Kisumu County Devolved Units Bill, 2017

has—

(a) at least a university degree in finance, accounting, engineering, economics, community development, law or a related field from a recognized university;

(b) at least five years working experience in public finance, public administration or a relevant field.

(2) The Administrator of the Fund shall be the chief executive officer and subject to the directions of the County Executive Committee Member responsible for matters related to Finance shall—

(a) supervise and control the day to day administration of the Fund;

(b) be responsible for the day to day management of the affairs and staff in the service of the Committees;

(c) prepare monthly returns on the movement of funds as appropriate for submission to the County Assembly;

(d) keep or cause to be kept proper books of accounts and other books and records related to the Fund;

(e) prepare, sign and transmit to the Auditor General accounts of the Fund in accordance with Public Audit Act; and

(f) perform any other duties that may be reasonably assigned to him by the County Executive Committee Member from time to time.

(3) The Administrator of the Fund shall—

(a) be designated by the County Executive Committee Member of Finance and Planning and approved by the County Assembly and subsequently appointed by the County Public Service Board;

(b) serve a term of four years but shall be eligible for reappointment.

8. The Executive Committee Member for Finance and Planning shall, upon request by the respective Committees, advise and facilitate secondment to the Fund of such
officers from the county public service and shall be appointed by the County Secretary as may be appropriate and necessary for the proper management of the Fund.

9. The Committees may designate any of the officers seconded under section (8) to be Officer of the Fund in respect of one or more wards including one or more Villages as may be appropriate.

10. (1) There is hereby established County Devolution Committee, whereby in exercise of its functions; by resolution either generally or in any particular case, delegate to any unit committee or to any member, officer, employee or agent of the County Devolution Committee, the exercise of any of the powers or the performance of any of the functions or duties of the County Devolution Committee under this Act or under any other written law.

(2) The Committee shall comprise of—

(a) The County Secretary who shall be the Chair;
(b) The Chief Officer responsible for Finance;
(c) The Chief Officer responsible for Health;
(d) The Chief Officer responsible for planning, lands and urban Development;
(e) The County Attorney;
(f) The Chief Officer responsible for Roads, Infrastructure and Public Works;
(g) The Chief Officer responsible for Water, Environment and Natural Resources;
(h) The Chief Officer responsible for Green Energy and Climate Change;
(i) The Administrator of the Fund who shall be the secretariat;

PART III—FINANCIAL PROVISIONS

11. (1) Each and every disbursement from the Fund shall be approved by the County Devolution Committee.

(2) All disbursements from the Fund shall be for specific projects as submitted by the units in accordance with the procedures outlines in this Act.
(3) All disbursements shall be made through the Sub-County, Ward and Village bank accounts maintained for every unit in accordance with section 16 of this Act.

(4) Notwithstanding the provisions of subsection (3), payments for a joint project as outlined in section 29 (4) or a joint procurement, may be made directly to a supplier or to an account established for the purpose with due approval of the County Devolution Committee.

(5) The record of the amounts received by each Sub County, Ward and Village, such record of expenditure of amounts so received shall be submitted to the County Devolution Committee within thirty days after the close of the relevant financial year together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.

(6) The County Devolution Committee shall set out general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(7) The County Devolution Committee may impose reasonable requirements, including restrictions, on a particular Sub County Ward or Village and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Executive Committee Member in accordance with this Act.

12. (1) The County Executive Committee Member responsible for finance, with the concurrence of the County Devolution Committee shall, for each financial year, allocate funds to each Sub County Ward and Village in accordance with section 26.

(2) Once funds are allocated for a particular project, they shall remain allocated for that project and may only be re-allocated for any other purpose during the financial year with the approval of the County Devolution Committee.

(3) If for any reason a particular project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund and credited to the account of the Sub County, Ward or Village from which the funds were withdrawn.
(4) Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year.

(5) For the avoidance of doubt, a return as set out in the Second Schedule shall be made for the current financial year and every previous financial year on the funds that remain unspent.

13. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be returned to the Fund and applied in accordance with section 12 (5) of this Act.

(2) All funds allocated to a Sub County Ward and Village shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the accounts in accordance with section 12 (3) or funds which are not utilized for whatever reasons.

14. (1) A portion of the Fund, equivalent to five per centum (hereinafter referred to as the "Emergency Reserve") shall remain unallocated and shall be available for emergencies that may occur within the Sub-County, Ward or Village.

(2) The County Devolution Committee shall determine the allocation of the emergency reserve in accordance with the Act.

(3) "Emergency" shall be construed to mean an urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the people.

(4) For each project, the County Devolution Committee shall set aside a sum of five per centum of the total allocation for the project to cater for the administration expenses of the project.

(5) The sum set aside under subsection (4) shall be properly accounted for and proper books of accounts kept and returns made to the County Devolution Committee on how the sum has been used.

15. (1) A bank account of the Fund shall be opened and maintained by the County Treasury.
(2) The signatories to the account of the Fund maintained in accordance with subsection (1), shall be the Administrator of the Fund and two other persons appointed by the County Devolution Committee from amongst its members.

(3) The signing instructions shall be such that the signature of the Administrator of the Fund shall be mandatory on all payment cheques or instruments intended for actual release of money from the Fund, plus any one of the other two signatories.

16. (1) The initial capital of the Fund shall be the sum of 400 million, divided in percentum as follows; 25% for the Sub county, 35% for the Wards and 40% for the Villages, as appropriated by County Assembly in Fund in the Budget Estimates in the every financial year.

17. (1) An accurate record of all disbursements made for projects to every unit shall be kept and updated every month by the County the respective Units Committee.

(2) The disbursement of funds to the Units Fund Account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five per centum of the annual allocation for the Units as prescribed in section 16(1), and thereafter the Units Fund Account shall be replenished in three equal instalments at the beginning of the second, third and fourth quarters of the financial year.

(3) The Chairperson of the County Devolution Committee shall submit an annual report on the activities, operations and expenditure under the Act.

(4) At the end of every financial year the County Devolution Committee shall submit separate accounts of the Units and the County Devolution Committee to the Auditor General.

18. (1) The personal emoluments of officers of the County Government working or involved in the management of the Fund shall be determined by the Executive Committee Member after consultation with the County Assembly upon the advice of the Salaries Remuneration Commission and shall be provided under the recurrent expenditure of the County Government.
(2) Out of pocket expenses incurred by any person officially involved in the management of the Fund or the implementation of projects under the Fund, including public officers may be reimbursed but that not more than ten percent of the total allocation in the financial year may be used for this purpose.

(3) Sitting and other allowances for the members of the County Ward Devolution Committee and the Units Committees shall be fixed by the Executive Committee Member upon the advice of the Salaries Remuneration Commission.

PART IV—SUBMISSION OF UNITS PROJECT PROPOSALS

19. (1) The list of proposed Units based projects to be covered under this Act shall be submitted by the chairpersons of the respective Units Committee to the County Devolution Committee after approval by the Sub Counties Committees.

(2) The County Devolution Committee shall receive and compile the list of proposed Unit projects submitted to it under this Act and grant the necessary approval where the requirements of this Act has been fulfilled.

20. (1) The list of the proposed Units projects shall be submitted to the County Devolution Committee before the end of the month of February in each year or such other month as may be determined by the Executive Committee Member in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year.

(2) Where the chairpersons of the Units Committees fail to submit the list of Unit based projects to the County Devolution Committee within the stipulated time in subsection (1), the list shall be deemed to have been submitted to the County Devolution Committee upon the lapse of the stipulated time.

21. (1) The list of projects shall be submitted on a Unit Projects Submission Form set out in the Third Schedule to this Act accompanied by minutes of the Units Committees approving the projects.
(2) All projects proposed for every Unit shall be listed in the Form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

22. For every project listed in the Form, there shall be attached a Project Description Form set out in the Second Schedule.

23. (1) The list of projects received by the County Devolution Committee pursuant to section 19 shall be tabled for review at a meeting of the County Devolution Committee.

(2) The County Devolution Committee shall scrutinize and approve for funding those project proposals that are consistent with the Act.

(3) Where the County Devolution Committee does not approve a proposal submitted to it under this section, it shall refer the matter to the Sub Counties Committee giving reasons as to why it has declined the proposal.

24. The allocation of funds to various projects in each Unit is the responsibility of the County Devolution Committee to be exercised at its own discretion within the provisions of this Act.

25. The projects listed for each Unit shall be numbered by the County Devolution Committee and the serial numbers of all projects in a Unit shall bear the number of the Unit as delineated by the Independent Electoral and Boundaries Commission and as prescribed in the Urban Areas and Cities Act in order to ensure that a project retains the same serial number every year until its completion.

26. (1) The budget ceiling, for each Unit shall be—

(a) eighty five percent of the amount specified in section 16 (1) divided equally among all the units;

(b) fifteen per cent of the amount specified in section 16 (1) divided by the population in the county multiplied by the number of inhabitants in that Unit as the last national population census.

(2) The Chairperson of a the relevant Standing Committee of the County Assembly shall table in the Assembly a schedule showing the ceiling for each Unit,
which shall be determined in accordance with sub section (1).

27. (1) The types of projects submitted for funding under this Act shall comply with the provisions of this Act.

(2) It shall be the responsibility of the County Devolution Committee to ensure that the list of projects submitted for funding comply with the provisions of the Act and their total cost does not exceed the allowable ceiling for the particular Ward or is not below that ceiling.

(3) If the list of projects submitted for funding is in contravention of subsection (2) the same shall be referred back to the Sub County Committee for amendment and re-submission.

(4) Whenever the amount for projects in a Unit is less than the allowable ceiling for reasons of projects being deleted in accordance with sub-section (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular Unit on the list to be forwarded to the Member of the County Executive Committee.

PART V—TYPES OF PROJECTS

28. (1) Projects under this Act shall—

(a) be in respect of those falling within the functions of the county government as contemplate under Part 2 of the Fourth Schedule to the Constitution; and

(b) be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(4) Funds provided under this Act shall not be used
for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(5) Notwithstanding the provisions of subsection (4), the County Devolution Committee may identify a support partner, religious body or organization as an appropriate specialized agency for purposes of section 12 with regard to emergency support.

(6) A County Devolution Units offices shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.

(7) Each of the projects shall be listed on the Third Schedule including the emergency item.

(8) The allocation may be used as follows—

(a) an amount not exceeding fifteen per cent of each Unit annual allocation may be used for an education bursary scheme and can fund school fees, examination fees and even continuous assessment and mock examination fees;

(b) an amount not exceeding three per cent may be used as expenses for running the Units which may include rent and utilities, staff salaries and committees allowances;

(c) an amount not exceeding two per cent of each Unit annual allocation may be used for sporting activities;

(d) an amount not exceeding two per cent of each Unit annual allocation may be used for environmental activities;

(e) two per cent of each Unit annual allocation may be used on capacity building;

(9) purchasing, running and maintenance of motor vehicles and equipment must not take more than three per cent of the total annual allocation.

29. (1) The number of projects to be included in the unit Projects Submission Form specified in the Third Schedule shall be a minimum of five and a maximum of ten for each Unit in every financial year.
(2) Units with unspent funds at the end of the financial year shall submit new proposals to the County Devolution Committee for approval in accordance with section 12 (4) of this Act.

(3) Project activities of a similar nature in a particular Unit may be combined and considered as one project for purposes of subsection (1) provided that the sub projects are listed in the Second Schedule.

(4) Units may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the County Devolution Committee of each of the participating Units and shall be reflected on the projects listed for each of the participating wards.

(5) Where Units have joint projects, the County Devolution Committee shall co-ordinate such projects

PART VI—THE COUNTY, SUB COUNTY, WARD DEVELOPMENT FORA AND VILLAGE BARAZAS

30. There is hereby established County development for whose composition and functions shall be prescribed by the County Executive Committee member responsible for matters related to devolution in a Gazette by appoint and the functions shall be prescribed in the regulations.

31. There shall be established a Sub-County Development forum which shall be appointed by the Executive Committee member responsible for matters related to devolution from time to time in Notice of Gazette by appoint

32. (1) Each sub county forum shall come up with proposals, discuss them, select and prioritize a list of projects to be submitted to the Sub-County Committee.

33. (1) There is hereby established Ward Development for which shall be constituted by the County Executive Committee Member in consultation with the County Assembly.

(2) Each Ward development forum shall deliberate on project proposals from the Ward and any other project which the forum considers beneficial to the Ward, then draw up a priority project list both immediate and long term, out of which the list of projects to be submitted to the
ward Committee.

(3) There is hereby established Village Development barazas which shall be constituted by the County Executive Committee Member in consultation with the County Assembly.

(4) Each Village development baraza shall deliberate on project proposals from the Ward and any other project which the forum considers beneficial to the Village, then draw up a priority project list both immediate and long term, out of which the list of projects to be submitted to the ward Committee.

(5) The County Executive Member responsible for devolution while appointing by Gazette Notice, members of the FORA all level shall adhere to the following criteria—

(a) a Chairperson who shall be an Administrator.;
(b) two persons representing the male in the Unit of whom one shall be a youth;
(c) two persons representing the female in the Unit of whom one shall be a youth;
(d) one representative of local non-governmental organizations or religious organizations;
(e) one member representing special interest groups;
(f) One Member being a Public Official who shall be the Secretary.
(g) The seven persons referred to in subsection (5) (b), (c), (d) and (e) shall be nominated through the following procedure—

(i) within forty-five days of being sworn in, each Member of the County Assembly for a particular Ward shall convene open public meetings of registered voters in each of the elective villages in the ward;

(ii) each village shall then elect five persons whose names shall be forwarded to the Sub County Committee where the village is situated;

(iii) upon receiving the names from all the
villages in the Ward, the County Executive Committee Member in consultation with the County Assembly take into account the geographical diversity within the area, communal, religious, social and cultural interest and the requirements of gender, youth and representation of persons with disabilities;

(iv) the Member of the County Assembly for the Ward shall be the key advisor on matters incidental to all the fora at each level.

(6) The Executive Committee Member shall cause the names of persons appointed as members of the Wards Development Fund Committee, pursuant to subsection (5) of the Act be published in the Kenya Gazette.

(7) The County Executive member responsible for Devolution shall prescribe rules of operations of the fora at each unit level.

34. (1) The Executive Committee Member may make regulations for the smooth running of the Fund and such regulations shall be approved by the County Assembly before implementation.

(2) The Executive Committee Member may amend any of the Schedules through a notice in the Gazette, provided that such amendments shall first be approved by the County Assembly before implementation.

35. (1) The provisions of this Act shall be complimentary to any other development efforts by the national government, the county governments or any other agency and nothing in this Act shall be taken or interpreted to mean that an area may be excluded from any other development programmes.

(2) For the avoidance of doubt, normal Government development allocations shall continue alongside the projects funded under this Act.

36. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, commits an offence and is liable on conviction, to imprisonment for a term not less
than five years or to a fine not less than five hundred thousand shillings or to both.

37. (1) All complaints and disputes by persons arising due to the administration of this Act shall be forwarded to the County Devolution Committee in the first instance.

(2) Complaints of a criminal nature shall be forwarded by the County Devolution Committee to the relevant government agencies with prosecutorial powers.

(3) Disputes of a civil nature shall be referred to the County Devolution Committee in the first instance and where necessary an arbitration panel whose costs shall be borne by the parties to the dispute, shall be appointed by consensus of the parties to consider and determine the matter before the same is referred to court.

(4) Notwithstanding subsection (3), parties shall be at liberty to jointly appoint an arbitrator of their choice in the event of a dispute but where parties fail to jointly agree on an arbitrator, the Executive Committee Member may appoint an arbitrator whose costs shall be jointly borne by the parties.

(5) Subject to this Act, no person in the management of the Fund shall be held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund.

38. (1) The initial capital of the Fund shall be 400 Million Kenya Shillings appropriated the vote of Devolution Units the during the 2017-2018 financial years.

(2) Notwithstanding subsection (1), If this Act comes into operation mid-way in a financial year, then the Leader of the Majority Party shall within one month of its publication, introduce in the Assembly the amount proposed to be put in the Fund and the amount proposed, shall be allowed for through supplementary estimates.
MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to establish the Devolved Units into which an amount equivalent to ten per cent of the total County Government annual revenue shall be paid into so as to facilitate development at the Units by ensuring that a specific portion of the county annual budget is devoted to the purposes of development and in particular the fight against poverty at the Units level.

Part I of the Bill sets out the preliminary matters including the commencement date and the definition of various terms used in the Bill. This part of the Bill establishes devolved Units Committees and County Devolution Committee.

Part II of the Bill outlines the financial procedures with respect to the administration and use of the Fund. This Part provides for the allocation and disbursement of funds from the Fund and requires the County Government and the County Devolution Committee to open separate bank accounts with respect to the monies from the Fund.

Part III. Outlines the format for presentation of projects to be undertaken under the fund and also provides the manner of sharing of the moneys from the Fund which shall be based at eighty five percent equality and fifteen percent based on population and other factors.

Part IV of the Bill provides for the type of projects that may be included for funding under this Act. In particular, this Part provides that such projects must be development based. This Part also sets out a minimum number of projects to be funded so as to ensure distribution of projects within the Units and a maximum number in a bid to avoid spreading out too thin. The eligibility of some projects for funding such as counter – part funding is also addressed in this Part.

Part V of the Bill provides for miscellaneous clauses to ensure proper utilization of funds and also provides for penalties against any person who misappropriates funds meant for development projects under the Bill.

CAROLINE PAMELA AWINO OWEN,
Member of County Assembly.