

SPECIAL ISSUE

Kenya Gazette Supplement No. 64 (Senate Bills No. 7)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2015

NAIROBI, 22nd May, 2015

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**THE KENYA NATIONAL EXAMINATIONS
COUNCIL (AMENDMENT) BILL, 2015**

A Bill for

**AN ACT of Parliament to amend the Kenya
National Examinations Council Act and for
connected purposes**

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Kenya National Examinations Council (Amendment) Act, 2015.

Short title.

2. The Kenya National Examinations Council Act, hereinafter referred to as the principal Act, is amended by inserting the following new definition immediately after the definition of the word “Examination” —

Insertion of new definition.

“examination centre” means a school or any other institution or premises used to administer examinations conducted by or on behalf of the Council with regard to candidates at the primary or secondary school level;

3. The principal Act is amended by inserting the following new sections immediately after section 45—

Insertion of new sections 45A and 45B.

Issuance of certificates.

45A. (1) The Council shall, upon awarding a certificate to a candidate at the primary school or secondary school level, submit the certificate to the District Education Officer with jurisdiction over the area in which the examination centre is located.

(2) Each candidate shall collect his or her certificate from the office of the District Education Officer with jurisdiction over the area in which the examination centre in which he or she sat the examination is located.

(3) The District Education Officer shall not withhold a certificate from a candidate unless the identification of the candidate is in dispute.

(4) A certificate awarded to a candidate under this Act shall be collected by the candidate in person and shall not be collected on behalf of the candidate unless in exceptional circumstances to be prescribed by the Cabinet Secretary.

(5) A candidate shall, in collecting his or her certificate, verify the accuracy of the particulars as set out in the certificate including—

- (a) the candidate's name and index number;
- (b) the name and code of the candidate's school; and
- (c) the grades of the respective subjects and the mean score.

(6) A candidate who identifies a discrepancy in the certificate issued shall notify the Council of such discrepancy within thirty days of the release of the results.

(7) The Cabinet Secretary shall put in place such administrative structures as are necessary to facilitate the issuance and collection of certificates by candidates under this section.

(8) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding eight hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Certificates.

45B. (1) The Council shall, for the purpose of facilitating the identification of the candidate to whom a certificate is to be issued under section 45A, emboss on each certificate awarded by it to a candidate, the photograph of the candidate with respect to whom the certificate is awarded.

(2) Every head teacher or principal of an examination centre in which an examination at the primary or secondary school level is administered shall, for purposes of subsection (1), submit to the Council the photographs of candidates who have been registered to undertake examinations in that examination centre in such form and within such time as the Council may direct.

(3) A person who contravenes the provisions of subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding eight hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to amend the Kenya National Examinations Council Act, No. 29 of 2012, to ensure that every candidate who has sat for examinations at the primary and secondary school level is issued with the certificate awarded to him or her by the Kenya National Examinations Council.

Article 43 (1) (f) of the Constitution confers on every person the right to education. In addition, Article 53(1)(b) of the Constitution confers on every child the right to free and compulsory basic education. The right to education would include the right to the issuance of a certificate as evidence of such education. The withholding of a certificate issued to a child would therefore infringe on the right of the child to education which right ends with the submission of the certificate to the child. Similarly, the withholding of such certificate would hamper the ability of the child to pursue further education should the child intend to undertake further education.

Section 10 (1) (b) of the Act prohibits the withholding of certificates awarded to candidates who have sat for examinations. However, the problem of schools withholding certificates of candidates by reason of unpaid school fees continues to persist. This is despite the directive by the Government compelling schools to release certificates held by them to candidates who have undertaken their examinations and who have been awarded a certificate.

It is important to observe that the obligation to pay school fees falls on a parent with whom the school enters into a contractual obligation to pay the fees and not on a child. As a result, the consequence of non-payment of fees should not be visited on the child but on the parent.

The Bill therefore sets out a framework through which the certificates would be delivered to candidates through the offices of the District Education Officers within the country. This is intended to avert the situation that currently exists. In addition, the Bill seeks to entrench in law, the requirement of embossing certificates with the photographs of candidates to facilitate the identification and submission of certificates to candidates by the District Education Officers.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

Article 43 (1) (f) of the Constitution confers on every person the right to education. In addition, Article 53 (1) (b) of the Constitution confers a right on every child to free and compulsory education and imposes an obligation on the State, which includes County Governments, to put in place measures that ensure that the right to education is not impaired. This same obligation is imposed on the State under Article 55 (a) of the Constitution to ensure that the youth have access to relevant education and training. The withholding of certificates awarded to candidates has the effect of impeding the right to further education or development of a child and unless the State takes measures to ensure that certificates awarded are actually issued to candidates, such right will be fettered.

The Bill is therefore one that concerns county governments in terms of Article 110 (1) (a) of the Constitution as its provisions affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 5th May, 2015.

DAVID MUSILA,
Senator.