



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (FIFTH SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, MAY 31, 2017

1. The House assembled at thirty minutes past Nine O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Deputy Speaker
4. **PAPERS LAID**

The following Paper was laid on the Table –

- The Report of the Departmental Committee on Administration and National Security on its Consideration of a Petition by concerned citizens regarding recognition of persons with Gender Disorder conditions.

(Chairperson, Departmental Committee on Administration and National Security)

5. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Deputy Speaker

(i) **The Refugees Bill (National Assembly Bill No.29 of 2016)**

Clause 3 - amendment proposed –

THAT, clause 3 of the Bill be amended–

- (a) by inserting the expression “(1)” immediately before the words “A person”;
- (b) by inserting the expression “(a)” immediately before the words “owing to a well-founded”;
- (c) by inserting the expression “(b)” immediately before the words “not having a nationality”;
- (d) by inserting the expression “(c)” immediately before the words “owing to external aggression”;

- (e) by inserting the expression “(d)” immediately before the words “the person is a member”; and
- (f) by deleting the word “Commission” wherever it appears and substituting therefor the word “Committee”.

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3 - as amended agreed to

Clause 4 - amendment proposed –

THAT, the Bill be amended by deleting clause 4 and substituting therefor the following new clause–

Exclusion and 4.(1) A person shall be excluded from being considered for refugee status
disqualification if there exists serious reason to believe that the person–
of refugees.

- (a) has committed a crime against peace, a war crime or a crime against humanity as defined in the International Crimes Act;
- (b) has committed a serious non-political crime outside Kenya prior to his or her admission to Kenya as a refugee;
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations and the African Union; or
- (d) has sought asylum in another country.

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- (2) A person shall be disqualified from being a refugee if the person–
 - (a) having more than one nationality, has not availed himself or herself for protection of one of the countries which he or she is a national and has no valid fear based on well-founded fear of persecution;
 - (b) has been granted refugee status in another country prior to entry in Kenya and can be re-admitted to that country and benefit currently and in the future in that country from effective protection;
 - (c) is recognized by competent authorities of the country he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, can be re-admitted into that country in the same condition and has no valid reasons based on a well-founded fear of persecution to have left that country.

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 4 - as amended agreed to

Clause 5 - amendment proposed –

THAT, clause 5 of the Bill be amended–

- (a) by deleting the expression “(i)” and substituting therefor the expression “(a)”;
- (b) by deleting the expression “(ii)” and substituting therefor the expression “(b)”;
- (c) by deleting the expression “(iii)” and substituting therefor the expression “(c)”;
- (d) by deleting the expression “(iv)” and substituting therefor the expression “(d)”;
- (e) by deleting the expression “(v)” and substituting therefor the expression “(e)”;
- (f) by deleting the expression “(vi)” and substituting therefor the expression “(f)”;
- (g) in the proviso by deleting the expression “(3(a))” and substituting therefor the expression “3(1)(a)”.

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 5 - as amended agreed to

Clause 6 - amendment proposed –

THAT, the Bill be amended by deleting clause 6 and substituting therefor the following new clause–

Administrative **6.** There is established—
institutions.

- (a) the Refugee Advisory Committee;
- (b) the Refugee Affairs Secretariat; and
- (c) the Refugee Status Appeal Board.

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 6 - as amended agreed to

Clause 7 - amendment proposed –

THAT, the Bill be amended by deleting clause 7 and substituting therefor the following new clause—

The
Refugee
Advisory
Committee.

- 7.** (1) The Committee shall consist of—
- (a) the chairperson who has knowledge and experience in public affairs for a period of not less than ten years appointed by the Cabinet Secretary;
 - (b) the Principal Secretary or their representative from the Ministry responsible for refugee affairs ;
 - (c) the Principal Secretary or their representative from the ministry responsible for foreign affairs;
 - (d) the Principal Secretary or their representative from the Ministry responsible for devolution affairs;
 - (e) the Principal Secretary or their representative from the Ministry responsible for health;
 - (f) the Principal Secretary or their representative from the Ministry responsible for finance;
 - (g) the principal Secretary or their representative from the Ministry responsible for education;
 - (h) the Attorney-General or their representative;
 - (i) the Director of the Department of Immigration or their representative;
 - (j) the Inspector-General or their representative; and
 - (k) the Director, who shall be the Secretary to the Committee.
- (2) The Committee may when necessary co-opt for a specified period of time a representative from the host communities, a representative from Kenya National Commission for Human Rights and a representative from the United Nations High Commissioner for Refugees on an advisory role only and who shall have no right to vote.
- (3) The quorum for a meeting of the Committee shall be five members.
- (4) Each member of the Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.
- (5) The chairperson shall convene at least four meetings in every year.
- (6) Except as expressly provided in this Act, the Committee shall regulate its own procedure as it deems fit.

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Clause 7 - agreed to

Clause 8 - amendment proposed –

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause–

Functions of the Committee. **8.** The functions of the Committee shall be to—

- (a) formulate national policies on matters relating to refugees in accordance with international standards;
- (b) advise the Cabinet Secretary on matters relating to refugees;
- (c) make a recommendation for declaration of prima facie status in respect of large scale influxes of refugees; and
- (d) propose and ensure the provision of durable solutions for refugees.

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 8 - as amended agreed to

Clause 9 - amendment proposed –

THAT, the Bill be amended by deleting clause 9 and substituting therefor the following new clause–

- | | |
|---|---|
| The
Refugee
Affairs
Secretariat. | 9. (1) The Refugee Affairs Secretariat shall be an office in the Public Service.

(2)The Secretariat shall be responsible for all administrative matters |
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concerning refugees and asylum seekers in Kenya, and shall, in that capacity, co-ordinate activities and programmes relating to refugees and asylum seekers and provide them with assistance and protection.

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 9 - as amended agreed to

Clause 10 - amendment proposed –

THAT, the Bill be amended by deleting clause 10 and substituting therefor the following new clause–

Director
for
Refugee
Affairs.

10.(1) There shall be a Director for Refugee Affairs whose office shall be an office in the Public Service and who shall be the head of the Secretariat.

(2) The functions of the Director shall be to—

- (a) be the Secretary to the Committee.
- (b) co-ordinate all measures necessary for promoting the welfare and protection of refugees and asylum seekers and advise the Committee thereon;
- (c) ensure in liaison with other relevant agencies the provision of adequate facilities and services for the protection, reception and care of asylum seekers and refugees within Kenya;
- (d) promote as far as possible durable solutions for refugees granted asylum in Kenya;
- (e) receive and process applications for refugee status determination;
- (f) keep, register and maintain a record of all asylum seekers and refugees in Kenya;
- (g) issue refugee identification documents and facilitate the issuance of civil registration and other relevant documents;

- (h) be the liaison between the department, state actors and relevant
- (i) stakeholders and shall in that capacity, sensitize and inform on new developments and policy;
- (j) in liaison with Director of Immigration, process and issue conventional travel documents;
- (k) in liaison with the police, arrest any person suspected of committing an offence under this Act;
- (l) manage refugee designated areas and other related facilities;
- (m) form sub-committees and assign to such sub-committees functions to be exercised in relation to the reception, treatment and welfare of asylum seekers and refugees;
- (n) co-ordinate the provision of overall security, protection and assistance for asylum seekers and refugees in the designated areas;
- (o) ensure the civilian and humanitarian character of the designated areas is maintained;
- (p) issue movement passes to refugees and asylum seekers wishing to travel outside the designated areas and within Kenya;
- (q) exempt asylum seekers and refugees from residing in designated areas where there are compelling reasons to do so;
- (r) protect and assist vulnerable groups, women, children and persons with disabilities;
- (s) ensure treatment of all asylum seekers and refugees in compliance with national law;
- (t) authorise access of visitors to designated areas;
- (u) facilitate refugees to access work permits and business permits;
- (v) in consultation with the Cabinet Secretary, establish structures and mechanisms for management of refugee humanitarian emergencies;
- (w) initiate, in collaboration with the development partners, projects that promote peaceful and harmonious co-existence between the host communities and refugees;
- (x) advise the Committee on the soliciting of funds for refugee assistance programmes which have a positive impact on host communities;

(y) ensure that refugee economic and productive activities do not have a negative impact on host communities, natural resources or the local environment; and

(z) ensure sustainable use of resources in designated refugee hosting areas.

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

Clause 11 - amendment proposed –

THAT, clause 11 of the Bill be amended–

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clauses–

“(1) The Refugee Status Appeal Board shall consist of–

- (a) a chairperson, who shall be an advocate of not less than ten years’ standing; and
- (b) eight members appointed from among persons having knowledge of and experience in matters relating to–
 - (i) refugee affairs;
 - (ii) immigration;
 - (iii) foreign affairs;
 - (iv) national security; and
 - (v) public administration.

(1A) The members of the Board shall be appointed by the Cabinet Secretary by notice in the Gazette.

(1B) A member of the Appeal Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of four years.

(1C) The Board may, where necessary, co-opt to invite a person with specialized knowledge and skill to attend the sittings of the Board, but such person shall not have the right to vote.”

(b) by deleting sub-clause (5) and substituting therefor the following new sub-clause–

“(5) The function of the Appeal Board shall be to hear and determine appeals against any decision of the Director with regard to refugee status determination.”

(Chairperson, Departmental Committee on Administration and National Security)

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Clause 11 - agreed to

Clause 12 - agreed to

Progress report

Motion made and Question proposed -

THAT, the Committee of the whole House do report progress and seeks leave to sit again

(Chairperson, Departmental Committee on Administration and National Security)

Question put and agreed to.

8. **HOUSE RESUMED** - the Third Chairperson in the Chair
Refugees Bill (National Assembly Bill No.29 of 2016)

Progress reported;

Motion made and Question proposed -

THAT, the Committee of the whole House has considered the Refugees Bill (National Assembly Bills No.29 of 2016) and seeks leave to sit again

(Chairperson, Departmental Committee on Administration and National Security)

Question put and agreed to.

(ii) **The Kenya National Examinations Council (Amendment) Bill (National Assembly Bill No. 42 of 2016)**

Clause 2 - amendment proposed –

THAT clause 2 of the Bill be deleted.

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - as amended agreed to

New Clauses - amendment proposed –

THAT the Bill be amended by inserting the following new clauses—

Amendment of section 2 of Cap 225A. **2A.** The Kenya National Examinations Council Act in this Bill referred to as the “principal Act” is amended in Section 2 by inserting the following new definitions in their proper alphabetical sequence—

“Technical and Vocational Education and Training Authority” means the Technical and Vocational Education and Training Authority established under section 6 of the Technical and Vocational Education and Training Act;

No.

29 of “Tribunal” means the National Examinations Tribunal 2013. established under section 40B;

Insertion of a new section into Cap 255A. **2B.** The principal Act is amended by inserting the following new section immediately after section 40—

Offences by examination officers. **40A.** A member, officer, agent or staff of the Council whose omission or commission leads to an examination irregularity commits an offence and is liable upon conviction, to imprisonment for a term not exceeding five years or a fine not exceeding five million shillings, or both.

Insertion of a new part into Cap. 225A. **2C.** The principal Act is amended by inserting the following new part immediately after the proposed new section 40A—

PART IVA – NATIONAL EXAMINATIONS APPEALS TRIBUNAL

National Examinations Appeals Tribunal. **40B.** (1) There is established a Tribunal to be known as the National Examinations Appeals Tribunal.

(2) The Tribunal shall consist of—

- (a) a chairperson, nominated by the Judicial Service Commission who shall be an advocate of the High Court of Kenya of at least fifteen years standing;
- (b) two persons nominated jointly by the associations for the time being representing head teachers and principals in the country;
- (c) one person having at least ten years’ experience in marking examinations; and
- (d) one person nominated by the Technical and

(e) Vocational Education and Training Authority.

(3) The nominating bodies under subsection (2) shall nominate and submit the names of at least two nominees, being one man and one woman, to the Cabinet Secretary

for appointment.

(4) The Cabinet Secretary shall appoint the members of the tribunal by notice in the *Gazette*.

(5) A person shall not be eligible for appointment under subsection (4) if at the time of appointment the person is an employee of the Council or was an employee of the Council five years before the date of appointment.

(6) In making appointments under subsection (4) the Cabinet Secretary shall—

- (a) ensure that not more than two-thirds of the appointees are of the same gender; and
- (b) have regard to the principle of regional balance.

Tenure.

40C.(1) The chairperson of the Tribunal shall serve for a term of four years and shall be eligible for reappointment for one further term.

(2) A Member of the Tribunal shall serve for a term of three years and shall be eligible for reappointment for one further term of three years.

Remuneration.

40D. The members of the Tribunal shall be paid such allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Vacancy
office
member.

in **40E.** The office of a member of the Tribunal shall become vacant if the member—

- (a) resigns by notice in writing addressed to the Cabinet Secretary;
- (b) is convicted of an offence and sentenced to imprisonment for a term of at least six months without the option of a fine;
- (c) is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson;

(d) is adjudged bankrupt;

(e) is convicted of an offence involving fraud,
dishonesty or moral turpitude;

(f) is unable, by reason of mental or physical infirmity, to discharge the functions as a member of the Tribunal;

(g) is otherwise unfit or unable to discharge the functions of the office; or

(h) dies.

Sittings of the Tribunal. **40F.** The Tribunal shall be ad hoc and shall sit at such times and in such places as the Tribunal may appoint.

Quorum. **40G.** (1) The Tribunal shall be properly constituted if at least three of the members of the Tribunal are present.

(2) The chairperson shall preside over all the meetings of the Tribunal and in the absence of the chairperson the members shall elect one member from amongst themselves to chair the Tribunal.

Jurisdiction to hear appeals. **40H.** The Tribunal shall consider all appeals made against a decision of the Council to withhold, nullify or cancel examinations prepared and administered by the Council.

Secretariat of the Tribunal. **40I.** (1) The Cabinet Secretary shall designate a public officer serving in the Ministry responsible for matters relating to education to be the secretary to the Tribunal.

(2) The Cabinet Secretary may, in consultation with the secretary, designate such other public officers as may be necessary to assist the Tribunal in the discharge its functions under this Act.

Appeals from decisions of the Council. **40J.** (1) A person who is aggrieved by a decision of the Council to withhold or cancel the results of a candidate may lodge an appeal to the Tribunal in the prescribed form.

(2) An institution that is aggrieved by the decision of the Council to withhold or cancel the results of the candidates in that institution may lodge an appeal to the tribunal in the prescribed form.

(3) Notwithstanding the provisions of subsection (1), a

person aggrieved by a decision of the Council may appeal to the Tribunal through the County Director of Education in the County in which the applicant is resident.

(4) The County Director of Education shall transmit to the Tribunal any applications received under subsection (3) within five days of receipt.

(4)Where the person aggrieved by the decision of the Council is a minor, the application under subsection (1) shall be made by the parent or guardian of the minor.

(5)An appeal under subsection (1) shall be—

(a) in writing; and

(b) lodged with the Tribunal within a period of fourteen days from the date of the decision of the Council.

(6)The parties to an appeal lodged under subsection (1) may appear before the Tribunal in person or be represented by an advocate or any other person whom the Tribunal may permit to be heard on behalf of such party.

Procedure of the Tribunal. **40K.** (1) The Tribunal shall transmit a copy of the application made under section 40J and any other supporting documents to the Council within seven days of receipt of the application.

(2) In any proceedings under this Part, the Tribunal shall act without undue regard to technicalities and shall not be strictly bound by the rules of evidence.

(3) The Tribunal shall—

(a) within thirty days from the date of receipt of the application determine an appeal relating to examination results in respect of national examinations conducted at primary school level; and

(b) within sixty days from the date of receipt of the application determine an appeal relating to examination results in respect of national examinations conducted at secondary school level.

Powers of the Tribunal. **40L.** The Tribunal shall have the power to summon witnesses, take evidence on oath or affirmation and order the production of documents.

Decision of the tribunal on appeal. **40M.** (1) Upon the hearing of an appeal the Tribunal may—
(a) confirm, set aside or vary a decision of the Council; or

(b) make such other order that it may consider appropriate.

(2) The Tribunal shall communicate its decision to the parties in writing within seven days from the date of the decision.

40N.(1) Where the Tribunal awards damages or costs in any matter before it, it shall, on application by the person in whose favour the damage or costs are awarded, issue to him a certificate stating the amount of the damages or

Enforcement of orders for costs.
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(374)

costs.

(2)A certificate issued under subsection (1) may be filed in the High Court by the person in whose favour the damages or costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

Appeals to the High Court. **40O.** A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may appeal to the High Court on any of the following grounds-

(a) the decision of the Tribunal was contrary to law or to some usage having the force of law;

(b) the decision failed to determine some material issue of law or usage having the force of law; or

(c) a substantial error or defect in the procedure provided by or under this Act has produced an error or defect in the decision of the appeal.

Rules and procedures of the Tribunal. **40P.** (1) The Tribunal shall make rules, within ninety days of the coming into effect of this Act, for regulating the practice and procedure for the Tribunal.

(2) Notwithstanding the provisions of subsection (1), the Rules regulating the practice and procedure of the Tribunal shall not provide for the payment of any fees by any of the parties to an appeal and prescribe forms and anything required to be prescribed under this Part.

Insertion of **2D.** The principal Act is amended in section 45 by inserting the following

a new subsection immediately after subsection (4)—
section into
Cap 255A.

(5) A person aggrieved by the decision of the Council to withhold, nullify or cancel examination results may appeal to the National Examinations Appeals Tribunal.

Question of the amendments proposed;

Debate arising;

Question put and agreed to;

New Clauses 2A, 2B, 2C and 2D - as amended agreed to

Title - agreed to

Clause 1 - agreed to

6. **HOUSE RESUMED** – the Speaker in the Chair

- (i) The Kenya National Examinations Council (Amendment) Bill (National Assembly Bill No. 42 of 2016)

Bill reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee of the Whole House in its Report on Consideration of Kenya National Examinations Council (Amendment) Bill (National Assembly Bill No. 42 of 2016)

(The Hon. Alfred Agoi Masadia, M.P.)

Question for agreement with the Committee of the Whole House deferred.

7. **MOTION - ROAD DESIGNS AND CONSTRUCTIONS TO INCORPORATE RUN-OFF WATER HARVESTING AND MANAGEMENT MECHANISMS**

Order Read;

Motion made and Question proposed –

THAT, aware that Article 43 of the Constitution provides that every person has the right to clean and safe water in adequate quantities; further aware that water harvesting is an important practice for water management; cognizant of the fact that earth-dams and water-pans would play a key role in water harvesting especially in arid and semi-arid areas; noting that a large quantity of run-off water goes to waste in most parts of the country; further noting that this run-off water if properly harvested and managed would be useful for domestic, livestock and irrigation purposes; appreciating that increased

infrastructural development especially in roads has led to the mobilization of machineries and human resources in most areas; further appreciating that these civil engineering machineries and personnel can be useful in the construction of earth-dams and water-pans; this House **resolves** that the Government through the Ministry of Transport, Infrastructure, Housing and Urban Development ensures that all road designs and constructions incorporate run-off water harvesting and management mechanisms.

(Hon. Joseph M'eruaki)

Debate arising;

Rising in his place on a Point of Order pursuant to Standing Order 95, the Member for Kibra (Hon. Ken Okoth, M.P.) claimed to move that the mover be now called upon to reply;

And the Speaker acceding to the claim;

Mover replied;

Question deferred.

8. **THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 51 OF 2016)**

Order for Second Reading Read;

Order deferred.

9. **THE BREASTFEEDING MOTHERS BILL (NATIONAL ASSEMBLY BILL NO. 13 OF 2017)**

Order Read;

Motion made and Question proposed –

THAT, the Breastfeeding Mothers Bill (National Assembly Bill No. 13 of 2017) be read a Second Time.

(Hon. Sabina Chege, M.P.)

And the time being One O'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

10. **HOUSE ROSE** - at One O'clock.

M E M O R A N D U M

The Speaker will take the Chair today,
Wednesday, May 31, 2017 at 2.30 p.m.

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