

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION


DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

REPORT ON-

CONSIDERATION OF THE UNIVERSITIES (AMENDMENT) BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 35) BY THE LEADER OF MAJORITY PARTY HON (DR.)

AMOS KIMUNYA, EGH, MP

	
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CHAIRPERSON'S FOREWORD

The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35) sponsored by Hon. (Dr.) Amos Kimunya, EGH, MP Leader of Majority Party was read a First Time on Wednesday 1st September, 2021 and committed to the Departmental Committee on Education and Research for consideration and reporting to the House, pursuant to Standing Order 127(1).

The object of the Bill is to amend the Universities Act, 2012 in the provisions relating to-

- (a) the appointment of the members of University Councils, Vice Chancellors and Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges of Public Universities to ensure transparency and accountability;
- (b) Governance of universities to ensure proper governance in public universities.
- (c) New provisions with respect to the Universities Fund
- (d) Establishment of the Kenya Universities and Colleges Central Placement Service by reducing the number of members of the Placement Board and to provide for additional independent members and for the Chief Executive Officer to be a member of the Board of KUCCPS.

Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), the Clerk of the National Assembly placed adverts in "Daily Nation" and the "Standard" newspapers of 7th September, 2021 inviting the public to submit representations they may have on the Bill. (Annex 1). The Committee received representations from ten (10) stakeholders including government agencies, university lecturers and university students which are contained in this report. The Committee took into account all public representations received.

Further, in considering the Bill the Committee held a total of ten (10) meetings to receive and consider submissions from the stakeholders. The Committee met the Cabinet Secretary for Education together with Ministry officials, the Vice Chancellors Committee of Public Universities, the Inter-Public Universities Councils Consultative Forum (IPUCCF), Kenya Association of Private Universities, National Association of Private Universities in Kenya, the Universities Academic Staff Union who presented their submissions on the Bill.

The Committee having considered the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35), clause by clause and taking into account views and recommendations of the stakeholders pursuant to Standing Order 127(3A) made observations and recommendations contained in section 4.0 and 5.0 of this Report.

Acknowledgement

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

On behalf of the Committee, and pursuant to Standing Order 127(4), it is my pleasant duty to table the Report of the Departmental Committee on Education and Research on its consideration of the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35).

HON. FLORENCE MUTUA, CBS, MP

DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY

Education and Research was constituted pursuant to the 216(1) of the National Assembly Standing Orders. Pursuant to together with the Second Schedule to the Standing Orders, to: -

to report on all matters relating to the mandate, management, operations and estimates of the Ministry of Education;

to examine the policy objectives of Ministry and the Departments of the Ministry of the implementation;

to monitor the progress of the implementation referred to it;

to monitor the relative success of the relevant Ministry as measured by their performance compared with their stated objectives and,

to monitor all matters relating to the as may be necessary, and as may be referred to by the House;

to monitor appointments where the Constitution or any law requires the approval of the House, the Committee to approve;

to monitor recommendations relating to the functions of the relevant Ministry to the House, including recommendation of proposed legislation;

to monitor the House as often as possible, including recommendation of

to monitor relevant commissions and independent offices submitted to the House in accordance with the provisions of Article 254 of the Constitution; and

to monitor recommendations made by Members on a matter within the mandate of the

Second Schedule of the Standing Orders, examines the

following government entities: -

including the following State Departments:

Primary Learning and Basic Education

University Education and Research

Vocational and Technical Training

Adult Training and Skills Development

Implementation of Curriculum Reforms

Commission.

2.0 COMMITTEE'S CONSIDERATION OF THE BILL

2.1 Committal of the Bill

6. The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35) sponsored by Hon. (Dr.) Amos Kimunya, EGH, MP Leader of Majority Party was read a First Time on Wednesday 1st September, 2021 and committed to the Departmental Committee on Education and Research for consideration and reporting to the House, pursuant to Standing Order 127(1).

2.2 Memorandum of Objects and Reasons for the Bill

7. The main object of this Bill is to amend the Universities Act in the provisions relating to the appointment of the members of University Councils, and the governance of universities, and also to make new provisions with respect to the Universities Fund.

Clause 2 of the Bill proposes to amend section 10 of the Act to limit the number of Deputy Secretaries of the Commission of University Education to two in order to streamline the management of the Commission.

Clause 3 of the Bill proposes to amend section 20 of the Act to empower that the Commission to recommend suitable institutions for declaration as constituent colleges of universities.

Clause 4 of the Bill proposes to amend section 24 of the Act to regulate the institutions offering specialized degrees.

Clause 5 of the Bill proposes to amend section 25 of the Act to provide for the declaration of institutions of the stature of National Polytechnics to be technical universities.

Clause 6 of the Bill proposes to replace section 26 of the Act in order to ensure attention to viability in the establishment of universities at county level.

Clause 7 of the Bill proposes to amend section 28 of the Act to allow the Commission to publish the names of accredited foreign universities on the Commission's website and two newspapers of national circulation to reduce costs.

Clause 8 of the Bill proposes to amend section 35 of the Act to clarify the procedure for the publication of university statutes through the Cabinet Secretary, and to harmonize the provisions on the appointment of certain members of the university administration.

Clause 9 proposes to amend section 36 of the Act to adjust the qualifications for appointment of chairpersons and members of university councils and to provide for staggered appointments for purposes of continuity.

Clause 10 of the Bill seeks to introduce a provision to empower the Cabinet Secretary with regard to the appointment and deployment of members of university councils.

Clause 11 of the Bill proposes to amend section 39 of the Act to harmonize the procedure for appointment of Deputy Vice-Chancellors and Principals and deputy principals of university

colleges and constituent colleges. It also seeks to limit the number of deputy vice chancellors to three.

Clause 12 of the Bill proposes to amend section 47 of the Act on the submission of accounts to the Auditor-General after the close of the financial year to harmonize them with the Public Finance Management Act 2012.

The Bill also proposes to amend the Act in the provisions relating to the Universities Fund, its establishment and management and to restructure it for optimal achievement of its intended objectives.

Clause 20 of the Bill proposes to amend the Act to remove from the Act the formats for the Charter and the Letter of Interim Authority for a University in order to afford greater flexibility in their formulation.

2.3 Public Participation on the Bill

8. Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), the Clerk of the National Assembly placed adverts in “Daily Nation” and the “Standard” newspapers on 7th September, 2021 inviting interested members of the public to submit any representations they may have on the Bill. (Annex 1). The Committee received representation from a total of twelve stakeholders including government agencies, university lecturers and university students which are contained in this Report. All the submissions were considered by the Committee.
9. Further, in considering the Bill the Committee held a total of ten (10) meetings to receive and consider submissions from the stakeholders. The Committee held meetings with the Cabinet Secretary for Education together with Ministry officials, the Vice Chancellors Committee of Public Universities, the Inter-Public Universities Councils Consultative Forum (IPUCCF), Kenya Association of Private Universities, National Association of Private Universities in Kenya, the Universities Academic Staff Union who presented their submissions on the Bill.

2.4 SUBMISSIONS FROM THE STAKEHOLDERS

10. The Committee received twelve (12) memoranda with various proposals on the Bill from the following stakeholders-
 - 2.4.1 Cabinet Secretary Ministry of Education;
 - 2.4.2 Vice Chancellors Committee;
 - 2.4.3 Chairs of Councils;
 - 2.4.4 Kenya Association of Private Universities;
 - 2.4.5 National Association of Private Universities in Kenya;
 - 2.4.6 University of Nairobi Council;
 - 2.4.7 Technical University of Kenya;
 - 2.4.8 Universities Academic Staff Union;
 - 2.4.9 Prof. Louis Mumera, Egerton University;
 - 2.4.10 Tom Njeru, University of Nairobi;
 - 2.4.11 Ajenda Kenya;
 - 2.4.12 Patrick Kaberia, Executive Director, PAWA Africa.

3.0 COMMITTEE CONSIDERATION OF THE SUBMISSIONS

C.	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
1.			
2.	MINISTRY OF EDUCATION The proposed amendment deletes the definition of "Trustees" in the Act.	The proposed section 53A provides that the Fund will be managed by a Board instead of a Board of Trustees. In the premises, the definition of "Trustees" will serve no purpose since the amendment seeks to establish the Fund as a Body Corporate where assets and resources will vest in the Fund and not in the Board of Trustees.	Agreed to
3.	MINISTRY OF EDUCATION The proposed amendment substitutes the word "particular" with the word "public".	The proposed amendment substitutes the word "particular" with the word "public" as the particular provision relates to public universities. Article 229(5) of the Constitution mandates the Auditor - General to audit and report on the accounts of any entity that is funded from public funds.	Agreed to
	VICE-CHANCELLORS The public University representative to the Commission for University Education should be specifically nominated by the public universities in a forum of the Vice-Chancellors of public universities.	The mounting and quality of academic programmes is the primary function of Senate. The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College.	Agreed to The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College.
4.	MINISTRY OF EDUCATION The proposed Amendment provides for not more than two Deputies.	The new provision will limit the number of Commission Secretaries to only two.	Agreed to

	<p>NAPUK</p> <p>Delete of a University to read Has ten years' experience in a senior management position.</p>	<p>The focus on management of a university only is limiting as it excludes other would be qualified persons working outside university environment but with similar experience and management competences such as in Research Institutions, Foundations and other corporate institutions supporting higher education not to mention officers who have diligently worked and grown their career in institutions such as like Commission for University Education.</p>	<p>Not agreed to</p> <p>It is necessary for the Secretary to the Commission to have experience in the management of a university</p>
5.	<p>MINISTRY OF EDUCATION</p> <p>The proposed amendment introduces a new proviso</p> <p>"Provided that the Cabinet Secretary may, upon request by a University and if satisfied that it is appropriate in the circumstances to do so, extend the Letter of Interim Authority for such further period, not exceeding four years, as the Cabinet Secretary may determine".</p>	<p>The provision allows the Cabinet Secretary to consider and be satisfied of the circumstances before extending a Letter of Interim Authority.</p>	<p>Agreed to</p>
6.	<p>MINISTRY OF EDUCATION</p> <p>The proposed amendment provides that the Cabinet Secretary will declare an institution of higher learning to be a constituent college of a university upon recommendation by the Commission.</p>	<p>The proposed amendment is intended to ensure that the Cabinet Secretary will declare an institution of higher learning to be a constituent college of a university only after recommendation by the Commission.</p>	<p>Agreed to</p>
7.	<p>MINISTRY OF EDUCATION</p> <p>The proposed amendment provides that the provisions</p>	<p>The amendment is intended to ensure that governance of specialized degree awarding institutions is within the framework of the Universities Act but modifications will be made as necessary.</p>	<p>Not agreed to</p> <p>The proposed amendment has already been effected through the Statute Law Miscellaneous</p>

	in Part V of the Act -on management and operations of universities shall apply to specialized degree awarding institutions with relevant modifications.	The proposed amendment has already been effected through the Statute Law Miscellaneous Amendment Act No. 20 of 2020 (refer to Section 24(4) and (5).	Amendment Act No. 20 of 2020 (refer to Section 24(4) and (5).
8.	MINISTRY OF EDUCATION The amendment provides that institutions that are or were previously National Polytechnics or have the requisite physical facilities and human resource appropriate for a technical university may be declared as technical universities.	The existing section is restrictive as it states that only institutions that are currently National Polytechnics may be declared as technical universities.	Agreed to
9.	MINISTRY OF EDUCATION The provision is deleted but replaced with one that ensures accessibility and viability of university education in all counties. UNIVERSITIES' ACADEMIC STAFF UNION (UASU) Retain current provision in the Act.	Universities should be established according to need, accessibility and viability. The proposed amendment: (a) affects Counties and should therefore be considered by Senate in addition to the National Assembly; (b) will open the door to merger of public universities in violation of pre-existing Court Orders; (c) favours counties with established public universities	Agreed to with amendments To ensure that the Commission establishes public universities in each of the counties taking into consideration their viability.
10.	MINISTRY OF EDUCATION The amendment requires publication in at least two newspapers of national	Proposal is intended to remove requirement for the Commission to publish accredited foreign universities in three newspapers to reduce the cost and leverage on technology.	Agreed to

	circulation and in the Commission's website.		
11.	<p>MINISTRY OF EDUCATION</p> <p>The amendment requires University Councils to approve University Statutes and submit them to the Cabinet Secretary for publication in the Gazette.</p> <p>The provision is deleted.</p> <p>THE CHAIRS OF COUNCILS</p> <p>Recommend to read as follows-</p> <p>The Cabinet Secretary should gazette the statutes or regulations received from Councils as soon as is practicable and in any event not later than three months following receipt of the statutes or regulations from the Councils. Any statutes or regulations submitted to the Cabinet Secretary for gazette but yet to be gazetted shall become effective upon the expiry of 90 days following their</p>	<p>The proposal is intended to align this provision with section 23(2) of the Act requiring submission of approved Statutes to the Cabinet Secretary for publication in the Gazette.</p> <p>The proposed amendment is intended to harmonize the provisions on appointment of Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges. Section 39 provides for their appointment through a Selection Panel to ensure transparency and accountability.</p> <p>The governance, administration and management of the Universities are vested in the Councils by the Universities Act and their University Charters. As such, statutes are approved internal administrative instruments by which Councils manage respective universities. Consequently, they are required to be operationalized as soon as possible through gazette.</p> <p>Universities view the abrogation of powers of gazette from the Councils to the CS with suspicion and apprehension as an avenue for the Ministry to interfere, micromanage and/or otherwise</p>	<p>Agreed to with amendments</p> <p>Amend section 23 of the Act to ensure that the CS publishes in the Gazette within 90 days from the date of submission failure of which the Statutes become effective.</p>

<p>submission to the Cabinet Secretary for gazettelement.</p> <p>UNIVERSITY OF NAIROBI COUNCIL</p> <p>Establishment and approval of statutes and gazettelement thereof be left to the respective university Councils which should be duty bound to gazette all statutes and amendments thereof within 90 days of their approval.</p> <p>-In the alternative and should the role of gazettelement be left to the CS Ministry of Education, the CS' role should be limited/restricted, by statute, to be ceremonial and or/non-executive. Additionally, the CS should be time bound (<i>say 2 months following receipt of approved statutes</i>) to publish the Statutes of a University in the Kenyan gazette.</p> <p>A timebomb clause should be included in the Act that statutes submitted to the CS for gazettelement, notwithstanding their gazettelement, become effective 61 days after their submission to the CS for purposes of gazettelement.</p> <p>TECHNICAL UNIVERSITY OF KENYA</p> <p>The Cabinet Secretary should gazette the statutes or regulations received from Councils as soon as practicable as and in any</p>	<p>intermeddle with statutory functions of the Council to make statutes and in so doing interfere with and/or frustrate management and functional autonomy of universities. Should the CS be the primary person responsible for gazettelement of statutes, (s)he may yet decline, neglect or inordinately delay gazettelement of statutes (s)he may not like due to vested, pecuniary or other interests.</p> <p>Considering the significant difficulties posed to the universities by the backlog of delayed gazettelement or non-gazettelement of statutes altogether by the Ministry of Education, members deemed it wise to provide a time rider for gazettelement of statutes by the Cabinet Secretary Ministry of Education.</p>	
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	<p>event not later than three months following receipt of the statutes or regulations from the councils. Any statutes or regulations submitted to the Cabinet Secretary for gazettelement but yet to be gazetted shall become effective upon the expiry of 90 days following their submission to the Cabinet Secretary for gazettelement.</p>		
12.	<p>MINISTRY OF EDUCATION</p> <p>The amendment requires chairpersons to have a Masters degree and 15 years' experience in a senior management position or Bachelor's degree and twenty years' experience in a senior management position while members should have Master's degree and ten years' experience in a senior management position or a Bachelor's degree and twenty years' experience in a senior management position.</p> <p>The provision for some council members to serve for three years and others for four years is deleted and substituted with a new provision for council members to serve for a period of three years and for appointment to be staggered so that their terms of office expire at different times.</p>	<p>Staggered appointments will ensure continuity in the activities of the council.</p> <p>The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University.</p> <p>It is important to ensure that the qualifications of Council Chair match that of the senior management.</p>	<p>Not agreed to</p> <p>The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University. It is also important to ensure that the qualifications of Council Chair match that of the senior management.</p>

<p>THE CHAIRS OF COUNCILS</p>	<p>Representation by academic staff in the Council is practice that was available in the statutes that were repealed by the Universities Act 2012 and is a good practice worldwide.</p> <p>The Council must provide strategic leadership and policy framework to nurture this. As part of these responsibilities, chairs of Councils preside over promotions of staff into senior academic positions of professors and must therefore themselves be thoroughly versatile with international requirements for such promotions.</p> <p>The chairs of the two complementary commissions for purposes of attainment of university mandate require the Chairs to hold a doctorate degree as the minimum academic qualification. As such, the current minimum academic requirements for appointment of Chair of the University Council ought to compare favourably with CUE and KUCPPS hence retaining the current requirement of a doctorate degree.</p> <p>The proposed amendment is vague and ambiguous in terms of addressing the practical challenges of implementation and provides an avenue for the CS to unnecessarily interfere with tenure of</p>	
<p>To retain existing provisions in the Principal Act;</p>		
<p>The existing provisions provide for parity in qualifications for appointment of Chairperson or members of CUE with those of University Councils. Thus, the proposed amendment to Section 36 be deleted and the requirement for a doctorate degree (PhD) for Chairpersons of Council be retained as provided for in the Principal Act.</p>		
<p>UNIVERSITIES' ACADEMIC STAFF UNION (UASU) The Universities Academic Staff Union (UASU) should nominate a representative to the University Council.</p>		
<p>PROF. LOUIS MUMERA, EGERTON UNIVERSITY</p>		
<p>The qualifications in the principal Act, should be retained because the primary objective of a University is the advancement of knowledge through teaching and research scholarship.</p>		

<p>UNIVERSITY OF NAIROBI COUNCIL</p> <p>The Chair of Council of a university that trains academicians to the highest academic level of a PhD should not hold a lesser/inferior academic qualification than the proposed Chair of Kenya Universities and Colleges Central Placement Service or the Chair of Commission for University Education. This specific amendment should thus not stand.</p> <p>The current provisions of Section 36(5) of the Universities Act 2012 should be retained as is. The current provisions address the how of implementation of staggering specific council member tenures as provided for in the Act especially in the case of Council members appointed at the same time.</p> <p>TECHNICAL UNIVERSITY OF KENYA</p> <p>That the proposed amendment to Section 36 be deleted and the requirement for a doctorate degree (PhD) for Chairpersons of Council be retained as provided for in the Primary Act.</p> <p>PAWA Africa</p> <p>Amend section 36(1) to provide that the Council of a public university shall</p>	<p>presiding Council members. This specific amendment should thus not stand.</p> <p>The Act excludes university stakeholders such as staff, students, parents and members of the public in constituting the university Council</p>	
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	<p>consist of a chairperson and three members appointed by the President through a competitive recruitment process; PS University education; PS finance,; two members representing the University's Alumni Association; two members of the public nominated by the University's Alumni Association representing parents, the public and special interest groups , two members representing workers and the university staff; and the Vice-Chancellor who shall be an ex-officio member of the Council.</p>		
	<p>VICE-CHANCELLORS The Chairperson shall also be the Pro-Chancellor of the University; and The Chairperson shall be appointed to function as the Pro-Chancellor.</p>	<p>In the absence of a substantive Chancellor, the Chairperson of Council is the Pro-Chancellor to avoid a lacuna.</p>	<p>Not agreed to Already provided for in section 38(5) of the Universities Act.</p>
13.	<p>MINISTRY OF EDUCATION</p> <p>A new provision is introduced allowing the Cabinet Secretary to revoke appointment, transfer and deploy members of councils, review or vacate council decisions and give approval to a council seeking to meet more than four times a year.</p> <p>THE CHAIRS OF COUNCILS</p> <p>The proposed amendment introducing S. 36A be</p>	<p>The proposal allows the Cabinet Secretary to take appropriate action as necessary and in the public interest to ensure proper governance in public universities.</p> <p>The Cabinet Secretary appoints the Chairpersons of Councils in consultation with the Head of State, thus there has been input on the suitability of the Council</p>	<p>Agreed to with amendments</p> <p>Councils like any other public Board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council. Further, as the appointing authority, the CS has the power to revoke any appointment hence no need to empower him to transfer or otherwise</p>

<p>deleted; The Ministry of Education (MoE) is represented in University Councils and therefore not necessary to review or revoke Council decisions; the proposal should therefore be deleted;</p> <p>The proposed amendments for addition of Section 36A in the Universities Act ought not to stand, in toto; and Consequently, the entire proposed amendment of Section 36A be expunged and that Section 36 of the Universities Act be retained in its current form.</p> <p>36A(3)-meetings The proposed amendment should be deleted in toto and instead the law can be amended to state that:-</p> <p>“A Council shall meet at least four times in every financial year.”</p> <p>VICE-CHANCELLORS</p> <p>36A(1)-Revocation of appointments The Cabinet Secretary shall reserve the right to revoke the appointment of any Chairperson of Council and Council member appointed under the provisions of this law following due process.</p>	<p>Chairs and members before their appointment.</p> <p>Transfers and deployment of Chairpersons and members goes against the contractual nature of their appointments - a non-executive fixed 3-year term of service. This proposal weakens the security and stability of university governance organs and places too much power in the hands of the Cabinet Secretary without requisite checks and balances. This power is amenable to abuse and places Council membership at a perilous position.</p> <p>Councils like any other public board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council by the PS of the Ministry of Education dealing with University matters.</p> <p>In accordance with the Public Service Circular. This whittles down the independent mandate of the Council to regularly review its meeting agenda and urgency, and imposes additional layers of bureaucracy.</p> <p>Consultation with SCAC and SRC necessary as meetings of the Council are guided by laws like the State Corporations Act.</p> <p>The respective University Councils have oversight authority and are not employees, per se, of the Universities or the Ministry but Agents for the Trustee (the Ministry of Education). This provision on deployment of Council members would justify that they should be regarded as employees. Consequently, a plethora of suits would ensue for aggrieved Council member(s) who feels</p>	<p>deploy Council members as they are not employees</p>
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	<p>36A(2)-Review or vacation of Council Decisions This provision should not be included in the Bill.</p> <p>36A(3)-Meetings</p> <p>The law can be mended to state that the:- “A Council shall meet once every quarter in every financial year and with an addition of not more than two special meetings in the same financial year” In accordance with the Public Service Circular.</p> <p>UNIVERSITIES’ ACADEMIC STAFF UNION (UASU)</p> <p>Delete</p> <p>UNIVERSITY OF NAIROBI COUNCIL</p> <p>The proposed amendments as number 11 proposing the addition of section 36A in the universities act ought not to stand, <i>in toto</i>.</p>	<p>that the deployment or re-deployment is not merited, unfair or unequitable.</p> <p>The autonomy and oversight authority of the University Council vested by the respective Charters will be in jeopardy. Also, it renders redundant the Ministry of Education representatives to the respective Councils, since they are to guide the Councils on the position of the Government and in particular Ministry of Education (MoE).</p> <p>It is a good idea to entrench the number of meetings held by a Council in the Universities Act. However, setting a rigid ceiling without any room for flexibility for the number of meetings that a Council can hold, offends both the law and hampers the operations of the respective Councils.</p> <p>The amendment appears to give the CS too much authority that seems to interfere with the mandate of the council. However as the appointing authority the CS must have control over certain decisions that the council makes.</p> <p>Council chairpersons and/or Council members are not employees of the universities; they are governors of the University. The proposed amendment poses the danger of compromising both the process of appointment and tenure of Councils in public universities and in so doing impairing respective council independence rendering them useless in the governance of universities contrary to</p>	
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	<p>TECHNICAL UNIVERSITY OF KENYA</p> <p>That the entire proposed amendment as section 36A be expunged and that Section 36 of the Universities Act be retained in its current form.</p> <p>On proposed amendment 36A(3)- That the Code of Governance for State Corporations (MWONGONZO) issued by the Public Service Commission (PSC) and in partnership with the State Corporations Advisory Committee (SCAC) provides for the number of meetings (4) to be held in a year.</p>	<p>the letter and spirit of the law and public service.</p> <p>That respective university charters govern the conduct of council meetings The proposed provision is restrictive especially given the nature of university environment where student and staff matters may demand sudden and urgent attendance by the University Council. The number of meetings should not be legislated.</p>	
14.	<p>MINISTRY OF EDUCATION</p> <p>The proposal provides for competitive recruitment of Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges through a selection panel appointed by the Cabinet Secretary. The Cabinet Secretary shall appoint one candidate out of three names of qualified persons forwarded by the selection panel.</p>	<p>The Proposal is intended to harmonize the procedure for appointment Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges and to ensure transparency and accountability.</p>	<p>Agreed to with amendments</p> <p>Amend the Fourth Schedule so that the proposed Selection Panel is for purposes of appointing the Vice-Chancellors and Deputy Vice-Chancellors of universities. The Principals and Deputy Principals should be recruited through an internal mechanism by the university Councils.</p>

<p>VICE-CHANCELLORS</p> <p>The Top Management in the form of Vice-Chancellor and Principal as well as the Deputy Vice-Chancellors and Deputy Principals should be appointed with the other officers of the Universities by the Council, internally. This recommendation is proposed to read as follows in the first instance that:-</p> <p>“Vice-Chancellors and Principals of Constituent Colleges, be appointed by a committee comprising of the following:-</p> <ol style="list-style-type: none"> 1. Chairperson of Council - Chairman 2. Principal Secretary State Department for University Education 3. Principal Secretary National Treasury 4. Two Independent Council members 5. Two senate representatives nominated by the Senate. <p>The names of the top three candidates to be forwarded to Cabinet Secretary with full minutes for the appointment for the position of Vice-Chancellor or Principal.”</p> <p>Further that in the case of the Principal of Constituent College the Vice-Chancellor of the mentoring university</p>	<p>To bring clarity on the authority of the universities councils and the Vice-Chancellors and Principals in regard to the recruitment of the Top Management and other university staff.</p> <p>It will also ensure that the process of hiring the Top Management and university staff is done in a timely manner, devoid of interference from parties with no standing in the affairs of staff of universities.</p>	
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<p>should be a member of the panel.</p> <p>Further recommendations of the section on Internal University Recruitment for the rest of the Top Management to read as follows:-</p> <p>1. Deputy Vice-Chancellor and Deputy Principal of Constituent College</p> <p>The committee for this should be composed as follows:</p> <ul style="list-style-type: none"> (a) Chair of Council – Chair (b) Three representative of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; (c) Vice-Chancellor of the mentoring University in the case of the Deputy Principal; (d) Principal of the Constituent College; (e) Two members of the University (f) College Academic Board, being one man and one woman; <p>The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p>		
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<p>The Council shall appoint one candidate from among the three recommended.</p> <p>2. Principal of Campus College</p> <p>The committee for this should be composed as follows:</p> <ul style="list-style-type: none"> (a) Chairperson of Council – Chair (b) Three representatives of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; (c) Vice-Chancellor; <p>The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p> <p>3. Deputy Principal of Campus College</p> <p>the committee for this should be composed as follows:</p> <ul style="list-style-type: none"> (a) Chair of Council – Chair (b) Three representatives of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; 		
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<p>(c) Vice-Chancellor (d) Two members of the University Senate, being one man and one woman;</p> <p>The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p> <p>The Council shall appoint one candidate from among the three recommended.</p> <p>The Council shall appoint one candidate from among the three recommended.</p> <p>Re-appointment for a further term of the Vice-Chancellors, the Deputy Vice-Chancellors, Principals and Deputy Principals to be in accordance to an appraisal system of the respective university Councils.</p> <p>UNIVERSITIES' ACADEMIC STAFF UNION (UASU)</p> <p>The provisions of the Proposed Fourth Schedule should be amended to include an UASU nominee as a member of the Selection Panel the positions of Vice-Chancellor, Deputy Vice-Chancellors, Principals and Deputy Principals.</p> <p>The Vice-Chancellor of a public university should serve a 5 - year term</p>	<p>The respective university councils have the ultimate responsibility of making decisions that affect the universities and all the employees.</p> <p>To enhance transparency, meritocracy and competitiveness, UASU should be represented in the Selection Panel in line with international best practices.</p>	
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<p>renewable once upon satisfactory service.</p> <p>The proposal provides for the Vice Chancellor of a public university to be supported in the execution of his or her duties by not more than three Deputy Vice Chancellors.</p> <p>THE CHAIRS OF COUNCILS</p> <p>That the appointment of Vice-Chancellors and Principals of constituent Colleges and their respective deputies be as provided for in the Principal Act in section 35.</p> <p>That Schedule 4 in the proposed amendments be expunged.</p> <p>That the appointment of Principals of University Colleges continues as is currently done by respective universities and their councils and as provided for in respective university Charters and statutes.</p> <p>On renewal of appointment for VCs, the proposal is that there should be satisfactory performance as evaluated by Council. Thus, to adopt the amended proposed amendment in 39(3) after including the words '.....as evaluated by the University Council' immediately after</p>	<p>The amendment is intended to rationalize administrative structures in public universities to ensure effective management.</p> <p>There is no justifiable reason for material departure of Universities from the cardinal national value of good governance practises enshrined in the State Corporation Act and encapsulated in the Mwongozo: Code of Governance for State Corporations.</p> <p>The proposed amendments of section 39(5) should be amended as follows: The provisions of this section shall apply with necessary modifications to the appointment of Deputy Vice-Chancellors and Principals and Deputy Principals of Constituent Colleges.</p> <p>Section 39(1)(a) in the Universities Act should remain the way it is: - in the case of a public university, competitively by the Cabinet Secretary on the recommendation of the Council;</p> <p>The Councils are charged with providing strategic direction for the institution and should therefore recommend the Vice-Chancellor for appointment by the Ministry.</p>	
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	<p>“....satisfactory performance”.</p> <p>On Deputy Vice-Chancellors and Principal of Constituent Colleges, that the proposal be deleted and have the University Council conduct the interviews.</p> <p>UNIVERSITY OF NAIROBI COUNCIL</p> <p>a) the proposed amendments of section 39(1)(a) should be amended to accord with best practices and read as follows: in the case of a public university, by the Council after a competitive recruitment process conducted by the Public Service Commission</p> <p><i>Amendment 12(a) Deletion of Schedule IV and renaming of Schedule V as Schedule IV</i></p> <p>b) the proposed amendments of section 39(3) should be upheld for purposes of certainty and clarity <i>Amendment 12(b)</i></p>	<p>This is a delegated responsibility of the Council whom the Cabinet Secretary himself/herself appointed.</p> <p>The function of promotions in these positions still remains with the Councils. Appointments to the same positions should be retained in the Councils. Deputy Vice-Chancellors and other lower positions should be filled through a competitive process managed by the University Councils.</p> <p>The Deputy Vice-Chancellors work under the Vice-Chancellors and it is therefore fair to have the University Councils and the Vice-Chancellors making the appointments.</p> <p>In law, a binding employment contract would only exist between the Council of a public university (employer) and an employee. No employment contract at any public university subsists between any employee and the CS MOEST or MOEST and therefore employment of any staff of a university should be the exclusive province of the Council.</p>	
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<p>c) the proposed amendments of section 39(5) should be amended as follows: The provisions of this section shall apply with necessary modifications to the appointment of Deputy Vice-Chancellors and Principals and Deputy Principals of Constituent Colleges <i>Amendment 12(c)</i></p> <p>d) the proposed amendments of section 35(1)(a)(v) should be amended as follows: In the case of public universities, appoint Vice Chancellor, Deputy Vice Chancellors and Principals and Deputy Principals of Constituent Colleges after a competitive process conducted by the Public Service Commission <i>Amendment 9(b)</i></p> <p>PROF. LOUIS MUMERA, EGERTON UNIVERSITY</p> <p>The stipulations in the principal Act that appointments to these key positions be by the Cabinet secretary, upon recommendation by the Council should be upheld</p> <p>TECHNICAL UNIVERSITY OF KENYA</p> <p>That the appointment of Vice Chancellors and Principals of constituent colleges and their</p>	<p>That it is not useful to remove Vice Chancellors and Deputy Vice-Chancellors of Public Universities and Principals of Constituent University Colleges and their deputies from the purview of University Councils and vest the same on another party. That doing so creates two</p>	
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	<p>respective deputies be as provided for in the Principal Act. That Schedule 4 in the proposed amendments be expunged.</p> <p>That the appointment of Principals of University Colleges continues as is currently done by respective universities and their councils and as provided for in respective university statutes.</p> <p>To adopt the amended proposed amendment in 39(3) after including the words '.....as evaluated by the University Council' immediately after "....satisfactory performance"</p> <p>TOM NJERU, UNIVERSITY OF NAIROBI</p> <p>Reduce the term of office of vice chancellor should be Three (3) years renewable once.</p>	<p>conflicting centers of power, one being the appointing authority and the other being the employer responsible for the employees' conduct and performance.</p> <p>That the Vice-Chancellor should be involved in the appointment of Deputy Vice-Chancellors and similarly Principals in the appointment of the Deputy Principals of Constituent University Colleges.</p> <p>That recruitment of senior university managers should vest with respective councils. This would be consistent with the practice in private universities under the same Act with respect to Council mandate vis-à-vis their sponsors, government being the sponsor in the case of public universities.</p> <p>Amendment diminishes the role of Council and negates a key provision of Mwongozo that outlines principles and procedures of good governance in State Corporations.</p> <p>Three years are sufficient just like the case of university councils. A maximum of six years gives a university a chance to inject fresh blood into the office of the Vice Chancellor.</p>	
15.	<p>MINISTRY OF EDUCATION</p> <p>The amendment provides for submission of accounts to the Auditor General within</p>	<p>The proposed amendment will align the Universities Act with the Public Finance Management Act of 2012.</p>	Agreed to

	three months from the end of each financial year.		
16.	<p>S. 53 is amended—</p> <p>(a) by deleting the word "Trustees" appearing in paragraph (3)(d) and substituting therefor the word "Board".</p> <p>(b) by deleting the word "Trustees" appearing in paragraphs (4)(a), (b) and (c) and substituting therefor the word "Board".</p>		Agreed to
17.	<p>The principal Act is amended by inserting the following new section immediately after section 53—</p> <p>Administration of the Fund. 53A. The Fund shall be administered by the Board established under section 54 in accordance with the provisions of the Fifth Schedule.</p>		Agreed to
18.	<p>MINISTRY OF EDUCATION</p> <p>The proposed amendment provides for establishment of a Universities Fund Board instead of a Board of Trustees to manage the Fund.</p> <p>VICE-CHANCELLORS 54(5)(e)(g)(h) Should read as follows-</p>	<p>The proposed amendment provides for establishment of a Universities Fund Board capable of transacting business as a body corporate and where assets and resources will vest in the Fund and not in the Board of Trustees.</p> <p>No need to specify "competitively".</p> <p>Members of Council are already board members and by this appointment they</p>	<p>Agreed to with amendments</p> <p>The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities.</p> <p>Agreed to expressly provide for funds allocated by the national government to</p>

<p>(e) one person nominated competitively by the Kenya Private Sector Alliance;</p> <p>(g) one person nominated by public universities in a forum of Vice-Chancellors of public universities;</p> <p>(g) one person nominated by private universities in a forum of Vice-Chancellors of private universities;</p> <p>Further Proposal Enforce that the formulae or criterion that the Fund comes up ensures that DUC Should be properly implemented in accordance to Section 54(4)(d) of the Act.</p> <p>KAPU 54(5)(h) should read-</p> <p>One person nominated by private universities upon request by the Cabinet Secretary</p> <p>UNIVERSITIES' ACADEMIC STAFF UNION (UASU)</p> <p>54(9)(b) Delete the phrase "and issue conditional grants to private universities;" in the current provisions (of the Principal Act) and reject the proposed provisions.</p>	<p>would be duplication of appointment (2 board appointments)</p> <p>The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities.</p> <p>In order to allow private universities autonomy to determine their methodology for representation in the Board.</p> <p>Public funds should not be used to generate profits for profit making private universities. Public universities have requisite capacity to train all government-sponsored students. Tax payers should only sponsor students in the public universities.</p> <p>Student who opt to undertake education at private universities should do so under self-sponsorship. Moreover there is no</p>	<p>private universities for tuition fees for government sponsored students in Kenyan universities</p>
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		<p>framework to enable the Office of the Auditor General hold private universities accountable for such public funds.</p>	
	<p>54(9)(e) Delete the sub-sections in the current provision (in the Principal Act) and reject the proposed amendment</p> <p>KAPU</p> <p>54(9)(c) Apportion-</p> <p>(a) funds allocated by the national government to public universities for development and recurrent expenditure.</p> <p>(b) funds allocated by the national government for tuition fees for government sponsored students in Kenyan universities; and</p> <p>(c) conditional grants and loans to private universities</p> <p>Fees paid for government sponsored students shall be guided by the differentiated unit cost model</p>	<p>Differentiated Unit Cost Model seeks to entrench a form of financial apartheid in funding of universities. The model has failed and is not based on any agreed formula. There should be delinking of KUCCPS and the Universities Fund (the Universities Funding Board) to avoid the practice of some universities manipulating (“gaming”) the admissions system and student capacity to subvert the funding formula (DUC is particularly susceptible to this type of manipulation).</p> <p>The sections further seek to destroy the right of workers to collectively bargain which is guaranteed under Art 41 of the Constitution of Kenya 2010.</p> <p>To clearly stipulate the various types of funding under the Fund. This is because of an apparent confusion that has at times projected tuition fees paid for government sponsored students in private universities as grants given to those universities, which is not the case.</p>	

	<p>54(9)(d) Add the following sentence at the end of the section to ensure equity in the funding of all government sponsored students in public and private universities</p>		
19.	<p>Chief executive officer.</p> <p>54A. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively appointed by the Board and whose terms and conditions of service shall be specified in the instrument of appointment.</p> <p>(2) A person shall be qualified for appointment as a Chief Executive Officer if such person-</p> <p>(a) is a Kenyan citizen; (b) holds a masters' degree or its equivalent from a university recognized in Kenya; and (c) has at least ten years' experience in financial management.</p> <p>(3) The Chief Executive Officer shall be the secretary to the Board and responsible to the Board for the day to day management of the affairs and staff of the Board.</p>		<p>Agreed to with amendments to provide for the term of office of the Chief Executive Officer as three years renewable once.</p>
20.	<p>Staff of the Board.</p> <p>54B. The Board may employ such other officers and staff as may be necessary for the discharge of its mandate and</p>		<p>Agreed to</p>

	<p>performance of its function under this Act:</p> <p>Provided that every person who at the commencement of this section is an employee of the Board of Trustees existing immediately before such commencement and not being under notice of dismissal or resignation shall become an employee of the Board under this Section 54A on the same or improved terms and conditions.</p>		
21.	<p>MINISTRY OF EDUCATION The amendment reduces the number of members, provide for additional independent members and for the CEO to be a member of the Board of KUCCPS.</p> <p>UNIVERSITIES' ACADEMIC STAFF UNION (UASU) Delete the requirement for representation of private universities in KUCCPS under the current provisions in the Principal Act, and reject the proposed provisions.</p>	<p>The amendment is intended to reduce membership and to comply with the relevant legal provisions on membership and composition of State Corporations.</p> <p>Public universities have requisite capacity to train all government-sponsored students, eliminating private interests in placement to students in public universities.</p> <p>Moreover, there should be delinking of KUCCPS and the Universities Fund (the Universities Funding Board) to avoid the practice of some universities manipulating ("gaming") the admissions system and student capacity to subvert the funding formula (DUC is particularly susceptible to this type of manipulation).</p>	<p>Agreed to with amendments</p> <p>To provide clarity on the years of experience required in management of education to qualify to be appointed by the Cabinet Secretary in the Board of the Kenya Universities and Colleges Central Placement Service. Agreed as ten years</p>

	<p>TECHNICAL UNIVERSITY OF KENYA</p> <p>To adopt the proposed amendment with regard to providing for a doctorate degree (PhD) as the minimum academic requirement for the position of be held as the minimum requirement for the position of Chairperson of the Placement Board.</p> <p>KAPU CEO of the Universities Fund be a member of the KUCCPS Board</p>	<p>That there should be consistency in terms of the required qualifications for the position of Chairpersons.</p> <p>To advise KUCCPS on policy and funding matters , among others</p>	
22.	<p>MINISTRY OF EDUCATION</p> <p>The proposed amendment introduces a new subsection requiring each participating university to submit a list of government and self-sponsored students enrolled in the universities to the KUCCPS Board within thirty days from the date of closure of the enrolment of students to the university and for the KUCCPS Board to submit the information to the Universities Fund within fourteen days of receipt thereof.</p>	The proposal is intended to ensure accountability.	Agreed to
23.	<p>MINISTRY OF EDUCATION</p> <p>Section is 61A deleted.</p>	The proposed amendment is intended to allow for the instruments of accreditation to be applied with relevant modifications.	Agreed to
24.	<p>MINISTRY OF EDUCATION</p> <p>The amendment revokes the Second Schedule and</p>	The amendment is intended to ensure adequate public participation and allow the stakeholders to identify suitable	Agreed to

	replaces it with a new one introducing the previous provisions on the procedure for appointing Chancellors through the Alumni Association and the Senate.	persons to be Chancellors of public universities.	
25.	Letter of Interim Authority The principal Act is amended by repealing the Third Schedule.		Agreed to
26.	MINISTRY OF EDUCATION The amendment introduces the Fourth Schedule to the Act which outlines the procedure for appointing Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges through a selection panel constituted by the Cabinet Secretary.	The proposal to have Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges appointed through a selection panel is intended to ensure inclusivity in appointments, transparency and accountability.	Agreed to with amendments (a)To provide that the fourth Schedule shall only be applicable to the Vice Chancellors and Deputy Vice Chancellors; (b)To provide that the Selection panel for appointment of Vice-chancellors and Deputy Vice-Chancellors shall be constituted by the Councils of a public university; (c)To provide that the chairperson of the Selection Panel shall be a scholar with the rank of a full professor; (d)To remove representation of the Council in the Selection Panel; (e)To provide that the Selection Panel shall identify five qualified applicants and forward the names to the Council which shall then forward three

			<p>names to the Cabinet Secretary for appointment.</p> <p>(f) To introduce a new schedule to provide for the appointment of Principals of Constituent Colleges through a selection panel constituted by the Councils of public universities.</p>
	<p>VICE-CHANCELLORS</p> <p>The status quo should be maintained to use the collegiate electoral system in University Students' Council election.</p> <p>UNIVERSITIES' ACADEMIC STAFF UNION (UASU)</p> <p>Supports free, fair and transparent election of student leaders without interference from the management of the university.</p> <p>AGENDA KENYA</p> <p>(a) Election of university students should be amended from delegate system to popular vote. The bill introduced a delegate system, which is contrary to Article 38 of the Constitution on Political Rights, and Article 81 of the Constitution on the principles of the electoral system in the country. The amendments were done in violation of Articles 10, 24 in that the National values of governance and limitation of</p>	<p>The collegiate electoral system has brought peace and harmony in the university sector</p>	<p>Agreed to provide for election to the student's council through election by the students' association comprising of all students as opposed to electoral colleges.</p>

<p>the right of students to vote directly were unconstitutional. For these reasons, we want the bill to be amended.</p> <p>(b) The number of student leaders elected in the university union should be increased from 7 positions to at least 15 student leaders.</p> <p>(c) Any student at the institution should be eligible to vie for the student leader without any restrictions provided they prove they are students.</p>		
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4.0 COMMITTEE OBSERVATIONS

The Committee observed as follows: -

1. The proposed amendment which is intended to ensure that governance of specialized degree awarding institutions is within the framework of the Universities Act has already been effected through the Statute Law Miscellaneous Amendment Act No. 20 of 2020;
2. To enhance accessibility to university education, it's imperative that each county has a public university as provided for in the Act;
3. Section 23 of the Act should be amended to ensure that the Cabinet Secretary publishes in the Gazette within 90 days from the date of submission failure of which the Statutes become effective to avoid inordinate delay of *gazettement* of statutes;
4. The focus on management of a university only for appointment as Commission Secretary is limiting as it excludes other would be qualified persons working outside university environment but with similar experience and management competences like officers working in institutions such as the Commission for University Education;
5. The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University. It is also important to ensure that the qualifications of Council Chair match that of the senior management;
6. Councils like any other public Board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council;
7. The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Universities Fund Board will resonate with their role as the Chief Executive Officers of the respective Universities.
8. Councils of public universities should retain the function of appointing Principals and Deputy Principals of Constituent Colleges through an internal mechanism.

5.0 COMMITTEE RECOMMENDATIONS

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clause immediately after clause 3—

Amendment
of section 6
of No.42 of
2012.

3A. Section 6 of the principal Act be amended—

(a) by deleting paragraph (f) and substituting therefor the following new paragraph—

(f) one person nominated by public universities in a forum of Vice-Chancellors of public universities;

(b) by deleting paragraph (g) and substituting therefor the following new paragraph—

(g) one person nominated by private universities in a forum of Vice-Chancellors of private universities;

Justification: The mounting and quality of academic programmes is the primary function of Senate. The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College.

THAT, the Bill be amended by inserting the following new clause immediately after clause 6—

Amendment
of section 23
of No.42 of
2012.

6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —

(3)The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the *Gazette*.

(4) Notwithstanding subsection (3), a statute or a regulation of a university shall come into force after the lapse of three months after submission to the Cabinet Secretary for publication in the *Gazette*.

Justification: Statutes are approved internal administrative instruments by which Councils manage respective universities. Consequently, they are required to be operationalized as soon as possible.

CLAUSE 7

THAT the Bill be amended by deleting clause 7.

Justification: The proposed amendment has already been effected in the Universities Act through the Statute Law Miscellaneous Amendment Act No. 20 of 2020 (refer to Section 24(4) and (5).

CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefore the following new clause—

Universities
in counties. The principal Act is amended by repealing section 26 and replacing it with the following new section —

26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country.

Justification: To enhance accessibility to university education, it's imperative that the Commission establishes public universities taking into consideration their viability.

CLAUSE 11

THAT clause 11 of the Bill be amended in the proposed amendment to section 35 by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) deleting paragraph (v) and substituting therefore the following new paragraph—

(v) in the case of a public university, appoint Principals and Deputy Principals of Constituent Colleges after a competitive process conducted in the manner provided in the Second Schedule

Justification: To ensure that the Councils of public universities retain the function of appointing Principals and Deputy Principals of Constituent Colleges through an internal mechanism.

CLAUSE 12

THAT, clause 12 of the Bill be amended in the proposed amendment to section 36(2) of the principal Act by—

(a) deleting paragraph (a) and substituting therefore the following new paragraph—

(a) in the case of a chairperson, the person holds a doctorate degree from a university recognized in Kenya and has at least fifteen years' experience in a senior management position or research;

(b) by inserting the words “at least” immediately before the word “holds” appearing in paragraph (b);

Justification: The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University. It is also important to ensure that a member of the Council has at least a Master's degree.

CLAUSE 13

THAT clause 13 of the Bill be amended in the proposed new section 36A by—

(a) deleting subsection (1) and substituting therefor the following new subclause—

(1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to any Council of a public university;

(b) deleting subsection (2)

Justification: Councils like any other public Board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council.

CLAUSE 14

THAT clause 14 of the Bill be amended—

(a) in the proposed amendment to section 39(3) by inserting the words “as appraised by the Council” immediately after the words “satisfactory performance” appearing in paragraph (b);

(b) in the proposed amendment to section 39(5) by deleting the words “appointment of” appearing in paragraph (c);

Justification: To ensure that the procedure for appointment of Vice-Chancellors and Deputy Vice-Chancellors as prescribed in the Fourth Schedule is not applicable to Principals and Deputy Principals of University colleges and Constituent Colleges. Further to ensure that appraisal is done by the Council of a university.

NEW

THAT, the Bill be amended by inserting the following new clause immediately after clause 14—

14A. Section 41 of the principal Act be amended by—

(a) inserting the following new subsection immediately after subsection (1B)-

(1BA) A person shall be eligible to stand for election as a member of a student's council if the person is in good academic standing;

(b) deleting subsection (1C);

(c) deleting subsection (1D);

(d) deleting subsection (1E);

Justification: To provide for election to the student’s council through election by the students’ association comprising of all students as opposed to electoral colleges. Further, to ensure that in order to qualify to stand for election, one must be in good academic standing.

CLAUSE 18

THAT clause 18 of the Bill be amended by—

- (a) deleting the word “competitively” appearing in paragraph (e);
- (b) deleting paragraph (g) and substituting therefor the following new paragraph—
 - (g) one person nominated by public universities in a forum of Vice-Chancellors of public universities;
- (c) deleting paragraph (h) and substituting therefor the following new paragraph—
 - (h) one person nominated by private universities in a forum of Vice-Chancellors of private universities;
- (d) in the proposed new section 54(9) by—
 - (i) inserting the following new paragraph immediately after paragraph (c) —
 - (ca) apportion funds allocated by the national government to private universities for tuition fees for government sponsored students in Kenyan universities;
 - (ii) inserting the words “to ensure equity in the funding of all government sponsored students in public and private universities” immediately after the words “subject area” appearing in paragraph (d);

Justification: The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities. Further, the amendment seeks to expressly provide for an additional function of the University Fund Board to provide for funds allocated by the national government for tuition fees for government sponsored students in Kenyan universities

CLAUSE 19

THAT, clause 19 of the Bill be amended 54A by inserting the following new sub clause immediately after sub clause (1)-

- (1A) The Chief Executive Officer of the Fund shall hold office for a term of five years and shall be eligible for reappointment for one further term of five years.

Justification: To provide for the term of office of the Chief Executive Officer of the Fund which had not been provided for in the Bill.

CLAUSE 21

THAT clause 21 of the Bill be amended in subsection (3) by-

- (a) deleting the word “six” appearing in the opening statement to paragraph (f) and substituting therefor with the word “two”;
- (b) inserting the words “nominated by a forum of Vice-Chancellors of public universities” immediately after the word “universities” appearing in paragraph (f)(i);
- (c) inserting the words “nominated by a forum of Vice-Chancellors of private universities” immediately after the word “universities” appearing in paragraph (f)(ii);
- (d) inserting the following new paragraph immediately after paragraph (e);
 - (ea) one representative of the Kenya Association of Technical Institutions;
- (e) renumbering paragraph (f)(iv) as paragraph (eb);
- (f) deleting paragraph (f)(iv) and substituting therefor with the following new paragraph-
 - (iv) one member with ten years’ experience in management of education;
- (g) renumbering paragraph (f)(v) as paragraph (g).

Justification: To provide clarity on the years of experience required in management of education to qualify to be appointed by the Cabinet Secretary in the Board of the Kenya Universities and Colleges Central Placement Service. To further ensure that the Vice-Chancellors appointed by the Cabinet Secretary are nominated by the Vice-Chancellors forum.

FIRST SCHEDULE

THAT, the Fourth Schedule to the Bill be amended—

- (a) by deleting the words “**PRINCIPALS AND DEPUTY PRINCIPALS**” appearing in the heading;

Justification: To ensure the Fourth Schedule is only applicable to the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities.

- (b) in paragraph 1 by deleting the words “ or Principal and Deputy Principal of a Constituent College, the Cabinet Secretary” appearing after the words “public university” and substituting therefore the words “the Council”;

Justification: To ensure that the Selection panel for the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities is constituted by the Council of a university and not the Cabinet Secretary who appoints.

- (c) in paragraph 2 (1) by—

- (i) deleting the phrase “subsection(2) and substituting therefor the phrase “subsection (1);
- (ii) deleting subparagraph (a) and substituting therefor the following new subparagraph—
 - (a) a chairperson being a scholar with the rank of a full professor;
- (iii) deleting subparagraph (b)

Justification: To ensure that the Chairperson of the selection Panel is a scholar with the highest academic rank and also to ensure that the Council is not represented in the Selection Panel as it constitutes the same.

(d) in paragraph 4 by—

- (i) deleting the word “three” appearing in sub paragraph (c) and substituting therefore the word “five”;
- (ii) by deleting the words “Cabinet Secretary” appearing in sub paragraph (d) and substituting therefor the word “Council”;
- (iii) inserting the following new paragraph immediately after sub paragraph 4—

4A. The Council shall, within seven days of receipt of the names forwarded under paragraph (4)(c), identify three qualified applicants for each vacant position and forward the names to the Cabinet Secretary.

Justification: To ensure that the Selection Panel submits five names of qualified applicants as opposed to three to the Council which in turn submits three names to the Cabinet Secretary for appointment.

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately after the First Schedule—

NEW SCHEDULE

[section 35(1)(v)]

**PROCEDURE FOR THE RECRUITMENT AND APPOINTMENT
OF PRINCIPALS AND DEPUTY PRINCIPALS**

(1) Where a vacancy occurs in the office of the Principal or Deputy Principal of a constituent college, the Council of that university shall constitute a selection panel consisting of –

- (a) a chairperson being the chairperson of the University Council;
- (b) a representative of the Principal Secretary for the time being responsible for university education;
- (c) a representative of the Principal Secretary for the time being responsible for finance;
- (d) two representatives, being one man and one woman, nominated by the University Senate;
- (e) a distinguished professor of the university; and
- (f) the Vice-Chancellor of the university.

(2) The selection panel may regulate its own procedure.

(3) The selection panel shall—

- (a) advertise for the vacancies and publicize the applicants and shortlisted candidates;
- (b) conduct interviews of the short listed candidates;
- (c) identify three qualified applicants for the position of Principal or Deputy Principal; and
- (d) forward the names of the qualified applicants under paragraph (c) to the Council.

(5) The Council shall, within fourteen days of receipt of the names forwarded under paragraph (3)(d), in consultation with the Cabinet Secretary appoint the Principal or Deputy Principal from among the three qualified applicants.

(7) The selection panel shall stand dissolved upon the appointment of the Principal or Deputy Principal under paragraph (5).

Justification: To provide for the procedure for appointment by the Council of a university of Principals and Deputy-Principals of Constituent Colleges

SIGNED _____



DATE _____

23/11/2021

**HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, DEPARTMENTAL
RESEARCH**

COMMITTEE ON EDUCATION AND


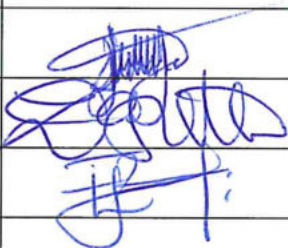



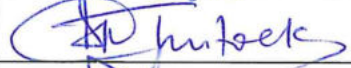

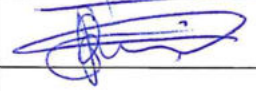
ANNEXURES

1. REPORT ADOPTION LIST
2. MINUTES
3. ADVERTS INVITING SUBMISSIONS OF MEMORANDA
4. SUBMISSIONS FROM STAKEHOLDERS
5. UNIVERSITIES (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 35 OF 2021)

REPORT ADOPTION LIST



KENYA NATIONAL ASSEMBLY
COMMITTEE ON EDUCATION AND RESEARCH
ADOPTION OF THE REPORT ON THE UNIVERSITIES (AMENDMENT) BILL, 2021
20th NOVEMBER 2021

	NAME	Signature
1.	Hon. Florence Mutua, MP - Chair	
2.	Hon. Ngunjiri Wambugu, MP - Vice Chair	
3.	Hon. Geoffrey Odanga, MP	
4.	Hon. (Dr.) Pamela Ochieng, MP	
5.	Hon. (Eng.) Nzambia Kithua, MP	
6.	Hon. (Prof.) Zadoc Ogutu, MP	
7.	Hon. Eric Muchangi, MP	
8.	Hon. Eve Obara, MBS, MP	
9.	Hon. Jackson Lekumontare, MP	
10.	Hon. Jerusha Momanyi, MP	
11.	Hon. Joseph Tonui, MP	
12.	Hon. Omboko Milemba, MP	
13.	Hon. Peter Lochakapong, MP	
14.	Hon. Wilson Sossion, MP	
15.	Hon. (Dr.) Wilson Kogo, MP	
16.	Hon. (Dr.) Daniel Kamuren Tuitoek, MP	
17.	Hon. James Gichuki Mugambi, MP	
18.	Hon. John Paul Mwirigi, MP	
19.	Hon. Mohammed Ali Lokiru, MP	

MINUTES

**MINUTES OF THE 44TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION AND RESEARCH HELD ON WEDNESDAY, 27TH OCTOBER 2021, IN
ENGLISH POINT MARINA HOTEL IN MOMBASA AT 9.30 AM**

PRESENT

1. Hon. Florence M. Mutua, CBS, MP – **Chairperson**
2. Hon. (Dr.) Pamela Ochieng, MP
3. Hon. (Prof.) Zadoc Ogutu, MP
4. Hon. Eric Muchangi, MP
5. Hon. Eve Obara, MBS, MP
6. Hon. Jerusha Momanyi, MP
7. Hon. Joseph Tonui, MP
8. Hon. Omboko Milemba, MP
9. Hon. Peter Lochakapong, MP
10. Hon. (Dr.) Wilson Kogo, MP
11. Hon. (Dr.) Daniel Kamuren Tuitoek, MP
12. Hon. John Paul Mwirigi, MP
13. Hon. Gichuki Mugambi, MP
14. Hon. Mohammed Ali Lokiru, MP

ABSENT WITH APOLOGY

1. Hon. Wambugu Ngunjiri, MP – **Vice- Chairperson**
2. Hon. Geoffrey Odanga, MP
3. Hon. (Eng.) Nzambia Kithua, MP
4. Hon. Jackson Lekumontare, MP
5. Hon. Wilson Sossion, MP

COMMITTEE SECRETARIAT

1. Mr. Philip Lekarkar – Clerk Assistant II
2. Ms. Grace Wahu – Clerk Assistant III
3. Ms. Mercy Wanyonyi – Legal Officer
4. Ms. Catherine Mukunyi – Sergeant at Arms
5. Mr. Collins Mahamba – Audio Officer

STAKEHOLDERS

1. Amb. Simon Nabukwesi – PS State Department for University Education and Research
2. Mr. Darius Mogaka – Director, State Department for University Education & Research
3. Ms. Diana Mutisya – ADB, State Department for University Education and Research
4. Christine Oduogi – PCO, State Department for University Education and Research
5. Mr. Shiroya Luke – DDQAS, State Department for University Education and Research
6. Dr. Agnes Mercy Wahome – CEO, Kenya Universities & Colleges Central placement Service
7. Prof. Chacha N Chacha – Chair, Commission for University Education
8. Dr. Geoffrey Monari – CEO, University Fund Board
9. Prof. Mwenda Ntaragwi – CEO, Commission for University Education
10. Prof. Sabah Ahmed Omar – Chair of Councils of Public Universities/Council Chair SEKU

11. Dr. Rachel Masake	- Council Chair, Rongo University
12. Prof. Geoffrey Muluvi	- Chair, Vice Chancellors Committee/Vice Chancellor, SEKU
13. Prof. Daniel Mugendi	- Vice Chancellor, University of Embu
14. Prof. Mary Ndungu	- Vice Chancellor, Kirinyaga University
15. Prof. Francis Aduol	- Vice Chancellor, Technical University of Kenya
16. Prof. Philip Maiyo	- VC UEAB/Ag. Chair, Kenya Association of Private Universities
17. Prof. Washington Okeyo	- Vice Chancellor Management University of Africa
18. Prof. Henry Kiplangat	- VC, Kabarak University
19. Dr. Dina Mwinzi	- Vice Chancellor, KAG EAST University
20. Prof. Robert Gateru	- Vice Chancellor, Riara University
21. Prof. Gideon Maina	- Vice Chancellor Pioneer International University
22. Dr. Vincent Gaitho	- Secretary General, National Association of Private Universities
23. Dr. Constatine Wasoga	- Secretary General Universities Academic Staff Union (UASU)
24. Dr. Jumba Kumba	- UASU, Treasurer

MIN. NO. EDUC/2021/217: PRELIMINARIES

The Chair called the meeting to order at 9.44 a.m. A word of prayer was said. The Agenda of the meeting was adopted having been proposed by Hon. Jerusha Momanyi, MP, and seconded by Hon. (Dr.) Daniel Kamuren Tuitoek, MP. A round of introductions was done.

The Chair informed the Committee that the retreat was convened to receive and consider submissions from university education stakeholders on the Universities (Amendment) Bill, 2021.

MIN. NO. EDUC/2021/218: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO. EDUC/2021/219: SUBMISSIONS FROM THE STAKEHOLDERS

Vice Chancellors Committee of Public Universities

The Chairperson of Councils of Public Universities Prof. Sabah Omar and the Chairperson of the Vice Chancellors Committee of Public Universities Prof. Geoffrey Muluvi presented the following submission as regards the Universities (Amendment) Bill.

Section of the Universities Act	Proposals	Rationale of the proposals
New	To be included in the Proposed Bill: 1. The Chairperson shall also be the Pro-Chancellor of the University; and 2. The Chairperson shall be appointed to function as the Pro-Chancellor.	In the absence of a substantive Chancellor, the Chairperson of Council is the Pro-Chancellor to avoid a <i>lacuna</i> .
New section to be inserted in Section 6	To be also included in the Proposed Bill: Recommendation: The public University representative to the Commission for University Education should be specifically be nominated by the public universities in a forum of the	Reason: The mounting and quality of academic programmes is the primary function of Senate.

Section of the Universities Act	Proposals	Rationale of the proposals
	<p>Vice-Chancellors of public universities. Thus, it should read as follows: -</p> <p><i>one person nominated by public universities in a forum of Vice-Chancellors of public universities;</i></p> <p><i>one person nominated by private universities in a forum of Vice-Chancellors of private universities;</i></p>	<p>The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College.</p> <p>Thus, it is imperative that the representative is a nominee of the Vice-Chancellors forum as the Vice-Chancellors and Principals oversee as academic programs in the Universities.</p>
36A	<p>Proposal in the Bill:</p> <p>1. As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or transfer or otherwise deploy the chairperson or any member of any Council.</p> <p>Recommendation: The Cabinet Secretary shall reserve the right to revoke the appointment of any Chairperson of Council and Council member appointed under the provisions of this law following due process.</p>	<p>The respective University Councils have oversight authority and are not employees, <i>per se</i>, of the Universities or the Ministry but Agents for the Trustee (the Ministry of Education).</p> <p>This provision on deployment of Council members would justify that they should be regarded as employees. Consequently, a plethora of suits would ensue for aggrieved Council member(s) who feels that the deployment or re-deployment is not merited, unfair or unequitable.</p>

Section of the Universities Act	Proposals	Rationale of the proposals
	<p>Proposal in the Bill:</p> <p>2. Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision.</p> <p>Recommendation: This provision should not be included in the Bill.</p>	<p>Reason: The autonomy and oversight authority of the University Council vested by the respective Charters will be in jeopardy. Also, it renders redundant the Ministry of Education representatives to the respective Councils, since they are to guide the Councils on the position of the Government and in particular Ministry of Education.</p>
	<p>Proposal in the Bill:</p> <p>3. A Council seeking to meet more than four times in a year must obtain written approval from the Cabinet Secretary.</p> <p>Recommendation: The law can be amended to state that the: - <i>"A Council shall meet once every quarter in every financial year and with an addition of not more than two special meetings in the same financial year"</i></p> <p>Reason: In accordance with the Public Service Commission Circular.</p>	<p>Justification: It is a good idea to entrench the number of meetings held by a Council in the Universities Act. However, setting a rigid ceiling without any room for flexibility for the number of meetings that a Council can hold, offends both the law and hampers the operations of the respective Councils.</p>
39	<p>Proposal in the Bill:</p> <p>To harmonize the two Sections S. 35 and S. 39, the Bill proposals that Section 35 1 (a) is deleted and Section 39 is amended to be read together with Fourth Schedule.</p> <p>Recommendation:</p> <p>The provision in the 2018 Statute Law (Miscellaneous Amendments) be retained with the exception that it only reads "the Vice-Chancellors, and Principals of the respective universities and constituent university colleges". Thus, to read that: -</p>	<p>Reason:</p> <p>The justification for this proposal is to bring clarity on the authority of the universities councils and the Vice-Chancellors and Principals in regard to the recruitment of the Top Management and other university staff.</p> <p>It will also ensure that the process of hiring the Top Management and university staff is done in a timely</p>

Section of the Universities Act	Proposals	Rationale of the proposals
	<p>“Vice-Chancellors and Principals of Constituent Colleges, be appointed by a committee comprising of the following</p> <ol style="list-style-type: none"> 1. Chairperson of Council - Chairman 2. Principal Secretary State Department for University Education 3. Principal Secretary National Treasury 4. Two Independent Council members 5. Two senate representatives nominated by the Senate. <p>The names of the top three candidates to be forwarded to Cabinet Secretary with full minutes for the appointment for the position of Vice-Chancellor or Principal.</p> <p>Further that in the case of the Principal of Constituent College, the Vice-Chancellor of the mentoring university should be a member of the interviewing panel.</p> <p>Recommendation on the section on internal University recruitment to read as follows: -</p> <p>1. Deputy Vice-Chancellor and Deputy Principal of Constituent College</p> <p>The committee for this should be composed as follows:</p> <ol style="list-style-type: none"> 1. Chair of Council – Chair 2. Three representatives of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; 3. Vice-Chancellor of the mentoring University in the case of the Deputy Principal; 4. Principal of the Constituent College; 5. Two members of the University College Academic Board, being one man and one woman; <p>The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p>	<p>manner, devoid of interference from parties with no standing in the affairs of staff of universities.</p>

Section of the Universities Act	Proposals	Rationale of the proposals
	<p>The Council shall appoint one candidate from among the three recommended.</p> <p>2. Principal of Campus College</p> <p>The committee for this should be composed as follows:</p> <ol style="list-style-type: none"> 1. Chairperson of Council – Chair 2. Three representatives of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; 3. Vice-Chancellor; <p>The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p> <p>The Council shall appoint one candidate from among the three recommended.</p> <p>3. Deputy Principal of Campus College</p> <p>The committee for this should be composed as follows:</p> <ol style="list-style-type: none"> 1. Chair of Council – Chair 2. Three representatives of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; 3. Vice-Chancellor 4. Two members of the University Senate, being one man and one woman; <p>The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p> <p>The Council shall appoint one candidate from among the three recommended.</p> <p>Further recommendations under this provision: -</p>	

Section of the Universities Act	Proposals	Rationale of the proposals
	<p>Re-appointment for a further term of the Vice-Chancellors, the Deputy Vice-Chancellors, Principals and Deputy Principals to be in accordance to an appraisal system of the respective university Councils.</p> <p>Reason: The respective university councils have the ultimate responsibility of making decisions that affect the universities and all the employees.</p>	
54	<p>Composition of the Universities Fund Board:</p> <p>1. Proposal in the Bill:</p> <p>g) one person nominated by public universities in a forum of chairpersons of the Councils of public universities convened by the Cabinet Secretary for that purpose;</p> <p>h) one person nominated by private universities in a forum of chairpersons of the Councils of private universities convened by the Cabinet Secretary for that purpose.</p> <p>Recommendation:</p> <p>one person nominated by public universities in a forum of Vice-Chancellors of public universities;</p> <p>one person nominated by private universities in a forum of Vice-Chancellors of private universities;</p>	<p>Reason:</p> <p>Members of Council are already board members and by this appointment they would be duplication of appointment (2 board appointments)</p> <p>The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities.</p>
	<p>Proposal in the Bill: -</p> <p>“(e): one person nominated competitively by the Kenya Private Sector Alliance”</p>	<p>Reason: No need to specify “competitively”. Thus, to read “(e): one person nominated by the Kenya Private Sector Alliance”</p>
	<p>To be also included in the Proposed Bill:</p> <p>Enforce that the formulae or criterion that the Fund comes up ensures that DUC Should be properly implemented in accordance to Section 54(4)(d) of the Act.</p>	
Student Petition	Petition by a student to change the electoral system to bring about universal suffrage.	Justification: The collegiate electoral system has brought peace and

Section of the Universities Act	Proposals	Rationale of the proposals
	Recommendation: the <i>status quo</i> should be maintained to use the collegiate electoral system in University Students' Council election.	harmony in the university sector

Proposals by the Kenya Association of Private Universities (KAPU)

The Kenya Association of Private Universities (KAPU through its acting Chairperson Prof. Philip Maiyo made the following submissions in regards to the Universities (Amendment) Bill.

Section of the Universities Act	Proposals	Rationale of the proposals
54 (5) h	54(5)(h) should read- One person nominated by private universities upon request by the Cabinet Secretary.	In order to allow private universities autonomy to determine their methodology for representation in the Board.
54(9)(d)	Apportion- (a) funds allocated by the national government to public universities for development and recurrent expenditure. (b) funds allocated by the national government for tuition fees for government sponsored students in Kenyan universities; and (c) conditional grants and loans to private universities Fees paid for government sponsored students shall be guided by the differentiated unit cost model	To clearly stipulate the various types of funding under the Fund. This is because of an apparent confusion that has at times projected tuition fees paid for government sponsored students in private universities as grants given to those universities, which is not the case.
54(9)(d)	Add the following sentence at the end of the section- to ensure equity in the funding of all government sponsored students in public and private universities	To ensure equity in funding of all government sponsored students in public and private universities

55 (3)	CEO of the Universities Fund be a member of the KUCCPS Board	To advise KUCCPS on policy and funding matters, among others
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Committee Resolution

The Committee resolved to consider the proposals by the Vice Chancellors Committee and the Council of Chairs on the Universities (Amendment) Bill, 2021 at later date.

MIN. NO. EDUC/2021/220: ANY OTHER BUSINESS

No other business arose.

MIN. NO. EDUC/2021/221: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.18 pm. The next meeting will be held in the afternoon of the same day at 2.30 pm

SIGN



DATE

23/11/2021

HON. FLORENCE MUTUA, CBS, MP

CHAIRPERSON, COMMITTEE ON EDUCATION AND RESEARCH

**MINUTES OF THE 45TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION AND RESEARCH HELD ON WEDNESDAY, 28TH OCTOBER 2021, IN
ENGLISH POINT MARINA HOTEL IN MOMBASA AT 9.30 AM**

PRESENT

1. Hon. Florence M. Mutua, CBS, MP – **Chairperson**
2. Hon. (Dr.) Pamela Ochieng, MP
3. Hon. (Prof.) Zadoc Ogutu, MP
4. Hon. Eric Muchangi, MP
5. Hon. Eve Obara, MBS, MP
6. Hon. Jerusha Momanyi, MP
7. Hon. Joseph Tonui, MP
8. Hon. Omboko Milemba, MP
9. Hon. Peter Lochakapong, MP
10. Hon. (Dr.) Wilson Kogo, MP
11. Hon. (Dr.) Daniel Kamuren Tuitoek, MP
12. Hon. John Paul Mwirigi, MP
13. Hon. Gichuki Mugambi, MP
14. Hon. Mohammed Ali Lokiru, MP

ABSENT WITH APOLOGY

1. Hon. Wambugu Ngunjiri, MP – **Vice- Chairperson**
2. Hon. Geoffrey Odanga, MP
3. Hon. (Eng.) Nzambia Kithua, MP
4. Hon. Jackson Lekumontare, MP
5. Hon. Wilson Sossion, MP

COMMITTEE SECRETARIAT

1. Mr. Philip Lekarkar – Clerk Assistant II
2. Ms. Grace Wahu – Clerk Assistant III
3. Ms. Mercy Wanyonyi – Legal Officer
4. Ms. Catherine Mukunyi – Sergeant At Arms
5. Mr. Collins Mahamba – Audio Officer

STAKEHOLDERS

1. Prof. George Magoha – Cabinet Secretary, Ministry of Education
2. Amb. Simon Nabukwesi – PS State Department for University Education and Research
3. Mr. Darius Mogaka – Director, State Department for University Education & Research
4. Ms. Diana Mutisya – ADB, State Department for University Education and Research
5. Christine Oduogi – PCO, State Department for University Education and Research
6. Mr. Tirimba Machogu – Advisor to the Cabinet Secretary
7. Mr. Simeon Odera – CS office
8. Mr. Shiroya Luke – DDQAS, State Department for University Education and Research
9. Dr. Agnes Mercy Wahome – CEO, Kenya Universities & Colleges Central placement Service
10. Prof. Chacha N Chacha – Chair, Commission for University Education

11. Dr. Geoffrey Monari	- CEO, University Fund Board
12. Prof. Mwenda Ntaragwi	- CEO, Commission for University Education
13. Prof. Sabah Omar	- Chair of Councils of Public Universities/Council Chair SEKU
14. Dr. Rachel Masake	- Council Chair, Rongo University
15. Prof. Geoffrey Muluvi	- Chair, Vice Chancellors Committee/Vice Chancellor, SEKU
16. Prof. Daniel Mugendi	- Vice Chancellor, University of Embu
17. Prof. Teresa Akenga	- Vice Chancellor, University of Eldoret
18. Prof. Francis Aduol	- Vice Chancellor, Technical University of Kenya
19. Prof. Anne Nangulu	- Principal, Bomet University College
20. Prof. Philip Maiyo	- VC UEAB/Ag. Chair, Kenya Association of Private Universities
21. Prof. Washington Okeyo	- Vice Chancellor Management University of Africa
22. Prof. Henry Kiplangat	- VC, Kabarak University
23. Dr. Dina Mwinzi	- Vice Chancellor, KAG EAST University
24. Prof. Robert Gateru	- Vice Chancellor, Riara University
25. Prof. Gideon Maina	- Vice Chancellor Pioneer International University
26. Dr. Vincent Gaitho	- Secretary General, National Association of Private Universities
27. Ms. Grace Nyongesa	- UASU Chairperson
28. Dr. Constatine Wasoga	- Secretary General Universities Academic Staff Union (UASU)
29. Dr. Jumba Kumba	- UASU, Treasurer

MIN. NO. EDUC/2021/222: PRELIMINARIES

The Chair called the meeting to order at 9.50 a.m. A word of prayer was said. The Agenda of the meeting was adopted having been proposed by Hon. (Dr.) Wilson Kogo, MP and seconded by Hon. Eric Muchangi, MP. A round of introductions was done.

MIN. NO. EDUC/2021/223: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO. EDUC/2021/224: SUBMISSIONS FROM THE STAKEHOLDERS

Vice Chancellors Committee of Public Universities

The Cabinet Secretary for Education Prof. George Magoha appeared before the Committee and presented the following submission as regards the Universities (Amendment) Bill.

.	Memoranda Received/proposed amendment	Rationale/Justification
1.	Short title	
2.	Section (2) Definition of Trustees The proposed amendment deletes the definition of "Trustees" in the Act.	The proposed section 53A provides that the Fund will be managed by a Board instead of a Board of Trustees. In the premises, the definition of "Trustees" will serve no purpose since the amendment seeks to establish the Fund as a Body

.	Memoranda Received/proposed amendment	Rationale/Justification
		Corporate where assets and resources will vest in the Fund and not in the Board of Trustees.
3.	<p>Section 5A (4) (b) Approval of Programmes by Commission for University Education</p> <p>The proposed amendment substitutes the word “particular” with the word “public”.</p>	<p>The proposed amendment substitutes the word “particular” with the word “public” as the particular provision relates to public universities. Article 229(5) of the Constitution mandates the Auditor - General to audit and report on the accounts of any entity that is funded from public funds.</p>
4.	<p>Section 10 Deputy Secretary for Commission for University Education</p> <p>The proposed Amendment provides for not more than two Deputies.</p>	<p>The new provision will limit the number of Commission Secretaries to only two.</p>
5.	<p>Section 19 Grant or refusal to grant a Charter</p> <p>The proposed amendment introduces a new proviso.... “Provided that the Cabinet Secretary may, upon request by a University and if satisfied that it is appropriate in the circumstances to do so, extend the Letter of Interim Authority for such further period, not exceeding four years, as the Cabinet Secretary may determine”.</p>	<p>The provision allows the Cabinet Secretary to consider and be satisfied of the circumstances before extending a Letter of Interim Authority.</p>
6.	<p>Section 20 (3) Establishment or declaration of institutions as constituent colleges of a university</p> <p>The proposed amendment provides that the Cabinet Secretary will declare an institution of higher learning to be a constituent college of a university upon recommendation by the Commission.</p>	<p>The proposed amendment is intended to ensure that the Cabinet Secretary will declare an institution of higher learning to be a constituent college of a university only after recommendation by the Commission.</p>
7.	<p>Section 24 Introduction of a new clause</p> <p>The proposed amendment provides that the provisions in Part V of the Act -on management and operations of universities shall apply to specialized degree awarding institutions with relevant modifications.</p>	<p>The amendment is intended to ensure that governance of specialized degree awarding institutions is within the framework of the Universities Act but modifications will be made as necessary. The proposed amendment has already been effected through the Statute Law Miscellaneous</p>

.	Memoranda Received/proposed amendment	Rationale/Justification
		Amendment Act No. 20 of 2020 (refer to Section 24(4) and (5)).
8.	Section 25 (2) Declaration of Technical Universities The amendment provides that institutions that are or were previously National Polytechnics or have the requisite physical facilities and human resource appropriate for a technical university may be declared as technical universities.	The existing section is restrictive as it states that only institutions that are currently National Polytechnics may be declared as technical universities.
9.	Section 26 Universities in counties The provision is deleted but replaced with one that ensures accessibility and viability of university education in all counties.	Universities should be established according to need, accessibility and viability.
10.	Section 28 (4) Publishing of accredited foreign universities The amendment requires publication in at least two newspapers of national circulation and in the Commission's website.	Proposal is intended to remove requirement for the Commission to publish accredited foreign universities in three newspapers to reduce the cost and leverage on technology.
11.	Section 35 (1) (ii) Publishing of University Statutes in the Kenya Gazette The amendment requires University Councils to approve University Statutes and submit them to the Cabinet Secretary for publication in the Gazette.	The amendment requires University Councils to approve University Statutes and submit them to the Cabinet Secretary for publication in the Gazette.
12.	Section 35 (1) (a) (v) Appointment of VCs, DVCs, Principals and Deputy Principals of Constituent colleges The proposal provides for competitive recruitment of Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges through a selection panel appointed by the Cabinet Secretary. The Cabinet Secretary shall appoint one candidate out of three names of qualified persons forwarded by the selection panel.	The Proposal is intended to harmonize the procedure for appointment Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges and to ensure transparency and accountability.
13.	Section 36 Councils of Public University The amendment requires chairpersons to have a Masters degree and 15 years' experience in a senior management	The amendment provides for qualifications for the chairpersons and members of

.	Memoranda Received/proposed amendment	Rationale/Justification
	position or Bachelor's degree and twenty years' experience in a senior management position while members should have Masters degree and ten years' experience in a senior management position or a Bachelor's degree and twenty years' experience in a senior management position	councils to ensure that they possess the necessary leadership and managerial competencies to provide strategic direction in the universities.
14.	Section 36 A Introduction of a new sub-section A new provision is introduced allowing the Cabinet Secretary to revoke appointment, transfer and deploy members of councils, review or vacate council decisions and give approval to a council seeking to meet more than four times a year.	The amendment provides for qualifications for the chairpersons and members of councils to ensure that they possess the necessary leadership and managerial competencies to provide strategic direction in the universities.
15.	Section 36 (5) Term of Council members The provision for some council members to serve for three years and others for four years is deleted and substituted with a new provision for council members to serve for a period of three years and for appointment to be staggered so that their terms of office expire at different times.	Staggered appointments will ensure continuity in the activities of the council.
16.	Section 38 Appointment of Chancellor The amendment is intended to revert to the previous provisions on the procedure for appointing Chancellors through the Alumni Association and the Senate.	The amendment is intended to ensure adequate public participation and allow the stakeholders in the Sector to identify suitable persons to be titular heads of public universities
17.	Section 39 (1) (a) of VCs, DVCs, Principals and Deputy Principals of Constituent colleges The proposal provides for competitive recruitment of Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges through a selection panel appointed by the Cabinet Secretary. The Cabinet Secretary shall appoint one candidate out of three names of qualified persons forwarded by the selection panel.	The Proposal is intended to harmonize the procedure for appointment Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges and to ensure transparency and accountability.

.	Memoranda Received/proposed amendment	Rationale/Justification
18.	<p>Section 39 Introduction of a new sub-section</p> <p>The proposal provides for the Vice Chancellor of a public university to be supported in the execution of his or her duties by not more than three Deputy Vice Chancellors</p>	The proposal provides for the Vice Chancellor of a public university to be supported in the execution of his or her duties by not more than three Deputy Vice Chancellors
19.	<p>Section 47 (2) Submission of account to the Auditor General</p> <p>The amendment provides for submission of accounts to the Auditor General within three months from the end of each financial year.</p>	The amendment provides for submission of accounts to the Auditor General within three months from the end of each financial year.
20.	<p>Section 54 Universities Fund</p> <p>The proposed amendment provides for establishment of a Universities Fund Board instead of a Board of Trustees to manage the Fund.</p>	The proposed amendment provides for establishment of a Universities Fund Board capable of transacting business as a body corporate and where assets and resource will vest in the Fund and not in the Board of Trustees.
21.	<p>Section 55 (3) Composition of KUCCPS</p> <p>The amendment reduces the number of members, provide for additional independent members and for the CEO to be a member of the Board of KUCCPS.</p>	The amendment is intended to reduce membership and to comply with the relevant legal provisions on membership and composition of State Corporations.
22.	<p>Section 56 Introduction of new sub-sections</p> <p>The proposed amendment introduces a new subsection requiring each participating university to submit a list of government and self-sponsored students enrolled in the universities to the KUCCPS Board within thirty days from the date of closure of the enrollment of students to the university and for the KUCCPS Board to submit the information to the Universities Fund within fourteen days of receipt thereof.</p>	The proposal is intended to ensure accountability.
23.	<p>Section 61A</p> <p>Section is 61A deleted.</p>	The proposed amendment is intended to allow for the instruments of accreditation to be applied with relevant modifications.

	Memoranda Received/proposed amendment	Rationale/Justification
24.	Second Schedule The amendment revokes the Second Schedule and replaces it with a new one introducing the previous provisions on the procedure for appointing Chancellors through the Alumni Association and the Senate.	The amendment is intended to ensure adequate public participation and allow the stakeholders to identify suitable persons to be Chancellors of public universities.
25.	Introduction of Fourth Schedule The amendment introduces the Fourth Schedule to the Act which outlines the procedure for appointing Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges through a selection panel constituted by the Cabinet Secretary.	The proposal to have Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges appointed through a selection panel is intended to ensure inclusivity in appointments, transparency and accountability.

The Cabinet Secretary further submitted that the mode of election of university student leaders should be through universal suffrage.

Submission by National Association of Private Universities in Kenya (NAPUK)

The National Association of Private Universities in Kenya proposed the following amendment to the Universities Act.

Clause 11	Proposed Amendment	Justification
Qualification for appointment as Commission Secretary 1(b) Has at least ten years experience in the management of a university	Delete of a University to read Has ten years experience in a senior management position.	The focus on management of a university only is limiting as it excludes other would be qualified persons working outside university environment but with similar experience and management competences such as in Research Institutions, Foundations and other corporate institutions supporting higher education not to mention officers who have diligently worked and grown their career in institutions such as like Commission for University Education.

NAPUK further submitted that proposed amendment enhances continuous opening of the university space to career managers who will infusing in it corporate management systems that will not only inject efficiency but also guarantee sustainability.

Submission by Universities Academic Staff Union (UASU)

The Universities Academic Staff Union Secretary General submitted the following on behalf of the Union:-

University Vice Chancellor

	Current Provision	Proposed Amendment under the Bill	Comment
1	The Vice-Chancellor 39. (1) The Vice-Chancellor of a university shall be appointed— (a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council;	The Vice-Chancellor 39. (1) The Vice-Chancellor of a university shall be appointed—(a) in the case of a public university, by the Cabinet Secretary after a competitive process conducted in the manner provided in the Fourth Schedule	<i>To enhance transparency, meritocracy and competitiveness, UASU should be represented in the Selection Panel in line with international best practices.</i> <i>The provisions of the Proposed Fourth Schedule should be amended to include an UASU nominee as a member of the Selection Panel the positions of Vice-Chancellor, Deputy Vice-Chancellors, Principals and Deputy Principals.</i>
2	The Vice-Chancellor 39 (3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years.	The Vice-Chancellor 39 (3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years upon satisfactory performance.	<i>The Vice-Chancellor of a public university should serve a 5 - year term renewable once upon satisfactory service.</i>

University Council Members

	Current Provision	Proposed Amendment under the Bill	Comment
3	Council of a public university 36. (1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—	—	<i>The Universities Academic Staff Union (UASU) should nominate a representative to the University Council.</i> Representation by academic staff in the Council is practice that was available in the statutes that were repealed by the Universities Act 2012 and is a good practice world wide.

4	No equivalent provision	36A. (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or transfer or otherwise deploy the chairperson or any member of any Council. (2) Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision.	Delete The amendment appears to give the CS too much authority that seems to interfere with the mandate of the council. However as the appointing authority the CS must have control over certain decisions that the council makes.
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3. Universities in Counties

	Current Provision	Proposed Amendment under the Bill	Comment
1	Universities in Counties 26. The Commission shall ensure the establishment of public universities in each of the Counties, giving priority to Counties that do not have universities immediately after following the coming into force of this Act.	26. The Commission shall ensure accessibility of public universities by all counties, giving priority to viability and equitability in the distribution of public universities across the country	<i>Retain the current provision (reject the proposed provision).</i> <i>The proposed amendment:</i> (i) affects Counties and should therefore be considered by Senate in addition to the National Assembly; (ii) will open the door to merger of public universities in violation of pre-existing Court Orders; (iii) favours counties with established public universities

4. Differentiated Unit Costs

	Current Provision	Proposed Amendment under the Bill	Comment
	Section 54 (4) The function of the Trustees shall be to generally manage the University Fund established under section 53, and more particularly to—	Section 54(9) (e) establish the minimum discipline differentiated remuneration for academic staff of public universities with the advice of the Salaries and Remuneration Commission, which shall	<i>Delete the sub-sections in the current provision (in the Principal Act) and reject the proposed amendment</i> <i>Rationale:</i> <i>As explained above the Differentiated Unit Cost Model seeks to entrench a form of</i>

	<p>(d) in consultation with the Chairpersons of Councils of public universities, propose and establish for approval by the Cabinet Secretary and the Auditor-General the maximum differentiated unit cost for the programmes offered;</p> <p>(e) establish the minimum discipline differentiated remuneration for academic staff of universities, which shall be fair and globally competitive, and advise the Government accordingly;</p>	<p>be fair and competitive, and advise the Cabinet Secretary accordingly;</p>	<p><i>financial apartheid in funding of universities. The model has failed and is not based on any agreed formula.</i></p> <p><i>There should be delinking of KUCCPS and the Universities Fund (the Universities Funding Board) to avoid the practice of some universities manipulating (“gaming”) the admissions system and student capacity to subvert the funding formula (DUC is particularly susceptible to this type of manipulation).</i></p> <p><i>The sections further seek to destroy the right of workers to collectively bargain which is guaranteed under Art 41 of the Constitution of Kenya 2010.</i></p>
	<p>Section 54 (4)</p> <p>(b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;</p>	<p>Section 54(9)</p> <p>(b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;</p> <p>(c) apportion funds allocated by the national government to public universities and issue conditional grants to private universities;</p>	<p><i>Delete the phrase “and issue conditional grants to private universities;” in the current provisions (of the Principal Act) and reject the proposed provisions.</i></p> <p>Rationale: <i>Public funds should not be used to generate profits for profit making private universities.</i></p> <p><i>Public universities have requisite capacity to train all government-sponsored students.</i></p> <p><i>Tax payers should only sponsor students in the public universities.</i></p> <p><i>Student who opt to undertake education at private universities should do so under self-sponsorship.</i></p> <p><i>Moreover there is no framework to enable the Office of the Auditor General hold private universities accountable for such public funds.</i></p>

<p>Section 55(3) The Service shall be governed by the Placement Board which shall consist of thirteen members appointed by the Cabinet Secretary as follows— (g) two Vice-Chancellors representing Private Universities;</p>	<p>Section 55(3) The Service shall be governed by the Placement Board which shall consist of— (e) the Chief Executive of the TVETA; and (f) six other persons appointed by the Cabinet Secretary, being— (ii) one Vice Chancellor representing private universities;</p>	<p><i>Delete the requirement for representation of private universities in KUCCPS under the current provisions in the Principal Act, and reject the proposed provisions.</i></p> <p>Rationale: <i>As already explained above, public universities have requisite capacity to train all government-sponsored students, eliminating private interests in placement to students in public universities.</i></p> <p><i>Moreover, there should be delinking of KUCCPS and the Universities Fund (the Universities Funding Board) to avoid the practice of some universities manipulating ("gaming") the admissions system and student capacity to subvert the funding formula (DUC is particularly susceptible to this type of manipulation).</i></p>
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Further submission

1. In relation to the appointment of Chancellors, the current provisions which require involvement of the Senate and alumni associations should be retained. However, the Public Service Commission should have no role, and three candidates, ranked in order of merit, should be forwarded by the Senate through the University Council to the Cabinet Secretary and eventually the President who shall pick one of the persons for appointment.
2. Regarding election of student leaders, UASU supports free, fair and transparent election of student leaders without interference from the management of the university.
3. If enacted, the proposed amendments would have a significant impact on the governance of public universities, and the Union accordingly requests Parliament to take into account the recommendations detailed above.

Committee Resolution

The Committee resolved to consider the proposals by the Vice Chancellors Committee and the Council of Chairs on the Universities (Amendment) Bill, 2021 at later date.

MIN. NO. EDUC/2021/225: ANY OTHER BUSINESS

No other business arose.

MIN. NO. EDUC/2021/226: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.45 pm. The next meeting will be held on notice.

SIGN



DATE

23/11/2021

HON. FLORENCE MUTUA, CBS, MP

CHAIRPERSON, COMMITTEE ON EDUCATION AND RESEARCH

**MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION AND RESEARCH HELD ON FRIDAY, 19TH NOVEMBER 2021, IN BOMA
INN HOTEL, NAIROBI AT 9.30 AM**

PRESENT

1. Hon. Florence M. Mutua, CBS, MP – **Chairperson**
2. Hon. (Prof.) Zadoc Ogutu, MP
3. Hon. (Eng.) Nzambia Kithua, MP
4. Hon. Eric Muchangi, MP
5. Hon. Joseph Tonui, MP
6. Hon. Jackson Lekumontare, MP
7. Hon. (Dr.) Wilson Kogo, MP
8. Hon. (Dr.) Daniel Kamuren Tuitoek, MP
9. Hon. John Paul Mwirigi, MP
10. Hon. Gichuki Mugambi, MP

ABSENT WITH APOLOGY

1. Hon. Wambugu Ngunjiri, MP – **Vice- Chairperson**
2. Hon. Geoffrey Odanga, MP
3. Hon. (Dr.) Pamela Ochieng, MP
4. Hon. Eve Obara, MBS, MP
5. Hon. Jerusha Momanyi, MP
6. Hon. Peter Lochakapong, MP
7. Hon. Omboko Milemba, MP
8. Hon. Wilson Sossion, MP
9. Hon. Mohammed Ali Lokiru, MP

COMMITTEE SECRETARIAT

1. Mr. Philip Lekarkar – Clerk Assistant II
2. Ms. Grace Wahu – Clerk Assistant III
3. Ms. Mercy Wanyonyi – Legal Officer
4. Ms. Catherine Mukunyi – Sergeant at Arms
5. Mr. Collins Mahamba – Audio Officer

MIN. NO. EDUC/2021/240: PRELIMINARIES

The Chair called the meeting to order at 9.40 a.m. A word of prayer was said. The agenda of the meeting was adopted having been proposed by Hon. (Eng.) Nzambia Kithua, MP and seconded by Hon. (Dr.) Daniel Kamuren Tuitoek, MP. A round of introductions was done.

MIN. NO. EDUC/2021/241: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO. EDUC/2021/242: CONSIDERATION OF THE REPORT ON THE UNIVERSITIES (AMENDMENT) BILL, 2021 SPONSORED BY THE LEADER OF MAJORITY PARTY HON. (DR.) AMOS KIMUNYA, EGH, MP

The Committee considered the Report on the Universities (Amendment) Bill, 2021 sponsored by the Leader of Majority Party Hon. (Dr.) Amos Kimunya, EGH, MP and the Bill clause by clause and made the following observations and recommendations:-

COMMITTEE OBSERVATIONS

The Committee observed as follows: -

1. The proposed amendment which is intended to ensure that governance of specialized degree awarding institutions is within the framework of the Universities Act has already been effected through the Statute Law Miscellaneous Amendment Act No. 20 of 2020;
2. To enhance accessibility to university education, it's imperative that each county has a public university as provided for in the Act;
3. Section 23 of the Act should be amended to ensure that the Cabinet Secretary publishes in the Gazette within 90 days from the date of submission failure of which the Statutes become effective to avoid inordinate delay of *gazettement* of statutes;
4. The focus on management of a university only for appointment as Commission Secretary is limiting as it excludes other would be qualified persons working outside university environment but with similar experience and management competences like officers working in institutions such as the Commission for University Education;
5. The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University. It is also important to ensure that the qualifications of Council Chair match that of the senior management;
6. Councils like any other public Board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council;
7. The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Universities Fund Board will resonate with their role as the Chief Executive Officers of the respective Universities.
8. Councils of public universities should retain the function of appointing Principals and Deputy Principals of Constituent Colleges through an internal mechanism.

COMMITTEE RECOMMENDATIONS

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clause immediately after clause 3—

- | | |
|---|---|
| Amendment
of section 6
of No.42 of
2012. | 3A. Section 6 of the principal Act be amended—
(a) by deleting paragraph (f) and substituting therefor the following new paragraph—
(f) one person nominated by public universities in a forum of Vice-Chancellors of public universities;
(b) by deleting paragraph (g) and substituting therefor the following new paragraph—
(g) one person nominated by private universities in a forum of Vice-Chancellors of private universities; |
|---|---|

Justification: The mounting and quality of academic programmes is the primary function of Senate. The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College.

THAT, the Bill be amended by inserting the following new clause immediately after clause 6—

- | | |
|--|--|
| Amendment
of section
23 of No.42
of 2012. | 6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —
(3)The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i> .
(4) Notwithstanding subsection (3), a statute or a regulation of a university shall come into force after the lapse of three months after submission to the Cabinet Secretary for publication in the <i>Gazette</i> . |
|--|--|

Justification: Statutes are approved internal administrative instruments by which Councils manage respective universities. Consequently, they are required to be operationalized as soon as possible.

CLAUSE 7

THAT the Bill be amended by deleting clause 7.

Justification: The proposed amendment has already been effected in the Universities Act through the Statute Law Miscellaneous Amendment Act No. 20 of 2020 (refer to Section 24(4) and (5)).

CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefore the following new clause—

Universities in counties. The principal Act is amended by repealing section 26 and replacing it with the following new section —

26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country.

Justification: To enhance accessibility to university education, it's imperative that the Commission establishes public universities taking into consideration their viability.

CLAUSE 11

THAT clause 11 of the Bill be amended in the proposed amendment to section 35 by deleting paragraph (b) and substituting therefor the following new paragraph—

- (b) deleting paragraph (v) and substituting therefore the following new paragraph—
 - (v) in the case of a public university, appoint Principals and Deputy Principals of Constituent Colleges after a competitive process conducted in the manner provided in the Second Schedule

Justification: To ensure that the Councils of public universities retain the function of appointing Principals and Deputy Principals of Constituent Colleges through an internal mechanism.

CLAUSE 12

THAT, clause 12 of the Bill be amended in the proposed amendment to section 36(2) of the principal Act by—

- (a) deleting paragraph (a) and substituting therefore the following new paragraph—
 - (a) in the case of a chairperson, the person holds a doctorate degree from a university recognized in Kenya and has at least fifteen years' experience in a senior management position or research;
- (b) by inserting the words “at least” immediately before the word “holds” appearing in paragraph (b);

Justification: The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University. It is also important to ensure that a member of the Council has at least a Master's degree.

CLAUSE 13

THAT clause 13 of the Bill be amended in the proposed new section 36A by—

- (a) deleting subsection (1) and substituting therefor the following new subclause—
 - (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to any Council of a public university;
- (b) deleting subsection (2)

Justification: Councils like any other public Board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council.

CLAUSE 14

THAT clause 14 of the Bill be amended—

- (a) in the proposed amendment to section 39(3) by inserting the words “as appraised by the Council” immediately after the words “satisfactory performance” appearing in paragraph (b);
- (b) in the proposed amendment to section 39(5) by deleting the words “appointment of” appearing in paragraph (c);

Justification: To ensure that the procedure for appointment of Vice-Chancellors and Deputy Vice-Chancellors as prescribed in the Fourth Schedule is not applicable to Principals and Deputy Principals of University colleges and Constituent Colleges. Further to ensure that appraisal is done by the Council of a university.

NEW

THAT, the Bill be amended by inserting the following new clause immediately after clause 14—

14A. Section 41 of the principal Act be amended by—

- (a) inserting the following new subsection immediately after subsection (1B)-
(1BA) A person shall be eligible to stand for election as a member of a student’s council if the person is in good academic standing;
- (b) deleting subsection (1C);
- (c) deleting subsection (1D);
- (d) deleting subsection (1E);

Justification: To provide for election to the student’s council through election by the students’ association comprising of all students as opposed to electoral colleges. Further, to ensure that in order to qualify to stand for election, one must be in good academic standing.

CLAUSE 18

THAT clause 18 of the Bill be amended by—

- (a) deleting the word “competitively” appearing in paragraph (e);
- (b) deleting paragraph (g) and substituting therefor the following new paragraph—
 - (g) one person nominated by public universities in a forum of Vice-Chancellors of public universities;
- (c) deleting paragraph (h) and substituting therefor the following new paragraph—
 - (h) one person nominated by private universities in a forum of Vice-Chancellors of private universities;
- (d) in the proposed new section 54(9) by—
 - (i) inserting the following new paragraph immediately after paragraph (c) —
 - (ca) apportion funds allocated by the national government to private universities for tuition fees for government sponsored students in kenyan universities;

- (ii) inserting the words “to ensure equity in the funding of all government sponsored students in public and private universities” immediately after the words “subject area” appearing in paragraph (d);

Justification: The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities. Further, the amendment seeks to expressly provide for an additional function of the University Fund Board to provide for funds allocated by the national government for tuition fees for government sponsored students in Kenyan universities

CLAUSE 19

THAT, clause 19 of the Bill be amended 54A by inserting the following new sub clause immediately after sub clause (1)-

- (1A) The Chief Executive Officer of the Fund shall hold office for a term of five years and shall be eligible for reappointment for one further term of five years.

Justification: To provide for the term of office of the Chief Executive Officer of the Fund which had not been provided for in the Bill.

CLAUSE 21

THAT clause 21 of the Bill be amended in subsection (3) by-

- (a) deleting the word “six” appearing in the opening statement to paragraph (f) and substituting therefor with the word “two”;
- (b) inserting the words “nominated by a forum of Vice-Chancellors of public universities” immediately after the word “universities” appearing in paragraph (f)(i);
- (c) inserting the words “nominated by a forum of Vice-Chancellors of private universities” immediately after the word “universities” appearing in paragraph (f)(ii);
- (d) inserting the following new paragraph immediately after paragraph (e);
 - (ea) one representative of the Kenya Association of Technical Institutions;
- (e) renumbering paragraph (f)(iv) as paragraph (eb);
- (f) deleting paragraph (f)(iv) and substituting therefor with the following new paragraph-
 - (iv) one member with ten years’ experience in management of education;
- (g) renumbering paragraph (f)(v) as paragraph (g).

Justification: To provide clarity on the years of experience required in management of education to qualify to be appointed by the Cabinet Secretary in the Board of the Kenya Universities and Colleges Central Placement Service. To further ensure that the Vice-Chancellors appointed by the Cabinet Secretary are nominated by the Vice-Chancellors forum.

FIRST SCHEDULE

THAT, the Fourth Schedule to the Bill be amended—

- (a) by deleting the words “**PRINCIPALS AND DEPUTY PRINCIPALS**” appearing in the heading;

Justification: To ensure the Fourth Schedule is only applicable to the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities.

- (b) in paragraph 1 by deleting the words “ or Principal and Deputy Principal of a Constituent College, the Cabinet Secretary” appearing after the words “public university” and substituting therefore the words “the Council”;

Justification: To ensure that the Selection panel for the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities is constituted by the Council of a university and not the Cabinet Secretary who appoints.

- (c) in paragraph 2 (1) by—
- (i) deleting the phrase “subsection(2) and substituting therefor the phrase “subsection (1);
 - (ii) deleting subparagraph (a) and substituting therefor the following new subparagraph—
 - (a) a chairperson being a scholar with the rank of a full professor;
 - (iii) deleting subparagraph (b)

Justification: To ensure that the Chairperson of the selection Panel is a scholar with the highest academic rank and also to ensure that the Council is not represented in the Selection Panel as it constitutes the same.

- (d) in paragraph 4 by—
- (i) deleting the word “three” appearing in sub paragraph (c) and substituting therefore the word “five”;
 - (ii) by deleting the words “Cabinet Secretary” appearing in sub paragraph (d) and substituting therefor the word “Council”;
 - (iii) inserting the following new paragraph immediately after sub paragraph 4—

4A. The Council shall, within seven days of receipt of the names forwarded under paragraph (4)(c), identify three qualified applicants for each vacant position and forward the names to the Cabinet Secretary.

Justification: To ensure that the Selection Panel submits five names of qualified applicants as opposed to three to the Council which in turn submits three names to the Cabinet Secretary for appointment.

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately after the First Schedule—

**PROCEDURE FOR THE RECRUITMENT AND APPOINTMENT
OF PRINCIPALS AND DEPUTY PRINCIPALS**

- (1) Where a vacancy occurs in the office of the Principal or Deputy Principal of a constituent college, the Council of that university shall constitute a selection panel consisting of –
- (a) a chairperson being the chairperson of the University Council;
 - (b) a representative of the Principal Secretary for the time being responsible for university education;
 - (c) a representative of the Principal Secretary for the time being responsible for finance;
 - (d) two representatives, being one man and one woman, nominated by the University Senate;
 - (e) a distinguished professor of the university; and
 - (f) the Vice-Chancellor of the university.
- (2) The selection panel may regulate its own procedure.
- (3) The selection panel shall—
- (a) advertise for the vacancies and publicize the applicants and shortlisted candidates;
 - (b) conduct interviews of the short listed candidates;
 - (c) identify three qualified applicants for the position of Principal or Deputy Principal; and
 - (d) forward the names of the qualified applicants under paragraph (c) to the Council.
- (5) The Council shall, within fourteen days of receipt of the names forwarded under paragraph (3)(d), in consultation with the Cabinet Secretary appoint the Principal or Deputy Principal from among the three qualified applicants.
- (7) The selection panel shall stand dissolved upon the appointment of the Principal or Deputy Principal under paragraph (5).

Justification: To provide for the procedure for appointment by the Council of a university of Principals and Deputy-Principals of Constituent Colleges


The Report was unanimously adopted having been proposed by Hon. Hon. (Dr.) Daniel Kamuren Tuitoek, MP and seconded by Hon. (Eng.) Nzambia Kithua, MP

MIN. NO. EDUC/2021/243: ANY OTHER BUSINESS

No other business arose.

MIN. NO. EDUC/2021/244: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.45 pm. The next meeting will be held on notice.

SIGN  DATE 23/11/2021
HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, COMMITTEE ON EDUCATION AND RESEARCH

**ADVERTISEMENTS
INVITING
SUBMISSIONS OF
MEMORANDA**





**THE STANDARD SACCO
SOCIETY LIMITED**
Umoja ni Nguvu

EXPRESSION OF INTEREST

SUPPLY, DELIVERY, TRAINING, IMPLEMENTATION AND COMMISSIONING OF SACCO MANAGEMENT SYSTEM

The Standard Sacco Society Limited, a duly registered Sacco, with its head office at The Standard Group Centre along Mombasa Road with over 700 members intends to invite expression of interest for the Supply, Delivery, Training, Implementation and Commissioning of a SACCO Financial Management System from suitably qualified interested bidders.

1. Objective

To have a reliable SACCO Management System that will maintain the members register, monitor and keep records of members' savings, loans, withdrawals, deposits and reporting.

2. Scope of Work

The successful bidder will be expected to provide technical and system support of the system, but not limited to:

- Effective access and security controls over records with an unalterable history/audit trail.
- Working closely with the sacco secretariat in the development, testing and deployment of the application software and subsequent maintenance of the system.
- Deployment of qualified and experienced personnel for the above tasks.
- Deployment of qualified staff to train office SACCO personnel.
- Compliance with SASRA regulations on NDT Saccos

3. Mandatory Requirement

- Company profile, registration, regulatory and compliance certificates.
- Evidence of capability to successful implementation of sacco financial management system by providing CVs of key personnel.
- Provide a technical approach and work plan to support the implementation of the system.
- EOLs will be assessed against the Vendor's capability of meeting the above outlined objectives and the information documents set out under Clauses 1 and 2 above.
- Evidence of Implementation of a sacco financial system of similar scope in the past three years (certified references will be an added advantage)
- Copies of certified audited accounts for the last three years

Application process

Applications can be hand delivered to the Sacco offices at The Standard Group Centre, along Mombasa Road or emailed to armedia.co.ke.

Applications to be addressed as 'The Standard Sacco Financial Management System 2021' to

The Sacco Accountant
The Standard Sacco Society Limited
P.O. Box 30080-00100
NAIROBI

The Sacco reserves the right to accept or reject the expression of interest without reasons.

Deadline for submission is 5.00 pm on Tuesday, 21st September 2021.

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bulk produce
hassle free!**

Introducing **VUUNA**, the wholesale marketplace for fresh produce, a joint project by **Standard Group's FarmKenya** and **AGIN** for wholesale buyers looking for reliable bulk supply of agricultural commodities!



Vuuna Market connects wholesale buyers to a network of reliable bulking centers countrywide, with benefits including:

- ✓ Better prices
- ✓ Guaranteed quality for agricultural commodities bought.
- ✓ Ability to stabilize market prices of sold commodities.
- ✓ Provision of information (prices listed on www.vuuna.co.ke)
- ✓ Standardized weights and measures for produce.

If you are a farmer looking to supply your produce at competitive prices, you can get in touch with the closest bulking center near you by emailing us on farmkenya@standardmedia.co.ke

FarmKenya. Working to secure your growth.

STANDARD GROUP

farmkenya

AGIN



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
and

In the Matter of Consideration by National Assembly of:-

1. The Sustainable Waste Management Bill, 2021 (National Assembly Bill No. 22 of 2021)
2. The National Disaster Risk Management Bill, 2021 (National Assembly Bill No. 28 of 2021)
3. The Public Procurement and Asset Disposal (Amendment) Bill 2021 (National Assembly Bill No. 32 of 2021)
4. The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021)
5. The Public Procurement and Asset Disposal (Amendment) Bill, 2021 (National Assembly Bill No. 36 of 2021)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bills.

The Sustainable Waste Management Bill, 2021 (National Assembly Bill No. 22 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to establish the legal and institutional framework for the sustainable management of waste; ensure the realization of the constitutional provision on the right to a clean and health environment and for connected purposes.

The National Disaster Risk Management Bill (National Assembly Bill No. 28 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to establish the National Disaster Risk Management Authority and County Disaster Management Committees, to provide a legal framework for the coordination of disaster risk management activities and for connected purposes.

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to amend the Public Procurement and Asset Disposal Act to address the challenges faced by procuring entities in implementing the Act including the multiple awards of contracts in the wake of sections 82 and 86 of the Act.

The Universities (Amendment) Bill (National Assembly Bill No. 35 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to amend the Universities Act in the provisions relating to the appointment of the members of University Councils, and the governance of universities and also to make new provisions with respect to the Universities Fund.

The Public Procurement and Asset Disposal (Amendment), Bill (No.2)(National Assembly Bill No. 36 of 2021) sponsored by Hon. Gladys Wanga, CBS, M.P. Chairperson, Departmental Committee on Finance & National Planning seeks to amend the Public Procurement and Asset Disposal Act, 2015 to subject the open tender method of procurement to a two-envelope bid process.

The Bill further seeks to amend the maximum prescribed period for evaluation of open tender from the current thirty (30) days to thirty business days, and to waive requirements on bidders to provide evidence of compliance with tender criteria to reduce the current reliance on technicalities to disqualify bidders during tender evaluation.

The Bills were Read a First Time on 1st September 2021 and Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:

SCHEDULE

No.	Bill	Committee
1.	The Sustainable Waste Management Bill, 2021 (National Assembly Bill No.22 of 2021)	Environment and Natural Resources
2.	The National Disaster Risk Management Bill, 2021 (National Assembly Bill No. 28 of 2021)	Administration and National Security
3.	The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 Of 2021)	Finance and National Planning
4.	The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021)	Education and Research
5.	The Public Procurement and Disposal (Amendment) Bill No.2 (National Assembly Bill No.36 of 2021)	Finance and National Planning

Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed 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 21st September, 2021 at 5.00 p.m.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
6th September 2021

FarmKenya



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
and
In the Matter of Consideration by National Assembly of:-

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MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
6th September 2021



SUPPLIER PREQUALIFICATION NOTICE 2021-2023

Action Against Hunger (AAH) has been operational in the arid and semi-arid lands of Kenya for more than 15 years implementing health and nutrition, water, sanitation, and hygiene, food security, and livelihoods programs in West Pokot, Isiolo, and Mandera Counties. AAH seeks to invite interested and eligible organizations to submit applications for the prequalification of suppliers for supply of goods, services and works for the period 2021/2023 for the following categories.

NO	CATEGORY DESCRIPTION	NAIROBI	RURAL
SUPPLY OF GOODS			
1	Supply of pipes and fittings	Nairobi	West Pokot, Mandera, Isiolo
2	Supply of water, sanitation and hygiene (WASH) equipment	Nairobi	N/A
3	Supply of water, sanitation and hygiene (WASH) emergency items	Nairobi	N/A
4	Supply of general hardware items, electricals, tools and plumbing materials (inclusive of farm and industrial tools and equipment)	Nairobi	West Pokot, Mandera, Isiolo
5	Supply of relief non-food items	Nairobi	N/A
6	Supply of relief food items	Nairobi	N/A
7	Supply of standard MUAC tapes (Calibrated and Non-Calibrated)	Nairobi	N/A
8	Supply of pharmaceutical products	Nairobi	N/A
9	Supply of medical equipment and surgical supplies (non-pharmaceuticals)	Nairobi	N/A
10	Supply of nutrition supplies	Nairobi	West Pokot, Mandera, Isiolo
11	Supply of agricultural tools and equipment	Nairobi	West Pokot, Mandera, Isiolo
12	Supply of agricultural inputs	Nairobi	West Pokot, Mandera, Isiolo
13	Supply of small-scale livestock and poultry	Nairobi	N/A
14	Supply of customized tents	Nairobi	West Pokot, Mandera, Isiolo
15	Supply of general office stationery	Nairobi	N/A
16	Supply of bottled water and water dispensers	Nairobi	N/A
17	Supply of office furniture and equipment	Nairobi	N/A
18	Supply, installation and maintenance of generators (country wide)	Nairobi	N/A
19	Supply, installation and maintenance of ICT equipment	Nairobi	N/A
20	Supply, installation and maintenance of CCTV, access control and intruder alarms	Nairobi	N/A
21	Supply of audio-visual equipment including screens, projectors and related equipment	Nairobi	N/A
22	Supply and delivery, repair, maintenance and servicing of telecommunication, radio communication and equipment and accessories	Nairobi	N/A
23	Supply of laptops, phones and computers	Nairobi	N/A
24	Supply of computer hardware, printers, scanners and related items and preventative maintenance	Nairobi	N/A
25	Supply of electronic equipment	Nairobi	N/A
26	Supply of genuine toners and cartridges	Nairobi	N/A
27	Supply of corporate gift items	Nairobi	N/A
28	Supply of branded promotional items (non-paper based)	Nairobi	N/A
29	Supply of branded promotional items (paper based)	Nairobi	N/A
30	Supply of motor vehicle spare parts	Nairobi	N/A
31	Supply of motor vehicle fuel (diesel and petrol), fuel cards and lubricants	Nairobi	N/A
32	Supply of motor vehicle and truck tyres and tubes	Nairobi	N/A
PROVISION OF SERVICES			
33	Provision of mechanical engineering consultancy services	Nairobi	N/A
34	Provision of electrical engineering consultancy services	Nairobi	N/A
35	Provision of civil structural engineers	Nairobi	West Pokot, Mandera, Isiolo
36	Provision of quantity surveyor (QS) services	Nairobi	West Pokot, Mandera, Isiolo
37	Provision of water supply and installation, servicing of irrigation pipes and fittings	Nairobi	West Pokot, Mandera, Isiolo
38	Provision of civil works in building construction services	Nairobi	West Pokot, Mandera, Isiolo
39	Provision of borehole drilling, electromechanical works and rehabilitation services	Nairobi	West Pokot, Mandera, Isiolo
40	Provision of borehole drilling services	Nairobi	West Pokot, Mandera, Isiolo
41	Provision of irrigation system construction services	Nairobi	West Pokot, Mandera, Isiolo
42	Provision of construction services for earth dams, earth pans and heavy works	Nairobi	West Pokot, Mandera, Isiolo
43	Provision of pipe laying, civil works and general building works	Nairobi	West Pokot, Mandera, Isiolo
44	Provision of hydrogeological services and borehole advisory	Nairobi	N/A
45	Provision of security guard services	Nairobi	N/A
46	Provision of garbage disposal services	Nairobi	N/A
47	Provision of audit services	Nairobi	N/A
48	Provision of legal services	Nairobi	N/A
49	Provision and maintenance of fire extinguishers	Nairobi	N/A
50	Provision of travel agency services, air ticketing and travel arrangements (IATA registered only)	Nairobi	West Pokot, Mandera, Isiolo
51	Provision of hotel, accommodation and conference facilities	Nairobi	N/A
52	Provision of photography, videography, interpretation equipment and services	Nairobi	N/A
53	Provision of digital communication, design and proof reading services	Nairobi	N/A
54	Provision of asset valuation and disposal services	Nairobi	N/A
55	Provision of printer maintenance service and repairs	Nairobi	N/A
56	Provision of internet and allied services	Nairobi	N/A
57	Provision of insurance services (underwriters only) From January 2022 - December 2023	Nairobi	N/A
58	Provision of insurance brokerage services - From January 2022 - December 2023	Nairobi	N/A
59	Provision of fumigation, pest control sanitary and general cleaning services	Nairobi	N/A
60	Provision of catering services	Nairobi	N/A
61	Provision of courier and freight services - intra-city and international	Nairobi	N/A
62	Provision of clearing and forwarding services	Nairobi	West Pokot, Mandera, Isiolo
63	Provision of car hire, lease and taxi services	Nairobi	N/A
64	Provision of car tracking services	Nairobi	N/A
65	Provision of transport services (commercial trucks)	Nairobi	N/A
66	Provision of garage services: repair and service of motor vehicle and motorcycles	Nairobi	N/A
67	Provision of consultancy services on program implementation, monitoring, assessment and reporting	Nairobi	N/A
68	Provision of research, survey and media monitoring services	Nairobi	N/A
69	Provision of event management services and entertainment services, PA system, audio-visuals display boards	Nairobi	N/A
70	Provision of internal and external branding services	N/A	West Pokot, Mandera, Isiolo
71	Provision of veterinary drug and administration services	Nairobi	N/A

The supplier prequalification exercise will be conducted online via:



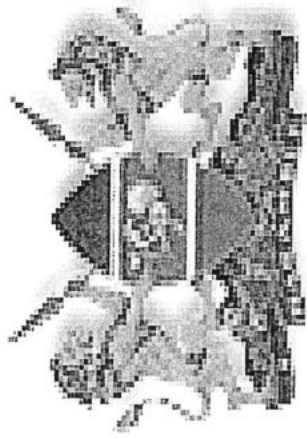
Tendersure™ platform is secure, transparent and provides an efficient prequalification process. Interested suppliers may access and register on www.tendersure.co.ke under "Available Jobs" tab. Please be careful to choose the correct location(s) after logging in to enable you pick the category(s) to participate in. Access to the prequalification will be granted upon payment of a non-refundable fee of KES 3,000.00 per category for Nairobi and KES 2,000.00 per category for the rural locations (Isiolo, West Pokot and Mandera). All payments will be made via an online payment platform during the application process. Available payment methods include M-PESA, Visa Card, MasterCard, amongst others. The online prequalification exercise closes on 5th October 2021 at 10pm EAT.

In case of any inquiry, kindly contact us at actkenya@tendersure.co.ke or +254 709 557 000

All existing suppliers are required to participate alongside prospective suppliers in order to be evaluated and considered. Action Against Hunger reserves the right to accept or reject any bid in whole or in part at its discretion.

SUBMISSIONS
FROM
STAKEHOLDERS





MINISTRY OF EDUCATION

MEETING WITH MEMBERS OF THE NATIONAL ASSEMBLY COMMITTEE ON EDUCATION AND RESEARCH

27TH -28TH OCTOBER, 2021

MOMBASA

OVERVIEW OF THE UNIVERSITIES (AMENDMENT) BILL, 2021

Wednesday, November 24, 2021



Wednesday, November 24, 2021

Object of the Bill

The object of the Bill is to amend the Universities Act, 2012 in the provisions relating to-

- (a) the appointment of the members of University Councils, Vice Chancellors and Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges of Public Universities
- (b) Governance of universities
- (c) New provisions with respect to the Universities Fund

Provisions of the Bill

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
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Section 2 The term “Trustees” in The proposed amendment provides that the Fund will be managed by a Board instead of a Board of Trustees.

definition of “Trustees” Board of Trustees of the “Trustees” in the Act.

Universities Fund.

Section 54 provides that the Universities Fund shall be managed by a Board of Trustees.

In the premises, the definition of “Trustees” will serve no purpose since the amendment seeks to establish the Fund as a Body Corporate where assets and resources will vest in the Fund and not in the Board of Trustees.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 5A(4)(b) Approval of programmes by the Commission for University Education	Section 5A(4)(b) provides that before approving any academic programme, the Commission for University Education may engage the Auditor General to offer the Commission professional opinion on management and financial positions of a “particular” university.	The proposed amendment substitutes the word “particular” with the word “public” as the particular provision relates to public universities. Article 229(5) of the Constitution mandates the Auditor - General to audit and report on the accounts of any entity that is funded from public funds .	The proposed amendment substitutes the word “particular” with the word “public” as the particular provision relates to public universities. Article 229(5) of the Constitution mandates the Auditor - General to audit and report on the accounts of any entity that is funded from public funds .

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 10 Deputy Secretary of Commission for University Education	Section 10 provides that the Commission for University Education can appoint one or more Deputy Commission Secretaries.	The proposed Amendment provides for not more than two Deputies.	The new provision will limit the number of Commission Secretaries to only two.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 19 Grant or refusal to grant a Charter	Section 19(1)(b) allows the Cabinet Secretary to extend a Letter of Interim Authority granted to an Applicant wishing to establish a University for a period of four years.	The proposed amendment introduces a proviso that the Cabinet Secretary may, circumstances before upon request by a University and if satisfied that it is appropriate in the circumstances to do so, extend the Letter of Interim Authority for such further period, not exceeding four years, as the Cabinet Secretary may determine".	The provision allows the Cabinet Secretary to consider and be satisfied of the circumstances before extending a Letter of Interim Authority.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 20(3)	<p>The section provides that the Cabinet Secretary may, in consultation with the Commission, establish or declare an institution of higher learning to be a constituent college of a university.</p>	<p>The proposed amendment provides that the Cabinet Secretary will declare an institution of higher learning to be a constituent college of a university upon recommendation by the Commission.</p>	<p>The proposed amendment is intended to ensure that the Cabinet Secretary will declare an institution of higher learning to be a constituent college of a university only after recommendation by the Commission.</p>

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 24	<p>The provision covers management and governance of degree specialized degree awarding institutions.</p> <p>Introduction of a new clause on operations of specialized degree awarding institutions</p>	<p>The proposed amendment provides that the provisions in Part V of the Act -on management and operations of universities shall apply to specialized degree awarding institutions but modifications will be made as necessary.</p> <p>The relevant proposed amendment has already been effected through the Statute Law Miscellaneous Amendment Act No. 20 of 2020 (refer to Section 24(4) and (5)).</p>	

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
5 (2) Declaration of technical Universities	The section provides that only institutions that are currently existing as National Polytechnics within Polytechnics or have the meaning of the the requisite physical TVET Act of 2013 facilities and human may be declared as resource appropriate for technical universities. a technical university may be declared as technical universities.	The amendment provides that institutions that are or were National Polytechnics or have the requisite physical facilities and human resource appropriate for a technical university may be declared as technical universities.	The existing section is restrictive as it states that only institutions that are currently National Polytechnics may be declared as technical universities.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
<p>Section 26</p> <p>Universities in counties</p>	<p>The section provides that the Commission shall ensure the establishment of a accessibility university in each viability of university county.</p>	<p>The provision is deleted but replaced with one that ensures accessibility and viability of university education in all counties.</p>	<p>Universities should be established according to need, accessibility and viability.</p>

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
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<p>ection 28(4)</p> <p>ublishing ccredited foreign Iniversities</p>	<p>The section requires foreign accredited universities to be in at least two published in at least newspapers of national circulation three newspapers of national circulation and in the national circulation.</p>	<p>amendment publication requires publication of newspapers and in Commission's website.</p>	<p>Proposal is intended to remove requirement for the Commission to publish accredited foreign universities in three newspapers to reduce the cost and leverage on technology.</p>
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SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
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Section 35(1)(ii)

Publishing of University Statutes in the Kenya Gazette

The section requires University Councils to approve University Statutes and cause them to be published in the Kenya Gazette. The amendment requires University Councils to approve University Statutes and submit them to the Cabinet Secretary for publication in the Gazette.

The proposal is intended to align this provision with section 23(2) of the Act requiring submission of approved Statutes to the Cabinet Secretary for publication in the Gazette.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 35(1)(a)(v)	The Act provides that appointment of Vice Chancellors or Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges will be by the Council, in consultation with the Cabinet Secretary, after a competitive recruitment process undertaken by the Public Service Commission (PSC).	The provision is deleted.	The proposed amendment is intended to harmonize the provisions on appointment of Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges. Section 39 provides for their appointment through a Selection Panel to ensure transparency and accountability .

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 36	<p>The Act provides that the qualifications for the chairpersons to have a chairperson (Doctorate degree and at least 15 years' experience in a matters relating to position or Bachelor's management of degree and twenty university education) years' experience in a and members (Masters senior management degree and at least 10 position while members years' experience in should have Masters matters relating to degree and ten years' management of experience in a senior university education) management position or of the Commission for a Bachelor's degree and University Education twenty years' apply to the chairpersons experience in a senior and members of management position. university councils.</p>	<p>The amendment requires the chairpersons to have a Masters degree and 15 years' experience in a senior management position or Bachelor's degree and twenty years' experience in a senior management position while members should have Masters degree and ten years' experience in a senior management position or Bachelor's degree and twenty years' experience in a senior management position. The amendment provides for the qualifications for the chairpersons and members of councils to ensure that they possess the necessary leadership and managerial competencies to provide strategic direction in the universities.</p>	

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 36A Introduction of new section 36A		<p>A new provision is introduced allowing the Cabinet Secretary to revoke appointment, transfer and deploy members of councils, review or vacate council decisions and give approval to a council seeking to meet more than four times a year.</p>	<p>The proposal allows the Cabinet Secretary to take appropriate action as necessary and in the public interest to ensure proper governance in public universities.</p>

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
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Section 36(5)

Term of Council

Members

<p>The section provides for council members to determine by lot which two of them shall vacate office after three and four years, respectively, to ensure continuity in the activities of the council.</p>	<p>The provision for some council members to serve for three years and others for four years is deleted and substituted with a new provision for council members to serve for a period of three years and for appointment to be staggered so that their terms of office expire at different times.</p>	<p>Staggered appointments will ensure continuity in the activities of the council.</p>
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SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 38 Appointment of Chancellor	The Act provides for appointment of Chancellors of public universities by the President after shortlisting and identification of three suitable candidates by the Public Service Commission.	The amendment is intended to revert to the previous provisions on the procedure for appointing Chancellors through the Alumni Association and the Senate.	The amendment is intended to ensure adequate public participation and allow the stakeholders in the Sector to identify suitable persons to be titular heads of public universities.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 39(1)(a)	The Act provides for appointment of Vice Chancellors by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council.	The proposal provides for competitive recruitment of Vice Chancellors, Deputy Chancellors, and Deputy Principals of Constituent Colleges through a selection panel appointed by the Cabinet Secretary. The Cabinet Secretary shall appoint one candidate out of three names of qualified persons forwarded by the selection panel.	The Proposal is intended to harmonize the procedure for appointment Vice Chancellors, Deputy Chancellors, Vice Chancellors, Principals and Deputy Principals of Constituent Colleges and to ensure transparency and accountability.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
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Section 39

Introduction of new
sub-section 39(6)

<p>The proposal provides for the Vice Chancellor of a public university to be supported in the execution of his or her duties by not more than three Deputy Vice Chancellors.</p>	<p>The amendment is intended to rationalize administrative structures in public universities to ensure effective management.</p>
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SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 47(2) Submission of Accounts to Auditor General	The Act provides for the submission of accounts to the Auditor General within four months of the end of each financial year.	The amendment provides for the submission of accounts to the Auditor General within three months from the end of each financial year.	The proposed amendment will align the Universities Act with the Public Finance Management Act of 2012.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
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Section 54 Universities Fund	The Act provides that the Universities Fund will be managed by a Board of Trustees.	The proposed amendment provides for establishment of a Universities Fund capable of Universities Fund transacting business as a Board instead of a body corporate and Board of Trustees where assets and to manage the Fund. resources will vest in the Fund and not in the Board of Trustees.	
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SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 55(3) Composition of 15 Kenya Universities and Colleges Central Placement Service	The Act provides for The amendment reduces the number of members, provide for additional legal provisions on membership and composition of State members and for the independent CEO to be a member of the Board of KUCCPS. Only three members are independent CEO of the Board of members and the CEO is not expressly provide KUCCPS. for as a member.		The amendment is intended to reduce membership and to comply with the relevant provisions on membership and composition of State Corporations.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 56 Introduction of a provisions on the new subsections requirement universities 56(4) and 56(5)	<p>The Act contains no provisions on the introduction of a new subsection requiring each participating universities to submit a list of government and self sponsored students enrolled in the universities to the KUCCPS Board within thirty days from the date of closure of the enrollment of students to the university and for the KUCCPS Board to submit the information to the Universities Fund, the Universities Fund respectively. within fourteen days of receipt thereof.</p>		

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Section 61A	The section provides the form of deleted instruments of accreditation.	The section is	The proposed amendment is intended to allow for the instruments of accreditation to be applied with relevant modifications.

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Second Schedule to the Universities Act No. 42 of 2012	The Second Schedule provides appointment of Chancellors of public universities by the President after previous provisions to identify suitable candidates for a shortlisting and on the procedure for persons to be identified of three appointing Chancellors through suitable candidates Chancellors Alumni by the Public Service the Association and the Commission. Senate.	The amendment for revokes the Second Schedule and replaces it with a new one introducing the allow the stakeholders to identify suitable Chancellors of public universities.	The amendment is intended to ensure adequate participation and

SECTION	PROVISION	PROPOSED AMENDMENT	RATIONALE
Introduction of Fourth Schedule			
Procedure for recruitment and appointment of Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges		The amendment introduces the Fourth Schedule to the Act which outlines the procedure for appointing Vice Chancellors, Deputy Vice Chancellors, through a selection panel is intended to ensure inclusivity in Constituent Colleges appointments, through a selection panel constituted by transparency and accountability. the Cabinet Secretary.	The proposal to have Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of Constituent Colleges appointed through a selection panel is intended to ensure inclusivity in appointments, transparency and accountability.

Thank you!



NATIONAL ASSOCIATION OF PRIVATE UNIVERSITIES IN KENYA (NAPUK)

Bank House, Moi avenue, 5th Floor • P.O Box 13495-00100 NAIROBI
Tel + 254(0) 733 183355 • Email: napuk.kenya@gmail.com

From The Office Of The National Chairman

4th October 2021

**The Chairperson
Education Research Committee**

**Through
The Clerk of the National Assembly**

Dear

Madam,

*Philip Leikam
pls facilitate
6/10/21*

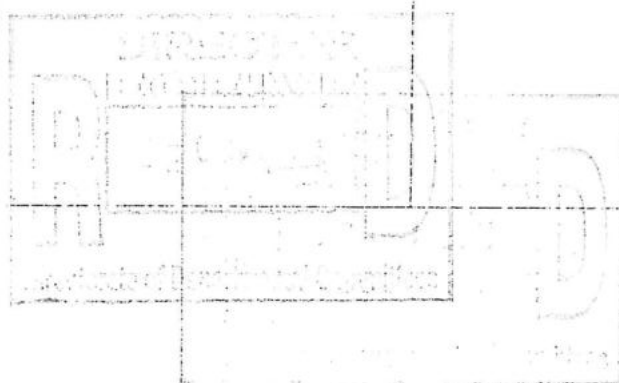
*D/DC
5/10/21*



RE: MEMORANDA ON THE UNIVERSITIES (AMENDMENT) BILL 2021

The National Association of Private Universities in Kenya wishes to propose one amendment to the Universities Act.

Clause 11	Proposed Amendment	Justification
1 (b) Qualification for appointment as Commission Secretary (b) Has at least ten years experience in the management of a university	Delete of a University to read Has ten years experience in a senior management position.	The focus on management of a university only is limiting as it excludes other would qualified persons working outside university environment but with similar experience and management competences such as in Research Institutions, Foundations and other corporate institutions supporting higher education not to mention officers who have diligently worked and growth their career in



[Signature]

		institutions such as like Commission for University Education.
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It is our conviction that, the proposed amendment will enhance continuous opening of the university space to career managers who will infuse in it corporate management systems that will not only inject efficiency but also guarantee sustainability.

Hon. Chairman, it is our sincere hope that our proposed amendment will receive highest consideration.

Yours

Sincerely,


DR. VINCENT G. GAITHO, PHD
SECRETARY GENERAL



KENYA ASSOCIATION OF PRIVATE UNIVERSITIES

D/DC's
Please deal
14/09/21

10th September 2021

To
The Clerk of the National Assembly,
P.O BOX 41842-00100,
NAIROBI.
Email: clerk@parliament.go.ke

Mr. De Kair
Deal
14/9/21

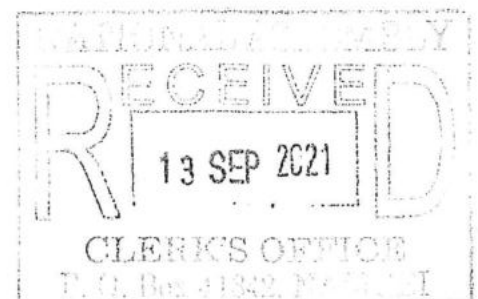
Dear Sir,

RE: PROPOSALS WITH REGARD TO THE UNIVERSITIES (AMENDMENT) BILL, 2021

The above subject refers;

The Kenya Association of Private Universities (KAPU) is the registered umbrella body of private universities in Kenya. KAPU supports the proposed Bill with the following additional amendments.

	Section of the Bill	Section of the Principal Act	Comment
1.	Section 18 (Page 942 - 947)	Proposed new section 54.(5)(h)	This is a very good insertion. However, KAPU proposes that the paragraph be replaced with the one below in order to allow private universities autonomy to determine their methodology for representation in the Board: <i>One person nominated by private universities upon request by the Cabinet Secretary;</i>



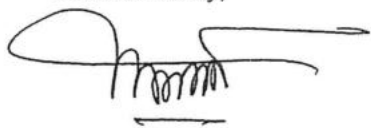
2.		Proposed new section 54.(9)(c)	<p>This section is good but KAPU proposes that the section be amended to clearly stipulate the various types of funding under the Fund. This is as a result of the apparent confusion that has at times projected tuition fees paid for government sponsored students as funds paid to support universities. KAPU therefore proposes that the section be amended to read as follows:</p> <p><i>apportion;</i></p> <ul style="list-style-type: none"> <i>i) funds allocated by the national government to public universities for development and recurrent expenditure</i> <i>ii) funds allocated by the national government for tuition fees for government-sponsored students in Kenyan universities</i> <i>iii) and issue conditional grants and loans to private universities;</i>
3.		Proposed new section 54.(9)(d)	<p>KAPU proposes to add the following sentence at the end of the section:</p> <p><i>to ensure equity in the funding of all government sponsored students in public and private universities.</i></p>
4.	Section 21 (Page 948)	Section 55.(3)	<p>KAPU proposes that the CEO of the Universities Fund become a member of the KUCCPS Board due to the close working nature of the two agencies. For example, the CEO of KUCCPS is proposed to be a member of the Board of the Fund [in section 54.(5)(d)] but not the other way round. KAPU has also noted that the proposed six (6) appointees of the Cabinet Secretary in that section are actually five (5) in number. It is therefore proposed that the CEO of the Fund be inserted as a substantive member of the Board then the 5 appointees of the Cabinet Secretary remain as proposed in part (f) of that section. The section would therefore read as follows:</p> <p><i>(3) The Service shall be governed by the Placement Board which shall consist of—</i></p> <ul style="list-style-type: none"> <i>(a) a chairperson appointed by the President;</i> <i>(b) the Principal Secretary in the Ministry responsible for higher education;</i> <i>(c) the Principal Secretary in the Ministry responsible for finance;</i> <i>(d) the Secretary of the Commission;</i> <i>(e) the Chief Executive of the TVETA;</i> <i>(f) the Chief Executive of the Universities Fund; and</i>

			<p>(f) five other persons appointed by the Cabinet Secretary, being—</p> <p>(i) one Vice-Chancellor representing public universities;</p> <p>(ii) one Vice Chancellor representing private universities;</p> <p>(iii) two members with experience in management of education; and</p> <p>(iv) the Director, who shall be an ex-officio member.</p>
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>>>>>> END <<<<<<

Your kind and urgent attention to this matter will be highly appreciated.

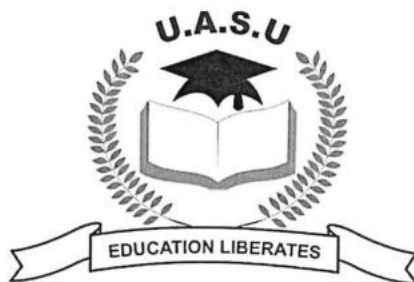
Yours sincerely,



Prof. Phillip Maiyo

Ag. Chair,
Kenya Association of Private Universities

and Vice Chancellor, University of Eastern Africa, Baraton.



UNIVERSITIES' ACADEMIC STAFF UNION

E-mail: uasunational@yahoo.com
P. O. Box 30198 – 00100, Nairobi

Tel: +254 739366023

Our Ref: UASU/NA/2021/7

5 September 2021

The Clerk, National Assembly,

Proposed Amendments to Universities Act 2012

The Universities' Academic Staff Union (UASU) appreciates the opportunity to provide comments on the proposed amendments to the Universities' Act 2012.

If enacted, the proposed amendments would have a significant impact on the governance of public universities, and the Union accordingly requests Parliament to take into account the recommendations detailed in Annex 1.

Yours sincerely,

Dr. Constantine Wasonga Opiyo, PhD
National Secretary General

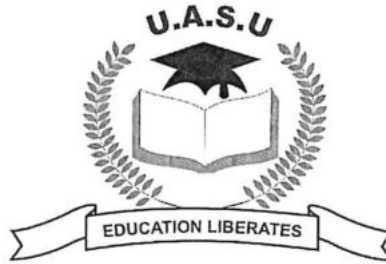
Encl: Annex 1

Annex 1: UASU Comments Proposed Amendments to Universities Act 2012

	Current Provision	Proposed Amendment under the Bill	Comment
1	<p>Universities in Counties</p> <p>26. The Commission shall ensure the establishment of public universities in each of the Counties, giving priority to Counties that do not have universities immediately after following the coming into force of this Act.</p>	<p>26. The Commission shall ensure accessibility of public universities by all counties, giving priority to viability and equitability in the distribution of public universities across the country</p>	<p>Retain the current provision.</p> <p>The proposed amendment:</p> <ul style="list-style-type: none"> (i) affects Counties and should therefore be considered by Senate in addition to the National Assembly; (ii) will open the door to merger of public universities in violation of pre-existing Court Orders; (iii) favours counties with established public universities
2	<p>Council of a public university</p> <p>36. (1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—</p>	—	<p><i>The Universities Academic Staff Union (UASU) should nominate a representative to the University Council.</i></p> <p>Representation by academic staff in the Council is practice that was available in the statutes that were repealed by the Universities Act 2012 and is a good practice world wide.</p>

3	No equivalent provision	36A. (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or transfer or otherwise deploy the chairperson or any member of any Council. (2) Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision.	Delete This new section destroys institutional autonomy of public universities
4	The Vice-Chancellor 39. (1) The Vice-Chancellor of a university shall be appointed— (a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council;	The Vice-Chancellor 39. (1) The Vice-Chancellor of a university shall be appointed—(a) in the case of a public university, by the Cabinet Secretary after a competitive process conducted in the manner provided in the Fourth Schedule	<i>UASU should be represented in the Selection Panel in line with international best practices</i>

5	<p>The Vice-Chancellor</p> <p>39 (3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years.</p>	<p>The Vice-Chancellor</p> <p>39 (3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years upon satisfactory performance.</p>	<p>The Vice-Chancellor of a public university should serve a 3 - year term renewable once upon satisfactory service.</p>
6	<p>Section 54 repealed</p>	<p>54(9)</p> <p>(e) establish the minimum discipline differentiated remuneration for academic staff of public universities with the advice of the Salaries and Remuneration Commission, which shall be fair and competitive, and advise the Cabinet Secretary accordingly;</p>	<p>Delete</p> <p>This section destroys rights of workers to collectively bargain</p>



UNIVERSITIES ACADEMIC STAFF UNION (UASU)

STATEMENT OF DR. CONSTANTINE WASONGA,

UASU NATIONAL SECRETARY GENERAL

**BEFORE THE DEPARTMENTAL COMMITTEE ON EDUCATION
AND RESEARCH OF THE NATIONAL ASSEMBLY CONCERNING
PROPOSED AMENDMENTS TO UNIVERSITIES ACT 2012**

THURSDAY, 28TH OCTOBER 2021

*Honourable Chairman and Honourable Members of the Departmental
Committee on Education and Research of the National Assembly:*

PREAMBLE

1. The Universities' Academic Staff Union (UASU) highly welcomes and appreciates the opportunity accorded by the National Assembly to make comments on the proposed amendments to the Universities' Act 2012.
2. The Universities (Amendment) Bill, 2021 (National Assembly Bill No.35), seeks to amend various provisions of the Universities' Act 2012 including sections 26, 36 and 39 and the Schedules thereto.
3. In particular, the Bill proposes that the Vice-Chancellors of public universities shall be appointed by the Cabinet Secretary after a competitive process conducted by a Selection Panel appointed by the Cabinet Secretary in accordance with the provisions of a Schedule to the Act.
4. The governance structure of a public university is key to the performance of a university in training, scholarship, research, innovation and internal administration; and is an important determinant in attracting qualified staff and students.

5. The University Vice-Chancellor occupies the top executive and academic position of the organizational structure of public universities, and the procedure for the recruitment, selection and appointment of the Vice-Chancellor must yield the most qualified individuals.
6. The principles and values that should guide recruitment and appointment of University Vice-Chancellor include:
 - (i) Democracy
 - (ii) Accountability
 - (iii) Transparency
 - (iv) Participation
 - (v) Representativeness
 - (vi) Integrity, and
 - (vii) The core values of the individual university.
7. The individuals selected to the position must be able to lead the public universities through the current challenges facing higher education in Kenya and globally. Such challenges include: changing student enrolment, quality of university education, curriculum reform, improving research and innovation, chronic underfunding of public universities, internationalization, increasing competition among universities, ethnicity and tribalism, corruption, creativity, productivity, working with student associations, workers unions among other challenges.

8. Recruitment and Appointment of the Vice-Chancellor

The Vice-Chancellor is the administrative and academic head of the university.

The traditional model in Kenya and other countries was appointment by the President, or appointment by the President (or Cabinet Secretary) from a shortlist of names competitively recruited by the University Council (or Public Service Commission).

Globally the trend is that Vice Chancellors (or University Presidents) are recruited by a Search Committee specifically constituted for that purpose.

Such a system, which found in many continental European countries, USA and Canada allows input of the academic staff for the selection of Vice Chancellors in Estonia, Germany, Ireland, Netherlands and Sweden.

In some countries such as the UK, the Vice Chancellor's position is also open to external candidates.

For Harvard, Stanford and other Ivy League American Universities, the Board of Trustees (equivalent to the University Council) appoints a Search Committee, consisting of the distinguished faculty members, representatives of the equivalent of the University Senate, alumni, students, and staff. The University then publicly announces the beginning of their search for a Vice Chancellor. The names of Search Committee members are publicly listed, and the recruitment and selection process is highly transparent. The Search Committee makes a shortlist, and interviews may be conducted publicly by the University Senate, and appointments made by the University Council.

UASU therefore recommends a similar system for appointment of Vice-Chancellors, in which the University Council forms a Select Panel composed of distinguished academicians, representatives of the University Senate, UASU and alumni association, where such alumni association has been established, to conduct a search followed by public interviews (such as conducted by the Judicial Service Commission) and preparation of a shortlist for the University Council to submit to the Cabinet Secretary.

9. Tenure of Service for Vice-Chancellors

Most Vice-Chancellors in the UK and USA serve one term of seven (7) years.

Currently in Kenya, the Vice Chancellors serve a five-year term renewable once; with a majority serving for a cumulative period of 10 years.

UASU recommends that Vice Chancellors serve a five year term renewable once.

Renewal of term

The renewal of term however should be through a competitive process, with the same process for initial appointment.

	Current Provision	Proposed Amendment under the Bill	Comment
1	The Vice-Chancellor 39. (1) The Vice-Chancellor of a university shall be appointed— (a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council;	The Vice-Chancellor 39. (1) The Vice-Chancellor of a university shall be appointed—(a) in the case of a public university, by the Cabinet Secretary after a competitive process conducted in the manner provided in the Fourth Schedule	<i>To enhance transparency, meritocracy and competitiveness, UASU should be represented in the Selection Panel in line with international best practices.</i> <i>The provisions of the Proposed Fourth Schedule should be amended to include an UASU nominee as a member of the Selection Panel the positions of Vice-Chancellor, Deputy Vice-Chancellors, Principals and Deputy Principals.</i>
2	The Vice-Chancellor 39 (3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years.	The Vice-Chancellor 39 (3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years upon satisfactory performance.	<i>The Vice-Chancellor of a public university should serve a 5 - year term renewable once upon satisfactory service.</i>

10. University Council Members

It is notable that one of the key causes of the current attempts to change the law is the inefficiencies in the University Councils. Many members of University Councils have been recruited through an opaque process, and are individuals who lack knowledge of strategic leadership of universities.

Academic staff should also be represented in the University Council as happens in South African Universities (and previously in Kenyan Public Universities).

Autonomy of Universities. From the foregoing, the Cabinet Secretary should not have the power to transfer members of the University Council.

Ethnicity. The membership of University Council and the Vice-Chancellor should be carefully balanced to avoid communities holding university administration hostage to local political interests, as has happened in the past.

UASU therefore recommends as follows:

	Current Provision	Proposed Amendment under the Bill	Comment
3	Council of a public university 36. (1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—	—	<i>The Universities Academic Staff Union (UASU) should nominate a representative to the University Council.</i> Representation by academic staff in the Council is practice that was available in the statutes that were repealed by the Universities Act 2012 and is a good practice world wide.
4	No equivalent provision	36A. (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or transfer or otherwise deploy the chairperson or any member of any Council. (2) Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision.	Delete The amendment appears to give the CS too much authority that seems to interfere with the mandate of the council. However as the appointing authority the CS must have control over certain decisions that the council makes.

11. Universities in Counties

The Bill proposes to eliminate the provision for mandatory establishment of public universities in the Counties. This may unwittingly open the door to the merger of public universities.

UASU proposes as follows:

	Current Provision	Proposed Amendment under the Bill	Comment
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1	Universities in Counties 26. The Commission shall ensure the establishment of public universities in each of the Counties, giving priority to Counties that do not have universities immediately after following the coming into force of this Act.	26. The Commission shall ensure accessibility of public universities by all counties, giving priority to viability and equitability in the distribution of public universities across the country	<i>Retain the current provision (reject the proposed provision).</i> <i>The proposed amendment:</i> (i) affects Counties and should therefore be considered by Senate in addition to the National Assembly; (ii) will open the door to merger of public universities in violation of pre-existing Court Orders; (iii) favours counties with established public universities
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12. Differentiated Unit Costs

The Differentiated Unit Cost (DUC) model is a form of financial apartheid (equal but different model) that has not worked for any university in the world. The DUC policy has utterly failed in Kenya.

UASU also emphasizes that public funds should not be used to generate profits for profit making private universities. Tax payers should only sponsor students in the public universities.

UASU therefore proposes as follows:

	Current Provision	Proposed Amendment under the Bill	Comment
	Section 54 (4) The function of the Trustees shall be to generally manage the University Fund established under section 53, and more particularly to— (d) in consultation with the Chairpersons of Councils of public universities, propose and establish for approval by the Cabinet Secretary and the	Section 54(9) (e) establish the minimum discipline differentiated remuneration for academic staff of public universities with the advice of the Salaries and Remuneration Commission, which shall be fair and competitive, and advise the Cabinet Secretary accordingly;	Delete the sub-sections in the current provision (in the Principal Act) and reject the proposed amendment <i>Rationale:</i> <i>As explained above the Differentiated Unit Cost Model seeks to entrench a form of financial apartheid in funding of universities. The model has failed and is not based on any agreed formula.</i>

	<p>Auditor-General the maximum differentiated unit cost for the programmes offered;</p> <p>(e) establish the minimum discipline differentiated remuneration for academic staff of universities, which shall be fair and globally competitive, and advise the Government accordingly;</p>		<p><i>There should be delinking of KUCCPS and the Universities Fund (the Universities Funding Board) to avoid the practice of some universities manipulating ("gaming") the admissions system and student capacity to subvert the funding formula (DUC is particularly susceptible to this type of manipulation).</i></p> <p><i>The sections further seek to destroy the right of workers to collectively bargain which is guaranteed under Art 41 of the Constitution of Kenya 2010.</i></p>
	<p>Section 54 (4)</p> <p>(b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;</p>	<p>Section 54(9)</p> <p>(b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;</p> <p>(c) apportion funds allocated by the national government to public universities and issue conditional grants to private universities;</p>	<p><i>Delete the phrase "and issue conditional grants to private universities;" in the current provisions (of the Principal Act) and reject the proposed provisions.</i></p> <p>Rationale: <i>Public funds should not be used to generate profits for profit making private universities.</i></p> <p><i>Public universities have requisite capacity to train all government-sponsored students.</i></p> <p><i>Tax payers should only sponsor students in the public universities.</i></p> <p><i>Student who opt to undertake education at private universities should do so under self-sponsorship.</i></p>

			Moreover there is no framework to enable the Office of the Auditor General hold private universities accountable for such public funds.
	<p>Section 55(3) The Service shall be governed by the Placement Board which shall consist of thirteen members appointed by the Cabinet Secretary as follows—</p> <p>....</p> <p>(g) two Vice-Chancellors representing Private Universities;</p>	<p>Section 55(3) The Service shall be governed by the Placement Board which shall consist of—</p> <p>(e) the Chief Executive of the TVETA; and</p> <p>(f) six other persons appointed by the Cabinet Secretary, being—</p> <p>....</p> <p>(ii) one Vice Chancellor representing private universities;</p>	<p>Delete the requirement for representation of private universities in KUCCPS under the current provisions in the Principal Act, and reject the proposed provisions.</p> <p>Rationale: As already explained above, public universities have requisite capacity to train all government-sponsored students, eliminating private interests in placement to students in public universities.</p> <p>Moreover, there should be delinking of KUCCPS and the Universities Fund (the Universities Funding Board) to avoid the practice of some universities manipulating ("gaming") the admissions system and student capacity to subvert the funding formula (DUC is particularly susceptible to this type of manipulation).</p>

13. In relation to the appointment of Chancellors, the current provisions which require involvement of the Senate and alumni associations should be retained. However, the Public Service Commission should have no role, and three candidates, ranked in order of merit, should be forwarded by the

- Senate through the University Council to the Cabinet Secretary and eventually the President who shall pick one of the persons for appointment.
- 14.Regarding election of student leaders, UASU supports free, fair and transparent election of student leaders without interference from the management of the university.
- 15.If enacted, the proposed amendments would have a significant impact on the governance of public universities, and the Union accordingly requests Parliament to take into account the recommendations detailed above.
- 16.Finally, Honourable Chairman and Honourable members of the Committee; thank you again for inviting UASU. I am prepared to answer any questions you may have.

SIGNED:

DATE:

Dr. Constantine Wasonga
UASU National Secretary General

EGERTON

P.O Box 627-20107
Njoro, Kenya
email<louismumera@gmail.com

>



SUNRISE ESTATE

[Phone: +254-727-381569;

<louis.mumera@egerton.ac.ke

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Ref: Universities/Gov./Vol1(16)

Date: September 16, 2021

Clerk of the National Assembly

P.O. Box 41842-00100; Nairobi, Kenya: e-mail: clerk@parliament.go.ke

REF: The Universities (Amendment) Bill, National Assembly Bill No.35 of 2021: KGS NO. 135

This is a response to a call for public participation on the above Bill published in the Standard dated 2021-0907. The Bill has provisions primarily for changes in the Appointment of Members of Councils and the Governance of Universities. My observations & proposals are abridged below:

1 Qualification for appointment as a Chair and or Member of the Council: The amendment (section 12), proposes a change of one of the qualifications from PhD to Masters degrees for the Chair and from Masters to Masters or Bachelors for Members. The qualifications in the principal Act, [36(1), (2) & 7(1)], should be retained because the primary objective of a University is the advancement of knowledge through teaching and research scholarship; the Council must provide strategic leadership and policy framework to nurture this. As part of these responsibilities, chairs of Councils preside over promotions of staff into senior academic positions of professors and must therefore themselves be thoroughly versatile with international requirements for such promotions. The drafters of the principal Act thus must have had good reason for staking these qualifications high.

2 Functions of Councils: Appointment of Vice Chancellors; Deputy Vice Chancellors; Principals & Deputy Principals of Constituent Colleges. The amendment (Section 14), provides that the Vice chancellor, Deputy, the Principals & their Deputies be appointed by the Cabinet Secretary after a competitive process outlined in the Fourth Schedule, which essentially allocates this function to an ad-hoc Selection Panel constituted by the Cabinet Secretary & removes the same from the Council. This diminishes the role of Council & negates a key provision of Mwongozo, that outlines principles & procedures of good governance in State Corporations. It's suggested that the stipulations in the principal Act [39(1)] that appointments to these key positions be by the Cabinet secretary, upon recommendation by the Council, be upheld.. The same principal law [section 39 & 62] has provisions for setting up of committees, including a Shortlisting Panel to process & advise on recruitment into these positions. A key factor here is the appointment of capable Councils following procedures outlined in the principal Act, [36(1)]. The current process for the appointment of council Chairs & members is wanting & should be invigorated.

3 Revocation of Council Membership & Decisions, [section 36A (1)] The amendment proposes to give the Cabinet Secretary, the power to revoke any appointment to, transfer or otherwise deploy the Chairperson or any member of any Council. This provision should be excluded because it risks compromising the relative autonomy of Councils under circumstances of an overarching CS or others in

higher echelons of State. Moreover, there are already provisions in the principal Act [8(1)] for revocation of appointment to & filling vacancies in the Council or Commission.

Prof Louis Mumera [*Chair of Council, SEKU, 2013-2017; DVC (AF) Egerton Univ. 2006-11; Dean, FoA*]

Ajenda Kenya

P. O. Box 517-80100, Mombasa

Mob: +254 711 712 347

E-mail: ajendakenya@gmail.com



THE CLERK OF NATIONAL ASSEMBLY,

P.O BOX 41842-00100,

NAIROBI, KENYA.

21st September, 2021.

Dear Sir,

ABOUT AJENDA KENYA

Ajenda Kenya is a youth-led organization registered under the Kenyan Laws in 2018 as a Community Based Organization in the Coast of Kenya. Our main niche being young people of this country we are mostly concern with student matters in higher institutions of learning. We believe that if young people in tertiary institutions are empowered holistically both politically, socially and economically our country will be geared towards prosperity.

MEMORANDUM OF UNIVERSITY AMENDMENT BILL OF 2021

The famous Duale Bill, which was signed by the President into law on 16 December 2016, is infringing on article 81 of the Kenyan Constitution in section (d) on Universal suffrage based on the aspiration for fair representation and equality of votes. The majority of our universities went contrary and introduced an alliance system whereby student aspirants go into an election as one alliance of six candidates infringing delegate's right to vote on each individual based on their merit. Out of this alliance, the administration has an upper hand in compromising and favoring one alliance over another one by manipulating delegates to vote in a certain direction.

The Bill has disadvantages competent and active students from ample background from contesting in Student leadership. During the popular vote, the ground was level for everyone to vie for any post but today it is close to impossible for him or her to get the opportunity. Institutions have hijacked the Democratic process by manipulating and compromising delegates to vote in a certain direction by promising them heaven if they vote for them. This is contrary to Article 81 section (e) Sub-section (ii) which states clearly that free and fair election should be free from violence, intimidations, improper influence, or Corruption.

The Bill conflicts with National voting system whereby popular vote is used while in institutions it is a delegate system. This is against article 24 of the Kenyan Constitution which states that a right can only be limited if it is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom. We find this contrary to the constitution and improper to have two systems working in the same country while denying students the right to vote directly to

The spirit of Comrade Power is slowly dying. This has disempowered students from having strong Unions representing the interest of students since they have to please their master's who most of the time is the administration. Out of this students end up having a bad attitude towards leadership and even shunning down the spirit of young people of becoming future leaders in society.

We Recommend the following;

a] Election of university students should be amended from delegate system to popular vote; The bill introduced a delegate system, which is contrary to Article 38 of the Constitution on Political Rights, and Article 81 of the Constitution on the principles of the electoral system in the country.

We contend that the amendments were done in violation of Articles 10, 24 in that the National values of governance and limitation of the right of students to vote directly were unconstitutional. For these reasons, we want the bill to be amended.

b] The number of student leaders elected in the university union should be increased from 7 positions to at least 15 student leaders.

c] Any student at the institution should be eligible to vie for the student leader without any restrictions provided they prove they are students.

For any query, do not hesitate to reach us through info@ajendakenya.org or +254711712347

Yours Sincerely

Felix Obiero



Executive Director

Ajenda Kenya

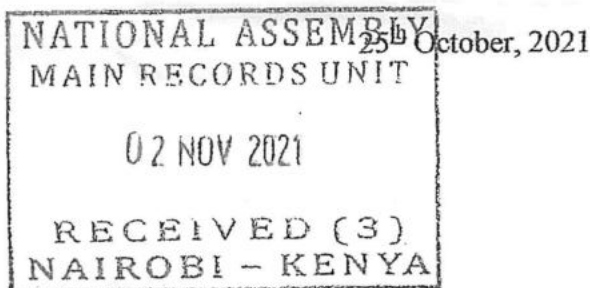




PAWA Africa.
E-mail: kaberial746@gmail.com
TEL: +254 724 081918

REF: PW/001 a

PATRICK KABERIA,
PAWA Africa.
E-mail: kaberial746@gmail.com
TEL: 0724 081918.



To: The Speaker,
National Assembly of Kenya.
P.O Box 41842 – 00100,
NAIROBI, KENYA.

Dear Sir / madam,

RE: PETITION FOR AMMENDMENT TO THE UNIVERSITIES ACT No. 42 OF 2012.

Our organization Pawa Africa is a Civil society organization registered in Kenya working in areas of Socio-Economic Development, Socio Justice, Human Rights, Community Engagement, Youth Empowerment, Democracy and Governance. In collaboration with Bunge la Mwananchi- Kenya and the Civil society reference group (Kenya), we hereby submit this petition for amendment to the universities Act No. 42 of 2012 on the following basis.

1. The Act excludes the university stakeholders such as staff, students, Parents and members of the public in constituting the University Council, the senate and the University management board .
2. On the Formation of the University Alumni Association, the Use of the word “may” in Section 42.(1) is incorrectly placed and needs to be replaced with “ Shall” owing to the importance of the Alumni Associations to their Alma mater.
3. The act fails to recognize the 2/3 gender rule, inclusion of PLWD and special category groups in constituting the University Council, senate and other university organs in line with Chapter 2 section 10 the Kenyan constitution 2010, and section 3. (2) (c) of the act – Objectives of University Education.

I therefore humbly submit this petition for Amendment to the Universities Act Number 42 of 2012 section 36 (1) and 42. (1) to read as follows;

- 36.(1) The Council of a Public University or constituent college of such a university shall consist of 13 Persons of mixed Gender appointed by the President as follow;
- a) A chairperson and three members appointed by the President through a competitive recruitment process.
 - b) The Principal Secretary representing the cabinet secretary for University Education.
 - c) The Principal Secretary representing the Cabinet secretary for Finance;
 - d) Two Members representing the University’s Alumni Association.
 - e) Two members of the public of either gender being not public officers nominated by the University’s Alumni Association representing Parents, the Public and Special interest groups.

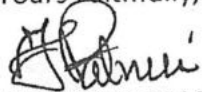


- f) Two members representing workers and the University Staff.
- g) The Vice-Chancellor who shall be an ex-officio member of the Council.

42.(1) A university "Shall" establish an Alumni Association, which shall consist of Graduates of the university and such other persons as may be declared to be members under the Charter, and shall nominate two Representatives to university council, senate, University Management Board and any other committee as may be described under the charter.

Thank you.

Yours Faithfully,



PATRICK KABERIA,
Executive Director,
PAWA Africa.

E-mail: kaberia1746@gmail.com

TEL: +254 724 081918

Proposed Review of the Universities Act: Public Universities Recommendations

S/No.	Section of the Universities Act	Areas of concern and Recommendation(s)	Reason and objective of the proposal
1.	New	<p>To be included in the Proposed Bill:</p> <ol style="list-style-type: none"> The Chairperson shall also be the Pro-Chancellor of the University; and The Chairperson shall be appointed to function as the Pro-Chancellor. 	<p>In the absence of a substantive Chancellor, the Chairperson of Council is the Pro-Chancellor to avoid a <i>lacuna</i>.</p>
2.	New section to be inserted in Section 6	<p>To be also included in the Proposed Bill:</p> <p>Recommendation: The public University representative to the Commission for University Education should be specifically be nominated by the public universities in a forum of the Vice-Chancellors of public universities. Thus it should read as follows:-</p> <ul style="list-style-type: none"> <i>one person nominated by public universities in a forum of Vice-Chancellors of public universities;</i> <i>one person nominated by private universities in a forum of Vice-Chancellors of private universities;</i> 	<p>Reason:</p> <ul style="list-style-type: none"> The mounting and quality of academic programmes is the primary function of Senate. The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College. Thus, it is imperative that the representative is a nominee of the Vice-Chancellors forum as the Vice-Chancellors and Principals oversee as academic programs in

Proposed Review of the Universities Act: Public Universities Recommendations

3.	36A	<p>Proposal in the Bill:</p> <ol style="list-style-type: none"> 1. As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or transfer or otherwise deploy the chairperson or any member of any Council. • Recommendation: The Cabinet Secretary shall reserve the right to revoke the appointment of any Chairperson of Council and Council member appointed under the provisions of this law following due process. <p>Reason: The respective University Councils have oversight authority and are not employees, <i>per se</i>, of the Universities or the Ministry but Agents for the Trustee (the Ministry of Education). This provision on deployment of Council members would justify that they should be regarded as employees. Consequently, a plethora of suits would ensue for aggrieved Council member(s) who feels that the deployment or re-deployment is not merited, unfair or unequitable.</p>
	<p>Proposal in the Bill:</p> <ol style="list-style-type: none"> 2. Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision. • Recommendation: This provision should not be included in the Bill. 	<p>• Reason: The autonomy and oversight authority of the University Council vested by the respective Charters will be in jeopardy. Also, it renders redundant the Ministry of Education representatives to the respective Councils, since they are to guide the Councils on the position of the Government and in particular Ministry of Education (MoE).</p>
	<p>Proposal in the Bill:</p> <ol style="list-style-type: none"> 3. A Council seeking to meet more than four times in a year 	<p>Justification: It is a good idea to entrench the number of meetings held by a</p>

Proposed Review of the Universities Act: Public Universities Recommendations

		<p>must obtain written approval from the Cabinet Secretary.</p> <ul style="list-style-type: none"> • Recommendation: The law can be mended to state that the:- <i>“A Council shall meet once every quarter in every financial year and with an addition of not more than two special meetings in the same financial year”</i> • Reason: In accordance with the Public Service Circular. 	<p>Council in the Universities Act. However, setting a rigid ceiling without any room for flexibility for the number of meetings that a Council can hold, offends both the law and hampers the operations of the respective Councils.</p>
4.	39	<p>Proposal in the Bill: To harmonize the two Sections S. 35 and S. 39, the Bill proposals that Section 35 1 (a) is deleted and Section 39 is amended to be read together with Fourth Schedule.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • The Top Management in the form of Vice-Chancellor and Principal as well as the Deputy Vice-Chancellors and Deputy Principals should be appointed with the other officers of the Universities by the Council, internally. • This recommendation is proposed to read as follows in the first instance that:- <i>“Vice-Chancellors and Principals of Constituent Colleges, be appointed by a committee comprising of the following:-</i> 1. Chairperson of Council - Chairman 2. Principal Secretary State Department for University Education 3. Principal Secretary National Treasury 4. Two Independent Council members 	<p>Reason:</p> <ul style="list-style-type: none"> • The justification for this proposal is to bring clarity on the authority of the universities councils and the Vice-Chancellors and Principals in regard to the recruitment of the Top Management and other university staff. • It will also ensure that the process of hiring the Top Management and university staff is done in a timely manner, devoid of interference from parties with no standing in the affairs of staff of universities.

Proposed Review of the Universities Act: Public Universities Recommendations

		<p>5. Two senate representatives nominated by the Senate. The names of the top three candidates to be forwarded to Cabinet Secretary with full minutes for the appointment for the position of Vice-Chancellor or Principal.”</p> <ul style="list-style-type: none"> • Further that in the case of the Principal of Constituent College the Vice-Chancellor of the mentoring university should be a member of the panel. • Further recommendations of the section on Internal University Recruitment for the rest of the Top Management to read as follows:- <ol style="list-style-type: none"> 1. Deputy Vice-Chancellor and Deputy Principal of Constituent College <ol style="list-style-type: none"> The committee for this should be composed as follows: <ul style="list-style-type: none"> • Chair of Council – Chair • Three representative of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; • Vice-Chancellor of the mentoring University in the case of the Deputy Principal; • Principal of the Constituent College; • Two members of the University 	
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Proposed Review of the Universities Act: Public Universities Recommendations

		<p>College Academic Board, being one man and one woman;</p> <p>ii. The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p> <p>iii. The Council shall appoint one candidate from among the three recommended.</p> <p>2. Principal of Campus College</p> <p>i. The committee for this should be composed as follows:</p> <ul style="list-style-type: none"> • Chairperson of Council – Chair • Three representatives of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; • Vice-Chancellor; <p>ii. The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p> <p>iii. The Council shall appoint one candidate from among the three recommended.</p>	
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Proposed Review of the Universities Act: Public Universities Recommendations

		<p>3. Deputy Principal of Campus College</p> <p>i. The committee for this should be composed as follows:</p> <ul style="list-style-type: none"> • Chair of Council – Chair • Three representatives of Council, being the representative of the Ministry responsible for universities, the representative of the National Treasury, and an independent member; • Vice-Chancellor • Two members of the University Senate, being one man and one woman; <p>ii. The names of the top three candidates to be forwarded to Full Council with full minutes of the appointment committee with the rankings from the interview process in the order of 1, 2, 3;</p> <p>iii. The Council shall appoint one candidate from among the three recommended.</p> <p>Further recommendations under this provision:- Re-appointment for a further term of the Vice-Chancellors, the Deputy Vice-Chancellors, Principals and Deputy Principals to be in accordance to an appraisal system of the respective university Councils.</p>	
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Proposed Review of the Universities Act: Public Universities Recommendations

		<p>Reason: The respective university councils have the ultimate responsibility of making decisions that affect the universities and all the employees.</p>	
5.	54	<p>Composition of the Universities Fund Board:</p> <p>1. Proposal in the Bill:</p> <p>g) one person nominated by public universities in a forum of chairpersons of the Councils of public universities convened by the Cabinet Secretary for that purpose;</p> <p>h) one person nominated by private universities in a forum of chairpersons of the Councils of private universities convened by the Cabinet Secretary for that purpose</p> <p>Recommendation:</p> <ul style="list-style-type: none"> • one person nominated by public universities in a forum of Vice-Chancellors of public universities; • one person nominated by private universities in a forum of Vice-Chancellors of private universities; 	<p>Reason:</p> <ul style="list-style-type: none"> • Members of Council are already board members and by this appointment they would be duplication of appointment (2 board appointments) • The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities.
		<p>Proposal in the Bill:-</p> <ul style="list-style-type: none"> • “(e): one person nominated competitively by the Kenya Private Sector Alliance” 	<p>Reason: No need to specify “competitively”. Thus to read “(e): one person nominated by the Kenya</p>

Proposed Review of the Universities Act: Public Universities Recommendations

		Private Sector Alliance"	
		<p>To be also included in the Proposed Bill:</p> <p>Enforce that the formulae or criterion that the Fund comes up ensures that DUC Should be properly implemented in accordance to Section 54(4)(d) of the Act.</p>	
6.	<p>Student Petition</p>	<p>Petition by a student to change the electoral system to bring about universal suffrage.</p> <p>Recommendation: the <i>status quo</i> should be maintained to use the collegiate electoral system in University Students' Council election.</p>	<p>Justification: The collegiate electoral system has brought peace and harmony in the university sector</p>

Proposed Review of the *Universities Act*: The Chairperson of Councils Proposed Recommendations

S/No.	Section of the Universities Act	Areas of Concern and Recommendation(s)	Reason and objective for the proposal
1.	Amendment of Section 35 in No. 42 of 2012 on University Statutes	<p>The Proposal in the Bill:</p> <p>The Principal Act is to be amended in section 35 (a) by deleting the words “and cause them to be published in the Gazette” appearing in subparagraph (1) (a) (ii) and substituting thereof the words “submit them to the Cabinet Secretary for Publication in the Gazette”.</p> <p>Recommendation by the Chairs of Councils:</p> <p>It is noted that the proposed amendment intends to harmonize Section 23 and Section 35 of the Principal Act. Thus adopt the following recommendation:</p> <p><i>“The Cabinet Secretary should gazette the statutes or regulations received from Councils as soon as is practicable and in any event not later than three months following receipt of the statutes or regulations from the Councils. Any statutes or regulations submitted to the Cabinet Secretary for gazettment but yet to be gazetted shall become effective upon the expiry of 90 days following their submission to the Cabinet Secretary for gazettment.”</i></p>	<p>The governance, administration and management of the Universities are vested in the Councils by the Universities Act and their University Charters. As such, statutes are approved internal administrative instruments by which Councils manage respective universities. Consequently, they are required to be operationalized as soon as possible through gazettment.</p>
2.	Amendment of Section 36 in No. 42 of 2012	<p>The Proposal in the Bill:</p> <p>The Principal Act is amended in section 36(a) by deleting subsection (2) and substituting the following new subsection:-</p>	<ul style="list-style-type: none"> The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University.

Proposed Review of the Universities Act: The Chairperson of Councils Proposed Recommendations

S/No.	Section of the Universities Act	Areas of Concern and Recommendation(s)	Reason and objective for the proposal
		<p>"A person shall be qualified for appointment as a Chairperson or member of the Council if the person-</p> <p>(a) in the case of a Chairperson, holds a Masters' degree from a University recognized in Kenya and has fifteen years' experience at a senior management position or a bachelors' degree from a university recognized in Kenya or at least twenty years' experience in a senior management position, or</p> <p>(b) in the case of a member, holds a Masters' degree from a university recognized in Kenya and has at least ten years' experience at a senior management position or a bachelors' degree from a university recognized in Kenya and has at least fifteen years' experience in a senior management position.</p> <p>Recommendations by the Chairs of Councils:</p> <ul style="list-style-type: none"> • To retain existing provisions in the Principal Act; and • The existing provisions provide for parity in qualifications for appointment of Chairperson or members of CUE with those of University Councils. Thus, the proposed amendment to Section 36 be deleted and the requirement for a doctorate degree (PhD) for Chairpersons of Council be retained as provided for in the Principal Act. 	<ul style="list-style-type: none"> • It is important to ensure that the qualifications of Council Chair match that of the senior management. • The proposed amendment lowers qualifications for Chairpersons and membership of Council and retains the years of experience as is, but for those with only a Bachelor's degree, the experience required is increased by 5 years.
3.	Insertion of New section 36A in no. 42 of 2012	<p>The Proposal in the Bill:</p> <p>1. 36A (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or</p>	<ul style="list-style-type: none"> • The Cabinet Secretary appoints the Chairpersons of Councils in consultation with the Head of State, thus there has

Proposed Review of the *Universities Act*: The Chairperson of Councils Proposed Recommendations

S/No.	Section of the Universities Act	Areas of Concern and Recommendation(s)	Reason and objective for the proposal
		<p>transfer or otherwise deploy the Chairperson or any member of any Council.</p> <p>2. Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision.</p> <p>Recommendations by the Chairs of Councils</p> <ul style="list-style-type: none"> • The proposed amendment introducing S. 36A be deleted; • The Ministry of Education (MoE) is represented in University Councils and therefore not necessary to review or revoke Council decisions; the proposal should therefore be deleted; • The proposed amendments for addition of Section 36A in the Universities Act ought not to stand, <i>in toto</i>; and • Consequently, the entire proposed amendment of Section 36A be expunged and that Section 36 of the Universities Act be retained in its current form. 	<p>been input on the suitability of the Council Chairs and members before their appointment.</p> <ul style="list-style-type: none"> • Transfers and deployment of Chairpersons and members goes against the contractual nature of their appointments - a non-executive fixed 3-year term of service. This proposal weakens the security and stability of university governance organs and places too much power in the hands of the Cabinet Secretary without requisite checks and balances. This power is amenable to abuse and places Council membership at a perilous position. • Councils like any other public board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council by the PS of the Ministry of Education dealing with University matters. • The proposed move can create confusion in terms of implementation of the Council decisions by management.

Proposed Review of the Universities Act: The Chairperson of Councils Proposed Recommendations

S/No.	Section of the Universities Act	Areas of Concern and Recommendation(s)	Reason and objective for the proposal
			<ul style="list-style-type: none"> By the Cabinet Secretary reviewing or vacating decisions on these functions undermines the very idea of governance and academic freedom provided for in section 29 of the Universities Act and Article 33(1)(c) to the extent that independence of decision making is removed. The proposal does not encourage corporate-decision making by the Council, as whatever decision made can be varied or vacated.
4.	36 Insertion of new Section 36 A in No 2021 (36A (3))	<p>The Proposal in the Bill:</p> <p>3. A Council seeking to meet more than four times in a year must obtain written approval from the Cabinet Secretary.</p> <p>Recommendation by the Chairs of Councils:</p> <p>The proposed amendment should be deleted <i>in toto</i> and instead the law can be amended to state that:- "A Council shall meet at least four times in every financial year."</p>	<ul style="list-style-type: none"> Reason: In accordance with the Public Service Circular. This whittles down the independent mandate of the Council to regularly review its meeting agenda and urgency, and imposes additional layers of bureaucracy. Consultation with SCAC and SRC necessary as meetings of the Council are guided by laws like the State Corporations Act.

Proposed Review of the *Universities Act*: The Chairperson of Councils Proposed Recommendations

S/No.	Section of the Universities Act	Areas of Concern and Recommendation(s)	Reason and objective for the proposal
5.	Amendment of 39 (1)(a), (3), (5) & 6	<p>In consonance to the amendment in Section 39, the Principal Act is amended in section 35 by deleting subparagraph (1) (a) (v) Thus, the proposal in the Bill is:</p> <p>Section 39 read together with Fourth Schedule are amended and inserted. Then section 35 and section 39 are harmonised by amending the 2018 amendment.</p> <p>Recommendations by the Chairs of Councils:</p> <ol style="list-style-type: none"> 1. That the appointment of Vice-Chancellors and Principals of constituent Colleges and their respective deputies be as provided for in the Principal Act in section 35. 2. That Schedule 4 in the proposed amendments be expunged. 3. That the appointment of Principals of University Colleges continues as is currently done by respective universities and their councils and as provided for in respective university Charters and statutes. <p>39 (b) Renewal of appointments for VCs</p> <p>Recommendation by the Chairs of Councils:</p> <p>The proposal is that there should be satisfactory performance as evaluated by Council!. Thus, to adopt the amended proposed amendment in 39(3) after including the words ‘.....as evaluated by the University Council!’ immediately after “.....satisfactory performance”.</p>	<p>Reason:</p> <ul style="list-style-type: none"> • There is no justifiable reason for material departure of Universities from the cardinal national value of good governance practises enshrined in the State Corporation Act and encapsulated in the <i>Mwongozo</i>: Code of Governance for State Corporations. • <i>The proposed amendments of section 39(5) should be amended as follows:</i> The provisions of this section shall apply with necessary modifications to the appointment of Deputy Vice-Chancellors and Principals and Deputy Principals of Constituent Colleges. • Section 39(1)(a) in the Universities Act should remain the way it is: - <i>in the case of a public university, competitively by the Cabinet Secretary on the recommendation of the Council;</i> • The Councils are charged with providing strategic direction for the institution and should therefore recommend the Vice

Proposed Review of the *Universities Act*: The Chairperson of Councils Proposed Recommendations

S/No.	Section of the Universities Act	Areas of Concern and Recommendation(s)	Reason and objective for the proposal
			<ul style="list-style-type: none"> Chancellor for appointment by the Ministry. This is a delegated responsibility of the Council whom the Cabinet Secretary himself/herself appointed. The function of promotions in these positions still remains with the Councils. Appointments to the same positions should be retained in the Councils.
		<p>Deputy Vice-Chancellor and Principal of Constituent College</p> <p>Recommendation by the Chairs of Councils:</p> <ul style="list-style-type: none"> That the proposal be deleted and have the University Council conduct the interviews. 	<ul style="list-style-type: none"> Deputy Vice-Chancellors and other lower positions should be filled through a competitive process managed by the University Councils. The Deputy Vice-Chancellors works under the Vice-Chancellors and it is therefore fair to have the University Councils and the Vice-Chancellors making the appointments.

**UNIVERSITIES (AMENDMENT) BILL,
(NATIONAL ASSEMBLY BILL NO. 35 OF 2021)**



SPECIAL ISSUE

Kenya Gazette Supplement No. 135 (National Assembly Bills No. 35)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

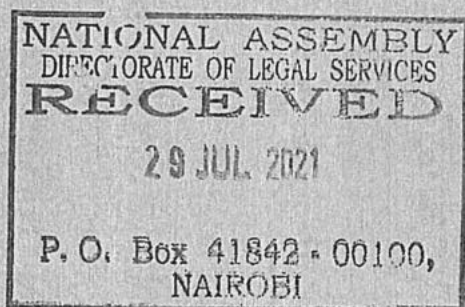
NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 9th July, 2021

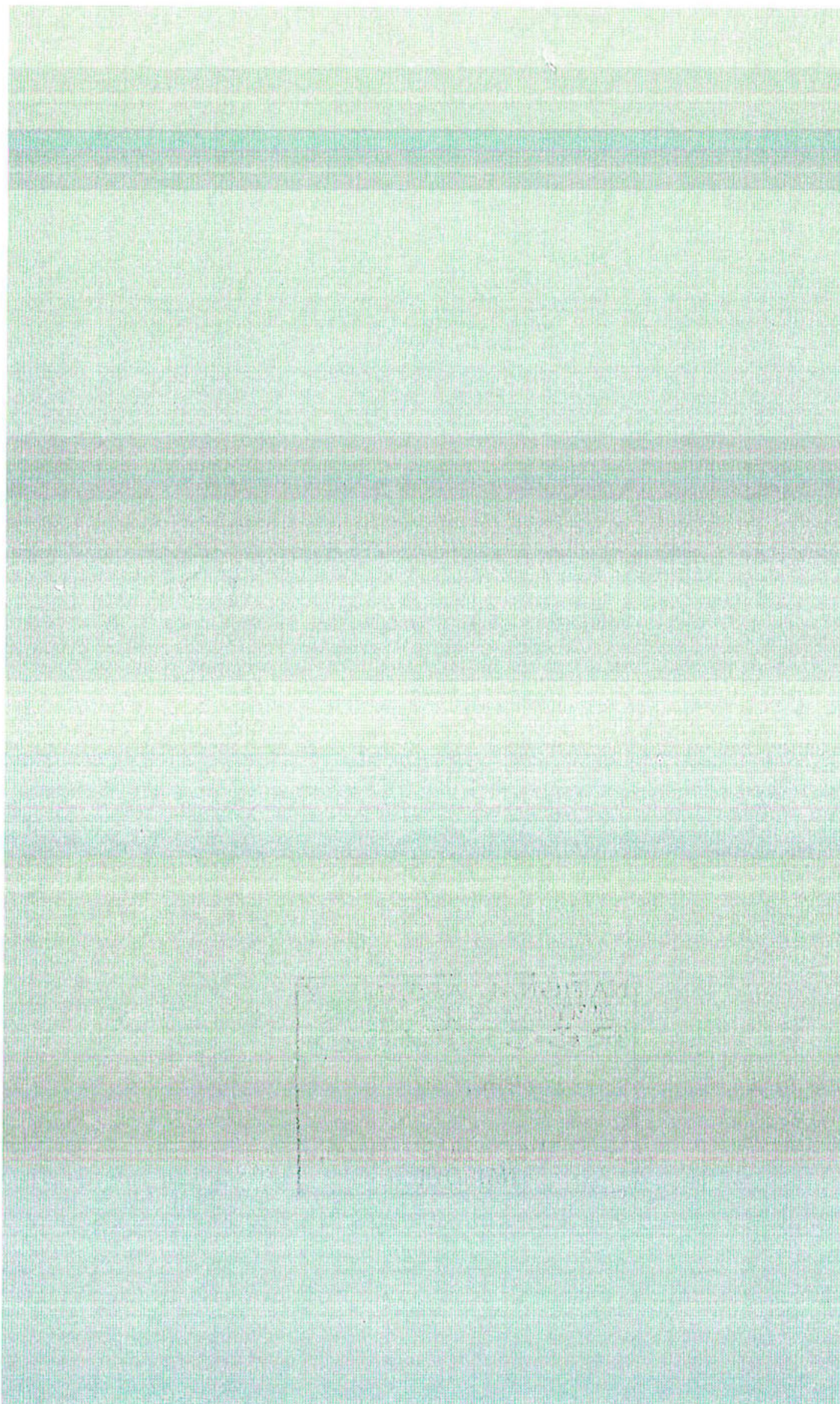
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THE UNIVERSITIES (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Universities Act, 2012 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be referred to as the Universities (Amendment) Act, 2021. Short title.
2. Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended by deleting the definition of “Trustees”. Amendment of section 2 of No. 42 of 2012.
3. Section 5A of the principal Act is amended in subsection (4)(b) by deleting the word “particular” appearing immediately after the words “of a” and substituting therefor the word “public”. Amendment of section 5A of No. 42 of 2012.
4. Section 10 of the principal Act is amended in subsection (1) by deleting the words “one or more” appearing immediately after the word “appoint” and substituting therefor the words “not more than two”. Amendment of section 10 of No. 42 of 2012.
5. Section 19 of the principal Act is amended in subsection (1) by inserting the following proviso immediately after paragraph (b)— Amendment of section 19 of No. 42 of 2012.

Provided that the Cabinet Secretary may, upon request by a University and if satisfied that it is appropriate in the circumstances to do so, extend the Letter of Interim Authority for such further period, not exceeding four years, as the Cabinet Secretary may determine.
6. Section 20 of the principal Act is amended in subsection (3) by deleting the words “in consultation with” appearing immediately after the words “Secretary may” and substituting therefor the words “upon recommendation of”. Amendment of section 20 of No. 42 of 2012.
7. Section 24 of the principal Act is amended by inserting the following new subsections immediately after subsection (2)— Amendment of section 24 of No. 42 of 2012.

(2A) The provisions of Part V of this Act shall apply with necessary modifications to the institutions established under this section.

(2B) A Charter granted to an institution under this section shall outline the conditions under which the institution shall operate and set out a clearly defined mandate with regard to specified academic programmes.

8. Section 25 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of
section 25 of
No. 42 of 2012.

(2) Where a declaration is made in respect of a public institution, it shall only apply where the institution is or was previously a National polytechnic within the meaning of the Technical and Vocational Education and Training Act, 2013, or is an institution with the requisite physical facilities and human resource appropriate for a technical university.

9. The principal Act is amended by repealing section 26 and replacing it with the following new section—

Repeal and
replacement of
section 26 of
No. 42 of 2012.

Universities in
counties.

26. The Commission shall ensure accessibility of public universities by all counties, giving priority to viability and equitability in the distribution of public universities across the country.

10. Section 28 of the principal Act is amended in subsection (4) by deleting the words “in at least three newspapers of national circulation” appearing immediately after the word “published” and substituting therefor the words “in at least two newspapers of national circulation and on the Commission’s website,”

Amendment of
section 28 of
No. 42 of 2012.

11. Section 35 of the principal Act is amended—

Amendment of
section 35 of
No. 42 of 2012.

(a) in subsection (1)(a)(ii) by deleting the words “and cause them to be published in the

Gazette” appearing immediately after the word “University” and substituting therefor the words “and submit them to the Cabinet Secretary for publication in the *Gazette*”;

- (b) by deleting subsection (1)(a)(v).

12. Section 36 of the principal Act is amended—

Amendment of
section 36 of
No. 42 of 2012.

- (a) by deleting subsection (2) and substituting therefor the following new subsection—

- (2) A person shall be qualified for appointment as a Chairperson or member of the Council if—

- (a) in the case of a chairperson, the person holds a Masters’ degree from a university recognized in Kenya and has at least fifteen years’ experience in a senior management position, or a bachelor’s degree from a university recognized in Kenya and has at least twenty years’ experience in a senior management position; or
- (b) in the case of a member, the person holds a Masters’ degree from a university recognized in Kenya and has at least ten years’ experience in a senior management position or a bachelor’s degree from a university recognized in Kenya and has at least fifteen years’ experience in a senior management position.

- (b) by deleting subsection (5) and substituting therefor the following new subsection—

- (5) The appointment of the members of the Council under subsection (1) shall be done at different times so as to ensure that their terms of office expire at different times.

13. The principal Act is amended by inserting the following new section immediately after section 36—

Insertion of new
section 36A in
No. 42 of 2012.

Cabinet secretary
may revoke
appointment etc.

36A. (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or transfer or otherwise deploy the chairperson or any member of any Council.

(2) Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision.

(3) A Council seeking to meet more than four times in a year must obtain written approval from the Cabinet Secretary.

14. Section 39 of the principal Act is amended—

Amendment of
section 39 of
No. 42 of 2012.

- (a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) in the case of a public university, by the Cabinet Secretary after a competitive process conducted in the manner provided in the Fourth Schedule.
- (b) by deleting subsection (3) and substituting therefor the following new subsection—
 - (3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years upon satisfactory performance.
- (c) by deleting subsection (5) and substituting therefor the following new subsection—
 - (5) The provisions of this section shall apply with necessary modifications to the

appointment of Deputy Vice-Chancellors and Principals and Deputy Principals of University colleges and Constituent Colleges.

(d) by inserting the following new subsection immediately after subsection (5)—

(6) The Vice-Chancellor of a public university shall be supported in the execution of his or her duties by not more than three deputy vice-chancellors:

Provided that where at the commencement of this provision, any University has more than three Deputy Vice-Chancellors—

(a) such Deputy Vice-Chancellors shall remain in office until the expiry of their terms of office after which appointments shall be made under this provision; and

(b) the University shall, within six months after such commencement, amend its statutes so as to comply therewith.

15. Section 47 of the principal Act is amended in subsection (2) by deleting the word “four” appearing immediately after the word “Within” and substituting therefor the word “three”.

Amendment of
section 47 of
No. 42 of 2012.

16. Section 53 of the principal Act is amended—

Amendment of
section 53 of
No. 42 of 2012.

(a) in subsection (3)(d) by deleting the word “Trustees” appearing immediately after the words “by the” and substituting therefor the word “Board”.

(b) in subsection (4) by—

(i) deleting the word “Trustees” appearing immediately after the words “by the” in

paragraph (a) and substituting therefor the word “Board”;

- (ii) deleting the word “Trustees” appearing immediately after the words “by the” in paragraph (b) and substituting therefor the word “Board”;
- (iii) deleting the word “Trustees” appearing immediately after the words “by the” in paragraph (c) and substituting therefor the word “Board”.

17. The principal Act is amended by inserting the following new section immediately after section 53—

Insertion of section 53A in No. 42 of 2012.

Administration
of the Fund.

53A. The Fund shall be administered by the Board established under section 54 in accordance with the provisions of the Fifth Schedule.

18. The principal Act is amended by repealing section 54 and replacing it with the following new section—

Repeal and replacement of section 54 of No. 42 of 2012.

Universities
Fund Board.

54. (1) There is established a Board to be known as the Universities Fund Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money and lending money;

- (d) entering into contracts; and
 - (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.
- (3) The Board shall be the successor to the Board of Trustees existing immediately before the commencement of this section, and all rights, duties, obligations, assets and liabilities of the Board of Trustees existing at such commencement shall be automatically and fully transferred to the Board.
- (4) The Board shall have all the powers necessary for the proper performance of its functions under this Act and, in particular but without prejudice to the generality of the foregoing, the board shall have power to—
- (a) formulate the policies of the Fund;
 - (b) carry out the objects and functions of the Fund;
 - (c) provide overall directions on effective coordination of operations of the Fund;
 - (d) receive donations or endowments on behalf of the Fund;
 - (e) borrow such monies from such sources and in such amounts as may be approved by the Cabinet Secretary with the concurrence of the National Treasury and to secure

such loans in such manner as they deem fit; and

- (f) invest any surplus funds not currently required for the purpose of the Fund in any investment of trust funds with power from time to time to vary or realize those investments.

(5) The Board shall consist of—

- (a) a chairperson being a person with at least ten years' experience in finance, education or investment, appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for Finance;
- (c) the Principal Secretary in the Ministry responsible for Education;
- (d) the Director of the Kenya Universities and Colleges Central Placement Service appointed under the Universities Act, 2012;
- (e) one person nominated competitively by the Kenya Private Sector Alliance;
- (f) one person nominated by the Federation of Kenya Employers;
- (g) one person nominated by public universities in a forum of chairpersons of the Councils of public universities convened by the Cabinet Secretary for that purpose;

- (h) one person nominated by private universities in a forum of chairpersons of the Councils of private universities convened by the Cabinet Secretary for that purpose; and
 - (i) an advocate of at least ten years' standing nominated by the Law Society of Kenya.
- (6) The Cabinet Secretary shall appoint the members referred to in subsection (5)(e), (f), (g), (h) and (i).
- (7) In making appointments under subsection (6) the Cabinet Secretary shall have regard to—
 - (a) the objects of the Fund;
 - (b) the need for balanced competencies among the members of the Board;
 - (c) gender equity; and
 - (d) the inclusion of persons with disabilities, minorities and other marginalized groups.
- (8) A member appointed to the Board under sub-section (5)(e), (f), (g), (h) and (i) shall hold office for a term of three years renewable once.
- (9) The functions of the Board shall be to—
 - (a) advise the Cabinet Secretary in matters relating to the funding for university education and related policy issues;

- (b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;
- (c) apportion funds allocated by the national government to public universities and issue conditional grants to private universities;
- (d) in consultation with the Chairpersons of Councils of public and private universities, propose and establish for approval by the Cabinet Secretary, the differentiated unit cost for the programmes offered by each subject area;
- (e) establish the minimum discipline differentiated remuneration for academic staff of public universities with the advice of the Salaries and Remuneration Commission, which shall be fair and competitive, and advise the Cabinet Secretary accordingly;
- (f) mobilize and receive funds for purposes of the Fund from the national government, donors, and from any other source;

and

- (g) exercise any other power for the better performance of its functions under this Act.

19. The principal Act is amended by repealing section 54A and replacing it with the following new section—

Repeal and replacement of section 54A in No. 42 of 2012.

Chief executive officer.

54A. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively appointed by the Board and whose terms and conditions of service shall be specified in the instrument of appointment.

(2) A person shall be qualified for appointment as a Chief Executive Officer if such person—

- (a) is a Kenyan citizen;
- (b) holds a masters' degree or its equivalent from a university recognized in Kenya; and
- (c) has at least ten years' experience in financial management.

(3) The Chief Executive Officer shall be the secretary to the Board and responsible to the Board for the day to day management of the affairs and staff of the Board.

20. The principal Act is amended by repealing section 54B and replacing it with the following new section—

Repeal and replacement of section 54B in No. 42 of 2012.

Staff of the
Board.

54B. The Board may employ such other officers and staff as may be necessary for the discharge of its mandate and performance of its function under this Act:

Provided that every person who at the commencement of this section is an employee of the Board of Trustees existing immediately before such commencement and not being under notice of dismissal or resignation shall become an employee of the Board under this Section 54A on the same or improved terms and conditions.

21. Section 55 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of
section 55 of
No. 42 of 2012.

(3) The Service shall be governed by the Placement Board which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for higher education;
- (c) the Principal Secretary in the Ministry responsible for finance;
- (d) the Secretary of the Commission;
- (e) the Chief Executive of the TVETA; and
- (f) six other persons appointed by the Cabinet Secretary, being—
 - (i) one Vice-Chancellor representing public universities;
 - (ii) one Vice Chancellor representing private universities;
 - (iv) two members with experience in management of education; and
 - (v) the Director, who shall be an *ex-officio* member.

22. Section 56 of the principal Act is amended by inserting the following new subsections immediately after subsection (3)—

Amendment of section 56 of No. 42 of 2012.

(4) Each participating university shall submit a list of the government and self-sponsored students enrolled in the university to the Placement Board, within thirty days from the date of closure of the enrollment of students to the University.

(5) The Placement Board shall submit the information received under subsection (4) to the Universities Fund Board within fourteen days of receipt thereof.

23. The principal Act is amended by repealing section 61A.

Repeal of section 61A of No. 42 of 2012.

24. The principal Act is amended by repealing the Second Schedule and replacing it with the following new Schedule—

Repeal and replacement of Second Schedule to No. 42 of 2012.

SECOND SCHEDULE**[section 38(1)]****PROCEDURE FOR THE APPOINTMENT OF THE
CHANCELLOR OF A PUBLIC UNIVERSITY**

1. Where a vacancy occurs in the office of Chancellor of a public university, the Senate of that university shall, in consultation with the respective alumni association, identify three suitable persons for appointment.

2. The Senate shall forward the names of the nominees to the Cabinet Secretary for onward transmission to the President, who shall select one of the persons so identified for appointment as Chancellor.

3. The appointment of Chancellor by the President shall be by notice published in the Gazette.

25. The principal Act is amended by repealing the Third Schedule.

Repeal of Third
Schedule of No.
42 of 2012.

26. The principal Act is amended by inserting the following new Schedules in proper numerical sequence—

Insertion of new
Schedules in
No. 42 of 2012.

FOURTH SCHEDULE [section

39(1)(a)]

**PROCEDURE FOR THE RECRUITMENT AND
APPOINTMENT OF VICE-CHANCELLORS,
DEPUTY VICE-CHANCELLORS, PRINCIPALS AND
DEPUTY PRINCIPALS**

1. Where a vacancy occurs in the Office of the Vice-Chancellor or the Deputy Vice-Chancellor of a public university or Principal or deputy Principal of a Constituent College, the Cabinet Secretary shall constitute a selection panel to conduct the recruitment.

2. (1) The selection panel referred to in subsection (2) shall comprise of persons appointed by the Cabinet Secretary as follows—

- (a) a chairperson being a scholar with at least ten years' experience in leadership and management of public or private institutions;
- (b) a representative of the Council;
- (c) a representative of the Principal Secretary of the Ministry for the time being responsible for university education;
- (d) two representatives, being one man and one woman, nominated by the respective University Senate;
- (e) one person to represent the body currently recognized as representing the interests of the private sector; and
- (f) two persons with a background in human resource and public finance management respectively.

2. Appointments under this paragraph shall be by notice in the *Gazette*.

3. The selection panel may regulate its own procedure.

4. The selection panel shall—

- (a) advertise for the vacancies and publicize the applicants and shortlisted candidates;
- (b) conduct interviews of the shortlisted candidates;
- (c) identify three qualified applicants for each vacant position; and
- (d) forward names of the qualified applicants under paragraph (c) to the Cabinet Secretary.

5. The Cabinet Secretary shall within fourteen days of receipt of the names forwarded under paragraph 4 (d) appoint a candidate from any of the three qualified applicants.

6. The selection panel shall stand dissolved after the appointment of a candidate under paragraph 5.

FIFTH SCHEDULE [section 53A]

ADMINISTRATION OF THE FUND

1. The Board may invest any unutilized balances in the Fund in such manner as the trustees may lawfully invest public funds.
2. Despite paragraph (1), the Board shall not invest more than twenty percent of the unutilized balances in the Fund in administrative costs or fixed capital investments.
3. The Board shall in each financial year, disburse funds without undue delay to a participating university for allocation to government-sponsored students.
4. For avoidance of doubt, any delay occasioned by the Board in disbursing the funds to a participating university shall not prejudice the provision of services to the proposed beneficiaries of such funds.
5. The Board shall notify each participating university in each financial year of the funds that have been apportioned to the university in respect of each student, the proposed date of disbursement of the funds and the total disbursements to be made to the university.
6. The Board shall apportion funds to a participating university in each financial year in addition to any disbursed funds that had been allocated to the participating university in the previous financial year.
7. Every university shall submit a report to the Board by the 30th April of each year on the status of the academic progress of the beneficiaries of the funds apportioned to the university by the Board.
8. The Board shall prescribe the form of the report to be submitted under paragraph (7) which shall include information on the amount apportioned to the university by the Board and the number of students who have received funds from the university.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The main object of this Bill is to amend the Universities Act in the provisions relating to the appointment of the members of University Councils, and the governance of universities, and also to make new provisions with respect to the Universities Fund.

Clause 2 of the Bill proposes to amend section 10 of the Act to limit the number of Deputy Secretaries of the Commission of University Education to two in order to streamline the management of the Commission.

Clause 3 of the Bill proposes to amend section 20 of the Act to empower that the Commission to recommend suitable institutions for declaration as constituent colleges of universities.

Clause 4 of the Bill proposes to amend section 24 of the Act to regulate the institutions offering specialized degrees.

Clause 5 of the Bill proposes to amend section 25 of the Act to provide for the declaration of institutions of the stature of National Polytechnics to be technical universities.

Clause 6 of the Bill proposes to replace section 26 of the Act in order to ensure attention to viability in the establishment of universities at county level.

Clause 7 of the Bill proposes to amend section 28 of the Act to allow the Commission to publish the names of accredited foreign universities on the Commission's website and two newspapers of national circulation to reduce costs.

Clause 8 of the Bill proposes to amend section 35 of the Act to clarify the procedure for the publication of university statutes through the Cabinet Secretary, and to harmonize the provisions on the appointment of certain members of the university administration.

Clause 9 proposes to amend section 36 of the Act to adjust the qualifications for appointment of chairpersons and members of university councils and to provide for staggered appointments for purposes of continuity.

Clause 10 of the Bill seeks to introduce a provision to empower the Cabinet Secretary with regard to the appointment and deployment of members of university councils.

Clause 11 of the Bill proposes to amend section 39 of the Act to harmonize the procedure for appointment of Deputy Vice-Chancellors and Principals and deputy principals of university colleges and constituent

colleges. It also seeks to limit the number of deputy vice chancellors to three.

Clause 12 of the Bill proposes to amend section 47 of the Act on the submission of accounts to the Auditor-General after the close of the financial year to harmonize them with the Public Finance Management Act, 2012.

The Bill also proposes to amend the Act in the provisions relating to the Universities Fund, its establishment and management and to restructure it for optimal achievement of its intended objectives.

Clause 20 of the Bill proposes to amend the Act to remove from the Act the formats for the Charter and the Letter of Interim Authority for a University in order to afford greater flexibility in their formulation.

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

This Bill does not delegate legislative power or limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion the expenditure of public funds which shall be provided in the estimates.

Dated the 30th June, 2021.

AMOS KIMUNYA,
Leader of the Majority Party.

Section 2 of No. 42 of 2012 which it is proposed to amend—

Interpretation

2. In this Act, unless the context otherwise requires—

“academic programme” means the design of learning content which includes the intention, the structure of the content, the delivery mode, academic resources and assessment modes;

“academic staff” means any person appointed to teach, train or to do research at a university and any other employee designated as such by the university council;

“accreditation” means the procedure by which the Commission recognises an institution as a University and as having fulfilled the prescribed criteria for mounting its academic programmes;

“alumni” means a member of the convocation of a university;

“Board” means the Universities Funding Board established under section 54;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to university education;

“Charter” means the Charter granted to a university under sections 19, 24 or 25;

“Commission” means the Commission for University Education established under section 4;

“constituent college” means a constituent college of a university established under this Act;

“differentiated unit cost” means the annual per student cost of mounting a particular degree programme;

“discipline differentiated remuneration” means academic staff remuneration based on programme discipline clusters;

“distance learning” means the mode of delivering education through use of print, audio-visual, electronic or other technical media;

“foreign university” means a university legally established in a country outside Kenya, which intends to offer university education in Kenya;

“foreign university campus” means an extension of a foreign university, set up by the university pursuant to its statutes and established in accordance with section 28 of this Act;

“Fund” means the Universities Fund established under section 53;

“institution” means a public or private institution or facility used or to be used wholly or partly, for the conduct of university education;

“instrument of accreditation” means the Charter or Letter of Interim Authority establishing a university issued under this Act;

“Open University” means the Open University established under section 24;

“Placement Board” means the Placement Board established under section 55(3);

“private university” means a university which is not established or maintained out of public funds;

“programme accreditation” means the process by which the Commission formally recognizes an academic programme of a University, including a foreign university;

“public university” means a university established and maintained out of public funds;

“quality assurance” means the employment by a university of various measures and mechanisms developed by the Commission to assess, maintain and enhance standards of programmes offered by a university;

“Senate” means the senate of a university or any other equivalent body;

“sponsor” means any person including the government proposing the establishment of a university and committed to its development, implementation, construction, maintenance, management and financing;

“stakeholder” means a person or group of persons involved in an education, training and research institution and with vested interests for the benefit of such an institution;

“statutes” means the statutes of a university made by a university council;

“student” means any person registered in a university or an institution offering university education;

“student with special needs” means a student with motor, hearing or visual or other impairment which requires adaptive support to access education;

“technical university” means a university, established in accordance with section 25 of this Act;

“Trustees” means the Board of Trustees of the Fund;

“TVET Funding Board” and “TVETA” shall have the meanings assigned to them under the Technical and Vocational Education and Training Act, 2012;

“university” means a university established in accordance with section 13 of this Act;

“university campus” means an extension of a university set up by the university pursuant to its statutes and established in accordance with section 20 of this Act;

“University Council” means the governing body of a University;

“visitation” means the visitation of a university directed by the Chancellor under section 38(3)(b).

(2) Notwithstanding subsection (1), until after the first general elections under the Constitution, the expressions “Cabinet Secretary” and “Principal Secretary” shall be construed to mean “Minister” and “Permanent Secretary” respectively.

Section 5A of No. 42 of 2012 which it is proposed to amend—

Conflicts with other Acts in approval of programmes

5A. (1) If there is a conflict between the provisions of this Act and the provisions of any other Act in matters relating to approval or accreditation of academic programmes offered by universities, the provisions of this Act shall prevail.

(2) Despite the provisions of any other law, the recognition, licensing, student indexing, approval or accreditation of any academic programme including postgraduate degrees, diplomas including postgraduate diplomas and other academic certificates offered at a university shall be the exclusive mandate of the Commission to be exercised in accordance with this section to the exclusion of any other person or body.

(3) The Commission may, before approving any academic programme consult with any relevant body established by written law to regulate the profession to which the academic programme relates where such law empowers the professional body to approve or accredit courses offered at any university or colleges.

(4) Pursuant to section 5(2), the Commission may engage—

- (a) professional bodies and associations to carry out inspection of universities on its behalf;

- (b) the Auditor-General to offer the Commission professional opinion on management and financial positions of a particular university.

(5) A person who without the authority of the Commission under this Act purports to license, accredit, recognise, audit, inspect, index students or collect a fee or a charge from a university or a student commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding two years or both.

Section 10 of No. 42 of 2012 which it is proposed to amend—

Deputy Secretary

10. (1) The Commission shall appoint one or more Deputy Commission Secretaries who shall, under the general authority of the Commission Secretary, exercise such powers and perform such duties as may be assigned by the Secretary.

(2) A Deputy Commission Secretary shall hold office on such terms and conditions as may be specified in the instrument of appointment.

Section 19 of No. 42 of 2012 which it is proposed to amend—

Grant or refusal to grant a Charter

19. (1) The Cabinet Secretary shall consider the report and the recommendations submitted under section 18 and may—

- (a) if satisfied that the application meets the requirements for the establishment of a university, recommend to the President the grant of a Charter, either in the form of the draft Charter submitted with the application or in such other form as the Commission may consider appropriate;
- (b) extend the Letter of Interim Authority for a further and final period of four years; or
- (c) if satisfied that the proposed university does not meet the requirements for establishment of a university, reject the application.

(2) Where the Cabinet Secretary rejects an application under paragraph (1)(c)—

- (a) the Cabinet Secretary shall furnish the applicant with the reasons for the rejection of the application;
- (b) the Letter of Interim Authority issued under this Act shall, be revoked within one year;

Provided that the applicant may submit a fresh application in accordance with this Act; and

- (c) the Cabinet Secretary may, in consultation with the Commission appoint such person or persons to administer and manage the university for the better protection of the interests of the students and staff of the university as provided for in the regulations.

(3) Subsection (2) shall apply mutatis mutandis where a Letter of Interim Authority is revoked under section 17.

Section 20 of No. 42 of 2012 which it is proposed to amend—

Effect of a Charter

20. (1) A university granted a Charter in accordance with section 19—

- (a) shall be a body corporate, and as such shall continue the activities of the university as undertaken under the Letter of Interim Authority, including the employment of staff, except where activity is expressly altered under the Charter;
- (b) shall mobilize academic resources;
- (c) may develop its new academic programmes for approval by the Commission in accordance with this Act;
- (d) may establish campuses and colleges which must conform to standards established by regulations made under this Act; and
- (e) may award—
 - (i) degrees, including postgraduate degree and honorary degrees;
 - (ii) diplomas, including postgraduate diplomas; and
 - (iii) other academic certificates.

(2) Notwithstanding the generality of subsection (1), colleges and campuses of universities shall not share premises with incompatible businesses.

(2A) Despite the provisions of Section (1) (d), a public university shall not establish a campus or a college in a foreign country without the approval of the Cabinet Secretary in consultation with the Cabinet Secretary for the time being responsible for matters relating to finance.

(3) The Cabinet Secretary may, in consultation with the Commission, by order published in the Gazette, establish or declare an institution of learning or higher education or other training establishment to be a constituent college of a university.

Section 24 of No. 42 of 2012 which it is proposed to amend—

Establishment of specialized degree awarding institutions

24. (1) The President, on the recommendation of the Commission through Cabinet Secretary, and with the approval of Parliament may by award of Charter, establish—

- (a) specialized degree-awarding or research institutions whose mandate shall be of strategic national importance; and
- (b) a national Open University as a specialized university under this section, to offer university programmes through distance and e-learning mode.

(2) The institutions established under this section shall be prioritized by the Commission with respect to accreditation and the development of the governing instruments.

(3) Despite subsection (1), the President may, on the recommendation of the Commission through the Cabinet Secretary, and on the advice of the National Security Council, establish a specialized degree awarding institution specializing in national security issues.

(4) The provisions of Part V of this Act shall apply to an institution established under this section with such modifications as may, with the approval of the Cabinet Secretary and the Commission, be specified in the respective Charter.

(5) A Charter granted to an institution established under this section shall stipulate the conditions under which the institution shall operate, and a clearly defined mandate with regard to specified academic programmes.

Section 25 of No. 42 of 2012 which it is proposed to amend—

Declaration of Technical Universities

25. (1) The President may, on the recommendation of the Cabinet Secretary, declare an institution to be a technical university subject to such conditions, standards and guidelines as may be specified by the Commission.

(2) Where a declaration under this section is made with respect to a public institution, it shall only apply where such institution is a National Polytechnic within the meaning of the Technical and Vocational Education and Training Act, 2013.

Section 26 of No. 42 of 2012 which it is proposed to amend—

Universities in Counties

26. The Commission shall ensure the establishment of public universities in each of the Counties, giving priority to Counties that do not have universities immediately after following the coming into force of this Act.

Section 28 of No. 42 of 2012 which it is proposed to amend—

Accreditation of foreign universities

28. (1) A university established outside Kenya which intends to offer university education in Kenya, shall apply to the Commission for accreditation in accordance with the provisions of this Act.

(2) A foreign university may, subject to the provisions of this Act, enter into an arrangement with an institution in Kenya for purposes of offering its programmes or joint programmes of instruction in Kenya, with the prior approval of the Commission.

(3) Any foreign university approved under subsection (2) must first submit proof of accreditation from its country of origin to undertake university education in Kenya.

(4) The Commission shall, at the beginning of each year and thereafter each quarter of the year, cause to be published in at least three newspapers of national circulation, the list of universities accredited to undertake university education in Kenya.

(5) Any person who purports to offer a degree through a university that is not accredited commits an offence and shall be liable upon conviction, to a fine of not less than ten million shillings, or to imprisonment for a term of not less than three years, or to both.

Section 35 of No. 42 of 2012 which it is proposed to amend—

Governing organs of a university

35. (1) In addition to the provisions of its Charter, a university shall establish the following organs of governance or their equivalent—

(a) a Council, which shall—

(i) employ staff;

(ii) approve the statutes of the University and cause them to be published in the Kenya Gazette;

(iii) approve the policies of the University;

(iv) approve the budget;

- (v) in the case of public universities, appoint Vice Chancellor, Deputy Vice Chancellors and Principals and Deputy Principals of Constituent Colleges, in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission; and
- (vi) undertake other functions set out under this Act and the Charter.
- (b) the Senate, which shall be in charge of all academic matters of the university and shall undertake the functions assigned to it in the Charter of the university.
- (c) the Management Board, which shall—
 - (i) be responsible for implementation of the policies of the university;
 - (ii) assist in the day-to-day management of the university; and
 - (iii) undertake such other functions as shall be set out in the Charter.

(2) Notwithstanding the generality of the provisions of subsection (1), the Council of a private university shall be appointed in accordance with provisions of the Charter, and such a university may, with the approval of the Commission, establish additional governance organs, including a Board of Trustees or its equivalent, as the sponsor may deem appropriate.

(3) A Board of Trustees established pursuant to subsection (2) or the sponsor of a private university shall, in addition to any other functions set out in the charter of the university—

- (a) appoint members of the University Council;
- (b) raise funds for the benefit of the university in accordance with any written law or financing arrangement under section 51A;
- (c) promote the objects of the university; and
- (d) appoint the university Chancellor.

Section 36 of No. 42 of 2012 which it is proposed to amend—

Council of a public university

36. (1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—

- (a) chairperson;

- (b) the Principal Secretary in the Ministry for the time being responsible for the university education;
- (c) the Principal Secretary in the Ministry for the time being responsible for Finance;
- (d) five members appointed by the Cabinet Secretary through an open process in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary; and
- (e) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an *ex officio* member of the Council.

(1A) Notwithstanding subsection (1) the Vice-Chancellor of a public university shall be an *ex-officio* member of the councils of the constituent colleges of that university.

(2) The provisions relating to the qualifications of the chairperson and members of the Commission in section 7 shall apply, with necessary modifications, to the chairperson and members appointed under subsection (1)(d).

(3) In making appointments under this section the appointing authority shall have regard to the objectives of the development of university education, ensuring that there are balanced competencies, gender equity, and the inclusion of stakeholders, persons with disabilities, the marginalized and other minority groups.

(4) The provisions of section (8) relating to the vacancy of office of the chairperson and members of the Commission shall apply with necessary modifications to the chairperson and members appointed under subsection (1) (a) and (d).

(5) The members of the Council appointed under section 36(1) shall at their first meeting after appointment determine by lot which two of their number shall vacate office after a period of three and four years respectively to ensure continuity in the activities of the Council.

(6) The provisions of the First Schedule shall apply with necessary modifications, to the conduct of the business and affairs of the Council.

Section 39 of No. 42 of 2012 which it is proposed to amend—

The Vice-Chancellor

39. (1) The Vice-Chancellor of a university shall be appointed—

- (a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council; and
- (b) in the case of a private university, by the respective university Council in accordance with the provisions of the Charter.

(1A) The qualifications for appointment as a Vice-Chancellor of a public university shall be as prescribed in regulations.

(2) The Vice-Chancellor shall be the chief executive of the university and shall—

- (a) be the academic and administrative head of the university;
- (b) have the overall responsibility for the direction, organization, administration and programmes of the university; and
- (c) have such responsibilities and duties as may be provided for in the Charter.

(3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years.

(4) The term of the Vice-Chancellor of a private university shall be as provided in the Charter.

(5) The provisions of this section shall apply mutatis mutandis to the Principal of a constituent college.

Section 47 of No. 42 of 2012 which it is proposed to amend—

Accounts and audit

47. (1) A public university shall cause to be kept all proper books of records of accounts of the income, expenditure and the assets of the university.

(2) Within four months from the end of each financial year, a public university shall submit to the auditor general corporations the accounts of the university together with—

- (a) a statement of the income and expenditure of the university during the financial year; and
- (b) a balance sheet of the university on the last day of the year.

(3) The accounts of a public university shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 (No. 12 of 2003).

Section 53 of No. 42 of 2012 which it is proposed to amend—

Establishment of Fund

53. (1) There shall be established a Fund to be known as the Universities Fund.

(2) The object and purpose of the Fund shall be to provide funds for financing universities.

(3) There shall be paid into the Fund—

- (a) monies provided by Parliament;
- (b) such sums of money as may be received by the Board in the form of donations;
- (c) such sums of money as may be specifically designated for the Fund by the Board out of its own Funds;
- (d) income generated by investments made by the Trustees; and
- (e) endowments, grants and gifts from whatever source designated for the Fund.

(4) There shall be paid out of the Fund—

- (a) any expenditure approved by the Trustees for the funding of the public universities;
- (b) any expenditure approved by the Trustees for conditional grants and loans to private universities; and
- (c) any expenditure authorized by the Trustees to be incurred in connection with the administration of the Fund.

Section 54 of No. 42 of 2012 which it is proposed to amend—

Board of Trustees

54. (1) The Fund shall be managed by a Board of Trustees which shall consist of nine members appointed by the Cabinet Secretary as follows—

- (a) a chairperson who has knowledge and experience in matters related to finance, investment and fundraising;
- (b) the Principal Secretary in the Ministry responsible for finance;
- (c) the Principal Secretary in the Ministry for University Education;
- (d) six persons who have proven knowledge and experience in Financial matters of which at least two and not more than three will be of the same gender.

(2) In appointing the members referred to in subsection (1)(d) the Cabinet Secretary shall have regard to—

- (a) the objects of the Fund;
- (b) the need for balanced competencies among the Trustees;
- (c) gender equity; and
- (d) the inclusion of persons with disabilities, minorities and other marginalized groups.

(3) The provisions relating to the appointment of the members of the Commission as set out in section 6 shall apply, *mutatis mutandis*, to the Trustees.

(4) The function of the Trustees shall be to generally manage the University Fund established under section 53, and more particularly to—

- (a) advise the Cabinet Secretary in matters of university education funding and related policy issues;
- (b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;
- (c) apportion funds to public universities and issuance of conditional grants to private universities in accordance with criteria established;
- (d) in consultation with the Chairpersons of Councils of public universities, propose and establish for approval by the Cabinet Secretary and the Auditor-General the maximum differentiated unit cost for the programmes offered;
- (e) establish the minimum discipline differentiated remuneration for academic staff of universities, which shall be fair and globally competitive, and advise the Government accordingly;
- (f) mobilize and receive funds for purposes of the Fund from the Government, donors, and from any other source; and
- (g) exercise any other power for the better performance of its functions under this Act.

(5) The Trustees may invest any unutilized balances in the Fund in such manner as trustees may lawfully invest public funds.

(6) *Deleted by Act No. 48 of 2016, s. 20.*

(7) *Deleted by Act No. 48 of 2016, s. 20.*

Section 54A of No. 42 of 2012 which it is proposed to amend—

Director of the Fund

54A. (1) There shall be a Director who shall be the chief executive officer of the Fund, appointed by the Cabinet Secretary on recommendation of the Board of Trustees of the Fund following a competitive recruitment process, and who shall serve for a term of five years, which may be renewed for one further term.

(2) The Director of the Fund shall be responsible for the day to day management of the affairs of the Fund.

(3) A person shall be qualified for appointment as a Director if such person—

- (a) is a Kenyan citizen;
- (b) holds a degree or its equivalent from a university recognized in Kenya in the field of banking, education, law, finance, economics or management;
- (c) has at least ten years' relevant professional experience in the management of a public or private institution; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Section 54B of No. 42 of 2012 which it is proposed to amend—

Staff of the Fund

54B. (1) The Fund may employ such other officers and staff as it may deem necessary for the performance of its functions under this Act.

(2) All appointments under this section shall take into account gender equity, ethnic and regional balance in accordance with the Constitution.

Section 55 of No. 42 of 2012 which it is proposed to amend—

Establishment of a Kenya Universities and Colleges Central Placement Service

55. (1) There shall be a Service to be known as the Kenya Universities and Colleges Central Placement Service.

(2) The Service shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—

- (a) suing and being sued;
- (b) purchasing, disposing and disposing of movable and immovable property; and

- (c) doing all such other things or acts as may be done by a body corporate.

(3) The Service shall be governed by the Placement Board which shall consist of thirteen members appointed by the Cabinet Secretary as follows—

- (a) a chairperson;
- (b) the Secretary of the Commission;
- (c) the chief executive of the Higher Education Loans Board;
- (d) the chief executive of the TVET Funding Board;
- (e) the chief executive of the TVETA;
- (f) two Vice-Chancellors representing Public Universities;
- (g) two Vice-Chancellors representing Private Universities;
- (h) two representatives of the Kenya Association of Technical Institutions;
- (i) the Principal Secretary in the Ministry responsible for higher education; and
- (j) the Principal Secretary in the Ministry responsible for finance.

(4) The Service shall establish a Secretariat in such manner as it may deem appropriate, which shall be at such place as the Service shall determine.

(5) The Placement Board shall in the performance of its functions under this Act uphold equity and balanced access to University and College education and develop suitable criteria to promote affirmative action, and other strategies as may be approved by the Government.

Section 56 of No. 42 of 2012 which it is proposed to repeal—

Functions of Placement Board

56. (1) The functions of the Board shall be to—

- (a) co-ordinate the placement of the government sponsored students to universities and colleges;
- (b) disseminate information on available programmes, their costs, and the areas of study prioritized by the Government;
- (c) collect and retain data relating to university and college placement;
- (d) advise the Government on matters relating to University and college student placement;

(e) develop career guidance programmes for the benefit of students; and

(f) perform any other function assigned to it under this Act.

(2) The Placement Board shall in the performance of its functions promote equity and access to university and college education, by among other things, developing criteria for affirmative action for the marginalized, the minorities and persons with disabilities.

(3) The placement Board shall establish criteria to enable students access the courses for which they applied taking into account the students' qualifications and listed priorities.

Section 61A of No. 42 of 2012 which it is proposed to repeal—

Form of instrument of accreditation

61A. The instruments of accreditation shall be in the form prescribed in the Third Schedule to this Act.

The Second Schedule to No. 42 of 2012 which it is proposed to amend—

SECOND SCHEDULE

[Section 38(1), Act No. 18 of 2018, Sch.]

1. Where a vacancy occurs in the office of the Chancellor of a public university, the senate of that university shall, in consultation with key stake holders, identify suitable persons for appointment.
2. Five names shall be proposed to the Senate and submitted to the Public Service Commission for shortlisting and identification of three suitable candidates, ranked in order of merit.
3. The Public Service Commission shall forward, the names of the top three candidates to the Cabinet Secretary for onward transmission to the President, who shall pick one of the persons for appointment as the Chancellor.
4. The appointment of the Chancellor by the President shall be by notice published in the *Gazette*.

The Third Schedule to No. 42 of 2012 which it is proposed to repeal—

THIRD SCHEDULE

[Section 61A, Act No. 48 of 2016, s. 30.]

LETTER OF INTERIM AUTHORITY

Pursuant to section 14 of the Universities Act, this day of 20..... the Cabinet Secretary has granted (name of university) a Letter of Interim Authority authorising the university to operate in accordance with the provisions of sections 15, 16 and 17 of this Act.

*Signed**Cabinet Secretary.***CHARTER**

Pursuant to section 13 of the Universities Act, this day of 20 the Commission accredits (name of university) to be established as a university in accordance with the provisions of this Act.

*Signed**Cabinet Secretary.*