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Chair - SC - Educ, Res & Tech
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ELEVENTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON EDUCATION, SCIENCE AND TECHNOLOGY

REPORT ON CONSIDERATION

UNIVERSITIES (AMENDMENT) BILL, 2015

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2016

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1.0 CHAIR'S FOREWORD

On behalf of the Departmental Committee on Education, Research and Technology and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Universities (Amendment) Bill, 2015. The Bill was committed to the Committee on Education, Research and Technology and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

The Committee wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to Committee Members for their devotion and commitment to duty during the consideration of this Bill.

On behalf of the Committee, I now wish to table this report for consideration and passage by the House.

HON. SABINA CHEGE, M.P

2.0 MANDATE OF THE COMMITTEE

The Committee on Education, Research and Technology is one of the Committees of the National Assembly established under Standing Order 216 and mandated:

1. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
2. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
3. To study and review all legislation referred to it;
4. To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
5. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and
7. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

3.0 MEMBERS OF THE COMMITTEE

Chairperson Hon. Sabina Chege, M.P

Vice Chairperson Hon. Julius Melly, MP

Members Hon. Yusuf Chanzu, M.P

Hon. (Dr.) Christine Ombaka, M.P

Hon. (Dr.) Wilber Ottichillo, M.P

Hon. (Dr.) Susan Chebet, M.P

Hon. (Prof.) Helen Sambili, M.P

Hon. Cecilia Ng'etich, M.P

Hon. Muriuki Njagagua, M.P

Hon. Eric Keter, M.P

Hon. Joseph Meruaki, M.P

Hon. Joseph Manje, M.P

Hon. Kenneth Okoth, M.P

Hon. Halima Ware Duri, M.P

Hon. Silverse Lisamula Anami, M.P

Hon. Richard Makenga, M.P

Hon. Opiyo Jared Odhiambo, M.P

Hon. Geoffrey Makokha Odanga, M.P

Hon. Anthony Kimaru, M.P

Hon. Moses Injendi, M.P

Hon. Mohamed Adan Huka, M.P

Hon. Harrison Kombe, M.P

Hon. Kedogo Dorcas Luvalitsa, M.P

Hon. Rose Rwamba Mitaru, M.P

Hon. Mary Seneta, M.P

Hon. Michael Kiso Munyao, M.P

Hon. Ibren Nasra Ibrahim, M.P

Hon. Steven Kariuki, M.P.

Hon. Banticha Abdullahi, M.P

4.0 COMMITTEE SECRETARIAT

Leah Wanjiru	First Clerk Assistant
John Mugoma	Third Clerk Assistant
Abdiaziz Shobay	Third Clerk Assistant
Doreen Karani	Legal Counsel
Annceta Gaacheri	Research Assistant
Eric Kanyi	Fiscal Analyst

5.0 THE UNIVERSITIES (AMENDMENT) BILL, 2015

5.1 Background

The Universities (Amendment) Bill, 2015 went through the First Reading on 17th February 2016. Subsequently, the Bill was referred to the Departmental Committee on Education, Research and Technology pursuant to the provisions of the Standing Order No. 127 of the National Assembly.

The principal object of the Bill was to amend the Universities Act, 2012 (No.42 of 2012) to streamline the operation of the Act with practical realities.

The highlight of the Bill is as shown in table 1 below.

Table1: Highlight of the Universities (Amendment) Bill, 2015

CLAUSE	HIGHLIGHT
Clause 1	The clause seeks to amend section 2 of the Act so as to introduce a distinction between accreditation of universities and approval of academic programmes.
Clause 3	The clause seeks to amend section 5 of the Act so as to empower the Commission to accredit universities and approve university programmes in Kenya.
Clause 4	The Clause seeks to amend section 6 of the Act so as provide for representation in the Commission by a nominee of the Councils of public universities and a nominee of sponsors of private universities.
Clause 5	The Clause seeks to amend section 5 of the Act so as address the issues of conflict in law in the approval of academic programmes by universities and colleges whereby the mandate of the Commission is empowered to prevail over any other body.
Clause 6	The Clause seeks to amend the Act by inserting a new section 12A providing protection against personal liability for members and staff of the Commission in the execution of their official duties.
Clause 7	The Clause seeks to amend section 20 of the Act so as to empower universities granted a charter to develop and mount its new academic programmes for review by the Commission in accordance with the provisions of the Act
Clause 8	The Clause seeks to amend section 22 of the Act so as to empower the President may, on the recommendation of the Cabinet Secretary after receiving approval from the Commission, to revoke a Charter if in the opinion of the President that the revocation is in the best interests of university education in Kenya.

Clause 9	The Clause seeks to insert a new section 22A into the Act so as to empower the Cabinet Secretary, on the recommendation of the Commission, to vary a Charter if in the opinion of the Cabinet Secretary that the variation is in the best interests of university education in Kenya.
Clause 10	The seeks to amend section 23 of the Act so as to empower the, University Council, before making statutes or regulations to obtain the prior approval of the Cabinet Secretary and publish the statutes or regulations in the Gazette.
Clause 11	The Clause seeks to amend section 35 of the Act so as to require universities to seek the approval of the Commission in the Universities (Amendment) Bill, 2015 2633 establishment of additional governance organs, including a Board of Trustees or its equivalent,
Clause 12	The Clause seeks to amend section 39 of the Act allow the qualifications for appointment as a Vice Chancellor of a public university to be prescribed and also make the recruitment process be competitively conducted by the Council.
Clause 13	The Clause seeks to amend section 41 of the Act so as to clarify the provisions relating to the student associations as relates to its status, membership, appointment and term of office.
Clause 14	The clause seeks to amend the Act by deleting section 51A
Clause 15	The Clause seeks to amend section 54 of the Act so as to clarify the provisions relating to the funding of public universities and issuance of conditional grants to private universities.
Clause 16	The Clause seeks to amend section 56 of the Act so as to clarify the role of the Commission and the role of the universities in the admission and placement of students in the universities and colleges.
Clause 17	The Clause seeks to provide for a transitional provision consequent to the amendment distinguishing between accreditation and approval so as to preserve the academic programmes previously accredited or approved by the Commission.

Source: The Universities (Amendment) Bill, 2015

5.2 Committee's consideration of the Universities (Amendment) Bill, 2015

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on (to be inserted) pursuant to Article 118 of the Constitution. At the lapse of the statutory number of the days, the Committee had only received memoranda from the Commission for University Education (CUE), the Kenya Universities and Colleges Central Placement Service (KUCCPS) and the Kenya Association of Private Universities

The Committee analyzed the memoranda as shown below from the stakeholders and proposed amendments as contained in the Report.

THE UNIVERSITIES (AMENDMENTS) BILL, 2015

AMENDED SECTION.	ORGANIZATION	PROPOSED AMENDMENT	JUSTIFICATION CONSTITUTIONAL BACKING
Clause 1	Kenya Association of Private Universities	Clause 1 of the Bill seeks to amend section 2 of the Act so as to introduce a distinction between Accreditation of Universities and approval of Academic programmes	This distinction has undesirable and unacceptable consequence. The effect of this is that in addition to the University being accredited each programme will now require the approval of the CUE. This Amendment is not acceptable as it adds delays and costs
Clause 3	Kenya Association of Private Universities	Clause 3 of the Bill seeks to amend section 5 of the Act so as to empower the Commission to accredit Universities and approve University programmes in Kenya	The effect of this is that in addition to the University being accredited each programme will now require the approval of the CUE. While a chartered University is permitted to mount its new academic programmes, the CUE retains the right to review such programmes, thereby effectively meaning 'approval' This Amendment

			is not acceptable as it adds delays and costs.
Clause 4	Kenya Association of Private Universities	Clause 4 of the Bill seeks to amend section 6 of the Act so as provide for representation in the Commission by a nominee of the councils of public Universities and a nominee of sponsors of private Universities.	This is good since private Universities will have a voice in CUE.
Clause 5	Kenya Association of Private Universities	Clause 5 of the Bill seeks to amend section 5 of the Act so as address the issues of conflict in law in the approval of academic programmes by Universities and colleges whereby the mandate of the commission is empowered to prevail over any other body	It's feared that Universities may be caught in potential wrangling between the CUE and professional bodies, thereby making it difficult for Universities to function.
Clause 6	Kenya Association of Private Universities	Clause 6 of the Bill seeks to amend the Act by inserting anew section 12A providing protection against personal liability for members and staff of the commission in the execution of their official duties.	None, normal
Clause 7	Kenya Association of Private Universities	Clause 7 of the seeks to amends section 20 of the Act so as to empower Universities granted a charter to develop and mount its new academic programme for review by the commission in accordance with the provisions of the Act.	While a chartered University is permitted to mount its new academic programmes, the CUE retains the right to review such programmes, thereby effectively meaning 'approval' This Amendment is not acceptable as this provision contradicts the rights of Universities to mount programmes and may create unnecessary delays

			and costs etc.
Clause 8	Kenya Association of Private Universities	Clause 8 of the Bill seeks to amend section 22 of the Act so as to empower the president may, on the recommendation of the Cabinet Secretary after receiving approval from the Commission, to revoke a charter if in the opinion of the president that the revocation is in the best interest of University Education in Kenya.	While this power may be well intentioned to protect the public against 'bad' Universities, this power is wide. However, due process of law has been retained by providing right to be heard as revocation is a serious deprivation of a right.
Clause 9	Kenya Association of Private Universities	Clause 9 of the Bill seeks to insert a new section 22A into the Act so as to empower the Cabinet Secretary, on the recommendation of the Commission, to vary a Charter if in the opinion of the Cabinet Secretary that the variation is in the best interest of University Education in Kenya.	The proposed Amendment for variation of charter seems fine as it appears that variation can only be initiated by the sponsor in case of a private University.
Clause 10	Kenya Association of Private Universities	Clause 10 of the Bill seeks to amend section 23 of the Act so as to empower the University Council before making statutes or regulations to obtain the prior approval of the Cabinet Secretary and publish the statutes or regulations in the Gazette.	This is not acceptable especially for private Universities as it infringes upon their autonomous and self-governing status. This is interference in the Governance of Universities. Once chartered, Universities must have complete freedom to establish their statutes and regulations. No prior approval should be sought from the Cabinet Secretary. KAPU requests reinstatement of the existing provisions.
Clause 11	Kenya Association of Private Universities	Clause 11 of the Bill seeks to amend section 35 of the Act so as to require Universities to seek the approval of the	OK, no issue although one can argue it infringes on the autonomy aspect of a

	Universities	Commission in the establishment of additional governance organs, including a Board of Trustees or its equivalent,	private University to establish such organs as determined by the University without the approval of CUE.
Clause 12	Kenya Association of Private Universities	Clause 12 of the Bill seeks to amend section 39 of the Act allow the qualifications for appointment as a vice chancellor of a public University to be prescribed and also make the recruitment process be competitively conducted by the council.	Noted.
Clause 13	Kenya Association of Private Universities	Clause 13 of the Bill seeks to amend section 41 of the Act so as to clarify the provisions relating to the student associations as relates to its status, membership, appointment, and term of office.	Proposed amendment is good as it will prevent multiplicity of student association in the University. It only allows the formation of a single association for all students of the University and for purposes of election, such association shall constitute itself into electoral colleges based on either academic departments, schools, faculties etc.
Clause 14	Kenya Association of Private Universities	Clause 14 of the Bill seeks to amend the Act by deleting section 51A	This deletion is fine as it does not affect powers of Universities. Section 51 was an enabling provision allowing Universities to have financing arrangements with any person or institution for the purposes of financing the objectives for which it was established but many saw this section as limiting because of the use of the

			word 'financing' and also not necessary because Universities are autonomous bodies and have inherent powers to contract.
Clause 15	Kenya Association of Private Universities	Clause 15 of the Bill seeks to amend section 54 of the Act so as to clarify the provisions relating to the funding of public Universities and issuance of conditional grants to private Universities.	This amendment appears to create an unfair and unfavorable situation for private Universities as it only allows conditional grants to private Universities will be developed. Its yet to be seen what criteria will be developed and how will be the application process. The provision as drafted is not encouraging. Existing provision is more fair and must reinstated.
Clause 16	Kenya Association of Private Universities	Clause 16 of the Bill seeks to amend section 56 of the Act so as to clarify the role of the Commission and the role of the Universities in the admission and placement of students in the Universities and colleges.	The proposed amendments to section 56(a) and (e) seem to be fine, and the addition of section 56 (4) is good as it reaffirms that admission and placement of students to Universities and colleges shall vest in the respective Universities/colleges.
Clause 16	Kenya Universities & Colleges Central Placement Service	Section 56 of the principal Act is Amended:- a) In subsection (1) By deleting Paragraph (a) and	Coordinate the placement of Government sponsored students to Universities, colleges and Technical, Vocational & Education Training Institutions.

		substituting therefore the following:- a) Coordinate the placement, by Universities and Colleges , of the Government sponsored students to the existing Universities and colleges to ensure fairness, equity and openness;	
Clause 16 (a, ii)	Kenya Universities & Colleges Central Placement Service	Section 16 (a, ii) By deleting paragraph (e) Develop career guidance programmes for the benefit of Universities and students admitted to Universities and colleges.	Develop career guidance programmes for the benefit of students prior to joining Universities, Colleges and Technical Vocational and Education Training Institutions.
Clause 16 b,4	Kenya Universities & Colleges Central Placement Service	Despite anything to the contrary in this section, the admission and placement of students to Universities and colleges shall vest in the respective Universities or colleges.	Notwithstanding any other provisions in this part, a university or college may independently admit students to its programmes in accordance with the approved admissions criteria approved by the placement service in consultation with Universities, Colleges, Technical Vocational and Education Training Institutions and other stakeholders.
Clause 17	Kenya Association of Private Universities	Clause 17 of the Bill seeks to provide for a transitional provision consequent to the amendment distinguishing between accreditation and approval so as to preserve the academic programmes previously accredited or approved by the Commission.	This is fine.

The Committee considered submissions received from the Commission for University Education as shown on table 2 below in regard to the Universities (Amendment) Bill, 2015 pursuant to Article 118 of the Constitution and article 127 of the National Assembly Standing Orders.

Table 3: Proposed amendments by the Commission for University Education on the Universities (Amendment) Bill, 2015 and the Committee resolutions

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
1(a)	Section 2 Interpretation “ <i>foreign University Campus</i> ” to mean an extension of a foreign University set up by the University pursuant to its statutes and established in accordance to Section 28 of the Act.	Delete the words “ <i>foreign University Campus</i> ” to mean an extension of a foreign University set up by the University pursuant to its statutes and established in accordance to Section 28 of the Act.	<i>Foreign University Campus</i> The provisions of the Miscellaneous (Amendments) Act, 2014 created a body called “foreign University campus”. This implies that a university established outside Kenya may establish itself in Kenya as a foreign university campus without the approval of the Commission and operate without being regulated. This exposes the country to influx of unaccredited universities	Amendment not recommended
1(b)	“ <i>programme accreditation</i> ” to mean the process by which the Commission recognizes an academic curriculum of a proposed university or of a	“ <i>programme accreditation</i> ” means the process by which the Commission formally recognizes an academic programme of a University, including a foreign university.	<i>Programme Accreditation</i> This current interpretation of programme accreditation hinders the Commission from accrediting academic programmes of chartered universities. As a result, any chartered University can mount whatever academic	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	university with a Letter of Interim Authority or of a foreign university campus;		programme(s) without meeting minimum national and international standards. This implies that the academic programmes offered by the universities are not subjected to regular audit, inspection, monitoring and evaluation by the Commission compromising global competitiveness.	
1(c)	" sponsor " means any person proposing the establishment of a university and committed to its development, implementation, construction, maintenance, management and financing;	" sponsor " means any person, including the government proposing the establishment of a university and committed to its development, implementation, construction, maintenance, management and financing;	The current interpretation of "sponsor" connotes an individual whereas the Government can also be a sponsor.	Amendment recommended
1(d).	" Quality assurance " means the employment of various measures and mechanisms developed by a university to assess and maintain certain standards and values	" Quality assurance " means the employment of various measures and mechanisms developed to assess, maintain and enhance standards.	Quality Assurance The measure of Quality Assurance is subjective to the universities themselves whereas the national and international standard is that quality assurance is objective.	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	in its activities.			
1(e)	“Technical University” means an institute of a university established in accordance with Section 25 of this Act.	Delete the words “an institute of”	The definition purports to establish a Technical University as an institute within a university which contradicts the Provisions of Section 25 of the Act.	Amendment recommended
2(a)	New definition	Insert “ academic programme ” means the design of learning content which includes the intention, the structure of the content, the delivery mode, academic resources and assessment modes.”	The proposed amendment is introduced to provide clarity between the core courses and programme to tally with Section 13(3) (h).	Amendment recommended
2(b)	New definition	Insert “ instrument of accreditation ” means the Charter or Letter of Interim Authority, accreditation report and proposal establishing the university.	The introduction of this definition seeks to clarify what an “ instrument of accreditation ”	Amendment recommended
3.	Section 5 Section 5(1)(h) undertake or cause to be undertaken, regular inspections, monitoring and evaluation of universities to ensure compliance with the provisions of this Act	By deleting paragraph (h) and substituting therefor the following new paragraph— “undertake or cause to be undertaken, regular audit, inspections, monitoring and evaluation of universities to ensure compliance with this Act regulations, set standards and guidelines”	The amendments under section 5(1)(h) invalidates the Commission’s set Standards and Guidelines, 2014 which were formulated pursuant to section 70 of the Act.	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	or any regulations made under section 70;			
	Section 5(1)(L) on regular basis, inspect universities in Kenya;	Section 5(1)(L) accredit, audit and inspect university programme in Kenya;	The amendment under the Statute Law (Miscellaneous Amendments) Act, 2014 removed the functions of the Commission to accredit, audit and inspect university programmes in Kenya.	Amendment not recommended
	New paragraph 5(1)(n)	(n) “perform such other functions and exercise such other powers as the Commission may deem necessary for the proper discharge of its mandate under this Act”	An omnibus provision is a standard provision in any law and its intention is to allow the Commission to exercise its powers effectively, which had been removed by the Statute Law (Miscellaneous Amendment) Act, 2014.	Amendment not recommended
5.	New paragraph (8)(1)(g)	(g) “is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary.	This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).	Amendment recommended
6.	Section 13(1)	Insert the words “or a Letter	A Letter of Interim Authority is	Amendment

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	Every university in Kenya shall be established by a Charter in accordance with this Act.	of Interim Authority or a" immediately after the word "Charter"	also considered an Instrument of Accreditation.	recommended
7.	Section 15(2) (b) commence or continue to develop the physical facilities; (c) commence or continue to assemble academic resources;	Delete the words "commence or" appearing in paragraphs (b) and(c).	The Commission does not grant a Letter of Interim Authority to an institution unless it has established that the institution has adequate academic and infrastructural resources. As such an institution with a Letter of Interim Authority cannot commence but continue to develop and assemble resources.	Amendment recommended
8.	Section 20 Section 20(1)(c) may, in accordance with its Charter, develop and mount academic programmes	By deleting paragraph (c) and substituting therefor the following new paragraph "may develop and mount its new academic programmes subject to accreditation by the Commission in accordance with the provisions of this Act.	Revert to the original provision under the law which mandated the Commission to review academic programmes mounted by chartered universities. The Statute Law (Miscellaneous Amendment) Act 2014 had removed these options.	Amendment recommended
	New subsection 20(4)	By inserting the following new subsection: "A Letter of Interim	Harmonize the transitional period of a Constituent College with that of an institution with a	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		Authority under Section 16 shall apply <i>mutatis mutandis</i> to institutions established under subsection 3”	Letter of Interim Authority to a chartered university.	
9.	Section 23 Statutes Section 23 (1) Subject to this Act and to the Charter a University Council or Senate may, and where required by this Act to do so shall, make such statutes and regulations as it considers appropriate to regulate the affairs of the university. Section 23 (2) A university Council shall, as soon as practicable as and in any event not later than three months after the making of a statute or regulation under this section, submit it to the Cabinet Secretary for publication in the Gazette.	The principal Act is amended in section 23- (a) By deleting the words “or Senate” appearing after the words “University Council”. By deleting subsection (2) and substituting therefor the following new subsection:- “A university council shall, as soon as practicable and in any event not later than three	This was amended to avoid conflict of functions of a University Council and Senate. To enable the Commission to align the Statutes and Regulations with charters of respective universities and give appropriate advice to the cabinet secretary as per the	Amendment recommended Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		months after the making of Statutes or regulations under this section, submit them to the Commission, and on recommendation of the Commission, the Cabinet Secretary may publish the Statutes or regulations in the Gazette.	functions of the Commission under the Act.	
10.	Section 34 Subject to the provisions of this Act, a university shall be governed in accordance with the provisions of its Charter granted under this Act and statutes made by its Council.	By Inserting the words "Letter of Interim Authority or Legal Notice" after the word "Charter".	To harmonize the instruments of governance of all universities.	Amendment recommended
11.	Section 35 <i>Governing Organs of a university</i> Section 35(2) Notwithstanding the generality of the provisions of subsection (1), the Council of a private university shall be appointed in	Section 35(2) of the principal Act is amended by inserting the words "with the approval of the Commission" after the words "such a university may".	To revert to the provision of the principal Act which mandated the Commission to approve governance organs of universities.	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	accordance with provisions of the Charter, and such a university may, with the approval of the Commission, establish additional governance organs, including a Board of Trustees or its equivalent, as the sponsor may deem appropriate.			
	Section 35(3) A Board of Trustees established pursuant to subsection (2) or the sponsor of a private university shall, in addition to any other functions set out in the charter of the university (a) appoint members of the University Council; (b) raise funds for the benefit of the university (c) promote the objects of the	Section 35(3) of the principal Act is amended by inserting the words In subsection (3) by deleting the words “in accordance with any written law or financing arrangement under Section 51A”	To remove possibilities of universities creating governing organs that are not in the Act. The principal Act allows universities to raise funds.	Amendment not recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	university; and (d) appoint the university Chancellor.			
12.	Section 36 Council of a Public University Section 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— (d) five members appointed by the Cabinet Secretary through an open process; New subsection (3)	Amend Section 36(1) (d) by deleting paragraph (d) and substituting therefor the following new paragraph—“five members, or, in the case of a constituent college, four members, appointed by the Cabinet Secretary through an open process in such manner as may be prescribed in guidelines issued by the Cabinet Secretary. In making appointments	As per the Presidential Order No. 7 of 2015 (<i>Mwongozo</i>).	Amendment recommended with further amendments as below; Section 36 of the principal Act is amended — (a) in subsection (1) by inserting the words “in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary” immediately after the word “process” in paragraph (d); Amendment

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		under this section the appointing authority shall have regard to the objectives of the development of university education, ensuring that there are balanced competencies, gender equity, and the inclusion of stakeholders, persons with disabilities, the marginalized and other minority groups.		recommended
	<i>New subsection (4)</i>	The appointing authority shall ensure that those appointed shall not have any conflict of interest in serving as Council members.		Amendment recommended
	<i>New subsection (5)</i>	The provisions in section 8 relating to the vacancy of office of the Chairperson and members of the Commission shall apply with necessary modifications to the chairperson and members appointed under sub section (1) (a) and (d).		Amendment recommended
	<i>New subsection (6)</i>	The members of the Council appointed under section 36(1) shall at their first meeting after appointment		Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	<i>New subsection (7)</i>	determine by lot which two of their number shall vacate office after a period of three and four years respectively to ensure continuity in the activities of the Council. The provisions of the First Schedule shall apply with necessary modifications, to the conduct of the business and affairs of the Council.		Amendment recommended
13.	Section 38	Amend Section 38(5) by inserting the words “for a period not exceeding three months” immediately after the word “Council”.	To limit the period of the person acting as Chancellor to allow the provisions of the second schedule to take effect.	Amendment recommended
14.	Section 41 Students’ Association <i>New subsection (1A)</i>	By inserting the following new subsection immediately after subsection (1) “Every university shall have a Students’ Council whose members shall be elected by the Students’ Association, and whose membership shall reflect national diversity, and not more than one-third of the members of the Council shall be of the same gender where applicable;	Re-numbering to allow for systematic flow of the paragraphs relating to students association and student council.	Amendment recommended with further amendments

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		Delete subsection 3		
15.	Section 51(2)(f) On request and for purposes of accreditation, provide to the Commission official confirmation of compliance with financial obligations state which shall not be published without the prior consent of the university concerned.	Amend Section 51 (2) (f) of the Principal Act- (a) By inserting the words “or audit” immediately after the word “accreditation” (b) By deleting the word “state”.	This is for quality assurance to align with national and international standards.	Amendment recommended
16.	Section 53(2) The object and purpose of the Fund shall be to provide funds for financing universities.	Amend Section 53(2) by inserting the word “public” immediately before the word “universities”	To align with the government policy on financing of public institutions.	Amendment recommended
17.	Section 54 (4) The function of the Trustees shall be to generally manage the University Fund established under section 53, and more particularly to— (a) advise the Cabinet Secretary in	Section 54 of the principal Act is amended in subsection (4)- (a) by inserting the word “public” immediately before the word	This is to align with the Presidential Order no. 7 of 2015 and Government policy on financing of public institutions.	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	matters of university education funding and related policy issues; (b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to universities; (c) apportion funds to universities in accordance with criteria established;	“university” appearing in paragraph (a) (b) by inserting the word “public” immediately before the word “Universities” appearing in paragraph (b). (c) by inserting the word “public” immediately before the word “universities” appearing in paragraph (c); (d) by deleting sub-sections (3), (6) and (7).		
18.	Insert new section 54A	18. The principal Act is amended by inserting the following new sections immediately after Section 54— 54A(1) There shall be a Director who shall be the chief executive officer of the Fund, appointed by the Cabinet Secretary on	This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		recommendation of the Board of Trustees of the Fund following a competitive recruitment process, and who shall serve for a term of five years, which may be renewed for one further term. (2) The Director of the Fund shall be responsible for the day-to-day management of the affairs of the Fund. (3) A person shall be qualified for appointment as a Director if such person— (a) is a Kenyan citizen (b) holds a degree or its equivalent from a university recognized in Kenya in the field of banking, education, law, finance, economics or management; (c) has at least ten years' relevant professional experience in the management of a public or private institution; and (d) meets the requirements of leadership and integrity set out in Chapter Six of the		

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		Constitution.		
	Insert new section 54B	54B(1) The Fund may employ such other officers and staff as it may deem necessary for the performance of its functions under this Act. (2) All appointments under this section shall take into account gender equity, ethnic and regional balance in accordance with the Constitution.	This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).	Amendment recommended
	Insert new section 54C	The provisions relating to the finances of the Commission as set out in sections 30, 31, 32 and 33 shall apply, <i>mutatis mutandis</i> to the finances of the Fund.	This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).	Amendment recommended
19.	Insert new section 54D	In this Part "college" means an institution established under the Technical and Vocational Education and Training Act, 2013, or any other public training institution established under an Act of Parliament".	This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).	Amendment recommended
20.	Section 55 (4) The Service shall	The Principal Act is amended in section 55 by	As per the Presidential Order No. 7 of 2015 (Mwongozo) and	Amendment not

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
	establish a Secretariat in such manner as it may deem appropriate, which shall be at such place as the Service shall determine.	deleting subsection (4).	government policy on financing of public institutions	recommended
21.	Section 56 <i>Functions of the Placement Board</i> (1) The functions of the Board shall be to— (a) co-ordinate the placement of the government sponsored students to universities and colleges; (3) The placement Board shall establish criteria to enable students access the courses for which they applied taking into account the students' qualifications and listed priorities.	Amend Section (1)(a) by inserting the word a “public” immediately before the word “Universities”. Amend Section 56(3) by deleting the word “courses” and inserting the words “academic programmes”.	The proposed amendment is introduced to provide clarity between the “courses” and “academic programmes”.	Amendment recommended Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
22.	Section 60(d) A University Council shall have the necessary powers for the proper performance of its functions under this Act and in particular, without prejudice to the generality of the foregoing, a university shall have powers to— (d) enter into association, collaboration or linkages with other bodies or organizations within or outside Kenya as the university may consider desirable or appropriate and in furtherance of the purpose for which the university is established;	Section 60(d) of the principal Act is amended by adding the words “which does not include teaching or hosting classes in other institutions other than the university” immediately after the word “collaboration”	To remove ambiguity in the application of the section.	Amendment not recommended
23.	New Section 69A (1) and (2)	Section 69A(1) The Commission may, by notice in writing, require an institution in default of any	To allow the Commission to notify institutions in default of the provisions of the law.	Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		provision under this Act, regulation, standards and guidelines to comply therewith within a prescribed time and in a prescribed manner. Section 69A (2) If any institution served with a notice under sub-section (1) fails to comply therewith, the Commission may close the institution either permanently or until the notice is complied with. Section 69A (3) Any person aggrieved by the decision of the Commission under subsection (2) may appeal to the Cabinet Secretary within thirty days of the decision.		
24.	Section 70	Section 70 of the principal Act is amended in subsection (1) by inserting the words “with Commission” immediately after the word “consultation”; Section 70 of the principal Act is amended in subsection (2) by deleting the	To align with amendments in the interpretation under section 2.	Amendment recommended with further amendment Amendment recommended

S/No	Clause	Proposal/ Preferred Amendment	Justification/Rationale	Committee Resolution
		expression “foreign university campuses” appearing in paragraph (a) and substituting therefor the words “university constituent colleges and university campuses”. Section 70 of the principal Act is amended by deleting all the paragraphs appearing after paragraph (f).		Amendment not recommended
26.	First Schedule The quorum for a meeting of the Board shall be seven members, who shall include five appointed members.	The principal Act is amended in the First Schedule by deleting paragraph 4 and substituting therefor the following new paragraph— (4) The quorum for a meeting of the Commission shall be five members. The principal Act is amended in the First Schedule by deleting the words “who shall include five appointed members”.	This amendment is to enable Commission to function efficiently.	Amendment recommended

6.0 COMMITTEE STAGE AMENDMENTS AND JUSTIFICATION

The Committee considered the Universities (Amendment) Bill, 2015 and proposed amendments submitted to the Committee by stakeholders. Consequently, the Committee agreed to the Bill subject to the following amendments;

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) in paragraph (b) by inserting the words “and substituting therefor the following new definition” immediately after the words “programme accreditation”—

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

Justification

The term “programme accreditation” is used in the Act and deleting it may create ambiguity as to the intended meaning of this term. The committee proposes to improve the definition of the term as the current interpretation of programme accreditation hinders the Commission from accrediting academic programmes of chartered universities. It implies that the academic programmes offered by the universities are not subjected to regular audit, inspection, monitoring and evaluation by the Commission compromising global competitiveness.

(b) by deleting paragraph (d)

Justification

The proposal in the Bill to delete the definition of the word “foreign university” will remove the clarity offered by the definition as to what the term means in the context of the Act. Foreign universities are provided for in the Act such as in Section 28 which deals with accreditation of foreign Universities and in section 70(2) (f) and (h) on provision for the making of regulations for registration of agents for foreign universities among other sections.

(c) by inserting the following new paragraphs immediately after paragraph (d) —

“(e) by deleting the definition of the word “quality assurance” and substituting therefor the following new definition—

“quality assurance” means the employment of various measures and mechanisms developed to assess, maintain and enhance standards”

Justification

The measure of “Quality Assurance” is subjective to the universities themselves whereas the national and international standard is that quality assurance is objective.

“(f) in the definition of the word—

- (i) “sponsor” by inserting the words “including the government” immediately after the word “person”
;and

Justification

The current interpretation of “sponsor” connotes that only an individual can be a sponsor whereas the Government can also be a sponsor.

- (ii) “technical university” by deleting the words “an institute of”.

Justification

The definition purports to establish a Technical University as an institute within a university which contradicts the Provisions of Section 25 of the Act.

(d) by inserting the following new definitions in proper alphabetical sequence—

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

Justification

The proposed amendment is introduced to provide clarity between the core courses and programme to tally with Section 13(3) (h).

“instrument of accreditation” means the Charter or Letter of Interim Authority, accreditation report and proposal establishing the university”

Justification

The definition seeks to clarify what an “instrument of accreditation” is.

CLAUSE 3

THAT clause 3 of the Bill be deleted and substituted with the following new clause—

Amendment Section 5 of the principal Act is amended in subsection (1) by deleting
of section 5

of No. 42 of paragraph (l) and substituting therefor the following new paragraph—
2012.

- (l) accredit, approve and review academic programs mounted by universities in Kenya

Justification

The amendment is an improvement to the proposed amendment in the Bill. Accreditation of universities is already a function of the Commission as provided for under section (5) (j). Additionally, the proposal in the Bill does not provide room for regular review of academic programmes once approved by CUE.

CLAUSE 4

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

“(4) Section 6 of the principal Act is amended—

(a) in subsection (1) by—

- (i) deleting the word “five” in paragraph (d) and substituting therefor the word “two”

Justification

To reduce the number of members to the Board appointed by the selection panel to two members as there are additional members proposed in the paragraph(b) below. This will ensure that even with the proposed amendment under paragraph (b) below, the number of board members is retained at 9.

- (ii) inserting the following new paragraph immediately after paragraph (d)—

“(da) three members appointed as follows—

- (i) one Vice Chancellor representing Public Universities nominated by Vice Chancellors of public universities in a forum of the Vice Chancellors of public universities convened by the Cabinet Secretary;
- (ii) one Vice Chancellor representing Private Universities nominated by Vice Chancellors of private universities in a forum of the Vice Chancellors of private universities convened by the Cabinet Secretary;
- (iii) one person representing professional bodies nominated by professional bodies in a forum of the professional bodies convened by the Cabinet Secretary; and”

Justification

It is proposed that being the CEO of a university, a VC would be the most suitable representative of universities in the Commission as opposed to nominating from any person from within the council as proposed in the Bill. Additionally, it may not be possible to hold a forum of all the councils or sponsors of public or private universities in Kenya respectively as they are numerous. A representative of the professional bodies would also serve to ensure that there is no conflict in accreditation of courses by the Commission and by professional bodies

(b) in subsection 3 by inserting the following new paragraph immediately after paragraph (d) —

“(e) one person nominated by professional bodies in a forum of the professional bodies convened by the Cabinet Secretary.”

Justification

A representative of professional bodies is proposed to serve in the selection panel.

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 5—

Amendment of section 8 of No. 42 of 2012.	5A. Section 8 of the principal Act is amended in subsection 1 by inserting the following new paragraph immediately after paragraph (a)— “(aa) is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary.”
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Justification

This is to align with the State Corporations Act and the Presidential Order No. 7 of 2015 (Mwongozo).

NEW CLAUSES

THAT the following new clause be inserted immediately after clause 6—

Amendment of section 13 of No. 42 of 2012.	6A. Section 13 of the principal Act is amended in subsection (1) by inserting the words “or a Letter of Interim Authority” immediately after the word “Charter”.
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Justification

A Letter of Interim Authority is also considered an Instrument of Accreditation.

Amendment of section 15 of No. 42 of 2012.	6B. Section 15 of the principal Act is amended in subsection (2) by deleting the words “commence or” appearing in paragraphs (b) and (c).
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Justification

The Commission does not grant a Letter of Interim Authority to an institution unless it has established that the institution has adequate academic and infrastructural resources. As such an institution with a Letter of Interim Authority cannot commence but continue to develop and assemble resources.

CLAUSE 7

THAT clause 7 be deleted and substituted with the following new clause—

Amendment of section 20 of No. 42 of 2012. 7. Section 20 of the principal Act is amended—
(a) in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph (c) —

“(c) may develop its new academic programmes for approval by the Commission in accordance with this Act”.

(b) by inserting the following new subsection immediately after subsection (3) —

“(4) A Letter of Interim Authority under section 16 shall apply *mutatis mutandis* to institutions established under subsection (3)”

Justification

This is to harmonize the transitional period of a constituent college as provided under section 16 with that of an institution established vide a letter of interim authority.

CLAUSE 8

THAT clause 8 of the Bill be deleted

Justification

This proposed amendment is law. It was enacted pursuant to Statute Law (Miscellaneous) (Amendment) Act, 2015

CLAUSE 9

THAT clause 9 of the Bill be deleted

Justification

This proposed amendment is law. It was enacted pursuant to Statute Law (Miscellaneous) (Amendment) Act, 2015

CLAUSE 10

THAT clause 10 be amended by deleting paragraph (b)

Justification

Statutes are instruments developed for the internal governance of a university hence for autonomy purposes universities need not seek the approval of the Cabinet Secretary in order to make statutes and regulations as proposed in the Bill. In any case, once made, the same are forwarded to the Cabinet Secretary for Gazettement as provided in the Act.

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 10—

Amendment of **10A.** Section 34 of the principal Act is amended by inserting the words “or section 34 of Letter of Interim Authority” after the word “Charter”.
No. 42 of 2012.

Justification

To harmonize the instruments of governance of all universities.

NEW CLAUSES

THAT the following new clauses be inserted immediately after clause 11—

Amendment of **11A.** Section 36 of the principal Act is amended —
section 36 of
No. 42 of 2012

(a) in subsection (1) by inserting the words “in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary” immediately after the word “process” in paragraph (d);

(b) by inserting the following new subsections immediately after section (2)—

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

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

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

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

Justification

This is to provide for alignment in the appointment of the council of a public university, matters relating to vacancy of office of the chairperson and members as well as the conduct of affairs of the council to legal requirements under the Constitution, Mwongozo and the State Corporations Act. The proposed provisions borrow from the provisions applicable to members of the Commission.

NEW CLAUSE

Amendment of **11B**. Section 38 of the principal Act is amended in subsection (5) by section 38 of inserting the words “for a period not exceeding three months” immediately No. 42 of 2012. after the word “Council”.

Justification

This is so as to limit the period of the person acting as Chancellor to allow the provisions of the second schedule to take effect.

CLAUSE 13

THAT clause 13 be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

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

“(1A) Every university shall have a students’ council whose members shall be elected by the students association and whose membership shall reflect national diversity, and not more than one-third of the members of the Council shall be of the same gender where applicable.

(1B) The student association referred to in subsection (1) shall be governed by a student’s council comprising of –

(a) a Chairperson;

(b) a Vice Chairperson who shall be of opposite gender with the Chairperson;

(c) a Treasurer and;

(d) a Secretary-General who shall be the secretary to the Council.

(1C) For purposes of conducting the election of the members of the Student Council referred to in subsection (2), the student association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate, where students of each department, school or faculty in the university shall elect three representatives, of whom at least one must be of opposite gender, from amongst persons who are not candidates under subsection (1A).

(1D) Members of the Student Council shall hold office for a term of one year and may be eligible for re-election for one further term.

(1E) A person who has held office as a member of the Student Council of a University for at least two terms is disqualified from future election as a member of the Student Council of that University, any other University or constituent college of any University in Kenya.

Justification

This is to anchor student councils in law, provide guidance on the matter of election of officials, guiding principles in elections and the term of office of the members of the student council.

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 13—

Amendment of 13A. Section 51 of the principal Act is amended in section (2) (f) by —
section 51 of No.
42 of 2012.

- (a) inserting the words “or audit” immediately after the word
“accreditation; and

Justification:

This is for purposes of ensuring the commission is able to audit private universities and check if private universities meet set national and international standards

- (b) deleting the word “state” appearing immediately after the words “financial obligations”.

Justification

Grammatical correction.

CLAUSE 15

THAT clause 15 be amended—

- (a) in paragraph (b) by deleting the words “issuance of” substitute therefor the words “issue”

Justification

Grammatical correction.

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

“(c) by inserting the words “for approval by the Cabinet Secretary” immediately after the word
“offered” in paragraph (d).

Justification

To enable the Cabinet Secretary to approve the maximum differentiated unit cost of programmes offered by universities so as to offer regulation and ensure the costs charged are fair and justifiable.

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

“(d) by deleting sub-section (3);

“(e) by deleting subsection (6); and

“(f) by deleting subsection (7).”

Justification

These provisions are deleted and proposed substantively in the next clause.

NEW CLAUSES

THAT the following new clauses be inserted immediately after clause 15—

Insertion of **15A.** The principal Act is amended by inserting the following new sections
new sections immediately after section 54—
into No. 42 of
2012.

Director of the **54A.** (1) There shall be a Director who shall be the
Fund.

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

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

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

(a) is a Kenyan citizen;

(b) holds a degree or its equivalent from a
university recognized in Kenya in the field of
banking, education, law, finance, economics or
management;

(c) has at least ten years’ relevant professional
experience in the management of a public or
private institution; and

(d) meets the requirements of leadership and
integrity set out in Chapter Six of the
Constitution.

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

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

Financial provisions **54C.** The provisions relating to the finances of the Commission as set out in sections 31, 32 and 33 shall apply, *mutatis mutandis* to the finances of the Fund.

Justification

The office of the Director as the CEO of the fund is proposed as well as the staff of the fund. As it is Section 54(5) is not comprehensive as it merely borrows from the provisions relating to the Commission to apply with necessary modifications to the Board of trustees. The provisions are now proposed substantively as per the amendment. This ensures alignment with Mwongozo and the State Corporations Act.

Insertion of **15B.** The principal Act is amended by inserting the following new sections immediately before section 55—
into No. 42 of
2012.

Meaning of the word “college” **54D.** In this Clause “college” means an institution established under the Technical and Vocational Education and Training Act, 2013, or any other public training institution of higher learning established under an Act of Parliament”.

Justification

To offer clarity on the meaning of the word “college” within the context of Clause VIII of the Act (which deals with the establishment and functions of KUCCPS).

CLAUSE 16

THAT clause 16 of the Bill be deleted and substituted with the following new clause—

“(16) Section 56 of the principal Act is amended in —

(a) subsection (1) by—

- (i) inserting the word “public” immediately before the word “Universities” appearing in paragraph (a);

Justification

This confines the function of KUPPCS to placement of government sponsored students to public Universities and colleges

- (ii) deleting paragraph (e) and substituting therefor the following new paragraph —

“(e) develop career guidance programmes for the benefit of universities and students”

Justification

the word “student” is defined in Section 2 as any person who is registered in a university or an institution offering university education hence no need to have the words “enrolled in a university” after the word “student” as proposed in the Bill.

- (b) subsection (3) by deleting the word “courses” and inserting the words “academic programmes”.

Justification

The word “academic programmes” is more suitable as it provides more clarity than the word “courses”. A proposed definition is in clause 2 as the term is used repeatedly in the Act.

NEW CLAUSES

THAT the following new clauses be inserted immediately after clause 16—

Insertion of **16A.** The principal Act is amended by inserting the following new section
new section immediately after section 69—
69A into No. 42
of 2012.

Commission **69A.** (1) The Commission may, by notice in writing, may issue a require an institution in default of any provision under this notice to Act, regulation, standards and guidelines to comply comply therewith within a prescribed time and in a prescribed manner.

(2) If any institution served with a notice under subsection (1) fails to comply therewith, the Commission may close the institution either permanently or until the notice

is complied with.

(3) Any person aggrieved by the decision of the Commission under subsection (2) may appeal to the Cabinet Secretary within thirty days of the decision.

Justification

This is so as to allow the Commission to notify institutions in default of the provisions of the law.

Amendment of **16B.** Section 70 of the Principal Act is amended in—

section 70 of (a) subsection (1) by inserting the words “with relevant
No. 42 of 2012. stakeholders” immediately after the word “consultation”;

(b) subsection (2) by deleting the expression “foreign” appearing
in paragraph (a)

Justification

To provide for consultation with the relevant stakeholders (including the commission and other bodies established under the Act) during regulation making

Amendment of **16D.** The principal Act is amended in the First Schedule by deleting
the First paragraph 4 and substituting therefor the following new paragraph 4—
Schedule

“(4) The quorum for a meeting of the Commission shall be five
members.”

Justification

This amendment is to enable Commission to function efficiently by reducing the quorum requirement to five members in a board of nine members and further removing the requirement that quorum must include five appointed members as all members of the Board are qualified and capable of holding a meeting.

Signed

Date.....

for

HON. SABINA CHEGE, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON EDUCATION, COMMITTEE RESEARCH AND
TECHNOLOGY

**MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION, RESEARCH AND TECHNOLOGY HELD ON TUESDAY, 14TH JUNE,
2016 IN BOARD ROOM 11TH FLOOR, PROTECTION HOUSE PARLIAMENT
BUILDINGS AT 10:00 AM.**

PRESENT

- | | | |
|--|---|-------------|
| 1. Hon. Julius Melly, M.P | - | Chairing |
| 2. Hon. Sabina Chege, M.P. | - | Chairperson |
| 3. Hon. (Prof.) Hellen Sambili, EGH, M.P | | |
| 4. Hon. (Dr.) Wilber Ottichillo, M.P | | |
| 5. Hon. Joseph M'eruaki, M.P | | |
| 6. Hon. Dorcas Kedogo Luvalitsa, M.P | | |
| 7. Hon. Moses Injendi, M.P | | |
| 8. Hon. Silverse Anami, M.P | | |
| 9. Hon. Muriuki Njagagua, M.P | | |
| 10. Hon. Makenga Richard Katemi, M.P | | |
| 11. Hon. (Dr.) Susan Chebet, M.P | | |
| 12. Hon. (Dr.) Christine Ombaka, M.P | | |
| 13. Hon. Yusuf Chanzu, M.P | | |
| 14. Hon. Rose Mitaru, M.P | | |
| 15. Hon. Eric Keter, M.P | | |
| 16. Hon. Halima Ware Duri, M.P | | |
| 17. Hon. Cecilia Ng'etich, M.P | | |
| 18. Hon. Joseph Manje, M.P | | |

APOLOGY WITH APOLOGY

1. Hon. Geoffrey Makokha Odanga, M.P.
2. Hon. Mary Seneta, M.P
3. Hon. Harrison Kombe, M.P
4. Hon. Ibren Nasra Ibrahim, M.P
5. Hon. Jared Opiyo Odhiambo, M.P
6. Hon. Kenneth Okoth, M.P
7. Hon. Michael Kisoi, M.P
8. Hon. Mohamed Huka, M.P

ABSENT WITHOUT APOLOGY

1. Hon. Anthony Kimaru, M.P
2. Hon. Steven Kariuki, M.P.
3. Hon. Banticha Abdullahi, M.P

IN ATTENDANCE

National Assembly Secretariat

- | | |
|------------------------|-------------------------|
| 1. Ms. Leah Wanjiru | -First Clerk Assistant |
| 2. Mr. Abdiaziz Shobay | - Third Clerk Assistant |
| 3. Mr. John Mugoma | - Third Clerk Assistant |
| 4. Doreen Karani | -Legal Counsel |

- | | |
|-------------------------|--------------------|
| 5. Mr. Eric Kanyi | -Fiscal Analyst |
| 6. Ms. Anneceta Gacheri | - Research Officer |
| 7. Mr. Rodgers Kilungya | - Audio Officer |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes of the previous sitting
 - (vi) Matters Arising
2. **Consideration of the Amendments to Universities Amendment Bill, 2015 and the Kenya National Examination Council Amendment Bill, 2016**
3. **Consideration of Presidential Memorandum on the Engineering Technologists and Technicians Bill, 2015**
4. Adjournment/ Date for the Next Sitting

MIN.NO.DC.D/204/2016: PRELIMINARIES

The Chairperson called the Meeting to order at 10:40am. Thereafter, prayer was read.

MIN.NO.DC.D/205/2016: ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed and seconded by Hon. Wilbur Otichillo, M.P and seconded by Hon. Joseph M'eruaki, M.P respectively.

MIN.NO.DC.D/206/2016: CONSIDERATION OF THE AMENDMENTS TO UNIVERSITIES AMENDMENT BILL, 2015

The Committee was taken through the Universities (Amendment) Bill, 2015 and adopted the Amendments as follows: -

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) in paragraph (b) by inserting the words “and substituting therefor the following new definition” immediately after the words “programme accreditation”—

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

Justification

The term “programme accreditation” is used in the Act and deleting it may create ambiguity as to the intended meaning of this term. The committee proposes to improve the definition of the term as the current interpretation of programme accreditation hinders the Commission from accrediting academic programmes of chartered universities. It implies that the academic programmes offered by the universities are not subjected to regular audit, inspection, monitoring and evaluation by the Commission compromising global competitiveness.

- (b) by deleting paragraph (d)

Justification

The proposal in the Bill to delete the definition of the word "foreign university" will remove the clarity offered by the definition as to what the term means in the context of the Act. Foreign universities are provided for in the Act such as in Section 28 which deals with accreditation of foreign Universities and in section 70(2) (f) and (h) on provision for the making of regulations for registration of agents for foreign universities among other sections.

- (c) by inserting the following new paragraphs immediately after paragraph (d) —

"(e) by deleting the definition of the word "quality assurance" and substituting therefor the following new definition—

"quality assurance" means the employment of various measures and mechanisms developed to assess, maintain and enhance standards"

Justification

The measure of "Quality Assurance" is subjective to the universities themselves whereas the national and international standard is that quality assurance is objective.

"(f) in the definition of the word—

- (i) "sponsor" by inserting the words "including the government" immediately after the word "person" ;and

Justification

The current interpretation of "sponsor" connotes that only an individual can be a sponsor whereas the Government can also be a sponsor.

- (ii) "technical university" by deleting the words "an institute of".

Justification

The definition purports to establish a Technical University as an institute within a university which contradicts the Provisions of Section 25 of the Act.

- (d) by inserting the following new definitions in proper alphabetical sequence—

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

Justification

The proposed amendment is introduced to provide clarity between the core courses and programme to tally with Section 13(3) (h).

"instrument of accreditation" means the Charter or Letter of Interim Authority, accreditation report and proposal establishing the university"

Justification

The definition seeks to clarify what an "instrument of accreditation" is.

CLAUSE 3

THAT clause 3 of the Bill be deleted and substituted with the following new clause—

Amendment of section 5 of the principal Act is amended in subsection (1) by deleting paragraph (l) and substituting therefor the following new paragraph—
of No. 42 of 2012. (l) accredit, approve and review academic programs mounted by universities in Kenya

Justification

The amendment is an improvement to the proposed amendment in the Bill. Accreditation of universities is already a function of the Commission as provided for under section (5) (j). Additionally, the proposal in the Bill does not provide room for regular review of academic programmes once approved by CUE.

CLAUSE 4

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

“(4) Section 6 of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting the word “five” in paragraph (d) and substituting therefor the word “two”

Justification

To reduce the number of members to the Board appointed by the selection panel to two members as there are additional members proposed in the paragraph(b) below. This will ensure that even with the proposed amendment under paragraph (b) below, the number of board members is retained at 9.

(ii) inserting the following new paragraph immediately after paragraph (d)—

“(da) three members appointed as follows—

- (i) one Vice Chancellor representing Public Universities nominated by Vice Chancellors of public universities in a forum of the Vice Chancellors of public universities convened by the Cabinet Secretary;
- (ii) one Vice Chancellor representing Private Universities nominated by Vice Chancellors of private universities in a forum of the Vice Chancellors of private universities convened by the Cabinet Secretary;
- (iii) one person representing professional bodies nominated by professional bodies in a forum of the professional bodies convened by the Cabinet Secretary; and”

Justification

It is proposed that being the CEO of a university, a VC would be the most suitable representative of universities in the Commission as opposed to nominating from any person from within the council as proposed in the Bill. Additionally, it may not be possible to hold a forum of all the councils or sponsors of public or private universities in Kenya respectively as they are numerous. A representative of the professional bodies would also serve to ensure that there is no conflict in accreditation of courses by the Commission and by professional bodies

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 5—

Amendment of
section 8 of No.
42 of 2012.

5A. Section 8 of the principal Act is amended in subsection 1 by inserting the following new paragraph immediately after paragraph (a)—

“(aa) is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary.”

Justification

This is to align with the State Corporations Act and the Presidential Order No. 7 of 2015 (Mwongozo).

NEW CLAUSES

THAT the following new clause be inserted immediately after clause 6—

Amendment of
section 13 of
No. 42 of 2012.

6A. Section 13 of the principal Act is amended in subsection (1) by inserting the words “or a Letter of Interim Authority” immediately after the word “Charter”.

Justification

A Letter of Interim Authority is also considered an Instrument of Accreditation.

Amendment of
section 15 of
No. 42 of 2012.

6B. Section 15 of the principal Act is amended in subsection (2) by deleting the words “commence or” appearing in paragraphs (b) and (c).

Justification

The Commission does not grant a Letter of Interim Authority to an institution unless it has established that the institution has adequate academic and infrastructural resources. As such an institution with a Letter of Interim Authority cannot commence but continue to develop and assemble resources.

CLAUSE 7

THAT clause 7 be deleted and substituted with the following new clause—

Amendment of
section 20 of
No. 42 of 2012.

7. Section 20 of the principal Act is amended—

(a) in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph (c) —

“(c) may develop its new academic programmes for approval by the

Commission in accordance with this Act”;

- (b) in subsection (1) by deleting paragraph (e) and substituting therefor the following new paragraph (e) —

“(e) may only award degrees, including postgraduate degrees and honorary degrees”.

Justification

This is to limit universities to only offer degrees including postgraduate and honorary degrees and shift focus of universities from engaging in short term courses of diplomas and certificates that should be offered by TVET institutions.

- (c) by inserting the following new subsection immediately after subsection (3) —

“(4) A Letter of Interim Authority under section 16 shall apply *mutatis mutandis* to institutions established under subsection (3)”

Justification

This is to harmonize the transitional period of a constituent college as provided under section 16 with that of an institution established vide a letter of interim authority.

CLAUSE 8

THAT clause 8 of the Bill be deleted

Justification

This proposed amendment is law. It was enacted pursuant to Statute Law (Miscellaneous) (Amendment) Act, 2015

CLAUSE 9

THAT clause 9 of the Bill be deleted

Justification

This proposed amendment is law. It was enacted pursuant to Statute Law (Miscellaneous) (Amendment) Act, 2015

CLAUSE 10

THAT clause 10 be amended by deleting paragraph (b)

Justification

Statutes are instruments developed for the internal governance of a university hence for autonomy purposes universities need not seek the approval of the Cabinet Secretary in order to make statutes and regulations as proposed in the Bill. In any case, once made, the same are forwarded to the Cabinet Secretary for Gazettement as provided in the Act.

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 10—

Amendment of 10A. Section 34 of the principal Act is amended by inserting the words “or section 34 of Letter of Interim Authority” after the word “Charter”.
No. 42 of 2012.

Justification

To harmonize the instruments of governance of all universities.

NEW CLAUSES

THAT the following new clauses be inserted immediately after clause 11—

Amendment of 11A. Section 36 of the principal Act is amended —
section 36 of
No. 42 of 2012

(a) in subsection (1) by inserting the words “in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary” immediately after the word “process” in paragraph (d);

(b) by inserting the following new subsections immediately after section (2)—

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

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

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

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

Justification

This is to provide for alignment in the appointment of the council of a public university, matters relating to vacancy of office of the chairperson and members as well as the conduct of

affairs of the council to legal requirements under the Constitution, Mwongozo and the State Corporations Act. The proposed provisions borrow from the provisions applicable to members of the Commission.

NEW CLAUSE

Amendment of 11B. Section 38 of the principal Act is amended in subsection (5) by section 38 of inserting the words “for a period not exceeding three months” immediately No. 42 of 2012. after the word “Council”.

Justification

This is so as to limit the period of the person acting as Chancellor to allow the provisions of the second schedule to take effect.

CLAUSE 13

THAT clause 13 be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

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

(1A) A students’ association shall be governed by a students’ council comprising of—

- (a) a Chairperson;
- (b) a Vice Chairperson who shall be of opposite gender with the Chairperson;
- (c) a Treasurer;
- (d) a Secretary-General who shall be the secretary to the Council; and
- (e) three other members to represent special interests of students.

(1B) Every students’ council shall be elected in accordance with this Act and its membership shall—

- (a) reflect national diversity; and
- (b) have not more than two-thirds of its members being of the same gender.

(1C) For purposes of conducting the election of the members of the student council referred to in subsection (1A), the students’ association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate.

(1D) The students of each electoral college constituted under subsection (1C) shall elect three representatives—

- (a) from amongst persons who are not candidates under subsection (1A) ; and

(b) of whom not more than two-thirds shall be of the same gender.

(1E) The representatives of each electoral college shall elect the members of the student council within thirty days of the election under subsection (1C).

(1F) A member of the student council shall hold office for a term of one year and may be eligible for re-election for one final term.

(1G) A person who has held office as a member of the student council of a University for two terms is disqualified from election as a member of the student council of any other University or constituent college in Kenya.

(1H) Every students' association shall, in consultation with the University, formulate and enact rules to govern the conduct of elections including regulation of campaigns, election financing, offences and penalties.

(1I) An election conducted pursuant to this section shall comply with the general principles of the Kenyan electoral system under Article 81 of the Constitution and the rules governing the election of members of the student council.

Justification

This is to provide guidance on the matter of election of officials, electoral process, guiding principles in elections and the term of office of the members of the student council.

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 13—

Amendment of 13A. Section 51 of the principal Act is amended in section (2) (f) by —
section 51 of
No. 42 of 2012.

(a) inserting the words “or audit” immediately after the word
“accreditation; and

Justification:

This is for purposes of ensuring the commission is able to audit private universities and check if private universities meet set national and international standards

(b) deleting the word “state” appearing immediately after the words
“financial obligations”.

Justification

Grammatical correction.

CLAUSE 15

THAT clause 15 be amended—

- (a) in paragraph (b) by deleting the words “issuance of” substitute therefor the words “issue”

Justification

Grammatical correction.

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

“(c) by inserting the words “for approval by the Cabinet Secretary” immediately after the word “offered” in paragraph (d).

Justification

To enable the Cabinet Secretary to approve the maximum differentiated unit cost of programmes offered by universities so as to offer regulation and ensure the costs charged are fair and justifiable.

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

“(d) by deleting subsection (6); and

“(e) by deleting subsection (7).”

Justification

These provisions are deleted and proposed substantively in the next clause.

NEW CLAUSES

THAT the following new clauses be inserted immediately after clause 15—

Insertion of 15A. The principal Act is amended by inserting the following new sections
new sections immediately after section 54—
into No. 42 of
2012.

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

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

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

- (a) is a Kenyan citizen;

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

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

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

Financial provisions

54C. The provisions relating to the finances of the Commission as set out in sections 31, 32 and 33 shall apply, *mutatis mutandis* to the finances of the Fund.

Justification

The office of the Director as the CEO of the fund is proposed as well as the staff of the fund. As it is Section 54(5) is not comprehensive as it merely borrows from the provisions relating to the Commission to apply with necessary modifications to the Board of trustees. The provisions are now proposed substantively as per the amendment. This ensures alignment with Mwongozo and the State Corporations Act.

Insertion of new sections into No. 42 of 2012. **15B.** The principal Act is amended by inserting the following new sections immediately before section 55—

Meaning of the word "college"
No. 29 of 2013 **54D.** In this Part "college" means an institution established under the Technical and Vocational Education and Training Act, or any other public training institution of higher learning established under an Act of Parliament".

Justification

To offer clarity on the meaning of the word "college" within the context of Part VIII of the Act (which deals with the establishment and functions of KUCCPS).

CLAUSE 16

THAT clause 16 of the Bill be deleted and substituted with the following new clause—

“(16) Section 56 of the principal Act is amended in —

(a) subsection (1) by—

- (i) inserting the word “public” immediately before the word “Universities” appearing in paragraph (a);

Justification

This confines the function of KUPPCS to placement of government sponsored students to public Universities and colleges

(ii) deleting paragraph (e) and substituting therefor the following new paragraph —

“(e) develop career guidance programmes for the benefit of universities and students”

Justification

the word “student” is defined in Section 2 as any person who is registered in a university or an institution offering university education hence no need to have the words “enrolled in a university” after the word “student” as proposed in the Bill.

- (b) subsection (3) by deleting the word “courses” and inserting the words “academic programmes”.

Justification

The word “academic programmes” is more suitable as it provides more clarity than the word “courses”. A proposed definition is in clause 2 as the term is used repeatedly in the Act.

NEW CLAUSES

THAT the following new clauses be inserted immediately after clause 16—

Insertion of new section 16A. The principal Act is amended by inserting the following new section 69A into No. 42 of 2012.

Commission may issue a notice to comply
69A. (1) The Commission may, by notice in writing, require an institution in default of any provision under this Act, regulation, standards and guidelines to comply therewith within a prescribed time and in a prescribed manner.

(2) If any institution served with a notice under subsection (1) fails to comply therewith, the Commission may close the institution either permanently or until the notice is complied with.

(3) Any person aggrieved by the decision of the

Commission under subsection (2) may appeal to the Cabinet Secretary within thirty days of the decision.

Justification

This is so as to allow the Commission to notify institutions in default of the provisions of the law.

Amendment of **16B.** Section 70 of the Principal Act is amended in—
section 70 of (a) subsection (1) by inserting the words “with relevant
No. 42 of 2012. stakeholders” immediately after the word “consultation”;

(b) subsection (2) by deleting the expression “foreign” appearing in paragraph (a)

Justification

To provide for consultation with the relevant stakeholders (including the commission and other bodies established under the Act) during regulation making

Amendment of **16D.** The principal Act is amended in the First Schedule by deleting the First paragraph 4 and substituting therefor the following new paragraph 4—
Schedule

“(4) The quorum for a meeting of the Commission shall be five members.”

Justification

This amendment is to enable Commission to function efficiently by reducing the quorum requirement to five members in a board of nine members and further removing the requirement that quorum must include five appointed members as all members of the Board are qualified and capable of holding a meeting.

MIN.NO.DC.D/207/2016: THE KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) BILL, 2015

The Committee was taken through the Kenya National Examination Council (Amendment) Bill, 2015 and adopted the Amendments as follows:-

CLAUSE 2

THAT the Bill be amended in—

(a) paragraph (a) by deleting the proposed new paragraph (ba) and substituting therefor the following new paragraphs—

“(ba) rank institutions of similar category in terms of value add to students in academic and non-academic fields at basic level in accordance with this Act;

(bb) liaise with the Cabinet Secretary and institutions to obtain the necessary information for purposes of ranking under paragraph (ab);”

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

“(ba) make rules regulating the ranking of institutions in the manner prescribed in section (1)(ba);

(c) paragraph (c) by deleting the proposed new subsection (3) and substituting therefor the following new subsection—

“(3) For purposes of this section, “academic and non-academic fields at basic level” means the academic, co-curricular or extra-curricular programmes, activities and learning experiences offered or undertaken at an institution of basic education as defined under the Basic Education Act, 2013.”

MIN.NO.DC.D/208/2016: CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE ENGINEERING TECHNOLOGIST AND TECHNICIANS BILL, 2015

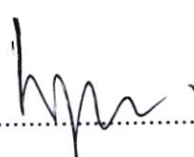
The Committee agreed with the Recommendation by the President on the Engineering Technologist and Technicians Bill, 2015 that the Bill be amended by deleting the current clause 5 and reinstating the provisions on the functions of the Board.

MIN.NO.DC.D/209/2016: ANY OTHER BUSINESS

No Any Other Business A rose

MIN.NO.DC.D/210/2016: ADJOURNMENT

The Chairperson adjourned the meeting at 12.50pm.

Signed.....

HON. SABINA CHEGE, M.P

(CHAIRPERSON)

Date.....5/7/16

**MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION, RESEARCH AND TECHNOLOGY HELD ON TUESDAY, 7TH JUNE,
2016 IN BOARDROOM, 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT
BUILDINGS AT 12.00 NOON**

PRESENT

- | | |
|--|-------------------------------|
| 1. Hon. Sabina Chege, M. P | - Chairperson |
| 2. Hon. Julius Melly, MP | - Vice Chairperson (Chairing) |
| 3. Hon. (Dr.) Wilber Ottichillo, M.P | |
| 4. Hon. (Dr.) Susan Chebet, M.P | |
| 5. Hon. Mohamed Adan Huka, M.P | |
| 6. Hon. Eric Keter, M.P | |
| 7. Hon. Yusuf Chanzu, M.P | |
| 8. Hon. (Prof.) Hellen Sambili, EGH, M.P | |
| 9. Hon. (Dr.) Christine Ombaka, M.P | |
| 10. Hon. Moses Injendi, M.P | |
| 11. Hon. Richard Makenga, M.P | |
| 12. Hon. Cecilia Ng'etich, M.P | |
| 13. Hon. Mary Seneta, M.P | |
| 14. Hon. Ibren Nasra Ibrahim, M.P | |
| 15. Hon. Rose Rwamba Mitaru, M.P | |
| 16. Hon. Joseph M'eruaki, M.P | |
| 17. Hon. Banticha Abdullahi, M.P | |
| 18. Hon. Michael Kisoi Munyao, M.P | |
| 19. Hon. Joseph Manje, M.P | |
| 20. Hon. Halima Ware Duri, M.P | |

APOLOGY

1. Hon. Steven Kariuki, M.P

ABSENT

1. Hon. Anthony Kimaru, M.P
2. Hon. Muriuki Njagagua, M.P
3. Hon. Geoffrey Makokha Odanga, M.P
4. Hon. Dorcas Kedogo Luvalitsa, M.P
5. Hon. Kenneth Okoth, M.P
6. Hon. Harrison Kombe, M.P
7. Hon. Jared Odhiambo Opiyo, M.P
8. Hon. Silverse Lisamula Anami, M.P

IN ATTENDANCE

National Assembly Secretariat

- | | | |
|---------------------|---|-----------------------|
| 1. Ms. Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. John Mugoma | - | Third Clerk Assistant |

- | | | |
|-------------------------|---|----------------------|
| 3. Ms. Doreen Karani | - | Legal Officer 11 |
| 4. Ms. Anneceta Gacheri | - | Research Officer III |
| 5. Ms. Rahab Chepkilim | - | Audio Officer |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes of the previous sitting
 - (vi) Matters Arising
2. **Consideration of the amendments to Universities Amendment Bill, 2015 and the Kenya National Examination Council Amendment Bill, 2016**
3. Any Other Business
4. Adjournment/ Date for the Next Sitting

MIN.NO.DC.D/199/2016: PRELIMINARIES

The Chairperson called the meeting to order at 12.25pm and thereafter a prayer was read. The Chairperson then welcomed Hon. Members back from long recess.

MIN.NO.DC.D/200/2016: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sitting was deferred to the next sitting. The Chairperson informed Members that due to the urgency of the business before the Committee, it was proper to defer the confirmation of the Minutes of previous sittings. However, it was noted that the Committee should always endeavor to confirm minutes of its previous sitting before deliberating on substantive agenda.

MIN.NO.DC.D/201/2016: CONSIDERATION OF THE AMENDMENTS TO UNIVERSITIES AMENDMENT BILL, 2015

- I. The Chairperson invited the Legal Counsel to the Committee to take Members through the Committee Stage amendments to **Universities (Amendment) Bill, 2015 by Hon. Aden Duale, Leader of Majority.**
- II. Members agreed to the following amendments as proposed by the Committee during its retreat in Mombasa on 22nd and 23rd April 2016.

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) in paragraph (b) by inserting the words “and substituting therefor the following new definition” immediately after the words “programme accreditation”—

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

Justification

The term “programme accreditation” is used in the Act and deleting it may create ambiguity as to the intended meaning of this term. The committee proposes to improve the definition of the term as the current interpretation of programme accreditation hinders the Commission from accrediting academic programmes of chartered universities. It implies that the academic programmes offered by the universities are not subjected to regular audit, inspection, monitoring and evaluation by the Commission compromising global competitiveness.

(b) by deleting paragraph (d)

Justification

The proposal in the Bill to delete the definition of the word “foreign university” will remove the clarity offered by the definition as to what the term means in the context of the Act. Foreign universities are provided for in the Act such as in Section 28 which deals with accreditation of foreign Universities and in section 70(2) (f) and (h) on provision for the making of regulations for registration of agents for foreign universities among other sections.

(c) by inserting the following new paragraphs immediately after paragraph (d) —

“(e) by deleting the definition of the word “quality assurance” and substituting therefor the following new definition—

“quality assurance” means the employment of various measures and mechanisms developed to assess, maintain and enhance standards”

Justification

The measure of “Quality Assurance” is subjective to the universities themselves whereas the national and international standard is that quality assurance is objective.

“(f) in the definition of the word—

(i) “sponsor” by inserting the words “including the government” immediately after the word “person” ;and

Justification

The current interpretation of “sponsor” connotes that only an individual can be a sponsor whereas the Government can also be a sponsor.

(ii) “technical university” by deleting the words “an institute of”.

Justification

The definition purports to establish a Technical University as an institute within a university which contradicts the Provisions of Section 25 of the Act.

(d) by inserting the following new definitions in proper alphabetical sequence—

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

Justification

The proposed amendment is introduced to provide clarity between the core courses and programme to tally with Section 13(3) (h).

“instrument of accreditation” means the Charter or Letter of Interim Authority, accreditation report and proposal establishing the university”

Justification

The definition seeks to clarify what an “instrument of accreditation” is.

CLAUSE 3

THAT clause 3 of the Bill be deleted and substituted with the following new clause—

Section 5 of the principal Act is amended in subsection (1) by deleting paragraph (l) and substituting therefor the following new paragraph—

- (l) accredit, approve and review academic programs mounted by universities in Kenya

Justification

The amendment is an improvement to the proposed amendment in the Bill. Accreditation of universities is already a function of the Commission as provided for under section (5) (j). Additionally, the proposal in the Bill does not provide room for regular review of academic programmes once approved by CUE.

CLAUSE 4

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

“(4) Section 6 of the principal Act is amended—

(a) in subsection (1) by—

- (i) deleting the word “five” in paragraph (d) and substituting therefor the word “two”

Justification

To reduce the number of members to the Board appointed by the selection panel to two members as there are additional members proposed in the paragraph(b) below. This will ensure that even with the proposed amendment under paragraph (b) below, the number of board members is retained at 9.

- (ii) inserting the following new paragraph immediately after paragraph (d)—

“(da) three members appointed as follows—

- (i) one Vice Chancellor representing Public Universities nominated by Vice Chancellors of public universities in a forum of the Vice Chancellors of public universities convened by the Cabinet Secretary;

- (ii) one Vice Chancellor representing Private Universities nominated by Vice Chancellors of private universities in a forum of the Vice Chancellors of private universities convened by the Cabinet Secretary;
- (iii) one person representing professional bodies nominated by professional bodies in a forum of the professional bodies convened by the Cabinet Secretary; and”

Justification

It is proposed that being the CEO of a university, a VC would be the most suitable representative of universities in the Commission as opposed to nominating from any person from within the council as proposed in the Bill. Additionally, it may not be possible to hold a forum of all the councils or sponsors of public or private universities in Kenya respectively as they are numerous. A representative of the professional bodies would also serve to ensure that there is no conflict in accreditation of courses by the Commission and by professional bodies

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 5—

5A. Section 8 of the principal Act is amended in subsection 1 by inserting the following new paragraph immediately after paragraph (a)—

“(aa) is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary.”

Justification

This is to align with the State Corporations Act and the Presidential Order No. 7 of 2015 (Mwongozo).

NEW CLAUSES

THAT the following new clause be inserted immediately after clause 6—

6A. Section 13 of the principal Act is amended in subsection (1) by inserting the words “or a Letter of Interim Authority” immediately after the word “Charter”.

Justification

A Letter of Interim Authority is also considered an Instrument of Accreditation.

6B. Section 15 of the principal Act is amended in subsection (2) by deleting the words “commence or” appearing in paragraphs (b) and (c).

Justification

The Commission does not grant a Letter of Interim Authority to an institution unless it has established that the institution has adequate academic and infrastructural resources. As such an institution with a Letter of Interim Authority cannot commence but continue to develop and assemble resources.

CLAUSE 7

THAT clause 7 be deleted and substituted with the following new clause—

7. Section 20 of the principal Act is amended—

(a) in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph (c) —

“(c) may develop its new academic programmes for approval by the Commission in accordance with this Act”.

(b) by inserting the following new subsection immediately after subsection (3) —

“(4) A Letter of Interim Authority under section 16 shall apply *mutatis mutandis* to institutions established under subsection (3)”

Justification

This is to harmonize the transitional period of a constituent college as provided under section 16 with that of an institution established vide a letter of interim authority.

CLAUSE 8

THAT clause 8 of the Bill be deleted

Justification

This proposed amendment is law. It was enacted pursuant to Statute Law (Miscellaneous) (Amendment) Act, 2015

CLAUSE 9

THAT clause 9 of the Bill be deleted

Justification

This proposed amendment is law. It was enacted pursuant to Statute Law (Miscellaneous) (Amendment) Act, 2015

CLAUSE 10

THAT clause 10 be amended by deleting paragraph (b)

Justification

Statutes are instruments developed for the internal governance of a university hence for autonomy purposes universities need not seek the approval of the Cabinet Secretary in order

to make statutes and regulations as proposed in the Bill. In any case, once made, the same are forwarded to the Cabinet Secretary for Gazettement as provided in the Act.

NEW CLAUSE

THAT the following new clause be inserted immediately after clause 10—

10A. Section 34 of the principal Act is amended by inserting the words “or Letter of Interim Authority” after the word “Charter”.

Justification

To harmonize the instruments of governance of all universities.

NEW CLAUSES

THAT the following new clauses be inserted immediately after clause 11—

11A. Section 36 of the principal Act is amended —

(a) in subsection (1) by inserting the words “in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary” immediately after the word “process” in paragraph (d);

(b) by inserting the following new subsections immediately after section (2)—

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

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

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

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

Justification

This is to provide for alignment in the appointment of the council of a public university, matters relating to vacancy of office of the chairperson and members as well as the conduct of affairs of the council to legal requirements under the Constitution, Mwongozo and the State Corporations Act. The proposed provisions borrow from the provisions applicable to members of the Commission.

NEW CLAUSE

Justification

This is so as to limit the period of the person acting as Chancellor to allow the provisions of the second schedule to take effect.

III. The following Clause was deleted:-

(4)(b)

(b)in subsection 3 by inserting the following new paragraph immediately after paragraph (d) —

“(e) one person nominated by professional bodies in a forum of the professional bodies convened by the Cabinet Secretary.”

Justification

To reduce the number of Board Members from eight to seven. Professional bodies are already represented in the Board.

IV. The following Clause was suspended

CLAUSE 13

THAT clause 13 be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

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

“(1A) Every university shall have a students’ council whose members shall be elected by the students association and whose membership shall reflect national diversity, and not more than one-third of the members of the Council shall be of the same gender where applicable.

(1B) The student association referred to in subsection (1) shall be governed by a student’s council comprising of —

(a) a Chairperson;

(b) a Vice Chairperson who shall be of opposite gender with the Chairperson;

(c) a Treasurer and;

(d) a Secretary-General who shall be the secretary to the Council.

(1C) For purposes of conducting the election of the members of the Student Council referred to in subsection (2), the student association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate, where students of each department, school or faculty in the university shall

elect three representatives, of whom at least one must be of opposite gender, from amongst persons who are not candidates under subsection (1A).

(1D) Members of the Student Council shall hold office for a term of one year and may be eligible for re-election for one further term.

(1E) A person who has held office as a member of the Student Council of a University for at least two terms is disqualified from future election as a member of the Student Council of that University, any other University or constituent college of any University in Kenya.

Justification

- 1. To allow further consultations on 1C regarding representation in students council and remove ambiguity.*
- 2. Need to include a clause on financing of Students campaigns whereby elections should be conducted in compliance with elections guidelines as provided for in Article 81 of the Constitution of Kenya.*

MIN.NO.DC.D/202/2016: ANY OTHER BUSINESS

No any other business arose

MIN.NO.DC.D/203/2016: ADJOURNMENT

The Chairperson adjourned the meeting at 1:50 pm.

Signed.....

**Hon. Sabina Chege, M.P
(CHAIRPERSON)**

Date..... 5/7/16

**MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION, RESEARCH AND TECHNOLOGY HELD ON FRIDAY, 23RD APRIL,
2016 IN MAKUTANO HALL, WHITESANDS HOTEL AT 9.30AM**

PRESENT

1. **Hon. Sabina Chege, M. P** - Chairperson
2. Hon. Yusuf Chanzu, M.P
3. Hon. (Dr.) Christine Ombaka, M.P
4. Hon. Moses Injendi, M.P
5. Hon. Ibren Nasra Ibrahim, M.P
6. Hon. (Prof.) Hellen Sambili, EGH, M.P
7. Hon. Geoffrey Makokha Odanga, M.P
8. Hon. Dorcas Kedogo Luvalitsa, M.P
9. Hon. Muriuki Njagagua, M.P
10. Hon. Joseph M'eruaki, M.P
11. Hon. Jacob Macharia, M.P
12. Hon. Jared Odhiambo Opiyo, M.P
13. Hon. Michael Kisoi Munyao, M.P
14. Hon. Joseph Manje, M.P
15. Hon. Silverse Lisamula Anami, M.P
16. Hon. Anthony Kimaru, M.P
17. Hon. Halima Ware Duri, M.P
18. Hon. Kenneth Okoth, M.P
19. Hon. Harrison Kombe, M.P

ABSENT WITH APOLOGY

1. **Hon. Julius Melly, MP** - Vice Chairperson
2. Hon. (Dr.) Susan Chebet, M.P
3. Hon. Rose Rwamba Mitaru, M.P
4. Hon. (Dr.) Wilber Ottichillo, M.P
5. Hon. Richard Makenga, M.P
6. Hon. Cecilia Ng'etich, M.P
7. Hon. Mary Seneta, M.P
8. Hon. Steven Kariuki, M.P
9. Hon. Mohamed Adan Huka, M.P
10. Hon. Eric Keter, M.P

IN ATTENDANCE

National Assembly Secretariat

1. Ms. Leah Wanjiru - First Clerk Assistant
2. Mr. John Mugoma - Third Clerk Assistant
1. Mr. Abdiaziz Shobay - Third Clerk Assistant
2. Ms. Doreen Karani - Legal Officer 11
3. Ms. Anneceta Gacheri - Research Officer III
4. Mr. Rodgers Kilungya - Audio Officer

AGENDA

1. Preliminaries

- (i) Prayers
- (ii) Introductions
- (iii) Communication from the Chair
- (iv) Adoption of the Agenda
- (v) Confirmation of Minutes of the previous sitting
- (vi) Matters Arising

2. Consideration of the Universities (Amendment) Bill, 2015

3. Any Other Business

4. Adjournment/ Date for the Next Sitting

MIN.NO.DC.D/140/2016: PRELIMINARIES

The Chairperson called the meeting to order at 9.47am and thereafter a prayer was read. The Chairperson then welcomed Hon. Members to the morning session.

MIN.NO.DC.D/141/2016: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

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

MIN.NO.DC.D/142/2016: CONSIDERATION OF THE UNIVERSITIES (AMENDMENT) BILL, 2015

The Committee was taken through the Universities (Amendment) Bill, 2015 as follows: -

14. Deletion of Section 51A

51A. (1) A private university granted a charter may enter into a financing arrangement with any person or institution upon such terms and conditions as may be set out in the arrangement, for the purpose of financing the objectives for which the university is established.

(2) without prejudice to the generality of subsection (1) the finance arrangement may set out —

- (a) the rights and obligations of each party to the arrangement;
- (b) the sharing of assets or liabilities arising from the arrangement;
- (c) the manner of termination of such arrangement;
- (d) such other matters as may be necessary under the law under which the arrangement is made.

Recommendation: Amendment Rejected.

Justification. Retain the Clause as it is in the main Act

15. Amendment of section 54

Section 54 of the principal Act is amended in subsection (4) —

(a) by deleting the word “universities” appearing in paragraph (b) and substituting therefor the words “public universities and the issuance of conditional grants to private universities;”

Recommendation: Agreed to

(b) by deleting the word “universities” appearing in paragraph (c) and substituting therefor the words “public universities and issuance of conditional grants to private universities;”

Recommendation: Amendment Rejected.

(c) by deleting the words “public universities” appearing in paragraph (d) and substituting therefor the words “the Cabinet Secretary”

Recommendation: Agreed to with amendment; by inserting the following phrase after public universities, “....and approval by Cabinet Secretary”

Justification. While establishing the maximum differentiated cost unit of programmes offered, the Fund Board will consult the public universities and it shall be approved by CS.

16. Amendment of section 56

Section 56 of the principal Act is amended -

(a) in subsection (1)-

(i) by deleting paragraph (a) and substituting therefore the following-

(a) co-ordinate the placement, by respective universities and colleges, of the government sponsored students to the existing universities and colleges to ensure fairness, equity and openness;

Recommendation: Amendment Rejected.

Justification: Retain the Clause as it is in the main Act

(ii) by deleting paragraph (e) and substituting therefor the following new paragraph-

(e) develop career guidance programmes for the benefit of universities and students admitted to universities and colleges.

Recommendation: Agreed to with amendment; delete, “..admitted to universities and Colleges.”

b) by inserting the following new subsection immediately after subsection (3)-

(4) Despite anything to the contrary in this section, the admission and placement students to universities or colleges shall vest in the respective universities or colleges.

Recommendation: Rejected

17. Transitional provisions

The provisions of paragraph (c) of section 2 of this Act shall not apply to an academic programme previously approved or accredited by the university or the Commission prior to the coming into force of this Act

Amendments by Commission for University Education

Section 54

Section 54 of the principal Act is amended in subsection (4)-

(d) by deleting sub-sections (3), (6) and (7).

Recommendation: Agreed to

Justification/Rationale: This is to align with the Presidential Order no. 7 of 2015 and Government policy on financing of public institutions.

Insert new section 54A

18. The principal Act is amended by inserting the following new sections immediately after Section 54—

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

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

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

(a) is a Kenyan citizen

(b) holds a degree or its equivalent from a university recognized in Kenya in the field of banking, education, law, finance, economics or management;

(c) has at least ten years' relevant professional experience in the management of a public or private institution; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Recommendation: Agreed to

Justification/Rationale: This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Insert new section 54B

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

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

Recommendation: Agreed to

Justification/Rationale: This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Insert new section 54C

The provisions relating to the finances of the Commission as set out in sections 30, 31, 32 and 33 shall apply, *mutatis mutandis* to the finances of the Fund.

Recommendation: Agreed to with amendment; delete Section “30”

Justification/Rationale: This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Insert new section 54D

In this Part “college” means an institution established under the Technical and Vocational Education and Training Act, 2013, or any other public training institution established under an Act of Parliament”.

Recommendation: Agreed to

Justification/Rationale: This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Section 55 (4)

The Principal Act is amended in section 55 by deleting subsection (4).

Recommendation: Rejected

Section 56

Functions of the Placement Board

Amend Section (1)(a) by inserting the word a “public” immediately before the word “Universities”.

Amend Section 56(3) by deleting the word “courses” and inserting the words “academic programmes”.

Recommendation: Agreed to

Justification/Rationale: The proposed amendment is introduced to provide clarity between the “courses” and “academic programmes”.

Section 60(d)

Section 60(d) of the principal Act is amended by adding the words “which does not include teaching or hosting classes in other institutions other than the university” immediately after the word “collaboration”

Recommendation: Rejected

New Section 69A (1) and (2)

Section 69A(1) The Commission may, by notice in writing, require an institution in default of any provision under this Act, regulation, standards and guidelines to comply therewith within a prescribed time and in a prescribed manner.

Section 69A (2) If any institution served with a notice under sub-section (1) fails to comply therewith, the Commission may close the institution either permanently or until the notice is complied with.

Section 69A (3) Any person aggrieved by the decision of the Commission under subsection (2) may appeal to the Cabinet Secretary within thirty days of the decision.

Recommendation: Agreed to

Justification/Rationale: To allow the Commission to notify institutions in default of the provisions of the law

Section 70

Section 70 of the principal Act is amended in subsection (1) by inserting the words “with Commission” immediately after the word “consultation”;

Recommendation: Agreed to with amendment; inserting the words “with stakeholders” immediately after the word “consultation”;

Section 70 of the principal Act is amended in subsection (2) by deleting the expression “foreign university campuses” appearing in paragraph (a) and substituting therefor the words “university constituent colleges and university campuses”.

Section 70 of the principal Act is amended by deleting all the paragraphs appearing after paragraph (f).

Recommendation: Rejected

First Schedule

The principal Act is amended in the First Schedule by deleting paragraph 4 and substituting therefor the following new paragraph—

(4) The quorum for a meeting of the Commission shall be five members.

The principal Act is amended in the First Schedule by deleting the words “who shall include five appointed members”.

Recommendation: Agreed to

Justification/Rationale: This amendment is to enable Commission to function efficiently.

Proposed Universities (Amendment) Bill, 2015 by Hon. Aden Duale, Leader of Majority.

CLAUSE 2; Definitions

(a) by deleting the definition of “accreditation” and substituting therefor the following new definition-

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

Recommendation: Agreed to

Justification/Rationale: Introduces the aspect of a university "having fulfilled the criteria prescribed for mounting its academic programmes" not only having fulfilled the criteria for establishment and accreditation as a University

(b) by deleting the definition of "programmes accreditation"

Recommendation: Rejected

(c) by inserting the following new definition in its proper alphabetical sequence-

"approval of academic programmes " means the procedure by which the Commission recognises an academic programme mounted by a university;

Recommendation: Agreed

Justification/Rationale: Inserting a new definition of the term " approval of academic programmes"

(d) by deleting the definition of "foreign university"

Recommendation: Rejected

Amendments by Commission for University Education

CLAUSE 2: Definitions

Delete the words "*foreign University Campus*" to mean an extension of a foreign University set up by the University pursuant to its statutes and established in accordance to Section 28 of the Act.

Recommendation: Rejected

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

Recommendation: Agreed

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

Recommendation: Agreed

Justification/Rationale: The current interpretation of "sponsor" connotes an individual whereas the Government can also be a sponsor.

"Quality assurance" means the employment of various measures and mechanisms developed to assess, maintain and enhance standards.

Recommendation: Agreed

Justification/Rationale: The measure of Quality Assurance is subjective to the universities themselves whereas the national and international standard is that quality assurance is objective.

“Technical University” means an institute of a university established in accordance with Section 25 of this Act.

Delete the words “an institute of”

Recommendation: Agreed

Justification/Rationale: The definition purports to establish a Technical University as an institute within a university which contradicts the Provisions of Section 25 of the Act.

New definitions

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

Recommendation: Agreed

Justification/Rationale: The proposed amendment is introduced to provide clarity between the core courses and programme to tally with Section 13(3) (h).

Insert **“instrument of accreditation”** means the Charter or Letter of Interim Authority, accreditation report and proposal establishing the university

Recommendation: Agreed

Justification/Rationale: The introduction of this definition seeks to clarify what an **“instrument of accreditation”** is.

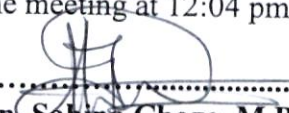
MIN.NO.DC.D/143/2016: ANY OTHER BUSINESS

No any other business arose.

MIN.NO.DC.D/144/2016: ADJOURNMENT

The Chairperson adjourned the meeting at 12:04 pm.

Signed.....

for 
Hon. Sabina Chege, M.P.
(CHAIRPERSON)

Date..... 16.6.2016

**MINUTES OF THE 23RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION, RESEARCH AND TECHNOLOGY HELD ON FRIDAY, 22ND APRIL,
2016 IN MAKUTANO HALL, WHITESANDS HOTEL AT 2.00 P.M**

PRESENT

- | | |
|--|-------------------------------|
| 1. Hon. Sabina Chege, M. P | - Chairperson |
| 2. Hon. Julius Melly, MP | - Vice Chairperson (Chairing) |
| 3. Hon. (Dr.) Susan Chebet, M.P | |
| 4. Hon. Yusuf Chanzu, M.P | |
| 5. Hon. (Dr.) Christine Ombaka, M.P | |
| 6. Hon. Moses Injendi, M.P | |
| 7. Hon. Ibren Nasra Ibrahim, M.P | |
| 8. Hon. (Prof.) Hellen Sambili, EGH, M.P | |
| 9. Hon. Geoffrey Makokha Odanga, M.P | |
| 10. Hon. Dorcas Kedogo Luvalitsa, M.P | |
| 11. Hon. Rose Rwamba Mitaru, M.P | |
| 12. Hon. Muriuki Njagagua, M.P | |
| 13. Hon. Joseph M'eruaki, M.P | |
| 14. Hon. Jacob Macharia, M.P | |
| 15. Hon. Jared Odhiambo Opiyo, M.P | |
| 16. Hon. Michael Kisoi Munyao, M.P | |
| 17. Hon. Joseph Manje, M.P | |
| 18. Hon. Silverse Lisamula Anami, M.P | |
| 19. Hon. Anthony Kimaru, M.P | |
| 20. Hon. Halima Ware Duri, M.P | |
| 21. Hon. Kenneth Okoth, M.P | |
| 22. Hon. Harrison Kombe, M.P | |

ABSENT WITH APOLOGY

1. Hon. (Dr.) Wilber Ottichillo, M.P
2. Hon. Richard Makenga, M.P
3. Hon. Cecilia Ng'etich, M.P
4. Hon. Mary Seneta, M.P
5. Hon. Steven Kariuki, M.P
6. Hon. Mohamed Adan Huka, M.P
7. Hon. Eric Keter, M.P

IN ATTENDANCE

National Assembly Secretariat

- | | | |
|-------------------------|---|-----------------------|
| 1. Ms. Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. John Mugoma | - | Third Clerk Assistant |
| 3. Mr. Abdiaziz Shobay | - | Third Clerk Assistant |
| 4. Ms. Doreen Karani | - | Legal Officer II |
| 5. Ms. Annceta Gacheri | - | Research Officer III |
| 6. Mr. Rodgers Kilungya | - | Audio Officer |

AGENDA

1. Preliminaries

- (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes of the previous sitting
 - (vi) Matters Arising
- 2. Consideration of the Universities (Amendment) Bill, 2015**
 - 3. Any Other Business**
 - 4. Adjournment/ Date for the Next Sitting**

MIN.NO.DC.D/135/2016: PRELIMINARIES

The Chairperson called the meeting to order at 2.18pm. The Chairperson then welcomed Hon. Members to that afternoon Sitting.

MIN.NO.DC.D/136/2016: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

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

MIN.NO.DC.D/137/2016: CONSIDERATION OF THE UNIVERSITIES (AMENDMENT) BILL, 2015

The Committee was taken through the Universities (Amendment) Bill, 2015 as follows: -

I. Amendment of Clause 3

~~Section 5 of the principal Act is amended in subsection (1) by deleting paragraph (i) and substituting therefor the following new paragraph-~~

(1) accredit universities and approve academic programs mounted by universities in Kenya.

Recommendation: Agreed to with the following Amendment; add the term "and inspect" immediately after the word "accredit"

Justification/Rationale: To empower CUE to inspect the Universities after accrediting and approving the courses so as to ensure that the Universities adheres to the regulations given by CUE. Not only will CUE accredit universities but will also approve the Courses and inspect them.

II. Amendment of Clause 4

Section 6 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (d)-

(da) two members appointed as follows-

- (i) one person nominated by Councils of public universities in a forum of members of the Councils of public universities convened by the Cabinet Secretary;
- (ii) one person nominated by sponsors of private universities in a forum of sponsors of private universities convened by the Cabinet Secretary.

Recommendation: Agreed to with the following Amendment; (da) delete "two" and substitute with "three" members.

Add new paragraph (iii) "one person nominated by professional bodies"

Justification/Rationale: To provide for additional representation in CUE including the Professional bodies.

III. Insertion of new Section 5A

The Principal Act is Amended by inserting the following new section immediately after section 5-

Conflicts with other Acts in approval of programmes.

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

(2) Despite the provisions of any other law, the approval or accreditation of any academic programme offered at a university shall be the exclusive mandate of the Commission to be exercised in accordance with this section at the exclusion of any other person or body.

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

Recommendation: Agreed to

Justification/Rationale:

To address issues of conflict in law in the approval of academic programmes by universities and colleges whereby approval is deemed to be the exclusive mandate of the CUE.

The provisions of the Act in terms of accreditation of programmes also prevail in the event of conflict in provisions in different laws. CUE will consult relevant professional bodies where such a body is empowered by legislation to approve or accredit courses offered at a university. Consultation creates a sense of inclusiveness harmony or compromise.

IV. Insertion of new Section 12A

The Principal Act is Amended by inserting the following new section immediately after Section 12

Protection from personal liability

12A (1) No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent or any person acting under the directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Commission of the liability to pay lawful compensation or damages to any person for injury to the person or property.

Recommendation: Agreed to

Justification/Rationale:

Acts of employees or officials or agents of CUE done in good faith in execution of duties/functions do not render that employee, official or agent personally liable. CUE is not exempt from making lawful compensation for loss or injury that may occur.

V. Amendment of Clause 7

Section 20 of the principal Act is amended in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph-

(c) may develop its new academic programmes for approval by the Commission in accordance with this Act.

Recommendation: Rejected

Justification/Rationale: Adopted CUE's proposal

VI. Amendment of Clause 8

Section 22 of the principal Act is amended-

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

(1) The President may, on the recommendation of the Cabinet Secretary revoke a Charter if in the opinion of the President that the revocation is in the best interests of university education in Kenya.

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

(2) The recommendation referred to under subsection (1) shall be made with the prior concurrence of the Commission which shall satisfy itself that the revocation is in the best interests of university education in Kenya.

Recommendation: Dropped

Justification/Rationale: The Amendment was enacted in Statute Law (Miscellaneous Amendment) Act, 2015

VII. Insertion of a new section 22A

The Principal Act is amended by inserting the following new section immediately after section 22

Variation of Charter

22A (1) The Cabinet Secretary may, upon an initiation made under subsection (3), vary a Charter if in the opinion of the Cabinet Secretary that the variation is in the best interests of university education in Kenya.

(2) The recommendation referred to under subsection (1) shall be made based on a need to-

- (a) align the particular Charter to the Constitution or any written law;
- (b) align the university to the training and research priority of the national government that would develop expertise in a specified academic field, including instilling of skills with bias in employment creation;
- (c) in the case of a private university, to reflect changes in sponsorship of the university; or,
- (d) align the university to the dynamics in research, technology and prevailing academic requirements recommended by the body which by law represents employers;
- (e) align the charter to the best interests of university education in Kenya.

(3) A variation under subsection (1) may be initiated-

- (a) by the Commission upon request by a university, in the case of a public university; or
- (b) by the sponsor in the case of a private university,

and may include the introduction of such mechanisms as shall enable the university concerned to better carry out its functions.

(4) A decision for the variation by the Cabinet Secretary shall be made without unreasonable delay, but in any case-

- (a) within three months from the date a recommendation for variation is made by the Commission, if the process is initiated by the Commission; or
- (b) within six months from the date a formal request for variation is made by a university, if the process is initiated by a university;

(5) If a Charter is varied under subsection (1) the Cabinet Secretary shall forthwith cause a notice of the variation to be published in the Gazette, and the variation shall come into effect on such date as may be specified in the notice.

(6) Notwithstanding subsection (5) the variation of a Charter shall not affect the validity of any academic award made by the University before the variation.

(7) For the purposes of this section, "vary" includes a review or amendment.

Recommendation: Dropped

Justification/Rationale: The Amendment was enacted in Statute Law (Miscellaneous Amendment) Act, 2015

VIII. Amendment of Clause 10

Section 23 of the principal Act is amended-

(a) by deleting the words "or Senate" appearing in subsection (1);

Recommendation: Agreed to

Justification/Rationale: The amendment takes away the power of a University Senate's to make statutes and regulations.

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

(2) The University Council shall-

(a) before making statutes or regulations under subsection (1) obtain the prior approval of the Cabinet Secretary;

(b) publish the statutes or regulations in the Gazette.

Recommendation: Rejected

Justification/Rationale: It proposes that the Council must seek approval of the CS before making statutes or regulations to regulate the university's affairs.

Empowers university councils to publish the statutes and regulations in the *Gazette*. As it is now, the Council submits the statues/regulations to the CS within three months of the making for gazette~~ment~~. What is in the main Act should be retained.

IX. Amendment of Clause 11 Section 35

Section 35 of the principal Act is amended in subsection (2) by inserting the words "with the approval of the Commission" immediately after the words "such a university may"

Recommendation: Agreed to

Justification/Rationale: Private universities should seek the approval of CUE before establishment of additional governance organs including a Board or trustee or its equivalent.

X. Amendment of Clause 12 Section 39

Section 39 of the principal Act is amended-

(a)by inserting a new subsection immediately after subsection (1) as follows-

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

(b) by deleting paragraph (a) and substituting therefor the following new subsection-

(a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council; and

Recommendation: Dropped

Justification/Rationale: The Amendment was enacted in Statute Law (Miscellaneous Amendment) Act, 2015

XI. Amendment of Clause 13 Section 41

Section 41 of the principal Act is amended-

(a) in subsection (1) by inserting the words "comprising of all students of the university" immediately after the word association";

Recommendation: Agreed to

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

(1A) The student association referred to in subsection (1) shall be governed by a student's council comprising of -

(a) a Chairperson;

(b) a Vice Chairperson who shall be of opposite gender with the Chairperson;

(c) a Treasurer and;

(d) a Secretary-General who shall be the secretary to the Council

Recommendation: Agreed to

(1B) For purposes of conducting the election of the members of the Student Council referred to in subsection (2), the student association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate, where students of each department, school or faculty in the university shall elect three representatives, of whom at least one must be of opposite gender, from amongst persons who are not candidates under subsection (1A),

Recommendation: Agreed to

(1C) Members of the Student Council shall hold office for a term of one year and may be eligible for re-election for one further term.

Recommendation: Agreed to

(c) by deleting subsection (3)

Recommendation: Agreed to

There is need for a new clause to bar any student leader to vie for more than two whether he registers for a new degree course in undergraduate or post graduate.

PROPOSED AMENDMENTS BY COMMISSION FOR UNIVERSITY EDUCATION

That, Clause 5 be amended in Section 5(1)(h) by deleting paragraph (h) and substituting therefor the following new paragraph—

“undertake or cause to be undertaken, regular audit, inspections, monitoring and evaluation of universities to ensure compliance with this Act regulations, set standards and guidelines”

Recommendation: Rejected

Justification/Rationale: Adopt what is in the Parent Act

New paragraph (8)(1)(g)

(g) “is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary.

Recommendations: Agreed to

Justification/Rationale

This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Section 13(1)

Insert the words “or a Letter of Interim Authority or a” immediately after the word “Charter”

Recommendations: Agreed to

Justification/Rationale

A Letter of Interim Authority is also considered an Instrument of Accreditation.

Section 15(2)

Delete the words “commence or” appearing in paragraphs (b) and(c).

Recommendations: Agreed to

Justification/Rationale

The Commission does not grant a Letter of Interim Authority to an institution unless it has established that the institution has adequate academic and infrastructural resources. As such an institution with a Letter of Interim Authority cannot commence but continue to develop and assemble resources.

Section 20

By deleting paragraph (c) and substituting therefor the following new paragraph “may develop and mount its new academic programmes subject to accreditation by the Commission in accordance with the provisions of this Act.

Recommendations: Agreed to

Justification/Rationale

Revert to the original provision under the law which mandated the Commission to review academic programmes mounted by chartered universities. The Statute Law (Miscellaneous Amendment) Act 2014 had removed these options.

New subsection 20(4)

By inserting the following new subsection:

"A Letter of Interim Authority under Section 16 shall apply *mutatis mutandis* to institutions established under subsection 3"

Recommendations: Agreed to

Justification/Rationale

Harmonize the transitional period of a Constituent College with that of an institution with a Letter of Interim Authority to a chartered university.

Section 23 Statutes

Section 23 (1)

The principal Act is amended in section 23-

(a) By deleting the words "or Senate" appearing after the words "University Council".

Recommendations: Agreed to

Section 23 (2)

By deleting subsection (2) and substituting therefor the following new subsection:- "A university council shall, as soon as practicable and in any event not later than three months after the making of Statutes or regulations under this section, submit them to the Commission, and on recommendation of the Commission, the Cabinet Secretary may publish the Statutes or regulations in the Gazette.

Recommendations: Agreed to

Section 34

By inserting the words "Letter of Interim Authority or Legal Notice" after the word "Charter".

Recommendations: Agreed to with amendment; delete the term "Legal Notice" and substitute it with "regulations"

Justification/Rationale: To harmonize the instruments of governance of all universities

Section 35 Governing Organs of a university

Section 35(2) of the principal Act is amended by inserting the words "with the approval of the Commission" after the words "such a university may".

In subsection (3) by deleting the words "in accordance with any written law or financing arrangement under Section 51A"

Recommendations: Rejected

Section 35(3)

Section 35(3) of the principal Act is amended by inserting the words In subsection (3) by deleting the words “in accordance with any written law or financing arrangement under Section 51A”

Recommendations: Rejected

Section 36 Council of a Public University

Amend Section 36(1) (d) by deleting paragraph (d) and substituting therefor the following new paragraph- “five members, or, in the case of a constituent college, four members, appointed by the Cabinet Secretary through an open process in such manner as may be prescribed in guidelines issued by the Cabinet Secretary.

New subsection (3)

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

New subsection (4)

The appointing authority shall ensure that those appointed shall not have any conflict of interest in serving as Council members.

New subsection (5)

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

New subsection (6)

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

New subsection (7)

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

Recommendations: Agreed to with amendments to 36 (1)(d); “...an open process in such manner as may be prescribed in guidelines issued by the Cabinet Secretary.”

Further Amendment on the qualification of the Chairperson to the Council; “...with a Ph.D and a minimum of ten years experience in an institution of Higher Learning.”

The person should not be a serving public servant.

Justification/Rationale

As per the Presidential Order No. 7 of 2015 (*Mwongozo*).

Section 38

Amend Section 38(5) by inserting the words "for a period not exceeding three months" immediately after the word "Council".

Recommendations: Agreed to

Justification/Rationale

To limit the period of the person acting as Chancellor to allow the provisions of the second schedule to take effect.

Section 41 Students' Association

New subsection (1A)

By inserting the following new subsection immediately after subsection (1) "Every university shall have a Students' Council whose members shall be elected by the Students' Association, and whose membership shall reflect national diversity, and not more than one-third of the members of the Council shall be of the same gender where applicable;

Delete subsection 3

Justification/Rationale

Re-numbering to allow for systematic flow of the paragraphs relating to students association and student council.

Recommendations: Agreed to

Deferment of the remaining business to the following day: Having considered several Clauses of the Bill, the Committee resolved to continue with the consideration of the Bill i.e the Universities Amendment Bill, 2015 and the Early Child Education (Senate Bill), 2014 in the next sitting.

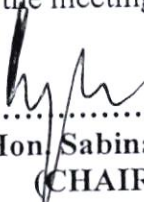
MIN.NO.DC.D/138/2016: ANY OTHER BUSINESS

No any other business arose.

MIN.NO.DC.D/139/2016: ADJOURNMENT

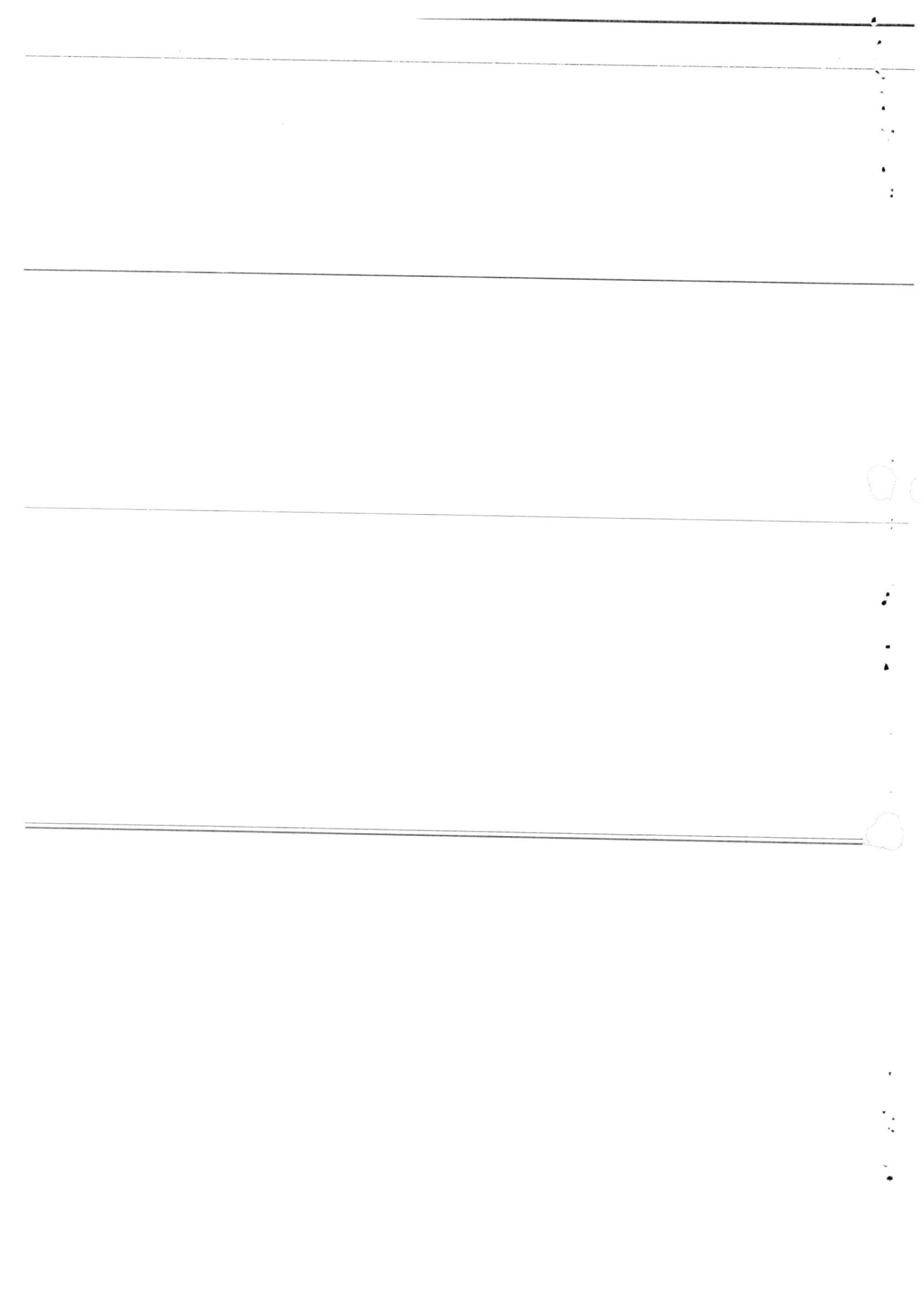
The Chairperson adjourned the meeting at 5:40 pm.

Signed.....


Hon Sabina Chege, M.P
(CHAIRPERSON)

Date.....

16.6.16



**MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION, RESEARCH AND TECHNOLOGY HELD ON TUESDAY, 12TH APRIL,
2016 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 10.00 AM**

PRESENT

- | | |
|---------------------------------------|-------------------------------|
| 1. Hon. Sabina Chege, M. P | - Chairperson |
| 2. Hon. Julius Melly, MP | - Vice Chairperson (Chairing) |
| 3. Hon. (Dr.) Susan Chebet, M.P | |
| 4. Hon. (Dr.) Wilber Ottichillo, M.P | |
| 5. Hon. Yusuf Chanzu, M.P | |
| 6. Hon. (Dr.) Christine Ombaka, M.P | |
| 7. Hon. Moses Injendi, M.P | |
| 8. Hon. Eric Keter, M.P | |
| 9. Hon. Cecilia Ng'etich, M.P | |
| 10. Hon. Geoffrey Makokha Odanga, M.P | |
| 11. Hon. Richard Makenga, M.P | |
| 12. Hon. Dorcas Kedogo Luvalitsa, M.P | |
| 13. Hon. Mary Seneta, M.P | |
| 14. Hon. Rose Rwamba Mitaru, M.P | |
| 15. Hon. Muriuki Njagagua, M.P | |
| 16. Hon. Joseph M'eruaki, M.P | |
| 17. Hon. Jacob Macharia, M.P | |
| 18. Hon. Jared Odhiambo Opiyo, M.P | |
| 19. Hon. Michael Kisoi Munyao, M.P | |
| 20. Hon. Joseph Manje, M.P | |
| 21. Hon. Silverse Lisamula Anami, M.P | |

ABSENT WITH APOLOGY

1. Hon. Ibren Nasra Ibrahim, M.P
2. Hon. (Prof.) Hellen Sambili, EGH, M.P

ABSENT

1. Hon. Anthony Kimaru, M.P
2. Hon. Halima Ware Duri, M.P
3. Hon. Steven Kariuki, M.P
4. Hon. Kenneth Okoth, M.P
5. Hon. Mohamed Adan Huka, M.P
6. Hon. Harrison Kombe, M.P

IN ATTENDANCE

National Assembly Secretariat

- | | | |
|---------------------|---|-----------------------|
| 1. Ms. Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. John Mugoma | - | Third Clerk Assistant |

- | | | |
|-------------------------|---|-------------------------|
| 3. Ms. Vane Akama | - | Principal Legal Officer |
| 4. Ms. Anneceta Gacheri | - | Research Officer |

Ministry of Education, Science and Technology

- | | | |
|------------------------------------|---|-------------------------------|
| 1. Prof. D.K Some, CEO | - | CUE |
| 2. Mr. John Muraguri, CEO | - | KUCCPS |
| 3. Ms. Edith Torone, Legal Officer | - | MOEST |
| 4. Ms. Monica Ng'ang'a, DCEO | - | KUCCPS |
| 5. Dr. Mumo Kisau, DG/CEO | - | TVET Authority |
| 6. Prof. Francis W.O Aduol, V.C | - | Technical University of Kenya |

Kenya Association of Private Universities

1. Prof. Mumo Kisau, V. C, Scott Christian University and Chairman, KAPU

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Confirmation of Minutes of the previous sitting
 - (vi) Matters Arising
2. **Meeting with the following stakeholders to consider the Universities (Amendment) Bill, 2015:-**
 - a) Prof. David Some, CEO, Commission for University Education (CUE);
 - b) Mr. John M. Muraguri, CEO, Kenya Universities & Colleges Central Placement Services (KUCCPS);
 - c) Prof. Mumo P. Kisau, Chairman, Executive Committee, Kenya Association of Private Universities
3. Any Other Business
4. Adjournment/ Date for the Next Sitting

MIN.NO.DC.D/104/2016: PRELIMINARIES

The Chairperson called the meeting to order At 10.30 am and thereafter a prayer was read. The Chairperson then welcomed the invited officials to the meeting and thereafter a round of introduction was done.

MIN.NO.DC.D/105/2016: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed and seconded by Hon.(Dr.) Christine Ombaka, M.P and Hon. Mary Seneta, M.P respectively.

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

**MIN.NO.DC.D/107/2016: MEETING WITH STAKEHOLDERS TO CONSIDER THE
UNIVERSITIES (AMENDMENT) BILL, 2015**

**1. Presentations by Chief Executive Officer Commission for University Education (CUE),
Prof. David Some**

The Chairperson invited the Chief Executive Officer Commission for University Education (CUE), Prof. David Some to make his submission on the Universities (Amendment) Bill, 2015. He informed the Committee that: -

That, Clause 2 on Interpretation be amended as follows: -

- a) Delete the words “foreign University Campus” to mean an extension of a foreign University set up by the University pursuant to its statutes and established in accordance to Section 28 of the Act.

Justification/Rationale

The provisions of the Miscellaneous (Amendments) Act, 2014 created a body called “foreign University campus”. This implies that a university established outside Kenya may establish itself in Kenya as a foreign university campus without the approval of the Commission and operate without being regulated. This exposes the country to influx of unaccredited universities

Recommendation: to be discussed in details during the retreat

- a) Provide a new definition of the term in 1(b) “*programme accreditation*” to mean the process by which the Commission formally recognizes an academic programme of a University, including a foreign university.

Justification/Rationale

The current interpretation of programme accreditation hinders the Commission from accrediting academic programmes of chartered universities. As a result, any chartered University can mount whatever academic programme(s) without meeting minimum national and international standards.

This implies that the academic programmes offered by the universities are not subjected to regular audit, inspection, monitoring and evaluation by the Commission compromising global competitiveness.

Recommendation: to be discussed in details during the retreat

- b) Provide a new definition for the term in 1(c) "**sponsor**" to mean any person, including the government proposing the establishment of a university and committed to its development, implementation, construction, maintenance, management and financing;

Justification/Rationale

The current interpretation of "sponsor" connotes an individual whereas the Government can also be a sponsor.

Recommendations: to be discussed in details during the retreat

- d) Provide a new definition to the term in 1(d). "**Quality assurance**" to mean as "the employment of various measures and mechanisms developed to assess, maintain and enhance standards".

Justification/Rationale

The measure of Quality Assurance was subjective to the universities themselves whereas the national and international standard is that quality assurance is objective.

Recommendation: to be discussed in details during the retreat

- e) 1(e) Delete the words "an institute of"

Justification/Rationale

The definition purports to establish a Technical University as an institute within a university which contradicts the Provisions of Section 25 of the Act.

Recommendation: to be discussed in details during the retreat

- f) 2(a) **New definition**

Insert **New definition** "**academic programme**" means the design of learning content which includes the intention, the structure of the content, the delivery mode, academic resources and assessment modes."

Justification/Rationale

The proposed amendment is introduced to provide clarity between the core courses and programme to tally with Section 13(3) (h).

Recommendation: to be discussed in details during the retreat

- g) 2(b) **New definition**

Insert **New definition** "**instrument of accreditation**" means the Charter or Letter of Interim Authority, accreditation report and proposal establishing the university.

Justification/Rationale

The introduction of this definition seeks to clarify what an "**instrument of accreditation**"

Recommendation: to be discussed in details during the retreat

That Clause 5 be amended in Section 5(1)(h) by deleting paragraph (h) and substituting therefor the following new paragraph—

“undertake or cause to be undertaken, regular audit, inspections, monitoring and evaluation of universities to ensure compliance with this Act regulations, set standards and guidelines”

Justification/Rationale

The amendments under section 5(1)(h) invalidates the Commission’s set Standards and Guidelines, 2014 which were formulated pursuant to section 70 of the Act.

Recommendations: Agreed to

Section 5(1)(L)

accredit, audit and inspect university programme in Kenya;

Justification/Rationale

The amendment under the Statute Law (Miscellaneous Amendments) Act, 2014 removed the functions of the Commission to accredit, audit and inspect university programmes in Kenya.

Recommendations: Agreed to

New paragraph 5(1)(n)

(n) “perform such other functions and exercise such other powers as the Commission may deem necessary for the proper discharge of its mandate under this Act”

Justification/Rationale

An omnibus provision is a standard provision in any law and its intention is to allow the Commission to exercise its powers effectively, which had been removed by the Statute Law (Miscellaneous Amendment) Act, 2014.

Recommendations: Agreed to

5. New paragraph (8)(1)(g)

(g) “is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary.

Justification/Rationale

This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Recommendations: Agreed to

6. Section 13(1)

Insert the words “or a Letter of Interim Authority or a” immediately after the word “Charter”

Justification/Rationale

A Letter of Interim Authority is also considered an Instrument of Accreditation.

Recommendations: Agreed to

7. Section 15(2)

Delete the words “commence or” appearing in paragraphs (b) and(c).

Justification/Rationale

The Commission does not grant a Letter of Interim Authority to an institution unless it has established that the institution has adequate academic and infrastructural resources. As such an institution with a Letter of Interim Authority cannot commence but continue to develop and assemble resources.

Recommendations: Agreed to

8. Section 20

By deleting paragraph (c) and substituting therefor the following new paragraph “may develop and mount its new academic programmes subject to accreditation by the Commission in accordance with the provisions of this Act.

Justification/Rationale

Revert to the original provision under the law which mandated the Commission to review academic programmes mounted by chartered universities. The Statute Law (Miscellaneous Amendment) Act 2014 had removed these options.

Recommendations: Agreed to

New subsection 20(4)

By inserting the following new subsection:

“A Letter of Interim Authority under Section 16 shall apply *mutatis mutandis* to institutions established under subsection 3”

Justification/Rationale

Harmonize the transitional period of a Constituent College with that of an institution with a Letter of Interim Authority to a chartered university.

Recommendations: Agreed to

9. Section 23 Statutes

Section 23 (1)

The principal Act is amended in section 23-

(a) By deleting the words “or Senate” appearing after the words “University Council”.

Justification/Rationale

This was amended to avoid conflict of functions of a University Council and Senate

Recommendations: Agreed to

Section 23 (2)

By deleting subsection (2) and substituting therefor the following new subsection:- "A university council shall, as soon as practicable and in any event not later than three months after the making of Statutes or regulations under this section, submit them to the Commission, and on recommendation of the Commission, the Cabinet Secretary may publish the Statutes or regulations in the Gazette.

Justification/Rationale

To enable the Commission to align the Statutes and Regulations with charters of respective universities and give appropriate advice to the cabinet secretary as per the functions of the Commission under the Act.

Recommendations: Agreed to

10. Section 34

By inserting the words "Letter of Interim Authority or Legal Notice" after the word "Charter".

Justification/Rationale

To harmonize the instruments of governance of all universities

Recommendations: Agreed to

11. Section 35 *Governing Organs of a university*

Section 35(2) of the principal Act is amended by inserting the words "with the approval of the Commission" after the words "such a university may".

In subsection (3) by deleting the words "in accordance with any written law or financing arrangement under Section 51A"

Justification/Rationale

To revert to the provision of the principal Act which mandated the Commission to approve governance organs of universities.

Recommendations: Agreed to

Section 35(3)

Section 35(3) of the principal Act is amended by inserting the words In subsection (3) by deleting the words "in accordance with any written law or financing arrangement under Section 51A"

Justification/Rationale

To remove possibilities of universities creating governing organs that are not in the Act. The principal Act allows universities to raise funds.

Recommendations: Agreed to

12. Section 36 Council of a Public University

Amend Section 36(1) (d) by deleting paragraph (d) and substituting therefor the following new paragraph- "five members, or, in the case of a constituent college, four members, appointed by the Cabinet Secretary through an open process in such manner as may be prescribed in guidelines issued by the Cabinet Secretary.

New subsection (3)

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

New subsection (4)

The appointing authority shall ensure that those appointed shall not have any conflict of interest in serving as Council members.

New subsection (5)

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

New subsection (6)

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

New subsection (7)

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

Justification/Rationale

As per the Presidential Order No. 7 of 2015 (*Mwongozo*).

Recommendations: Deferred

Cabinet Secretary should develop guidelines on appointment of the Council Members. Need for a body to check on the guidelines, regional balance and ethnic balance should also be considered.

13. Section 38

Amend Section 38(5) by inserting the words "for a period not exceeding three months" immediately after the word "Council".

Justification/Rationale

To limit the period of the person acting as Chancellor to allow the provisions of the second schedule to take effect.

Recommendations: Agreed to

14. Section 41 *Students' Association****New subsection (1A)***

By inserting the following new subsection immediately after subsection (1) "Every university shall have a Students' Council whose members shall be elected by the Students' Association, and whose membership shall reflect national diversity, and not more than one-third of the members of the Council shall be of the same gender where applicable;

Delete subsection 3

Justification/Rationale

Re-numbering to allow for systematic flow of the paragraphs relating to students association and student council.

Recommendations: Agreed to

15. Amend Section 51 (2) (f) of the Principal Act-

- (a) By inserting the words "or audit" immediately after the word "accreditation"
- (b) By deleting the word "state".

Justification/Rationale

This is for quality assurance to align with national and international standards.

Recommendations: Agreed to

16. Amend Section 53(2) by inserting the word "public" immediately before the word "universities"**Justification/Rationale**

To align with the government policy on financing of public institutions.

Recommendations: Agreed to

17. Section 54 of the principal Act is amended in subsection (4)-

- (a) by inserting the word "public" immediately before the word "university" appearing in paragraph (a)
- (b) by inserting the word "public" immediately before the word "Universities" appearing in paragraph (b).

(c) by inserting the word “public” immediately before the word “universities appearing in paragraph (c);

(d) by deleting sub-sections (3), (6) and (7).

Justification/Rationale

This is to align with the Presidential Order no. 7 of 2015 and Government policy on financing of public institutions

Recommendations: Rejected

18. Insert new section 54A

The principal Act is amended by inserting the following new sections immediately after Section 54—

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

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

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

(a) is a Kenyan citizen

(b) holds a degree or its equivalent from a university recognized in Kenya in the field of banking, education, law, finance, economics or management;

(c) has at least ten years’ relevant professional experience in the management of a public or private institution; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Justification/Rationale

This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Insert new section 54B

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

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

Justification/Rationale

This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

Insert new section 54C

The provisions relating to the finances of the Commission as set out in sections 30, 31, 32 and 33 shall apply, *mutatis mutandis* to the finances of the Fund.

Justification/Rationale

This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

19. Insert new section 54D

In this Part "college" means an institution established under the Technical and Vocational Education and Training Act, 2013, or any other public training institution established under an Act of Parliament".

Justification/Rationale

This is to align with the Presidential Order no. 7 of 2015 (Mwongozo).

20. Section 55 (4)

The Principal Act is amended in section 55 by deleting subsection (4).

Justification/Rationale

As per the Presidential Order No. 7 of 2015 (*Mwongozo*) and government policy on financing of public institutions

21. Section 56

Functions of the Placement Board

Amend Section (1)(a) by inserting the word a "public" immediately before the word "Universities".

Amend Section 56(3) by deleting the word "courses" and inserting the words "academic programmes".

Justification/Rationale

The proposed amendment is introduced to provide clarity between the "courses" and "academic programmes".

22. Section 60(d)

Section 60(d) of the principal Act is amended by adding the words "which does not include teaching or hosting classes in other institutions other than the university" immediately after the word "collaboration"

Justification/Rationale

To remove ambiguity in the application of the section.

Recommendations: Agreed to

23. New Section 69A (1) and (2)

Section 69A(1) The Commission may, by notice in writing, require an institution in default of any provision under this Act, regulation, standards and guidelines to comply therewith within a prescribed time and in a prescribed manner.

Section 69A (2) If any institution served with a notice under sub-section (1) fails to comply therewith, the Commission may close the institution either permanently or until the notice is complied with.

Section 69A (3) Any person aggrieved by the decision of the Commission under subsection (2) may appeal to the Cabinet Secretary within thirty days of the decision.

Justification/Rationale

To allow the Commission to notify institutions in default of the provisions of the law.

Recommendations: Agreed to

24. Section 70

Section 70 of the principal Act is amended in subsection (1) by inserting the words "with Commission" immediately after the word "consultation";

Section 70 of the principal Act is amended in subsection (2) by deleting the expression "foreign university campuses" appearing in paragraph (a) and substituting therefor the words "university constituent colleges and university campuses".

Section 70 of the principal Act is amended by deleting all the paragraphs appearing after paragraph (f).

Justification/Rationale

To align with amendments in the interpretation under section 2.

Recommendations: Agreed to with the following an amendment, "in miscellaneous amendment 2014" immediately after the phrase "appearing after paragraph (f)"

26. First Schedule

The principal Act is amended in the First Schedule by deleting paragraph 4 and substituting therefor the following new paragraph—

(4) The quorum for a meeting of the Commission shall be five members.

The principal Act is amended in the First Schedule by deleting the words "who shall include five appointed members".

Justification/Rationale

This amendment is to enable Commission to function efficiently.

Recommendations: Agreed to

2. Presentations by Mr. John M. Muraguri, CEO, Kenya Universities & Colleges Central Placement Services (KUCCPS);

KUCCPS proposed amendment to three clauses as follows:-

- a) **Clause 16, Section 56 In subsection (1)** Should be amended by deleting Paragraph (a) and substituting therefore the following: -

“Coordinate the placement of Government sponsored students to Universities, colleges and Technical, Vocational & Education Training Institutions.”

Justification/rationale

The object is to develop common admission requirements

Recommendations: Rejected

- b) Clause 16 (a, ii) is amended by deleting paragraph (a) and substituting therefore the following-

“Develop career guidance programmes for the benefit of students **prior to joining** Universities, Colleges and Technical Vocational and Education Training Institutions.”

Justification/rationale

The role of carrier guidance will be taken away from KUCCPS when the law is enacted. There is need for openness and balanced access to institutions of higher learning.

Recommendations: to be discussed in details during the retreat

- c) Clause 16 b,4 is amended by inserting the following new subsection immediately after subsection 3 -

Notwithstanding any other provisions in this part, a university or college may independently admit students to its programmes in accordance with the approved admissions criteria **approved by the placement service in consultation with Universities, Colleges, Technical Vocational and Education Training Institutions and other stakeholders.**

Recommendation: Rejected

Justification/Rationale: There was need to create an amendment that nullifies previous laws that give other bodies mandate to place students to universities and colleges.

Amend section 16 (2a) by inserting the following, “for avoidance of doubt, the institution will be in charge of admission and incase of any conflict, the status qui remains” (KUCCPS will carry the day)

3. **Presentations by Prof. Mumo P. Kisau, Chairman, Executive Committee, Kenya Association of Private Universities**

The Kenya Association of Private Universities was in agreement with majority of the amendments proposed by the Commission for University Education except for the following clauses:-

Clause 3 of the Bill seeking to amend section 5 of the Act so as to empower the Commission to accredit Universities and approve University programmes in Kenya.

Recommendation: Delete

Justification/Rationale:

The 2012 Act provided for the same but was removed by the miscellaneous amendment Act of 2014. The Committee should therefore adopt the amendment by Commission on University Education.

Recommendation: to be discussed in details during the retreat

Clause 10 of the Bill seeks to amend section 23 of the Act so as to empower the University Council before making statutes or regulations to obtain the prior approval of the Cabinet Secretary and publish the statutes or regulations in the Gazette.

Recommendation: Delete

Justification/Rationale: Adopt the Commission for Universities Education proposal.

Clause 15 of the Bill which seeks to amend section 54 of the Act so as to clarify the provisions relating to the funding of public Universities and issuance of conditional grants to private Universities.

Recommendation: Delete

Justification/Rationale: This amendment appears to create an unfair and unfavorable situation for private Universities as it only allows conditional grants to private Universities will be developed. It's yet to be seen what criteria will be developed and how will be the application process. The provision as drafted is not encouraging. Existing provision is more fair and must reinstated.

4. **Amendment by Technical University of Kenya.**

Section 25

That Section 25(2) be amended to read, "is or has been" immediately after the word institution.

Recommendation: Agreed to.

Justification/Rationale: To remove ambiguity

Members concerns

- (i) The Committee raised concern on the amendments made to the Universities Act, 2012 through the Statute Law (Miscellaneous Amendment) Bill, 2014. It was noted that several irregular amendments were approved by the House. The Committee noted the need to be extra vigilante on such amendment that might end up eroding the gains made by the enactment of the Universities Act, 2012. The Committee further noted that some of the amendments being proposed by the CUE were removed from the Principal Act through the said Statute Law (Miscellaneous Amendment) Bill.
- (ii) The Committee noted that one of the amendments being proposed through the Bill was proposing to reduce the powers of placement from the KUCCPS. The Committee noted that the proposal was in contravention of the spirit behind the establishment of the central placement service.
- (iii) The Committee noted that some of the Universities were offering diploma and certificates programmes which are preserve of the Middle Level colleges. The Committee further noted that the Universities Act, 2012 was clear on the level of programmes to be offered by Universities. The Committee directed CUE to reign on these Universities that were contravening the law.
- (iv) It was noted that some Middle level colleges like Utalii College, and Kenya Institute of Water were offering internal certification by offering internal examination. It was noted that these institutions were contravening the TVET Act where certification should be done through TVETA.

MIN.NO.DC.D/108/2016: ANY OTHER BUSINESS

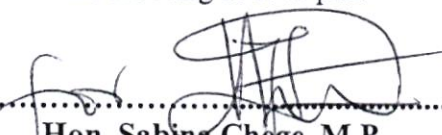
Placement of Students in KMTC

The Committee raised concern with the persistent turf wars between the Kenya Universities and Colleges Central Placement Service (KUCCPS) and Kenya Medical Training College (KMTC) regarding the placement of students in KMTC. The Committee resolved to hold a joint meeting with the concerned government agencies to discuss the best way possible on how to solve the issue.

MIN.NO.DC.D/109/2016: ADJOURNMENT

The Chairperson adjourned the meeting at 1:40 pm.

Signed.....


Hon. Sabina Chege, M.P
(CHAIRPERSON)

Date..... 19/4/2016

