

Approved for tabling in the House.

~~Bill~~
SNA
14/4/2022

REPUBLIC OF KENYA




PARLIAMENT
OF KENYA
LIBRARY

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

REPORT ON CONSIDERATION OF THE HIGHER EDUCATION LOANS BOARD
(AMENDMENT) BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 52 OF 2021) BY THE
HON. GIDEON KOSKE, MP

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	14 APR 2022
	DAY: THURS
TABLED BY:	HON. FLORENCE MUTUA, MP CHAIR. EDUCATION
CLERK AT THE TABLE:	CHRISTINE NDIRITU

Published by:-
Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

APRIL, 2022

Table of Contents

CHAIRPERSON’S FOREWORD	2
1.0 PREFACE.....	3
1.1 Mandate of the Committee.....	3
1.2 Subjects.....	3
1.3 Committee Membership.....	4
1.4 Committee Secretariat.....	7
2.0 CONSIDERATION OF THE BILL BY THE COMMITTEE.....	8
2.1 Committal of the Bill	8
2.2 Memorandum of Objects and Reasons for the Bill	8
2.3 Public Participation on the Bill.....	8
3.0 COMMITTEE ANALYSIS OF THE SUBMISSION	12
4.0 COMMITTEE OBSERVATIONS	16
5.0 COMMITTEE RECOMMENDATIONS.....	16

CHAIRPERSON'S FOREWORD

The Higher Education Loans Board (Amendment) Bill, 2021 (National Assembly Bill No. 52) sponsored by the Hon. Gideon Koske, MP was read a First Time on Thursday 25th November, 2021 and committed to the Departmental Committee on Education and Research for consideration and reporting to the House, pursuant to Standing Order 127(1).

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

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

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

Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), adverts for request for submission were placed in the "Daily Nation" and the "Standard" newspapers on 24th February, 2022 inviting interested members of the public to submit any representations they may have on the Bill. (Annex 1). The Committee received representations from the Ministry of Education. The submission was considered by the Committee.

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

The Committee having considered Higher Education Loans Board (Amendment) Bill, 2021 (National Assembly Bill No. 52) sponsored by the Hon. Gideon Koske, MP clause by clause and taking into consideration views and recommendations of the stakeholders pursuant to Standing Order 127(3A) made observations and recommendations contained in section 4.0 and 5.0 of this Report.

Acknowledgement

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

On behalf of the Committee, and pursuant to Standing Order 127(4), it is my pleasant duty to table the Report of the Departmental Committee on Education and Research on its consideration of the Higher Education Loans Board (Amendment) Bill, 2021 (National Assembly Bill No. 52) sponsored by the Hon. Gideon Koske, MP).

HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION AND
RESEARCH

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Education and Research is constituted pursuant to the National Assembly Standing Order No. 216(1) which mandates Departmental Committees to :-

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

1.2 Subjects

The Committee, according to the Second Schedule of the Standing Orders, examines the following subjects:

- i) Education;
- ii) Training; and
- iii) Research.

The Committee oversees the following government entities: -

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

1.3 Committee Membership

The Committee comprises of the following Members: -

Chairperson

Hon. Florence Mutua, CBS, MP
Busia County

Orange Democratic Movement Party

Vice Chairperson

Hon. Ngunjiri Wambugu, CBS, MP
Nyeri Town Constituency

Jubilee Party

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

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

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

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

Hon. Eric Muchangi Njiru, MP
Runyenjes Constituency
Jubilee Party

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

Hon. Jackson Lekumontare, MP
Samburu East Constituency
KANU Party

Hon. Jerusha Momanyi, MP
Nyamira County
Jubilee Party

Hon. Joseph Tonui, MP
Kuresoi South Constituency
Jubilee Party

Hon. Omboko Milemba, MP
Emuhuya Constituency
Amani National Congress

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. Wilson Sossion, MP
Nominated Member

Hon. Wilson Kogo, MP
Chesumei Constituency
Jubilee Party

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

Hon. Gichuki Mugambi, MP
Othaya Constituency
Jubilee Party

Hon. John Mwirigi, MP
Igembe South Constituency
Independent

Hon. Ali Mohammed Lokiru, MP
Turkana East Constituency
Orange Democratic Movement Party

1.4 Committee Secretariat

The Committee secretariat comprise of: -

Mr. Philip Lekarkar
Clerk Assistant II
Lead Clerk

Ms. Grace Wahu
Clerk Assistant III

Ms. Mercy Wanyonyi
Legal Counsel I

Ms. Winnie Kulei
Research Officer II

Mr. Eric Kanyi
Fiscal Analyst II

Ms. Deborah Mupusi
Media Relations Officer

Ms. Catherine Mukunyi
Serjeant-At-Arms

Mr. Collins Mahamba
Audio Recording Officer

2.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

2.1 Committal of the Bill

The Higher Education Loans Board (Amendment) Bill, 2021 (National Assembly Bill No. 52) sponsored by the Hon. Gideon Koske, MP was read a First Time on Thursday 25th November, 2021 and committed to the Departmental Committee on Education and Research for consideration and reporting to the House, pursuant to Standing Order 127(1).

2.2 Memorandum of Objects and Reasons for the Bill

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

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

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

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

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

Statement on how the Bill concerns county governments

The Bill does not affect the functions of the county governments in terms of Article 109 (5) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

The Universities and other institutions of higher learning is a function of the national government as provided in Part 1 of the Fourth Schedule to the Constitution.

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

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

2.3 Public Participation on the Bill

1. Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), adverts for request for submission were placed in the “Daily Nation” and the “Standard” newspapers on 24th February, 2022 inviting interested members of the public to submit any representations they may have on the Bill. **(Annex 1)**. The Committee received representations from the Ministry of Education which were considered by the Committee.
2. In considering the Bill the Committee held a total of three meetings to receive and consider submissions from the stakeholders.

2.4 Submission from the Cabinet Secretary Ministry of Education

The Cabinet Secretary for Education submitted as follows as regards the Bill :-

That the National ID is a mandatory document during loan application. To ensure that the loan application is only accessed by Kenyans and used to create a loan account for the student. Applicants' National Identity numbers are validated against Integrated Population Registration System (IPRS). This database (IPRS), links other systems to the third generation ID card.

Number of KCSE candidates under the age of 18 years

Candidates with C+ and Above (University)

In the last three years, it is estimated that 54,457 KCSE candidates out of a total of 358,980 who obtained grade C+ and above, were under the age of 18 years. This represents KCSE candidates' population of 15.2% who qualified for university placement and financial assistance from HELB but could not access HELB funding due to lack of Kenyan National ID.

The table below shows the number of KCSE candidates under the age of 18 years who attained grades C+ and above in the last three KCSE final examinations in the last 3 years.

KCSE Candidates	KCSE 2018	KCSE 2019	KCSE 2020
Number of all candidates with C+ and above	90,377	125,463	143,140
Estimated number of under 18 with C+ & above	12,289	19,789	22,371
% of C+ and above-Under 18 years of age	14%	16%	16%

Candidates with Below C+ (TVET)

In the last three years, it is estimated that 262,100 KCSE candidates out of a total of 1,745,607 who obtained grades below C+, were under the age of 18 years. This represents KCSE candidates' population of 15% who qualified for TVET placement and financial assistance from HELB, but could not access HELB funding due to lack of the Kenyan National Identity Card.

The table below indicates the number of KCSE candidates under the age of 18 years who attained grades below C+ in the last three KCSE final examinations.

KCSE Candidates	KCSE 2018	KCSE 2019	KCSE 2020
Number of all candidates with below C+	569,827	571,759	604,021
Estimated number of under 18 with below C+	77,485	90,184	94,432
% of C+ and above-Under 18 years of age	14%	16%	16%

Funding requirements for KCSE candidates under the age of 18 years

University Level

An estimate of 46,430 underage students would have successfully applied for HELB financial assistance in the last three years. This translates to 85.2% of the total number of KCSE candidates with C+ and above under the age of 18 years in the last three years. HELB would have required an additional funding of Kshs.4,178,669,648 to fund the 46,430 students in the last three years.

Each cohort would have been funded for period of two years before they acquire a Kenyan National ID. That is an average of Kshs.1,044,667,412.04 per year for university students.

The table three below shows funding requirement per year for KCSE candidate under the age of 18 years-University.

Funding per Year	KCSE 2018	KCSE 2019	KCSE 2020	Total
Average Loan (University)	45,000	45,000	45,000	
Estimated Number of successful HELB applicants-Under 18	10,630	16,778	19,022	46,430
Loan Year 1 (2018/2019)	478,351,646.49	478,351,646.49		478,351,646.49
Loan Year 2 (2018/2019)	478,351,646.49	478,351,646.49	855,969,483.22	1,233,365,340.87
Loan Year 3 (2019/2020)	-	-	855,969,483.22	1,610,983,177.33
Loan Year 4 (2020/2021)	-	-		855,969,483.22
Total University				4,178,669,648

TVET Level

An estimate of 49,055 students would have successfully applied for HELB financial assistance. This translates to 18.7% of the total number of KCSE candidates with below C+ under the age of 18 years in the last three years. HELB would have required an additional funding of Kshs.3,924,373,243 to fund a total of 49,055 TVET students in the last three years.

Each cohort would have been funded for period of two years before they acquire the National ID. Annual average funding of Kshs.981,093,310.79 would have been required.

The table below illustrates funding requirement per year for KCSE candidate under the age of 18 years-TVET.

Funding per Year	KCSE 2018	KCSE 2019	KCSE 2020	Total
Average Loan (TVET)	40,000	40,000	40,000	
Estimated Number of successful HELB applicants-Under 18	14,404	16,708	17,942	49,055
Loan Year 1 (2018/2019)	576,170,990.78	-	-	576,170,990.78
Loan Year 2 (2018/2019)	576,170,990.78	668,334,613.08		1,244,505,603.86
Loan Year 3 (2019/2020)	-	668,334,613.08	717,681,017.71	1,610,983,177.33
Loan Year 4 (2020/2021)	-	-	717,681,017.71	717,681,017.71
Total TVET				3,924,373,243.15

Total Funding Requirements for University & TVET for Under 18 Students

The total funding requirement for students below 18 years is Kshs.4,178,669,648 for Universities and Kshs3,924,373,243 for TVET students. This brings the total funding requirement to Kshs.8,103,042,891 for all students below 18 years for four years at average budget of Kshs.2,025,760,723 annually.

The table below shows the total funding requirements for both university and TVET students under the age of 18 years.

Item	Amount	Average/Year Kshs.
Total (University)	4,178,669,648.17	1,044,667,412.04
Total (TVET)	3,924,373,243.15	981,093,310.79
Grand Total (University + TVET)	8,103,042,891.32	2,025,760,722.83

Total Amount to be Repaid Upon Maturity

HELB loan matures one year upon completion of studies and is expected to be repaid within a period of ten (10) years. From the disbursement of Kshs.8,103,042,891, a total of Kshs.10,788,754,635 would have been anticipated back in repayment of principal and interest.

The law of contract limits the capacity of persons under the age of 18 years in contracting including loan agreements. Under the circumstances, awarding minors loans poses a risk of non-recovery of Kshs.10,788,754,635.

Disputes may arise on account of contravention to provisions of the law of contract, noting that the minor always retains the right to invalidate the contract on account of age. This will be a major setback in sustainability of higher education financing hence creating more dependency on the National Treasury.

The table below shows the amounts expected to be repaid back upon maturity of loan disbursed to students below the age of 18 years.

Funding per Year	Total Disbursement	Amount to be repaid
2018/2019	1,054,522,637 1	
2019/2020	2,477,870,945	3,299,145,509
2020/2021	2,996,998,808	3,990,332,211
2021/2022	1,573,650,501	2,095,231,809
Total	8,103,042,891	10,788,754,635

HELB Act

HELB Act defines an “eligible person” as any person, who being a Kenyan citizen, has attained minimum entry requirements and has been admitted to a recognized institution of higher education to a full-time course of at least one year.

The criteria set in the Act is limited to admission and length of study. There is no mention of age. However, at the time HELB Act was enacted in 1995, there was a waiting period of two (2) years after KSCCE examination before admission by which time all were of the majority age.

No Action to be Brought on Ratification of Minor’s Contract.

The general operating norm is that no action can be brought to charge or make claim to any person upon any promise made after full age to pay any debt contracted while the person was a minor, or

upon any ratification made after full age of any promise or contract made during the minor status, whether there shall or shall not be any new consideration for such promise or ratification after full age.

This means that minors usually retain the legal right to invalidate a contract whenever they wish, which means as a party entering a contract with them (minors) should always know that there is no guarantee that the contract would actually be completed. The reason that minors are allowed to invalidate contracts is to protect them from being forced to fulfill contractual obligations they do not have the ability to understand, more so at the time it was made.

Co-Signing

Through benchmarking (India, UK and US) it has been established that the only way minors can get a loan for education purpose is through co-signing with a guardian or parent, both committing themselves to repayment of the loan. Under such, should the minors invalidate the contract, to co-signatory remains liable for loan repayment.

Amendment to the HELB Act

The expansion of the definition of a loanee to include a parent and guardian will make it possible to award education loan to a minor who co-signs with a parent or guardian. This will address the issue of under-age applicants.

Other operational logistics

Even if HELB is obligated to allocate loans to minors, the disbursement of loans to minors will be challenged by the following technical hurdles during implementation: -

- (i) To open a bank account, one is required to have a national ID and KRA pin number;
- (ii) To get a KRA pin one is required to have an ID and being minors they will not have both documents;
- (iii) An amendment to the law of contracts to allow minors to contract may need to precede these amendments;
- (iv) In the case of co-borrowing and the money deposited in the co-signee account we cannot guarantee that the money will eventually get to the minor's hands; and
- (v) Determining who will be responsible for repaying the loan, minor or the co-signee.

Credit risk

The country risks losing millions of shillings due to default, lack of contractual obligations and eventually bad loans since HELB will not be able to enforce the recovery mechanisms currently being applied to enforce repayment and unless the Government guarantees to underwrite such loans the fund will start suffering massive wastages in the long term. It will therefore not be prudent to lend to minors until the co-borrower amendment is legislated.

3.0 COMMITTEE ANALYSIS OF THE SUBMISSION

C	Provision in the Principal Act	Proposed Amendment	Memoranda Received	Rationale/ Justification	Committee Observations/ Committee Resolution
1	Short Title	The Short Title of the Bill			
2	<p>14. Conditions for grant of loan</p> <p>(1) The Board may–</p> <p>(a) accept or reject any application for a loan;</p> <p>(b) grant a loan to any student and in so granting impose conditions, demand security and require repayment in installments at such times and within such periods as the Board deems fit:</p> <p>Provided that and subject to the provisions of this section the Board may upon the request by any student to whom a loan has been granted at any time vary –</p> <p>(i) the condition subject to which the loan was made;</p> <p>(ii) any security given in relation to the loan;</p> <p>(iii) any of the terms of repayment of the loan.</p> <p>(2) Where the Board has resolved to make a loan to any eligible student, the Board shall notify the applicant in writing, and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Board may have imposed or demanded.</p>	<p>Insertion of the following new subsections;</p> <p>“(2A) The Board shall not reject an application for a loan under this Act only on the ground that the student has not attained the age of eighteen years.</p> <p>(2B) A person granted an education loan by the Board under this Act and who is under the age of eighteen years shall be required to have his or her parents or guardian as co-signatories to the loan.”</p>	<p><u>MINISTRY OF EDUCATION</u></p> <p>The HELB Act should be amended to expand the definition of a loanee to include a parent and guardian to allow for co-signing.</p> <p>Do not support the amendment until the co-borrower amendment is legislated.</p>	<p>The law of contract limits the capacity of minors in contracting including loan agreements. This poses a risk of non-recovery as the HELB loan is based on contractual agreements.</p> <p>Minors cannot open bank accounts and in the case the money is deposited in the parent or guardian’s account they have no assurance that the money will eventually end up in the minor’s hands.</p>	Amendment adopted

C	Provision in the Principal Act	Proposed Amendment	Memoranda Received	Rationale/ Justification	Committee Observations/ Committee Resolution
	<p>(3) Where any applicant fails to comply with the requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.</p> <p>(3A) The Board shall notify every applicant in writing whether the application for a higher education loan has been accepted or rejected.</p> <p>(3B) A student may appeal against a decision of the Board to reject his or her application for grant of a higher education loan in writing, addressed to the Secretary of the Board.</p> <p>(4) Where in granting a higher education loan to any student the Board considers it prudent to request for a guarantor to guarantee any loan granted to a student, in case of any default by the loanee in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board.</p> <p>(5) Where a guarantor who has been notified by</p>				

C	Provision in the Principal Act	Proposed Amendment	Memoranda Received	Rationale/ Justification	Committee Observations/ Committee Resolution
	the Board under subsection (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.				

4.0 COMMITTEE OBSERVATIONS

The Committee observed as follows: -

- (a) The Bill seeks to expressly provide that the Higher Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years and to require a person granted an education loan by the Board who is under the age of eighteen years to have his or her parents or guardian as co-signatories to the loan..
- (b) The expansion of the definition of a loanee to include a parent and guardian will make it possible to award education loan to a minor who co-signs with a parent or guardian. This will address the issue of under-age applicants.

5.0 COMMITTEE RECOMMENDATIONS

The Committee recommends that—

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 1—

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

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

SIGNED _____



DATE _____

13/04/2022

HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION & RESEARCH

ANNEXURES

I - REPORT ADOPTION LIST

II - MINUTES






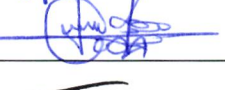
III - NEWSPAPERS ADVERTS

IV – SUBMISSION FROM STAKEHOLDERS

KENYA NATIONAL ASSEMBLY

COMMITTEE ON EDUCATION AND RESEARCH

Adoption List of the Report on the Higher Education Loans Board (Amendment) Bill, 2021 (National Assembly Bill No. 52 of 2021) by Hon. Gideon Koske, MP

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

MINUTES OF THE 13TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH HELD ON THURSDAY 31ST MARCH 2022, IN 2ND FLOOR COMMITTEE BOARD ROOM, CONTINENTAL HOUSE, AT 12.00 NOON

PRESENT

1. Hon. Florence M. Mutua, CBS, MP – **Chairperson**
2. Hon. Geoffrey Odanga, MP
3. Hon. (Dr.) Pamela Ochieng, MP
4. Hon. (Eng.) Nzambia Kithua, MP
5. Hon. (Prof.) Zadoc Ogutu, MP
6. Hon. Eric Muchangi, MP
7. Hon. Jerusha Momanyi, MP
8. Hon. Joseph Tonui, MP
9. Hon. (Dr.) Wilson Kogo, MP
10. Wilson Sossion, MP
11. Hon. John Paul Mwirigi, MP

ABSENT WITH APOLOGY

1. Hon. Wambugu Ngunjiri, MP – **Vice- Chairperson**
2. Hon. Eve Obara, MBS, MP
3. Hon. Omboko Milemba, MP
4. Hon. Jackson Lekumontare, MP
5. Hon. Peter Lochakapong, MP
6. Hon. Gichuki Mugambi, MP
7. Hon. (Dr.) Daniel Kamuren Tuitoek, MP
8. Hon. Mohammed Ali Lokiru, MP

COMMITTEE SECRETARIAT

1. Mr. Philip Lekarkar – Clerk Assistant II
2. Mr. Grace Wahu – Clerk Assistant II
3. Ms. Mercy Wanyonyi – Legal Counsel I
4. Ms. Winnie Kulei – Research Officer II
5. Mr. David Milimu – Hansard Officer III
6. Ms. Rhoda Muchori – Hansard Officer III
7. Mr. Collins Mahamba – Audio Officer

MIN. NO. EDUC/2022/061: PRELIMINARIES

The meeting was called to order at 12.15 pm. The agenda of the meeting was adopted having been proposed by Hon. Jerusha Momanyi, MP, and seconded by Hon. (Eng.) Nzambia Kithua, MP.

MIN. NO. EDUC/2022/062: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO. EDUC/2022/063: ADOPTION OF REPORTS ON BILLS AND LEGISLATIVE PROPOSALS.

The Committee considered the following Reports as follows: -

I. Report on Consideration of the Basic Education (Amendment) Bill, 2021 Senate Bill No. 4 of 2021 by Sen. Beatrice Kwamboka.

Committee Observations

The Committee observed as follows: -

- (i) The provision and distribution of milk to learners enrolled in pre-primary schools should be carried out by the County Governments while the provision and distribution of milk to learners enrolled in primary schools be carried out by the National Government. Clearly demarcating the role of the National Government from that of County Government as set out in the Fourth Schedule to the Constitution will avoid any potential conflict on the roles of the National and County Governments.
- (ii) The implementation of the amendment would amount to expanding the current school meals programme. In seeking to provide milk for learners, other school meals would be affected owing to budgetary shortfalls.
- (iii) The school feeding programme should first be fully implemented and the proposal on the expansion of the school meals programme to include the provision of milk should be firstly relegated to policy before legislation.

Committee Recommendation

The Committee recommended that—

Clause 2

That clause 2 of the Bill be deleted.

Justification: Definition not necessary as clause 3 where the term is proposed to be used is proposed to be deleted.

Clause 3

That clause 3 of the Bill be deleted.

Justification: The proposed amendment may not be implementable as the implementation would amount to expanding the current school feeding programme which is yet to be fully implemented owing to budgetary shortfalls.

Report on Consideration of the Basic Education (Amendment) Bill, 2021 Senate Bill No. 4 of 2021 by Sen. Beatrice Kwamboka was unanimously adopted having been proposed by Hon. (Prof.) Zadoc Ogutu, MP and seconded Hon. Eric Muchangi, MP.

II. Report on Consideration of the Higher Education Loans Board (Amendment) Bill by Hon. Gideon Koske MP.

Committee Observations

The Committee observed as follows: -

- (i) The Bill seeks to expressly provide that the Higher Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years and to require a person granted an education loan by the Board who is under the age of eighteen years to have his or her parents or guardian as co-signatories to the loan.

- (ii) The expansion of the definition of a loanee to include a parent and guardian will make it possible to award education loan to a minor who co-signs with a parent or guardian. This will address the issue of under-age applicants.

Committee Recommendations

The Committee recommended that—

New Clause

THAT the Bill be amended by inserting the following new clause immediately after clause 1—
“Section 2 of the Higher Education Loans Board Act No.3 of 1995 is amended in the definition of the term “loanee” by inserting the words ‘including a parent or guardian’ immediately before the words “granted an education loan by the Board”

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

The Report on Consideration of the Higher Education Loans Board (Amendment) Bill by Hon. Gideon Koske MP was unanimously adopted having been proposed by Hon. Joseph Tonui, MP and seconded by Hon. Wilson Sossion, MP.

III. Report on Consideration of the Basic Education (Amendment) Bill, 2021 (Legislative Proposal) by Hon. Mary Wamaua, MP.

Committee’s Observations

The Committee observed that-

- (i) The amendment seeks to provide for the establishment of Sub-County Education Boards in every sub county, provide for its functions and membership.
- (ii) The role of the Sub-County Education Board shall include, the establishment of a data bank of all education and training institutions in the sub-county and assessment of the budgetary requirements of all education and training institutions in the sub-county and developing allocation programmes including programmes for allocation to institutional lunch programmes.
- (iii) Further, the sub-county Education Board in consultation with the National Education Board and the County Education Board the national and county level will help in ensuring that all the barriers to the right to quality education are removed and facilitate the realization of the right basic education in line with Article 53(1)(b) of the Constitution.

Committee Recommendations

Having considered the Legislative Proposal, the Committee recommends that the Legislative Proposal should be published.

The Report on Consideration of the Basic Education (Amendment) Bill, 2021 (Legislative Proposal) by Hon. Mary Wamaua, MP was unanimously adopted having been proposed by Hon. Geoffrey Odanga, MP and seconded by Hon. (Eng.) Nzambia Kithua, MP.

IV. Report on Consideration of the Basic Education (Amendment) Bill, 2021 (Legislative Proposal) by Hon. Anthony Oluoch, MP.

Committee's Observations

The Committee observed that-

- (i) The principal object of the Bill is to amend the Basic Education Act, 2013 to ensure Alternative Provision for Basic Education and Training (APBET) schools fall under the definition of basic education.
- (ii) The policy framework for Alternative Provision of Basic Education and Training (APBET) 2009 and the Basic Education Regulations 2015 recognizes different categories of APBET Institutions, including Adult and Continuing Education centres, Non-Formal Education Learning Centres, Vocational Training Centres, Alternative Basic Education Programmes (Non—Formal Schools (NFS), Mobile Schools, Night Schools and Home Schools.
- (iii) The Bill seeks to streamline the Basic Education Act 2013 in line with the APBET policy 2009 and the Basic Education Regulations 2015 in order to fully embrace and mainstream APBET schools into the formal education structures or system.
- (iv) The Committee observed the importance of APBET schools but was of the view that more input from stakeholders was required before the policy framework for Alternative Provision of Basic Education and Training (APBET) 2009 is legislated upon.

Committee Recommendation

Having considered the Legislative Proposal, the Committee recommended that the Legislative Proposal should not be published.

The Report on Consideration of the Basic Education (Amendment) Bill, 2021 (Legislative Proposal) by Hon. Anthony Oluoch, MP having been proposed by Hon. Jerusha Momanyi, MP and seconded by Hon. Joseph Tonui, MP

V. Report on Consideration of the Basic Education (Amendment) Bill, 2021 (Legislative Proposal) by Hon. Samuel Arama, MP.

Committee's Observations

The Committee made the following observations:

- (i) The amendment seeks to mandate the government to provide free meals to school going children who belong to marginalized, vulnerable or disadvantaged groups and are enrolled in public primary and secondary schools.
- (ii) School feeding programme has been used as one of the interventions to promote enrolment, retention and improving learning outcomes in primary schools. The Ministry of Education is currently implementing school feeding programme as a policy in Arid and Semi-Arid regions, urban slums and informal settlements where school going children also face challenges. The objective of the initiative is expected to boost enrolment and retention in the targeted areas.
- (iii) Implementation of the proposed programme requires further sources of sustainable funding and personnel to co-ordinate both at the national and county level of government.

- (iv) There is need to define the terms “marginalized”, “vulnerable” and “disadvantaged groups” as used in the proposed amendments.
- (v) That the provision of free meals to school going children enrolled in public primary schools would increase enrollment in schools particularly by disadvantaged children; and
- (vi) That the provision of free meals should not be limited to school going children who belong to marginalized, vulnerable or disadvantaged groups but to all school going children as it would pose an identification challenge.

Committee Recommendations

Having considered the Legislative Proposal, the Committee recommends that the Legislative Proposal should not be published.

Report on Consideration of the Basic Education (Amendment) Bill, 2021 (Legislative Proposal) by Hon. Hon. Samuel Arama, MP was unanimously adopted having been proposed by Hon. Eric Njiru MP and seconded by Hon. Paul Mwirigi, MP.

MIN. NO. EDUC/2022/064: ANY OTHER BUSINESS

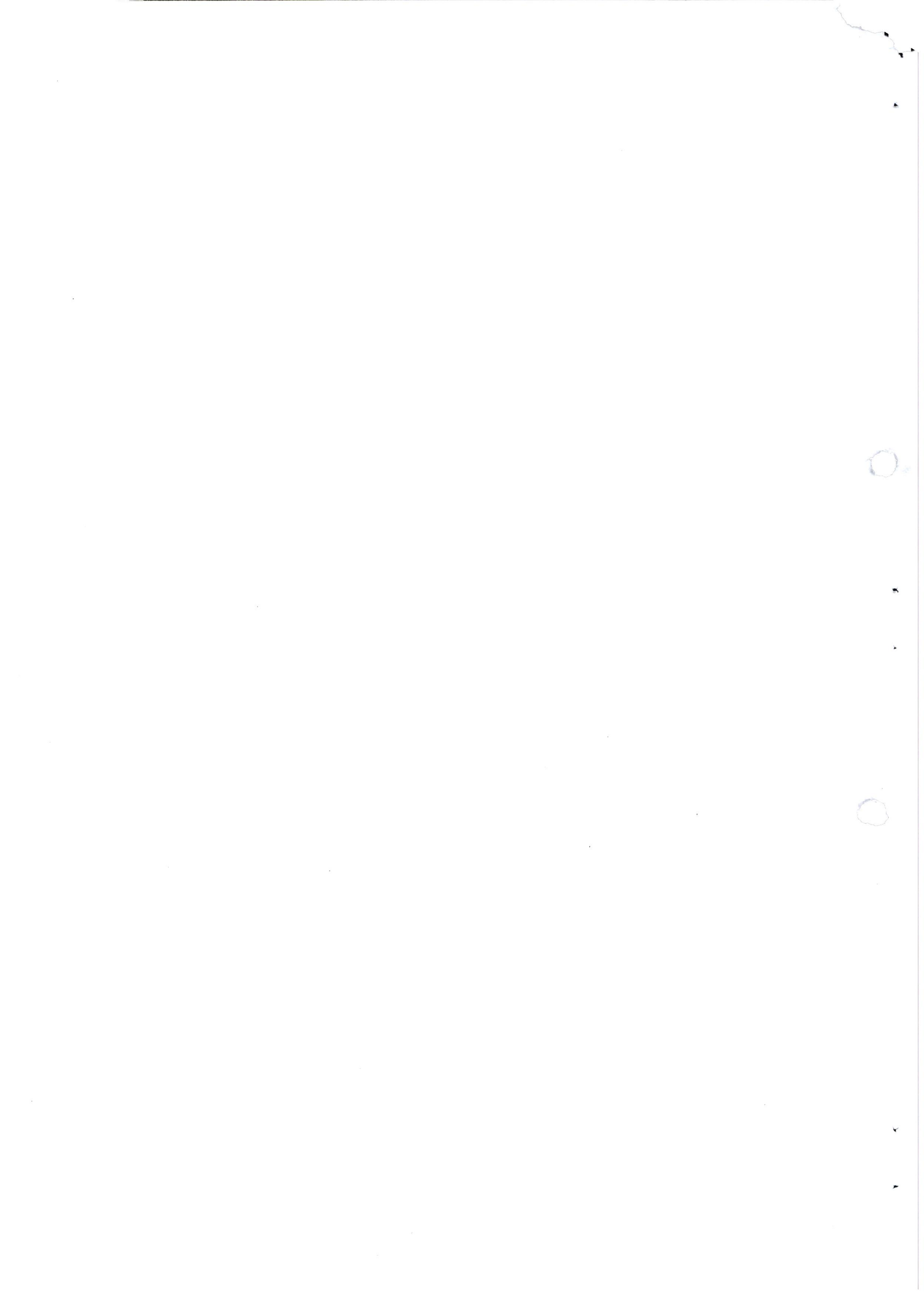
There was no other business

MIN. NO. EDUC/2022/065: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.55 pm. The next meeting will be held on notice.

SIGN  DATE 13/4/2022

**HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, COMMITTEE ON EDUCATION AND RESEARCH**



d whose proceeds, he said, had landed in the region and were being used to sway the residents away from him



yatta said. For the nth time, he criticised his deputy for taking credit for the achievements of the government, saying, the Dr Ruto had abandoned his duties to focus on politics.

"Governments are not run from car sunroofs. Let nobody lie to you that they have done anything for you because, when I asked them to join me in delivering first, they took off to engage in politics," Mr Kenyatta said.

He singled out Mathira MP Rigathi Gachagua, a key Ruto ally in whose constituency the meeting was happening, and whom he said was fond of challenging his development record.

"Even your MP cannot show up but stands in the markets I built shouting yet his own hometown did not have electricity when we came into power. You could see a light bulb at State Lodge all the way from his home but now the entire area is connected," he said.

Still using his scorecard, the President sought to defend his party, Jubilee, insisting that it is not dead but has been working to deliver on its promises to the people.

"Jubilee is not dead. Anyone saying that should look at our numbers and the numbers speak the truth," he said. The party, formed in September 2016 and which was just 62 shy of the absolute two-thirds majority in Parliament, meets tomorrow in its Nation-

al Delegates Convention (NDC) a wounded outfit after DP Ruto engineered an exodus to his United Democratic Alliance (UDA).

But for President Kenyatta, the move to revive Jubilee was just getting started, even as he opened his arms to fringe parties cropping up in the region, whose rise he said could be attributed to the 2017 Jubilee nominations whose bungling the DP is often blamed for.

Before the meeting, politicians and government officials allied to the President arrived in troops and could be seen herding in groups exchanging pleasantries and discussions.

The most notable ones were hard to miss out, among them Agriculture CS Peter Munya, Health CS Mutahi Kagwe, Interior PS Karanja Kibicho, Governors Kiraitu Murungi, Ndiritu Murithi and Anne Kananu, MPs Kanini Kega, Ngunjiri Wambugu, Anthony Kiai and Maina Kamanda.

Also present were Muranga governor Mwangi wa Iria, Kirinyaga woman rep Wangui Ndirici and President Kibak's son, Jimmy. At the same time, notable faces were conspicuously missing. Host governor Mutahi Kahiga and Mr Gachagua, the host MP, were among key faces missing. Politicians allied to DP's UDA were missing in action.

Mr Wakahiu, the Presidential Delivery Unit boss, in his presentation, highlighted key projects



Governments are not run from car sunroofs ... when I asked them to join me in delivering first, they took off to engage in politics.

President Uhuru Kenyatta



among them roads, hospitals, agriculture, higher learning institutions electricity connectivity, markets and stadia as some of the development projects initiated in the region that backed the President in the last three elections.

President Kenyatta was on a mission to recapture his lost support and for him, his scorecard was his primary weapon.

"I took up the role of doing what can help Kenyans. Despite my tribulations, there is no President that has delivered more than me," he said. Along the Tagwa Road snaking through Mt Kenya Forest in Sa-

gana State Lodge, a contingent of heavily armed police officers had been deployed to not only conduct security checks but also keep out unwinvited guests amid intelligence reports that hecklers had been mobilised to sabotage it.

At the luxurious Sagana Lodge, hundreds of caterers had been deployed with the mission to keep the delegates refreshed and a battery of local benga and gospel musicians kept the crowd entertained. As for the crowd, the much touted Red Army was highly visible with the mobilised delegates donning Jubilee Party colours.

Heavy traffic leading up to the Sagana State Lodge. PHOTO: IPSCU



REPUBLIC OF KENYA

**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - SIXTH SESSION
DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH**

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

1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 52 of 2021)
2. The Basic Education (Amendment) Bill, 2021 (Senate Bill No. 4 of 2021)
3. The County Vocational Education and Training Bill (Senate Bill No. 6 of 2021)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1)(b) of the Constitution of Kenya provides that "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". National Assembly Standing Order 127(3) further provides that "the Departmental Committee to which a Bill has been committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 52 of 2021) sponsored by The Hon. Gideon Koske, MP seeks to amend the Higher Education Loans Board Act No. 3 of 1995 to provide that the Higher Education Loans Board shall not deny a loan to an eligible student who has not attained the age of eighteen years.

The Basic Education (Amendment) Bill, 2021 (Senate Bill No. 4 of 2021) seeks to amend the Basic Education Act to ensure that school going children in Kenya are provided with milk. Through this amendment, the national government will be required through the respective County Directors of Education to supply milk to all pupils in Kenyan schools.

The County Vocational Education and Training Bill (Senate Bill No. 6 of 2021) seeks to provide legal and institutional framework for the establishment of systems for the administration of training in vocational education and training within a county, and for connected purposes.

The three (3) Bills have since been Read a First Time and committed to the Departmental Committee on Education and Research for review and reporting to the House.

Now therefore, in compliance with Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3), the Departmental Committee on Education and Research hereby invites the general public and stakeholders to submit memoranda on the Bill. Copies of the Bill are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 10th March 2022 at 5.00 p.m.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

24th February 2022

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



REPUBLIC OF KENYA

**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (SIXTH SESSION)
DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE AND THAT ON
DEFENCE AND FOREIGN RELATIONS**

In the Matter of Article 118 (1)(b) of the Constitution and National Assembly Standing Order 127(3)
and
In the Matter of consideration by the National Assembly of -

- 1) The Persons With Disabilities Bill, 2021 (National Assembly Bill No. 61 of 2021); and
- 2) The Military Veterans Bill, 2022 (National Assembly Bill No. 4 of 2022)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". National Assembly Standing Order (S.O.) 127(3) provides that "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Persons With Disabilities Bill (National Assembly Bill No. 61 of 2021), sponsored by the Leader of the Majority Party, was read a First Time on Tuesday, 22nd February 2022 and thereafter committed to the Departmental Committee on Labour and Social Welfare for consideration and reporting to the House. The Bill seeks to give effect to Article 54 of the Constitution to restructure the National Council for Persons with Disabilities and to provide for its functions and powers to provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities; and for connected purposes.

The Military Veterans Bill (National Assembly Bill No. 4 of 2022), sponsored by the Leader of the Majority Party was read a First Time on Tuesday, 22nd February 2022 and thereafter committed to the Departmental Committee on Defence and Foreign Relations for consideration and reporting to the House. The Bill seeks to establish a regulatory and institutional framework for the management of military veterans' affairs; for the provisions of benefits to military veterans and military veterans' dependants; to establish the dependants' Education Fund; to establish the Defence Forces Retirement Home and for connected purposes.

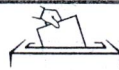
Now therefore, in compliance with Article 118 (1) (b) of the Constitution and National Assembly Standing Order 127(3), the Committees hereby invite the general public and stakeholders to submit memoranda on the two Bills. Copies of the Bills are available at the National Assembly Table Office or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday, 11th March, 2022.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

24th February 2022

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



First was handshake, then BBI and now new alliance

► This was the third meeting which the president has presided over at the Nyeri venue.

► Uhuru used forum to make Mt Kenya region see his perspective regarding handshake and BBI.

ALLAN MUNGAI, NAIROBI

Sagana, tucked on the edge of the Mt Kenya Forest in Nyeri County, has become symbolic to the 2022 presidential contest.

It was a sort of launching pad for ODM leader Raila Odinga's "hike up the mountain".

That statement became a truism yesterday when President Uhuru Kenyatta unsurprisingly endorsed Raila over his deputy William Ruto.

Uhuru hosted delegates from his official base of Mt Kenya for a meeting which was heavily touted as giving the region political direction. It was the third meeting of the sort.

For Uhuru's supporters, the meet-

ing lived up to the billing, complete with the song *Reke Tumanwo* by Peter Kigia whose literal translation is "let us part ways" and which came in perfectly right after the president agreed with an attendee who shouted Raila's name when he (Uhuru) was referring to whom he will hand over office to.

But if the meeting yesterday was the crescendo, then the song itself was composed and started playing much earlier.

It was the undertone in two similar meetings held in Sagana in November 2019 and then again in September 2020.

In 2019, Uhuru attempted to have the region see things from his perspective regarding the Handshake and the Building Bridges Initiative (BBI) taking the country back to the violence that followed the 2007 and 2017 election and the relative calm since.

Slowly by slowly, Uhuru has been building up to the moment when he declares his stand on the election. He gave the first teaser in 2018 when he told supporters that when he ulti-

mately declares the person he wishes to hand power to, Kenyans would be shocked.

First, it was to whip the country's MCAs to support the BBI initiative by promising the most sought after car grants.

He insisted that BBI was not about the General Elections but their bid to unite the country.

At the outset, it was to sway a region which was lukewarm about his and former Prime Minister Odinga's bid to amend the Constitution.

Uhuru told the meeting then that he and Raila were disparaged as dynasties and hence the BBI being trashed, yet the truth was Mt Kenya has been shortchanged in terms of resource allocation.

The BBI was an expensive affair, he conceded but he rationalised that there was value to the masses, for example by having more constituencies, there would be more funding for bursaries.

An increase in parliamentary seats, he said, was a small price to pay to ensure more resources to the Mt Kenya.



Jubilee leaders and supporters follow President Uhuru Kenyatta's address at the Sagana State Lodge in Nyeri County yesterday. [Mose Sammy, Standard]

Eradication of poverty can only be done through investments done through resources to be made available through passage of BBI, he said.

For Uhuru, Sagana has also become the place of confrontation, a boxing ring of sorts and, according to his Deputy President William Ruto's allies, an echo chamber.

It was also to beat down a wave of discontent from legislators of the region who were proclaiming his deputy's gospel.

While in the past Uhuru has urged the people to accept the "pennies and shillings" that Ruto was handing out in the region "because it is your money".

He asked voters not to sell their

minds by accepting the handouts.

Uhuru used Kibera as an anecdote for the peace that has prevailed since the Handshake. He said it was an indication that it was possible to have peaceful elections and that people did not have to fear for their property because of an election.

Jubilee, on its death bed then, has amputated the gangrenous parts and gained a new lease of life. The clasped hands have let go and TNA's dove is back. Tuko Pamoja has become Mbele Pamoja.

Billboards bearing Kenyatta's face, which tease a new Jubilee communication to the public that *Tuliahidi, Tunitimiza - We promised, We delivered*. angige@standardmedia.co.ke



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT (SIXTH SESSION)

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE AND THAT ON DEFENCE AND FOREIGN RELATIONS

In the Matter of Article 118 (1)(b) of the Constitution and National Assembly Standing Order 127(3) and
In the Matter of consideration by the National Assembly of -

- 1) The Persons With Disabilities Bill, 2021 (National Assembly Bill No.61 of 2021); and
- 2) The Military Veterans Bill, 2022 (National Assembly Bill No. 4 of 2022)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". National Assembly Standing Order (SO) 127(3) provides that "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

Persons With Disabilities Bill (National Assembly Bill No.61 of 2021), sponsored by the Leader of the Majority Party, was read a First Time on Tuesday, 22nd February 2022 and thereafter committed to the Departmental Committee on Labour and Social Welfare for consideration and reporting to the House. The Bill seeks to give effect to Article 54 of the Constitution to restructure the National Council for Persons with Disabilities and to provide for its functions and powers to provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities; and for connected purposes.

Military Veterans Bill (National Assembly Bill No. 4 of 2022), sponsored by the Leader of the Majority Party was read a First Time on Tuesday, 22nd February 2022 and thereafter committed to the Departmental Committee on Defence and Foreign Relations for consideration and reporting to the House. The Bill seeks to establish a regulatory and institutional framework for the management of military veterans' affairs; for the provisions of benefits to military veterans and military veterans' dependants; to establish the dependants' Education Fund; to establish the Defence Forces Retirement Home and for connected purposes.

Now therefore, in compliance with Article 118 (1) (b) of the Constitution and National Assembly Standing Order 127(3), the Committees hereby invite the general public and stakeholders to submit memoranda on the two Bills. Copies of the Bills are available at the National Assembly Table Office or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday, 11th March, 2022.

MICHAEL R. SIALAL, CBS
CLERK OF THE NATIONAL ASSEMBLY
24th February 2022

"For the Welfare of Society and the Just Government of the People"



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - SIXTH SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

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

1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 52 Of 2021)
2. The Basic Education (Amendment) Bill, 2021 (Senate Bill No. 4 of 2021)
3. The County Vocational Education and Training Bill (Senate Bill No. 6 of 2021)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1) (b) of the Constitution of Kenya provides that "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". National Assembly Standing Order 127(3) further provides that "the Departmental Committee to which a Bill has been committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 52 of 2021) sponsored by the Hon. Gideon Koske, MP seeks to amend the Higher Education Loans Board Act No. 3 of 1995 to provide that the Higher Education Loans Board shall not deny a loan to an eligible student who has not attained the age of eighteen years.

The Basic Education (Amendment) Bill, 2021 (Senate Bill No.4 of 2021) seeks to amend the Basic Education Act to ensure that school going children in Kenya are provided with milk. Through this amendment, the national government will be required through the respective County Directors of Education to supply milk to all pupils in Kenyan schools.

The County Vocational Education and Training Bill (Senate Bill No. 6 of 2021) seeks to provide legal and institutional framework for the establishment of systems for the administration of training in vocational education and training within a county, and for connected purposes.

The three (3) Bills have since been Read a First Time and committed to the Departmental Committee on Education and Research for review and reporting to the House.

Now therefore, in compliance with Article 118 (1) (b) of the Constitution and National Assembly Standing Order 127(3), the Departmental Committee on Education and Research hereby invites the general public and stakeholders to submit memoranda on the Bill. Copies of the Bill are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 10th March 2022 at 5.00 p.m.

MICHAEL R. SIALAL, CBS
CLERK OF THE NATIONAL ASSEMBLY
24th February 2022

"For the Welfare of Society and the Just Government of the People"



IV

REPUBLIC OF KENYA
MINISTRY OF EDUCATION
Office of the Cabinet Secretary

Telephone: Nairobi (020) 3318581
Email: cabinetsecretarymoe@gmail.com
Website: www.education.go.ke

Jogoo House "B"
Harambee Avenue
P. O. BOX 30040 - 00100
NAIROBI - Kenya

Ref: MOE/CON/9/6 (12)

March 8, 2022

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

Dear Mr. Sialai

MEETING WITH THE DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

Reference is made to your letter referenced NA/DDC/EDUC/2022/(008) and dated March 1, 2022.

Pursuant to the provisions of Article 118(1)(b) of the Constitution of Kenya and Standing Order 127(3), please find attached hereto the Ministry's submissions on the under-listed Bills for the attention of the National Assembly Committee on Education and Research:

1. The Basic Education (Amendment) Bill, 2021 (Senate Bill No. 4 of 2021);
2. The County Vocational Education and Training Bill (Senate Bill No. 6 of 2021); and
3. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 52 of 2021).

Yours sincerely

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

Copy to:

Dr. Sara Ruto, CBS
Chief Administrative Secretary
Ministry of Education

Dr. Margaret Mwakima, CBS
Principal Secretary
Vocational and Technical Training

Dr. Julius Jwan, CBS
Principal Secretary
Early Learning and Basic Education

Amb. Simon Nabukwesi, CBS
Principal Secretary
University Education and Research

C. SUBMISSION OF MEMORANDA ON THE HELB (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2021.

The National ID is a mandatory document during loan application. To ensure that the loan application is only accessed by Kenyans and used to create a loan account for the student. Applicants' National Identity numbers are validated against Integrated Population Registration System (IPRS). This database (IPRS), links other systems to the third generation ID card.

1. Number of KCSE candidates under the age of 18 years

1.1 Candidates with C+ and Above (University)

In the last three years, it is estimated that **54,457** KCSE candidates out of a total of **358,980** who obtained grade C+ and above, were under the age of 18 years. This represents KCSE candidates' population of **15.2%** who qualified for university placement and financial assistance from HELB but could not access HELB funding due to lack of Kenyan National ID.

Table 1 below shows the number of KCSE candidates under the age of 18 years who attained grades C+ and above in the last three KCSE final examinations.

Table 1: No. of KCSE candidates under the age of 18 in the last 3 years with C+ and above

KCSE Candidates	KCSE 2018	KCSE 2019	KCSE 2020
Number of all candidates with C+ and above	90,377	125,463	143,140
Estimated number of under 18 with C+ & above	12,289	19,789	22,378
% Of C+ and above-Under 18 years of age	14%	16%	16%

**Source: KNEC, 2018, 2019 & 2020 KCSE Essential Statistics*

1.2 Candidates with Below C+ (TVET)

In the last three years, it is estimated that **262,100** KCSE candidates out of a total of **1,745,607** who obtained grades below C+, were under the age of 18 years. This represents KCSE candidates' population of **15%** who qualified for TVET placement and financial assistance from HELB, but could not access HELB funding due to lack of the Kenyan National Identity Card.

Table 2 below indicates the number of KCSE candidates under the age of 18 years who attained grades below C+ in the last three KCSE final examinations.

Table 2: Number of KCSE candidates under the age of 18 in the last 3 years with below C+

KCSE Candidates	KCSE 2018	KCSE 2019	KCSE 2020
Number of all candidates with below C+	569,827	571,759	604,021
Estimated number of under 18 with below C+	77,485	90,184	94,432
% Of below C+ -Under 18 years of age	14%	16%	16%

Source: KNEC, 2018,2019 & 2020 KCSE Essential Statistics

2. Funding requirements for KCSE candidates under the age of 18 years

2.1 University Level

An estimate of **46,430** underage students would have successfully applied for HELB financial assistance in the last three years. This translates to **85.2%** of the total number of KCSE candidates with C+ and above under the age of 18 years in the last three years. HELB would have required an additional funding of **Kshs.4,178,669,648** to fund the **46,430** students in the last three years. Each cohort would have been funded for period of

two years before they acquire a Kenyan National ID. That is an average of **Kshs.1,044,667,412.04** per year for university students.

Table three below shows funding requirement per year for KCSE candidate under the age of 18 years-University.

Table 3: Funding requirements for KCSE candidates under the age of 18 years-University

Funding per Year	KCSE 2018	KCSE 2019	KCSE 2020	Total
Average Loan (University)	45,000	45,000	45,000	
Estimated Number of successful HELB applicants-Under 18	10,630	16,778	19,022	46,430
Loan Year 1 (2018/2019)	478,351,646.49			478,351,646.49
Loan Year 2 (2019/2020)	478,351,646.49	755,013,694.38		1,233,365,340.87
Loan Year 3 (2020/2021)		755,013,694.38	855,969,483.22	1,610,983,177.59
Loan Year 4 (2021/2022)			855,969,483.22	855,969,483.22
Total (University)				4,178,669,648

2.2 TVET Level

An estimate of **49,055** students would have successfully applied for HELB financial assistance. This translates to **18.7%** of the total number of KCSE candidates with below C+ under the age of 18 years in the last three years. HELB would have required an additional funding of **Kshs.3,924,373,243** to fund a total of **49,055** TVET students in the last three years. Each cohort would have been funded for period of two years before they acquire the National ID. Annual average funding of **Kshs.981,093,310.79** would have been required.

Table four below illustrates funding requirement per year for KCSE candidate under the age of 18 years-TVET.

Table 4: Funding requirements for KCSE candidates under the age of 18 years-TVET

Funding per Year	KCSE 2018	KCSE 2019	KCSE 2020	Total
Average Loan (TVET)	40,000.00	40,000.00	40,000.00	
Estimated Number of successful HELB applicants-Under 18	14,404	16,708	17,942	49,055
Loan Year 1 (2018/2019)	576,170,990.78			576,170,990.78
Loan Year 2 (2019/2020)	576,170,990.78	668,334,613.08		1,244,505,603.86
Loan Year 3 (2020/2021)		668,334,613.08	717,681,017.71	1,386,015,630.79
Loan Year 4 (2021/2022)			717,681,017.71	717,681,017.71
Total (TVET)				3,924,373,243.15

3. Total Funding Requirements for University & TVET for Under 18 Students

The total funding requirement for students below 18 years is **Kshs.4,178,669,648** for Universities and **Kshs3,924,373,243** for TVET students. This brings the total funding requirement to **Kshs.8,103,042,891** for all students below 18 years for four years at average budget of **Kshs.2,025,760,723** annually.

Table five below shows the total funding requirements for both university and TVET students under the age of 18 years.

Table 5: Total funding requirement for under 18 students (Universities and TVET)

Item	Amount (Kshs)	Average/Year (Kshs)
Total (University)	4,178,669,648.17	1,044,667,412.04
Total (TVET)	3,924,373,243.15	981,093,310.79
Grand Total (University + TVET)	8,103,042,891.32	2,025,760,722.83

4. Total Amount to be Repaid Upon Maturity

HELB loan matures one year upon completion of studies and is expected to be repaid within a period of ten (10) years. From the disbursement of **Kshs.8,103,042,891**, a total of **Kshs.10,788,754,635** would have been anticipated back in repayment of principal and interest.

The law of contract limits the capacity of persons under the age of 18 years in contracting including loan agreements. Under the circumstances, awarding minors loans poses a risk of non-recovery of **Kshs.10,788,754,635**. Disputes may arise on account of contravention to provisions of the law of contract, noting that the minor always retains the right to invalidate the contract on account of age.

This will be a major setback in sustainability of higher education financing hence creating more dependency on the National Treasury.

Table six (6) below shows the amounts expected to be repaid back upon maturity of loan disbursed to students below the age of 18 years.

Table 6: Expected loan repayment upon maturity

Funding per Year	Total Disbursement	Amount to be repaid
2018/2019	1,054,522,637	1,404,045,106
2019/2020	2,477,870,945	3,299,145,509
2020/2021	2,996,998,808	3,990,332,211
2021/2022	1,573,650,501	2,095,231,809
Total	8,103,042,891	10,788,754,635

5. HELB Act

HELB Act defines an "eligible person" as any person, who being a Kenyan citizen, has attained minimum entry requirements and has been admitted to a recognized institution of higher education to a full-time course of at least one year. The criteria set in the Act is limited to admission and length of study. There is no mention of age. However, at the time HELB Act was enacted in 1995, there was a waiting period of two (2) years after KSCCE examination before admission by which time all were of the majority age.

6. No Action to be Brought on Ratification of Minor's Contract.

The general operating norm is that no action can be brought to charge or make claim to any person upon any promise made after full age to pay any debt contracted while the person was a minor, or upon any ratification made after full age of any promise or contract made during the minor status, whether there shall or shall not be any new consideration for such promise or ratification after full age. This means that minors usually retain the

legal right to invalidate a contract whenever they wish, which means as a party entering a contract with them (minors) should always know that there is no guarantee that the contract would actually be completed. The reason that minors are allowed to invalidate contracts is to protect them from being forced to fulfill contractual obligations they do not have the ability to understand, more so at the time it was made.

7. Co-Signing

Through benchmarking (India, UK and US) it has been established that the only way minors can get a loan for education purpose is through co-signing with a guardian or parent, both committing themselves to repayment of the loan. Under such, should the minors invalidate the contract, to co-signatory remains liable for loan repayment.

8. Amendment to the HELB Act

The expansion of the definition of a loanee to include a parent and guardian will make it possible to award education loan to a minor who co-signs with a parent or guardian. This will address the issue of under-age applicants.

9. Other operational logistics

Even if HELB is obligated to allocate loans to minors, the disbursement of loans to minors will be challenged by the following technical hurdles during implementation: -

- a) To open a bank account, one is required to have a national ID and KRA pin number;
- b) To get a KRA pin one is required to have an ID and being minors they will not have both documents;
- c) An amendment to the law of contracts to allow minors to contract may need to precede these amendments;
- d) In the case of co-borrowing and the money deposited in the co-signee account we cannot guarantee that the money will eventually get to the minor's hands; and
- e) Determining who will be responsible for repaying the loan, minor or the co-signee?

10. Credit risk

The country risks losing millions of shillings due to default, lack of contractual obligations and eventually bad loans since HELB will not be able to enforce the recovery mechanisms currently being applied to enforce repayment and unless the Government guarantees to underwrite such loans the fund will start suffering massive wastages in the long term. It will therefore not be prudent to lend to minors until the co-borrower amendment is legislated.

I Submit!



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