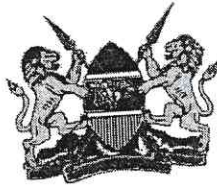
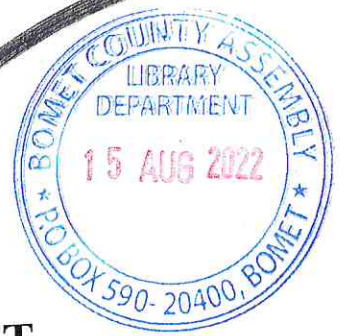


BOMET COUNTY



S.L.O



REPUBLIC OF KENYA
THE COUNTY ASSEMBLY OF BOMET

**REPORT OF THE COMMITTEE ON
ADMINISTRATION PEACE JUSTICE AND LEGAL
AFFAIRS ON THE BOMET OFFICE OF THE
COUNTY ATTORNEY BILL, 2014**



JUNE, 2014

Table of Contents

PREFACE.....	3
MANDATE OF THE COMMITTEE.....	4
COMMITTEE MEMBERSHIP.....	5
APPRECIATION.....	7
EXECUTIVE SUMMARY	9
VIEWS, CRITIQUES AND RECOMMENDATIONS BY THE MEMBERS OF THE PUBLIC DURING PUBLIC PARTICIPATION.....	10
PROPOSED AMENDMENTS TO THE BOMET OFFICE OF THE COUNTY ATTORNEY BILL, 2014.....	11
CONCLUSION.....	12
“APPENDIX 1”	13
“APPENDIX 2”	15
“APPENDIX 3”	17

PREFACE

Mr. Speaker Sir,

On behalf of the committee on Administration Peace Justice and Legal Affairs and pursuant to the provisions of the Standing Orders 181 (3), it is my pleasant privilege and pleasure to present to this House the report of the Administration Peace Justice and Legal Affairs findings after public participation on the Bomet Office of the County Attorney bill, 2014.

MANDATE OF THE COMMITTEE

The committee derives its mandate from Standing Order in the Second Schedule which stipulates that

“Administration, Constitutional affairs, peace, the administration of law and justice including the elections, ethics, integrity and anti-corruption and human rights, ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level”

The main objective of the committee is to ensure administrative capacities have been developed to ensure effective delivery of legal, justice and administration services. The committee is also required to submit half yearly reports to the Liaison committee.

COMMITTEE MEMBERSHIP

The Administration Peace Justice and Legal Affairs committee as currently constituted comprises of the following Honorable Members:

- | | |
|----------------------------|-------------|
| 1. Hon. Robert Bett | Chairperson |
| 2. Hon. Nancy Chepkirui | Vice Chair |
| 3. Hon. Josphine Rotich | Member |
| 4. Hon. John Molel | Member |
| 5. Hon. Benard Ngeno | Member |
| 6. Hon. Reuben Langat | Member |
| 7. Hon. Stephen Changmorik | Member |
| 8. Hon. Bency Too | Member |
| 9. Hon. Sammy Chelule | Member |

The main challenges faced by this committee in exercising its mandate is lack of proper prior communication to the members of the public for their required input in deliberations on the Bomet Office of the County Attorney Bill, 2014. Despite aforementioned, the committee was able to undertake its role and carried out a successful public participation.

It is the committee's recommendation that the above hiccup be addressed by the house as it is paramount that the members of the public be fully involved as provided for under Article 196 (1) (b) of the constitution which states that

"A County Assembly shall facilitate public participation and involvement in legislative and other business of the Assembly and its committees."

The County Governments Act under section 87 provides for the guidelines of public participation.

Mr., Speaker Sir,

Allow me to thank the entire membership of this committee for its hard work and commitment which made the public participation exercise a success.

In carrying out its mandate, the committee was guided by the existing procedures and modalities of operations of the County Assembly derived from the Constitution of Kenya 2010, Acts of Parliament, County Assembly Standing Orders, conventions, common practices and rulings and directives of the chair.

APPRECIATION

The Committee would like to thank the Office of the county legal officer, and the committee for their cooperation.

The Committee would also like to thank the members of the public for their valuable insights, critique and recommendations.

Finally Mr. Speaker Sir, the Committee wishes to record its appreciation for the exemplary services rendered by officers from Office of the Clerk of the County Assembly and The Legal Department Indeed, their commitment and devotion to duty have made the work of the Committee and production of this report timely and successful.

Mr. Speaker Sir,

On behalf of the Committee, I now wish to table the report and urge the House to adopt it and the recommendations therein.

HON. ROBERT BETT

SIGNED



CHAIR

DATE

10/06/2014

We Members of the Administration peace Justice and Legal Affairs do hereby
affix our signatures to this report to affirm the correctness of the contents and
support for the report:-

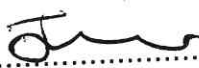
(I) Hon. Robert Bett

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(ii) Hon. Nancy Chepkirui

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(iii) Hon. Josphine Rotich

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(iv) Hon. John Molel

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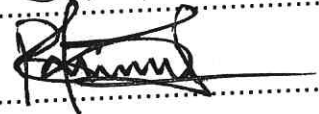

(v) Hon. Reuben Langat

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(vi) Hon. Bency Too

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(vii) Hon. Benard Ngeno

.....


(viii) Hon. Stephen Changmorik

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(ix) Hon. Sammy Chelule

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EXECUTIVE SUMMARY

The Bomet Office of the County Attorney bill is an important bill. The principle object of the bill is to basically provide for the creation of the office of the County Attorney. The Bill outlines the functions and powers of the County Attorney, the performance of those functions as well as the appointment of the County State Counsel. The County Attorney is the principal legal adviser to the County Government and is responsible for representing the County Government in any legal proceedings. The County Attorney is also the chief custodian of all the legal instruments and contracts that the County Government enters into.

The Bill ensures that the appointment is done in a very transparent, accountable and competitive manner. The appointment of the county state counsel shall be done in consultation with the county public service board. The bill outlines the qualifications required as well as the terms and conditions of service.

The Bill is a mechanism for ensuring smooth operations within the office of the County Attorney and other the County Government agencies.

VIEWS, CRITIQUES AND RECOMMENDATIONS BY THE MEMBERS OF THE PUBLIC DURING PUBLIC PARTICIPATION

1. That the substantive holder of the office of the county attorney must be insulated against any interference by any individual or institution.
2. That the county attorney must be recruited competitively, even if it means sourcing persons from outside the county.
3. That the county attorney should also be empowered to seek redress for and on behalf of the county residents who have suffered injustices in the past.
4. That the already serving county state counsels should be subjected to vetting to establish their suitability before being absorbed in the system rather than employing new office holders.
5. That the statement at the end of the Bill reading “The enactment of this Bill will not occasion additional expenditure of public funds “ is ambiguous and misleading.
6. The system of appointment and qualification criteria should be very strictly established and that the roles of state counsel need to be complimentary with those of the National Government officers.
7. That the state counsel serving in the national government be seconded to the County Government instead of employing new officers.
8. That the appointment of state counsel be solely done by the County Public Service Board.

PROPOSED AMENDMENTS TO THE BOMET OFFICE OF THE COUNTY ATTORNEY BILL, 2014.

1. THAT, clause 3 be amended by deleting the words **"the county solicitor"** and the words be deleted wherever they appear within the bill.
2. THAT, clause 4 (3) be amended by inserting a new sub clause 3(f) with the words **"has a valid practicing certificate"**
3. THAT, clause 5(1) (a) be amended by deleting the words **"shall be a member of the county executive committee"** and substituting there for the words **"may attend the county executive committee meetings"**
4. THAT, clause 5 (1) (b) be amended by deleting the words **"Government"** and substituting there for with the words **"Executive"**
5. THAT, clause 5 (1) (f) be amended by inserting the words **"with the approval and concurrence of the Director of Public Prosecutions"** and that the words **"County"** before courts be deleted; and that the word **"court"** immediately before the word **"as"** be deleted and substituted there for the word **"tribunal"**.
6. THAT, clause 5 (1) (j), (l) and (p) be deleted.
7. THAT, clauses 5 (1) (q), (r) and (s) be renumbered clauses (5) (1) (p), (q) and (r) respectively.
8. THAT, clauses 5 (6) (7) (8) be renumbered clauses 5 (2) (3) (4) respectively.
9. THAT, clause 6 (1) (c) be amended by deleting the word **"summon"** and substituting thereof with the word **"require"**
10. THAT, clause 6 (2) be amended by inserting the words **"in consultation with the County Public Service Board"**
11. THAT, clause 6 (4) be amended by deleting the words **"not be under the direction or control of any person or authority"** and substituting thereof with the words **"exercise fidelity to the law"**

11. **THAT**, clause 8 1 be amended by inserting the words **“with leave of the court”** immediately after the word **“shall”**

12. **THAT**, clause 9 (1) be amended by inserting the words **“lawfully”** immediately before the words **“discharging”**

13. **THAT**, clause 10 be deleted.

14. **THAT**, clauses 11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28 and 29 be renumbered as clauses 10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28 and 29 respectively.

15. **THAT**, a new clause 12 (2) (as amended) be inserted with the words **“Notwithstanding the provisions of sub section (1),the Governor may, upon election under the constitution, appoint a person who is qualified as county attorney in accordance with the provisions of this act.”**

16. **THAT**, clause 16 (1) be amended be deleting letter **“r”**

17. **THAT**, clause 19 (1) be amended by deleting the word **“may”** and substituting there for with the word **“shall”**

18. **THAT**, clause 22 (1) be amended by inserting the words **“of county attorney”** immediately after the word **“office”**

19. **THAT**, clause 24 be amended by inserting the words **“of county attorney”** immediately after the word **“office”**

CONCLUSION

Mr. Speaker sir,

The importance of the Bomet Office of the County Attorney Bill cannot be gainsaid. The committee therefore requests the house to adopt the report together with the amendments contained therein.

“APPENDIX 1”
MINUTES OF THE PUBLIC PARTICIPATION OF THE COMMITTEE ON
ADMINISTRATION PEACE JUSTICE AND LEGAL AFFAIRS HELD ON 19TH OF
MAY 2014 AT BOMET STADIUM AT 12.00 NOON ON THE OFFICE OF THE
COUNTY ATTORNEY BILL, 2014.

MEMBERS PRESENT

Hon. Robert Bett
Hon. Reuben Langat
Hon. Bency Too
Hon. Nancy Chepkirui
Hon. Benard Ngeno
Hon. Josphine Rotich
Hon. Sammy Chelule
Hon. John Molel
Hon. Stephen Changmorik

IN ATTENDANCE

Hon. Josphat Kirui
Hon. Evaline Chepkemoi
Hon. G.K Kipn’getich
Hon. Leah Kirui
Hon. Julius Korir
Hon. David Rotich

AGENDA

1. Preliminaries
2. The Bomet County Attorney Bill, 2014

PRELIMINARIES

The chair opened the meeting and called upon Rev. Tonui to open the meeting with a word of prayer

The chair then explained in summary what the Bill entailed and thereafter welcomed Hon. Reuben Langat to take the members of the public through the Bill.

THE BOMET COUNTY ATTORNEY BILL, 2014

Recommendations from members of the public.

1. That copies of the Bills should be provided to the members of the public prior to the meeting.
2. That the office of the county Attorney should be structured in such a way as not to crush with the work of the judiciary.
3. That remuneration of the office holder be clearly stated
4. That the county attorney's power should be clearly stipulated
5. That clause 4(2) that the appointment by the Governor should show that he is doing so from amongst persons and time frame of appointment.
6. That clause 13(1) (c) be amended to clarify on the issue of mental incapacity.
7. That in clause 13 (1) (e) be amended to clarify the issue of incompetence
8. That bankruptcy as a ground of removal should not be listed as it is an automatic ground of removal.
9. That there should be checks in the office of the County Attorney to avoid misuse of office.
10. That public participation should be done on the ward level as opposed to Sub County level s
11. That public participation should be timely and effective
12. That whether the county attorney should be the final person when it comes to registration of groups.
13. The Bill should state whether the attorney should be a resident or from any part of the country.
14. Clause 19(2) should provide for compliance with chapter iv of the constitution.

A.O.B

That every MCA be facilitated to bring 10 people from every ward.
There being no other business the meeting was adjourned at 4.00pm. Closing prayers were said by a member of public.

SIGNED BY:

THE CHAIRPERSON: DATED

THE SECRETARY: DATED

"APPENDIX 2"

MINUTES OF THE COMMITTEE ON ADMINISTRATION PEACE JUSTICE AND LEGAL AFFAIRS HELD ON 23RD MAY 2014 AT THE TEA RESEARCH FOUNDATION AT 2.00PM

MEMBERS PRESENT

Hon. Robert Bett

Hon. Nancy Chepkirui

Hon. Josphine Rotich

Hon. Reuben Langat

Hon. Bernard Ngeno

Hon. Bency Too

Hon. Sammy Chelule

MEMBERS ABSENT

Hon. Stephen Changmorik

Hon. Benard Ngeno

IN ATTENDANCE

Haron Ngeno

Veronica Waweru

AGENDA

1. Preliminaries
2. Report writing on the County Attorney Bill, 2014

PRELIMINARIES

The chair called the meeting to order and welcomed one of the members to open the meeting with a word of prayer.

Report writing on the County Attorney Bill, 2014

The committee members made recommendations with regard to the amendment of the Bill as follows:

1. That clause 4(3) (d) be introduced to read " A valid practicing Certificate"
2. That clause 3(d) be renumbered to (e) and (e) be renumbered to (f)
3. That clause 5(1) (a) be amended to read thus the County Attorney is the principal legal advisor to the Executive and may attend CEC meetings.

4. That clause 5 (p) be deleted
5. That clause 5(q) be renumbered to (p)
6. That clause 5 (r) be renumbered to (q)
7. That clause 5 (r) be renumbered to (s)
8. That clause 5 (6) be renumbered to 5(2), (3), (4) respectively.
9. That clause 6 (1) (c) be amended by deleting the words “summon” and in its place insert the word “require”
10. That clause 8(1) be amended by adding the words with the leave of the court after the word audience.
11. That clause 10 (1) be amended by inserting a full stop after the word determine.
12. That clause 10(3) be amended by introducing a sub clause 3 (f) by inserting the words “A valid practicing certificate”
13. Clause 10(2) be amended by inserting the words with “Approval of the County Assembly” immediately after the word attorney.
14. Clause 10(2) (d) be amended to read “six years”
15. Clauses 13(2) be amended by introducing a new clause. The removal of the County Attorney and the Solicitor by lifting Article 158 (2-9) of the constitution.
16. That clause 16(1) deleting (r)
17. Clause 22(1) be amended by inserting of County Attorney after the words offices.
18. Clauses 24 same applies.

A.O.B

There being no other business the chair adjourned the meeting at 5.00 pm

SIGNED BY:

THE CHAIRPERSON: DATED

THE SECRETARY: DATED

"APPENDIX 3"
MINUTES OF THE COMMITTEE ON ADMINISTRATION, PEACE, JUSTICE AND
LEGAL AFFAIRS HELD ON 5TH JUNE 2014 AT 2.00PM

MEMBERS PRESENT

Hon. Robert Bett	Chairperson
Hon. Nancy Chepkirui	Vice Chairperson
Hon. Bency Too	Member
Hon. Josphine Rotich	Member
Hon. Stephen Changmorik	Member

IN ATTENDANCE

Veronicah Waweru	Secretary
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MEMBERS ABSENT

Hon. David Rotich	Member
Hon. Benard Ngeno	Member
Hon. Sammy Chelule	Member

AGENDA

1. Preliminaries
2. Deliberations on the report on the Bomet County Attorney Bill, 2014 and the Bomet County Assembly Service Bill, 2014

MIN 1/06/2014: PRELIMINARIES

The chair called the meeting to order and welcomed hon. Josphine Rotich to open the meeting with a word of prayer.

MIN 2/06/2014: DELIBERATIONS ON THE REPORT ON THE BOMET COUNTY
ATTORNEY BILL 2014 AND THE BOMET COUNTY ASSEMBLY
SERVICE BILL, 2014

The chair briefed the members on the agenda of the day. The chair thanked the members for their efforts and contributions during public participation. He stated that the two reports ought to be ready by 10th June, 2014 because that's when it's required to be tabled.

The chair welcomed the clerk to read through the reports. The secretary informed the members that the members of the staff had requested that they be facilitated for a retreat in order for them to be taken through the Bill.

The committee members deliberated on the same and came to a conclusion that the members of the staff should indeed have been consulted at the inception stage since they are the stake holders. They agreed that the members of the staff to be taken through the Bill by the legal team together with the committee members in order for them to come up with a comprehensive report on the same.

The chair requested the clerk to print out the two reports and give copies to the committee members before the end of that day or the following morning in order for them to read through.

MIN 3/06/2014: A.O.B

Hon. Bency Too thanked the committee members for their hard work and commitment. She noted that the committee is exceptional as it has been the most active in the Assembly in delivery of services.

There being no other business the chair called upon Hon. Bency Too to close with a word of prayer.

The meeting was adjourned at 2.45 pm.

SIGNED BY:

THE CHAIRPERSON: _____ **DATE** _____

THE SECRETARY: _____ **DATE** _____