

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND
TECHNOLOGY

REPORT ON

KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL (No.38 of 2016)

Clerks Chambers

Directorate of Committee Services

Parliament Buildings

Nairobi

February, 2017

TABLE OF CONTENT

1.0	PREFACE	3
1.1	Mandate of the Committee.....	3
1.2	Committee Membership.....	3
1.3	Considerations Of The Kenya National Examinations Council (Amendment) Bill, 2015	5
1.4	Acknowledgement.....	5
2.0	BACKGROUND	6
3.0	HIGHLIGHTS OF THE KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) BILL, 2015	6
3.1	Clause Analysis.....	6
3.2	Stakeholders Submissions.....	7
4.0	COMMITTEE RECOMMENDATIONS	11

1.0 PREFACE

The Committee on Education, Research and Technology is one of the Departmental Committees of the National Assembly established under Standing Order 216.

1.1 Mandate of the Committee

The committee is mandated to: -

- i. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments.
- ii. Study the programme and policy objectives of ministries and departments the effectiveness of the implementation.
- iii. **Study and review all legislation referred to it, including consideration of Bills committed to the committee after first reading;**
- iv. Study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- v. Investigate and inquire into all matters relating to the assigned ministries and departments they may deem necessary and as may be referred to them by the house;
- vi. Vet and report on all appointments where the constitution or any law requires the national assembly to approve, except those understanding order 204 (*committee on appointments*);
- vii. Reports and recommendations to the house as often as possible, including recommendation of proposed legislation.

1.2 Committee Membership

The Committee was constituted by the House on Thursday 16th May, 2013 and comprises the following members:

- | | |
|--------------------------------------|--------------------|
| 1. Hon. Sabina Chege, M. P | - Chairperson |
| 2. Hon. Julius Melly, MP | - Vice Chairperson |
| 3. Hon. (Dr.) Wilber Ottichillo, M.P | |
| 4. Hon. Yusuf Chanzu, M.P | |
| 5. Hon. Richard Makenga, M.P | |
| 6. Hon. Kenneth Okoth, M.P | |
| 7. Hon. (Dr.) Christine Ombaka, M.P | |
| 8. Hon. Joseph M'eruaki, M.P | |

9. Hon. Cecilia Ng'etich, M.P
10. Hon. Geoffrey Makokha Odanga, M.P
11. Hon. (Dr.) Susan Chebet, M.P
12. Hon. Michael Kiso Munyao, M.P
13. Hon. Halima Ware Duri, M.P
14. Hon. Ibren Nasra Ibrahim, M.P
15. Hon. Mary Seneta, M.P
16. Hon. Moses Injendi, M.P
17. Hon. (Prof.) Hellen Sambili, EGH, M.P
18. Hon. Mohamed Adan Huka, M.P
19. Hon. Muriuki Njagagua, M.P
20. Hon. Joseph Manje, M.P
21. Hon. Harrison Kombe, M.P
22. Hon. Anthony Kimaru, M.P
23. Hon. Eric Keter, M.P
24. Hon. Jared Odhiambo Opiyo, M.P
25. Hon. Rose Rwamba Mitaru, M.P
26. Hon. Silverse Lisamula Anami, M.P
27. Hon. Zulekha Hassan Juma, M.P.
28. Hon. The Hon. Banticha Abdullahi, M.P.
29. Hon. Andrew Mwadime, M.P.

Committee Secretariat

- | | | |
|-------------------------|---|-----------------------|
| 1. Ms. Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. John Mugoma | - | Third Clerk Assistant |
| 3. Ms. Mugure Gituto | - | Legal officer |
| 4. Ms. Anneceta Gacheri | - | Research Officer |
| 5. Mr. Eric Kanyi | - | Fiscal Analyst |

1.3 Kenya National Examinations Council (Amendment) Bill No.38 of 2016

The Kenya National Examinations Council (Amendment), Bill No.38 of 2016 sponsored by Hon. Agoi Alfred Masadia, MP was published on 23th September 2016 and read for the first time in the National Assembly on 12th October 2016. The Bill was further committed to the Departmental Committee on education for consideration pursuant to National Assembly Standing Order 127. In processing the Bill, the Committee invited submissions from the public pursuant to Article 118 of the Constitution and received submissions from Kenya National Examinations Council whose details are contained in the report.

1.4 Acknowledgement

The Committee is grateful to the offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

Additionally, I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this Report.

Finally, it is my pleasant duty and privilege, on behalf of the Departmental Committee on Education, Research and Technology to table its report on the consideration of the Kenya National Examination Council (Amendment) Bill, 2016 pursuant to Standing Order 127 (4).

Signed..........Date.....28/2/17.....

HON. SABINA CHEGE, M.P.

(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY

2.0 BACKGROUND

The principal object of the Kenya National Examination Council (Amendment) Bill, 2016 is to amend the Kenya National Examination Council Act, 2012. 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 an appeal mechanism on decisions relating to examination irregularities hence establishing an Appeals Tribunal.

3.0 HIGHLIGHTS OF THE KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) , BILL (No. 38 of 2016)

3.1 Clause by Clause Analysis

CLAUSE	HIGHLIGHT
2	Deleting section 45 of the Kenya National Examinations Council Act, 2012 dealing with nullification of examination and investigations and substituting with new sections
3	Inserting new section 45A on disciplinary powers of the council Its proposed that the Council shall have powers to investigate, consider and determine any case where it is alleged that there is an examination irregularity or malpractice
	Inserting new section 45B - inquiry by the Council. Proposes, 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.
	Inserting new section 45 C – Determinations of Council in disciplinary proceedings and appeals. Proposes, 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.
	Inserting new section 45 D - Establishment of Appeals Tribunal. The section proposes that the Examinations Appeals Tribunal shall consider and determine appeals arising from the determinations of the Council.

	<p>Inserting new section 45 E - Procedure of Tribunal.</p> <p>The Cabinet Secretary may make rules for regulating the practice and procedure Of the Appeals Tribunals.</p>
	<p>Inserting new section 45F - Offences by examination officers</p> <p>The 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.</p>

3.2 Stakeholders Submissions

The Committee considered submissions received from the stakeholders as shown on table 1 below pursuant to Article 118 of the Constitution and article 127 of the National Assembly Standing Orders.

Table 1: Proposed amendments by stakeholders and the Committee resolutions

S/N	Stakeholder	Recommendations	Committee Resolution
1	The National Treasury	The Bill seeks to introduce section 45 A which give the Kenya National Examination Council powers to investigate and determine malpractice. This provision is already provided for under section 45(3) of the Kenya National Examination Council Act,2012	The Committee agreed with the recommendation in that the proposed section in the Bill was provided for in the Kenya National Examination Council Act,2012
		Section 45 B proposed in the Bill seeks to establish provisions for the council to conduct investigation and undertake necessary disciplinary proceedings where it has a reason to believe there is an examination irregularity or malpractice. The Council is already empowered to perform the same functions under section 45 (3) and (4) of the Kenya National Examination Council Act,2012	The Committee agreed with the in that the proposed section in the Bill was provided for in the Kenya National Examination Council Act,2012

		<p>Section 45 C in the Bill seeks to empower the Kenya National Examination Council to nullify examination results where after disciplinary proceedings the council determines that the examination results have been obtained by irregular means. This provision is clearly provided for under Section 45 (2) of the Kenya National Examination Council Act,2012</p>	<p>The Committee agreed with the in that the proposed section in the Bill was provided for in the Kenya National Examination Council Act,2012</p>
--	--	---	---

		<p>Section 45 D in the Bill seeks to establish Examinations Appeal Tribunal to consider and determine appeals arising from determination of the Council including the procedure of the tribunal.</p> <p>Section 10(2)(a), 10 (2)(b), 11 (c) and 48 (2)(i) of the Kenya National Examination Council Act,2012 gives the Council the necessary powers to deal with examinations appeals.</p>	<p>The Committee is in cognizant that the KNEC Act, 2012 empowers the Council to withhold, nullify or cancel results of candidates involved in irregularities.</p> <p>However, Article 47(l) of the Constitution provides for the right of every person to fair administrative action and further Article 47(3) requires Parliament to enact legislation to provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal.</p> <p>Therefore Committee views the tribunal as necessary so as to ensure the powers of the council are not exercised arbitrarily to the detriment of students and their future.</p>
		<p>Section 45 E of the Bill establishes provision for handling offences by examination officers and the penalties thereof. The same provision is provided for under Part IV of the Kenya National Examination Council Act,2012</p>	<p>The Committee agreed with the recommendation in that the proposed section in the Bill was provided for in the Kenya National Examination Council Act,2012</p>

2	Technical and Vocational Education and Training Authority (TVETA)	<p>On proposed Clause 40 A (2) (a)</p> <p>(a) The Director General Technical and Vocational Education and Training Authority or his representative appointed in writing.</p> <p>Being the head of the Authority, the Director General is best placed to represent the institution in the Tribunal.</p>	Amendment not recommended
3	Kenya National Examination Council	<p>Kenya National Examination Council has mechanisms for dealing with matters of cancellation and withholding of examinations results as per the KNEC Act no 29 of 2012.</p> <p>The proposed provisions in the Bill on the establishment of the examinations Appeal Tribunal will lead to duplication of roles and functions of the Council.</p>	<p>The Committee is in cognizant that the KNEC Act, 2012 empowers the Council to withhold, nullify or cancel results of candidates involved in irregularities.</p> <p>However, Article 47(l) of the Constitution provides for the right of every person to fair administrative action and further Article 47(3) requires Parliament to enact legislation to provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal.</p> <p>Therefore Committee views the tribunal as necessary so as to ensure the powers of the council are not exercised arbitrarily to the detriment of students and their future.</p>

4.0 COMMITTEE RECOMMENDATIONS

Based on the submissions and presentations adduced, the Committee observed that the Bill sought to introduce section 45 A, 45 B, 45 C, and 45 E; which give the Kenya National Examination Council powers to investigate, determine malpractice undertake necessary disciplinary proceedings where it has a reason to believe there is an examination irregularity or malpractice. The Kenya National Examination Council Act, 2012 has already empowered the Council to perform the same functions.

Additionally, the Bill on Section 45 D sought to establish Examinations Appeal Tribunal to consider and determine appeals arising from determination of the Council including the procedure of the tribunal. The Committee views the tribunal as necessary so as to ensure the powers of the Council are not exercised arbitrarily to the detriment of students and their future.

However, the Committee noted that there was a similar Bill from the Senate i.e the Kenya National Examination Council (Amendment) Bill (No. 14 of 2015) which was also seeking to establish National Examinations Appeal Tribunal under section 40 A. The Committee further notes that the Bill from the Senate had more express provisions and has attempted systematically expounds on the Members of the tribunal, their tenure, Remuneration, vacancy in office of Member, sittings of tribunal, quorum, and jurisdiction's to hear appeal, secretariat of the tribunal, procedure of the tribunal, powers of the tribunal amongst others. In cognizant of the above, the Committee therefore recommends that the amendments to the Kenya National Examination Council (Amendment) Bill (No.38 of 2016) be deleted and as such would wish to support the Amendments to the Bill from the Senate i.e the Kenya National Examination Council (Amendment) Bill (No. 14 of 2015).

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON THURSDAY, 17TH MARCH, 2016 IN COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30 AM

PRESENT

1. Hon. Sabina Chege, M. P - Chairperson
2. Hon. Julius Melly, MP - Vice Chairperson
3. Hon. (Dr.) Wilber Ottichillo, M.P
4. Hon. Yusuf Chanzu, M.P
5. Hon. Eric Keter, M.P
6. Hon. (Dr.) Susan Chebet, M.P
7. Hon. Richard Makenga, M.P
8. Hon. Dorcas Kedogo Luvalitsa, M.P
9. Hon. Cecilia Ng'etich, M.P
10. Hon. Joseph Manje, M.P
11. Hon. Silverse Lisamula Anami, M.P
12. Hon. Mary Seneta, M.P
13. Hon. Geoffrey Makokha Odanga, M.P
14. Hon. Rose Rwamba Mitaru, M.P
15. Hon. Muriuki Njagagua, M.P
16. Hon. Joseph M'eruaki, M.P

ABSENT WITH APOLOGY

1. Hon. Steven Kariuki, M.P
2. Hon. Michael Kisoi Munyao, M.P
3. Hon. Kenneth Okoth, M.P
4. Hon. Ibren Nasra Ibrahim, M.P
5. Hon. (Dr.) Christine Ombaka, M.P
6. Hon. Moses Injendi, M.P
7. Hon. Harrison Kombe, M.P

ABSENT

1. Hon. Anthony Kimaru, M.P
2. Hon. Jacob Macharia, M.P
3. Hon. Halima Ware Duri, M.P
4. Hon. (Prof.) Hellen Sambili, EGH, M.P
5. Hon. Mohamed Adan Huka, M.P
6. Hon. Jared Odhiambo Opiyo, M.P

IN ATTENDANCE

1. Hon. Winnie Njuguna, M.P
2. Hon. Alfred Agoi, M.P
3. Hon. Eng. James Rege, M.P

National Assembly Secretariat

- | | | |
|------------------------|---|-----------------------|
| 1. Ms. Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. John Mugoma | - | Third Clerk Assistant |
| 3. Mr. Abdiaziz Shobay | - | Third Clerk Assistant |
| 4. Ms. Doreen Karani | - | Legal Officer II |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes of the previous sitting
 - (vi) Matters Arising
2. Meeting with the following Members to consider Legislative Proposals for Prepublication Scrutiny:-
 - (i) Hon. Eng. James Rege, M.P on the Proposed Basic Education (Amendment) Bill, 2015
 - (ii) Hon. Irungu Kangata, M.P on the Proposed Kenya School of Law (Amendment) Bill, 2015
 - (iii) Hon. Alfred Agoi, M.P on the proposed Kenya National Examination Council (Amendment) Bill, 2015
 - (iv) Hon. Winnie Njuguna, M.P on the Proposed Basic Education (Amendment) Bill, 2015
 - (v) Hon. Abdullahi Diriye, M.P on the Proposed Universities (Amendment) Bill, 2016
3. Any Other Business
4. Adjournment/ Date for the Next Sitting

MIN.NO.DC.D/080/2016: PRELIMINARIES

The Chairperson called the meeting to order at 10:53 am and thereafter a prayer was read.

MIN.NO.DC.D/081/2016: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed and seconded by Hon. Julius Melly, M.P and Hon. Joseph Manje, M.P respectively.

MIN.NO.DC.D/082/2016: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO.DC.D/083/2016: CONSIDERATION OF LEGISLATIVE PROPOSALS FOR PREPUBLICATION SCRUTINY

I. Kenya National Examination Council (Amendment) Bill, 2015

The Chairperson invited Hon. Alfred Agoi, M.P to make his submissions on proposed **Kenya National Examination Council (Amendment) Bill, 2015**. He made a justification on the proposed legislation by informing the Committee as follows: -

- (i) That, the proposed legislation was based on Chapter 53(2) of the constitution which stated that every person had the right to the correction or deletion of untrue or misleading information affecting the person;
- (ii) That, the proposed legislation would ensure that the Kenya National Examinations Council (KNEC) operates in a transparent manner by opening it up for scrutiny of its operations.
- (iii) That, Section 4(1) of the Fair Administrative Action Act, 2015 states that "Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair."
- (iv) That, the proposed legislation was also seeking to strengthen Section 19 of KNEC Act, 2012 which stated that, "No member, officer, agent or staff of the Council shall be personally liable for any act or omission done or omitted in good faith in carrying out any of the functions of the Council under this Act"
- (v) That, the proposed legislation had made a provision for the establishment of an Examination Appeal Tribunal which will provide for an appeal mechanism on decisions relating to examination irregularities. This would ensure that the right of learners is upheld by going through the appeal mechanism instead of summarily cancelling examination results without giving the learner a fair hearing.
- (vi) That, the principal objective of the proposed legislation was to provide for disciplinary procedure before nullification of examinations, the enhancement of the quality and control of examinations and protection of the basic rights of candidates as well as providing professionalism in investigation of examination irregularities.
- (vii) That, the proposed legislation if enacted would go along in improving the quality of examinations and reduce incidences of examinations irregularities.

Committee Deliberations

- (i) The Committee applauded the efforts of Hon. Alfred Agoi, M.P in coming up with the timely and progressive legislative proposal.
- (ii) The Committee noted the need to ensure that the Examination Appeals Tribunal is established without the membership of the KNEC so as to allow the tribunal to operate independently. Its operations should be on an oversight role perspective.
- (iii) The Committee raised concern on the capacity of the Examination Appeals Tribunal to conclude on the cases of malpractices owing to the fact that the number of malpractices may be too high and thereby raising a challenge. It was further noted that the Examination Appeals Tribunal ought to be given timelines through which the appeals should be concluded.
- (iv) The Committee noted that in line with the principles of the Constitution, the Bill should also incorporate aspects of the freedom on access to information where the KNEC should be compelled to make public, the report on the all the examinations irregularities. The report should also include the nature of the malpractice.

Committee Recommendation

Taking into consideration of the concerns raised by the Members, the Committee recommended that the Bill be published for consideration by the House.

II. Proposed Basic Education (Amendment) Bill, 2015

The Chairperson invited Hon. Winnie Njuguna, M.P to make her submissions on proposed **Basic Education (Amendment) Bill, 2015**. She made a justification on the proposed legislation by informing the Committee as follows: -

- (i) That, the proposed legislation was being proposed on the need to ensure that needy students are able to access Secondary or higher education. The Bill was mandating the County government to set aside bursary funds for needy and deserving learners in pre-primary education, village polytechnics, home craft centres and childcare facilities.
- (ii) That, Clause 3 of the proposed legislation was proposing to make it a responsibility of the Cabinet Secretary to set aside funds for provision of bursary to needy and deserving learners in basic education institutions.
- (iii) That, Clause 4 of the proposed legislation was seeking to amend section 95 of the Principal Act to enable the Cabinet Secretary to make regulations for administration of bursaries from public funds.

- (iv) That, the proposed legislation was not affecting the functions of the County governments and therefore not a Bill concerning counties for purposes of the Article 110 (1) of the Constitution.

Committee Deliberations

- (i) The Committee noted that contrary to the memorandum of objects and reasons given, the Bill was affecting the functions of the County Governments.
- (ii) The Committee noted that some of issued in the proposed legislation could be addressed through delegated legislations by the Cabinet Secretary.
- (iii) The Committee noted that there was need for the Cabinet Secretary to develop uniform regulations that will govern the administration of bursary funds in all the Counties.
- (iv) The Committer expressed the need to develop regulations on how to administer bursary funds from the conditional grants to counties especially where the National Government transfers some of its functions to County Governments under subsection 2.

Committee Recommendation

The Cabinet Secretary should formulate regulations on administration of bursaries both at the National and County level. Regulations will ensure smooth running of bursary programs. Therefore, the Committee recommended that the concerns be addressed through regulations by the Cabinet Secretary.

III. Proposed Basic Education (Amendment) Bill, 2015

The Chairperson invited Hon. Eng. James Rege, M.P to make his submissions on proposed **Basic Education (Amendment) Bill, 2015**. He made a justification on the proposed legislation by informing the Committee as follows: -

- (i) That, the Principal objective of the proposed legislation was to provide for a mechanism that ensured total transition of pupils from primary school to secondary school education level.
- (ii) That, through the proposed legislation there will be full realization of the aspirations of Article 53(1) (b) of the Constitution regarding the rights of a child to free and compulsory basic education.
- (iii) That, the proposed legislation was seeking to enhance the definition of basic education to expressly include secondary education. This was because as put in the Principal Act, the definition does not clearly and explicitly incorporate secondary education.
- (iv) That, the proposed legislation was proposing to introduce end-year progress examinations to be administered in all classes of primary and secondary education levels within Kenya. This would ensure that the policy of administering KCPE and KCSE was completely abolished so that the end of either the primary or secondary school level, students are graded on the basis of their performance throughout their stay in the respective level.

- (v) That, the proposed legislation was also proposing to mandate the Cabinet Secretary to ensure the establishment of talent academies at the County level in order to enable form four graduates who may not want to proceed with education to exploit their full potentials in whatever talents they may have.
- (vi) That, the proposed legislation through a consequential amendment to the Kenya National Examination Act gives Kenya National Examination Council power to set and Conduct national end-year progress examinations within Kenya at basic level.
- (vii) That, the proposed legislation was in line with what is practiced in most developed Countries like United Kingdom and USA.
- (viii) Kenya National Examinations Council should develop on practices as a means of administering examinations.

Committee Deliberations

- (i) The Committee noted that in the Principal Act the definition of Basic Education includes both Primary and secondary education hence there was no need to provide for new definition.
- (ii) The Committee noted that across the world, the best practice is not to give final examinations but to administer continuous assessment tests which formed the basis of the final evaluation and the end of eight or four years.
- (iii) The Committee observed that the proposed legislation would go along way to curb examinations irregularities since the students will be forced to study throughout their stay in school instead piling a lot of content which the children would be expected to revise on for the final examination. The Committee further noted that practice was encouraging rote learning as well as cheating in examinations.
- (iv) The Committee noted that the proposal would mandate KNEC to administer annual assessments at the end of each academic year and compute the average results of each student for purposes of obtaining the final grade.
- (v) The Committee further noted that the legislative proposal will empower the Cabinet Secretary to make regulations to provide mechanism to ensure that pupils who complete primary school access secondary education while those who complete secondary education school access higher level of education and cater for those whose who fail to take the annual examinations.

Committee Recommendation

The Committee observed that the legislative proposal was timely in light of the proposed curriculum review. The Committee further observed that there was need to put necessary structures including the possibility of administering the annual test through the use of ICT. The Committee therefore recommended that the legislative proposal should be published.

The Committee noted the need to carry out a comparative research on administration of examination across the world in order to inform the consideration of the Bill once it was published.

Consideration of the other Legislative proposals on the agenda was deferred to another sitting.

MIN.NO.DC.D/084/2016: ANY OTHER BUSINESS

No any other business arose

MIN.NO.DC.D/085/2016: ADJOURNMENT

The Chairperson adjourned the meeting at 1:30 pm.

Signed.....

for 

Hon. Sabina Chege, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE 63RD SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON MONDAY, 28TH NOVEMBER, 2016 IN PWANI HALL, NYALI INTERNATIONAL BEACH HOTEL AT 2.00PM

PRESENT

1. **Hon. Sabina Chege, M. P**
- **Chairperson**
2. Hon. Yusuf Chanzu, M.P
3. Hon. (Dr.) Susan Chebet, M.P
4. Hon. Kenneth Okoth, M.P
5. Hon. Geoffrey Makokha Odanga, M.P
6. Hon. Joseph Manje, M.P
7. Hon. Silverse Lisamula Anami, M.P
8. Hon. Anthony Kimaru, M.P
9. Hon. Harrison Kombè, M.P
10. Hon. Mohamed Adan Huka, M.P
11. Hon. Rose Rwamba Mitaru, M.P
12. Hon. Zuleikha Juma Hassan, M.P
13. Hon. Halima Ware Duri, M.P
14. Hon. Joseph M'eruaki, M.P

APOLOGY

1. **Hon. Julius Melly, MP**
- **Vice Chairperson**
2. Hon. (Dr.) Christine Ombaka, M.P
3. Hon. Moses Injendi, M.P
4. Hon. Ibren Nasra Ibrahim, M.P
5. Hon. (Prof.) Hellen Sambili, EGH, M.P
6. Hon. (Dr.) Wilber Ottichillo, M.P
7. Hon. Richard Makenga, M.P
8. Hon. Cecilia Ng'etich, M.P
9. Hon. Mary Seneta, M.P
10. Hon. Eric Keter, M.P
11. Hon. Muriuki Njagagua, M.P
12. Hon. Jared Odhiambo Opiyo, M.P
13. Hon. Michael Kisoi Munyao, M.P
14. Hon. Banticha Abdullahi, M.P

IN ATTENDANCE

National Assembly Secretariat

- | | | |
|-------------------------|---|------------------------------|
| 1. Ms. Florence Abonyo, | - | Director, Committee Services |
| 2. Ms. Leah Wanjiru | - | First Clerk Assistant |
| 3. Mr. John Mugoma | - | Third Clerk Assistant |
| 4. Ms. Mugure Gituto | - | Legal Counsel II |
| 5. Ms. Annceta Gacheri | - | Research Officer III |
| 6. Mr. Erick Kanyi | - | Fiscal Analyst |
| 7. Mr. Joseph Muriuki | - | Audio Officer |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions

- (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes of the previous sitting
 - (vi) Matters Arising
2. **Consideration of the Kenya National Examinations Council (Amendment) Bill (Senate Bill No. 14 of 2015)**
 3. Any Other Business
 4. Adjournment/ Date for the Next Sitting

MIN.NO.DC.D/369/2016: PRELIMINARIES

The Chairperson called the meeting to order at 2.20pm and thereafter a prayer was read. The Chairperson then welcomed Hon. Members to the two days retreat and gave the following communication:

- i. The main objective of the retreat was to consider the Kenya National Examination Council (Amendment) Senate Bills No. 7 and 14 of 2015, the Kenya National Examinations Council (Amendment) Bill, (No. 38 of 2016) by Hon. Alfred Masadia, M.P, the Basic Education (Amendment) Bill, 2016 by Hon. Grace Jemutai Kiptui, M.P and brief on the Budget Policy Statement.

MIN.NO.DC.D/370/2016: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO.DC.D/371/2016: CONSIDERATION OF KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) SENATE BILL NO. 14 OF 2015

The Committee was informed that the aim of the KNEC (amendment) Act was to empower the council to withhold, nullify or cancel results of candidates involved in irregularities. It was important that the council does not exercise its powers arbitrarily at the detriment of candidates. The tribunal is viewed as necessary so as to check upon the actions of the council.

The Committee was then taken through the Kenya National Examination Council (amendment) Senate Bills No. 14 of 2015 as follows: -

CLAUSE: 2 Amendment of the long title

To provide for the aspect of “establishment of examinations appeals tribunal” in the long title

Recommendation: Agreed to

CLAUSE: 3 Amendment of section 2(definitions)

Introduction of the terms

“county director of education”; per the Basic Education Act, “technical and vocational education per the TVET Act and “Tribunal” to mean the proposed examinations tribunal.

Recommendation: Agreed to

Justification: These definitions adopts the meanings in existing legislation

CLAUSE: 4 Insertion of a new part

New section 40A-establishment of the National Examinations tribunal

Recommendation: Agreed to

Justification: The persons proposed to sit in the tribunal are so proposed in order to comprise an independent and impartial tribunal. These are a person nominated by the JSC to offer legal expertise, teachers for their experience in teaching, parents representatives to advocate for the rights of children, TVET nominee as a person with experience in marking examinations.

New section 40B-tenure of the tribunal

It is proposed that members hold office for four years but eligible for reappointment for a further one term

Recommendation: Agreed to with amendment; “A member of the Tribunal shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.” “The Chairperson shall hold office for four year and shall be eligible for re-appointment for one further term of four years.”

Justification: To guard against lack of quorum.

Insertion of new section 40C-Remuneration

Recommendation: Agreed to

Justification: It is proposed that members may be paid allowances

Insertion of new section 40D - vacancy in office of member

Recommendation: Agreed to

Justification: Instances leading to vacation of office are proposed

Insertion of Section 40E – Sittings of the tribunal

Recommendation: Agreed to with amendment

Justification: the place and time of sittings shall be as determined by the members of the tribunal. (It should be standard and given a term)

Insertion of section 40F – quorum

Recommendation: Agreed to

Justification: Quorum is proposed as three members

Insertion of section 40G- Jurisdiction to hear appeals

Recommendation: Agreed to

Justification: The tribunal shall hear appeals from the decision of the council to withhold cancel or nullify results

Insertion of section 40H – secretariat of the tribunal

Recommendation: Agreed to

Justification: The CS may designate a public officer serving in the ministry to be the secretary to the tribunal and also other officers to serve in the secretariat.

Insertion of section 40I- Appeals from the decisions of the council

Recommendation: Agreed to with amendments in (1); insert “or an institution” immediately after the word “person”

Justification: Appeals to be in prescribed form, through the county education board (it is unclear why an appeal is to be made through the board)

For minors, appeals may be submitted by a parent or guardian.

Appeals to be lodged within 14days from the date of receipt of the decision of the council

Insertion of section 40J- procedure of the tribunal

Recommendation: Amendment (3) (a) & (b) Dropped.

Justification: The Committee adopted Hon. Agoi’s proposal.

Insertion of section 40K- Powers of the tribunal

Recommendation: Agreed to

Justification: The tribunal is empowered to take evidence on oath and summon witnesses

Insertion of section 40L- Decision of the tribunal on appeal

Recommendation: Agreed to

Justification: The tribunal may confirm, set aside the council’s decision or make other appropriate orders.

Insertion of section 40M- enforcement of orders for costs

Recommendation: Agreed to

Justification: The orders of costs may be filed in the High Court and deemed to be a decree of the High Court hence enforceable as such

Insertion of section 40N- appeals to the High court

Recommendation: Agreed to

Justification: This is in line with the supervisory jurisdiction of the high court under Article 165(6) (over quasi-judicial bodies)

Insertion of section 40O- Rules and procedures of the tribunal

Recommendation: Agreed to

Justification: The timelines given to make the rules may be too little. This is noting that the tribunal requires to be established first. If rules are not made within the proposed 90days the tribunal will have breached the law.

CLAUSE 5: Amendment of Section 45

Recommendation: Agreed to

Justification: It informs an aggrieved candidate of right to appeal.

MIN.NO.DC.D/372/2016: CONSIDERATION OF KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) BILL, (NO. 38 OF 2016) BY HON. ALFRED MASADIA, M.P

The Committee was informed that;

- I. The Principal object of the Bill was to amend the Kenya National Examination Council Act.
- II. 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.
- III. The Bill further provides for appeal mechanism on decisions relating to examination irregularities hence establishing an Appeal Tribunal.

Recommendation and Way forward

The Committee resolved to drop amendments by Hon. Agoi Alfred Masadia, M.P and adopt the The Kenya National Examinations Council (Amendment) (No. 2) Bill, 2015 (Senate Bill No. 14 of 2015) since it was more elaborate and comprehensive. The Committee however adopted the following Clauses from Hon. Agoi Alfred's Bill which were to be merged with the Clauses in Senate Bill;

45E (3) The Appeals Tribunal shall within thirty days determine an appeal relating to examination result at primary level.

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

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 five year term, or a fine not exceeding five million shillings or both.

That Clause 45F should be moved to clause on offences.

MIN.NO.DC.D/373/2016: CONSIDERATION OF KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) SENATE BILL NO. 7 OF 2015

Members were informed that;

The Bill sought 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 includes the right to receive a certificate as evidence of such education. The withholding of a certificate issued to a child would therefore fetter the right of the child to education which culminates in the submission of a certificate to the child. Similarly, the withholding of such certificate hampers the ability of the child to pursue further education should the child intend to undertake further education. The state should therefore take measures to ensure that certificates awarded are issued to candidates.

CLAUSE 1: Short title –Kenya National Examinations Council (Amendment) Act, 2015.

Recommendation: Agreed to

CLAUSE 2: proposal- new definition

Section 2 of the Kenya National Examinations Council Act, hereafter referred to as “the principle Act”, is amended by inserting the following new definition immediately after the definition of the word “Examination”

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

Recommendation: Agreed to

Justification: Institution or premises approved and registered by the Council for purposes of administering Council Examinations

CLAUSE 3: Proposal- new subsection (3)

The principal Act is amended in section 10 by inserting the following new subsection immediately after subsection (2) –

(3) A person who contravenes the provisions of subsection (1)(b) commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

Recommendation: Amendment Dropped

Justification: Provided for in Clause 7

CLAUSE 4: Proposal- new section 45A

The principal Act is amended by inserting the following new sections immediately after section 45 –

45A. (1) The Council shall, upon releasing the Kenya Certificate of Primary Education or the Kenya Certificate of Primary Education or the Kenya Certificate of Secondary Education examination results, transmit the result slips of all candidates to the respective examination centers within a period of one month from the date of release of the results.

(2) A head-teacher or principal of an examination centre shall release to the respective candidates, the result slip received under subsection (1).

Recommendation: Agreed to

Justification: to specify the that result slips be released and transmitted within a specified timeline. KNEC will be mandated to transmit the result slips to examination centres within one month from the date of release of national examination results (it specifies KCPE and KCSE). Reconsider an amendment to cover other exams offered by KNEC.

CLAUSE 5: Proposal- new section 45AA

45AA. (1) The Council shall, within a period of two months from the date of release of the Kenya Certificate of Primary Education or the Kenya Certificate of Secondary Education examination results, transit to the examination centres, the certificates of the respective candidates who sat for the examinations.

(2) The head-teacher or principal of an examination centre shall not withhold the certificate awarded to a candidate under this Act.

(3) 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 examination centre; and
- (c) the grades of the respective subjects and the mean score.

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

(5) The Council shall rectify any discrepancy notified by a candidate under subsection (4) within a period of thirty days from the date of such notification.

(6) The Council shall meet the costs of rectifying any discrepancy notified by a candidate under subsection (4).

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

Recommendation: Agreed to with amendments in sections (3) insert “(d) photograph”; (4) insert the phrase “by writing” immediately after the word “Council”; (5) delete “thirty days” and substitute with “three months”

Justification: The proposal relates to issuance of certificates after release of KCPE and KCSE examination results. The effect will be that the KNEC will be require to transmit certificates of candidates who sat the exams within a period of two months from exam results release dates. In case of any discrepancy it is proposed that a complaint may be lodged with KNEC within 30 days of receipt of the certificate. KNEC will then have 30 days to make any rectification. KNEC will bear any costs incidental to the rectification.

CLAUSE 6: Proposal- new section 45B

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 examinations 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.

Recommendation: Amendment Dropped

Justification: Provided for under clause 45AA(3)

Way forward: The Clauses should be renumbered and insert New Clause 44A on verification of result slip.

MIN.NO.DC.D/374/2016: CONSIDERATION OF THE BASIC EDUCATION (AMENDMENT) BILL, (No. 35 of 2016) BY HON. GRACE JEMUTAI KIPTUI, M.P

Members were informed that;

The Bill sought to amend the Basic Education Act, No. 14 of 2013 to provide for the distribution of free sanitary towels to every girl child registered and enrolled in a public basic education institution.

CLAUSE 1: Short title – The Basic Education (Amendment) Act, 2016.

Recommendation: Agreed to

Justification:

CLAUSE 2: The Basic Education Act is amended in Section 39 by –

(a) deleting the word “and” appearing in paragraph (i);

Recommendation: Agreed to

(b) inserting the following new paragraph (j) –

(k) provide free, sufficient and quality disposable sanitary towels to every girl child registered and enrolled in a public basic institution who has reached puberty.

Recommendation: Agreed to

Justification: The proposal is in furtherance of Article 43(1)(b) on the right of every person to the highest attainable standard of health. Also A. 53(1)(b) on the right of every child to free and compulsory education and 53(1)(c) on the right of every child to basic nutrition, shelter and health.

Many needy girls miss school during menstruation due to lack of access to disposable sanitary products. While there are several projects geared towards assisting girls who have attained puberty with sanitary products, it is notable that these projects are mainly spearheaded by private individuals and institutions while the Government has not played an active role in addressing the challenge.

CLAUSE 2: Section 88 of the Principal Act is amended in subsection (2) by –

(a) inserting the word “and” immediately after the word “development” appearing in paragraph (f);

Recommendation: Agreed to

(b) inserting the following new paragraph immediately after paragraph (f)

(g) the acquisition of sufficient and quality disposable sanitary towels to every girl child registered and enrolled in a public basic education institution who has reached puberty.

Recommendation: Agreed to with amendment to (g); “the acquisition of sufficient and quality sanitary towels to every girl child registered and enrolled in a public basic education institution who has reached puberty, and provide comfortable and safe environment for disposal.”

Way forward:

The Bill should provide for conditional capitation to schools so that the schools can buy the Sanitary towels.

MIN.NO.DC.D/375/2016: BRIEF ON THE PROPOSED BASIC EDUCATION (AMENDMENT) BILL, 2016 BY HON. KENNETH OKOTH, M.P

Hon. Kenneth Okoth informed the Committee that the proposed legislative proposal was meant to amend the Basic Act, no. 14 of 2013 to provide for establishment of Public Private Partnership schools, as a category of schools in Kenya apart from the public and private schools.

The proposed amendment intends to improve the quality of education service delivery in Kenya since Public Private Partnership sponsored schools bring together the reach of the Government system with the innovation of the private sector so as to improve the quality of the education system as a whole.

Recommendation: The Committee recommended the Hon. Member for the initiative and resolved to deliberate on the Proposal once it's committed to the Departmental Committee on Education, Research and Technology.

MIN.NO.DC.D/376/2016: ANY OTHER BUSINESS

No any other business arose.

MIN.NO.DC.D/377/2016: ADJOURNMENT

The Chairperson adjourned the meeting at 1:30 pm.

Signed.....

Hon. Sabina Chege, M.P
(CHAIRPERSON)

Date..... 7/2/17

DEPARTMENTAL COMMITTEE ON EDUCATION RESEARCH AND TECHNOLOGY

ADOPTION OF THE REPORT ON THE KENYA NATIONAL EXAMINATIONS
COUNCIL (AMENDMENT) BILL 2016 BY HON. ALFRED AGOI, MP

DATE 28/2/2017

NO.	NAME	SIGNATURE
1.	HON. SABINA WICHEGE	
2.	Hon J K. Melly	
3.	Hon Rose R. Mitani	
4.	Hon. Yusuf Chanzu	
5.	Hon. Geoffrey M. Odongo	
6.	Hon. Silverse L. Arani	
7.	Hon Jared Opono	
8.	Hon. Kenneth Ojoth	
9.	Hon Joseph Munge	
10.	Hon. Andrew Mwangi	
11.	Hon. Eric Keter	
12.	Hon Nasra Doreen	
13.	Hon Dr Susan Chebet	
14.	Hon. MURIUKI NJAGAGUA	
15.	Hon. Richard Makengo	
16.	Hon Joseph M'nduki	
17.	Hon. Mohamed Adh Hula	
18.	Hon. Mary Seneta	
19.	Hon Harrison Kibee	
20.		



REPUBLIC OF KENYA



NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT – FOURTH SESSION

In the Matter of consideration by the National Assembly - The Kenya National Examinations Council (Amendment) Bill, 2016

SUBMISSION OF MEMORANDA

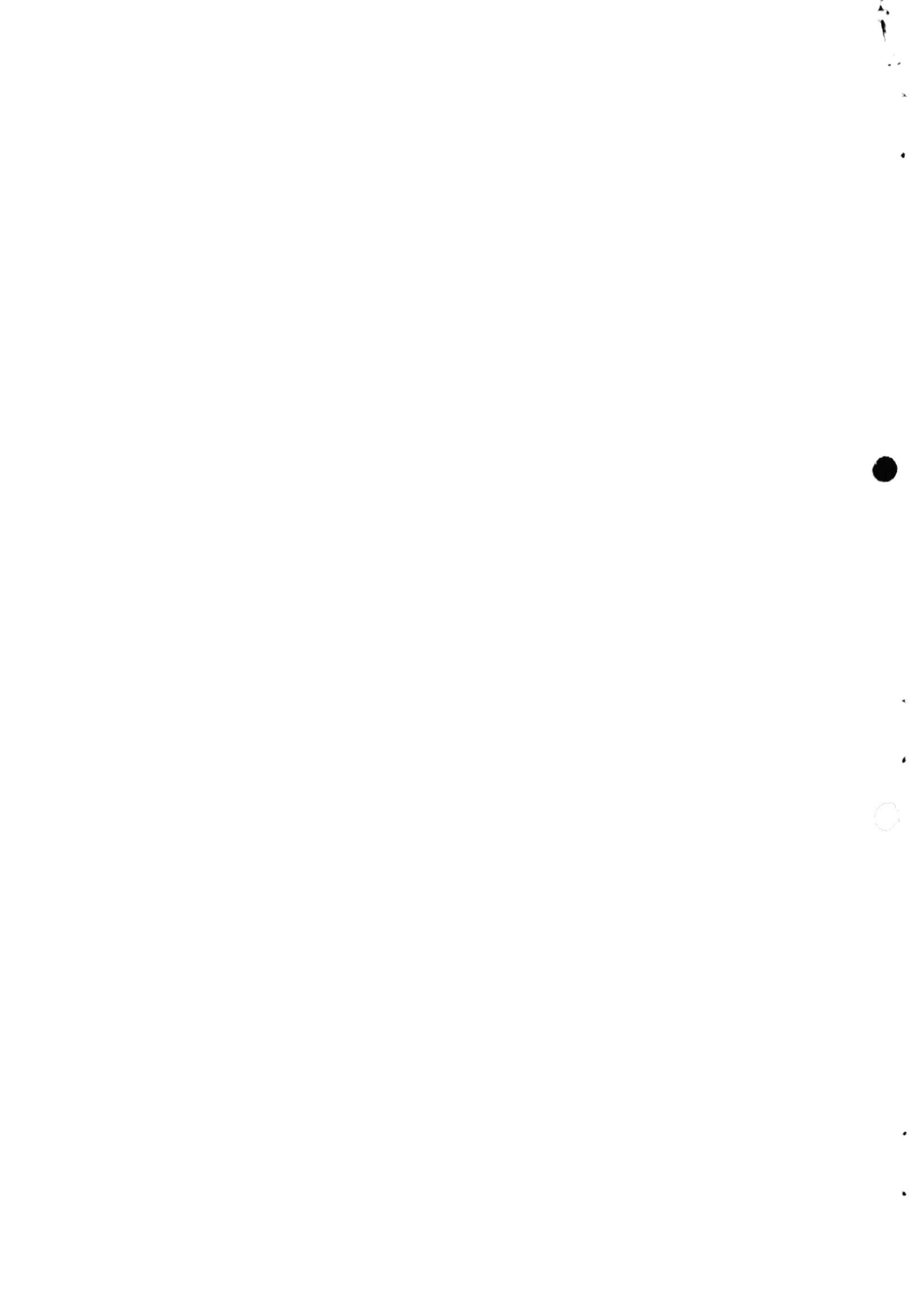
Article 118(1)(b) of the Constitution provides that, “*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.*” Standing Order 127(3) states that, “*the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House*”.

The Kenya National Examinations Council (Amendment) Bill, 2016 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Education, Research and Technology for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Tuesday 25th October, 2016 at 5.00pm.

A handwritten signature in black ink, appearing to read 'Justin Bundi'.

JUSTIN BUNDI, CBS
CLERK OF NATIONAL ASSEMBLY





REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

1326
928

Ref. No. 199/1/45

Date: 13th July, 2015

The Clerk of the
National Assembly,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

① *D. M. Muthiga*

T. A. Sule

13/7/15



RE: PRE-PUBLICATION SCRUTINY:
THE BASIC EDUCATION (AMENDMENT) BILL, 2015

Your letter ref. no. KNA/EDUC/CORR/201/(62) dated 7th July, 2015 refers.

The proposed Bill has as its main purpose the provision of sanitary towels for female students of pubescent age in all basic education institutions.

With due respect, the Bill is not advisable because—

- (a) the provisions are vague.
“sufficient and quality disposable” sanitary towels can be interpreted very differently by different persons, rendering it difficult to implement.
- (b) the Bill has cost implications, and should therefore be considered by the Treasury.

② *LEAH*
Pls deep
FA 14/7

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112 - 00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555 / 0732529995
E-MAIL: info.statelawoffice@kenya.go.ke. WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILESELASSIE AVENUE
P.O. Box 56057-00200, Nairobi- Kenya TEL: Nairobi 2224029 / 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke



- (c) the Bill concerns a matter which can be dealt with adequately at county level out of the various Funds established by the Government at that level.



E. M. NG'ANG'A
Senior Deputy Chief Parliamentary Counsel
FOR: ATTORNEY GENERAL

13th July, 2015

① D/Komukhas

REPUBLIC OF KENYA



② LEGAT
Ple def
FA
18/8

21
128

THE NATIONAL TREASURY

Telegraphic Address: 22921
FINANCE-NAIROBI
Fax No.: 310833
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 30007-00100
NAIROBI
KENYA

Ref: RES 1061/15/01 (4)

Date: 11th August, 2015

Mr. Justin Bundi

Clerk of the National Assembly
Parliament Buildings
NAIROBI

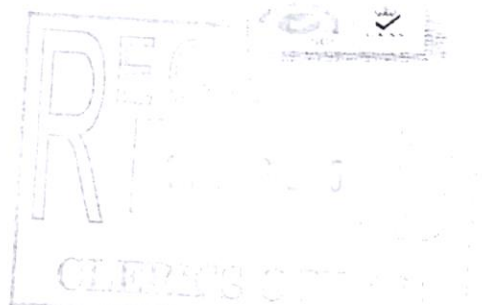
Dear Justin,

PRE-PUBLICATION SCRUTINY OF THE PROPOSED BASIC EDUCATION (AMENDMENT) LEGISLATIVE PROPOSAL, 2015

Your letter Ref.KNA/EDUC./CORR/2015/ (62) dated 7th July, 2015 on the above subject refers.

We have noted your request for comments on the legislative proposal to the amendment of the Basic Education Act to provide free, sufficient and quality disposable sanitary towels to every girl child registered and enrolled in a public basic institution who has reached puberty.

We concur with this proposal, however the financial implication may not be affordable and sustainable in the Medium Term, with the estimated budget requirement of **Kshs.2.14.billion**. In the FY 2015/16 Budget the provision of sanitary towels is **Ksh.400million**. This will therefore result into a financial gap of **Ksh.1.7billion**. The National Treasury is not able to provide this funding. Attached please find the National Treasury Memorandum on the Basic



Education (Amendment) Legislative Proposal, 2015 for the necessary action of the National Assembly.

Yours *Sincerely*

Mutua Kilaka

MUTUA KILAKA, CBS, SS
PRINCIPAL ADMINISTRATIVE SECRETARY
FOR: PRINCIPAL SECRETARY/NATIONAL TREASURY



THE NATIONAL TREASURY'S COMMENTS AND RECOMMENDATIONS ON THE BASIC EDUCATION (AMENDMENT) BILL, 2015

Background

1. This Bill seeks to amend the Basic Education Act, No. 14 of 2013 to provide for free sanitary towels to every girl child registered and enrolled in a public basic education institution upon attaining puberty. This recognizes the right of every girl child to education and proper health care and in particular reproductive health. It is clear that lack of sanitary towels is one of the causes of absenteeism amongst both Primary and Secondary school-going girls in the country.

2. Clause 3 seeks to amend section 88 (2) of the Principal Act by providing that the Cabinet Secretary shall make provision for the acquisition of sanitary towels while preparing the annual estimates of revenue and expenditure for the Department. This is to ensure that funds are availed for the *purchase and distribution of the sanitary towels*.

Observations

3. The National Treasury notes that Section 30 (1) of the Basic Education Act makes it mandatory for every parent who has a Kenyan child or a child who resides in Kenya to ensure that they attend school regularly. However, some parents may not be able to afford sanitary towels and can be an impediment for their children to attend school regularly. Therefore, by providing free sanitary towels the Government will discharge its obligations of ensuring access to education and reproductive health.

4. The enactment of this Bill shall definitely occasion additional expenditure of public funds through the normal government appropriation. During the current Financial Year 2015/16, the Government has provided **KSh. 400 million** for the sanitary towels to girls.

5. School enrolment for girls who need to be supplied with sanitary towels stands at 1,933,009 for primary and 1,035,827 for secondary schools. The cost for the total coverage will be **KSh. 2.14 billion** per year. This cost covers purchase and transportation of the towels to schools for 9 months in a year.

6. This activity has been allocated **KSh. 400 million** in the FY 2015/16 Budget. This will cost the exchequer an additional **KSh. 1.7 billion** to cover all the girls.

Recommendation:

7. The National Treasury notes that this is a noble idea to reduce the absenteeism of the girl child especially in the primary school level. However the resources required are quite high considering the economic conditions and the prevailing priorities of the government. The activity cannot be financed at once and therefore this may be done progressively.

945

KENYA LAW REFORM COMMISSION



"A vibrant Agency for responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote

Ref. No. KLRC/RES/53(60)

KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
4 TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

14th July, 2015

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842-00100
NAIROBI



Handwritten signature: D. Muttey
Handwritten initials: 15/7

(Attn. Mr. Michael R. Sialai)

Dear *Michael,*

RE: PRE-PUBLICATION SCRUTINY OF THE PROPOSED BASIC EDUCATION (AMENDMENT) LEGISLATIVE PROPOSAL, 2015

Kindly refer to your letter Ref.No.KNA/EDUC/CORR/2015/(62) of 7th July, 2015 on the above subject.

Enclosed herewith please find Commission's comments on the Pre-Publication Scrutiny of the Proposed Basic Education (Amendment) Legislative Proposal, 2015.

As always, we thank you for your support to the Commission.

Yours *Sincerely,*
Joash Dache

Joash Dache, MBS
Secretary/Chief Executive Officer

Encl.

Handwritten notes:
② LEAH
pls deal
FA
15/7

THE BASIC EDUCATION (AMENDMENT) LEGISLATIVE PROPOSAL, 2015

INTRODUCTION

Pursuant to the provisions of Standing Order No. 114 (3) (b), this legislative proposal has been referred to the Departmental Committee on Education, Research and Technology for its pre-publication scrutiny. Through the Clerk of the National Assembly, the Kenya Law Reform Commission has received the said Legislative Proposal and will proceed to comment as hereunder.

OBJECTIVE OF THE LEGISLATIVE PROPOSAL

The primary object of this Bill is to amend the Basic Education Act No. 14 of 2013 to provide for the distribution of free sanitary towels to every girl child registered and enrolled in a public basic education institution upon attaining puberty. This amendment has been grounded in Article 43 and 53 of the Constitution.

We are well aware that Article 43 (1) (a) provides that: "Every person has the right to the highest attainable standards of health which includes the right to health care services, including reproductive health care." This Legislative proposal also takes cognizance of the rights entrenched under Article 53 of the Constitution with Articles 53 (1) (b) providing for the right of every child to free and compulsory education and Article 53 (1) (c) providing for the right of every child to basic nutrition, shelter and health.

It is against this background and in fulfillment of the provided constitutional provisions that Clause 2 of the Bill seeks to introduce a new paragraph under Section 39 of the Basic Education Act to be numbered (k) and which states that: "It shall be the duty of the Cabinet Secretary to: (k)...Provide free, sufficient and quality disposable sanitary towels to every girl child registered and enrolled in a public basic institution who has reached puberty."

The Bill also seeks to amend Section 88 of the Basic Education Act No. 14 of 2013 by inserting a new paragraph to be numbered (g) and the same is to read as follows: "The annual estimates shall make provisions for all the estimated expenditure of the Department for the financial year concerned and in particular shall provide for— the acquisition of sufficient and quality disposable sanitary towels to every girl child registered and enrolled in a public basic institution who has reached puberty

COMMENTS

It is our considered view that the following words contained in the proposed amendments should be defined and inserted in Section 2 under the Interpretation of the Basic Education Act No. 14 of 2013.

PUBERTY

The word "Puberty" is defined in the Collins Dictionary as: "The period at the beginning of adolescence when the sex glands become functional and the secondary sexual characteristics emerge."

Indeed in the case of *The State of Oregon vs. Ronnie Scott Mayes*, 2008 the Oregon Court of Appeal had the opportunity to define the word "Puberty" and pronounced that: "Again, as a question of statutory construction, we begin with an analysis of the text of the statute in context. We note at the outset that the text "post-pubescent," as used in ORS 163.700(2) (b) is ambiguous. To start, Webster's does not contain a stand-alone definition of "post-pubescent." However, it does define "pubescent" as "arriving at or having reached puberty: characteristic of or relating to this state [.]" Webster's Third New Int'l Dictionary 1836 (unabridged ed. 2002). In turn, "puberty" is defined, in part, as "the condition of being or the period of becoming first capable of reproducing sexually marked by maturing of the genital organs, development of secondary sex characteristics, and in the human and in higher primates by the first occurrence of menstruation in the female[.]" (Emphasis mine)

We are convinced that in arriving at a definition of the word puberty, and taking into consideration that this Legislative Proposal is particularly concerned with the provision of free, sufficient, quality sanitary towels for every girl child registered and enrolled in a public basic institution, we propose that the word "Puberty" be specifically defined as "the period at the beginning of adolescence marked by the first occurrence of menstruation in the female."

GIRL CHILD

I note that under Section 2 of the Basic Education Act No. 14 of 2013, the word "child" is defined as "child" means an individual who has not attained the age of eighteen years;

The Bill in proposing amendments denotes that the free, sufficient and quality sanitary towels shall be provided to every “girl child”.....The word “girl child” can be defined as a “a female individual who has not attained the age of eighteen years.”

PROTECTION OPTIONS AND ASSOCIATED POTENTIAL RISKS

A survey conducted by the Kenya Industrial Research and Development Institute yielded the following information on the advantages and disadvantages on the protection options:

Disposable pads have arguably been regarded as a health threat to the users. They have been manufactured through chemical processes such as chlorine bleaching which releases dioxin as a byproduct. The most potent carcinogen known to science, risks for endometriosis (an infection of the uterine lining), suppress the immune system, increase the risk of pelvic inflammatory disease, reduce fertility, and possibly interfere with normal fetal and childhood development. Additives such as fragrances and deodorants, absorbency agents and wet-strength agent often, poly-sorbate, urea formaldehyde can also cause allergies and skin reactions.

Re usable pads are unhygienic if not washed thoroughly before and after use and often leak due to poor absorbency. The users also need to have access to water and soap for washing the pad after each use which becomes a challenge to the marginalized poor schoolgirls.

In Kenya, unemployment rate stands at 54% and 58% of the population live in abject poverty. Commercial pads are too expensive for most underprivileged schoolgirls and young women as such they opt for low cost reusable cloth pads which however, are unhygienic and uncomfortable.

An initiative to make available sustainable low cost, safe, absorbent and degradable quality sanitary pads to the poor schoolgirls and young women is necessary. This can be realized by designing, developing and producing sanitary pads using locally available materials from bamboo plant and low cost sanitary pad making invention

It is imperative that the word sanitary towel is defined in the interpretation section. Considering the challenges posed above, we propose that the word sanitary towel as worded in the proposed amendments be defined to include quality disposable pads, reusable pads and degradable pads.