

# COUNTY ASSEMBLY OF GARISSA



## THIRD ASSEMBLY – (FIRST SESSION)

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### COMMITTEE ON LANDS, PHYSICAL PLANNING AND URBAN DEVELOPMENT

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### REPORT ON CONSIDERATION OF THE MASALANI MUNICIPAL CHARTER

Clerk's Chambers,  
County Assembly Buildings,  
**Garissa, Kenya**

**February, 2023**

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## **1.0 PREFACE**

**Mr. Speaker Sir,**

On behalf of the Committee on Lands, physical Planning and urban development and pursuant to Standing Order 191(1) it is my duty and pleasure to present to the Assembly, the Committee's report on the Masalani Municipal Charter.

### **1.1 Composition of the committee.**

The committee on lands, physical planning and urban development was established pursuant to standing order 191 of the County Assembly.

The committee comprises of the following Members

- |                                  |               |
|----------------------------------|---------------|
| 1. Hon Khadija Idriss Mohamed    | chairperson   |
| 2. Hon. Abdirahman Muktar        | vice chairman |
| 3. Hon. Hajir Mohamed Dahiye     | Member        |
| 4. Hon. Issa Aden Abdi           | “             |
| 5. Hon. Mohamed Sheikh Abdi      | “             |
| 6. Hon. Abdirahman Mohamed Ali   | “             |
| 7. Hon. Ayan Mohamed Dahir       | “             |
| 8. Hon. Farhiya Buro             | “             |
| 9. Hon. Fakrudin Haji Sadik      | “             |
| 10. Hon. Dekow Mohamed Duale     | “             |
| 11. Hon. Abubakar Mohamed Khalif | “             |
| 12. Hon. Fatuma Mohamed Shide    | “             |
| 13. Hon. Abdullahi Ibrahim sigat | “             |

## **1.2 Mandate of the committee**

### **Mr. speaker sir**

The Committee is established pursuant to Standing Order 191(1) with its subject matter as set out in the Second Schedule. Its functions are as set out in Standing Order 191(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.

## **1.3 Committee Meetings**

### **Mr. Speaker Sir,**

The committee held two meetings 5<sup>th</sup> and 6<sup>th</sup> December 2022 to consider and review the Masalani Municipal Charter. In one of the meetings, the committee made a resolution to conduct public participation on the Masalani Municipal Charter on 7th December, 2022 from 9.00 am.

The members of the public were notified of the public participation forum through newspapers inviting the general public.

**2.0 Acknowledgement**

**Mr. Speaker Sir,**

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 the 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 Nomad Palace Hotel and gave their valuable views on the proposed Masalani Municipal 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 physical planning and urban development to table this Report to the House for consideration and adoption.

**SIGNED: .....**

**HON. KHADIJA IDRIS MOHAMED, NOMINATED M.C.A.**

**CHAIRPERSON, COMMITTEE ON LANDS PHYSICAL PLANNING AND URBAN DEVELOPMENT.**

**DATE: .....**

## **3.0 BACKGROUND AND LEGAL FRAMEWORK**

### **BACKGROUND**

**Mr. Speaker Sir,**

The proposed Masalani Municipal charter was tabled in the county assembly on 1<sup>st</sup> December 2022 and subsequently committed to the committee on lands, physical planning and urban development for interrogation.

The committee was therefore, required to conduct public participation pursuant to Article 196 of the constitution of Kenya 2010 and compile the views and opinions from the public.

Subsequently the committee was required to table a conclusive report with the proposed amendments by the committee and the public as well as the stakeholders.

### **LEGAL FRAMEWORK**

**Mr. Speaker Sir**

The following legal provisions have informed the resolutions and recommendations reached by the committee on the formation of the Masalani Municipal charter.

#### **3.1 -The constitution of Kenya**

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.

#### **3.2 - The County Government Act 2012**

**Mr. Speaker Sir,**

Pursuant to **section 104** of the County Governments Act, 2012, a county government has an obligation to plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly. Such county planning should integrate economic, physical, social, environmental and spatial planning. Further the Act provides that the county government shall designate county department, cities and urban areas, sub counties and wards as planning authorities of the county.

Section 111 of the County Governments Act requires that each city or municipality should have the following plans; - City or municipal land use plan, City or municipal building and zoning plans, City or urban area building and zoning plans and Location of recreational areas and public facilities which the county cannot achieve without the conferment of the status of Masalani town to that of a municipality.

### **3.3- The Urban Areas and Cities**

**Mr. speaker Sir,**

To this end, the parliament through the Urban Areas and Cities Act of 2011 (the Principal Act), the Urban Areas and Cities (Amendment) Bill, 2017 and the Urban Areas and Cities (Amendment) Act, 2019 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, 2011 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) of the Urban Areas and Cities (Amendment) Bill, 2017 states that a town is eligible for conferment of municipal status if it satisfies the following criteria:

- a) has a resident population of at least fifty thousand residents;
- b) has an integrated urban area development plan in accordance with this Act and other existing laws;
- c) has the capacity to effectively and efficiently deliver its services to its residents and has in existence, the services provided in the First Schedule;
- d) has demonstrable good system and records of prudent management.

### **3.4- Objects of the Municipality**

The Municipality of Masalani 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 provide high standards of social services in a cost effective manner to the Municipality residents

### **3.5- 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.

### **3.6- Establishment of the Board of the Municipality**

Under Clause 3, the Municipality of Masalani shall be run by the Board of the Municipality of Masalani 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 Garissa 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.

### **3.7- Composition and Term of the Board of the Municipality**

The Board of municipality shall be composed of nine (9) members appointed by the county governor with the approval of the county assembly. The members appointed by the governor shall be constituted of the county executive member responsible for lands physical and urban development and three other members appointed by the governor with the approval of the county assembly.

The chief officer responsible for urban development is the other member and the remaining four 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.



The municipal manager shall be the secretary and ex officio member of the board.

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.

### **3.8- The Municipal Manager**

Clause 6 establishes the Office of the Municipal Manager who shall be the administrative head of the Municipality of Masalani 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 responsible for urban planning in the County.

### **4.0- Public participation on Masalani Municipality charter by the County assembly of Garissa.**

**Mr. Speaker Sir,**

The Assembly carried out a public participation exercise on 7th December, 2022 at the Nomad Palace Hotel. The public participation was attended by members of public from Masalani, Ijara and Hulugho Sub-counties and it was clear that the public was impressed by the proposed Masalani Municipality. They made their proposals which were captured by the secretariat. Majority of the Members of Garissa County assembly were present.

The following umbrella groups were also represented;

- i. Youth representatives
- ii. Business community
- iii. Civil society
- iv. Women groups
- v. PWD representative

## **5.0 SUBMISSIONS FROM MEMBERS OF THE PUBLIC DURING THE PUBLIC PARTICIPATION BY THE COUNTY ASSEMBLY.**

**Mr. Speaker Sir,**

Article 196(1) (b) of the Constitution requires the County Assembly to facilitate public participation in its business. The County Assembly's Committee on Lands, physical planning and Urban Development through the office of the clerk placed an advert in one of the local dailies; the Standard, dated Monday, December 5<sup>th</sup>, 2022 inviting the stakeholders and the general members of the Public to present their views on the charter to the proposed Masalani Municipality.

In fulfillment of this requirement, the County Assembly Committee on Lands, physical planning and urban Development conducted a public participation exercise on the proposed Masalani Municipal Charter on 7<sup>th</sup> December, 2022 at Nomad Palace Hotel for members of the public to give their views.

At the time of compiling this report no memorandum had been received from the public, however the committee was able to collect the following views from the persons who attended the various forums.

**Mr. Speaker Sir,**

Among the participants were committee members of Masalani Town, the business Community, and civil society. The members of the public were taken through the Charter by the Chairperson of the Committee.

In support of the Charter, members of the public made the following proposals;

### **5.1- Electricity**

It was mentioned that some parts of the proposed municipality do not have electricity in place. It was therefore suggested that the Board in collaboration with the relevant county and national government agencies should strive to ensure that electricity is connected to all parts of the municipality.

### **5.2- infrastructure**

One of the resident was of the opinion that the Board establishes a good infrastructure system to aid in the planning of the municipality particularly; tarmacking of access roads, electricity connection, development of proper sewerage systems, masalani market sheds for vegetable vendors.

### **5.3- Board Qualifications**

Eligibility and qualification of board members and staff should be fair and just. It was highlighted that persons appointed to the Board and staff employed, should be qualified for the positions through a competitive process to ensure that the administration of the Municipality is managed effectively and efficiently, and should come from larger Masalani residents.

### **5.4- Economic development**

One of the participants supported the conferment of Masalani to status of Municipality, noting that, it comes with a number of economic benefits including and not limited to; Job creation, increase revenue generating capacity and increase property value.

## **6.0- COMMITTEE’S FINDINGS AND OBSERVATIONS**

1. The committee observed and noted that,

Clause 3.3 of the charter on composition and term of the municipal board of the municipality reads as follows;

“the board of the municipality shall be composed of nine (9) members. Four members of the board of the municipality shall be appointed through a competitive process by the county executive committee and approved by the assembly. Five members of the board shall be nominated by umbrella bodies” this is contrary to **Urban Areas and Cities act, 2011** section **14, 1** and **2** which states that;

“A Board of a municipality shall be composed of nine (9) members appointed by the county governor with the approval of the county assembly.

The members of the board appointed shall be constituted as follows-

- The county executive member of the time being responsible for cities and urban areas or his representative and
- three other members appointed by the county governor, with the approval of the county assembly
- the chief officer responsible for urban development and the municipal manager shall be the secretary of the board and ex officio member of the board.

The remaining four (4) members of the board of a municipality specified shall be nominated by -

- An umbrella body representing professional association in the area.
- An association representing the private sector in the area.
- A cluster representing registered associations of the informal sector in the area.
- A cluster representing registered neighborhood associations in the area;

2. The committee noted that, clause 3.4.2 of the charter on Eligibility for appointment of the Municipal Board of the municipality states that, each member of Board of the Municipality shall have the following qualifications:
  - (a) be a Kenyan citizen;
  - (b) be ordinarily resident or have a permanent dwelling in the Municipality;
  - (c) carry on business in the Municipality; or
  - (d) Have lived in the Municipality for at least five years.
  - (e) Have a minimum of post-secondary school education from a recognized institution

This is contrary to **Urban Areas and Cities act, 2011** section **14, 6** which states that;

- (a) Holds at least a diploma from an institution recognized in Kenya;
  - (b) Has a distinguished career in a medium level management position in either the private or public sector;
  - (c) Holds at least five years' post-qualification professional experience; and
  - (d) Satisfies the requirements of chapter six of the constitution.
  - (e) Is ordinary residents or has a permanent dwelling in the municipality; and
  - (f) Carries on business in the municipality or has lived in the municipality for at least five years.
3. The committee observed that Masalani town satisfies the threshold to be conferred the status of Municipality as follows:

- a) Is in the process of putting in place The Masalani Municipality Integrated Development Plan.
- b) Has sufficient space for expansion as required by law
- c) Has a capacity to effectively and efficiently deliver essential services to its citizens as provided for in the fourth schedule of the Constitution of Kenya 2010.
- d) Has infrastructural facilities, including but not limited to street lighting, and markets.
- e) Has the capacity for functional and effective waste disposal system.
- f) Has demonstrable capacity to generate sufficient revenue to sustain its operations.
- g) Has a fast-growing population.

## 6.1 Resolution of the Public Participation

The Chairperson assured the participants that the issues which they had raised will be given serious consideration, and that the **Urban Areas and Cities Act**, the **County Government Act** and the **Constitution of Kenya** recognized public participation as a measure of involving members of the public in addressing issues. Moreover, the Urban Areas and Cities Act provided for citizen fora where the residents will regularly meet the Municipal Board to discuss diverse issues in the Masalani Municipality. The participants of the Public/stakeholder participation meeting approved the Masalani Municipal Charter for onward presentation to the County Assembly for debate and final approval.

## **7.0- COMMITTEE RECOMMENDATIONS**

**Mr. Speaker Sir,**

Upon reviewing the proposed Masalani Municipality Charter and considering the views of the public, the Committee makes the following recommendations: **THAT;**

- 1) Clause 3.3 and 3.4.1 of the charter should be in line with the Urban Areas and Cities Act, revised edition 2019 (2011) section 14 (1) (2) a, b, c, d, e (3) and 14 (6)
- 2) The committee recommends for the establishment of a municipality logo. This will have a significant impact on a municipality's public perception thus an important branding tool for the municipality.

That, pursuant to the provisions of Section 9(1) of the Urban Areas and Cities Act of 2011 (the Principal Act), the Urban Areas and Cities (Amendment) Bill, 2017 and the Urban Areas and Cities (Amendment) Act, 2019 that this House resolves Masalani Town be conferred the status of Municipality by H.E. the Governor by grant of a Charter.

## **8.0 ADOPTION OF THE REPORT**

We, Members of the Committee on Lands physical planning and urban development have adopted this Report on Consideration of the Masalani Municipal Charter and hereby affix our signatures to it to affirm our approval and confirm its accuracy, validity and authenticity: -

| <b>NAME</b>                             | <b>DESIGNATION</b> | <b>SIGNATURE</b> |
|---|--------------------|------------------|
| 1. <b>Hon.</b> Khadija Idriss Mohamed   | Chairperson        | .....            |
| 2. <b>Hon.</b> Abdirahman Muktar        | Vice Chairperson   | .....            |
| 3. <b>Hon.</b> Hajir Mohamed Dahiye     | Member             | .....            |
| 4. <b>Hon.</b> Issa Aden Abdi           | “                  | .....            |
| 5. <b>Hon.</b> Mohamed Sheikh Abdi      | “                  | .....            |
| 6. <b>Hon.</b> Abdirahman Mohamed Ali   | “                  | .....            |
| 7. <b>Hon.</b> Ayan Mohamed Dahir       | “                  | .....            |
| 8. <b>Hon.</b> Farhiya Buro             | “                  | .....            |
| 9. <b>Hon.</b> Fakrudin Haji Sadik      | “                  | .....            |
| 10. <b>Hon.</b> Dekow Mohamed Duale     | “                  | .....            |
| 11. <b>Hon.</b> Abubakar Mohamed        | “                  | .....            |
| 12. <b>Hon.</b> Fatuma Mohamed Shide    | „                  | .....            |
| 13. <b>Hon.</b> Abdullahi Ibrahim Sigat | „                  | .....            |

## **9.0 ANNEXURES**

- i. Appointment letter to the ad hoc committee on conferment of Masalani Town to a Municipality town committee
- ii. Letter from the Governor on conferment of Municipal status on Masalani Town.
- iii. Ad hoc committee resolution
- iv. Committee minutes.
- v. Cabinet approval