

REPUBLIC OF KENYA

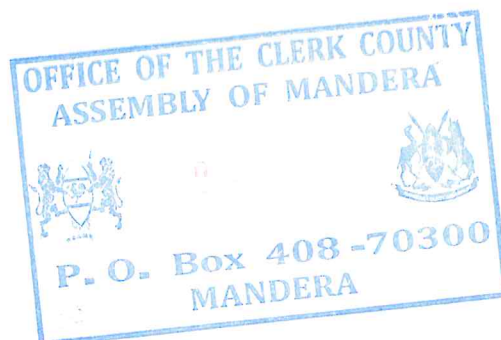


MANDERA COUNTY ASSEMBLY

SECOND ASSEMBLY- FOURTH SESSION, 2020

**REPORT OF LANDS, HOUSING AND PHYSICAL PLANNING COMMITTEE ON
THE ELWAK MUNICIPAL CHARTER 2020**

**THE CLERK'S CHAMBER,
MANDERA COUNTY ASSEMBLY,
MAY 2020**



PREFACE

Mr. Speaker Sir,

On behalf of Lands, Housing and Physical Planning Committee and pursuant to Standing Order 193(5), it is my duty and pleasure to present to the Assembly, the Committee's report on Elwak Municipal Charter.

This is one of the Sectoral Committees established under the Standing Order 193(5). Among its functions are to study the programmes and policy objectives of departments and the effectiveness of the implementation, make reports and recommendations to the County Assembly as often as possible and including recommendations of proposed legislation.

Mr. Speaker Sir,

The legislative authority of a County is vested in, and exercised by its County Assembly as provided for in Article 185 of the Constitution of Kenya, 2010. A County Assembly may make any laws that are necessary for or incidental to the effective performance of the function and exercise of the powers of the County Government under the fourth schedule.

COMMITTEE'S MANDATE

Mr. Speaker Sir,

The Sectoral Committee on Lands Housing and Physical Planning derives its mandate from provisions of Standing order 193(5).

The functions of the Committee are as follows;

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- b) To study the programmes and policy objectives of departments and the Effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyses the relative success of the departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned departments as may be deemed necessary, and as may be referred to it by the County Assembly;
- f) To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 188 (Committee on appointments); and
- g) To make reports and recommendations to the Assembly as often as possible, including recommendations of proposed legislation.

COMMITTEE COMPOSITION

The following are the Members of the Committee as constituted by the house.

- | | |
|--------------------------------|------------------|
| 1. Hon. Halima Bellow Omar- | Chairperson |
| 2. Hon. Hindia Hussein Ibrahim | vice Chairperson |
| 3. Hon. Adan Maalim Abdullahi | Member |
| 4. Hon. Abass Abdille Mohamed | Member |
| 5. Hon. Abdinur Diisow Teno | Member |
| 6. Hon. Adan Maalim Mohamed | Member |
| 7. Hon. Abdi Adan Ali | Member |
| 8. Hon. Amran Adan Abdirahman | Member |
| 9. Hon. Nasra Noor Mohamed | Member |

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to thank the offices of the Speaker and the Clerk to the County Assembly for supporting the committee in carrying out its mandate.

I would like to also thank the Honourable Members for their cooperation, teamwork and commitment in coming up with this report.

Further the Committee acknowledges the exemplary services rendered by staff attached to it.

I wish to confirm that the recommendations of the Committee in this report were unanimously adopted.

It is therefore my pleasant duty and privilege on behalf of Lands, Housing and Physical Planning Committee to present the committee's report on the Elwak Municipal Charter for approval by the Assembly.

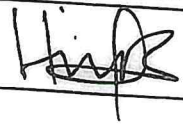


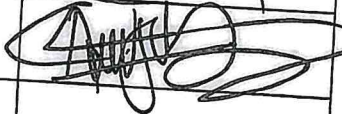
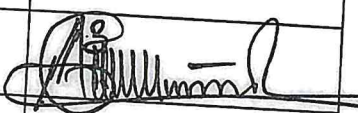


HON. HALIMA BILLOW OMAR
CHAIRPERSON, LANDS, HOUSING AND PHYSICAL PLANNING
COMMITTEE.

SIGNED:DATE. 04/05/2020.....

OWNERSHIP OF THE REPORT

We, the Members of Lands, Housing and Physical Planning Committee, do append our signatures against our names to this report to affirm the correctness of the contents and support for the report.

NO.	NAMES	DESIGNATION	SIGNATURE
1.	Hon. Halima Billoow Omar	Chairperson	
2.	Hon. Hindia Hussein Ibrahim	V/Chairperson	
3.	Hon. Adan Maalim Abdullahi	Member	
4.	Hon. Abass Abdille Mohamed	Member	
5.	Hon. Abdinur Diisow Teno	Member	
6.	Hon. Adan Maalim Mohamed	Member	
7.	Hon. Abdi Adan Ali	Member	
8.	Hon. Amran Adan Abdirahman	Member	
9.	Hon. Nasra Noor Mohamed	Member	

BACKGROUND AND LEGAL FRAMEWORK

BACKGROUND

The Committee on Lands, Housing and Physical Planning is one of the Sectoral committees established under standing order No. 193(1) and deals with all matters relating to Lands as set out under the fourth schedule part two of the Constitution of Kenya 2010.

On 13th November, 2019 the Elwak Municipal Charter was tabled in the County Assembly and was committed to this Committee. The Committee was therefore required to conduct public participation pursuant to Article 196 of the Constitution of Kenya 2010 and table a report on the same pursuant to standing order no 193(5) (g).

In compliance with Article 196(1) (b) of the Constitution of Kenya, 2010, section 87 of the County Governments Act 2012 and standing order No. 123(3) the Committee placed an advert in the Dailies inviting members of the public for public hearing as per the schedule below.

Location	Ward	Venue	Date	Time
Elwak Town	Elwak South	Elwak Social Hall	25 th November, 2019	10:00 A.M
Bulla Afya	Elwak North	Elwak Polytechnic	26 th November, 2019	10:00 AM

VIEWS OF THE PUBLIC DURING THE PUBLIC PARTICIPATION

On 25th and 26th November 2019 the Lands, Housing and Physical Planning committee invited the Elwak residents to give their views on the proposed Elwak Municipal Charter.

The members of the public felt the following issues should be thoroughly addressed when the Municipality is established.

Waste management

The Residents aired their concerns on waste management. It was their view that the current status of waste management is wanting and that they envisaged the Board to address this as a matter of priority. It was suggested that proper infrastructure be put in place to manage all the waste generated within the proposed municipality.

Infrastructure

The Public noted the need to put in place modern infrastructure. These include, drainage system, waste disposal sites, street lights, Health Facilities, urban roads and modern markets. This is aimed at generating more revenue to the County.

Planning

The members of the public informed the Committee that Elwak Town was not properly planned and building were haphazardly built with some on road reserves. They requested the Municipality to do proper planning for the town.

They also requested the County to fast track the implementation of the Elwak spatial plan to aid the survey and planning of the town.

Equalization of Resources in the wards

The members noted that resources in the County are not shared equitably and requested that during the budget making process the funds be shared equitably among the various wards.

Social amenities

The members suggested the Municipality has to construct social amenities i.e. sport centers, gym among others. The construction and maintenance of fire stations including provision of firefighting services, emergency preparedness and disaster management.

Other views included;

- The falama water be strengthened in order to enhance revenue for the County
- The members requested the administrative boundaries of the Elwak Municipality charter to be extended beyond Elwak south and Elwak North wards to include other wards such as Kutulo and shimbir fatuma.
- The Implementation of the Elwak charter has to be immediately after the County Assembly approves.
- The qualification of the Board manager and deputy manager of the municipality to be reduced.

In summary, the public were generally receptive and in full support of the Elwak Municipality. It was their general view that the creation of the municipality would be beneficial to the residents of the county at large in terms of service delivery and the overall management of urban centers within the County.

OBJECT OF THE MUNICIPALITY

The objectives of the Elwak Municipal Charter includes;

- a) Provision of efficient and accountable management of the affairs of the Municipality.
- b) Provision of good governance mechanisms that will enable the residents of the Municipality to:
 - i. participate in determining the social services and regulatory framework that will satisfy their needs and expectations;
 - ii. Verify whether public resources and authority are utilized or exercised, as the case may be, to their satisfaction;
 - iii. enjoy efficiency in service delivery;
- c) Vigorously pursue the developmental opportunities which are available in the Municipality and to institute such measures as are necessary for achieving public order and the provisions of civic amenities, so as to enhance the quality of life of inhabitants of the Municipality;
- d) Provision of a high standard of social services in a cost effective manner to the inhabitants of the Municipality;
- e) Promoting social cohesiveness and a sense of civic duty and responsibility among the inhabitants and stakeholders in the Municipality in order to facilitate collective action and commitment towards achieving the goal of harmonious and stable community;
- f) Provision of services, laws and other matters for Municipality benefit;
- g) Fostering the economic, social and environmental well-being of its community.

LEGAL FRAMEWORK

Constitution of Kenya 2010

In the current Kenyan constitution, Schedule four part II, Land, Urban Planning and Housing is listed as one of the devolved functions this includes County planning and development, including— (a) statistics; (b) land survey and mapping; (c) boundaries and fencing; (d) housing; and (e) electricity and gas reticulation and energy regulation falls under the purview of the Committee.

The Urban Areas and Cities Act 2011

The Urban Areas and Cities Act Section 9 (1) of the Urban Areas and Cities Act provides that the County governor may, on the resolution of the County Assembly, confer the status of a municipality on a town, that meets the criteria set out in subsection (3), by grant of a charter in the prescribed form. (2) The procedure set out under section (8) (1) to (4) shall apply with necessary modifications to the conferment of municipal status to a town, except that the conferment shall be done by the county governor.

In this regards the CECM for lands submitted resolution of interim Elwak town Committee requesting for conferment of municipal status as well as application for conferment of municipal status **(copy annexed)**

The Urban Areas and Cities (Amendment) Act 2019

Pursuant to section 4A of the Urban Areas and Cities (amendment) Act 2019 on Delineation of Boundaries the Committee noted that the process was taken over by the National Ministry Transport, Infrastructure, Housing and Urban Development with Preliminary County Assessment report in place where 968 areas in 45 counties (Nairobi and Mombasa Counties excluded) were identified. On 16th April 2020 the ministry placed an advert in the dailies calling for consultancy service on marking of digital boundaries hence this provision is taken care of at national level. **(Copy annexed)**

The County Governments Act, 2012

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 also requires that each city or municipality should have the following plans-

- i. City or municipal land use plan,
- ii. City or municipal building and zoning plans,
- iii. City or urban area building and zoning plans
- iv. Location of recreational areas and public facilities.

Hence, the above plans cannot be achieve without the conferment of the status of Elwak town to that of a municipality.

PROPOSED AMENDMENT

The Committee proposes that Charter No **17 (6)** be amended by deleting **‘at least one sitting in every month but unless for special reasons, not more than three sittings in a month which includes committee meetings’** and substitute with **“its sittings to transact the business of the board once every three months”** and Charter No. **30 (4) (d)** by deleting completely **“the County Governor or”**

COMMITTEES OBSERVATION

The committee observed that;

1. The charter provides that the boundaries of the Elwak municipality will constitute Elwak North and Elwak South Wards as demarcated by IEBC
2. Elwak town is faced with perennial challenge of storm water drainage system and floods. In 2018 the town was submerged with flood forcing the County Assembly to pass resolution urging the County Executive to put in place urgent measures to mitigate the effect of the rainfall through the construction of proper drainage system. The conferment of Municipality status to Elwak will address the issue as it is set to benefit from the donor fund.
3. The department complied on the requirement sections 8 and 9 of the Urban Areas and Cities Act 2011.
4. As required in first schedule of the Urban Areas and Cities (amendment) Act 2019 Elwak town has met the population requirement according the Kenya National Bureau Statistics census 2019
5. The Charter is largely compliant with the national legislation, County legislation and any other written relevant laws.
6. On the Criteria of conferment of Municipal Status the committee noted that
 - a. The County is in the process of putting in place The Elwak Integrated Development Plan.
 - b. Elwak town has sufficient space for expansion as required by law
 - c. Elwak 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. Elwak has infrastructural facilities, including but not limited to street lighting, and markets.
 - e. It has capacity for functional and effective waste disposal.
 - f. It has demonstrable revenue collection or revenue collection potential.
 - g. It has demonstrable capacity to generate sufficient revenue to sustain its operations.
 - h. The proposed Elwak Municipality has a fast growing population.

COMMITTEES RECOMMENDATION

The committee recommends;

1. **THAT;** the County Assembly pursuant to section 9(1) of Urban Areas and Cities Act approves the conferment of the status of municipality to the proposed Elwak Municipality.
7. **THAT;** the County Assembly approves the granting of the Charter as amended.