SPECIAL ISSUE

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NATIONAL ASSEMBLY BILLS, 2016

NAIROBI, 30th August, 2016

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THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL, 2016

A Bill for

AN ACT of Parliament to amend the Kenya National Examinations Council Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya National Examination Council (Amendment) Act, 2016.

2. Kenya National Examinations Council Act is amended by deleting section 45 and substituting therefor the following new sections—

Disciplinary powers of the Council.

45A The Council shall have powers to investigate, consider and determine any case where it is alleged that there is an examination irregularity or malpractice.

Inquiry by the Council.

45B (1) Where the Council has reason to believe that there is an examination irregularity or malpractice, the Council shall conduct investigation, and undertake the necessary disciplinary proceedings.

(2) In any disciplinary proceedings under this section the Council shall—

(a) inform the person concerned of the nature of the allegations made against them;

(b) afford the person adequate time for the preparation and presentation of their defense, and;

(c) afford the person the opportunity of being heard in person or through an advocate;

(3) The Council may act on general evidence or statements relating to the character or conduct of the person concerned, and shall not be bound to receive and consider only evidence admissible in a court of law;
(4) For the purposes of proceedings at any inquiry held by the Council; the Council may administer oaths and may, for the purpose of dealing with any matter before it, summon any person to attend and give evidence and to produce any relevant documents.

(5) The Council may make rules for regulating the practice and procedure of the proceedings under this section.

45C (1) Where the Council after disciplinary proceedings determines in any case that the examination results of a candidate have been obtained by irregular means, the Council shall nullify the examination results of such candidate;

(2) The Council shall as soon as practically possible notify the candidate of the determination taken against him.

(3) A notice served under this section shall include a statement of the facts found to have been proved in the proceedings before the Council and the reasons for the determination.

(4) A person aggrieved by the determination of the Council in the exercise of its powers under this section may within twenty-eight days from the service on the person of the determination appeal to the Examination Appeals Tribunal.

(5) The Examination Appeals Tribunal may annul or vary the determination as it deems fit.

EXAMINATIONS APPEALS TRIBUNAL

45D (1) There is hereby established a tribunal, known as the Examinations Appeals Tribunal, which shall consider and determine appeals arising from the determinations of the Council.

(2) The Appeals Tribunal established under sub section (1) shall be an ad hoc tribunal limited to the appeals period.
(3) The Appeals Tribunal shall consist of—

(a) a chairperson, who shall be appointed by the Cabinet Secretary;

(b) not less than four nor more than six other members who shall be appointed by the Cabinet Secretary, and of whom at least three shall be—

(i) a representative from Kenya Curriculum Development Council.

(ii) a representative from teachers Service Commission; and

(iii) a quality assurance officer from a public university.

(4) A person shall not be qualified to be appointed as a member of the Appeals Tribunal if the person is a member of the Council.

(5) There shall be an assessor to the Appeals Tribunal, who shall be an advocate of not less than five years standing appointed by the Tribunal with the approval of the Cabinet Secretary, and who shall, when the Tribunal may so require, attend the proceedings of the Tribunal and advise it on questions of law.
by an advocate or by some other person;

(d) prescribe the manner in which decisions of the Tribunal shall be recorded and that where the Tribunal determines that the allegation has not been proved it shall record a finding that the person is not guilty of such irregularity in respect of the matters to which the allegation relates;

(e) empower the Tribunal to impose fees and award costs.

(2) The Appeals Tribunal may administer oaths and may, for the purpose of dealing with any matter before it, summon any person to attend and give evidence and to produce any relevant documents.

(3) The Appeals Tribunal shall within thirty days determine an appeal relating to examination results at primary level.

(4) The Appeals Tribunal shall within sixty days determine an appeal relating to examination results at secondary level.

(5) Subject to subsection (3) and (4), the Appeals Tribunal shall determine an appeal before the commencement date of the registration for the examination of the year on which the appeal is heard.

(6) Subject to this section, the Appeals Tribunal may regulate its own practice and procedure.

45F. A member, officer, agent or staff of the Council whose omission and or commission leads to an examination irregularity commits an offence and is liable upon conviction, to imprisonment for a five year term, or a fine not exceeding five million shillings, or both.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Kenya National Examination Council Act.

The Bill proposes to provide for disciplinary procedure before nullification of examinations, the enhancement of the quality and control of examinations and to protect the basic rights of candidates as well as providing professionalism in investigation of examination irregularities.

The bill further provides for appeal mechanism on decisions relating to examination irregularities hence establishing an Appeals Tribunal.

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 30th August, 2016.

AGOI ALFRED MASADIA,
Member of Parliament.
Section 45 of the principal Act which it is proposed to amend—

45. Nullification of examination and investigations

(1) Where the Council is satisfied that there has been an irregularity in the course of any examination, the Council shall suspend or nullify such examination or any part thereof.

(2) Where the Council is satisfied that there is reasonable cause to believe that the examination results of any candidate have been obtained by irregular means, the Council shall nullify the examination results of such candidate.

(3) In the exercise of its powers under this section, the Council may conduct such investigations as it may deem necessary, and during such investigations, the Council shall withhold the examination results of any candidate pending conclusion of the investigations.

(4) In the course of investigations under this section, the Council may call for such information or the production of such documents as the Council may require, and within such period, in such place and from such person as the Council may determine, to assist in the investigations.