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MUNICIPALITY CHARTER

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## 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;** Section 9 of the Urban Areas and Cities Act 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;** The Urban Areas and Cities Act do not have the prescribed form of a Municipal Charter.

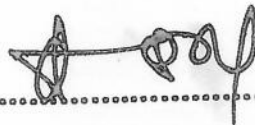
**WHEREAS;** No regulations have been promulgated under the Urban Areas and Cities Act providing the prescribed form of a Municipal Charter under the Urban Areas and Cities Act.

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 Busia duly approved the request by the Town Committee of Malaba for grant of this Charter to the now Municipality of Malaba.

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, the County Governor of Busia County HEREBY GRANTS the Municipality of Malaba this Municipal Charter on this.....day of .....2019.

[SIGNATURE OF COUNTY GOVERNOR]



H.E SOSPETER ODEKE OJAAMONG

THE COUNTY GOVERNOR OF BUSIA COUNTY

SEAL OF THE COUNTY GOVERNOR OF  
BUSIA COUNTY

## 1. INCORPORATION, NAME AND BOUNDARIES

### 1.1 Incorporation and Name

1.1.1. This Charter is the Municipal Charter of the Municipality of MALABA, within Busia County, Kenya.

1.1.2. All processes affecting the Municipality shall be served on the Municipal Manager or acting Municipal Manager.

### 1.2 Boundaries

1.2.1. The boundaries of the Municipality of MALABA as now existing or as may subsequently be altered shall be the boundaries of the Municipality of MALABA.

1.2.2 Malaba Municipality is located in North Teso sub-county, covering Central Malaba ward, North Malaba ward and South Malaba ward

## 2. POWERS, OBJECTS AND FUNCTIONS OF THE MUNICIPALITY<sup>1</sup>

### 2.1. Powers of the Municipality

2.1.1. The Municipality of MALABA shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by the municipalities under the Urban Areas and Cities Act 2011 and the subsequent amendments, the County Government Act 2012, the Public Finance Management Act 2012, the lands Act 2012 and the County of Busia laws.

2.1.2. No enumeration of specific powers in this Charter shall be held to be exclusive. All such powers shall be exercised in the manner prescribed in this Charter, or, if not prescribed herein, in such manner as Board of the Municipality may determine, or, unless a contrary intent appears in this Charter or in the By-laws and Resolutions of the Board of the Municipality, in such manner as may be provided by the County of Busia laws.

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<sup>1</sup>Article 2, Kenya Urban Support Programme (KUSP) Programme Operations Manual (POM)2017 / Volume II / Annex 2b

## 2.2. Objects of the Municipality

### 2.2.1. The objects of the Municipality of MALABA 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.
- 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 the inhabitants of the Municipality.
- d) Provide a high standard of social services in a cost effective manner to the inhabitants of the Municipality.
- e) 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.
- f) Providing for services, laws and other matters for Municipality's benefit.
- g) Fostering the economic, social and environmental well-being of its community.



### 2.3. Functions of the Municipality

2.3.1. The Municipality of MALABA shall, within the boundaries of the Municipality, 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 (in areas within the Municipality not served by the Water and Sanitation Provider);
- c) Construction and maintenance of Municipality 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 infrastructure;
- f) Construction and maintenance of recreational parks and green spaces;
- g) Construction and maintenance of street lighting;
- h) Construction, maintenance and regulation of traffic controls and parking facilities;
- i) Construction and maintenance of bus stands and taxi stands;
- j) Regulation of outdoor advertising;
- k) Construction, maintenance and regulation of municipal markets and abattoirs;
- l) Construction and maintenance of fire stations; provision of fire-fighting services, emergency preparedness and disaster management;

- m) Promotion, regulation and provision of municipal sports and cultural activities;
- n) Promotion, regulation and provision of animal control and welfare;
- o) Development and enforcement of municipal plans and development controls;
- p) Municipal administration services (including construction and maintenance of administrative offices);
- q) Promoting and undertaking infrastructural development and services within municipality;
- r) The County Executive Committee may delegate any other functions.

### 3. THE BOARD OF THE MUNICIPALITY

#### 3.1. Establishment of the Board

3.1.1. There shall be a Board of the Municipality of MALABA.<sup>2</sup>

3.1.2. The Board of the Municipality shall be a corporate body with perpetual succession and a common seal and shall in its own corporate name and be capable of;<sup>3</sup>

- (a) Suing and being sued;
- (b) Taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) Borrowing money or making investments within the limits imposed by law;
- (d) Entering into contracts; and

<sup>2</sup> Section 12(1)(a) Urban Area and Cities Act 2011

<sup>3</sup> Section 12(2) Urban Area and Cities Act 2011

- (e) Doing or performing all other act or things for the proper performance of its functions in accordance with the Urban Areas and Cities Act or any other written law which may lawfully be done or performed by a body corporate.

3.1.3. There shall be a principal and agency relationship between the Board of the Municipality and the County Government of Busia<sup>4</sup>.

### 3.2. Powers and Functions of the Board of the Municipality

3.2.1. 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, the County of Busia Laws and the Municipality By-laws.

3.2.2. Except as this Charter otherwise provides, delegated powers of the Municipality shall be vested in the Board of the Municipality.

3.2.3. The Board of the Municipality shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the Board of the Municipality.

3.2.4. Subject to the Constitution and any other written law, the Board of the Municipality shall, within the boundaries of the Municipality of MALABA-<sup>5</sup>

- a) Exercise executive authority as delegated by the county executive committee of the County of Busia;
- b) Ensure provision of services to its residents;
- c) Impose such fees, levies and charges as may be authorized by the County Government for delivery of services by the Municipality;
- d) Promote constitutional values and principles;

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<sup>4</sup> Section 11(b) Urban Area and Cities Act 2011

<sup>5</sup> Section 21(1) Urban Area and Cities Act 2011

- e) Ensure the implementation and compliance with policies formulated by both the National and County Government;
- f) Make By-laws or make recommendations for issues to be included in Busia County Laws
- g) Ensure participation of the residents in decision making, its activities and programmes; and
- h) Exercise such other powers as may be delegated by the County Executive Committee of the County of Busia.

3.2.5. Notwithstanding any other provision of law or this Charter, the Board of the Municipality shall exercise such executive authority as may be delegated by the County Executive Committee for the necessary performance of its functions.<sup>6</sup>

3.2.6. The Board of the Municipality shall perform the following functions:<sup>7</sup>

- a) oversee the affairs of the Municipality;
- b) develop or adopt policies, plans, strategies and programmes and set targets for service delivery;
- c) formulate and implement an integrated development plan;
- d) control land, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centers, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the Municipality as delegated by the County Government of Busia;

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<sup>6</sup>Section 12(2) Urban Area and Cities Act 2011

<sup>7</sup> Section 20(1) Urban Area and Cities Act 2011

- e) promoting and undertaking infrastructural development and services within Municipality as delegated by the County Government of Busia;
- f) developing and managing schemes, including site development in collaboration with the relevant national and county agencies;
- g) maintaining a comprehensive database and information system of the administration;
- h) administering and regulating its internal affairs;
- i) implementing applicable national and county legislation;
- j) entering into contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions;
- k) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the Board of the Municipality;
- l) preparing and submitting its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
- m) collecting rates, taxes levies, duties, fees and surcharges on fees as delegated by the County Government of Busia;
- n) settling and implementing tariff, rates and tax and debt collection policies as delegated by the County Government of Busia;
- o) monitoring the impact and effectiveness of any services, policies, programs or plans;

- p) establishing, implementing and monitoring performance management systems;
- q) promoting a safe and healthy environment;
- r) facilitating and regulating public transport; and
- s) performing such other functions as delegated by the County Government of Busia;

### 3.3. Composition and Term of the Board of the Municipality

3.3.1 A board of a municipality shall consist of nine members appointed by the county governor with the approval of the county assembly. <sup>8</sup>

3.3.2 The members of the board appointed under subsection 3.3.1 shall be constituted as follows;<sup>9</sup>

- (a) The county executive member for the time being responsible for cities and urban areas or his representative;
- (b) Three members who shall be appointed by the county governor, with the approval of the county assembly;
- (c) Four members who shall be nominated by an association and appointed by the county governor, with the approval of the county assembly;
- (d) The chief officer responsible for urban development; and
- (e) The municipal manager appointed under section 28 of the Urban Area and City Act, 2011, who shall be the secretary of the board and an ex officio member of the board.

<sup>8</sup> Section 14(1) Urban Area and Cities (Amendment) Act 2019

<sup>9</sup> Section 14(2) Urban Area and Cities (Amendment) Act 2019

3.3.3 The four members of the board of a municipality specified under subsection 3.3.2 (c), shall be nominated as indicated below:<sup>10</sup>

- (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 associations of the informal sector in the area; and
- (d) A cluster representing registered neighbourhood associations in the area.

3.3.4 The county governor shall, while appointing the members of the board, ensure gender equity, representation of persons with disability, youth and marginalised groups.<sup>11</sup>

3.3.5 The county governor shall while considering the nominated members identified by the organizations specified under subsection 3.3.2, require the organizations to produce;<sup>12</sup>

- (a) Signed minutes as evidence of an accountable process of nomination;
- (b) Evidence of compliance with statutory obligations; and
- (c) Vetting form to establish that the nominee has complied with the prescribed criteria for appointment as a member of the board.

3.3.7. The term of the members of the Board of the Municipality shall be five (5) years on a part- time basis<sup>13</sup>.

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<sup>10</sup> Section 14(3) Urban Area and Cities (Amendment)Act 2019

<sup>11</sup> Section 14(4) of the Urban Area and Cities (Amendment)Act 2019

<sup>12</sup> Section 14(5) of the Urban Area and Cities (Amendment)Act 2019

<sup>13</sup> Section 15 of the Urban Area and Cities Act 2011

### 3.4. Eligibility for Appointment as Member of the Board of the Municipality

3.4.1. Each member of the Board of the Municipality shall have the following qualifications;<sup>14</sup>

- (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' postqualification professional experience; and
- (d) Satisfies the requirements of Chapter Six of the Constitution;
- (e) Is ordinarily resident or has a permanent dwelling in the municipality; and (1) carries on business in the municipality or has lived in the municipality for at least five years.

### 3.5. Chairperson of the Board

3.5.1. At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Chairperson of the Board of the Municipality.<sup>15</sup>

3.5.2. A person shall be qualified for appointment as a chairperson of the board if that person<sup>16</sup>

- (a) Holds at least a degree from an institution recognized in Kenya;
- (b) Has a distinguished career in a medium level management position in either the private or public sector;

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<sup>14</sup> Section 14(6) of the Urban Area and Cities (Amendment) Act 2019

<sup>15</sup> Section 17(3) of the Urban Area and Cities Act 2011

<sup>16</sup> Section 14 (6) of the Urban Area and Cities Act 2011



- (c) Holds at least ten years' post-qualification professional experience;
- (d) Carries on business in the municipality or has lived in the municipality for at least five years.

3.5.3. The Chairperson of the Board shall hold office for a term of five (5) years<sup>17</sup>.

### 3.6. Powers and Functions of the Chairperson

3.6.1. The Chairperson of the Board of the Municipality shall have the following powers and shall perform the functions set out below; <sup>18</sup>

- a) The Chairperson shall be the head of the Board of the Municipality;
- b) Chairing the meetings of the Board of the Municipality; and
- c) Perform such other duties as may be delegated by the Board of the Municipality.

### 3.7. Vice-Chairperson of the Board of the Municipality

3.7.1. At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Vice-Chairperson of the Board of the Municipality.<sup>19</sup>

3.7.2. The Chairperson and the Vice-Chairperson of the Board of the Municipality shall at all times be of different gender.

3.7.3. 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.<sup>20</sup>

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<sup>17</sup> Section 17(4) of the Urban Area and Cities Act 2011

<sup>18</sup> Section 17 (5) of the Urban Area and Cities Act 2011

<sup>19</sup> Section 17(3) of the Urban Area and Cities Act 2011

<sup>20</sup> Section 17(6) of the Urban Area and Cities Act 2011

### 3.8. Removal of the Chairperson and Vice-Chairperson

3.8.1. The Chairperson and the Vice-Chairperson of the Board of the Municipality may be removed by;<sup>21</sup>

- a) a majority decision of the members of Board of the Municipality at a duly convened meeting where quorum is present; or
- b) upon petition by a resident of the Municipality.<sup>22</sup>

3.8.2. The procedure for the removal of a Chairperson or Vice-Chairperson of the Board of the Municipality under 3.8.1 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 labour practices.

3.8.3. 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 under Article 3.5 and 3.7 respectively.

### 3.9. Secretary of the Board of the Municipality

3.9.1. The manager of the municipality shall be the secretary to the board of the municipality. <sup>23</sup>

3.9.2. Where the Secretary of the Board of the Municipality is absent from any meeting, the members of the Board of the Municipality shall appoint a Secretary of the Board from amongst themselves for purposes of that meeting.

### 3.10. Committees of the Board of the Municipality

3.10.1. The Board of the Municipality may –

- a) Establish such Committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under the Urban Areas and Cities Act;<sup>24</sup>

<sup>21</sup> Section 18(1) of the Urban Area and Cities Act 2011

<sup>22</sup> Section 19 of the Urban Area and Cities Act 2011

<sup>23</sup> Section 14(2)(e) Urban Area and Cities (Amendment) Act 2019

<sup>24</sup> Section 26(a) of the Urban Area and Cities Act 2011

- b) Delegate to such Committee such functions as are necessary for the efficient performance of its duties in respect to the whole or any part of the area under the jurisdiction of the Board of the Municipality;<sup>25</sup> and
- c) Include persons who are not members of the Board in any Committee<sup>26</sup>.
- d) The number of so establish Committees for any general or special purpose, shall not exceed four(4)<sup>27</sup>
- e) From time to time constitute adhoc committees to help it in executing specific mandate as need arises
- f) The membership of the adhoc committees may include both Members and non- members of the board.

3.10.2. The Committees of the Board of the Municipality to which members of the Board of the Municipality delegate any of their powers and functions must follow procedures which are based as far as they are applicable on that provision of this Charter which govern the taking of decisions and performance of functions by the Board of the Municipality.

### 3.11. Remuneration of the Members of the Board of the Municipality

3.11.1. The Board of the Municipality shall not be entitled to a salary.

3.11.2. However, members of the Board of the Municipality shall be paid such allowances as the County Executive Committee shall, with the approval of the County Assembly, and on the advice of the Salaries and Remuneration Commission, determine<sup>28</sup>.

<sup>25</sup> Section 26(b) of the Urban Area and Cities Act 2011

<sup>26</sup> section 26(c) of the Urban Area and Cities Act 2011

<sup>27</sup> This is not provided for under the Act. However since the membership of the board does not allow for more

<sup>28</sup> Section 25 of the Urban Area and Cities Act 2011

### 3.12. Removal of Members of the Board of the Municipality

3.12.1 A member of the Board of the Municipality shall cease to hold office if the member<sup>29</sup>

- a) Is unable to perform the functions of the office by reason of mental or physical infirmity;
- b) Is declared or becomes bankrupt or insolvent;
- c) Is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- d) Resigns in writing to the County Governor;
- e) Without reasonable cause, the member is absent from three consecutive meetings of the Board or Committee of the Board of the Municipality within one financial year;
- f) Is found guilty of professional misconduct by the relevant professional body;
- g) Is disqualified from holding a public office under the Constitution;
- h) Fails to declare his or her interest in any matter being considered or to be considered by the Board or Board Committees;
- i) Engages in any gross misconduct; or
- j) Dies.

3.12.2 A member of the Board of the Municipality may be removed from office by<sup>30</sup>

- a) The County Governor;

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<sup>29</sup>Section 16 of the Urban Area and Cities Act 2011

<sup>30</sup> Section 18 of the Urban Area and Cities Act 2011

- b) A resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality; or
- c) Petition by the residents of the Municipality to the Busia County Assembly.

3.12.3 The procedure for the removal or petition for removal of a member of the Board of the Municipality under 3.12.2 above shall be provided by Regulation under the Urban Areas and Cities Act<sup>31</sup>.

3.12.4 Any vacancy arising out of the removal of a member of the Board of the Municipality may be filled in the manner provided under Article 3.3 above.<sup>32</sup>

### 3.13. Meetings of the Board of the Municipality

3.13.1. The Board of the Municipality shall hold its sittings to transact the business of the Board once every three months.<sup>33</sup>

3.13.2. Notwithstanding Article 3.13.1, the Chairperson of the Board of the Municipality may, and upon request in writing by at least one-third of the members of the Board of the Municipality shall, convene a special meeting to transact any urgent business of the Board of the Municipality.<sup>34</sup>

3.13.3. All regular meetings of the Board of the Municipality called for the purpose of transacting public business, where a majority of the members elected are present, shall be open to the public.

3.13.4. The Board shall have the privilege of holding executive sessions from which the public is excluded, however, no by-laws, resolution, rule or regulation shall be finally adopted at such an executive session.

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<sup>31</sup> While the UACA provides persons who may remove a member of the Board of a Municipality, the procedure for removal or petitioning for removal is not provided. The Charter proposes that the same be provided in the regulations.

<sup>32</sup> Section 19 of the Urban Area and Cities Act 2011

<sup>33</sup> Section 23(1) of the Urban Area and Cities Act 2011

<sup>34</sup> Section 23(2) of the Urban Area and Cities Act 2011

### 3.14. Quorum

3.14.1. A majority of the members of the Board of the Municipality is a quorum to conduct business, but a smaller number may meet and compel attendance of absent members as prescribed by Board of the Municipality Rules.<sup>35</sup>

3.14.2. A member of the Board of the Municipality who is interested in any discussions or decision-making regarding any subject or transaction under consideration by the Board of the Municipality, shall not be counted as participating in the discussions or decision-making, and is not entitled to vote on or agree to the subject or transaction relating to it.

### 3.15. Rules of the Board

3.15.1. The Board of the Municipality shall by resolution adopt rules to govern its meetings.

### 3.16. Record of Information of the Board

3.16.1. The minutes and other information of the Board of the Municipality shall be kept by the Secretary of the Board of the Municipality.

3.16.2. Access to information on the activities and resolutions of the Board of the Municipality shall be as provided under the Urban Areas and Cities Act.

### 3.17. Citizen Fora

3.17.1. The Board of the Municipality shall ensure the development of mechanisms for the participation of the residents of the Municipality of MALABA in the management and administration of the Municipality.

3.17.2. All recommendations from the Citizen Fora of the Municipality of MALABA shall be forwarded to the Board of the Municipality for resolution.

3.17.3. All recommendations on issues raised in the Citizen Fora and addressed by the Board of the Municipality shall be forwarded to the Municipal Manager for implementation.

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<sup>35</sup> This is not provided in the Act. However, a majority of the members of the Board of the Municipality is sufficient to constitute quorum.

## 4. LEGISLATIVE AUTHORITY

### 4.1. By-Laws

4.14.1. The Board of the Municipality shall exercise its legislative authority by passing Municipality By-laws.

### 4.2. Passing of By-Laws

4.2.1. Except as authorized by Article 3.2.2, passing of By-laws shall require approval by a majority of the Board of the Municipality at two meetings.

4.2.2. The Board of the Municipality may adopt a By-law at a single meeting by the unanimous approval of at least a quorum of Board, provided the proposed By-law is available in writing to the public at least one week before the meeting.

4.2.3. Any substantive amendment to a proposed By-law must be read aloud or made available in writing to the public before the Board of the Municipality adopts the By-law at that meeting.

4.2.4. After the adoption of a By-law, the vote of each member must be entered into the Board minutes.

4.2.5. After adoption of a By-law, the Chairperson of the Board must endorse it with the date of adoption and his title.

### 4.3. Effective Date of By-Laws

4.3.1. By-laws shall take effect on the 30th day after adoption, or on a later day provided in the By-law.

4.3.2. A By-law may take effect as soon as adopted or other date less than 30 days after adoption if it contains an emergency clause.

## **5. ADMINISTRATIVE AUTHORITY**

### **5.1. Resolutions**

5.1.1. The Board of the Municipality shall exercise its administrative authority by approving resolutions.

### **5.2. Approval of Resolutions**

5.2.1. Approval of a resolution or any other Board administrative decision requires approval by the Board of the Municipality at one meeting.

5.2.2. Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the Board adopts the resolution at that meeting.

5.2.3. After approval of a resolution or other administrative decision, the vote of each member must be entered into the Board minutes.

### **5.3 Effective date of resolutions**

5.3.1 Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolution.

## **6. THE MUNICIPAL MANAGER**

### **6.1. Office of the Municipal Manager**

6.1.1. There is established the office of the Municipal Manager.<sup>36</sup>

The term of the Municipal Manager is not provided for in the Act. The model Charter proposes that the appointment be contractual.

6.1.2. The Municipal Manager shall be the administrative head of the Municipality of MALABA.

### **6.2. Appointment and Term**

6.2.1. The Municipal Manager shall be competitively recruited and appointed by the County Public Service Board<sup>37</sup>.

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<sup>36</sup> Section 28 of the Urban Area and Cities Act 2011

<sup>37</sup> Section 29 of the Urban Area and Cities Act 2011



6.2.2. The Municipal Manager shall be appointed for a definite term

### 6.3. Qualifications

6.3.1. The Municipal Manager shall;<sup>38</sup>

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

6.3.2 In appointing a manager (under subsection 6.3.1) the County Public Service Board shall ensure<sup>39</sup>

- (a) Gender equity;
- (b) The inclusion of minorities and marginalised communities; and
- (c) The person satisfies the requirements of Chapter six of the Constitution

### 6.4. Functions and Powers of the Municipal Manager

6.4.1. The Municipal Manager shall implement the decisions and functions of the Board of the Municipality and shall be answerable to the Board.<sup>40</sup>

6.4.2. The Municipal Manager shall perform the following function<sup>41</sup>

- a. Act on behalf of the Board of the Municipality:
  - i. In ensuring the execution of the directives of the Board of the Municipality; and
  - ii. During all intervals between meetings of the Board of the Municipality.

<sup>38</sup> Section 30(1) of the Urban Area and Cities Act 2011

<sup>39</sup> Section 30(2) of the Urban Area and Cities Act 2011

<sup>40</sup> Section 28 of the Urban Area and Cities Act 2011

<sup>41</sup> The enumeration of the powers and functions of the Municipal Manager is not provided under the Act. A sample of the powers and functions of the Municipal Manager is provided here.

- b. 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;
- c. 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;
- d. 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 municipal manager and the staff of the Municipality.
- e. Act as an ex-officio member of all committees of the Board of the Municipality; and
- f. Such other functions as the Board may, by order, confer upon the Municipal Manager.

6.4.3. The Municipal Manager shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the Municipality. The Municipal Manager shall have the power and shall be required to;

- a) Exercise supervision over all departments and agencies of the Municipality and provide for the coordination of their activities;
- b) Enforce the provisions of this Charter, Municipal By-laws, and all applicable laws;
- c) 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;

- d) Exercise such other powers as may be prescribed by this Charter, by-laws and applicable laws.

6.4.4. The Municipal Manager shall—

- a) Attend all Board of the Municipality meetings unless excused by the Chairperson of the Board or the Board of the Municipality;
- b) Make reports and recommendations to the Board of the Municipality 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;
- e) Organize Municipality departments and administrative structure;
- f) Prepare and administer the annual Municipality budget;
- g) Administer Municipality utilities and property;
- h) Encourage and support regional and intergovernmental cooperation;
- i) Promote cooperation among the Board of the Municipality, staff and citizens in developing Municipality policies and building a sense of community;
- j) Perform other duties as directed by the Board of the Municipality; or
- k) Delegate duties, but remain responsible for acts of all subordinates.

6.4.5. The Municipal Manager shall have no authority over the Board of the Municipality.

6.4.6. The Municipal Manager shall be entitled to attend meetings of the Board of the Municipality but shall not be entitled to vote.

#### 6.5. Remuneration

6.5.1. The County Public Service Board shall set the compensation and determine the conditions of employment of the Municipal Manager.

#### 6.6. Removal of the Municipal Manager

6.6.1. The Municipal Manager may be removed from office by<sup>42</sup>

- a) The County Governor;
- b) A resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality; or
- c) Petition by the stakeholders of the Municipality to the Municipality board.

6.6.2. 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;
- b) Is declared or becomes bankrupt or insolvent;
- c) Is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- d) Resigns in writing to the County Governor;

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<sup>42</sup> this is not provided for in the Urban Area and Cities Act 2011

- e) Without reasonable cause, is absent from three consecutive meetings of the Board of the Municipality;
- f) Is found guilty of professional misconduct by the relevant professional body; is disqualified from holding a public office under the Constitution; engages in any gross misconduct; or
- g) Dies.

6.6.3. The Regulations made under the County Government Act (No. 17 of 2012) and in the absence thereof in accordance with Kenyan law having regard to fair labour practices.

6.6.4. Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Article 6.2 above.

#### 6.7. Acting Municipal Manager

6.7.1. When the Municipal Manager is temporarily disabled from acting as Municipal Manager or when the office of the Municipal Manager becomes vacant, the County Governor shall appoint a qualified person to be an Acting Municipal Manager.

6.7.2. The County Governor shall inform the County Public Service Board of such appointment within seven (7) days.

6.7.3. The Acting Municipal Manager shall have the authority and duties of the Municipal Manager, except that the Acting Municipal Manager may appoint or remove employees only with approval of the Board of the Municipality.

6.7.4. An Acting Municipal Manager shall hold office until such a time as a new Municipal Manager shall be appointed by the County Public Service Board.

## 7. MUNICIPAL FINANCES AND FINANCIAL MANAGEMENT

### 7.1. Sources of the Municipality's Funds and Revenue

7.1.1. The Board of the Municipality shall derive its revenue and funds from<sup>43</sup>

- a) monies allocated by the County Assembly for the purposes of the management and service delivery of the Board;
- b) monies or assets that may accrue to the Board in the course of the exercise of its powers or the performance of its functions;
- c) all monies or grants from any other legitimate source provided or donated to the Board;
- d) revenue arising from rates, fees, levies, charges and other revenue raising measures which is retained by Municipality for the purpose of defraying its costs for providing services with authority from the County Executive Committee;
- e) investment income; and
- f) Moneys borrowed with authority from the County Executive Committee Member of Lands, Housing and Urban Development with approval of the Busia County Assembly.

### 7.2. Appointment of the Municipality Accounting Officer

7.2.1. The Municipality Accounting Officer shall be designated by the County Executive Committee Member for Finance in the manner provided under Section 148(1) and (2) of the Public Finance Management Act. <sup>44</sup>

### 7.3. Functions and Powers of the Municipality Accounting Officer

7.3.1. 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.

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<sup>43</sup> Section 43 of the UACA and Section 172 of the Public Finance Management Act

<sup>44</sup> Section 170 of the Public Finance Management Act

7.3.2. Without prejudice to the foregoing, the Municipality Accounting Officer shall be responsible for managing the finances of the Municipality with the approval of the Municipal board.

#### 7.4. Financial Year

7.4.1. The Municipality shall operate on an annual budget.

7.4.2. The financial year of the Board of the Municipality shall be the period of twelve months ending on the thirtieth June in each year.<sup>45</sup>

7.4.3 The budget of the Board of the Municipality shall be developed in the manner provided under Section 175 of the Public Finance Management Act any other written law.

#### 7.5. Budget

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

#### 7.6. Management of Municipality Finances

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

7.6.2. All monies received by the Board of the Municipality shall be paid into the Municipality's bank account promptly and in accordance with the Public Finance Management Act. <sup>46</sup>

#### 7.7. Borrowing by The Municipality

7.7.1. The Board of the Municipality may only borrow from<sup>47</sup>

- a) from the County Government;
- b) through the County Government; or
- c) 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.

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<sup>45</sup> Section 44 of the Urban Area and Cities Act 2011

<sup>46</sup> Section 179 of the Public Finance Management Act

<sup>47</sup> Section 177 of the Public Finance Management Act

## 7.8. Audit

7.8.1. The audit of the Board of the Municipality shall be as provided under section 46 and 47 of the Urban Areas and Cities Act.

## 8. MUNICIPAL PERSONNEL

### 8.1. Municipality Personnel

8.1.1. The Board of the Municipality 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.

### 8.2. Management of Municipal Personnel

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

### 8.3. Retirement Systems

8.3.1. The Board of the Municipality may do all things necessary to include its officers and employees, or any of them within any retirement system or pension system under the terms of which they are admissible, and to pay the employer's share of the cost of any such retirement or pension system out of the general funds of the Board of the Municipality with advise from the county public service board.

### 8.4. Compensation of Municipal Personnel

8.4.1. The compensation of all employees of the Municipality shall be set by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

## 9. MUNICIPAL PROPERTY

### 9.1. Acquisition, Possession and Disposal

9.1.1. 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.

9.1.2. 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.

#### 9.2. Compulsory Acquisition

9.2.1. Whenever the Municipality deems it necessary to acquire private land for its purposes, it shall request the County Executive Committee Member for the time being responsible for land to request the National Land Commission to acquire the land on its behalf. <sup>48</sup>

9.2.2. Provisions of the Land Act shall apply to any intended compulsory acquisition by the Municipality of property within the Municipality.

#### 9.3. Municipal Buildings

9.3.1 The Board of the Municipality may acquire, obtain by lease or rent, purchase, construct, operate, and maintain all buildings and structures it deems necessary for the operation of the Municipality.

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

#### 9.4. Protection of Municipality Property

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

### 10. GENERAL PROVISIONS

#### 10.1. Amendments to the Charter

10.1.1. The County Governor may at any time, after consultation with the Board of the Municipality, amend any provision of this Charter.

10.1.2. The County Governor shall cause a copy of the Amended Charter to be laid before the County Assembly within 30 days of its amendment for approval.

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<sup>48</sup> Section 107(1) of the Lands Act 2012

## 10.2 Separability

10.2.1. If, at any time, any provision of this Charter is or becomes illegal, invalid or unenforceable in any respect under Kenyan law, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired.

## 10.3 Dissolution of The Board

10.3.1 The Governor, on advice from the County Executive Committee and with the approval of the County Assembly, has the power to dissolve the board;

- a) In an emergency arising out of internal conflict
- b) Where there is collective gross misconduct by all the board members
- c) where the board fails in its duty to perform its functions as provided for under article 3.2.6
- d) where two thirds of the registered voters of the respective municipality petition the County Assembly to have the board dissolved
- e) Where the board acts in any manner beyond the scope of their delegated powers.

10.3.2 The Governor shall by a notice in the Kenya Gazette dissolve the municipal board

10.3.3 The Governor shall upon dissolving the municipal board, appoint an interim board comprising not more than five members to run the affairs of the municipality for a period of 90 days

10.3.4 A new board shall be established in accordance with articles 3.1, 3.3 and 3.4 of this charter on or before the end of 6 months from the date upon which the last board was dissolved

## 10.4 Effective Date of the Charter

10.4.1 This charter shall take effect upon gazettment in the Kenya Gazette by the Governor

10.5 Rights and Privileges Preserved

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

10.6 Departments

10.6.1 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.

**COUNTY ASSEMBLY OF BUSIA**

**MINUTES OF PLANNING, TRADE, TOURISM, COOPERATIVES & INDUSTRIALIZATION  
COMMITTEE HELD ON 25/2/2020 IN KIKA HOTEL, KISUMU STARTING AT 10.30 AM.**

**MEMBERS PRESENT**

- |                             |   |                       |
|-----------------------------|---|-----------------------|
| 1. Hon. John Oganga         | - | Committee Chairperson |
| 2. Hon. Angela Nafula       | - | Vice Chairperson      |
| 3. Hon. Fred Musirimba      | - | Member                |
| 4. Hon. Immaculate Adhiambo | - | Member                |
| 5. Hon. Moses Ochieng       | - | Member                |
| 6. Hon. Beatrice Kanoti     | - | Member                |
| 7. Hon. Moses Pius Ouma     | - | Member                |
| 8. Hon. Erick Kaibe         | - | Member                |
| 9. Hon. Mwajuma Toloyi      | - | Member                |

**IN- ATTENDANCE**

- |                        |   |                          |
|------------------------|---|--------------------------|
| 1. Francis Makokha     | - | Researcher               |
| 2. Jacob Mallo         | - | Principal Hansard Editor |
| 3. Wilberforce Wanyama | - | Commissionaire           |
| 4. Kenneth Itaa        | - | Clerk Assistant          |
| 5. Rodgers Obimba      | - | Legal Officer            |

**AGENDA.**

1. Preliminaries
2. Adoption of the Agenda
3. Adoption of the report on conferment of Municipal Status to Malaba Town.

**PRELIMINARIES**

The meeting was called to order at 10.30 a.m. by a word of prayer from the Committee Chairperson Hon. John Oganga and thereafter welcomed members to the meeting.

**MIN. NO. BSA/CA/PLAN/1/25/2/2020: ADOPTION OF THE AGENDA**

The Committee Chairperson Hon. Oganga presented the agenda of the day for member's consideration and adoption. The agenda was proposed by Hon. Kanoti and seconded by Hon. Moses Ochieng and duly adopted as the day's agenda.

**MIN.NO./BSA/CA/PLAN/02/25/2/2020: ADOPTION OF THE REPORT ON CONFERMENT OF MUNICIPAL STATUS TO MALABA TOWN.**

The Chairperson informed members that the report on conferment of municipal status to Malaba Town was ready. He (chair) therefore invited the Clerk Assistant to lead members through the report.

The Clerk Assistant Mr. Itaa Kenneth in consultation with the committee secretariat in his presentation informed members of the contents therein for the Member's approval.

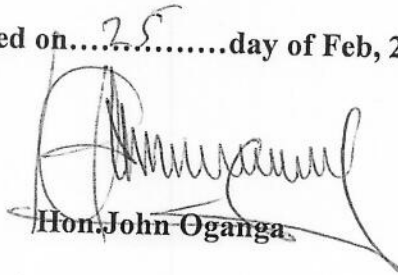
After thorough deliberations, members adopted the report as proposed by Hon. Moses Ouma and seconded by Hon.Immaculate Adhiambo and unanimously.

**ADJOURNMENT**

There being no other business for the day, the meeting was adjourned at 12.45 PM to a later date to be communicated.

**Minutes prepared this 25<sup>th</sup> day of Feb, 2020.**

**Confirmed on.....25.....day of Feb, 2020**



**Hon. John Oganga**

**( Chairperson Committee of Planning, Trade, Tourism, Cooperatives & Industrialization )**

**MEETING OF PLANNING TRADE TOURISM AND INDUSTRIALIZATION  
COMMITTEE HELD ON 23/1/2020 AT 11:30 AM IN ROYAL CITY HOTEL,KISUMU.**

**MEMBERS PRESENT**

- 1 Hon. John Oganga - Chairperson
- 2 Hon. Angela Nafula - Vice chairperson
- 3 Hon. Moses Ochieng - Member
- 4 Hon. Joyce Adhiambo - Member
- 5 Hon. Beatice Kanoti - Member
- 6 Hon. Eric Kaibe - Member
- 7 Hon. Moses Pius Ouma - Member
- 8 Hon. Mwajuma Toloyi - Member
- 9 Hon. Fred Musirimba - Member

**IN ATTENDANCE**

- 1 Jacob mallo – Principal Hansard Editor
- 2 Kenneth Itaa - Clerk Assistant
- 3 Wilberforce Wanyama - Commissionaire
- 4 Francis Makokha - Researcher

**AGENDA**

Prayer

- 1 Communication from the chairperson
- 2 Adoption of Agenda
- 3 Proposed Malaba Municipal Charter.

PRELIMINARIES.

The meeting was called to order by the committee chairperson at 11.30am with official prayer as enshrined in the Busia County Assembly Standing Orders.

**MIN. NO.CA/BSA/PLAN/01/23/1/2020 – COMMUNICATION FROM THE  
CHAIRPERSON**

The Committee Chairperson Hon. Oganga welcomed all the members and the committee secretariat for the days meeting.

**MIN. NO.CA/BSA/PLAN/02/23/1/2020-ADOPTION OF AGENDA**

The committee chairperson Hon.Oganga floated the agenda of the day for member's consideration and adoption. The agenda was then proposed by Hon.Ochieng and seconded by Hon.Kanoti that the agenda be adopted as presented.

**MIN. NO.CA/BSA/PLAN/03/23/1/2020-PROPOSED MALABA MUNICIPAL CHARTER.**

The committee in consideration of the proposed Municipal Charter for Malaba Municipality received an advisory/petition from the residents of Amukura West Ward requesting for inclusion of the Ward in the Municipality of Malaba.In considering the request,the committee established that exclusion of Amukura West Ward from the proposed Malaba Municipality would be discriminatory owing to the fact that over the years, the ward has played a very integral part both economically, socially and politically to the growth of Malaba Town and also due to its close proximity to Malaba Town.

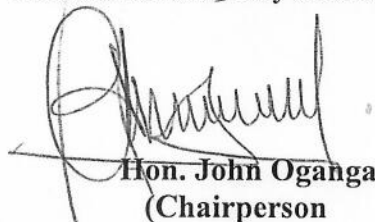
The committee there resolved that Amukura West ward be included as part of the wards in the proposed Malaba Municipality.

**ADJOURNMENT**

The meeting was adjourned at 11:14 am to a later date to be communicated.

**Minutes prepared this 23<sup>rd</sup> day of January, 2020**

**Confirmed on 23 day January, 2020**



**Hon. John Oganga**  
(Chairperson

**Planning, Trade, Tourism, Cooperatives and Industrialization)**

## COUNTY ASSEMBLY OF BUSIA

### MEETING OF PLANNING TRADE TOURISM CO-OPERATIVES AND INDUSTRIALIZATION COMMITTEE HELD ON 04/2/2020 AT 10 AM IN COMMITTEE ROOM.

#### MEMBERS PRESENT

- |                         |                    |
|-------------------------|--------------------|
| 1. Hon. John Oganga     | - Chairperson      |
| 2. Hon. Angela Nafula   | - Vice chairperson |
| 3. Hon. Moses Ochieng   | - Member           |
| 4. Hon. Joyce Adhiambo  | - Member           |
| 5. Hon. Beatice Kanoti  | - Member           |
| 6. Hon. Eric Kaibe      | - Member           |
| 7. Hon. Moses Pius Ouma | - Member           |
| 8. Hon. Mwajuma Toloyi  | - Member           |
| 9. Hon. Fred Musirimba  | - Member           |

#### IN ATTENDANCE

- |                        |                            |
|------------------------|----------------------------|
| 1. Kenneth Itaa        | - Committee Clerk          |
| 2. Wilberforce Wanyama | - Commissionaire           |
| 3. Jakob Mallo         | - principal Hansard Editor |
| 4. Francis Makokha     | - Researcher               |
| 5. Rodgers Obimba      | - Legal Officer            |

#### AGENDA

Prayer

1. Communication from the chairperson
2. Conferment of municipal status to Malaba Town.

#### Prelimeries

The meeting was called to order at 10:00 am.

The Committee Vice Chairperson Hon. Angela read a word of prayer.

#### COMMUNICATION FROM THE CHAIRPERSON

The Committee Chairperson Hon. Oganga welcomed all the members for the meeting. He thanked members for their commitment and informed them that today's meeting is a continuation of where the committee left yesterday.



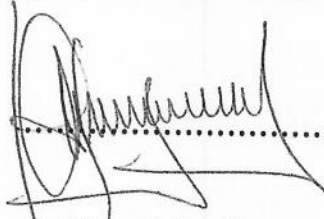
**MIN. NO.CA/BSA/PLAN/01/04/2/2020-CONFERMENT OF MUNICIPAL STATUS TO THE PROPOSED MALABA MUNICIPALITY.**

The Committee was told that the County Executive Committee at its sitting held approved the application for conferment of Municipal status to Malaba Town in line with article 8(1) of the Urban areas and Cities Act. The County executive committee also approved the establishment of a Municipal Board to run the Municipality in line with article 14 of the Urban Areas and Cities Act. The same was communicated through the Office of the clerk vide a letter dated 21/11/2019 and signed by HE the Governor. The committee was therefore tasked by the speaker to peruse the charter and bring its report to the house for approval or otherwise. The committee through the guidance of the legal counsel went through the charter document page by page in its effort to ascertain whether all the statutory and legal requirements have been met to grant it approval. The committee embarked on the last half of the part that was left. With the guidance of the Researcher and the Legal Counsel, the committee covered the whole document. After thorough deliberations, the committee resolved that the document meets all the Legal and statutory requirements to receive a nod from the committee members. It was also resolved that the committee meets on a later date to peruse the final fine tuned copy and eventually adopt the report for onward transmission to the floor of the house.

**ADJOURNMENT**

There being no other business for the day, the meeting was adjourned at 11.03 Am to a later date to be communicated.

**Minutes prepared this 4<sup>st</sup> day of Feb, 2020.**

Confirmed on  .....day of Feb, 2020

**Hon. John Oganga,  
(Committee Chairperson  
Planning, Trade, Tourism, Cooperatives and Industrialization)**