

SPECIAL ISSUE

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LEGAL NOTICE NO. 1

THE URBAN AREAS AND CITIES ACT

(No. 13 of 2011)

THE COUNTY GOVERNMENT OF MIGORI

KEHANCHA MUNICIPAL CHARTER

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THE URBAN AREAS AND CITIES ACT

(No. 13 of 2011)

THE COUNTY GOVERNMENT OF MIGORI

KEHANCHA MUNICIPAL CHARTER

PREAMBLE

WHEREAS Article 2 of the Constitution provides that the Constitution is the supreme law of the Republic of Kenya and binds all persons and all State organs at both levels of government.

WHEREAS Article 184 of the Constitution of Kenya 2010 mandated parliament to enact a legislation to provide inter alia the criteria for classifying areas as urban areas and cities; establishing the principles of governance and management of urban areas and cities and to provide for participation by residents in the governance of urban areas and cities within 1 year of the promulgation of the Constitution.

WHEREAS Parliament enacted the Urban Areas and Cities Act in the year 2011 which legislation had an effective date falling after the first elections held under the Constitution of Kenya, 2010.

WHEREAS Parliament enacted the Urban Areas and Cities (Amendment) Act in the year 2019.

WHEREAS Section 9 of the Urban Areas and Cities Act of 2011 empowers the County Governor, on the resolution of the County Assembly, to confer on a qualifying town, the status of a Municipality by grant of a Charter in the prescribed form.

WHEREAS Section 72 of the Interpretations and General Provisions Act allows for substantial conformity of any instruments required to be in a prescribed form under any statute in Kenya.

WHEREAS the County Assembly of Migori duly approved the Ad Hoc Committee report on classification of the Urban Areas in Migori County.

NOW THEREFORE IN EXERCISE of the powers conferred by section 9 (1) of the Urban Areas and Cities Act, (No. 13 of 2011) as complemented by section 72 of the Interpretations and General Provisions Act (Chapter 2) and all other enabling provisions of law, I, DR. OCHILO GEORGE MBOGO AYACKO, the Governor of Migori County, HEREBY GRANTS the Town of KEHANCHA, this Municipal Charter on this 15th day of February, 2023.

PART I— INCORPORATION, NAME AND BOUNDARIES

Incorporation and Name

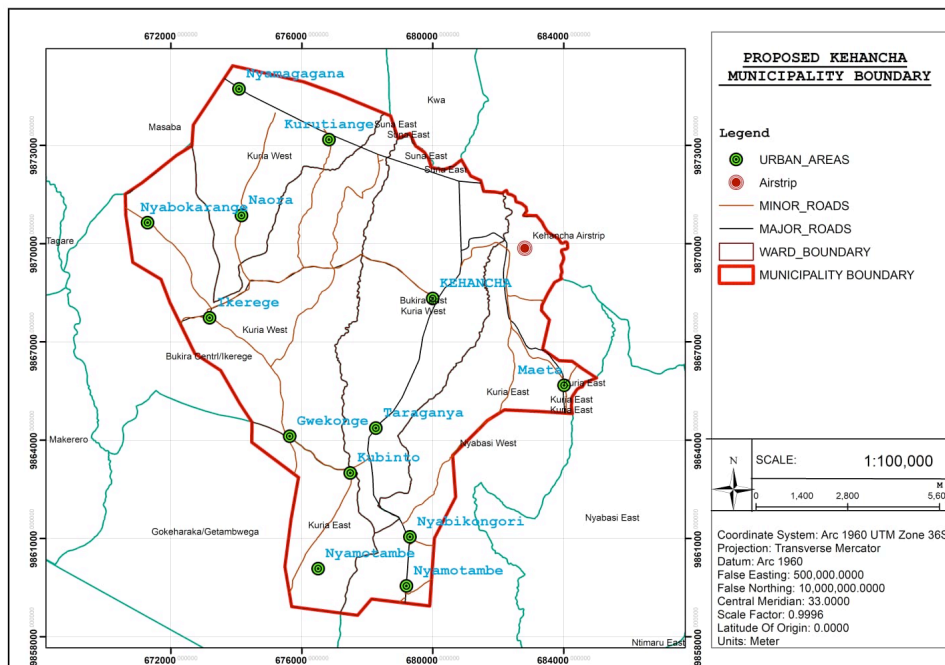
1. (1) This Charter is the Municipal Charter of the Municipality of Kehancha, within Migori County, Kenya.

(2) All processes affecting the Municipality shall be served on the Municipal Manager or the person for the time being holding the office of the Municipal Manager.

Boundaries

2.(1) The boundary of the Town of Kehancha as now existing or as may subsequently be altered shall be the boundary of the Municipality of Kehancha.

(2) The boundary of the Municipality of Kehancha is as per the Sketch/map below;



PART II— OBJECTS, FUNCTIONS AND POWERS OF THE MUNICIPALITY

Powers of the Municipality

3.(1) The Municipality of Kehancha shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by municipalities under the Urban Areas and Cities Act, the County Government Act and the County Legislations.

(2) All such powers shall be exercised in the manner prescribed in this Charter, resolutions of the Board, or, as prescribed in any other written law.

Objects of the Municipality

4. (1) The objects of the Municipality of Kehancha are to—

- (a) Provide for efficient and accountable management of the affairs of the Municipality.
- (b) Provide for a governance mechanism that will enable the inhabitants of the Municipality to—
 - (i) Participate in determining the social services and regulatory framework which will best 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.
 - (iv) 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 the inhabitants of the Municipality.
 - (v) Provide a high standard of social services in a cost-effective manner to the inhabitants of the Municipality.
 - (vi) Promote 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 a harmonious and stable community.
 - (vii) Fostering the economic, social and environmental well-being of its community

Functions of the Municipality

5. (1) The Municipality of Kehancha shall, within its boundary, perform the following functions—

- (a) Promotion, regulation and provision of refuse collection and solid waste management services;
- (b) Promotion and provision of water and sanitation services and infrastructure
- (c) Construction and maintenance of urban roads and associated infrastructure;
- (d) Construction and maintenance of storm drainage and flood controls;
- (e) Construction and maintenance of walkways and other non-motorized transport
- (f) infrastructure;
- (g) Construction and maintenance of recreational parks and green spaces;
- (h) Construction and maintenance of street lighting;
- (i) Construction, maintenance and regulation of traffic controls and parking facilities;
- (j) Construction and maintenance of bus stands and taxi stands;
- (k) Regulation of outdoor advertising;
- (l) Construction, maintenance and regulation of municipal markets and abattoirs;

- (m) Construction and maintenance of fire stations;
- (n) Provision of fire-fighting services, emergency preparedness and disaster management;
- (o) Promotion, regulation and provision of municipal sports and cultural activities;
- (p) Promotion, regulation and provision of animal control and welfare; Development and enforcement of municipal plans and development controls;
- (q) Municipal administration services (including construction and maintenance of administrative offices); Promoting and undertaking infrastructural development and services within municipality;
- (r) Any other functions as may be delegated by the County Government.

PART III—THE BOARD OF THE MUNICIPALITY

Establishment of the Board

6. (1) There shall be a Board of the Municipality of Kehancha appointed as per section 14 of the Urban Areas and Cities (Amendment) Act, 2019.

(2) The Board of the Municipality shall be a body corporate with perpetual succession and a common seal with all the attributes provided for under section 12 (2) of the Act.

(3) There shall be a principal and agency relationship between the Board of the Municipality and the County Government of Migori.

Powers and Functions of the Board of the Municipality

7.(1) The Board of the Municipality shall have all the powers and perform all functions vested in boards of municipalities under the Urban Areas and Cities Act, the County Government Act and the Municipality By-laws.

(2) Except as this Charter otherwise provides, all powers of the Municipality shall be vested in the Board of the Municipality.

(3) The functions of the board shall be as provided for in section 20 (1) of the Urban Areas and Cities Act, 2011.

Composition and term of the Board of the Municipality

8. The composition of the board shall be as provided in Section 14 of the Act.

Eligibility for appointment as member of the Board of the Municipality

9. A person will be eligible for appointment as a member of the board if they meet the requirements set out in Section 13(4) of the Act.

Chairperson and vice chairperson of the Board

10.(1) There shall be a chair person and vice chairperson of the board as provided for in section 17(2) of the Act.

Powers and functions of the Chairperson

11. The Chairperson of the Board shall have such powers as provided for in section 17(5) of the Act.

Vice-Chairperson of the Board of the Municipality

12. (1) The Vice-Chairperson shall, in the absence of the Chairperson, perform the functions of the Chairperson and shall perform such other functions as may be delegated by the Chairperson.

Removal of the Chairperson and Vice-Chairperson

13. (1) The Chairperson and the Vice-Chairperson of the Board of the Municipality may be removed by a majority decision of the members of Board of the Municipality at a duly convened meeting where quorum is present; or upon petition by a resident of the Municipality.

(2) The procedure for the removal of a Chairperson or Vice-Chairperson of the Board of the Municipality above may be provided by Regulations under the Urban Areas and Cities Act and, in the absence, thereof in accordance with Kenyan law having regard to fair labor practices.

(3) Any vacancy arising out of the removal of a Chairperson or the Vice-Chairperson of Board of the Municipality may be filled in the manner provided for in Section 19 of the Urban Areas and Cities Act.

Secretary of the Board of the Municipality

14. The secretary of the Board shall be appointed according to section 13A of the Urban Areas and Cities Act (Amendment), 2019.

Committees of the Board of the Municipality

15. (1) The board may establish such committees as provided for in section 26 of the Act.

Vacation and Removal of members of the Board of the Municipality

16. (1) A member of the Board shall cease to hold office as provided for in section 16 of the Act.

(2) A member of the Board may be removed from office in accordance with section 18 of the Act.

Quorum

17. The quorum for board meetings is a minimum of five (5) members.

Conflict of interest

18. A member of the Board who has a conflict of interest on a matter before the Board shall declare the same ahead of the meeting and shall not be eligible to vote on that particular issue.

Rules of the Board

19. The Board of the Municipality shall by resolution regulate the procedure governing its meetings.

Record of information of the Board

20.(1) The minutes and other information of the Board of the Municipality shall be kept by the Secretary of the Board of the Municipality.

(2) Access to information on the activities and resolutions of the Board shall be availed as provided for under the Urban Areas and Cities Act and other applicable laws.

Citizen Fora

21.(1) The Board of the Municipality shall ensure the development of mechanisms for the participation of the residents of the Municipality in the management and administration of the Municipality.

(2) All recommendations from the Citizen Fora shall be forwarded to the Board for deliberations.

PART IV— LEGISLATIVE AUTHORITY

By-Laws

22. The Board shall make By-laws for the efficient management of the Municipality.

Passing of By-laws

23. The Board shall adopt a procedure to guide the making, approval and effective date of by-laws.

PART V— ADMINISTRATIVE AUTHORITY

Resolutions

24. The Board of the Municipality shall exercise its administrative authority by approving and implementing its resolutions.

Approval of resolutions

25. Approval of a resolution or any other Board administrative decision shall be made through consensus by the Board

PART VI— THE MUNICIPAL MANAGER

Office of the Municipal Manager

26. (1) There shall be a Municipal Manager as provided for in Section 28 of Urban Areas and Cities Act.

(2) The Municipal Manager shall be the administrative head of the Municipality of Kehancha.

Appointment and Term

27. (1) The Manager shall be recruited competitively by the County Public Service Board.

(2) The Municipal Manager may be appointed under such terms and conditions as the Board may determine.

Qualifications

28. The Municipal Manager shall—

- (a) Be a citizen of Kenya;
- (b) Hold a degree from a university recognized in Kenya or its equivalent;
- (c) Have served and had proven experience in administration or management either in public or private sector for a term of at least ten years;

- (d) In appointing the Municipal Manager, the County Public Service Board shall ensure: gender equity; and
- (e) The inclusion of minorities and marginalized communities; and the person satisfies the requirements of Chapter six of the Constitution.

Functions and powers of the Municipal Manager

29. (1) The Municipal Manager shall implement the decisions and functions of the Board of the Municipality and shall be answerable to the Board.

(2) The Municipal Manager shall perform the following powers and functions—

- (a) Act on behalf of the Board of the Municipality;
- (b) In ensuring the execution of the directives of the Board of the Municipality;
- (c) Prepare and present for approval of the Board of the Municipality, an annual estimate of revenue and expenditure to fund and carry out the programmes and operations of the Board;
- (d) Be principally responsible for building and maintain a strong alliance and effective working relationships between the Board of the Municipality and the civil society, private sector and community-based organizations;
- (e) Cause to be prepared, transmitted to the Board of the Municipality, and distributed to the public at least an annual report on the activities and accomplishments of the departments and agencies comprising the executive branch of the Municipality;
- (f) Act as an ex-officio member of all committees of the Board of the Municipality;
- (g) Exercise supervision over all departments and agencies of the Municipality and provide for the coordination of their activities;
- (h) Enforce the provisions of this Charter, Municipal By-laws, and all applicable laws;
- (i) Exercise powers granted to the Municipal Manager in this Charter, By-laws and applicable laws concerning the appointment and removal of certain officers, employees, and members of committees of the Board of the Municipality;
- (j) Exercise such other powers and functions as may be prescribed by this Charter, by-laws, applicable laws, and as the Board may, by order, confer upon the Municipal manager.

(3) The Municipal Manager must—

- (a) Attend all Board meetings unless excused by the Chairperson of the Board or the Board of the Municipality;
- (b) Make reports and recommendations to the Board about the needs of the Municipality;
- (c) Administer and enforce all Municipality By-laws, resolutions, franchises, leases, contracts, permits, and other Municipality decisions;
- (d) Supervise Municipality employees; propose to the Board the organization of Municipality departments and administrative structure;

- (e) Prepare and administer the annual Municipality budget; Administer Municipality utilities and property;
- (f) Encourage and support regional and intergovernmental cooperation;
- (g) Promote cooperation among the Board of the Municipality, staff and citizens in developing Municipality policies and building a sense of community;
- (h) Perform other duties as directed by the Board of the Municipality; and
- (i) The Municipal Manager may attend meetings of the Board but shall not be entitled to vote.

Removal of the Municipal Manager

30.(1) The Municipal manager may be removed from office by; the County Public Service Board; or a resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality;

(2) The Municipal Manager shall cease to hold office upon the lapse of the employment term or if he/she—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity; is declared or becomes bankrupt or insolvent;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (c) resigns in writing to the Board; is found guilty of professional misconduct by the relevant professional body;
- (d) is disqualified from holding a public office under the Constitution;
- (e) engages in any gross misconduct;
- (f) dies.
- (g) Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Article 27 above.

PART VII— MUNICIPAL FINANCES AND FINANCIAL MANAGEMENT

Sources of the Municipality's funds and revenue

31. The Board of the Municipality shall derive its revenue and funds as provided for in Section 172 of the Public Finance Management Act, 2012.

Appointment of the Municipality Accounting Officer

32. The Municipality Accounting Officer shall be designated by the County Executive Committee Member for Finance in the manner provided under Section 148 of the Public Finance Management Act.

Functions and Powers of the Municipality Accounting Officer

33.(1) The Municipality Accounting Officer shall have all the powers and perform all the functions of accounting officers as provided under the Public Finance Management Act.

(2) Without prejudice to the foregoing, the Municipality Accounting Officer shall be responsible for managing the finances of the Municipality.

Financial year

34. (1) The Municipality shall operate on an annual budget.

(2) The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

Budget

35. The budget of the Board shall be developed in the manner provided under Section 175 of the Public Finance Management Act.

Management of Municipality Finances

36. (1) The Board shall, with the approval of the County Executive Committee member for finance, open and maintain a bank account in the name of the Municipality.

(2) All monies received by the Board shall be paid into the Municipality's bank account promptly and in accordance with the Public Finance Management Act.

Borrowing by the Municipality

37. The Board may only borrow from the County Government; through the County Government; or by way of a bank overdraft and subject to such terms as may be imposed by the County Assembly or such terms as provided by law.

Audit

38. The audit of the Board shall be as provided under Section 46 and 47 of the Urban Areas and Cities Act.

PART VIII— MUNICIPALITY PERSONNEL

Municipality Personnel

39. (1) The Board may subject to the approval by the County Public Service Board, employ such officers and employees as it deems necessary to execute the powers and duties provided by this Charter or other any other law.

(2) The remuneration of the municipal personnel shall be set by the County Public Service Board in consultation with the Board and Salaries and Remuneration Commission.

Management of Municipal Personnel

40. Employees of the Municipality shall be under the general guidance of the Municipal Manager.

Retirement systems

41. The retirement benefits for the officers of the Board shall be determined in accordance with Section 49 of the Urban Areas and Cities Act.

PART IX— MUNICIPALITY PROPERTY

Acquisition, possession and disposal

42. (1) The Board of the Municipality is a body corporate and may acquire real, personal, or mixed property for any public purpose by purchase, gift, bequest, devise, lease, or otherwise and may sell, lease, or otherwise dispose of any property belonging to the Municipality.

(2) All town property and funds of every kind belonging to or in the possession of the town (by whatever prior name known) at the time this Charter becomes effective are vested in the Municipality, subject to the terms and conditions thereof.

Compulsory acquisition

43. (1) Whenever the Municipality deems it necessary to acquire private land for its purposes, it shall send a request to the National Land Commission through County Executive Committee Member for acquisition.

(2) The provisions of the Land Act shall apply to any intended compulsory acquisition by the Municipality of property within the Municipality.

Protection and maintenance of Municipality Property

44. The Board of the Municipality may do whatever may be necessary to protect municipal property and to keep all municipal property in good condition.

PART X— GENERAL PROVISIONS

Oath of Office

45. Before entering upon the duties of their offices, the Municipal Manager, the Chairperson and Vice Chairperson and the members of the Board, and all other persons elected or appointed to any office of profit trust in the Municipality, as determined by Board, shall take and subscribe to the following oath or affirmation:

“.....,being called onto exercise the functions of [Municipal Manager/Chairperson, etc.]the Municipality of Kehancha do swear/solemnly affirm that that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic, that except with the authority of the Board of the Municipality of Kehancha, I will not directly or indirectly reveal the nature or contents of any business, proceedings or documents of the Municipality committed to my secrecy, except as may be required to duly discharge of my duties as [Municipal Manager/Chairperson, etc.] of the Municipality of Kehancha or otherwise under the law. (In the case of an oath— So help me God.) ”

Amendments to the Charter

46. Amendment of this Charter may be proposed by the Board or County Government. The proposal shall be made to the President through the County Governor.

Separability

47. If, at any time, a provision of this Charter is or becomes illegal, invalid or unenforceable in any respect under Kenyan law, the legality, validity or enforceability of the remaining provisions shall not be affected or impaired.

PART XI— TRANSITIONAL PROVISIONS

Effective Date of Charter

48. The commencement date of this Charter shall be the date of Gazettement.

Rights and Privileges Preserved

49. Nothing in the Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are Town Officials, Officers or Employees at the time of its adoption.

Departments

50. All Town Departments shall continue to operate with the same powers, duties, activities, budgets, and employees as were in effect at the time this Charter becomes effective until changed by the Municipal Manager with the approval of the Board of the Municipality.

Made on the 15th February, 2023.

OCHILO GEORGE MBOGO AYACKO,
Governor, Migori County.