

REPUBLIC OF KENYA



COUNTY ASSEMBLY OF BOMET

SECOND ASSEMBLY- THIRD SESSION



**COMMITTEE ON ADMINISTRATION, PEACE, JUSTICE AND LEGAL
AFFAIRS**

REPORT

**ON THE BOMET COUNTY CO-ORDINATION OF GOVERNMENT
FUNCTIONS (AMMENDMENT) BILL, 2019**

15TH MAY, 2019



LEGISLATIVE FRAMEWORK

Mr. Speaker Sir,

Article 1 (2) and (3) of the Constitution of Kenya provides that the people shall exercise Sovereign power under this Constitution through democratically elected representatives. The Constitution delegates this people's power to Parliament and the Legislative Assemblies in the County Governments, the National Executive and the Executive structures in the County Governments and the Judiciary and independent tribunals which perform their functions in accordance with the Constitution. The sovereign power of the people is exercised both at the National and the County levels.

Article 94(5) of the Constitution of Kenya provides that no person or body, other than Parliament, has the power to make provisions having the force of law in Kenya except under authority conferred by this Constitution or by legislation. Article 185 of the Constitution provides that the legislative authority of a County is vested in, and exercised by, its County Assembly.

Finally, Section 21(1), (2) of the County Governments Act no.17 of 2012 lays out the procedure of exercising the legislative powers enshrined in the Constitution of Kenya. The same shall be exercised through Bills passed by the County Assembly and assented by the Governor.

Acknowledgment

Mr. Speaker

I wish to thank the Members of the Committee for dedicating their time and energy to scrutinize the amendment Bill and prepare this report. The Committee is equally grateful to the office of the Speaker, the Clerk of County Assembly and the secretariat for the support received as it discharged its mandate.

1.2 An over View of the Bomet County Co-ordination of Government Functions (Amendment) Bill, 2019

Mr. Speaker Sir,

The principal object of the Bill is to amend the Bomet County Coordination of Government Functions Act, 2014 to facilitate decentralization of services and coordination of Government administration to the lowest level possible. The Bill dis-establishes area and zone units and establishes sub-ward units in its place. The Bill further establishes sub-ward councils for each sub-ward unit.

Mr. Speaker Sir,

The Bomet County Co-ordination of Government Functions (Amendment) Bill, 2019 underwent the First Reading on 23rd April, 2019 and was effectively committed to the Committee on Administration, Peace, Justice and Legal Affairs, as provided for under Standing order 115(2).

Pursuant to Article 196(b) of the Constitution and Standing Order 121(3) which demands public participation and involvement in the legislative and other businesses of the County Assembly and its Committees, a notification was placed in the mainstream print media on 27th April, 2019 informing the public that the Committee was considering the Bomet County Co-ordination of Government Functions (Amendment) Bill, 2019 and inviting them to submit any representations they might have on the proposed Amendment Bill. The Amendment Bill was further uploaded to the Bomet County Assembly website as mentioned in the advertisement sent to mainstream media. Finally, a copy of the amendment Bill was shared with interested stakeholders and parties prior to the public participation.

Mr. Speaker, Sir,

The Committee held a total of three meetings and a retreat to consider the amendment Bill. Some of the meetings were held with stakeholders from the County Executive during the scrutiny of the Bill specifically, the Departments of Administration, Information and Communication Technology and Public Service to which the function administration and co-ordination falls. The committee also met with the legal officer from the executive arm

Section 22

The same is creating a legal loophole for governor to legally appoint his/her people without any control or check.

Section 13(a)

The section fails to create a good chain of command. For harmonious working of the department.

On boundaries

Doing away with zones as the lowest unit of administration shall reverse the gains of devolving services to the lowest level possible. The net effect shall be centralization.

It is worth noting that the National Government doesn't establish its provincial administrative boundaries in consultation with the County Government. So what happens when it does so? Does that force the county government to employ an assistant sub-ward administrator for such a newly created unit?

Section 22

The committee should consider in the amendment, a provision to have a committee tasked with vetting the applicants for sub-ward council.

Section 18 of amendment Bill

The section ought to establish roles of the various offices with a clear specialty.

Section 22 a (1)

In its amendment, the committee should consider making the sub-ward administrator, a chairperson of the Council.

Section 22 a (1)

The functions should be very clear to avoid duplication.

The same section establishes the council but fails to make provision for disciplinary procedure of its member, their term of service and who they report to.

The appointment of the council members in the proposed amendment should be competitive.

Section 18

In the principal Act the section provides for functions of those offices but the amendment fails to clearly define the functions. The committee should look into such shortcomings and remedy the same.

Section 22

1.4 The proposed amendment versus the sections amended in principal Act

Amendment 2 **Proposed amendment in the Section amended as read in the Principal Act**

Amendment 2	The Bomet County Coordination of Government Functions Act, 2014 (in this Act is referred to as the "Principal Act") is amended by- (a) deleting the words, "Community Administrator" whenever it appears; (b) deleting the words "Area Administrators" wherever it appears	The entire Act is amended by deleting the words "community administrator" and "area administrator" whenever it appears
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Amendment 3	The principal Act is amended in section 12 by- (a) deleting paragraph (c) in its entirety; (b) deleting paragraph (d) in its entirety; (c) deleting paragraph (e) and substituting therefor the following paragraph (e) sub-wards in each ward headed by Assistant Ward Administrators; (d) deleting paragraph (f) and substituting	The government service delivery co-ordination units shall be- (a) the sub-county established under the County Governments Act and headed by a Sub-County Administrator; (b) the Ward established under the County Governments Act headed by a Ward Administrator – provided that where a ward traverses certain urban
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(3) The Ward administrator shall preside over the formation of zones, areas and villages.

(4) The criteria for formation of zones, areas and villages may be such that a population of at least ten thousand people forms a zone and a population of at least three thousand people shall form a area:

Provided that each ward shall have at least two and not more than three zones, six areas and five villages in an area.

(5) In determining the zones, areas and villages, the community shall consider-

- (a) community of interest;
- (b) geographical features;
- (c) mode of infrastructure; and
- (d) commonly shared facilities.

Amendment 5 The principal Act is amended in section 18 by deleting the entire section and substituted therefor for a new section-

18 A (1) There is established for each sub-ward the office of the Assistant Ward Administrator.

There is established for each zone the office of the Community Administrator.

(1) The Community administrator shall have such qualifications and technical knowledge in administration as shall be determined by the County Public Service Board and shall be competitively recruited in accordance with the provisions of this Act.

determined by the County Public Service Board and shall be competitively recruited in accordance with the provisions of this Act.

(2) The community secretary shall, among other duties-

- a. be the secretary to the meetings convened by the community administrator and area administrator.
- b. advise the meetings on points of law;
- c. be the custodian of records of all the meetings; and
- d. undertake any other function as he may be assigned by the Ward administrator.

Amendment 7 The principal Act is amended in section 20 by deleting the section in its entirety

(1) There is established for each area the office of the Area administrator.

(2) The Area administrator shall have such qualifications and technical knowledge in administration as shall be determined by the County Public Service Board and shall be competitively recruited in accordance with the provisions of this Act.

(3) The Area administrator shall coordinate, manage and supervise the general administrative functions in the area unit, including-

Amendment 8

The principal Act is amended in section 22 (1) by deleting the entire section and substituting thereof with a new section-

22A (1) There is established, for each Sub-ward, a council comprising of five persons appointed by the Governor taking into account gender, youth, religious representation and disability.

(2) A sub-ward council shall be

responsible for-

(a) ensuring and coordinating the participation of the sub-ward unit in governance;

(b) enhancing the participation of the public in governance at the local level;

(c) monitoring the implementation of policies at the sub-ward unit;

(d) any other function necessary for the better administration of the sub-ward unit.

(1) There is established, for each area unit, an area council comprising-

i. the area administrator who shall be the chairperson of the area council; and

ii. not less than three and not more than five village elders competitively recruited and appointed by the County Secretary taking into account gender, youth, religious representation and disability.

(2) An area council shall be responsible for-

a. ensuring and coordinating the participation of the village unit in governance;

b. assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level;

c. monitoring the implementation of policies at the village unit;

d. advising the ward administrator and sub-county administrator on matters pertaining to the village; and

e. any other function necessary for the better administration of the village unit.

(3) A person shall be eligible for appointment as a village elder if the person-

a. is a citizen of Kenya;

1.5 The Committee's Observation and Comments on the Amendment Bill (Section by Section)

Section	Proposed amendment	Committee's Observation
Section 1 (short Title)	This Act may be cited as the Bomet County Coordination of Government Functions (Amendment) Act, 2019.	The Committee had no comment on the short title of Bill considering that there was no typo or error
Amendment 2 (amendment of the entire Act)	The Bomet County Coordination of Government Functions Act, 2014 (in this Act is referred to as the "Principal Act") is amended by- (c) deleting the words, "Community Administrator" whenever it appears; (d) deleting the words "Area Administrators" wherever it appears	The words "community administrator" and "area administrator" were deleted whenever it appears as per the proposed amendment, but Section 14(2) Paragraph "e" and "g" of the Principal Act, the words "community administrator" and "area administrator" still appears and have since been deleted and there is no amendment on the same. The committee therefore proposes to amend the aforesaid Section 14(2) by deleting Paragraphs "e" and "g".
Amendment 3 (amendment Section 12 of the Act)	The principal Act is amended in section 12 by- (a) deleting paragraph (c) in its entirety;	The committee observed the following; -

(a) having the location instead of sub-locations to be the equivalent boundaries of the sub-wards. This is because Bomet County has 66 locations of the National Government, however there is a serious boundary clash between the electoral and administrative boundaries, i.e some parts of electoral ward spill to a nearby electoral ward. For instance, itembe location is a location in Bomet Central Division yet it is an integral part of Nyongors ward in Chepalungu Sub-County.

(b) The County Assembly should come up with legislation for delimitation of county administrative boundaries as the case of the creation of villages units as pronounced in Section 48(4) of the County Governments Act, 2012.. The County Assembly should take into account; -

- Population Size
- Geographical features
- Community of interest, historical, economic and cultural ties; and
- Means of communication

(c) Reverting back to the principal Act where boundaries were determined by the community.

Amendment 6 (Repeal Section 19) of	The principal Act is amended in section 19 by deleting the section in its entirety	In respect to the repeal of section 19 of the principal Act, Section 14 (2) paragraph (f) of the principal Act should equally be amended by deleting. This is because the said paragraph 14 (2)(f) contains the word "community Secretary"
Amendment 7 (Repeal of section 20)	The principal Act is amended in section 20 by deleting the section in its entirety	The committee observed that amendment herein is technically viable.
Amendment 8 (amendment of Section 22)	The principal Act is amended in section 22 (1) by deleting the entire section and substituting thereof with a new section- 22A (1) There is established, for each Sub-ward, a council comprising of five persons appointed by the Governor taking into account gender, youth, religious representation and disability. (2) A sub-ward council shall be responsible for- (e) ensuring and coordinating the participation of the sub-ward	The committee observed the proposed amendment and noted the following; - The same proposal creates a legal loophole by donating unchecked power to the Governor to appoint council members. - The proposed amendment fails to take into consideration the minority and marginalized group - The proposed amendment fails to factor in the approval by the county Assembly. - Given the number of the sub-wards in

THE COMMITTEE THEREFORE PROPOSES THE FOLLOWING AMENDMENTS

Amendment of Section 12

- (1) THAT Clause 3 of the Bill be amended by inserting the words “equivalent to village units envisaged in Section 48 (3) of the County Government Act, 2012.”

Amendment of Section 22

- (2) THAT Clause 8 of the Bill be amended by inserting the word “competitively” immediately before the word “appointed”
- (3) THAT Clause be amended by deleting the word “Governor” appearing in 22A (1) and substituting thereof with the words “Assistant ward Administrator”
- (4) THAT Clause 8 be amended by inserting words “with the approval of the County Assembly” immediately before the words “immediately before the words taking into account gender, youth, religious representation and disability”

New Clause 5

Amendment of Section 14

- (5) THAT Section 14 of the principal Act is amended by deleting Section 14(2) (e) (f) (g) and (h) and that the other clauses be renumbered accordingly