REMARKS BY PROF. GEORGE A.O. MAGOHA, VICE-CHANCELLOR, UNIVERSITY OF NAIROBI ON EFFECTIVE INDUSTRIAL RELATIONS IN KENYA AT THE 9TH DELEGATES CONFERENCE OF THE KENYA UNIVERSITIES STAFF UNION ON AUGUST 14, 2014, AT ELDORET
The Secretary General, KUSU
The Chairman, KUSU
Delegates
Representatives from Universities
Ministry officials
Distinguished guests
Ladies and Gentlemen
It is my pleasure to join you during this occasion as you mark the 9th Delegates Conference of the Kenya Universities Staff Union (KUSU). I feel honored to be invited by KUSU, to make a presentation to this conference.

Ladies and Gentlemen, the existence of Universities in Kenya, as organizations, is provided for within the framework of the Universities Act, 2012. The Act, in Section 3.1, sets out the establishment, accreditation and governance of universities and
spells objectives of university education as provided for among others as:

i) Advancement of knowledge through teaching, research and scientific investigation;

ii) Support and contribution to the realization of national economic and social development;

iii) Education, training and retraining higher level personnel;

The Labour Relations refers to the collective relations between the management of an
organization and its employees or employees' representatives (unions) in the context of the work and external environment. This would include the government arms which formulate, interpret and enforce labour legislations, and third party arbitrators and mediators.

The labour component also encompasses both the employees and unions that represent them. They influence how employers can achieve their objectives and shape the growth and demand of unions. On the other hand, the Government side consists of its
agencies which represent public interest. Government policy shapes and provides regulation on how industrial relations proceed.

The three levels of industrial relations activity are summed up in the three-tier approach. This is manifested with the strategic-tier at the top which includes the strategies and structures that exert influences on collective bargaining. The middle-tier or functional level entails collective bargaining level involved in the processes and outcomes of negotiations. While the bottom-tier workplace level
or shop floor entails those activities through which workers, their supervisors and the union representatives administer the fair labour practices on a daily basis.

The labour relations process involves the recognition of the legitimate rights and responsibilities of the trade union and management representatives. They carry out negotiation of the labour agreement, including appropriate strategies, tactics and impasse-resolution techniques.
The development of unionism originated in the development of industry and the industrial revolution. It is to be noted that Unions initially existed as small guilds, joint associations of employers and crafts people that pressed for professional standards and restriction of outside competition for the benefit of both the employers and employees. Workers who are known to have challenged employers by joining together and demanding for improved wages were skilled craftsmen. These unions started when the workers came together jointly and agreed on new wages for
their work. They usually laid down their tools if the employers were not in agreement with their demands.

In the early years of industrialization employment relationships were governed solely by the Common Law traditions. This generally translated into few enforceable contractual or implied rights for individual employees and surprisingly most court considerations were outrightly hostile towards collective action by labour organisations. Another competing method of management emerged from the
human relations (welfare capitalism) which gained popularity and stressed on the social significance of work and work groups. Human relations theory predicted that satisfied workers would achieve higher productivity. This culminated into both the scientific management and human relations schools believing that by following certain principles employers could eliminate conflict with workers.

This human resource management (HRM) pattern relies on formal policies. The HRM pattern is based on work organization, skill-or-knowledge based pay
and elaborate communication and compliant procedures. It has been noted that many human resource management patterns practised bring to bearing employment stabilization and rarely makes use of layoffs.

The formalization of industrial relations in public universities has been characterized by highly detailed and formal contracts of employment. This has provided grievance arbitration, numerous and detailed job classification and standardization of pay. The other emerging phenomenon of the formal
industrial relations is a participatory pattern that is characterized by team forms of work organization, employment security and involvement of workers in business decision making.

In the public eye, efforts by trade unions or other combinations of workers to raise wages seemed intrinsically illegal and which led to the unions being viewed with hostility and suspicion. In the absence of a collective bargaining agreement, common law doctrine of employment has been applied at will. This sets the employee and employer free to end the
employment relationship at any time for any reason and without liability provided that the termination does not violate any statutory provisions.

The origin of labour relations law was contained in the doctrines of criminal and civil conspiracy. The criminal conspiracy doctrine was of the view that it was illegal for two or more workers to join together for the purpose of pressurizing their employer to improve their wages and working conditions and of all workers in the industry. On the other hand, the civil conspiracy theory held the view that a group
involved in concerted activities could inflict harm on other parties like customers and fellow employees even though pursuing a valid objective in their own interest.

It is evident that both aim at fulfilling their own self-interests in that employers seek to maximize their return on capital invested whereas employees seek to advance their pay, working conditions and job security. The second assumption is that employees in a free and democratic society have a right to independently pursue their employment interests
using lawful means. The third assumption is that collective bargaining provides a process for meaningful employee participation through independently chosen representatives in the determination of work rules.

The labour relations process depends on the recognition of the legitimate rights and responsibilities of the union and management representatives. This involves the negotiation of the Recognition Agreement which sets strategies,
impasse-resolution techniques; and the administration of the negotiated labour agreement.

With the enactment of the Constitution of Kenya, 2010, labour relations have been enshrined in the Bill of Rights and by so doing each and every individual has been given the right to fair labour practices. The framework for the practice of industrial relations between organizations and the employees through the trade unions is regulated by the Labour Relations Act, 2007.
The Labour Relations Act, 2007 provides for the rights of employees including participating in forming a trade union or federation of trade unions, joining or leaving a trade union. Further, every member of a trade union has the right, subject to the constitution of that trade union to participate in its lawful activities, election of its officials and representatives, availing themselves for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the Act or a collective agreement.
The Act has also conferred the employers with the right of association in federations. To sustain the operations of Trade Unions, the Act has provided for the recovery of Trade Union Dues and Agency Fees from employees.

The Inter-Public Universities Councils Consultative Forum of the Federation of Kenya Employers (IPUCCF) was formed to consolidate and deal with those issues that were common among Public Universities in Kenya. This led to the Forum negotiating and signing a Memorandum of Agreement
on September 30, 2006 to facilitate the collective bargaining agreement negotiations between the parties.

The IPUCCF recognizes the Kenya Universities Staff Union as properly constituted to negotiate Collective Bargaining Agreements on behalf of staff on Grades 5-14. All the collective bargaining agreements negotiated with the individual university councils set out terms and conditions of service for all unionisable employees covered in the Memorandum of Agreement in compliance with the provision of an
employer recognizing a trade union for purposes of collective bargaining, as per the law.

It is worth noting that the effective engagement of IPUCCF and KUSU has resulted in the transfer of traditional Terms of Service to collective bargaining agreements hence rendering them to periodic review to reflect changing economic times through mutual negotiation.

To conclude my presentation, any successful enterprise to prosper and meet its objectives; there is
need for inclusivity and mutuality of creating a long term relationship with the unions representing staff as social and strategic partners. The success of all the public universities in Kenya is dependent on the support received from the staff unions.

Thank you.