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TWELFTH PARLIAMENT - FOURTH SESSION - 2020

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE
REPORT ON THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY
BILLS NO. 79 OF 2019)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 01 DEC 2020	DAY: TUE
TABLED BY:	HON PETER MWATHI (CHAIRPERSON)
CLERK (AS) TABLED BY:	MIRIAM MODO

Directorate of Departmental Committees,
Clerk's Chambers
Parliament Buildings,
NAIROBI

NOVEMBER, 2020

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LIST OF ABBREVIATIONS AND ACRONYMS

CRB	Credit Reference Bureau
DCI	Directorate of Criminal Investigation
EACC	Ethics and Anti-Corruption Commission
HELB	Higher Education Loans Board
KRA	Kenya Revenue Authority
LIA	Leadership and Integrity Act, 2012
MP	Member of Parliament
NA	National Assembly
PIN	Personal Identification Number
TCC	Tax Compliance Certificates
TPA	Tax Procedures Act

LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on the consideration of the Bill
- Annexure 2:** Adoption Schedule
- Annexure 3:** Submissions from Stakeholder

CHAIRPERSON'S FOREWORD

The Employment (Amendment) Bill, National Assembly Bills No. 79 of 2019 is a Bill sponsored by Hon. Gideon Keter, M.P. The Bill was published on 25th November, 2019 and Read a First Time on 26th February, 2020. The Bill was committed for consideration to the Committee on Labour pursuant to Standing Order 127(1).

Consequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 127 (3), invited submissions from members of the public on the Bill via advertisements in national dailies on 13th January, 2020. During its Sittings held on 25th February, 2020 the Departmental Committee on Labour and Social Welfare considered the submissions on the Bill from key stakeholders and has proposed amendments to improve the Bill.

In summary, the Bill seeks to amend section 9 of the Employment Act, 2011 in order to reduce costs incurred by the youth while job-seeking. Many of the unemployed Kenyans consist of persons below the age of thirty- five (35) years and as mostly first time job seekers, are unable to afford clearance certificates required by employers for purposes of employment. To that end, the Bill provides that employers may only request for any clearance or compliance certificates only upon granting an offer of employment. The employer is granted reprieve if it is ascertained that the employee cannot provide the compliance or clearance certificates or if the employee does not satisfy the mandatory requirements on ethics and compliance. To that end the employer may withdraw the offer of employment.

The Committee proposes further amendments to ensure that public entities digitize application processes for compliance or clearance certificates and proposes that public entities should not charge applicants for clearance and compliance certificates for purposes of employment as this should not be used as a revenue stream by public entities.

May I take this opportunity to commend the Committee members for their devotion and commitment to duty in the consideration of the Bill and express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing technical and logistical support.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Employment (Amendment) Bill, National Assembly Bill No. 79 of 2019.


HON. PETER MWATHI, M.P. - CHAIRPERSON

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*:-

- i. *To 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. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- iii. ***To study and review all legislation referred to it;***
- iv. *To 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. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- vii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee is mandated to consider the following subjects: -

- i. Labour,
- ii. Labour relations,
- iii. Manpower or Human Resource Planning,
- iv. Gender,
- v. Youth,
- vi. Social Welfare and Security,
- vii. Children`s Welfare,
- viii. Persons Living with Disabilities.

1.2 Oversight

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. The State Department for Labour
- ii. The State Department for Social Protection
- iii. The State Department for Gender
- iv. The State Department for Youth

CHAPTER ONE

2.0 PART A: OVERVIEW OF THE EMPLOYMENT (AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 79 OF 2019.

1. The Employment (Amendment) Bill, National Assembly Bills No. 79 of 2019 seeks to amend the Employment Act, 2011 in order to enable an employer carry out background checks on prospective employees only upon granting an offer of employment. Many of the unemployed consist of persons below the age of thirty- five (35) years and as a result, are unable to afford clearance certificates required by employers for purposes of employment. It is therefore necessary for an employer to require an applicant to submit the mandatory requirements as a condition for confirmation of employment.
2. Clause 2 of the Bill seeks to amend section 9 of the principal Act by introducing new subsections to provide that an employer shall not require an employee for a contract of service to submit any clearance certificates for which payment is required unless such employer intends to enter into a written contract of service with the employee.
3. The Bill further provides that an employer who intends to enter into a written contract of service may, in compliance with chapter Six of the Constitution, request an employee to submit mandatory clearance certificates from the relevant entities and may withdraw an offer of contract of service where the employee does not submit the mandatory clearance certificates.

PART B: PUBLIC PARTICIPATION

4. Through an advertisement on 13th January 2020, the Committee invited the public to present submissions on the Employment (Amendment) Bill, 2019.
5. The Committee received submissions on the Bill from numerous stakeholders including the Higher Education Loans Board (HELB), the Kenya Revenue Authority (KRA) and the Ethics and Anti-Corruption Commission (EACC) among others.
6. The details of the submissions are annexed to this report as annexure 3. The Committee extensively considered the contents of the submissions on the Bill and the details of the deliberations and the Committee's observations and resolutions as relates to the Bill are contained in Chapter 3.

2.1 Submissions by Higher Education Loans Board

7. The Higher Education Loans Board (HELB) forwarded a memorandum on the proposed Employment(Amendment) Bill, 2019. It submitted that-
8. The Higher Education Loans Board was established in 1995 by an Act of Parliament, the Higher Education Loans Board Act, Cap. 213A of the Laws of Kenya. The mandate of HELB is to finance needy Kenyan students pursuing higher education. The philosophy behind this is to create a revolving fund from which future generations can borrow in pursuit of higher education.

9. The current national requirement is that those seeking employment in the public sector should get clearance from KRA, DCI, EACC, CRB and HELB. HELB has therefore been issuing compliance certificates to non-beneficiaries of student loans at a fee of Kshs. 1,000 to defray the cost of the certificate and other administrative expenses.
10. However, following various stakeholder engagements where HELB sought feedback on Citizen Service Delivery, HELB stopped charging Kshs. 1,000 for issuance of the Compliance Certificate **with effect from 15th July 2020**. The HELB Compliance Certificates are now free of charge and can be accessed from the HELB Website www.helb.co.ke as well as through the E-Citizen Portal.
11. The expected impact of the waiver of payment of the compliance certificate fees include-
 - (i) Motivation for Kenyan youth to seek their HELB compliance certificates as they seek jobs or opportunities to contribute towards building the nation; and
 - (ii) Creation of goodwill and promotion of HELB products among Kenyans as they seek compliance certificates.
12. It was also worth noting that HELB Clearance certificates for loan beneficiaries had always been issued free of charge since inception. This gesture was an indication that HELB remained committed to listening to feedback from stakeholders.
13. There was difference between compliance and clearance certificate. Compliance certificates were issued to Kenyans who did not benefit from the loan and those who benefitted but were still in the process of servicing the loans. Whereas clearance certificates were issued to loan beneficiaries who had completed repayment.
14. The justification for the need for clearance were pursuant to provisions of the Constitution and other relevant laws as follow-
 - (a) Provision of Article 10 (1) of the Constitution on the National Values and Principles of Governance bind all State organs, State officers and public officers to observe good governance, integrity, transparency and accountability and sustainable development.
 - (b) Chapter 6 of the Constitution under Article 73 which addresses responsibilities of leadership provides-

Authority assigned to a State officer is a public trust to be exercised in a manner that—

 - (i) *is consistent with the purposes and objects of this Constitution.*
 - (ii) *Demonstrates respect for the people.*
 - (iii) *Brings honour to the nation and dignity to the office; and*
 - (iv) *promotes public confidence in the integrity of the office.*
 - (c) The Leadership and Integrity Act which operationalizes Chapter 6 of the Constitution, wholly incorporates the provisions of Public Officer Ethics Act 2003.

15. In light of the Constitutional and statutory provisions above, clearance/compliance certificates for purpose of seeking employment are meant to determine the applicant's integrity which according to section 13 of the Leadership and Integrity Act encompasses demonstrable consistent history of honesty and high moral character in professional and personal life; Respect for professional duties arising under the codes of professional and judicial conduct; and ability to understand the need to maintain propriety and the appearance of propriety.
16. However, section 15 of the HELB Act (Cap. 213A), establishes the responsibilities of the loanee and sanctions if the loanee does not comply whereas section 16 establishes the responsibilities of the employer. If an employer is in breach of section 16, they are then liable to specified fines as established under section 17 of the same Act. Similarly, the other Agencies involved with Chapter 6 six of the Constitution have their respective laws that require specific compliances. The big question is if these amendments on the Employment Act,2011 will cause changes to all the other laws and the Constitution itself.
17. The Courts position on clearance by the various bodies-the High Court of Kenya at Nairobi-Constitutional, Human Rights and Judicial Review Division in *Petition No. 314 of 2016 (Consolidated with Judicial Review No. 306 of 2016), Trusted Society of Human Rights Alliance and 3 Others Versus Judicial Service Commission, Attorney General, Law Society of Kenya (Interested Party) and Article 19- Eastern Africa (Amicus Curiae), Justice G. V. Odunga* held that requirement for clearance certificates by the various bodies was part of requirement of Chapter 6 of the Constitution hence it could not be dealt away with. The only adjustment was that it could not be used in first or primary instance, at the application level and therefore fail to shortlist someone on the basis that they did not have the clearances. It has to be dealt with at the secondary level, probably at the interview level or thereafter as the potential employer wishes.
18. Accordingly, HELB's Opinion was that in the presence of the unchallenged court decision, the requirement for clearance certificate is not unreasonable or unjustified. HELB clearance is proof that a prospective candidate has not only honored their obligation to pay their education loan but that they have reinvested in the education of other deserving Kenyans. This is in keeping with the Constitutional guarantee to Right to Education as provided in Article 43 of the Constitution. For those who did not benefit, the clearance is proof that they do not have a public liability that they are not honouring.
19. It was therefore the prayer of HELB that this strategy remains in force for the Board to effectively collect loans to enable other Kenyans pursuing higher education realize their dreams. The huge financial requirement by HELB and the declining Exchequer support was pushing HELB more towards External Resource Mobilization from both institutions and individuals of goodwill created overtime part of which is through the relationship developed through the issuance of the certificates.

2.2 Submissions by the Ethics and Anti-Corruption Commission

20. The Committee held a meeting on 22nd October, 2020 with Ethics and Anti-Corruption Commission (EACC) where the CEO/Secretary made submissions as follows-

21. The Leadership and Integrity Act, 2012 (LIA) was enacted pursuant to Article 80 of the Constitution to provide mechanisms and procedures for the administration and enforcement of Chapter Six of the Constitution on leadership and integrity. The Act seeks to ensure that State and Public Officers uphold and respect the values, principles and requirements of the Constitution while discharging public duty so as to foster and promote integrity and good governance in the management of public affairs. Under Section 4 of LIA, the Commission was mandated to oversee and enforce implementation of the Act.
22. Section 12A of LIA makes it mandatory for any person intending to be appointed to a State Office to submit to the EACC a Self-Declaration Form set out in the First Schedule of the Act.
23. Section 52 of LIA provides that the provisions of Chapter Six of the Constitution and Part II of the LIA except Section 18 shall apply to all Public Officers as if they were State Officers. Consequently, the data in the Self-Declaration Form submitted provides baseline information for integrity verification of all persons joining public service.
24. The Constitutional underpinning on ethics and integrity is provided in Articles 10(2) (c), 73(2) (a) of the Constitution and section 12A of the Leadership and Integrity Act. The provisions are outlined as follows-
 - (a) Article 10(2) (c) of the Constitution states that: The national values and principles of governance include good governance, integrity, transparency and accountability.
 - (b) Article 73(2) (a) of the Constitution states that: The guiding principles of leadership and integrity include - selection on the basis of personal integrity, competence and suitability.
25. The Statutory requirements for compliance with ethics and integrity is also provided for in the Public Appointments (Parliamentary Approval) Act, 2011, County Government Act, 2012 and; Public Appointments (County Assemblies) Approval Act, 2017.
 - (a) Public Appointments (Parliamentary Approval) Act, 2011 under section 7(b), one of the issues for consideration in determining a nominee's suitability for public office is compliance with constitutional and statutory requirements. These requirements include the integrity standards under Chapter Six of the Constitution.
 - (b) Section 35(3) (c) of the County Government Act provides that: A person may be appointed as a member of the County Executive Committee if that person; satisfies the requirements of Chapter Six of the Constitution. Section 8 (1) (a) of the County Government Act, 2012 mandates the County Assemblies to: vet and approve nominees for appointment to County Public offices as may be provided for in the Act or any other law.
 - (c) Public Appointments (County Assemblies) Approval Act, 2017 requires that only persons of integrity are appointed to County public offices. This role is vested on the Governor, County Public Service Boards and the County Assemblies mandated to vet the nominees.
 - (d) Sections 4 and 7(8), respectively of Public Appointments (County Assemblies) Approval Act, 2017, requires an approval hearing to focus on a candidate's academic credentials, professional training and experience, personal integrity and background.
26. EACC provides vetting agencies including the National Assembly and County Assemblies with recommendations on the integrity status of persons being vetted for suitability to join public service.

27. The requirements under Chapter Six of the Constitution and Leadership and Integrity Act are on: moral, ethical and financial probity of candidates. The process of determining suitability consists of background verification to determine whether an applicant seeking public office meets the moral and ethical requirements and is of good integrity standing.
28. The integrity verification process by the Commission involves the following steps-
- (i) any person seeking appointment to public office is required to fill in the self-declaration form;
 - (ii) the declarant is required to attach copies of identity card and or passport, KRA pin and academic certificates to support responses;
 - (iii) the self-declaration has a provision for commissioning by a Commissioner for Oaths or Magistrate;
 - (iv) the duly commissioned Self-Declaration Form is submitted to any EACC Office. The Commission has presence at its Headquarters, 11 Regional Offices and 50 Huduma Center Service Desks; The Form is available from EACC website.
29. Upon receipt of a request from a recruiting public entity, the Commission undertakes verification to determine integrity suitability of shortlisted candidates, and prepares a Report to the requesting entity; the EACC does not charge any fees for processing of the self-declaration forms. However, applicants may incur expenses in the form of the commissioning fees.
30. Whereas the self-declaration form is a useful tool for collection of data necessary for implementation of Chapter Six of the Constitution of Kenya, there is need to address the challenge faced by applicants in relation to commissioning/attestation of the forms. In this regard, the Commission recommends as follows:
31. The self-declaration form as set out in the First Schedule of the Leadership and Integrity Act, 2012 be amended by deleting the provision on the requirement for commissioning by a Commissioner for Oaths or Magistrate and substituting therefor a caution in the following terms:
- CAUTION: It is a criminal offence under section 46(1)(d) of the Leadership and Integrity Act to give false information to the Commission, a public entity or a person acting under the Act for which one is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.*
32. The Commission will automate the self-declaration form to enable for wider access and submission by applicants.
33. The Commission will consider allowing the applicants to use a copy of the duly filled and submitted Self-Declaration Form for a period of 12 months before renewal.

2.3. Submissions by Kenya Revenue Authority (KRA)

34. The Committee held a meeting with the Kenya Revenue Authority on 21st October, 2020 the Authority made the following submissions-
35. The said Bill seeks to among other things to exempt youth seeking employment from the provisions to provide for any clearance certificates for which payment is required.
36. KRA, as a government body charged with the assessment, collection, accounting and administration of tax laws does not charge a fee for any of its services it renders to the members of the public. Its services are free. However, some of the certificates they issue have been taken as part of other institutions of governments or private ones as mandatory required documentations for anyone to produce in order to proceed receiving certain services.
37. The certificates they issue are Personal Identification Number (PIN) certificate and Tax Compliance Certificates (TCC) which are critical documents one was required to produce in order to carry out certain transactions including seeking for employment.
38. Section 12 of the Tax Procedures Act, 2015 (TPA) provides that *‘The Commissioner shall issue a number, to be known as a personal identification number (“PIN”), to a person registered for the purposes of a tax law and that person shall use the PIN as may be required under this Act.*
39. PIN affects job seekers in the sense that, the document is required in opening up bank accounts, seeking HELB Loans, opening accounts with utility companies such as Kenya Power and Water Companies, required by potential employers and moreover, to file returns annually. Failure to file returns despite not having any income to return, is punishable by imposition of a penalty of Ksh 2,000.
40. As a way forward, in assisting the youth especially unemployed and those still in school, the Authority sought for amendment of law to provide for KRA to issue a PIN without a tax obligation and at the same time to exempt certain persons who want to transact certain business to be exempted from PIN requirements. These measures go a long way in assisting the youth from being required to fulfil tax obligations which they are not ripe for. The iTax system is in the process of being amended to be in line with the above.
41. Section 3 of the TPA defines “Tax Compliance Certificate” means a certificate issued by the Commissioner if satisfied that the person has complied with the tax law in respect of filing returns and has paid all the tax due based on self-assessment or has made an arrangement with the Commissioner to pay any tax due.
42. Finally, KRA submitted that their services are free and offered online through self-service iTax platform anywhere and everywhere. Moreover, youths who had studied and understood KRA online services had opened cyber cafes where they offered such services to other members of the public at a small fee. However, for those who were unable to access our services at the comfort of their homes or wherever they were could visit KRA offices, Huduma Centres or made calls to customer care representatives or email for assistance.

3.0 CHAPTER TWO: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1 COMMITTEE OBSERVATIONS

43. The Committee made the following observations-

- 1) The Employment (Amendment) Bill, National Assembly Bills No. 79 of 2019 seeks to amend the Employment Act, 2011 in order to require an employer seeking to carry out background checks on prospective employees to request for any clearance or compliance certificates only upon granting an offer of employment. Many of the unemployed consist of persons below the age of thirty- five (35) years and as mostly first time job seekers, are unable to afford clearance certificates required by employers for purposes of employment.
- 2) While it is necessary for an employer to require an applicant to submit the compliance or clearance certificates as a condition for confirmation of employment, the requirement should not be used to lock out applicants at the first instance of recruitment/application.
- 3) The High Court of Kenya at Nairobi- Constitutional, Human Rights and Judicial Review Division in *Petition No. 314 of 2016 (Consolidated with Judicial Review No. 306 of 2016), Trusted Society of Human Rights Alliance and 3 Others Versus Judicial Service Commission, Attorney General, Law Society of Kenya (Interested Party) and Article 19- Eastern Africa (Amicus Curiae), Justice G. V. Odunga* held that the requirement for clearance certificates by the various bodies was pursuant to Chapter 6 of the Constitution hence could not be dealt away with. The only adjustment was that it could not be used in the first or primary instance, at the application level and therefore result in the failure to shortlist a person on the basis that they did not have the clearances. It had to be dealt with at the secondary level, probably at the interview level or thereafter as the potential employer wishes. However, the Committee notes that most applicants fell within category of youth (persons who had attained age of 18 years but not attained 35 years) who had never been employed hence lacked resources to acquire some of these certificates even at the secondary level of the interview process.
- 4) Clause 2 of the Bill seeks to amend section 9 of the principal Act by introducing new subsections to provide that an employer shall not require an employee for a contract of service to submit any clearance certificates for which payment is required unless such employer intends to enter into a written contract of service with the employee. This does not include state officers whose appointment process is elaborate and undergoes various approval stages and it should be possible for the ethics and integrity requirements to be ascertained at first stage of approval. However, as drafted, the clause lacks clarity and ought to be re-drafted in more clear and unambiguous terms.
- 5) The Bill further provides that an employer who intends to enter into a written contract of service may, in compliance with Chapter Six of the Constitution, request an employee to submit mandatory clearance certificates from the relevant entities and may withdraw an offer of contract of service where the employee does not submit the mandatory clearance certificates.

- 6) The Constitutional underpinning on ethics and integrity is provided in Articles 10(2) (c), 73(2) (a) of the Constitution and section 12A of the Leadership and Integrity Act. The provisions are outlined as follows-
 - (a) Article 10(2) (c) of the Constitution states that: *The national values and principles of governance include good governance, integrity, transparency and accountability.*
 - (b) Article 73(2) (a) of the Constitution states that: *The guiding principles of leadership and integrity include - selection on the basis of personal integrity, competence and suitability.*
- 7) The Statutory requirements for compliance with ethics and integrity is also provided for in Section 52 of the Leadership and Integrity Act, 2012 which provides that the provisions of Chapter Six of the Constitution and Part II of the LIA except section 18 shall apply to all Public Officers as if they were State Officers.
- 8) The provisions of Chapter Six apply to state and public officers and the mandatory clearance certificates from the relevant entities are mainly a requirement during the recruitment of such officers pursuant to the Constitution and relevant laws. As regards private employers it is at the discretion of such employers to determine the mandatory clearance or compliance certificates.
- 9) The clearance certificates ordinarily sought by employers relate to certification of the status of a potential employee's tax compliance, ethics and integrity, creditworthiness and criminal liability. By inference, the relevant institutions that issue the said clearance certificates are the Ethics and Anti-Corruption Commission (EACC), the Higher Education Loans Board (HELB), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI) and the Credit Reference Bureau (CRB).
- 10) There was a difference between compliance and clearance certificates. Some institutions issued either type of certificate depending on the nature of the applicant. For example, HELB issued compliance certificates to applicants who did not benefit from the loan and those who benefitted but were still in the process of servicing the loans whereas clearance certificates were issued to loan beneficiaries who had completed repayment. Clause 2 of the Bill in the proposed new subsection (5) therefore ought to be redrafted to include both compliance and clearance certificates.
- 11) The issuance of compliance or clearance certificate ought not to be treated as a revenue stream by public entities mandated to issue the same and in this regard, the Committee notes that the KRA, EACC and HELB did not charge for issuance of clearance or compliance certificates.
- 12) It was noted that CRB charges Kshs. 2200 and DCI charges Kshs. 1050 for a Certificate of Good Conduct, which was valid for a one-year period. Whereas the Ethics and Anti-Corruption Commission did not charge any fees, jobseekers incurred advocates costs relating to commissioning of the self-declaration form which is required to be sworn in the presence of a Commissioner for Oaths. It was proposed that the Self Declaration Form contained in the First Schedule to the Leadership and Integrity Act in order to

remove the requirement for commissioning by a Commissioner for Oaths or Magistrate.

- 13) The application and processing of compliance or clearance certificates by the relevant entities should be automated in order to facilitate the acquisition of such documents and reduce attendant costs of manual processing of such documents.

3.2 COMMITTEE RECOMMENDATIONS

The Committee, having considered the Employment (Amendment) Bill, 2019 and stakeholder submissions recommends that-

- 1) Clause 2 of the Bill be amended-
 - (a) By deleting the proposed new subsection 5 and substituting therefor -
'In respect of recruitment, an employer shall not require an employee to submit any clearance or compliance certificate unless such employer intends to enter into a contract of service'
 - (b) by inserting the following new subsection immediately after the proposed new subsection 5-
'Subsection 5 shall not apply to an applicant for employment as a State Officer'; and
 - (c) by inserting the following new subsection immediately after the proposed new subsection (7);
'(7A) A relevant public entity shall not charge for the issuance of a clearance or compliance certificate under this section or any other written law and shall undertake to ease the process of application including digitization of the process'.
- 2) the Leadership and Integrity Act, 2012 and any other relevant laws requiring the issuance of clearance or compliance certificates for purposes of employment be amended to provide that the relevant entities shall not require payment for issuance of such certificates; and
- 3) the self-declaration form as set out in the First Schedule of the Leadership and Integrity Act, 2012 be amended by deleting the provision on the requirement for commissioning by a Commissioner for Oaths or Magistrate and substituting therefor with a caution in the following terms-

CAUTION: It is a criminal offence under section 46(1)(d) of the Leadership and Integrity Act to give false information to the Commission, a public entity or a person acting under the Act for which one is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

SIGNED.....

DATE.....

HON. PETER MWATHI, M.P. - CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY 21ST OCTOBER, 2020 AT 9.10AM IN THE CONFERENCE ROOM, WHITESANDS HOTEL

PRESENT

1. **The Hon. Peter Mwathi, MP** - Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
3. The Hon. James K'Oyoo, M.P
4. The Hon. Ronald Kiprotich Tonui, MP
5. The Hon. Tom Mboya Odege, MP
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. Safia Sheikh Adan, MP
8. The Hon. Omboko Milemba, MP
9. The Hon. Titus Mukhwana Khamala, M.P
10. The Hon. Caleb Amisi, M.P.
11. The Hon. Charles Kanyi Njagua, MP
12. The Hon. David Ole Sankok, MP
13. The Hon. Wilson Sossion, MP
14. The Hon. Gideon Keter, MP

APOLOGY

1. The Hon. Moses Malulu Injendi, M.P
2. The Hon. Janet Nangabo, MP
3. The Hon. Rose Museo Mumo, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Fabian Kyule Muli, MP

IN ATTENDANCE

The National Assembly Secretariat

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani - Legal Counsel I
4. Ms. Fiona Musili - Research Officer
5. Ms. Sheila Chebotibin - Sargent-At-Arms
6. Mr. Job Owaga - Audio Officer

Ethics and Anti-Corruption Commission

1. Mr. Twalib Mbarak – CEO
2. Mr. Jackson Mue
3. Mr. Erick Ngumbi
4. Mr. Stephen Karuga

Kenya Revenue Authority

Mr. Charles Cheruiyot – Chief Manager

AGENDA

1. Prayers

2. Preliminaries
 - i. Introductions
 - ii. Communication from the Chairperson
 - iii. Confirmation of Minutes of previous Sitzings
 - iv. Matters Arising
3. **Meeting with Officials from KRA and EACC regarding the Employment (Amendment) Bill, 2019**
4. **Adoption of the following Committee Reports: -**
 - a) **Legislative Proposal on Prohibition of FGM Bill, 2020**
 - b) **Legislative Proposal on Children Amendment Bill, 2019**
5. Any Other Business
6. Adjournment/Date of the next Sitting

MIN.NO. DC/LSW/212/2020: - PRELIMINARIES

The meeting was called to order at 9.10am and thereafter a prayer was said. This was followed with introductions.

The Chairperson then informed Members that the agenda of the of the meeting was to consider the Employment (Amendment), Bill, 2019, get the stakeholders views on the Bill and thereafter consider and adopt two reports as per the agenda.

MIN.NO. DC/LSW/213/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

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

MIN.NO. DC/LSW/214/2020: EMPLOYMENT (AMENDMENT) BILL, 2019

I. SUMMARY OF CLAUSES

- a) The Bill seeks to amend section 9 of the Employment Act, 2011 in order to reduce costs incurred by the youth while job-seeking.
- b) Many of the unemployed Kenyans consist of persons below the age of thirty- five (35) years and as mostly first-time job seekers, are unable to afford clearance certificates required by employers for purposes of employment.
- c) The Bill provides that employers may only request for any clearance or compliance certificates only upon granting an offer of employment.
- d) Clause 2 of the Bill seeks to amend section 9 of the principal Act by introducing new subsections to provide that an employer shall not require an employee for a contract of service to submit any clearance certificates for which payment is required unless such employer intends to enter into a written contract of service with the employee.
- e) The Bill further provides that an employer who intends to enter into a written contract of service may, in compliance with chapter Six of the Constitution, request an employee to submit mandatory clearance certificates from the relevant entities and may withdraw an offer of contract of service where the employee does not submit the mandatory clearance certificates.

II. SUBMISSIONS BY THE STAKEHOLDERS

1. Submissions by the Ethics and Anti-Corruption Commission

The CEO/Secretary made submissions as follows-

- a) Section 12A of the Leadership and Integrity Act, 2012 (LIA) makes it mandatory for any person intending to be appointed to a State Office to submit to the EACC a Self-Declaration Form set out in the First Schedule of the Act.
- b) Section 52 of LIA provides that the provisions of Chapter Six of the Constitution and Part II of the LIA except Section 18 shall apply to all Public Officers as if they were State Officers.
- c) The Statutory requirements for compliance with ethics and integrity is also provided for in the Public Appointments (Parliamentary Approval) Act, 2011, County Government Act, 2012 and; Public Appointments (County Assemblies) Approval Act, 2017.
- d) EACC provides vetting agencies including the National Assembly and County Assemblies with recommendations on the integrity status of persons being vetted for suitability to join public service.
- e) The requirements under Chapter Six of the Constitution and Leadership and Integrity Act are on: moral, ethical and financial probity of candidates. The process of determining suitability consists of background verification to determine whether an applicant seeking public office meets the moral and ethical requirements and is of good integrity standing.
- f) The certificate issued by EACC is free and that the cost is in paying for the stamp of the commissioner of oaths to verify the document.
- g) Whereas the self-declaration form is a useful tool for collection of data necessary for implementation of Chapter Six of the Constitution of Kenya, there is need to address the challenge faced by applicants in relation to commissioning/attestation of the forms. In this regard, the Commission recommends as follows:
 - i. The self-declaration form as set out in the First Schedule of the Leadership and Integrity Act, 2012 be amended by deleting the provision on the requirement for commissioning by a Commissioner for Oaths or Magistrate and substituting therefor a caution in the following terms:

CAUTION: It is a criminal offence under section 46(1)(d) of the Leadership and Integrity Act to give false information to the Commission, a public entity or a person acting under the Act for which one is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

- ii. The Commission will automate the self-declaration form to enable for wider access and submission by applicants.
- iii. The Commission will consider allowing the applicants to use a copy of the duly filled and submitted Self-Declaration Form for a period of 12 months before renewal.

Committee Observations

1. EACC doesn't have Commissioners of Oaths within their offices across the Country.
2. The EACC self-declaration form should be accessible online and each form should have a seal.
3. Having a Government lawyers for the purposes of oathing may lead to change of policies.

4. Leadership and Integrity Act should be used to hold persons capable in case they give false information.
5. The Committee noted that the Government need to come up with automated system identification so that a single identification covers all individuals details and everything.

2.3. Submissions by Kenya Revenue Authority (KRA)

- h) KRA, as a government body charged with the assessment, collection, accounting and administration of tax laws does not charge a fee for any of its services it renders to the members of the public. Its services are free. However, some of the certificates they issue have been taken as part of other institutions of governments or private ones as mandatory required documentations for anyone to produce in order to proceed receiving certain services.
- i) The certificates they issue are Personal Identification Number (PIN) certificate and Tax Compliance Certificates (TCC) which are critical documents one was required to produce in order to carry out certain transactions including seeking for employment.
- j) Section 12 of the Tax Procedures Act, 2015 (TPA) provides that *'The Commissioner shall issue a number, to be known as a personal identification number ("PIN"), to a person registered for the purposes of a tax law and that person shall use the PIN as may be required under this Act.*
- k) PIN affects job seekers in the sense that, the document is required in opening up bank accounts, seeking HELB Loans, opening accounts with utility companies such as Kenya Power and Water Companies, required by potential employers and moreover, to file returns annually. Failure to file returns despite not having any income to return, is punishable by imposition of a penalty of Ksh 2,000.
- l) As a way forward, in assisting the youth especially unemployed and those still in school, the Authority sought for amendment of law to provide for KRA to issue a PIN without a tax obligation and at the same time to exempt certain persons who want to transact certain business to be exempted from PIN requirements. These measures go a long way in assisting the youth from being required to fulfil tax obligations which they are not ripe for. The iTax system is in the process of being amended to be in line with the above.
- m) KRA services are free and offered online through self-service iTax platform anywhere and everywhere. Moreover, youths who had studied and understood KRA online services had opened cyber cafes where they offered such services to other members of the public at a small fee.

Committee Observations

1. Youths can apply for PIN without obligations until such time when they secure tenders.
2. Section 12 (5A) gives the Commissioner powers to exempt a group of persons or certain businesses as provided for in the first schedule of Tax procedure.
3. The Commission should work on modalities to ensure that youths who fail to get tenders are not penalized if they fail to file returns.
4. Tax exception for PWDs should be renewed after every five years since their disability is permanent.
5. Complaints raised by the youth should be prompt and waivers shouldn't take more than one month.

MIN.NO. DC/LSW/215/2020: ADOPTION OF THE REPORT ON LEGISLATIVE PROPOSAL ON PROHIBITION OF FGM BILL, 2020

The Committee made the following observations:

1. The definition of the word therapeutic may be subject to abuse as it gives a leaves room for misinterpretation of the phrase 'healing of a disease'. Furthermore, section 19(3) sets out exact instances where certain surgical procedures performed by midwives and medical practitioners will not be deemed to be FGM.
2. The proposal to include medical practitioners and midwives will be necessary to prohibit performance of FGM by rogue midwives or doctors.
3. Whereas the amendment on clause 4 seeks to exclude victims of FGM from the categories of persons required to report FGM, it is couched in unclear words. Further, it is unclear whether the protection applies to persons reporting of FGM being done to them or persons who were subjected to FGM long ago as it refers to 'any person who has been subjected to FGM'. The committee was of the view that instances of FGM must be reported in order to eradicate it as it is intended. To this end, the committee observed that there is no stipulated timeline for reporting and proposes that timelines be provided for while taking into consideration the need to protect the victim.
4. The provisions relating to criminalisation of discrimination of a person who has not undergone Female Genital Mutilation and her family or support bubble are progressive and in line with the guidelines on non-discrimination set out in the National Policy on abandonment of Female Genital Mutilation, 2010.

Recommendations

The Committee proposed that the legislative proposal be proceeded with subject to the following-

- i. Deletion of clause 2
- ii. Amendment of clause 4 by deleting it and instead provide for a timeline for reporting of FGM (different for the person facing imminent threat of FGM or who has been a recent victim of FGM and other persons)

MIN.NO. DC/LSW/216/2020: ADOPTION OF THE REPORT ON LEGISLATIVE PROPOSAL ON CHILDREN AMENDMENT BILL, 2019

The Committee made the following observations;

- (i) The Proposal seeks to amend provisions of the Children Act, (No. 8 of 2001) to align them with the Constitution. The Bill seeks to vest equal responsibility for parental care and protection of a child in both the mother and the father whether they are married to each other or not. The Bill further provides that neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.
- (ii) The Children Act currently places primary parental responsibility on an unmarried mother of a child and requires a father to assume such responsibility. The amendment

proposes to place primary parental responsibility on both the mother and father of a child whether they are married or not in line with article 53(1)(e) of the Constitution.

- (iii) Section 25 of the Children Act requires that where the father and mother of a child are unmarried, the father of a child may only acquire parental responsibility over the child if he applies to the court for an order or enters into an agreement with the mother. Responsibility for the father is also presumed where the father and mother, though unmarried, cohabit for a period exceeding 12 months. The amendment does away with the entire section thus placing parental responsibility on both parents of a child by default.
- (iv) Section 26 of the Children Act provides for the prescribed form of a parental responsibility agreement, the manner in which and by who it may be brought to an end. The amendment proposes to repeal the entire section.
- (v) Section 27(2) of the Children Act provides for the transmission of parental responsibility in the event of the death of a father who has acquired parental responsibility. The amendment deleted the portions of the Act referring to acquisition of parental responsibility in line with proposed amendment to section 24, 25 and 26.
- (vi) Some parties enter into parental responsibility agreements as a means of avoiding actual litigation on children matters.
- (vii) There are existing parental responsibility agreements that have been registered in court, thus there is need for a transitional provision for such agreements.

Committee Recommendation

The Committee proposed that the legislative proposal be proceeded with subject to the following amendments-

- (i) That clause 3 of the legislative proposal be deleted and substituting with the following-

Where a child's father and mother were not married at the time of the child's birth the father and mother may by agreement ("a parental responsibility agreement") provide for the parental responsibility of the child.

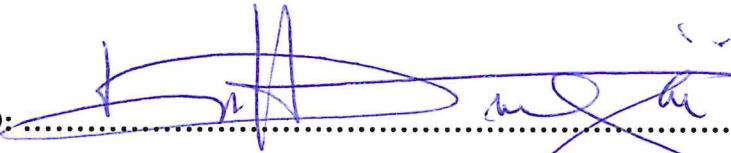
- (ii) Clause (4) of the legislative proposal be deleted.

MIN.NO. DC/LSW/217/2020: ANY OTHER BUSINESS

No Any Other Business Arose

MIN.NO. DC/LSW/218/2020: ADJOURNMENT

There being no other business, the meeting was adjourned 1.27pm

SIGNED: 

The Hon. Peter Mwathi, M.P
(Chairperson)

DATE: 25/11/2020

MINUTES OF THE 42ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY 23RD OCTOBER, 2020 AT 9.40AM IN THE CONFERENCE ROOM, WHITESANDS HOTEL

PRESENT

1. **The Hon. Peter Mwathi, MP** - Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** – Vice Chairperson
3. The Hon. James K'Oyoo, M.P
4. The Hon. Ronald Kiprotich Tonui, MP
5. The Hon. Tom Mboya Odege, MP
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. Safia Sheikh Adan, MP
8. The Hon. Omboko Milemba, MP
9. The Hon. Titus Mukhwana Khamala, M.P
10. The Hon. Caleb Amisi, M.P.
11. The Hon. Charles Kanyi Njagua, MP
12. The Hon. David Ole Sankok, MP
13. The Hon. Wilson Sossion, MP
14. The Hon. Gideon Keter, MP

APOLOGY

1. The Hon. Moses Malulu Injendi, M.P
2. The Hon. Janet Nangabo, MP
3. The Hon. Rose Museo Mumo, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Fabian Kyule Muli, MP

IN ATTENDANCE

The National Assembly Secretariat

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani - Legal Counsel I
4. Ms. Fiona Musili - Research Officer
5. Ms. Sheila Chebotibin - Sargent-At-Arms
6. Mr. Job Owaga - Audio Officer

AGENDA

1. Prayers
2. Preliminaries
 - i. Introductions
 - ii. Communication from the Chairperson
 - iii. Confirmation of Minutes of previous Sitings
 - iv. Matters Arising
3. **Consideration and adoption of the report on Employment (Amendment) Bill, 2019**
4. Any Other Business
5. Adjournment/Date of the next Sitting

MIN.NO. DC/LSW/238/2020: - PRELIMINARIES

The meeting was called to order at 9.40am and thereafter a prayer was said.

MIN.NO. DC/LSW/239/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

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

MIN.NO. DC/LSW/240/2020: ADOPTION OF THE REPORT ON EMPLOYMENT (AMENDMENT) BILL, 2019

The Committee considered and adopted the report on Employment Amendment Bill, 2019 with the following observations and recommendations: -

Committee Observations

- 1) Many of the unemployed consist of persons below the age of thirty- five (35) years and as mostly first-time job seekers, are unable to afford clearance certificates required by employers for purposes of employment.
- 2) While it is necessary for an employer to require an applicant to submit the compliance or clearance certificates as a condition for confirmation of employment, the requirement should not be used to lock out applicants at the first instance of recruitment or application.
- 3) Clause 2 of the Bill seeks to amend section 9 of the principal Act by introducing new subsections to provide that an employer shall not require an employee for a contract of service to submit any clearance certificates for which payment is required unless such employer intends to enter into a written contract of service with the employee. This does not include state officers whose appointment process is elaborate and undergoes various approval stages and it should be possible for the ethics and integrity requirements to be ascertained at first stage of approval. However, as drafted, the clause lacks clarity and ought to be re-drafted in more clear and unambiguous terms.
- 4) The Bill further provides that an employer who intends to enter into a written contract of service may, in compliance with Chapter Six of the Constitution, request an employee to submit mandatory clearance certificates from the relevant entities and may withdraw an offer of contract of service where the employee does not submit the mandatory clearance certificates.
- 5) The Constitutional underpinning on ethics and integrity is provided in Articles 10(2) (c), 73(2) (a) of the Constitution and section 12A of the Leadership and Integrity Act.
- 6) The Statutory requirements for compliance with ethics and integrity is also provided for in Section 52 of the Leadership and Integrity Act, 2012 which provides that the provisions of Chapter Six of the Constitution and Part II of the LIA except section 18 shall apply to all Public Officers as if they were State Officers.

- 7) The provisions of Chapter Six apply to state and public officers and the mandatory clearance certificates from the relevant entities are mainly a requirement during the recruitment of such officers pursuant to the Constitution and relevant laws. As regards private employers it is at the discretion of such employers to determine the mandatory clearance or compliance certificates.
- 8) The clearance certificates ordinarily sought by employers relate to certification of the status of a potential employee's tax compliance, ethics and integrity, creditworthiness and criminal liability. By inference, the relevant institutions that issue the said clearance certificates are the Ethics and Anti-Corruption Commission (EACC), the Higher Education Loans Board (HELB), the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI) and the Credit Reference Bureau (CRB).
- 9) There is a difference between compliance and clearance certificates. Some institutions issued either type of certificate depending on the nature of the applicant.
- 10) The issuance of compliance or clearance certificate ought not to be treated as a revenue stream by public entities mandated to issue the same and, in this regard, the Committee notes that the KRA, EACC and HELB did not charge for issuance of clearance or compliance certificates.
- 11) It was noted that CRB charges Kshs. 2200 and DCI charges Kshs. 1050 for a Certificate of Good Conduct, which was valid for a one-year period. Whereas the Ethics and Anti-Corruption Commission did not charge any fees, jobseekers incurred advocates costs relating to commissioning of the self-declaration form which is required to be sworn in the presence of a Commissioner for Oaths. It was proposed that the Self Declaration Form contained in the First Schedule to the Leadership and Integrity Act should be amended in order to remove the requirement for commissioning by a Commissioner for Oaths or Magistrate.
- 12) The application and processing of compliance or clearance certificates by the relevant entities should be automated in order to facilitate the acquisition of such documents and reduce attendant costs of manual processing of such documents.

Committee Recommendations

The Committee, having considered the Employment (Amendment) Bill, 2019 recommended that-

- 1) Clause 2 of the Bill be amended-
 - (a) by deleting the proposed new subsection 5 and substituting therefor -
'In respect of recruitment, an employer shall not require an employee to submit any clearance or compliance certificate unless such employer intends to enter into a contract of service'
 - (b) by inserting the following new subsection immediately after the proposed new subsection 5-

‘Subsection 5 shall not apply to an applicant for employment as a State Officer’; and

(c) by inserting the following new subsection immediately after the proposed new subsection (7);

‘(7A) A relevant public entity shall not charge for the issuance of a clearance or compliance certificate under this section or any other written law and shall undertake to ease the process of application including digitization of the process’.

- 2) The Leadership and Integrity Act, 2012 and any other relevant laws requiring the issuance of clearance or compliance certificates for purposes of employment be amended to provide that the relevant entities shall not require payment for issuance of such certificates; and
- 3) The self-declaration form as set out in the First Schedule of the Leadership and Integrity Act, 2012 be amended by deleting the provision on the requirement for commissioning by a Commissioner for Oaths or Magistrate and substituting therefor with a caution in the following terms-

CAUTION: It is a criminal offence under section 46(1)(d) of the Leadership and Integrity Act to give false information to the Commission, a public entity or a person acting under the Act for which one is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

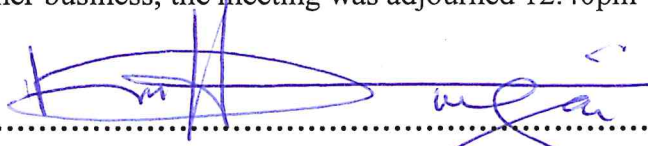
MIN.NO. DC/LSW/ 241/2020: ANY OTHER BUSINESS

No Any Other Business Arose

MIN.NO. DC/LSW/242/2020: ADJOURNMENT

There being no other business, the meeting was adjourned 12.40pm

SIGNED:



The Hon. Peter Mwathi, M.P

(Chairperson)




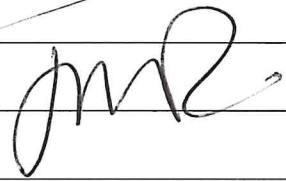


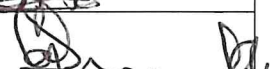
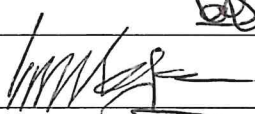


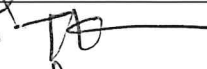
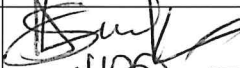


DATE:

25/11/2020

**DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE
REPORT ADOPTION SCHEDULE**

REPORT ON THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY) BILL NO. 79 OF 2019

DATE: 23rd OCTOBER, 2020

No.	NAME	SIGNATURE
1.	The Hon. Peter Mwathi, MP – Chairperson	
2.	The Hon. Gideon Koske Kimutai, MP – Vice Chairperson	
3.	The Hon. Ronald Kiprotich Tonui, MP	
4.	The Hon. Janet Marania Teyiaa, MP	
5.	The Hon. Janet Nangabo Wanyama, MP	
6.	The Hon. James Onyango K'Oyoo, MP	
7.	The Hon. Rose Museo, MP	
8.	Hon. Moses Malulu Injendi, M.P	
9.	The Hon. Fabian Kyule Muli, MP	
10.	The Hon. Abdi Mude Ibrahim, MP	
11.	The Hon. Omboko Milemba, MP	
12.	The Hon. Safia Sheikh Adan, MP	
13.	The Hon. Tom Mboya Odege, MP	
14.	The Hon. Caleb Amisi, M.P	
15.	The Hon. Charles Kanyi Njagua, MP	
16.	The Hon. Titus Mukhwana Khamala, M.P	
17.	The Hon. Ole Sankok David, MP	
18.	The Hon. Wilson Sossion, MP	
19.	The Hon. Gideon Keter, M.P	


DOMESTIC TAXES DEPARTMENT
1.0 Introduction

The Clerk to the National Assembly through his letter dated 6th October, 2020 with Ref No. NA/DCLSW/2020/(065) invited the Commissioner General of Kenya Revenue Authority (KRA) among others as a public participant in presenting his input into bill seeking to amend Employment Act in compliance with Article 118(1)(b) of the Constitution of Kenya, 2010 read together with Standing Order no. 127(3) of the National Assembly Standing Orders.

The said bill is seeking among other things to exempt youth seeking employment from the provisions to provide for any clearance certificates for which payment is required.

2.0 KRA Representations

KRA, as a government body charged with the assessment, collection, accounting and administration of tax laws does not charge a fee for any of its services it renders to the members of the public. Its services are free. However, some of our certificates we issue have been taken as part of other institutions of governments or private ones as mandatory required documentations for anyone to produce in order to proceed receiving certain services.

The certificates we issue are Personal Identification Number (PIN) and Tax Compliance Certificates (TCC) which are critical documents one is required to produce in order to carry out certain transactions including seeking for employment.

2.1 PIN Requirement

Section 12 of the Tax Procedures Act, 2015 (TPA) provides that ‘The Commissioner shall issue a number, to be known as a personal identification number (“PIN”), to a person registered for the purposes of a tax law and that person shall use the PIN as may be required under this Act.

PIN affect job seekers in the sense that, the document is required in opening up bank accounts, seeking HELB Loans, opening accounts with utility companies such as Kenya Power and Water Companies, required by potential employers and moreover, to file returns annually. Failure to file returns despite not having any income to return, is punishable by imposition of a penalty of Ksh 2,000.





As a way forward, in assisting the youth especially unemployed and those still in school, we sought for amendment of law to provide for KRA to issue a PIN without a tax obligation and at the same time to exempt certain persons who want to transact certain business to be exempted from PIN requirements. These measures goes a long way in assisting the youth from being required to fulfil tax obligations which they are not ripe for. Our iTax system is in the process of being amended to be in line with the above.

2.2 Tax Compliance Certificate

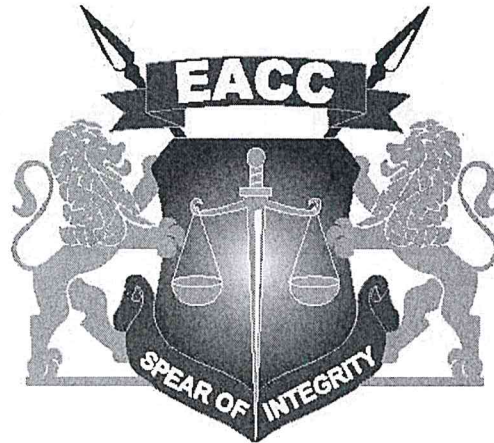
Section 3 of the TPA defines “Tax Compliance Certificate” means a certificate issued by the Commissioner if satisfied that the person has complied with the tax law in respect of filing returns and has paid all the tax due based on self-assessment or has made an arrangement with the Commissioner to pay any tax due’.

Section 72 Tax Compliance Certificate:

- (1) Any person may apply to the Commissioner for a Tax Compliance Certificate.
- (2) The Commissioner may issue a Tax Compliance Certificate, which shall be valid for the period specified in the certificate, upon the applicant fulfilling conditions that the Commissioner may impose.
- (3) The Commissioner may revoke a Tax Compliance Certificate issued under sub-section (2) if the Commissioner finds that the person has failed to honour a demand for tax issued by the Commissioner or has violated the provisions of a tax law.

3.0 Conclusion

As indicated above, KRA’s services are free. They are offered online through self-service iTax platform anywhere everywhere. Moreover, youths who have studied and understood well KRA online services have opened cyber cafes where they offer such services to other members of the public at a small fee. However, for those who are unable to access our services at the comfort of their homes or wherever they are may visit our KRA offices, Huduma Centres or make calls to our customer care representatives or email us for assistance.



**REPORT OF THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO
THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LABOUR AND
SOCIAL WELFARE ON THE EMPLOYMENT (AMENDMENT) BILL, 2019 IN
RELATION TO EXEMPTION OF YOUTH SEEKING EMPLOYMENT FROM
SUBMISSION OF CLEARANCE CERTIFICATES REQUIRED BY PUBLIC ENTITIES
ON APPLICATION FOR JOBS IN KENYA**

**SAROVA WHITESANDS BEACH RESORT AND SPA
MOMBASA**

=====
**WEDNESDAY
21ST OCTOBER, 2020
FROM 9:30 A.M.**
=====

REPORT OF THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE EMPLOYMENT (AMENDMENT) BILL, 2019 IN RELATION TO EXEMPTION OF YOUTH SEEKING EMPLOYMENT FROM SUBMISSION OF CLEARANCE CERTIFICATES REQUIRED BY PUBLIC ENTITIES ON APPLICATION FOR JOBS IN KENYA

1.0 BACKGROUND

This is a Report by the Ethics and Anti-Corruption Commission (EACC) to the National Assembly Departmental Committee on Labour and Social Welfare on the Employment (Amendment Bill), 2019 in so far as it seeks to exempt youth seeking employment from submission of clearance certificates required by public entities on application for jobs in Kenya. The report is submitted pursuant to a written request by the Departmental Committee vide letter **Ref: NA/DCLSW/2020(065)** dated **6th October 2020**.

EACC is established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011 pursuant to Article 79 of the Constitution with the powers and status of a Commission under Chapter 15. The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and best practice in ethics and integrity.

Besides the EACC Act, 2011 which bestows on the Commission the responsibility of ensuring law enforcement and compliance with Chapter Six of the Constitution, the Commission also derives its statutory mandate from a number of other statutes namely; the Anti-Corruption and Economic Crimes Act (ACECA) of 2003, the Leadership and Integrity Act (LIA), 2012 and the Public Officer Ethics Act (POEA), 2003.

2.0 THE ROLE OF ETHICS AND ANTI-CORRUPTION COMMISSION IN ENFORCEMENT OF CHAPTER SIX OF THE CONSTITUTION OF KENYA

The Leadership and Integrity Act, 2012 (LIA) was enacted pursuant to Article 80 of the Constitution to provide mechanisms and procedures for the administration and enforcement of Chapter Six of the Constitution on leadership and integrity. The Act seeks

to ensure that State and Public Officers uphold and respect the values, principles and requirements of the Constitution while discharging public duty so as to foster and promote integrity and good governance in the management of public affairs. Under Section 4 of LIA, the Commission is mandated to oversee and enforce implementation of the Act.

Section 12A of LIA makes it mandatory for any person intending to be appointed to a State Office to submit to the EACC a Self-Declaration Form set out in the **First Schedule of the Act (Copy of this form is annexed to this Report).**

Section 52 of LIA provides that the provisions of Chapter Six of the Constitution and Part II of the LIA except Section 18 shall **apply to all Public Officers as if they were State Officers.** Consequently, the data in the Self-Declaration Form submitted provides baseline information for integrity verification of all persons joining public service.

2.1 CONSTITUTIONAL AND STATUTORY FOUNDATION

2.1.1 Constitutional Requirements

The Constitutional underpinning on ethics and integrity is provided in Articles 10(2) (c), 73(2) (a) of the Constitution and Section 12A of the Leadership and Integrity Act. The provisions are outlined as follows:

Article 10(2) (c) of the Constitution states that: *The national values and principles of governance include good governance, integrity, transparency and accountability.*

Article 73(2) (a) of the Constitution states that: *The guiding principles of leadership and integrity include - selection on the basis of personal integrity, competence and suitability.*

2.1.2 Statutory Requirements

The requirement for compliance with ethics and integrity is also provided for in the Public Appointments (Parliamentary Approval) Act, 2011, County Government Act, 2012 and; Public Appointments (County Assemblies) Approval Act, 2017.s

a) Public Appointments (Parliamentary Approval) Act, 2011,

- Under section 7(b) of the Act, one of the issues for consideration in determining a nominee's suitability for public office is **compliance with constitutional and statutory requirements**. These requirements include the **integrity standards under Chapter Six of the Constitution**.

b) County Government Act, 2012

- Section 35(3) (c) of the County Government Act provides that: A person may be appointed as a member of the County Executive Committee if that person; satisfies the requirements of Chapter Six of the Constitution.
- Section 8 (1) (a) of the County Government Act, 2012 mandates the County Assemblies to: **vet and approve nominees for appointment to County Public offices as may be provided for in the Act or any other law**.

c) Public Appointments (County Assemblies) Approval Act, 2017

- The Act requires that only persons of integrity are appointed to County public offices. This role is vested on the Governor, County Public Service Boards and the County Assemblies mandated to vet the nominees.
- **Sections 4 and 7(8)**, respectively of **Public Appointments (County Assemblies) Approval Act, 2017**, requires an approval hearing to focus on a candidate's academic credentials, professional training and experience, **personal integrity** and background.

EACC provides vetting agencies including the National Assembly and County Assemblies with recommendations on the integrity status of persons being vetted for suitability to join public service.

2.1.3 The Integrity Verification(vetting) Process

The requirements **under Chapter Six of the Constitution and Leadership and Integrity Act are on: moral, ethical and financial probity** of candidates. The process of determining suitability consists of background verification to determine whether an applicant seeking public office meets the moral and ethical requirements and is of good integrity standing.

The integrity verification process by the Commission involves the following steps:

- *Any person seeking appointment to public office is required to fill in the self-declaration form.*
- *The declarant is required to attach copies of identity card and or passport, KRA pin and academic certificates to support responses;*
- *The self-declaration has a provision for **commissioning by a Commissioner for Oaths or Magistrate***
- *The duly commissioned Self-Declaration Form is submitted to any EACC Office. The Commission has presence at its Headquarters, 11 Regional Offices and 50 Huduma Center Service Desks; The Form is available from EACC website www.eacc.go.ke*
- *Upon receipt of a request from a recruiting public entity, the Commission undertakes verification to determine integrity suitability of shortlisted candidates, and prepares a Report to the requesting entity;*

NOTE

EACC does not charge any fees for processing of the self-declaration forms. However, applicants may incur expenses in the form of the commissioning fees.

3.0 RECOMMENDATION

Whereas the self-declaration form is a useful tool for collection of data necessary for implementation of Chapter Six of the Constitution of Kenya, there is need to address the challenge faced by applicants in relation to commissioning/attestation of the forms. In this regard, the Commission recommends as follows:

- i. The self-declaration form as set out in the First Schedule of the Leadership and Integrity Act, 2012 be **amended by deleting the provision on the requirement for commissioning by a Commissioner for Oaths or Magistrate** and substituting therefor a caution in the following terms:

CAUTION: It is a criminal offence under section 46(1)(d) of the Leadership and Integrity Act to give false information to the Commission, a public entity or a person acting under the Act for which one is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

- ii. The Commission to automate the self-declaration form to enable for wider access and submission by applicants.
- iii. The Commission will consider allowing the applicants to use a copy of the duly filled and submitted Self-Declaration Form for a period of 12 months before renewal.

DATED at Mombasa this.....day of.....**2020**

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Twalib Mbarak, CBS
SECRETARY/CHIEF EXECUTIVE OFFICER, EACC

HELB/46/001/VOLIV/87

19th October 2020

Mr. Michael R. Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Thro'

Amb. Simon Nabukwesi
Principal Secretary
State Department for University Education & Research
Ministry of Education
P.O. Box 30040-00100
NAIROBI

Dear

**RESPONSE TO THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE:
CONSIDERATION OF EMPLOYMENT (AMENDMENT) BILL, 2019**

Reference is made to your letter Ref: No. NA/DCLSW/2020(065) dated 6th October 2020 on the above subject.

Pursuant to the provisions of Article 118 (1)(b) of the Constitution and the Standing Order 127(3), please find below here with the Higher Education Loans Board (HELB) submission.

Introduction

The Higher Education Loans Board (HELB) was established in 1995 by an Act of Parliament, the Higher Education Loans Board Act, CAP 213A of the Laws of Kenya. The mandate of HELB is to finance needy Kenyan students pursuing higher education. The philosophy behind this is to create a revolving fund from which future generations can borrow in pursuit of higher education.

Background

For the last 25 years, HELB has empowered the dreams of more than **1,009,866** students and disbursed over **113.6B** Kenya Shillings. As at **30th September 2020**, there were **562,223** mature loan accounts worth **Kshs.69.1B** as compared to **492,227** mature loans holding **Kshs.58.5B** in the last financial year **2019/2020**. A total of **447,643** loanees holding **Kshs.44.5B** had not matured.

Out of the mature loans, **207,024** accounts valued at **Kshs.31.49B** are repaying their loans compared to **175,993** loanees holding **Kshs.26.8B** who were in repayment in September 2019. A total of **116,642** loanees holding **Kshs.11.34B** are in default as compared to **86,603** holding **Kshs.8.6B** in a similar period, last financial year. A total of **238,557** loanees have cleared their loans worth **Kshs.23.56B** as compared to **229,631** cleared loanees holding **Kshs.23.1B** in September 2019. The loan book performance at the close of the fourth quarter (2019/2020) was **73.1%** against a performance target of **74%** by 30th June 2020.

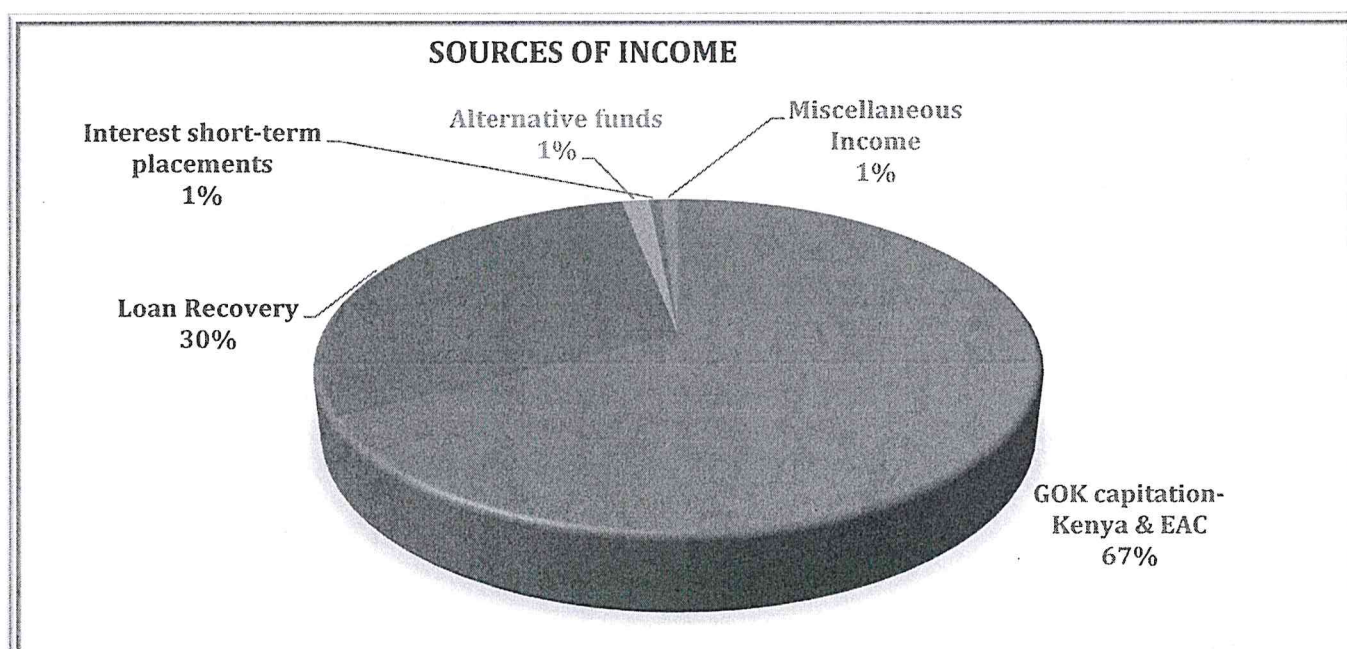
HELB Funding

In 2020/21 Financial year, HELB Students Budget was as follows;

No.	Application Category	Number of Students	Allocated Amount (Kshs)
	Students Loans		
1	University Students	265,950	11,015,793,000
2	TVET Students	105,930	4,000,018,519
3	Continuing Education (<i>Jielimishe</i>)	2,663	355,000,000
4	Bursaries (Universities and TVET)	*37,125	237,000,000
5	Postgraduate Scholarships	104	31,050,000
	Sub -Total	374,647	15,638,861,519
	Operating Expenses		
6	Staff expenses		662,701,303
7	Operating expenses		641,147,732
8	Capital expenditure		128,722,000
9	Staff loans		100,000,000
	Sub-Total		1,532,571,034
	Total		17,171,432,553

*Number of students awarded Bursaries included in the University and TVET Loans Category

HELB Sources of Funds



Of the total approved budget of **Kshs.17.1B**, 67% is Exchequer funded while 33% internally generated resources through - Miscellaneous income (1%) and loan recoveries (30%) while 2% is from partner funds and other interest on short term placements. It is important to note that the 33% internally generated resources (Budgeted at **Kshs.5.014B** in 2020/2021), the bulk comes from loan repayments. If for any reason that is not paid back it means at an average of Kshs. 40,000 loan amount per students per annum, over 125,000 students will miss funding from HELB thereby killing their dreams. The original intention of establishing HELB was that it will progressively move out Exchequer dependency and through establishment of a National Revolving fund through loan repayments and external resources mobilization from Development Partners, Counties, Constituencies, Corporates, Individuals and Foundations.

Clearance by HELB and Other Bodies

The current national requirement is that those seeking employment in the public sector should get clearance from KRA, DCI, EACC, CRB and HELB. HELB has therefore been issuing compliance certificates to non-beneficiaries of student loans at a fee of Kshs. 1,000 to defray the cost of the certificate and other administrative expenses. However, following various stakeholder engagements where HELB sought feedback on Citizen Service Delivery, **HELB stopped charging Kshs. 1,000** for issuance of the Compliance Certificate **with effect from 15th July 2020**. The HELB Compliance Certificates are **now free of charge** and can be accessed from the HELB Website www.helb.co.ke as well as through the E-Citizen Portal.

The expected impact of the waiver of payment of the compliance certificate fees include:

1. Motivation for Kenyan youth to seek their HELB compliance certificates as they seek jobs or opportunities to contribute towards building the nation; and
2. Creation of goodwill and promotion of HELB products among Kenyans as they seek compliance certificates.

It is also worth noting that HELB Clearance certificates for loan beneficiaries has always been issued **free of charge since inception**. This gesture is an indication that HELB remains committed to listening to feedback from stakeholders.

Difference Between Compliance and Clearance Certificate

The extract of the propped Bill reads as follows:

Short title.	1. This Act may be cited as the Employment (Amendment) Act, 2019.
Amendment of Section 9 of No. 11 of 2007.	<p>2. Section 9 of the Employment Act is amended by inserting the following new subsections immediately after subsection (4)—</p> <p>“(5) In respect to recruitment, an employer shall not require an employee for a contract of service to submit any clearance certificates for which payment is required unless such employer intends to enter into a written contract of service with the employee.</p> <p>(6) An employer who intends to enter into a written contract of service may, in compliance with chapter Six of the Constitution, request an employee to submit mandatory clearance certificates from the relevant entities.</p>

Compliance certificate is issued to Kenyans who did not benefit from the loan and those who benefitted but were still in the process of servicing the loans. **Clearance certificate** is issued to loan beneficiaries who have completed repayment.

Justification for the Need for Clearance

Provision of Article 10 (1) of the Constitution on the National Values and Principles of Governance bind all State organs, State officers and public officers to observe good governance, integrity, transparency and accountability and sustainable development.

Chapter 6 of the Constitution under Article 73 which addresses responsibilities of leadership provides: -

Authority assigned to a State officer is a public trust to be exercised in a manner that—

- (i) is consistent with the purposes and objects of this Constitution.*
- (ii) Demonstrates respect for the people.*
- (iii) Brings honour to the nation and dignity to the office; and*
- (iv) promotes public confidence in the integrity of the office.*

The Leadership and Integrity Act which operationalizes Chapter 6 of the Constitution, wholly incorporates the provisions of Public Officer Ethics Act 2003. In light of the Constitutional and statutory provisions above, clearance/compliance certificates for purpose of seeking employment are meant to determine the applicant's integrity which according to Section 13 of the Leadership and Integrity Act encompasses demonstrable consistent history of honesty and high moral character in professional and personal life; Respect for professional duties arising under the codes of professional and judicial conduct; and ability to understand the need to maintain propriety and the appearance of propriety.

Non-Compliance of amendment of Employment Act with other existing laws

The extract of the propped Bill reads as follows:

	<p>(7) Notwithstanding subsection (6), an employer may, where an employee does not satisfy the requirements under subsection (6), withdraw an offer of contract of service.</p> <p>(8) For the purposes of this section—</p> <ul style="list-style-type: none">(a) “employee” includes an applicant for employment;(b) “employer” includes an employment agency; <p>“(5) In respect to recruitment, an employer shall not require an employee for a contract of service to submit any clearance certificates for which payment is required unless such employer intends to enter into a written contract of service with the employee.</p> <p>(6) An employer who intends to enter into a written contract of service may, in compliance with chapter Six of the Constitution, request an employee to submit mandatory clearance certificates from the relevant entities.</p>
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However, HELB Act CAP 213A, Section 15 establishes the responsibilities of the Loanee and sanctions if the loanee does not comply and Section 16 establishes the Responsibilities of the Employer. If an employer is in breach of section 16, they are then liable to specified fines as established under Section 17 of the same Act. Similarly, the other Agencies involved with Chapter 6 have their respective laws that require specific compliances. The big question is if these amendments on the Employment Act will cause changes to all the other laws and the Constitution itself.

Courts Position on Clearance by the Various Bodies

The High Court of Kenya at Nairobi- Constitutional, Human Rights and Judicial Review Division in Petition No. 314 of 2016 (Consolidated with Judicial Review No. 306 of 2016), Trusted Society of Human Rights Alliance and 3 Others Versus Judicial Service Commission, Attorney General, Law Society of Kenya (Interested Party) and Article 19- Eastern Africa (Amicus Curiae), Justice G. V. Odunga held that requirement for clearance certificates by the various bodies was part of requirement of Chapter 6 of the Constitution hence it cannot be dealt away with. The only adjustment was that it cannot be used in first or primary instance, at the application level and therefore fail to

shortlist someone on the basis that they do not have the clearances. It has to be dealt with at the secondary level, probably at the interview level or thereafter as the potential employer wishes.

HELB's Opinion

In the presence of the unchallenged court decision, HELB is of the opinion that the requirement for clearance certificate is not unreasonable or unjustified. HELB clearance is proof that a prospective candidate has not only honored their obligation to pay their education loan but that they have reinvested in the education of other deserving Kenyans. This is in keeping with the Constitutional guarantee to Right to Education as provided in Article 43 of the Constitution. For those who did not benefit, the clearance is proof that they do not have a public liability that they are not honouring.

It is the prayer of HELB that this strategy remains in force for the Board to effectively collect loans to enable other Kenyans pursuing higher education realize their dreams. The huge financial requirement by HELB and the declining Exchequer support is pushing HELB more towards External Resource Mobilization from both institutions and individuals of goodwill created overtime part of which is through the relationship developed through the issuance of the certificates.

Yours

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