

TEACHERS EMPLOYED ON CONTRACT:- SECRETARY GENERAL'S REPORT TO THE NEC MEMBERS ON 6TH SEPTEMBER 2011.

SALUTATIONS

The National Chairman,
The National Treasurer,
Members of National Steering Committee,
Members of the National Executive Council,
National Trustees,
The Executive Officers,

PREAMBLE

I wish to join the National Chairman in welcoming you warmly to this Special National Executive Council meeting of the Kenya National Union of Teachers. Since we had our last meeting; that is the 211th NEC meeting, disturbing events have taken place, and the National Steering Committee is concerned by the irresponsibility of those who call themselves the leaders of this Nation. That is why you have been summoned on short notice to rescue the **Teaching Fraternity** from the reckless neglect it is being subjected to.

Ladies and gentlemen, at the end of this report, you will be required to take a decision that will direct this Union, and the Teachers of this Nation on the way forward. In order to assist you in making an informed decision, allow me to give you a chronology of events that are the genesis of the problem at hand.

With regard to:

1. VISION 2030

In the year 2007, the Government published a document referred to as **Vision 2030 (the social strategy; investing in the people of Kenya)**; in which the Government set for itself, flagship projects to be undertaken by the end of budgetary year, 2011 – 2012, **as follows:**

- a) To build and fully equip **560 new Secondary Schools**.
- b) To establish a Teachers Recruitment Programme to employ **28,000** more teachers and ensure that schools have **adequate teachers**.

In line with this policy, KNUT wrote to the Minister for Finance and reminded him to make provision in the budget, **for employment of 28,000 teachers**. We informed him that there was a shortage of **over 60,000 teachers in our schools**, and that this would hinder provision of **quality education**; which is a pillar to eradication of poverty in this Nation. We were shocked to find that in the historic budget of **kshs 1,000,000,000,000/= (one trillion)** the Minister had not made provision for employment of **even one single teacher**.

One is left wondering whether the Government knows; what its policy is, and whether the Cabinet has abandoned the policies it has disseminated to its citizens. The Union has always insisted that there is a shortage of over 60,000 teachers. We reiterate that even the 28,000 teachers are not enough to cover the shortage.

2. THE COURT CASE FILED BY THE UNION IN THE YEAR 2009

The Union filed a suit in court; **Miscellaneous Civil Application No. 492 of 2009** where **Hon. Lady Justice Ali Aroni** gave her ruling on **19th August, 2009** granting the following orders:

- a) An order of **CERTIORARI** to call and/ or remove in the High Court and quash the decision of the Minister for Education

to recruit and/or employ Primary and Secondary School Intern Teachers as professional teachers.

- b) An order of **CERTIORARI** to call and/or remove into the High Court and quash the decision of the Permanent Secretary, Ministry of Education to advertise for **10,500** vacant posts for Primary School Intern Teachers and **2,100** vacant posts for Secondary School Teachers as posts for professional qualified teachers contrary to the law.
- c) An Order of **MANDAMUS** to call and compel the Minister for education to follow the law in his quest to recruit **10,500** vacant posts for Primary School Teachers as professional teachers.
- d) An order of **MANDAMUS** to call and compel the Permanent Secretary Ministry of Education to comply with the law in his quest to recruit **10,500** vacant posts for Primary School Intern Teachers and **2,100** vacant posts for secondary School Teachers as professionally qualified teachers.
- e) An order of **PROHIBITION** to prohibit the Minister for Education from engaging and/or to stop violating the law through his actions to recruit and/or employ **10,500** vacant post for Primary Schools Intern Teachers and **2,100** vacant posts for Secondary School Teachers as professionally qualified teachers without involving the T.S.C.
- f) An order of **PROHIBITION** to prohibit the Permanent Secretary for Ministry of Education from violating the law by meeting, deliberating, selecting recruiting and/or employing **10,500** vacant posts for primary schools interns teachers and **2,100** vacant posts for Secondary School Teachers as professionally qualified teachers involving the T.S.C.
- g) An order of **PROHIBITION** to prohibit the interested parties from regularizing, accepting and/or condoning the irregular, un-procedural and illegal actions by the Minister for Education and the Permanent Secretary for Education.

The TSC through the Attorney General filed an application challenging the **Hon. Lady Justice Abida Aroni's** ruling dated **26th August, 2009** and **Justice Muga Apondi** dismissed their application.

3. MEETING TO DISCUSS THE EMPLOYMENT OF TEACHERS ON CONTRACT TERMS ON 19TH JULY, 2010.

When the Government realized that the Union had given it a Technical Knockout in court, it invited the Union to the above meeting, attended by Deputy Prime Minister and Minister for Finance (**Hon. Uhuru Kenyatta**), Permanent Secretary Ministry for Finance, Minister For Education **Professor Sam Ongeri**, Permanent Secretary, Ministry for Education, Chairman, Teachers Service Commission and Secretary to the Teachers Service Commission.

This meeting culminated in the Union agreeing to withdraw the suit it had filed in court in the year 2009. The Union acted in good faith believing that the Minister for Finance and the Minister for Education would live up to the promises they had made. This was never to be.

4. KNUT 53RD ADC HELD BETWEEN THE 6TH-8TH DECEMBER, 2010

Pursuant to the 53rd ADC held between, **6th and 8th December, 2010**, the Union wrote to the TSC to communicate that the members of the Union had resolved as follows;

Pertaining to the issue of employment of teachers on contract:
The Union demands that these teachers be absorbed by the Commission, on Permanent and Pensionable Terms; as it is very clear that employment of teachers under contractual terms, was strictly a stop gap measure. The Union wants to make it very clear that it will not allow the TSC to continue keeping these fully qualified and professional teachers, in employment under such discriminatory terms of employment.

The laws of the land are very clear and the union will not allow the TSC to sustain a position that violates the constitutional rights of the so called intern teachers. It is now incumbent on the TSC to employ these teachers on Permanent Terms.

5. THE LEGAL FRAMEWORK

a) The Constitution

Guided by the **newly promulgated constitution; bill of rights**, the Union submits that it is opposed to the continued employment of professionally qualified teachers on discriminatory terms as those that the contract teachers are being subjected to. You will recall on the agreement you signed on 22nd July, 2010 at Treasury Building Clause No. 4 stated as follows:- **“the teachers so recruited under contract shall be at liberty to exercise their constitutional rights.....”**

It has been brought to our attention that the terms of contract are against the Bill of Rights as contained in Chapter 4 of the constitution of Kenya. A careful reading of **Article 27**, leaves one in no doubt, that the state is barred from discriminating directly or indirectly, against any person on any ground. Yet the state has gone right ahead to employ these teachers on discriminatory terms. **Article 41**, subsection **2 (a)** and **(b)** are very clear that; every worker has a right to fair remuneration and to reasonable working conditions.

Our position is that the so called intern teachers are being subjected to unfair working conditions and poor remuneration. **Section 47** protects all citizens against unfair administrative action, and it is our belief that paying teachers these kind of salary and excluding them from earning any other allowances that other professional teachers are earning, is an unfair administrative action.

b) The Employment Act

Taking cognizance of the acute shortage of teachers' country wide, the Union allowed the government to employ teachers on contractual terms within the parameters of the employment act. However the Government has gone right ahead to break all laws related to contractual service.

The laws of the land are very clear and the Union will not allow the TSC sustain a position that violates the constitutional rights of the so called intern teachers.

The employment Act, section 5 (1) and (2) requires that employers should promote equality of opportunity in employment in order to eliminate discrimination in employment. In fact, **subsection 3** bars employers from discriminatory employment. To make our stand clear, **subsection 4** in fact states that **“an employer shall pay his employees equal remuneration for work of equal value”**.

It is an offence in **subsection 5** to contravene **subsection 4**.

c) The TSC Act

As you are aware, the TSC and KNUT negotiate(s) the terms and conditions of service for teachers within the Teachers Service Remunerations Committee (TSRC), and thereafter the employer is required to employ teachers under terms contained in the Schemes of Service as negotiated. We wish to report that under the current schemes of service, there is no provision for employment of teachers on contract. In fact, employment of teachers on contract is illegal and *ultra-vires*.

6. MINUTES OF MEETING WITH THE PERMANENT SECRETARY, MINISTRY OF EDUCATION ON 14TH MARCH, 2011

The Union attended the above meeting with the Permanent Secretary, (PS) Ministry of Education and discussed the urgent need to employ teachers to mitigate the biting shortage in the teaching force and the Permanent Secretary undertook to request for funds to employ more teachers in his Ministerial budget proposal. We have a copy of the ministerial budget and it is evident that the PS made the request as he had promised.

7. PARLIAMENTS HANSARD THURSDAY 9TH JUNE 2011

The Union has extracts of the Parliamentary Hansard in which **Hon. Mr. Namwamba contributed as follows:**

“Mr. Deputy Speaker, Sir, you will, indeed, notice from that letter that the primary basis of the request to Treasury is absorption of the contract teachers. So, there is no reason as to why the Ministry would receive those funds and apply them for purposes other than the reason for which the funds were sought from the Treasury, which is absorption of these Contract Teachers. So, really, let him just confirm what is in both the letter and his written answer, that these **Contract Teachers** will be given absolute priority.”

This shows that right from the start Parliament knew that there was need to convert Contract Teachers Terms to Permanent and Pensionable. It is also evident from the above statement that the funds were available. The Union is left to wonder; **what did the Minister for Finance do to the Members of Parliament that good judgment has deserted them all of a sudden?**

8. CONSULTATIVE MEETING ON WEDNESDAY 29TH JUNE, 2011 AT 9.00 A.M IN THE TREASURY BUILDING, 10TH FLOOR CONFERENCE ROOM - KNUT AND ECONOMIC SECRETARY

The Union wrote to the Minister of Finance to urge that as the budget for the next year was being prepared, adequate provision be made to cater for the absorption of the eighteen thousand (18,000) teachers on contract and a **further ten thousand** (10,000) to make **twenty eight thousand** (28,000) as required by vision 2030.

We have taken this early opportunity to inform you that our members are disgruntled by the way these matters are being treated and very soon this state of anxiety may degenerate to a crisis. Please take remedial measures as we have indicated to avert the impending crisis.

9. THE MEETING HELD BETWEEN THE TSC AND KNUT AT THE TSC'S CHAIRMAN BOARDROOM ON 4TH JULY 2011 AT 11.00A.M

The Union attended a meeting and discussed the issue of Contract Teachers and arrived on the consensus that employment of trained and qualified teachers on contract was unfair and that there is urgent need to rectify the Terms of Service for these teachers.

10. EARLY CHILDHOOD EDUCATION (ECE)

The KNUT informed the Minister for Finance that KNUT was concerned that while **Early Childhood Education (ECE)**, should have been mainstreamed way back in 2010, (meaning that the Nation is two years behind schedule), and whereas the teaching fraternity was expectant that the recruitment of E.C.E. Teachers would commence this year; no provision has been made in the budget. The Union states that there are no substantive reasons for such an important programme to be left out of this year's budget estimates.

11. KNUT'S LETTER DATED JULY 12, 2011, TO HON. JOHN MUNYES, MINISTER FOR LABOUR REQUESTING FOR COURTESY CALL BY KNUT

The Union wrote to the Minister for Labor after the National Elections on **8th June, 2011**; and requested that if it was possible, a courtesy call be made on the **Tuesday, 2nd August 2011, at 8.00 am**. During the meeting, we had intended to broach on the issue of Contract Teachers. To date, the Minister has ignored, refused, and or, neglected the request we made.

12. REPORTING OF THE TRADE DISPUTE BETWEEN THE KENYA NATIONAL UNION OF TEACHERS (KNUT) AND THE TEACHERS SERVICE COMMISSION (TSC)

The Union wrote to the Minister for Labor on 30th August 2011, to report the existence of a trade dispute between the Kenya National Union of Teachers (KNUT) and the **Teachers Service Commission**

(TSC). The issue in dispute is as follows:- **“EMPLOYMENT OF TRAINED, QUALIFIED PROFESSIONAL TEACHERS UNDER DISCRIMINATORY AND ILLEGAL CONTRACTUAL TERMS SINCE 2009”**.

13. NOTICE TO THE EMPLOYER

Seven (7) Days Notice Of Industrial Action due to commission’s refusal to effect Union’s demand for Conversion Of Contract Teachers to Permanent and Pensionable Terms Of Service:

We write to declare a Trade Dispute on the issue of **“Employment of Trained, Qualified Professional Teachers under Discriminatory and Illegal Contractual Terms Since 2009”**.

14. KNUT’S MEMORANDUM TO PARLIAMENT

The Union presented a memorandum to parliament as hereunder;

- a. **THAT there is urgent need to employ more teachers to mitigate the current shortage which according to key stake holders, stands at over 60,000 teachers, and this is hindering provision of quality education;**
- b. **THAT owing to the Commission’s hard position on this issue, Teachers of this Nation have decided to give notice to the employer of their intention to take Industrial Action if this issue is not addressed to their satisfaction**

The Union is demanding that the employer converts the 18,000 teachers on contract employment to permanent and pensionable terms.

15. LETTER TO MINSTER FOR LABOUR TO FOLLOW UP ON THE REPORT OF TRADE DISPUTE BETWEEN THE KENYA NATIONAL UNION OF TEACHERS (KNUT) AND THE TEACHERS SERVICE COMMISSION (TSC)

WE REITERATED that the dispute was reported under **Section 62** of the **Labour Relations Act 2007**. The communication was done by the Secretary General of KNUT as required by **Section 62 (1b)**, and delivered by hand as required by **Section 62 (2a)**.

We are disappointed that you have not communicated to us, as is required of you by the law. A certain Mrs. Taabu wrote to us to appoint a conciliator by the name of Mr. Omondi. The law requires the Minister himself to appoint not even the Assistant Minister can make the appointment. The letter was not even copied to the Minister and the Commissioner for Labor.

OUR NOTICE expires today, **Monday 5th September, 2011**. Since the Minister has refused, ignored, and, or neglected our report and request, that you find a solution to our dispute, we have no choice but to take action as provided for under **Section 76**, of the **Labour Relations Act 2007**. This provides that:

A person may participate in a strike or lock-out if

(a) The trade dispute that forms the subject of the strike or lock-out concerns terms and conditions of employment or the recognition of trade Union.

(b) The trade dispute is unresolved after conciliation –

i. Under this Act; or

ii. As specified in a registered collective agreement that provides for the private conciliation of disputes; and

(C) Seven days written notice of the strike or lock-out has been given to the other parties and to the Minister by the authorized representative of –

i. The trade Union, in the case of a strike;

ii. The employer, group of employers or employers' organization, in the case of a lock-out.

The **National Executive Council (NEC)** has been invited for meeting on **6th September, 2011**, and the Union shall take whichever **Industrial Action** as will be **directed by the NEC**.

16. MEETING WITH THE RIGHT HONORABLE, PRIME MINISTER ON 5TH SEPTEMBER, 2011.

On Monday 5th September, 2011, the Union was called to a meeting at the Prime Minister's Office, 2nd floor boardroom; attended by the Prime Minister, Permanent Secretary, Ministry of Education, Permanent Secretary, Ministry of Finance, Permanent Secretary, Office of the Prime Minister, and Permanent Secretary, Ministry for Labor.

The Prime Minister acknowledged that the Union was tackling a matter of National Interest; he in fact said that the Union was on a **"patriotic mission"**. The meeting was unanimous that KNUT was right to demand the employment of more teachers because there was consensus amongst the "Education Sector Stakeholders" that there was a shortage of 70,000 teachers and even the 28,000 KNUT was demanding is far below the Nation's requirement.

He pledged to handle the matter himself as the coordinator of Government affairs and that he had constituted a taskforce of the officers in attendance to tackle the matter. He pledged to return to the Union with a response any time within a week. He further pledged that the 18,060 teachers on contract employment would be converted to **Permanent and Pensionable Terms**; 3.5 billion would be reallocated and earmarked for employment of 10,000 teachers to bring the total to 28,000 teachers.

CONCLUSION

Teachers employed on Contract are required to perform the duties as their other professional colleagues and sometimes they even do more work; yet they earn pea-nuts. This situation offends morality as it is un-ethical.

The teaching force which used to stand at **260,000** strong, before Free Basic Education was implemented, has ironically been depleted to less **220,000** currently.

We demand the absorption of the eighteen thousand (**18,000**) teachers on contract and a **further ten thousand** to make **twenty eight thousand** (28,000) as required by Vision 2030.

We have taken this early opportunity to inform the Government that our members have declared that enough is enough and very soon this state of anxiety may degenerate to a crisis.

Colleagues, I wish you good luck as you take a decision on this serious matter.

Thank you

(D.O. OSIANY)
SECRETARY GENERAL
K.N.U.T