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**Governance of Public Universities in Kenya and Trade Unionization of Academic Staff:
The University Academic Staff Union (UASU)**

By

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Abstract

This article aims at analysing the concept of collegial and corporate systems of university governance and how government and universities relations as well as universities' management as sources of conflict contributing to academic staff trade unionization through the formation of the University Academic Staff Union (UASU) in Kenya to give them a voice of protecting their rights and improving their terms and conditions of service as has been demonstrated over time.. This has positively led to the signing of collective bargaining agreements (CBAs) between the union and the government which however, remain to be implemented to the full by both parties. It is recommended that the union leadership ought to be a little more aggressive through updating members of its activities through publication of a more regular newsletter and other relevant forums.

Key words: Kenya: Universities' Unions, Governance of Public Universities and Unionisation of Academic Staff, UASU

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Introduction

In higher education, governance focuses on the rules and mechanisms by which different stakeholders influence decisions, how they are held accountable, and to whom. In more specific terms, it refers to the formal and informal exercise of authority under laws, policies and rules that articulate the rights and responsibilities of various actors including the rules by which they interact. It encompasses the framework in which an institution pursues its goals, objectives and policies in a coherent and coordinated manner to answer key questions about the institution. It involves authority to make decisions about fundamental policies and practices in several critical areas concerning colleges and universities (Huisman, 2009). Another important aspect which requires some kind of elaboration is trade unionization. A trade union is believed to provide an employee with a strong voice within the organization with legal power to represent employees as equals through a bargaining process for their wages, benefits and a large number of issues. Unionization of academic staff gives them a voice in their work place and creates a job security which ordinarily might not be available. This article examines the governance of public universities and unionization of academic staff by discussing: the concept of collegial and corporate university governance; government and university relations as well as university management as sources of conflict; establishment of University College Nairobi and the formation of the academic staff association; transformation of the association into the University Academic Staff Union (UASU) and confrontation with the government; and UASU revival and the signing of the Collective Bargaining Agreements (CBAs) with government.

Statement of the Problem

The University Academic Staff Union (UASU) has been in existence since the early seventies though not much has been written about it. In 1972, the Academic Staff Association (ASA) was transformed into a Union due to its inability to access certain information crucial to staff welfare. Some dons had rejected membership of this body which they regarded as part of the government machinery to curb academic freedom. The decision to transform the association into a union was based on the fact it could make certain demands with the backing of the law. First, such associations were subject to administrative and political control by the university administration and the government. Secondly, associations as provided for in the Societies Act under which they fall do not have bargaining power and the right to engage in trade disputes with employers. Thirdly, under the Societies Act an association could be proscribed at any time by the Registrar of Societies, who was normally a political appointee with no security of tenure. This article examines the governance of public universities and unionization of academic staff by discussing: the concept of collegial and corporate university governance; government and university

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Collegial and Corporate Governance Systems in Universities

The traditional organization of universities was identified with the culture of collegiality which was derived from the Latin word *collegialis*, in turn borrowed from collegiums, which in the Roman times legally enshrined the principle of association and shared leadership in a bond of allegiance. The Roman *collegia* were diverse, widespread societies advancing some shared interest or purpose or occupation. Such collegial organizations emphasized consensus, shared power, consultation and collective responsibilities in communities in which status differences are de-emphasized and individuals interact as equals. Members of collegial organizations share aspirations and commitments, have frequent interactions and use civil discourse. In other words collegiality means cooperative interaction among colleagues, the way a group of colleagues take collective responsibility for their work together and represents a reciprocal relationship among colleagues with a commitment to sustaining a positive and productive environment as critical for the progress and success of the university community. It further entails opportunities for the faculty members to feel they belong to a mutually respected community of scholars who value each faculty member's contributions to the institution and feel concern for their colleagues' well-being (Meyer, 2007).

Collegial governance offsets the one-way traffic of the linear design which is so favoured in the present commerce driven dispensation. Given its foundation in self-governance and community base where it derives its authority, it is said that the collegial arrangement instinctively resists the imposition of an oligarchy, which in its incorporation of top-down structures for profit, becomes an affront to the principles of autonomy and academic freedom. Once autonomy is ceded, universities uncritically adopt the crude mechanisms of market supply and demand and give away their right to define the nature and goals of higher education as well as surrender their laws of the market economy (Meyer, 2007).

As with any association based on mutual agreement and trust, collegial governance is by no means foolproof, not without flaw, misuse or discord. Nonetheless, collegiality has lived on, and become embedded and intrinsic feature of the university landscape, though now discovering its nemesis in the all-consuming market confronting modernity. In many countries, the issue is further complicated by the ruthless intrusion of the state in the university policy which in many cases is the hangover from the colonial past or dictatorial systems and which still affect collegial structures and arrangements (Kramer and Crespy, 2011; Weinberg and Gaham-Smith, 2012).

Collegial governance as discussed is inextricably linked to the concepts of university autonomy and academic freedom, key ingredients of modern universities. As a matter of fact, since the early beginnings of the university in the Middle Ages, down to the present century autonomy or self-government has been the key ingredient in the ideology of institutions of higher learning. The ideology envisages the freedom or autonomy of the institution to make its own

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decisions on a broad context of issues without interference from external, non-university agencies (Ajayi, 1990). However, universities are facing challenges that their predominant organizational structures are unable to address. Given the dynamic environment, they are increasingly being forced to reconsider their structures to become better able to quickly and effectively make the necessary changes. As much as they value collegial leadership, it is no longer an easy undertaking with the demands of performance appraisals which have the potential to directly affect individuals' behavior. The consequence of some these challenges has been of corporate governance system

By way of definition, corporate governance is said to be the system by which companies are directed and controlled. It is a process that involves managing and controlling the activities, direction and performance of companies and, by extension, other institutions. The scope of governance is a contested area as some commentators interpret it narrowly as referring to the maximization of shareholder wealth, whereas, for others, governance has evolved to include corporate accountability, corporate social responsibility, risk management and the protection of interests of other stakeholders apart from shareholders (Elane, 1998).

In the classic corporate governance approach, the key operators are the managers as distinct from the floor workers. Policy directions flow down the line from the general manager advised by a group of middle level managers, the corporate group to the managers of each shop floor. Under this system the floor workers have no say in the policy formulation. The main distinguishing features of this structure are the emphasis on quantifiable objectives, clear role specifications and the testing of the implementation of the objectives by some performance indicators. In theory this enables responsibility for good or bad performance to be targeted on specific individuals or departments, remembering that the whole aim of the operation is to secure a profitable product (Oman 2001).

There is increasing strong evidence of insidious corporatization of universities through surreptitious importation of ranks from the world of commerce. Ancient university positions, offices, bodies, which though honoured by time, have been renamed to reflect their new alignment with the marketplace and politically by state dictates. In many universities worldwide and more noticeably in developing countries, there exist positions of executive dean, senate executive committees, faculty executive, faculty or college board, heads of schools and institutes who had previously retained their professional designations as befitted the academy are now executive directors (Elane, 2009). The inscribed styles mark a deliberate and unambiguous shift in allegiance from the collegiate to administrators who are executors of educational policy. These fabricated designations with their signals of managerialism and technocratic executive or director has more status and authority than the customary professor or lecturer. They also have ample remuneration as their support. This makes the system more synonymous with monetary entitlement. Senior university representatives have reclassified themselves as 'executive' or 'top management', and their authority scaled down into the system at every level, such that the chair of the department functions as a line manager answerable to superiors, hence technically removed from the department he or she serves (Kramer and Crespy, 2011; Weinberg and Gaham-Smith, 2012).

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The emerging corporatization has increasingly impacted on universities' employees' labour rights or workers' rights which are a group of legal and human rights relating to labor relations between workers and employers, codified in national and international labor and employment law. In general, these rights influence working conditions in relations of employment. One of the most central is the right to freedom of association, otherwise known as the right to organize. Workers organized in trade unions exercise the right to collective bargaining to improve working conditions. For example, there have been widespread cases of corporate scandals and failures which have their root in poor and dishonest management decisions and in some cases outright cover-ups of illicit activities which have wrecked some public universities and cases of abuse of corporate governance such as gross financial misconduct committed by the university management. The response by the academic staff to the emergence of technocratic managerialism and abuse of corporate governance in African universities as in many parts of the world has been trade unionization as a means of protecting their rights (Arrey, 2015). The next section examines government and universities' relations as a source of conflict with academic staff.

Government and Universities' Relations as Sources of Conflict

From the earliest beginnings of the university in the medieval period down to the present century, autonomy or self-government has been the key ingredient in the ideology of institutions of higher learning. This ideology envisages freedom or autonomy of the institution to make its own decisions on a broad complex of issues without interference from external or non-university agencies. Hence the traditional idea of academic governance stresses the importance of autonomy, and academic institutions have often utilized it to insulate themselves from direct control by external agencies including governments. However, with the increase in size, scope, importance and cost of higher education, there have been immense pressures from those funding higher education, mostly the state for accountability from institutions of higher learning. It has also been observed that, on the one hand, too much autonomy might lead to higher education being unresponsive to society and, on the other hand, too much accountability might destroy the necessary ethos (Altbach, 1991).

Academic freedom and autonomy have for long been considered as necessary conditions for high academic standards, but only recently have they become of central concern for many African universities. Among the key reasons for this is that in their formative years, especially during the colonial era, most African universities were staffed by individuals having similar socioeconomic and political backgrounds and philosophies. Some of these colleges were strictly supervised with the intention of insulating students from any ideas not condoned by the colonial administration. In this context, it is necessary to point out that universities' autonomy and academic freedom very much depend on the prevailing political system, since democracy by its nature guarantees autonomy, while an authoritarian form of political organization denies the concepts of autonomy and academic freedom. In an authoritarian system, the activities of the state are normally centralized and the university is treated as one of the appendages of the government. Since the African continent has been characterized by authoritarian regimes for a long time, they have not nurtured a political atmosphere for a proper existence of autonomy and

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academic freedom in universities, although the system has been changing gradually (Albornoz 1991).

In many of the African countries, governments are heavily involved in the affairs of their universities, which from the outset begins with their establishment. Since in the colonial period university education opportunities for Africans were quite limited and the achievement of independence seemed to provide the chance for rapidly expanding this level of education. As a result, there has been a persistent trend towards the proliferation of universities to satisfy group and community interests with little regard to availability of adequate facilities and resources. In this regard, the establishment of universities in many African countries has by and large been government or individual presidential initiative or a directive. In the hands of many governments in power, the university acquires the same status as an industry which is used as a largess to reward political patrons and loyalists. In effect scientific rationale and feasibility studies which determine cost effectiveness of the institution are disregarded as they do not follow the laid down government procedures through specific legislation. Such universities rights from their establishment remain riddled with lack of vision and plan (Emenyonu, 1990). Such a situation often leads academic staff to raise questions about the direction their university is taking in its development.

While the expansion and management of university education through government involvement has been widespread in many of the countries in the Eastern Africa region, Kenya perhaps represents the most extreme version of this phenomenon. Through a chain of presidential directives have resulted in the establishment of 31 fully fledged public universities and several university colleges in the country since the turn of the century with a student enrolment of 461, 820 students with around 9,000 lecturers, which raises some serious questions about the quality of education provided by these institutions, but also concerns about lecturers' terms of service and working conditions which undoubtedly lead to their efforts at trade unionisation. There are also 34 private universities with a student enrolment of 77, 929 students making a total student enrolment of 539, 719 (Mukhwana, 2016). It however, needs to be pointed out with the enactment of the Universities Act of 2012 which established the Commission for University Education (CUE) and which replaced the Commission for Higher Education (CHE), it assumed the responsibility of the development of university education which includes; the establishment, accreditation and governance of universities (Republic of Kenya, 2012).

Another aspect of direct presidential involvement in university affairs and contributing to academic staff unionisation has been through his position as the chancellor of all public universities. While such a relationship could provide unique access by the university management to the executive arm of the government, it was commonly used as a pretext for intervention by the president in university affairs, often without consultation either with the ministry responsible for university affairs or with the university itself. Many of these interventions have tended to put universities in the intolerable position of being dictated to or interfered with by their titular head, acting not in terms of authority conferred by the university statutes, but by virtue his presidential power (Coomb, 1991). It needs to be pointed out that following the ushering of a more democratic in 2002 the president relinquished his position as chancellor and instead some eminent persons were appointed to serve in that position. While this

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was considered an important move, without making some drastic revisions of their acts and statutes, the dominant government control and autocratic governance remains in place and have become a major obstacle for academic staff participation in the affairs of their universities (Sifuna, 2012).

The second level of government involvement in university affairs which often calls for unionization of the academic staff has been in some aspects of management. This has centered on the appointment of the chief executive of the university is the vice-chancellor. The chancellor appointed and dismissed vice-chancellors who in many cases were not necessarily the most able administrators and academically competent, but those deemed to be politically loyal to the establishment and from within the ranks of academic staff. The chancellor's powers extended to the appointments of other key university administrators often in violation of the university acts and statutes. The government also nominated most of the university councils. While academic staff and students' representatives to councils were usually elected by their respective constituencies, key members of the council such as; the chairman, deputy, the minister for education and permanent secretaries of ministries dealing with universities are nominated by the chancellor. In all the public universities, more than 60 percent of the council members are nominees of the chancellor or some kind of nominees by him/her. In such a system of appointing council members, it has often turned out that the government's views have become particularly dominant in council deliberations and it easily steers university affairs in the government's favour with the full protection of a flawed law (Sifuna, 1998).

There are indeed many areas of university governance which demonstrate a continuation of autocratic management, among the key ones being the handling of trade disputes with staff. As noted in one study, the management of strikes in public universities in Kenya has been based on a conventional top-down approach which further undermines the greatly needed quality of human and social capital that is responsible for implementing the university mandate towards sustainable development. Whenever industrial action takes place, however, the leadership reflects failed efforts in terms of conflict resolution, and often triggers a chain reaction whose cumulative effects have far-reaching effects on quality delivery. Reprisals from university authorities and government have traditionally been perceived as being autocratic and counterproductive in the long run, particularly when viewed from a quality service perspective. This autocracy also seems to contradict the inherent spirit within the philosophy, vision and mission statements detailed in various university strategic plans (Waswa and Katana, 2008). According to Goleman (1998), contradictions between vision/mission statements and reality inevitably result in emotional fallout exemplified by self-protection, cynicism, anger and despair.

Another area of concern that leads growing academic staff agitation has been pressure on funding of public universities. As the economic conditions have deteriorated, the government has responded with increased cut backs in the university budgets. The impressive growth in student numbers has generally been achieved without a proportionate rise in resources available for higher education. As a result of the decline in per capita funding, universities have been forced to curtail expenditures which they would have liked to deploy in such areas as staff development, teaching and learning materials and postgraduate training. It is now evident that the government simply lacks the financial resources to continue subsidizing the basic infrastructure needed to

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cope with the massive expansion and growth in the student population. In many of the institutions, there appears to be a shortage of everything except students (Konings, 2004).

The deteriorating conditions of service tend to negatively affect the morale and commitment of the academic staff who are expected to teach the growing numbers of students in deplorable working conditions for meager remuneration. In many of the universities due underfunding by the state, they are faced with regular delays in the payment of their salaries and various allowances. Such conditions negatively impact on the high status and respect which they enjoyed in the past coupled with the decline in their living and working conditions. In such a situation, they have resorted to all kinds of individual solutions to their problems. Among the key reactions has been one of ‘moon lighting’ through part-time teaching. As the joke goes, one ensures that he/she begins the week by teaching in a university in the western part of the country and ends the week in a university at the coast! Others try to combine their teaching with a variety of informal income generating activities both during and after working hours to sustain their livelihood. University lecturers like in many African countries are engaged of photocopied lecture notes to students due to shortages of textbooks and journals as well as poorly stocked university libraries. They are in addition on a lookout for short-term and well-paying consultancies offered by NGOs and external donor agencies. Above all, many apply for better paying jobs within the country and abroad.

UASU has often responded to these conditions by organizing strikes and boycotts of teaching which have adversely affected the quality of university education. The most effective boycott was the 3003/2004 strike to which the government responded by raising lecturers’ pay and some conditions of service. Unfortunately, the current boisterous UASU national leadership which seems to have politically maneuvered its way into office has little or no clue in taking a cue from the previous leadership on strategies of informal negotiations with government and relevant university authorities on improving terms and conditions of service for their members. This is exacerbated by the perception and attitude of these authorities which are characterized by anti-union activities and non-recognition, delays in signing agreements, refusal to remit union dues, as well as reluctance in negotiating with a national union leadership composition which reflects an ethnic bias. The next section focuses on the nature of universities’ as a source of conflict with academic staff.

Universities’ management as a source of conflict

Universities in Kenya are hierarchically structured with a governing council at their apex. The council is expected to be a high-level committee which deals with all matters relating to administration, finance and general policies. Most members of the council are appointed by or through the government and are drawn from the legislature and other walks of public life, except for those who appointed from within the university. Next in hierarchy is the senate which is responsible for the academic management of the university. Academics predominate the senate, irrespective of the academic status. It is important to point out the structure of most of the public universities is nonetheless very authoritarian with major decisions made by top management, with hardly any consultation of academic staff and students prior to decision making (Sifuna, 20120).

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In accordance with each university act and statutes, it is expected to be governed in accordance with the law that establishes it. In this regard, every university has a law or edict which spells out the functions of the various organs, such as council, senate, faculty, department, institute and others. The traditional model of governance, especially with the older universities have also been partly guided by bureaucratic forms which hinge on hierarchy based on the formal chains of command, communication, organizational goals, or predetermined rules and regulations which are expected to maximize efficiency. However, one major obstacle in operationalisation of an organised bureaucratic model is government interference which influences university governance which tends to limit free internal participation of employees which leads to a lack of commitment. The government tends to set all the rules and regulations such that the institutions are not allowed to raise issues freely. This is reflected in the banning and unbanning of staff and student unions at various times. Academic staff and students have also in the past been dismissed, retired and unjustly imprisoned for teaching what they were employed to teach or organizing nation-wide strikes (Mwiria, 1996).

At the institutional level, many of the vice-chancellors tend to administer their institutions like private estates as they are usually high handed and pursue their self interests to the exclusion of the common good. In many of the institutions, the management populate the governing councils with maverick ethnic politicians whose major interest is pecuniary in nature. Such appointments of members who have little or no experience in academia on how universities operate and function is partly responsible for some of the crises in a number of public universities as it creates unnecessary adversarial climate in institutions (Konings, 2004). In a number of institutions, on the appointment of new administrators, they quickly surround themselves with intellectual supporters who help them to identify the administrations' enemies real or imagined for frustration. In violation of the statutes, they establish a top-down model of decision making which tends to isolate most of the academic staff in policy making and management.

Most of the universities have created what are known as management boards which in effect have tended to overshadow the university senates and faculty boards of the schools as they consist of a handful of members appointed by the top university management. In some of the universities functions and composition are stipulated in the statutes, while in others they are not constitutionally sanctioned. With the establishment of management boards, senates which are expected to be the supreme academic bodies do not function as stipulated in the university acts. They routinely discuss new course programmes and approve examination results. Occasionally when there is a student crisis, the senate is convened the chairman's (vice-chancellor) decision. A majority of senate representatives are departmental heads and directors of institutes who are appointees of the vice-chancellor. In many of the universities, the tendency is towards appointing relatively junior staff as departmental heads and rewarding full professors with dubious administrative positions in order to have full control of the senate (Ibonvbere, 1993).

Below the University Senates are faculty boards and individual departments which are expected to be responsible for academic affairs of the university. In most universities, faculty boards hardly meet to discuss faculty affairs, except for routine approval of examination marks. This too applies to departmental meetings. Matters relating to staff welfare, terms and conditions

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of service do not feature in their meetings. In this regard, faculties and departments in many of the universities have little or no influence in decision making in the running of universities, except to administer examinations. This state of institutional governance which highly marginalizes participation of the academic staff at practically all levels of the hierarchical structure has undoubtedly contributed to staff unionization in most Kenyan universities as a channel of airing their views (Gichaba, 2013; Nkirote, 2018). The next sections discuss the development of higher education and the formation of the academic staff association and its transformation into the universities' academic staff union (UASU) and its struggle to improve its members' terms and conditions of service.

Establishment of University College Nairobi and the formation of the Academic Staff Association (ASA)

The first Kenyan based institution to provide higher education was the Royal Technical College of East Africa situated in Nairobi. In 1947, the Kenya government planned for a technical institute and set up a committee chaired by G.P. Willoughby in 1949 to make recommendations. The committee recommended that the government establishes a technical and commercial institute in Nairobi to:

1. Provide full-time and part-time instruction for courses leading to the Higher National Certificate offered in Britain;
2. Prepare matriculated students through full-time study for university degrees in engineering and allied subjects not provided by Makerere (Southall, 1974).

This development coincided with the Asian community's plans for an "Indian University," to join with the Gandhi Memorial Academy, a commercial college for Asians to be set up in memory of the late Mahatma Gandhi. The founding Society agreed to combine with the government's plans and raised 400,000 pounds for the joint founding of the Royal Technical College. The East African High Commission assented to an Act establishing the College in 1954 after obtaining a Royal Charter for its establishment. The college opened in 1956 as an interracial and inter-territorial college for higher technological, professional and vocational training, especially for commerce, engineering and architecture. Arts, science, domestic science and surveying subjects were soon added. The three-year courses led to special certificates and not degrees.

Student admission by 1957 had shot up to 284, most of them being Asian, reflecting its strong origins in the Gandhi Memorial Academy, which remained so for a greater part of the early years of the college. The two working parties on higher education in East Africa, one by Sir Alexander Carr-Saunders in 1955 and another one by John F. Lockwood in 1958 recommended that each East African territory, should establish a university college. This meant that the Royal Technical College had to be transformed into a university college in special relationship with the University of London, and like Makerere, it developed courses leading to the London degrees, except in two faculties; one being Art and Architecture and the other one being for "special professional studies," where although subjects such a accountancy, business administration and

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domestic science were taught, in the British training system they were normally found in the polytechnics and not universities (Southall, 1974).

The University of East Africa came into existence in January, 1963, consisting of the University College, Nairobi established in 1957, University College, Dar es Salaam and Makerere University College with a Council composed of representatives from governments, colleges and academic staff, also three members from outside East Africa, and a Senate of representatives from the colleges, controlling academic affairs. Meanwhile in Kenya under the foundation of the University of East Africa and driven by the manpower or human resource development, the rallying point was rapid growth in higher education, especially university education. Development expenditure for university education was only second to that of secondary education, being 3,700,000 million pounds.

The University of Nairobi was inaugurated at the end of 1970. The Faculty of Architecture, Design and Development, Faculty of Arts and Science, the Institutes of Development Studies and of Adult Studies were key institutions at Nairobi, while the Faculties of Medicine, Agriculture and Veterinary Medicine and Education were added following the inauguration. The University of Nairobi Act of 1970 also established Kenyatta University College, a teacher training college situated some miles from Nairobi as a constituent college. In 1972, the college admitted the first students for the degree of Bachelor of Education (B.Ed.), which was already being offered by the Faculty of Education at Nairobi. Kenyatta University was inaugurated in 1985 as the third public university. Its expansion had been boosted by the transfer of the Faculty of Education from the University of Nairobi in 1977, making it the sole University College offering degrees in education in the country. Egerton University located 20 kilometres west of Nakuru town, became the fourth public university (Monyoncho, 2004).

The 1990s marked the heyday in university expansion, especially in terms of increased student enrolments. This was particularly through the admission of privately self-sponsored students and the establishment of several constituent colleges of public universities, some which were later converted into fully fledged universities. For example, in late 1988, Parliament made the Jomo Kenyatta University of Agriculture, a constituent college of Kenyatta University and became an independent university through the Jomo Kenyatta University of Agriculture and Technology (JKUAT) Act of 1994. Maseno University was later established by another Act of Parliament in 2000 and the Western University College of Science and Technology in 2004 and later renamed Masinde Muliro University of Science and Technology. By 2006, there were seven public universities and 21 private universities, including five fully chartered ones which offered their own degrees.

The academic staff at the University of Nairobi and its predecessors, the Royal College and the University College, Nairobi was organized, in one way or another since the beginning of the institution. Records of this organization date back to April 1966, when an organization called the University College Academic Staff Association was registered with the Registrar of Societies. The association was very much a social organization which welcomed and sent off expatriate staff as they joined and left college. Most of such social function was eventually taken over by the Faculty Boards and the Senior Common Room. The Academic Staff Association was accorded some legal status with the establishment of the University of Nairobi Act of 1970 in

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which the staff association was entitled to representation in the University Council, the highest governing body of the University (UASU Newsletter, 1979).

Transformation of the Association into the University Academic Staff Union (UASU) and Confrontation with the Government

In 1972, the Association was transformed into a Union due to its inability to access certain information crucial to staff welfare. Some dons had rejected membership of this body which they regarded as part of the government machinery to curb academic freedom. The decision to transform the association into a union was based on the fact it could make certain demands with the backing of the law. However more importantly, on the right and freedom of assembly and association, section 80(1) of the Kenyan Constitution stipulated that except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests (Republic of Kenya, 1983). It was on this basis of the constitutional right that the lecturers formed the Union in 1972, which was officially registered as a trade union and gazetted under Notice No. 1283 of 28 April 1972 during President Kenyatta's rule. The Nairobi University Act expressly allowed for the formation of staff associations, but the lecturers rejected this form of organization for a number of reasons. First, such associations were subject to administrative and political control by the university administration and the government. Secondly, associations as provided for in the Societies Act under which they fall do not have bargaining power and the right to engage in trade disputes with employers. Thirdly, under the Societies Act an association could be proscribed at any time by the Registrar of Societies, who was normally a political appointee with no security of tenure. Thus, it was only logical for the Kenyan academics to revive the 1972 union, the UASU, instead of forming an association (Adar, 1999).

The move was unpopular with the University Council because the Union Constitution like all constitutions of trade unions provided for strike action as a last resort. It was felt at the time that “intellectual workers could not properly be expected to withhold their labour.” Although there was a lot of lobbying from the University Council and certain Senate members to the association members to reconsider their decisions and revert to association, the pressure that came with being unrepresented in the Council and its committees, members in 1972 voted overwhelmingly to remain as a trade union. It is also worth mentioning that senior academics were strongly opposed to the change as a union in their perception meant being members in the same organization with workers as they compared the union to the Central Organisation of Trade Unions (COTU) which embraced such a category. However, as much as the union was officially registered, it worked without the recognition of the University of Nairobi Council and with persistent harassment and pressure by the university authority, all its officials unconstitutionally resigned in 1976 rendering it to be dormant until January 1979 when UASU was re-launched under a new executive committee at the Senior Common of the University of Nairobi (UASU Newsletter, 1979).

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The 1972 Nairobi University Union, a chapter of the UASU, existed until 1980 when it was, together with the Civil Servants Union (CSU), banned by President Moi because of what he called "over-indulgence in politics". In banning the UASU and CSU, Moi was invoking constitutional provisions inherited from the colonial legal system and retained in the Kenyan laws. They include the Preservation of Public Security Act and the Public Order Act, which give the executive wing of the government sweeping powers with respect to issues relating to, among other things, detention without trial, control of public meetings, and public security. These powers are in conformity with the provisions of Article 11 of the African Charter at the time. What needs to be emphasized is that in the Kenyan case the right of association was at the mercy of the executive arm of the government (Adar, 1999).

The argument in favour of the union over an association has often been that while university academic staff are workers or "intellectual workers", they sell their services for a price all the same. They therefore need to negotiate their terms on which they are hired, including salary, housing, medical and retirement benefits, just like other workers. A trade union gives academic staff a strong voice on campus as well as in other forums as it is not advisory and as it is an organization with legal power to represent employees as within the university.

Through the bargaining process a union negotiates over wages and benefits as well as a large number of issues; among them paid leaves and holidays, hiring and job security, including appointments and reappointments, seniority, layoffs, discipline evaluations and workloads. It was noted that unionization in Western universities has given academic staff in a variety of public and private institutions a voice in their workplace. It has allowed workers to create a type of job security not available in their university systems. It has also improved their wages and benefits such that employees are in line with their peer institutions as well as protecting them in times of financial crises. Above all, unions have represented both faculty and academic staff as part of the same campus community facing the same issues of increased workloads, decreased job security, loss of pay and erosion of benefits (UASU Newsletter, 1979; Munene, 1997). However, the mainstream university governance hardly shares such perceptions. Its misgivings against the union seem to be that the union may easily drag the university into "trade union politics, especially if the union is affiliated to the central organisation such as the" (COTU) in Kenya. With the fear that any time plantation workers go on strike against an oppressive management, university academic staff would be asked to go on a sympathy strike as it is the practice with COTU affiliated unions.

With the re-launched UASU under the new executive committee, it was felt that members of the union be kept updated with its news and activities through some kind of newsletter. The decision was taken after complaints from the members regarding insufficient communication from the officials on the union matters. It was also felt that starting a regular communication forum would encourage a broader demographic participation of the members scattered around the universities' existing six campuses. In addition, members on leave and in other places such as hospitals, attending conferences abroad and in the field would also be able to participate by writing their comments and views to the secretary-general. However, as expressed by members in its first general meeting, the executive committee was urged to urgently address the issue of staff salaries and other terms of service which were believed to be ignored by the government

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and the university authorities. Therefore, in its petition to the vice-chancellor, there was an urgent demand for salary increase, house allowance, owner occupier and car loans. The modest demand which proposed 10 percent salary increase for the assistant lecturer ranging to 7.5 percent for professor was based on the considerable rise in the cost of living which in the estimation of the union had risen by about 34 percent since 1977. There seems to have been no immediate response from the vice-chancellor's office to the UASU petition (UASU Newsletter, 1979).

At the same time another very pressing matter for the union was the arrest and detention of Professor Ngugi waThiong'o who was the Chairman of the Department of Literature, University of Nairobi and member of UASU. In mid-January, 1978, the press announced the detention of Professor Ngugi without any reasons being given by the state. The following weeks, there were intermittent student demonstrations expressing their resentments at the detention and demanding his immediate release. Members of the Department of Literature send a delegation to the vice-chancellor and demanded their colleague's release as students' agitations continued. On 12th December, 1979 during the celebration of the Jamhuri day, Professor Ngugi was released from detention amid students' jubilation and procession through the streets of the city of Nairobi. The following day Professor Ngugi addressed the university staff and students and received a tremendous reception from the community. Student meetings embarked on a call for Prof Ngugi to resume his duties and office as well as sending a petition to the chancellor of the university who was also the president of the country. But there was no response from the university authorities as well as the state (UASU Newsletter, 1979).

In the meanwhile, the academic members of staff took an important decision to join the students demand for the reinstatement of Professor Ngugi. In a special meeting of UASU late February 1979 a resolution was unanimously passed mandating the executive committee meeting to take up with the relevant authorities the question of re-engagement of Professor Ngugi by the university as a matter of singular and utmost urgency and report back as soon as possible. It also met the vice-chancellor and discussed the Ngugi issue. In another special meeting in mid-March, it procured signatures from members of the academic staff who endorsed the following petition to the president and chancellor of the University of Nairobi about Professor Ngugi wa Thiong'o:

We the undersigned, being members of the academic staff of the academic staff in the University of Nairobi and Kenyatta University College and all being colleagues of Prof Ngugi wa Thiong'o DO PETITION your Excellency in your capacity as Chancellor of the university to allow Prof Ngugi wa Thiong'o to resume his teaching duties at the Department of Literature in the University of Nairobi. We do so on the grounds that he is a patriot and a scholar who greatly loves his country; he is an outstanding teacher with proven capability to contribute to the development of our Society-he is the only Kenyan creative writer of international repute. We strongly feel that he can only participate fully in the nation-building by taking his place in the university. We have sent a memorandum expressing similar sentiments to Council, University of Nairobi and the Council, Kenyatta University College. We are sure, Your Excellency, that in

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the interests of this nation in general and those of the University in particular, you will favourably consider this petition” (UASU Newsletter, 1979)

In another effort to facilitate Prof Ngugi’s resumption of his teaching duties UASU executive committee met the vice-chancellor and was told that the issue of Prof Ngugi resuming his duties in the university rested with other people than the university authorities and his situation was an Act of State. For further clarification the executive committee sought an appointment with the chancellor without success. However, the vice-chancellor proceeded to inform Prof Ngugi that his case was beyond the university and it was a matter of Public Security and that he needed clearance from somewhere else. UASU responded to the developments by convening a special meeting which ruled that a petition be delivered to the State House by hand in the event of an appointment and audience with the chancellor was refused. The meeting further ruled that a press conference be called to inform the Kenyan public that members of staff have petitioned the chancellor. The petition to the chancellor was sent to the office of the Comptroller of State House by the chairman and secretary followed by a press conference took place an hour later in the University of Nairobi (UASU Newsletter, 1979).

At the end of July 1979, Prof Ngugi discovered after a ministerial statement in Parliament over his reinstatement that the university had paid his terminal benefits in December, 1978 by a voucher presented to the bank. In August 1979, the registrar of the university of Nairobi formally wrote to Prof Ngugi and informed him that the university, acting on some legal advice from unspecified quarters, had as early as January, 1978, dismissed him from his job through the invocation of an Act of State (UASU Newsletter, 1979).

UASU concern with Prof Ngugi’s reinstatement was that what seemed to be his affair was actually a matter of job security and tenure for any of the teaching staff member at the university. His involuntary absence was also considered a serious blow to the university’s prestige which he tirelessly fought for and upheld. In the union’s meeting with the vice-chancellor, the executive committee had been led to believe the university as an autonomous institution was free to take the initiative to reinstate him. But the university had not sought any guidance from the government and neither had the government attempted to influence the university on the matter. It was in this regard that the union decided to launch a direct petition to the chancellor of the university which was a last resort and the union was entitled to such an action by the university statutes as well as by virtue of university autonomy and academic freedom. It was against the background of unsuccessful attempts to assist Prof Ngugi resume his duties that the union felt obliged to inform the public through a press conference that it had petitioned the chancellor of the University of Nairobi who was also the president of the Republic of Kenya. The press statement stressed that Prof Ngugi has devotedly served Kenya as an outstanding scholar and has continuously struggled for the true development of national cultures of Kenya against domination by foreign cultures as demonstrated in a number of novels Prof Ngugi had published. In this struggle, from pre-independent Kenya until then, he had stood as a firm patriot in the eyes of the broad national population of our country (UASU Newsletter, 1979).

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As UASU and university students continued to agitate for the reinstatement of Prof Ngugi and an improvement in the terms and conditions of service for academic staff, the political situation in the country was increasingly becoming tense due to the growing repression by the government. This was manifested in the attempted military coup d'état by some members of the Kenyan armed forces in August, 1982. The government responded by arbitrary arrests and detentions of a number of critical political leaders, civil society members and some executive UASU officials. The union officials were detained for allegedly participating in the publication of the underground banned leaflets of *Mwakenya* and *Pambana* (Confront) which were calling for political change in the country. For these reasons the President Moi's government became uncompromisingly opposed the idea of an academic union as it was considered an anathema to the country's body politic. He therefore immediately ordered for UASU's disbandment.

In early 1992 the lecturers at Kenyatta University, Moi University, and the University of Nairobi submitted individual applications for the registration of trade unions for their respective universities to the Registrar-General's office. The interim officials of the unions were, however, advised by the Registrar of Trade Unions that the Trade Unions Act requires that people in the "same trade" must belong to the same union. Part of the Trade Unions Act provides that all the "officers and members of every trade union should be persons actually engaged or employed in an industry or occupation with which the union is directly concerned (Republic of Kenya 1983). The lecturers complied with this provision and the Registrar of Trade Unions' advice and, the three universities withdrew their individual applications, formed an umbrella union, the UASU, and submitted the application for registration accordingly in late 1992.

The interim UASU officials thereafter made numerous unsuccessful attempts to have an audience with the Registrar of Trade Unions and the Attorney General over the issue of the registration of the union. Apart from being informed unofficially that the issue of the registration of the UASU was "political," and no official communication was given to the UASU members for more than a year. As a result, the lecturers in the four public universities resolved to go on strike in November 1993 to try to put pressure on the government to register the union. Following the strike notice, the Registrar of Trade Unions expeditiously notified the former officials of the University of Nairobi UASU chapter that the union would not be registered. In his letter, the Registrar stated the Union is used for unlawful purposes and as such peace, welfare and good order in Kenya would likely to suffer prejudice by reason of the Union's registration as a Trade Union by persons purporting to be officials of the Union who have deliberately contravened Section 29(A) of the Trade Unions Act (Adar, 1999).

As a result of the refusal to register the UASU, lecturers in the four public universities (Moi University, Eldoret; Egerton University, Njoro; Kenyatta University, Nairobi; and University of Nairobi) went on strike on 29 November 1993 until 28 September 1994. It was the first time in Kenya's history that the academics collectively paralyzed the universities. It is however, fair to state that the effectiveness of the strike varied from one university to the other as months elapsed. Just like in other African countries, where many academics work for the state security service to spy and report on their colleagues and union leaders, many of the so-called academic loyalists or pro-establishment academics also frustrated the efforts of their colleagues on the issue of the registration of the UASU.

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At one point a group of unnamed "100 Academics" thanked "His Excellency President Moi for ruling out the registration of a trade union for universities" and went on to suggest that "associations/convocations are best suited for universities." The President had earlier recommended in his 1994 New Year address to the nation that the Vice-Chancellors institute the immediate registration of associations for lecturers in the universities. After the President declared the UASU illegal, following a change of mind "armed police flooded the country's campuses to prevent any further action by the academic staff. Hence the universities, working in concert with the government, managed to stop the lecturers, with the help of the security forces, from holding meetings within or outside the campuses. The universities not only dismissed the entire leadership of the UASU, but the salaries of more than 1,000 lecturers were also withheld during the strike (Adar, 1999).

Revival of Universities' Academic Staff Union and Collective Bargaining Agreements

It was not until the new and more democratic administration which was voted into office in 2001 that the union was revived, but most interestingly, a number of its former intellectuals who had now joined the government were decidedly opposed to UASU ideals when it called a strike in 2003-2004 to pressure the government to improve the terms of service and working conditions of dons in Kenya. They pitched tent on the government side invoking the dubious principles of collective responsibility to undermine what the union stood for, nor were they moved into a supportive action (Murunga and Nasong'o, 2007). However, through a court order to government and through informal negotiations by some UASU executive members, the government agreed to a pay rise and general improvements in the terms and conditions of the academic staff in 2010.

In the efforts to revive the union, it is also important to mention the state of the economy which impacted on public financing. Since the late 1990s, Kenya's economy slumped and the only way to get the country out of recession was to involve the Bretton-Woods institutions, especially the World Bank. One of the conditions it set for the then government before it committed itself to resuscitating the fledgling economy was the introduction of a structural readjustment programme (SAPs) that was basically aimed at curtailing government expenditure. As the government tightened its belt, one of the sectors that suffered most was higher education. Supplementary funding to universities was halted. Thus, the institutions were left to fend for themselves. In 1998, desperate to get more funds to support itself, the country's oldest university Nairobi introduced self-sponsored students' programme. This was a parallel enrolment programme that saw students pay for the university courses. Soon afterwards, the other public universities followed suit, with some doubling, and others even tripling their student numbers. The sky-rocketing numbers originating from the establishment of the school-based and parallel programmes in the public universities precipitated a very serious problem in the overall decline in quality of university education. This was evident in the declining resources for teaching and infrastructure, poor governance and outdated approaches to teaching, curricula and assessment. All these left universities unable to maintain high quality teaching and learning largely due to lack of requisite resources and the situation remained so for many years.

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In 2016, UASU held fresh elections in which a new executive committee was put into office and in 2017 the union declared a nationwide strike because the government had failed to implement a pay rise deal signed in 2013. The pay dispute between government and university workers had been going on for years, with lecturers and non-academic staff calling for strikes from time to time. Among other demands, UASU wanted the salary of an assistant lecturer to be 3,600 U.S. dollars per month while a lecturer was earning 10,000 dollars. The union was also demanding that house allowance be adjusted such that lecturers and tutorial fellows were to get 1,350 dollars a month as professors pocketed 2,500 dollars. Union officials claimed that the last time teaching staff in public universities were awarded a salary increase was in 2010 and regretted that salaries for university teaching staff had remained stagnant for a long period during which the cost of living had risen tremendously. A highlight of the Collective Bargaining Agreement (CBA) was 17.5 percent increase in basic salary and 3.9 percent increase in house allowance across the board except for Maasai Mara University which was already offering related salary scales. The CBA was for the 2013-2017 quadrennium, and was to be effective from 1 July 2013 and to expires 30 June 2017. This meant that academic staff would benefit from arrears that had accrued over the quadrennium. In a statement, UASU pointed out that it had signed the 2013-2017 collective bargaining agreement concluding the 54 days strike that had paralysed learning and research at all public and private universities (UASU Newsletter 2020).

The circus between the academic staff and the government seemed to have no end. A new Collective Bargaining Agreement between the University Academic Staff Union and the Inter-Public Universities Councils' Consultative Forum, which negotiates on behalf of the state was expected to be in place covering the period 2017-2021 to replace the expired 2013-2017 agreement. While UASU made some offers for the various academic positions, the government proposed a 0.44 per cent annual salary increment which was out rightly rejected by the union. UASU went ahead and called for a strike over the issue of an agreement which covers salaries and benefits for 2017-2021. In view of the continued failure by the government to meet its end of the bargain, lecturers rightly concluded that the state has failed to negotiate in good faith. This has resulted in a good number of strikes in public universities.

The UASU National Executive Council has also been extremely disappointed with the government's and university councils failure to meet the obligations signed by the parties to the 2013-2017 collective bargaining agreement (CBA) UASU Newsletter, 2020(). A major impact has been the disruption of learning. For maximum effect, faculty strikes have occurred during term time when students are learning. So far in the recent strikes, students have lost more than half a semester of instruction which is hardly recovered. This means many students take longer to complete their academic programmes, which is also quite expensive for them and the institutions. Faculty strikes also heighten the divide between the academics on one hand, and the university administrators and government on the other which undoubtedly is most unhealthy for the sector due to its adversarial nature. The government has quite often deliberately failed to honour agreements with unions concluded after protracted negotiations. These violations run counter to the development of good labour practices in universities. To resolve the numerous problems confronting universities, it requires no emphasis to point out that a cordial and

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collaborative relationship between the three stakeholders is paramount. However, in a climate defined by militant faculty unions and inflexible administration and government, it is not possible to forge common ground to address institutional challenges which continued for many years.

Summary and Conclusions

The article has analysed the concept of collegial and corporate systems of university governance and how government and universities relations as well as universities' management as sources of conflict contributing to academic staff trade unionization through the formation of the University Academic Staff Union (UASU) in Kenya to give them a voice of protecting their rights and improving their terms and conditions of service as has been demonstrated over time.. The union's struggle to achieve this particular goal through frequent strikes successfully contributed to the signing of collective bargaining agreements (CBAs) between the union and the government which however, remain to be implemented to the full by both parties. It is recommended that the union leadership ought to be a little more aggressive through updating members of its activities through publication of a more regular newsletter and other relevant forums.

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