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25/11/24

Rt. Hon. Speaker,
The report is in order
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Shi
22/11/24



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

PUBLIC PETITIONS COMMITTEE

REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 6 OF 2024 REGARDING DELAYS IN POSTING MEDICAL INTERNS, ABSORPTION OF UNIVERSAL HEALTH COVERAGE (UHC) CONTRACT STAFF, CONCLUSION OF COLLECTIVE BARGAINING AGREEMENT (CBAS) AND RECOGNITION OF AGREEMENT IN THE HEALTH SECTOR IN THE COUNTRY, BY HON. (DR.) ROBERT PUKOSE, MP, MEMBER FOR ENDEBES CONSTITUENCY

NOVEMBER 2024

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	DAY: Wednesday
TABLED BY: Hon. Dimos Mtshai (Chairperson)	
CLERK-AT-THE-TABLE:	hemale

Directorate of Legislative & Procedural Services
Clerk's Chambers
Parliament Buildings
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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present this House the Report of the Public Petitions Committee regarding Delays in posting medical interns, Absorption of Universal Health Coverage (UHC) Contract staff, conclusion of Collective Bargaining Agreement (CBAs) and recognition of agreement in the Health Sector in the Country

The Petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Hon. (Dr.) Robert Pukose, MP, Member for Endebes Constituency. The Petitioners prayed regarding posting of graduate interns for mandatory internship, transition health workers contracted under the UHC into permanent and pensionable terms, absorption of all other contracted health workers into permanent or pensionable service, addressing discriminatory disparities in compensation of medical interns, and conclusion of pending CBAs and recognition agreements.

In consideration of the Petition, the Committee collected the views from the Petitioner, various health sector unions, societies and associations, Council of Governors, Ministry of Labour and Social Protection, Ministry of Health, and the National Treasury.

The Committee observed that recommends that the Ministry of Health in collaboration with Public Service Commission (PSC), SRC and all relevant stakeholders to fast-track the comprehensive policy proposal to guide on the management of internship in the health sector to address concerns about postings and disparities witnessed in the payment of stipends to interns. The Ministry of Health to present the policy proposal to the Committee on Health within ninety (90) days of tabling of this report.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Chairperson expresses gratitude to the Members of the Committee and the Secretariat for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report before the House.


HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date: 20/11/2024

LIST OF ABBREVIATIONS AND ACRONYMS

CBA	Collective Bargaining Agreement
CHERP	COVID-19 Health Emergency Response Project
COG	Council of Governors
COTU	Central Organization of Trade Unions
ELRC	Employment and Labour Relations Court
KMPDU	Kenya Medical Practitioners, Pharmacists and Dentists Union
KUNAD	Kenya Union of Nutritionists and Dieticians
MOH	Ministry of Health
PSC	Public Service Commission
RTWF	Return To Work Formula
SRC	Salaries & Remuneration Commission
UHC	Universal Health Coverage

PART ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2. Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3. Committee Secretariat

The Public Petitions Committee is facilitated members of the secretariat:

**Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II**

**Ms. Anne Shibuko
First Clerk Assistant**

**Ms. Miriam Modo
First Clerk Assistant**

**Mr. Willis Obiero
Clerk Assistant III**

**Mr. Isaac Nabiswa
Legal Counsel II**

**Ms. Patricia Gichane
Legal Counsel II**

**Mr. Martin Sigei
Research Officer III**

**Ms. Roselyne Njuki
Senior Serjeant-at-Arms**

**Mr. Paul Shana
Serjeant-at-Arms**

**Mr. Calvin Karungo
Media Relations Officer III**

**Mr. Peter Mutethia
Audio Officer**

PART TWO

2. BACKGROUND TO THE PETITION

2.1. Introduction

1. Public Petition No. 6 of 2024 regarding Delays in Posting Medical Interns, Absorption of Universal Health Coverage (UHC) Contract Staff, Conclusion of Collective Bargaining Agreement (CBAs), and Recognition of Agreement in the Health Sector in the Country was presented to the House by Hon. (Dr.) Robert Pukose, MP on
2. The Petitioners averred that quality healthcare is the lifeline of a country's prosperity and that the maintenance of an appropriate complement of medical practitioners under suitable terms and conditions is fundamental to quality healthcare.
3. That Articles 27 and 41 of the Constitution as read together with the Employment Act, 2007 provide for the rights of employees and fair labour practices.
4. The African Charter on Human and People's Rights entitles everyone to equal protection of the law including the right to the respect of the dignity inherent in a human being and the right to receive information and to express and disseminate their opinions within the law.
5. Despite the elaborate safeguards in international law, the Constitution and statutes, medical practitioners in Kenya have been subjected to unfair labour practices, which have heightened since 2020.
6. In April 2020, following the outbreak of COVID-19, the Government recruited a number of health workers on one-year Universal Health Coverage (UHC) internship contracts to boost efforts on achievement of universal health as well as to aid in the fight against COVID-19.
7. The contracted health workers were released from service after one year, yet they had already been assigned personal numbers in the Ministry of Health. Their exit created a shortage that is yet to be addressed and has also made it hard for them to get any other employment in the public service since they are deemed to be in employment because they have personal numbers.
8. The Public Service Commission, the Human Resource Policies and Procedures Manual for the Public Service (2016) recognize public sector internship programs, which is both a legal requirement and prerequisite for licensure and independent practice in the case of medical practitioners.

9. Whereas the Ministry of Health has a duty to facilitate posting of graduate medical practitioners for mandatory internship, it is yet to post medical interns who ought to have been posted in September 2023.
10. Further, the Ministry, which is obligated to compensate medical interns through a standardised salary/stipend, has been applying different terms. For instance, while all other interns are paid based on a job group in the health sector, Diploma Clinical Officers are only paid a meagre allowance that can hardly cater to their basic needs during the internship period.
11. The health staff under UHC contract have been earning a salary equivalent to half of what their colleagues employed under county governments have been earning despite working in the same environment.
12. The delayed internship posting and subsequent licensure deny affected graduates the opportunity to get exposure to uninterrupted skills' mastery that would equip them to contribute to health service delivery in the country.
13. The plight of intern graduates remains unresolved despite recommendations by the Senate for absorption of UHC and other staff contracted during COVID-19. Further that the Kericho Declaration Agreement signed on 18th October 2023 by the medical staff Unions, the Ministry of Health and Council of Governors committed the Ministry of Health and Council of Governors (CoG) to facilitate absorption and mainstreaming of national government contract staff, including the COVID-19/UHC staff into employment.
14. The health workers currently under the UHC program are about three months to the end of their one-year extension, yet both county governments and the national government have not shown any plans of transitioning them and converting their terms of service to permanent employment as per the Kericho Declaration.
15. Further, the health workers under UHC contract have not received gratuities for their previous three-year terms served and no communication regarding the reasons for the delay and when to expect the said gratuities.
16. While all other unions in other sectors have concluded CBAs with their respective employers, the unions in the health sector have been subjected to frustrations and what appears to be deliberate intent to deny them their right to the CBAs.
17. That Petitioners' efforts to resolve these matters with Ministry of Health and other relevant bodies have not fruitful despite their numerous requests for audience and engagements.

2.2. Prayers

18. The Petitioners prayed that the Committee—

- (i) Investigates the reasons for the failure by the Ministry of Health to facilitate the posting of graduate interns for mandatory internship since September 2023 and recommends immediate posting of the affected interns and institution of measures to avert in internship posting henceforth;
- (ii) Inquires into the circumstances surrounding the failure by the Ministry of Health to transition health workers contracted under the Universal Health Coverage (UHC) in 2020 to permanent and pensionable terms in accordance with the Kericho agreement of 18th September 2023;
- (iii) Intervenes to cause the Ministry of Health to absorb all the Universal Health Coverage (UHC) health workers and other contracted health workers into permanent or pensionable service in order to address the acute shortage in the health sector;
- (iv) Recommends to the Ministry to immediately address discriminatory disparities in compensation of medical interns and instead apply fair remuneration as per the Salaries and Remuneration Commission terms pegged on job grades;
- (v) Recommends that the pending CBAs and Recognition Agreements be concluded expeditiously; and
- (vi) Makes any other recommendations it deems fit in addressing the plight of the Petitioners.

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1. Petitioners

19. On 19th March 2024, the Hon. (Dr) Robert Pukose, MP accompanied by the various health sector unions, societies and associations appeared before the Committee to make submissions. The health sector unions, societies and associations present included:

- (i) Kenya Medical Practitioners and Dentists Union (KMPDU)
- (ii) Kenya Union Of Clinical Officers (KUCO)
- (iii) Kenya National Union of Nurses (KNUN)
- (iv) Kenya National Union of Pharmaceutical Technologists and Officers (KNUPT)
- (v) Kenya National Union of Medical Laboratory Officers (KNUMLO)
- (vi) Kenya Union Of Nutritionists and Dietitians (KUNAD)
- (vii) Kenya Environmental & Public Health Practitioners Union (KEPHPU)
- (viii) Universal Health Coverage (UHC) Interns

20. The petitioners made submissions on the various issues of concern including, delay in posting of medical interns, absorption of UHC contract staff, realisation of the UHC, CBA and recognition agreement in the health sector, and intimidation and victimization of union leaders.

Delay in posting of medical interns

21. Internship is a compulsory requirement for medical practitioners, including pharmacists, dentists, clinical officers, nurses, and laboratory technicians. Moreover, interns comprise not only fresh graduates but also experienced health practitioners. Once assigned to various places of work, interns provide services after obtaining temporary licenses from their respective regulatory councils.

22. Over the past two years, there has been a noticeable delay in posting medical interns, with some waiting a year or two after graduating before being assigned. For example, the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) negotiated a CBA with the Ministry of Health, approved by the Salaries and Remuneration Commission (SRC), stipulating that medical officers should be posted for internships within 30 days of clearance by their regulatory councils. However, significant delays have persisted before they can commence service.

23. Interns constituted approximately 27-30 percent of the medical workforce in the counties. Consequently, delays in posting them after the preceding cohort completes its internship led to severe shortages in service delivery.

24. The Ministry of Health proposed salary payments to interns in a letter to the SRC, which responded with recommendations that led to reductions in stipends. For instance, stipends for doctor interns were slashed by 91 percent, while those for clinical officers and nurses were reduced by up to 50 percent. This occurred despite a negotiated CBA submitted to court.
25. Furthermore, interns are included in the staff establishment by the Public Service Commission (PSC), enabling their posting and allowing the Ministry of Health to plan and budget accordingly. However, the Ministry has inconsistently paid some interns according to their job group while neglecting to pay others.

Absorption of UHC contract staff

26. The country has been striving to ensure that every Kenyan can access healthcare regardless of their socioeconomic status or ability to pay for medical services. As part of this effort, the Ministry of Health engaged a significant number of healthcare workers starting in 2019. These staff, under the Universal Health Coverage (UHC) contract, courageously served on the frontlines during the COVID-19 pandemic, risking their lives.
27. There were three categories of UHC staff: first, those employed in 2020, totalling around 8,500, contracted for three years. Their service term was extended for an additional year based on the advisory of the Public Service Commission (PSC), with an indication that they would transition to permanent and pensionable terms after this extension. However, while counties extended the contracts of these officers in writing for three years, their payroll reflected only a one-year extension, leading to confusion on how to address the issue.
28. The second category of UHC staff, known as UHC interns, served between 2020 and 2021 for a year. Their concerns have never been addressed, and they have not received their gratuity. The third category comprised individuals referred to as the COVID-19 response team, numbering about 900. They worked briefly during the pandemic but did not receive their gratuity upon completion of their service.
29. Contrary to Section 5 of the Labour Relations Act, which stipulates equal pay for equal value of work, these different categories of workers performed duties in the same departments as their colleagues but received only half or a third of their salaries.
30. Additionally, these workers were denied the ability to plan for their futures as they were on contract terms, preventing them from pursuing career progression opportunities like their counterparts on permanent and pensionable terms.

Realisation of the Universal Health Coverage

31. Despite the government's pledge to bolster the healthcare workforce, there has been a decline in numbers. The decrease stemmed from natural attrition, resignations, and the migration of healthcare professionals to more favourable employment opportunities elsewhere.
32. Both national and county governments have failed to implement a strategy for annual recruitment of healthcare workers. The committee should propose a mechanism compelling national and county government to hire health workers, aligning with the goal of achieving Universal Health Coverage (UHC), similar to recruitment practices observed in the teaching profession and security sector.
33. Many counties have exceeded the Controller of Budget's (COB) ceiling points, which stipulate that no county should allocate more than 35 percent of its budget towards wages and remuneration. However, numerous counties have surpassed this threshold, with some exceeding 40 percent.

CBA and recognition agreement in the health sector

34. Despite Kenya's ratification of Convention C98, which guarantees the right to collective bargaining as outlined in Article 41 of the Constitution, unions have faced a concerning trend. Without issuing strike notices, they have encountered difficulties in getting their CBAs signed by national and county governments.
35. Notably, nurses and clinical officers have exerted significant effort over the years, yet their employers have failed to sign CBAs. In the case of doctors, despite the signing of a CBA intended to run from 2017 to 2021, 90 percent of its articles remained unimplemented throughout its four-year cycle.
36. Articles within the 2017-2021 CBA have been systematically violated, including provisions regarding the posting of medical interns, basic salary increments, post-graduate training for all cadres, and medical cover.
37. The medical allowance, ranging between Kshs. 4000 and Kshs. 6000 in 2011, was relinquished and replaced by comprehensive coverage. However, with the enactment of the new Social Health Insurance Act, only 40 percent of civil servants will be covered, leaving healthcare providers unable to afford the care they deliver.
38. Employers should be compelled to honour recognition agreements with unions, eliminating the need for strike notices to negotiate CBAs.
39. In the health sector, only three unions have recognition agreements, leaving others in limbo as employers bypass their legal right to recognition agreements. The committee should intervene to ensure justice for these unions.

3.2. Kenya Union of Nutritionists and Dieticians

Vide a letter Ref: KUNAD/TU/PSC&DN/VOL.A (1)/2024 dated 22nd March 2024, the General Secretary of KUNAD, Mr. Odero Michael Ouma submitted as follows–

Issues 1- Internship Stipend

40. The Cabinet Secretary in charge of Ministry of Health/ Director General Health & Director General Finance, the Chairperson SRC & Chief Executive Officer, Kenya Nutritionists and Dietitians Institute should Act on the court order awarding stipend of Kshs25,000 per month as per the Public Service Commission manual and harmonize Nutrition Interns posting procedure and stipend payment - START budgeting. This is in accordance with the Public Service Commission internship manual, Nutrition Act 2007, Kenya Nutritionists and Dietitians Internship Regulations and Guidelines.

Issue 2- Unemployment and Poor Staffing of Nutritionists and Dieticians in the Country

41. KUNAD recommends that Kenya Nutritionists and Dietitians Institute recommendations on human resource and workforce need as per Population growth and need be effected. This will honour the Country's commitment to achieving vision 2030 & SDGs. This is in accordance with Kenya Nutritionists and Dietitians Institute Scope of practice, Public Service Commission Human Resource Manual, Kenya National Bureau of Statistics 2019 census report, Kenya Health Workforce Report 2020, Kenya Demographic.

Issue 3 - Risk allowance and uniform allowances.

42. KUNAD recommends the award of Nutritionists Risk and Uniform allowances based on their point of service delivery. This is in accordance with Nutritionists and Dietitians act no.18 of 2007 and subsequent amendments, Health Act No.5 of 2019 and subsequent amendments. Kenya Nutritionists and Dietitians Training Manual, Kenya Clinical Nutrition Manual 2016 and Kenya Nutritionists and Dietitians Scope of practice.

Issue 4- Recognition Agreements at both National and County governments

43. The Cabinet Secretary for the Ministry of Health and the Council of Governors should Respect labour rights of all employees and ensure implementation of Labour Relations Act No. 14 of 2007 and the African Charter on Human Rights.

Issue 5- UHC staffing, absorption into Permanent and Pensionable terms

44. KUNAD recommends the review the discriminative terms, implementation of the Senate report and recommendations on UHC staffs and stop addressing human resource issues.

Issue 6- Biased and unreasonable classification of Nutrition and Dietetics Professionals

45. Nutrition plays key role in both clinical and community health services (Clinical manual and parenteral feeding manual). Therefore, nutrition be included as a key pillar in clinical practice as per the Kenya Nutritionists and Dietitians Institute manual.

3.3. The Ministry of Labour & Social Protection

On 20th March 2023, the Cabinet Secretary, Ministry of Labour & Social Protection, Hon. Florence Bore appeared before the Committee and submitted as follows:

46. Owing to the fact that the issues raised in the petition were ongoing national issues, the Ministry would provide a further detailed response to the petition.

47. The Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) issued a strike notice on 28th November 2022 and in response, the Cabinet Secretary appointed a Conciliator who attempted to reconcile the parties.

48. Given the complex nature of the dispute there was a need to have a broad-based intervention by various government agencies, from whom key information and opinion is required. The process was prolonged and not concluded amicably. The Conciliator's report of the negotiation process was released on 6th March 2024.

49. The KMPDU recently issued a notice of strike on 6th March 2024 expressing intention to proceed on industrial action within seven days of the notice. There were several issues raised by the Union including non-implementation of the parties CBAs, negotiation of the new CBAs, and failure to implement court decisions and directives.

50. In response, the Cabinet Secretary appointed a Conciliation Committee on 11th March 2024. In the meantime, the employer proceeded to Court and under Case Number ELRCPET/E032/2024 and obtained the following orders—

- a) restraining orders against KMPPDU proceeding on industrial action;
- b) the Conciliation Committee appointed by the Cabinet Secretary to expeditiously proceed for the union and the concerned public service employers to conclude a Tripartite Memorandum of Understanding on the Minimum Safety services the members of the Union shall provide in the event of a strike;

c) to institute a whole-nation approach towards resolving the instant outstanding dispute and to achieving a sustainable solution of the ongoing negotiation and conciliation to incorporate—

1. Head of Public Service
2. Cabinet Secretary, Ministry of Finance
3. Cabinet Secretary for Ministry of Public Service
4. Cabinet Secretary for Labour and Social Protection
5. Salaries & Remuneration Commission (SRC)
6. Public Service Commission (PSC)
7. Council of Governors (COG) and each of the 47 County Governors
8. The Federation of Kenya Employers
9. Central Organization of Trade Unions (COTU)
10. All National Referral Hospitals and the parties to the suit

51. The role of Ministry was to bring the parties on the table for them to have an agreement and negotiations. The Conciliation Committee was ongoing with meetings to have an agreement between the parties.

3.4. The Ministry of Health

Vide a letter REF: MOH/ADM/VOL.III/208 and dated 3rd July 2024, the Cabinet Secretary, Hon. Nakhumicha Wafula forwarded written submission to the Petition as follows—

Issue 1: Conclusion of the Collective Bargaining Agreement

Kenya National Union of Nurses

52. The Ministry of Health has concluded CBA negotiations with the Kenya National Union of Nurses. The proposed CBA has been forwarded to Salaries and Remuneration Commission (SRC) with all the support documentation for review and advice before the parties can sign.

53. The proposed CBA contains enhancement of Health Risk Allowance for Nurses from Kshs.3,750 to Kshs.5,000 as well as uniform allowance from Kshs. 10,000 to Kshs. 15,000. The National Treasury provided a written commitment to fund the proposed enhancements.

Kenya Union of Clinical Officers

54. The Ministry of Health is almost done with the CBA negotiations with the Kenya Union of Clinical Officers. The only remaining item on enhancement of health risk allowance where the union is demanding the same to be enhanced from Kshs.3,000 to Kshs.15,000. In the current stage of negotiations, the union is fixated on the

Kshs.15,000 rate. The MOH awaits budgetary commitment from the National Treasury concerning the proposed enhancement.

KMPDU

55. The Ministry has engaged KMPDU on negotiations of new CBA with a total of four meetings. The union gave its proposal, and the Ministry of Health gave its counter proposal. The union have indicated to us that they are keen to proceed with the negotiations.

Issue 2: Delay in the posting of medical interns

56. Following the release of the Salaries and Remuneration Commission Circular Ref. No. SRC/TS/19(III) of 13th March, 2024 the spelt out payable stipend in respect to all the cadres of the Healthcare workers interns, the Ministry of Health issued offer letters dated 18th March, 2024 to all the interns premised on the SRC advisory and requiring them to have commenced their internship as from 2nd April, 2024. Further, the Ministry of Health circulated widely posting of the above captioned intern cadres through publishing in The Star Newspaper of 10th April, 2024.

57. The Employment and Labour Relations Court (ELRC) in Eldoret issued orders on 18th April, 2024 under Petition No. E003 of 2024 suspending the SRC advisory circular requiring maintenance of status quo before the SRC circular was issued on 13th March, 2024 as far as posting of interns was concerned.

58. The National Government through the Ministry of Health and the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) executed a Return-to-Work Formula Agreement on 8th March, 2024 which among others spelt out the positions on internship by the Government and KMPDU. The Government indicated that the Intern Doctors discussion was the subject of the Court petition and as such be held in abeyance until the matter is heard and finally determined. On the other hand, KMPDU wanted immediate posting of interns in accordance with 2017-2021 CBA. Notwithstanding the two positions, the parties agreed to commence negotiations on the internship issue and conclude within sixty (60) days.

59. The Ministerial Return to Work Formula Implementation Committee has held meetings with the KMPDU officials. The Committee and the Union team led by Deputy Secretary General during a meeting held on 3rd June, 2024 reviewed the progress of implementation of all the items in the RTWF including the internship.

60. On 20th June, 2024, the RTWF implementation Committee met with Union team led by the Secretary General accompanied by Interns representatives where the two positions of GoK and KMPDU were reiterated and the union was keen on the outcome of Court deliberations on the case that had been scheduled for 27th June, 2024 which was rescheduled to 26th September, 2024.

61. KMPDU is agitating for posting of interns based on the 2017-2021 CBA where the union has no budgetary provision to cater for the resultant costs.

Issue 3: Absorption of UHC and CHERP staff into permanent and pensionable employment

62. The Public Service Commission approved extension of for UHC staff for a further period of two (2) years in line with the resolution of the Summit with effect from May, 2024 when the previous one (1) year contract lapsed. The National Treasury provided the Ministry of Health with Kshs.4.2 billion which was enough to cover the UHC costs under the current contract terms. Additional Kshs. 3.5 billion would be required to transition UHC staff to permanent and pensionable terms, the two levels of government were looking into mechanisms to be put in place before the expiry of the just extended contracts.

Issue 4: Medical cover for UHC staff

63. The UHC staff enjoy the NHIF standard cover as all other Kenyans.

Issue 5: Payment of gratuity for UHC staff

64. The gratuity was not included in the contract with the UHC staff. The provision was for a consolidated salary.

Issue 6: Enhancement of health risk allowance

65. The Ministry of Health is negotiating with Healthcare Workers Unions on the enhancement of the Health Risk allowance under the CBA framework where all the relevant stakeholders are participating including Salaries & Remuneration Commission and the National Treasury.

Issue 7: Review of internship policy

66. The draft policy is in place with external and internal stakeholder's validation was done, pending public participation process.

Issue 8: Recognition agreements for unionized health associations

67. The Ministry of Health has received requests for recognition agreements and has engaged the Lab Technician Union where they are currently verifying their submitted membership list as required under the Labour Relations Act.

3.5. Council of Governors

Vide a letter Ref: COG/6/40 Vol. 95 (65) and dated 1st July 2024, the Chief Executive Officer, Ms Mary Mwiti submitted a written response on the Petition as follows—

Issue 1: Internship under the UHC program

68. *Status Update:* The Ministry of Health through the Public Service Commission (PSC) recruited interns under the UHC program for one year with a view to offer young grandaunts an opportunity in the service. These interns were posted in the county health facilities for a period of one year and their stipend was paid by the Ministry of Health.

69. The internship was for a definite period of one year which ended. Additionally, the internship does not necessarily guarantee employment.

Issue 2: Delayed posting of Medical Interns

70. *Status Update:* Internship is part of the in-house training intended to expose medical workers to the world of work. It is also a mandatory post qualification requirement before the graduate doctors can be registered and licensed to practice. Posting of medical interns is the mandate of the Ministry of Health and therefore the Ministry is in a better position to address the matter. Additionally, the perennial delay in posting interns also affects smooth and uninterrupted service delivery in county health facilities where the interns train due to inadequate human resource in the county facilities.

71. Training is a function of the national government under the Ministry of Health. The Ministry to expedite posting of interns to facilitate their training clearance, registration and subsequent licensing to practice.

Issue 3: Disparity in the payment of stipends to interns (medical and clinical officers)

72. *Status Update:* Payment of internship stipend is the mandate of the Ministry of Health.

73. The Ministry of Health and Public Service Commission (PSC) to develop a comprehensive policy to guide on the management of internship in the health sector, this to include the stipend /payments payable.

Issue 4: UHC staff on a three-year contract

74. *Status Update:* In 2020, Governments County in collaboration with the Ministry of Health (MOH) and Public Service Commission (PSC) undertook recruitment of staff

of different cadres for a period of three (3) years, running from April 2022 to May 2023, under the Universal Health Care Program (UHC). The recruitment of a total of 9,681 health care workers was informed by gaps identified by county governments and shared with the MOH.

75. **Terms and Conditions:** The staff are supervised and managed by respective County Governments, but their payroll has been managed by the MOH since the inception of the program.

76. **Summit resolution:** On 12th February 2024, the Summit resolved that the Ministry of Health extends the contracts of the UHC staff for a further period of three years under the same terms and conditions to allow the two levels of government time to deliberate on the transition with clear modalities on the terms of employment.

77. However, PSC renewed the contracts for UHC for a period of one year which lapse between April and October 2024. MOH has further written to COG confirming the extension of UHC contracts for a further two years under the same terms. To date, the personnel emoluments for UHC remains with the Ministry of Health.

78. The Council received a copy of a letter from the Ministry of Health to the Public Service Commission on the transition of the staff under the UHC programme, absorption of the staff into permanent terms of employment by the respective County Public Service Boards.

79. **COVID-19 Surge Capacity Project (CHERP):** In 2020, PSC recruited 605 health care workers for management of the COVID 19 pandemic. Currently there are 441 Covid 19 health with an annual budget of 674 M workers working in the counties but remunerated by the Ministry of Health.

80. The three-year contracts will expire in the year. National Treasury advised the Ministry of Health to inform counties to absorb the 441 COVID 19 workers. County Governments are unable to absorb the aforementioned staff without the requisite budget.

81. The National Treasury to allocate through the budget FY 2024/2025 adequate budgetary provision to cater for the UHC and COVID -19 workers salary at the prevailing market rates including the attendant employment benefits such as medical insurance and pension contributions.

Issue 5: Collective Bargaining Agreements

82. **Status Update:** County Governments have recognized three unions in the health sector—

- (i) Kenya National Union of Nurses (KNUN) - December 2016
- (ii) Kenya Medical Practitioners and Pharmacists and Dentist Union - July 2017
- (iii) Kenya Union of Clinical Officers - December 2017

83. All County Governments have signed the Collective Bargaining Agreement of 2017-2021 with the Kenya Medical Practitioners and Pharmacist and Dentist Union. The negotiations for the CBA for 2017-2021 for KUCO and KNUN were not completed as parties did not agree on some monetary provisions provided therein. Therefore, there is no CBA executed between the Counties and the two unions. County Governments have not executed recognition agreement with KNUMLO.

84. County Governments are the employers of the members of trade unions, and therefore the respective unions are advised to initiate negotiations with the respective County Government for purposes of entering into the recognition agreement or signing of the CBAs. County governments are expected to undertake due diligence of the membership register to establish the membership in each county for purposes of entering into a Recognition Agreement as required by law.

Recognition agreements by 41 counties as the union has not met CoG hence only six counties have signed recognition agreements

85. The CoG recognizes the Kenya National Union of Medical Laboratory Officers (KNUMLO) is a new union and that most County Governments have not executed recognition agreements with KNUMLO.

86. Accordingly, the CoG has advised County Governments to undertake due diligence of the membership register presented to establish the union members in each county for purposes of entering into a recognition agreement as required by the law.

3.6. Ministry of National Treasury and Economic Planning

Vide a letter Ref: TNT/CONF 51/07 'I' (54) and dated 11th September, 2024, the Cabinet Secretary, Hon. CPA. John Mbadi submitted a written response to the Petition as follows—

Absorption of UHC Contract Staff

87. The Petition enquires on the transitioning of the UHC contract staff to permanent and pensionable terms in accordance with the Kericho Agreement of 18th September, 2023. The Government engaged the UHC contract staff on a three-year contract in 2020 to aid in the fight against the outbreak of the COVID 19 pandemic and boost the Governments efforts in achievement of Universal Health Coverage. The Government extended the contracts for a further one year following the lapse of the initial contract. This lapsed in May, 2024.

88. The Kericho Declaration Agreement between Medical Staff Unions and the Ministry of Health and Council of Governors committed to absorb and mainstream contract staff into employment. The UHC contract staff are posted in county facilities and

in this regard, the respective County Governments should consider absorbing the workers should they require their services.

Payment of Gratuity to UHC Contract Staff

89. The Government has proposed an allocation of Ksh.4.2 billion to Ministry of Health in the FY 2024/25 Budget for the UHC Contract Staff. This allocation will be utilized for payment of gratuities due to the UHC contract staff.

90. The petition also states that the health workers under UHC contract have been earning a salary equivalent to half of what their colleagues employed under County Governments earn. However, the UHC contract staff were on contractual basis under terms agreed upon with the Ministry and were not engaged on a permanent and pensionable terms.

Delays in posting Medical Interns

91. The petition requests for investigation into the reasons for failure by the Ministry of Health to facilitate the posting of graduate interns for mandatory internship since September, 2023 and recommends immediate posting of the affected interns.

92. The Ministry recognised that as part of the medical training, medical students are required to undertake a mandatory one-year post university internship before they are licensed to practice. To support implementation of this Programme, the Government allocated over Kshs.20.4 billion from FY 2019/2020 to FY 2023/24 and the same was disbursed as provided in Table 1 below:

F/Y	2019/20	2020/21	2021/22	2022/23	2023/24	TOTAL
Allocation	3,943,266,204	3,261,285,856	3,834,069,759	3,658,067,359	5,738,217,551	20,434,906,729
Actual Expense	3,943,266,204	3,261,285,856	3,834,069,759	3,658,013,665	3,433,118,620	18,129,754,104
Balance	-	-	-	53,694	2,305,098,931	2,305,152,625

93. In the FY 2023/24 Budget, the Ministry of Health was allocated KShs.5.7 billion to cater for the Internship Programme. This includes additional funding amounting to KShs.2.1 billion provided in the FY 2023/24 Supplementary Estimates No.1.

94. The Ministry proposed Kshs.3,700,000,000 in the FY 2024/25 Budget for the Ministry of Health to cater for the Internship Programme. To ensure sustainability of the Programme, the Ministry of Health engaged the Salaries Remuneration Commission on the rates payable under the Internship Programme which has been reviewed as provided in Table 2 below:

S/No.	Intern	Initial Stipend per month	Revised Stipend per month (Min)	Revised Stipend per month (Max)
1	Medical, Dentists, Pharmacists	206,400	47,000	70,000
2.	BSc Nursing	106,350	35,000	50,000
3.	BSc Clinical	115,400	35,000	50,000
4.	Diploma Clinical	15,000	27,000	35,000

95. With the revised rates the Ministry of Health has adequate resources to cater for placement of the 3,759 interns for three (3) months w.e.f. 1st April 2024. The Government is committed to ensuring the engagement of medical interns within the prevailing resource constraints. In addition, the Ministry recommends that the review of the National Guidelines on Internship Programme be fast tracked to accommodate Voluntary/self-sponsored Internship in Private Health Facilities.

CBA with Health Workers

96. The Government is committed to implementing the Collective Bargaining Agreements with Health Workers. To show this commitment, the National Government has been providing training to eligible postgraduate medical officers from 2018 as provided for in the 2017 CBA with health unions.

97. This is also in compliance with the Constitutional requirement for the National Government to undertake capacity building and technical assistance to the Counties. The National Government has been providing financial support to cater for post graduate training of the medical officers. Between the FY 2019/2020 and FY 2023/24 the Government allocated a total of Kshs.846,800,000 to cater for training of doctors of which Kshs.770,300,000 was disbursed as provided in Table 3 below.

F/Y	2019/20	2020/21	2021/22	2022/23	2023/24	Total
Allocation	179,623,417	143,421,075	162,745,691	91,397,200	269,590,710	846,778,093
Expenditure	176,996,287	143,406,804	171,556,683	112,810,603	165,540,530	770,310,907
Variance	2,627,230	14,271	21,413,403	21,413,403	104,050,180	76,467,186

98. In the FY 2024/25 Budget, the Government has proposed Kshs.407,000,000 to the Ministry of Health to cater for post graduate training of the medical officers. This is contrary to the Union assertions that no funding has been provided to cater for training from 2018 cohort.

99. The petition avers that the Government has been frustrating the right of Doctors to a CBA. This should be taken up with the specific institutions under the Ministry of Health and with the respective County Governments.

PART FOUR

COMMITTEE OBSERVATIONS

100. Having collected the views from the various stakeholders, the Committee made the following observations, that—

- (i) Internship for health practitioners is a mandatory requirement for registration and subsequent licensing to practice.
- (ii) The allocation of Kshs.20.4 billion from FY 2019/2020 to FY 2023/2024 towards posting of graduate interns for mandatory internship has not been sufficient to accommodate all the graduate interns coming through the years.
- (iii) The delay in posting of interns affects the smooth running and interrupts service delivery in county health facilities as the facilities have inadequate human resources.
- (iv) KMPDU was agitating for posting of interns based on the 2017-2021 CBA for which the Ministry of Health had no budgetary provisions to cater for the resultant costs. However, the matter was pending before the Employment and Labour Relations Court in Eldoret under Petition No. E003 of 2024. The Judgement was delivered on 17th October 2024, where the court ordered the parties to renegotiate on the terms of interns provided for in the CBA.
- (v) There were clear disparities in remuneration across the different cadres of health workers, for instance laboratory or nutritionists or dietician cadres were not remunerated during their internship.
- (vi) The contracts for the UHC staff have been extended over the years, to allow for the two levels of governments time to deliberate on the modalities on the permanent and pensionable terms, with the latest extension set for a further two years after the lapse between April and October 2024.
- (vii) Transitioning the UHC staff to permanent and pensionable terms has not been possible due to inadequate budgetary allocation to county governments which are expected to absorb both UHC and CHERP staff.
- (viii) The disparity in compensation of interns in the health sector was occasioned by the fact that the Ministry of Health was allocated Kshs5.7 billion to cater for the internship programme which was not enough to place all the interns at the initial stipend rates. Therefore, the rates were revised to accommodate 3759 interns from April 2024.
- (ix) County Governments had recognized three unions in the health sector namely, the Kenya National Union of Nurses (KNUN) (December 2016); Kenya Medical

Practitioners and Pharmacists and Dentist Union (July 2017); and Kenya Union of Clinical Officers (December 2017). Only six (6) county governments had signed and executed the recognition agreements with the respective unions.

- (x) The Ministry of Health was in the process of receiving requests for recognition agreements from health sector unions and was in the process of verifying submitted membership list as required under the Labour Relations Act.

PART FIVE

COMMITTEE RECOMMENDATIONS

101. Pursuant to the provisions of Standing Order 227, the Committee makes the following recommendations—

- (i) The Ministry of Health in collaboration with Public Service Commission (PSC), SRC and all relevant stakeholders to fast-track the comprehensive policy proposal to guide on the management of internship in the health sector to address concerns about postings and disparities witnessed in the payment of stipends to interns. The Ministry of Health to present the policy proposal to the Committee on Health within ninety (90) days of tabling of this report.
- (ii) The Ministry of Health in collaboration with the Council of Governors fast-tracks and presents a policy proposal on the employment of the UHC and CHERP staff on permanent and pensionable terms, including budgetary provision, to the Committee on Health within sixty (60) days. In the meantime, the Ministry of Health and the county governments continuously renews the contracts for UHC and CHERP staff until adequate provision of budget for their employment on permanent and pensionable terms.
- (iii) Health sector unions without recognition agreements to engage the Council of Governors and the Ministry of Health to develop a framework as per the provisions of Section 54 (3) the Labour Relations Act. The Cabinet Secretary in charge of the Ministry of Health and the Council of Governors to facilitate the verification of the membership register of the various unions to fast-track the adoption of recognition agreements across the 47 counties.

THE NATIONAL ASSEMBLY PAPERS LAID.	
DATE: 27 NOV 2024	DAY: Wednesday
TABLED BY:	Hon. Nimrod Mbai (Chairperson)
CLERK-AT THE TABLE:	hemale

Signed:  Date: 29/11/2024

THE HON. NIMROD MITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

