

COUNTY GOVERNMENT OF KITUI



COUNTY ASSEMBLY

SECOND ASSEMBLY – (SECOND SESSION)

COMMITTEE ON LANDS INFRASTRUCTURE AND URBAN DEVELOPMENT

REPORT ON CONSIDERATION OF THE KITUI MUNICIPAL CHARTER

Clerk's Chambers,
County Assembly Buildings,

Kitui, Kenya

June, 2018

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Signed List of Members

The Kitui Municipal Charter

Public participation report

PREFACE

Mr Speaker Sir,

On behalf of the Sectoral Committee on Lands Infrastructure and Urban Development, it is my pleasure to present to this House the Committee's report on Consideration of the Kitui Municipality Charter.

Composition of the Committee

Mr Speaker Sir,

The Committee on Lands, Infrastructure and Urban Development was established pursuant to standing order 190 of the Kitui County Assembly Standing Orders.

The Committee as currently constituted comprises of the following Members:

- | | |
|----------------------------|------------------|
| 1. Hon Boniface Katumo | Chairperson |
| 2. Hon Geoffrey Mwalimu | Vice Chairperson |
| 3. Hon Colleta Koli | Member |
| 4. Hon Charles Maema | “ |
| 5. Hon John Kisangau | “ |
| 6. Hon Alex Wambua | “ |
| 7. Hon David Thuvi | “ |
| 8. Hon Anthony Ndo | “ |
| 9. Hon Eunice Katheke | “ |
| 10. Hon Jehoshaphat Nzamba | “ |
| 11. Hon Alex Mbili | “ |

Mandate of the Committee

The Committee is established pursuant to Standing Order 190(1) with its subject matter as set out in the Second Schedule.

Its functions are as set out in Standing Order 190(5) and include generally to:

- a) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- b) study the programme and policy objectives of departments and the effectiveness of implementation;
- c) study and review all County legislation referred to it;
- d) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned department as they may deem necessary, and as may be referred to them by the County Assembly
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve except under Standing Order 184 (Committee on Appointments);
- g) make reports and recommendations to the County Assembly as often as possible including recommendation of proposed legislation

Committee Meetings

The Committee held two meetings on 26th June, 2018 to consider and review the Kitui Municipal Charter and also to compile the public participation report and final Committee Report. Prior to the committee meeting of 26th June, 2018 the County Executive Committee Member for Lands Infrastructure, Housing and Urban Development on 22nd June, 2018, took Members through the said Charter and on Monday, 25th June, 2016 at Kitui Multi-Purpose Hall the Committee conducted a public participation exercise on the same.

Acknowledgement

The Committee is grateful to the Offices of the Speaker and the Clerk of the County Assembly for the support extended to it in fulfilling its mandate.

I also wish to thank Members of the Committee and staff of Assembly who worked tirelessly to compile this Report. In addition, I wish to thank Members of the public who

sacrificed their time to attend the public participation exercise held at Kitui Multi-Purpose Hall and give their valuable views on the proposed Kitui Municipality Charter.

Mr. Speaker Sir,

I wish to confirm that the recommendations of the Committee in this Report were unanimous. It is therefore my pleasant duty and privilege, on behalf of the Committee on Lands Infrastructure and Urban Development to table this Report to the House for consideration.

SIGNED:

HON. BONIFACE KATUMO, M.C.A.

CHAIRPERSON, COMMITTEE ON LANDS INFRASTRUCTURE AND URBAN DEVELOPMENT.

DATE:

LEGAL FRAMEWORK AND LEGAL BASIS

Mr. Speaker Sir,

The Constitution of Kenya under Article 184 provides that a national legislation shall provide for the governance and management of urban areas and cities and shall inter alia provide for the criteria for classification of areas as urban areas and cities as well establish principles of governance and management of urban areas and cities. To this end, the parliament through the Urban Areas and Cities Act of 2011 established the criteria for conferring municipality status on towns and that of conferring town status into other areas.

Section 9(1) of the Urban Areas and Cities Act provides that a Governor may, on the resolution of a County Assembly, confer the status of a municipality on a town that meets the criteria in Section 9(3) of the same Act.

Section 9(3) states that a town is eligible for conferment of municipal status if it satisfies the following criteria:

- a) has a population of at least two hundred and fifty thousand residents according to the final *gazetted* results of the last population census carried out by an institution authorized under any written law, preceding the grant;
- b) has an Integrated Development Plan in accordance with this Act;
- c) has demonstrable revenue collection or revenue collection potential;
- d) has demonstrable capacity to generate sufficient revenue to sustain its operations;
- e) has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule to this Act;
- f) has institutionalized active participation by its residents in the management of its affairs;
- g) has sufficient space for expansion;
- h) has infrastructural facilities, including but not limited to street lighting, markets and fire stations; and
- i) has a capacity for functional and effective waste disposal.

However, Section 9(4) of the same Act authorized the Governor to confer the status of a municipality to the county headquarter where the said headquarter meets all the other criteria as stated under subsection 9(3) save by what is set under subsection 9(3)(a).

The criteria set under subsection 9(3)(a) is about the population of the county headquarter meaning that the same does not need to have a population of at least two hundred and fifty thousand residents according to the final *gazetted* results of the last population census carried out by an institution authorized under any written law to be conferred into a municipality.

On 13th June, 2018, H.E. the Governor of Kitui County Government forwarded to the County Assembly the Kitui Municipal Charter accompanied by other related documents on the conferment of Kitui county headquarter into a municipality upon the same meeting the criteria established under Section 9(3) in line with the provisions of section 9 (1) and 9(4).

On 21st June, 2018 the Leader of the Minority Party laid the proposed Charter on the table of the House after which it stood committed to the Committee on Lands, Infrastructure, and Urban Development to facilitate public participation and further table a report to the House.

OVER VIEW OF THE KITUI TOWN MUNICIPALITY AND CHARTER

Mr. Speaker Sir,

The Kitui Municipal Charter seeks to confer upon Kitui town the status of a Municipality by H.E. the Governor, with the approval of the County Assembly as required by Section 9(1) of the Urban Areas and Cities Act.

Areas to be covered by the Municipality are: Kitui Township ward, Kyangwithya East ward, Kyangwitya West ward, Nzambani Ward, Matinyani Ward, Mulango Ward, and parts of Kwa Mutonga/Kithumula Ward and Chuluni ward.

On conferment of Municipality status, Kitui County will benefit under the Kenya Urban Support Programme through funding from the World Bank, up to a tune of Kshs.

232,374,200/= every financial year for a period of five years making the aggregate financial benefit from the programme a sum of Kshs. 1,161,871,000/=. In addition, the programme will also give a sum of Kshs. 40,000,000/= for the FY 2018/19 to assist in the capacity building of the Board of municipality employees as well as other county government employees who will be involved in the management of the municipality. However, this funding is will only be available if by the end of this year (by 30th June, 2018) Kitui county headquarter is conferred into a municipality status and there is a Board in place for the management of the municipality, that is, the Municipality Board.

The Kenya Urban Support Programme (KUSP)

This is a World Bank funded project aimed at establishing and strengthening specific urban institutions to improve infrastructure and service delivery and entails the setting up of urban areas in Kenyan Counties. It focuses on all urban areas that qualify for conferment of Municipality or City status, except Nairobi and Mombasa which are categorized as cities.

Kitui is one of the qualifying beneficiaries as per the World Bank Project Operational Manual.

Under this programme, the funding is meant to finance waste management systems, water and sanitation services, cultural activities, urban roads, bus parks, storm drainage systems, recreational facilities, amongst other devolved functions.

Objects of the Municipality

The Municipality of Kitui seeks to, *inter alia*:

- i) provide efficient and accountable management of the municipality;
- ii) provide for a governance mechanism that will enable the inhabitants of the Municipality to participate in determining preferable social services and regulatory framework, and enjoy efficiency in public service delivery;
- iii) pursue developmental opportunities available in the Municipality; and
- iv) provide high standards of social services in a cost effective manner to the Municipality residents.

Purpose of the Municipality

The Municipality shall within its boundaries ensure, amongst others:

- i) promotion, regulation and provision of an integrated wastes management system;
- ii) promotion and provision of water and sanitation services and infrastructure;
- iii) construction and maintenance of urban roads and associated infrastructure;
- iv) construction and maintenance of bus and taxi stands, *boda boda* sheds;
- v) municipal administration services; and
- vi) promotion, regulation and provision of municipal sports and cultural activities.

Establishment of the Board of the Municipality

Under Clause 3, the Municipality of Kitui shall be run by the Board of the Municipality of Kitui which shall be a body corporate with perpetual succession, with all powers that can be bestowed upon such a corporate body.

A principal and agency relationship shall exist between the County Government of Kitui and the Board of the Municipality, with the County Government being the principal and the Municipality Board being the agent. This in essence means that the Board will only exercise powers and functions that are legally delegated to it by the County Government through its authorized officers.

Composition and Term of the Board of the Municipality

The Board of municipality shall be composed on nine (9) members. Of these, four members shall be appointed through a competitive process by the County Executive Committee and approved by the County Assembly.

The remaining five members of the Board Members shall be nominated by the following umbrella bodies and thereafter approved by the County Assembly for appointment by the County Executive Committee.

- 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 association 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.

In appointing the members of the Board of Municipality, the County Executive Committee shall ensure gender, equity, and representation of persons with disability, youth and marginalized groups.

The term of the members of the Board of the Municipality shall be five years and they shall serve on part time basis.

The Municipal Manager

Clause 5 establishes the Office of the Municipal Manager who shall be the administrative head of the Municipality of Kitui and Secretary to the Board.

The Clause further provides for the qualifications of a person to hold the office of the manager and states that the manager shall implement decisions and functions of the Board of the Municipality and shall be answerable to the County Executive Committee Member in charge of Urban Development in the County. This means that the County Assembly will oversight the workings of the Board and the Municipality in general, through the County Executive Committee Member for the time being responsible for urban planning in the County.

SUBMISSIONS FROM MEMBERS OF THE PUBLIC

Mr. Speaker Sir,

Article 196(1)(b) of the Constitution requires the County Assembly to facilitate public participation in its business. In fulfillment of this requirement, the County Assembly Committee on Lands, Infrastructure and Urban Development conducted a public participation exercise on the proposed Kitui Municipal Charter on 25th June, 2018 at Kitui Multi-Purpose Hall for members of the public to give their views.

In support of the Charter, Members of the public were of the opinion that the following should be addressed once the municipality is established, THAT:

- i) Security within the Municipality should be enhanced so as to attract investors;

- ii) The chronic water problem within Kitui Municipality should be addressed;
- iii) Infrastructural development should be prioritized once the Municipality is established, particularly: tarmacking of access roads, rehabilitation of Ithookwe Airstrip, electricity connection and development proper sewerage systems;
- iv) Proper town planning should be prioritized within the municipality as the current status with hawkers and boda boda operators all over the place was not inviting even to investors and tourists and was even making it a challenge for the residents of Kitui town to freely move within the town;
- v) A 24 hour economy should be established within Kitui town to assist in economic growth.
- vi) Kitui town prison should be relocated to another location away from town and the municipality;
- vii) Mwingi town should also be considered and upon qualification be upgraded into a municipality status.
- viii) Under Clause 3.3.3, the Clergy (Christians and Muslims), has been omitted from playing a role in nomination of Members to the Board and this needs to be looked into to ensure that they are represented.
- ix) Persons appointed to the Board and staff employed should be extremely qualified for the positions to ensure that administration of the Municipality is managed effectively and efficiently.

Overall View of the Public

In spite of the concerns raised above, Members of the public were generally in support of the Kitui Municipal Charter, noting that it would lead to improved service delivery in the County.

COMMITTEE'S OBSERVATIONS AND FINDINGS

Mr. Speaker Sir,

As stated earlier, section 9(3) outlines the criteria for conferment of Municipal status.

Regarding this criteria, the Committee made the following general observations:

i) Population

Despite Kitui not having the statutory population of 250,000, Section 9(4) of the Urban Areas and Cities Act states that every headquarter of a County Government shall be conferred the status of a municipality, whether or not it meets the criteria on the population as set under section 9(3)(a).

ii) Integrated Development Plan

The Kitui Municipality Integrated Development Plan has been approved by the Kitui County Executive Committee and the same will be adopted by the Municipality Board once it assumes office in order to guide the development of the Municipality.

iii) Revenue collection

As witnessed in the previous financial years, Kitui town has demonstrable revenue collection potential if well managed to sustain its operations.

iv) Service delivery capacity

It has potential to effectively and efficiently deliver essential services as required in the First Schedule of the Urban Areas and Cities Act of 2011.

v) Public participation

Public participation exercises are carried out often within Kitui and therefore it has institutionalized active participation by its residents in management of its affairs.

vi) Space for expansion

The town has sufficient space for expansion should need arise. Further, there are various pieces of public land that can be utilized for expansion.

vii) Infrastructural facilities

Kitui town has sufficient infrastructure including markets, street lights, postal services, public recreational parks, roads just to mention but a few.

viii) Waste disposal

Kitui town has capacity for functional and effective waste disposal.

Based on the above observations and findings, Kitui town satisfies the criteria for conferment of Municipality status.

RECOMMENDATIONS OF THE COMMITTEE

Mr. Speaker Sir,

Upon reviewing the proposed Kitui Municipality Charter and considering the views of the public, the Committee makes the following recommendations:

1. That, the County Assembly approves the Charter in the Form presented to the County Assembly by H.E. the Governor.
2. That, pursuant to the provisions of Section 9(1) of the Urban Areas and Cities Act, 2011 this House resolves that Kitui Town be conferred the status of Municipality by H.E. the Governor by grant of a Charter.
3. That, the following issues need to be looked into in the future:
 - i) In Clause 3.3.5, Membership to the Board should be non- renewable after expiry of five years.
 - ii) In Clause 5.6.3, Regulations for removal of the Board member should be developed to ensure that this gap is addressed.

This Report was compiled by:

1. *Kanyaa Mwendwa- Senior Legal Counsel*
2. *Mercy Mbinya- First Clerk Assistant*

We, Members of the Committee on Lands Infrastructure and Urban Development have adopted this Report and hereby affix our signatures to it to affirm our approval and confirm its accuracy, validity and authenticity:-

NAME	DESIGNATION	SIGNATURE
1. Hon Boniface Katumo	Chairperson
2. Hon Geoffrey Mwalimu	Vice Chairperson
3. Hon Colleta Koli	Member
4. Hon Charles Maema	“
5. Hon John Kisangau	“
6. Hon Alex Wambua	“
7. Hon David Thuvi	“
8. Hon Anthony Ndo	“
9. Hon Eunice Katheke	“
10. Hon Jehoshaphat Nzamba	“

11. Hon Alex Mbili

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