

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION 2018

DEPARTMENTAL COMMITTEE ON EDUCATION AND
RESEARCH

REPORT ON THE PROPOSED AMENDMENTS IN THE
STATUTE LAW (MISCELLANEOUS AMENDMENTS)
BILLS, 2018
NATIONAL ASSEMBLY BILL NO.12 OF 2018

Directorate of Committee Services
Clerk's Chambers
National Assembly
NAIROBI

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1.0 PREFACE

Hon. Speaker,

The Departmental Committee on Education and Research is established under the National Assembly Standing Order 216.

1.1 Mandate of the Committee

The Committee is mandated, among others, to: -

- i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- ii) study the programmes and policy objectives of Ministries and departments and the effectiveness of the implementation;
- iii) study and review all legislation referred to it;
- iv) study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
- v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- vi) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
- vii) examine treaties, agreements and conventions;
- viii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- ix) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- x) examine any questions raised by Members on a matter within its mandate.

1.2 Committee Membership

The Committee comprises of the following Members: -

1. Hon. Julius Melly, MP - Chairperson
2. Hon. Amos Kimunya, EGH, MP - Vice-Chairperson
3. Hon. Moses Malulu Injendi, MP
4. Hon. Geoffrey Makokha Odanga, MP
5. Hon. (Dr.) Pamela Ochieng, MP

6. Hon. (Eng.) Nzambia Thuddeus Kithua, MP
7. Hon. (Prof.) Zadoc Abel Ogutu, MP
8. Hon. Catherine Wambilyanga, MP
9. Hon. Eric Muchangi Njiru, MP
10. Hon. Eve Obara, MBS, MP □
11. Hon. Jackson Lekumontare, MP
12. Hon. Jerusha Mongina Momanyi,
13. Hon. John Oroo Oyioka, MP □
14. Hon. Joseph Kipkosgei Tonui, MP
15. Hon. Lilian Cheptoo Tomitom, MP
16. Hon. Omboko Milemba, MP □
17. Hon. Peter Lochakapong, MP
18. Hon. Wilson Sossion, MP
19. Hon. Wilson Kipngetich Kogo, MP

1.3 Committee Secretariat

The Committee secretariat comprise the following officers

1. Mr. Daniel Mutunga - Principal Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Eric Kanyi - Fiscal Analyst
4. Ms. Anncenta Gacheri - Research Officer
5. Ms. Emma Esendi - Legal Counsel
6. Mr. Nimrod Ochieng - Audio Officer
7. Ms. Catherine Mukunyi - Serjeant At Arms
8. Ms. Winnie Kizia - Media Relations Officer

1.4 Committal of the Bills

Article 109 of the Constitution states that “Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President”.

The Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bills No. 12 of 2018) was published on 10th April, 2018 and read a First Time on 18th April, 2018. The Bill, in keeping with the practice, proposes various amendments which do not merit the publication of separate Bills and consolidating them into one Bill. The Bills are proposing amendments to various Acts of Parliament.

Standing Order 127(1) of the National Assembly Standing Orders provides that *a Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put*. Standing Order 216(5)(b) mandates Departmental Committees to *study and review all legislation referred to it*.

Pursuant to the provisions of Standing Order 127 (1) the **Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bills No. 12 of 2018)** was committed to the Departmental Committee on Education and Research for consideration of the proposed amendments to various Statutes of Parliament related to the mandate of the Committee. The Bill proposes amendments to the Acts of Parliament.

1. The Universities Act, No. 42 of 2012;
2. The Kenya Institute of Curriculum Development Act, No. 4 of 2013;
3. The Higher Education Loans Board Act, 1995;
4. The Science, Technology and Innovation Act, No. 28 of 2013.

1.5 Memorandum of Objects and Reasons

The Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bills No. 12 of 2018) seeks to make amendments to the following statutes relevant to the mandate of the Committee:

The Universities' Act, 2012

The Bill seeks to amend the Universities Act, 2012 to make provisions on the appointment of the Chancellors and Vice-Chancellors in public universities.

The Higher Education Loans Board Act, 1995

The Bill seeks to amend the Higher Education Loans Board Act, 1995. The proposed amendments seek to change the composition of the Board as currently constituted under section 4 of the Act.

Kenya Institute of Curriculum Development Act, 2013

The Bill seeks to amend the Kenya Institute of Curriculum Development Act, 2013 to make provisions on the appointment of the Chairperson of the Council and composition of the Council.

The Science, Technology and Innovation Act, No. 28 of 2013

The Bill seeks to amend the Science, Technology and Innovation Act, 2013 to provide for the mode of appointment of the chairperson of the National Commission for Science, Technology and Innovation.

1.6 Committee Proceedings and Public Participation

Article 118 (b) requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees while Standing Order No. 127 (3) requires that the Departmental Committee to which a Bill is committed to facilitates public participation on the Bill through an appropriate mechanism, including: -

- (a) Inviting submissions of the memoranda;
- (b) Holding public hearings;
- (c) Consulting relevant stakeholders in a sector; and
- (d) Consulting experts on technical subjects.

Effective public consultation is based on principles of openness, transparency, integrity and mutual respect. The open process facilitates acceptability amongst the key stakeholders, subsequently facilitating efficient and effective implementation of the legislative instrument.

Further Standing Order No. 127 (3A) provides that the Committee shall take into account the views and recommendations of the public when it makes its report to the House.

In the matter of consideration of the the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No. 12 of 2018), adverts were placed in the print media on 7th May 2018 inviting public participation and submission of memoranda on the Miscellaneous Amendments Bill to the Committee. **(ANNEXURE I)**

The Committee received a total of nine memoranda from the public and relevant stakeholders in relation to the Bill which the Committee closely examined and took into account in consideration of the Bill. The memoranda were received from the following: -

- i) Inter Public Universities Councils Consultative Forum (IPUCCF)
- ii) National Association of Private Universities in Kenya (NAPUK)
- iii) University of Embu
- iv) Moi University
- v) Council of Governors
- vi) Kenya Bankers Association
- vii) Ms. AnnahKonuche
- viii) Mr. Francis Nguku
- ix) Sr. Nancy Watega

The Committee further invited the relevant stakeholders in considering the Bills and held a total of seven (7) sittings in which it closely received oral and written submissions and examined evidence from stakeholders namely the Cabinet Secretary for the Ministry of Education accompanied the by officers from Higher Education Loans Board (HELB), Commission for University Education and Kenya Institute of Curriculum Development (KICD), University Academic Staff Union officials and the Vice Chancellors Committee.

1.7 Acknowledgement

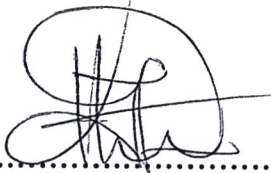
Hon. Speaker,

I take this opportunity to thank all Members of the Committee for their input in the consideration of the Statute Law (Miscellaneous Amendments) Bill, 2018.

The Committee also takes this opportunity to thank the Offices of the Speaker and the Clerk of the National Assembly for the logistical support accorded to it during the exercise. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability and transparency.

Hon. Speaker,

Pursuant to the provisions of Standing Order 199(6), and on behalf of the Departmental Committee on Education and Research, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No. 12) of 2018 and the Statute Law (Miscellaneous Amendments) (No.2), Bill, 2018 (National Assembly Bill No. 13) of 2018.



25/6/2018

Sign.....Date.....

Hon. Julius Melly, MP
(Chairperson, Departmental Committee on Education and Research)

2.0 CONSIDERATION OF THE BILLS

The submissions by the various stakeholders on the proposed amendments to the Acts as submitted to the Committee are summarized in the table below -

2.1 UNIVERSITIES ACT, 2012

SECTION	STAKEHOLDERS' PROPOSAL	JUSTIFICATION
35(1)(a)(v)	<p>Appointment of the Vice Chancellor</p> <p>Ministry of Education</p> <p>Delete the word "consultation" appearing immediately before the words "with the Cabinet Secretary" and substitute therefor the word "concurrence".</p>	<p>(a) Concurrence is more engaging than consultation;</p> <p>(b) As much as the appointing authority has been moved from the Cabinet Secretary to the respective Council, there is still need for checks and balances. The engagement between the Cabinet Secretary and the Council should be intense and they must arrive at an agreed name;</p> <p>(c) This will cure the problem currently experienced whereby the respective councils, after nominating three names to the Cabinet Secretary, the same Council informs the candidates of the outcome especially the candidate ranked number one. On the other hand, the Cabinet Secretary may appoint another candidate and this has resulted into court proceedings;</p> <p>(d) This amendment will also cure the current confusion and tension that occurs during appointment of Vice Chancellors.</p>

	<p>Committee of Vice Chancellors</p> <p>This should be done by a selection panel consisting of:</p> <ul style="list-style-type: none"> (a) the Council; (b) a representative of the Public Service Commission; (c) the Principal Secretary, Ministry of Education; (d) the Principal Secretary, the National Treasury; (e) the Senate; (f) Staff (which could be through the staff unions); (g) the alumni; (h) the Student Council. 	<p>To ensure and maintain academic credibility, autonomy and integrity of the office of the Vice Chancellor, the hiring of the Vice Chancellor cannot be left solely to the Public Service Commission.</p>
	<p>IPUCCF</p> <p>Delete and substitute with the following:</p> <p>(v) in the case of a public university, recommend for appointment of the Vice-Chancellor, Deputy Vice Chancellors and Principals and Deputy Principals of constituent Colleges through a competitive process.</p>	<p>The Act provides at section 35 that the Council shall employ staff of the University and these staff would include the Vice Chancellors and Deputy Vice Chancellors.</p> <p>If the hiring process is transferred to the Public Service Commission, the autonomy and academic freedom of the university will be greatly eroded.</p>
	<p>University Academic Staff Union (UASU)</p> <p>The university council should form a "search committee" composed of:</p> <ul style="list-style-type: none"> (a) distinguished academicians; 	<ul style="list-style-type: none"> (a) This is in line with the global practice; (b) This will ensure that the process is democratic, transparent, representative and the individuals can be held

	<p>(b) representatives of the Senate;</p> <p>(c) UASU;</p> <p>(d) Alumni association; and</p> <p>(e) representative of the Public Service Commission.</p> <p>The search committee will conduct the search, interviews will be publicly conducted and a shortlist presented to the university council for submission to the president.</p>	<p>accountable.</p>
	<p>National Association of Private Universities in Kenya (NAPUK)</p>	<p>The recruitment of the Vice Chancellors should be done by the Public Service Commission. This is to</p>
	<p>Include the following provisions:</p> <p>(a) The Public Service Commission shall, by regulations prescribe a standard requirement for appointment of a Vice Chancellor of a public university;</p> <p>(b) The Public Service Commission shall, with the advice of the Salaries and Remuneration Commission, set the remuneration package of all Vice Chancellors;</p> <p>(c) Every university council shall, at least six months before the expiry of the term of a Vice Chancellor, notify the Cabinet Secretary</p>	<p>ensure that the process of recruiting the Vice Chancellor is free from bias and also provide the process of removal from office of the Vice Chancellor.</p>

	<p>and the Public Service Commission of the imminent vacation of office;</p> <p>(d) The Public Service Commission shall, immediately commence the process of recruiting a new Vice Chancellor, in an open, transparent and competitive manner;</p> <p>(e) The Council may petition the Public Service Commission to remove the Vice Chancellor from office for –</p> <p>(i) Serious violation of the Constitution, or any other law, including Chapter Six of the Constitution;</p> <p>(j) Gross misconduct;</p> <p>(k) Incompetence;</p> <p>(l) Bankruptcy;</p> <p>(m) Abuse of office; or</p> <p>(n) Physical or mental incapacity to perform the functions of the office.</p>	
39 (1) (a)	<p>Inter Public Universities Councils Consultative Forum (IPUCCF)</p> <p>Retain the provision in the parent Act.</p>	<p>The membership of Council is made up of representation from the Ministry of Education and the National Treasury who are part and parcel of the Council and therefore take part in the recruitment process of the Vice Chancellor and the Deputy Vice Chancellors.</p>
39(3)	<p>Term of office of the Vice Chancellor</p>	<p>(a) The Chief Executive Officer of a parastatal usually serves for a term</p>

	<p>Committee of Vice Chancellors</p> <p>A term should be three to six years renewable upon satisfactory performance.</p>	<p>of three to five years renewable once upon satisfactory performance. It would thus be discriminatory to have the Vice Chancellors serve for one term of five years only;</p> <p>(b) University programmes run for a period of between four and six years before they are reviewed to enable the institution mount refurbished curricula, there is thus need for a second term to continue implementing approved projects, programmes and decisions on critical matters;</p> <p>(c) If the term is reduced to one term of</p>
		<p>five years, universities run the risk of being in a vicious cycle of unfulfilled programmes and projects as well as a perpetual state of paralysis and always on the lookout for a suitable next head.</p>
	<p>IPUCCF</p> <p>Retain the provision in the parent Act.</p>	<p>(a) The first five years of the Vice Chancellors term are spent putting in place systems that will ensure that targets are met. It is in the second term that the Vice Chancellors are able to implement and actualize policies and targets set during the first term;</p> <p>(b) The one five year term would also affect the terms of the Deputy Vice Chancellors, which the amendment law is silent on hence the inference that this clause does not apply to them;</p> <p>(c) The current Constitution has also largely provided that its office</p>

		bearers hold office for a term that is renewable once, hence other Acts would best also provide for the same
	<p>UASU</p> <p>The Vice Chancellors should serve for a term of three years renewable once through a competitive process.</p>	The renewal of the term should not be automatic and should be pegged on satisfactory performance upon evaluation of all stakeholders.
	<p>NAPUK</p> <p>The Vice Chancellors should serve for one term of six years, non-renewable.</p>	
<p>Second Schedule</p> <p>Paragraph (1)</p>	<p>Appointment of the Chancellor</p> <p>Ministry of Education</p> <p>Delete the word “key stakeholders” and substitute therefor with “alumni association, chairperson of the students union, the Senate, Chairperson of the university council and a representative from KEPSA (industry).</p>	The Bill does not define who the key stakeholders are and thus the attempt to define them.
	<p>Committee of Vice Chancellors</p> <p>The status quo should remain.</p>	<p>(a) The Chancellor is a titular figure in the university with the credibility of being able to network, mobilise resources and influence great decisions for the university;</p> <p>(b) A recruitment process of a chancellor will relegate the position to one of employment</p>

		and limit the benefits to the university.
	UASU Retain the status quo but consider changing the method of electing the council members.	
	IPUCCF Retain the provision in the parent Act.	(a) The Chancellor is a titular head of an Institution and as such has no executive power; (b) Subjecting the future holders of such offices to this rigorous process of recruitment may actually deter suitable persons from expressing interest in holding such office.
	GENERAL COMMENTS University of Embu The status quo in the Act should remain.	
	Moi University The status quo in the Act should remain.	
	Ms. AnnahKonuche It is doubtful whether the Public Service Commission has the capacity to recruit the vice chancellors of public universities.	

- (a) The Ministry also proposed amendments to section 36 of the Act on the composition and qualifications of the Council. However, as this was not part of the original Bill, the Committee may consider this in a separate Bill sponsored by the Committee.
- (b) UASU submitted proposals on the election of principals (within a university), deans, directors and academic heads, acting positions, recruitment of council members, and

composition of the Commission for University Education. However, as this was not part of the original Bill, the Committee may consider this in a separate Bill sponsored by the Committee.

2.2 KENYA INSTITUTE OF CURRICULUM DEVELOPMENT ACT, 2013

SECTION	STAKEHOLDERS' SUBMISSION	JUSTIFICATION
5(1)	<p>Ministry of Education</p> <p>Replace the small letter "g" appearing in the word "governing" and substitute with a capital "G".</p>	To make the word "Governing Council" a proper noun.
5(2) (d)	<p>Delete paragraph (d) and substitute with the following new paragraph:</p> <p>"(d) the Chief Executive Officer of the Kenya National Examinations Council;"</p>	To make the representative specific.
5(2)(e)	<p>Delete paragraph (e) and substitute with the following new paragraph:</p> <p>"(e) the Chief Executive Officer of the Teachers Service Commission"</p>	To make the representative specific.
5(4)	<p>Delete and substitute with the following new clause:</p> <p>"(4) The Council shall appoint a Corporation Secretary who shall be the Secretary to the Council on terms and conditions to be determined by the Council."</p>	To align the Act with the MWONGOZO code which recommends separation of title of the CEO and the corporation secretary.

5(2)	Council of Governors There should be a representative of the Council of Governors in the Council for KICD to represent the interests of Early Childhood Development and Education.	The function of Early childhood and development has been devolved and thus the need for a representative from the county government.
5 (3)	Council of Governors Maintain the status quo in the Act.	It is prudent to have a clearly outlined procedure on the appointments to avoid a lacuna where a chairperson or member has ceased being in office.
7 (2), 8 and First Schedule	Maintain the status quo in the Act.	It is important to have a procedure for filling a position in the event there is a vacancy.
14 (1)	Add the word “General” immediately after the word “Director”.	To rename the title of the head of the Institute from “Director” to “Director General” in line with the current trend and the new organisational structure of the Institute.

2.3 THE HIGHER EDUCATION LOANS BOARD ACT, 1995

The Ministry of Education requested for withdrawal all the amendments to the The Higher Education Loans Board Act, 1995 as proposed in The Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bills No. 12) of 2018. The proposed deletion of the amendments in entirety is to allow for sector-wide consultation. (ANNEXURE II)

2.4 THE SCIENCE, TECHNOLOGY AND INNOVATION ACT, 2013

The Ministry of Education requested for withdrawal all the amendments to the Science, Technology and Innovation Act, 2013 as proposed in The Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bills No. 12) of 2018. The Ministry proposed that a substantial bill will be presented to Parliament in due course for consideration.

3.0 COMMITTEE AMENDMENTS /RECOMMENDATIONS

Having scrutinized the proposed amendments and taking into consideration the oral and written submissions of the stakeholders, the Committee recommends as follows: -

SCHEDULE

THAT the Schedule to the Bill be amended —

(1) in the proposed amendments to the **Higher Education Loans Board Act, 1995** -

- (a) by deleting the proposed amendments to section 4(1);
- (b) by deleting the proposed amendments to section 4(3);
- (c) by deleting the proposed amendments to section 5; and
- (d) by deleting the proposed amendments to section 22.

(2) in the proposed amendments to the **Universities Act, 2012**—

(a) by deleting the words “in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission” appearing immediately after the word “Colleges” in the proposed amendments to section 35 (1) (a)(v) and substituting therefor the words “in the manner provided in the Fourth Schedule”;

(b) by deleting the proposed amendments to section 39 (3) and substituting therefor the following new subsection –

“(3) The Vice-Chancellor of a public university shall hold office for a term of three years and shall be eligible for one final term, upon satisfactory performance, as evaluated by the Council”.

(c) in the proposed amendments to the Second Schedule-

(i) by deleting the words “key stake holders” appearing immediately after the words “consultation with” in paragraph (1) and substituting therefor the words “the following persons”;

(ii) by inserting the following new sub-paragraphs immediately after the word “appointment” in paragraph (1) –

(a) the alumni association;

(b) the staff union;

- (c) the students' association; and
 - (d) the industry represented by the Kenya Private Sector Alliance, National Chamber of Commerce and the Association of Professional Societies of East Africa.
- (iii) by deleting the words "Five names shall be proposed to the Senate and submitted to the Public Service Commission" appearing immediately before the words "for shortlisting" in paragraph (2) and substituting therefor the words "The Senate shall in consultation with the Public Service Commission submit five names to the Council";
 - (iv) by deleting the words "The Public Service Commission" appearing at the beginning of paragraph (3) and substituting therefor the words "The Council".

(d) by inserting the following new paragraph immediately after the proposed amendments to the Second Schedule –

"by inserting the following new Schedule immediately after the Third Schedule"

Fourth

FOURTH SCHEDULE

Schedule.

(Section 35 (a) (v))

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

- (a) a representative of the Council who shall not be the Vice Chancellor;
- (b) a representative of the Public Service Commission;
- (c) the Principal Secretary, Ministry of Education;
- (d) the Principal Secretary, the National Treasury;
- (e) a representative of the Senate who shall not be the Vice Chancellor;
- (f) a distinguished professor of the university;
- (g) a representative of the Universities Academic Staff

Union;

- (h) a representative of the alumni association; and
- (i) a representative of the Students' Association.

(2) The Council shall—

(a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among themselves; and

(b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(3) Subject to this Act, the selection panel shall, within seven days of convening, by advertisement in the media, invite applications from persons who qualify for nomination and appointment for the position of Vice Chancellor, Deputy Vice Chancellor, Principal or Deputy Principal.

(4) The selection panel shall—

(a) consider the applications received under paragraph (3) to determine their compliance with the provisions of the Constitution and this Act;

(b) short list the applicants;

(c) publish the names of the qualified applicants and short listed applicants in the media;

(d) conduct interviews of the short listed persons;

(e) shortlist three qualified applicants for the position of Vice Chancellor, Deputy Vice Chancellor, Principal or Deputy Principal; and (g) forward the names of the qualified persons to the Council.

(5) The Council shall, within fourteen days of receipt of the names forwarded under paragraph (4)(e), in consultation with the Cabinet Secretary appoint the Vice Chancellor, Deputy Vice Chancellor, Principal or Deputy Principal from among the three qualified applicants.

(6) The selection panel may, subject to this section, determine its own procedure for the conduct of business and affairs.

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

(9) Despite the foregoing provisions, the Cabinet Secretary may, by notice in the Gazette, extend the period specified in respect of any matter under this schedule by a period not exceeding twenty-one days.

(3) in the proposed amendments to section 5 (2) of the **Kenya Institute of Curriculum Development Act, 2013** by deleting the proposed amendments to paragraph (f)(ii) and substituting the following new paragraph –

“(f)(ii) one person to represent the Kenya Private Schools Association;”

(4) in the proposed amendments to the **Science, Technology and Innovation Act, 2013-**

- (a) by deleting the proposed amendments to section 5(1);
- (b) by deleting the proposed amendments to section 8(1);
- (c) by deleting the proposed amendments to section 8(4); and
- (d) by deleting the proposed amendments to section 8(5).

4.0 ANNEXURES