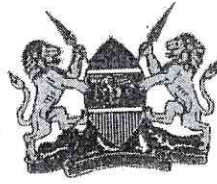


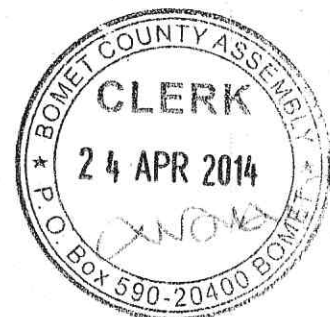
BOMET COUNTY



REPUBLIC OF KENYA
THE COUNTY ASSEMBLY

**REPORT OF THE COMMITTEE ON ADMINISTRATION
PEACE JUSTICE AND LEGAL AFFAIRS ON THE
COUNTY COORDINATION OF GOVERNMENT
FUNCTIONS BILL, 2014 (BILLS NO. 2)**

24TH APRIL, 2014



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 County Coordination of Government Functions 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 County Coordination of Government Functions 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.

The committee had a total of five sessions of public participation in five Sub Counties namely:-

1. Sotik Sub County
2. Konoin Sub County
3. Bomet East Sub County
4. Bomet Central Sub County
5. Chepalungu Sub County

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 Chief Officer Administration, and the members 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

24/4/2014

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:-

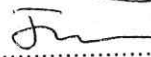
(i) The Hon. Robert Bett

.....

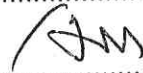
(ii) The Hon. Nancy Chepkirui

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(iii) The Hon. Josphine Rotich

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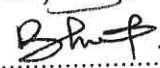
(iv) The Hon. John Molel

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(v) The Hon. Reuben Langat

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(vi) The Hon. Bency Too

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(vii) The Hon. Benard Ngeno

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(viii) The Hon. Stephen Changmorik

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(ix) The Hon. Sammy Chelule

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REPORT OF THE COMMITTEE ON ADMINISTRATION PEACE JUSTICE AND LEGAL AFFAIRS ON PUBLIC PARTICIPATION ON THE COUNTY COORDINATION OF GOVERNMENT FUNCTIONS BILL, 2014

EXECUTIVE SUMMARY

The coordination of government functions is an important principle in realizing synergy among different levels of government and within specific levels for stability of entire government. It applies irrespective of the system of government since there is always the state (county government) and its related agencies, for county government to work effectively there has to be further decentralization with even lower levels of government taking central role in implementation of policies through various programs. The promulgation of the new constitution paved way for devolution and/ or decentralization aimed at ensuring efficient provision of services. This was informed by the fact that for many years Kenya had embraced the decocentration form of decentralization which did not give full powers to local governments. To these end the county governments were tasked to come up with policies and relevant laws for full operationalisation of devolution. It is in this process that the county government of Bomet produced a draft Bill seeking to coordinate the county government functions.

The Bill is a mechanism for ensuring smooth operations between the county government and the decentralized units of governance. Whereas there are many provisions in the constitution that inform the proposal of the Bill, Article 6(2) is particularly crucial. The Article provides for two levels of governments at the national and county levels. The provisions notes that "the governments are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation". These are not unique caveats to Kenya. They prevail in other jurisdictions such as USA, South Africa and Nigeria. Article 48 of the County Government Act provides for creation of decentralized units. The Article in particular creates the following units:-

- a) The urban areas and cities
- b) The sub Counties
- c) The wards
- d) The village units
- e) Such others or further units.

The Article further advocates for the creation of further and /or adjustment of existing units for purposes of further decentralization of the county functions and provision of its services in accordance with Article 176(2) of the constitution.

The Bill encompasses all the complex and interdependent relations among the various spheres of government as well as the coordination of public policies among different decentralized units.

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

1. That the level of education for Village Administrators should not be set so high
2. That the office of the Deputy Sub County Administrator be created.
3. That section 23 be amended to include members of the public in the Mediation team.
4. That the already existing village elders be 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. That a different system of appointment and qualification criteria should be established and that the roles of administrators be harmonized with those of the National Government officers.
7. That all the administrators below the rank of the Chief Officer should be answerable Chief Officer not the Governor.
8. That section 16(3) of the Bill be amended to include the role of Sub County Administrator to safe guard the assets of the Sub County.
9. That under section 16, the Sub County Administrator in performing his/her duties he/she should consult the people.
10. That the position of a community secretary as provided for in section 19 be removed.
11. That the officers in charge of administration in the national government be seconded to the County Government instead of employing new officers.
12. That the community rather than the Governor be consulted in appointment of administrators as provided for under section 14 of the Bill.

13. That the appointment of the administrators be solely done by the County Public Service Board.

**PROPOSED AMENDEMENTS ON THE COUNTY COORDINATION OF
GOVERNMENT FUNCTIONS BILL, 2014**

Mr. Speaker Sir,

Allow me to present the proposed amendments by the committee

THAT an “elder” means “an individual who has attained the age of 18 years and includes the youth” be added in section 2 of the Bill

THAT A “village” means a sub location as provided for under the National Coordination of Government Act be added in section 2 of the Bill

THAT section 9 (3) of the Bill be amended to read as follows “ The county Public Service Board shall recruit and appoint such number of public officers as the county secretary may require for the effective and efficient discharge of the functions of the office subject to approval by the county assembly.”

THAT section 11 (1) of the Bill be amended to read “The Governor shall establish such committees of chief officers as may be necessary for the effective management and coordination of the government functions under the constitution, this Act or any other written law

(2) The Governor may establish such other adhoc committees or put in place such mechanisms as may be necessary in addition to the committees established under sub section (1)

THAT Section 11 sub section (3), (4) and (6) be deleted

THAT Section 12(1) (c) of the Bill be deleted

THAT Section 12 (1) (d) be amended to read as follows “ The sub location established under this Act headed by a village administrator as established under section 52 of the County Governments Act.

THAT section 13(1) be amended to read as follows” There is established the villages to be service delivery units for the government in accordance with the criteria provided for under this section.

THAT section 13 (2) be amended to read that “The county assembly shall determine the demarcation and delimitation of village boundaries through enactment of a legislation under the County Government Act.

THAT section 13 (3) be amended to read that “The Sub county administrator shall preside over the formation of villages.

Section 13(5) be amended to read that “In determining the villages, the county assembly shall consider-

- (a) Population size
- (b) Geographical features
- (c) Community of interest, historical, economic and cultural ties; and
- (d) Means of communication

THAT Section 14 (1) be amended to read that “In accordance with the county government functions under the constitution, the County Governments Act under section 62, this Act or any other written law, the Public Service Board shall, in consultation with the Governor, appoint government administrative officers to coordinate government functions and to perform such other functions as may be assigned to them under this Act or any other law.

THAT Section 14 sub section 2 clause (e), (f), (g) and (h) be deleted

THAT section 15 (1) of the Bill be amended to read that “There is established the office of Chief officer Administration which shall be an office at the office in the county public service.

THAT section 16 (2) of the bill be amended to read that "The sub county administration shall have qualifications and knowledge in administration or management and shall be competitively appointed by the County Public Service Board in the accordance with the County Governments Act.

THAT Section 16(3) f) be amended to read exercise any functions and powers delegated by the County Public Service Board under section 86 of the County Government Act

THAT Sub section 3 (f) be amended to read exercise any functions and powers delegated by the County Public Service Board.

THAT Section 18 be amended to read that "18 (1) There is established the office of village administrator for each village unit established in a county.

(2) A village administrator shall have professional qualifications and technical knowledge in administration and shall be appointed by the County Public Service Board in accordance with the provisions of this Act or any other written law

(3) A village administrator shall coordinate, manage and supervise the general administrative functions in the village including –

Ensuring and coordinating the participation of the village unit in governance; and

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; and

Exercise any functions and powers delegated by the County Public Service Board

(4) In carrying out the functions and obligations in subsection (3). A village administrator shall be responsible to the relevant Ward administrator.

THAT section 22 (1) (a) be amended to read "the village administrator who shall be the chairperson of the village council; and

(b) not less than three and not more than five village elders competitively appointed by the village administrator with the approval of the county assembly, taking into account gender balance.

THAT subsection (4) be added to read "A village elder shall be paid such allowances as shall be determined by the county assembly.

THAT subsection (5) be amended to read that "In appointing the panel, the village administrator shall consider gender, youth, and persons with disability.

THAT section 28 be amended to read that "The executive member responsible for administration shall, in consultation with the Governor and with the approval of the County Assembly, make regulations for the better carrying into effect of the purpose of this Act"

RECOMMENDATIONS

The committee recommends as follows:

1. That the Committee of the whole house to adopt this report.
2. That the county assembly to enact legislation to provide for the delineation and establishment of village units as provided for under section 48 (4) of the County Governments Act.
3. That a public participation policy be established

LEGAL OPINION

The Bomet County Coordination of Government Functions Bill, 2014: Reflection and Proposals on Principles, Opportunities and Gaps.

1. Overview

The coordination of government functions is an important principle in realizing synergy among different levels of government and within specific levels for stability of entire government. It applies irrespective of the system of government since there is always the state (county government) and its related agencies, for county government to work effectively there has to be further decentralization with even lower levels of government taking central role in implementation of policies through various programs. The promulgation of the new constitution paved way for devolution and/ or decentralization aimed at ensuring efficient provision of services. This was informed by the fact that for many years Kenya had embraced the deconcentration form of decentralization which did not give full powers to local governments. To these end the county government were tasked to come up with policies and relevant laws for full operationalisation of devolution. It is in this process that the county government of Bomet produced a draft Bill seeking to coordinate the county government functions.

The Bill is a mechanism for ensuring smooth operations between the county government and the decentralized units of governance. Whereas there are many provisions in the constitution that inform the proposal of the Bill, Article 6(2) is particularly crucial. The Article provides for two levels of governments at the national and county levels. The provisions note that “the governments are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation”. These are not unique caveats to Kenya. They prevail in other jurisdictions such as USA, South Africa and Nigeria. Article 48 of the County Government Act provides for creation of decentralized units. The Article in particular creates the following units:-

- f) The urban areas and cities
- g) The sub Counties
- h) The wards
- i) The village units

j) Such others or further units.

The Article further advocates for the creation of further and /or adjustment of existing units for purposes of further decentralization of the county functions and provision of its services in accordance with Article 176(2) of the constitution.

Apart from this introduction, this paper attempts to provide a conceptual understanding of the provisions of the Bill followed by analysis on the opportunities and gaps

2. Conceptualizing the Bill

The Bill encompasses all the complex and interdependent relations among the various spheres of government as well as the coordination of public policies among different decentralized units. The concept is commonly used to refer to relations between and within levels of government that facilitate the attainment of common goals. These relations and interactions occur through policy alignment, reporting requirements, fiscal grants and transfers, the planning and budget and informal knowledge sharing among officials. The concept also refers to the fiscal and administration processes by which spheres of government share resources. The concept of cooperation is central in the Bill. Public Service responsibilities are divided across the devolved units each unit operating within its jurisdiction taking into consideration the principles of cooperation and coordination. It ensures mutual consultation, coordinated strategic delivery of services and expenditure in terms of Legislation. In adopting devolution, one anticipates a system which is dynamic, efficient and viable, each and every part must work coordinately otherwise the system collapses.

In order to achieve all these systems and processes must be developed with clarity on the functions of each level of devolved unit since uncoordinated strategic planning and unilateral delivery of action by departments contribute to fragmented service delivery. The roles of departments/ units must be made very clear, especially where the services creates

long term costs for lower levels.

3. OBJECTS, PRINCIPLES And PURPOSE

As already highlighted, the proposed Bill provides for the creations of decentralized units for purposes of enhancing and improving service delivery. Institutional structures are also provided for. These structures are expected to operate on principles of Peoples sovereignty, inclusive and participatory, respect of every devolved unit, Promotion of equality in service delivery, impartiality and minimalisation of disputes and institutionalized protection of marginalized groups among others.

4. County Government Coordination Framework

This stresses the powers of the county governor in coordinating the county government functions. The Bill proposes to give the governor powers to assign functions and responsibilities through a framework. The Bill also proposes the creation of the office of executive headed by county secretary who shall provide support services to the executive committee.

The provisions of the Bill must be understood from four different approaches. These are democratic, constitutional legal, financial and normative operational. The democratic approach stresses the right to self-determination to the extent of regarding the lowest units as independent institutions. The constitutional legal approach stresses the view that the constitution is the basis for determination of devolution. The financial approach lays emphasis on equitable sharing of revenue among the different levels of government. This aspect is also closely hinged on the decision making authority. A normative approach stresses on the significance of considering all the norms in order to understand the operational reality of government relations, without one aspect of government being given too much attention at the expense of another. There has to be adequate protocol outlining rules and norms and procedures of interaction between the different levels/ units of government.

5. Decentralized Units of Governance

The proposed Bill provides for creation of decentralized units such as sub-county, the ward, the location, sub-location and villages. The Bill proposes that the community shall determine the demarcation and delimitation of the sub-locations, locations, village

boundaries. This is directly in conflict with the provisions of the county Government Act which gives such powers to the county assemblies

6. Appointment and Administrative Offices

This is critical aspect of the Bill requiring sobriety, impartiality and honesty. Powers corrupts absolutely once in the hands of one entity. The Bill proposes that the Chief Officer Administration shall be an office at the office of the Governor. The Bill notes that the Chief Administration Offices shall be responsible to Governor. History has shown that such arrangements are prone to political interference and manipulations.

7. Dispute Resolution

Intergovernmental disputes between national and county, county and government or amongst.

County governments will occur in the process of interaction and the Bill proposes how such disputes will be resolved. The Bill proposes for a mediation team that deals with such disputes. The proposed mediation team shall be guided by constitutional; principles and failure to resolve the dispute shall be referred to the summit for resolution under the Inter- governmental Regulations Act. The Act states in Article 34 that within twenty one days of formal declaration of a dispute, the summit shall convene a meeting of the disputing parties and agree on mechanisms of resolving the dispute. Article 35 provides for judicial proceedings where all efforts of resolving a dispute have failed.

RECOMMENDATIONS

After a deliberation on the Bill it's recommended that amendments be made as follows:

1. That clause 13(2) be amended to provide that "the county Assembly shall determine the demarcation and delimitation of location, sub location and village boundaries pursuant to section 48 of the County Government Act".
2. That clause 16(4) be amended to provide that "In carrying out the functions and obligations in sub section (3) the sub county administration shall be responsible to the Chief Officer Administration"

3. That part IV clause 14 (2) (a) of the Bill be amended to provide that “the chief officer shall be appointed by the Public Service Board in consultation with the Governor and with the approval of the County Assembly.”

Related Statutes for further reference

1. The Constitution
2. The County Government Act
3. The Inter-Governmental Relations Act
4. The Transition to Devolved Government Act
5. The Urban Areas and Cities Act

MINUTES

MINUTES OF THE COMMITTEE ON ADMINISTRATION PEACE JUSTICE AND LEGAL AFFAIRS ON PUBLIC PARTICIPATION ON THE COUNTY COORDINATION OF GOVERNMENT FUNCTIONS BILL, 2014 HELD AT SOTIK TOWN SOTIK SUB COUNTY ON 8TH APRIL 2014

MEMBERS PRESENT

Hon. Robert Bett	Chairperson
Hon. Nancy Chepkirui	Vice chairperson
Hon. Benard Ngeno	Member
Hon. Bency Too	Member
Hon. Josphine Rotich	Member
Hon. Bency Too	Member
Hon. Sammy Chelule	Member
Hon. John Molel	Member
Hon. Stephen Changmorik	Member

IN ATTENDANCE

Hon. David Rotich	Area MCA
Calvine Kitur	Legal Clerk

AGENDA

1. Preliminaries
2. Public views on the county coordination of Government Function s Bill, 2014

MIN 1/4/2014 PRELIMINARIES

The chair welcomed the members and members of the public. He then asked requested one person from the members of the public to open the meeting with a word of prayer.

The chair welcomed the area MCA to welcome the members of his ward.

**MIN2/4/2014 PUBLIC VIEWS ON THE COUNTY COORDINATION OF
GOVERNMENT FUNCTION S BILL, 2014**

The members of the public stated that:

1. For village administrators, the qualifications should not exceed diploma level.
2. That the office of the deputy sub county administrator be created
3. That in clause 23 a member of the public be represented in the mediation team.
4. That the already existing village elders be absorbed rather than employing new office holders
5. That the statement at the end of the Bill is ambiguous and misleading
6. That the roles of the administrators be harmonized with those of the national government officers
7. That those administrative officers below the rank of a chief officer should be responsible to the chief officer and not the governor.

MIN 3/4/2014 A.O.B

There being no other business the chair adjourned the meeting at 2.00 pm.

Signed by:

Date

The Chairperson: _____

The Secretary: _____

**MINUTES OF THE COMMITTEE ON ADMINISTRATION PEACE JUSTICE AND
LEGAL AFFAIRS ON PUBLIC PARTICIPATION ON THE COUNTY
COORDINATION OF GOVERNMENT FUNCTIONS BILL, 2014 HELD AT
MOGOGOSIEK TOWN, KONOIN SUB COUNTY ON 8TH APRIL 2014 AT 3.00 PM**

MEMBERS PRESENT

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

IN ATTENDANCE

Hon. William Mosonik	Area MCA
Calvine Kitur	Legal Clerk
Kilelson Mutai	Chief Administrator

MIN 4/04/2014: PRELIMINARIES

The chair welcomed the committee and the members of the public and asked one of the members of the public to open with a word of prayer. The chair then welcomed the area MCA to welcome the members to his ward.

MIN 5/04/ 2014 PUBLIC VIEWS AND RECOMMENDATIONS ON THE COUNTY COORDINATION OF GOVERNMENT FUNCTIONS BILL, 2014

Having noted the objectives and content of the Bill, the members of the public stated that:-

1. Clause 16(3) That the role of the sub county administrator to include safeguarding the assets of the sub county
2. In clause 16 in conducting his or her functions the sub county administration should consult the people
3. That the position of a community secretary as provided for in clause 19 be removed.
4. That the officer in charge of administration in the national government should be seconded to the county government instead of employing new officers.
5. The community rather than the Governor should be consulted in the appointment of the administrators
6. That in clause 18 the office of the community administrator should be elective and be given a term of 5 years and his roles be determined by the community. His qualifications should also be clearly stated.
7. That the appointment of the administrators be solely done by the county public service board and not the Governor.
8. That during the formation of sub-locations, the issue of development and social amenities should be taken into consideration.

MIN 6/04/2014: A.O.B

1. The members of the public suggested that before the committee goes for public participation, the copies of the bill be supplied prior and the announcements for the same be made on several radio stations.
2. The members of the public thanked the county assembly for passing the Alcoholic Beverages Management and Control Act.

There being no other business the chair adjourned the meeting at 6.00 pm. Closing prayers were said by one member of the members of the public.

Signed by

Date

The Chairperson _____

The Secretary _____

MINUTES OF THE COMMITTEE ON ADMINISTRATION PEACE JUSTICE AND LEGAL AFFAIRS ON PUBLIC PARTICIPATION ON THE COUNTY COORDINATION OF GOVERNMENT FUNCTIONS BILL, 2014 HELD AT SIGOR TOWN CHEPALUNGU SUB COUNTY ON 10TH APRIL 2014 AT 11.00 AM

MEMBERS PRESENT

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

MEMBERS ABSENT

Hon. John Molel	Member
Hon. Benard Ngeno	Member
Hon. Reuben Langat	Member

AGENDA

1. Preliminaries
2. Public views on the Bomet County Coordination of Government Functions Bill, 2014.

MIN 7/04/ 2014: PRELIMINARIES

The chair welcomed the members and the members of the public to the meeting and asked the town chairman to ask a member of the public to open with a word of prayer.

The chair then introduced the committee members. He later took the members through the Bill.

**MIN 8/04/2014 VIEWS AND RECOMMENDATIONS OF THE MEMBERS OF THE
PUBLIC ON THE BOMET COUNTY COORDINATION OF GOVERNMENT
FUNCTIONS BILL, 2014**

The members of the public stated that:

1. That clause 14 (g) be removed. That the position of a community assistant is not relevant.
2. That clause 22 (1) (b) in composition of a village council, the Governor should not appoint the village elders
3. That clause 22(3) the eligibility for appointment as a village elder should also be applied in appointment of the administrative officers.
4. That each village to vet its own village elders.
5. That in clause 18 the community administrator should not be transferred as he or she knows the affairs of the location.
6. The members of the public were also of the opinion that the positions of the administrators should be elective.

MIN 9/4/2014 A.O.B

There being no other business the chair adjourned the meeting at 4.00 pm.

Closing prayers was said by one member of the members of the public.

Signed by

Date

The chairperson: _____

The Secretary: _____