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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DEPARTMENTAL COMMITTEE ON EDUCATION

REPORT ON:
CONSIDERATION OF THE HIGHER EDUCATION LOANS BOARD
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 58 OF 2022) BY THE
HON. JOYCE KAMENE, MP

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 APR 2024	DAY: Thursday
TABLED BY:	Hon. Jerucha Momanyi (Member, Education Committee)
CLERK-AT THE TABLE:	Shibuko

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APRIL, 2024

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CHAIRPERSON'S FOREWORD

The Higher Education Loans Board (Amendment) Bill, 2022 (National Assembly Bill No. 58) sponsored by the Hon. Joyce Kamene, MP was read a First Time on 26th July, 2023 and committed to the Departmental Committee on Education for consideration and reporting to the House, pursuant to Standing Order 127(1).

The principal object of the Bill is to amend the Higher Education Loans Board Act No. 3 of 1995 to expressly provide that the Higher Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years.

The amendment further provides that any student who applies for an education loan and who is under the age of eighteen years shall be required to have his or her parents as co-signatories to the loan agreement so as to ensure the access to loans of all eligible university students despite their age.

This will ensure that university students who have not attained the age of eighteen years and who do not yet have national identification cards, are allowed access to the higher education loans. The amendment will thus ensure the access to loans of all eligible university students despite their age.

Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), advertisements for request for submission of memoranda were placed in the Daily Nation and the Standard newspapers on 8th August, 2023 inviting interested members of the public to submit views on the Bill. The Committee received submissions from the Ministry of Education, Hon Joyce Kamene, Kenya Law Reform Commission and the Attorney General's office. All the submissions were considered by the Committee.

Further, in considering the Bill, the Committee held a total of three (3) meetings to receive and consider submissions.

The Committee, having considered the Bill clause by clause and taking into consideration views and recommendations of the stakeholders pursuant to Standing Order 127(3A), made observations and recommendations contained in Part Three and Part Four of this report.

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 on its consideration of the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022).

Hon. Julius Melly, CBS, MP

Chairperson, Departmental Committee on Education



PART ONE

1.0 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Education was constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly Standing Orders. Pursuant to the Standing Order 216 (5) read together with the Second Schedule to the Standing Orders, the functions of the Committee are to: -
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the Ministry of Education;*
 - b. *study the programme and policy objectives of Ministry and the Departments of the Ministry, and the effectiveness of the implementation;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the relevant Ministry as measured by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the as may be necessary, and as may be referred to the Committee by the House;*
 - f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly and by extension, the Committee to approve;*
 - g. *make reports and recommendations relating to the functions of the relevant Ministry to the House as often as possible, including recommendation of proposed legislation;*
 - h. *make recommendations to the House as often as possible, including recommendation of proposes legislation;*
 - i. *consider reports of the relevant commissions and independent offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *examine any questions raised by Members on a matter within the mandate of the Committee.*
2. The Committee's subjects according to the Second Schedule of the Standing Orders are as follows
 - i. Education,
 - ii. Training; and
 - iii. Research.
3. The Committee oversights the following government entities: -
 - (a) Ministry of Education comprising the following State Departments
 - i. The State Department for Basic Education
 - ii. The State Department for TVET

iii. The State Department for Higher Learning and Research

(b) The Teachers Service Commission

1.2 Committee Membership

4. The Committee comprises of the following Members of Parliament: -

Hon. Julius Kibiwott Melly, MP

Chairperson
Tinderet Constituency
UDA

Hon. Moses Malulu Injendi, MP

Vice Chairperson
Malava Constituency
ANC

Hon. Dr. Christine Oduor Ombaka, MP

Siaya County
ODM

Hon Julius Taitumu M'Anaiba, MP

Igembe North Constituency
UDA

Hon. Eve Akinyi Obara, MP

Kabondo Kasipul Constituency
ODM

Hon. Nabii Nabwera Daraja, MP

Lugari Constituency
ODM

Hon. Jerusha Mongina Momanyi, MP

Nyamira County
JP

Hon. Peter Ochieng Orero, MP

Kibra Constituency
ODM

Hon. Abdul Ebrahim Haro, MP

Mandera South Constituency
UDM

Hon. (Prof.) Phylis Jepkemoi Bartoo

Moiben Constituency
UDA

Hon. Anne Muratha, MP

Kiambu County
UDA

Hon. Rebecca Noonaishi Tonkei, MP

Narok County
UDA

Hon. Clive Gisairo, MP

Kitutu Masaba, Constituency
ODM

Hon. Timothy Toroitich, MP

Marakwet West Constituency,
IND

Hon. Dick Oyugi Maungu, MP

Luanda Constituency
DAP-K

1.3 Committee Secretariat

5. The Committee is facilitated by:

Ms. Rose M. Wanjohi
Senior Clerk Assistant

Mr. Clive Onyancha
Clerk Assistant III

Mr. Eric Kanyi
Fiscal Analyst II

Dr. Maina Mburu
Research Officer

Mr. Daniel Psirmoi
Media Relations Officer

Ms. Pauline Njuguna
Hansard Reporter

Ms. Fiona Githunguri
Legal Counsel II

Ms. Winnie Kulei
Research Officer

Mr. Richard Sang
Sergeant-at-Arms

Mr. Nimrod Ochieng
Audio Recording Officer

Mr. Jared Onyancha
Protocol Officer

PART TWO

2.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

2.1 Committal of the Bill to the Committee

6. The Higher Educations Loans Board (Amendment) Bill, 2022(National Assembly Bill No. 58 of 2022) sponsored by Hon. Joyce Kamene, MP was read a First Time on 26th July, 2023 and committed to the Departmental Committee on Education 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 principal object of the Bill is to amend the Higher Education Loans Board Act, No. 3 of 1995 to expressly provide that the High Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years.
8. The amendment further provides that any student who applies for an education loan and who is under the age of eighteen years shall be required to have his or her parents or guardians as co-signatories to the loan agreement, so as to ensure the validity of the loan agreement. This will ensure that university students who have not attained the age of eighteen years and who do not yet have national identification cards are allowed access to higher education loans. The amendment will thus ensure access to loans for all eligible university students regardless of their age.

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

9. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

10. The Bill does not concern county governments in terms of Article 109(5) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.
11. The Universities and other institutions of higher learning are functions of the national government as provided in Part 1 of the Fourth Schedule to the Constitution.

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

12. The enactment of the Bill shall not occasion the expenditure of public funds.

2.3 Public Participation on the Bill

13. Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), advertisement for request for submission of memoranda was placed in the "Daily Nation" and the "Standard" newspapers on Tuesday 8th August, 2023 inviting the public to submit representations they may have on the Bill. (**Annexure 3**).
14. The Committee received memoranda from-
- i. Hon. Joyce Kamene, MP; sponsor of the Bill;

- ii. The Principal Secretary, State Department for Higher Education, Ministry of Education;
- iii. Kenya Law Reforms Commission; and
- iv. The Attorney-General's Office

All the submissions were considered by the Committee.

2.4 STAKEHOLDER SUBMISSIONS

2.4.1 Submission by Hon. Joyce Kamene, MP

15. The Hon. Joyce Kamene, MP the sponsor of the Bill indicated that clause 2 of the Bill seeks to amend Section 14 of the Act to mandate the Board to approve loan applications for persons under the age of 18 years.

2.4.2 Submissions by State Department for Higher Education, Ministry of Education

16. Dr. Beatrice Inyangala, the Principal Secretary, State Department for Higher Education submitted that the Higher Education Loans Board (HELB) agreed with the proposal but proposed that another subsection 2B be introduced as follows: *"The provisions of any other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract."*
17. This provision will ensure that those granted loans while under 18 cannot refuse to repay loan on account of having lacked capacity to contract at the time of signing the contract.
"Any student who applies for an education loan and who is under the age of 18 years shall be required to have his or her parents or guardians as co-signatories to the loan agreement" be brought in as Subsection 2C.

2.4.3 Kenya Law Reform Commission (KLRC)

18. The Kenya Law Reform Commission (KLRC) submitted that means need to be devised to ensure that needy but underage applicants access HELB loans. This will prevent needy persons who haven't attained the age of eighteen years from being locked out of loans advanced to support their higher education.
19. Contracts with minors are voidable in that they cannot be specifically enforced against the minor. However, parents or guardians of minors can name them in contracts only if it benefits them but even in this case, the minor cannot be personally liable. Additionally, minors may not ratify a contract upon attaining age of majority unless a law specifically allows this.
20. KLRC asserted that the amendments as proposed will give minors an opportunity to benefit from the loans available to those pursuing higher education.

2.4.4 The Office of the Attorney-General and Department of Justice

21. The Office submitted that Clause 2 of the Bill seeks to amend section 14 of the Act which provides for conditions for grant of loan by inserting new sub sections immediately after subsection (2) to mandate the board to approve applications by persons under the age of 18 as long as the parents and guardians of the applicant cosign the loan.

22. This proposal though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority, may create challenges in the implementation as a minor (a person under the age of 18 years) may not have capacity to enter into a legally binding contract and also can't open a bank account to where the funds can be channeled. Thus, the contracts may be challenged in a Court of law.
23. The Office proposed that the Bill may be amended to consider having the guardians and parents as applicants until the minor becomes of age where the applicant can regularize the application
24. The Office had consulted the Ministry of Education on the proposed amendment.

SECTION AMENDED	CURRENT PROVISION	PROPOSED AMENDMENT	Memoranda received	Rationale
2	14. Conditions for grant of loan (1) The Board may— (a) accept or reject any application for a loan; (b) grant a loan to any student and in so granting impose conditions, demand security and require repayment in instalments at such times and within such periods as the Board deems fit: Provided that and subject to the provisions of this section the Board may upon the request by any student to whom a loan has been granted at any time vary— (i) the condition subject to which the loan was made; (ii) any security given in relation to the loan; (iii) any of the terms of repayment of the loan. (2) Where the Board has resolved to make a loan to any eligible student, the Board shall notify the	2. The Higher Education Loans Board Act, 1995 is amended in section 14 by inserting the following new subsections immediately after subsection (2) — “(2A) The Board shall not reject an application for a loan under this Act only on the ground that the student has not attained the age of eighteen years. (2B) A person granted an education loan by the Board under this Act and who is under the age of eighteen years shall be required to have his or her parents or	State Department for Higher Education The institution agreed with the provision. They proposed a subsection 2B be introduced as follows” <i>the provision of any other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract.</i>” The committee rejected the proposed additional subsection 2B. Office of the Attorney General and Department of Justice	The provision will ensure that those granted loans while under 18 cannot refuse to repay loans on account of having lacked capacity to contract at the time of signing the contract. The minor may not have capacity to enter into a legally

	applicant in writing, and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Board may have imposed or demanded. (3) Where any applicant fails to comply with the requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed. (3A) The Board shall notify every applicant in writing whether the application for a higher education loan has been accepted or rejected. (3B) A student may appeal against a decision of the Board to reject his or her application for grant of a higher education loan in writing, addressed to the Secretary of the Board. (4) Where in granting a higher education loan to any student the Board considers it prudent to request for a guarantor to guarantee any loan granted to a student, in case of any default by the loanee in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay	guardian as co-signatories to the loan.”	The AG's office agreed with the proposed amendment. However, though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority may create challenges in the implementation as a minor may not have capacity The Committee agreed with the Need to enjoin the guardians or parents to the loan application until the minor attains the majority age.	binding contract and also cannot open a bank account to where the funds can be channelled. Thus the contracts may be challenged in a court of law. They proposed that the Bill be amended to consider having the guardians and parents as applicants until the minor becomes of age when then the applicant can regularise the application Kenya Law Reform Commission It agreed with the propose amendment The amendment will ensure needy but underage applicant
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	to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board. (5) Where a guarantor who has been notified by the Board under subsection (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.			access HELB loans.
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2.4.5 Clause by Clause Analysis

CLAUSE 1 of the Bill provides for the Short title.

The Committee Agreed

CLAUSE 2 of the Bill proposes the amendment of Section 14 of the principal Act, by inserting the following new subsections immediately after subsection (2) –

“(2A) The Board shall not reject an application for a loan under this Act only on the ground that the student has not attained the age of eighteen years.

“(2B) A person granted an education loan by the Board under this Act and who is under the age of eighteen years shall be required to have his or her parents or guardian as co-signatories to the loan.”

The Committee agreed with the proposed amendment and proposed an amendment to include the guardians and parents of the minor to act as co-signatories to the loans until such a time the minor attains the age of majority. This was as proposed by the Kenya Law Reform Commission and the Attorney General's office.

PART THREE

3.0 DETERMINATION AS TO WHETHER OR NOT THE BILL SHOULD BE PASSED BY THE HOUSE

The Committee observed as follows: -

- (a) There is no existing legal framework allowing students under the age of eighteen years to apply for loans from the Higher Education Loans Board.
- (b) The Bill seeks to expressly provide that the Higher Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years. It will also require a person granted an education loan by the Board who is under the age of eighteen years to have his or her parents or guardian as co-signatories to the loan.
- (c) The Bill be amended to consider having the guardians as applicants until the minor becomes of age where the application can be regularized. The justification for this is to cure the potential challenge of enforcing a loan contract with a minor, as contracts by minors are generally voidable, meaning that upon reaching the age of majority, if the minor chooses to disaffirm the contract they may be able to avoid liability for the loan repayment. By having a parent or legal guardian co-sign the loan, the lender gains additional assurance that the loan will be repaid, even if the minor chooses to disaffirm the contract. Where a parent or guardian co-signs the loan they become jointly liable for the repayment of the loan alongside the minor.
- (d) Further in the context of a loan, both a guarantor and a co-signer serve similar functions, but there are important differences:
 - (i) Co-signer: A co-signer is typically someone who signs the loan agreement alongside the borrower (in this case, the minor). By co-signing the loan, the co-signer becomes equally responsible for repaying the loan if the borrower defaults. This means that the lender can pursue the co-signer for repayment if the borrower fails to meet their obligations.
 - (ii) Guarantor: A guarantor, on the other hand, is someone who agrees to be responsible for the loan if the borrower (the minor) defaults. Unlike a co-signer, a guarantor does not sign the original loan agreement. Instead, they provide a guarantee that they will repay the loan if the borrower cannot. If the borrower defaults, the lender can pursue the guarantor for repayment.

In essence, a co-signer is directly party to the loan agreement and is equally liable for repayment, while a guarantor stands behind the borrower and agrees to cover the debt only if the borrower defaults. Both serve as a form of security for the lender, but the legal mechanisms and responsibilities may differ slightly between the two roles.

PART FOUR

4.0 COMMITTEE RECOMMENDATIONS

25. The Committee having scrutinised the Bill, recommends that the House should pass the Bill with the following amendments:

NEW CLAUSE

- a. **THAT the Bill be amended by inserting the following new clause immediately after Clause 1—**

"Section 2 of the Higher Education Loans Board Act No.3 of 1995 is amended in the definition of the term "loanee" by inserting the words 'including a parent or guardian' immediately before the words "granted an education loan by the Board"

Justification: The amendment seeks to expand the definition of a loanee to include a parent and guardian so as to make it possible to award a HELB loan to a student who has not attained the age of eighteen years with a parent or guardian as co-signatories to the loan.

- b. **Clause 2 be amended by inserting the following new subsection immediately after (2B)-**

"(2C) A person granted a loan under subsection (2B) shall ratify the loan contract upon attaining the age of majority."

Signed _____

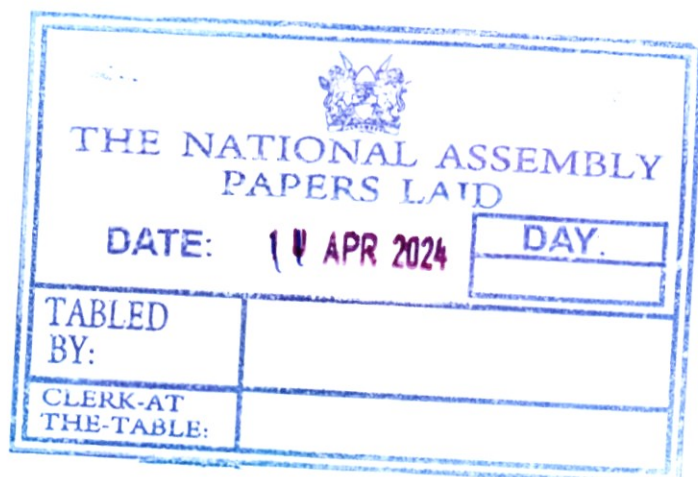


Date _____

11/4/2024

HON. JULIUS MELLY, CBS, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION



Annexure 1 : Report adoption list



PARLIAMENT OF KENYA
NATIONAL ASSEMBLY
13TH PARLIAMENT
THIRD SESSION (2024)

DEPARTMENTAL COMMITTEE ON EDUCATION

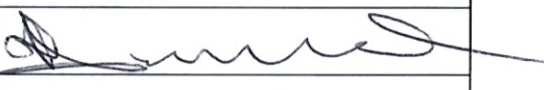
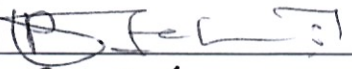
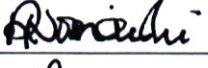
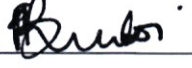
ADOPTION LIST

DATE: 19/3/2024

VENUE: CONTINENTAL HOUSE, 5TH FLOOR

AGENDA:

CONSIDERATION AND ADOPTION OF THE HIGHER EDUCATION LOANS BOARD
(AMENDMENT) NO. 58 OF 2022 BY HON JAYLE KAMONE

No.	HON MEMBER	SIGNATURE
1.	Hon. Julius Melly, M.P. Chairperson	
2.	Hon. Moses Malulu Injendi, M.P. Vice Chairperson	
3.	Hon. Dr. Christine Oduor Ombaka, M.P.	
4.	Hon. Eve Obara, MBS, M.P.	
5.	Hon. Jerusha Momanyi, M.P.	
6.	Hon. Abdul Ebrahim Haro, M.P.	
7.	Hon. Anne Wanjiku Muratha, M.P.	
8.	Hon. Clive Ombane Gisairo, M.P.	
9.	Hon. Dick Maungu Oyugi, M.P.	
10.	Hon. Julius Taitumu M'Anaiba, M.P.	
11.	Hon. Nabii Nabwera Daraja, M.P.	
12.	Hon. Peter Ochieng Orero, M.P.	
13.	Hon. Prof. Phyllis Jepkemoi Bartoo, M.P.	
14.	Hon. Rebecca Noonaishi Tonkei, M.P.	
15.	Hon. Timothy Kipchumba Toroitich, M.P.	

Annexure 2 : Minutes of Committee sittings

**MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION HELD ON TUESDAY, 19TH MARCH, 2024, COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, AT 10:00 AM.**

PRESENT

- | | |
|---|--------------------|
| 1. Hon. Julius Melly, M.P. | - Chairperson |
| 2. Hon. Moses Malulu Injendi, M.P. | - Vice-Chairperson |
| 3. Hon. Jerusha Momanyi, M.P. | |
| 4. Hon. Abdul Ebrahim Haro, M.P. | |
| 5. Hon. Dick Maungu Oyugi, M.P. | |
| 6. Hon. Nabii Nabwera Daraja, M.P. | |
| 7. Hon. Peter Ochieng Orero, M.P. | |
| 8. Hon. Prof. Phyllis Jepkemoi Bartoo, M.P. | |
| 9. Hon. Rebecca Noonaishi Tonkei, M.P. | |

APOLOGIES

1. Hon. Dr. Christine Oduor Ombaka, M.P.
2. Hon. Eve Obara, MBS, M.P.
3. Hon. Anne Wanjiku Muratha, M.P.
4. Hon. Clive Ombane Gisairo, M.P.
5. Hon. Julius Taitumu M'Anaiba, M.P.
6. Hon. Timothy Kipchumba Toroitich, M.P.

SECRETARIAT

- | | |
|------------------------|-----------------------|
| 1. Mr. Clive Onyancha | - Clerk Assistant III |
| 2. Mr. Kimathi Timothy | - Clerk Assistant III |
| 3. Ms. Fiona Wanjiru | - Legal Counsel |
| 4. Dr. Mburu Maina | - Research Officer |
| 5. Mr. Richard Sang | - Serjeant at arms |

AGENDA

1. Prayers;
2. Preliminaries and adoption of Agenda;
3. Confirmation of Minutes of the 16th Sitting held on 12th March, 2024;
4. Matters Arising;
5. **Consideration of the following Bills**
 - a. The Higher Education Loans Board (Amendment) No. 58 of 2022 by Hon. Joyce Kamene, MP
 - b. Universities (Amendment) Bill 2023 by Hon. Wanami Wamboka, MP
 - c. The Universities (Amendment) Bill, 2023 by Hon. Christopher Aseka, MP

d. The Learners with Disabilities Bill (Senate Bill No. 4 of 2023)

f. The Basic Education (Amendment) Bill, 2023 by Hon. Mary Wamaua, MP

6. Any Other Business; and
7. Adjournment and date of next sitting.

MIN. NO. 78 NA/EDUC/2024: PRELIMINARIES

The Chairperson called the meeting to order at eighteen minutes past ten o'clock followed by the Prayer and self-introductions.

MIN. NO. 79 /NA/EDUC/2024: CONFIRMATION OF PREVIOUS MINUTES

Confirmation of Minutes of the 16th sitting held on 12th March 2024.

Minutes of the 16th Sitting held on 12th March 2024 were adopted as a true reflection of the Committee deliberations having been proposed by Hon. Rebecca Noonaishi Tonkei, M.P. and seconded by Hon. Dick Maungu Oyugi, M.P.

Matters Arising

Members raised concerns regarding the discontinuation of the Edu Afya program without a suitable alternative in place. Additionally, the Committee noted that funds allocated for Edu Afya had been disbursed to schools as part of capitation raising questions on the Ministry of Education plans for students' health coverage.

The Committee resolved to invite the Cabinet Secretary for Education and Cabinet Secretary for Health to provide more information on the issue.

MIN. NO. 80 /NA/EDUC/2024: CONSIDERATION OF BILLS BEFORE THE COMMITTEE

The Higher Education Loans Board (Amendment) No. 58 of 2022 by Hon. Joyce Kamene, MP

The Committee having considered the Higher Education Loans Board (Amendment) Bill No.58 of 2022 by Hon Joyce Kamene, MP unanimously resolved to adopt the report as an accurate representation of the Committee's deliberations. The motion for adoption was proposed by Hon. Nabii Nabwera Daraja, M.P., and seconded by Hon. Jerusha Momanyi, M.P.

Universities (Amendment) Bill 2023 by Hon. Wanami Wamboka, MP

The Committee instructed the Secretariat to present the report for consideration in the next meeting.

The Universities (Amendment) Bill, 2023 by Hon. Christopher Aseka, MP

The Committee instructed the Secretariat to present the report for consideration in the next meeting.

The Learners with Disabilities Bill (Senate Bill No. 4 of 2023)

The Committee instructed the Secretariat to present the report for consideration in the next meeting.

The Basic Education (Amendment) Bill, 2023 by Hon. Mary Wamaua, MP

The Committee instructed the Secretariat to present the report for consideration in the next meeting.

MIN. NO. 81 /NA/EDUC/2024: PROPOSED SITE VISIT TO UNIVERSITIES

The Committee proposed visiting twelve universities, six(6) in the Central region and six(6) in the Western region. The proposed inspection visit dates are between the 1st to 4th of April 2024.

The members resolved to organize themselves into the following groups:

Group 1

1. Hon. Julius Melly, M.P. **- Chairperson**
2. Hon. Jerusha Momanyi, M.P.
3. Hon. Peter Ochieng Orero, M.P.
4. Hon. Prof. Phyllis Jepkemoi Bartoo, M.P.
5. Hon. Rebecca Noonaishi Tonkei, M.P.

This group led by Hon. Julius Melly, M.P.- Chairperson, will visit the following universities:

- a. Kenyatta University
- b. Jomo Kenyatta University of Agriculture and Technology
- c. Muranga University of Technology
- d. Karatina University
- e. Chuka University
- f. Tharaka University

Group 2

1. Hon. Moses Malulu Injendi, M.P. **-Vice-Chairperson**
2. Hon. Dick Maungu Oyugi, M.P.

The Committee will finalize the Membership of Group 2 during the next meeting. This group led by Hon. Moses Malulu Injendi, M.P.-Vice-Chairperson, will visit the following universities:

- a. Masinde Muliro University of Science and Technology
- b. Maseno University
- c. University of Eldoret
- d. Koitalel Arap Samoei University College
- e. Kisii University
- f. Rongo University

The Committee instructed the Fiscal Analyst to provide a brief on each University including but not limited to:

- a. List of ongoing projects funded by the Government, including details on their status, timelines, and budget allocations
- b. Amount of donor funds received and their utilization

The Committee further directed the Secretariat to formulate relevant questions the Committee may pose to the Universities. These questions should be attached to the letters sent to the Universities regarding the Committee's planned inspection visit, which must be sent out before Tuesday 26th, April 2024.

MIN. NO. 82 /NA/EDUC/2024: ANY OTHER BUSINESS

There was no other business

MIN. NO. 83 /NA/EDUC/2024: ADJOURNMENT

There being no other business the meeting was adjourned at thirty-six minutes past eleven O'clock. The next meeting will be held on Notice.

SIGNED: DATE: 26/03/2024

HON. JULIUS MELLY, CBS MP,
CHAIRPERSON

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION HELD ON TUESDAY, 5TH MARCH, 2024, IN COMMITTEE ROOM, 2ND
FLOOR, CONTINENTAL HOUSE, AT 10:00 AM.

PRESENT

1. Hon. Julius Melly, M.P.
2. Hon. Moses Malulu Injendi, M.P.
3. Hon. Dr. Christine Oduor Ombaka, M.P.
4. Hon. Eve Obara, MBS, M.P.
5. Hon. Jerusha Momanyi, M.P.
6. Hon. Dick Maungu Oyugi, M.P.
7. Hon. Julius Taitumu M'Anaiba, M.P.
8. Hon. Nabii Nabwera Daraja, M.P.
9. Hon. Peter Ochieng Orero, M.P.
10. Hon. Prof. Phyllis Jepkemoi Bartoo, M.P.
11. Hon. Rebecca Noonaishi Tonkei, M.P.
12. Hon. Timothy Kipchumba Toroitich, M.P.

- Chairperson

- Vice-Chairperson

APOLOGIES

1. Hon. Abdul Ebrahim Haro, M.P.
2. Hon. Anne Wanjiku Muratha, M.P.
3. Hon. Clive Ombane Gisairo, M.P.

SECRETARIAT

- | | | |
|--------------------------|---|----------------------|
| 1. Mr. Clive Onyancha | - | Clerk Assistant III |
| 2. Mr. Kimathi Timothy | - | Clerk Assistant III |
| 3. Ms. Collettah Sigilai | - | Senior Legal Counsel |
| 4. Ms. Fiona Wanjiru | - | Legal Counsel |
| 5. Dr. Mburu Maina | - | Research Officer |

AGENDA

1. Prayers;
2. Preliminaries and adoption of Agenda;
3. Confirmation of Minutes of the 12th and 13th Sitting;
4. Matters Arising;
5. Consideration of draft Reports on the following Bills:

- i. The Higher Education Loans Board (Amendment) Bill No.58 of 2022 by Hon. Joyce Kamene, MP

- ii. The Higher Education Loans Board (Amendment) Bill No.10 of 2023 by Hon Joyce Kamene, MP
- iii. The Vocational Training Bill (Senate Bill No.3 of 2022)
- 6. Way forward for the following Bills
 - i. The Universities (Amendment) Bill, NA No.38 of 2013 by Hon. Wanami Wamboka, MP
 - ii. The Universities (Amendment) Bill, No. 3 of 2023 by Hon. Christopher Wangaya, MP
 - iii. The Learners with Disabilities (Senate Bill No. 4 of 2024)
- 7. Any Other Business; and
- 8. Adjournment and date of next sitting.

MIN. NO. 62 NA/EDUC/2024: PRELIMINARIES

The Chairperson called the meeting to order at twenty-six minutes past ten o'clock followed by the Prayer. Thereafter self-introductions were made.

MIN. NO. 63 /NA/EDUC/2024: CONFIRMATION OF PREVIOUS MINUTES

Confirmation of Minutes of the 12th sitting held on 28th February 2024.

Minutes of the 12th Sitting held on 28th February 2024 were adopted as a true reflection of the Committee deliberations having been proposed by Hon. Jerusha Momanyi, M.P. and seconded by Hon. Dick Maungu Oyugi, M.P.

Confirmation of Minutes of the 13th sitting held on 29th February 2024.

Minutes of the 13th Sitting held on 29th February 2024 were adopted as a true reflection of the Committee deliberations having been proposed by Hon. Prof. Phyllis Jepkemoi Bartoo, M.P. and seconded by Hon. Timothy Kipchumba Toroitich, M.P.

MIN. NO. 64 /NA/EDUC/2024: CONSIDERATION OF DRAFT REPORT ON BILLS

- 1. The Higher Education Loans Board (Amendment) Bill No.58 of 2022 by Hon. Joyce Kamene, MP.

The Committee having considered the report on the Higher Education Loans Board (Amendment) Bill No. 58 of 2022 by Hon. Joyce Kamene, MP. made the following observation:

Amendment to Section 2 of the Higher Education Board Act No. 3 seeks to expand the definition of a loanee to include a parent and guardian to make it possible to award a HELB loan to a student who has not attained the age of eighteen years with a parent or guardian as co-signatories to the loan. The Committee noted this proposed amendment may be in contravention of other existing laws.

The Committee instead recommended the adoption of Dr. Charles Ringera, Chief Executive Officer, HELB submission to introduce another subsection 2B as follows: 'The provisions of any

other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract.'

The Committee further advised the Secretariat to do more research on the proposed amendments and resubmit the report for consideration.

2. The Higher Education Loans Board (Amendment) Bill No.10 of 2023 by Hon Joyce Kamene, MP

The Committee having considered the Higher Education Loans Board (Amendment) Bill No.10 of 2023 by Hon Joyce Kamene, MP adopted the report as a true reflection of the Committee deliberations having been proposed by Hon. Dick Maungu Oyugi, M.P. and seconded by Hon. Jerusha Momanyi, M.P.

3. The Vocational Training Bill (Senate Bill No.3 of 2022)

The Committee advised the Secretariat to incorporate all recommendations and resubmit the report for consideration.

MIN. NO. 65 /NA/EDUC/2024: WAY FORWARD FOR THE FOLLOWING BILLS

1. The Universities (Amendment) Bill, NA No.38 of 2013 by Hon. Wanami Wamboka, MP

The Committee proposed the report be submitted to the Committee for consideration and adoption.

2. The Universities (Amendment) Bill, No. 3 of 2023 by Hon. Christopher Wangaya, MP

The Committee proposed the report be submitted to the Committee for consideration and adoption.

3. The Learners with Disabilities (Senate Bill No. 4 of 2024)

The Committee proposed the report be submitted to the Committee for consideration and adoption.

MIN. NO. 66 /NA/EDUC/2024: ANY OTHER BUSINESS

There was no other business.

MIN. NO. 67 /NA/EDUC/2024: ADJOURNMENT

There being no other business the meeting was adjourned at thirty-two minutes past eleven O'clock. The next meeting will be held on Notice.

SIGNED:

DATE:

HON. JULIUS MELLY, CBS, MP,
CHAIRPERSON

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION HELD ON WEDNESDAY, 13TH SEPTEMBER 2023, IN 2ND FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, AT 10:00 AM

PRESENT

- | | |
|--|------------------------------------|
| 1. Hon. Julius Kibiwott Melly, MP | - Chairperson |
| 2. Hon. Moses Malulu Injendi, MP | - Vice-Chairperson – Session Chair |
| 3. Hon. Jerusha Mongina Momanyi, MP | |
| 4. Hon. Abdul Ebrahim Haro, MP | |
| 5. Hon. Anne Wanjiku Muratha, MP | |
| 6. Hon. Dick Maungu Oyugi, MP | |
| 7. Hon. Julius Taitumu M'Anaiba | |
| 8. Hon. Peter Ochieng Orero, MP | |
| 9. Hon. Rebecca Noonaishi Tonkei, MP | |
| 10. Hon. Timothy Kipchumba Toroitich, MP | |

ABSENT WITH APOLOGY

1. Hon. Dr. Christine Ombaka Oduor, MP
2. Hon. Eve Akinyi Obara, MP
3. Hon. Clive Ombane Gisairo, MP
4. Hon. Nabii Nabwera Daraja, MP
5. Hon. (Prof.) Phylis Jepkemoi Bartoo, MP

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Ms. Grace Wahu | - Clerk Assistant III |
| 2. Ms. Colleta Sigilai | - Senior Legal Counsel |
| 3. Mr. Eric Kanyi | - Fiscal Analyst II |
| 4. Dr. Mburu Maina | - Research Officer III |
| 5. Mr. Daniel Psirmoi | - Media Officer |
| 6. Mr. Nimrod Ochieng | - Audio Officer |
| 7. Ms. Rose Ndegi | - Senior Serjeant-At-Arms |

AGENDA

1. Prayers
2. Adoption of the agenda
3. Confirmation of Minutes of the 55th Sitting held on 12th September, 2023
4. Meeting with the following stakeholders and Hon. Joyce Kamene, MP in regards to the Higher Education Loans Board (Amendment) Bill, 2022 and Higher Education Loans Board (Amendment) Bill, 2023:
 - a. Office of the Attorney General
 - b. Dr. Beatrice Inyangala, PS Higher Education and Research
 - c. Mr. Charles Ringera, CEO HELB
 - d. Kenya Law Reform Commission
5. Any other Business
6. Adjournment and date of the next sitting.

MIN.NO.EDUC/2023/282: PRELIMINARIES

The Chairperson called the meeting to order at 10.10 am and a prayer said by Hon. Abdul Haro, MP. The agenda was adopted having been proposed by Hon. Abdul Haro, MP, and seconded by Hon. Malulu Injendi, MP.

MIN.NO.EDUC/2023/283: CONFIRMATION OF MINUTES

- a. Confirmation of Minutes of the 55th Sitting held on Tuesday, 12th September, 2023 at 12.00 Noon.

The Minutes of the 55th Sitting were deferred to the next Sitting.

MIN.NO.EDUC/2023/284: BRIEFING ON THE VOCATIONAL TRAINING BILL (SENATE BILL) 2022 BY THE SENIOR LEGAL COUNSEL

The Legal Counsel guided the Committee through the Bill giving a critique of the Bill.

Committee Observations

1. The Committee noted that there is need to look at the Bill against the TVET Act in order to identify similarities.
2. In Clause 4(a), the policy affecting vocational centres should be formulated by the Cabinet Secretary.
3. If counties are given a leeway to formulate the policies, it might affect the roles of the Cabinet Secretary. This should be provided for in the Bill.
4. The Committee also observed that Clause 5(b) should be amended since the obligation of formulating programs and policies should be a preserve of the National Government.
5. The Committee noted that there should be a provision in the Bill indicating that if there is conflict between the National Government and the County Government, the National Government law takes precedence.

MIN.NO.EDUC/2023/285: MEETING WITH STAKEHOLDERS AND HON. JOYCE KAMENE, MP ON THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2022 AND THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2023

The Committee was appraised on the following in regards to the Higher Education Loans Board (Amendment) Bill, 2022 and Higher Education Loans Board (Amendment) Bill, 2023: -

- a. Presentation by Hon. Joyce Kamene, MP

- i. The Higher Education Loans Board (Amendment) Bill, 2023

1. **Clause 2** of the Bill seeks to amend Section 2 of the Act by introducing definition of “disability” and “youth”.
2. **Clause 3** of the Bill seeks to remove the function of setting interest rates from the Board.
3. **Clause 4** seeks to insert a new subsection which provides that the loans advanced to youth and persons living with disability shall not accrue interest until these beneficiaries have secured employment.
4. **Clause 5** of the Bill seeks to set a maximum interest rate of 3% on loans.

ii. The Higher Education Loans Board (Amendment) Bill, 2023

Hon. Kamene indicated that Clause 2 of the Bill seeks to amend Section 14 of the Act to mandate the Board to approve loan applications for persons under the age of 18 years.

Committee Concerns

- a. **On defining persons with disabilities and youth yet they are defined under the Persons Living with Disabilities Act and the Constitution 2010 respectively**
Hon. Kamene informed the Committee that the definitions seem to offer clarity since HELB offers loans to other persons other than the ones defined in the Amendment.
- b. **On the effect of the Bill on those who get employment immediately**
The Committee was informed that the Bill targets the youth and the PLWD’S who take long before being employed.
- c. **On why the PLWD’S and the youth are to be given a grace period of five years before imposition of default penalties**
The Committee was informed that this is to give time for the beneficiaries to start some income generating activities such as startup businesses. However, Hon. Kamene indicated that the Committee may change on the length of the grace period.
- d. **On the source of additional funds for HELB**
The Committee was informed that the amended law will motivate more beneficiaries to start repaying their accrued loans. However, the Committee raised a concern that some beneficiaries may still not repay despite the intervention by the proposed Bill.
- e. **On why the revision of interest rates should not be housed under Regulations**
Hon. Kamene asserted that having it in the Act would be good for posterity purposes.
- f. **On the status of the defaulters’ CRB status**
The Committee was informed that there are very many defaulters black listed and this denies them opportunities for jobs that would otherwise enrich their ability to repay their HELB Loans.

b. Submissions by the State Department for Higher Education and Research

i. The Higher Education Loans Board (Amendment) Bill, 2023

The Ministry indicated that introducing the definition of disability and youth is not important because Article 260 of the Constitution has already provided for the definition of the Youth. Moreover, the Persons with Disability Act 2003 defines disability in the same way as it is in the proposed bill.

The youth account for 95% of the HELB Loan beneficiaries and giving them preferential treatment then advantages almost every HELB loan beneficiary.

The Ministry suggested that the function of setting interest rates should be left with the Board as it is best placed to monitor performance of the revolving fund and its sustainability and impact in financing higher education.

In addition, the Ministry stated that Persons with Disabilities have an added advantage over other students with their higher education being fully funded in terms of loans. They are not subjected to Means Testing Instruments (MTI). Most of them also benefit from the National Council of Persons Living with Disabilities (NCPWD) who supplement their higher education financing; therefore, will not be tenable to waive their interest on account of their status.

The Committee was informed that the 4% interest rate was way below the 7.3% inflation rate as at July 2023 and 8.87% over the last ten years.

There is also no mechanism of determining what constitutes employment, when one is deemed to be employed and how to communicate to HELB information that one is employed. Moreover, interest earned goes towards financing other needy students. In the absence of capitation from the National Treasury, less students will be financed.

The Ministry was also concerned that extending the grace period to five years will mean funding less students because income from loan repayment goes towards funding other needy students. Long delays of penalties and interests will make beneficiaries take advantage of the provision and fail to pay even when they are able to.

The Committee was also informed that reviewing the interest rate downwards and the proposed delay in repayments will have an adverse effect on the cashflows considering that currently 37% of the students loan budget is from AIA. This would then mean that more capitation would be required from treasury to make up for the loss in interest.

The HELB indicated that the interest rate is currently set by the Board and providing it in law would mean Parliament legislating on any changes as and when required.

ii. **The Higher Education Loans Board (Amendment) Bill, 2022**

HELB agreed with the proposal but proposed that another subsection 2B be introduced as follows: *“The provisions of any other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract.”*

This provision will ensure that those granted loans while under 18 cannot refuse to repay loan on account of having lacked capacity to contract at the time of signing the contract.

“Any student who applies for an education loan and who is under the age of 18 years shall be required to have his or her parents or guardians as co-signatories to the loan agreement” be brought in as Subsection 2C.

c. Submissions by the Kenya Law Reform Commission

i. The Higher Education Loans Board (Amendment) Bill, 2023

The Board currently administers student loans at an interest rate of four per centum per annum for undergraduate and TVET students whose repayment is deferred until after graduation. It also funds the salaried undergraduate and postgraduate students who repay the loans as they study through the Jielimishe Loan product at 10% per annum. This amendment would limit the Board's power to vary interest rates depending on the prevailing market conditions and the performance of the revolving fund. Further, salaried applicants may not be too needy as to require such an incentive.

KLRC also agreed with the amendment since it gives youth and persons living with disability an opportunity to commence paying their loans without having the loans accrue huge amounts in interest.

The amendment gives youths and persons living with disability a grace period to secure employment or venture into business before commencing the repaying the loans. It also prevents this class of loanees from being heavily indebted at the time of commencing the repayment of the loans.

The amendment covers the administration of undergraduate and TVET student loans which are currently at 4% and those for the salaried undergraduate and postgraduate students which are currently at 10%. Salaried undergraduate and postgraduate students could be in a position to easily afford the loans. The amendment should indicate whether it applies to only needy undergraduate and TVET students or to salaried students pursuing undergraduate and postgraduate studies as well.

ii. The Higher Education Loans Board (Amendment) Bill, 2022

The KLRC indicated that means need to be devised to ensure that needy but underage applicants access HELB loans. This will prevent needy persons who haven't attained the age of eighteen years from being locked out of loans advanced to support their higher education.

Contracts with minors are voidable in that they cannot be specifically enforced against the minor. However, parents or guardians of minors can name them in contracts only if it benefits them but even in this case, the minor cannot be personally liable. Additionally, minors may not ratify a contract upon attaining age of majority unless a law specifically allows this.

KLRC concluded by asserting that the amendments as proposed in the two Bills will give minors an opportunity to benefit from the loans available to those pursuing higher education. The amendments will also make the loans cheaper as interest payable on them is now capped at three per centum per annum. However, it should be made clear whether this applies to salaried applicants pursuing undergraduate and postgraduate studies as well. Youths and persons living with disability get a grace period within which to begin paying their loans which ensures that the loans do not accumulate penalties as to make them heavily indebted.

d. Submission by the Office of the Attorney General and Department of Justice

i. The Higher Education Loans Board (Amendment) Bill, 2023

Clause 2 of the Bill seeks to amend **section 2** of the Act relating to interpretation of terms by introducing the definition of additional terms into the interpretation section namely the definition of "disability" and "youth".

The Committee was informed that the proposal is unnecessary as both terms are defined adequately in other pieces of legislation. The term disability is defined in the persons with disability Act and the term "youth" is defined in the Constitution. They proposed for the definitions to be withdrawn or if inserted for the Act to make a cross reference to main legislation that defines these terms.

Clause 3 of the Bill seeks to amend **Section 6** of the Act which provides for the functions of the Board. The proposal seeks to remove from the Board, the function of setting the rate of interest for loans granted under the Act. The Board will thus not be responsible for setting the interest rates to be charged on the higher education loans granted under the Act.

The Committee was informed that the proposal may pose a challenge in implementation as it is not clear who will be mandated to set the interest rate to be charge on loans issued under the Act.

Clause 4 of the Bill seeks to amend **Section 15** of the Act which sets out the obligation of loanees. The amendment proposes to insert a new subsection which seeks to provide that the loans advanced to the youth and persons with disabilities shall not accrue for as long as these persons have not secured employment. The proposal seeks to have the interest on the loans to only accrue from the time these persons get employment. Further, the amendment under subsection (2) seeks to ensure that in as much as loan beneficiaries are required under the Act to start repayment of the loan within one year of completion of studies, failure to do so shall not constitute an offence, the loan beneficiary only commits an offence where he fails to start the loan repayment either upon securing employment or within five years after completion of studies.

The Committee was informed that the proposal may affect the effective operations of the Fund as the disbursements rely on loan repayment/recovery as a major component of resource mobilization. Further, a majority of the loanees complete university at the age between 22 and 25 years thus a proposal to waive interest for the youth is likely to hand over interest loans to majority of the beneficiaries thus affecting the resources in the fund. This will in turn lead to over reliance on exchequer.

Clause 5 of the Bill proposes the insertion of a new **Section 14A** which seeks to expressly set a maximum interest rate of three per centum (3%) that can be charged by the Board on the loans issued under the Act. This proposal is tied to the amendment in section six which sought to remove the function of setting interest rates from the Board.

It was indicated that although the provision does not raise any significant constitutional issues, noting the ever-growing inflation rate in the economy it may be necessary to leave the setting of interest rates open as provided in Section 6 so as to cater for the rising cost of inflation. Further, if this

provision is retained and there is need to revise the interest rate, the Act will need to be amended to reflect the new interest rates. The AG recommended for the provision to be deleted and the proposed amendment to Section 6 be deleted.

From the foregoing, the Office of the Attorney General noted that though the legislative proposal does not raise significant constitutional issues, they proposed for the same to be withdrawn as the proposals may have serious implications on the continuity of the Fund.

The Committee was also informed that the Attorney General's office was consulting with the Ministry and the Ministry noted that it is in the process of developing a Bill which will merge the Funds under the University Act and Technical and Vocational Education and Training Act with the Higher Education Loans Board Act and the proposed bill will repeal the Higher Education Loans Board Act.

They further noted that the Legislative Proposal contains similar proposals as in the Higher Education Loans Board (Amendment) Bill, 2022 (National Assembly Bill No. 29) sponsored by Hon. Gideon Keter, MP, which the Departmental Committee on Education and Research in their report dated 10 August 2021, recommended for the Bill not to proceed and for the sponsor of the Bill to consider withdrawing it.

It was suggested that an amendment be done to have the guardians as applicants until the minor becomes of age then the applicant can regularize the application.

ii. The Higher Education Loans Board (Amendment) Bill, 2022

The Committee was informed that **Clause 2** of the Bill seeks to amend **Section 14** of the Act which provides for conditions for grant of loan by inserting new sub sections immediately after sub-section (2) to mandate the board to approve applications by persons under the age of 18 as long as the parents and guardians of the applicant co-sign the loan.

This proposal, though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority, may create challenges in the implementation as a minor (a person under the age of 18 years) may not have capacity to enter into a legally binding contract and also can't open a bank account to where the funds can be channelled. Thus, the contracts may be challenged in a Court of law.

It was proposed that the Bill may be amended to consider having the guardians as applicants until the minor becomes of age where the applicant can regularize the application.

Committee Concerns

- a. **On why the youth and the disabled should be accorded a grace period of five years**
The Kenya Law Reform Commission (KLRC) stated that persons living with disability take time before securing employment. HELB added that even according the 5 years will not better loan repayments since Kenyans have a tendency of waiting for the last minute thus inconveniencing prospective beneficiaries.

- b. **On how the interests of Persons with Disabilities are safeguarded**
The Ministry indicated that MTI takes care of them where they get a top up. In addition, the NCPWD offers them additional funds.
- c. **On the parameters used to charge 4% interest**
HELB indicated that it calculates cost of money using default rates and the cost of running business. The Committee was further informed that the HELB kitty has shrunk due to inflation levels. HELB would lose 1.8B if the interest rate is reduced to 3%.
- d. **On how HELB sensitizes beneficiaries on the need to repay their loans**
The Committee was informed that students through e-financial literacy are encouraged to start repaying while still in school. HELB indicated that it has changed the name of the unit from Debt Recovery to Debt Management.
- e. **On whether HELB does waivers**
The Committee was informed that it does waivers and 1.2B was collected in 2013 waiver, 800M collected in 2018 waiver and another 800M collected in 2021 waiver.
- f. **On how long the students have to wait before they get their loans and scholarships**
HELB indicated that it is still collecting data and the process will end on 7th of October, 2023. The Committee was told that the delay was occasioned by the challenge of data validation.
- g. **On Vice Chancellors chasing away students despite the Ministerial circular**
The Committee was informed that the Ministry had met with VC's who indicated that the ones chased were for not having paid for accommodation. The PS Higher Education indicated that some reports from the fourth estate were misleading.
- h. **On the amount of money that has been disbursed so far**
The Committee was informed that no money has so far been disbursed although the Ministry is following up the issue with the Treasury. The Ministry however indicated that three months enhanced capitation has been provided already.

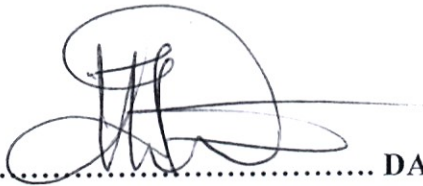
MIN.NO.EDUC/2023/286: ANY OTHER BUSINESS

1. The Committee resolved that every foreign trip delegation must be accompanied by Secretariat.
2. The following Members were selected for foreign trips:
 - a. **London:** Hon. Rebecca Tonkei, Hon. Phylis Bartoo, Hon. Dick Maungu
 - b. **France:** Hon. Jerusha Momanyi, Hon. Julius Taitumu, Hon. Nabii Nabwera and Hon. Anne Muratha
 - c. **Next trip:** Hon. Julius Melly, Hon. Malulu Injendi and Hon. Peter Orero
3. The Committee resolved to begin with the Kenya Institute on Curriculum Development (KICD) on budget implementation

MIN.NO.EDUC/2023/287: ADJOURNMENT.

There being no other business, the sitting was adjourned at 1.45 pm.

SIGNED:



DATE:

31/10/2023

**HON. JULIUS MELLY, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION**

**MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION HELD ON THURSDAY, 17TH AUGUST 2023, MINI CHAMBER, MAIN
PARLIAMENT BUILDINGS, AT 10:00 AM**

PRESENT

1. Hon. Julius Kibiwott Melly, MP
2. Hon. Moses Malulu Injendi, MP
3. Hon. Dr. Christine Ombaka Oduor, MP
4. Hon. Eve Akinyi Obara, MP
5. Hon. Jerusha Mongina Momanyi, MP
6. Hon. Abdul Ebrahim Haro, MP
7. Hon. Clive Ombane Gisairo, MP
8. Hon. Dick Maungu Oyugi, MP
9. Hon. Julius Taitumu M'Anaiba
10. Hon. Nabii Nabwera Daraja, MP
11. Hon. Peter Ochieng Orero, MP
12. Hon. Rebecca Noonaishi Tonkei, MP

- Chairperson
- Vice-Chairperson – Session Chair

ABSENT WITH APOLOGY

1. Hon. Anne Wanjiku Muratha, MP
2. Hon. (Prof.) Phylis Jepkemoi Bartoo, MP
3. Hon. Timothy Kipchumba Toroitich, MP

IN ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Grace Wahu
2. Ms. Colleta Siglai
3. Dr. Mburu Maina
4. Mr. Nimrod Ochieng
5. Mr. Paul Kashana Shane
6. Mr. Daniel Psirmoi

- Clerk Assistant III
- Senior Legal Counsel
- Research Officer III
- Audio Officer
- Serjeant-at-Arms
- Media Officer

AGENDA

1. Prayers
2. Adoption of the agenda
3. Confirmation of Minutes of the 47th Sitting held on Tuesday, 15th August, 2023
4. Matters Arising
5. Briefing by the Legal Counsel on the following Bills:
 - a. Higher Education Loans Board (Amendment) Bill, 2022 sponsored by Hon. Joyce Kamene, MP
 - b. Higher Education Loans Board (Amendment) Bill, 2023 sponsored by Hon. Joyce Kamene, MP
 - c. Teachers Service Commission (Amendment) Bill, 2023 sponsored by Hon. Abdul Haro, MP
6. Any other Business
7. Adjournment and date of the next sitting.

MIN.NO.EDUC/2023/241: PRELIMINARIES

The Chairperson called the meeting to order at 10.18 am and Hon. Malulu Injendi said a prayer. The agenda was adopted having been proposed by Hon. Clive Gisairo, MP, and seconded by Hon. Abdul Haro, MP.

MIN.NO.EDUC/2023/2242: CONFIRMATION OF MINUTES

a. Confirmation of Minutes of the 47th Sitting held on Tuesday, 15th August 2023 at 12.00 noon.

The Minutes of the 47th Sitting were confirmed as a true reflection of the meeting having been proposed by Hon. Dick Maungu, MP, and seconded by Hon. Jerusha Momanyi, MP.

Matters Arising

1. Concerns were raised by the Members on the selection of three Members for the Paris and London trip to be undertaken by the Committee. The Chairperson informed the Committee that the number of people selected is subject to availability of funds.
2. The Committee stated that prioritization should be given to the retreat with the Ministry of Education to go through the Report on the Presidential Working Party Education Reforms in order to be appraised on the amendments in legislation.
3. The Committee deliberated that the Cabinet Secretary for Education needs to appraise the Committee on the new Funding Model. The Chairperson informed the Committee that he had posted a brief on the new Funding Model in the Committee group and requested the Members to look through it in order to understand the application process for university scholarships and loans.

MIN.NO.EDUC/2023/243: BRIEFING BY THE LEGAL COUNSEL ON THE BILLS BEFORE THE COMMITTEE

The Legal Counsel took the Committee through the Bills and the discussions were as follows: -

a. Higher Education Loans Board (Amendment) Bill, 2022 sponsored by Hon. Joyce Kamene, MP

The Committee indicated that a minor cannot get into a contract and therefore it is not possible for him or her to be a co-signatory. The Committee stated that it will not sanitize a mistake because a child should ideally join Grade One at 6 years. The new proposal was thus found to be in conflict with the law of contract.

The Committee noted that some parents take their children to school very early to evade responsibilities and they should be the ones to do funding for their children. Education should be an equalizer and the well to do should not have the liberty to enroll their children in school earlier than others and children should remain at home and allowed to be just children.

b. Higher Education Loans Board (Amendment) Bill, 2023 sponsored by Hon. Joyce Kamene, MP

The Committee noted that the sponsor is redefining terms so as to fit her legislative proposal. There was also a concern on interest rates since the new proposal indicates that the maximum interest rate, if the bill is passed, will be at most 3% which will require parliament's approval to adjust if need arises. This is despite the fact that the Board is the one charged with the responsibility of disbursement and recovery of higher education loans.

Interest rates should be a product of demand and supply and Parliament would be acting ultra vires by being allowed to set interest rates.

The Committee proposed that interest rates adjustments should be captured under HELB regulations.

c. Teachers Service Commission (Amendment) Bill, 2023 sponsored by Hon. Abdul Haro, MP

The Committee noted that the Legislative Proposal seeks to take away allowances from the regulations and place them under the Act.

It was stated that the Legislative proposal inserted unnecessary allowances such as transfer allowances yet the TSC suffers low budget. Some allowances in the Bill are already being offered by TSC.

The Committee however indicated that it has had concerns over acting allowances for teachers acting for years without being confirmed yet the acting allowances are already provided for in the Regulations. In addition, the Public Service Commission already provides for the award of allowances and the Collective Bargaining Agreements (CBAs) signed between TSC and teachers act as guides to the allowances payable.

The Committee noted that a teacher should not be appointed in an acting capacity unless the person satisfies all the prescribed qualifications.

Further, the Teachers Service Commission should continually hold promotional interviews so that acting teachers may benefit from existing promotional opportunities.

MIN.NO.EDUC/2023/244: ANY OTHER BUSINESS

There were no matters arising

MIN.NO.EDUC/2023/245: ADJOURNMENT.

There being no other business, the sitting was adjourned at 1.45 pm.

SIGNED: DATE: 12/9/2023

HON. JULIUS MELLY, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION

Annexure 3 : Copy of the newspaper advertisement on public participation on the Bill





“Lay Canon Blasto Ooko is another composer whose music was sung not only in St. Stephen's Church but also in other churches. The Choir had a committee that ensured members followed set rules.

Kimani re-joined the choir and contributed to the composition and lyrics of notable songs, some of which were political songs. One of his famous composition is “Chombo cha Shetani,” which advises Christians not to be Satan’s vessel.

Lay Canon Blasto Ooko is another composer whose music was sung not only in St. Stephen's Church but also in other churches. The Choir had a committee that ensured members followed set rules and standards, promoting healthy functioning for the choir as a whole.

When Mr Mbela joined politics in 1988, Mr Christopher Sikukuu took over the directorship of the St. Stephen's Choir. Chris, as he was fondly called, also trained the Postal Corporation of Kenya Choir in the 1990s. The choir frequently entertained President Daniel arap Moi at the Jomo Kenyatta International Airport (JKIA) upon his return from foreign trips. Sikukuu was to later receive a Head of State Commendation (HSC) on 12 December 2008 from President Mwai Kibaki for his service.

Senoga-Zake, Mbela and Sikukuu developed a tradition of taking cultural tunes and adapting them for church music. This made their songs resonate with the audience because they had a rich African flavour.

The incorporation of African tunes and traditional musical instruments did not resonate well with some church leaders who felt that the move secularised church music. Although Mbela was put to task about it, he was firm and the Choir continued to use African elements in its compositions.

The St. Stephen's Choir was not only famous but also the most sought-after music group in the country. It became a household name, popularised by radio and television. The success of the St. Stephen's Choir was attributed to teamwork and the members' will-

ingness to support each other to realise their talents.

In May 1980, both the Swahili Choir and the English Choir were suspended due to what the Parish Council referred to as anti-Christian behaviour. Rev. Peter Mjomba Mwakio who was the Vicar said that when a snake entered a gourd you needed to break the gourd to remove it.

The suspension of the choir found its way into the media. The popularity of the choir was cited, as well as issue of access to the choir's accounts which were managed by the church leadership at that time. The matter of African tunes and rhythms also cropped up. Archbishop Manasses Kuria held some consultative meetings between church officials and the choirs were reinstated without any conditions.

The St. Stephen's Choir also collaborated with other choirs outside Nairobi, such as Namirembe Cathedral Choir from Kampala, Uganda, and the St. Lukes Makupa Church Choir from Mombasa. The collaboration with Namirembe Cathedral Choir was particularly special as it was an exchange between two choirs from different countries with similar musical backgrounds.

At the turn of the millennium, Charles Omondi (Cerelec) trained the Swahili Choir briefly. In 2002, Eric Wesonga took over from Omondi and gave the choir a new lease of life. The choir began singing at the 11am Swahili Service and Wesonga established a strict practice regimen. Members held practice sessions on Tuesdays, Fridays and Sundays after church service.

The Swahili Choir continues to perform at local and national events. Some of the functions at which it performs are church events, concerts and weddings in Kenya, Rwanda, Uganda and Tanzania. Members of the Swahili and English Choirs founded the One Song International Hymn Festival which attracted participants from the East African region.

Over the years, St. Stephen's Church expanded its music ministry by establishing several other choirs. In the 1950s, the original choir which is recognised as the Swahili Choir was established. In the 1960s, the English Choir was established. In 2002, the Kathedral Crooners Choir was established after St. Stephen's became a Cathedral. Much later in 2017, the Youth Choir was formed. The four choirs have a combined force of over 200 members with diverse skills and a wide repertoire of songs.

The writer is a Senior Lecturer and Head of Humanities Department at Murang'a University



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION AND IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 58 OF 2022);
2. THE INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2023);
3. THE NATIONAL GOVERNMENT CO-ORDINATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 25 OF 2023);
4. THE WATER (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2023); AND
5. THE VOCATIONAL TRAINING BILL (SENATE BILL NO. 3 OF 2022).

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022); the Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023); the National Government Co-ordination (Amendment) Bill (National Assembly Bill No. 25 of 2023); the Water (Amendment) Bill (National Assembly Bill No. 33 of 2023); and the Vocational Training Bill (Senate Bill No. 3 of 2022) have been read a First Time and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022) is a Bill sponsored by the Hon. Joyce Kamene, MP which seeks to amend the Higher Education Loans Board Act, No. 3 of 1995 to expressly provide that the Higher Education Loans Board shall not deny loans to students who have not attained the age of eighteen years.
2. The Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023) is a Bill sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'wah, MGH, MP which seeks to enhance accountability within insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies by amending the Insurance Act (CAP. 487) to provide for offences and penalties relating to the management of insurance companies. The amendments seek to ensure that insurance companies take responsibility in case an insurance company fails.
3. The National Government Co-ordination (Amendment) Bill (National Assembly Bill No. 25 of 2023) is a Bill sponsored by the Hon. Moses Malulu Injendi, MP which seeks to amend the National Government Coordination Act to recognize village elders who perform national government functions in village units. The Bill further seeks to recognize the existing village units and provide for establishment of village councils and appointment of village elders and payment of their allowances.
4. The Water (Amendment) Bill (National Assembly Bill No. 33 of 2023) is a Bill sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'wah, MGH, MP which seeks to amend the Water Act, 2016, to operationalize public private partnerships in the water sector.
5. The Vocational Training Bill (Senate Bill No. 3 of 2022) seeks to put in place a legal framework to govern the establishment and management of vocational education and training institutions in the countries.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022)	Education
2. Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023)	Finance and National Planning
3. National Government Co-ordination (Amendment) Bill (National Assembly Bill No. 25 of 2023)	Administration and Internal Security
4. Water (Amendment) Bill (National Assembly Bill No. 33 of 2023)	Blue Economy, Water and Irrigation
5. Vocational Training Bill (Senate Bill No. 3 of 2022)	Education

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

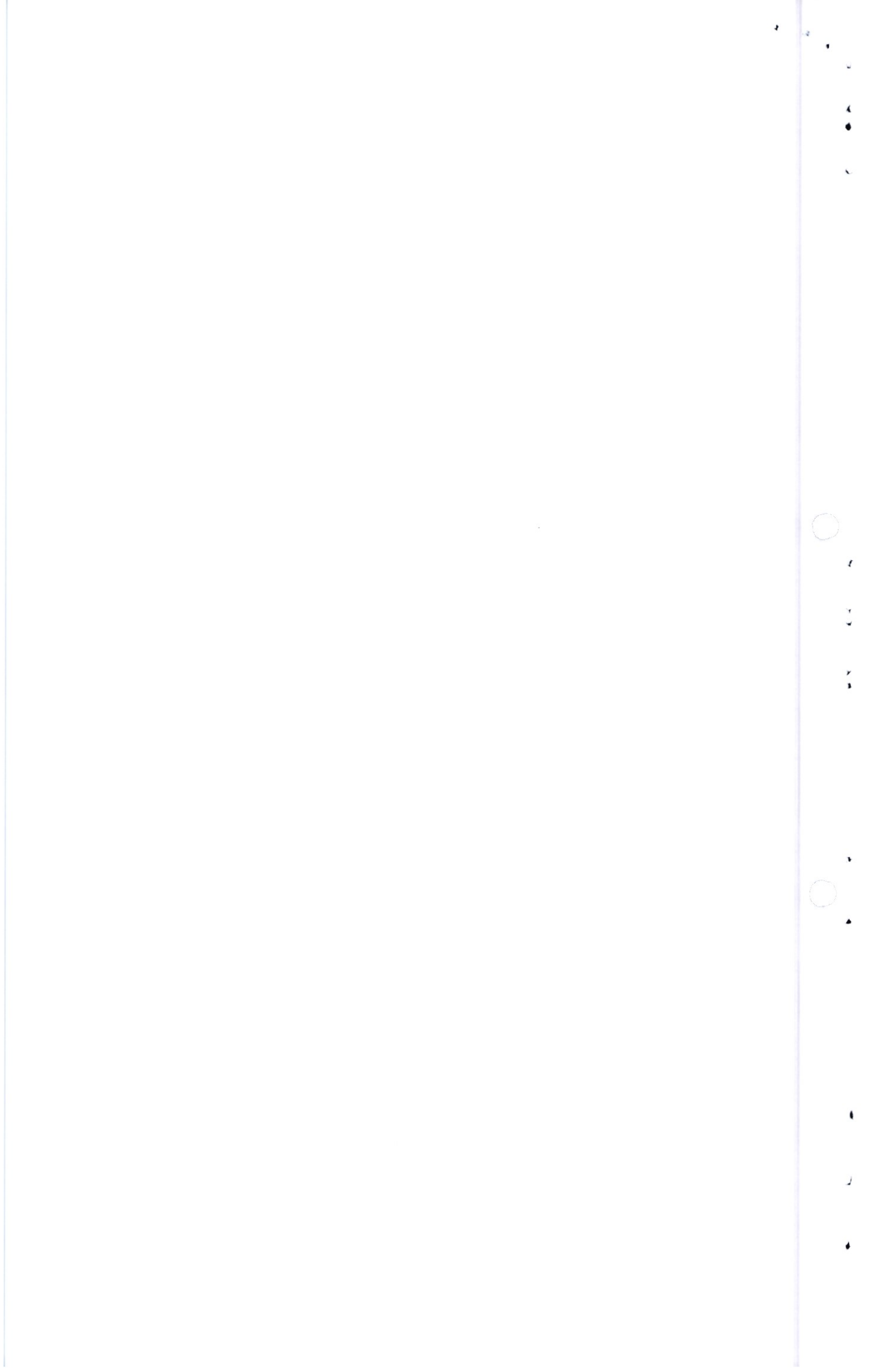
The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke to be received on or before Tuesday, 22nd August 2023 at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

8th August, 2023

For the Welfare of Society and the just Government of the People

Annexure 4 : Submissions by stakeholders





HIGHER EDUCATION LOANS BOARD

Tel: 0711052000
E-mail: contactcentre@helb.co.ke
Website: www.helb.co.ke

Anniversary Towers
University Way
P.O Box 69489-00400
Nairobi, Kenya

HELB/ 46/001/Vol.2/32

11th September 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI

Dear 

RESPONSE TO HON. JOYCE KAMENE BILL 2022 ON PROPOSED AMENDMENTS TO HELB ACT

HON. JOYCE KAMENE BILL 2023 ON PROPOSED AMENDMENTS TO HELB ACT

The Bill proposes four amendments on Higher Education Loans Board Act, CAP 213A, as highlighted below:-

Definition

Include definition of "Youth and Disability" within HELB Act.

Power to Set Interest Rate

The function of the Board of setting interest rate is taken away.

Youth and Persons with Disabilities (PWD)

To waive the imposition of interest on the principal amount of a loan advanced to the Youth and Persons with Disabilities (PWD) until they secure employment.

Penalty Charged

The penalty charged upon defaulting in loan repayment should be charged after the loanee secures employment or five years after completion of studies.

Maximum Interest Rate

The percentage of interest that may be charged on the loan advanced to be fixed at not more than three (3%) per cent p.a.

Principal Object for Proposed Amendments

The rationale of the proposed amendments is to reduce the financial burden on fresh graduates who are expected to pay money to the Higher Education Loans Board in terms of interest and penalties even before securing employment or becoming financially stable.

Proposed Bill

Clause 1 provides for the short title.

Clause 2 provides for amendment to section 2 of the HELB Act to insert the definitions of the terms "disability" and "youth" which are used in the proposed amendments.

Clause 3 provides for the amendment of section 6 of the HELB Act to remove the function of setting the rate of interest from the Board.

Clause 4 provides for the amendment of section 15 of the HELB Act by

inserting a new subsection that provides that interest in cases of the Youth and Persons with Disabilities, their loan repayment shall become due upon them securing employment after completion of their studies.

Clause 5 provides for the insertion of a new section that sets the rate of interest charged on the loans at a maximum of three (3) per cent per annum. It also provides that the penalty charged upon defaulting in loan repayment shall be charged after securing employment or five years after completion of studies.

Attached is a comparison of the current provisions of the Act and the changes proposed by the Bill.

Current Provision	Proposed Amendments	Implication	HELB Comment
Section 2 of HELB Act, which provides for interpretation.	Section 2 of the HELB Act (herein after referred to as the Principal Act) is amended by inserting the following new paragraph in their proper alphabetical sequence- Youth" means the collectivity of all individuals in the Republic who: - a) Have attained the age of eighteen years; but b) Have not attained the age of thirty-five years. "Disability" includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities.	It introduces the definition of disability and youth.	Disagree. The proposal is not necessary because Article 260 of the Constitution, which is the Supreme Law, has already provided the definition of Youth in the same terms as being proposed. Other than the few employed postgraduate students who opt to take HELB loans, and their loans are recovered as they study, over 95% of HELB loan beneficiaries, are under the category of the youth. This means if they are given any preferential treatment, then the entire undergraduate group benefits. Persons With Disability Act, 2003 which is the reference law when dealing with Persons with Disabilities, gives the definition of disability exactly in the same terms as the proposal being made.
Section 6 Functions of the Board. The functions of the Board shall be a)... b)... c) to set the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans.	Section 6 of the Principal Act is amended in paragraph (c) by deleting the words "rate of interest and" appearing immediately before the word "recovery".	The proposal takes away from HELB, the function of setting interest rate	Disagree. The function of setting interest rate should be left with the Board as it is best placed to monitor performance of the revolving fund and its sustainability and impact in financing higher education.

Obligations of the Loanee Section 15. A loanee shall be required, subject to and in accordance with this Act or any regulations made thereunder, within one year of completion of his studies or within such a period as the Board decides to recall its loan whichever is the earlier— a).... b) to begin repayment of his loan together with any interest accrued thereon.	Section 15 of the principal Act is amended- (a) by inserting the following new subsection immediately after subsection (I) – “(IA) Notwithstanding the provisions of subsection (I) (b), no interest shall be charged on the principal amount advanced to the youth and persons with disabilities until they have secured their first Employment upon completion of studies”.	Loan interest in cases of the youth and persons with disabilities shall be charged upon them securing employment after completion of their studies.	Disagree The Amendment will affect the entire undergraduate groups as and when they complete their studies. Persons with Disabilities have an added advantage over other students with their higher education being fully funded in terms of loan. They are not subjected to the means testing instrument requirement. Further, most of them benefit from the National Council of Persons with Disabilities (NCPWD) who supplement their higher education financing. It will therefore not be tenable to waive the interest on account of their status. Further, the 4% p.a. interest charged is way below the annual inflation rate (7.3%) as at July 2023 and 8.87% over the last ten years. There is no mechanism of determining what constitutes employment, when one is deemed to be employed and how to communicate to HELB information that one is now employed. Interest earned goes towards financing other needy students and for the period that it's not forthcoming, in the absence of more capitation from the National Treasury, less students will be financed.
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Section 15 (2) Any loanee who fails or neglects to satisfy the requirements of subsection (1) within the stipulated time shall, in addition to any other action that the Board may take against him, be guilty of an offence and liable to a fine of not less than five thousand shillings in respect of each loan deduction that remains unpaid in accordance with provisions of subsection (1), and such fine shall be payable to the Board.	Section 15 section (2) be amended by deleting the words " within the stipulated time" appearing immediately after the words " subsection (1)" where they first appear and substituting therefor the words " upon securing employment or within five years after completion of studies".	A loanee shall be liable of the offence under sub-section (2) and penalty thereof upon securing employment or after five years from the time of completion of studies.	Disagree Loan repayment is key to HELB's mandate of creating a revolving fund for the benefit of other deserving student. Extending the grace period to five years will mean funding less students because income from loan repayment goes towards funding other needy students. A judgement delivered on 19th August 2022 by Justices Alfred Mabeya, of the High Court of Kenya fixed HELB interest and penalties charged, in that the maximum that HELB can charge on penalties and interest is limited to equal to the principal amount as at the time of default. Penalties are imposed to deter default while interest is for partial cost of the cost of the cost of lending. If they are delayed for that long, most of beneficiaries will take advantage of the provision and fail to repay even when they are able.
A new Section	<i>Interest rate.</i> 14(A). The maximum interest rate to be charged by the Board on the principal amount advanced to a loanee shall not be more than three per cent per annum.	The provision sets the maximum interest rate at 3%.	Reviewing the interest rate downwards and the proposed delay in repayments will have an adverse impact in terms of cashflows to fund students where currently 37% of student loan budget is from AIA (Loan Recoveries). It means HELB would need more capititation from the National Treasury to make up for the loss in interest.

			Reducing the current rate to 3% will negatively impact on the revolving fund hence negatively affecting HELB's ability to finance needy students, given that the current 4% is already way annual inflation rate. The interest rate is currently set by the Board as it is one of its functions. The Board has not in any way mismanaged this function. Providing for it in law means that Parliament has to legislate on any change as and when required.
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KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI Telephone:

Nairobi, +254-20-2241186/2241201 Fax:

+254-20-2225786

www.info@klrc.go.ke

When replying please quote

Ref. IKLRC/8/6.4JV01..IX.(6.0) ...

and Date

The Clerk.
Clerks Chambers
National Assembly
Parliament Buildings
P O Box 41842 - 00100
NAIROBI

(Attn. Peter K. Chemweno)

Dear

RE.: COMMENTS. ON THE PROPOSED HIGHER EDUCATION LOANS BOARD
(AMENDMENT) BILL, 2023 AND THE HIGHER EDUCATION (AMENDMENT) LOANS BOARD
BILL, 2022 BOTH BY HON JOYCE KAMENE

We acknowledge with thanks receipt of your letter Kef.NA/FDU202313) dated 6th September, 2023
on the above subject.

Introduction

The Kenya Law Reform Commission has been requested vide a letter dated 6th September, 2013 from the Clerk of the National Assembly to make representations on the Higher Education Loans Board (Amendment) Bill, 2022 and the Higher Education Loans Board (Amendment) Bill, 2023 which have undergone First Reading in the House and thereafter committed to the Departmental Committee on Education for review and reporting.

The Commission has examined the legislative proposals and gives the following comments.



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

12 September, 2023

..... 20

1. The Higher Education Loans Board (Amendment) Bill, 2023

Objects of the Bill

This Bill proposes to amend the Higher Education Loans Board Act. No. 3 of 1995 to waive the imposition of interest on the principal amount of a loan advanced to the youth and persons with disability until such a time as they have secured their first employment.

The Bill further sets the percentage of interest that may be charged on the loan advanced at three percent and provides that penalty for defaulting on loan may only be charged after securing employment or five years after completion of studies.

Comments on the Bill

Statute	Section/ Proposed KLRC Proposal Amendment	Rationale
The Higher Education Loans Board Act, No. 3 of 1995.	Section 2. Inserting new definitions for the terms 'disability' and 'youth'.	There would be no harm to have these 'disability' and 'youth' given in the definitions Bill are a replicate of the definitions dropped as they of those terms as contained in are already defined Article 260 of the Constitution of Kenya. 2010.
	Section 6. Removing power to set interest rates on loans.	Not in agreement. The Board currently administers student loans at an interest rate of four per centum per annum for undergraduate and TVET students whose repayment is deferred until after graduation. It also funds the salaried undergraduate and postgraduate students who repay the loans as they study through the Jielimishe Loan product at 10% per annum. This amendment would limit the Board's power to vary interest rates depending on the prevailing market conditions and the performance of the revolving fund. Further salaried applicants may not be too needy as to require such an incentive.
	Section 15. Insertion of a new subsection abolishing charging of interest on loans advanced to _____ L	In agreement. This gives youth and persons living with disability an opportunity to commence paying their loans without having the loans accrue huge amounts in interest.

youth and persons with disability until they have secured employment.

Section 15.

In agreement.

Suspends payment of fines on loans until upon securing employment or within five years after completion of his studies.

Within five years of completion of studies could mean any period before the specified period of five years ends. This gives youths and persons living with disability a grace period to secure employment or venture into business before commencing the repaying the loans. It also prevents this class of

loanees from being heavily indebted at the time of commencing the repayment of the loans.

Section 14.

Not in agreement.

Sets the maximum interest rate on amount advanced by the Board to a loanee at not more than three per centum per annum.

The amendment covers the administration of undergraduate and TVET student loans which are currently at 4% and those for the salaried undergraduate and postgraduate students which are currently at 10%. Salaried undergraduate and postgraduate students could be in a position to easily afford the loans. The amendment should indicate whether it applies to only needy undergraduate and TVET students or to salaried students pursuing undergraduate and postgraduate studies as well.

2. The Higher Education Loans Board (Amendment) Bill, 2022

Objects of the Bill

This Bill proposes to amend the Higher Education Loans Board Act, No. 3 of 1995 to prohibit the Higher Education Loans Board from denying loans to students who have not attained the age of eighteen years.

Comments on the Bill

Statute	Section/ Proposed Amendment	KLRC Proposal	Rationale
The Education Bill	Section 14.	In agreement.	Even though the Board may not enter into contract with minor, innovative

Loans Board Act, No 3 of 1995. Insertion of new subsection prohibiting the Board from denying loans to persons who have not attained the age of eighteen years.

means need to be devised to ensure that needy but underage applicants get access HELB loans. This will prevent needy persons who haven't attained the age of eighteen years from being locked out of loans advanced to support their higher education.

Section 14. In agreement.

Contracts with minors are voidable they cannot be specifically enforced against the minor.

Insertion of new subsection to provide that loan applications by minors be co-signed by a parent or guardian.

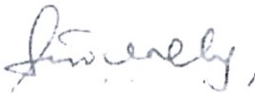
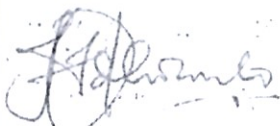
However, parents or guardians of minors can name them in contracts only if it benefits them. But even in this case, the minor cannot be personally liable. Additionally, minors may not ratify a contract upon attaining age of majority unless a law specifically allows this.

Conclusion

The amendments as proposed in the two Bills will give minors an opportunity to benefit from the loans available to those pursuing higher education. The amendments will also make the loans cheaper as interest payable on them is now capped at three per centum per annum however it should be made clear whether this applies to salaried applicants pursuing undergraduate and postgraduate studies as well. Youths and persons living with disability get a grace period within which to begin paying their loans which ensures that the loans do not accumulate penalties as to make them heavily indebted.

As always, we thank you for your continued cooperation.

Yours

Joash Dache, MBS
SECRETARY/CEO

Copy to: Ms. Christine Agimba, Chairperson to see file copy



**OFFICE OF THE ATTORNEY-GENERAL AND
DEPARTMENT OF JUSTICE**

**SUBMISSION BY THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF
JUSTICE ON THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2022, AND THE
HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2023, LEGISLATIVE PROPOSAL
BEFORE THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON EDUCATION**

We note that the Higher Education Loans Board (Amendment) Bill, 2022 and the Higher Education Loans Board (Amendment) Bill, 2023 before the National Assembly Departmental Committee on Education seek to amend the Higher Education Loans Board Act. The Bills are sponsored by Hon. Joyce Kamene, MP

We further note that the Higher Education Loans Board Act No. 3 of 1995 provides for the establishment of a Board for the management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya and for matters incidental thereto and connected therewith

We have reviewed the two legislative proposals and wish to comment as follows:

A. The Higher Education Loans Board (Amendment) Bill, 2022

1. Clause 2 of the Bill seeks to amend section 14 of the Act which provides for conditions for grant of loan by inserting new sub sections immediately after subsection (2) to mandate the board to approve applications by persons under the age of 18 as long as the parents and guardians of the applicant cosign the loan.

4. This proposal though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority, may create challenges in the implementation as a minor (a person under the age of 18 years) may not have capacity to enter into a legally binding contract and also can't open a bank account to where the funds can be channeled. Thus the contracts may be challenged in a Court of law.
3. The proposal may be amended to consider having the guardians as applicants until the minor becomes of age then the applicant can regularize the application.

B. The Higher Education Loans Board (Amendment) Bill, 2023

4. Clause 2 of the Bill seeks to amend section 2 of the Act relating to interpretation of terms by introducing the definition of additional terms into the interpretation section namely the definition of "disability" and "youth".
5. This proposal is unnecessary as both terms are defined adequately in other pieces of legislation. The term disability is defined in the persons with disability Act and the term "youth" is defined in the Constitution. We propose for the definitions to be withdrawn or if inserted for the Act to make a cross reference to main legislation that defines these terms.
6. Clause 3 of the Bill seeks to amend section 6 of the Act which provides for the functions of the Board. The proposal seeks to remove from the Board, the function of setting the rate of interest for loans granted under the Act. The Board will thus not be responsible for setting the interest rates to be charged on the higher education loans granted under the Act.
7. This proposal may pose a challenge in implementation as it is not clear who will be mandated to set the interest rate to be charge on loans issued under the Act.
8. Clause 4 of the Bill seeks to amend section 15 of the Act which sets out the obligation of loanees. The amendment proposes to insert a new subsection which seeks to provide that the loans advanced to the youth and persons with disabilities shall not accrue for as long as these persons have not secured employment. The proposal seeks

to have the interest on the loans to only accrue from the time these persons get employment. Further the amendment under subsection (2) seeks to ensure that in as much as loan beneficiaries are required under the Act to start repayment of the loan within one year of completion of studies, failure to do so shall not constitute an offence, the loan beneficiary only commits an offence where he fails to start the loan repayment either upon securing employment or within five years after completion of studies.

9. The proposal may affect the effective operations of the Fund as the disbursements rely on loan repayment/recovery as a major component of resource mobilization. Further, a majority of the loanees complete university at the age between 22 and 25 years thus a proposal to waive interest for the youth is likely to hand over interest loans to majority of the beneficiary thus affecting the resources in the fund. This will in turn lead to over reliance on exchequer.
10. Clause 5 of the Bill proposes the insertion of a new section 14A which seeks to expressly set a maximum interest rate of three per centum (3%) that can be charged by the Board on the loans issued under the Act. This proposal is tied to the amendment in section six which sought to remove the function of setting interest rates from the Board.
11. Although the provision does not raise any significant constitutional issues, noting the ever growing inflation rate in the economy it may be necessary to leave the setting of interest rates open as provided in section 6 so as to cater for the rising cost of inflation. Further if this provision is retained and there is need to revise the interest rate, the Act will need to be amended to reflect the new interest rates. We recommend for the provision to be deleted and the proposed amendment to section 6 be deleted.
12. From the foregoing, we note that though the legislative proposal does not raise significant constitutional issues we propose for the same to be withdrawn as the proposals may have serious implications on the continuity of the Fund.
13. We also consulted the Ministry and the ministry noted that it is in the process of developing a Bill which will merge the Funds under the University Act and Technical

and Vocational Education and Training Act with the Higher Education Loans Board Act and the proposed bill will repeal the Higher Education Loans Board Act.

14. We further note that the legislative proposal contains similar proposals as in the Higher Education Loans Board (Amendment) Bill, 2022 (National Assembly Bill No. 29) sponsored by Hon. Gideon Keter, MP, which the Departmental Committee on Education and Research in their report dated 10 August 2021, recommended for the Bill not to proceed and for the sponsor of the Bill to consider withdrawing it.

Olivia Simiyu

Senior Parliamentary Counsel

FOR: ATTORNEY GENERAL

12"September, 2023