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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY



TWELFTH PARLIAMENT – SIXTH SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

ADDENDUM REPORT ON THE CONSIDERATION OF THE PROPOSED
AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL, 2021 (NATIONAL
ASSEMBLY BILL NO. 35) BY THE LEADER OF MAJORITY HON (DR.) AMOS
KIMUNYA, EGH, MP

 THE NATIONAL ASSEMBLY PARDOS LAID	
DATE:	18 MAY 2022
	DAY: P.M
TABLED BY:	HON. FLORENCE MUTUA, CHAIR, EDUCATION & RESEARCH
CLERK AT THE TABLE:	CHRISTINE NDIRITU

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CHAIRPERSON'S FOREWORD

This addendum report contains the Committee's proceedings on the consideration and winnowing of amendments from individual Members and consideration of submission from the Ministry of Education to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35).

The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35) sponsored by Hon. (Dr.) Amos Kimunya, EGH, MP Leader of Majority Party was read a First Time on Wednesday 1st September, 2021 and committed to the Departmental Committee on Education and Research for facilitation of public participation pursuant to Article 118 of the Constitution and reporting to the House, pursuant to Standing Order 127(1).

The Second Reading of the Bill was concluded on 24th February, 2022 and the Bill is scheduled for Committee of the whole House. After the Second Reading of the Bill, the Ministry of Education and seven Honourable Members proposed further amendments to the Bill.

The Hon. Speaker directed that the proposed amendments be committed to the Committee on Education and Research for harmonization before consideration at the Committee of the Whole House, pursuant to the provisions of Standing Order 131 (Winnowing). The outcome of winnowing would inform the Speaker on how best to guide the House before the Bill is considered at the Committee of whole House.

During consideration of the proposed amendments, the Committee held a total of six (6) sittings during which it heard submissions from the following-

- (i) Chief Administrative Secretary and Principal Secretary for the State Department for University Education and Research and other Ministry officials
- (ii) Honourable Members who proposed amendments
- (iii) Vice Chancellors Committee
- (iv) Kenya Association of Private Universities
- (v) National Association of Private Universities in Kenya
- (vi) Universities Academic Staff Union

Acknowledgement

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

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

HON. FLORENCE MUTUA, CBS, MP

PART 1

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Education and Research 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: -

- (i) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the Ministry of Education;*
- (ii) *study the programme and policy objectives of Ministry and the Departments of the Ministry, and the effectiveness of the implementation;*
- (iii) *study and review all legislation referred to it;*
- (iv) *study, assess and analyze the relative success of the relevant Ministry as measured by the results obtained as compared with their stated objectives and,*
- (v) *investigate and inquire into all matters relating to the as may be necessary, and as may be referred to the Committee by the House;*
- (vi) *to vet and report on all appointments where the Constitution or any law requires the National Assembly and by extension, the Committee to approve;*
- (vii) *make reports and recommendations relating to the functions of the relevant Ministry to the House as often as possible, including recommendation of proposed legislation;*
- (viii) *make recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (ix) *consider reports of the relevant commissions and independent offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- (x) *examine any questions raised by Members on a matter within the mandate of the Committee.*

1.2 Subjects

The Committee, according to the Second Schedule of the Standing Orders, examines the following subjects: - Education, Training and Research.

The Committee oversees the following government entities: -

- (a) Ministry of Education comprising the following State Departments:
 - (i) State Department for Early Learning and Basic Education
 - (ii) State Department for University Education
 - (iii) State Department for Vocational and Technical Training
 - (iv) State Department for Post Training and Skills Development
 - (v) State Department for Implementation of Curriculum Reforms
- (b) The Teachers Service Commission.

1.3 Committee Membership

The Committee comprises of the following Members: -

Chairperson

Hon. Florence Mutua, CBS, MP
Busia County

Orange Democratic Movement Party

Vice Chairperson

Hon. Ngunjiri Wambugu
Nyeri Town Constituency

Jubilee Party

Hon. Geoffrey Makokha Odanga, MP
Matayos Constituency
Orange Democratic Movement Party

Hon. (Dr.) Pamela Ochieng, MP
Migori County
Orange Democratic Movement Party

Hon. (Eng.) Nzambia Kithua, MP
Kilome Constituency
Wiper Democratic Movement Kenya

Hon. (Prof.) Zadoc Abel Ogutu, MP
Bomachoge Borabu Constituency
Independent

Hon. Eric Muchangi Njiru, MP
Runyenjes Constituency
Jubilee Party

Hon. Eve Obara, MBS, MP
Kabondo Kasipul Constituency
Orange Democratic Movement Party

Hon. Jackson Lekumontare, MP
Samburu East Constituency
KANU Party

Hon. Jerusha Momanyi, MP
Nyamira County
Jubilee Party

Hon. Joseph Tonui, MP
Kuresoi South Constituency
Jubilee Party

Hon. Omboko Milemba, MP
Emuhuya Constituency
Amani National Congress

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. Wilson Sossion, MP
Nominated Member

Hon. (Dr) Wilson Kogo, MP
Chesumei Constituency
Jubilee Party

Hon. (Dr.) Daniel K Tuitoek, MP
Mogotio Constituency
Jubilee Party

Hon. Gichuki Mugambi, MP
Othaya Constituency
Jubilee Party

Hon. John Mwirigi, MP
Igembe South Constituency
Independent

Hon. Ali Lokiru Mohammed
Turkana East
Orange Democratic Movement

1.4 Committee Secretariat

The Committee secretariat comprises: -

Mr. Philip Lekarkar
Clerk Assistant II
Lead Clerk

Ms. Grace Wahu
Clerk Assistant III

Ms. Mercy Wanyonyi
Legal Counsel I

Ms. Winnie Kulei
Research Officer II

Mr. Eric Kanyi
Fiscal Analyst II

Ms. Deborah Mupusi
Media Relations Officer

Ms. Catherine Mukunyi
Serjeant-At-Arms

Mr. Collins Mahamba
Audio Recording Officer

Mr. David Milimo
Hansard Officer III

Ms. Rhoda Muchori
Hansard Officer III

PART 2

2.0 CONSIDERATION AND WINNOWING OF PROPOSED AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL, 2021

2.1 Referral of Proposed Amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35)

The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35) sponsored by Hon. (Dr.) Amos Kimunya, EGH, MP Leader of Majority Party was read a First Time on Wednesday 1st September, 2021 and committed to the Departmental Committee on Education and Research for facilitation of public participation pursuant to Article 118 of the Constitution and reporting to the House, pursuant to Standing Order 127(1).

The Second Reading of the Bill was done on 16th, 17th and concluded on 24th February, 2022. After the Second Reading of the Bill was concluded, the Ministry of Education and the following seven Honourable Members proposed further amendments to the Bill, namely: -

1. Owen Yaa Baya, MP
2. Hon. Didmus Barasa, MP;
3. Hon. John Kiarie, MP;
4. Hon. David Ole Sankok, MP
5. Hon. Robert Pukose, MP
6. Hon. Silvanus Osoro, MP;
7. Hon. George Murugara MP;

Pursuant to the provisions of Standing Order 131, the Speaker directed that all the amendments received be referred to the Departmental Committee on Education and Research and be subjected to the winnowing process for harmonization.

2.2 Proposed Amendments

The Committee on Education and Research proposed amendments to the Bill as well as the Ministry of Education and individual Members.

Below is a matrix of the proposed amendments by the Committee, the Ministry of Education and individual Members which were subjected to the winnowing process in order by clause, pursuant to Standing Order 131.

Clause	Sponsor	Proposed Amendment
2	Ministry of Education	THAT clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence— “Merger” means an amalgamation of two or more institutions to form a single entity; “principal institution” means an institution that is integrated into a different institution to form a merged institution;

Clause	Sponsor	Proposed Amendment
	Hon. David Sankok, MP	<p>Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended by—</p> <p>(a) in the definition of the term “differentiated unit cost” by inserting the words “approved by the Commission” immediately after the words “degree programme”;</p> <p>(b) in the definition of the term “statutes” by inserting the words “under section 23” immediately after the words “university council”;</p> <p>(c) deleting the definition of the term “Trustees”.</p>
NEW	Committee on Education and Research	<p>3A. Section 6 of the principal Act be amended—</p> <p>(a) by deleting paragraph (f) and substituting therefor the following new paragraph—</p> <p>(f) one person nominated by public universities in a forum of Vice- Chancellors of public universities;</p> <p>(b) by deleting paragraph (g) and substituting therefor the following new paragraph—</p> <p>(g) one person nominated by private universities in a forum of Vice- Chancellors of private universities;</p>
	Ministry of Education	Reject
NEW	Ministry of Education	<p>The principal Act is amended by inserting the following new section immediately after section 22A—</p> <p>Merger of public universities.</p> <p>22B. (1) The President may, on the recommendation of the Cabinet Secretary —</p> <p>(a) merge two or more public universities;</p> <p>(b) merge two or more constituent colleges of a public university to be mentored by one public university; or</p> <p>(c) make a constituent college of a public university a campus of another public university.</p> <p>(2) The recommendation referred to under subsection (1) shall be made with the prior concurrence of the Commission which shall satisfy itself that the merger is in the best interest of university education in Kenya.</p>

Clause	Sponsor	Proposed Amendment
		<p>(3) A recommendation under subsection (1) shall only be made after the principal institution has been afforded the opportunity to be heard and the Commission has, in accordance with the regulations, inspected the principal institution and is satisfied that it is unable to contribute to the objectives of university education set out in this Act.</p> <p>(4) If a principal institution under subsection (1) is merged, the Cabinet Secretary shall forthwith cause a notice to be published in the Gazette, specifying the date from which the principal institution shall have been merged.</p> <p>(5) Notwithstanding subsection (4), the merger of a principal institution shall not affect the validity of any academic award made by the university before the merger.</p> <p>(6) All immovable and movable property and assets of a principal institution shall upon merger vest in the merged institution as agreed upon by the councils of the respective public universities or as may be determined by the Cabinet Secretary in consultation with the councils of the respective public universities.</p> <p>(7) All rights, obligations and liabilities of a principal institution are deemed to be the rights, obligations and liabilities of the merged institution under this Act.</p> <p>(8) All references to a principal institution in any agreement or instrument relating to any property, assets, rights, obligations or liabilities transferred under subsection (6) and (7) shall, unless the context otherwise requires, be read as references to the merged institution established under this Act.</p> <p>(10) All persons who were members of staff of the principal institution shall be members of staff of the merged institution and shall be deemed to have been appointed on the terms and conditions of service applicable to them immediately before the merger of the principal institution.</p> <p>(11) The Cabinet Secretary may, in consultation with the Commission, make regulations for the better carrying out of the functions under this section.</p>
7	Hon. Owen Baya, MP	<p>Section 24 of the principal Act is amended—</p> <p>(a) in subsection (1) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”;</p> <p>(b) by inserting the following new subsections immediately after subsection (2)—</p>

Clause	Sponsor	Proposed Amendment
		<p>(2A) The provisions of Part V of this Act shall apply with the necessary modifications to the institutions established under this section.</p> <p>(2B) A Charter granted to an institution under this section shall outline the conditions under which the institution shall operate and set out a clearly defined mandate with regard to specified academic programmes.</p>
	Committee on Education and Research	THAT the Bill be amended by deleting clause 7.
NEW	Ministry of Education	Section 24 of the principal Act is amended by deleting the words “and with the approval of Parliament” appearing in subsection (1)
9	Hon. Robert Pukose, MP	<p>The principal Act is amended by repealing section 26 and substituting therefor the following new section—</p> <p>Universities in Counties.</p> <p>26. The Commission shall ensure accessibility of public universities by all counties, giving priority to—</p> <p>(a) viability and equitability in the distribution of public universities across the country;</p> <p>(b) underserved and marginalized areas; or</p> <p>such other factors as the Commission may determine.</p>
	Committee on Education and Research	<p>THAT the Bill be amended by deleting clause 9 and substituting therefor the following new clause—</p> <p>26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country.</p>
	Ministry of Education	Reject and retain as provided in the Bill
11	Hon. Robert Pukose, MP	<p>THAT Clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph —</p> <p>(b) in subsection (1)(v), by deleting the words “in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission” and substitute therefor the words “after a competitive process conducted by the Council”.</p>

Clause	Sponsor	Proposed Amendment
	Committee on Education and Research	<p>THAT clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—</p> <p>(b) by deleting paragraph (v) and substituting therefor the following new paragraph—</p> <p>(v) in the case of a public university, appoint Principals and Deputy Principals of Constituent Colleges after a competitive process conducted in the manner provided in the Second Schedule</p>
NEW	Ministry of Education	<p>NEW CLAUSE</p> <p>4A. Section 11 of the principal Act be amended subsection (1) by deleting the words “the management of a university” appearing in paragraph (b) and substituting therefor the words “a senior management position”;</p>
12	Hon. George Gitonga, Murugara, MP	<p>THAT clause 12 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraphs —</p> <p>(a) by deleting subsection (1) and substituting therefor the following new subsections —</p> <p>(1) The council of a public university or constituent college of such a university shall consist of—</p> <p>(a) a chairperson appointed by the President;</p> <p>(b) three other persons appointed by the President;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for the university education;</p> <p>(d) the Principal Secretary in the Ministry for the time being responsible for Finance;</p> <p>(e) two persons nominated by the Alumni Association of a university to represent the Alumni Association;</p> <p>(f) two persons not being public officers nominated by the Alumni Association of a university to represent the parents of the students in a university, the public and the special interests’ groups;</p> <p>(g) two persons nominated by the Alumni Association of a university to represent the staff of a university; and</p> <p>(h) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an ex officio member of the Council.</p>

Clause	Sponsor	Proposed Amendment
		<p>(1A) Subject to subsection (2), the persons appointed under subsection (1)(a) and (b) shall be appointed by the President, through a competitive process.</p> <p>(1B) Despite subsection (1), the Vice-Chancellor of a public university shall be an ex-officio member of the councils of the constituent colleges of that university.</p> <p>(b) by deleting subsection (1A); (c) by deleting subsection (2) and substituting therefor the following new subsection —</p> <p>(2) A person shall be qualified for appointment as a Chairperson or Member of the Council if —</p> <p>(a) in the case of chairperson, the person holds—</p> <p>(i) a doctorate degree from a university recognized in Kenya; and</p> <p>(ii) has at least fourteen years’ experience in a senior management position; or</p> <p>(b) in the case of a member, the person holds—</p> <p>(i) a masters’ degree from a university recognized in Kenya; and</p> <p>(ii) has at least ten years’ experience in a senior management position; or</p> <p>(iii) a bachelor’s degree from a university recognized in Kenya; and</p> <p>(iv) has at least fifteen years’ experience in a senior management position.</p> <p>(d) in subsection (3), by deleting the words “appointing authority” and substituting therefor the words “appointing and nominating authorities”.</p>
	Committee on Education and Research	<p>THAT, clause 12 of the Bill be amended in paragraph (a) by—</p> <p>(a) deleting paragraph (a) appearing in the new subsection (2) and substituting therefor the following new paragraph—</p> <p>(a) in the case of a chairperson, the person holds a doctorate degree from a university recognized in Kenya and has at least fifteen years’ experience in a senior management position or research;</p> <p>(b) inserting the words “at least” immediately before the word “holds” appearing in paragraph (b);</p>
	Ministry of Education	Reject and retain as provided in the Bill\

Clause	Sponsor	Proposed Amendment
13	Hon. George Murugara, MP	THAT the Bill be amended by deleting clause 13.
	Committee on education and Research	THAT clause 13 of the Bill be amended in the proposed new section 36A by— (a) deleting subsection (1) and substituting therefor the following new subsection— (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to any Council of a public university. (b) deleting subsection (2).
NEW	Hon. Owen Baya, MP	6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) — (3) The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i> . (4) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.
	Committee on Education and Research	6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) — (3) The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i> . (4) Notwithstanding subsection (3), a statute or a regulation of a university shall come into force after the lapse of three months after submission to the Cabinet Secretary for publication in the <i>Gazette</i> .
	Ministry of Education	Reject the amendment
NEW	Committee on Education and Research	14A. Section 41 of the principal Act be amended by— (a) inserting the following new subsection immediately after subsection (1B)— (1BA) A person shall be eligible to stand for election as a member of the student council if the person is in good academic standing;

Clause	Sponsor	Proposed Amendment
		(b) deleting subsection (1C); (c) deleting subsection (1D); (d) deleting subsection (1E);
18	Ministry of Education	THAT clause 18 of the Bill be amended in the proposed new section 54— (a) in subsection 5— (i) by deleting the word “Director” appearing in paragraph (d) and substituting therefor the words “Chief Executive Officer”; (ii) by deleting paragraph (f); (iii) by deleting the words “Law Society of Kenya” and substituting therefor the words “Office of the Attorney General”; (b) in subsection 9 by deleting paragraph (c) and substituting therefor the following new paragraph— (c) apportion and disburse funds allocated by the national government to accredited public and private universities;
	Committee on Education and Research	THAT clause 18 of the Bill be amended in the proposed new section 54— (a) in subsection 5— (i) by deleting the word “competitively” appearing in paragraph (e); (ii) by deleting paragraph (g) and substituting therefor the following new paragraph— (g) one person nominated by public universities in a forum of Vice-Chancellors of public universities; (iii) by deleting paragraph (h) and substituting therefor the following new paragraph— (h) one person nominated by private universities in a forum of Vice-Chancellors of private universities;
19	Committee on Education and Research	THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3)—

Clause	Sponsor	Proposed Amendment
		(4) The Chief Executive Officer of the Fund shall hold office for a term of five years and shall be eligible for reappointment for one further term of five years.
	Ministry of Education	REJECT
	Hon. John Kiarie, MP	<p>THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3) —</p> <p>(4) The Chief Executive Officer of the Fund shall hold office for a term of five years, renewable once.</p>
21	Committee on Education and Research	<p>THAT clause 21 of the Bill be amended in the proposed new subsection (3) by deleting paragraph (f) and substituting therefor the following new paragraphs—</p> <p>(f) four other persons appointed by the Cabinet Secretary, being—</p> <p>(i) one Vice-Chancellor representing public universities nominated by a forum of Vice-Chancellors of public universities;</p> <p>(ii) one Vice-Chancellor representing private universities nominated by a forum of Vice-Chancellors of private universities;</p> <p>(iii) one representative of the Kenya Association of Technical Training Institutions; and</p> <p>(iv) one person with ten years' experience in management of education;</p> <p>(g) the Director, who shall be an ex-officio member.</p>
	Hon. Didmus Barasa, MP	<p>THAT, clause 21 of the Bill be amended in the proposed new subsection (3)(f) —</p> <p>(a) by deleting the word “one” appearing in sub-paragraph (i) and substituting therefor the word “two”; and</p> <p>(b) by deleting sub-paragraph (ii).</p>
	Ministry of Education	<p>THAT clause 21 of the Bill be amended in the proposed new subsection (3) by deleting paragraph (f) and substituting therefor the following new paragraphs—</p> <p>(f) the Chief Executive Officer of the Universities Fund Board;</p> <p>(g) four other persons appointed by the Cabinet Secretary, being—</p>

Clause	Sponsor	Proposed Amendment
		<p>(i) one person nominated by public universities in a forum of chairpersons of Councils public universities;</p> <p>(ii) one person nominated by private universities in a forum of chairpersons of Councils of private universities;</p> <p>(iii) one representative of the Kenya Association of Technical Training Institutions; and</p> <p>(iv) one person with ten years' experience in management of education;</p> <p>(h) the Chief Executive Officer, who shall be an <i>ex-officio</i> member.</p>
NEW	Ministry of Education	<p>22A. Section 58 of the principal Act be amended—</p> <p>(c) in the marginal note by deleting the word “Secretary” and substituting therefor the words “Chief Executive Officer”;</p> <p>by deleting the word “Director” and substituting therefor the words “Chief Executive Officer.</p>
Fourth Schedule	Ministry of Education	<p>THAT, the Fourth Schedule to the Bill be amended by deleting the words “fourteen days of receipt of” appearing in paragraph (5) and substituting therefor the word “upon”.</p>

2.3 Submissions Received from Stakeholders

During harmonization of the proposed amendments, the Committee received a total of (12) memoranda from the following stakeholders: -

- (i) Ministry of Education
- (ii) Vice Chancellors Committee
- (iii) Kenya Association of Private Universities (KAPU)
- (iv) National Association of Private Universities in Kenya (NAPUK)
- (v) Universities Academic Staff Union
- (vi) Owen Yaa Baya, MP
- (vii) Hon. Didmus Barasa, MP;
- (viii) Hon. John Kiarie, MP;
- (ix) Hon. David Ole Sankok, MP
- (x) Hon. Robert Pukose, MP
- (xi) Hon. Silvanus Osoro, MP;
- (xii) Hon. George Murugara MP;

3.0 COMMITTEE CONSIDERATION OF THE SUBMISSIONS

All the stakeholders were invited by the Committee to prosecute their proposed amendments before the Committee. The Committee thereafter considered and made observations and recommendations on each the proposed amendments from each of the stakeholders.

3.1 Submission by the Ministry of Education

The Ministry of Education led by the Chief Administrative Secretary and the Principal Secretary for the State Department for University Education and Research appeared before the Committee on 13th May, 2022 and made the following submission: -

Clause	Proposed Amendment	Justification	Committee Resolution
2	<p>THAT clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence—</p> <p>“Merger” means an amalgamation of two or more institutions to form a single entity;</p> <p>“principal institution” means an institution that is integrated into a different institution to form a merged institution;</p>		<p>The Committee rejected the proposed amendment. The proposed definitions are words proposed to be used interchangeably on the provisions regarding the merger of universities</p>
	<p>Reject</p> <p>New</p> <p>3A. Section 6 of the principal Act be amended—</p> <p>(d) by deleting paragraph (f) and substituting therefor the following new paragraph—</p> <p>(f) one person nominated by public universities in a forum of Vice- Chancellors of public universities;</p> <p>(e) by deleting paragraph (g) and substituting</p>	<p>The role of the Commission goes beyond consideration of academic matters since it considers issues within the mandate of the Council. Additionally, having Vice-chancellors in a Commission that regulates them would create a conflict of interest from their role as university managers. Chairpersons of Council should be represented in the Commission.</p>	<p>The Committee rejected the proposal to delete the proposed amendment as Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College</p>

Clause	Proposed Amendment	Justification	Committee Resolution
	<p>therefor the following new paragraph—</p> <p>(g) one person nominated by private universities in a forum of Vice- Chancellors of private universities;</p>		
	<p>New Clause</p> <p>4A. Section 11 of the principal Act be amended subsection (1) by deleting the words “the management of a university” appearing in paragraph (b) and substituting therefor the words “a senior management position”;</p>	<p>The amendment seeks to ensure that persons working outside the university environment but with similar experience and management competencies such as in research institutions, foundations and other corporate institutions also qualify to be appointed as Commission Secretary</p>	<p>The Committee agreed to the proposed amendment.</p>
	<p>Reject</p> <p>New</p> <p>6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —</p> <p>(3) The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i>.</p> <p>(4) Notwithstanding subsection (3), a statute or a regulation of a university shall come into force after the lapse of three months after submission to the</p>	<p>The role of statutes is paramount in establishing administrative organs in universities and the Cabinet Secretary is required to ensure that the Council are financially viable (by liaising with the treasury) and legal (liaising with the AG’s office) before they are gazette. The process may take more than three months. If the statutes become operational and create a bloated administrative structure in a university without the consideration of the Ministry it could be tantamount to collapse.</p>	<p>The committee agreed to propose further amendments on the provision to provide for a reasonable timeframe of six months within which the Cabinet Secretary is required to publish in the <i>Gazette</i> after the submission of a statute or regulation.</p> <p>There is need for the statutes or regulations to be published in the <i>Gazette</i> as it gives them the force of law and also informs the public.</p>

Clause	Proposed Amendment	Justification	Committee Resolution
	<p>of university education set out in this Act.</p> <p>(4) If a principal institution under subsection (1) is merged, the Cabinet Secretary shall forthwith cause a notice to be published in the Gazette, specifying the date from which the principal institution shall have been merged.</p> <p>(5) Notwithstanding subsection (4), the merger of a principal institution shall not affect the validity of any academic award made by the university before the merger.</p> <p>(6) All immovable and movable property and assets of a principal institution shall vest in the merged institution as agreed upon by the councils of the respective public universities or as may be determined by the Cabinet Secretary in consultation with the councils of the respective public universities.</p> <p>(7) All rights, obligations and liabilities of a principal institution are deemed to be the rights, obligations and liabilities of the merged institution under this Act.</p> <p>(8) All references to a principal institution in any agreement or instrument relating to any property,</p>		

Clause	Proposed Amendment	Justification	Committee Resolution
	Cabinet Secretary for publication in the <i>Gazette</i> .		
	<p>Closure/Merger of public universities.</p> <p>22B. (1) The President may, on the recommendation of the Cabinet Secretary –</p> <p>(a) merge two or more public universities;</p> <p>(b) merge two or more constituent colleges of a public university to be mentored by one public university; or</p> <p>(c) make a constituent college of a public university a campus of another public university.</p> <p>(2) The recommendation referred to under subsection (1) shall be made with the prior concurrence of the Commission which shall satisfy itself that the merger is in the best interest of university education in Kenya.</p> <p>(3) A recommendation under subsection (1) shall only be made after the principal institution has been afforded the opportunity to be heard and the Commission has, in accordance with the regulations, inspected the principal institution and is satisfied that it is unable to contribute to the objectives</p>	<p>The amendment seeks to empower the government to rein in on the excesses in the university sector by merging public universities, constituent colleges and campuses so as to ensure there's sustainability in the sector. Proposal is informed by several challenges including the mismatch of the academic and support staff ratio; too many redundant administrative positions; poor fiscal management by university managers and councils; over-reliance on government capitation and student fee collection; establishment of redundant and loss-making satellite campuses and establishment of redundant programmes.</p>	<p>The Committee rejected the proposed amendments as-</p> <p>(a) Students should be facilitated to access university education and the focus should be on the proper management of universities;</p> <p>(b) the procedure for the revocation of a university Charter has already been provided for in section 22 of the Act hence no need to further provide for the closure of universities; and</p> <p>(c) They are very substantive in nature and had not been subjected to public participation as required by Article 118 of the Constitution;</p>

Clause	Proposed Amendment	Justification	Committee Resolution
	<p>assets, rights, obligations or liabilities transferred under subsection (6) and (7) shall, unless the context otherwise requires, be read as references to the merged institution established under this Act.</p> <p>(10) All persons who were members of staff of the principal institution shall be members of staff of the merged institution and shall be deemed to have been appointed on the terms and conditions of service applicable to them immediately before the merger of the principal institution.</p> <p>(11) The Cabinet Secretary may, in consultation with the Commission, make regulations for the better carrying out of the functions under this section.</p>		
	<p>NEW</p> <p>Section 24 of the principal Act is amended by deleting the words “and with the approval of Parliament” appearing in subsection (1)</p>	<p>This reduces the red-tape required to establish specialized degree awarding institutions by allocating that mandate to the Commission, the Cabinet Secretary and the President which applies in all cases in the establishment of Universities and University Colleges.</p> <p>It also paves way for critical research institutions such as KEMRI, KALRO and others to specialize beyond</p>	<p>The Committee rejected the proposed amendment as the approval of Parliament is critical in the establishment of specialized degree awarding institutions because of the financial implications that may be required and their strategic national importance e.g., the National Defence College.</p>

Clause	Proposed Amendment	Justification	Committee Resolution
		research in specialized training and awarding of academic qualifications.	
9	<p>Reject and retain as provided in the Bill</p> <p>26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country.</p>	To ensure sustainability as the massification of public universities has not been matched by a commensurate increase in their capitation because they have mushroomed faster than the resources available which has presented dire implications on quality and sustainability.	The Committee rejected the proposed amendment as the provision had been reworded by the Committee to ensure that viability is taken into consideration by the Commission before the establishment of universities in counties
12	<p>Reject and retain as provided in the Bill</p> <p>THAT, clause 12 of the Bill be amended in paragraph (a) by—</p> <p>(c) deleting paragraph (a) appearing in the new subsection (2) and substituting therefore the following new paragraph—</p> <p>(a) in the case of a chairperson, the person holds a doctorate degree from a university recognized in Kenya and has at least fifteen years' experience in a senior management position or research;</p> <p>(d) inserting the words "at least" immediately before the word "holds"</p>	<p>A Council is not an academic organ as academic issues are handled in the Senate which requires the doctoral holders. Councils require candidates with extensive industry expertise most of whom may not have doctoral or masters' qualifications but bring the benefit of their experience to university management.</p> <p>Most PhD holders (and researchers) are either serving in universities or government which makes them ineligible for appointment limiting the pool of credible candidates.</p>	The Committee agreed to amend the qualifications of the chairperson from a holder of a doctorate degree to at least a master's degree to ensure that the minimum qualification is a master's degree.

Clause	Proposed Amendment	Justification	Committee Resolution
	<p>appearing in paragraph (b);</p>		
	<p>Reject New Clause</p> <p>14A. Section 41 of the principal Act be amended by—</p> <p>(e) inserting the following new subsection immediately after subsection (1B)—</p> <p>(1BA) A person shall be eligible to stand for election as a member of the student council if the person is in good academic standing;</p> <p>(f) deleting subsection (1C);</p> <p>(g) deleting subsection (1D);</p> <p>(h) deleting subsection (1E);</p>	<p>Electoral colleges have brought stability from the previously unmanageable elections by universal suffrage. It has also allowed electoral candidates to work together through coalitions and incorporated more diversity in regional and gender balance.</p>	<p>The Committee rejected the proposed amendment and reiterated that election to the student’s council should be by universal suffrage through election by the students’ association comprising of all students as opposed to electoral colleges. Further, that only students in good academic standing would be eligible to stand for election and that students will also be required to comply with the prescribed code of conduct.</p>
<p>18</p>	<p>Clause 18</p> <p>THAT clause 18 of the Bill be amended in the proposed new section 54—</p> <p>(b) in subsection 5—</p> <p>(iv) by deleting the word “Director” appearing in paragraph (d) and substituting therefor the words “Chief Executive Officer”;</p> <p>(v) by deleting paragraph (f);</p> <p>(vi) by deleting the words “Law Society of Kenya” and substituting therefor</p>	<p>University Councils are responsible for approving budgets in universities therefore the membership of chairpersons who oversee the approval of budgets and utilization of the same by the university management led by the Vice-Chancellors should be retained in the UFB. Since UFB considers university financing based on budgets considered and adopted by Councils, the representation of chairs of Council should be maintained.</p>	<p>The amendment seeks to retain the representation of chairs of Council, remove the representation of the Federation of Kenya Employers from the Universities Fund Board and to ensure representation in the Board by an advocate from the Office of the Attorney General as it’s the government entity in charge of advising government on legal issues.</p>

Clause	Proposed Amendment	Justification	Committee Resolution
	<p>the words “Office of the Attorney General”;</p> <p>Amend by deleting 54(9)(c) and substituting therefor the following-</p> <p>(c) apportion and disburse funds allocated by the national government to accredited public and private universities.</p>	<p>Empowering the Universities Fund to apportion and disburse funds will ensure alignment between the universities needs and requirements which are presented, considered and processed by the Fund. The role of the Ministry in establishing a policy and criteria for university funding is well vested in the Cabinet Secretary while the Universities Fund advises on and implements the determined government policy on funding</p>	<p>Amendment seeks to provide for the disbursement of funds to both public and private universities in addition to apportionment of the same. The amendment also removes the issue of conditional grants to private universities</p>
21	<p>THAT clause 21 of the Bill be amended in the proposed new subsection (3) by deleting paragraph (f) and substituting therefor the following new paragraphs—</p> <p>(f) the Chief Executive Officer of the Universities Fund Board;</p> <p>(g) four other persons appointed by the Cabinet Secretary, being—</p> <p>(v) one person nominated by public universities in a forum of chairpersons of Councils public universities;</p> <p>(vi) one person nominated by private universities in a forum of chairpersons of</p>	<p>Since oversight of universities is done by University Councils as they consider and process requests for government sponsored students, it is more expedient for the chairpersons to nominate a suitable person in the KUCCPS Board and for the Chief Executive Officer of the Fund to be incorporated in the Board so as to ensure a synergetic approach between KUCCPS and UFB is developed.</p>	<p>The committee agreed to include the Chief Executive Officer of the Fund in the KUCCPS Board so as to ensure there is a synergetic approach between KUCCPS and UFB is developed.</p>

Clause	Proposed Amendment	Justification	Committee Resolution
	<p>Councils of private universities;</p> <p>(vii) one representative of the Kenya Association of Technical Training Institutions; and</p> <p>(viii) one person with ten years' experience in management of education;</p> <p>(h) the Chief Executive Officer, who shall be an <i>ex-officio</i> member.</p>		
	<p>22A. Section 58 of the principal Act be amended—</p> <p>(f) in the marginal note by deleting the word “Secretary” and substituting therefor the words “Chief Executive Officer”;</p> <p>(g) by deleting the word “Director” and substituting therefor the words “Chief Executive Officer.”</p>	<p>To ensure consistency and provide clarity on the use of the terms “Secretary” and “Director” as the same are used interchangeably</p>	<p>The committee agreed to the proposed amendments as they seek to provide clarity and uniformity in the use of the terms</p>
	<p>THAT, the Fourth Schedule to the Bill be amended by deleting the words “fourteen days of receipt of” appearing in paragraph (5) and substituting therefor the word “upon”.</p>	<p>Imposition of time limits for appointment would prejudice the process if the appointment would prejudice the process if the appointment is not done within fourteen days</p>	<p>The committee rejected the proposed amendment but proposed a further amendment to ensure that timeframe is twenty-one days and not fourteen days.</p>

3.2 Submission by the Hon. Members

The Hon. Members who proposed further amendments appeared before the Committee on 12th May, 2022 and made the following submissions: -

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
2	<p>Hon. David Sankok. MP</p> <p>Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended by—</p> <p>(a) in the definition of the term “differentiated unit cost” by inserting the words “approved by the Commission” immediately after the words “degree programme”;</p> <p>(b) in the definition of the term “statutes” by inserting the words “under section 23” immediately after the words “university council”;</p> <p>(c) deleting the definition of the term “Trustees”.</p>		<p>The amendment seeks to ensure that the differentiated unit cost is approved by the Commission.</p> <p>The amendment seeks to provide for cross referencing where the term has been used.</p> <p>The proposed amendment to delete the term “Trustees” is already proposed to be deleted in the Bill.</p>
21	<p>Hon. Didmus Barasa, MP</p> <p>Establishment of a Kenya Universities and Colleges Central Placement Service</p> <p>THAT, clause 21 of the Bill be amended in the proposed new sub-section (3)(f) —</p> <p>(a) by deleting the word “one” appearing in sub-paragraph (i) and substituting therefor the word “two”; and</p> <p>(b) by deleting sub-paragraph (ii).</p>	<p>THAT clause 21 of the Bill be amended in the proposed new subsection (3) by deleting paragraph (f) and substituting therefor the following new paragraphs—</p> <p>(f) four other persons appointed by the Cabinet Secretary, being—</p> <p>(i) one Vice-Chancellor representing public universities nominated by a forum of Vice-Chancellors of public universities;</p> <p>(ii) one Vice-Chancellor representing</p>	<p>The amendment seeks to ensure that KUCCPS Board has two vice-chancellors representing public universities as opposed to one. Amendment further seeks to remove the representation of one vice-chancellor representing private universities from the KUCCPS Board</p>

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
		<p>private universities nominated by a forum of Vice-Chancellors of private universities;</p> <p>(iii) one representative of the Kenya Association of Technical Training Institutions; and</p> <p>(iv) one person with ten years' experience in management of education;</p> <p>(g) the Director, who shall be an ex-officio member.</p> <p>Justification: To provide clarity on the years of experience required in management of education to qualify to be appointed by the Cabinet Secretary in the Board of the Kenya Universities and Colleges Central Placement Service. To further ensure that the Vice-Chancellors appointed by the Cabinet Secretary are nominated by the Vice-Chancellors forum.</p>	
19	<p>Hon. John Kiaria, MP</p> <p>THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3) —</p>	<p>THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3)—</p> <p>(4) The Chief Executive Officer of the Fund shall</p>	<p>The amendment seeks to provide for the term of office of the Chief Executive Officer of the Fund which had not been provided for in the Bill. The committee had also</p>

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
	(4) The Chief Executive Officer of the Fund shall hold office for a term of five years , renewable once.	hold office for a term of five years and shall be eligible for reappointment for one further term of five years. Justification: To provide for the term of office of the Chief Executive Officer of the Fund which had not been provided for in the Bill.	proposed a similar amendment. <u>NAPUK</u> No objection to the proposal
12	<p>Hon. George Gitonga, Murugara, MP</p> <p><u>NEW</u></p> <p>THAT clause 12 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraphs —</p> <p>(a) by deleting subsection (1) and substituting therefor the following new subsections —</p> <p>(1) The council of a public university or constituent college of such a university shall consist of—</p> <p>(a) a chairperson appointed by the President;</p> <p>(b) three other persons appointed by the President;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for the university education;</p> <p>(d) the Principal Secretary in the Ministry for the time being responsible for Finance;</p>		The amendment seeks to amend the composition of a Council of a public university.

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
	<p>(e) two persons nominated by the Alumni Association of a university to represent the Alumni Association;</p> <p>(f) two persons not being public officers nominated by the Alumni Association of a university to represent the parents of the students in a university, the public and the special interests' groups;</p> <p>(g) two persons nominated by the Alumni Association of a university to represent the staff of a university; and</p> <p>(h) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an ex officio member of the Council.</p> <p>(1A) Subject to subsection (2), the persons appointed under subsection (1)(a) and (b) shall be appointed by the President, through a competitive process.</p> <p>(1B) Despite subsection (1), the Vice-Chancellor of a public university shall be an ex-officio member of the councils of the constituent colleges of that university.</p> <p>(b) by deleting subsection (1A);</p>		
	<p>(c) by deleting subsection (2) and substituting therefor the following new subsection —</p> <p>(2) A person shall be qualified for appointment as a</p>	<p>THAT, clause 12 of the Bill be amended in paragraph (a) by—</p> <p>(e) deleting paragraph (a) appearing in the new</p>	<p>The amendment seeks to amend the qualifications for appointment as a chairperson or</p>

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
	<p>Chairperson or Member of the Council if—</p> <p>(a) in the case of chairperson, the person holds—</p> <p>(i) a doctorate degree from a university recognized in Kenya; and</p> <p>(ii) has at least fourteen years' experience in a senior management position; or</p> <p>(b) in the case of a member, the person holds—</p> <p>(i) a masters' degree from a university recognized in Kenya; and</p> <p>(ii) has at least ten years' experience in a senior management position; or</p> <p>(iii) a bachelor's degree from a university recognized in Kenya; and</p> <p>(iv) has at least fifteen years' experience in a senior management position.</p> <p>(d) in subsection (3), by deleting the words "appointing authority" and substituting therefor the words "appointing and nominating authorities".</p>	<p>subsection (2) and substituting therefore the following new paragraph—</p> <p>(a) in the case of a chairperson, the person holds a doctorate degree from a university recognized in Kenya and has at least fifteen years' experience in a senior management position or research;</p> <p>(f) inserting the words "at least" immediately before the word "holds" appearing in paragraph (b);</p> <p>Justification: The Chair of Council should be a PhD degree holder who has vast experience in research which is one of the key functions of the University. It is also important to ensure that a member of the Council has at least a Master's degree.</p>	<p>Member of a Council of a public university</p>
<p>13</p>	<p><u>CLAUSE 13</u></p> <p>THAT the Bill be amended by deleting clause 13.</p>	<p>THAT clause 13 of the Bill be amended in the proposed new section 36A by—</p> <p>(c) deleting subsection (1) and substituting</p>	<p>The amendment seeks to delete provisions on the powers of the Cabinet Secretary to revoke any appointment, to</p>

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
		<p>therefor the following new subsection—</p> <p>(1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to any Council of a public university.</p> <p>(d) deleting subsection (2).</p> <p>Justification: Councils like any other public Board operate on delegated authority; however, it is unnecessary for the CS to review Council decisions recognizing that CS is ably represented in the Council.</p>	<p>review or vacate a Council decision and seek approval before meeting.</p>
	<p>Hon. Silvanus Osoro, MP</p> <p><u>NEW CLAUSE</u></p> <p>Fund for research and innovation by Public Universities.</p> <p>20A. The principal Act is amended by inserting the following new section immediately after section 54C—</p> <p>54D. (1) The Cabinet Secretary for National Treasury shall, within six months of commencement of this section, establish a Fund for allocation of grants to public universities—</p> <p>(a) to undertake research on various thematic areas;</p>		<p>The amendment seeks to establish a Fund for research and innovation by Public Universities and to provide for its purposes.</p>

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
	<p>(b) to establish innovation hubs;</p> <p>(c) to recommend public policy solutions to social economic issues affecting the country;</p> <p>(d) to assist in the development of public policy for implementation by the national government;</p> <p>(e) to assist in the formulation of effective public policy implementation strategies; and</p> <p>(f) perform any other function related to research and innovation as the Cabinet Secretary may determine.</p> <p>(2) The Cabinet Secretary shall prescribe regulations for the implementation of this section.</p>		
	<p>Hon. Owen Baya, MP.</p> <p><u>NEW CLAUSE</u></p> <p>6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —</p> <p>(3) The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i>.</p>	<p>6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —</p> <p>(3) The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i>.</p>	<p>The amendment seeks to ensure that university statutes or regulations made under this section are considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.</p>

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
	<p>(4) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.</p>	<p>(4) Notwithstanding subsection (3), a statute or a regulation of a university shall come into force after the lapse of three months after submission to the Cabinet Secretary for publication in the <i>Gazette</i>.</p> <p>Justification: Statutes are approved internal administrative instruments by which Councils manage respective universities. Consequently, they are required to be operationalized as soon as possible within a reasonable timeframe.</p>	
7	<p>7. Section 24 of the principal Act is amended—</p> <p>(c) in subsection (1) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”;</p> <p>(d) by inserting the following new subsections immediately after subsection (2)—</p> <p>(2A) The provisions of Part V of this Act shall apply with the necessary modifications to the institutions established under this section.</p> <p>(2B) A Charter granted to an institution under this section shall outline the conditions under which the institution</p>	<p>THAT the Bill be amended by deleting clause 7.</p> <p>Justification: The proposed amendment has already been effected in the Universities Act through the Statute Law Miscellaneous Amendment Act No. 20 of 2020 (refer to Section 24(4) and (5)).</p>	<p>The amendment seeks to ensure that specialized degree awarding institutions are established by the President, on the recommendation of the Commission through Cabinet Secretary, and with the approval of the National Assembly and not Parliament.</p> <p>The further proposed amendments in paragraph (b) are similar to what is provided for in the Bill.</p>

Clause	Proposed Amendments	Committee Amendments	Observations/ Resolution
	shall operate and set out a clearly defined mandate with regard to specified academic programmes.		
	<p>Hon. Robert Pukose, MP</p> <p>The principal Act is amended by repealing section 26 and substituting therefor the following new section—</p> <p>Universities in Counties.</p> <p>26. The Commission shall ensure accessibility of public universities by all counties, giving priority to—</p> <p>(c) viability and equitability in the distribution of public universities across the country;</p> <p>(d) underserved and marginalized areas; or</p> <p>(e) such other factors as the Commission may determine.</p>	<p>THAT the Bill be amended by deleting clause 9 and substituting therefore the following new clause—</p> <p>26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country.</p> <p>Justification: To enhance accessibility to university education, it's imperative that the Commission establishes public universities taking into consideration their viability.</p>	<p>The amendment seeks to provide for the criteria for the establishment of public universities in counties.</p>
	<p>THAT Clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph —</p> <p>(b) in subsection (1)(v), by deleting the words “in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission” and substitute therefor the words “after a competitive</p>	<p>THAT clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—</p> <p>(v) in the case of a public university, appoint Principals and Deputy Principals of Constituent Colleges after a competitive process conducted in the</p>	<p>The amendment seeks to ensure that Vice Chancellors, Deputy Vice Chancellors and Principals and Deputy Principals of Constituent Colleges are appointed by the Council of a university after a competitive process conducted by the Council and not the Public Service Commission</p>

Clause	Proposed Amendments	Committee Amendments	Observations/Resolution
	process conducted by the Council”.	manner provided in the Second Schedule Justification: To ensure that the Councils of public universities retain the function of appointing Principals and Deputy Principals of Constituent Colleges through an internal mechanism.	

3.3 Submission by the Vice-Chancellors Committee and Inter-Public Universities Councils Consultative Forum

The Vice-Chancellors Committee (Forum of Vice Chancellors of Public Universities) accompanied by the Inter-Public Universities Councils Consultative Forum (IPUCCF) appeared before the Committee on 13th May, 2022 and made the following joint submission

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
NEW 22(B)	To amend the Universities Act by inserting a new section 22B on the closure and/or merger of universities	Universities continue to support the Government initiative of 100% transition from basic (primary and secondary) education to university level. That the Government should consider increasing the University admissions from the current transition from Secondary, which is presently about 15% (making it about 143,000 students out of more than 850, 000 that sat for KCSE) to about three hundred thousand (300,000) students. That the foregoing can only be attained and achieved through the expansion of the current	Students should be facilitated to access university education and the focus should be on the proper management of universities. The procedure for the revocation of a university Charter has already been provided for in section 22 of the Act hence no need to further provide for the closure of universities

		<p>Universities, the facilities and infrastructure. In addition, right now the young universities started in 2012/2013 have about 10,000-20,000 students per institution.</p> <p>A university of 30,000 students is already very large and difficult to manage.</p> <p>Public universities despite the financial challenges are ranked the best among state corporations as evidenced by the 2020/2021 performance contracting results announced this week. In the top 10 we have 6 universities.</p> <p>The challenges facing the universities will not be resolved by the so-called mergers. The root cause is the insufficient funding the universities are receiving from the exchequer.</p> <p>In addition, the <i>Universities Act, 2012</i> has provided for the noble aspiration of one Public University in each County and therefore this would negate the spirit and the letter of the law.</p> <p>This proposal is <i>sub judice</i> since this matter is in court <i>vide Employment and Labour Relations Court Cause No. 144/2019</i>, in which the Universities' Academic Staff Union (UASU) had moved to Court to stop the proposed mergers by the Ministry of Education and IPUCCF is the 2nd Interested Party. The proceedings remain in court and</p>	
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		the matter has not been determined.	
12	The Vice-Chancellors' Committee is in support of the Chairpersons of Council and therefore vacate their earlier recommendations of a Master's degree as the highest qualification for the Chairperson of University Council.	The proposed amendment would lower the qualifications for Chairpersons. However, the Chairperson of Council should be an earned PhD degree holder and/or a Kenyan (full) Professor and has vast experience in research which is one of the key functions of the University. It is important to ensure that the qualifications of the Council Chairperson match that of the senior management.	
18	Funding of Private Universities by the Government from public funds	That the Government should not fund the Private Universities at the expense of Public Universities.	Funds allocated by the national government to private universities are for tuition fees for government sponsored students in Kenyan universities
18, 21	Representation by Public Universities is stipulated under in detail as follows: - For the Commission for University (CUE) under <i>Section 6 of the Universities Act</i> ; For the Universities Fund Board (UFB) under <i>Section 54 of the Universities Act</i> and for the Kenya Universities and Colleges Central Placement Service (KUCCPS) under	The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission/Boards will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College. Thus, it is imperative that the representative to these Commission/Boards	Committee had already proposed amendments to ensure that Vice- chancellors are represented the Commission for University (CUE), in the Universities Fund Board (UFB) and the Kenya Universities and Colleges Central Placement Service (KUCCPS)

	<i>Section 55 of the Universities Act</i>		
11	Agree with the proposals by Hon. Pukose	<p>Top Management in the form of the Vice-Chancellors, Principals, Deputy Vice-Chancellors, and Deputy Principals should be appointed with the other officers of the Universities by the Council, internally.</p> <p>The Councils are charged with providing strategic direction for the institutions and should therefore recommend the Vice-Chancellors, Principals, Deputy Vice-Chancellors, and Deputy Principals for appointment by the Ministry.</p>	The committee had already proposed amendments to ensure that the procedure the university councils have a major in the appointment of Vice-Chancellors, Principals, Deputy Vice-Chancellors, Principals and Deputy Principals
NEW	<p>Appointment of the Chief Executive Officer of the Commission for University Education (CUE) under Section 11 (1) of the Principal Act.</p> <p>The words “<i>of a university</i>” should not be deleted.</p>	The Chief Executive Officer of the Commission for University Education (CUE) requires to have knowledge and experience of working at a university and/or with universities.	The amendment would ensure that persons working outside the university environment but with similar experience and management competencies such as in research institutions, foundations and other corporate institutions also qualify to be appointed as Commission Secretary

3.4 Submissions by Kenya Association of Private Universities in Kenya (KAPU)

The Kenya Association of Private Universities in Kenya (KAPU) appeared before the Committee on 13th May, 2022, and made the following submission: -

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
2	<p>Amend by adding Definition of ‘<i>Conditional Grant</i>’</p> <p>The paragraph to read as follows:</p> <p>‘<i>Conditional Grant</i>’ means Targeted funding by the University Funding Board (UFB) to private universities for purposes of budgetary support, research development and innovations that are of interest to the people of Kenya.</p>	<p>The term has been used repeatedly in the Bill but not defined (s.54).</p> <p>Private universities play a crucial role in the advancement growth and development of the Country.</p> <p>There is need to ensure stability of education in Kenya. UFB should operate emergency funds</p>	<p>The definition of the term should not be limited to funding by the University Funding Board (UFB) to private universities for purposes as conditional grants are also used in other sectors.</p>
18	<p>Amend Section 54 (4) by adding Paragraph (g) on the powers of the Board to read as follows:</p> <p>(g) Provide conditional grants to private universities.</p> <p>Amend Section 54 (9) by adding and private after public to read as follows:</p> <p>‘In consultation with the Cabinet Secretary, develop a transparent and fair criterion for allocation of funds to public and private universities and issue conditional grants to private universities.</p>	<p>This may help to ensure enhance the robustness of significant aspects of the university education that is of interest to the people of Kenya.</p> <p>Students are allocated to both public and private universities to ensure a larger access of choice to all.</p> <p>The definition of Conditional grants was not provided in the Bill. This amendment will seek to define what conditional grant is.</p>	<p>The committee had already amended to expressly provide for funds allocated by the national government to private universities for tuition fees for government sponsored students in Kenyan universities</p>

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
	<p>Amend Section 54 (9) c by adding and private after public to read as follows:</p> <p>Apportion funds allocated by national government to public and private universities and issue conditional grants to private universities.</p> <p>Amend Section 54 (9)d to read as follows: In consultation with the chairpersons of public and private universities, propose and establish for approval by the Cabinet Secretary the differentiated unit cost for the programmes offered by each subject area.</p>	<p>This will ease the availability of resources for students. Money should follow student whether in public or private university. This will reduce the instances where private universities are treated differently to public university in terms of costing.</p>	

3.4.1 Reactions by the Kenya Association of Private Universities to Proposals by Honourable Members

The Kenya Association of Private Universities (KAPU) further made submissions with respect to the proposed amendments by Honourable Members as follows: -

Clause	Amendments by the Hon. Members and reactions by KAPU	Rationale/Justification by KAPU	Committee Observations/Committee Resolution
21(3)	<p>Hon. Didmus Barasa, MP proposes: the deletion of the word 'one' appearing in sub paragraph (i) and substituting therefore with 'two' and deleting sub paragraph (ii).</p>	<p>The proposal discriminates against private universities</p> <p>The placement board serves both public and private Universities and is a Kenyan entity not a single sector entity.</p>	<p>The amendment seeks to ensure that KUCCPS Board has two vice-chancellors representing public universities as opposed to one. Amendment further seeks to remove the representation of one vice-</p>

	The Association is opposed to the proposition and the Clause to remain as is in the Bill.	Students are placed in both public and private entities.	chancellor representing private universities from the KUCCPS Board
New	<p>Hon. Owen Baya, MP proposed introduction of a new clause immediately after Clause 6. Section 23 of the principal Act is amended by inserting the following new subsections (2)-</p> <p>(3) The cabinet secretary shall not later than three months after submission of a statute or regulation under this section by a university, cause it to be published in Gazette.</p> <p>The Association agreed to the inclusion of section 23(3).</p> <p>The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the statutory instruments Act, 2013. The association rejected the inclusion of 23 (4).</p>	<p>Whilst the universities were obligated to submit the statutes and regulations to the Cabinet Secretary, no timeline has been placed on the ministry for publication upon receipt of the same.</p> <p>The proposed amendment does not draw a distinction between private and public universities.</p> <p>If parliament is allowed to scrutinize the statutes of private and public universities it would erode the very character of private universities.</p> <p>The same contradicts Section 35(2) of the Act</p>	The amendment seeks to ensure that university statutes or regulations made under this section are considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.
19	<p>Hon John Kiari, MP proposes that Clause 19 of the Bill be amended in the proposed new section 54 by inserting the following new subsection immediately after subsection (3)</p> <p>(4) The Chief Executive Officer of the fund shall hold</p>	KAPU agrees to the proposal	The amendment seeks to provide for the term of office of the Chief Executive Officer of the Fund which had not been provided for in the Bill. The committee had also proposed a similar amendment.

	office for a term of five years, renewable once.		
2	<p>Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended by—</p> <p>(a) in the definition of the term “differentiated unit cost” by inserting the words “approved by the Commission” immediately after the words “degree programme”;</p> <p>(b) in the definition of the term “statutes” by inserting the words “under section 23” immediately after the words “university council”;</p> <p>(c) deleting the definition of the term “Trustees”.</p> <p>KAPU agrees with the amendment.</p>	KAPU agrees with the member.	The amendment seeks to ensure that the differentiated unit cost is approved, to provide for cross referencing where the term has been used and to delete the term “Trustees” is already proposed to be deleted in the Bill.

3.5 Submission by the National Association of Private Universities of Kenya (NAPUK)

The National Association of Private Universities appeared before the Committee on 13th May, 2022 and made the following submission: -

Clause	Memoranda Received from NAPUK	Rationale/Justification	Committee Observations/Committee Resolution
New Clause 41	Not to delete 41 (1C), (1D) and (1E)	This should be retained as provided for in the current Act	
21	<p>Hon. Didmus Barasa</p> <p>Amendment to (f)(i) and (f)(ii)</p> <p>Increasing the Vice-Chancellors representing</p>	Notice to expand the representation of the public university sector in the said institution by totally ignoring the relevance of the private	The amendment seeks to ensure that KUCCPS Board has two vice-chancellors representing public universities as opposed to one.

	public universities to 2 and removing the representation of Vice-Chancellors representing private universities. This should be disregarded.	sector; which is a major player in the space is both discriminative and in bad faith	Amendment further seeks to remove the representation of one vice-chancellor representing private universities from the KUCCPS Board
2	Hon. David Ole Sankok, MP Definition of the differentiated unit cost is adequate as per the Act and should not be amended	Definition of the differentiated unit cost is adequate as per the Act	The amendment seeks to ensure that KUCCPS Board has two vice-chancellors representing public universities as opposed to one. Amendment further seeks to remove the representation of one vice-chancellor representing private universities from the KUCCPS Board
9	Hon. Robert Pukose, MP The provision in the Bill is adequate and does not require further amendment	The provision in the Bill incorporates the proposals by the Hon. Member	The amendment seeks to provide for the criteria for the establishment of public universities in counties.
New Clause	Hon. Silvanus Osoro, MP The new section 54C- This is redundant since these functions are domiciled under the Universities Funding Board	Refer to the functions of the Universities Funding Board	The amendment seeks to establish a Fund for research and innovation by Public Universities and to provide for its purposes.
12	Hon. George Murugara, MP The provisions in the current Act and Bill on the appointment of the Councils are sufficient and do not require further amendment.	The provisions in the current Act and Bill on the appointment of Councils are sufficient and do not require further amendment	The amendment seeks to amend the composition of a Council of a public university.

3.6 Submission by the Universities Academic Staff Union (UASU)

The Universities Academic Staff Union appeared before the Committee on 13th May, 2022 and made the following submission: -

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
New	<p>The union wants to amend Section 6(1) by proposing an additional member nominated by the Universities Academic Staff Union (UASU) to be a member of the Commission for Universities Education (CUE).</p>	<p>This would create balance in the Commission as currently Employers are overrepresented by FKE as well as Chairpersons of Councils of universities.</p> <p>The Commission will benefit tremendously through representation of the voice of the Academic Staff Union as CUE deals with matters that affect the learning environment. The input of the Union is important in matters academic.</p>	<p>The Committee rejected the proposal to include the representation of UASU in the Commission as Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College</p>
New	<p>The proposal to is to amend Section 11(1) requiring for a person to have at least 10 years' experience in the management of a university to be appointed as Secretary to the Commission for University Education.</p> <p>The Union wants the requirement of experience in the</p>	<p>The requirement is essential for the Secretary of the commission includes accreditation of programs, quality control and granting authority to foreign universities seeking to collaborate with local universities. The knowledge of the operations of the</p>	<p>The committee agreed amend section 11 of the Ac to ensure that persons working outside the university environment but with similar experience and management competencies such as in research institutions, foundations and other corporate institutions also qualify to be appointed as Commission Secretary</p>

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
	management of a university to be retained.	university system is mandatory.	
New	The union rejected the proposed amendment of section 22b by Ministry of Education on closure or merger of universities.	<p>Section 26 is the safeguard against closure of public universities, an unpopular measure widely known to be pushed by IMF. Parliament should reject.</p> <p>Note that under the proposals closure of the universities is transferred to the Executive, to the exclusion of Parliament, which is a typical IMF modus operandi; as it is easier to push Executive by holding back funding unless demands are met.</p> <p>Parliament should be careful and protect the public. To amend Clause 26, and introduce Clause 22B gives out our birthright and we risk becoming external observers.</p> <p>There exists a conservatory Order in ELRC Petition NO. 144 of 2019 against the CS Ministry of Education and the Attorney General who are enjoined as Respondents. This</p>	<p>The Committee also rejected the proposed amendments as-</p> <p>(d) Students should be facilitated to access university education and the focus should be on the proper management of universities;</p> <p>(e) the procedure for the revocation of a university Charter has already been provided for in section 22 of the Act hence no need to further provide for the closure of universities; and</p> <p>(f) They are very substantive in nature and had not been subjected to public participation as required by Article 118 of the Constitution;</p>

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
		matter is still pending in court and cannot be discussed as it will be subjudice.	
New	<p>Proposal is to add a new subsection (23) to provide that Statues will come into force three months after submission to the Cabinet Secretary even if they have not been gazetted.</p> <p>The Union strongly proposes that the statutes should be gazetted within the stipulated 3 months for them to have the force of law</p>	<p>This will enable the stakeholders involved to access the document due to their validity upon being gazzeted. The time limit is mandatory to make the stake holders involved in the gazzetment to be held accountable in accordance with Article 47 of the Constitution of Kenya 2010. Further, this will avoid manipulation of the process.</p>	<p>The committee agreed to propose further amendments on the provision to provide for a reasonable timeframe of six months within which the Cabinet Secretary is required to publish in the Gazette after the submission of a statute or regulation and further observed that there is need for the statutes or regulations to be published in the Gazette as it gives them the force of law and also informs the public.</p>
7	<p>UASU reject the proposal to establish a specialized degree awarding institutions on the recommendation of the Commission for University Education, through the Cabinet Secretary without involving Parliament</p>	<p>Parliament and education stakeholders should not be excluded in this process because Parliament represents the people and provides an oversight role.</p>	<p>The Committee rejected the proposed amendment as the approval of Parliament is critical in the establishment of specialized degree awarding institutions because of the financial implications that may be required and their strategic national importance e.g the National Defence College.</p>

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
9	The Union proposed the current provision in the Principal Act to be retained	The proposed amendment: (i) affects Counties and should therefore be considered by Senate in addition to the National Assembly; (ii) will open the door to merger of public universities in violation of pre-existing Court Orders; (iii) favours counties with established public universities;	The Committee rejected the proposed amendment as the provision had been reworded by the Committee to ensure that viability is taken into consideration by the Commission before the establishment of universities in counties
12	The Universities Academic Staff Union (UASU) should nominate a representative to the University Council. Additionally, the Chair of Council should be a PhD holder	Representation by academic staff in the Council is practice that was available in the statutes that were repealed by the Universities Act 2012 and is a good practice worldwide. Comparatively the basic education Act has allowed a teacher to sit on the Board of Management in tandem with international instruments which Kenya is a signatory. It is imperative that the union has representation in the council.	The Committee agreed to amend the qualifications of the chairperson from a holder of a doctorate degree to at least a master's degree to ensure that the minimum qualification is a master's degree.

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
		<p>The Union supports the Chair of Council to be a PhD holder, as the Council members interview PhD holders for appointment and promotion. It is usually very difficult to have those without academic credentials properly evaluate those suitable for academic positions when Council members themselves do not have similar qualifications.</p>	
<p>New</p>	<p>The union supports the Committee proposal to delete Sections 41(1C, 1D and 1E)</p>	<p>UASU supports universal suffrage in election of student leaders which upholds free, fair and transparent elections without interference from the management of the university. The University Management should only develop guidelines to facilitate the process.</p>	<p>The Committee agreed with the union and reiterated that election to the student's council should be by universal suffrage through election by the students' association comprising of all students as opposed to electoral colleges. Further, that only students in good academic standing would be eligible to stand for election and that students will also be required to comply with the prescribed code of conduct.</p>

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
18	<p>Delete any reference to funding of private universities.</p> <p>Delete the phrase “and issue conditional grants to private universities;” in the current provisions (of the Principal Act) and reject the proposed provisions.</p> <p>UASU supports that the Universities Funding Board should manage and disburse funds to public universities only</p>	<p>Handing over public funds to private entities removes oversight of Parliament and Auditor General over funds drawn from the Consolidated Fund. This is a great anomaly and should be rectified by the House.</p> <p>Public funds should not be used to generate profits for profit making private universities.</p> <p>Public universities have requisite capacity to train all government-sponsored students.</p> <p>The Government should only sponsor students in the public universities.</p> <p>Student who opts to undertake education at private universities should do so under self-sponsorship.</p> <p>Moreover, there is no framework to enable the Office of the Auditor General hold private</p>	<p>The amendment seeks to expressly provide for funds allocated by the national government to private universities for tuition fees for government sponsored students in Kenyan universities</p>

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
		<p>universities accountable for such public funds.</p> <p>It will ensure efficiency, transparency and accountability in the disbursement and management of university funds.</p>	
21	Delete the requirement for representation of private universities in KUCCPS under the current provisions in the Principal Act, and reject the proposed provisions.	Public universities have requisite capacity to train all government-sponsored students, eliminating private interests in placement to students in public universities.	The committee rejected the proposed amendment as removing the representation of one vice-chancellor representing private universities from the KUCCPS Board would be discriminatory.
Fourth Schedule Appointment of Vice Chancellors, Deputy vice Chancellors, Principals and Deputy Principals of Constituent Colleges	<p>UASU strongly objects to the withdrawal of time limits</p> <p>The provisions should be amended also to include an UASU nominee as a member of the Selection Panel to the positions of Vice-Chancellor, their Deputies, Principals and Deputy Principals.</p>	<p>Doing away with the time limit will prejudice the candidates and is subject to manipulation. Delays in appointment of substantive office bearers have brought challenges in the management of universities.</p> <p>The Union proposes that the appointments should not take more than 21 days once the names have been forwarded to the Cabinet Secretary.</p>	The committee rejected the proposed amendment but proposed a further amendment to ensure that timeframe is twenty-one days and not fourteen days.

Clause	Memoranda Received	Rationale/Justification	Committee Observations/Committee Resolution
		<p>This will enhance transparency, meritocracy and competitiveness, UASU should be represented in the Selection Panel in line with international best practices.</p>	

PART 3

4.0 COMMITTEE OBSERVATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2021)

Having considered the all the proposed amendments as proposed to the Universities (Amendment) Bill, 2021, by the Committee, the Ministry of Education and individual Honourable Members and the submissions from all stakeholders, the Committee made the following observations on each of the proposed amendment: -

1. PROPOSED AMENDMENTS BY THE MINISTRY OF EDUCATION

Clause	Proposed Amendment	Committee's Observation and Justification
2	<p>THAT clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence—</p> <p>“Merger” means an amalgamation of two or more institutions to form a single entity;</p> <p>“principal institution” means an institution that is integrated into a different institution to form a merged institution;</p>	<p>The Committee rejected the proposed amendment. The proposed definitions are words proposed to be used interchangeably on the provisions regarding the merger of universities</p>
NEW	<p>Delete</p> <p>NEW</p> <p>3A. Section 6 of the principal Act be amended—</p> <p>(h) by deleting paragraph (f) and substituting therefor the following new paragraph—</p> <p style="padding-left: 40px;">(f) one person nominated by public universities in a forum of Vice- Chancellors of public universities;</p> <p>(i) by deleting paragraph (g) and substituting therefor the following new paragraph—</p> <p style="padding-left: 40px;">(g) one person nominated by private universities in a forum of Vice- Chancellors of private universities;</p>	<p>The Committee rejected the proposal to delete the proposed amendment as Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College</p>
NEW	<p>4A. Section 11 of the principal Act be amended subsection (1) by deleting the words “the</p>	<p>The Committee agreed to the proposed amendment.</p>

Clause	Proposed Amendment	Committee's Observation and Justification
	management of a university" appearing in paragraph (b) and substituting therefor the words "a senior management position";	
NEW	<p>Delete</p> <p>6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —</p> <p>(3) The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i>.</p> <p>(4) Notwithstanding subsection (3), a statute or a regulation of a university shall come into force after the lapse of three months after submission to the Cabinet Secretary for publication in the <i>Gazette</i>.</p>	<p>The committee agreed to propose further amendments on the provision to provide for a reasonable timeframe of six months within which the Cabinet Secretary is required to publish in the <i>Gazette</i> after the submission of a statute or regulation.</p> <p>There is need for the statutes or regulations to be published in the <i>Gazette</i> as it gives them the force of law and also informs the public.</p>
NEW	<p>Closure/Merger of public universities.</p> <p>22B. (1) The President may, on the recommendation of the Cabinet Secretary —</p> <p>(a) merge two or more public universities;</p> <p>(b) merge two or more constituent colleges of a public university to be mentored by one public university; or</p> <p>(c) make a constituent college of a public university a campus of another public university.</p> <p>(2) The recommendation referred to under subsection (1) shall be made with the prior concurrence of the Commission which shall satisfy itself that the merger is in the best interest of university education in Kenya.</p> <p>(3) A recommendation under subsection (1) shall only be made after the principal institution has been afforded the opportunity to be heard and the</p>	<p>The Committee rejected the proposed amendments as-</p> <p>(g) Students should be facilitated to access university education and the focus should be on the proper management of universities;</p> <p>(h) the procedure for the revocation of a university Charter has already been provided for in section 22 of the Act hence no need to further provide for the closure of universities; and</p> <p>(i) they are very substantive in nature and had not been subjected to public participation as required</p>

Clause	Proposed Amendment	Committee's Observation and Justification
	<p>Commission has, in accordance with the regulations, inspected the principal institution and is satisfied that it is unable to contribute to the objectives of university education set out in this Act.</p> <p>(4) If a principal institution under subsection (1) is merged, the Cabinet Secretary shall forthwith cause a notice to be published in the Gazette, specifying the date from which the principal institution shall have been merged.</p> <p>(5) Notwithstanding subsection (4), the merger of a principal institution shall not affect the validity of any academic award made by the university before the merger.</p> <p>(6) All immovable and movable property and assets of a principal institution shall vest in the merged institution as agreed upon by the councils of the respective public universities or as may be determined by the Cabinet Secretary in consultation with the councils of the respective public universities.</p> <p>(7) All rights, obligations and liabilities of a principal institution are deemed to be the rights, obligations and liabilities of the merged institution under this Act.</p> <p>(8) All references to a principal institution in any agreement or instrument relating to any property, assets, rights, obligations or liabilities transferred under subsection (6) and (7) shall, unless the context otherwise requires, be read as references to the merged institution established under this Act.</p> <p>(10) All persons who were members of staff of the principal institution shall be members of staff of the merged institution and shall be deemed to have been appointed on the terms and conditions of service applicable to them immediately before the merger of the principal institution.</p>	<p>by Article 118 of the Constitution;</p>

Clause	Proposed Amendment	Committee's Observation and Justification
	(11) The Cabinet Secretary may, in consultation with the Commission, make regulations for the better carrying out of the functions under this section.	
NEW	Section 24 of the principal Act is amended by deleting the words "and with the approval of Parliament" appearing in subsection (1)	The Committee rejected the proposed amendment as the approval of Parliament is critical in the establishment of specialized degree awarding institutions because of the financial implications that may be required and their strategic national importance e.g the National Defence College.
9	<p>Delete and retain as provided in the Bill</p> <p>26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country.</p>	The Committee rejected the proposed amendment as the provision had been redrafted by the Committee to ensure that viability is taken into consideration by the Commission before the establishment of universities in counties.
12	<p>Delete and retain as provided in the Bill</p> <p>THAT, clause 12 of the Bill be amended in paragraph (a) by—</p> <p>(g) deleting paragraph (a) appearing in the new subsection (2) and substituting therefore the following new paragraph—</p> <p style="padding-left: 40px;">(a) in the case of a chairperson, the person holds a doctorate degree from a university recognized in Kenya and has at least fifteen years' experience in a senior management position or research;</p> <p>(h) inserting the words "at least" immediately before the word "holds" appearing in paragraph (b);</p>	The Committee agreed to amend the qualifications of the chairperson from a holder of a doctorate degree to at least a master's degree to ensure that the minimum qualification is a master's degree.

Clause	Proposed Amendment	Committee's Observation and Justification
NEW	<p>14A. Section 41 of the principal Act be amended by—</p> <p>(a) inserting the following new subsection immediately after subsection (1B)— (1BA) A person shall be eligible to stand for election as a member of the student council if the person is in good academic standing;</p> <p>(b) deleting subsection (1C);</p> <p>(c) deleting subsection (1D);</p> <p>(d) deleting subsection (1E);</p>	<p>The Committee rejected the proposed amendment and reiterated that election to the student's council should be by universal suffrage through election by the students' association comprising of all students as opposed to electoral colleges. Further, that only students in good academic standing would be eligible to stand for election. However, the committee recommends that a further amendment be done to section 41(1I) to ensure that a student standing for election has to comply with the prescribed code of conduct.</p>
18	<p>THAT clause 18 of the Bill be amended in the proposed new section 54—</p> <p>(c) in subsection 5—</p> <p>(i) by deleting the word "Director" appearing in paragraph (d) and substituting therefor the words "Chief Executive Officer";</p> <p>(ii) by deleting paragraph (f);</p> <p>(iii) by deleting the words "Law Society of Kenya" and substituting therefor the words "Office of the Attorney General";</p> <p>(b) in subsection 9 by deleting paragraph (c) and substituting therefor the following new paragraph—</p> <p>(c) apportion and disburse funds allocated by the national government to accredited public and private universities;</p>	<p>The Committee agreed to the proposed amendment to delete the word "Director" appearing in paragraph (d) and substituting therefor the words "Chief Executive Officer" but rejected the proposed amendment to paragraphs 5(f) and (1) and (9)</p>
21	<p>THAT clause 21 of the Bill be amended in the proposed new subsection (3) by deleting paragraph</p>	<p>The Committee agreed to the proposed amendment to include the Chief Executive</p>

Clause	Proposed Amendment	Committee's Observation and Justification
	<p>(f) and substituting therefor the following new paragraphs—</p> <p>(f) the Chief Executive Officer of the Universities Fund Board;</p> <p>(g) four other persons appointed by the Cabinet Secretary, being—</p> <ul style="list-style-type: none"> (i) one person nominated by public universities in a forum of chairpersons of Councils public universities; (ii) one person nominated by private universities in a forum of chairpersons of Councils of private universities; (iii) one representative of the Kenya Association of Technical Training Institutions; and (iv) one person with ten years' experience in management of education; <p>(h) the Chief Executive Officer, who shall be an <i>ex-officio</i> member.</p>	<p>Officer of the Universities Fund Board in the KUCCPS Board so as to ensure a synergetic approach between KUCCPS and UFB is developed. The Committee further resolved to remove the representation of one person with ten years' experience in management of education from the KUCCPS Board.</p>
NEW	<p>22A. Section 58 of the principal Act be amended—</p> <ul style="list-style-type: none"> (a) in the marginal note by deleting the word "Secretary" and substituting therefor the words "Chief Executive Officer"; (b) by deleting the word "Director" and substituting therefor the words "Chief Executive Officer." 	<p>The Committee agreed to the proposed amendments as they seek to provide clarity</p>
<p>FOURTH SCHEDULE [section 39(1)(a)]</p>	<p>THAT, the Fourth Schedule to the Bill be amended by deleting the words "fourteen days of receipt of" appearing in paragraph (5) and substituting therefor the word "upon".</p>	<p>The committee rejected the proposed amendment but proposed a further amendment to ensure that timeframe is twenty-one days and not fourteen days.</p>

2. PROPOSED AMENDMENTS BY HONOURABLE MEMBERS

(a) DAVID OLE SANKOK, MP

Clause	Proposed Amendment	Committee's Observation and Justification
2	<p>Section 2 of the Universities Act, 2012 (in this Act referred to as "the principal Act") is amended by—</p> <p>(a) in the definition of the term "differentiated unit cost" by inserting the words "approved by the Commission" immediately after the words "degree programme";</p> <p>(b) in the definition of the term "statutes" by inserting the words "under section 23" immediately after the words "university council";</p> <p>(c) deleting the definition of the term "Trustees".</p>	<p>The committee rejected the proposed amendments to the definition of the term differentiated unit cost is approved by the Commission.</p> <p>The committee agreed to the proposed amendment as it seeks to provide for cross referencing where the term has been used.</p> <p>The committee rejected the proposed amendment on the definition of the term "Trustees" as the same had already been provided for in the Bill.</p>

(b) HON. DIDMUS BARASA, MP

Clause	Proposed Amendment	Committee's Observation and Justification
21	<p>THAT, clause 21 of the Bill be amended in the proposed new sub-section (3)(f) —</p> <p>(a) by deleting the word "one" appearing in sub-paragraph (i) and substituting therefor the word "two"; and</p> <p>(b) by deleting sub-paragraph (ii).</p>	<p>The committee rejected the proposed amendment as it seeks to ensure that KUCCPS Board has two vice-chancellors representing public universities as opposed to one. Amendment further seeks to remove the representation of one vice-chancellor representing private universities from the KUCCPS Board which would be discriminatory.</p>

(c) HON. JOHN KIARIE, MP

Clause	Proposed Amendment	Committee's Observation and Justification
19	<p>THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3) —</p> <p>(4) The Chief Executive Officer of the Fund shall hold office for a term of five years, renewable once.</p>	The committee agreed to the proposed amendment but noted that it had already proposed a similar amendment.

(d) HON. GEORGE GITONGA, MURUGARA, MP

Clause	Proposed Amendment	Committee's Observation and Justification
12	<p>THAT clause 12 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraphs —</p> <p>(a) by deleting subsection (1) and substituting therefor the following new subsections —</p> <p>(1) The council of a public university or constituent college of such a university shall consist of—</p> <p>(a) a chairperson appointed by the President;</p> <p>(b) three other persons appointed by the President;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for the university education;</p> <p>(d) the Principal Secretary in the Ministry for the time being responsible for Finance;</p> <p>(e) two persons nominated by the Alumni Association of a university to represent the Alumni Association;</p> <p>(f) two persons not being public officers nominated by the Alumni Association of a university to represent the parents of the students in a university, the public and the special interests' groups;</p> <p>(g) two persons nominated by the Alumni Association of a university to represent the staff of a university; and</p>	The Committee agreed to the proposed amendments to ensure that there's representation of representatives of the alumni associations in the council but rejected the proposal to ensure the President appoints the chairperson and three other members of a council of a university.

	<p>(h) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an ex officio member of the Council.</p> <p>(1A) Subject to subsection (2), the persons appointed under subsection (1)(a) and (b) shall be appointed by the President, through a competitive process.</p> <p>(1B) Despite subsection (1), the Vice-Chancellor of a public university shall be an ex-officio member of the councils of the constituent colleges of that university.</p> <p>(b) by deleting subsection (1A);</p> <p>(c) by deleting subsection (2) and substituting therefor the following new subsection —</p> <p>(2) A person shall be qualified for appointment as a Chairperson or Member of the Council if —</p> <p>(a) in the case of chairperson, the person holds—</p> <p>(i) a doctorate degree from a university recognized in Kenya; and</p> <p>(ii) has at least fourteen years’ experience in a senior management position; or</p> <p>(b) in the case of a member, the person holds—</p> <p>(i) a masters’ degree from a university recognized in Kenya; and</p> <p>(ii) has at least ten years’ experience in a senior management position; or</p> <p>(iii) a bachelor’s degree from a university recognized in Kenya; and</p> <p>(iv) has at least fifteen years’ experience in a senior management position.</p> <p>(d) in subsection (3), by deleting the words “appointing authority” and substituting therefor the words “appointing and nominating authorities”.</p>	
<p>13</p>	<p>CLAUSE 13</p> <p>THAT the Bill be amended by deleting clause 13.</p>	<p>The committee rejected the proposed amendment retained the proposed amendment by the Committee.</p>

(e) HON. SILVANUS OSORO, MP

Clause	Proposed Amendment	Committee's Observation and Justification
NEW	<p>20A. The principal Act is amended by inserting the following new section immediately after section 54C—</p> <p>54D. (1) The Cabinet Secretary for National Treasury shall, within six months of commencement of this section, establish a Fund for allocation of grants to public universities—</p> <ul style="list-style-type: none">(g) to undertake research on various thematic areas;(h) to establish innovation hubs;(i) to recommend public policy solutions to social economic issues affecting the country;(d) to assist in the development of public policy for implementation by the national government;(e) to assist in the formulation of effective public policy implementation strategies; and(f) perform any other function related to research and innovation as the Cabinet Secretary may determine. <p>(2) The Cabinet Secretary shall prescribe regulations for the implementation of this section.</p>	<p>The committee rejected the proposed as there already exists the National Research Fund (NRF); created by an Act of Parliament with clear mandate to fund research. Further, the proposed amendment would be redundant since the functions proposed are already domiciled under the Universities Funding Board.</p>

(f) HON. OWEN BAYA, MP.

Clause	Proposed Amendment	Committee's Observation and Justification
NEW	<p>6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —</p> <p>(3) The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i>.</p> <p>(4) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.</p>	<p>The Committee agreed to the proposed amendment in the proposed new subsection (4) and noted that the proposed new subsection (3) had already been proposed by the committee.</p>

7	<p>Section 24 of the principal Act is amended—</p> <p>(a) in subsection (1) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”;</p> <p>(b) by inserting the following new subsections immediately after subsection (2)—</p> <p>(2A) The provisions of Part V of this Act shall apply with the necessary modifications to the institutions established under this section.</p> <p>(2B) A Charter granted to an institution under this section shall outline the conditions under which the institution shall operate and set out a clearly defined mandate with regard to specified academic programmes.</p>	<p>The Committee agreed to the proposed amendment save for the proposed new section (2A) and (2B) as the proposed amendment had already been effected in the Universities Act through the Statute Law Miscellaneous Amendment Act No. 20 of 2020</p>
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(g) HON. ROBERT PUKOSE, MP

Clause	Proposed Amendment	Committee’s Observation and Justification
9	<p>The principal Act is amended by repealing section 26 and substituting therefor the following new section—</p> <p>Universities in Counties.</p> <p>26. The Commission shall ensure accessibility of public universities by all counties, giving priority to—</p> <p>(a) viability and equitability in the distribution of public universities across the country;</p> <p>(b) underserved and marginalized areas; or</p> <p>(c) such other factors as the Commission may determine.</p>	<p>The Committee partly agreed to the proposed amendment to ensure that not only viability but also equitability is taken into consideration by the Commission before the establishment of universities in counties</p>
11	<p>THAT Clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph —</p> <p>(b) in subsection (1)(v), by deleting the words “in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission” and substitute therefor the words “after a competitive process conducted by the Council”.</p>	<p>The Committee rejected the proposed amendment and retained the committee’s proposal on the procedure appoint Principals and Deputy Principals of Constituent Colleges as proposed by the Committee to be provided for in the second schedule is more comprehensive.</p>

5.0 COMMITTEE RECOMMENDATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2021)

Having considered the all the proposed amendments as proposed by the Committee, the Ministry of Education and individual Honourable Members and the submissions from all stakeholders, the Committee agreed upon the following harmonized version of amendments

1. MINISTRY OF EDUCATION

NEW CLAUSE

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

Amendment
of section
11 of No.42
of 2012.

4A. Section 11 of the principal Act be amended subsection (1) by deleting the words “the management of a university” appearing in paragraph (b) and substituting therefor the words “a senior management position”;

Justification: The amendment seeks to ensure that persons working outside the university environment but with similar experience and management competencies such as in research institutions, foundations and other corporate institutions also qualify to be appointed as Commission Secretary

NEW CLAUSE

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

Amendment
of section 23
of No.42 of
2012.

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

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

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

CLAUSE 12

THAT, clause 12 of the Bill be amended in paragraph (a) by—

(i) deleting paragraph (a) appearing in the new subsection (2) and substituting therefore the following new paragraph—

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

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

Justification: The amendment seeks to provide clarity and uniformity as the terms “Secretary” and “Chief Executive Officer” have been used interchangeably in the Act. The amendment further seeks to ensure that candidates with extensive industry expertise most of whom may not have doctoral or masters’ qualifications but bring the benefit of their experience to university management also qualify to be appointed to university Councils.

NEW CLAUSE

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

- Amendment of section 41 of No.42 of 2012.
- 14A.** Section 41 of the principal Act be amended by—
- (a) inserting the following new subsection immediately after subsection (1B)—
 - (1BA) A person shall be eligible to stand for election as a member of the student council if the person is in good academic standing;
 - (b) deleting subsection (1C);
 - (c) deleting subsection (1D);
 - (d) deleting subsection (1E); and
 - (e) by inserting the words “and prescribed code of conduct” immediately after the word “rules” appearing in subsection (1I).

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

CLAUSE 18

THAT clause 18 of the Bill be amended in the proposed new section 54—

- (a) in subsection 5—
 - (i) by deleting the word “Director” appearing in paragraph (d) and substituting therefor the words “Chief Executive Officer”;
 - (ii) by deleting the word “competitively” appearing in paragraph (e);
 - (iii) by deleting paragraph (g) and substituting therefor the following new paragraph—
 - (g) one person nominated by public universities in a forum of Vice-Chancellors of public universities;
 - (iv) by deleting paragraph (h) and substituting therefor the following new paragraph—

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

(b) in subsection (9) by—

- (i) inserting the words “and disburse” immediately after the word “apportion” appearing in paragraph (c);
- (ii) inserting the following new paragraph immediately after paragraph (c)—

(ca) apportion and disburse funds allocated by the national government to private universities for tuition fees for government sponsored students in Kenyan universities;
- (iii) inserting the words “to ensure equity in the funding of all government sponsored students in public and private universities” immediately after the words “subject area” appearing in paragraph (d);

Justification: The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities. Further, the amendment seeks to ensure that the UFB has powers to not only apportion but also disburse funds allocated by the national government to universities and to also expressly provide for funds allocated by the national government for tuition fees for government sponsored students in Kenyan universities

CLAUSE 21

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

- (a) inserting the following new paragraph immediately after paragraph (e)—

(ea) the Chief Executive Officer of the Universities Fund Board;
- (b) deleting paragraph (f) and substituting therefor the following new paragraphs—
 - (f) three other persons appointed by the Cabinet Secretary, being—
 - (i) one Vice-Chancellor representing public universities nominated by a forum of Vice-Chancellors of public universities;
 - (ii) one Vice-Chancellor representing private universities nominated by a forum of Vice-Chancellors of private universities;
 - (iii) one representative of the Kenya Association of Technical Training Institutions; and
 - (g) the Director, who shall be an *ex-officio* member

Justification: To provide clarity on the years of experience required in management of education to qualify to be appointed by the Cabinet Secretary in the Board of the Kenya Universities and

Colleges Central Placement Service. To further ensure that the Vice-Chancellors appointed by the Cabinet Secretary are nominated by the Vice-Chancellors forum and that the Chief Executive Officer of the Fund is incorporated in the Board so as to ensure a synergetic approach between KUCCPS and UFB is developed.

NEW CLAUSE

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

- Amendment of section 58 of No.42 of 2012.
- 22A. Section 58 of the principal Act be amended—
- (a) in the marginal note by deleting the word “Secretary” and substituting therefor the words “Chief Executive Officer”;
 - (b) by deleting the word “Director” and substituting therefor the words “Chief Executive Officer.”

Justification: The amendment seeks to provide clarity and uniformity as the terms “Secretary” and “Director” have been used interchangeably in the Act.

FOURTH SCHEDULE

THAT, the Fourth Schedule to the Bill be amended—

- (a) by deleting the words “**PRINCIPALS AND DEPUTY PRINCIPALS**” appearing in the heading;
- (b) in paragraph 1 by deleting the words “or Principal and Deputy Principal of a Constituent College, the Cabinet Secretary” appearing after the words “public university” and substituting therefore the words “the Council”;
- (c) in paragraph 2(1) by—
 - (i) deleting the phrase “subsection (2)” and substituting therefor the phrase “subsection (1)”;
 - (ii) deleting sub-paragraph (a) and substituting therefor the following new subparagraph—
 - (a) a chairperson being a scholar with the rank of a full professor;
 - (iii) deleting sub-paragraph (b).
- (d) in paragraph 4 by—
 - (i) deleting the word “three” appearing in sub-paragraph (c) and substituting therefore the word “five”;
 - (ii) by deleting the words “Cabinet Secretary” appearing in sub-paragraph (d) and substituting therefor the word “Council”;
- (e) by inserting the following new paragraph immediately after paragraph 4—

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

- (f) in paragraph 5 by deleting the word “fourteen” appearing after the word “within” and substituting therefor the word “twenty-one”;

Justification: The amendment seeks to ensure the Fourth Schedule is only applicable to the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities ; to ensure that the Selection panel for the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities is constituted by the Council of a university and not the Cabinet Secretary who appoints ; to ensure that the Chairperson of the selection Panel is a scholar with the highest academic rank and also to ensure that the Council is not represented in the Selection Panel as it constitutes the same; to ensure that the Selection Panel submits five names of qualified applicants as opposed to three to the Council which in turn submits three names to the Cabinet Secretary for appointment; to provide the timeline within which the Council is to submit the three names to the Cabinet Secretary for appointment and to provide a reasonable timeframe of twenty one days within which the Cabinet Secretary is to appoint a VC or DVC upon submission of names.

HON. DAVID OLE SANKOK, MP

CLAUSE 2

THAT clause 12 of the Bill be amended by —

- (a) renumbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub-clause (2) immediately after the renumbered sub-clause (1) —
 - (2) Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended in the definition of the term “statutes” by inserting the words “under section 23” immediately after the words “university council”;

Justification: The amendment seeks to provide for cross referencing where the term has been used.

HON. GEORGE GITONGA, MURUGARA, MP

CLAUSE 12

THAT clause 12 of the Bill be amended by —

- (a) renumbering the existing paragraph (a) as paragraph (b); and
- (b) inserting the following new paragraphs (a) immediately before the renumbered paragraph (b) —
 - (a) in subsection (1) by inserting the words “out of which three shall be nominated by the Alumni Association of a university” immediately after the words “Cabinet Secretary” appearing in paragraph (d);

(b) by inserting the following new subsection immediately after subsection (1) —

(1A) The persons nominated under paragraph (d) shall represent—

- (a) the Alumni Association of a university;
- (b) parents of the students in a university, the public and the special interest groups;
and
- (c) the staff of a university

Justification: To ensure that there's representation of the alumni associations in the council as they are important stakeholders in the management of a university.

HON. OWEN BAYA, MP.

NEW CLAUSE

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

Amendment of section 23 of No.42 of 2012.	6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) — (3) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.
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Justification: To ensure that university statutes or regulations made under this section are considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.

CLAUSE 7

THAT the Bill be amended by deleting clause 7 and substituting therefor the following new clause—

7. Section 24 of the principal Act is amended in subsection (1) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”;

Justification: To ensure that specialized degree awarding institutions are established by the President, on the recommendation of the Commission through Cabinet Secretary, and with the approval of the National Assembly and not Parliament which includes the Senate as higher education is a function of the national government.

HON. ROBERT PUKOSE, MP

CLAUSE 9

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

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

Justification: To enhance accessibility to university education, it's imperative that the Commission establishes public universities taking into consideration their viability and also equitability to ensure that underserved and also marginalized areas can also have universities.

SIGNED 

DATE 13.5.2022

HON. FLORENCE MUTUA, CBS, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION & RESEARCH


















ANNEXURES

REPORT ADOPTION LIST

KENYA NATIONAL ASSEMBLY

COMMITTEE ON EDUCATION AND RESEARCH

Adoption of the Addendum Report on the Consideration of proposed
Amendments to the Universities (Amendment) Bill, 2021, (National Assembly Bill
No. 35) by the Leader of Majority Hon. (Dr.) Amos Kimunya, EGH, MP

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

ADOPTION MINUTES

MINUTES OF THE 22ND SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH HELD ON FRIDAY, 13TH MAY 2022, IN FALMINGO HOTEL, MOMBASA, PARLIAMENT BUILDINGS AT 2. 30 PM

PRESENT

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

ABSENT WITH APOLOGY

1. Hon. Wambugu Ngunjiri, CBS, MP - **Vice- Chairperson**
2. Hon. (Dr.) Pamela Ochieng, MP
3. Hon. Jackson Lekumontare, MP
4. Hon. Omboko Milemba, MP
5. Hon. Gichuki Mugambi, MP

COMMITTEE SECRETARIAT

1. Mr. Philip Lekarkar – Lead Clerk
2. Ms. Grace Wahu – Clerk Assistant
3. Ms. Mercy Wanyonyi – Legal Counsel I
4. Ms. Winnie Kulei – Research Officer
5. Ms. Catherine Mukunyi – Sergeant At Arms
6. Mr. Collins Mahamba – Audio Officer

MIN. NO. EDUC/2022/106: PRELIMINARIES

The meeting was called to order at 2.36 pm. A word of prayer was said by Hon. (Eng) Nzambia Kithua, MP. The agenda of the meeting was adopted having been proposed by Hon. Geoffrey Odanga, MP, and seconded by Hon. Mohammed Ali Lokiru, MP.

MIN. NO. EDUC/2022/107: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN.NO. EDUC/2022/108: ADOPTION OF THE ADDENDUM REPORT ON CONSIDERATION OF PROPOSED AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL, 2021 (NATIONAL ASSEMBLY BILL. 35 OF 2021)

COMMITTEE OBSERVATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2021)

Having considered the all the proposed amendments as proposed to the Universities (Amendment) Bill, 2021, by the Committee, the Ministry of Education and individual Honourable Members and the submissions from all stakeholders, the Committee made the following observations on each of the proposed amendment: -

1. PROPOSED AMENDMENTS BY THE MINISTRY OF EDUCATION

Clause	Proposed Amendment	Committee's Observation and Justification
2	<p>THAT clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence—</p> <p>“Merger” means an amalgamation of two or more institutions to form a single entity;</p> <p>“principal institution” means an institution that is integrated into a different institution to form a merged institution;</p>	<p>The Committee rejected the proposed amendment. The proposed definitions are word proposed to be used interchangeably on the provisions regarding the merger of universities</p>
NEW	<p>Delete</p> <p>NEW</p> <p>3A. Section 6 of the principal Act be amended—</p> <p>(a) by deleting paragraph (f) and substituting therefor the following new paragraph—</p> <p>(f) one person nominated by public universities in a forum of Vice- Chancellors of public universities;</p> <p>(b) by deleting paragraph (g) and substituting therefor the following new paragraph—</p> <p>(g) one person nominated by private universities in a forum of Vice- Chancellors of private universities;</p>	<p>The Committee rejected the proposal to delete the proposed amendment as Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission will resonate with their role as the Chairperson of Senate of the respective Universities and/or head of the College Academic Board of the University College</p>
NEW	<p>4A. Section 11 of the principal Act be amended subsection (1) by deleting the words “the management of a university” appearing in paragraph (b) and substituting therefor the words “a senior management position”;</p>	<p>The Committee agreed to the proposed amendment.</p>
NEW	<p>Delete</p> <p>6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —</p>	<p>The committee agreed to propose further amendments on the provision to provide for a reasonable timeframe of six months within which the</p>

Clause	Proposed Amendment	Committee's Observation and Justification
	<p>(3)The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i>.</p> <p>(4) Notwithstanding subsection (3), a statute or a regulation of a university shall come into force after the lapse of three months after submission to the Cabinet Secretary for publication in the <i>Gazette</i>.</p>	<p>Cabinet Secretary is required to publish in the Gazette after the submission of a statute or regulation.</p> <p>There is need for the statutes or regulations to be published in the Gazette as it gives them the force of law and also informs the public.</p>
NEW	<p>Closure/Merger of public universities.</p> <p>22B. (1) The President may, on the recommendation of the Cabinet Secretary –</p> <p>(a) merge two or more public universities;</p> <p>(b) merge two or more constituent colleges of a public university to be mentored by one public university; or</p> <p>(c) make a constituent college of a public university a campus of another public university.</p> <p>(2) The recommendation referred to under subsection (1) shall be made with the prior concurrence of the Commission which shall satisfy itself that the merger is in the best interest of university education in Kenya.</p> <p>(3) A recommendation under subsection (1) shall only be made after the principal institution has been afforded the opportunity to be heard and the Commission has, in accordance with the regulations, inspected the principal institution and is satisfied that it is unable to contribute to the objectives of university education set out in this Act.</p> <p>(4) If a principal institution under subsection (1) is merged, the Cabinet Secretary shall forthwith cause a notice to be published in the Gazette, specifying the date from which the principal institution shall have been merged.</p> <p>(5) Notwithstanding subsection (4), the merger of a principal institution shall not affect the validity of any academic award made by the university before the merger.</p> <p>(6) All immovable and movable property and assets of a principal institution shall vest in the merged institution as agreed upon by the councils of the respective public universities or as may be determined by the Cabinet Secretary in consultation with the councils of the respective public universities.</p>	<p>The Committee rejected the proposed amendments as-</p> <p>(a) Students should be facilitated to access university education and the focus should be on the proper management of universities;</p> <p>(b) the procedure for the revocation of a university Charter has already been provided for in section 22 of the Act hence no need to further provide for the closure of universities; and</p> <p>(c) they are very substantive in nature and had not been subjected to public participation as required by Article 118 of the Constitution;</p>

Clause	Proposed Amendment	Committee's Observation and Justification
	<p>(7) All rights, obligations and liabilities of a principal institution are deemed to be the rights, obligations and liabilities of the merged institution under this Act.</p> <p>(8) All references to a principal institution in any agreement or instrument relating to any property, assets, rights, obligations or liabilities transferred under subsection (6) and (7) shall, unless the context otherwise requires, be read as references to the merged institution established under this Act.</p> <p>(10) All persons who were members of staff of the principal institution shall be members of staff of the merged institution and shall be deemed to have been appointed on the terms and conditions of service applicable to them immediately before the merger of the principal institution.</p> <p>(11) The Cabinet Secretary may, in consultation with the Commission, make regulations for the better carrying out of the functions under this section.</p>	
NEW	Section 24 of the principal Act is amended by deleting the words “ and with the approval of Parliament” appearing in subsection (1)	The Committee rejected the proposed amendment as the approval of Parliament is critical in the establishment of specialized degree awarding institutions because of the financial implications that may be required and their strategic national importance e.g the National Defence College.
9	<p>Delete and retain as provided in the Bill</p> <p>26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country.</p>	The Committee rejected the proposed amendment as the provision had been redrafted by the Committee to ensure that viability is taken into consideration by the Commission before the establishment of universities in counties.
12	<p>Delete and retain as provided in the Bill</p> <p>THAT, clause 12 of the Bill be amended in paragraph (a) by—</p> <p>(a) deleting paragraph (a) appearing in the new subsection (2) and substituting therefore the following new paragraph—</p> <p style="padding-left: 40px;">(a) in the case of a chairperson, the person holds a doctorate degree from a university recognized</p>	The Committee agreed to amend the qualifications of the chairperson from a holder of a doctorate degree to at least a masters degree to ensure that the minimum qualification is a masters degree.

Clause	Proposed Amendment	Committee's Observation and Justification
	<p>in Kenya and has at least fifteen years' experience in a senior management position or research;</p> <p>(b) inserting the words "at least" immediately before the word "holds" appearing in paragraph (b);</p>	
NEW	<p>14A. Section 41 of the principal Act be amended by—</p> <p>(a) inserting the following new subsection immediately after subsection (1B)— (1BA) A person shall be eligible to stand for election as a member of the student council if the person is in good academic standing;</p> <p>(b) deleting subsection (1C);</p> <p>(c) deleting subsection (1D);</p> <p>(d) deleting subsection (1E);</p>	<p>The Committee rejected the proposed amendment and reiterated that election to the student's council should be by universal suffrage through election by the students' association comprising of all students as opposed to electoral colleges. Further, that only students in good academic standing would be eligible to stand for election. However the committee recommends that a further amendment be done to section 41(11) to ensure that a student standing for election has to comply with the prescribed code of conduct.</p>
18	<p>THAT clause 18 of the Bill be amended in the proposed new section 54—</p> <p>(a) in subsection 5—</p> <p>(i) by deleting the word "Director" appearing in paragraph (d) and substituting therefor the words "Chief Executive Officer";</p> <p>(ii) by deleting paragraph (f);</p> <p>(iii) by deleting the words "Law Society of Kenya" and substituting therefor the words "Office of the Attorney General";</p> <p>(b) in subsection 9 by deleting paragraph (c) and substituting therefor the following new paragraph—</p> <p>(c) apportion and disburse funds allocated by the national government to accredited public and private universities;</p>	<p>The Committee agreed to the proposed amendment to delete the word "Director" appearing in paragraph (d) and substituting therefor the words "Chief Executive Officer" but rejected the proposed amendment to paragraphs 5(f) and (1) and (9)</p>
21	<p>THAT clause 21 of the Bill be amended in the proposed new subsection (3) by deleting paragraph (f) and substituting therefor the following new paragraphs—</p> <p>(f) the Chief Executive Officer of the Universities Fund Board;</p> <p>(g) four other persons appointed by the Cabinet Secretary, being—</p>	<p>The Committee agreed to the proposed amendment to include the Chief Executive Officer of the Universities Fund Board in the KUCCPS Board so as to ensure a synergetic approach between KUCCPS and UFB is</p>

Clause	Proposed Amendment	Committee's Observation and Justification
	<p>(i) one person nominated by public universities in a forum of chairpersons of Councils public universities;;</p> <p>(ii) one person nominated by private universities in a forum of chairpersons of Councils of private universities;</p> <p>(iii) one representative of the Kenya Association of Technical Training Institutions; and</p> <p>(iv) one person with ten years' experience in management of education;</p> <p>(h) the Chief Executive Officer, who shall be an <i>ex-officio</i> member.</p>	developed. The Committee further resolved to remove the representation of one person with ten years' experience in management of education from the KUCCPS Board.
NEW	<p>22A. Section 58 of the principal Act be amended—</p> <p>(a) in the marginal note by deleting the word “Secretary” and substituting therefor the words “Chief Executive Officer”;</p> <p>(b) by deleting the word “Director” and substituting therefor the words “Chief Executive Officer.”</p>	The Committee agreed to the proposed amendments as they seek to provide clarity
FOURTH SCHEDULE [section 39(1)(a)]	THAT, the Fourth Schedule to the Bill be amended by deleting the words “fourteen days of receipt of” appearing in paragraph (5) and substituting therefor the word “upon”.	The committee rejected the proposed amendment but proposed a further amendment to ensure that timeframe is twenty one days and not fourteen days.

2. PROPOSED AMENDMENTS BY HONOURABLE MEMBERS

(a) DAVID OLE SANKOK, MP

Clause	Proposed Amendment	Committee's Observation and Justification
2	<p>Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended by—</p> <p>(a) in the definition of the term “differentiated unit cost” by inserting the words “approved by the Commission” immediately after the words “degree programme”;</p> <p>(b) in the definition of the term “statutes” by inserting the words “under section 23” immediately after the words “university council”;</p> <p>(c) deleting the definition of the term “Trustees”.</p>	<p>The committee rejected the proposed amendments to the definition of the term differentiated unit cost is approved by Commission.</p> <p>The committee agreed to the proposed amendment as it seeks to provide for cross referencing where the term has been used.</p> <p>The committee rejected the proposed amendment on the definition of the term “Trustees” as the same had already been provided for in the Bill.</p>

(b) HON. DIDMUS BARASA, MP

Clause	Proposed Amendment	Committee's Observation and Justification
21	<p>THAT, clause 21 of the Bill be amended in the proposed new sub-section (3)(f) —</p> <p>(a) by deleting the word “one” appearing in sub-paragraph (i) and substituting therefor the word “two”; and</p> <p>(b) by deleting sub-paragraph (ii).</p>	<p>The committee rejected the proposed amendment as it seeks to ensure that KUCCPS Board has two vice-chancellors representing public universities as opposed to one. Amendment further seeks to remove the representation of one vice-chancellor representing private universities from the KUCCPS Board which would be discriminatory.</p>

(c) HON. JOHN KIARIE, MP

Clause	Proposed Amendment	Committee's Observation and Justification
19	<p>THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3) —</p> <p>(4) The Chief Executive Officer of the Fund shall hold office for a term of five years, renewable once.</p>	<p>The committee agreed to the proposed amendment but noted that it had already proposed a similar amendment.</p>

(d) HON. GEORGE GITONGA, MURUGARA, MP

Clause	Proposed Amendment	Committee's Observation and Justification
12	<p>THAT clause 12 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraphs —</p> <p>(a) by deleting subsection (1) and substituting therefor the following new subsections —</p> <p>(1) The council of a public university or constituent college of such a university shall consist of—</p> <p>(a) a chairperson appointed by the President;</p> <p>(b) three other persons appointed by the President;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for the university education;</p> <p>(d) the Principal Secretary in the Ministry for the time being responsible for Finance;</p> <p>(e) two persons nominated by the Alumni Association of a university to represent the Alumni Association;</p>	<p>The Committee agreed to the proposed amendments to ensure that there's representation of representatives of the alumni associations in the council but rejected the proposal to ensure the President appoints the chairperson and three other members of a council of a university.</p>

	<p>(f) two persons not being public officers nominated by the Alumni Association of a university to represent the parents of the students in a university, the public and the special interests' groups;</p> <p>(g) two persons nominated by the Alumni Association of a university to represent the staff of a university; and</p> <p>(h) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an ex officio member of the Council.</p> <p>(1A) Subject to subsection (2), the persons appointed under subsection (1)(a) and (b) shall be appointed by the President, through a competitive process.</p> <p>(1B) Despite subsection (1), the Vice-Chancellor of a public university shall be an ex-officio member of the councils of the constituent colleges of that university.</p> <p>(b) by deleting subsection (1A);</p> <p>(c) by deleting subsection (2) and substituting therefor the following new subsection —</p> <p>(2) A person shall be qualified for appointment as a Chairperson or Member of the Council if —</p> <p>(a) in the case of chairperson, the person holds—</p> <p>(i) a doctorate degree from a university recognized in Kenya; and</p> <p>(ii) has at least fourteen years' experience in a senior management position; or</p> <p>(b) in the case of a member, the person holds—</p> <p>(i) a masters' degree from a university recognized in Kenya; and</p> <p>(ii) has at least ten years' experience in a senior management position; or</p> <p>(iii) a bachelor's degree from a university recognized in Kenya; and</p> <p>(iv) has at least fifteen years' experience in a senior management position.</p> <p>(d) in subsection (3), by deleting the words "appointing authority" and substituting therefor the words "appointing and nominating authorities".</p>	
<p>13</p>	<p>CLAUSE 13</p> <p>THAT the Bill be amended by deleting clause 13.</p>	<p>The committee rejected the proposed amendment retained the proposed amendment by the Committee.</p>

(e) HON. SILVANUS OSORO, MP

Clause	Proposed Amendment	Committee's Observation and Justification
NEW	<p>20A. The principal Act is amended by inserting the following new section immediately after section 54C—</p> <p>54D. (1) The Cabinet Secretary for National Treasury shall, within six months of commencement of this section, establish a Fund for allocation of grants to public universities—</p> <p>(a) to undertake research on various thematic areas;</p> <p>(b) to establish innovation hubs;</p> <p>(c) to recommend public policy solutions to social economic issues affecting the country;</p> <p>(d) to assist in the development of public policy for implementation by the national government;</p> <p>(e) to assist in the formulation of effective public policy implementation strategies; and</p> <p>(f) perform any other function related to research and innovation as the Cabinet Secretary may determine.</p> <p>(2) The Cabinet Secretary shall prescribe regulations for the implementation of this section.</p>	<p>The committee rejected the proposed as there already exists the National Research Fund (NRF); created by an Act of Parliament with clear mandate to fund research. Further, the proposed amendment would be redundant since the functions proposed are already domiciled under the Universities Funding Board.</p>

(f) HON. OWEN BAYA, MP.

Clause	Proposed Amendment	Committee's Observation and Justification
NEW	<p>6A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2) —</p> <p>(3)The Cabinet Secretary shall, not later than three months after the submission of a statute or regulation under this section by a university, cause it to be published in the <i>Gazette</i>.</p> <p>(4) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.</p>	<p>The Committee agreed to the proposed amendment in the proposed new subsection (4) and noted that the proposed new subsection (3) had already been proposed by the committee.</p>
7	<p>Section 24 of the principal Act is amended—</p> <p>(a) in subsection (1) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”;</p> <p>(b) by inserting the following new subsections immediately after subsection (2)—</p> <p>(2A) The provisions of Part V of this Act shall apply with the necessary modifications to the institutions established under this section.</p>	<p>The Committee agreed to the proposed amendment save for the proposed new section (2A) and (2B) as the proposed amendment had already been effected in the Universities Act through the Statute Law Miscellaneous Amendment Act No. 20 of 2020</p>

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

Clause	Proposed Amendment	Committee's Observation and Justification
9	The principal Act is amended by repealing section 26 and substituting therefor the following new section— Universities in Counties. 26.The Commission shall ensure accessibility of public universities by all counties, giving priority to— (a) viability and equitability in the distribution of public universities across the country; (b) underserved and marginalized areas; or (c) such other factors as the Commission may determine.	The Committee partly agreed to the proposed amendment to ensure that not only viability but also equitability is taken into consideration by the Commission before the establishment of universities in counties
11	THAT Clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph — (b) in subsection (1)(v), by deleting the words “in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission” and substitute therefor the words “after a competitive process conducted by the Council”.	The Committee rejected the proposed amendment and retained the committee’s proposal on the procedure appoint Principals and Deputy Principals of Constituent Colleges as proposed by the Committee to be provided for in the second schedule is more comprehensive.

COMMITTEE RECOMMENDATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2021)

Having considered the all the proposed amendments as proposed by the Committee, the Ministry of Education and individual Honourable Members and the submissions from all stakeholders, the Committee agreed upon the following harmonized version of amendments

1. MINISTRY OF EDUCATION

NEW CLAUSE

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

Amendment of section 11 of No.42 of 2012.	4A. Section 11 of the principal Act be amended subsection (1) by deleting the words “the management of a university” appearing in paragraph (b) and substituting therefor the words “a senior management position”;
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Justification: The amendment seeks to ensure that persons working outside the university environment but with similar experience and management competencies such as in research institutions, foundations and other corporate institutions also qualify to be appointed as Commission Secretary

NEW CLAUSE

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

Amendment
of section 23
of No.42 of
2012.

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

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

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

CLAUSE 12

THAT, clause 12 of the Bill be amended in paragraph (a) by—

(c) deleting paragraph (a) appearing in the new subsection (2) and substituting therefore the following new paragraph—

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

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

Justification: The amendment seeks to provide clarity and uniformity as the terms “Secretary” and “Chief Executive Officer” have been used interchangeably in the Act. The amendment further seeks to ensure that candidates with extensive industry expertise most of whom may not have doctoral or masters qualifications but bring the benefit of their experience to university management also qualify to be appointed to university Councils.

NEW CLAUSE

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

Amendment
of section 41
of No.42 of
2012.

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

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

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

(b) deleting subsection (1C);

(c) deleting subsection (1D);

(d) deleting subsection (1E); and

(e) by inserting the words “ and prescribed code of conduct” immediately after the word “rules” appearing in subsection (1I).

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

CLAUSE 18

THAT clause 18 of the Bill be amended in the proposed new section 54—

(a) in subsection 5—

- (i) by deleting the word “Director” appearing in paragraph (d) and substituting therefor the words “ Chief Executive Officer”;
- (ii) by deleting the word “competitively” appearing in paragraph (e);
- (iii) by deleting paragraph (g) and substituting therefor the following new paragraph—

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

- (iv) by deleting paragraph (h) and substituting therefor the following new paragraph—

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

(b) in subsection (9) by—

- (i) inserting the words “and disburse” immediately after the word “apportion” appearing in paragraph (c);
- (ii) inserting the following new paragraph immediately after paragraph (c)—

(ca) apportion and disburse funds allocated by the national government to private universities for tuition fees for government sponsored students in Kenyan universities;

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

Justification: The Vice-Chancellors are the accounting officers of the Universities and having them sit in the Board will resonate with their role as the Chief Executive Officers of the respective Universities. Further, the amendment seeks to ensure that the UFB has powers to not only apportion but also disburse funds allocated by the national government to universities and to also expressly provide for funds allocated by the national government for tuition fees for government sponsored students in Kenyan universities.

CLAUSE 21

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

- (a) inserting the following new paragraph immediately after paragraph (e)—
 - (ea) the Chief Executive Officer of the Universities Fund Board;
- (b) deleting paragraph (f) and substituting therefor the following new paragraphs—

(f) three other persons appointed by the Cabinet Secretary, being—

- (i) one Vice-Chancellor representing public universities nominated by a forum of Vice-Chancellors of public universities;
- (ii) one Vice-Chancellor representing private universities nominated by a forum of Vice-Chancellors of private universities;
- (iii) one representative of the Kenya Association of Technical Training Institutions; and

(g) the Director, who shall be an *ex-officio* member

Justification: To provide clarity on the years of experience required in management of education to qualify to be appointed by the Cabinet Secretary in the Board of the Kenya Universities and Colleges Central Placement Service. To further ensure that the Vice-Chancellors appointed by the Cabinet Secretary are nominated by the Vice-Chancellors forum and that the Chief Executive Officer of the Fund is incorporated in the Board so as to ensure a synergetic approach between KUCCPS and UFB is developed.

NEW CLAUSE

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

Amendment of section 58 of No.42 of 2012. 22A. Section 58 of the principal Act be amended—

(a) in the marginal note by deleting the word “Secretary” and substituting therefor the words “Chief Executive Officer”;

(b) by deleting the word “Director” and substituting therefor the words “Chief Executive Officer.”

Justification: The amendment seeks to provide clarity and uniformity as the terms “Secretary” and “Director” have been used interchangeably in the Act.

FOURTH SCHEDULE

THAT, the Fourth Schedule to the Bill be amended—

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

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

(c) in paragraph 2(1) by—

(i) deleting the phrase “subsection (2)” and substituting therefor the phrase “subsection (1)” ;

(ii) deleting sub-paragraph (a) and substituting therefor the following new subparagraph—

(a) a chairperson being a scholar with the rank of a full professor;

(iii) deleting sub-paragraph (b).

(d) in paragraph 4 by—

(i) deleting the word “three” appearing in sub-paragraph (c) and substituting therefor the word “five”;

(ii) by deleting the words “Cabinet Secretary” appearing in sub-paragraph (d) and substituting therefor the word “Council”;

(e) by inserting the following new paragraph immediately after paragraph 4—

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

(f) in paragraph 5 by deleting the word “fourteen” appearing after the word “within” and substituting therefor the word “twenty one”;

Justification: The amendment seeks to ensure the Fourth Schedule is only applicable to the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities ; to ensure that the Selection panel for the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities is constituted by the

Council of a university and not the Cabinet Secretary who appoints ; to ensure that the Chairperson of the selection Panel is a scholar with the highest academic rank and also to ensure that the Council is not represented in the Selection Panel as it constitutes the same; to ensure that the Selection Panel submits five names of qualified applicants as opposed to three to the Council which in turn submits three names to the Cabinet Secretary for appointment; to provide the timeline within which the Council is to submit the three names to the Cabinet Secretary for appointment and to provide a reasonable timeframe of twenty one days within which the Cabinet Secretary is to appoint a VC or DVC upon submission of names.

HON. DAVID OLE SANKOK, MP

CLAUSE 2

THAT clause 12 of the Bill be amended by —

- (a) renumbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub-clause (2) immediately after the renumbered sub-clause (1)

(2) Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended in the definition of the term “statutes” by inserting the words “under section 23” immediately after the words “university council”;

Justification: The amendment seeks to provide for cross referencing where the term has been used.

HON. GEORGE GITONGA, MURUGARA, MP

CLAUSE 12

THAT clause 12 of the Bill be amended by —

- (a) renumbering the existing paragraph (a) as paragraph (b); and
- (b) inserting the following new paragraphs (a) immediately before the renumbered paragraph (b) —

(a) in subsection (1) by inserting the words “out of which three shall be nominated by the Alumni Association of a university” immediately after the words “Cabinet Secretary” appearing in paragraph (d);

(b) by inserting the following new subsection immediately after subsection (1) —

(1A) The persons nominated under paragraph (d) shall represent—

- (a) the Alumni Association of a university;
- (b) parents of the students in a university, the public and the special interest groups; and
- (c) the staff of a university

Justification: To ensure that there’s representation of of the alumni associations in the council as they are important stakeholders in the management of a university.

HON. OWEN BAYA, MP.

NEW CLAUSE

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

Amendment
of section 23
of No.42 of
2012.

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

(3) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.

Justification: To ensure that university statutes or regulations made under this section are considered by the National Assembly in accordance with the Statutory Instruments Act, 2013.

CLAUSE 7

THAT the Bill be amended by deleting clause 7 and substituting therefor the following new clause—

7. Section 24 of the principal Act is amended in subsection (1) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”;

Justification: To ensure that specialized degree awarding institutions are established by the President, on the recommendation of the Commission through Cabinet Secretary, and with the approval of the National Assembly and not Parliament which includes the Senate as higher education is a function of the national government.

HON. ROBERT PUKOSE, MP

CLAUSE 9

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

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

Justification: To enhance accessibility to university education, it’s imperative that the Commission establishes public universities taking into consideration their viability and also equitability to ensure that underserved and also marginalized areas can also have universities.

The Addendum Report on Consideration of proposed Amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bill. 35 Of 2021) was unanimously adopted having been proposed by Hon. (Eng.) Nzambia Kithua, MP and seconded by Hon. Geoffrey Odanga, MP.

MIN. NO. EDUC/2022/109: ANY OTHER BUSINESS

There was no other business

MIN. NO. EDUC/2022/110: ADJOURNMENT

There being no other business, the meeting was adjourned at 6.10 pm. The next meeting will be held on notice.

SIGN  DATE 14.5.2022
HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, COMMITTEE ON EDUCATION AND RESEARCH

**PROPOSED AMENDMENTS FROM
THE MINISTRY OF EDUCATION
AND HON. MEMBERS**



REPUBLIC OF KENYA
MINISTRY OF EDUCATION
Office of the Cabinet Secretary

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J 7/4/22
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NAIROBI - Kenya

Ref: MOE.HQS/3/6/45

April 5, 2022

Hon. Amos Kimunya, EGH
Leader of the Majority Party
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI

Dear Sir,



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

Reference is made to the above matter and to the 'Report by the Departmental Committee on Education and Research on the Universities (Amendment) Bill, (National Assembly Bill No. 35 of 2021)'.
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In light of the foregoing, please find attached the submissions of the Ministry on the Committee's recommendations.

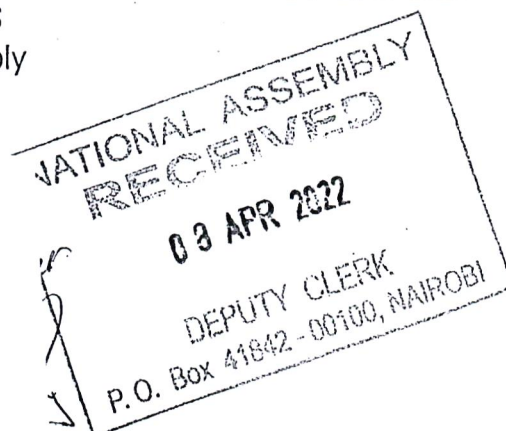
Yours Sincerely

Prof. George A. O. Magoha, EGH
CABINET SECRETARY

Encl.

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

07 APR 2022



PROPOSALS TO THE UNIVERSITIES AMENDMENT BILL, 2021

SECTION	COMMITTEE PROPOSAL	RECOMMENDATION	JUSTIFICATION
Section 26 (Clause 9 of the Bill)	Delete	Do not delete! This should be retained as provided in the Bill!	<ol style="list-style-type: none"> The massification of public universities has not been matched by a commensurate increase in their capitation because they have mushroomed faster than the resources available. This has presented dire implications on quality and sustainability. Since the Amendment sought to ensure that a balance between access and viability, it should be considered and retained to ensure sustainability.
Section 22B		<p>Amend the universities Act by inserting a new section 22B as follows:</p> <p>Section 22B Closure or merger of public Universities</p> <p>22B (1) The President may, on the recommendation of the Cabinet Secretary with the concurrence of the Commission approve: -</p> <ol style="list-style-type: none"> a merger of two or more public universities; or a merger of two or more public universities colleges to be mentored by one public university; or make a public university college, a campus of another university through repeal of the enactment under which the institution was established; the closure of a public university or public universities colleges or a Campus. 	<ol style="list-style-type: none"> This amendment is presented owing to the need to ensure that the objectives of university education under Section 3 of the Universities Act, 2012 are met; The amendment seeks to empower the government to rein in on the excesses in the University sector in a bid to close, consolidate or merge universities and/or campuses; It is presented arising from the reality that with the massification of public universities, several challenges affecting the future and viability of the sector have arisen including but not limited to: <ol style="list-style-type: none"> Mismatch of the academic: support staff ratio which is indicative of a failure by universities to right-size staff; Too many redundant administrative positions; Poor fiscal management by university managers and university councils; Establishment of numerous redundant projects; Over-reliance on government capitation and student fee collections demonstrating failure to establish additional means of generating revenue; Establishment of redundant and loss-making satellite campuses; and Establishment of redundant programmes. This is necessitated by a need to ensure that the Government reins in on the excesses in the public university sector for sustainability of the sector. To address the challenges, Universities must institute the following measures for their sustainability: <ol style="list-style-type: none"> Each University must operate within its means by budgeting below the capitation received and revenue realised; The University Sector must right-size and restructure for sustainability by:

PROPOSALS TO THE UNIVERSITIES AMENDMENT BILL, 2021

SECTION	COMMITTEE PROPOSAL	RECOMMENDATION	JUSTIFICATION
Section 26 (Clause 9 of the Bill)	Delete	Do not delete! This should be retained as provided in the Bill!	<ol style="list-style-type: none"> The massification of public universities has not been matched by a commensurate increase in their capitation because they have mushroomed faster than the resources available. This has presented dire implications on quality and sustainability. Since the Amendment sought to ensure that a balance between access and viability, it should be considered and retained to ensure sustainability.
Section 22B		<p>Amend the universities Act by inserting a new section 22B as follows:</p> <p>Section 22B Closure or merger of public Universities</p> <p>22B (1) The President may, on the recommendation of the Cabinet Secretary with the concurrence of the Commission approve: -</p> <ol style="list-style-type: none"> a merger of two or more public universities; or a merger of two or more public universities colleges to be mentored by one public university; or make a public university college, a campus of another university through repeal of the enactment under which the institution was established; the closure of a public university or public universities colleges or a Campus. 	<ol style="list-style-type: none"> This amendment is presented owing to the need to ensure that the objectives of university education under Section 3 of the Universities Act, 2012 are met; The amendment seeks to empower the government to rein in on the excesses in the University sector in a bid to close, consolidate or merge universities and/or campuses; It is presented arising from the reality that with the massification of public universities, several challenges affecting the future and viability of the sector have arisen including but not limited to: <ol style="list-style-type: none"> Mismatch of the academic: support staff ratio which is indicative of a failure by universities to right-size staff; Too many redundant administrative positions; Poor fiscal management by university managers and university councils; Establishment of numerous redundant projects; Over-reliance on government capitation and student fee collections demonstrating failure to establish additional means of generating revenue; Establishment of redundant and loss-making satellite campuses; and Establishment of redundant programmes. This is necessitated by a need to ensure that the Government reins in on the excesses in the public university sector for sustainability of the sector. To address the challenges, Universities must institute the following measures for their sustainability: <ol style="list-style-type: none"> Each University must operate within its means by budgeting below the capitation received and revenue realised; The University Sector must right-size and restructure for sustainability by:

	<p><i>if in the opinion of the President he is satisfied that a public university/ public universities colleges/ a campus of a university is unable to contribute to the objectives of university education set out in section 3 of the Act and that a merger or closure is in the best interest of university education in Kenya.</i></p> <p><i>(2) The Cabinet Secretary shall only make such recommendations after the University has been afforded the opportunity to be heard and the Commission has, in accordance with the regulations, inspected the university concerned, and is satisfied that the university is unable to contribute to the objectives of university education set out in section 3 of the Act.</i></p> <p><i>(3) The Minister shall submit to the President any recommendations and representations received by him or her in terms of this section, together with any recommendations that he or she may wish to make in the matter: Provided that, before submitting any such recommendations or representations to the President, the Cabinet Secretary may require the Commission to conduct such further inquiry or make such further investigation into the matter as he or she may specify.</i></p>	<p>a) Rationalising the number of administrative posts and units. This is because every unit has a cost element attached to it. The costs include personnel and operational costs.</p> <p>b) Moving or stopping entirely, courses that are duplicated across many universities where a university does not have a competitive advantage or niche.</p> <p>c) Deploying post-graduate students to perform some of the functions supported by administrative staff, except functions such as the management of examinations and other sensitive records. This will build the capacity of students and prepare them adequately for their future roles in developing society.</p> <p>c) Universities should also prioritise research in order to attract funding locally, regionally and internationally;</p> <p>d) Automation as a cost mitigation and corruption prevention measure should be adopted;</p> <p>e) Review of fees charged should only be considered after public participation of all stakeholders (in this regard, it is imperative that the prevailing economic impact of COVID-19 on many households is taken into account in such an engagement); and</p> <p>f) There is a need to consider introducing new income generation streams. These may include charging fees for use of university facilities and utilizing the idle assets such as land for income generation purposes. Registration and commercialisation of patents is another way of monetising transformative research and addressing budgetary shortfalls.</p> <p>6. In light of the above, the Government will be available to support institutions that present a viable workplan on their sustainability.</p>
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		<p>(4) If the President is satisfied that it is in the interests of higher education in Kenya generally for the public university/ public universities colleges/ a campus of a university to merge or to be closed, the President may signify by publication his or her approval of the merger or closure of the public university/ public universities colleges/ a campus of a university in the gazette, specifying the date from which the public university/ public university colleges/ a campus of a university shall merge or cease to operate: Provided that the merger or closure of the public university/ public university colleges/ a campus of a university shall not affect the validity of any certificate, diplomas, degrees or other academic qualifications conferred or awarded by the public university(ies)/ public university colleges/ a campus of a university concerned before that date.</p>	
	<p>(5) The assets, liabilities, rights and obligations of the public university/ public university colleges/ a campus of a university concerned shall devolve upon the university which the merged in a manner agreed by the councils of the public university/ public university colleges concerned or failing such agreement, in a manner determined by the Cabinet Secretary after consulting</p>		

		<p>such councils.</p> <p>(6) If a public university/ public university colleges/ a campus of a university is closed under subsection (1), all assets and liabilities of such a public university/ public universities colleges/ a campus of a university must after closure be dealt with according to Law governing dissolution of public entities in Kenya.</p>	
Section 24 (Clause 7 of the Bill)		<p>7. The principal Act is amended in section 24(1) as follows—</p> <p>(1) The President, on the recommendation of the Commission through the Cabinet Secretary may by award of Charter, establish –</p>	<p>1. This section seeks to reduce the red-tape required to establish specialised degree awarding institutions by allocating that mandate to the Commission, the Cabinet Secretary and the President which applies in all cases on establishment of Universities and University Colleges; and</p> <p>2. It also paves the way for critical research institutions such as KEMRI, KALRO and others to specialise beyond research in specialised training and awarding of academic qualifications.</p>
Section 11(1)		<p>Delete 'of a university' to read as follows:</p> <p>(b) has at least ten years' experience in a senior management position.</p>	<p>1. The focus of management of a university only is limiting as it excludes other would-be qualified persons working outside the university environment but with similar experience and management competencies such as in research institutions, foundations and other corporate institutions supporting university education not to mention officers who have diligently worked and grown their careers in institutions such as Commission for University Education.</p>
New Clause on Section 6(1)	Delete Paragraph (f) and (g)	<p>Do not delete! This should be retained as provided in the current Act!</p>	<p>1. The role of the Commission goes beyond consideration of academic matters since CUE considers issues within the mandate of the Council.</p> <p>2. In addition, including Vice-Chancellors in the Commission that regulates them would create a conflict of interest from their role as university managers.</p> <p>Therefore, representation from Chairpersons should be retained in the Commission.</p>
New Clause	Addition of Section 23(3)	Do not add the new sub-sections!	<p>The role of statutes is paramount in establishing administrative organs in universities. The role of the Cabinet Secretary is to ensure that the Council</p>

on Section 23	and (4)		<p>proposals and financially viable (by liaising with Treasury on the same) and legal (by liaising with the AG's office for guidance) before they are gazetted. This process may not necessarily take three months. If they become operational and create a bloated administrative structure in a university without the consideration of the Ministry, Universities would be tantamount to collapse. Therefore, this proposed addendum should be struck out!</p>
Clause 12 of the Bill on Section 36(2)	Chair of Council to be a PhD degree holder and a member of Council to be a master's degree holder	Do not change! Retain the proposed amendment in the Bill!	<ol style="list-style-type: none"> 1. A council is not an academic organ. Academic issues are handled in Senate which requires the doctoral holders. Councils require candidates with extensive industry expertise most of whom may not have doctoral or master's qualifications but bring the benefit of their experience to university management. 2. Finally, most prolific PhD holders (and researchers) are either serving in universities or government which makes them ineligible for appointment. This significantly limits the pool of credible candidates who are expected to be identified from industry. <p>Therefore, if this provision is retained, the quality of University Councils will continue to decline.</p>
New Clause on Section 41	Delete 41(1C), (1D) and (1E)	Do not delete! This should be retained as provided in the current Act!	<ol style="list-style-type: none"> 1. Electoral colleges have brought stability from the previously unmanageable election by universal suffrage. 2. It has also allowed electoral candidates to work together through Coalitions in the spirit reflected by the new elections law Bill. Finally, it has incorporated more diversity in regional and gender balance. <p>Therefore, the electoral college approach to student elections should be retained.</p>
Clause 18 of the Bill	Section 54(5)	This should be amended to read as follows: The Board shall consist of— a) a chairperson being a person with at least ten years' experience in finance, education or investment, appointed by the President; b) the Principal Secretary in the Ministry responsible for Finance; c) the Principal Secretary in the Ministry responsible for University	<ol style="list-style-type: none"> 1. University Councils are responsible for approving budgets in universities therefore the membership of Chairpersons who oversee the approval of budgets and utilisation of the same by the University management led by Vice Chancellors should be retained in the membership of the Universities Funding Board. 2. Since the UFB considers University financing based on budgets considered and adopted by Councils, the representation of Chairs of Council should be maintained therein. <p>Representation of an advocate from the Office of the Attorney General would ensure that the Universities Fund gets sound legal advice from the Government entity in charge of advising government on legal issues.</p>

		<p>Education;</p> <p>d) the Chief Executive Officer of the Kenya Universities and colleges central Placement Service appointed under the Universities Act, 2012;</p> <p>e) one person representing the private sector;</p> <p>f) one person nominated by public universities in a forum of chairpersons of the Councils of public universities;</p> <p>g) one person nominated by private universities in a forum of chairpersons of the Councils of private universities; and</p> <p>h) an advocate of at least ten years' standing nominated by the Office of the Attorney General.</p>	
Clause 18 of the Bill	Section 54(9)(c)	<p>Amend to read as follows:</p> <p>c) apportion and disburse funds allocated by the national government to accredited public and private universities.</p>	<ol style="list-style-type: none"> 1. Empowering the Universities Fund to apportion and disburse funds will ensure alignment between the Universities needs and requirements which are presented, considered and processed by the Fund and ensure that the resources are disbursed in line with the allocation of government sponsored students whose allocation is also processed by the Fund. 2. The Ministry's role on establishing a policy and criteria for university funding is well vested in the Cabinet Secretary while the Universities Fund advises on and implements the determined Government policy on funding.
Clause 21 of the Bill	Section 55 (3) Paragraph f(i), f(ii) and (g)	<p>Amend to read as follows:</p> <p>(f)(i) one person nominated by public universities in a forum of chairpersons of the Councils of public universities;</p> <p>(f)(ii) one person nominated by private universities in a forum of chairpersons of the Councils of private universities;</p>	<ol style="list-style-type: none"> 1. Since oversight of universities is done by Councils, it is more expedient for the Chairpersons to nominate the suitable representative in the KUCCPS Board. 2. The University Council considers and processes the request for government sponsored students and should therefore be represented in the KUCCPS Board 3. Replace the word Director with Chief Executive Officer to ensure consistency and provide clarity avoid use of the terms, "Secretary" and Director interchangeably.

INTERNAL MEMO

The National Assembly

FROM: DIRECTOR, LEGISLATIVE & PROCEDURAL SERVICES

TO : DIRECTOR, DEPARTMENTAL COMMITTEES SERVICES

DATE: APRIL 06, 2021

SUBJECT: HARMONIZATION OF PROPOSED AMENDMENTS TO THE
UNIVERSITIES (AMENDMENT) BILL, 2021

The Hon. Speaker has directed that the attached proposed amendments to The Universities (Amendment) Bill, 2021 be committed to the Departmental Committee on Education, Research and Technology for harmonization before consideration at Committee of the whole House, pursuant to the provisions of Standing Order 131. (Winnowing)

The amendments attached herein are proposed by the following:-

- 1) The Cabinet Secretary for Ministry of Education;
- 2) The Hon. Owen Yaa Baya, M.P.;
- 3) The Hon. Didmus Barasa, M.P.;
- 4) The Hon. John Kiarie, M.P.;
- 5) The Hon. David Sankonk, M.P.;
- 6) The Hon. Robert Pukose, M.P.;
- 7) The Hon. Silvanus Osoro, M.P.; and
- 8) The Hon. George G. Murugara, M.P.



This is therefore to request that you bring this matter to the attention of the Committee.


S. NJOROGE

Copy to: -

- ✓ D/Clerk, (H.A)
- ✓ Director, Legal Services

//Encl.

17th February, 2022

The Clerk of the National Assembly
Parliament Buildings
NAIROBI

*Hon. Speaker
The Deputy Speaker
30.3.2022*

Approved.

*Blair
SNA
5/4/2022*

**RE: COMMITTEE STAGE AMENDMENTS- THE UNIVERSITIES (AMENDMENT)
BILL, 2021**

NOTICE is given that Hon. Florence Mutua M.P., Chairperson of the Departmental Committee on Education and Research, intends to move the following amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bills No. 35 of 2021) at the Committee Stage—

NEW CLAUSE

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

Amendment of section 6 of No.42 of 2012.

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

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

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

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

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

NEW CLAUSE

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

Amendment of section 23 of No.42 of 2012.

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

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

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

CLAUSE 7

THAT the Bill be amended by deleting clause 7.

CLAUSE 9

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

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

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

CLAUSE 11

THAT clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

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

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

CLAUSE 12

THAT, clause 12 of the Bill be amended in paragraph (a) by—

(a) deleting paragraph (a) appearing in the new subsection (2) and substituting therefore the following new paragraph—

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

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

CLAUSE 13

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

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

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

(b) deleting subsection (2).

CLAUSE 14

THAT clause 14 of the Bill be amended—

(a) in paragraph (b) by inserting the words "as appraised by the Council" immediately after the words "satisfactory performance" appearing in the proposed new subsection (3);

(b) in paragraph (c) by deleting the words "appointment of" appearing in the proposed new subsection (5);

NEW CLAUSE

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

Amendment
of section 41
of No.42 of
2012.

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

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

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

(b) deleting subsection (1C);

(c) deleting subsection (1D);

(d) deleting subsection (1E);

CLAUSE 18

THAT clause 18 of the Bill be amended in the proposed new section 54—

(a) in subsection 5—

- (i) by deleting the word “competitively” appearing in paragraph (e);
- (ii) by deleting paragraph (g) and substituting therefor the following new paragraph—

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

- (iii) by deleting paragraph (h) and substituting therefor the following new paragraph—

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

(b) in subsection (9) by—

- (i) inserting the following new paragraph immediately after paragraph (c)—

(ca) apportion funds allocated by the national government to private universities for tuition fees for government sponsored students in Kenyan universities;

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

CLAUSE 19

THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3)—

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

CLAUSE 21

THAT clause 21 of the Bill be amended in the proposed new subsection (3) by deleting paragraph (f) and substituting therefor the following new paragraphs—

(f) four other persons appointed by the Cabinet Secretary, being—

- (i) one Vice-Chancellor representing public universities nominated by a forum of Vice-Chancellors of public universities;
- (ii) one Vice-Chancellor representing private universities nominated by a forum of Vice-Chancellors of private universities;
- (iii) one representative of the Kenya Association of Technical Training Institutions; and
- (iv) one person with ten years' experience in management of education;

(g) the Director, who shall be an *ex-officio* member.

NEW SCHEDULE

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

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

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

SECOND SCHEDULE

THAT, the Bill be amended by renaming the Second Schedule as the Third Schedule.

FOURTH SCHEDULE

THAT, the Fourth Schedule to the Bill be amended—

- (a) by deleting the words “PRINCIPALS AND DEPUTY PRINCIPALS “ appearing in the heading;
- (b) in paragraph 1 by deleting the words “ or Principal and Deputy Principal of a Constituent College, the Cabinet Secretary” appearing after the words “public university” and substituting therefore the words “the Council”;
- (c) in paragraph 2(1) by—
 - (i) deleting the phrase “subsection (2)” and substituting therefor the phrase “subsection (1)” ;
 - (ii) deleting sub-paragraph (a) and substituting therefor the following new subparagraph—
 - (a) a chairperson being a scholar with the rank of a full professor;
 - (iii) deleting sub-paragraph (b).
- (d) in paragraph 4 by—
 - (i) deleting the word “three” appearing in sub-paragraph (c) and substituting therefore the word “five”;
 - (ii) by deleting the words “Cabinet Secretary” appearing in sub-paragraph (d) and substituting therefor the word “Council”;
- (e) by inserting the following new paragraph immediately after paragraph 4—

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

Dated the 10TH OF FEBRUARY 2022



HON. FLORENCE MUTUA, CBS, MP,

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION &
RESEARCH



Hon. Owen Yaa Baya, MP.

Kilifi North Constituency

Member, Departmental Committee on Lands

Member, Committee on Implementation

Parliament Buildings
Tel: +254 20 2221291
P. O. Box 41842 - 00100 Nairobi, Kenya

Continental House 1st Flr. Rm. 117
Mobile: +254 722 537 381
Email: owenbaya71@gmail.com

5th April, 2022

The Clerk,
National Assembly,
Parliament Building,
P.O Box 41842-00100
NAIROBI

DL&P
Proceed with
5/4/22

RE: COMMITTEE STAGE AMENDMENTS TO THE UNIVERSITIES
(AMENDMENT) BILL,2021

NOTICE is given that the Hon. Owen Baya, MP, Kilifi North Constituency intends to move the following amendments to the University (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021) at the committee stage--

NEW CLAUSE

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

Amendment of Section 23 of No.42 of 2012

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

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

No. 23 of 2013

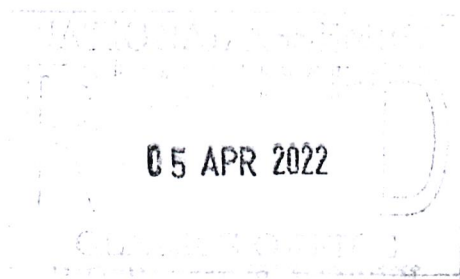
(4) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the statutory instruments Act, 2013.

CLAUSE 7

THAT the Bill be amended by deleting clause 7 and substituting therefore the following new clause---

Amendment of section 24

7. Section 24 of the principal Act is amended--



- of No.42 of
- (a) in subsection (1) by deleting the word "parliament" and substituting therefor the word "the National Assembly"
 - (b) by inserting the following new subsections immediately after subsection (2)--
 - (2A) The provisions of parts V of this Act shall apply with the necessary modification to the institutions established under this section.
 - (2B) A charter granted to an institution under this section shall outline the condition under which the institution shall operate and set out a clearly defined mandate with regard to specified academic programmes.

Hon. OWEN BAYA, MP.

Baya

Hon. Speaker
You may approve

MP 5/04/2022

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

Approved
BNA
SNA
5/4/2022

29th March, 2022

**RE: COMMITTEE STAGE AMENDMENTS TO THE UNIVERSITIES
(AMENDMENT) BILL, 2021**

NOTICE is given that the Hon. Didmus Barasa, MP, Kimilili Constituency intends to move the following amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021) at the Committee Stage—

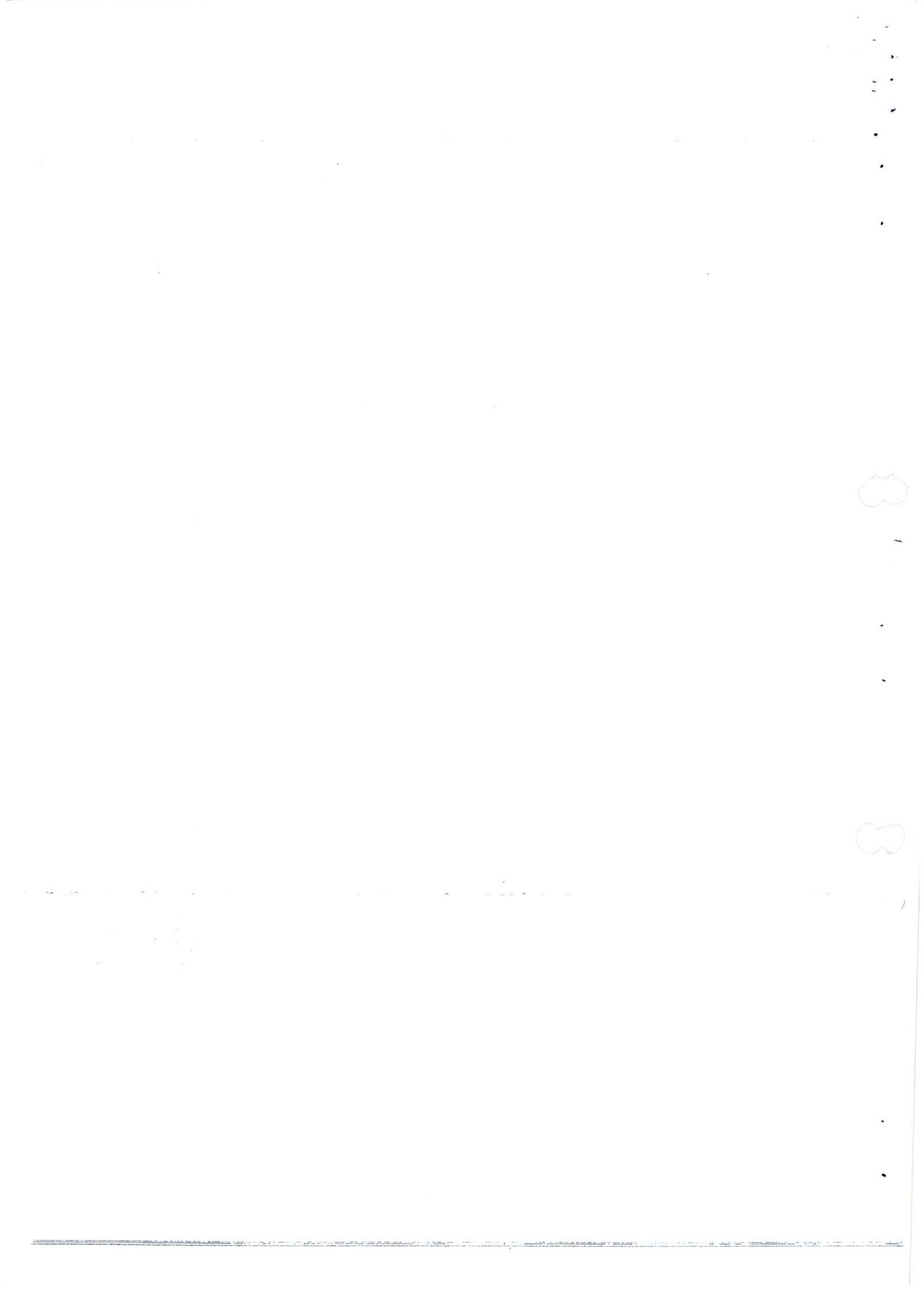
CLAUSE 21

THAT, clause 21 of the Bill be amended in the proposed new sub-section (3)(f) —

- (a) by deleting the word “one” appearing in sub-paragraph (i) and substituting therefor the word “two”; and
- (b) by deleting sub-paragraph (ii).

 Makes a

Hon. Didmus Barasa, MP



Hon. Speaker
You may approve

1170
5/04/2022

Approved.

RA
SNA
5/4/2022

29th March, 2022

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

**RE: COMMITTEE STAGE AMENDMENTS TO THE UNIVERSITIES
(AMENDMENT) BILL, 2021**

NOTICE is given that the Hon. John Kiarie, MP, Dagoretti South Constituency intends to move the following amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021) at the Committee Stage—

CLAUSE 19

THAT, clause 19 of the Bill be amended in the proposed new section 54A by inserting the following new subsection immediately after subsection (3) —

(4) The Chief Executive Officer of the Fund shall hold office for a term of five years, renewable once.



Hon. John Kiarie, MP

Hon. Speaker

You may approve

MP
H/O 5/04/2022

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

Approved

BNA

5/4/2022

29th March, 2022

**RE: COMMITTEE STAGE AMENDMENTS TO THE UNIVERSITIES
(AMENDMENT) BILL, 2021**

NOTICE is given that the Hon. David Ole Sankok, MP, intends to move the following amendment to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021) at the Committee Stage—

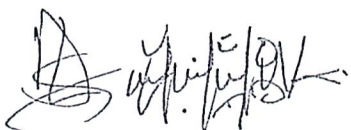
CLAUSE 2

THAT the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Amendment of section 2 of No.42 of 2012. 2. Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended by—

- (a) in the definition of the term “differentiated unit cost” by inserting the words “approved by the Commission” immediately after the words “degree programme”;
- (b) in the definition of the term “statutes” by inserting the words “under section 23” immediately after the words “university council”;
- (c) deleting the definition of the term “Trustees”.

Hon. David Ole Sankok, MP



5/4/2022 at

10/1/20

Hon. Speaker
You may approve
MP
H/O
5/04/22

Approved.
Blal SWA
5/4/2022
29th March, 2022

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

RE: COMMITTEE STAGE AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL, 2021 .

NOTICE is given that the Hon. Robert Pukose, MP, Endebess Constituency intends to move the following amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021) at the Committee Stage—

CLAUSE 9

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

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

9. The principal Act is amended by repealing section 26 and substituting therefor the following new section—

Universities in Counties.

26. The Commission shall ensure accessibility of public universities by all counties, giving priority to—
- (a) viability and equitability in the distribution of public universities across the country;
 - (b) underserved and marginalized areas; or
 - (c) such other factors as the Commission may determine.

CLAUSE 11

THAT Clause 11 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph —

(b) in subsection (1)(v), by deleting the words “in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission” and substitute therefor the words “after a competitive process conducted by the Council”.



Hon. Robert Pukose, MP

5/4/2022

Hon. Speaker
You may approve
MP HTO
05/04/2022

Approved.
SN A
5/4/2022
29th March, 2022

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

**RE: COMMITTEE STAGE AMENDMENTS TO THE UNIVERSITIES
(AMENDMENT) BILL, 2021**

NOTICE is given that the Hon. Silvanus Osoro, MP, South Mugirango Constituency intends to move the following amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021) at the Committee Stage—

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 20—

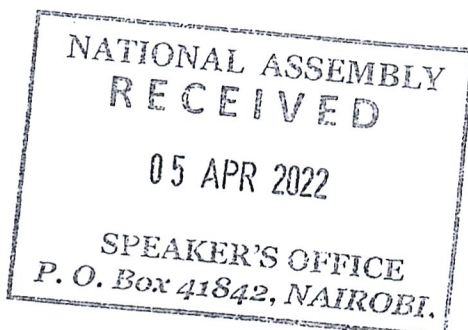
Insertion of a new section into No. 42 of 2012.

20A. The principal Act is amended by inserting the following new section immediately after section 54C—

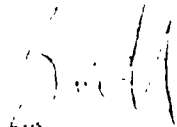
Fund for research and innovation by Public Universities.

54D. (1) The Cabinet Secretary for National Treasury shall, within six months of commencement of this section, establish a Fund for allocation of grants to public universities—

- (a) to undertake research on various thematic areas;
- (b) to establish innovation hubs;
- (c) to recommend public policy solutions to social economic issues affecting the country;
- (d) to assist in the development of public policy for implementation by the national government;
- (e) to assist in the formulation of effective public policy implementation strategies; and
- (f) perform any other function related to research and innovation as the Cabinet Secretary may determine.



(2) The Cabinet Secretary shall prescribe regulations for the implementation of this section


Hon. Silvanus Osofo, MP

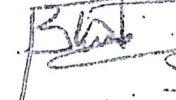
Hon. Speaker

✓/on may approve



HTO
05.04.2022

Approved


SNA
5/4/2022

29th March, 2022

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

**RE: COMMITTEE STAGE AMENDMENTS TO THE UNIVERSITIES
(AMENDMENT) BILL, 2021.**

NOTICE is given that the Hon. George Gitonga, Murugara, MP, Tharaka Constituency intends to move the following amendments to the Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021) at the Committee Stage—

CLAUSE 12

THAT clause 12 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraphs —

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

(1) The council of a public university or constituent college of such a university shall consist of—

- (a) a chairperson appointed by the President;
- (b) three other persons appointed by the President;
- (c) the Principal Secretary in the Ministry for the time being responsible for the university education;
- (d) the Principal Secretary in the Ministry for the time being responsible for Finance;
- (e) two persons nominated by the Alumni Association of a university to represent the Alumni Association;

(f) two persons not being public officers nominated by the Alumni Association of a university to represent the parents of the students in a university, the public and the special interests' groups;

(g) two persons nominated by the Alumni Association of a university to represent the staff of a university; and

(h) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an ex officio member of the Council.

(1A) Subject to subsection (2), the persons appointed under subsection (1)(a) and (b) shall be appointed by the President, through a competitive process.

(1B) Despite subsection (1), the Vice-Chancellor of a public university shall be an ex-officio member of the councils of the constituent colleges of that university.

(b) by deleting subsection (1A);

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

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

(a) in the case of chairperson, the person holds—

(i) a doctorate degree from a university recognized in Kenya;
and

(ii) has at least fourteen years' experience in a senior management position; or

(b) in the case of a member, the person holds—

(i) a masters' degree from a university recognized in Kenya;
and

(ii) has at least ten years' experience in a senior management position; or

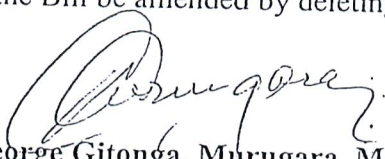
(iii) a bachelor's degree from a university recognized in Kenya; and

(iv) has at least fifteen years' experience in a senior management position.

(d) in subsection (3), by deleting the words "appointing authority" and substituting therefor the words "appointing and nominating authorities".

CLAUSE 13

THAT the Bill be amended by deleting clause 13.


Hon. George Gitonga, Murugara, MP

MP T HARARA

5. 4. 022

SUBMISSIONS FROM STAKEHOLDERS



SOUTH EASTERN KENYA UNIVERSITY

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Email: info@seku.ac.ke

OFFICE OF THE VICE-CHANCELLOR

28th April, 2022

Your Ref: NA/DDC/EDU/2021/016

Our Ref: VCs/CORRES./VOL. X

The Clerk,
The National Assembly,
NAIROBI.
Attn: Peter K. Chemweno


“ADVANCE COPY BY EMAIL”

RE: SUBMISSION OF MEMORANDUM ON THE PROPOSED AMENDMENTS TO THE UNIVERSITIES (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 35 OF 2021)

We make reference to the above captioned matter as well as your letter dated 20th April, 2022 and note the contents thereof.

Consequently, the Vice-Chancellors and Principals of Constituent College of Public Universities at a meeting held on 24th April, 2022 made the attached comments of the *Universities (Amendment) Bill* hereof. Kindly acknowledge receipt by return.

Kindly revert to the undersigned on any clarification that you may require on the report herein.


PROF. GEOFFREY MULUVI, PH.D,
CHAIRPERSON, VICE-CHANCELLORS' COMMITTEE, AND
VICE-CHANCELLOR, SOUTH EASTERN KENYA UNIVERSITY,
KITUI.

Copy to: Vice-Chancellors of Public Universities and Principals of Constituent Colleges

GMM /rkk

Page 1 of 4





SOUTH EASTERN KENYA UNIVERSITY

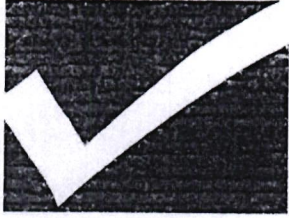
Review of the Universities Act: Public Universities Recommendations by the Vice-Chancellors' Committee

S/NO.	SECTION TO PROPOSED TO BE AMENDED	RESOLUTION(S) AND RECOMMENDATION(S)
	I. SECTION 22(B) - CLOSURE AND/OR MERGER OF PUBLIC UNIVERSITIES	
1.	To amend the Universities Act by inserting a new section 22B on the closure and/or merger of universities	<ol style="list-style-type: none"> 1. It is noted by the Public Universities that Universities continue to support the Government initiative of 100% transition from basic (primary and secondary) education to University level. 2. That the Government should consider increasing the University admissions from the current transition from Secondary, which is presently about 15% (making it about 143,000 students out of more than 850, 000 that sat for KCSE) to about three hundred thousand (300,000) students. 3. That the foregoing can only be attained and achieved through the expansion of the current Universities, the facilities and infrastructure. 4. In addition right now the young universities started in 2012/2013 have about 10,000-20,000 students per institution. 5. A university of 30,000 students is already very large and difficult to manage 6. Public universities despite the financial challenges are ranked the best among state corporations as evidenced by the 2020/2021 performance

		<p>contracting results announced this week. In the top 10 we have 6 universities.</p> <p>7. The challenges facing the universities will not be resolved by the so called mergers. The root cause is the insufficient funding the universities are receiving from the exchequer.</p> <p>8. In addition, it is noted that the <i>Universities Act, 2012</i> has provided for the noble aspiration of one Public University in each County and therefore this would negate the spirit and the letter of the law.</p> <p>9. This proposal is <i>sub judice</i> since this matter is in court <i>vide Employment and Labour Relations Court Cause No. 144/2019</i>, in which the Universities' Academic Staff Union (UASU) had moved to Court to stop the proposed mergers by the Ministry of Education and IPUCCF is the 2nd Interested Party. The proceedings remain in court and the matter has not been determined.</p>
II. SECTION 36(2) OF THE UNIVERSITIES ACT ON THE QUALIFICATIONS OF CHAIRPERSON OF COUNCIL		
<p>1. Chairperson of Council to be a PhD holder and a Member of Council to be a master's degree holder</p>		<p>1. The proposed amendment would lower the qualifications for Chairpersons. However, the Chairperson of Council should be an earned PhD degree holder and/or a Kenyan (full) Professor and has vast experience in research which is one of the key functions of the University.</p> <p>2. It is important to ensure that the qualifications of the Council Chairperson match that of the senior management.</p> <p>3. The Vice-Chancellors' Committee is in support of the Chairpersons of Council and therefore vacate their earlier recommendations of a Master's degree as the highest qualification for the Chairperson of University Council.</p>
III. FUNDING OF PRIVATE UNIVERSITIES BY THE GOVERNMENT		
<p>2. Funding of Private Universities by the Government from public funds</p>		<p>Recommendation: That the Government should not fund the Private Universities at the expense of Public Universities.</p>
IV. REPRESENTATION OF THE VICE-CHANCELLORS' COMMITTEE IN THE COMMISSION/BOARDS UNDER THE UNIVERSITIES ACT		
<p>3. Representation by Public Universities is stipulated under in detail as follows:-</p>		<p>1. The Vice-Chancellors and Principals are the heads of academic matters at the Universities and having them sit in the Commission/Boards will resonate with their role as the Chairperson of Senate of the respective</p>

	<ul style="list-style-type: none"> • For the Commission for University (CUE) under Section 6 of the Universities Act • For the Universities Fund Board (UFB) under Section 54 of the Universities Act • For the Kenya Universities and Colleges Central Placement Service (KUCCPS) under Section 55 of the Universities Act 	<p>Universities and/or head of the College Academic Board of the University College.</p> <ol style="list-style-type: none"> 2. Thus, it is imperative that the representative to these Commission/Boards is a nominee of the Vice-Chancellors' forum of Public Universities as the Vice-Chancellors and Principals oversee as academic programs in the Universities. 3. Furthermore, the Vice-Chancellors and Principals are the accounting officers of the Universities and having them sit in the Commission/Boards will resonate with their role as the Chief Executive Officers of the respective Universities.
V. APPOINTMENT OF VICE-CHANCELLORS, PRINCIPALS, DEPUTY VICE-CHANCELLORS, AND DEPUTY PRINCIPALS		
<p>4.</p>	<p>Amendment contained in Clause 11 in the Bill as read with Sections 35 and 39 of the Universities Act.</p>	<ul style="list-style-type: none"> • The recommendations by Hon. Robert Pukose, MP are supported, as captured hereunder viz.:- (b) in subsection (1)(v), by deleting the words "in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission" and substitute therefor the words "after a competitive process conducted by the Council". <p>Reason for supporting the position of the Hon. MP:-</p> <ul style="list-style-type: none"> • There is no justifiable reason for material departure of Universities from the cardinal national value of good governance practises enshrined in the Kenyan Constitution, 2010, the State Corporations Act and encapsulated in the Mwongozo: Code of Governance for State Corporations that the Top Management in the form of the Vice-Chancellors, Principals, Deputy Vice-Chancellors, and Deputy Principals should be appointed with the other officers of the Universities by the Council, internally. • The Councils are charged with providing strategic direction for the institutions and should therefore recommend the Vice-Chancellors, Principals, Deputy Vice-Chancellors, and Deputy Principals for appointment by the Ministry. This is by forwarding the names of the top three (3) candidates to be endorsed by the Cabinet Secretary, Ministry of Education.





KENYA ASSOCIATION OF PRIVATE UNIVERSITIES (KAPU)

May 11, 2022

The Clerk
National Assembly of the Republic of Kenya
Parliament Buildings
Parliament Road,
NAIROBI, KENYA

Dear Sir,

Re: Proposals by Kenya Association of Private Universities On the Universities (Amendment) Bill, 2021

Find below a document outlining the proposals by Kenya Association of Private Universities with regard to the *Universities (Amendment) Bill, 2021*. The document is in two parts as follows:

Section A: Proposals/Recommendations by the Kenya Association of Private Universities and their rationale on the same.

Section B: Honourable Members of Parliament reactions to the proposals and the position of Kenya Association of Private Universities on the same.

Kindly acknowledge receipt of this document.

Thank you.

Yours Sincerely

Paul Wakhanya

for
Very Rev. Prof. Stephen Mbugua Ngari,
Chair, Kenya Association of Private Universities and
Vice-Chancellor, Catholic University of Eastern Africa

cc: KAPU Executive Committee

**PROPOSALS BY KENYA ASSOCIATION OF PRIVATE UNIVERSITIES ON THE
UNIVERSITIES (AMENDMENT) BILL, 2021**

PART A

ITEM	SECTION OF THE BILL	PROPOSAL BY THE PRIVATE UNIVERSITIES	RECOMMENDATION	RATIONALE
1.	Clause 2 of the Bill	Section 2 of the Act Add Definition of 'Conditional grant'	Add paragraph to read as follows: <i>'Conditional grant'</i> means Targeted funding by the University Funding Board (UFB) to private universities for purposes of budgetary support, research development and innovations that are of interest to the people of Kenya.	<ol style="list-style-type: none"> 1. The term has been used repeatedly in the Bill but not defined.(s.54) 2. Private Universities play a crucial role in the advancement, growth and development of the Country. 3. There is need to ensure stability of education in Kenya. 4. UFB should operate emergency funds.
2.	Clause 18	Section 54 (4) Add paragraph (g) on the powers of the Board	Amend by including paragraph to read as follows: <i>(g) provide conditional grants to private universities</i>	<ol style="list-style-type: none"> 1. This may help to ensure enhance the robustness of significant aspects of the university education that is of interest to the people of Kenya.
2.	Clause 18 of the Bill	Section 54 (9) b After public add 'and private'	Amend to read as follows; " In consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public and private universities and issue conditional grants to private universities	<ol style="list-style-type: none"> 1. Students are allocated to both public and private universities to ensure a larger access of choice to all. 2. The Definition of Conditional grants was not provided in the Bill. This amendment will seek to define

				what conditional grants is.
3.	Clause 18	Section 54 (9) c Add ' <i>and private</i> ' after ' <i>public</i> '	Amend to read as follows: "Apportion funds allocated by national government to public and private universities and issue conditional grants to private universities"	Same rationale as item 2 above.
4.	Clause 18	Section 54 (9) d	Amend to read as follows: In Consultation with the chairpersons of public and private universities, propose and establish for approval by the Cabinet Secretary , the differentiated unit cost for the programmes offered by each subject area	<ol style="list-style-type: none"> 1. This will ease the availability of resources for students. 2. Money should follow the student whether in public or private university. 3. This will reduce the instances where private universities are treated differently to public university in terms of costing

PART B

REACTIONS TO PROPOSALS BY HONOURABLE MEMBERS OF PARLIAMENT

ITEM NO:	PROPOSER AND PARTICULARS OF THE AMENDMENT	THE POSITION OF KENYA ASSOCIATION OF PRIVATE UNIVERSITIES	RATIONALE
1.	Hon. Didmus Barasa, Mp Amendments on Clause 21 (3) f a. Deletion of the word "one" appearing in sub paragraph (i)	Opposed to this proposition. Clause 21 (3) f of the Bill should remain as is in the Bill.	<ol style="list-style-type: none"> 1. The proposal discriminates against private universities. 2. The placement Board serves both public and private Universities

	<p>and substitution therefore the word "two", and</p> <p>b By deleting sub paragraph (ii)</p>		<p>and is a Kenyan entity not a single sector entity.</p> <p>3. Students are placed in both public and private entities.</p>
2.	<p>Hon. Owen baya, MP</p> <p>Introduction of a new Clause immediately after Clause 6.</p> <p>^A. Section 23 of the principal Act is amended by inserting the following new subsections immediately after subsection (2)-</p> <p>(3) The cabinet Secretary shall, not later than three months after submission of a Statute or regulation under this section by a university, cause it to be published in Gazette</p> <p>(4) The statutes or regulations made under this section shall be considered by the National Assembly in accordance with the statutory instruments Act,2013</p>	<p>The inclusion of Section 23 (3) is acceptable.</p> <p>The Inclusion of 23 (4) is not acceptable to private universities</p>	<p>1. Whilst the universities were obligated to submit the statutes and regulations to the Cabinet Secretary, no timeline had been placed on the ministry for publication upon receipt of the same.</p> <p>2. The proposed amendment does not draw a distinction between private and public universities.</p> <p>3. If parliament is allowed to scrutinize the statutes of private universities it would erode the very character of private universities.</p> <p>4. The same contradicts Section 35 (2) of the Act</p>
3.	<p>Hon. John Kiarie, MP</p> <p>Clause 19</p> <p>THAT, Clause 19 of the Bill be amended in the proposed new section 54 by inserting the following new subsection immediately after subsection (3)</p> <p>(4) The Chief Executive officer of the fund shall hold office for a term of five years, renewable once</p>	<p>No objections to the inclusion</p>	
4.	<p>Hon. David Ole Sankok, MP</p> <p>Clause 2</p>	<p>Not opposed</p>	



NATIONAL ASSOCIATION OF PRIVATE UNIVERSITIES IN KENYA (NAPUK)

Union Tower, Moi Avenue, 11th Floor
Tel: +254 709 153 320

P.O Box 13495-00100 NAIROBI
Email:napuk.kenya@gmail.com

Honourable Micheal Sialai, EBS
The Clerk of the National Assembly
P.O Box 41842 -00100
NAIROBI

REF: NA/DDC/EDU/2021/016

DLP
DIDC
DLS
25th April 2022

26/4/22

Dear Hon. M. Sialai, EBS

REF: THE UNIVERSITIES (AMENDMENT) BILL 2021 NO. 35 OF 2021

Above matter refers:

As a response to your letter dated 20th April, 2022 Ref : NA/DDC/EDU/2021/016 informing stakeholders to submit memoranda on the referred subject the National Association of Private Universities in Kenya (NAPUK) wishes to present a matrix of the memorandum for your kind consideration.

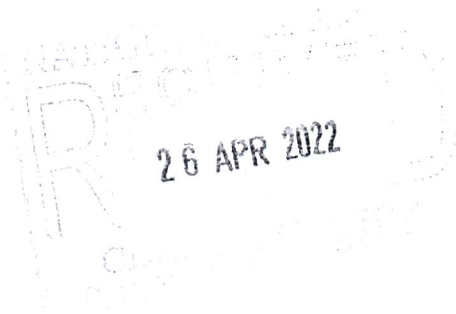
Thank you.

Your Sincerely,

Dr. Vincent G. Gaitho, PhD

Secretary - General

The National Association of Private Universities in Kenya(NAPUK)



PROPOSALS TO THE UNIVERSITIES (AMENDMENT) BILL 2021

SECTION	COMMITTEE PROPOSAL	MEMBERS PROPOSAL	MOE PROPOSAL	NAPUK PROPOSAL	JUSTIFICATION
New Clause on Section 41	Delete 41 (1C), (1D) and 1(E)		Do not delete! This should be retained as provided in the current Act!	Do not delete	As narrated by MOE
Clause 21 Of the Bill	Section 55 (3) Paragraph f(i), f(ii), and (g)	NOTICE by Hon. Didmus Barasa, MP	Amend (f) (i) and (f) (ii)	In concurrence with MOE NOTICE by the Hon. MP discriminative. Increasing the Vice-Chancellors representing Public Universities to 2 and removing the representation of Vice-Chancellors representing Private Universities. This should be disregarded.	NOTICE to expand the representation of Public university sector in the said institution by totally ignoring the relevance of the Private sector; which is a major player in the space is both discriminative and in bad faith
		NOTICE by Hon.		That the proposed Clause be amended by	In Kenya, there is recognition of Chartered Universities; both public and private.

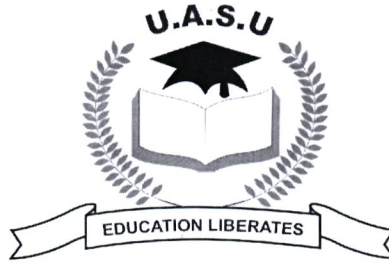
NAPUK 

Clause 2 of the Bill	Hon. David Ole Sankok, MP		Definition of differentiated unit cost is adequate as per the Act	Definition of differentiated unit cost is adequate as per the Act
Clause 9 of the Bill	Hon. Robert Pukose, MP		The provision in the Bill is adequate and does not require further amendment	The provision in the Bill incorporates the proposals by the Hon. MP
Clause 11 of the Bill	Hon. Robert Pukose, MP		The provision in the Bill is adequate and does not require further amendment	The provision in the Bill incorporates the proposals by the Hon. MP
New Clause	Hon. Silvanus Osoro, MP		New Section 54C – This is redundant since these functions are domiciled under the Universities Funding Board	Refer to the functions of the Universities Funding Board
Clause 12 of the Bill	Hon. George Gitonga Murugara, MP		The provisions in the current Act and Bill on the appointment of Councils are sufficient and do not require further amendment.	The provisions in the current Act and Bill on the appointment of Councils are sufficient and do not require further amendment.

Memorandum Presented by

National Association of Private Universities in Kenya (NAPUK)





UNIVERSITIES ACADEMIC STAFF UNION (UASU)

STATEMENT OF DR. CONSTANTINE WASONGA,

UASU NATIONAL SECRETARY GENERAL

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

FRIDAY, 13TH MAY 2022

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

Introduction

1. The Universities' Academic Staff Union (UASU) highly welcomes and appreciates the opportunity accorded by the National Assembly to make comments on the on the proposed amendments to the Universities' Act 2012.
2. The Universities (Amendment) Bill, 2021 (National Assembly Bill No.35), seeks to amend various provisions of the Universities' Act 2012 including sections 23, 24, 26, 36, 39, 54, 55 and 58 and the Schedules thereto.
3. We reiterate and adopt our submissions of 28th October 2021 and submit as follows in regard to further amendments proposed after the Second Reading of the Bill.

Timing of Further Amendments

4. We are concerned by the nature, breadth, depth and legislative impact of the proposed new amendments to the Bill emanating from outside of Parliament after a Second Reading of the Bill.

The concerns stem from the following:

- (i) As you are well aware, in Parliamentary Legislative Practice in Kenya and the rest of the Commonwealth, the Standing Order 131 does not anticipate that new proposed amendments originate from **outside** the House **after the Second Reading**. Consequently, any such amendment should ideally be disregarded and should not be moved by the Chairperson or any member of this Honourable Committee in the Committee of the Whole House.
- (ii) The nature of some of the proposed amendments such as proposed merger or closure of public universities are very weighty matters and should be accompanied by a policy discussing in detail the rationale, possible impacts on the youth, students, staff, counties and the nation.
- (iii) Any policy proposing merger or closure of public universities requires the report of a **Task Force** that has undertaken a comprehensive research with commensurate public participation all over the country before the matter is brought before the House for consideration and legislation.
- (iv) The legislative framework for creation of new public universities is a towering legacy of the late Former President HE Mwai Kibaki and should not be undone through a process devoid of public participation or adequate scrutiny, as is happening now during the busy electioneering period.
- (v) The manner in which the new proposals are drafted, including the exclamation marks that leave no room for opposition, appears to be the diktat of the International Monetary Fund (IMF) directing the august House on how to conduct its business.

5. UASU makes the following recommendations:

Table 1 - UASU Proposals

	Current Provision	Committee Proposal	UASU Proposal	Justification
<p>Clause 9 of the Bill</p>	<p>Universities in Counties 26. The Commission shall ensure the establishment of public universities in each of the Counties, giving priority to Counties that do not have universities immediately after following the coming into force of this Act.</p>	<p>26. The Commission may establish public universities in each of the counties taking into consideration their viability in the distribution of public universities across the country</p>	<p>Retain the current provision in the Principal Act</p>	<p><i>Retain the current provision (reject the proposed amendment). The proposed amendment: (i) affects Counties and should therefore be considered by Senate in addition to the National Assembly; (ii) will open the door to merger of public universities in violation of pre-existing Court Orders; (iii) favours counties with established public universities;</i></p>

<p>Section 22B</p>	<p>-</p>	<p>The MoE proposes closure or merger of universities</p>	<p>Reject</p>	<p><i>Section 26 is the safeguard against closure of public universities, an unpopular measure widely known to be pushed by IMF. Parliament should reject.</i></p> <p><i>Note that under the proposals closure of the universities is transferred to the Executive, to the exclusion of Parliament, which is a typical IMF modus operandi; as it is easier to push Executive by holding back funding unless demands are met.</i></p> <p><i>Parliament should be careful and protect the public. To amend Clause 26, and introduce Clause 22B gives out our birthright and we risk becoming external observers.</i></p> <p><i>There exists a conservatory Order in ELRC Petition NO. 144 of 2019 against the CS Ministry of Education and the Attorney General who are enjoined as Respondents. This matter is still pending in court and cannot be discussed as it will be subjudice.</i></p>
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<p>Section 6(1)</p>	<p>Membership of the Commission</p>		<p>We propose an additional member nominated by the Universities Academic Staff Union (UASU) to be a member of the Commission for Universities Education (CUE)</p>	<p><i>This would create balance in the Commission as currently Employers are overrepresented by FKE as well as Chairpersons of Councils of universities.</i></p> <p><i>The Commission will benefit tremendously through representation of the voice of the Academic Staff Union as CUE deals with matters that affect the learning environment.</i></p> <p><i>The input of the Union is important in matters academic.</i></p>
<p>Section 11(1)</p>	<p>Qualification for the Secretary to the Commission</p>	<p>The proposal to is to change the requirement for a person to have at least 10 years' experience in the management of a university to be appointed as Secretary to the Commission for University Education</p>	<p>The requirement of experience in the management of a university should be retained</p>	<p><i>The requirement is essential for the Secretary of the commission includes accreditation of programs, quality control and granting authority to foreign universities seeking to collaborate with local universities. The knowledge of the operations of the university system is mandatory.</i></p>

<p>Clause 12 of the Bill on Section 36(2)</p>	<p>Council of a public university 36. (1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—</p>		<p>The Universities Academic Staff Union (UASU) should nominate a representative to the University Council. Additionally, Chair of Council should be a PhD holder</p>	<p><i>Representation by academic staff in the Council is practice that was available in the statutes that were repealed by the Universities Act 2012 and is a good practice worldwide. Comparatively the basic education Act has allowed a teacher to sit on the Board of Management in tandem with international instruments which Kenya is a signatory. It is imperative that the union has representation in the council.</i></p> <p><i>We support the Chair of Council to be a PhD holder, as the Council members interview PhD holders for appointment and promotion. It is usually very difficult to have those without academic credentials properly evaluate those suitable for academic positions when Council members themselves do not have similar qualifications.</i></p>
<p>New Clause on Section 41</p>		<p>Delete Sections IC, 1D and 1E</p>	<p>Committee proposals supported</p>	<p><i>UASU supports universal suffrage in election of student leaders which upholds free, fair and transparent elections without interference from the management of the university. The University Management should only develop guidelines to facilitate the process.</i></p>

<p>Clause 18 of the Bill</p>	<p>Section 54 (9)</p>	<p>the</p>	<p>Delete any reference to funding of private universities.</p> <p>Delete the phrase “and issue conditional grants to private universities;” in the current provisions (of the Principal Act) and reject the proposed provisions.</p> <p>UASU supports that the Universities Funding Board should manage and disburse funds to public universities only</p>	<p><i>Handing over public funds to private entities removes oversight of Parliament and Auditor General over funds drawn from the Consolidated Fund. This is a great anomaly and should be rectified by the House.</i></p> <p><i>Public funds should not be used to generate profits for profit making private universities.</i></p> <p><i>Public universities have requisite capacity to train all government-sponsored students.</i></p> <p><i>The Government should only sponsor students in the public universities.</i></p> <p><i>Student who opt to undertake education at private universities should do so under self-sponsorship.</i></p> <p><i>Moreover there is no framework to enable the Office of the Auditor General hold private universities accountable for such public funds.</i></p> <p><i>It will ensure efficiency, transparency and accountability in the disbursement and management of university funds.</i></p>
<p>Section 54(9) (c) Function of the Universities Funding Board</p>				

<p>Clause 21 of the Bill</p>	<p>Section 55(3) Section 55(3) The Service shall be governed by the Placement Board which shall consist of thirteen members appointed by the Cabinet Secretary as follows— (g) two Vice-Chancellors representing Private Universities</p>		<p>Delete the requirement for representation of private universities in KUCCPS under the current provisions in the Principal Act, and reject the proposed provisions</p>	<p><i>As already explained above, public universities have requisite capacity to train all government-sponsored students, eliminating private interests in placement to students in public universities.</i></p>
<p>Section 23 Statutes</p>	<p>Proposal to have Statutes come into force after 3 months after submission to the Cabinet Secretary</p>	<p>Proposal is to add a new subsection to provide that Statutes will come into force three months after submission to the Cabinet Secretary even if they have not been gazetted</p>	<p>The Union strongly proposes that the statutes should be gazetted within the stipulated 3 months for them to have the force of law</p> <p style="text-align: center;">T</p>	<p><i>This will enable the stakeholders involved to access the document due to their validity upon being gazetted. The time limit is mandatory to make the stake holders involved in the gazettement to be held accountable in accordance with Article 47 of the Constitution of Kenya 2010. It will avoid manipulation of the process.</i></p>

<p>Fourth Schedule Appointment of Vice Chancellors, Deputy vice Chancellors, Principals and Deputy Principals of Constituent Colleges</p>	<p>The proposal is to do away with imposition of time limit for a candidate to be appointed from names forwarded to the Cabinet Secretary</p>		<p>UASU strongly objects to the withdrawal of time limits</p> <p>The provisions should be amended also to include an UASU nominee as a member of the Selection Panel to the positions of Vice-Chancellor, their Deputies, Principals and Deputy Principals.</p>	<p><i>Doing away with the time limit will prejudice the candidates and is subject to manipulation. Delays in appointment of substantive office bearers has brought challenges in the management of universities. The Union proposes that the appointments should not take more than 21 days once the names have been forwarded to the Cabinet Secretary.</i></p> <p><i>This will enhance transparency, meritocracy and competitiveness, UASU should be represented in the Selection Panel in line with international best practices.</i></p>
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<p>Section 24 Clause 7 of the Bill</p>	<p>Establishment of specialized degree awarding institutions</p>	<p>The Proposal is for establishment of specialized degree awarding institutions on the recommendation of the Commission for University Education, through the Cabinet Secretary without involving Parliament</p>	<p>UASU reject this proposal</p>	<p><i>Parliament and education stakeholders should not be excluded in this process because Parliament represents the people and provides an oversight role.</i></p>
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6. If enacted, the proposed amendments would have a significant impact on the governance of public universities, and the Union accordingly requests Parliament to take into account the recommendations detailed above.
7. Finally, Honourable Chairman and Honourable members of the Committee; thank you again for inviting UASU. I am prepared to answer any questions you may have.

SIGNED:



DATE: 13th May 2022

Dr. Constantine Wasonga
UASU National Secretary General

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