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REPUBLIC OF KENYA



paper land by  
the Hon. Melly  
Chairperson, D/Committee on  
Education & Research

THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – SECOND SESSION

Directorate of Committee Services

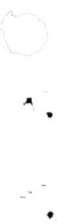
DEPARTMENTAL COMMITTEE ON EDUCATION AND  
RESEARCH

REPORT ON THE PETITION BY UNIVERSITIES' ACADEMIC  
STAFF UNION REGARDING 2013 - 2017 AND 2017 - 2021  
COLLECTIVE BARGAINING AGREEMENTS



Clerk's Chambers  
National Assembly

July 2018



## Table of Contents

<b>1.0 PREFACE</b> .....	<b>4</b>
<b>1.1 Mandate of the Committee</b> .....	<b>4</b>
<b>1.2 Committee Membership</b> .....	<b>4</b>
<b>1.3 Committal of Petition</b> .....	<b>5</b>
<b>1.4 Committee Proceedings</b> .....	<b>6</b>
<b>1. University Academic Staff Union Officials (UASU)</b> .....	<b>6</b>
<b>2. Inter-Public Universities' Councils Consultative Forum(IPUCCF)</b> .....	<b>6</b>
<b>3. The Cabinet Secretary, Ministry of Education</b> .....	<b>6</b>
<b>4. The Cabinet Secretary for the National Treasury</b> .....	<b>6</b>
<b>5. Joint Meeting with the Principal Secretaries for the National Treasury and the State Department for University Education, Inter-Public Universities Councils Consultative Forum UASU and KUSU UASU Officials</b> .....	<b>6</b>
<b>1.5 Acknowledgement</b> .....	<b>10</b>
<b>2.0 CONSIDERATION OF THE PETITION</b> .....	<b>11</b>
<b>2.1 SUBMISSIONS BY WITNESSES</b> .....	<b>11</b>
<b>2.1.1 SUBMISSIONS BY UNIVERSITY ACADEMIC STAFF UNION OFFICIALS (UASU)</b> .....	<b>11</b>
<b>2.2.2 SUBMISSIONS BY INTER-PUBLIC UNIVERSITIES' COUNCILS' CONSULTATIVE FORUM (IPUCCF)</b> .....	<b>16</b>
<b>2.2.3 SUBMISSION BY THE CABINET SECRETARY MINISTRY OF EDUCATION</b> .....	<b>18</b>
<b>2.2.4 SUBMISSION BY THE CABINET SECRETARY FOR THE NATIONAL TREASURY</b> .....	<b>21</b>
<b>2.2.5 SUBMISSION THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY, PRINCIPAL SECRETARY FOR STATE DEPARTMENT FOR UNIVERSITY EDUCATION, INTER-PUBLIC UNIVERSITIES COUNCILS CONSULTATIVE FORUM AND UASU OFFICIALS</b> .....	<b>23</b>
<b>3.0 COMMITTEE GENERAL OBSERVATIONS</b> .....	<b>29</b>
<b>4.0 COMMITTEE GENERAL RECOMMENDATIONS</b> .....	<b>31</b>

## 1.0 PREFACE

**Mr. Speaker Sir,**

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

### 1.1 Mandate of the Committee

The Committee is mandated, among others, to: -

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

### 1.2 Committee Membership

The Committee comprises of the following members: -

1. Hon. Julius Melly, MP - **Chairperson**
2. Hon. Amos Kimunya, EGH, MP - **Vice-Chairperson**
3. Hon. Moses Malulu Injendi, MP
4. Hon. Geoffrey Makokha Odanga, MP
5. Hon. (Dr.) Pamela Ochieng, MP
6. Hon. (Eng.) Nzambia Thuddeus Kithua, MP
7. Hon. (Prof.) Zadoc Abel Ogutu, MP
8. Hon. Catherine Wambilyanga, MP
9. Hon. Eric Muchangi Njiru, MP
10. Hon. Eve Obara, MBS, MP
11. Hon. Jackson Lekumontare, MP
12. Hon. Jerusha Mongina Momanyi,
13. Hon. John Oroo Oyioka, MP

14. Hon. Joseph Kipkosgei Tonui, MP
15. Hon. Lilian Cheptoo Tomitom, MP
16. Hon. Omboko Milemba, MP
17. Hon. Peter Lochakapong, MP
18. Hon. Wilson Sossion, MP
19. Hon. Wilson Kipngetch Kogo, MP

### **Committee Secretariat**

The Committee secretariat comprise the following officers

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

### **1.3 Committal of Petition**

Pursuant to Standing Order 220 and Section 4(1b) of the Petition to Parliament (Procedure) Act CAP 7C, the Universities Academic Staff Union Secretary General Dr. Constatine Wasonga, PhD, National Chairman Dr. Muga K' Olale and the National Vice-Chair Dr. Joseph Mberia on 20<sup>th</sup> December, 2017 presented a public petition to the House on behalf of the Universities Academic Staff Union and the Kenya Universities' Staff Union.

The Petition was referred to the Departmental Committee on Education and Research pursuant to Standing Order 227 for consideration. (ANNEX 1)

The petitioners sought the House's intervention on implementation of 2013-2017 Collective Bargaining Agreement and appropriation of funds for 2017 -2021 Collective Bargaining Agreement. Specifically, the Petitioners prayed that the National Assembly through the Committee to:

- (i) *Urgently intervene and facilitate appropriation of funds to enable implementation of 2013-2017 CBA;*
- (i) *Urgently intervene and facilitate appropriation of funds amounting to Kshs 1.56 billion for the employers' pension component of the 2010 – 2013 CBA.*
- (ii) *Urgently intervene and facilitate appropriation of funds amounting to Kshs. 2 billion for employers' pension component for the 2013 -2017 CBAs.*
- (iii) *Urgently intervene and facilitate appropriation of funds for the internal CBA's*
- (iv) *Urgently intervene and facilitate appropriation of funds for the 2013 -2017 CBA*
- (v) *Urgently intervene and facilitate appropriation of funds for the 2017 -2021 CBA.*

*(vi) Urgently intervene and facilitate appropriation of funds to cater for car loans and mortgages scheme for academic staff of public universities.*

The Committee immediately embarked on considering of the Petition by inviting the relevant witnesses to make submissions on the petition.

#### **1.4 Committee Proceedings**

In considering the Petition, the Committee held a total of seven (7) sittings in which it closely received oral and written submissions and examined evidence from the following witnesses –

1. University Academic Staff Union Officials (UASU)
2. Inter-Public Universities' Councils Consultative Forum(IPUCCF)
3. The Cabinet Secretary, Ministry of Education
4. The Cabinet Secretary for the National Treasury
5. Joint Meeting with the Principal Secretaries for the National Treasury and the State Department for University Education, Inter-Public Universities Councils Consultative Forum UASU and KUSU UASU Officials

The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations/findings and recommendations as outlined in the Report and can be obtained in the Parliament Library.

## **COMMITTEE GENERAL OBSERVATIONS**

This section provides for the summary of the Committee's Observations on the Petition as hereunder: -

- 1. Nearly all public universities fail to remit financial statutory deductions such as Pay as you earn (PAYE), National Social Security Fund (NSSF) contributions, National Hospital Insurance Fund (NHIF) contributions, contributions Retirement Benefit Schemes, Co-operative Societies on regular basis despite the fact that such dues are recovered from the employees salaries. The universities have fallen into arrears in the remittance of these deductions.**
- 2. The University staff members have been grossly affected by the non-remittance of monthly statutory deductions like NSSF, NHIF, Pension deductions, bank loans and contributions to SACCOs by the universities. Bank loans are not serviced on time hence staff members are subjected to penalties. Furthermore, medical schemes have collapsed as a result of default in repayments of insurance premiums by the universities university staff cannot access medical services.**
- 3. Twenty-five (25) Universities have not concluded negotiating and signing Internal Collective Bargaining Agreements as at May, 2018. By the same date only six universities of the thirty-one (31) public universities namely University of Nairobi, Pwani University, Jaramogi Oginga Odinga University of Science and Technology, Maseno University, Kenyatta University, Jomo Kenyatta University of Agriculture and Technology - have concluded their Internal CBAs. The rest have not negotiated and concluded their Internal CBAs citing lack of funds. This has resulted in inequalities in the salaries of universities' staff in different universities due to payment of different allowances for employees in the same grade.**
- 4. Job evaluation exercise was conducted for lecturers and other staff in the universities by the Salaries and Remuneration Commission and preliminary results communicated to each university but the process was yet to be finalized before expiration of the Commission term. Rec-constitution of the Commission is ongoing and this has hampered the finalization of the job evaluation and an appropriate counter offer advice.**
- 5. The Framework of the negotiations of the Universities staff salaries and terms and condition of service is done at many levels which makes the voice of the Unions gets lost. There is a need therefore to have the Union officials represented at highest levels of negotiations.**
- 6. There is need for the State Department to carry-out payroll audit to establish actual number of university staff in the universities and the cost of their compensation.**
- 7. The Government has not put forward a counter offer to the university unions as regards the 2017 – 2021 CBA because of the ongoing universities job evaluation**

**exercise by Salaries and Remuneration Commission (SRC) which has been temporarily stopped due expiration of the term of the previous Commission.**

- 8. The Salaries and Remuneration Commission is currently being reconstituted and there is no a definite timeline when the universities staff job evaluation exercise will be concluded.**



## **COMMITTEE GENERAL RECOMMENDATIONS**

In response to the petitioners prayers, the Committee recommends that:

- 1. The Committee directed the parties involved in the Collective Bargaining Agreement i.e the Ministry of Education, the National Treasury, IPUCCF and UASU to commence negotiations on the 2017 – 2021 Collective Bargaining Agreement and reach at an indicative offer pending conclusion of Job Evaluation exercise by Salaries and Remuneration Commission. Once the exercise is concluded the offer can be reviewed depending on the findings of the exercise.**
- 2. All Public universities should remit their financial statutory obligations to the Kenya Revenue Authority, National Social Security Fund, National Hospital Insurance Fund, Retirement Benefit Schemes, and Co-operative Societies and banks on a regular basis to enhance the welfare and well being of their employees.**
- 3. All Vice-Chancellors of public universities should ensure that they settle all pending statutory deductions arrears deducted from the salaries of the university staff members accrued over time immediately. Going forward, the Vice-Chancellors should remit all statutory deductions in respect of NSSF, PAYE, NHIF, union dues, bank loan deductions and other contributions to the relevant authorities within the stipulated period as provided for in the relevant legislation and financial regulations to avoid unnecessary penalties and interest and inconveniences caused to the staff members.**
- 4. The individual Universities' Councils and local chapters of UASU of the Universities which have not concluded their internal 2010 – 2013 and 2013 -2017 CBAs should initiate and conclude structured negotiations on other terms and conditions of service within 3 months from the date of tabling this report and set up a Joint Implementation Committee to oversee the implementation process.**
- 5. There is need to have the University Unions namely UASU, KUSU and KUDHEIHA representation at highest level of Collective Bargaining Agreement negotiations in future to give the university unions a significant voice and role in the negotiation process in contrast to the current arrangement where the Inter-Public Universities Councils Consultative Forum negotiates on behalf the unions at the Ministerial level of negotiations.**
- 6. The State Department for University Education in collaboration with the National Treasury should carry-out payroll audit to establish actual number of university staff in the universities and the cost of their monthly salaries. In addition, the State Department for University Education should conduct a financial audit on the expenditures and revenues including internal control systems in the universities in order to establish how funds released from the exchequer and those generated internally are applied and accounted for by the Universities.**

- 7. The State Department for University Education and the National Treasury should undertake an audit of Ksh. 10 billion disbursed to the various Universities to cater for implementation of the 2013- 2017 CBA for university staff.**

### **1.5 Acknowledgement**

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitation in fulfilment of its mandate. The Committee is also grateful to all the witnesses and government agencies who adduced evidence before it. Further, the Committee is grateful to the staff of the National Assembly for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

**Mr. Speaker Sir,**

On behalf of the Members of the Departmental Committee on Education and Research, I beg to table the Report on Report on the Petition by Universities' Academic Staff Union Regarding 2013 - 2017 and 2017- 2021 Collective Bargaining Agreements pursuant to Standing Order 227.

Signed \_\_\_\_\_



Date \_\_\_\_\_

25/7/2018

**HON. JULIUS MELLY, MP  
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION AND  
RESEARCH**

## **2.0 CONSIDERATION OF THE PETITION**

The Petitioners drew the attention of the House to the following prayers as in the petition **Annex 1**.

### **2.1 SUBMISSIONS BY WITNESSES**

#### **2.1.1 SUBMISSIONS BY UNIVERSITY ACADEMIC STAFF UNION OFFICIALS (UASU)**

**The University Academic Staff Union (UASU) officials led by the National Secretary General Dr. Constatine Wasonga appeared before the Committee on 13<sup>th</sup> March, 2018 to adduce evidence on the petition regarding the 2013 – 2017 and 2017 – 2021 Collective Bargaining Agreements between University Academic Staff Union and Inter Public Universities’ Council Consultative Forum (IPUCCF)**

The National Secretary General Dr. Constatine Wasonga made the following submission to the Committee:

That the Kenyan university education sector is rapidly expanding, in the year 2000, the number of public universities were six; in 2018, public universities number thirty-one, representing an increase by more than 500%. The enrolment of students in the public universities has similarly increased from less than 100,000 in 2000 to more than 500,000 in 2018.

University education, is however, only as good as its academic staff who carry out its core mandate of teaching, training and research; and the provision of quality university education is only possible if the universities can attract and retain high calibre academic staff.

Currently the terms and conditions of service for universities’ academic staff, comprising Professors, Associate Professors, Senior Lecturers, Lecturers, Assistant Lecturers, Tutorial Fellows and Graduate Assistants; are contained in an already expired 2013-2017 Collective Bargaining Agreement (CBA). The 2013-2017 CBA expired on 30<sup>th</sup> June 2017.

The Government has adjusted the terms and conditions of service for public workers, except university staff, by implementing Collective Bargaining Agreements (CBAs) for the period 2017-2021 or through other salary harmonization interventions.

Academic staff in public universities have however been discriminatively left out of any review of terms and conditions of employment including basic salaries, housing allowances, housing mortgage schemes, car loan schemes, among others, at levels comparable to what other public sector employees enjoy.

The pay structure of academic staff is characterized by distortions, large salary overlaps, stagnation within current grades, and poor career progression plans leading to low retention of human resources and massive brain drain from public universities to other sectors.

Academic staff in Kenyan Public Universities are overworked and underpaid, with detrimental effects on staff morale, research, teaching and innovation outputs.

Unless the situation is remedied there is an impending collapse of the higher education sector in Kenya.

#### **2013-2017 CBA INTERNAL CBAs:**

Under the terms of national 2013-2017 CBA concluded between IPUCCF and UASU on 13<sup>th</sup> March 2017, the individual universities councils and UASU agreed to initiate and conclude structured negotiations on other Terms and Conditions of Service, not covered under the national CBA.

By May, 2018 only six universities - University of Nairobi, Pwani University, Jaramogi Oginga Odinga University of Science and Technology, Maseno University, Kenyatta University, Jomo Kenyatta University of Agriculture and Technology - have concluded their Internal CBAs.

The rest of the 25 public universities have not negotiated and concluded their Internal CBAs citing lack of funds. Consequently, the Union and members of academic staff are concerned that the failure by some universities to negotiate Internal CBAs results in inequalities brought about by payment of different allowances for employees in the same grade but in different universities.

The officials appealed to Parliament to appropriate funds to enable completion of the Internal 2013-2017 CBAs.

#### **2017-2021 CBA CYCLE NEGOTIATIONS:**

Since March 2017, the Universities Academic Staff Union (UASU) has made concerted efforts to ensure the 2017-2021 CBA is negotiated, signed and implemented, by undertaking the following:

UASU and the Inter-Public Universities Councils' Consultative Forum (IPUCCF) signed a Return To Work Formula on 13<sup>th</sup> March 2017, in which it was agreed that the 2017-2021 CBA negotiations commence on 3<sup>rd</sup> April 2017 and be concluded by 31<sup>st</sup> May 2017 to allow for implementation by 1<sup>st</sup> July 2017.

To meet this mutually agreed deadline, UASU presented its 2017-2021 CBA proposal to IPUCCF on 30<sup>th</sup> March 2017.

IPUCCF and the Government did not give any counter-offer, and were therefore unable to meet the 31<sup>st</sup> May 2017 deadline. Being a reasonable and flexible social partner, UASU gave the universities councils more time to prepare for negotiations.

Despite persistent promises that the 2017-2021 CBA would be implemented on 1<sup>st</sup> July 2017, IPUCCF and Government missed this key date; and blamed the preparations for general elections;

On 9<sup>th</sup> December 2017, the parties jointly agreed in a new Return To Work Formula to further extend the deadline. The negotiations for 2017-2021 CBA were to start on 18<sup>th</sup> December 2017 and be concluded by 31<sup>st</sup> January 2018. On 18<sup>th</sup> December 2018, the parties met but IPUCCF did not present a counter-offer, and blamed the Christmas holiday season. IPUCCF promised that their document would be ready by the close of the second week of January.

IPUCCF postponed two meetings scheduled for January 10<sup>th</sup> and 15<sup>th</sup> and opted for 19<sup>th</sup> January as the new key date.

On 31<sup>st</sup> January 2018, the Government and IPUCCF reported that the Ministry of Education had changed leadership on 26<sup>th</sup> January 2018 and the incoming Cabinet Secretary Ambassador Amina Mohamed and Principal Secretary Prof. Japhet Micheni Ntiba; had requested for more time up to the 12<sup>th</sup> February 2018 to study the technical documents.

On 12<sup>th</sup> February 2018, IPUCCF again requested UASU for an extension till 21<sup>st</sup> February 2018 to enable a technical team of officials from Ministry of Education, the National Treasury and Public Universities to finalize the counter-offer.

Regrettably IPUCCF failed to honour their commitment on 21<sup>st</sup> February 2018. All options having been exhausted, UASU issued a seven-day strike notice to all the public universities and their constituent colleges:

1. Over the failure to negotiate, sign and implement the 2017-2021 CBA; and
2. To protest the unconstitutional and unlawful violation of the Constitution of Kenya 2010, Article 41(1), (2) (a) and (5).
3. To protest the blatant violations of the universities' workers fundamental rights and freedoms.
4. IPUCCF failed to utilize the seven-day strike notice period to table a counter-offer and on 1<sup>st</sup> March 2018, lecturers in all public universities and constituent colleges withdrew their services.

The Union requested the Committee to appropriate funds that are sufficient to cover the 2017-2021 CBA.

### **Pensions**

There are outstanding pension arrears for the previous CBAs, that is 2010-2013 and 2013-2017 CBAs, amounting to KSh. 3.56 Billion. It is not clear whether IPUCCF has made a clear proposal to Government to release funds due to universities' staff facing retirement or already retired.

There is an outstanding employer pension contribution accruing from the 2010-2013 and 2013-2017 CBAs that should be factored in the FY 2018/2019 budget and be paid to the Employees Retirement Benefit Schemes.

### **Car Loan and Mortgage Schemes**

The Salaries and Remuneration Commission in fulfilment of its constitutional mandate and in exercise of the powers conferred to it under Article 230 of the Constitution of Kenya set and advised on the Car Loan and Mortgage benefits for all state officers and public officers. The commencement date was 1<sup>st</sup> January 2015.

To date in the public sector, it is only universities staff that do not have access to the Housing mortgage and car loan scheme. UASU appeals to this august house to appropriate funds for the Car Loan and Mortgage benefits for universities' staff.

### **Statutory and Third Party Deductions**

More disturbing is the inability of public universities to meet their financial statutory obligations to the Kenya Revenue Authority, National Social Security Fund, National Hospital Insurance Fund, Retirement Benefit Schemes, and Co-operative Societies on a regular basis. The universities are forced to fall into arrears in the remittance of these deductions.

### **Medical Schemes**

The medical schemes at public universities are dysfunctional. Lecturers including Professors of medicine and their families do not receive the same medical attention they give to others. This is highly unjust. UASU appeals to Parliament to support setting up of a comprehensive medical scheme for academic members of staff.

### **Salary Delays and Capitation**

Delay in payment of salaries has recently become all too common in universities, in particular University of Nairobi. Salaries are frequently paid after 10<sup>th</sup> of every month.

### **Acting Vice Chancellors**

Certain universities have Vice Chancellors who have acted for far too long in positions whereas it is desirable to have permanent office holders to enable effective discharge of their mandates. Examples: Moi University, Taita Taveta University, Technical University of Mombasa, Co-operative University and Garissa University. All the principals of University Colleges are also in Acting Capacity: Tom Mboya, Alupe, Turkana, Bomet, and Tharaka University College.

Some universities do not have councils such as University of Nairobi.

### **Satellite Campuses**

Universities have too many satellite campuses; yet they cannot even afford rent.

Nearly all public universities have satellite campuses in Nairobi (It is only useful to mention the universities that do not have campuses in Nairobi i.e. SEKU, Chuka, Garissa and Maseno).

This dilutes the quality of education, as the universities employ part-time lecturers, some of whom whose qualifications are not properly vetted, and who are not paid.

Some private colleges use logos of universities with impunity.

### **Retirement Age**

Despite attempts to harmonize the retirement age for universities academic staff through various Government policies and circulars including the Office of the President's circular Ref No. OP.CAB.2/7A dated 14<sup>th</sup> February 2014 which placed the mandatory retirement age for academic staff at 74 years of age; different universities have different retirement ages ranging from 65 to 75 years. UASU appeals to Parliament to support efforts towards harmonization of the retirement ages for universities academic staff.

### **Appointment and Promotion Criteria for Public Universities in Kenya**

The Commission for University Education (CUE), the national regulator for university education, introduced, in 2014, two policy documents, namely:

1. The Harmonized Criteria and Guidelines for Appointment and Promotion of Academic Staff in Universities in Kenya, 2014, and
2. Universities Standards and Guidelines, 2014.

The two policy instruments from the Commission for University Education were developed without input from academic staff, one of the key stakeholders in university education in public universities, or their unions. The documents thus have serious shortcomings in how the qualifications of staff are assessed for appointment or promotion, leading to haphazard implementation, poor career development of academic staff in the public universities and pervasive staff disenchantment. At its worst the lacunae in policy for vertical mobility has given rise to brain drain out of the public universities.

Since 2015, only a handful of universities have promoted teaching staff, the rest have frozen appointment and promotion citing CUE policies as the bottleneck. The current appointment and promotion criteria are therefore vastly discriminatory and patently unfavourable to academic staff. UASU appeals to this august house to support development of an equitable appointment and promotion criteria for universities academic staff.

### **Committee Observations**

The Committee observed that:

1. Some prayers raised by the petitioners in their petition to the Committee are of administrative nature and can be resolved at the universities level.
2. Very minimal teaching and learning is taking place at the Universities and in constituent colleges since 1<sup>st</sup> March 2018 when lecturers withdrew their services;
3. The failure of 25 public universities to negotiate and conclude their Internal CBAs citing lack of funds results has brought about in inequalities in payment of allowances for employees in the same grade in different universities;

4. Even though UASU and IPUCCF met several times, no counter-offer was tabled on by IPUCCF. That the Union and the Ministry of Education have not had a sitting to negotiate on ending the stalemate.
5. The staff members have been grossly affected by the non-remittance of statutory deductions like NSSF, NHIF, Pension deductions, bank loans and contributions to SACCOs. Access Bank loans are not serviced on time hence staff members are subjected to penalties. Furthermore, medical schemes have collapsed as a result of default in repayments due to non-remittance of insurance premiums by the universities.
6. Its criminal for the universities University Councils to continue deductions on staff salaries and fail to remit to the relevant institutions.

### **2.2.2 SUBMISSIONS BY INTER-PUBLIC UNIVERSITIES' COUNCILS' CONSULTATIVE FORUM (IPUCCF)**

**Inter-Public Universities' Councils Consultative Forum Chairman Prof. Paul Kanyari accompanied by Chair, Vice Chancellors Committee Prof. Francis W. O. Aduol, Joint Negotiations Committee Co-Chair, Prof. Erastus Isaac Mbeche, IPUCCF members Prof. Mary Ndung'u (Vice-Chancellor, Kirinyaga University), Prof. Geoffrey Muluvi (Vice Chancellor, South Eastern Kenya University), Prof. Erastus Njoka (Vice Chancellor, Chuka University), Prof. Rosbella Maranga (Deputy Vice Chancellor, Multi Media University, IPUCCF) and Prof. Catherine Muhoma, (Deputy Vice Chancellor, Maseno University) appeared before the Committee on 13<sup>th</sup> March, 2018 to adduce evidence on the Petition regarding the 2013 – 2017 and 2017 – 2021 Collective Bargaining Agreements between University Academic Staff Union and Inter Public Universities' Council Consultative Forum.**

The IPUCCF officials informed the Committee as follows: -

#### **Collective Bargaining Agreement 2010-2013**

A Return to Work Formula was signed on 19<sup>th</sup> March, 2014 together with re-worked schedules of the new Collective Bargaining Agreement (CBA) for the Financial Years 2010-2013. According to the calculations this amount was exclusive of Pension and salary arrears for the period from 1<sup>st</sup> July, 2013 up-to and until 30<sup>th</sup> June, 2014. Upon reconciliation of the declared balances with IPUCCF the Universities noted that they required a total of Kshs. 1.56 billion to settle the pension component of this CBA for the Financial Years 2010-2013. This figure for the pension remains due and owing to-date.

#### **Collective Bargaining Agreement 2013-2017**

The CBAs for the Financial Years 2013-2017 with four (4) respective Unions were signed as follows: -

1. Universities' Academic Staff Union (UASU) dated 13<sup>th</sup> March, 2017;
2. Kenya Universities' Staff Union (KUSU) dated 9<sup>th</sup> May, 2017; and



3. Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers dated 15<sup>th</sup> March, 2017.
4. Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU)

Thereafter, the Ministry of Education (MOE) disbursed CBAs payments in two (2) tranches of Kshs. 4.775 billion paid on the 30<sup>th</sup> June, 2017 and Kshs. 5.225 billion paid on 13<sup>th</sup> July, 2017 which totalled to Kshs. 10 billion. However, the pension component was not factored in these CBAs for the Financial Years 2013-2017 amounting to a total of Kshs. 2 billion. This amount for the pension component remains outstanding to-date.

#### **Top-up in Capitation for the Financial Year 2017 - 2018**

Subsequently, a strike notice was issued by UASU on 3<sup>rd</sup> October, 2017 and later proceeded with industrial action on 1<sup>st</sup> November, 2017. The reason that UASU gave for the industrial action was that Thirty-one (31) University Councils had failed to implement the Basic Salaries and House Allowances at the levels provided for under the CBAs of 2013-2017. Succeeding these events, the Vice-Chancellors (the CEOs of the Universities) requested from the Ministry of Education for top-up in capitation of about Kshs. 5.2 billion to pay into the Financial Year 2017-2018 for Thirty-one (31) Universities and Eight (8) constituent University College together with a Pension Component of Kshs. 781,265,514.00 as hereunder:

<b>S/No.</b>	<b>Item</b>	<b>Amount in Kshs.</b>
1.	Top Up Government Capitation for 31 Public Universities	4,345,442,669.00
2.	Pension Component	781,265,514.00
3.	Top Up Government Capitation for 8 new Constituent University Colleges	160,000,000.00
<b>Grand Total</b>		<b>5,286,708,183.00.</b>

The Ministry of Education paid the arrears for the top-up for capitation for the CBAs for the Financial Years 2013-2017 as at 1<sup>st</sup> December, 2017 and the Universities and Constituent University Colleges continue to receive the top-up with their monthly capitation and pay in accordance to the CBAs for the Financial Years 2013-2017.

#### **Payment of Allowances to Medical Doctors in Medical Schools in Kenyan Universities**

In light of the assertions made by UASU with regard to the tripartite CBA of KMPDU, and the Ministry of Health and the Council of Governors, it is noteworthy, that IPUCCF is not privy to the recognition Agreement nor a party to the CBA with KMPDU. This is because the mandate of IPUCCF is limited to the matters dealing with the three Unions of UASU, KUSU, and

KUDHEIHA. However, IPUCCF opines that this matter of KMPDU should be separated from the UASU CBA for the Financial Years of 2017-2021. Instead, the issue can be discussed by the Universities, which offer Medical Programs and correspondingly Clinical Services in Public Hospitals, with the Ministry of Education, Ministry of Health and National Treasury. We are advised that this has been the custom and practice in the past, to negotiate in this format and IPUCCF feels that there should be no departure from this trend.

### **Collective Bargaining Agreement 2017-2021**

With reference to the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021 the Inter-Public Universities Councils Consultative Forum (IPUCCF) Proposal was forwarded to the Ministry of Education (MoE) for purposes of onward transmission to the Salaries and Remuneration Commission (SRC) and the National Treasury (NT) for concurrence and approval.

The Proposal took into account all the various staff categories of Public Universities from the three unions of Universities Academic Staff Union (UASU); Kenya Universities Staff Union (KUSU); and Kenya Union of Domestic, Hotel, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers as well as the Top Management staff.

It is noteworthy, that besides the proposals on remuneration for the basic salary, the computation provided for the estimated number of staff for the four (4) years for the total projected cost of the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021. The projected figure for the Financial Year 2017-2018 is estimated at Kshs. 6.8 Billion. It is significant to note that the projected figure is reasonable when compared with the fact that the Ministry of Education paid into the Financial Year 2017-2018 Kshs. 5.2 Billion as a top-up in capitation and to cater for the increase salaries from the 2013-2017 CBAs.

### **Committee Observations**

The Committee observed that:

1. That the IPUCCF Joint Negotiations Committee (JNC) comprising of both IPUCCF and the three (3) Unions of UASU, KUSU, KUDHEIHA Workers began negotiations on 18<sup>th</sup> December, 2017;
2. That the negotiations continued with UASU up-to and until 21<sup>st</sup> February, 2018 when UASU issued a strike notice; KUSU had negotiations up-to 23<sup>rd</sup> February, 2018; for KUDHEIHA Workers up-to and until 27<sup>th</sup> February, 2018.
3. Currently, the IPUCCF Joint Negotiations Committee (JNC) is has not been furnished with the necessary guidelines from the Ministry of Education (MoE) to form the basis of fruitful and productive negotiations.
4. There are so many levels of negotiations on implementation of the CBA, which hamper faster negotiations and inclusivity of all concerned parties.

### **2.2.3 SUBMISSION BY THE CABINET SECRETARY MINISTRY OF EDUCATION**

**The Cabinet Secretary Ministry of Education Amb. (Dr.) Amina Mohammed accompanied by the Principal Secretary State Department for University Education Prof. Micheni Ntiba Cabinet Administrative Secretary Mr. Simon Kachapin, Senior Ministry Officials Mr. Peter Okwayo, Mr. Thuita Isaac, Mr. Johnstone Nyanumba, Ms. Ann Kaiga and Mr. Philip Kinara appeared before the Committee on 15<sup>th</sup> March, 2018 to adduce evidence on petition regarding the 2013 – 2017 and 2017 – 2021 Collective Bargaining Agreements between University Academic Staff Union and Inter Public Universities' Council Consultative Forum**

The Cabinet Secretary, Ministry of Education informed the Committee as follows: -

Following the industrial action experienced in the year 2017 the unions representing all staff in the public universities in liaison with the Inter-Public Universities Consultative Forum (IPUCCF) entered into Collective Bargaining Agreement (CBA) and a return to work formula was agreed upon.

In the 2013-2017 CBA Kshs. 10 billion was provided for the four-year cycle covering basic salary, house allowances that was to be paid in arrears from 1<sup>st</sup> July, 2013.

The Government settled the Kshs. 10 billion in two instalments with the first one of Kshs. 4.775 billion being released to the universities during the first supplementary budget of the 2016/2017 financial year. The remaining second instalment of Kshs. 5.225 billion was released to the universities at the beginning of the current financial year 2017/2018. The Ministry has since paid all salary arrears and factored the increment in the budget going forward.

The parties agreed to start negotiations for the 2017 – 2021 CBA and finalize by 31<sup>st</sup> January, 2018. The consultations started in January 2018 and are still going on. During the consultations the staff unions presented their proposals and expected a response from IPUCCF.

Further consultations were held in February 2018 between the Principal Secretaries of the National Treasury and the State Department for University Education and Research (Ministry of Education) where it was agreed that all public universities submit payroll data for analysis by the National Treasury. This would be the decision making on the counter offer to be communicated to IPUCCF. The process is ongoing and once completed the counter offer will be communicated to IPUCCF to kick start the negotiations once again.

Job evaluation for exercise was conducted for lecturers and other staff in the universities by the Salaries and Remuneration Commission and preliminary results communicated to each university but the process is yet to be finalized. UASU however filed a case in court contesting

job evaluation for university academic staff. This has therefore hampered the finalization of the job evaluation and therefore denying SRC an opportunity to advise on an appropriate counter offer.

As consultations with IPUCCF and the National Treasury were going on the universities staff unions issued a seven-day strike notice from 21<sup>st</sup> February, 2018 which expired on 28<sup>th</sup> February, 2018 and thus commencing the withdrawal of services in public universities.

IPUCCF filed Employment Labour Relations Court (ELRC) case number 257 of 2018 in Employment and Labour Relations Court (IUPCCF versus UASU) and named the Ministry of Education, the National Treasury, Ministry of Labour, Attorney General and Salaries and Remuneration Commission as interested parties. IPUCCF and the interested parties were urging the court to declare the strike illegal and unprotected to enable parties to start the negotiation process, table and resolve the dispute once and for all. The judgment is expected to be delivered on 16<sup>th</sup> March, 2016.

From the foregoing, it is clear that the National CBA for 2013-2017 that covers basic salary and house allowance has been fully implemented to date. However, IPUCCF has reported that public universities have outstanding pension for 2010 – 2013 and 2013 – 2017 CBA's totalling Kshs. 4 billion. The other allowances and terms and conditions of service are covered under local institutions CBA with each of the three with respective university councils.

From the above it is clear that the Government has not refused to negotiate with the unions but there are various huddles such as the UASU court case on job evaluation results and the declaration of an industrial strike that has kept away the parties from the negotiation table for the Ministry to give a counter offer. The job evaluation exercise would form a good basis for any CBA negotiations and ensure harmony within the public sector. The payroll data requested from the universities is still streaming in.

The Ministry welcomes efforts by the Committee on Education and Research on appropriation of funds to enable finalization of the 2017 -2021 CBA and clearance of outstanding Kshs 4 billion of employer pension contributions arrears for 2010 – 2013 and 2013 – 2017.

Whereas the Government policy provides for provision of mortgages and car loans for public servants including public universities, the existing guidelines required universities to set aside funds for the same within their available budgets.

On Wednesday 14<sup>th</sup> March, 2018 there were demonstrations at the Ministry of Education headquarters and where discussions were held on the way forward and later the Cabinet Secretary addressed the Union members.

### **Committee Observations**

The Committee observed that:

1. Public universities have outstanding pension for 2010 – 2013 and 2013 – 2017 CBA's totalling Kshs. 4 billion. The other allowances and terms and conditions of service are

covered under local institutions CBA with each of the three with respective university councils. Further some universities have reverted to the old payment structure despite receiving allocation for the implementation of the 2013- 2107 CBA.

2. The Internal CBA's signed between the individual Universities and local unions creates disparity in the allowances of the lecturers and other university staff. The internal CBA's should be harmonized across all universities.
3. The Framework of the negotiations has many levels which makes the voice of the Unions gets lost. There is a need to have the Unions representations at higher levels of negotiations thus an all inclusive negotiation committee needs to be set-up
4. The negotiations for the 2017 -2021 Collective Bargaining Agreement had commenced however it stalled when the Unions called for industrial action partly due to the contested job evaluation for exercise conducted for lecturers and other staff in the universities by the Salaries and Remuneration Commission which is yet to be finalized

### **Committee Resolutions**

The Committee:

1. Directed the Cabinet Secretary to order for conduct pay roll analysis of all universities and undertake a thorough audit of Kshs. 10 billion disbursed to the universities to implement the 2017 -2021 Collective Bargaining Agreement.
2. Directed the Cabinet Secretary to call for a conference on the Status of Kenya universities to address the quality of University education and the perennial challenges affecting the universities.

#### **2.2.4 SUBMISSION BY THE CABINET SECRETARY FOR THE NATIONAL TREASURY**

**The Cabinet Secretary for the National Treasury Mr. Henry Rotich, EGH accompanied by Ministry officials Mr. G.K Mothemba and CPA Isabella Kogei appeared before the Committee on 20<sup>th</sup> March, 2018 to adduce evidence on the petition regarding the 2013 – 2017 and 2017 – 2021 Collective Bargaining Agreements between University Academic Staff Union and Inter Public Universities' Council Consultative Forum**

The Cabinet Secretary informed the Committee as follows:

**The National Treasury's obligations in implementation of the 2013- 2017 and 2017 – 2021 CBA's made between University Staff Unions and the Inter-Public Universities Councils Consultative and the timelines for meeting the obligations.**

The obligation of the National Treasury in the implementation of the financial obligations of the CBA's is to ensure that the amounts agreed are sustainable and affordable.

**The Budget allocated for the implementation of the two CBA's amount disbursed and any outstanding amount**

In March, 2017 the State Department for University Education was considered for additional funding amounting to Kshs. 10 billion to cater for the implementation of the CBA for Universities staff for the period 2013 – 2017. The amount was provided in two phases as follows:

Phase I – Kshs. 4,800,000 which was provided in the FY 2016/2017 budget.

Phase II – Kshs. 5,200,000 which was factored in the supplementary estimates No. 1 for FY 2017/2018.

To sustain the enhanced salaries up to the of the FY 2017/2018 (up to June, 2018), the Universities were also granted additional funding amounting to Kshs. 5,266,708,183 pending regularization of the same in the Supplementary Estimates No. 2 for 2017/18 financial year, which will be tabled in Parliament for consideration and approval.

In total an amount of Kshs. 15, 266,708, 183 has already been disbursed to the Ministry for onward disbursement to the various universities to cater for the 2013- 2017 CBA's.

#### **Extent of Implementation of the two CBA's**

The provision of the above funding was to cater for the full implementation of the 2013 – 2017 CBAs to all the Universities staff. The Ministry is required to provide the status of the implementation of the 2013-2017 CBAs.

#### **Any counter offer put forward by the Government to the Unions in the recent negotiations regarding the 2017 – 2021 CBA**

In 2015 the Salaries and Remuneration Commission initiated job evaluation exercise across the Public service to determine the true worth of public service jobs and at the same time ensure that the fiscal wage bill becomes manageable and sustainable. The exercise entailed determination of remuneration for each grade within the civil service and it covered all research institutions, public universities, and institutions offering tertiary education.

In view of the foregoing the National Treasury is obligated to provide funding for remuneration to spending units within the context of Job Evaluation. It is noted that the SRC has not concluded the Job evaluation for the universities for the reason that only a few universities submitted the requisite information sought by SRC to enable them determine the remuneration to staff in that sector. This information has since been submitted to the SRC and it is expected that the job evaluation for the universities will be concluded. In this regard therefore, the Government has not been in a position to put forward a counter offer to the unions as regards the 2017 – 2021 CBA.

#### **Proposals on the way forward in resolving the current stalemate between the universities' unions and the Government.**

The Cabinet Secretary put forward the following proposals

The SRC should fast-track finalization of job evaluation for the universities given that the university staff are currently on strike.

Staff audit should be carried out in order to establish actual existing staff in the universities; and; Financial audit should be carried out to be determine how universities spend funds allocated to them and disbursed from the exchequer and from their own internal revenue streams.

### **Committee observations**

The Committee observed the following:

1. A total amount of Kshs. 15, 266,708, 183 has already been disbursed by the National Treasury to the Ministry of Education for onward disbursement to the various universities to cater for the 2013- 2017 CBA's, contrary to the assertion by IPUCCF that it has received only Kshs. 10 billion.
2. The Government has not put forward a counter offer to the university unions as regards the 2017 – 2021 CBA because of the ongoing universities job evaluation exercise by Salaries and Remuneration Commission (SRC) which has been temporarily stopped due a court case lodged by UASU;
3. The SRC is currently being reconstituted and there is no a definite timeline when the universities staff job evaluation exercise will be concluded;
4. The Universities have been operating at a deficit yet they have not been disclosing monies collected from the parallel programs and Appropriations-In-Aid, and remuneration of lecturers from such degree programs.
5. A number of public universities do not remit statutory deductions such as pension contributions, income tax, NSSF, NHIF deductions as well as SACCO remittances, Insurance premiums and bank loans deductions deducted from employee income.

### **Committee Resolutions**

The Committee made the following recommendations:

1. The parties to the CBA, UASU and IPUCCF should formulate and sign a return to work formula with the help of the Ministry of Education in order to end the strike as conclusion of the job evaluation exercise undertaken by SRC is awaited;
2. Universities should adjust their expenditure to the capitation they receive from the exchequer under Differentiated Unit Cost (DUC) in order to sustain their payrolls.
3. Staff audit in the universities should be carried out by the Ministry of Education so as to establish actual existing staff in the universities;
4. Financial audit should be carried out to be determine how universities spend funds allocated to them and disbursed from the exchequer and money generated from their own internal revenue streams.

## **2.2.5 SUBMISSION THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY, PRINCIPAL SECRETARY FOR STATE DEPARTMENT FOR**

**UNIVERSITY EDUCATION, INTER-PUBLIC UNIVERSITIES COUNCILS  
CONSULTATIVE FORUM AND UASU OFFICIALS.**

**The Principal Secretaries for the National Treasury and the State Department for University Education, Inter-Public Universities Councils Consultative Forum officials and UASU Officials appeared before the Committee on 12<sup>th</sup> April, 2018 to adduce evidence on the petition regarding the 2013 – 2017 and 2017 – 2021 Collective Bargaining Agreements between University Academic Staff Union and Inter Public Universities' Council Consultative Forum.**

**SUBMISSION BY THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY**

The Principal Secretary of the National Treasury Dr. Kamau Thugge, CBS informed the Committee as follows:

**The National Treasury's obligations in implementation of the 2013- 2017 and 2017 – 2021 CBA's made between University Staff Unions and the Inter-Public Universities Councils Consultative and the timelines for meeting the obligations.**

The obligation of the National Treasury in the implementation of the 2013- 2017 CBA was to review financial implications of the CBA to ensure that the amount agreed in this case **Kshs. 10 billion** was sustainable and affordable.

**Fulfilment of National Treasury Obligations/Responsibilities in the implementation of 2013 -2017 CBA.**

In March, 2017 the State Department for University Education was considered for additional funding amounting to Kshs. 10 billion to cater for the implementation of the CBA for Universities staff for the period 2013 – 2017. The amount was provided in two phases as follows:

Phase I – Kshs. 4,800,000 which was provided in the FY 2016/2017 budget.

Phase II – Kshs. 5,200,000 which was factored in the supplementary estimates No. 1 for FY 2017/2018 and released to the State Department.

These funds were released as one off expenditure given that additional funding was to cater for the 2017/18 whose implementation was in arrears.

To sustain the enhanced salaries and allowances up to the end of the FY 2017/2018 (up to June, 2018), the State Department fro University Education requested and was granted authority to incur additional expenditure amounting to Kshs. 5,266,708,183 in November 2017. This additional funding was to cater for:

Kshs. 4,345,669 – Top-up capitation for the 31 public universities

Kshs. 781,265,514 – Pension Component.



The authority was issued under Article 223 of the Constitution pending regularization of the the Supplementary Estimates No. 2 for 2017/18 financial year, which will be tabled in Parliament for consideration and approval.

In total an amount of Kshs. 15, 266,708, 183 has already been disbursed to the Ministry for onward disbursement to the various universities to cater for the 2013- 2017 CBA's.

### **Proposals on the way forward in resolving the current stalemate between the universities' unions and the Government.**

The Principal Secretary put forward the following proposals

- (i) The National Treasury view on the 2013-2017 CBA is that it has fulfilled its obligations by providing the funds requested by the State Department to enable them fully implement the CBA.
- (ii) The Court case filed by UASU to stop Salaries and Remuneration Commission (SRC) from concluding the job evaluation should be withdrawn to allow the Commission finalize the exercise.
- (iii) The determination of the offer to the universities will be subject to the recommendations of SRC.
- (iv) There is need for the State Department to carry-out payroll audit to establish actual number of university staff in the universities and the cost of their compensation.
- (v) The State Department should also conduct a financial audit on the expenditures and revenues including internal control systems in the universities to in order to establish how funds released from the exchequer and those generated internally are applied and accounted for.

### **Committee observations**

The Committee observed the following:

- 1. The Government has not put forward a counter offer to the university unions as regards the 2017 – 2021 CBA because of the ongoing universities job evaluation exercise by Salaries and Remuneration Commission (SRC) which has been temporarily stopped due a court case lodged by UASU;**
- 2. The SRC is currently being reconstituted and there is no a definite timeline when the universities staff job evaluation exercise will be concluded;**
- 3. The Universities have been operating at a deficit yet they have not been disclosing what they collect from the parallel program and Appropriations-In-Aid, and how much they have been paying lecturers from such degree programs.**

## **SUBMISSION BY THE PRINCIPAL SECRETARY STATE DEPARTMENT OF UNIVERSITY EDUCATION**

**The Principal Secretary State Department of University Education Prof. Micheni Ntiba informed the Committee as follows:**

### **Ministry of Education Responsibility in the 2013-2017 CBA**

Liaise with the National Treasury and IPUCCF to come up with counter offer. a counter offer of Kshs. 10 billion was given.

The National Treasury provided funds in two tranches of Kshs. 4.775 billion in March 2017 and Kshs. 5.225 billion in July 2017 which was shared between three unions UASU, KUSU AND KUDHEIHA as per a schedule provided by IPUCCF paid in arrears.

The National Treasury agreed to release Kshs. 5.2 billion in November 2017 to enhance and sustain the new salaries as below:

- (i) Out of the amount Kshs. 2.136 billion for five months for July – November 2017 to cover outstanding arrears.
- (ii) The remaining amount is being disbursed at the rate of Kshs. 465 Million per month towards sustaining the new salaries for the remaining months of 2017/2018 financial year.

The Ministry is conducting an audit to ascertain application of these resources as intended.

### **Ministry's obligations/fulfilment of 2013 – 2017 CBA**

**In regard to the Ministry's obligations of the 2013-2017 CBA, the Ministry has fully fulfilled its obligations as follows:**

- (a) Gave a counter offer, in liaison with the National Treasury.
- (b) The Ministry sourced for funds and disbursed it all to the universities based on schedules submitted by the universities.
- (c) The Ministry guided the universities on their budgetary and financial responsibilities and the prudent use of resources.

### **Committee Observation**

**The Committee observed that the Ministry of Education is consulting with the National Treasury, Inter Public Universities Councils Consultative Forum and Salaries and Remuneration Commission to come up with a counter offer. The Ministry is also analysing the payroll and the statutory obligations data which is being received from all universities to determine a sustainable counter offer for the current CBA. The analysis will also provide reliable setting for future counter offer in future CBAs to prevent the old age disturbances in the learning and research programmes in the universities.**

### **Collective Bargaining Agreement 2010-2013**

A Return to Work Formula was signed on 19<sup>th</sup> March, 2014 together with re-worked schedules of the new Collective Bargaining Agreement (CBA) for the Financial Years 2010-2013. According to the calculations this amount was exclusive of Pension and salary arrears for the period from 1<sup>st</sup> July, 2013 up-to and until 30<sup>th</sup> June, 2014. Upon reconciliation of the declared balances with IPUCCF the Universities noted that they required a total of Kshs. 1.56 billion to settle the pension component of this CBA for the Financial Years 2010-2013. This figure for the pension remains due and owing to-date.

### **Collective Bargaining Agreement 2013-2017**

The CBAs for the Financial Years 2013-2017 with the three (3) respective Unions were signed as follows:

- (i) Universities' Academic Staff Union (UASU) dated 13<sup>th</sup> March, 2017;
- (ii) Kenya Universities' Staff Union (KUSU) dated 9<sup>th</sup> May, 2017; and
- (iii) Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers dated 15<sup>th</sup> March, 2017.
- (iv) Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU)

Thereafter, the Ministry of Education (MOE) disbursed CBAs payments in two (2) tranches of Kshs. 4.775 billion paid on the 30<sup>th</sup> June, 2017 and Kshs. 5.225 billion paid on 13<sup>th</sup> July, 2017 which totalled to Kshs. 10 billion. However, the pension component was not factored in these CBAs for the Financial Years 2013-2017 amounting to a total of Kshs. 2 billion. This amount for the pension component remains outstanding to-date.

### **Top-up in Capitation for the Financial Year 2017 - 2018**

Subsequently, a strike notice was issued by UASU on 3<sup>rd</sup> October, 2017 and later proceeded with industrial action on 1<sup>st</sup> November, 2017. The reason that UASU gave for the industrial action was that Thirty-one (31) University Councils had failed to implement the Basic Salaries and House Allowances at the levels provided for under the CBAs of 2013-2017. Succeeding these events, the Vice-Chancellors (the CEOs of the Universities) requested from the Ministry of Education for top-up in capitation of about Kshs. 5.2 billion to pay into the Financial Year 2017-2018 for Thirty-one (31) Universities and Eight (8) constituent University College together with a Pension Component of Kshs. 781,265,514.00 as hereunder:

<b>S/No.</b>	<b>Item</b>	<b>Amount in Kshs.</b>
1.	Top Up Government Capitation for 31 Public Universities	<b>4,345,442,669.00</b>
2.	Pension Component	<b>781,265,514.00</b>
3.	Top Up Government Capitation for 8 new Constituent	<b>160,000,000.00</b>

	University Colleges	
<b>Grand Total</b>		<b>5,286,708,183.00.</b>

The Ministry of Education paid **the arrears** for the top-up for capitation for the CBAs for the Financial Years 2013-2017 as at 1<sup>st</sup> December, 2017 and the Universities and Constituent University Colleges continue to receive the top-up with their monthly capitation and pay in accordance to the CBAs for the Financial Years 2013-2017.

### **Payment of Allowances to Medical Doctors in Medical Schools in Kenyan Universities**

In light of the assertions made by UASU with regard to the tripartite CBA of KMPDU, and the Ministry of Health and the Council of Governors, it is noteworthy, that IPUCCF is **not privy** to the recognition Agreement nor a party to the CBA with KMPDU. This is because the mandate of IPUCCF is limited to the matters dealing with the three Unions of UASU, KUSU, and KUDHEIHA. However, IPUCCF opines that this matter of KMPDU should be separated from the UASU CBA for the Financial Years of 2017-2021. Instead, the issue can be discussed by the Universities, which offer Medical Programs and correspondingly Clinical Services in Public Hospitals, with the Ministry of Education, Ministry of Health and National Treasury. We are advised that this has been the custom and practice in the past, to negotiate in this format and IPUCCF feels that there should be no departure from this trend.

### **Collective Bargaining Agreement 2017-2021**

With reference to the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021 the Inter-Public Universities Councils Consultative Forum (IPUCCF) Proposal was forwarded to the Ministry of Education (MoE) for purposes of onward transmission to the Salaries and Remuneration Commission (SRC) and the National Treasury (NT) for concurrence and approval.

The Proposal took into account all the various staff categories of Public Universities from the three unions of Universities Academic Staff Union (UASU); Kenya Universities Staff Union (KUSU); and Kenya Union of Domestic, Hotel, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers as well as the Top Management staff.

It is noteworthy, that besides the proposals on remuneration for the basic salary, the computation provided for the estimated number of staff for the four (4) years for the total projected cost of the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021. The projected figure for the Financial Year 2017-2018 is estimated at **Kshs. 6.8 Billion**. It is significant to note that the projected figure is reasonable when compared with the fact that the Ministry of Education paid into the Financial Year 2017-2018 Kshs. 5.2 Billion as a top-up in capitation and to cater for the increase salaries from the 2013-2017 CBAs.

### **Committee Observation**

The Committee observed that UASU Court injunction on Job evaluation by SRC and the strike are hindering smooth negotiations on the 2017-2021 collective bargaining agreement.

#### **SUBMISSION BY IPUCCF**

##### **Way Forward in the Implementation of the 2013-2017 and 2017 -2021 CBAs**

Currently, the IPUCCF Joint Negotiation Committee is not furnished with the necessary guidelines from the Ministry of Education to form the basis of fruitful and productive negotiations to successfully conclude the 2017 -2021 CBA and the outstanding monies that comprise the 2013-2017 CBA.

#### **SUBMISSION BY UASU & KUSU**

**The UASU Secretary General Dr. Constatine Wasonga informed the Committee as follows:**

##### **Responsibilities and obligations of UASU as a stakeholder in the CBAs**

The 2017-2021 CBA is the priority for UASU. The current crisis in higher education has been triggered by the failure to conclude the 2017 -2021 CBA and the current strike will be called off upon conclusion of 2017 -2021 CBA.

The failure to conclude the 2017 -2021 CBA is due to non-fulfilment by IPUCCF, Ministry of Education and the National Treasury of their responsibilities and legal obligations. The failures largely mirror what happened in the 2013 -2017 CBA cycle, and UASU pleads with all stakeholders to avert the strike cycles leading the 2013-2017 CBA signing.

The obligations of UASU in the 2017 -2021 CBA is to present a CBA proposal to IPUCCF, negotiate, sign and assist in registration of the CBA and play an oversight role in its implementation. UASU has already submitted its proposal to IPUCCF on 30<sup>th</sup> March, 2017 with regards to 2017 – 2021 CBA.

IPUCCF, Ministry of Education and the National Treasury have on the other hand not performed any of its responsibilities in presenting a county offer.

##### **Proposal on the way forward in resolving the current stalemate regarding 2013-2017 and 2017 -2021 CBA's**

- (i) Parliament directs IPUCCF, Ministry of Education and the National Treasury to urgently present a counter offer and engage in meaningful negotiations so that 2017-2021 CBA can immediately be concluded.
- (ii) Parliament appropriates the required funds.
- (iii) To avoid future problems in budgeting process, it is recommended that the Ministry of Education involves IPUCCF in the budgeting process.

##### **Committee Observations**

The Committee observed that UASU is ready to call off the strike and direct its members to resume duty if the Government offers them a counter offer on the 2017 -2021 CBA pending salaries review by Salaries and Remuneration Commission.

## **Committee Resolutions**

The Committee directed the parties the Ministry of Education, the National Treasury, IPUCCF and UASU to urgently commence negotiations on the 2017 – 2021 CBA and reach at an agreement on an indicative offer pending conclusion of job evaluation exercise by SRC. Once the exercise is concluded the offer can be reviewed depending on the findings of the exercise.

### **3.0 COMMITTEE GENERAL OBSERVATIONS**

This section provides for the summary of the Committee's Observations on the Petition as hereunder: -

- 1. Nearly all public universities fail to remit financial statutory deductions such as Pay as you earn (PAYE), National Social Security Fund (NSSF) contributions, National Hospital Insurance Fund (NHIF) contributions, contributions Retirement Benefit Schemes, Co-operative Societies on regular basis despite the fact that such dues are recovered from the employees salaries. The universities have fallen into arrears in the remittance of these deductions.**
- 2. The University staff members have been grossly affected by the non-remittance of monthly statutory deductions like NSSF, NHIF, Pension deductions, bank loans and contributions to SACCOs by the universities. Bank loans are not serviced on time hence staff members are subjected to penalties. Furthermore, medical schemes have collapsed as a result of default in repayments of insurance premiums by the universities university staff cannot access medical services.**
- 3. Twenty-five (25) Universities have not concluded negotiating and signing Internal Collective Bargaining Agreements as at May, 2018. By the same date only six universities of the thirty-one (31) public universities namely University of Nairobi, Pwani University, Jaramogi Oginga Odinga University of Science and Technology, Maseno University, Kenyatta University, Jomo Kenyatta University of Agriculture and Technology - have concluded their Internal CBAs. The rest have not negotiated and concluded their Internal CBAs citing lack of funds. This has resulted in inequalities in the salaries of universities' staff in different universities due to payment of different allowances for employees in the same grade.**
- 4. Job evaluation exercise was conducted for lecturers and other staff in the universities by the Salaries and Remuneration Commission and preliminary results communicated to each university but the process was yet to be finalized before expiration of the Commission term. Rec-constitution of the Commission is ongoing and this has hampered the finalization of the job evaluation and an appropriate counter offer advice.**
- 5. The Framework of the negotiations of the Universities staff salaries and terms and condition of service is done at many levels which makes the voice of the Unions gets**

lost. There is a need therefore to have the Union officials represented at highest levels of negotiations.

6. There is need for the State Department to carry-out payroll audit to establish actual number of university staff in the universities and the cost of their compensation.
7. The Government has not put forward a counter offer to the university unions as regards the 2017 – 2021 CBA because of the ongoing universities job evaluation exercise by Salaries and Remuneration Commission (SRC) which has been temporarily stopped due expiration of the term of the previous Commission.
8. The SRC is currently being reconstituted and there is no a definite timeline when the universities staff job evaluation exercise will be concluded.

#### **4.0 COMMITTEE GENERAL RECOMMENDATIONS**

In response to the petitioners' prayers, the Committee recommends that:

- 1. The Committee directed the parties in the Collective Bargaining Agreement i.e the Ministry of Education, the National Treasury, IPUCCF and UASU to commence negotiations on the 2017 – 2021 Collective Bargaining Agreement and reach at an indicative offer pending conclusion of Job Evaluation exercise by Salaries and Remuneration Commission. Once the exercise is concluded the offer can be reviewed depending on the findings of the exercise.**
- 2. All Public universities should remit their financial statutory obligations to the Kenya Revenue Authority, National Social Security Fund, National Hospital Insurance Fund, Retirement Benefit Schemes, and Co-operative Societies and banks on a regular basis to enhance the welfare and well being of their employees.**
- 3. All Vice-Chancellors of public universities should ensure that they settle all pending statutory deductions arrears deducted from the salaries of the university staff members accrued over time immediately. Going forward, the Vice-Chancellors should remit all statutory deductions in respect of NSSF, PAYE, NHIF, union dues, bank loan deductions and other contributions to the relevant authorities within the stipulated period as provided for in the relevant legislation and financial regulations to avoid unnecessary penalties and interest and inconveniences caused to the staff members.**
- 4. The individual Universities' Councils and local chapters of UASU of the Universities which have not concluded their internal 2010 – 2013 and 2013 -2017 CBAs should initiate and conclude structured negotiations on other terms and conditions of service within 3 months from the date of tabling this report and set up a Joint Implementation Committee to oversee the implementation process.**
- 5. There is need to have the University Unions namely UASU, KUSU and KUDHEIHA representation at highest level of Collective Bargaining Agreement negotiations in future to give the university unions a significant voice and role in the negotiation process in contrast to the current arrangement where the Inter-Public Universities Councils Consultative Forum negotiates on behalf the unions at the Ministerial level of negotiations.**
- 6. There State Department for University Education in collaboration with the National Treasury should carry-out payroll audit to establish actual number of university staff in the universities and the cost of their monthly salaries. In addition, the State Department for University Education should conduct a financial audit on the expenditures and revenues including internal control systems in the universities in order to establish how funds released from the exchequer and those generated internally are applied and accounted for by the Universities.**



- 7. The State Department for University Education and the National Treasury should undertake an audit of Ksh. 10 billion disbursed to the various Universities to cater for implementation of the 2013- 2017 CBA for university staff.**

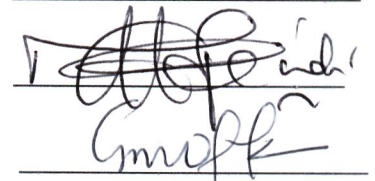
# ADOPTION OF REPORT ON THE PETITION BY UNIVERSITIES' ACADEMIC STAFF UNION REGARDING 2013 - 2017 AND 2017-2021 COLLECTIVE BARGAINING AGREEMENT

We the undersigned, hereby affix our signatures to this Report to affirm our approval

1. Hon. Julius Melly, MP - Chairperson



2. Hon. Amos Kimunya, EGH, MP - Vice-Chairperson



3. Hon. Moses Malulu Injendi, MP

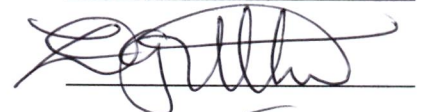
4. Hon. Geoffrey Makokha Odanga, MP

5. Hon. (Dr.) Pamela Ochieng, MP

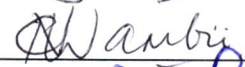
6. Hon. (Eng.) Nzambia Thuddeus Kithua, MP



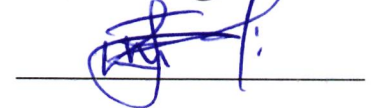
7. Hon. (Prof.) Zadoc Abel Ogutu, MP



8. Hon. Catherine Wambilyanga, MP



9. Hon. Eric Muchangi Njiru, MP



10. Hon. Eve Obara, MBS, MP

11. Hon. Jackson Lekumontare, MP

12. Hon. Jerusha Mongina Momanyi, MP



13. Hon. John Oroo Oyioka, MP

14. Hon. Joseph Kipkosgei Tonui, MP

15. Hon. Lilian Cheptoo Tomitom, MP

16. Hon. Omboko Milemba, MP

17. Hon. Peter Lochakapong, MP



18. Hon. Wilson Sossion, MP

19. Hon. Wilson Kipngetch Kogo, MP



# **ANNEXURE 1 - PETITION**

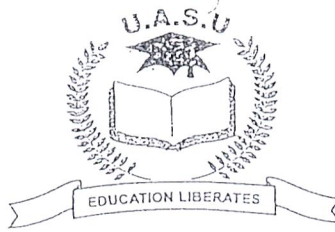
# UNIVERSITIES' ACADEMIC STAFF UNION

All Correspondence should be addressed to the Secretary General

National - Chairman  
Muga K'olale

Secretary General  
Dr. Constantine Wasonga

National Treasurer  
Dr. Janepha K. Kumba



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P.O. Box 30198 - 00100  
Nairobi, Kenya  
Tel: +254 721 947 715  
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Email: uasunational@yahoo.com

Our Ref: UASU/NA/2/2017

## PETITION CONCERNING THE 2013-2017 CBA AND 2017-2021 CBA FOR UNIVERSITIES' ACADEMIC STAFF

*(Brought under the Constitution of Kenya 2010, Articles 37, 94, 95 and 96; and the Standing Orders)*

TO: The Clerk, National Assembly

WE, the undersigned and humble Petitioners, representing members of Universities' Academic Staff in all the public universities of Kenya:

**DRAW** the attention of the House to the following:

- On 13th March 2017, the Inter-Public Universities Councils Consultative Forum (IPUCCF) and the Universities' Academic Staff Union (UASU) signed the 2013-2017 Collective Bargaining Agreement (CBA). The CBA was subsequently registered by the Employment and Labour Relations Court.
- The conclusion of the 2013-2017 CBA brought an end to a period of industrial unrest and ushered in harmony in the Kenyan public universities.
- To fund the arrears under the 2013-2017 CBAs, the National Treasury through the Ministry of Education, Science and Technology (MoEST), availed Kenya Shillings Ten Billion (KSh. 10, 000,000,000.00).
- The KSh. 10 billion covered arrears of basic salary and house allowance for all public university workers represented by the Universities' Academic Staff Union (UASU), Kenya Universities Staff Union (KUSU) and the Kenya Union of Domestic, Hotels, Educational Institutions,

*Petition Concerning the 2013-2017 and 2017-2021 CBAs for Universities Academic Staff to Parliament.*



Deputy Sec General - Joab M. Kinzi  
George O. O.  
Cyprian Oin

Hospital and Allied Workers (KUDHEIHA); who number approximately thirty thousand (30,000).

- The 2013-2017 CBA is effective from 1st July 2013 to 30th June 2017, but remains in force until its 2017-2021 successor CBA is concluded. This means university staff are entitled to earn basic salary and house allowance at the rates specified in the 2013-2017 CBA until a successor CBA is in place.
- However 28 out of 31 public universities continue to pay academic staff basic salary and house allowance at the rates of the previous 2010-2013 CBA, below the levels in the 2013-2017 CBA.
- Additionally, 26 out of 31 public universities have not completed Internal 2013-2017 local university CBAs, that are integral components of the national CBA. The public universities often cite funding shortfall, sustainability and affordability for their failure to complete negotiating in time the Internal 2013-2017 local university CBAs.
- Of further concern is that the public universities have failed to negotiate the 2017-2021 CBA, which when concluded would prevent future recurrence of similar labour unrests. Other public sector employees such as the civil servants, teachers and doctors already have 2017-2021 CBAs.
- The commencement date for the 2017-2021 CBA when concluded shall be 1<sup>st</sup> July 2017. This means the arrears under the 2017-2021 CBA are already accruing.
- The failure to complete the internal 2013- 2017 CBAs and the 2017-2021 CBA and remunerate staff in accordance with the CBAs is in clear breach of the terms and conditions of service for the academic staff, comprising Professors, Associate Professors, Senior Lecturers, Lecturers, Assistant Lecturers, Tutorial Fellows and Graduate Assistants.
- Furthermore a number of public universities do not remit statutory deductions such as pension contributions, income tax, NSSF and NHIF deductions, as well as co-operative society deductions, insurance premiums, union dues and bank loan instalments deducted from employee income.

- Since 17<sup>th</sup> December 2014, it has been Government policy that all public sector employees benefit from a car loan and mortgage scheme. This policy was communicated vide a circular Ref: SRC/ADM/CIR/1/13VoI.II(128) from the Salaries and Remuneration Commission (SRC) for state officers and other public officers of government of Kenya. To date, however, the public universities have not implemented the car loans and mortgages scheme for academic staff.
- Academic staff in Kenyan Public Universities are overworked and underpaid, with detrimental effects on staff morale, research, teaching and innovation outputs.
- The poor pay structure of academic staff leads to low retention of human resources and massive brain drain from public universities to foreign countries or other sectors.
- Unless the situation is remedied there is an impending collapse of the higher education sector in Kenya.

THAT:

- The academic staff in all public universities represented by the Universities' Academic Staff Union (UASU) and the Inter-Public Universities Council Consultative Forum (IPUCCF) negotiated, signed and registered in the Employment and Labour Relations Court a CBA for the period 2013-2017.
- That, following industrial action by UASU and subsequent intervention by the Cabinet Secretary, Ministry of Education, KShs. 10 billion was availed for the 2013-2017 CBA cycle to cover arrears of basic salary and house allowance for all public university workers represented by UASU, KUSU and KUDHEIHA.
- In July 2017, five out of thirty-one universities implemented basic salary and house allowance at the levels specified in the 2013-2017 CBA. Of the five universities two (JKUAT and Karatina) have since reverted to the previous pay level. Currently, the only compliant universities are: Jaramogi Oginga Odinga University of Science and Technology, Chuka University and Machakos University.

- Considering that lecturers and professors are among the most poorly paid and overworked in the country, the failure to implement the 2013-2017 CBA has condemned academic staff to a life in poverty.
- That UASU has made all efforts to get IPUCCF and the Ministry of Education to implement the 2013-2017 CBA rates but in vain. 3
- In further breach of the Return To Work Formula signed by IPUCCF and UASU on 13 March 2017, the majority of the public universities have failed to conclude the Internal Local University 2013-2017 CBAs that make provisions for medical scheme, leave entitlements, commuter allowance and other working conditions for academic staff.
- In particular, the medical scheme has collapsed at virtually all public universities leaving academic staff and their dependents without access to health care services.
- ~~In further violation of the Return To Work Formula the public universities have failed to negotiate the 2017-2021 CBA, which when concluded would prevent future recurrence of similar labour unrests. Other public sector employees such as the civil servants, teachers and doctors already have 2017-2021 CBAs.~~
- The arrears of pension due to the 2010-2013 CBA and 2013-2017 CBA are KSh. 1.56 Billion and KSh. 2 Billion respectively.
- The severe breach of the 2013-2017 CBA has pushed UASU to resort to avoidable industrial action; with detrimental effects on the higher education sector and student learning.

THAT:

- The issues in respect of which the petition is made are not pending before any court of law.

REASONS WHEREFORE your humble petitioners PRAY that Parliament:

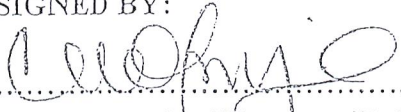
- (i) urgently intervene and facilitate appropriation of funds to enable implementation of the 2013-2017 CBA;
- (ii) urgently intervene and facilitate appropriation of funds amounting to KSh. 1.56 Billion for the employers' pension component of the 2010-2013 CBA;

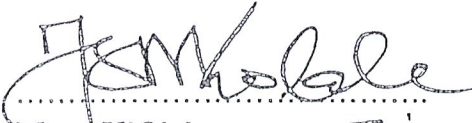
- (iii) urgently intervene and facilitate appropriation of funds amounting to KSh. 2 Billion for the employers' pension component of the 2013-2017 CBA;
- (iv) urgently intervene and facilitate appropriation of funds for the internal 2013-2017 CBAs. 4
- (v) urgently intervene and facilitate appropriation of funds for the 2017-2021 CBA.
- (vi) urgently intervene and facilitate appropriation of funds for car loans and mortgages scheme for academic staff of public universities.

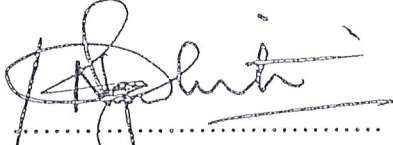
and your PETITIONERS will ever Pray.

DATED at NAIROBI this 20th day of December 2017

SIGNED BY:

  
.....  
Dr. Constantine Wasonga, Ph.D  
National I.D. No. 10407519  
National Secretary General, UASU

  
.....  
Muga K'Olale  
National I.D. No. 8963953  
National Chairman, UASU

  
.....  
Joseph Mutuura Mberia  
National I.D. No. 3462364  
National Vice Chairman, UASU and  
Co-Chairman of CBA Joint Negotiation Committee



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**ANNEXURE II - MINUTES**



**MINUTES OF THE 1<sup>ST</sup> SITTING OF THE SUB-COMMITTEE ON UNIVERSITY EDUCATION OF THE COMMITTEE ON EDUCATION & RESEARCH HELD ON TUESDAY, 13<sup>TH</sup> MARCH 2018 IN BOARD ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS 10:00 AM**

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**PRESENT**

1. Hon. Moses Injendi, MP □ - **Chairperson**
2. Hon. Julius Melly, MP
3. Hon. Geoffrey Odanga, MP
4. Hon. (Prof.) Zadoc Ogutu, MP
5. Hon. Catherine Wambilianga, MP
6. Hon. Jerusha Momanyi, MP

**ABSENT WITH APOLOGY**

7. Hon. (Dr.) Pamela Ochieng, MP - **Vice Chairperson**
8. Hon. (Eng.) Nzambia Kithua, MP
9. Hon. Lilian Tomitom, MP
10. Hon. Wilson Sossion, MP

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Daniel Mutunga - Principal Clerk Assistant I/Presiding Officer
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Ms. Emma Esendi - Legal Counsel II
4. Mr. Nimrod ochieng' - Audio Officer
5. Ms. Catherine mukunyi - Sejeant-at-arms

**UNIVERSITIES' ACADEMIC STAFF UNION**

1. Prof. Muga K'Olale - UASU National Chair
2. Prof. Mutuura Mberia - UASU National Vice –Chair/ JNC Co-chair
3. Dr. Constatine Wasonga - UASU National Secretary General
4. Dr. Kirinzi Joab - UASU Deputy Secretary General
5. Dr. Janepha Kumba - UASU National Treasurer
6. Mr. Muiga Rugara - UASU Organising Secretary
7. Mr. Onesmus Mutio - UASU Chapter Secretary General, MMU
8. Prof. George Osanjo - UASU National Trustee
9. Mr. Mohammed Mwachiti- UASU National Trustee
10. Ms. Njoki Ngung'u - UASU National Trustee
11. Mr. Jacob Musembi - UASU - TUK
12. Mr. Jack Willis Okumu - UASU – Moi Universi
13. Mr. Cyprian Ombati - UASU National Trustee
14. Mr. Cyrus Wakaro - KUSU National Chair
15. Mr. Philip Onyango - KUSU National Vice - Chair
16. Mr. Aggrey Ososgo - KUSU Deputy Secretary General
17. Mr. Wayaya Ernest - KUSU National Organising Secretary
18. Mr. Makori Mogaka - KUSU National Treasurer

19. Ms. Lynn Kipkosgei - KUSU Deputy Treasurer

**MIN.NO. 01/UNI-EDUC/2018: PRELIMINARIES**

The Chair called the meeting to order at 10:20 am and afterwards Hon. (Prof) Zadoc Ogutu read the Prayer followed by a round of introductions. The agenda of the meeting was adopted as a true business for the meeting having been proposed by Hon. Hon. Julius Melly, MP and seconded by Hon. Jerusha Momanyi, MP.

The Chair welcomed the officials from UASU and KUSU to the meeting

**MIN. NO. 02/UNI-EDUC/2018: PETITION CONCERNING THE 2013 – 2017 AND 2017 – 2021 COLLECTIVE BARGAINING AGREEMENTS SIGNED BETWEEN UNIVERSITY ACADEMIC STAFF UNION AND INTER PUBLIC UNIVERSITIES’ COUNCIL CONSULTATIVE FORUM (IPUCCF)**

**The Union officials made the following submission to the Committee:**

The Kenyan university education sector is rapidly expanding: In the year 2000, the number of public universities were six; in 2018, public universities number thirty-one, representing an increase by more than 500%. The enrolment of students in the public universities has similarly increased from less than 100,000 in 2000 to more than 500,000 in 2018.

University education, is however, only as good as its academic staff who carry out its core mandate of teaching, training and research; and the provision of quality university education is only possible if the universities can attract and retain high calibre academic staff.

Currently the terms and conditions of service for universities’ academic staff, comprising Professors, Associate Professors, Senior Lecturers, Lecturers, Assistant Lecturers, Tutorial Fellows and Graduate Assistants; are contained in an already expired 2013-2017 Collective Bargaining Agreement (CBA). The 2013-2017 CBA expired on 30<sup>th</sup> June 2017.

The Government has adjusted the terms and conditions of service for public workers, except university staff, by implementing Collective Bargaining Agreements (CBAs) for the period 2017-2021 or through other salary harmonization interventions.

Academic staff in public universities have however been discriminatively left out of any review of terms and conditions of employment including basic salaries, housing allowances, housing mortgage schemes, car loan schemes, among others, at levels comparable to what other public sector employees enjoy.

The pay structure of academic staff is characterized by distortions, large salary overlaps, stagnation within current grades, and poor career progression plans leading to low retention of human resources and massive brain drain from public universities to other sectors.

Academic staff in Kenyan Public Universities are overworked and underpaid, with detrimental effects on staff morale, research, teaching and innovation outputs.

Unless the situation is remedied there is an impending collapse of the higher education sector in Kenya.

#### **2013-2017 CBA INTERNAL CBAs:**

Under the terms of national 2013-2017 CBA concluded between IPUCCF and UASU on 13<sup>th</sup> March 2017, the individual universities councils and UASU agreed to initiate and conclude structured negotiations on other Terms and Conditions of Service, not covered under the national CBA.

To date only six universities - University of Nairobi, Pwani University, Jaramogi Oginga Odinga University of Science and Technology, Maseno University, Kenyatta University, Jomo Kenyatta University of Agriculture and Technology - have concluded their Internal CBAs.

The rest of the 25 public universities have not negotiated and concluded their Internal CBAs citing lack of funds. Consequently the Union and members of academic staff are concerned that the failure by some universities to negotiate Internal CBAs results in inequalities brought about by payment of different allowances for employees in the same grade but in different universities.

The officials appealed to Parliament to appropriate funds to enable completion of the Internal 2013-2017 CBAs.

#### **2017-2021 CBA CYCLE NEGOTIATIONS:**

Since March 2017, the Universities Academic Staff Union (UASU) has made concerted efforts to ensure the 2017-2021 CBA is negotiated, signed and implemented, by undertaking the following:

UASU and the Inter-Public Universities Councils' Consultative Forum (IPUCCF) signed a Return To Work Formula on 13<sup>th</sup> March 2017, in which it was agreed that the 2017-2021 CBA negotiations commence on 3<sup>rd</sup> April 2017 and be concluded by 31<sup>st</sup> May 2017 to allow for implementation by 1<sup>st</sup> July 2017.

To meet this mutually agreed deadline, UASU presented its 2017-2021 CBA proposal to IPUCCF on 30<sup>th</sup> March 2017.

IPUCCF and the Government did not give any counter-offer, and were therefore unable to meet the 31<sup>st</sup> May 2017 deadline. Being a reasonable and flexible social partner, UASU gave the universities councils more time to prepare for negotiations.

Despite persistent promises that the 2017-2021 CBA would be implemented on 1<sup>st</sup> July 2017, IPUCCF and Government missed this key date; and blamed the preparations for general elections;

On 9<sup>th</sup> December 2017, the parties jointly agreed in a new Return To Work Formula to further extend the deadline. The negotiations for 2017-2021 CBA were to start on 18<sup>th</sup>

December 2017 and be concluded by 31st January 2018. On 18<sup>th</sup> December 2018, the parties met but IPUCCF did not present a counter-offer, and blamed the Christmas holiday season. IPUCCF promised that their document would be ready by the close of the second week of January.

IPUCCF postponed two meetings scheduled for January 10<sup>th</sup> and 15<sup>th</sup> and opted for 19<sup>th</sup> January as the new key date.

On 31<sup>st</sup> January 2018, the Government and IPUCCF reported that the Ministry of Education had changed leadership on 26<sup>th</sup> January 2018 and the incoming Cabinet Secretary Ambassador Amina Mohamed and Principal Secretary Prof. Japhet Micheni Ntiba; had requested for more time up to the 12<sup>th</sup> February 2018 to study the technical documents.

On 12<sup>th</sup> February 2018, IPUCCF again requested UASU for an extension till 21<sup>st</sup> February 2018 to enable a technical team of officials from Ministry of Education, the National Treasury and Public Universities to finalize the counter-offer.

Regrettably IPUCCF failed to honour their commitment on 21<sup>st</sup> February 2018. All options having been exhausted, UASU issued a seven day strike notice to all the public universities and their constituent colleges :

Over the failure to negotiate, sign and implement the 2017-2021 CBA; and

To protest the unconstitutional and unlawful violation of the Constitution of Kenya 2010, Article 41(1), (2) (a) and (5).

To protest the blatant violations of the universities' workers fundamental rights and freedoms.

IPUCCF failed to utilize the seven day strike notice period to table a counter-offer and on 1<sup>st</sup> March 2018, lecturers in all public universities and constituent colleges withdrew their services.

The Union requested the Committee to appropriate funds that are sufficient to cover the 2017-2021 CBA.

### **1. Pensions**

There are outstanding pension arrears for the previous CBAs, that is 2010-2013 and 2013-2017 CBAs, amounting to KSh. 3.56 Billion. It is not clear whether IPUCCF has made a clear proposal to Government to release funds due to universities' staff facing retirement or already retired.

There is an outstanding employer pension contribution accruing from the 2010-2013 and 2013-2017 CBAs that should be factored in the FY 2018/2019 budget and be paid to the Employees Retirement Benefit Schemes.

## **1. Car Loan and Mortgage Schemes**

The Salaries and Remuneration Commission in fulfillment of its constitutional mandate and in exercise of the powers conferred to it under Article 230 of the Constitution of Kenya set and advised on the Car Loan and Mortgage benefits for all state officers and public officers. The commencement date was 1<sup>st</sup> January 2015.

To date in the public sector, it is only universities staff that do not have access to the Housing mortgage and car loan scheme. UASU appeals to this august house to appropriate funds for the Car Loan and Mortgage benefits for universities' staff.

## **4. Statutory and Third Party Deductions**

More disturbing is the inability of public universities to meet their financial statutory obligations to the Kenya Revenue Authority, National Social Security Fund, National Hospital Insurance Fund, Retirement Benefit Schemes, and Co-operative Societies on a regular basis. The universities are forced to fall into arrears in the remittance of these deductions.

## **4. Medical Schemes**

The medical schemes at public universities are dysfunctional. Lecturers including Professors of medicine and their families do not receive the same medical attention they give to others. This is highly unjust. UASU appeals to Parliament to support setting up of a comprehensive medical scheme for academic members of staff.

## **2. Salary Delays and Capitation**

Delay in payment of salaries has recently become all too common in universities, in particular University of Nairobi. Salaries are frequently paid after 10<sup>th</sup> of every month.

## **3. Acting Vice Chancellors**

Certain universities have Vice Chancellors who have acted for far too long in positions whereas it is desirable to have permanent office holders to enable effective discharge of their mandates. Examples: Moi University, Taita Taveta University, Technical University of Mombasa, Co-operative University and Garissa University. All the principals of University Colleges are also in Acting Capacity: Tom Mboya, Alupe, Turkana, Bomet, and Tharaka University College.

Some universities do not have councils such as University of Nairobi.

## **4. Satellite Campuses**

Universities have too many satellite campuses; yet they cannot even afford rent.

Nearly all public universities have satellite campuses in Nairobi (It is only useful to mention the universities that do not have campuses in Nairobi i.e. SEKU, Chuka, Garissa and Maseno).

This dilutes the quality of education, as the universities employ part-time lecturers, some of whom whose qualifications are not properly vetted, and who are not paid.



Some private colleges use logos of universities with impunity.

## **5. Retirement Age**

Despite attempts to harmonize the retirement age for universities academic staff through various Government policies and circulars including the Office of the President's circular Ref No. OP.CAB.2/7A dated 14<sup>th</sup> February 2014 which placed the mandatory retirement age for academic staff at 74 years of age; different universities have different retirement ages ranging from 65 to 75 years. UASU appeals to Parliament to support efforts towards harmonization of the retirement ages for universities academic staff.

## **9. Appointment and Promotion Criteria for Public Universities in Kenya**

The Commission for University Education (CUE), the national regulator for university education, introduced, in 2014, two policy documents, namely:

- (i) The Harmonized Criteria and Guidelines for Appointment and Promotion of Academic Staff in Universities in Kenya, 2014, and
- (ii) Universities Standards and Guidelines, 2014.

The two policy instruments from the Commission for University Education were developed without input from academic staff, one of the key stakeholders in university education in public universities, or their unions. The documents thus have serious shortcomings in how the qualifications of staff are assessed for appointment or promotion, leading to haphazard implementation, poor career development of academic staff in the public universities and pervasive staff disenchantment. At its worst the lacunae in policy for vertical mobility has given rise to brain drain out of the public universities.

Since 2015, only a handful of universities have promoted teaching staff, the rest have frozen appointment and promotion citing CUE policies as the bottleneck. The current appointment and promotion criteria are therefore vastly discriminatory and patently unfavourable to academic staff. UASU appeals to this august house to support development of an equitable appointment and promotion criteria for universities academic staff.

## **Committee Observations**

### **The Committee observed that:**

1. Some prayers raised by the petitioners in their petition to the Committee are of administrative nature and can be resolved at the universities level.
2. Very minimal teaching and learning is taking place at the Universities and in constituent colleges since 1<sup>st</sup> March 2018 when lecturers withdrew their services;
3. The failure of 25 public universities to negotiate and conclude their Internal CBAs citing lack of funds results in inequalities brought about by payment of different allowances for employees in the same grade but in different universities;

4. Even though UASU and IPUCCF met several times, no counter-offer was tabled on by IPUCCF. That the Union and the Ministry of Education have not had a sitting to negotiate on ending the stalemate.
5. The staff members have been grossly affected by the non-remittance of statutory deductions like NSSF, NHIF, Pension deductions, bank loans and contributions to SACCOs. Access Bank loans are not serviced on time hence staff members are subjected to penalties. Furthermore, medical schemes have collapsed as a result of default in repayments due to non-remittance of insurance premiums by the universities.
6. Its criminal for the universities University Councils to continue deductions on staff salaries and fail to remit to the relevant institutions.

**The Committee directed the Union to submit to the Committee the following information:**

1. Retired staff who have not been pension
2. Information on staff affected on medical scheme

**The Committee resolved to:**

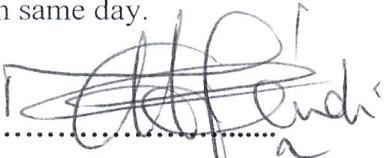
1. Invite the Cabinet Secretary, National Treasury to brief the Committee on implementation of the two CBA's
2. Hold a joint meeting with Budget and Appropriations Committee to explore possible ways of allocating funds to fund implementation of the two CBA's

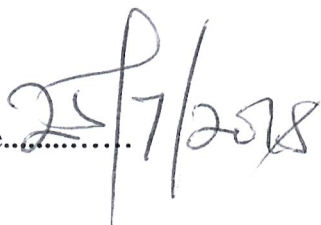
**MIN. NO.03/UNI-EDUC/2018: ANY OTHER BUSINESS**

No other business arose

**MIN. NO.04/UNI-EDUC/2018: ADJOURNMENT**

There being no other business the meeting was adjourned at 11:37 am. The next meeting at 12.00 noon same day.

Signed.....  
**Hon. Moses Malulu Injendi, MP**  
**(Sub-Committee Chairman)**

Date.....

**MINUTES OF THE 2<sup>ND</sup> SITTING OF THE SUB-COMMITTEE ON UNIVERSITY EDUCATION OF THE COMMITTEE ON EDUCATION & RESEARCH HELD ON TUESDAY, 13<sup>TH</sup> MARCH 2018 IN BOARD ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS 12:00 NOON**

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**PRESENT**

1. Hon. Moses Injendi, MP - **Chairperson**
2. Hon. Julius Melly, MP
3. Hon. Geoffrey Odanga, MP
4. Hon. (Prof.) Zadoc Ogutu, MP
5. Hon. Catherine Wambilianga, MP
6. Hon. Jerusha Momanyi, MP

**ABSENT WITH APOLOGY**

7. Hon. (Dr.) Pamela Ochieng, MP - **Vice Chairperson**
8. Hon. (Eng.) Nzambia Kithua, MP
9. Hon. Lilian Tomitom, MP
10. Hon. Wilson Sossion, MP

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Daniel Mutunga - Principal Clerk Assistant I/Presiding Officer
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Ms. Emma Esendi - Legal Counsel II
4. Mr. Nimrod ochieng' - Audio Officer
5. Ms. Catherine mukunyi - Sejeant-at-arms

**INTER-PUBLIC UNIVERSITIES' COUNCILS CONSULTATIVE FORUM (IPUCCF)**

1. Prof. Paul Kanyari -Chairman IPUCCF
2. Prof. Francis W. O. Aduol - Chair, Vice Chancellors Committee
3. Prof. Erastus Isaac Mbeche -Joint Negotiations Committee
4. Prof. Mary Ndung'u -Vice-Chancellor, Kirinyaga University, IPUCCF
5. Prof. Geoffrey Muluvi -Vice Chancellor, South Eastern Kenya University, IPUCCF
6. Prof. Erastus Njoka - Vice Chancellor, Chuka University, IPUCCF
7. Prof. Rosbella Maranga - Deputy Vice Chancellor, Multi Media University, IPUCCF
8. Prof. Catherine Muhoma - Deputy Vice Chancellor, Maseno University, IPUCCF

**MIN.NO. 05/UNI-EDUC/2018: PRELIMINARIES**

The Chair called the meeting to order at 12:00 pm.

The Chair welcomed the officials from IPUCCF to the meeting and a round of introduction was done.

**MIN.NO. 06/UNI-EDUC/2018:CONFIRMATION OF MINUTES**

Confirmation of the previous minutes was deferred to the next meeting.

**MIN. NO. 07/UNI-EDUC/2018: PETITION CONCERNING THE 2013 – 2017 AND 2017 - 2021 COLLECTIVE BARGAINING AGREEMENTS SIGNED BETWEEN UNIVERSITY ACADEMIC STAFF UNION AND INTER PUBLIC UNIVERSITIES' COUNCIL CONSULTATIVE FORUM (IPUCCF)**

**The IPUCCF informed the Committee as follows:-**

**Collective Bargaining Agreement 2010-2013**

A Return to Work Formula was signed on 19<sup>th</sup> March, 2014 together with re-worked schedules of the new Collective Bargaining Agreement (CBA) for the Financial Years 2010-2013. According to the calculations this amount was exclusive of Pension and salary arrears for the period from 1<sup>st</sup> July, 2013 up-to and until 30<sup>th</sup> June, 2014. Upon reconciliation of the declared balances with IPUCCF the Universities noted that they required a total of Kshs. 1.56 billion to settle the pension component this CBA for the Financial Years 2010-2013. This figure for the pension remains due and owing to-date.

**Collective Bargaining Agreement 2013-2017**

The CBAs for the Financial Years 2013-2017 with the three (3) respective Unions were signed as follows:-

- (i) Universities' Academic Staff Union (UASU) dated 13<sup>th</sup> March, 2017;
- (ii) Kenya Universities' Staff Union (KUSU) dated 9<sup>th</sup> May, 2017; and
- (iii) Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers dated 15<sup>th</sup> March, 2017.
- (iv) Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU)

Thereafter, the Ministry of Education (MOE) disbursed CBAs payments in two (2) tranches of Kshs. 4.775 billion paid on the 30<sup>th</sup> June, 2017 and Kshs. 5.225 billion paid on 13<sup>th</sup> July, 2017 which totaled to Kshs. 10 billion. However, the pension component was not factored in these CBAs for the Financial Years 2013-2017 amounting to a total of Kshs. 2 billion. This amount for the pension component remains outstanding to-date.

**Top-up in Capitation for the Financial Year 2017 - 2018**

Subsequently, a strike notice was issued by UASU on 3<sup>rd</sup> October, 2017 and later proceeded with industrial action on 1<sup>st</sup> November, 2017. The reason that UASU gave for the industrial action was that Thirty-one (31) University Councils had failed to implement the Basic Salaries and House Allowances at the levels provided for under the CBAs of 2013-2017. Succeeding these events, the Vice-Chancellors (the CEOs of the Universities) requested from the Ministry of Education for top-up in capitation of about Kshs. 5.2 billion to pay into the Financial Year 2017-2018 for Thirty-one (31) Universities and Eight (8) constituent University College together with a Pension Component of Kshs. Kshs. 781,265,514.00 as hereunder:

S/No.	Item	Amount in Kshs.
1.	Top Up Government Capitation for 31 Public Universities	4,345,442,669.00
2.	Pension Component	781,265,514.00
3.	Top Up Government Capitation for 8 new Constituent University Colleges	160,000,000.00
<b>Grand Total</b>		<b>5,286,708,183.00.</b>

The Ministry of Education paid **the arrears** for the top-up for capitation for the CBAs for the Financial Years 2013-2017 as at 1<sup>st</sup> December, 2017 and the Universities and Constituent University Colleges continue to receive the top-up with their monthly capitation and pay in accordance to the CBAs for the Financial Years 2013-2017.

#### **Payment of Allowances to Medical Doctors in Medical Schools in Kenyan Universities**

In light of the assertions made by UASU with regard to the tripartite CBA of KMPDU, and the Ministry of Health and the Council of Governors, it is noteworthy, that IPUCCF is **not privy** to the recognition Agreement nor a party to the CBA with KMPDU. This is because the mandate of IPUCCF is limited to the matters dealing with the three Unions of UASU, KUSU, and KUDHEIHA. However, IPUCCF opines that this matter of KMPDU should be separated from the UASU CBA for the Financial Years of 2017-2021. Instead, the issue can be discussed by the Universities, which offer Medical Programs and correspondingly Clinical Services in Public Hospitals, with the Ministry of Education, Ministry of Health and National Treasury. We are advised that this has been the custom and practice in the past, to negotiate in this format and IPUCCF feels that there should be no departure from this trend.

#### **Collective Bargaining Agreement 2017-2021**

With reference to the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021 the Inter-Public Universities Councils Consultative Forum (IPUCCF) Proposal was forwarded to the Ministry of Education (MoE) for purposes of onward transmission to the Salaries and Remuneration Commission (SRC) and the National Treasury (NT) for concurrence and approval.

The Proposal took into account all the various staff categories of Public Universities from the three unions of Universities Academic Staff Union (UASU); Kenya Universities Staff Union (KUSU); and Kenya Union of Domestic, Hotel, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers as well as the Top Management staff.

It is noteworthy, that besides the proposals on remuneration for the basic salary, the computation provided for the estimated number of staff for the four (4) years for the total projected cost of the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021. The projected figure for the Financial Year 2017-2018 is estimated at **Kshs.6.8 Billion**. It is significant to note that the projected figure is reasonable when compared with the fact that the Ministry of Education paid into the Financial Year 2017-2018 Kshs. 5.2

Billion as a top-up in capitation and to cater for the increase salaries from the 2013-2017 CBAs.

### **Committee Observations**

#### **The Committee observed that:**

- (i) That the IPUCCF Joint Negotiations Committee (JNC) comprising of both IPUCCF and the three (3) Unions of UASU, KUSU, KUDHEIHA Workers began negotiations on **18<sup>th</sup> December, 2017;**
- (ii) That the negotiations continued with UASU up-to and until 21<sup>st</sup> February, 2018 when UASU issued a strike notice; KUSU had negotiations up-to 23<sup>rd</sup> February, 2018; for KUDHEIHA Workers up-to and until 27<sup>th</sup> February, 2018.
- (iii) Currently, the IPUCCF Joint Negotiations Committee (JNC) is has not been furnished with the necessary guidelines from the Ministry of Education (MoE) to form the basis of fruitful and productive negotiations.
- (iv) A suit was filed by IPUCCF against UASU to include as well five (5) interested parties of Ministry of Education, National Treasury, Ministry of Labour, Attorney General, and Salaries and Remuneration Commission in the Employment and Labour Relations Court.
- (v) There are so many levels of negotiations on implementation of the CBA, which hamper faster negotiations and inclusivity of all concerned parties.

#### **MIN. NO.08/UNI-EDUC/2018: ANY OTHER BUSINESS**

No other business arose

#### **MIN. NO.09/UNI-EDUC/2018: ADJOURNMENT**

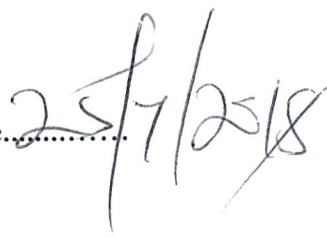
There being no other business the meeting was adjourned at 1.20 pm. The next meeting will be held on Thursday 15<sup>th</sup> March at 10.00 am.

Signed.....

  
**Hon. Moses Malulu Injendi, MP**

**(Sub-Committee Chairman)**

Date.....

  
25/7/2018

**MINUTES OF THE 3<sup>RD</sup> SITTING OF THE SUB-COMMITTEE ON UNIVERSITY EDUCATION OF THE COMMITTEE ON EDUCATION & RESEARCH HELD ON THURSDAY, 15<sup>TH</sup> MARCH 2018 IN BOARD ROOM, 4<sup>TH</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS 11:00 AM**

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**PRESENT**

1. Hon. Moses Injendi, MP □ - **Chairperson**
2. Hon. (Dr.) Pamela Ochieng, MP - **Vice Chairperson**
3. Hon. Julius Melly, MP
4. Hon. Geoffrey Odanga, MP
5. Hon. Oroo Oyioka, MP
6. Hon. Eric Muchangi, MP

**ABSENT WITH APOLOGY**

7. Hon. Jerusha Momanyi, MP
8. Hon. (Eng.) Nzambia Kithua, MP
9. Hon. Lilian Tomitom, MP
10. Hon. Wilson Sossion, MP

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Daniel Mutunga - Principal Clerk Assistant I/Presiding Officer
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Ms. Emma Esendi - Legal Counsel II
4. Mr. Nimrod ochieng' - Audio Officer
5. Ms. Catherine mukunyi - Sejeant-at-arms
6. Ms. Winnie Kiziah - Media Relations Officer

**MINISTRY OF EDUCATION**

1. Amb (Dr.) Amina Mohammed - Cabinet Secretary, Ministry of Education
2. Prof. Micheni Ntiba - PS, State Department for University Education
3. Mr. Simon Kachapin - Cabinet Administrative Secretary, MOE
4. Mr. Peter Okwayo - SA, MOE
5. Johnstone Nyanumba - US
6. Ms. Ann Kaiga - Legal Officer, MOE
7. Mr. Philip Kinara - Economist, MOE
8. Mr. Thuita Isaac - Deputy Director, MOE

**MIN.NO. 10/UNI-EDUC/2018: PRELIMINARIES**

The Chair called the meeting to order at 11:10 am.

The Chair welcomed the officials from the Ministry to the meeting and a round of introduction was done.

**MIN.NO. 011/UNI-EDUC/2018: CONFIRMATION OF MINUTES**

Confirmation of the previous minutes was deferred to the next meeting.

**MIN. NO. 12/UNI-EDUC/2018: PETITION CONCERNING THE 2013 – 2017 AND 2017 - 2021 COLLECTIVE BARGAINING AGREEMENTS SIGNED BETWEEN UNIVERSITY ACADEMIC STAFF UNION AND INTER PUBLIC UNIVERSITIES' COUNCIL CONSULTATIVE FORUM (IPUCCF)**

**The Cabinet Secretary, Ministry of Education informed the Committee as follows:-**

Following the industrial action experienced in the year 2017 the unions representing all staff in the public universities in liaison with the Inter-Public Universities Consultative Forum (IPUCCF) entered into Collective Bargaining Agreement (CBA) and a return to work formula was agreed upon.

In the 2013-2017 CBA Kshs. 10 billion was provided for the four year cycle covering basic salary, house allowances that was to be paid in arrears from 1<sup>st</sup> July, 2013.

The Government settled the Kshs 10 billion in two installments with the first one of Kshs. 4.775 billion being released to the universities during the first supplementary budget of the 2016/2017 financial year. The remaining second installment of Kshs. 5.225 billion was released to the universities at the beginning of the current financial year 2017/2018. The Ministry has since paid all salary arrears and factored the increment in the budget going forward.

The parties agreed to start negotiations for the 2017 – 2021 CBA and finalize by 31<sup>st</sup> January, 2018. The consultations started in January 2018 and are still going on. During the consultations the staff unions presented their proposals and expected a response from IPUCCF.

Further consultations were held in February 2018 between the Principal Secretaries of the National Treasury and the State Department for University Education and Research (Ministry of Education) where it was agreed that all public universities submit payroll data for analysis by the National Treasury. This would be the decision making on the counter offer to be communicated to IPUCCF. The process is ongoing and once completed the counter offer will be communicated to IPUCCF to kick start the negotiations once again.

Job evaluation for exercise was conducted for lecturers and other staff in the universities by the Salaries and Remuneration Commission and preliminary results communicated to each university but the process is yet to be finalized. UASU has however filed a case in court contesting job evaluation for university academic staff. This has therefore hampered the finalization of the job evaluation and therefore denying SRC an opportunity to advise on an appropriate counter offer.

As consultations with IPUCCF and the National Treasury were going on the universities staff unions issued a seven day strike notice from 21<sup>st</sup> February, 2018 which expired on 28<sup>th</sup> February, 2018 and thus commencing the withdrawal of services in public universities.

IPUCCF filed Employment Labour Relations Court (ELRC) case number 257 of 2018 in Employment and Labour Relations Court (IPUCCF versus UASU) and named the Ministry



of Education, the National Treasury, Ministry of Labour, Attorney General and Salaries and Remuneration Commission as interested parties. IPUCCF and the interested parties were urging the court to declare the strike illegal and unprotected to enable parties to start the negotiation process, table and resolve the dispute once and for all. The judgment is expected to be delivered on 16<sup>th</sup> March, 2016.

From the foregoing, it is clear that the National CBA for 2013-2017 that covers basic salary and house allowance has been fully implemented to date. However, IPUCCF has reported that public universities have outstanding pension for 2010 – 2013 and 2013 – 2017 CBA's totalling Kshs. 4 billion. The other allowances and terms and conditions of service are covered under local institutions CBA with each of the three with respective university councils.

From the above it is clear that the Government has not refused to negotiate with the unions but there are various huddles such as the UASU court case on job evaluation results and the declaration of an industrial strike that has kept away the parties from the negotiation table for the Ministry to give a counter offer. The job evaluation exercise would form a good basis for any CBA negotiations and ensure harmony within the public sector. The payroll data requested from the universities is still streaming in.

The Ministry welcomes efforts by the Committee on Education and Research on appropriation of funds to enable finalization of the 2017 -2021 CBA and clearance of outstanding Kshs 4 billion of employer pension contributions arrears for 2010 – 2013 and 2013 – 2017.

Whereas the Government policy provides for provision of mortgages and car loans for public servants including public universities, the existing guidelines required universities to set aside funds for the same within their available budgets.

On Wednesday 14<sup>th</sup> March, 2018 there were demonstrations at the Ministry of Education headquarters and where discussions were held on the way forward and later the Cabinet Secretary addressed the Union members.

### **Committee Observations**

**The Committee observed that:**

- 1. Public universities have outstanding pension for 2010 – 2013 and 2013 – 2017 CBA's totalling Kshs. 4 billion. The other allowances and terms and conditions of service are covered under local institutions CBA with each of the three with respective university councils. Further some universities have reverted to the old payment structure despite receiving allocation for the implementation of the 2013- 2107 CBA.**
- 2. The Internal CBA's signed between the individual Universities and local unions creates disparity in the allowances of the lecturers and other university staff. The internal CBA's should be harmonized across all universities.**
- 3. The Framework of the negotiations has many levels which makes the voice of the Unions gets lost. There is a need to have the Unions representations at higher**

levels of negotiations thus an all inclusive negotiation committee needs to be set-up

4. The negotiations for the 2017 -2021 Collective Bargaining Agreement had commenced however it stalled when the Unions called for industrial action partly due to the contested job evaluation for exercise conducted for lecturers and other staff in the universities by the Salaries and Remuneration Commission which is yet to be finalized

#### **Committee Resolutions**

##### **The Committee:**

1. Directed the Cabinet Secretary to order for conduct pay roll analysis of all universities and undertake a thorough audit of Kshs. 10 billion disbursed to the universities to implement the 20.17 -2021 Collective Bargaining Agreement.
2. Directed the Cabinet Secretary to call for a conference on the Status of Kenya universities to address the quality of University education and the perennial challenges affecting the universities.

#### **MIN. NO.13/UNI-EDUC/2018: RESPONSE TO THE PETITION BY MR. JOHN WANGAI TO THE NATIONAL ASSEMBLY ON THE AMENDMENT OF SECTIONS 18 (1B), (1C), (1D) AND (1E) OF THE UNIVERSITIES (AMENDMENT) ACT NO. 48 OF 2016**

The Cabinet Secretary informed the Committee as follows:

The amendment was moved by the Leader of Majority in the National Assembly and the amendments sought to strengthen governance structures established by the Act streamlining the process of appointing student leaders in the universities among others.

The amendment bill was subjected to all parliamentary processes and many consultative meetings were held with relevant stakeholders. The President assented to the Universities amendment bill on 23<sup>rd</sup> December 2016 and subsequently it came into effect on 13<sup>th</sup> January, 2017.

The Ministry had received a report from the Commission on Administrative Justice (CAJ) forwarding their findings after student unrest broke out after April, 2016 students leaders elections at the University of Nairobi. CAJ undertook investigations into perceived mishandling of University of Nairobi students elections and subsequent riots of April, 2018.

The report emphasized on proper students elections in view of the fact that SONU leadership is perceived as preparatory ground for national politics hence the high profile campaign strategies contestants employ. The report further established that excessive amount of money is given to students during the campaigns and interference in students governance by politicians.

#### **Court Case**

Petitioners Were Samuel & 14 others filed a Constitutional petition No. 17 of 2017 in the matter of Universities (amendment) Act No. 48 of 2016 against the Attorney General, the Cabinet Secretary of Education, Science and Technology and the Commission for University Education.

They obtained conservatory order on 25<sup>th</sup> January 2017 suspending sections of 18 (1c), (1d), and (1e) of the Universities Act 2016 pending the inter-parties hearing of the notice of motion.

The order had the effect of stopping students elections in Kisii University, Kenyatta University, Jomo Kenyatta University of Agriculture and Technology scheduled to take place on various dates between 7<sup>th</sup> January 2017 and 3<sup>rd</sup> February 2017. The matter was dismissed when it came up for full hearing; however the petitioners filed a notice of appeal in the Court of Appeal.

#### **Committee Observations**

**The Committee observed that issues in respect of which the petition is made are pending before court of appeal and therefore any further discussion on the matter would be sub-judice.**

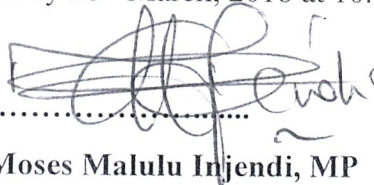
#### **MIN. NO.13/UNI-EDUC/2018: ANY OTHER BUSINESS**

No other business arose

#### **MIN. NO.14/UNI-EDUC/2018: ADJOURNMENT**

There being no other business the meeting was adjourned at 1.20 pm. The next meeting will be held on Tuesday 20<sup>th</sup> March, 2018 at 10.00 am.

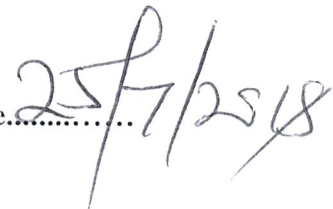
Signed.....

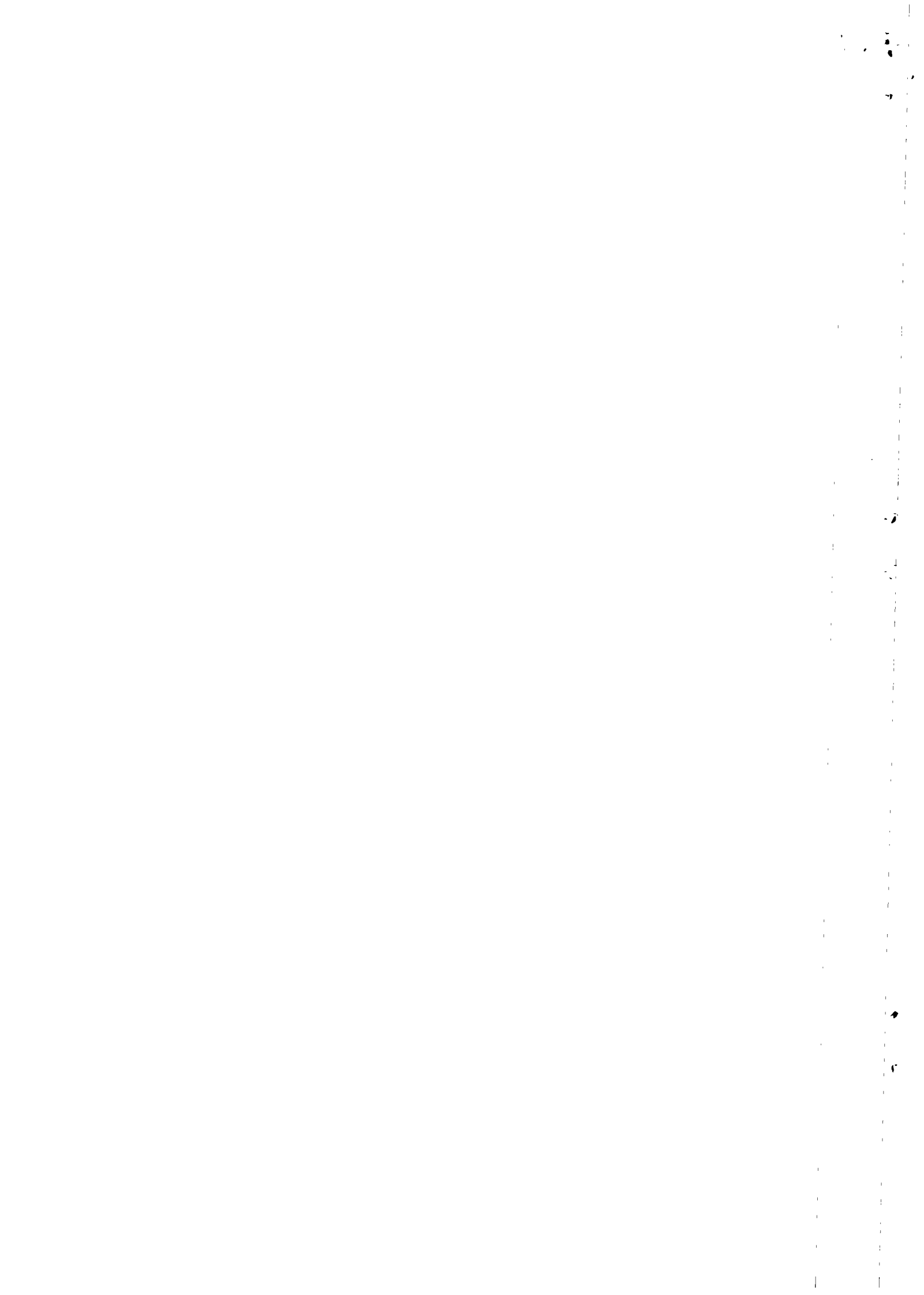


**Hon. Moses Malulu Injendi, MP**

**(Sub-Committee Chairman)**

Date.....





**MINUTES OF THE 4<sup>TH</sup> SITTING OF THE SUB-COMMITTEE ON UNIVERSITY OF  
COMMITTEE ON EDUCATION & RESEARCH HELD ON TUESDAY, 20<sup>TH</sup> FEBRUARY  
2018 IN BOARD ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT  
BUILDINGS 10:00 AM**

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**PRESENT**

1. Hon. Moses Injendi, MP - **Sub-Committee Chairperson**
2. Hon. (Dr.) Pamela Ochieng, MP - **Sub-Committee Vice Chairperson**
3. Hon. Julius Melly, MP
4. Hon. Amos Kimunya EGH, MP
5. Hon. Geoffrey Odanga, MP
6. Hon. (Eng.) Nzambia Kithua, MP
7. Hon. (Prof.) Zadoc Ogutu, MP
8. Hon. Catherine Wambilianga, MP
9. Hon. Eric Muchangi, MP
10. Hon. Eve Obara MBS, MP
11. Hon. Jackson Lekumontare, MP
12. Hon. Jerusha Momanyi, MP
13. Hon. Joseph Tonui, MP
14. Hon. Lilian Tomitom, MP
15. Hon. Peter Lochakapong, MP
16. Hon. Oroo Oyioka, MP ☐
17. Hon. Wilson Kogo, MP
18. Hon. Wilson Sossion, MP

**ABSENT WITH APOLOGY**

1. Hon. Omboko Milemba, MP

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Philip Lekarkar - Clerk Assistant III
2. Mr. Eric Kanyi - Fiscal Analyst
3. Ms. Emma Esendi - Legal Counsel II
4. Ms. Annceta Gacheri - Research Officer
5. Mr. Nimrod ochieng' - Audio Officer
6. Ms. Catherine mukunyi - Sejeant-at-arms

**THE NATIONAL TREASURY**

1. Mr. Henry Rotich, EGH - Cabinet Secretary, The National Treasury
2. Mr. G.K Mothemba - SADB, The National Treasury
3. CPA Isabella Kogei - Parliamentary Liaison Officer, National Treasury

**MIN.NO. 15/UNIV-EDUC/2018: PRELIMINARIES**

The Chair called the meeting to order at 10:10 am and afterwards Hon. (Prof) Zadoc Ogutu read the Prayer followed by a round of introductions. The Chair welcomed the Cabinet Secretary and his team to the meeting.

**MIN.NO. 16/UNIV-EDUC/2018: CONFIRMATION OF THE PREVIOUS MINUTES**

Confirmation of minutes of the previous sitting was deferred to the next meeting.

**MIN.NO. 17/UNIV-EDUC/2018: SUBMISSION BY THE CABINET SECRETARY,  
THE NATIONAL TREASURY IN RESPONSE TO  
PETITION BY UASU**

The Cabinet Secretary of the National Treasury informed the Committee as follows:

**1. The National Treasury's obligations in implementation of the 2013- 2017 and 2017 – 2021 CBA's made between University Staff Unions and the Inter-Public Universities Councils Consultative and the timelines for meeting the obligations.**

The obligation of the National Treasury in the implementation of the financial obligations of the CBA's is to ensure that the amounts agreed are sustainable and affordable.

**2. The Budget allocated for the implementation of the two CBA's amount disbursed and any outstanding amount**

In March, 2017 the State Department for University Education was considered for additional funding amounting to Kshs. 10 billion to cater for the implementation of the CBA for Universities staff for the period 2013 – 2017. The amount was provided in two phases as follows:

Phase I – Kshs. 4,800,000 which was provided in the FY 2016/2017 budget.

Phase II – Kshs. 5,200,000 which was factored in the supplementary estimates No. 1 for FY 2017/2018.

To sustain the enhanced salaries up to the of the FY 2017/2018 (up to June, 2018), the Universities were also granted additional funding amounting to Kshs. 5,266,708,183 pending regularization of the same in the Supplementary Estimates No. 2 for 2017/18 financial year, which will be tabled in Parliament for consideration and approval.

In total an amount of Kshs. 15, 266,708, 183 has already been disbursed to the Ministry for onward disbursement to the various universities to cater for the 2013-2017 CBA's.

**3. Extent of Implementation of the two CBA's**

The provision of the above funding was to cater for the full implementation of the 2013 – 2017 CBAs to all the Universities staff. The Ministry is required to provide the status of the implementation of the 2013-2017 CBAs.

**4. Any counter offer put forward by the Government to the Unions in the recent negotiations regarding the 2017 – 2021 CBA**

In 2015 the Salaries and Remuneration Commission initiated job evaluation exercise across the Public service to determine the true worth of public service jobs and at the same time ensure that the fiscal wage bill becomes manageable and sustainable. The exercise entailed determination of remuneration for each grade within the civil service and it covered all research institutions, public universities, and institutions offering tertiary education.

In view of the foregoing the National Treasury is obligated to provide funding for remuneration to spending units within the context of Job Evaluation. It is noted that the SRC has not concluded the Job evaluation for the universities for the reason that only a few universities submitted the requisite information sought by SRC to enable them determine the remuneration to staff in that sector. This information has since been submitted to the SRC and it is expected that the job evaluation for the universities will be concluded. In this regard therefore, the Government has not been in a position to put forward a counter offer to the unions as regards the 2017 – 2021 CBA.

**5. Proposals on the way forward in resolving the current stalemate between the universities' unions and the Government.**

The Cabinet Secretary put forward the following proposals

- (a) The SRC should fast-track finalization of job evaluation for the universities given that the university staff are currently on strike.
- (b) Staff audit should be carried out in order to establish actual existing staff in the universities; and
- (c) Financial audit should be carried out to determine how universities spend funds allocated to them and disbursed from the exchequer and from their own internal revenue streams.

**Committee observations**

The Committee observed the following:

- 1. A total amount of Kshs. 15, 266,708, 183 has already been disbursed by the National Treasury to the Ministry of Education for onward disbursement to the various universities to cater for the 2013- 2017 CBA's, contrary to the assertion by IPUCCF that it has received only Kshs. 10 billion.**
- 2. The Government has not put forward a counter offer to the university unions as regards the 2017 – 2021 CBA because of the ongoing universities job evaluation exercise by Salaries and Remuneration Commission (SRC) which has been temporarily stopped due a court case lodged by UASU;**
- 3. The SRC is currently being reconstituted and there is no a definite timeline when the universities staff job evaluation exercise will be concluded;**
- 4. The Universities have been operating at a deficit yet they have not been disclosing what they collect from the parallel program and Appropriations-In-Aid, and how much they have been paying lecturers from such degree programs.**

5. Universities Lecturers and employees statutory deductions have not been remitted to the relevant bodies due to the under-funding of the universities by the Government.

#### Committee Resolutions

The Committee made the following recommendations:

1. UASU should withdraw the court case against job evaluation by SRC to allow conclusion of the exercise to determine the relative worth of the lecturers and other university staff jobs as has been done for all other public servants; to afford the government an opportunity to put forward a counter offer to the unions as regards the 2017 -2021 CBA;
2. The parties to the CBA, UASU and IPUCCF should formulate and sign a return to work formula with the help of the Ministry of Education in order to end the strike as conclusion of the job evaluation exercise undertaken by SRC is awaited;
3. Universities should adjust their expenditure to the capitation they receive from the exchequer done through the Universities Funding Board under new formula known as the Differentiated Unit Cost (DUC) of funding higher learning institutions which entails funding universities based on the courses they offer.
4. Staff audit in the universities should be carried out by the Ministry of Education so as to establish actual existing staff in the universities;
5. Financial audit should be carried out to be determine how universities spend funds allocated to them and disbursed from the exchequer and from their own internal revenue streams.
6. The Committee resolved to convene a joint sitting with the Cabinet Secretaries for the ministries of Education, the National Treasury, IPUCCF and UASU in a bid to resolve the stalemate.

**MIN. NO.18/UNI-EDUC/2018: ANY OTHER BUSINESS**

No other business arose

**MIN. NO.19/UNI-EDUC/2018: ADJOURNMENT**

There being no other business the meeting was adjourned at 12:20 pm. The next meeting will held on Thursday 29<sup>th</sup> March 2018 at 10.00 am.

Signed.....

Hon. Moses Injendi, MP

(Sub-Committee Chairman)

Date.....



**MINUTES OF THE 5<sup>TH</sup> SITTING OF THE SUB-COMMITTEE ON UNIVERSITY OF  
COMMITTEE ON EDUCATION & RESEARCH HELD ON THURSDAY, 12<sup>TH</sup> FEBRUARY  
2018 IN BOARD ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT  
BUILDINGS 11:00 AM**

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**PRESENT**

1. Hon. Moses Injendi, MP - **Sub-Committee Chairperson**
2. Hon. Julius Melly, MP - **Chairing**
3. Hon. Amos Kimunya EGH, MP
4. Hon. Geoffrey Odanga, MP
5. Hon. (Eng.) Nzambia Kithua, MP
6. Hon. (Prof.) Zadoc Ogutu, MP
7. Hon. Catherine Wambilianga, MP
8. Hon. Eve Obara MBS, MP
9. Hon. Jackson Lekumontare, MP
10. Hon. Peter Lochakapong, MP
11. Hon. Oroo Oyioka, MP
12. Hon. Omboko Milemba, MP
13. Hon. Wilson Kogo, MP
14. Hon. Wilson Sossion, MP

**ABSENT WITH APOLOGY**

1. Hon. (Dr.) Pamela Ochieng, MP - **Sub-Committee Vice Chairperson**
2. Hon. Eric Muchangi, MP
3. Hon. Jerusha Momanyi, MP
4. Hon. Joseph Tonui, MP
5. Hon. Lilian Tomitom, MP

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Ms. Emma Esendi - Legal Counsel II
4. Ms. Annceta Gacheri - Research Officer
5. Mr. Nimrod ochieng' - Audio Officer

**THE NATIONAL TREASURY** Mr.

1. Dr. Kamau Thugge - Principal Secretary
2. Hon. Nelson Gaichu - Chief Administrative Secretary
3. Mr. G.K Muthemba - SADB, The National Treasury

**MINISTRY OF EDUCATION**

- Prof. Micheni Ntiba - Principal Secretary, University Education  
Mr. Isaac Thuita - DDE,  
Mr. James Onduru - University Education & Research Officer

Mr. Johnstone Nyamumba - Under Secretary  
Mr. Peter Okwanyo - Secretary Administration

#### **INTER-PUBLIC UNIVERSITIES' COUNCILS CONSULTATIVE FORUM (IPUCCF)**

1. Prof. Paul Kanyari - Chairman IPUCCF
2. Prof. Francis W. O. Aduol - Chair, Vice Chancellors Committee
3. Prof. Erastus Isaac Mbeche - Joint Negotiations Committee
4. Dr. Florence Nyamu - IPUCCF
5. Ms. Ruth Kirwa - IPUCCF Secretariat

#### **UNIVERSITIES' UNIONS (UASU & KUSU)**

1. Prof. Muga K'Olale - UASU National Chair
2. Prof. Mutuura Mberia - UASU National Vice –Chair/ JNC Co-chair
3. Dr. Constatine Wasonga - UASU National Secretary General
4. Dr. Kirinzi Joab - UASU Deputy Secretary General
5. Dr. Janepha Kumba - UASU National Treasurer
6. Mr. Muiga Rugara - UASU Organising Secretary
7. Mr. Onesmus Mutio - UASU Chapter Secretary General, MMU
8. Prof. George Osanjo - UASU National Trustee
9. Mr. Mohammed Mwachiti - UASU National Trustee
10. Ms. Njoki Ngung'u - UASU National Trustee
11. Mr. Jacob Musembi - UASU - TUK
12. Mr. Jack Willis Okumu - UASU – Moi Universi
13. Mr. Cyprian Ombati - UASU National Trustee
14. Mr. Cyrus Wakaro - KUSU National Chair
15. Mr. Philip Onyango - KUSU National Vice - Chair
16. Mr. Aggrey Osogo - KUSU Deputy Secretary General
17. Mr. Wayaya Ernest - KUSU National Organising Secretary
18. Mr. Makori Mogaka - KUSU National Treasurer
19. Ms. Lynn Kipkosgei - KUSU Deputy Treasurer

#### **MIN.NO. 19/UNIV-EDUC/2018: PRELIMINARIES**

The Chair called the meeting to order at 11:15 am and afterwards Hon. (Prof) Zadoc Ogutu read the Prayer followed by a round of introductions. The Chair welcomed the teams to the meeting.

#### **MIN.NO. 20/UNIV-EDUC/2018: CONFIRMATON OF THE PREVIOUS MINUTES**

Confirmation of minutes of the previous sitting was deferred to the next meeting.

#### **MIN.NO. 21/UNIV-EDUC/2018: SUBMISSIONS**

#### **SUBMISSION BY THE CABINET SECRETARY, THE NATIONAL TREASURY**

The Principal Secretary of the National Treasury informed the Committee as follows:

**1. The National Treasury's obligations in implementation of the 2013- 2017 and 2017 - 2021 CBA's made between University Staff Unions and the Inter-Public Universities Councils Consultative and the timelines for meeting the obligations.**

The obligation of the National Treasury in the implementation of the 2013- 2017 CBA was to review financial implications of the CBA to ensure that the amount agreed in this case **Kshs. 10 billion** was sustainable and affordable.

**2. Fulfilment of National Treasury Obligations/Responsibilities in the implementation of 2013 -2017 CBA.**

In March, 2017 the State Department for University Education was considered for additional funding amounting to Kshs. 10 billion to cater for the implementation of the CBA for Universities staff for the period 2013 – 2017. The amount was provided in two phases as follows:

Phase I – Kshs. 4,800,000 which was provided in the FY 2016/2017 budget.

Phase II – Kshs. 5,200,000 which was factored in the supplementary estimates No. 1 for FY 2017/2018 and released to the State Department.

These funds were released as one off expenditure given that additional funding was to cater for the 2017/18 whose implementation was in arrears.

To sustain the enhanced salaries and allowances upto the end of the FY 2017/2018 (up to June, 2018), the State Department fro University Education requested and was granted authority to incur additional expenditure amounting to Kshs. 5,266,708,183 in November 2017. This additional funding was to cater for:

Kshs. 4,345,669 – Top-up capitation for the 31 public universities

Kshs. 781,265,514 – Pension Component.

The authority was issued under Article 223 of the Constitution pending regularization of the the Supplementary Estimates No. 2 for 2017/18 financial year, which will be tabled in Parliament for consideration and approval.

In total an amount of Kshs. 15, 266,708, 183 has already been disbursed to the Ministry for onward disbursement to the various universities to cater for the 2013-2017 CBA's.

**3. Proposals on the way forward in resolving the current stalemate between the universities' unions and the Government.**

The Principal Secretary put forward the following proposals

- (a) The National Treasury view on the 2013-2017 CBA is that it has fulfilled it obligations by providing the funds requested by the State Department to enable them fully implement the CBA.
- (b) The Court case filed by UASU to stop Salaries and Remuneration Commission (SRC) from concluding the job evaluation should br withdrawn to allow the Commission finalize the exercise.
- (c) The determination of the offer to the universities will be subject to the recommendations of SRC.

- (d) There is need for the State Department to carry-out payroll audit to establish actual number of university staff in the universities and the cost of their compensation.
- (e) The State Department should also conduct a financial audit on the expenditures and revenues including internal control systems in the universities to in order to establish how funds released from the exchequer and those generated internally are applied and accounted for.

### **Committee observations**

The Committee observed the following:

1. The Government has not put forward a counter offer to the university unions as regards the 2017 – 2021 CBA because of the ongoing universities job evaluation exercise by Salaries and Remuneration Commission (SRC) which has been temporarily stopped due a court case lodged by UASU;
2. The SRC is currently being reconstituted and there is no a definite timeline when the universities staff job evaluation exercise will be concluded;
3. The Universities have been operating at a deficit yet they have not been disclosing what they collect from the parallel program and Appropriations-In-Aid, and how much they have been paying lecturers from such degree programs.

### **SUBMISSION BY THE PRINCIPAL SECRETARY STATE DEPARTMENT OF UNIVERSITY EDUCATION**

The Principal Secretary State Department of University Education informed the Committee as follows:

#### **1. Ministry of Education Responsibility in the 2013-2017 CBA**

Liase with the National Treasury and IPUCCF to come up with counter offer . a counter offer of Kshs. 10 billion was given.

The National Treasury provided funds in two tranches of Kshs. 4.775 billion in March 2017 and Kshs. 5.225 billion in July 2017 which was shared between three unions UASU, KUSU AND KUDHEIHA as per a schedule provided by IPUCCF paid in arrears.

The National Treasury agreed to release Kshs. 5.2 billion in November 2017 to enhance and sustain the new salaries as below:

- (i) Out of the amount Kshs. 2.136 billion for five months for July – November 2017 to cover outstanding arrears.
- (ii) The remaining amount is being disbursed at the rate of Kshs. 465 Million per month towards sustaining the new salaries for the remaining months of 2017/2018 financial year.

The Ministry is conducting an audit to ascertain application of these resources as intended.

#### **2. Ministry's obligations/fulfilment of 2013 – 2017 CBA**

**In regard to the Ministry's obligations of the 2013-2017 CBA, the Ministry has fully fulfilled its obligations as follows:**

- (a) Gave a counter offer, in liaison with the National Treasury.
- (b) The Ministry sourced for funds and disbursed it all to the universities based on schedules submitted by the universities.
- (c) The Ministry guided the universities on their budgetary and financial responsibilities and the prudent use of resources.

### **3. Way Forward**

The Ministry is consulting with the National Treasury, IPUCCF and SRC to come up with a counter offer. The Ministry is also analyzing the payroll and the statutory obligations data which is being received from all universities to determine a sustainable counter offer for the current CBA. The analysis will also provide reliable setting for future counter offer in future CBAs to prevent the old age disturbances in the learning and research programmes in the universities.

#### **Committee observations**

##### **Collective Bargaining Agreement 2010-2013**

A Return to Work Formula was signed on 19<sup>th</sup> March, 2014 together with re-worked schedules of the new Collective Bargaining Agreement (CBA) for the Financial Years 2010-2013. According to the calculations this amount was exclusive of Pension and salary arrears for the period from 1<sup>st</sup> July, 2013 up-to and until 30<sup>th</sup> June, 2014. Upon reconciliation of the declared balances with IPUCCF the Universities noted that they required a total of Kshs. 1.56 billion to settle the pension component of this CBA for the Financial Years 2010-2013. This figure for the pension remains due and owing to-date.

##### **Collective Bargaining Agreement 2013-2017**

The CBAs for the Financial Years 2013-2017 with the three (3) respective Unions were signed as follows:-

- (i) Universities' Academic Staff Union (UASU) dated 13<sup>th</sup> March, 2017;
- (ii) Kenya Universities' Staff Union (KUSU) dated 9<sup>th</sup> May, 2017; and
- (iii) Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers dated 15<sup>th</sup> March, 2017.
- (iv) Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU)

Thereafter, the Ministry of Education (MOE) disbursed CBAs payments in two (2) tranches of Kshs. 4.775 billion paid on the 30<sup>th</sup> June, 2017 and Kshs. 5.225 billion paid on 13<sup>th</sup> July, 2017 which totaled to Kshs. 10 billion. However, the pension component was not factored in these CBAs for the Financial Years 2013-2017 amounting to a total of Kshs. 2 billion. This amount for the pension component remains outstanding to-date.

##### **Top-up in Capitation for the Financial Year 2017 - 2018**

Subsequently, a strike notice was issued by UASU on 3<sup>rd</sup> October, 2017 and later proceeded with industrial action on 1<sup>st</sup> November, 2017. The reason that UASU gave for the industrial action was that Thirty-one (31) University Councils had failed to implement the Basic Salaries and House Allowances at the levels provided for under

the CBAs of 2013-2017. Succeeding these events, the Vice-Chancellors (the CEOs of the Universities) requested from the Ministry of Education for top-up in capitation of about Kshs. 5.2 billion to pay into the Financial Year 2017-2018 for Thirty-one (31) Universities and Eight (8) constituent University College together with a Pension Component of Kshs. Kshs. 781,265,514.00 as hereunder:

S/No.	Item	Amount in Kshs.
1.	Top Up Government Capitation for 31 Public Universities	4,345,442,669.00
2.	Pension Component	781,265,514.00
3.	Top Up Government Capitation for 8 new Constituent University Colleges	160,000,000.00
<b>Grand Total</b>		<b>5,286,708,183.00.</b>

The Ministry of Education paid **the arrears** for the top-up for capitation for the CBAs for the Financial Years 2013-2017 as at 1<sup>st</sup> December, 2017 and the Universities and Constituent University Colleges continue to receive the top-up with their monthly capitation and pay in accordance to the CBAs for the Financial Years 2013-2017.

#### **Payment of Allowances to Medical Doctors in Medical Schools in Kenyan Universities**

In light of the assertions made by UASU with regard to the tripartite CBA of KMPDU, and the Ministry of Health and the Council of Governors, it is noteworthy, that IPUCCF is **not privy** to the recognition Agreement nor a party to the CBA with KMPDU. This is because the mandate of IPUCCF is limited to the matters dealing with the three Unions of UASU, KUSU, and KUDHEIHA. However, IPUCCF opines that this matter of KMPDU should be separated from the UASU CBA for the Financial Years of 2017-2021. Instead, the issue can be discussed by the Universities, which offer Medical Programs and correspondingly Clinical Services in Public Hospitals, with the Ministry of Education, Ministry of Health and National Treasury. We are advised that this has been the custom and practice in the past, to negotiate in this format and IPUCCF feels that there should be no departure from this trend.

#### **Collective Bargaining Agreement 2017-2021**

With reference to the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021 the Inter-Public Universities Councils Consultative Forum (IPUCCF) Proposal was forwarded to the Ministry of Education (MoE) for purposes

of onward transmission to the Salaries and Remuneration Commission (SRC) and the National Treasury (NT) for concurrence and approval.

The Proposal took into account all the various staff categories of Public Universities from the three unions of Universities Academic Staff Union (UASU); Kenya Universities Staff Union (KUSU); and Kenya Union of Domestic, Hotel, Education Institutions, Hospitals and Allied (KUDHEIHA) Workers as well as the Top Management staff.

It is noteworthy, that besides the proposals on remuneration for the basic salary, the computation provided for the estimated number of staff for the four (4) years for the total projected cost of the Collective Bargaining Agreement (CBA) for the Financial Years 2017-2021. The projected figure for the Financial Year 2017-2018 is estimated at **Kshs. 6.8 Billion**. It is significant to note that the projected figure is reasonable when compared with the fact that the Ministry of Education paid into the Financial Year 2017-2018 Kshs. 5.2 Billion as a top-up in capitation and to cater for the increase salaries from the 2013-2017 CBAs.

**The Committee observed that Uasu Court injunction on Job evaluation by SRC and the strike are hindering smooth negotiations**

**SUBMISSION BY IPUCCFF**

**Way Forward in the Implementation of the 2013-2017 and 2017 -2021 CBAs**

Currently, the IPUCCF Joint Negotiation Committee is not furnished with the necessary guidelines from the Ministry of Education to form the basis of fruitful and productive negotiations to successfully conclude the 2017 -2021 CBA and the outstanding monies that comprise the 2013-2017 CBA.

**SUBMISSION BY UASU & KUSU**

The Secretary General Informed the Committee as follows:

**Responsibilities and obligations of UASU as a stakeholder in the CBAs**

The 2017-2021 CBA is the priority for UASU. The current crisis in higher education has been triggered by the failure to conclude the 2017 -2021 CBA and the current strike will be called off upon conclusion of 2017 -2021 CBA.

The failure to conclude the 2017 -2021 CBA is due to non-fulfilment by IPUCCF, Ministry of Education and the National Treasury of their responsibilities and legal obligations. The failures largely mirror what happened in the 2013 -2017 CBA cycle, and UASU pleads with all stakeholders to avert the strike cycles leading the 2013-2017 CBA signing.

The obligations of UASU in the 2017 -2021 CBA is to present a CBA proposal to IPUCCF, negotiate, sign and assist in registration of the CBA and play an oversight role in its implementation. UASU has already submitted its proposal to IPUCCF on 30<sup>th</sup> March, 2017 with regards to 2017 – 2021 CBA.

IPUCCF, Ministry of Education and the National Treasury have on the other hand not performed any of its responsibilities in presenting a county offer.

**Proposal on the way forward in resolving the current stalemate regarding 2013-2017 and 2017 -2021 CBA's**

- (i) Parliament directs IPUCCF, Ministry of Education and the National Treasury to urgently present a counter offer and engage in meaningful negotiations so that 2017-2021 CBA can immediately be concluded.
- (ii) Parliament appropriates the required funds.
- (iii) To avoid future problems in budgeting process, it is recommended that the Ministry of Education involves IPUCCF in the budgeting process.

**Committee Observations**

The Committee observed that UASU is ready to call off the strike and direct its members to resume duty if the Government offers them a counter offer on the 2017 -2021 CBA pending salaries review by Salaries and Remuneration Commission.

**Committee Resolutions**

The Committee directed the parties the Ministry of Education, the National Treasury, IPUCCF and UASU to urgently commence negotiations on the 2017 - 2021 CBA and reach at an agreement on an indicative offer pending conclusion of job evaluation exercise by SRC. Once the exercise is concluded the offer can be reviewed depending on the findings of the exercise.

**MIN. NO. 22/UNI-EDUC/2018: ANY OTHER BUSINESS**

No other business arose

**MIN. NO. 23/UNI-EDUC/2018: ADJOURNMENT**

There being no other business the meeting was adjourned at 12:50 pm. The next meeting to be held on Tuesday 17<sup>th</sup> April 2018 at 10.00 am.

Signed.....

Hon. Moses Injendi, MP

(Sub- Committee Chairman)

Date.....