


REPUBLIC OF KENYA



MURANG'A COUNTY ASSEMBLY

THIRD ASSEMBLY

CA HBRC  
List in the OP  
  
28/3/23

FIRST SESSION (2023)

COMMITTEE ON DELEGATED COUNTY LEGISLATION

**REPORT ON THE MURANG'A MUNICIPALITY  
(AMENDMENTS) 2023, KENOL AND KANGARI  
MUNICIPALITIES CHARTERS.**

## 1.0 BACKGROUND

Hon.Speaker, pursuant to section 9 (4) of Urban Areas Cities Act (UACA), Murang'a town is classified as special Municipality; the act prescribes the minimum population for conferment of municipality is 250,000 and 10,000 for a town. The act however in section 5 (2) provides for the grant of city status to areas having less population than the prescribed minimum in the case of special cities due to their cultural, economic or political importance.

Hon.Speaker, the boundaries of the Municipality of Murang'a as now existing as those of Murang'a Municipal council immediately before the enactment of Murang'a County Government or May subsequently be altered shall be the boundaries of the special Municipality of Murang'a.

Hon. Speaker the procedure of conferment of municipality is as stipulated under section 9(2) of the Urban Areas and Cities act:

- 1.0 The County Executive Committee members shall apply to the County Executive Committee for consideration of special municipality.
- 2.0 The County Executive Committee shall approve the application.
- 3.0 The Governor shall constitute an Adhoc Committee duly constituted as per Section 8 (3) to consider the recommendation and advise appropriately.
- 4.0 The County Governor shall transmit the recommendation of the adhoc Committee through a report and the draft charter to the County Assembly for consideration and approval.
- 5.0 The County Assembly pursuant to section 9(1) of Urban Areas and Cities Act shall approve the conferment of the status of municipality to the proposed Municipality.
- 6.0 The County Governor shall be required to gazette the conferment of such status.

## 2.0 COMMITTEE'S MEMBERSHIP

The Committee on Delegated County Legislation comprises of the following Members;

1. Hon. Moses Muchiri Maina	Chairperson
2. Hon. Mark Gicheru Wainaina	Vice-chairperson
3. Hon. Priscilla Njeri Mwangi	Member
4. Hon. Boniface Ng'ang'a Mbau	Member
5. Hon. Margaret Wanjiku Gichia	Member
6. Hon. Moses Macharia Mirara	Member
7. Hon. Alex Wanyoike Wainaina	Member
8. Hon. Bernard Ruiru Njeri	Member
9. Hon. Esther Nyawira Kamindo	Member
10. Hon. Hannah Wairimu Kamau	Member

## 3.0 ACKNOWLEDGEMENTS

I am grateful to the Members of the committee who committed their time to scrutinizing the charter. Special thanks to the Office of the Hon. Speaker and the Office of the Clerk for the support extended to the Committee in the execution of its mandate.

The Committee also extends its appreciation to the County Executive Committee Member In charge of Lands, Housing & Physical Planning Department for her effort in amending the Murang'a Municipality Charter.

Thank you.

Signed .....  ..... Date ... 28/03/2023 .....

Moses Muchiri Maina

CHAIRPERSON

#### 4.0 THE URBAN AREAS AND CITIES ACT

Hon Speaker, 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. Sub section 3 stipulates that a town can only be eligible for conferment of a municipal status if it satisfies the following;

- I. 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;
- II. Has an integrated development plan.
- III. Has demonstrable revenue collection or revenue collection potential.
- IV. Has demonstrable capacity to generate sufficient revenue to sustain its operations.
- V. Has the capacity to effectively and efficiently deliver essential services to its residents.
- VI. Has institutionalized active participation by its residents in the management of its affairs.
- VII. Has sufficient space for expansion.
- VIII. Has infrastructural facilities, including but not limited to street lighting, markets and fire stations; and
- IX. Has the capacity for functional and effective waste disposal

#### 5.0 THE CLASSIFICATION AND CRITERIA OF URBAN AREAS AND CITIES

Hon.Speaker, the urban areas and cities Act is a reprieve from the previous legislation it repeals that have been guiding our urban areas. The new Act gives more insightful and objective criteria of classifying urban areas and their management. With Kenya being in the lead of most rapidly urbanizing nations in Africa, the act comes at a convenient time to give sanity to the selection of urban areas as towns, municipalities or cities and the subsequent management of these units. The previous local government act had a four unit

Structure for the urban areas: city, municipality, county and townships.

Hon.Speaker, below are some of the new insights that the Act introduces in the classification and criteria for according various status of urban areas and cities.

- 5.1.1** Population-Hon.Speaker, the act prescribes the minimum population for conferment of various statuses in the urban arena where an urban area has to have a minimum of 500,000 residents, 250,000 for the municipality and 10,000 for a town. The act however in section 5 (2) provides for the grant of city status to areas having less population than the prescribed minimum in the case of special cities due to their cultural, economic or political importance.
- 5.1.2** Integrated development plan-Hon.Speaker the act provides that urban areas applying for the conferment of statuses in the urban arena must have an integrated development plan. This is a shift from the previous dispensation where the integrated development plans were not mandatory. This step moves a long way in cementing urban planning to our urban areas a move that is likely to spur more organized growth and better urban areas to live in. The act necessitates that the urban areas must operate in accordance with a prepared integrated development plan. The urban areas are required to prepare integrated development plans and harmonize them with those of their county plans. The integrated development plan will be the blue print for the development and operation within the urban areas.
- 5.1.3** Citizen Participation-Hon.Speaker, the act insists on the public participation in the running and management of urban areas. There is established public forum where the citizens will express their views about the management of their urban areas and require access to information about their area. This is a break from the past where the participation of the public was not required in the management of urban areas.
- 5.1.4** Provision of essential services - Hon.Speaker, the act requires that the urban areas considered for conferment of various statuses have the capacity to effectively deliver essential services as outlined in the first schedule of the act. This will make sure that the urban areas have the capability to give these services abundantly to the residents.

- 5.1.5** Infrastructure provision – Hon.Speaker, the act requires that urban areas be in a position to provide infrastructural facilities in their area of operation including; roads, street lighting, parking, markets, fire stations and facilities for disaster management. The act also expressly requires that such areas have the capacity for functional and effective waste disposal system.
- 5.1.6** Revenue collection- Hon Speaker, the act requires that the urban must show capacity to generate and collect revenue that is able to sustain the operations of the area.
- 5.1.7** Space for expansion – Hon.Speaker, the act requires that municipalities and towns must have sufficient space for their future growth. Previous legislations paid little heed to the need for future expansion land.

## **6.0 AMENDMENT TO THE MUNICIPAL CHARTER**

To give effect to Article 184 of the Constitution of Kenya 2010, the National Assembly formulated the Urban Areas and Cities Act in 2011 which spell out criteria for classification of urban areas. The Act provides for governance and management of the urban areas.

Section 9(1) of the Urban Areas and Cities Act, 2011, under which the boundaries were reviewed provides that the County Governor may, on the resolution of the County Assembly confer the status of a Municipality status on a town that meets the criteria set out in subsection (3) by grant of a charter in a prescribed form.

The procedures for reviewing a Municipality boundary is not expressly provided for under the Urban Areas and Cities Act, 2011, However, Section 48 (1) to (5) of the County Government Act, 2012 provides that nothing in the part may be construed as precluding the County Government, through County legislation, from adjusting the units created under subsection (1) for purposes of further decentralizing its functions and provision of its services in accordance with Article 176(2) of the Constitution.

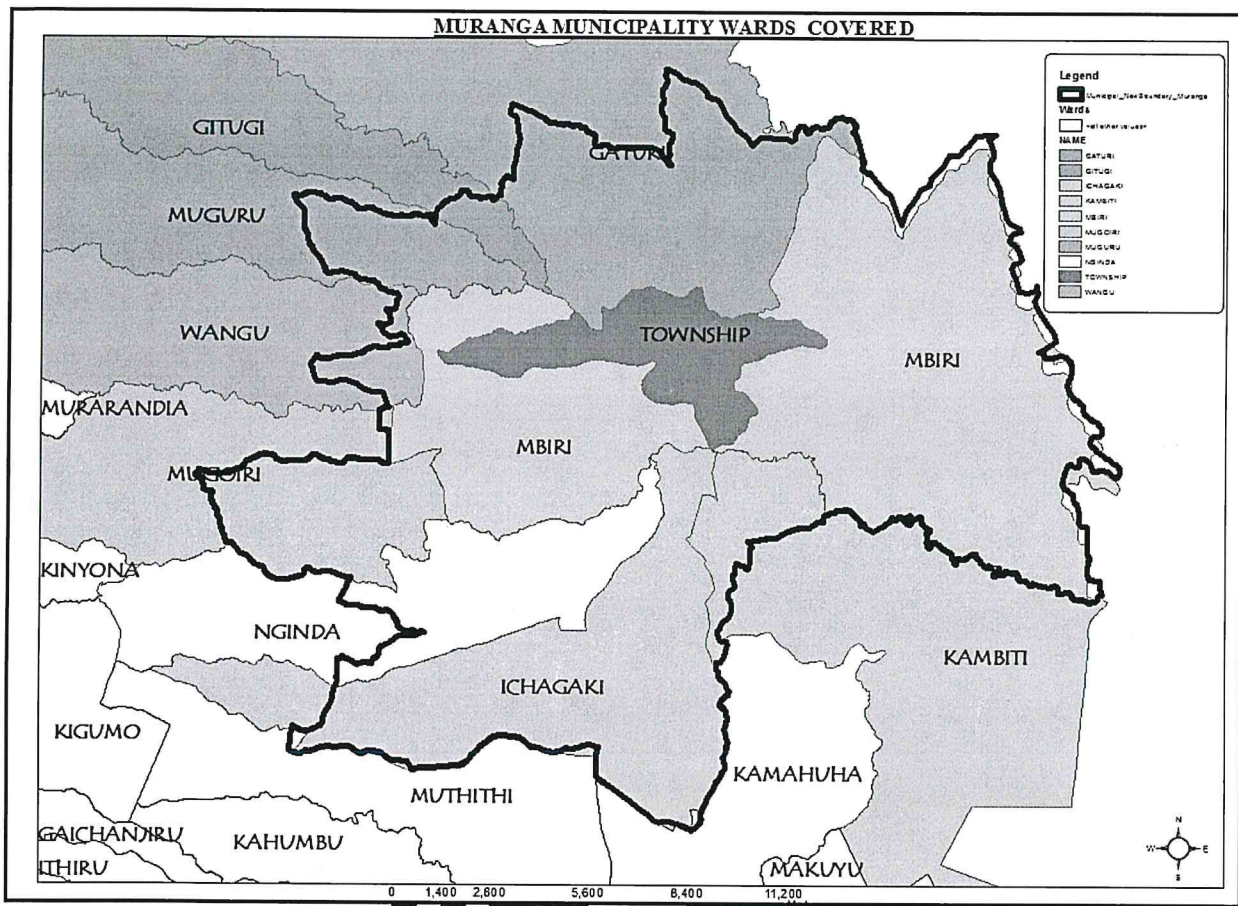
## **7.0 OBJECTIVES, PURPOSE AND APPLICATION OF THE AMENDMENTS**

The review of Murang'a Municipality boundary was necessitated by a number of factors that included;

- a) The need for unfragmented urban metropolis with financial viability to effectively provide administrative capacity to render quality service infrastructure. The expansion of the Municipality boundaries was also envisaged to provide strong interdependent social and economic linkages amongst the satellite towns within the municipality
- b) The need to efficiently and effectively provide for essential services and social infrastructure as provided for under Schedule 1 of the Urban Areas and Cities (Amendment) Act, 2019. The current boundaries only covers CBD and Mukuyu with critical services such as dump site at Karii situated outside the Municipality
- c) The need to share and re-distribute financial and administrative resources. In the Country's development context, capitation is pegged on population and the increased population endears the Municipality to a higher allocation especially from the State Department for Urban Development and the World Bank grants.
- d) High influx of people from within and without the County to seek employment or training/education opportunities within Murang'a town. According to Murang'a CIDP 2018-2022, urban population within Murang'a is projected to hit over 50% of the County population by the year 2030. This ever-increasing population puts pressure to improve service infrastructure and to expand provision of amenities and recreational facilities.
- e) The interdependence of people and economies exemplified by existing and expected patterns of human settlement, migration, use of amenities, recreational facilities and infrastructure.
- f) Existing and expected trends in land use, social, economic and transport planning
- g) Section 9(3) of the Urban Areas and Cities (Amendment) Act, 2019 which stipulates the criteria to be met by Municipalities and services to be provided.

## **8.0 CURRENT AND PROPOSED MUNICIPALITY BOUNDARIES AS PER GAZETTE NOTICE**

As shown in the shaded region (red) of the map, the current Municipality boundary as superimposed on the proposed boundary as per the gazette notice is only within the township and covers an area of 2,468.9 Ha (25 Sq. Km). It has an estimated population of 31,452 persons (2019 KNBS census)

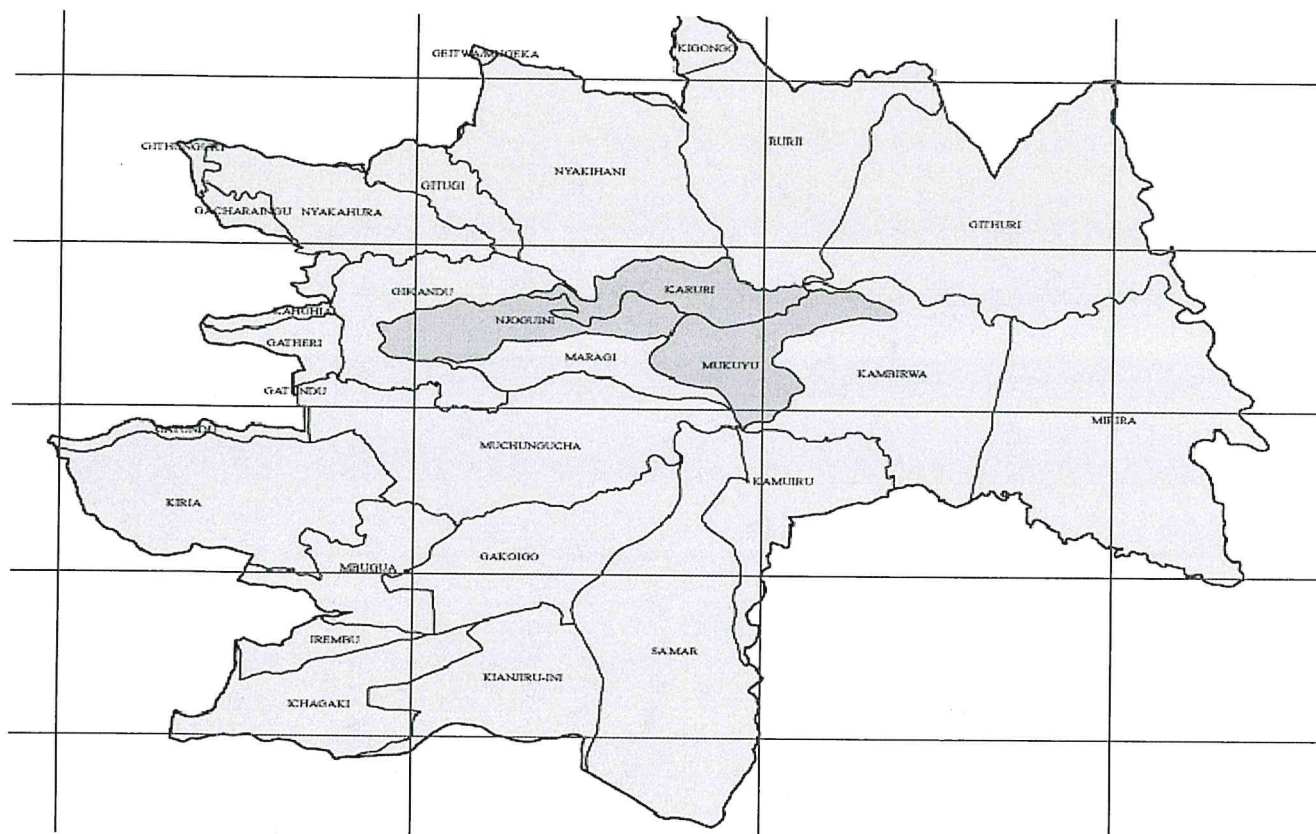


Map 1: Superimposition of the current Municipality boundary on the proposed boundary

### 9.0 PROPOSED MUNICIPALITY BOUNDARIES AS PER GAZETTE NOTICE

The proposed Municipality boundaries as per the gazette notice as shown in the expanded map Covers an area of 300.7 Sq. Km and an estimated population of 109,770 persons as per the KNBS Census of 2019. The Municipality cuts across 20 sub-locations that provide peri-urban catchment for the Municipality. These sub-locations include Gatheri, Kiria, Muchungucha, Maragi, Gikandu, Kambirwa, Githuri, Miriria, Karuri, Mukuyu, Njogu-ini, Rurii, Nyakihai, Kamuiru, Ichagaki, Kianjiirui, Samar, Gakoigo, Mbugua and Irembu as provided in the map below;





Map 2: Sub-locational Coverage of the proposed Municipality boundary

**10.0 OTHER PROCEDURAL AND LEGAL ISSUES PERTAINING TO THE MUNICIPALITY BOUNDARIES**

(1) Delineation and conferment of Municipality boundaries is provided for under Section 9(1) of the Urban Areas and Cities Act, 2011 as read together with Urban Areas and Cities (Amendment) Act, 2019. While Murang'a Municipality boundary was reviewed and approved by the County Assembly under the provisions of the Urban Areas and Cities Act, 2011, in July 2019 the passing

of Urban Areas and Cities (Amendment) Act, 2019 later in 2019 introduced new parameters and procedures for delineating and conferment of urban areas, which includes the appointment of an adhoc committee by the Cabinet Secretary under which the urban development falls. The purpose of the adhoc committee is to regularize the delineation process.

- (2) According to Section 48 (1) (a) of the County Government Act 2012 on decentralized units, , the functions and provision of services of each county government shall be decentralized to the urban areas and cities within the county established in accordance with the Urban Areas and Cities Act (No. 13 of 2011); Section 48 (2) further provides that if the constituency or part of a constituency falls under urban areas or cities, that constituency or part of the constituency, as the case may be, shall be considered as falling under subsection (1)(a).

## **11.0 LEGAL OPINION ON MURANG'A MUNICIPALITY AND THE PROPOSED KENOL AND KIHARU MUNICIPALITIES**

### **Introduction**

Article 148 of the Constitution of Kenya, 2010 provided that a legislation would provide for the governance and management of urban areas. Such legislation was enacted as the Urban Areas and Cities Act, 2011. The purpose of the Act being to provide for the classification, governance and criteria for establishing urban areas and cities while heeding to the principles of governance and participation of residents.

It is important to note that there have been several amendments in the Act which have been passed in 2012, 2016 and 2019 which have been incorporated in the Act.

### **Issues for Determination**

- a. Whether the Proposed Amendments to the Murang'a Municipality are in line with The Urban Areas and Cities Act, 2011 [2019].
- b. Whether the Proposed Kenol and Kangari Municipalities are in line with the Urban Areas and Cities Act, 2011 [2019].
- c. Whether there was sufficient public participation.

**1. Whether the Proposed Amendments to the Murang'a Municipality are in line with The Urban Areas and Cities Act, 2011 [2019].**

The proposed amendments to the Murang'a Municipality relate to the issue of delineation of boundaries as provided for under Section 4A of the Urban Areas and Cities Act 2011 [2019]. This is a new provision which was incorporated in the Act after some proposed Amendments in 2019. It is important to note that the Urban Areas and Cities (Amendment) Act, 2019 was assented to on March 12, 2019 and the commencement date was March 28, 2019.

Section 4A brought about a new parameter when there is an issue of delineation of boundaries of urban areas and cities. In our circumstance, the county government is required to make a written request to the Cabinet Secretary responsible for matters relating to urban areas and cities to appoint an adhoc committee. The appointment shall be by notice in the Kenya Gazette. The membership of the adhoc committee has been provided for under Section 4A (3) of the Act.

**2. Whether the Proposed Kenol and Kangari Municipalities are in line with the Urban Areas and Cities Act, 2011 [2019].**

The conferment of municipal status is governed by Section 9 of the Urban Areas and Cities Act, 2011 [2019]. The governor, on resolution of the county assembly is the one who confers the municipality status on a town that meets the criteria stated in Section 9 (3) through granting of a Charter.

**The procedure for conferment of Municipality Status**

This is not expressly provided for in the Act. However, Section 9 (2) provides that the procedure set out in Section 8 (1) to (4) shall apply with necessary modifications to the conferment of municipality status to a town, except that the conferment is to be done by the county governor.

Section 8 (1) to (4) provides as follows:

*(1) The board of a municipality may, upon a resolution, apply to the county executive committee for consideration for the conferment of city status.*

*(2) Where the executive committee approves the application, the county governor shall constitute an ad hoc committee to consider the recommendation and advise as appropriate.*

*(3) The ad hoc committee shall comprise of relevant professionals in good standing nominated by the following institutions taking account of regional, ethnic and gender diversity and representation of persons with disability—*

*(a) the Institution of Surveyors of Kenya;*

*(b) the Kenya Institute of Planners;*

*(c) the Architectural Association of Kenya;*

*(d) the Law Society of Kenya;*

*(e) an association of urban areas and cities;*

*(f) the Institute of Certified Public Accountants of Kenya; and*

*(g) the business community.*

*(4) Where the ad hoc committee under subsection (2) determines that the municipality under review meets the requisite criteria for classification as a city, 10 the county governor shall transmit the recommendation to the county assembly for approval.*

From the above Section 8 (1) to (4) we can thus deduce the procedure for conferment of municipality status as follows:

- a. The relevant County Executive Committee member shall apply to the County Executive Committee for consideration of conferment of municipality status.
- b. The County Executive Committee shall approve the application.
- c. In the case of a municipality which was not a Municipal Council, where boundaries need to be delineated, the county government shall in writing request the relevant Cabinet Secretary to appoint an adhoc Committee duly constituted as per Section 4A (3) to (6) of the Urban Areas and Cities Act, 2011[2019] to consider the recommendation of delineation of boundaries and advise appropriately.
- d. The County Governor shall transmit the recommendation of the adhoc Committee through a report and the draft charter to the County Assembly for consideration and approval.
- e. The County Assembly pursuant to section 9 (1) of Urban Areas and Cities Act shall approve the conferment of the municipality status.

- f. The County Governor on resolution of the County Assembly then confers the status of municipality by granting a charter.

### Criteria for Conferment of Municipality Status

This is provided for under Section 9 (3) of the Urban Areas and Cities Act,2011 [2019] as follows:

*(3) A town is eligible for the conferment of municipal status under this Act if the town satisfies the following criteria—*

*(a) has a population of at least between seventy thousand and two hundred and forty-nine 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;*

*(f) has institutionalised 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.*

### Charters

As per Section 9 (1) of the Urban Areas and Cities Act,2011 [2019], the county governor is to confer the municipality status, by grant of a charter, on resolution of the County Assembly. However, the Act does not provide the prescribed form of a charter.

A charter is a statutory instrument as per Section 2 of the Statutory Instruments Act,2013 [2022]. Once a statutory instrument is referred to the relevant committee, the committee is to scrutinize the statutory instruments to see whether it meets the considerations provided under Section 13 of the Statutory Instruments Act. The resolutions for the committee are limited as the committee can only recommend

revocation or annulment of the statutory instrument as per Section 18 and 19 of the Statutory Instruments Act. There is no room for amending statutory instruments by the committee.

### **3. Whether there was sufficient public participation.**

Public Participation is a critical principle in the Constitution of Kenya, 2010. It is provided for under Article 1 where power belongs to the people and Article 10 (2) (a) which recognizes participation of the people as one of the national values and principles of governance.

## **12.0 FINDINGS**






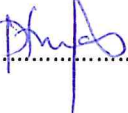


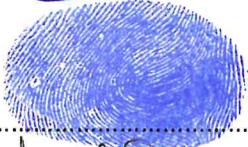
1. There is no evidence from the documents provided that the county government requested the relevant Cabinet Secretary to appoint the adhoc committee to carry out the delineation of boundaries of Murang'a Municipality as proposed in the amendments brought to the County Assembly.
2. The discussion on conferment of Municipality status to Kenol and Kangari came to the Assembly after the 2019 Amendments. However, there is no evidence from the documentation provided that the county government requested the relevant Cabinet Secretary to appoint the adhoc committee to carry out the delineation of boundaries of the proposed Kenol and Kangari Municipalities.
3. All the criteria stated under section 9(3) of the Urban Areas and Cities Act for conferment of municipal status to a town has not been justified for the proposed Kenol and Kangari Municipalities.
4. The Gazetted Charters has provisions which contradict with what is provided for in the Urban Areas and Cities Act 2011, [2019].
5. There was no adequate public participation as no documents were provided to show that public participation was undertaken. There is also some admission in the document dated February 27, 2023 on Kenol and Kangari Municipalities that public participation carried out was not very adequate.

## **13.0 RECOMMENDATIONS**

1. That the County Government writes to the relevant Cabinet Secretary to appoint the adhoc committee for purposes of:
  - a. Delineation of boundaries with regards to the proposed amendments to the Murang'a Municipality.

- b. Delineation of boundaries with regards to the proposed Kenol Municipality.
  - c. Delineation of boundaries with regards to the proposed Kangari Municipality.
2. That a report be prepared to justify whether the proposed Kenol and Kangari Municipalities have met all the criteria provided under Section 9 (3) of the Urban Areas and Cities Act, 2011 [2019].
3. That the Gazetted charters for Kenol and Kangari be revoked and new ones be published which are in line with provisions of the Urban Areas and Cities Act after the adhoc committee has done its work.
4. That sufficient public participation be carried out on the proposed expansion of Murang'a Municipality boundaries and conferment of municipality status to Kenol and Kangari which involves delineation of boundaries.

**ADOPTION**

1. Hon. Moses Muchiri Maina ..... 
2. Hon. Mark Gicheru Wainaina..... 
3. Hon. Priscilla Njeri Mwangi ..... 
4. Hon. Boniface Ng'ang'a Mbau ..... 
5. Hon. Margaret Wanjiku Gichia..... 
6. Hon. Moses Macharia Mirara ..... 
7. Hon. Alex Wanyoike Wainaina..... 
8. Hon. Bernard Ruiru Njeri..... 
9. Hon. Esther Nyawira Kamindo..... 
10. Hon. Hannah Wairimu Kamau ..... 