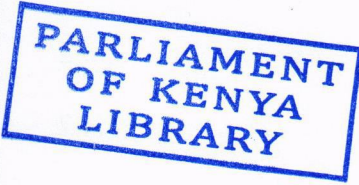


PARLIAMENT OF KENYA



THE SENATE

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Recommended for approval for tabling. E.g. 19/02/19

TWELFTH PARLIAMENT

SECOND SESSION

PAPERS	
DATE	20/2/19
TABLED BY	Chairperson
COMMITTEE	Legal Affairs
CLERK AT THE TABLE	[Signature]

THE STANDING COMMITTEE ON

JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON THE PETITION ON THE CONFERMENT OF MUNICIPAL STATUS ON MARALAL TOWN BY THE COUNTY GOVERNMENT OF SAMBURU

Clerk's Chambers,  
Parliament Buildings,  
P.O. Box 41842-00100,  
NAIROBI

Rt. Hon. Speaker  
You may approve for tabling. 19/02/19

February, 2019

Approved  
[Signature]  
20/2/2019

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## PREFACE

### Establishment of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 218 and mandated to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.

### Membership of the Committee

The Committee is comprised of the following members:-

1. Sen. Samson Cherarkey, MP - **Chairperson**
2. Sen. Mithika Linturi, MP - **Vice-Chairperson**
3. Sen. Fatuma Dullo, MP
4. Sen. James Orengo, MP
5. Sen. Amos Sitswila Wako, MP
6. Sen. Kilonzo Mutula Jnr., MP
7. Sen. Irungu Kang'ata, MP
8. Sen. Susan Wakarura Kihika, MP
9. Sen. Faki Mohamed, MP

### **Mr. Speaker,**

The Petition dated 12<sup>th</sup> July, 2018 by Sen. Steve Ltumbesi Lelegwe, MP, Samburu County on the conferment of municipal status on Maralal town by the County Government of Samburu was presented and tabled in the Senate on 18<sup>th</sup> July, 2018. The residents of Samburu County expressed concern over the alleged unconstitutional and irregular conferment of municipal status upon Maralal Town by the County Government. The Justice, Legal Affairs and Human Rights

deliberated on the Petition by the residents of Samburu County, Maralal Municipality and made appropriate observations and recommendations.

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 226(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human rights on the Petition by Sen. Steve Ltumbesi Lelegwe, MP, Samburu County on the conferment of municipal status on Maralal Town by the County Government of Samburu.

Signed..........

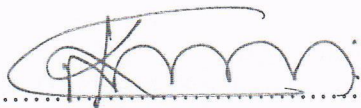
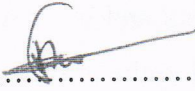

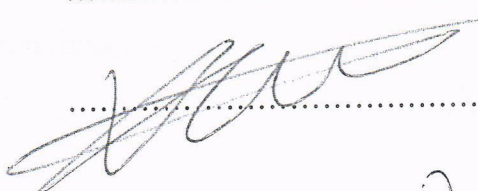
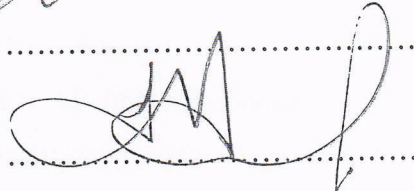
Date.....12/2/2018.....

**SEN. SAMSON CHERARKEY, MP**

**CHAIRPERSON, JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE**

ADOPTION OF THE REPORT OF THE JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE OF THE SENATE

We, the undersigned Members of the Justice, Legal Affairs and Human Rights Committee of the Senate, do hereby append our signatures to adopt the Report-

Sen. Samson Cherarkey, MP	Chairperson	
Sen. Mithika Linturi, MP	Vice-Chairperson	.....
Sen. Fatuma Dullo, MP	Member	
Sen. James Orengo, MP	Member	
Sen. Amos Sitswila Wako, MP	Member	.....
Sen. Kilonzo Mutula Jnr., MP	Member	.....
Sen. Irungu Kang'ata, MP	Member	
Sen. Susan Wakarura Kihika, MP	Member	.....
Sen. Faki Mohamed, MP	Member	

## CHAPTER ONE

### INTRODUCTION

#### **1.0 Background**

The Petition dated 12<sup>th</sup> July, 2018 by Sen. Steve Ltumbesi Lelegwe, MP, Samburu County was presented and tabled in the Senate on 18<sup>th</sup> July, 2018. Pursuant to standing order 226(2) the Committee was required to respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate not more than sixty calendar days from the time of reading the prayer.

The Petition was presented on behalf of the residents of Samburu County, Maralal Municipality. The petitioners were opposed to the conferment of municipal status on Maralal Town by the County Government of Samburu on the grounds that it was unconstitutional and irregular. The Petitioners also alleged that public participation and stakeholder consultations with relevant agencies such as the National Land Commission (NLC) has not been carried out, challenges related to property ownership, financial implications on residents of Maralal Town, among other pertinent issues.

In light of the above the petitioner prays that the Senate conducts an inquiry into the review of Maralal Town boundaries and the subsequent gazettelement of the town as a municipality in Samburu County and makes appropriate recommendations.

#### **1.1 Legal provisions touching on the Petition**

##### **1.1.1 Right to Petition Parliament**

The right to petition Parliament is provided for under Article 119 of the Constitution, which provides as follows:-

*“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right.”*

The petition therefore falls under the Committees mandate under Senate Standing Order 21<sup>2</sup>. Further, Standing Orders 226 of the Senate Standing Order outlines the procedure for committal of a petition to a Committee and transmission of its decision to the Petitioner. The Standing Committee on Justice, Legal Affairs and Human Rights is mandated to consider all matters related to implementation of the provisions of the Constitution on human rights. Further, the Petition to Parliament (Procedure) Act, 2012 and the Standing Orders of the Senate provide for the procedure to be followed in the submission, processing and consideration of a Petition.

Articles 94 as read together with Article 96 of the Constitution further provides for the role and by extension the authority of Parliament in general and the Senate in particular. Generally, the Houses of Parliament exercise the legislative mandate of the people, deliberate on matters of national interest and oversight the exercise of power by other arms of government.

#### **1.1.2 The Constitution of Kenya, 2010**

Article 184 of the Constitution provides that urban areas and cities shall be governed separately. This is to allow improved management, growth and employment creation in these areas. Article 184 provides as follows-

*(1) National legislation shall provide for the governance and management of urban areas and cities and shall, in particular—*

*(a) establish criteria for classifying areas as urban areas and cities,*

*(b) establish the principles of governance and management of urban areas and cities; and*

*(c) provide for participation by residents in the governance of urban areas and cities.*

*(2) National legislation contemplated in clause (1) may include mechanisms for identifying different categories of urban areas and cities, and for their governance.*

### **1.1.3 The Urban Areas and Cities Act, No.13 of 2011**

The Urban Areas and Cities Act 2011, deals with the establishment and governance of urban areas. Section 9 of the Act provides that the conferment of municipal status is done by the county governor on the resolution of the county assembly by grant of a charter in the prescribed form if it meets the criteria set out in Section 9 (3) which states that-

*(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.*

*(4) Notwithstanding the provisions of subsection (1), the county governor shall confer the status of a special municipality to the headquarters of the county even where it does not meet the threshold specified under subsection (3)(a).*

Section 11 of the Act provides principles for the governance of urban areas. These include:

- (i) Recognition and respect for Constitutional status of County Governments;
- (ii) Recognition of the principal and agency relationship between Counties and Urban Areas and Cities



- (iii) Boards carry out functions on behalf of Counties;
- (iv) Accountability to County and residents;
- (v) Institutionalised active participation of residents in management of Urban Areas and Cities
- (vi) Efficient and effective delivery of services;
- (vii) Clear assignment of functions

Part II of the Act provides that urban areas shall be classified into Cities, Municipalities or Towns based on several criteria. It provides a formal way in which urban areas can apply for and be conferred an improved status. The advantage of an improved status is that the urban area is granted increased say in the management of its resources and services.

Based on the criteria set out in section 9 (3) of the Act, the classification is therefore determined by-

- (i) Population;
- (ii) Existence of urban area or city development plan;
- (iii) Capacity to generate income for sustainability;
- (iv) Prudent management;
- (v) Effectiveness and efficiency in delivery of services;
- (vi) Availability of infrastructural facilities such as roads;
- (vii) Capacity for effective waste disposal;
- (viii) Has sufficient space for expansion and
- (ix) Has institutionalised mechanisms for public participation.

## CHAPTER TWO

### SUBMISSIONS RECEIVED BY THE COMMITTEE ON THE PETITION

#### 2.0 Introduction

The Petition dated 12th July, 2018 by Sen. Steve Ltumbesi Lelegwe, MP, Samburu County was presented and tabled in the Senate on 18<sup>th</sup> July, 2018. Pursuant to standing order 226(2) the Committee was required to respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate not more than sixty calendar days from the time of reading the prayer.

#### 2.1 Petition by residents of Samburu County

The Petitioners who identified themselves as Kenyan citizens and residents of Samburu County submitted to the Senate as follows-

- (1) THAT, many residents of Samburu County own property around Maralal Town through group ranches;
- (2) THAT, the County Assembly of Samburu has, without public participation, approved the conferment of municipality status upon the town of Maralal, leading to the gazettelement of the same by the Governor of Samburu County on 22<sup>nd</sup> May 2018;
- (3) THAT, the above action is inimical to the interests of residents of Maralal Town, adjacent group ranches and Samburu County in general;
- (4) THAT, the consequence of the conferment of municipal status upon Maralal Town will likely be that by-laws and regulations will have to come into effect requiring-
  - (a) all premises within the jurisdiction of Maralal Town to be ratable and levied, yet most the premises now fall within the group ranches which confer specific rights and duties;
  - (b) that administrative functions within electoral boundaries shall be transferred without attendant legal foundations and/or mandatory public participation while being enforced;
  - (c) criminal sanctions come into play on matters that were hitherto ordinary, mainly activities common among pastoralists;

(d) take-over and/or occupation of the adjacent group ranches without consent, most of which are communal group ranches and owned; and,

(e) property of residents be subjected to taxes and/or controls, despite the absence of consent and/or approval through public participation, which is mandatory.

(5) THAT, relevant agencies like the National Land Commission, group ranch leaders, elders, herders and livestock traders have not been involved nor has their opinion been sought regarding this matter, which is contrary to the requirements of the Constitution of Kenya, 2010;

(6) THAT, implementation of Municipality programmes will likely have huge financial implications on residents of the county, thereby loading over to them unnecessary burdens;

(7) THAT, the residents' right place to raise this Petition is the Senate because it represents counties and serves to protect the interests of counties and their governments, which interests have been infringed on.

(8) THAT, the consequence of the purported declaration of the municipality will be a restriction to residents' rights, including property rights and the risk of annexation of property, imposition of levies for use and restriction on use, including imposition of criminal sanctions.

## **2.2 Prayers to the Senate**

The Petitioners prays that the Senate conducts an inquiry into the review of Maralal Town boundaries and the subsequent *gazettement* of the town as a municipality in Samburu County and makes appropriate recommendations.

## CHAPTER THREE

### OBSERVATIONS AND RECOMMENDATIONS

#### **3.0 General Observations**

The Justice, Legal Affairs and Human Rights Committee observed that following approval by the Samburu County Assembly on 17<sup>th</sup> May, 2018, the Governor of Samburu County conferred the status of Municipality to Maralal Town following the grant of the Municipal Charter on 21<sup>st</sup> May, 2018 through Gazette notice No.5345 of 31<sup>st</sup> May, 2018 (Vol.CXX-No.65).

The Committee further observed that the Gazette Notice No.5345 conferring the Municipal Status was revoked by Gazette Notice No.8389 of 17<sup>th</sup> August, 2018 (Vol.CXX-No.99).The Governor of Samburu County subsequently conferred the status of Special Municipality to Maralal Town, as the County Headquarters pursuant to section 9(4) of the Urban Areas and Cities Act which provides as follows-

*(4) Notwithstanding the provisions of subsection (1), the county governor shall confer the status of a special municipality to the headquarters of the county even where it does not meet the threshold specified under subsection (3)(a).*

The Committee observed the *degazettement* addressed the concerns raised in the Petition and therefore the subject matter of the Petition has since been overtaken by events.

#### **3.1 Committee Recommendation**

The Committee resolved –

1. That pursuant to by Gazette Notice No.8389 of 17<sup>th</sup> August, 2018 which revoked Gazette notice No.5345 of 31<sup>st</sup> May, 2018, the Petition on the conferment of municipal status on Maralal Town by the County Government of Samburu has been overtaken by events; and
2. That the Senate adopts this report

**MINUTES OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 13<sup>TH</sup> FEBRUARY 2019 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 10.18 AM.**

**PRESENT**

- |                          |              |
|--------------------------|--------------|
| 1. Sen. Samson Cherarkey | -Chairperson |
| 2. Sen. James Orengo     | -Member      |
| 3. Sen. Fatuma Dullo     | -Member      |
| 4. Sen. Mohamed Faki     | -Member      |
| 5. Sen. Irungu Kang'ata  | -Member      |

**ABSENT WITH APOLOGY**

- |                            |                   |
|----------------------------|-------------------|
| 1. Sen. Mithika Linturi    | -Vice Chairperson |
| 2. Sen. Amos Wako          | -Member           |
| 3. Sen. Mutula Kilonzo Jr. | -Member           |
| 4. Sen. Susan Kihika       | -Member           |

**IN-ATTENDANCE**

1. Ms. Kavata Musyoka
2. Mr. Malcolm Ngugi
3. Ms. Clare Jerotich

**SENATE SECRETARIAT**

- Clerk Assistant
- Legal Counsel
- Research Officer

**MIN/JLAHR/2019:**

The Chairperson called the meeting to order at 10.18 a.m. and commenced the meeting with a word of prayer.

**PRELIMINARIES**

**MIN/JLAHR /2019:**

The agenda of the meeting was adopted as presented having been proposed by Sen. Orengo and seconded by Sen. Faki.

**ADOPTION OF THE AGENDA.**

**MIN/JLAHR /2019:**

**CONSIDERATION OF REPORTS PENDING BEFORE THE COMMITTEE**

The Committee adopted the following reports for tabling by consensus.

- i) Report on Public Participation on the Statutory Instruments (Amendment) Bill (Sen. Bills No. 24 of 2018)
- ii) Report on the Petition on the Conferment of Municipal Status of Mararal Town by the County Government of Samburu
- iii) Report on Public Participation on the County Statutory Instruments Bill (Sen. Bill No. 21 of 2018)
- iv) Report on Public Participation on the Petition to County Assemblies Bill (Sen. Bill No. 22 of 2018)
- v) Report on the Visit to Eldoret G.K. Prisons and Remand
- vi) Report on the Fifth Global Summit on Open Governance Partnership in Tbilisi, Georgia, 17<sup>th</sup> to 19<sup>th</sup> July, 2018

**MIN/JLAHR /2019:**

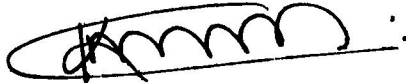
There was no other business

**ANY OTHER BUSINESS**

**MIN/JLAHR /2019:**

**DATE OF THE NEXT MEETING AND  
ADJOURNMENT**

The meeting was adjourned at 12.36 pm. Date of the next meeting will be communicated through a notice.



Signed .....

SEN. SAMSON CHERARKEY (CHAIRPERSON)

13/2/2019

Date: .....