

Approved for tabling before the House.

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SNA
29/9/2021


PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT FIFTH SESSION

SELECT COMMITTEE ON IMPLEMENTATION

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 30 SEP 2021	DAY: Thursday
TABLED BY: <i>Markus ole Kenta</i>	
CLERK-AT THE-TABLE:	<i>James Gino</i>

REPORT ON

IMPLEMENTATION STATUS OF THE REPORT OF THE DEPARTMENTAL
COMMITTEE ON HEALTH REGARDING THE KENYATTA UNIVERSITY
HOSPITAL PROJECT

Tabled on 30/9/21
J. Gino

Directorate of Audit, Appropriations & Other Select Committees
Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

September, 2021

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ABBREVIATIONS

FY	-	Financial Year
H.E	-	His Excellency
KUTRRH	-	Kenyatta University Teaching, Research & Referral Hospital
KU	-	Kenyatta University
MoU	-	Memorandum of Understanding
SAGA	-	Semi-Autonomous Government Agency
UASU	-	University Academic Staff Union
UHC	-	Universal Health Coverage
VC	-	Vice Chancellor

CHAIRPERSON'S FOREWORD

The Select Committee on Implementation scrutinizes resolutions of the House (*including adopted Committee Reports*), petitions and the undertakings given by the National Executive and examines whether such decisions and undertakings have been implemented within sixty (60) days as provided for in the National Assembly Standing Orders and whether such implementation has taken place within the minimum time necessary.

The Report of the Departmental Committee on Health on the Kenyatta University Teaching and Referral Hospital project was tabled in the House on 17th October 2018 and adopted by the House on 26th May, 2019. The Select Committee on Implementation sought to follow up on the implementation status of the report mentioned above and subsequently held meetings with officials of the Ministry of Health; the Ministry of Education; the Vice-Chancellor, Kenyatta University; and University Academic Staff Union-Kenyatta University Chapter. The Committee also received written submissions from the National Treasury.

The Committee registers its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for facilitation and support in producing this report.

Pursuant to Standing Order 199(6), it is, therefore, my pleasant duty and privilege, on behalf of the Committee on Implementation, to lay this report on the Table of the House.

Hon. Moitalel Ole Kenta, MP

EXECUTIVE SUMMARY

The Select Committee on Implementation scrutinizes resolutions of the House (*including adopted Committee Reports*), Petitions and the undertakings given by the National Executive and examines whether such decisions and undertakings have been implemented within sixty (60) days as provided for in the National Assembly Standing Orders and whether such implementation has taken place within the minimum time necessary.

The Departmental Committee on Health tabled its Report on the Kenyatta University Teaching and Referral Hospital project in the House on 17th October 2018 and was adopted by the House on 26th May, 2019. The Select Committee on Implementation sought to follow up the report's implementation status and subsequently held meetings with officials of the Ministry of Health, the Vice-Chancellor, Kenyatta University; University Academic Staff Union-Kenyatta University Chapter; and the Ministry of Education. The Committee also received written submissions from the National Treasury.

During consideration of the matter, the management of Kenyatta University expressed fears that the Hospital might not achieve its major objective of teaching, training, research and collaboration. However, the Ministry of Health submitted that aspirations of the University Hospital to provide specialized services are still being upheld. Further, the Ministry submitted that the Hospital enjoys autonomy which was the spirit of the Departmental Committee on Health in recommending that the University run the Hospital.

The Committee notes that some of the best global hospitals are University Hospitals; the Committee also notes that the current Memorandum of Understanding (MoU) between Kenyatta University and the Kenyatta University Teaching, Research & Referral Hospital (KUTRRH) Board is more skewed towards KUTRRH. There is a need to ensure that Kenyatta University has full access to the Hospital facilities for use by its College of Health Sciences, which comprises of the schools of Medicine, Pharmacy, Nursing, public health, and Dentistry.

The Committee, therefore, recommends the following:

- 1) The Cabinet Secretaries for Education and Health should ensure that Kenyatta University has full access to the Kenyatta University Teaching, Research and Referral Hospital facilities, as envisaged, for use by its College of Health Sciences, which comprises schools of Medicine, Pharmacy, Nursing, Public Health, and Dentistry.
- 2) H.E. the President should revoke Legal Notice No. 4 of 2019 and revert the Kenyatta University Teaching, Research and Referral Hospital to a University Hospital within six (6) months of the adoption of this report.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Implementation is established under Standing Order 209 of the National Assembly Standing Orders.
2. The Committee is charged with scrutinizing the resolutions of the House (*including adopted Committee reports*), petitions and the undertakings given by the National Executive. It also examines whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and whether or not legislation passed by the House has been operationalised and where operationalised, the extent to which such operationalisation has taken place within the minimum time necessary. The Committee may propose to the House, sanctions against any Cabinet Secretary who fails to report to the relevant select Committee on implementation status without justifiable reasons.
3. Standing Order 201 further provides that within sixty days of a resolution of the House or adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the appropriate Committee of the House.
4. The mandate of the Committee is further enhanced by the provisions of Article 153(4) (b) of the Constitution that requires the Cabinet Secretaries to provide Parliament with complete and regular reports concerning matters under their control.

1.2 The Committee Membership

5. The Committee comprises of the following Members -

Chairperson

Hon. Moitalel Ole Kenta, MP
Narok North Constituency

Orange Democratic Party

Vice-Chairperson

Hon. Godfrey Osotsi, MP
Nominated

Amani National Congress

Members

Hon. Joash Nyamache Nyamoko, MP
North Mugirang'o Constituency

Jubilee Party

Hon. Paul Simba Arati, MP
Dagoretti North Constituency

Orange Democratic Party

Hon. Alois Lentoimaga, MP
Samburu North Constituency

Jubilee Party

Hon. Benjamin Dalu Tayari, MP
Kinango Constituency

Orange Democratic Party

Hon. (Dr.) James Murgor, MP
Keiyo North Constituency

Jubilee Party

Hon. Johnson Many Naicca, MP
Mumias West Constituency

Orange Democratic Party

Hon. John Muchiri Nyagah, MP
Manyatta Constituency

Jubilee Party

Hon. Moses Kuria, MP
Gatundu South Constituency

Jubilee Party

Hon. Silvanus Onyiego Osoro, MP
South Mugirang'o Constituency

Kenya National Congress

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency

Ford Kenya

Hon. Paul Odalo Abuor, MP
Rongo Constituency
Orange Democratic Party

Hon. Hassan Oda Hulufu, MP
Isiolo North Constituency
Kenya Patriots Party

Hon. Nelson Koech, MP
Belgut Constituency
Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP
Masinga Constituency
Wiper Democratic Movement-Kenya

Hon. Mukuha Gabriel Kago, MP
Githunguri Constituency
Jubilee Party

Hon. John Njuguna Wanjiku, MP
Kiambaa Constituency
United Democratic Alliance

Hon. Feisal Abdalla Bader, MP
Msambweni Constituency
Independent

Hon. Michael Thoya Kingi, MP
Magarini Constituency
Orange Democratic Party

Hon. Kihara Peter Kimari, MP
Mathioya Constituency
Jubilee Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency
Wiper Democratic Movement-Kenya

Hon. Jared Okello, MP
Nyando Constituency
Orange Democratic Party

1.3 Committee Secretariat

6. The following secretariat supports the Committee in executing its mandate –

Ms Tracy Chebet Koskei
Clerk Assistant I /Team Leader

Mr Abdirahman Hassan
Clerk Assistant II

Ms Mercy Wanyonyi
Legal Counsel I

Ms Winnie Kizia
Media Relations Officer

Dr Donald Manyala
Research Officer II

Ms Jane Serem
Audio Officer I

2.0 INTRODUCTION

7. The Departmental Committee on Health tabled, in the House, its report on the Kenyatta University Teaching, Research and Referral Hospital project on 17th October, 2018 (*Appendix III*).
8. The Kenyatta University Teaching, Research and Referral Hospital was purposed to be a teaching and referral hospital with a bed capacity of six hundred and fifty (650). The facility objective was to offer highly specialised services that include; Oncology, renal services, orthopaedic and accident and emergency services supported by a functional theatre, laboratory, pharmacy and radiology services.
9. The Project was financed through a concessional loan agreement between the Government of Kenya and the EXIM Bank of China amounting to Kshs. 8.7 Billion. At the time, 85 % of the loan had been disbursed and utilized.
10. At the time of tabling the report, it was indicated that the Hospital's design, infrastructure development, and equipping had been completed and was ready for use. However, the personnel and capacity building component of the loan totalling Kshs 1.37 Billion remained outstanding, as it is a condition precedent pegged on the training of personnel who are yet to be recruited by the University as per the Loan Agreement. The University has not done the recruitment due to budgetary constraints. The University required Ksh.1.37 billion to carry out a dry run and start soft operations, beginning with a 160-bed capacity.
11. The budget for the dry run was Kshs. 891 million and would cover staffing and operational costs and the University was to provide the Hospital with Kshs. 234 million.
12. The Departmental Committee on Health concluded that the Project was well conceptualized and fitted within the government's big four agenda of providing universal health care. Therefore, the Committee recommended that the Project be immediately supported to be operationalized and specifically recommended that the National Treasury immediately allocates the Hospital the required amount of Kshs. six hundred fifty-six million (Kshs 656m) to carry out a dry run of the facility, unlock the remaining loan component, and consider providing additional funding for the facility's soft opening. This was to be ratified by the National Assembly in the subsequent Supplementary Estimates.
13. The Hospital opened its doors to the first patient on Monday, 28th October, 2019 after successfully conducting a dry run from 27th September to 27th October, 2019, followed by a successful soft run from 28th October, 2019 to 24th November, 2019. To operationalize the first 160 beds, the Hospital operationalized oncology, renal dialysis, accident & emergency, trauma & orthopaedics, ICU, radiology, laboratory, pharmacy, mortuary and other allied services. The Hospital was designated as an isolation and Treatment Centre on 24th March 2020 with over 400 beds designated for COVID-19 patients.

14. His Excellency the President officially launched the Hospital on 10th September, 2020.

15. The Select Committee on Implementation took up the matter, pursuant to Standing Order 209 of the National Assembly Standing Orders. The Committee held meetings and received submissions on various dates with officials of the Ministry of Health, the Vice-Chancellor Kenyatta University; University Academic Staff Union- Kenyatta University Chapter and the Ministry of Education. The Committee also received written submissions from the National Treasury.

3.0 SUBMISSIONS FROM STAKEHOLDERS

16. The Committee held meetings with various stakeholders whose submissions are detailed below:

3.1 Submission by the Ministry of Health

The Cabinet Secretary for Health, Ms Sicilly Kariuki; the Principal Secretary for the State Department for Health, Ms Susan Mochache and other officials of the Ministry appeared before the Committee on Tuesday, 15th October, 2019 and Thursday 14th November, 2019. They submitted that: -

17. The Kenyatta University Teaching, Research & Referral Hospital was established under Legal Notice No.4 of 2019. The Hospital has been categorized as a state Parastatal.
18. The decision to have the University Hospital run as a Parastatal was informed by the need to have Kenyatta University stick to its teaching mandate and training of medical professionals. The Hospital was placed under the Ministry of Health to provide stewardship.
19. The aspirations of the University Hospital to provide specialized services are still being upheld. Further, the Hospital enjoys autonomy which was the spirit of the Departmental Committee on Health in recommending the University run the Hospital.
20. Regarding how the decision was arrived at, to have the Hospital run as a Parastatal, the Committee was informed that His H.E the President had consulted various parties. However, she could not confirm the specifics of the consultations.
21. The Ministry appointed a task force to oversee the handover of the Hospital from the Contractor. A team of different medical specialists reviewed the facility spaces and equipment and provided a report. The recommendations of the report were included in the implementation plan of the Hospital.
22. The Hospital Board comprises twelve (12) members and the appointment of the chairman, Board of directors and acting Chief Executive Officer is in place. The Board had already met five (5) times at the time of the meeting. Human resources instruments had been developed and approved by the Board and it advertised and recruited a total of five hundred and twenty-one (521) staff.
23. Kenyatta University had initially tried to get funding for the University Hospital project from the China Exim Bank. However, this arrangement had not worked out and the Project had stalled and that is when the National Treasury came in to assist with funding.
24. The Hospital had been allocated an initial budget of Kshs. six hundred (600) million to operationalize the services and other additional allocations were expected going forward.

25. The Principal Secretary for Health opined that, it was not too late to change the running of the Hospital and that in future, the University Hospital could be run by the University through a Public-Private Partnership.
26. Regarding whether the Kenyatta University had been compensated for its initial investment in the Project before the takeover, the Principal Secretary submitted that there had been no compensation and that was unlikely to happen just as is common practice in government to government takeovers.
27. The Cabinet Secretary in her submission, informed the Committee that there were several consultations made before conferring the status of a parastatal to Kenyatta University Hospital. Between April and October 2018, there were several Inter-Ministerial consultative meetings that took place in the Office of the President under the chairmanship of the Head of Public Service. In attendance in the meetings were Cabinet Secretaries for Health and Education; Principal Secretary for Health; the Solicitor General; Economic Advisor to the office of the President, Representative of the Principal Secretary National Treasury; representative of State Corporation Advisory Council (SCAC); Representative of the Ministry of Education; the Director of Medical Services and the representative of the Attorney General.
28. The meetings resolved to form an Inter-Ministerial Technical Committee comprising key stakeholders including representatives from the National Treasury, the Ministry of Health, the Ministry of Education, the office of the Attorney General, the State Corporations Advisory Council (SCAC) and Senior Economic Advisor, Office of the President.
29. The Terms of Reference for the Technical Committee was to analyze and advise on the legal framework under which the Hospital will be operated, develop a roadmap and an implementation plan for the operationalization of the Hospital and a Cabinet Memorandum on the operationalization of the Hospital.
30. Consequently, the technical committee recommended establishing the Hospital as a state corporation and at level six. The decision was premised upon the provisions of the 4th Schedule of the Constitution of Kenya which places the function of managing national referral health facilities on the Ministry of Health. Further, Section 25 of the Health Act, together with Schedule 1 thereto on Tertiary Hospitals, states that any public health facility of level 6 shall be a national referral health facility under the Ministry of Health.
31. Further, the Ministry of Health under Executive Order No. 1 of 2018 is mandated to manage National Health Referral Services. A Cabinet memorandum was developed seeking approval of the following:
 - (i) The Hospital is to be corporatized as a legal entity under section 3(1) of the State Corporations Act (Cap 446) of 1986, which provides that the President may, by order, establish a State Corporation to perform the functions listed therein.

- (ii) The Hospitals assets and liabilities be transferred to the legal entity established under (i) above.
 - (iii) The Hospital be designated as a National Teaching, Research and Referral Hospital to provide facilities for medical education for Kenyatta University and for research either directly or indirectly through collaborating health institutions, to provide facilities for education and training in nursing and other health and allied disciplines and to participate as a National Referral hospital in National health planning.
32. Following approval of the Cabinet Memorandum, the Attorney General approved the Legal Order which was eventually signed by His Excellency the President and gazetted as Legal Notice No. 4 of 2019 dated 25th January, 2019 effectively making the Hospital a parastatal.
33. On the Budgetary allocation to the Hospital by the National Treasury, the capital investment for the Project was Ksh. 8.8 Billion. During the Financial Year 2018/19, the Hospital was allocated Ksh. 655 Million under Supplementary II and the funds were availed in July, 2019. In the Financial Year 2019/20, the budgetary allocation was Ksh. 500M; a further Kshs. 1.8 Billion was to be released to the Hospital upon recruitment of staff.
34. To facilitate the handing over of the Hospital from the Contractor and Kenyatta University, the Hospital Board recommended the formation of an Inter-Ministerial Taskforce vide Min 8/12/4 /2019 and after that, the Principal Secretary for Health duly appointed the Taskforce.
35. The Terms of Reference for the Taskforce were—
- (i) To liaise with hospital Contractor and compile all documents related to the Project, including and not limited to the structural, architectural, electrical, mechanical and built drawings, statutory approvals and Master plan.
 - (ii) Liaise with the Contractor and the KU to check the existing equipment compared with what was in the contract and document any variations and reasons for it, if any. This should include an equipment test certificate for lifts and building logbooks.
 - (iii) To inspect all infrastructure, equipment, furniture, software, and report on their current status and compare to what was allowed in the initial contract.
 - (iv) To review all service contracts to determine their worth given that the new Hospital is not bound to adopt them.
 - (v) To receive and review all warranties, water accounts, and electricity accounts to transfer them to the new Hospital.
 - (vi) To receive any agreement related to training technical people handling the equipment and agreements related to spare parts.
 - (vii) To receive and compile all reports previously done concerning the Hospital.
 - (viii) To obtain all information related to the children's Hospital so that decision can be taken on how to move that Project forward.

- (ix) To compile any other information that they may deem necessary and valuable for handing over the Project.

36. Subsequently, upon finalizing the task, a handover report was submitted to the Hospital Board on 23rd May 2019, followed by a handing over function on 24th May 2019. The Hospital has since been registered and licensed by the Kenya Medical Practitioners and Dentist Council as a level six national referral hospital.

3.2 Submission by the Vice-Chancellor, Kenyatta University

The Vice-Chancellor (VC) of Kenyatta University, Prof. Patrick Wainaina, acting Director, Kenyatta University Teaching, Research & Referral Hospital, Prof. Okello Agina and other officials of the University appeared before the Committee on Tuesday, 12th November, 2019. The VC submitted as follows; that-

37. The Kenyatta University Teaching & Referral Hospital was the first university hospital to be started in the country to address issues affecting medical schools in the country, with no hospitals of their own and instead relies on government hospitals for training and research.
38. The Kenyatta University hospital project development was run and supervised by the University, which mainly focused on research services and provided the technical team while the Ministry of Works provided consultancy services.
39. The Project was funded through a loan from Exim Bank of China and guaranteed by the Government of Kenya. The VC also informed the Committee that he was not aware of any other donor who came to supplement the Project other than the loan from China. The money was released in four phases, and it was at the 4th phase and during operationalization of the Project that the idea of running the Hospital as a parastatal came up.
40. The University made a request to the National Treasury for funding with a proposed budget and the Treasury called for a meeting to deliberate on the viability of the Project. The National Treasury informed the University that there was no policy for universities to run hospitals and that the idea of a university running a hospital was an expensive venture.
41. The Cabinet Secretary for the National Treasury and Planning advised the University to consider a public-private partnership, develop a policy and develop a structure where the Hospital will sustain itself financially.
42. The Ministry of Health thereafter came up with a draft order on how to run the Hospital as a parastatal. The Ministry wanted to use the Hospital as a level 6 hospital to help realise the Big Four Agenda.

43. The University felt that running the Hospital as a parastatal might not help them achieve their original objective. The University could run the Hospital if given an initial capital.
44. The University came up with various options on effectively running the Project and met with the Ministry of Health for negotiations. During negotiations and before the University made their final presentation, an order came indicating that the Hospital would be run as a parastatal.
45. A Semi-Autonomous Government Agency (SAGA) option was one of the options fronted by the University as part of their final presentation to the Head of Public Service. However, the University was never afforded an opportunity to present the final document.
46. When the University received the order on the Gazettment of the Hospital as a parastatal, it was agreed that the Order could still be used to achieve some objectives if implemented to the letter. Nonetheless, it could have been better if the University managed the Hospital.
47. Although the order indicated that the University would be the primary beneficiary and represented at the Board level by the Vice-Chancellor, Principal Medical School and the Chairman Kenyatta University Teaching, Research & Referral Hospital Project, the VC expressed fears that the Project might not achieve its primary objective of teaching, training, research and collaboration if the Hospital is run as a parastatal.
48. The VC reiterated that the Ministry of Health and Kenyatta University have different strategic plans and management structures, leading to overlapping positions and conflicting priorities. He cited procurement, human resource and funding of a common budget as some of the challenges the Project might face if managed by the Ministry and the University.
49. The priority of the Ministry of Health was generally clinical while the Kenyatta University's focus was the development of new ideas on causes and management of diseases and it would be difficult to deal with causes if the University doesn't control the Hospital. The University thus wanted to manage the University Hospital to help provide clinical services that are research-based and provide high-level training to operate sophisticated equipment.
50. The University had not received any communication from the National Treasury on whether they had done the requisite on-lending agreement amendments as per the recommendations contained in the Report of the National Assembly's Departmental Committee on Health.
51. The National Treasury gave approval to the State Department for University Education to incur an additional expenditure of Kshs. Six hundred fifty-five (655) million for operationalization of phase one of Kenyatta University Hospital during the

financial year 2018/19. The money was later transferred to the Hospital Board when the Hospital became a parastatal.

52. The University had done some benchmarking visits and established that the best-run hospitals are managed by universities as its research directly informs clinical services. For example, Istanbul University runs two hospitals.
53. The VC further informed the Committee that other universities in the country are also coming up with similar projects hence the need to provide enabling legislation for universities to run hospitals.

3.4 Submission by the University Academic Staff Union (UASU) - KU Chapter

The Chairman of the University Academic Staff Union KU Chapter, Mr Peter Lemoesu; Vice-Chairman Dr Itolondo Wilfred; Assistant Chapter Secretary Dr Calvin Kayi and other officials of the Union appeared before the Committee on Thursday, 21st November, 2019 and submitted as follows; that: -

54. The University has depended on infrastructure and facilities in other health institutions to train health professionals, an unreliable, expensive, and unsustainable situation. Additionally, these institutions cannot offer specialized training for health care professionals beyond the undergraduate level.
55. The KUTRRH was envisioned in the KU Charter, the Statutes and the Strategic Plan of 2005-2015 and reiterated in the Strategic Plan of 2016-2026 to enhance the training of health professionals and specialists and conduct medical research.
56. The construction of KUTRRH began in 2012 and was completed in 2017. The Project was majorly financed by a loan from the Exim Bank of China to KU and guaranteed by the Kenyan Government.
57. Before the change-over of the Hospital to a parastatal, KU started managing and operating it. The circumstances that led to the change of status and ownership of the KUTRRH was thus unclear to the Union.
58. The Hospital was to provide highly trained and qualified medical professionals who will provide contemporary patient-centred, interdisciplinary and collaborative health care. This was aimed at reducing the burden of disease and reversing global medical tourism to Kenya. The Hospital was also to provide a platform for research and outreach which would have been realized through;
 - (i) Undertaking robust biomedical and clinical research that ensures the valid, accurate and reliable generation of knowledge and data that is necessary for decision making as well as transforming health care;
 - (ii) Provision of quality health care services to students, staff and all including the KU community through NHIF card system to supplement the benefits of the Directorate of Health Services at KU;

- (iii) Provision of highly qualified health care professionals, researchers, educators and leaders; and
- (iv) Transforming medical training, research and healthcare through innovative biomedical and clinical research.

59. The officials opined that it would be difficult to achieve the above objectives if the University was denied the opportunity to manage and operate the Hospital.
60. UASU-KU Chapter as a critical stakeholder of Kenyatta University, was never involved in the process that led to the change of the KUTRRH to the status of a parastatal. UASU only came to learn about it in April, 2019 when the current management board of the Hospital was appointed. Section 17 and 18 of Legal Notice counteracts the spirit and letter of the Constitution of Kenya 2010 and particularly Chapter Six.
61. The Hospital was to benefit KU community and the country at large through the attraction of research grants that would lead to evidence-based improvements in clinical care, innovations and better healthcare outcomes; integration of medical education, medical research and clinical services, avoiding competing and conflicting interest and priorities due to differences in policy frameworks; and provision of quality medical education and research at postgraduate level leading to earnings in foreign exchange through the attraction of international students and savings through local training.
62. The Chair of the Board of Directors of KUTRRH did not hand over when she exited as Vice-Chancellor of KU despite the Hospital insisting that the university hands over all related documents. Despite a myriad of letters written by UASU, other KU unions, the Vice-Chancellor and Chairman of Council requesting for handing over and forensic audit.
63. In an email dated 1st October, 2019, the Chief Executive Officer of the Hospital updated the Chair and Board of Directors on the progress of the Hospital. It informed them that a team comprising of public works officials and staff of the Hospital were assessing the Chinese contractor variation claims amounting to 1.3 billion.
64. The Ministry of Education and the KU leadership, particularly the Council and the VC, were not involved in the process that led to the Hospital's current status.
65. The Legal Notice No.4 of 22nd January, 2019 that changed the Hospital to a parastatal was never presented to the National Assembly for consideration contrary to the Statutory Instruments Act.
66. The Representatives of the UASU-Kenyatta University wondered why the haste of turning the Kenyatta University Hospital into a parastatal, yet there was no consensus on the same by the stakeholders.

67. The University has partnered with various entities locally and internationally, including but not limited to Michigan State University in the USA and Makerere University. Turning the Project to a parastatal midway will affect the agreements and collaborations entered into with various partners.
68. The representatives of the UASU-Kenyatta University alleged that Mr. Okiya Omtata, an activist, had gone to court to challenge the appointment of Prof. Olive Mugenda as the Chairperson of the KUTRRH Board and that the matter is still pending before the courts.
69. They further alleged that the hospital's new management forcefully evicted the staff of KU who were transferred to KUTRRH and that the gate leading to the University Hospital was locked, hence making access difficult.
70. The Committee held a further meeting with the Union officials on 17th February, 2021. The Union officials submitted their views and involvement in the Memorandum of Understanding between Kenyatta University and the Kenyatta University Teaching, Research & Referral Hospital.
71. They reported that the Union members did not participate in formulating the said Memorandum of Understanding (MoU). The Union reiterated that it was not even aware of the existence of the MoU before receiving Communication from the Committee regarding the same.
72. The Authenticity and legality of the said MoU is in question given that the KU Governing Council Chair did not sign the document, unlike the one of the KUTRRH Chairperson of the Board who duly signed the document.
73. The MoU between KUTRRH and KU was signed on different dates in December, 2020 (KUTRRH Board Chairperson and the Acting Chief Executive of the Hospital signed the MoU on 17th December, 2020 while the KU Vice-Chancellor and the Acting Deputy Vice-Chancellor signed it on 21st December, 2020); does not address the initial objective and intention of the establishment of KUTRRH. The Objective of the KUTRRH was teaching, research and referral for Kenyatta University students.
74. The legality of the transfer of KUTRRH ownership from KU to the Ministry of Health has not been captured in the MoU contrary to the KU Strategic Plan 2016-2026.
75. The establishment of KUTRRH was meant to serve all the students in the School of Health Sciences and not selected a few as captured in the MoU.
76. In addition, KUTRRH was supposed to supplement the services of the Directorate of Health Services at the University. The MoU does not capture this component as envisaged in the Kenyatta University Strategic Plan 2016-2026 onwards on quality medical training research and health care provisions.

77. The New curriculum for the training of health professionals as approved by CUE and other regulatory bodies has not been captured in the MoU as addressed by the VC's letter dated 22nd December, 2020.
78. The facilities at the Hospital were meant for teaching, training and research exclusively according to the initial establishment. This is not happening, given that KU students and staff have been denied access to these facilities.
79. The MoU is not balanced since it favours the Hospital against the University. It noted with concern the legal status of the MoU, which stated that it was a merely constituted statement of the mutual intentions of the parties and is not intended to and it will not create any legal obligations between the parties.
80. The Union added that the University spent some money from its self-sponsored programme in addition to the loan provided by the EXIM Bank of China to establish the KUTRRRH.

3.5 Submission by the Ministry of Education

The Principal Secretary for the State Department for University Education, Amb. Simon Nabukwesi and other officials of the Ministry of Education appeared before the Committee on Wednesday 7th October, 2020 and submitted that: -

81. Kenyatta University wanted to retain the Hospital as a University Hospital for teaching and research. However, after consultations between Kenyatta University, the Ministry of Education and the Ministry of Health, it was established that:
82. The Hospital had incurred a loan owed to the Chinese Government totalling Kshs. 8,756,025,600.00 through the Export-Import Bank of China; The loan was due for repayment by the end of 2019/2020 financial year; Kenyatta University had not factored in the costs of operationalizing/running the Hospital for purposes of ensuring that the Hospital would be self-sufficient and able to pay the loan mentioned above amount;
83. Notwithstanding its other income-generating activities, Kenyatta University could not offset the due loan amount within the set timelines; further, Kenyatta University College of Health Sciences did not have the capacity to employ specialized medical personnel.
84. In light of the issues identified above, consultations between Kenyatta University, the Ministry of Education and the Ministry of Health were conducted. They were built around the establishment of the Hospital as a State Corporation under the State Corporations Act. This was gazetted through Legal Notice No. 4, which was published in the Kenya Gazette Supplement No.2 of 25th January, 2019.
85. Additionally, consultations were done regarding the incorporation of a Board comprising all relevant stakeholders from the Ministry of Education, the Ministry of Health and Kenyatta University to ensure that the objectives of the Hospital are

Principal, College of Health Sciences of Kenyatta University among others as members of the Board.

86. To ensure that the establishment of the Hospital did not displace the affiliation of the Hospital to the Kenyatta University as a parastatal, the objectives of the Board as per Sections 4(b) and 5(b) of the Legal Notice ensured the support of the University's academic and research activities through the management of the Hospital.
87. The outstanding loan was subsequently transferred to the newly established parastatal, whose assets were placed under the ownership of the National Treasury. Consequently, the Government undertook to underwrite the entire outstanding loan amount within the stipulated timelines.
88. The Ministry of Health undertook to second key medical personnel for the running of the Hospital.
89. The Kenyatta University Teaching, Referral and Research Hospital is envisaged to be a critical national hospital whose activities will optimally benefit the Kenyatta University and the public if incorporated between the Kenyatta University, the Ministry of Education and the Ministry of Health.
90. The Contractor officially handed over the Hospital in July 2019 and there were not much training and research so far. The Professors of the College of Health Sciences of the University were also reluctant to use the facility for research as they felt that the University Hospital should have been owned and managed entirely by Kenyatta University. The Board of Directors will have consultations and internal discussions to create modalities to ensure that the hospital offers training and research as per its initial vision.
91. Regarding the Hospital's optimal use, the PS informed the Committee that the Hospital was turned into a COVID 19 isolation facility in March, 2020. Additionally, the University Hospital has a fully operational cancer centre. Further, referral cases had started trickling in.
92. Concerns were raised over the involvement of both the Ministry of Health and the Ministry of Education in running the Hospital and the need to have only one of the Ministry running the Hospital.
93. In conclusion, the PS opined that it would have been better if the Kenyatta University Teaching, Referral and Research Hospital was run by Kenyatta University, as is the practice, in the best run hospitals globally.

3.6 Submission by the National Treasury

94. The Principal Secretary for the National Treasury, Dr Julius Muia, CBS made a written submission dated 15th September, 2020 and submitted that:-
95. Kenyatta University conceptualised Kenyatta University Teaching, Research and Referral Hospital (KUTRRH). The Project was implemented at the cost of Kshs. 8,756,025,600.00. The Hospital's infrastructure was constructed by M/s China Jiangxi Corporation for International Economic and Technical Co-operation (CJIC). The contract for design, construction, equipping and personnel capacity building was signed on 12th August 2010; construction works commenced on 1st November 2012, and was completed on 14th December, 2016.
96. KUTRRH was established as a state corporation under the State Corporations Act Cap 446 through a Legal Notice No.4 of 25th January 2019. The six hundred and fifty (650) bed Hospital was handed over to the Hospital Board by the Contractor on 24th May, 2019. The Board advertised and successfully appointed six hundred and sixty (660) staff including four (4) Directors. The Hospital opened its doors to the first patient on Monday, 28th October, 2019 after successfully conducting a dry run from 27th September to 27th October, 2019, followed by a successful soft run from 28th October, 2019 to 24th November, 2019.
97. To operationalize the first 160 beds, the Hospital Operationalized Oncology, Renal dialysis, accident & emergency, trauma & orthopaedics, ICU, radiology, laboratory, pharmacy, mortuary and other allied services. The Hospital was designated as an isolation and treatment centre on 24th March, 2020 with over 400 beds designated for COVID-19 patients. The Hospital is on course for the full operationalization of the six hundred and fifty (650) beds Hospital.
98. The development of the KUTRRH is in line with the Kenya Vision 2030, Medium Term Plans and the Big-4 Agenda of achieving the Universal Health Coverage. The original plan of Kenyatta University was to own and operate the Hospital and pay the loan through the Government as per the on-lending agreement. However, the government under the Ministry of Health through Legal Notice No.4 of 25th January 2019 gazetted KUTRRH as a State Corporation.
99. Regarding the status of implementation of the Report of the Departmental Committee on Health, the National Treasury submitted as follows:

Recommendation 1: The National Treasury immediately allocates Kshs. 656,682,207 for the dry run budget and Kshs. 1,060,490,567 for the soft run to the Kenyatta University Hospital. This allocation should be factored in the Supplementary Budget for National Assembly Ratification. This would trigger the release of an undisbursed loan of Ksh. 1.37billion for personnel and capacity building:

Implementation status

100. The National Treasury during the financial year 2018/19 allocated KUTRRH Ksh. Six hundred fifty-five (655) million for recurrent expenditure in line with the National Assembly recommendations.

The table below summarizes the budget allocations for KUTRRH to date.

Item Description	FY2018/19		FY2019/20		FY2020/21	
	Rec.	Dev.	Rec.	Dev.	Rec.	Dev.
Integrated Molecular Imaging Centre	-	-	-	-	-	533
Operationalization of 300 bed Capacity for COVID-19 Cases – KUTRRH	-	-		527	-	-
Current Grants to KUTRRH	655	-	500	-	757	-
Current Grant to Gatundu Hospital (KUTRRH-Annex)	-	-	-	-	500	100
Total	655	-	500	527	1,257	633

Recommendation 2: That Kenyatta University and National Treasury re-look into the PPP approach and consider the original plan of the University running the Hospital. If the model settled upon is the PPP, then-Treasury to give guidelines on competitive identification of the private partner:

Implementation status

101. The KUTRRH as a State Corporation under the Ministry of Health was established in line with Kenya Vision 2030 and responds to the Big Four Agenda and the Health Act, 2017 as a Level 6 referral Hospital for teaching, training, research with the following objectives: to provide highly specialized services, including general specialization; discipline specialization; and geographical or regional specialization including highly specialized healthcare for an area or region; and to provide training and research services for issues of national importance.
102. The Hospital to receive patients on referral from other hospitals or institutions within, or outside Kenya for specialized health care and to provide facilities for medical education for the Kenyatta University and research either directly or through other co-operating health institutions. The Hospital also expects to provide facilities for education and training in nursing and other health and allied institutions.
103. Since the KUTRRH was established as a State Corporation, there was no need for preparing guidelines for public-private partnership (PPP) arrangements.
104. However, it's important to note that KUTRRH will contribute to the overall UHC agenda by increasing access to quality and highly specialized health services. The Hospital is well equipped to offer highly specialized care in various specialities, to become a centre of excellence in oncology, trauma & orthopaedics, renal and cardiology, amongst other services, by establishing an Integrated Molecular Imaging Centre (IMIC).

Recommendation 3: That the Ministries of Health and Ministry of Education, Science and Technology be actively involved in the discussion of (i) and (ii) above and take a leading role in matters of Health policy and teaching, respectively:

Implementation status

105. Since KUTRRH is established as a State Corporation under the Ministry of Health, the Ministry provides overall policy direction to the Hospital and the Management Board takes responsibility for day to day running of the Hospital. On the other hand,

Kenyatta University medical students use the facility for training and research. Therefore, the Ministry of Education through the University and the Ministry of Health have a collaborative role in ensuring the original objectives of the KUTRRH are met.

Recommendation 4: The National Treasury amends the on-lending Agreement with Kenyatta University to allow Kenyatta University adequate time to reorganize its finances to meet its loan repayment obligations under the on-lending Agreement.

Implementation status

106. The National Treasury appreciated the concern of the Departmental Committee on Health that Kenyatta University needed to meet the loan repayment for the Project. In this respect, the National Treasury was looking for the option of amending the On-lending Agreement to allow KU time to reorganize its finances. However, this option would have been viable if the PPP arrangement option had been taken up. Since the Ministry of Health took up the KUTRRH as a State Corporation, the repayment obligations were taken up by the National Treasury. The National Treasury will continue strengthening the Hospital to ensure they generate revenue to enable self-sustainability and capacitate it to pay the debt obligation thereof.
107. The government is keen to ensure that the Hospital meets its original objectives. The PS appealed to the National Assembly for support in ensuring that allocations earmarked for the Project are safeguarded to secure full benefits of the Project.

3.7 Submission by the Kenyatta University, Teaching, Research & Referral Hospital Board

The KUTRRH Board Chairperson, Prof. Olive Mugenda, accompanied by other Members of the Board, submitted as follows, that:

108. She initiated the idea of Kenyatta University Hospital when she was the Vice-Chancellor of Kenyatta University.
109. The original idea was to create a highly specialized hospital that was going to offer health care services to Kenyans and the region. Though affiliated to the University then, the Hospital was run and managed separately as an independent entity (company).
110. The Hospital Management was going to report to the University Council. However, it is essential to note that Kenyatta University rejected the idea of the Hospital running as a company and took the matter to court to block it in 2016. Sadly, the University Management did not operationalize the Hospital for three years.
111. After the completed Hospital stalled for three years, the Government, in its wisdom, decided to make the Hospital an independent parastatal under the Ministry of Health. KUTRRH was handed over officially by KU in May 2019. The Hospital became operational in October, 2019 when it admitted its first patient.
112. The Hospital Board is guided by the Legal Notice No. 4 of 2019. The Board is headed by a Chairperson who happened to be the former Vice-Chancellor of Kenyatta University during the conceptualization and actualization of the Hospital. Being the Vision carrier, the Chairperson fully understands the need to offer medical education to Kenyatta University and all medical training institutions in the country and beyond.

113. The Legal Notice No. 4 of 2019 that set up the Hospital as a State Corporation is clear on the functions of the Hospital and what the Board is supposed to ensure is provided. More specifically, regarding the matter raised, the functions that touch on Medical Education are captured in Section 5 and include providing facilities for medical education for the Kenyatta University and research either directly or through other co-operating health institutions. Regarding Education, the functions include providing facilities for education and training in nursing and other health and allied institutions.
114. The Hospital Board further submitted that it has all intent and purpose to uphold and implement the functions set out in the Legal Notice.
115. KU had been continuously requested to submit a training and research proposal and did not do so until 31st October, 2019. She noted that the Vice-Chancellor of the University did not attend Board meetings for six months after the Board was established.
116. Upon submission, the KUTRRH Board noted that the proposal submitted by KU went beyond the scope provided for in the Legal Order and responded to the proposal as such. However, the Board approved that KU postgraduate students commence their clinical rotations at KUTRRH. Students undertaking Family Medicine began their clinical rotations in the Accident and Emergency Department until the onset of COVID-19, when the University was closed. This engagement commenced even before the MOU was signed.
117. Undergraduate students in their 4th and 6th year of study will conduct their clinical rotations at KUTRRH. The modalities and implementation of this function will be guided by a Memorandum of Understanding (MOU) between KUTRRH and Kenyatta University which is ready but yet to be signed by the two Institutions.
118. The MOU sets out an Implementation Committee that will run the day to day activities regarding the clinical ward rounds, including discipline matters of the students. KU students will conduct clinical rotations at KUTRRH immediately after the MOU is signed, hopefully before the year ends.
119. The Legal Notice sets out that providing medical education can either be done directly or through other co-operating health institutions. In this regard, KUTRRH is collaborating with Gatundu Level 5 Hospital and will thus have more space to accommodate undergraduate and postgraduate students during their course of study.
120. The Chairperson of the Board further submitted that the students would acquire skills from patients with specialized tertiary needs. It will also provide space dedicated for consultation of the students with their lecturers and a waiting lounge/office for the lecturers guiding the students.

121. KUTRRH, a public institution and in line with the Legal Order Section 5(c), shall also grant access to other medical training institutions. KUTRRH already has requests from JKUAT, KEMU, KMTC together with MKU, which are under consideration.
122. The Hospital Board has put measures in place to ensure that all collaborating institutions, including KU, have clear access to the Hospital for medical education, research and innovation. KUTRRH policies will govern access and use.
123. The utilization of the Training, Research and Innovation Complex takes into account the needs of Kenyatta University and other medical training institutions to the extent possible to fulfil the objectives of the Hospital.
124. In collaboration with KUTRRH staff, KU staff have already submitted research proposals approved by the KUTRRH giving such researchers clear access to the Hospital pertinent to the fulfilment of respective research activities. KUTRRH Research Policy guides the research activities.
125. She submitted that she had nothing to do with the Hospital being turned into a parastatal. However, right from the beginning, Kenyatta University was not going to run the Hospital. The plan was to have a company opened as a subsidiary of the University run the Hospital, the Chief Executive Officer of the Hospital would report to the University Council. She added that there was nothing wrong with the Hospital being run as a parastatal in her opinion. However, there needed to be a good relationship between the University and the Hospital.
126. Regarding the loan from EXIM Bank, she submitted that the Government of Kenya guaranteed the loan. The GoK was also paying the interest in the loan during the construction of the Hospital.
127. On the handover of the Hospital, a very elaborate process was followed, and the process was cordial. A certificate on the handover was attached to the submission. She added that the University had initially been hesitant to hand over some documents but eventually did so following the intervention of the Attorney General.
128. Regarding whether there was a conflict of interest on her being the Chairperson of the Board and yet she was the former vice-chancellor of the University, she submitted that there was no conflict of interest, as by the time of her appointment to the Board she had been out of the University for three years.
129. In her concluding remarks, the Chairperson submitted that the Hospital is good for Kenya and she was committed to ensuring that Hospital achieves its objectives. She undertook to engage Kenyatta University on the MoU and have it signed by Mid-January, 2021.

4.0 IMPLEMENTATION STATUS OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON HEALTH REGARDING THE KENYATTA UNIVERSITY HOSPITAL PROJECT

130. The following is the implementation status of the Report of the Departmental Committee on Health;

I. Recommendation: That the National Treasury immediately allocates Kshs. 656,682,207 for dry run budget and Kshs. 1,060,490,567.19 for the soft run to the Kenyatta University Hospital. This allocation should be factored in the Supplementary Budget for National Assembly ratification. This would trigger the release of an undisbursed loan of Kshs 1.37 Billion for personnel and capacity building.

Implementation Status: Implementation has been done.

Committee Observation

131. In the FY 2018/19, the Hospital was allocated Kshs. Six hundred fifty-five (655) million under Supplementary II and the funds were availed in July 2019. In the FY 2019/20, the budgetary allocation was Kshs. 500 million; a further Kshs. 1.8 Billion was released to the Hospital upon recruitment of staff.

II. Recommendation: That Kenyatta University and Treasury to re-look into the PPP approach and consider the original plan of the University running the Hospital. If the model settled upon is PPP, then Treasury to give clear guidelines on competitive identification of the private partner.

Implementation status:

132. Implementation has been done.

Committee Observation

133. The KUTRRH was established as a State Corporation, hence there was no need for preparing guidelines for PPP arrangement.

III. Recommendation: The Ministries of Health and Education, Science & Technology be actively involved in these discussions and take a leading role in health policy and teaching matters, respectively.

Implementation Status:

134. Implementation has been done.

Committee Observation

135. Since KUTRRH is established as a State Corporation under the Ministry of Health, the Ministry provides overall policy direction to the Hospital and the Management Board takes responsibility for day to day running of the Hospital. On the other hand, Kenyatta University medical students use the facility for training and research. Therefore, the Ministry of Education through the University and the Ministry of Health have a collaborative role in ensuring the original objectives of the KUTRRH are met.

IV. Recommendation: The National Treasury amends the on-Lending Agreement with Kenyatta University to allow Kenyatta University adequate time to reorganize its finances to meet its loan repayment obligations under the on-Lending Agreement.

Implementation Status:

136. The recommendation has not been implemented.

Committee Observation

137. The Ministry of Health took up the KUTRRH as a State Corporation while the National Treasury took up the repayment obligations. The National Treasury will continue strengthening the Hospital to ensure they generate revenue to enable self-sustainability and pay the debt obligation thereof.

138. Although the National Treasury has not amended the on-Lending Agreement with Kenyatta University, the GoK through Treasury, had repaid the loan. The option of amending the On-lending Agreement to allow KU time to reorganize its finances could only have been viable if the PPP arrangement option had been taken up.

5.0 COMMITTEE OBSERVATIONS

139. The Committee made the following observations—

- (1) Teaching and Research hospitals run by universities around the globe are an overwhelming majority of the best-run hospitals. Other than providing services, these Universities provide top-notch training, with a human resource for health services being a key plank for the universal health care (UHC) that Kenya intends to achieve.
- (2) The Kenyatta University Teaching, Research and Referral Hospital being run as a parastatal has created a sense of disgruntlement among professors at Kenyatta University as they have been blocked from using the Hospital for training and research as was envisaged.
- (3) Managing the Kenyatta University Teaching, Research and Referral Hospital as a parastatal risked the Hospital facing the same problems experienced by such public Hospitals as Kenyatta National Hospital.
- (4) Prof. Olive Mugenda, PhD as the Chair of the Kenyatta University Teaching, Research and Referral Hospital Board, was the immediate former Vice-chancellor of Kenyatta University and had not handed over the operations yet, thus posing a conflict of interest, as she had initiated the process of establishment of the Hospital.
- (5) Further, in Prof. Olive Mugenda's submissions, she confirmed that right from the beginning, the Kenyatta University was not going to run the Hospital directly but through a company opened as a subsidiary of the University, whose Chief Executive Officer would report to the University Council. Thus every intention was for the Hospital to be owned, managed by and benefit Kenyatta University and not annexed as a State Corporation.
- (6) The Memorandum of Understanding (MoU) between Kenyatta University and the Kenyatta University, Teaching, Research & Referral Hospital Board was not intended to create any legal obligations between the parties as it was just a mere statement of mutual intentions of the parties, it is not sealed, therefore cannot be termed as legal and binding under the Law of Contracts.
- (7) The takeover through the Legal Notice No. 4, Legislative Supplement No. 2 of 25th January, 2019 (*The Kenyatta University, Teaching, Research and Referral Hospital Order, 2019*) was oppressive and defeated the intention of the establishment of the Teaching, Research and Referral Hospital for Kenyatta University.

6.0 COMMITTEE RECOMMENDATIONS

140. The Committee, having reviewed the said report and considered the evidence received, recommends that—

1. The Cabinet Secretaries for Education and Health should ensure that Kenyatta University has full access to the Kenyatta University Teaching, Research and Referral Hospital facilities, as envisaged, for use by its College of Health Sciences, which comprises schools of Medicine, Pharmacy, Nursing, Public Health, and Dentistry.
2. H.E. the President should revoke Legal Notice No. 4 of 2019 and revert the Kenyatta University Teaching, Research and Referral Hospital to a University Hospital within six (6) months of the adoption of this report.

Signed



Date

29/09/2021.

Hon. Moitalel Ole Kenta, MP
Chairperson, Committee on Implementation

APPENDIX I: ADOPTION LIST

The National Assembly



12th Parliament–5th Session-2021



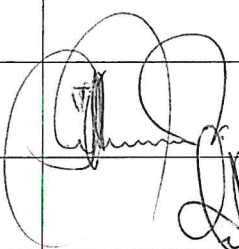
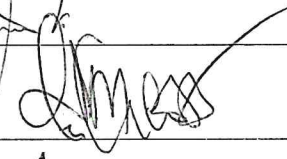

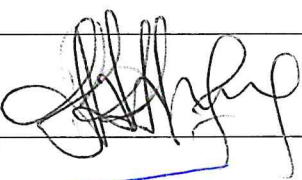
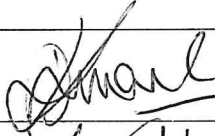
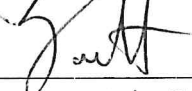
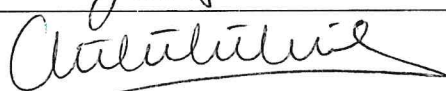
Committee on Implementation

Agenda: Adoption of the Report on the Implementation status of the Report of the Departmental Committee on Health on the Kenyatta University Teaching, Research and Referral Hospital Project

Venue: Sarova Whitesands Hotel, Mombasa


Date: Friday, 27th August, 2021

S/NO.	NAME	SIGNATURE
1.	The Hon. Moitalel Ole Kenta, MP – Chairperson	
2.	The Hon. Godfrey Osotsi, MP - Vice Chairperson	
3.	The Hon. Richard Onyonka, MP	
4.	The Hon. Alois Musa Lentoimaga, MP	
5.	The Hon. (Dr.) James Kipkosgei Murgor, MP	
6.	The Hon. Johnson Many Naicca, MP	
7.	The Hon. Moses Kiarie Kuria, MP	
8.	The Hon. Paul Simba Arati, MP	

9.	The Hon. Charles Ngusya Nguna, MP	
10.	The Hon. Feisal Abdalla Bader, MP	
11.	The Hon. Gabriel Kago Mukuha, MP	
12.	The Hon. Hassan Oda Hulofo, MP	
13.	The Hon. Jared Okello, MP	
14.	The Hon. Joash Nyamache Nyamoko, MP	
15.	The Hon. John Muchiri Nyagah, MP	
16.	The Hon. Joshua Mwalyo Mbithi, MP	
17.	The Hon. Michael Thoya Kingi, MP	
18.	The Hon. Nelson Koech, MP	
19.	The Hon. Benjamin Dalu Tayari, MP	
20.	The Hon. Paul Abuor, MP	
21.	The Hon. Peter Kimari Kihara, MP	
22.	The Hon. Silvanus Osoro, MP	
23.	The Hon. John Njuguna Wanjiku, MP	

Committee Clerk

Name Abdulla G. Hassan


(Signature)

Date 31/08/2021

**APPENDIX IV: SUBMISSION BY THE MINISTRY OF
EDUCATION**

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① Director
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**MINISTRY OF EDUCATION
OFFICE OF THE PRINCIPAL SECRETARY**

STATE DEPARTMENT FOR UNIVERSITY EDUCATION AND RESEARCH

Telephone: 254-20-3318581
Direct Line: 254-20-2228617
E-mail: psecretaryuer@gmail.com
Website: www.education.go.ke
When replying please quote

Jogoo House 'B'
Harambee Avenue
P.O. Box 9583-00200
NAIROBI

Ref: MOEST/2/23/VOL XX

③ EMEIGRO
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FA
09/3/20

6th March, 2020

Mr. Jeremiah W. Ndombi
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

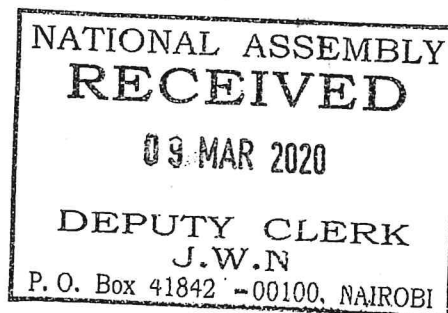
MEETING WITH THE SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTION

Reference is made to your letter No.NA/DCS/CO1/2020(05) dated 27th February, 2020 on the above subject matter.

Attached herewith, please find a response to the Parliamentary Question by the Departmental Committee on Health on Kenyatta University Teaching, Research and Referral Hospital Project. Twenty four (24) copies of the report have been submitted and a soft copy of the same has been e-mailed accordingly.

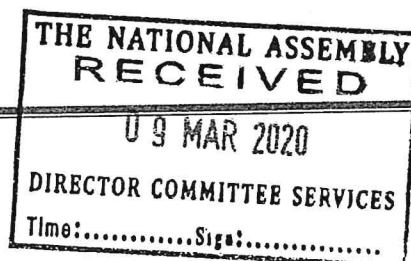
Amb. Simon Nabukwesi
PRINCIPAL SECRETARY

Copy to: Prof. George A. O. Magoha, CBS
Cabinet Secretary
Ministry of Education



Encls:

OFFICE OF THE CAS&PS, SDUE&R



ISO 9001: 2008 CERTIFIED

REPUBLIC OF KENYA

Telegraphic Address

"Bunge", Nairobi

Telephone 2248000

Fax: 2243694

E-mail: clerk@parliament.go.ke

RECEIVED

04 MAR 2020

PRINCIPAL SECRETARY'S OFFICE

STATE DEPARTMENT FOR UNIVERSITY EDUCATION AND RESEARCH

MINISTRY OF EDUCATION



National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI, Kenya



When replying please quote

REF: NA/DCS/COI/2020/(05)

The Principal Secretary
State Department for University Education and Research,
Ministry of Education,
Jogoo House 'B', Harambee Avenue,
NAIROBI

27th February, 2020

Dear Sir,

**RE: MEETING WITH THE SELECT COMMITTEE ON IMPLEMENTATION
REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTION**

Reference is made to our letter Ref: NA/DCS/COI/2019/127, dated 28th November 2019, and your letter Ref. MOEST/2/23/ Vol. XX dated 4th December 2019 on the above subject matter.

The Committee during its 3rd Sitting held on Tuesday, 25th February 2020, resolved to invite the Cabinet Secretary for Education to apprise the Committee on the implementation status of the Report by the Departmental Committee on Health on the Kenyatta University Teaching and Referral Hospital Project.

This is therefore to invite the Cabinet Secretary for a meeting to be held on Tuesday, 10th March, 2020 in Committee Room on 2nd Floor, Continental House, Parliament Buildings at 12.00 pm.

Kindly forward twenty-four (24) copies of your submission to the Office of the Clerk of the National Assembly and email a soft copy to clerk@parliament.go.ke on or before Friday, 6th March 2020.

The liaison officer facilitating the meeting is Mr. Abdirahman G. Hassan who may be contacted on Tel. No. 0722288756 or email address: sirjelle03@yahoo.com.

Yours sincerely,

SERAH M. KIOKO
FOR: CLERK OF THE NATIONAL ASSEMBLY

RESPONSES TO A PARLIAMENTARY QUESTION BY THE SELECT COMMITTEE ON IMPLEMENTATION REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

1.0 BACKGROUND

Matter raised by the Committee

The Report of the Departmental Committee on Health on Kenyatta University Teaching and Referral Hospital Project was adopted by the House on 5th December, 2018. The Committee during its Sitting on Thursday, 14th November, 2019 resolved to invite the Ministry of Education to shed light on the consultations done on the decision to make Kenyatta University Teaching and Referral Hospital a parastatal rather than a University Hospital as had earlier been proposed by the Departmental Committee on Health; the merits and demerits of that decision.

2.0 RESPONSES BY THE CABINET SECRETARY MINISTRY OF EDUCATION

2.1 Issues raised on the operations of the Hospital

Kenyatta University wanted to retain the Hospital as a University Hospital for teaching and research. However, after consultations between Kenyatta University, the Ministry of Education and the Ministry of Health, it was established that:

- i) The Hospital had incurred a loan owed to the Chinese Government totaling kshs. 8,756,025,600.00 through the Export Import Bank of China;
- ii) The loan was due for repayment by the end of 2019/2020 financial year;
- iii) Kenyatta University had not factored in the costs of operationalizing/running the hospital for purposes of ensuring that the Hospital would be self-sufficient and able to pay the aforementioned loan amount;
- iv) Notwithstanding its other income generating activities, Kenyatta University did not have the capacity to off-set the due loan amount within the set timelines;
- v) Kenyatta University College of Health Sciences did not have capacity to employ specialized medical personnel.

2.2 Way forward based on consultations by key stakeholders

In light of the issues identified above, consultations between Kenyatta University, the Ministry of Education and the Ministry of Health were conducted and was built around the following issues:

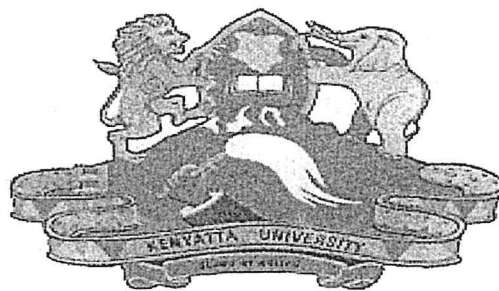
- i) Establishment of the Hospital as a State Corporation under the State Corporations Act through Legal Notice No. 4 which was published in the Kenya Gazette Supplement No.2 of 25th January, 2019.
- ii) Incorporation of a Board comprising all relevant stakeholders from the Ministry of Education, the Ministry of Health and Kenyatta University to ensure that the objectives of the Hospital are achieved. This was effected through having the Principal Secretary in Charge of University Education, Principal Secretary in charge of Health, a representative of the Kenyatta University Council, the Vice-Chancellor of Kenyatta University and the Principal, College of Health Sciences of Kenyatta University among others as members of the Board.
- iii) To ensure that the affiliation of the Hospital to the Kenyatta University was not displaced by the establishment of the Hospital as a parastatal, the objectives of the Board as per section 3 of the Legal Notice ensured support of the Universities academic and research activities through the management of the Hospital.
- iv) The sum due from the loan as identified above was subsequently transferred to the newly established parastatal whose assets were placed under the ownership of the National Treasury. Consequently, the Government undertook to underwrite the entire outstanding loan amount within the stipulated timelines.
- v) The Ministry of Health undertook to second key medical personnel for the running of the Hospital.

3.0 CONCLUSION

In light of the above, the Kenyatta University Teaching, Referral and Research Hospital is envisaged to be a key national hospital whose activities will optimally benefit the Kenyatta University and the public at large if incorporated between the Kenyatta University, the Ministry of Education and the Ministry of Health.



Prof. George A. O. Magoha, CBS
CABINET SECRETARY



KENYATTA UNIVERSITY

**RESPONSE TO THE COMMITTEE ON IMPEMETATION
REGARDING THE IMPLEMENTATION STATUS OF HOUSE
RESOLUTIONS**

ON

**KENYATTA UNIVERSITY TEACHING
REFERRAL AND RESEARCH HOSPITAL**

SUBMITTED TO

PARLIAMENTARY IMPLEMENTATION COMMITTEE

ON

MONDAY 11TH NOVEMBER, 2019

INTRODUCTION

In order to address the shortage of Health Professionals in Kenya, Kenyatta University (KU) established the School of Health Sciences in 2004. The School has since evolved into Schools of Medicine, Nursing, Public Health, Pharmacy and Dental. These Schools are designated to form the College of Health Sciences. In addition, Biomedical Engineering is offered as a programme in the School of Engineering.

The University depends on infrastructure and facilities in other health institutions to train health professionals, a situation that is unreliable and unsustainable. These institutions are not able to offer specialized training for health care professionals beyond undergraduate level and yet the need for more health professionals and the demand for training in health sciences in Kenya is enormous.

In addition, the University aimed at addressing health challenges including; building capacity, research and research capacity, enhancing equitable access to healthcare, providing highly specialized medical care, reversing outbound medical tourism, providing the safest most effective care possible and becoming the model for an academically based integrated Health Care Delivery System that responds to global health issues.

This resulted in Kenyatta University seeking advice on appropriate solutions for effective delivery of these programmes from the relevant Ministries. The Ministry of Health and Ministry of Education both advised that KU sets up a hospital for this purpose so as to address teaching, research and medical services provision. Two Cabinet Papers; one by the Ministry of Education and another by the Ministry of Health were developed and presented.

Subsequently, Kenyatta University submitted a proposal through the Government of Kenya to the Government of the People's Republic of China for the construction of Kenyatta University Hospital. This proposal was favorably considered, and a concessional loan amounting to CNY 744,560,000 equivalent to KES 8,756,025,600 (@ 11.76) was provided by EXIM Bank of China for this purpose. However, the loan did not include hospital operational costs, recruitment and staff salaries.

The Original plan for completing and operationalizing the hospital was that the University would develop the hospital with the Government of Kenya guarantee and upon its completion, the University would operate it and pay the loan through the Government as per the On-Lending agreement entered between GoK and KU on 18th August 2011.

Once established, the Hospital would be self-sustaining from among others, fees paid, charges levied for services rendered and research grants. As part of the University teaching departments, the hospital would also receive a budgetary allocation from the University. In addition, as a referral hospital, a supplementary budgetary allocation would be expected from the Government for clinical and other services.

The Project was divided into four components:

S/NO.	DESCRIPTION	AMOUNT (CNY)	AMOUNT (KES)	STATUS
1.	Design and Preparation	51,396, 603	604,377,011.28	Complete
2.	Infrastructure Development	403,130,357	4,740,812,998.32	Complete
3.	Biomedical Equipment	172,824,000	2,032,410,240	Complete
4.	Personnel & Capacity Build	117,213,040	1,378,425,350.4	Outstanding
TOTAL		744,560,000	8,756,025,600	

The first three components of the project are complete but the fourth component, (Personnel and Capacity Building) remains outstanding despite the approval and release of the supplementary budget amounting to KES 656,000,000 which was required for the Dry-Run and unlocking the funds to complete the 4th Component.

In line with the original plan that the Hospital would get funding from the Government, the University prepared and submitted a budget to the National Treasury (NT) through the Ministry of Education. The NT requested the Ministry of Education to provide a Governance and Management Policy considering that this was the first Public University Hospital in the country.

On submission of the Policy the Cabinet Secretary, NT convened a meeting on 4th April, 2018 and requested the University to work out several funding options that would ensure continued sustainability of the Hospital without necessarily depending on Government funding. He also indicated that in our options we could consider Public Private Partnerships (PPPs) as an option amongst other models. However, the Government would consider the needed KES 656,682,209 to unlock the KES 1,378,425,350.4 held by the financier.

Engagement with the Parliamentary Committee on Health

After the visit to the Hospital, the Parliamentary Committee on Health and subsequent meetings with the University Management, the Committee tabled KUH in Parliament which in turn recommended that the National Treasury allocates Kshs. 656 Million for the operationalization of Phase One of the Hospital as had been proposed by the University. The funds were expected in the Financial Year 2018/2019 supplementary budget, following which,

- i. Parliament opined that the Hospital should be owned and managed by KU since it was a Teaching, Training and Research Hospital.
- ii. A letter from the National Treasury dated 10th December, 2018 gave an approval to the State Department for University Education to incur additional expenditure of Kshs. 655,000,000 for operationalization of Phase One of KUH during the financial year 2018/2019. (*Annex 1*)

- iii. In response to the letter, State Department for University Education requested the National Treasury to create a sub head and upload the approved operationalization budget to IFMIS via a letter dated 21st January, 2019. (*Annex 2*)
- iv. With the above communication, the University undertook the following activities in preparation for the operationalization of the Hospital
 - i. Secondment of lean staff to the Hospital
 - ii. Development of a roadmap towards the operationalization of the Hospital
 - iii. Carrying out inspections of the facility in readiness for the Dry-Run
 - iv. Identifying staff for training in various specialities as per the PCB component of the loan
- v. Soon after, an Executive Order through Legal Notice No. 4 published in the Kenya Gazette Supplement No. 2, of 25th January 2019 established the Hospital as a Parastatal under MoH.

1.0 RESPONSES TO PARLIAMENTARY IMPLEMENTATION COMMITTEE

Q1. The merits and demerits of the Kenyatta University Hospital Project as a Parastatal

a. Merits of Kenyatta University Hospital as a Parastatal

There are no merits of the Hospital operating as a Parastatal considering the original objectives of establishing Kenyatta University Hospital and judging from the challenges being faced by Universities already engaging with hospitals established as Parastatals.

b. Demerits of the Hospital running as a Parastatal

The University and the Hospital have different priorities according to their core mandates. Hospitals prioritize provision of clinical services. Universities prioritize teaching, training and research. These differences in priorities could lead to:

i. Different Strategic Plans

These two institutions have different strategic plans hence disharmony in their implementation due to pursuant of opposing priorities thus compromising their core functions.

ii. Different Management Structures

These institutions have different management structures leading to overlap of positions resulting in turf wars between different critical players hence inefficiencies and non-performance.

iii. Conflict of Interest

Due to lack of proper controls, differences in areas of priority may occur. For example, while the University would focus on beds set aside for research, the Hospital's main focus would be on pure patient care.

iv. Funding of a Common Budget

The two institutions would face challenges in funding a common budget for; e.g. utilities, maintenance and consumables which are funded from different institutional budgetary allocations. Failure of either of the institutions to honor their financial obligations may result in inconveniencing service delivery.

v. Procurement Process Challenges

Unless the procurement plans of the two institutions are aligned to the common goals of the institutions, they will negatively impact on the service delivery.

vi. HR Challenges

The two institutions subscribe to different HR policies and guidelines leading to overlaps and conflicts in management of human resource; for example in; recruitment, staff duplication, staff discipline, and labour disputes.

vii. Political Threat

Involvement of different ministry officials in management of the two institutions has the potential of creating collision of roles which would compromise delivery of services.

viii. Collaborations and Research Challenges

Execution of signed collaborations between the University and other universities with established academic hospitals would not be fulfilled unless the Hospital is an integral part of the University. Similarly, the University would not be able to attract the best scholars in the world in the medical fields as long as the two institutions are run independently.

ix. Teaching and Training Challenges

The University would continue to face challenges in mounting postgraduate courses in highly specialized areas unless She has full access to the facilities at the Hospital. Other challenges would include management of risks and liabilities.

Q2. Details of consultations, if any, on the decision to have the University Hospital run as a Parastatal

The idea of a Parastatal was mooted to the University by the State Corporations Advisory Committee (SCAC) and at all meetings, the University was opposed to this given the demerits of running a Parastatal and in view of the original objective for the establishment of the hospital.

Kenyatta University was already in advanced stages of operationalizing the Hospital following advice from the National Treasury and engagement with the Parliamentary Departmental Committee on Health.

The following operation models had been considered:

- i. KU with a Private Partner to Operate & Maintain (O&M) under PPP Model
- ii. KU with Management Contract
- iii. KU Managed Hospital
- iv. KUH as a State Corporation (SAGA)
- v. KU with a Lease Operator

The University proposed a PPP (Operator and Maintain (O&M) Model) as the most appropriate as per the original objective in order to provide teaching, training, research and provision of high quality clinical services without relying on government funding as advised by the National Treasury.

SCAC proceeded to impose a draft legal notice which the University rejected for failing to factor in the conditions required for a Level Six Hospital as provided for in the Health Act, 2017. *SCAC Legal Order Proposal (Annex 3)*

However, in recognition of the status of the Project at the time, lack of funds and the urgency to operationalize it in order to achieve the UHC agenda of the Government and the original objectives of the Project, KU suggested establishment of the Hospital as the University's **wholly owned subsidiary** as provided for under the State Corporations Act Section 2(d). *KU Draft Legal Order Proposal (Annex 4)*

The University was therefore surprised by the release of the Legal Notice No. 4 of 2019, establishing the Hospital as a State Corporation under the Ministry of Health. *Legal Notice No. 4 of 2019 (Annex 5)*

Q3. What are the best practices generally?

From the research conducted by Kenyatta University, it has been established that the best ranked hospitals in the world are University Hospitals followed by Military Hospitals. Examples include:

- i. John Hopkins Hospital (USA)
- ii. University of Michigan Hospital(USA)
- iii. Walter Reed National Military Medical Centre (USA)
- iv. University Clinic Heidelberg (Europe)
- v. Erasmus Medisch Centrum (Europe)
- vi. Istanbul University Hospital (Turkey)
- vii. Xinqiao Hospital Third Military University (Asia)
- viii. National Taiwan University Hospital (Asia)
- ix. Steve Biko Academic Hospital (South Africa)
- x. Kwazulu Natal University Hospitals (South Africa)

The common practice in most world class universities is to have their own academic hospitals. Examples include Duke University Hospital, Steve Biko Academic Hospital, Kwazulu Natal University Hospitals and the Aga Khan University Hospital.

In the region, most universities offering medical related programmes have already put up their own teaching hospitals or are in the process of establishing them. Examples of such universities include;

- | | | |
|-------|---|------------------|
| i. | Kenyatta University | - Established |
| ii. | University of Dar es Salaam | - Established |
| iii. | University of Botswana | - Established |
| iv. | Aga Khan University | - Established |
| v. | University of Nairobi | - In the Process |
| vi. | Moi University | - In the Process |
| vii. | Kabarak University | - In the Process |
| viii. | Masinde Muliro University | - In the Process |
| ix. | Jomo Kenyatta University of
Agriculture & Technology | - In the Process |
| x. | Pwani University | - In the Process |

KU carried out benchmarking in top university owned hospitals in the world, amongst them are: -

- i. Istanbul University Hospital, Turkey
- ii. Cincinnati University Hospital, USA
- iii. John Hopkins University Hospital, USA
- iv. Duke University Hospital, USA
- v. Florida State University Hospital, USA
- vi. Utrecht University Medical Centre, Netherlands

KU has already signed collaborations with top universities in the World with the understanding that the Hospital would be managed by KU. These collaborating institutions are ready awaiting the operationalization of the Hospital. They include among others: -

- i. Istanbul University Hospital, Turkey
- ii. Cincinnati University Hospital, USA
- iii. John Hopkins University Hospital, USA
- iv. Duke University Hospital, USA

The collaborations would attract research grants and other benefits at minimal costs and first-hand utilization of research. Technology put in place at the Hospital focuses on all the aspects of teaching, research and high-level healthcare service delivery where telemedicine, teleradiology and information technology will be highly utilized to enable the collaborations and consultations. Systems have also been put in place to have some staff focus more on research and training so as to fully deliver on the University's mandate.

Q4. Any other submission that may be relevant to the implementation status of the Report of the Departmental Committee on Health on the Kenyatta University Teaching and Referral Hospital Project.

a. Current status of implementation Legal Notice No. 4 of 2019

There has not been wide consultation with regard to fundamental issues between the two institutions in the implementation of the Legal Notice No. 4 of 2019. For instance; the University Council and the Hospital Board are yet to meet.

b. Provisions of the Legal Order

The Legal Order No. 4 of 2019 recognizes the need for collaboration between the University, Ministry of Health and Ministry of Education in the operation of the Hospital hence the inclusion of the three entities in the Hospital Board. The Order further provides for teaching, research and clinical service provision as captured below;

- i. Section 3(3) and (4) the Hospital shall be a Level 6 Tertiary Hospital within the meaning of Section 25(1) as read with the First Schedule of the Health Act 2017
- ii. Sections 5 (b) and 7 (2) (b) - **Shall** provide facilities for medical education for the Kenyatta University and for research.
- iii. Section 6(d), (f), (g), and (i) - The constitution of the Board comprises of Ministry of Education, University Council, the Vice-Chancellor and the Principal, College of Health Sciences
- iv. From the above, the Hospital irrespective of the appointed custodian or management appointee, remains the property of the Kenyatta University.
- v. Section 7 (1) of the Legal Order states that the Board of the Referral Hospital shall be responsible for management and administration of the Hospital.
- vi. The objective of the Board is restricted to implementation and fulfilment of the operational objectives and managerial requirements of the Hospital.
- vii. As provided for by the Legal Order, the scope of the Board is restricted to the management and administration of the Hospital and not any other current or future healthcare related projects that the University may undertake; eg, the Children's Hospital Project, the Women's Hospital Project, the Drug Manufacturing Unit
- viii. The Legal Order acknowledges the Hospital as an integral part of the Medical School of Kenyatta University.
- ix. The Legal Notice No.4 of 2019 provides for a position of a Non-Executive Chair Person.

With strict implementation of the above provisions of the Legal Notice No. 4 of 2019, some of the objectives of the University could be met.

c. If the operationalization of the Hospital shall not be as stipulated above, the University is likely to encounter the following risks:

- i. She will have no access and control of facilities at the Hospital and hence will not be able to carry out high level training and research in medical fields.

- ii. The University will not be able to contribute to the Government's UHC Agenda of offering high level clinical services as these are informed by research.
 - iii. The University will lose out on financial support associated with high level research projects and collaborations with world renowned scholars in medical fields.
 - iv. The University's objective of establishing a center of excellence driven by patient centered evidence based care, will be lost.
 - v. The University will lose on foreign exchange through reversal of outbound medical tourism, attraction of inbound medical tourism and foreign students.
 - vi. The University risks underutilizing the facilities specifically provided at the Hospital for teaching, training and research.
- d. With the current implementation status of the Legal Notice No. 4 of 2019, the University developed proposed policies for seamless integration between the University and the Hospital. These policies include; teaching & training; research & innovation; clinical service; finance & resource mobilization; procurement & supplies; human resources; health & safety; equipment & facilities management; information governance and information access control.

These proposed policies have been forwarded to the Hospital Board for deliberation and possible adoption.

2.0 PRAYER TO THE COMMITTEE

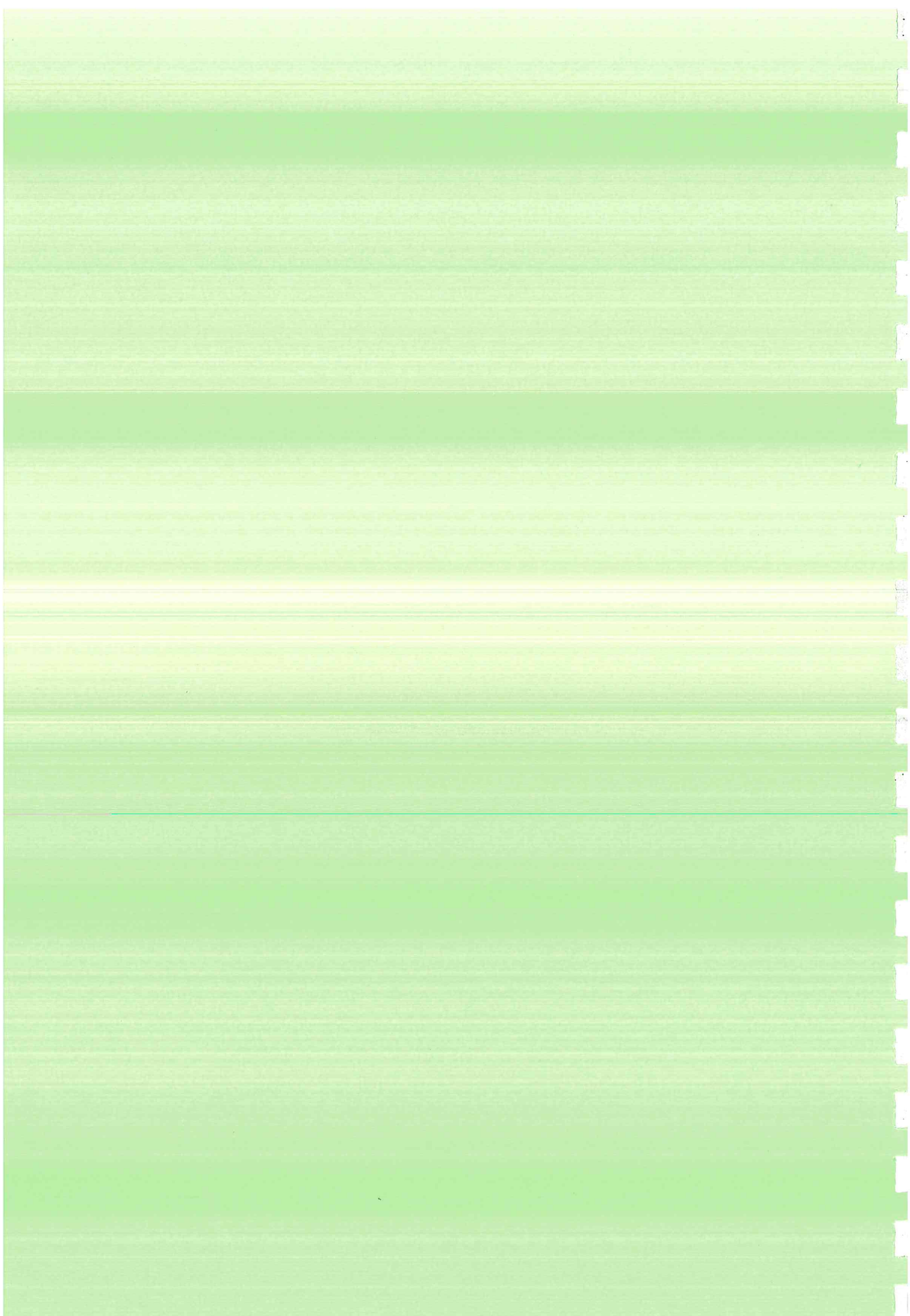
- a. Amendment to the Universities Act No. 42 of 2012 to make provisions for universities to own, run and manage hospitals as an integral part of their academic programmes. In addition an amendment be made that reciprocates the need for collaboration between the Ministries of Education and Health as provided for in the Health Act, 2017. This will enable universities to access the Research for Health Fund that is within the Ministry of Health.
- b. As an alternative, an act of Parliament be enacted for the establishment of University Hospitals in Kenya.
- c. With the current implementation status of the Legal Notice 4 of 2019, necessary measures be put in place for the University's objectives to be met. This would be achieved through full implementation of the proposed policies for the seamless integration between the University and the Hospital.


PROF. PAUL K. WAINAINA, PhD.
VICE-CHANCELLOR

ANNEX 1

A letter from the National Treasury dated 10th December, 2018

- ❖ Approval to incur additional expenditure of Kshs. 655,000,000 for the operationalization of Phase One of Kenyatta University Hospital

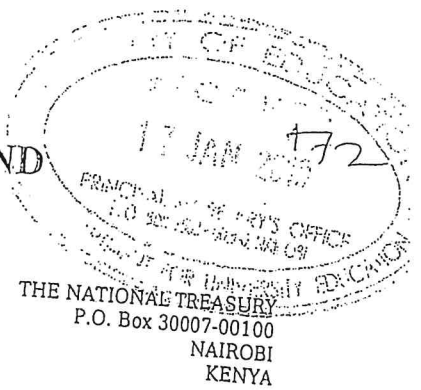


REPUBLIC OF KENYA



THE NATIONAL TREASURY AND
PLANNING

Telegraphic Address: 22921
FINANCE-NAIROBI
Fax No.: 310833
Telephone: 2252299



Ref: RES 1065/18/01(31)

Date: 10th December, 2018

Prof. Collette A. Suda, PhD, FKNAS, CBS
Chief Administrative Secretary and
Principal Secretary
State Department for University Education
Ministry of Education
NAIROBI

Dear

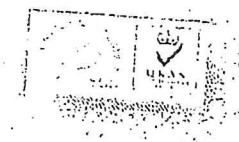
CA/PS

**OPERATIONALIZATION BUDGET FOR KENYATTA UNIVERSITY
TEACHING, REFERRAL AND RESEARCH HOSPITAL**

This is in reference to letter Ref. OP/CAB.17/70 dated 16th November, 2018 from the Head of the Public Service seeking for the National Treasury and Planning confirmation on the availability of KSh.655,000,000 to cater for the first phase of the operationalization of the Kenyatta University Teaching, Research and Referral Hospital.

We have reviewed the request and made the following observations:-

- The Cabinet approved the establishment and operationalization of Kenyatta University Teaching, Research and Referral Hospital;
- The Government of Kenya borrowed RMB 744,460,000 (equivalent to KSh.8,756,025,600) from Export Import Bank of China to cater for the construction of the Hospital which was completed 16 months ago;
- The Hospital will be given a Level Six status and is designed to provide highly skilled health care to patients in Kenya and from the region and will




ISO 9001:2008
Certified.

train health professionals thereby increasing the number of medical personnel to deal with the growing population and emerging diseases;

- " The Hospital has not been operationalized due to unavailability of resources to hire staff and to undertake other activities that are prerequisite for the commissioning of the infrastructure, plant and equipment; and
- " The operationalization of the Hospital is planned to take place in three phases. Implementation of Phase 1 requires a total of KSh.655,000,000 and will involve recruitment of 92 critical staff to take over the facility. The allocation of this amount will help to unlock KSh.1,300,000,000 held by the financier to cater for other components. Implementation of Phase 2 will require a total of KSh.1,893,631,134 to recruit 851 staff to operationalize 8 wards, each of 20 beds in order to accommodate 160 in-patients. Under Phase 3 the hospital is expected to run at full capacity of 600 bed occupancy at a cost of KSh.5,893,789,845. A total of 1,457 staff will be recruited for this Phase.

In view of the foregoing, approval is granted to the State Department for University Education to incur an additional expenditure of KSh.655,000,000 under Article 223 of the Constitution of Kenya to cater for the operationalization of Phase 1 of the Project pending regularization of the same in the Supplementary Estimates No.2 for Financial Year 2018/19.

Yours

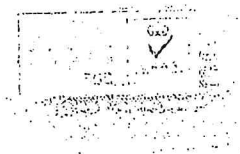
Sincerely


Dr. Kamau Thugge, CBS
Principal Secretary/National Treasury

Copy to: Dr. Joseph K. Kinyua, EGH
Head of the Public Service
State House
NAIROBI

Mr. Edward Ouko, CBS
The Auditor General
Kenya National Audit Office
NAIROBI

Mrs. Agnes Nangira Odhiambo, CBS
Controller of Budget
Office of the Controller of Budget
NAIROBI

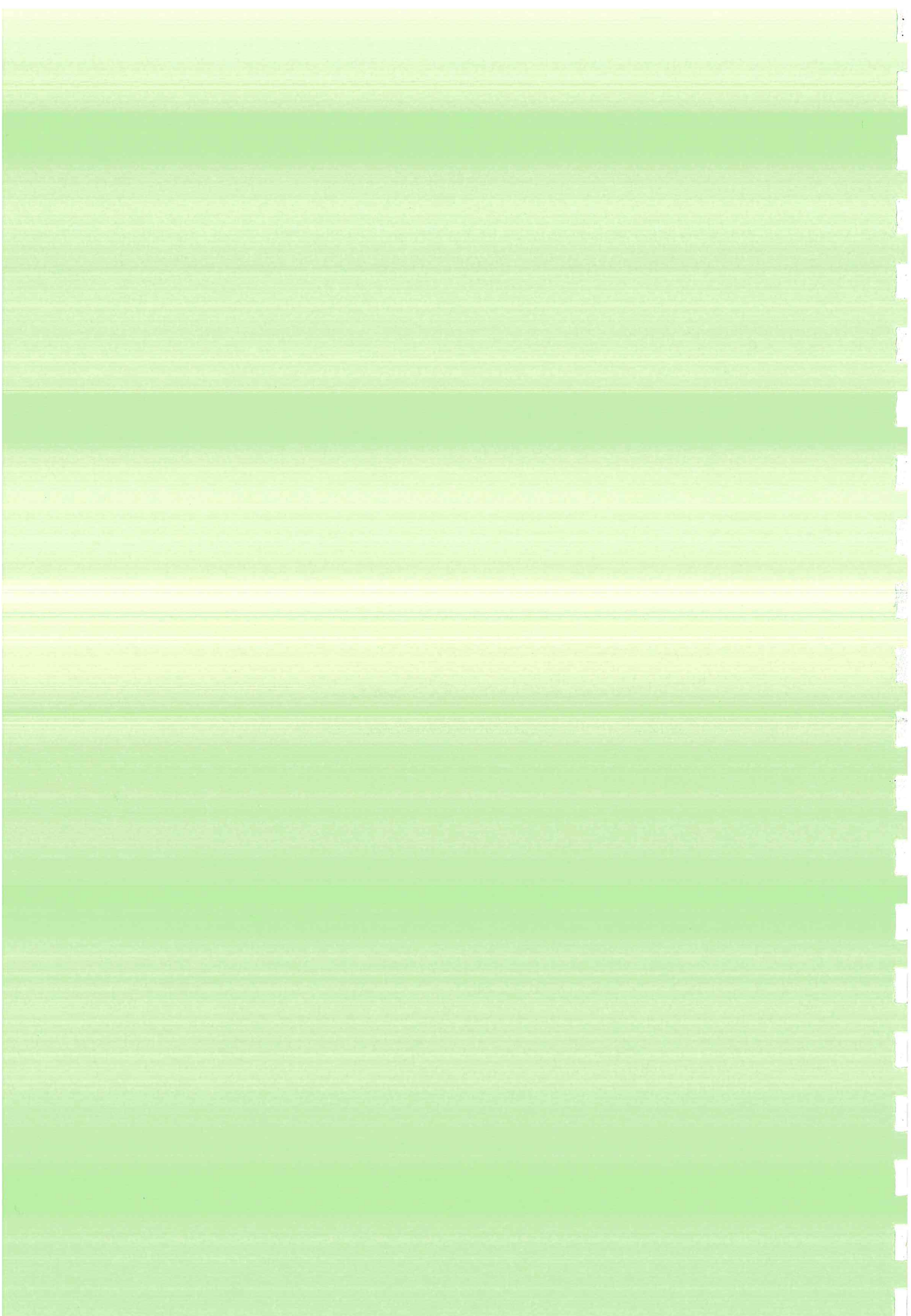


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Certified.

ANNEX 2

**Letter from the State Department for University Education dated
21st January, 2019**

- ❖ Instruction to create a sub head and upload the approved operationalization budget to IFMIS





MINISTRY OF EDUCATION
OFFICE OF THE CHIEF ADMINISTRATIVE SECRETARY AND PRINCIPAL SECRETARY
STATE DEPARTMENT FOR UNIVERSITY EDUCATION AND RESEARCH

Telephone: +254-020-3318581
Facsimile: +254-020-2251991
Email: cas.psuer@gmail.com
Website: www.education.go.ke
When replying please quote:

JOGOO HOUSE "B"
HARAMBEE AVENUE
P.O. Box 9583 - 00200
NAIROBI

Ref: MOEST/FIN/11/39 Vol. V (172)

Date: 21st January, 2019

Dr. Kamau Thugge, CBS
Principal Secretary
The National Treasury
P.O Box 3007
NAIROBI

Dear

CREATION OF SUB HEAD AND UPLOADING OF OPERATIONALIZATION BUDGET OF KSH 655,000,000 TO THE IFMIS SYSTEM FOR KENYATTA UNIVERSITY TEACHING, RESEARCH AND REFERRAL HOSPITAL

Reference is made to the National Treasury Letter Ref: RES 1065/18/01 (31) dated 10th December, 2018 (copy attached) on the above subject.

The approved additional funds shall be utilized under recurrent expenditure for operationalization of the hospital as communicated in your letter in three phases. This requires creation of a budget sub head under Kenyatta University recurrent budget to facilitate utilization of the allocated funds under supplementary budget II.

The purpose of this letter therefore is to request for the creation of budget sub head and uploading of approved Operationalization Budget Kshs. 655,000,000 to the IFMIS under the Recurrent budget for Kenyatta University to facilitate the Implementation of Phase 1 of Kenyatta University Teaching, Research and Referral Hospital which involves recruitment of 92 critical staff to take over the facility.

Yours

Prof. Collette A. Suda, PhD, FKNAS, CBS
CHIEF ADMINISTRATIVE SECRETARY AND PRINCIPAL SECRETARY

Encl.

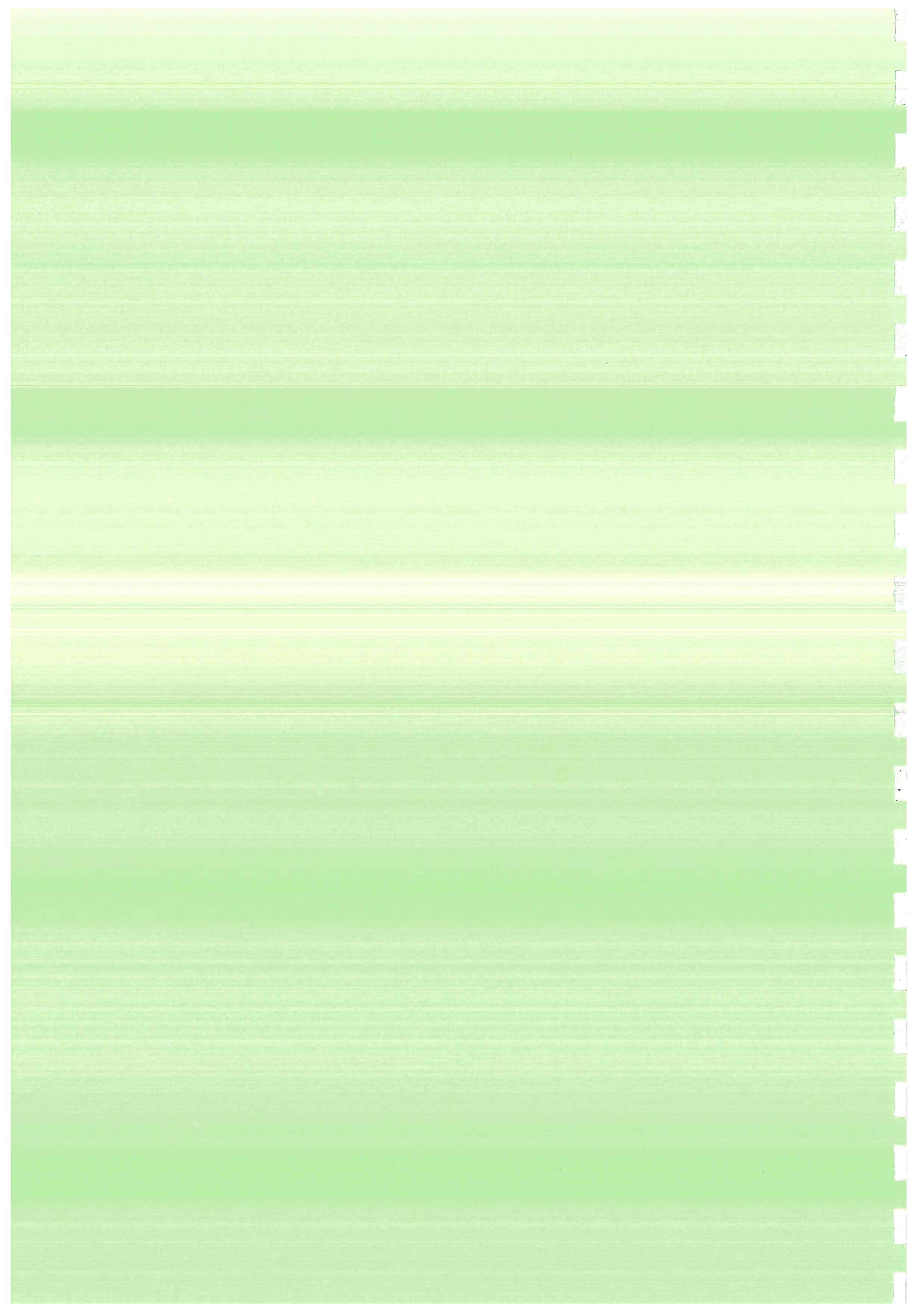
Copy to:

Vice Chancellor

Kenyatta University

ANNEX 3

SCAC draft Legal Order (Annex 3)



LEGAL NOTICE NO.

THE STATE CORPORATIONS ACT
(Cap. 446)

IN EXERCISE of the powers conferred by section 3 (1) of the State Corporations Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, make the following Order—

**THE KENYATTA UNIVERSITY REFERRAL HOSPITAL
ORDER, 2018**

Citation. 1. This Order may be cited as the Kenyatta University Referral Hospital Order, 2018.

Interpretation. 2. In this Order, unless the context otherwise requires—

Cap. 446. “Act” means the State Corporations Act;

“Board” means the Board of Directors of the Kenyatta University Referral Hospital Board constituted in accordance with paragraph 5;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for health;

“Chief Executive Officer” means the person appointed in accordance with paragraph 9;

“Board Member” means a member of the Board of Directors of the Kenyatta University Referral Hospital ;

“Referral Hospital” means the Kenyatta University Referral Hospital established under paragraph 3 of this Order.

Establishment
of the Referral
Hospital.

3.(1) There is established a state corporation to be known as the Kenyatta University Referral Hospital.

(2) The referral hospital shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) receiving, investing, borrowing and lending money; and
- (d) doing or performing all other things or acts, including entering into for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

No. 21 of
2017

(3) The referral hospital shall be a national referral hospital within the meaning of section 25(1) as read together with the First Schedule of the Health Act, 2017.

Functions of
the Referral
Hospital.

4. The Referral Hospital shall—

- (a) receive patients on referral from other hospitals or institutions within or outside Kenya for specialized health care;
- (b) provide facilities for medical education for the Kenyatta University and for research either directly or through other co-operating health institutions;
- (c) provide facilities for education and training in nursing and other health and allied institutions;

- (d) participate, as a national referred hospital, in national health planning;
- (e) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer and other chronic diseases;
- (f) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with chronic diseases, including those controlled and managed by the national government;
- (g) advise the Cabinet Secretary on matters relating to the treatment and care of persons with cancer and chronic diseases and to advise on the relative priorities to be given to the implementation of specific measures; and
- (h) doing or performing all other necessary functions or activities of a National Teaching, Research and Referral Hospital, including undertaking ventures for the purposes of raising revenues for the purposes of funding its activities wholly or in part.

Board of the
Referral
Hospital.

5.(1) There shall be a Board of Directors of the Referral Hospital which shall consist of—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for finance, or his or her representative, appointed in writing;
- (c) the Principal Secretary in the Ministry for the time being responsible for finance, or his or her representative, appointed in writing;

(d) the Attorney-General or his representative appointed in writing;

(e) the Vice-Chancellor of Kenyatta University;

(f) the Principal of the College of Health Sciences of Kenyatta University;

(g) the chief executive; and

(h) two other members, not being public officers, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to finance, management, medicine, economics, law or any other relevant field.

(2) The office of the chairperson or a board member shall become vacant if the holder—

(a) by a notice, in writing, addressed to the appointing authority, resigns from office;

(b) is removed from office, by the appointing authority, on grounds of incapacity due to mental or physical illness or is otherwise unable to discharge the functions of a member of the Board or continue to serve in the Board;

(c) is absent from three consecutive meetings of the Board without good cause and prior apology;

(d) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(e) is sentenced by a Court to imprisonment for a term of six months or more; or

Functions of
the Board.

(f) is convicted of an offence involving dishonesty or fraud.

6.(1) The Board shall be responsible for the management and administration of the Referral Hospital.

(2) Without prejudice to the generality of subparagraph (1), the Board shall—

- (a) receive patients on referral from other hospitals or institutions within or outside Kenya for specialized health care;
- (b) provide facilities for medical education for the Kenyatta University and for research either directly or through other co-operating health institutions;
- (c) provide facilities for education and training in nursing and other health and allied institutions;
- (d) participate, as a national referred hospital, in national health planning;
- (e) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer and other chronic diseases;
- (f) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with chronic diseases, including those controlled and managed by the Government;
- (g) advise the Cabinet Secretary on matters relating to the treatment and care of persons with cancer and chronic diseases and to advise on the relative priorities to be given to the implementation of specific measures; and

- (h) doing or performing all other necessary functions or activities of a National Teaching, Research and Referral Hospital, including undertaking of any ventures for the purposes of raising revenues for the purposes of funding its activities wholly or in part.

Powers of the Board.

7.(1) The Board shall have all the powers necessary to manage and administer the Referral Hospital in a manner that shall enable the realization the objects and purposes for which the Referral Hospital is established.

(2) Without prejudice to the generality of subparagraph (1), the Board shall have the power to—

- (a) open a bank account(s) for the funds of the Referral Hospital into which all moneys received by the Referral Hospital shall be paid in the first instance and out of which all payments made by the Referral Hospital shall be made;
- (b) enter into any agreement or partnership with any public sector agencies and other parties for the operation of facilities, equipment or services of the Referral Hospital as necessary, in furtherance of the discharge of the functions of the Referral Hospital;
- (c) acquire such land or assets for the proper performance of the functions of the Referral Hospital;
- (d) invest any of the Referral Hospital's funds not immediately required for performance of the objects and purposes for which the Referral Hospital is established; and
- (e) with the written prior approval of the Cabinet Secretary, carry out any other activity that in the opinion of the Board will promote and facilitate the

realization of the objects and purposes for which the Referral Hospital is established.

Delegation by
the Board.

8. The Board may by resolution, in writing, either generally or for a particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Referral Hospital, the exercise of any of the powers or the performance of any of the functions of the Board under this Order or any other written law.

Chief
Executive
Officer.

9.(1) There shall be a Chief Executive Officer of the Referral Hospital appointed by the Board, in consultation with the Cabinet Secretary, who shall hold office on such terms and conditions of service as may be specified in the instrument of appointment or otherwise from time to time.

(2) A person shall qualify for appointment as the Chief Executive Officer if that person—

- (a) is a registered medical practitioner who holds a Master's degree in a health related field.;
- (b) has had a distinguished career in a senior management position in either the private or public sector for at least ten years;
- (c) holds at least ten years' post qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the Chief Executive Officer under subparagraph (1) if that person—

- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

- (b) is convicted of an offence involving dishonesty or fraud;
- (c) fails to comply with the requirements of Chapter Six of the Constitution; or
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months.

(4) The Chief Executive Officer shall be responsible for the day-to-day operations and administration of the Referral Hospital, under the general direction and supervision of the Board.

(5) The Chief Executive Officer shall be appointed for a term of three years and shall be eligible for reappointment for one further term.

Corporation
Secretary.

10.(1) The Board shall competitively recruit a person qualified, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Corporation Secretary of the Referral Hospital.

(2) The Corporation Secretary shall be the Secretary to the Board and shall be responsible for arranging the business and meetings of the Board, the keeping of records of the Board's meetings, the keeping of the records of the proceedings of the Board, and perform such other duties as the Board may direct.

Staff.

11. The Referral Hospital may employ such other officers, staff or agents as it considers necessary for the discharge of its functions and duties under this Order, upon such terms and conditions as the Board may, in consultation with the relevant government institutions, determine.

Funds of the
Referral
Hospital.

12. The funds of the Referral Hospital shall consist of—

- (a) monies appropriated by Parliament for the purposes of the Referral Hospital;
- (b) such monies or assets as may accrue to the Referral Hospital in the course of the exercise of its powers or in the performance of its functions under this Order;
- (c) monies from any other source provided, donated, lent or given as a grant to the Referral Hospital; and
- (d) any other funds designated for or accruing to the Referral Hospital by operation of the law.

Financial
year.

13. The financial year of the Referral Hospital shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual
estimates.
No.18 of 2012

14. The annual estimates of the Referral Hospital shall be prepared in accordance with the Public Finance Management Act, 2012.

Accounts and
audit.

15.(1) The Board shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Referral Hospital.

No. 18 of 2012
No. 34 of 2015

(2) The accounts of the Referral Hospital shall be audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015.

Protection
from personal
liability.

16. No matter or thing done by the Board, chairperson, any Board member, or any officer, employee or agent of the Referral Hospital shall, if the matter or thing is done in good faith and for the purposes of executing any provisions of this Order, render the Board, Chairperson, Board member, or any officer, employee or agent of the Referral Hospital or any person acting under the direction of those persons personally liable for any action, claim or demand arising from the same.

Liability for damages.

17. The provisions of this Order shall not relieve the Referral Hospital of the liability to pay compensation or damages to any person for any injury to that person or his interests caused by the exercise of any power conferred by this Order or by failure, whether wholly or partially, of any works.

Policies.

18. The Board may make policies for the carrying into effect the provisions of this Order, and in particular but without prejudice to the foregoing make policies—

- (a) prescribing the procedure for the appointment of all members of staff or officers of the Referral Hospital;
- (b) prescribing the performance parameters and targets for any department, section, officer or member of staff of the Referral Hospital;
- (c) with respect to fees and charges to be levied by the Referral Hospital with respect to its services; and
- (d) outlining the Service Charter and deliverables of the Referral Hospital.

Protection from personal liability.

19. No matter or thing done by the Board, Chairperson, any other member of the Board, or any officer, employee or agent of the Referral Hospital shall, if the matter or thing is done in good faith and for the purposes of executing any provisions of this Order, render the Board, Chairperson, any other member of the Board, or any officer, employee or agent of the Referral Hospital or any person acting under the direction of those persons personally liable for any action, claim or demand arising from the same.

Annual report.

20. The Board shall, on receipt of audited accounts for the preceding year, submit to the Cabinet Secretary an annual report in respect of that financial year, containing—

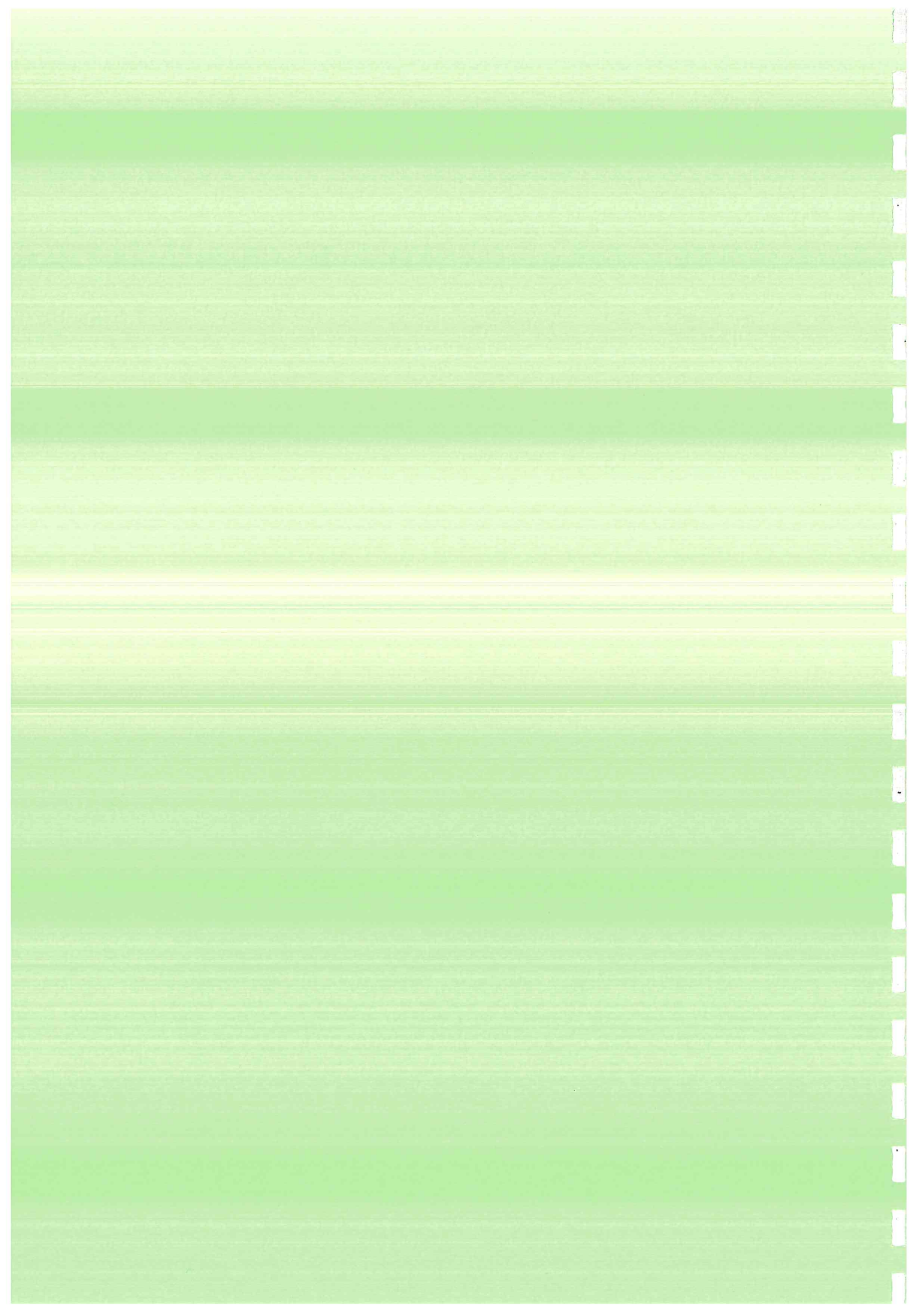
- (a) the accounts of the Referral Hospital and statements referred to under paragraph 15(1);
- (b) the Referral Hospital's performance indicators and any other related information;
- (c) a report on the operations of the Referral Hospital during that year; and
- (d) such other information as the Cabinet Secretary may request.

Made on the, 2018.

UHURU KENYATTA,
President.

ANNEX 4

❖ KU Draft Legal Order Proposal



LEGAL NOTICE NO:

THE STATE CORPORATIONS ACT
(Cap. 446)

IN EXERCISE of the powers conferred by section 3 (1) and Section 2(d) of the State Corporations Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defense Forces, make the following Order—

THE KENYATTA UNIVERSITY HOSPITAL ORDER, 2018

Citation. 1. This Order may be cited as the Kenyatta University Hospital Order, 2018.

Interpretation. 2. In this Order, unless the context otherwise requires—

Cap. 446. “Act” means the State Corporations Act;

 “Board” means the Kenyatta University Hospital Board constituted in accordance with paragraph 5;

 “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for health and Cabinet Secretary for the time being responsible for Education;

 “Chief Executive Officer” means the person appointed in accordance with paragraph 9;

 “Board Member” means a member of the Kenyatta University Hospital Board;

 “Hospital” means the Kenyatta University Hospital established under paragraph 3 of this Order.

Establishment of
the Hospital.
Section 2 (d) 3.(1) There is established a state corporation to be known as the Kenyatta University Hospital which shall be a wholly owned subsidiary of Kenyatta University

 (2) The hospital shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

 (a) suing and being sued;

 (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable property;

- (c) receiving, investing, borrowing and lending money; and
- (d) performing all other things or acts, including entering into contracts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate

No. 21 of 2017 (3) The hospital shall be a level 6 tertiary hospital within the meaning of section 25(1) as read together with the First Schedule of the Health Act, 2017.

Functions of the Hospital.

4. The Hospital shall—

(a) Provide highly specialized services. These include—

- (i) general specialization
- (ii) discipline specialization; and
- (iii) geographical/regional specialization including highly specialized healthcare for area/regional specialization;

(b) Research centre, provides training and research services for issues of national importance.

- (i) building capacity to enhance equitable access to healthcare,
- (ii) research in pre-clinical and clinical areas,
- (iii) providing highly specialized medical health care professionals,
- (iv) becoming a model for training, teaching, research and integrated Health Care Delivery System that responds to global health issues;
- (v) Providing environment and opportunity for schools in the university for training, research and innovative ideas
- (vi) Integration of traditional and alternative medicine into the conventional medicine
- (vii) Establishment of high level biosafety laboratories
- (viii) conduct clinical trials
- (ix) receive patients for highly specialized care from other hospitals or institutions within or outside Kenya

(c) participate, as a national referred hospital, in national health planning;

(d) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer, emerging and re-emerging communicable and non-communicable diseases;

(e) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with chronic diseases, including those controlled and managed by the national government;

- (f) advise the Cabinet Secretary for the time being for Health on matters relating to the treatment and care of persons with, emerging and re-emerging communicable and non-communicable diseases and to advise on the relative priorities to be given to the implementation of specific measures; and
- (g) performing all other necessary functions or activities of a Tertiary Hospital, including undertaking ventures for the purposes of sustainability of its activities wholly or in part

Board of the
Hospital.

5.(1) There shall be a Hospital Board which shall consist of—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for Finance, or his or her representative, appointed in writing;
- (c) the Principal Secretary in the Ministry for the time being responsible for Education, or his or her representative, appointed in writing;
- (d) the Principal Secretary in the Ministry for the time being responsible for Health, or his or her representative, appointed in writing;
- (e) the Vice-Chancellor of Kenyatta University;
- (f) Kenyatta University Council Member;
- (g) the Principal of the College of Health Sciences of Kenyatta University;
- (h) the Chief Executive Officer; and
- (i) One other member, not being a public officer, appointed by the Council by virtue of their knowledge and experience in matters relating to hospitals and healthcare management, finance management, medicine, economics, law or any other relevant field.

(2) Qualification for appointment as a member of the Board

A person shall qualify for appointment as a chairperson or member of the board if the person:

- (a) In the case of the Chairperson holds a doctorate degree from a university recognized in Kenya and has at least fifteen years' experience in matters relating to management of university education and health care delivery and services

- (b) In case of a member of the Board referred to under section 5(i) holds a master's degree from a university recognized in Kenya and has at least ten years' experience in matters relating to management of university education and health
- (c) In addition to the qualifications specified under subsection (1), and 2 a member of the Board shall be a person of high moral character and integrity in accordance with Chapter Six of the Constitution and capable of contributing to university education and health care management and delivery

(2) The office of the chairperson or a board member shall become vacant if the holder—

- (a) by a notice, in writing, addressed to the appointing authority, resigns from office;
- (b) is removed from office, by the appointing authority, on grounds of incapacity due to mental or physical illness or is otherwise unable to discharge the functions of a member of the Board or continue to serve in the Board;
- (c) is absent from three consecutive meetings of the Board without good cause and prior apology;
- (d) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (e) is sentenced by a Court to imprisonment for a term of six months or more; or
- (f) is convicted of an offence involving dishonesty or fraud;

Functions of the Board.

6. (1) The Board shall be responsible for the management and administration of the Hospital.

(2) Without prejudice to the generality of subparagraph (1), the Board shall—

- (a) administer the property and funds of the Hospital in such manner and for such purposes as will, in the opinion of the Board, promote its best interests;
- (b) on the advice of the relevant schools and programmes, to approve and submit through the responsible Ministry programmes of research and financial estimates for the consideration of the National Treasury;

- (c) approve financial estimates;
- (d) receive on behalf of the Hospital grants in aid, gifts, donations, fees, subscriptions or other moneys and approve disbursements therefrom;
- (e) enter into association, collaboration or linkages with other bodies or organizations within or outside Kenya as the university may consider desirable or appropriate and in furtherance of the purpose for which the Hospital is established; and
- (f) make regulations governing the appointment, conduct and discipline of employees of the Hospital;
- (g) in consultation with the Council draw up a scheme of service for employees of the Hospital;
- (h) approve terms and conditions of service, including appointments, dismissals, remuneration and retiring benefits, of employees of the Hospital;
- (i) Approve the secondment of personnel to and out of the Hospital in co-operation with other agencies;
- (j) Appoint such employees upon terms and conditions to be laid down by the Board as it considers necessary for the efficient conduct and operation of the Hospital

Powers of the Board.

7. (1) The Board shall have all the powers necessary to manage and administer the Hospital in a manner that shall enable the realization of the objects and purposes for which the Hospital is established.

(2) Without prejudice to the generality of subparagraph (1), the Board shall have the power to—

- (a) open a bank account(s) for the funds of the Hospital into which all moneys received by the Hospital shall be paid in the first instance and out of which all payments made by the Hospital shall be made;
- (b) enter into any agreement or partnership with any public sector agencies and other parties for the operation of facilities, equipment or services of the Hospital as is necessary;
- (c) acquire such land or assets for the proper performance of the functions of the Hospital;

- (d) invest any of the Hospital's funds not immediately required for performance of the objects and purposes for which the Hospital is established; and
- (e) With the written prior approval of the Cabinet Secretary for the time being responsible for education, carry out any other activity that in the opinion of the Board will promote and facilitate the realization of the objects and purposes for which the Hospital is established.

Delegation by
the Board.

8. The Board may by resolution, in writing, either generally or for a particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Hospital, the exercise of any of the powers or the performance of any of the functions of the Board under this Order or any other written law.

Chief Executive
Officer.

9. (1) There shall be a Chief Executive Officer of the Hospital appointed by the Board, in consultation with the Cabinet Secretary for the time being Education, who shall hold office on such terms and conditions of service as may be specified in the instrument of appointment or otherwise from time to time.

(2) A person shall qualify for appointment as the Chief Executive Officer if that person—

- (a) is a registered medical practitioner who holds at least a Master's degree in a health related field, training with experience in research and fund raising
- (b) has had a distinguished career in a senior management position in either the private or public health sector for over ten years;
- (c) holds at least ten years' post qualification professional experience; and
- (d) Satisfies the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the Chief Executive Officer under subparagraph (1) if that person—

- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
- (b) is convicted of an offence involving dishonesty or fraud;
- (c) fails to comply with the requirements of Chapter Six of the Constitution; or

(d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(4) The Chief Executive Officer shall be responsible for the day-to-day operations and administration of the Hospital, under the general direction and supervision of the Board.

(5) The Chief Executive Officer shall be appointed for a term of three years and shall be eligible for reappointment for one further term.

Corporation
Secretary.

10. (1) The Board shall competitively recruit a person qualified, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Corporation Secretary of the Hospital.

(2) The Corporation Secretary shall be the Secretary to the Board and shall be responsible for arranging the business and meetings of the Board, the keeping of records of the Board's meetings, the keeping of the records of the proceedings of the Board, and perform such other duties as the Board may direct.

The
Management
Committee

11. (1) The Management Committee,
There shall be a Management Committee which shall consist of :

(a) The Chief Executive Officer

(b) The Director Administration and Finance

(c) The Director Training

(d) The Director Research and Innovation

(e) The Director Nursing

(f) The Director Clinical Services

(g) Deans of respective schools within the College of Health Sciences

(2) The functions of a Management Committee shall be:

(i) responsible for implementation of the policies of the Hospital

(ii) assist in the day-to-day management of the university hospital; and

(iii) undertake such other functions as shall be set out by the Board;

Staff.

12. The Hospital may employ such other officers, staff or agents as it considers necessary for the discharge of its functions and duties under this Order, upon such terms and conditions as the Board may, in consultation with the relevant government institutions, determine.

Funds of the Hospital.	<p>13. The funds of the Hospital shall consist of—</p> <ul style="list-style-type: none"> (a) monies appropriated by Parliament for the purposes of the Hospital; (b) such monies or assets as may accrue to the Hospital in the course of the exercise of its powers or in the performance of its functions under this Order; (c) monies from any other source provided, donated, lent or given as a grant to the Hospital; and (d) any other funds designated for or accruing to the Hospital by operation of the law;
Financial year.	14. The financial year of the Hospital shall be the period of twelve months ending on the thirtieth day of June in each year.
Annual estimates. No.18 of 2012	15. The annual estimates of the Hospital shall be prepared in accordance with the Public Finance Management Act, 2012.
Accounts and audit.	16. (1) The Board shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Hospital.
No. 18 of 2012 No. 34 of 2015	(2) The accounts of the Hospital shall be audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015.
Protection from personal liability.	17. No matter or thing done by the Board, chairperson, any Board member, or any officer, employee or agent of the Hospital shall, if the matter or thing is done in good faith and for the purposes of executing any provisions of this Order, render the Board, Chairperson, Board member, or any officer, employee or agent of the Hospital or any person acting under the direction of those persons personally liable for any action, claim or demand arising from the same.
Liability for damages.	18. The provisions of this Order shall not relieve the Hospital of the liability to pay compensation or damages to any person for any injury to that person or his interests caused by the exercise of any power conferred by this Order or by failure, whether wholly or partially, of any works.
Policies.	19. The Board may make policies for the carrying into effect the provisions of this Order, and in particular but without prejudice to the foregoing make policies—

- (a) prescribing the procedure for the appointment of all members of staff or officers of the Hospital;
- (b) prescribing the performance parameters and targets for any department, section, officer or member of staff of the Hospital;
- (c) with respect to fees and charges to be levied by the Hospital with respect to its services; and
- (d) outlining the Service Charter and deliverables of the Hospital;

Annual report.

20. The Board shall, on receipt of audited accounts for the preceding year, submit to the Cabinet Secretary for the time being, Education an annual report in respect of that financial year, containing—

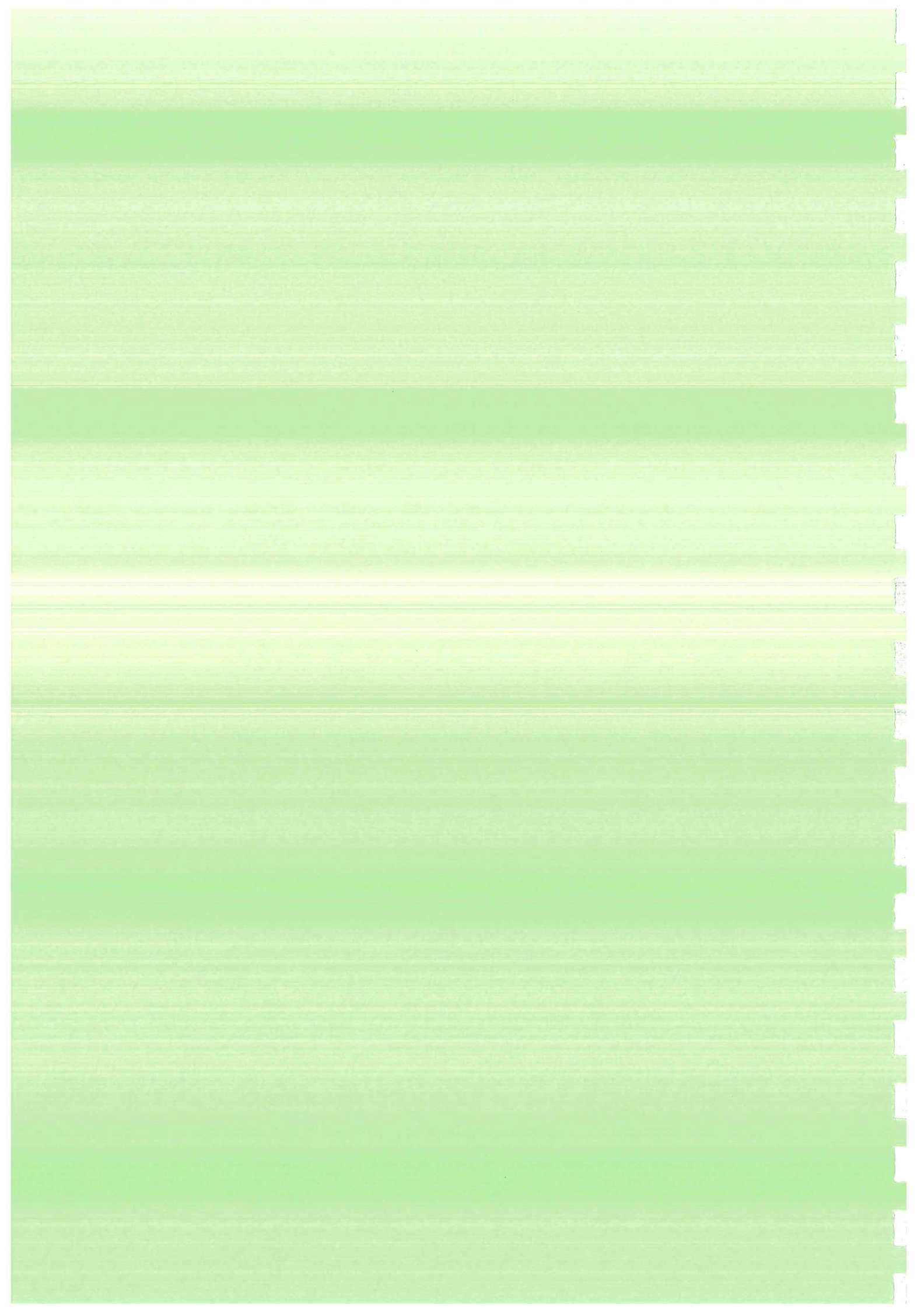
- (a) the accounts of the Hospital and statements referred to under paragraph 15(1);
- (b) the Hospital's performance indicators and any other related information;
- (c) a report on the operations of the Hospital during that year; and
- (d) such other information as the Cabinet Secretary may request.

Made on the, 2018.

UHURU KENYATTA,
President.

ANNEX 5

- ❖ Legal Notice No. 4 of 2019



SPECIAL ISSUE

7

Kenya Gazette Supplement No. 2

25th January, 2019

(Legislative Supplement No. 2)

LEGAL NOTICE NO. 4

THE STATE CORPORATIONS ACT

(Cap. 446)

IN EXERCISE of the powers conferred by section 3 (1) of the State Corporations Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, make the following Order—

THE KENYATTA UNIVERSITY TEACHING, REFERRAL AND RESEARCH HOSPITAL ORDER, 2019

1. This Order may be cited as the Kenyatta University Teaching, Referral and Research Hospital Order, 2019.

Citation.

2. In this Order, unless the context otherwise requires—

Interpretation.

“Act” means the State Corporations Act;

Cap. 446.

“Board” means the Board of Directors of the Kenyatta University Teaching, Referral and Research Hospital Board constituted in accordance with paragraph 6;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for health;

“Chief Executive Officer” means the person appointed in accordance with paragraph 10;

“Board Member” means a member of the Board of Directors of the Kenyatta University Teaching, Referral and Research Hospital ;

“Referral Hospital” means the Kenyatta University Teaching, Referral and Research Hospital established under paragraph 3 of this Order.

3. (1) There is established a state corporation to be known as the Kenyatta University Teaching, Referral and Research Hospital.

Establishment of
the Referral
Hospital.

(2) The Referral Hospital shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) receiving, investing, borrowing and lending money; and
- (d) doing or performing all other things or acts, including entering into for the proper performance of its functions

under this Act which may be lawfully done or performed by a body corporate.

(3) The hospital shall be a level 6 tertiary hospital within the meaning of section 25(1) as read with the First Schedule of the Health Act, 2017.

No. 21 of 2017

4. The aim and objective of the Referral Hospital shall be—

Aim and objective of the Hospital

(a) to provide highly specialized services, including—

(i) general specialization;

(ii) discipline specialization; and

(iii) geographical or regional specialization including highly specialized healthcare for an area or region; and

(b) to provide training and research services for issues of national importance.

5. The Referral Hospital shall—

Functions of the Referral Hospital.

(a) receive patients on referral from other hospitals or institutions within or outside Kenya for specialized health care;

(b) provide facilities for medical education for the Kenyatta University and for research either directly or through other co-operating health institutions;

(c) provide facilities for education and training in nursing and other health and allied institutions;

(d) participate, as a national referral hospital, in national health planning;

(e) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer and other chronic diseases;

(f) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with chronic diseases, including those controlled and managed by the national government;

(g) advise the Cabinet Secretary on matters relating to the treatment and care of persons with cancer and chronic diseases and to advise on the relative priorities to be given to the implementation of specific measures; and

(h) doing or performing all other necessary functions or activities of a National Teaching, Research and Referral Hospital, including undertaking ventures for the purposes of raising revenues for the purposes of funding its activities wholly or in part.

6. (1) There shall be a Board of Directors of the Referral Hospital which shall consist of —

Board of the Referral Hospital.

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for finance, or his or her representative, appointed in writing;
- (c) the Principal Secretary in the Ministry for the time being responsible for health, or his or her representative, appointed in writing;
- (d) the Principal Secretary in the Ministry for the time being responsible for university education, or his representative, appointed in writing;
- (e) the Attorney-General or his representative appointed in writing;
- (f) the Vice-Chancellor of Kenyatta University;
- (g) the Principal of the College of Health Sciences of Kenyatta University;
- (h) the Director of Medical Services;
- (i) a representative of the Kenyatta University Council, who shall not be a public officer;
- (j) the chief executive officer; and
- (k) two other members, not being public officers, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to finance, management, economics, law or any other relevant field.

(2) The Board may co-opt any other person with necessary expertise and on temporary basis as it considers necessary to assist the Board in discharging its duties and responsibilities.

(3) The office of the chairperson or a Board member shall become vacant if the holder—

- (a) by a notice, in writing, addressed to the appointing authority, resigns from office;
- (b) is removed from office, by the appointing authority, on grounds of incapacity due to mental or physical illness or is otherwise unable to discharge the functions of a member of the Board or continue to serve in the Board;
- (c) is absent from three consecutive meetings of the Board without good cause and prior apology;
- (d) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (e) is sentenced by a Court to imprisonment for a term of six months or more; or
- (f) is convicted of an offence involving dishonesty or fraud.

... shall be responsible for the management and Functions of the

(2) Without prejudice to the generality of subparagraph (1), the Board shall—

- (a) receive patients on referral from other hospitals or institutions within or outside Kenya for specialized health care;
- (b) provide facilities for medical education for the Kenyatta University and for research either directly or through other co-operating health institutions;
- (c) provide facilities for education and training in nursing and other health and allied institutions;
- (d) participate, as a national referred hospital, in national health planning;
- (e) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer and other chronic diseases;
- (f) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with chronic diseases, including those controlled and managed by the Government;
- (g) administer the property and funds of the Referral Hospital in such a manner and for such purposes as will, in the opinion of the Board, promote its best interests;
- (h) receive on behalf of the Referral Hospital grants in aid, gifts, donations, fees, subscriptions or other moneys and approve disbursement;
- (i) advise the Cabinet Secretary on policy matters relating to the treatment and care of persons with cancer and chronic diseases and to advise on the relative priorities to be given to the implementation of specific measures; and
- (j) do or perform all other necessary functions or activities of a National Teaching, Research and Referral Hospital, including undertaking of any ventures for the purposes of raising revenues for the purposes of funding its activities wholly or in part.

8. (1) The Board shall have all the powers necessary to manage and administer the Referral Hospital in a manner that shall enable the realization the objects and purposes for which the Referral Hospital is established.

Powers of the Board.

(2) Without prejudice to the generality of subparagraph (1), the Board shall have the power to—

- (a) open a bank account(s) for the funds of the Referral Hospital into which all moneys received by the Referral Hospital shall be paid in the first instance and out of which all payments

- (b) enter into any agreement or partnership with any public sector agencies and other parties for the operation of facilities, equipment or services of the Referral Hospital as necessary, in furtherance of the discharge of the functions of the Referral Hospital;
- (c) acquire such land or assets for the proper performance of the functions of the Referral Hospital;
- (d) invest any of the Referral Hospital's funds not immediately required for performance of the objects and purposes for which the Referral Hospital is established; and
- (e) with the written prior approval of the Cabinet Secretary, carry out any other activity that in the opinion of the Board will promote and facilitate the realization of the objects and purposes for which the Referral Hospital is established.

9. The Board may by resolution, in writing, either generally or for a particular case, delegate to any committee of the Board or Hospital management, the exercise of any of the powers or the performance of any of the functions of the Board under this Order or any other written law.

Delegation by the Board.

10. (1) There shall be a Chief Executive Officer of the Referral Hospital who shall be appointed by the Board on such terms and conditions of service as the Cabinet Secretary may in consultation with the Committee, approve.

Chief Executive Officer.

(2) A person shall qualify for appointment as the Chief Executive Officer if that person—

- (a) is a registered medical practitioner who holds a Master's degree in a health related field;
- (b) has had a distinguished career in a senior management position in either the private or public sector for at least ten years;
- (c) holds at least ten years' post qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the Chief Executive Officer under subparagraph (1) if that person—

- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
- (b) is convicted of an offence involving dishonesty or fraud;
- (c) fails to comply with the requirements of Chapter Six of the Constitution; or
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months.

(4) The Chief Executive Officer shall be responsible for the day-

(5) The Chief Executive Officer shall be appointed for a term of three years and shall be eligible for reappointment for one further term of three years.

11. (1) The Board shall competitively recruit a person qualified, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Corporation Secretary of the Referral Hospital.

Corporation
Secretary.

(2) The Corporation Secretary shall be the Secretary to the Board and shall be responsible for arranging the business and meetings of the Board, the keeping of records of the Board's meetings, the keeping of the records of the proceedings of the Board, and perform such other duties as the Board may direct.

12. The Referral Hospital may employ such other officers, staff or agents as it considers necessary for the discharge of its functions and duties under this Order, upon such terms and conditions as the Board may, in consultation with the relevant government institutions, determine.

Staff.

13. The funds of the Referral Hospital shall consist of—

Funds of the
Referral Hospital.

- (a) monies appropriated by Parliament for the purposes of the Referral Hospital;
- (b) such monies or assets as may accrue to the Referral Hospital in the course of the exercise of its powers or in the performance of its functions under this Order;
- (c) monies from any other source provided, donated, lent or given as a grant to the Referral Hospital; and
- (d) any other funds designated for or accruing to the Referral Hospital by operation of the law.

14. The financial year of the Referral Hospital shall be the period of twelve months ending on the thirtieth day of June in each year.

Financial year.

15. The annual estimates of the Referral Hospital shall be prepared in accordance with the Public Finance Management Act, 2012.

Annual estimates.
No.18 of 2012

16. (1) The Board shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Referral Hospital.

Accounts and
audit.

(2) The accounts of the Referral Hospital shall be audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015.

No. 18 of 2012
No.34 of 2015

17. No matter or thing done by the Board, chairperson, any Board member, or any officer, employee or agent of the Referral Hospital shall, if the matter or thing is done in good faith and for the purposes of executing any provisions of this Order, render the Board, Chairperson, Board member, or any officer, employee or agent of the Referral Hospital or any person acting under the direction of those persons personally liable for any action, claim or demand arising from the same.

Protection from
personal liability.

18. The provisions of this Order shall not relieve the Referral Hospital of the liability to pay compensation or damages to any person for any injury to that person or his interests caused by the exercise of any power conferred by this Order or by failure, whether wholly or partially, of any works.

Liability for damages.

19. The Board may make policies for the carrying into effect the provisions of this Order, and in particular, but without prejudice to the foregoing, make policies—

Policies.

- (a) with respect to the procedure for the appointment of all members of staff or officers of the Referral Hospital;
- (b) with respect to the performance parameters and targets for any department, section, officer or member of staff of the Referral Hospital;
- (c) with respect to fees and charges to be levied by the Referral Hospital with respect to its services; and
- (d) outlining the Service Charter and deliverables of the Referral Hospital.

20. No matter or thing done by the Board, Chairperson, any other member of the Board, or any officer, employee or agent of the Referral Hospital shall, if the matter or thing is done in good faith and for the purposes of executing any provisions of this Order, render the Board, Chairperson, any other member of the Board, or any officer, employee or agent of the Referral Hospital or any person acting under the direction of those persons personally liable for any action, claim or demand arising from the same.

Protection from personal liability.

21. The Board shall, on receipt of audited accounts for the preceding year, submit to the Cabinet Secretary an annual report in respect of that financial year, containing—

Annual report.

- (a) the accounts of the Referral Hospital and statements referred to under paragraph 15(1);
- (b) the Referral Hospital's performance indicators and any other related information;
- (c) a report on the operations of the Referral Hospital during that year; and
- (d) such other information as the Cabinet Secretary may request.

Dated the 22nd January, 2019.

UHURU KENYATTA,
President.

**APPENDIX V: SUBMISSION BY THE UNIVERSITIES'
ACADEMIC STAFF UNION (UNION)**



UNIVERSITIES' ACADEMIC STAFF UNION(UASU) KENYATTA UNIVERSITY CHAPTER

Kenyatta University Former Teaching Practice Building, Behind Graduate School Building, Opp Arboretum
Tel: 0703 463 646 email: uasuku2014@gmail.com

FROM: UASU CHAPTER SECRETARY, KU

DATE: 15TH FEBRUARY 2021

TO: CLERK OF THE NATIONAL ASSEMBLY
PARLIAMENT BUILDING
P. O BOX 41942 - 00100
NAIROBI
KENYA

**SUBJECT: OPINION OF UASU KU CHAPTER ON MOU BETWEEN
KENYATTA UNIVERSITY TEACHING, RESEARCH &
REFERRAL HOSPITAL (KUTRRH) AND KENYATTA
UNIVERSITY**

Your letter dated 4th February 2021 refers.

We wish to respond as follows:

- 1) The UASU KU Chapter and Union members did NOT participate in the process of formulating the said MOU dated 21st December 2020. Indeed the UNION learnt of the MOU from your letter dated 4th February 2021.
- 2) The authenticity and legality of the said MOU is in question given that the KU Governing Council Chair did NOT sign the document unlike the one of KUTRRH Chairperson of the Board who duly signed the document. This is further evidenced by the provisions of Article 11 at p.7 of the MOU.
- 3) The MOU between KUTRRH and KU signed on different dates in December, 2020 does NOT address the initial objective and intention of the establishment of KUTRRH. ~~The objective of the KUTRRH was~~ Teaching, Training, Research and Referral for Kenyatta University students.

It is clear from the MOU that Kenyatta University students may only be allowed to use the facilities of the hospital at the pleasure of the hospital leadership.

- 4) The legality of the transfer of KUTRRH ownership from KU to the Ministry of Health has NOT been captured in the MOU and goes against the KU Strategic Plan 2016 – 2026, Chapter Five, page 127 onwards of 285, **that is attached.**
- 5) The establishment of KUTRRH was meant to serve all the students in the School of Health Sciences and NOT selected few as captured in the MOU (Art. 3. Pg. 2-3).
- 6) In addition KUTRRH was supposed to supplement the services of Directorate of Health Services at University. The MOU does NOT capture this component as envisaged in the Kenyatta University Strategic Plan 2016/2026 at Chapter Five p.127 of 285 onwards on Quality Medical Training, Research and Healthcare Provisions. On the question of provision of medical care to Kenyatta University community, the **first Strategic Goal and Objective** under Chapter 5.3 p. p.127 of 285 on Strategic Goals and Objectives provides as follows:

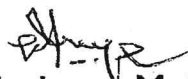
To provide quality healthcare services to students, staff and all including the Kenyatta University community through NHIF card system to supplement the services of Directorate of Health Services.

- 7) The New curriculum for training of health professionals as approved by CUE and other regulatory bodies has not been captured in the MOU as addressed by the VC's letter dated 22nd December 2020.
- 8) The facilities at the Hospital were meant for teaching, training and research exclusively according to the initial establishment. This is not happening given that KU students and staff have been denied access to these facilities. It may not even happen in future based on letter of the Chairman of Board of Directors to Prof. Paul Wainaina, Vice Chancellor Kenyatta University

dated 28th December, 2020 at p.5 where she give detailed information on how the different Blocks of Hospital Complex will be used.

- 9) The MOU is not balanced since it favors the Hospital against the University
- 10) It is in our considered opinion that the MOU between KUTRRH and KU must have been signed by our Vice Chancellor under duress evidenced from his letter dated 22nd December 2020 which was copied to the Chairperson of Parliamentary Committee on Implementation.
- 11) The union stands by its earlier MOU received by the committee on 4th November 2019 **that is attached**. The Union has not received any feedback to date. (Refer record).

Thank you.



Dr. George Lukoye Makokha
CHAPTER SECRETARY, UASU KENYATTA UNIVERSITY





KENYATTA UNIVERSITY

OFFICE OF THE VICE-CHANCELLOR

Office Tel: (+254-20) 870 3000/4000 Ext.: 3051
Office Cellphone: (+254) 772 296749
Website: www.ku.ac.ke

P.O. Box 43844-00100
Nairobi, Kenya
Email: vc@ku.ac.ke

REF: KU/VC/KUTRRH/C17/Vol.19/(45)

DATE: 22nd December, 2020

Prof. Olive M. Mugenda, Ph.D., EBS, CBS
Chairperson, Board of Directors
Kenyatta University Teaching, Referral &
Research Hospital
P.O. Box 7674-00100
NAIROBI

Dear Prof. Mugenda,

RE: EMPHASIS ON THE UNIQUE RELATIONSHIP BETWEEN KENYATTA UNIVERSITY AND KENYATTA UNIVERSITY TEACHING RESEARCH AND REFERRAL HOSPITAL (KUTRRH)

Greetings from Kenyatta University;

The University wishes to thank the KUTRRH Board for presenting an opportunity for KU and KUTRRH to cooperate in offering medical education and research through a Memorandum of Understanding. We also thank and appreciate the support and follow-up received from the Parliamentary Committees on Implementation and Health in the operationalization of the Hospital and efforts towards initiating collaboration between the two institutions which will be partially realized by the implementation of this MoU.

The University recognizes that KUTRRH is premised on the Legal Notice No. 4 of 2019 which requires it to provide medical education for the Kenyatta University as one of its functions as set out in section 5(b) and is strengthened by giving the Board the specific responsibility of providing facilities for medical education for Kenyatta University in section 7(2)(b).

The Legal Notice therefore translated the vision of Kenyatta University by establishing a tertiary hospital with a unique Board having substantial representation from the University, namely the Vice-Chancellor, the Principal, College of Health Sciences, the Council representative and Principal Secretary, State Department for University Education & Research. It is with this understanding that the University developed and forwarded for consideration to the Hospital Board a proposed policy document that would enable seamless integration between the two State Corporations.

However, during the Special Board meeting held on Thursday 17th December, 2020, where the MoU between KU and KUTRRH was tabled and discussed, an impression was created that KU relates to KUTRRH just like any other institution and not as the primary beneficiary of facilities for medical education as envisioned in the Legal Notice, thereby distancing the two institutions from each other.

Transforming Higher Education.....Enhancing Lives

It is worth noting that there are several key issues that make the two institutions inseparable such as:-

1. The legally established Hospital Board whose unique composition makes KU and KUTRRH synonymous entities.
2. The heavy investment that KU has made and continues to make in support of the Hospital establishment and operations, besides the loan component.
3. The continuous provision of professional consultancy services to the hospital by University staff as and when required and at no cost.
4. The wish of His Excellency the President to make the two facilities one huge Centre of Excellence in medical education, medical research and high level clinical services in East Africa.

As I mentioned during the meeting, the sections of the MoU that make provision for medical education for KU students are not compliant with the requirements of Kenyatta University curricula for various cadres, as accredited by the Commission for University Education and professional regulatory bodies. Nevertheless, to fast track initial entry of Kenyatta University medical students at the Hospital, the University has signed the MoU with the understanding that amendments will be made to conform to the aforementioned curricula and regulatory bodies' requirements going forward.

Thus, the MoU presents the first opportunity towards making the two institutions a Centre of Excellence in medical education, research and provision of clinical services. In order to accomplish its mandate within this MoU, the Legal Order and the University's vision, Kenyatta University expects that, all its requirements for medical education and research shall be considered. These comprise; clinical areas and facilities for medical education in medicine, pharmacy, nursing, dentistry and public health.

For the MoU to maximize the mutual benefits for the two institutions, the University would like to make the following requests;

1. Full access of the Academic Block in the Hospital for teaching and research purposes since the facilities were meant to be used by the College of Health Sciences that comprises of schools of Medicine, Pharmacy, Nursing, Public Health and Dentistry. Currently, there is a shortage of these facilities at the Main Campus since the schools were planned to be housed at the Hospital. These facilities support clinical teaching of medical students and include; lecture theatres, clinical resource centres, skills laboratories, research laboratories and offices for the college, the five schools, departments and lecturers.

We appreciate that the Order provides for collaboration with other institutions and we note that with proper arrangements, these can be accommodated within the same facilities.

2. The new curricula as accredited by the Commission for University Education and the regulatory bodies require students to have hospital experience right from the formative stages of training. These therefore requires them to access the Hospital from year one of their study. The Board should therefore try to make provisions for the students to access the Hospital as and when required and not as captured in the MoU.

3. In the implementation of training and research, there is involvement in patient management. This therefore means that there will be involvement of faculty in patient management at the Hospital, hence the collaboration will go beyond just training as captured in the MoU. Similarly, joint research may lead to joint innovations and acceleration which will be managed by both institutions. The MoU therefore needs to consider joint innovations and acceleration as a result of joint research.

With the above considered, the implementation of the MoU will lead to a smooth cooperation between the University and the Hospital with amazing results.

Finally, I take this opportunity to wish you a Merry Christmas and Happy New Year.

Thank you.

Yours sincerely,



PROF. PAUL K. WAINAINA, Ph.D.
VICE-CHANCELLOR

Cc. Prof. George A.O. Magoha, CBS
Cabinet Secretary, Ministry of Education

Hon. Mutahi Kagwe, EGH
Cabinet Secretary, Ministry of Health

Chairperson,
Parliamentary Committee on Implementation

Chairperson,
Parliamentary Committee on Health

Prof. Shem Migot-Adholla
Chairman, Kenyatta University Council



MEMORANDUM OF UNDERSTANDING
BETWEEN

KENYATTA UNIVERSITY TEACHING REFERRAL AND RESEARCH
HOSPITAL

AND



KENYATTA UNIVERSITY

PREAMBLE

This Memorandum of Understanding (Hereinafter referred to as "MOU") dated
Day of Two Thousand and Twenty is entered into between

Kenyatta University Teaching, Referral and Research Hospital, hereinafter referred to as "KUTRRH", established by the Legal Notice No. 4 of 2019 under the State Corporation Act, of P.O. Box 7674 – 00100 NAIROBI.

AND

Kenyatta University, a Public University established by a Charter under the Universities Act, 2012 of P.O. BOX 43844 00100, NAIROBI, and hereinafter referred to as "KU".

NOW, THEREFORE, the parties agree to cooperate and collaborate as follows:

Article 1: Objective

- i) Pursuant to the Legal Notice No. 4 of 25th January, 2019 Section 5(b), KUTRRH and KU will work and collaborate for purposes of enhancing quality, efficiency and effectiveness in the provision of quality medical education and for research either directly or through other co-operating health institutions.

Article 2: Areas of Collaboration

The areas of collaboration shall be as follows:

- i) Medical Training
- ii) Medical Research

Article 3: Responsibilities and Commitment of the Parties

- i. In principle, each institution (KUTRRH and KU) shall retain their own policies and only engage in collaborative training and research ventures as per the respective policy guidelines and agreements.
- ii. Clinical placements and rotations-
KUTRRH and KU shall mutually determine the number of students expected to use the hospital for teaching and practical purposes from the following categories of students:
 - a) Medical Education: Medicine Students;
 - i. KUTRRH will engage 4th and 6th year Medical students.
 - ii. The rationale for the choice of the two groups is that:
 - they are the ones ready for bedside training having gone through the basic sciences and foundational medical training.



- the first to third year students are undertaking their basic science and basic foundation medical courses and hence not ready for clinical rotations. In addition, they have training space at Kenyatta University School of Medicine.
- iii. Medical Laboratory students in their 4th year of study will be placed at KUTRRH depending with the Hospital's capacity and needs.
- iv. More capacity will be provided in Gatundu Annex.
- b) Medical Education: Nursing Students;
 - i. KUTRRH being a tertiary Hospital will accept an agreed number of postgraduate students for placement in selected clinical areas.
 - ii. KUTRRH will allow placement of 3rd year nursing students at Gatundu level 5 hospital which is an annex of KUTRRH and 4th year at the main hospital facility.
 - iii. When the KUTRRH specialized nursing institute is fully operational, placement priority will be given to KUTRRH nursing students.
- c) Medical Education: Pharmacy Students;
 - i. KUTRRH will accept an agreed number of 4th year students for attachment according to the Hospital capacity and needs.
- d) Medical Education: Public Health Students;
 - i. KUTRRH will place relevant students who need attachment in a hospital setup. This will only apply to those students who need tertiary level exposure and be according to the Hospital capacity and needs.

3.1 RESPONSIBILITIES OF KENYATTA UNIVERSITY TEACHING, REFERRAL AND RESEARCH HOSPITAL

Responsibilities of KUTRRH:

- 3.1.1 To offer facilities for medical education that will consist of clinical rotations to an agreed number of students at a time
- 3.1.2 To collaborate in medical research with KU as per applicable policies.
- 3.1.3 Appoint its members to the Joint Implementation Committee of this MOU.
- 3.1.4 Participate actively in the membership and operations or activities of the MOU Implementing Committee.
- 3.1.5 Promote the spirit of understanding and mutual resolution of disputes and conflicts should they arise.
- 3.1.6 Empanel individual KU Clinicians who are qualified to provide services to the Hospital as per KUTRRH empanelment policy as per the needs of KUTRRH and taking into consideration other applicants from other institutions/individuals. Some KU Clinicians have already applied to be empaneled.
- 3.1.7 Ensure that empaneled KU Clinicians adhere to all relevant KUTRRH policies.





- 3.1.8 Grant access to relevant sections of the Hospital for the use by Kenyatta University clinical staff and students. The students shall be handled by their own lecturers and as per this MOU.
- 3.1.9 Setup a coordination office and appoint a Clinical Practice Educators to oversee the clinical placements and rotations.
- 3.1.10 Provide the secretariat which will work with the liaison person from KU.
- 3.1.11 During clinical rotation, KU students will benefit from experiences of KUTRRH staff who will be attending to patients in the course of their normal duties. However, KU clinicians will take primary responsibility of bedside training and teaching of KU students.
- 3.1.12 KUTRRH has the right to disengage any student or staff of KU who grossly violates KUTRRH policies or engages in professional misconduct. Staff and students of KU will be required to sign a code of conduct before engaging with the Hospital.

3.2: RESPONSIBILITIES OF KENYATTA UNIVERSITY

Responsibilities of KU: -

- 3.2.1 Appoint its members to the Joint Implementation Committee of this MOU.
- 3.2.2 Participate actively in the membership and operations or activities of the MOU Implementation Committee.
- 3.2.3 Ensure KU medical education staff take primary responsibility of their students while in KUTRRH.
- 3.2.4 Promote the spirit of understanding and mutual resolution of disputes and conflicts should they arise.
- 3.2.5 Promptly meet the costs of consumables to be used by their students before they start clinical rotations.
- 3.2.6 Provide the liaison person who will work with the secretariat.
- 3.2.7 Facilitate enforcement of discipline and observance of ethical standards and good professional conduct among medical students, the academic and allied staff of KU rendering service in KUTRRH in relation to their clinical duties therein.
- 3.2.8 Ensure that staff and students of KU sign KUTRRH code of conduct before engaging with the Hospital.

Article 4: Joint Implementation Committee

The KUTRRH Board which has representation from KU will approve the activities of the Joint Implementation Committee.

The parties will:

- 4.1 Form a Joint Implementation Committee comprised of 5 representatives from each institution, promptly after this MOU comes into effect.
- 4.2 Each party shall appoint its members to the Joint Implementation Committee



Responsibilities of the Joint Implementation Committee

The purpose of the Joint Implementation Committee will be:

- i) Design implementation tools.
- ii) Monitor and oversee implementation of this MOU
- iii) Ensure effective communication between the two parties.
- iv) Agree on the modalities, contents and logistics of clinical rotations.
- v) KUTRRH will chair the joint implementation committee meetings. The Vice-Chair will come from the partnering institution.
- vi) The quorum for a meeting shall consist of six (6) members, three (3) from each party.
- vii) The Joint Implementation Committee will handle issues of discipline of medical students and staff from Kenyatta University.
- viii) The Secretariat will issue notices of meetings, record the proceedings and be the custodian of the committee minutes.
- ix) Each party shall pay its own expenses related to participation of the meetings.

Article 5: Medical Research

The two parties will:

- i. Engage in selected joint medical research projects where such projects are mutually beneficial to the two parties.
- ii. All research proposals will be subjected to respective institutional research approval processes.
- iii. All research activities that relate to the Hospital including data collection, analysis and dissemination must be approved by the Hospital research committees.
- iv. Research publications using data from the Hospital must be cleared by the Hospital Research Committee.
- v. Each party will fund its own research activities. Where there is collaboration, the parties will engage in joint research funds mobilization.

Article 6: Funding

Under this memorandum of understanding:

- i. KUTRRH contribution will be non-monetary through the provision of relevant spaces in the Hospital.
- ii. KUTRRH will appoint Clinical Practice Educators
- iii. KU will meet the costs of consumables to be used by their students before they start clinical rotations.
- iv. KU will meet the costs of their staff engaged in medical education of KU students.

Article 7: Intellectual and Technical Property Rights

- 7.1 In the course of collaboration between KUTRRH and KU, participating individuals who deploy proprietary materials and technologies acquired by either institution must adhere to intellectual property (IP) and technical property (TP) protection [e.g. material transfer Agreement (MTA) or license] pertaining to the relevant technologies and materials. Protection of innovations, research products and other IP/TP (through Patents, Copyrights, or other means) accruing from joint collaboration between KUTRRH and KU shall be undertaken jointly following consultations with the relevant institutional IP/TP organs/panels on proprietary science and technology.
- 7.2 All TP/IP resulting from the collaboration shall be jointly owned and managed by KUTRRH and KU in line with all relevant and applicable laws.
- 7.3 For purposes of this MOU, IP shall be taken, without limitation, to mean intellectual property rights (IPR), unpublished patent applications, and any other inventions, improvements, and/or discoveries that may or may not be legally protectable, including all know-how, trade secrets, research plans and priorities, research results, reports, statistical models, computer programmes, product ideas, etc. Technical or tangible property (TP) will be taken to mean, without limitation, tangible property such as computer software, architectural designs and teaching or learning toys or aids.

Article 8: Confidentiality

- 8.1 Each party shall undertake to preserve the confidentiality of information, documents or data received from the other party during the implementation of this MOU. Such information shall not be communicated to any third party without prior express consent of both parties. Technical documents and information received from the other party will only be used for purposes approved by both parties and no party will disclose them to a third party without prior consent of the other party.
- 8.2 In the event of termination of the MOU, the parties agree that the preservation of confidentiality shall continue to apply to the existing contractual agreements between the two parties.



Article 9: Notices

- i) Any notice, request or consent required or permission to be given or made pursuant to this MOU, will be in writing.
- ii) The communication shall be directed to:
 - a. For KUTRRH – Chief Executive Officer,
P.O. Box 7674 -00100
Nairobi, Kenya
 - b. For KU - Vice-Chancellor
P.O Box 43844 – 00100
Nairobi, Kenya

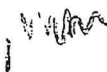
Article 10: Settlement of Disputes

- i) Any dispute arising in connection with the interpretation or application of this MOU will be amicably settled through consultations or negotiations between the parties.
- ii) As far as practicable the two parties will avoid any act of commission or omission that may cause, lead to or result in misunderstanding, disharmony, disputes or conflict between the two parties.
- iii) In case of failure to resolve the dispute within 30 days from the date one party gives Notice to the other of the dispute, the dispute shall be referred to a single Arbitrator appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Chapter at the request of either party.

Article 11: Legal Status of this MOU

This MOU merely constitutes a statement of the mutual intentions of the parties and is not intended to and will not create any legal obligations between the parties. Where parties intend to create such legal obligations, they will negotiate in good faith and form binding legal agreements.

Nothing in the Memorandum entitles the parties hereto to act in contravention of their respective enabling Acts or of any other written law.



Article 12: Effective date and Duration

- i) This MOU will be effective upon signatures of the parties
- ii) The MOU will remain valid for a period of 5 years and maybe extended in writing for a term to be agreed upon unless either party gives to the other a written notice in advance, of its intentions to terminate the MOU.

Article 13: Amendment

This MOU may be amended as maybe required from time to time by mutual written consent by both parties. Such amendments will be signed and dated by both parties prior to any changes being made and will come into effect on such a date as will be mutually agreed upon by the parties and will form part of the MOU.

Article 14: Governing Law

This MoU shall be governed by and construed in all aspects in accordance with Laws of Kenya.

Article 15: Force Majeure

No failure or delay by the Parties hereto in the performance of any obligation herein contained shall be deemed a breach of this MoU, nor shall the same create any liability as a result of any force or cause beyond the control of the Parties including, but not limited to, acts or omissions of any government, compliance with laws, regulations, orders or requests of any governments, fire, storm, flood or earthquake, war, rebellion, revolution, riot, strikes or lockouts. Should an event of *force majeure* occur, which prevents the performance of any obligation of either Party, the performance of any such obligation, directly, indirectly or consequentially affected by the event of *force majeure*, will be postponed for such time as the performance necessitates. The Parties hereto shall make all reasonable efforts to minimize, reduce, and mitigate the effect of any delay occasioned by an event of *force majeure*.

Article 16: Termination

- i) Either party may terminate this MOU at any time by giving the other party one-year prior written notice of its intention to do so, through the registered address.
- ii) Any ongoing activity at the time of termination arising out of the MOU will be carried out to their conclusion as if the MOU was in force.
- iii) In the event of this MOU being terminated, each party, will be solely responsible for the payments of any expenses it has incurred pursuant to the termination.

IN WITNESS WHEREOF, the undersigned being duly authorized, have signed and sealed this MOU in triplicate in the English language, both texts being equally authentic.

DATED ON THIS DAY OF 2020.

SIGNED ON BEHALF OF KENYATTA UNIVERSITY TEACHING REFRRAL AND RESARCH HOPSITAL

1. PROF. OLIVE MUGENDA PhD, EBS, CBS
CHAIRPERSON BOARD OF DIRECTORS

KENYATTA UNIVERSITY, TEACHING, REFERRAL AND RESEARCH HOSPITAL

SIGNATURE... *Olive Mugenda* DATE: *17/12/2020*

2. DR. VICTOR M. NJOM
AG. CHIEF EXECUTIVE OFFICER

KENYATTA UNIVERSITY, TEACHING, REFERRAL AND RESEARCH HOSPITAL

SIGNATURE... *Victor M. Njom* DATE: *17/12/2020*

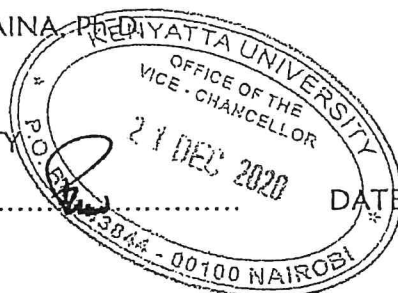
AND

SIGNED ON BEHALF OF KENYATTA UNIVERSITY

1. PROF. PAUL K. WAINAINA
VICE-CHANCELLOR

KENYATTA UNIVERSITY

SIGNATURE... *Paul K. Wainaina* DATE: *21/12/2020*



2. PROF. PAUL OKEMO
AG. DEPUTY VICE CHANCELLOR ACADEMIC

KENYATTA UNIVERSITY

SIGNATURE... *Paul Okemo* DATE: *21/12/2020*

Om

VNM



UNIVERSITIES' ACADEMIC STAFF UNION(UASU) KENYATTA UNIVERSITY CHAPTER

Kenyatta University Former Teaching Practice Building, Behind Graduate School Building, opp. Arboretum
Tel: 0703 463 646 email: uasuku2014@gmail.com

4th NOVEMBER, 2019

CLERK OF THE NATIONAL ASSEMBLY
PARLIAMENT BUILDING
P.O. BOX 41842 – 00100
NAIROBI
KENYA



**ATTENTION: CHAIR, SELECT COMMITTEE ON IMPLEMENTATION
REGARDING THE STATUS OF HOUSE RESOLUTIONS**

**SUBJECT: MEMORANDUM ON KENYATTA UNIVERSITY TEACHING,
RESEARCH AND REFERRAL HOSPITAL FROM UASU, KENYATTA
UNIVERSITY CHAPTER**

The above subject matter refers.

Attached find our Memorandum on the said subject matter.

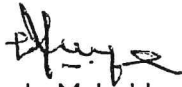
As the Chair of the said committee, we are kindly requesting you to present our Memorandum to the Committee to assist in arriving at a balanced and informed decision regarding the Kenyatta University Teaching Research and Referral Hospital (KUTRRH). The following question will guide your discussions.

- 1) How was the KUTRRH transferred from Kenyatta University (KU) ownership to be a parastatal under the Ministry of Health and where is the formal and legal evidence for such transfer?
- 2) Was the right procedure followed in the take-over?
- 3) Did relevant stakeholders particularly from KU Community participate in the take-over process of the hospital and if so where is the evidence?
- 4) Was the Legal Order No. 4 of 2019 presented before the National Assembly for deliberations and final approval?

- 5) How will KU realize her Strategic Goal stated in her 2016/2026 Strategic Plan on Quality Medical Training, Research and Health Care provision without full ownership and management of the hospital?
- 6) Why did the Executive take away the hospital from the university management and placed it under the Ministry of Health when it was already in operation?
- 7) Given that the KUTRRH is sitting on KU land, is it right for it to be owned by a completely different legal entity?
- 8) Is it lawful and morally right for Prof. Olive Mugenda to hold three positions of employment as a State Officer?
- 9) Is it right for Prof. Olive Mugenda as an Employee of Kenyatta University to chair a board where the Chief Executive of Kenyatta University sits as an ordinary member of the board?

Sir, we are very ready and willing to appear before your committee for any clarifications on our memorandum and other issues relating to the matter given.

Thank you.



Dr. George L. Makokha

CHAPTER SECRETARY, UASU KU CHAPTER

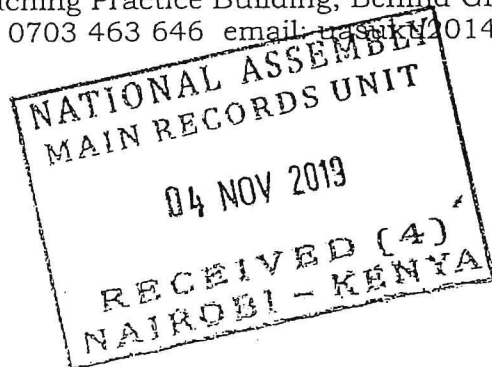


UNIVERSITIES' ACADEMIC STAFF UNION(UASU) KENYATTA UNIVERSITY CHAPTER

Kenyatta University Former Teaching Practice Building, Behind Graduate School Building, opp. Arboretu
Tel: 0703 463 646 email: uasukn2014@gmail.com

4th November, 2019

The Clerk
National Assembly
Republic of Kenya
NAIROBI



**SUBJECT: UASU PETITION ON THE KENYATTA UNIVERSITY HOSPITAL
AND OTHERS**

A. Background to the Establishment of the Hospital

- 1) Kenyatta University (KU) has been offering health related courses for a long time in different schools. In Notice to consolidate the training of medical professionals, KU started a school of Health Sciences in 2004. The University currently depends on infrastructure and facilities in other health institutions to train health professionals, a situation that is unreliable, expensive and unsustainable.

Additionally, these institutions are not able to offer specialized training for health care professions beyond undergraduate level and yet the need for more health professionals and the demand for training in health sciences in Kenya are enormous. To address that short fall, KU conceptualized and proposed to establish a state-of-art teaching, training, research and referral hospital at the main campus.

- 2) The establishment of Kenyatta University Teaching Research and Referral Hospital was envisioned in the Kenyatta University Charter, the Statutes and the Strategic Plan 2005 – 2015. Its Construction began in 2012 and was completed in 2017. The construction of the hospital was financed majorly by a loan amounting to 744,

560, 000 Chinese Yuan from the Exim Bank of China to Kenyatta through a loan signed on behalf of the Kenya Government by Mr. Joseph Kinyua, Permanent Secretary, Treasury in the presence of Prof. Crispus Kiambu, Permanent Secretary, Ministry of Higher Education, Science and Technology and signed by on behalf of Kenyatta University by Prof. Olive Mugenda, Vice Chancellor of Kenyatta University on 18th August, 2011. (***See attached Doc. 1***)

- 3) Before the change-over of the hospital to a parastatal, Kenyatta University had started operating it as evidenced in the attached documents as ***Doc 2***. In the said documents, the current management of the hospital requested the University to withdraw its staff that had been deployed there. Given that the university had started operating the hospital, UASU, KU Chapter as key stakeholder does not know the circumstances under which the hospital changed hands to become a parastatal.
- 4) In the Executive Summary of the 2016/2026 Strategic Plan under the Key priority areas at page 36 of 285, on ***Quality Medical Training, Research and Healthcare Provision***, it was envisaged that:
 - a) Kenyatta University will produce highly trained and qualified medical professionals who will provide contemporary patient-centered, interdisciplinary and collaborative health care. This is aimed at reducing the burden of disease as well as reversing the global medical tourism to Kenya.
 - b) The hospital will also provide a platform for research and outreach which will be realized through:
 - i. Undertaking robust biomedical and clinical research that ensures valid, accurate and reliable generation of knowledge and data that is necessary for decision making as well as transforming health care.
 - ii. Establishing the Centre for biomedical research and clinical trials with a view to creating a seamless continuum between the scientific inquiry and discovery carried out in the University's School of Health Sciences, the care delivered through its health hub, and the broad outreach that

measurably impacts the health of our local and global communities.

- 5) The Strategic goal is to establish a globally competitive medical training, research and health care hub. To realize this strategic goal, the University will pursue the following strategic objectives;
- a) To provide quality healthcare services to students, staff and all including the Kenyatta University community through NHIF card system to supplement the services of Directorate of Health Services.
 - b) To provide quality and specialized pediatrics care.
 - c) To produce highly qualified health care professionals, researchers, educators and leaders.
 - d) To transform medical training, Research and healthcare through innovative biomedical & clinical research.

(See Doc. 3)

UASU, KU Chapter opines that it will be difficult to realize the above objectives if the university is denied managing the hospital.

B. Benefits of Kenyatta University Hospital if Owned and Managed by the University

- 6) If the university is denied ownership and management, it will loss the following benefits:

a) Delivery of Medical Education

- i. The hospital was envisaged to provide an environment for training, research, and innovation leveraging on the vibrant related schools such as: Biomedical Engineering; Pharmacy; Nutrition and Dietetics; Hospital Management; Public Health among others.
- ii. It was to help meet the large demand for specialized skills development for doctors, nurses, pharmacists and other healthcare specialists to the Country.
- iii. It was to address the Big Four Agenda specifically on provision of Universal Health Coverage

b) Research and Innovation

- i. Kenyatta University Hospital was expected to be a model facility for excellent medical training, teaching, research, innovation and integrated Health Care Delivery System that was to respond to both local and global health care issues that would be Self-sustaining.
- ii. The hospital was to enhance research in pre-clinical, new clinical methods of managing patients, biomedical engineering and new technologies in medicine and other related fields.
- iii. It was envisaged that the hospital will attract research grants that will lead to evidence based improvements in clinical care, innovations and better healthcare outcomes. Research funding organizations may not or will not provide funds to a parastatal body.

All the above will not be realized if the hospital is not owned and managed by the university.

c) Collaboration

The university had already entered collaboration agreements with international Hospitals for clinical services and research with the understanding that the Hospital will be managed by the University.

These may not be honoured because the hospital as a parastatal will not have research capacity to attract such collaborations.

d) Accessibility and Availability to Medical Students and Academic Staff

- i. The University currently depends on infrastructure and facilities in other health institutions to train health professionals, a situation that is unreliable, expensive, time wasting and unsustainable.
- ii. Additionally, these institutions are not able to offer specialized training for health care professionals beyond undergraduate level and yet the need for more health professional and the demand for training in health sciences in Kenya are enormous.

The hospital as a parastatal run by the Ministry of Health is not obligated to allow unlimited accessibility and availability to Kenyatta University students and Ku staff.

e) Medicare Cost Cutting

- i. The goal of the hospital according to the Hospital Strategic Plan 2016/2026, is to establish a globally competitive medical training, research and health care hub. To realize this goal, the University was among others through the operation of hospital provide quality healthcare services to students, staff and all including the Kenyatta University community through NHIF card system to supplement the services of Directorate of Health Services.
- ii. In addition, it was to help cut down on the medical costs so that the savings can be used on research and improvement of the hospital facilities.

C. University Academic Staff Unions (UASU), Kenyatta University Chapter Concerns

- 7) UASU is a legal corporate entity made up of members of academic staff that have a right to fair labour practices as enshrined in Article 41 of the Constitution of Kenya, 2010. As Kenyans, they have an obligation to defend the Constitution and either individually, collectively or through the union leadership, have a right to the following:
 - i. Participation in decision making that affects them as provided in Articles 10 of the Constitution
 - ii. Involvement in the process of policy making as enshrined in Article 232.
 - iii. Timely information as provided in Articles 10, 35 and 232 of the Constitution of Kenya of 2010
- 8) UASU, KU fraternity still has a lot of stake in the Kenyatta University Hospital on the grounds that:

- i. Many of its members were going to benefit from it in their roles of teaching, training and research.
- ii. Its larger membership were going to benefit from referral services. According to the Legal Notice No. 4 of 2019, there are no provisions for benefiting its members.

UASU as key stakeholders of Kenyatta University with a lot of stake in the Kenyatta University was never involved in the process (if any) that led to the change of the hospital to the status of a parastatal. UASU only came to learn about with the current management board of the hospital was appointed in April, 2019.

- 9) From documents available, it is clear that the Ministry of Education and the Kenyatta University leadership and particularly the Council and Vice Chancellor were not involved in the process that led to current establishment of the Hospital. Below are the documents and also attached as ***Doc 4***
 - a) The letter from the Administrative Secretary and Principal Secretary dated 21st January, 2019 to the Principal Secretary, National Treasury attached at ***page 24 to 26***. The letter was issued four days before the Legal Notice No. 4 of 2019 was issued on 25th January, 2019.
 - b) The Minutes of Council Meeting held on 12th April 2019 attached at ***page 27 to 32***
 - c) The university management was coerced to cooperate with current hospital management in the establishment and operation of the Hospital as per the Legal Notice 4 of 2019. The letter dated 30th July, 2019 from the Non-executive Chair of the Hospital to the Chairman of the Council of Kenyatta University at ***page 41 to 44 attests*** to that.
 - d) The union is privy to information that the Vice Chancellor was summoned by some senior government officers to Harambee House on Sunday 13th October, 2019 and reprimanded for not cooperating with current hospital management. He was given

~~two days to ensure that all cases filed by Omtatah are withdrawn. On Tuesday 15th October, he was forced to surrender all the Hospital documents to the Solicitor~~

- 10) The aforementioned Legal Notice was not tabled before the National Assembly within 7 days as required in law. (**See Doc. 5**)
- 11) As early as 2016, there were attempts to take away the hospital from Kenyatta University. In the said year, the Kenyatta University Council attempted to change the name of the Hospital to Kenyatta University Health Care Systems Limited with its Board of Directors. Prof. Olive Mugenda was appointed as the Chief Executive Officer for a term of three years. Mr. Okiya Omtatah and UASU, KU Chapter moved to Court to challenge the change of hospital under a new name and the appointment of its directors. (**See Doc. 6**)

D. Official Handing Over of The Office of the Vice Chancellor, Kenyatta University by Prof. Olive Mugenda

- 12) UASU brings to the attention of this Committee that Prof. Olive Mugenda has not officially handed over the university to her successor, Prof. Wainaina. It is, therefore, surprising that the Acting Chief Executive Officer of the hospital through a letter dated 6th June 2019 to the Vice Chancellor and copied to the Non-executive Chairperson was requesting for hospital documents from the university. (**See Doc. 7**)

In addition, Prof. Olive Mugenda has refused to hand over even after the chairman of the Council through a letter dated 17th July, 2019 has requested her to do so. Evidence to this are the documents shown below and attached as **Doc. 8**

- a) A response letter dated 30th July, 2019 from Prof. Olive Mugenda to Prof. Shem Migot Adholla, Chairman of Council, Kenyatta University dated 17th July, 2019 whose subject was HAND OVER OF THE OFFICE OF THE VICE CHANCELLOR, KENYATTA UNIVERSITY.

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b) A letter from the current Vice Chancellor of Kenyatta University, Prof. Paul Wainaina to Chairman of the Council of Kenyatta University, Prof. Shem Miggot Adhola dated 16th May, 2018 whose subject was REQUEST FOR FINANCIAL AUDIT. In the said letter, the Vice Chancellor requested for official handing over and to establish the financial status of the university by the time he took over as Vice Chancellor.

c) It is very clear from the documents shown below and attached as **Doc. 9** that Prof. Olive Mugenda has never officially handed over as Vice Chancellor of Kenyatta University and no forensic and financial audit was done.

- i. Letter to the Chief Executive Officer, Ethics and Anti-Corruption dated 14th January 2016 requesting for forensic audit of Kenyatta University.
- ii. Letter to the Auditor General, Cabinet Secretary, Ministry of Education and Secretary of Ethics and Anti-Corruption Commission dated 5th July, 2016 requesting for forensic Audit
- iii. Letter dated 16th May, 2018 from the Vice Chancellor, KU to the Chairman of Council, KU requesting Financial Audit and Handing Over by Prof. Olive Mugenda
- iv. Letter to the Chairman of Kenyatta University Council dated 9th October 2018 requesting for handing over by Prof. Olive Mugenda
- v. Letter to the Chairman of Kenyatta University Council dated 16th November 2019 requesting for handing over by Prof. Olive Mugenda
- vi. Letter to the Cabinet Secretary of Education requesting handing over by Prof. Mugenda and forensic audit/investigation of Kenyatta University in a letter dated 5th March, 2019
- vii. Letter to the Vice Chancellor, KU by UASU, KU Chapter requesting for handing over by Prof. Olive Mugenda in a letter dated 10th May, 2019

Apparently, nothing has happened despite the many communications.

13) UASU is concerned that Prof. Mugenda is holding three positions, namely

- i. Professor of Kenyatta University
- ii. Commissioner in the Judicial Service Commission appointed by the President

- iii. Non-executive chair of Kenyatta University Hospital appointed by the President
Prof. Olive Mugenda is drawing salaries and allowances from the three positions.

E. IRREGULARITIES AT THE HOSPITAL

- 14) UASU is concerned that there are irregularities going in relation to KUTRRH as shown in documents below and marked as ***DOC. 10***
- a) In a letter dated 6th June 2019 to the Vice Chancellor, Kenyatta University mentioned under **No. 12** above, the Chief Executive Officer of the Hospital was requesting hand-over of some documents that have nothing to do with the Legal Notice 4 of 2019, for example, documents for the Women and Children's Hospitals.
 - b) In a letter dated 26th June, 2019, the Acting Secretary/CEO of Public Service Commission wrote to Dr. Joseph Kinyua, Head of the Public Service informing him that the Public Service Commission had granted approval secondment of Prof. Olive Mugenda to Kenyatta University Teaching, Referral and Research Hospital. The position of Chair of the Hospital is Non-Executive and so not full time.
 - c) On 22nd July 2019, Dr. Joseph Kinyua, Head of the Public Service wrote to the Vice Chancellor, Kenyatta University informing him about the Secondment of Prof. Olive Mugenda.
 - d) A letter 16th August, 2019 from the Secretary/CEO, 2019 to the Vice Chancellor over stoppage of Salary of Prof. Olive Mugenda Upon Secondment
 - e) Curiously, Prof. Olive Mugenda is on Secondment and yet she continues earning from Kenyatta University. Evidence is through a letter from the Vice Chancellor to the Acting Chief Finance Officer dated 29th August, 2019 instructing him to reinstate Prof. Mugenda's Salary.

f) On 29th May 2019, the Senior Chief, Kahawa West Location wrote to the Chairperson of Kenyatta University Hospital forwarding names of four (4) casuals as per their discussion during a meeting on 27th May 2019. This is corruption.

15) The Vice Chancellor of Kenyatta University is operating under intimidation from some high State Officers whom UASU strongly believes have personal interests in the hospital. The Vice Chancellor may not come out openly to give the correct position about the hospital.

Yours Sincerely


Dr. George L. Makokha

CHAPTER SECRETARY, UASU, KU CHAPTER

Quality Medical Training, Research and Healthcare Provision

5

Kenya's vision for health is to provide high quality, equitable and affordable health to all citizens in line with the Kenya Vision 2030 and the Government's Big Four Agenda. To achieve this, the vision recognizes the role of the private sector and other corporate bodies in improving the delivery of health care in partnership with the public sector. One area through which the private sector and corporate bodies can partner in health is provision of basic infrastructure. Basic health infrastructure and facility is an important determinant of the quality of medical training and healthcare provided and the research conducted. Indeed, health infrastructure is a key flagship project of the Kenya Health Sector Strategic and Investment plan (2013-2017). Further, to facilitate the realization of Kenya Vision 2030's biomedical and clinical research agenda, Kenyatta University will endeavour to transform biomedical and clinical research. This is one of the reasons Kenyatta University Hospital (KUH) is exploring possibilities of partnership with private sector in operationalization of the hospital. To facilitate realization of the National Health Care Vision, the quality of medical training, Kenyatta University will give priority to among others, establishment of a robust health infrastructure network through the proposed Kenyatta University Health Hub. Realization of this Hub will entail operationalization of the Kenyatta University Hospital (KUH) of Kenyatta University Children's Hospitals.

Developing a highly qualified human resource to provide quality health care and conduct impactful medical research is especially very important in the context of low impact medical research and the presence of a large youthful, middle-aged and highly productive population with increasing chronic and lifestyle disease and appreciation of equity in provision of health. Further, patient safety and quality of health care as well as increasing consumer and community expectations of health care are also key considerations.

During the 2016-2026 plan periods, Kenyatta University will produce highly trained and qualified medical professionals who will provide contemporary patient-centred, interdisciplinary and collaborative health care. This is aimed at reducing the burden of disease as well as reversing the global medical tourism to Kenya. The hospital will also provide a platform for research and outreach. This can be realized through undertaking robust biomedical and clinical research. Such a research ensures valid, accurate and reliable generation of knowledge and data that is necessary for decision making as well as transforming health care. The University will realize this through establishing the Institute for Non-Communicable Diseases and Disability Prevention as well as the Institute of Infectious Diseases Prevention. This Centre will put predominant emphasis on biomedical research and clinical trials with a view to creating a seamless continuum between the scientific inquiry and discovery carried out in the University's School of Health Sciences, the care delivered through its health hub, and the broad outreach that measurably impacts the health of our local and global communities.

5.2 Flagship Projects

- i. Operationalization of Kenyatta University Hospital (KUH).
- ii. Construction of Kenyatta University Children's Hospital
- iii. Establish the Institute of Non-Communicable Diseases and Disability Prevention
- iv. Establish the Institute of Infectious Diseases Prevention.

5.3 Strategic Goal and Objectives

The Strategic goal is to establish a globally competitive medical training, research and health care hub. To realize this strategic goal, the University will pursue the following strategic objectives;

- i. To provide quality healthcare services to students, staff and all including the Kenyatta University community through NHIF card system to supplement the services of Directorate of Health Services.
- ii. To provide quality and specialized pediatrics care.
- iii. To produce highly qualified health care professionals, researchers, educators and leaders.
- iv. To transform medical training, Research and healthcare through innovative biomedical & clin-

ical research.

Transforming neighbor relationships: From theory to practice

5.4 Key Targets and Expected Outputs

- i. Completed, fully equipped and operational KUH.
- ii. Completed, fully equipped and operational Kenyatta University Children's Hospital.
- iii. Highly qualified medical professionals.
- iv. Fully established and functional Center for Medical Research and Continuing Education that will comprise the Institute of Non-Communicable Diseases and Disability Prevention and the Institute of Infectious Diseases Prevention.
- v. High impact biomedical and clinical research that contributes to the quality of teaching and health care provision.
- vi. Policies that ensures access of the hospitals' referral services to the Kenyatta University community.
- vii. Improved healthcare provision for the Kenyatta University community.

5.5 Log Frame: Quality Medical Training, Research and Healthcare Provision

Strategic Goal: A Globally Competitive Medical Training, Research and Health Care Hub.											
Strategic Objectives	Strategies	Activities	Performance Indicators	Output/ Outcomes	Time Frame / Phases					Implementation period	Responsibility
					I	II	III	IV	V		
To provide quality healthcare	Ensure completion of construction and equipping The KUH	Finalize construction of KUH	Completed construction of KUH	Completed construction of KUH	√					July 2016-June 2018	Vice-Chancellor
		Equip KUH	Number of equipment bought and fixed	Equipped KUH	√	√				July 2016-June 2020	Vice-Chancellor
	Operationalization of KUH	Recruit qualified and adequate personnel for KUH	Interviews	Qualified personnel	√	√	√	√	√	July 2016-June 2026	Vice-Chancellor
		Establish Governance structure	Governance Structure in place	Governance Structure in place	√					July 2016-June 2018	Director KUH
		Undertake human resource planning	Staff establishment	Operational staff establishment	√					July 2016-June 2018	DVC (Administration) Director KUH

Strategic Goal: A Globally Competitive Medical Training, Research and Health Care Hub.											
Strategic Objectives	Strategies	Activities	Performance Indicators	Output/ Outcomes	Time Frame / Phases					Implementation period	Responsibility
					I	II	III	IV	V		
Provide quality health care services, including to Kenyatta University community	Improve health welfare of Kenyatta University students, staff and all including Kenyatta university community	Develop and implement a referral policy to the Kenyatta University Hospitals for Kenyatta University community	Policy in place	Policy	✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor DVC (Administration) Director KUH
To provide quality and specialized paediatric care	Establish a Children's Hospital	Write grant proposal	Number of grant proposals submitted for fundraising	2 proposals written per year	✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor Director KUH
					✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor Director KUH
		Construct the Children's hospital	Hospital completed	Hospital completed	✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor Director KUH
		Operationalize the Children's hospital	Operational Children's hospital	Operational Children's hospital				✓	✓	July 2014-June 2026	Vice-Chancellor Director KUH
To Produce highly qualified health care professionals,	Develop and offer clinical programmes	Carry out market survey	Market survey report	Survey report	✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor Director KUH
		Mount the programmes	Number of programs mounted	All new programs mounted	✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor Director KUH

Strategic Goal: A Globally Competitive Medical Training, Research and Health Care Hub.											
Strategic Objectives	Strategies	Activites	Performance Indicators	Output/ Outcomes	Time Frame / Phases					Implementation period	Responsibility
					I	II	III	IV	V		
researchers, educators, and leaders	Review existing programmes	Identify and review programmes	Number of programs reviewed per year	All programs reviewed when due						July 2016-June 2026	Vice-Chancellor Director KUH
	Attract and admit students with relevant qualifications	To advertise for programmes	Number of students admitted	Number of students admitted	✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor Director KUH
	Enhance relationship with existing hospitals current offering training facilities	Continue engagement with the current level 5 hospitals	Number of students taking practical classes in other hospitals	Number of students taking practical classes in other hospitals	✓	✓	✓	✓	✓	July 2016-June 2026	Vice-Chancellor Director KUH
	To transform medical training and health care through innovative biomedical & clinical research	Establish a strong interface between Kenyatta University College of Health Sciences and other institutions	Develop policy on the relationship	Policy in place	Policy in place	✓	✓	✓	✓	✓	July 2016-June 2026

Strategic Goal: A Globally Competitive Medical Training, Research and Health Care Hub.

Strategic Objectives	Strategies	Activities	Performance Indicators	Output/ Outcomes	Time Frame / Phases					Implementation period	Responsibility
					I	II	III	IV	V		
	That will comprise of institutes	Write grant proposals for establishment of Institute for Non-Communicable Diseases and Disability Prevention and the Institute of Infectious Diseases Prevention	Number of proposals written	5 proposals written per year	√	√				July 2016-June 2020	Vice-Chancellor Director KUH
			Amount of funds raised through grant proposals	Amount raised <ul style="list-style-type: none"> To cost approximately KShs 1.2 Billion for building and equipping 	√	√	√	√	√	July 2016-June 2026	Vice-Chancellor Director KUH
		Allocate funds for establishment of the two institutes	Operational Institutes of Non-Communicable Diseases and Disability Prevention as well as Institute of Infectious Diseases Prevention	Operational Institutes of Non-Communicable Diseases and Disability Prevention as well as Institute of Infectious Diseases Prevention	√	√				July 2016-June 2019	Vice-Chancellor Director KUH

Strategic Goal: A Globally Competitive Medical Training, Research and Health Care Hub.

Strategic Objectives	Strategies	Activities	Performance Indicators	Output/ Outcomes	Time Frame / Phases					Implementation period	Responsibility
					I	II	III	IV	V		
	Undertake health research	Allocate funds for research in health	Amount of funds allocated per year	Amount of funds allocated per year	√	√	√	√	√	July 2016 – June 2026	Vice-Chancellor Director KUH
		Develop Clinical training programmes for research in health	Number of programmes developed per year	Number of programmes developed per year	√	√	√	√	√	July 2016 – June 2026	Vice-Chancellor Director KUH
		Train researchers	Number of researchers trained per year	Number of researchers trained per year	√	√	√	√	√	July 2016 – June 2026	Vice-Chancellor Director KUH
		Conduct research	Number of research reports per year	Number of research reports per year	√	√	√	√	√	July 2016 – June 2026	Vice-Chancellor Director KUH
			Number of innovations per year	Innovations per year	√	√	√	√	√	July 2016 – June 2026	Vice-Chancellor Director KUH
	Utilize research uptake for health promotion and medical training	Identify best practices from research results	Number of best practices identified from research and applied in KU Health Hub per year	2 medical breakthroughs per year	√	√	√	√	√	July 2016 – June 2026	Vice-Chancellor Director KUH

Strategic Goal: A Globally Competitive Medical Training, Research and Health Care Hub.											
Strategic Objectives	Strategies	Activities	Performance Indicators	Output/ Outcomes	Time Frame / Phases					Implementation period	Responsibility
					I	II	III	IV	V		
	To initiate and sustain collaborations and partnerships in health care provision and training	Identify potential partners	Number of partners identified	Number of partners identified	✓	✓	✓	✓	✓	July 2016 – June 2026	Vice-Chancellor Director KUH
		Engage potential partners	Number of partners engaged	Number of partners engaged	✓	✓	✓	✓	✓	July 2016 – June 2026	Vice-Chancellor Director KUH
		Sign MoUs /MoAs	Number of MoUs /MoAs signed	Number of MoUs /MoAs signed	✓	✓	✓	✓	✓	July 2016 – June 2026	Vice-Chancellor Director KUH
	Develop novel inter-disciplinary and inter-professional programs and projects	Implement the MoUs /MoAs	Number of collaborative research/ teaching activities on schedule	Collaborative research/ teaching activities on schedule	✓	✓	✓	✓	✓	July 2016 – June 2026	Vice-Chancellor Director KUH

Phases: All Phases are Two Years Each

Phase: I -July 2016 to June 2018
Phase: II -July 2018 to June 2020
Phase: III -July 2020 to June 2022
Phase: IV -July 2022 to June 2024
Phase: V -July 2024 to June 2026

**UASU KENYATTA
UNIVERSITY CHAPTER
MEMORANDUM
TO
SELECT COMMITTEE
ON
IMPLEMENTATION
OF
HOUSE RESOLUTIONS**

SUB-HEADINGS OF THE MEMORANDUM

- A. Background to the Establishment of the Hospital
- B. Objectives of the Hospital
- C. Benefits of Kenyatta University Hospital if Owned and Managed by the University
- D. University Academic Staff Unions (UASU), KU Chapter and KU Leadership Non-involvement in the Change of the Hospital to a Parastatal
- E. Official Handing Over of The Office of the Vice Chancellor, KU by Prof. Olive Mugenda
- F. Symptoms of Irregularities, Corruption and Abuse of Office at The Kenyatta University Hospital
- G. Conclusion



UNIVERSITIES' ACADEMIC STAFF UNION(UASU) KENYATTA UNIVERSITY CHAPTER

Kenyatta University Former Teaching Practice Building, Behind Graduate School Building, opp. Arboretum
Tel: 0703 463 646 email: uasuku2014@gmail.com

20th November, 2019

The Clerk
National Assembly
Republic of Kenya
NAIROBI

SUBJECT: UASU PETITION ON THE KENYATTA UNIVERSITY HOSPITAL AND OTHERS

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Additionally, these institutions are not able to offer specialized training for health care professions beyond undergraduate level and yet the need for more health professionals and the demand for training in health sciences in Kenya are enormous. To address that short fall, KU conceptualized and proposed to establish a state-of-the-art teaching, training, research and referral hospital at the main campus.

- 2) The establishment of Kenyatta University Teaching Research and Referral Hospital (KUTRRH) was envisioned in the KU Charter, the Statutes and the Strategic Plan of 2005 – 2015 and reiterated in the Strategic Plan of 2016 - 2026. The Construction of the hospital began in 2012 and was completed in 2017. The construction was majorly financed by a loan from the Exim Bank of China to KU and guaranteed by the Kenyan Government following an agreement signed by Mr. Joseph Kinyua, Permanent

Secretary, Treasury on behalf of the Government and Prof. Olive Mugenda, Vice Chancellor of KU on behalf of KU on 18th August, 2011. **(See attached Doc. 01)**

- 3) Before the change-over of the hospital to a parastatal, KU had started operating it as evidenced in the document attached as **Doc. 02**. In the said documents, the current management of the hospital requested the University to withdraw its staff that had been deployed there. Given that the university had started operating the hospital, UASU KU Chapter as key a stakeholder does not know the circumstances that led the hospital be changed to a parastatal.

B. Objectives of the Hospital

- 4) In the Executive Summary of the 2016/2026 Strategic Plan **(attached as Doc. 03)** under the Key priority areas on **Quality Medical Training, Research and Healthcare Provision**, it was envisaged that:
 - a) KU was to produce highly trained and qualified medical professionals who will provide contemporary patient-centered, interdisciplinary and collaborative health care. This was aimed at reducing the burden of disease as well as reversing the global medical tourism to Kenya.
 - b) The hospital was to also provide a platform for research and outreach which would have been realized through:
 - i. Undertaking robust biomedical and clinical research that ensures valid, accurate and reliable generation of knowledge and data that is necessary for decision making as well as transforming health care.
 - ii. Establishing the Centre for biomedical research and clinical trials with a view to creating a seamless continuum between the scientific inquiry and discovery carried out in the University's School of Health Sciences, the care delivered through its health hub, and the broad outreach that measurably impacts the health of our local and global communities.
 - c) The Strategic goal was to establish a globally competitive medical training, research and health care hub. To realize this, the University was to pursue the following strategic objectives:

- i. To provide quality healthcare services to students, staff and all including the Kenyatta University community through NHIF card system to supplement the services of Directorate of Health Services at KU;
- ii. To provide quality and specialized pediatrics care;
- iii. To produce highly qualified health care professionals, researchers, educators and leaders;
- iv. To transform medical training, Research and healthcare through innovative biomedical & clinical research.

UASU, KU Chapter opines that it will be difficult to achieve the above objectives if the university is denied managing the hospital.

C. Benefits of Kenyatta University Teaching, Research and Referral Hospital if Owned and Managed by the University

5) If the university is denied ownership and management of the hospital, it will loss the following benefits:

a) Delivery of Medical Education

- i. Provision of an environment for training, research, and innovation leveraging on the vibrant related schools such as: Biomedical Engineering; Pharmacy; Nutrition and Dietetics; Hospital Management; Public Health; Social Sciences among others.
- ii. Helping meet the large demand for specialized skills development for doctors, nurses, pharmacists and other healthcare specialists to the Country.

b) Research and Innovation

- i. The KUTRRH was expected to be a model facility for excellent medical training, teaching, research, innovation and integrated Health Care Delivery System that was to respond to both local and global health care issues that would be Self-sustaining.

- ii. The hospital was to enhance research in pre-clinical, new clinical methods of managing patients, biomedical engineering and new technologies in medicine and other related fields.
- iii. It was envisaged that the hospital would attract research grants that would lead to evidence based improvements in clinical care, innovations and better healthcare outcomes. Research funding organizations may not or will not provide funds to a parastatal body.

All the above will not be realized if the hospital is not owned and managed by the university.

c) Collaboration

- i. The university had already entered collaboration agreements with international Hospitals and institutes for clinical services and research with the understanding that the Hospital will be managed by the University. ***(See Doc. 04 at page at 24 – 28)***

This may not be honoured because the hospital as a parastatal will not have research capacity to attract such collaborations.

d) Accessibility and Availability to Medical Students and Academic Staff

- i. The University currently depends on infrastructure and facilities in other health institutions to train health professionals, a situation that is unreliable, expensive, time wasting and unsustainable.
- ii. Additionally, these institutions are not able to offer specialized training for health care professionals beyond undergraduate level and yet the need for more health professional and the demand for training in health sciences in Kenya are enormous.

The hospital as a parastatal run by the Ministry of Health is not obligated to allow unlimited accessibility and availability to KU students and staff. This is already evident in the fact that the road and gate connecting the university to the hospital has been permanently

closed by the hospital and is manned by persons from National Youth Service.

e) Medicare Cost Cutting

- i. The goal of the hospital according to the Hospital Strategic Plan 2016/2026 was to establish a globally competitive medical training, research and health care hub. To realize this goal, the University was to among others things provide quality healthcare services to students, staff and all including the KU community through NHIF card system to supplement the services at the Directorate of Health Services at the university through the operation of the hospital.
- ii. In addition, it was to help cut down on the medical costs on staff and the students so that the savings could be used on research, improvement of the hospital facilities and other activities.
- iii. The hospital was to be an income generating entity for the university.

D. University Academic Staff Unions (UASU), KU Chapter and KU Leadership Non-involvement in the Change of the Hospital to a Parastatal

- 6) UASU is a legal corporate entity made up of members of academic staff that have a right to fair labour practices as enshrined in Article 41 of the Constitution of Kenya, 2010. As Kenyans, they have an obligation to defend the Constitution and either individually, collectively or through the union leadership, have a right to the following:
 - a) Participation in decision making that affects them as provided in Article 10 of the Constitution of Kenya of 2010.
 - b) Involvement in the process of policy making as enshrined in Article 232 of the Constitution.
 - c) Timely information as provided in Articles 10, 35 and 232 of the Constitution
- 7) UASU, KU fraternity still has a lot of stake in the KUTRRH on the grounds that:

- a) Many of its members were going to benefit from it in their roles of teaching, training and research.
- b) The UASU larger membership was going to benefit from referral services. According to the Legal Notice No. 4 of 2019, there are no provisions for benefiting its members.

UASU as key stakeholders of KU with a lot of stake in the KUTRRH were never involved in the process (if any) that led to the change of the hospital to the status of a parastatal. UASU only came to learn about it in April, 2019 when the current management board of the hospital was appointed. It is no wonder that Sections 17 and 18 of Legal Notice counteracts the Spirit and Letter of the Constitution of Kenya 2010 and particularly Chapter Six. Had the Legal Notice been subjected to public scrutiny before its issuance, the aforementioned offensive sections would not have seen the light of the day.

- 8) From documents at UASU's disposal, it is clear that the Ministry of Education and the KU leadership and particularly the Council and Vice Chancellor were not involved in the process that led to current status of the Hospital as evidenced in the documents shown below and attached as ***Docs. 05***
 - a) Communication between Administrative Secretary and Principal Secretary Ministry of Education and Principal Secretary, National Treasury in letters dated 21st January, 2019 and 10th December 2018 respectively. The letter from the Administrative Secretary and Principal Secretary Ministry of Education dated 21st January, 2019 was issued ***four days*** before the Legal Notice No. 4 of 2019 that was issued on 25th January, 2019. That means that Ministry may not have been involved in the process of coming up with the Legal Notice.
 - b) The Minutes of KU Council Meeting held on 12th April 2019. From the said minutes it was reported/noted that:
 - i. The government was to provide finances for recruitment of staff but the funds had not been released.
 - ii. That the University had forwarded to the Ministry of Education its proposal on ownership of KU Hospital and was awaiting response;

- iii. That the President had requested to meet with the Chancellor in order for him to clarify on the history of the Hospital before he signed a document on the KU Hospital. The Chancellor in turn held a meeting with the Chairman of Council and Vice Chancellor;
 - iv. That the meeting between the President and the Chancellor was scheduled for December 2018, but was later rescheduled to January, 2019.
 - v. *Parliament had approved that the Hospital should be owned and managed by KU since it was a Teaching, Training and Research Hospital;*
 - vi. The model of the Hospital neither replicated that of Moi Teaching and Referral Hospital nor Kenyatta National Hospital
 - vii. That the University had identified institutions that would train personnel to work at KU Hospital.
- c) Kenyatta University management was coerced to cooperate with current hospital management in the establishment and operation of the Hospital as per the Legal Notice 4 of 2019. The letter dated 30th July, 2019 from the Non-executive Chair of the Hospital to the Chairman of the Council of Kenyatta University particularly at **page 48** of the attachments attests to that.
- d) The union is privy to information that the Vice Chancellor was summoned by some senior government officers to Harambee House on Sunday 13th October, 2019 and reprimanded for not cooperating with the current hospital management. He was given two days to ensure that all cases filed by Mr. Omtatah are withdrawn. On Tuesday 15th October 2019, he was forced to surrender all the Hospital documents to the Solicitor General.
- 9) The aforementioned Legal Notice under paragraph 8 (c) above was not tabled before the National Assembly within 7 days as required in law as evidenced in the document attached as **Doc. 06**

- 10) As early as 2016, there were attempts to take away the hospital from KU. In the said year, the KU Council attempted to change the name of the Hospital to Kenyatta University Health Care Systems Limited with its Board of Directors. Prof. Olive Mugenda was appointed as the Chief Executive Officer for a term of three years. Mr. Okiya Omtatah and UASU, KU Chapter moved to Court under ELRC Petition 78 of 2016 to challenge the change of hospital under a new name and the appointment of its directors. (**See Doc. 07**)

E. Official Handing Over of the Office of the Vice Chancellor, Kenyatta University by Prof. Olive Mugenda

- 11) UASU brings to the attention of this Committee that Prof. Olive Mugenda has not officially handed over the university to her successor, Prof. Wainaina as evidenced through the documents attached as **Docs. 08**. It is, therefore, surprising that the Acting Chief Executive Officer of the hospital through a letter dated 6th June 2019 to the Vice Chancellor and copied to the Non-executive Chairperson was requesting for hospital documents from the university.
- a) A response letter dated 30th July, 2019 from Prof. Olive Mugenda to a letter of Prof. Shem Migot Adholla, Chairman of Council of KU dated 17th July, 2019 whose subject was HAND OVER OF THE OFFICE OF THE VICE CHANCELLOR, KENYATTA UNIVERSITY. It is evident that Prof. Olive Mugenda refused to hand over even after the request from the chairman of the Council, KU.
 - b) A letter from the current Vice Chancellor of KU, Prof. Paul Wainaina to Chairman of the Council of Kenyatta University, Prof. Shem Migot Adholla dated 16th May, 2018 whose subject was REQUEST FOR FINANCIAL AUDIT. In the said letter, the Vice Chancellor requested for official handing over and the establishment of the financial status of the university by the time he took over as Vice Chancellor.
 - c) It is very clear from the documents shown below that Prof. Olive Mugenda has never officially handed over as Vice Chancellor of Kenyatta University and no forensic/financial audit was done.
 - i. A letter from UASU to the Chief Executive Officer, Ethics and Anti-Corruption dated 14th January 2016 requesting for forensic audit of Kenyatta University.

- ii. A letter from UASU, KUSU and KUDHEIHA to the Auditor General, Cabinet Secretary, Ministry of Education and Secretary of Ethics and Anti-Corruption Commission dated 5th July, 2016 requesting for forensic Audit.
- iii. A letter from the Vice Chancellor, KU to the Chairman of Council, KU dated 16th May, 2018 requesting for Financial Audit and Handing Over by Prof. Olive Mugenda. ***The Vice Chancellor may not have requested for Financial Audit in vain.***
- iv. A letter from UASU, KU Chapter to the Chairman of KU Council dated 9th October 2018 requesting for handing over by Prof. Olive Mugenda.
- v. A letter from UASU, KU Chapter to the Chairman of KU Council dated 16th November 2018 requesting for handing over by Prof. Olive Mugenda.
- vi. A letter from UASU, KU Chapter to the Cabinet Secretary of Education requesting handing over by Prof. Mugenda and forensic audit/investigation of KU in a letter dated 4th March, 2019.
- vii. A letter from UASU, KU Chapter lawyer to the Vice Chancellor, KU requesting for handing over by Prof. Olive Mugenda in a letter dated 10th May, 2019.

Apparently nothing has and there has been no communication in relation to the question of handing over.

- 12) UASU is concerned that Prof. Mugenda is holding three positions from which she is drawing salaries, namely as:
- a) Professor of Kenyatta University;
 - b) Commissioner in the Judicial Service Commission appointed by the President;
 - c) Non-executive chair of KUTRRH appointed by the President

F. Symptoms of Irregularities, Corruption and Abuse of Office at the KUTRRH

13) UASU is concerned that there are symptoms of irregularities, corruption and abuse of office going on at the KUTRRH as shown in documents below and marked as ***Docs. 09***

- a) The manner in which the hospital was taken over from the University was very acrimonious putting in mind that the hospital was developed by KU. The handing over process was supposed to have been carried out in line with the Public Finance Management Act. The letter from the Head of Public Service to the Non-executive Chair of the hospital dated 21st May 2019 directed the hospital to be taken over without regard to KU that was the implementing agent for the Government and this was echoed by the CS Health when she stated that the hospital will be operated by the board without any regard to KU.
- b) In a letter dated 6th June 2019 to the Vice Chancellor, KU mentioned under **No. II** above, the Chief Executive Officer of the Hospital was requesting hand-over of some documents that had nothing to do with the Legal Notice 4 of 2019. For example, documents for the Women and Children's Hospitals.
- c) In a letter dated 26th June, 2019, the Acting Secretary/CEO of Public Service Commission wrote to Dr. Joseph Kinyua, Head of the Public Service informing him that the Public Service Commission had granted approval secondment of Prof. Olive Mugenda to KUTRRH. The position of Chair of the Hospital is Non-Executive and so not full time.
- d) On 22nd July 2019, Dr. Joseph Kinyua, Head of the Public Service wrote to the Vice Chancellor, KU informing him about the Secondment of Prof. Olive Mugenda. Apparently UASU is privy to information that the secondment has since been revoked by the same Dr. Kinyua under unclear circumstances.
- e) A letter 16th August, 2019 from the Secretary/CEO, Public Service Commission to the Vice Chancellor, KU instructing him that the Salary of Prof. Olive Mugenda be borne by Kenyatta University Upon Secondment.

- f) Curiously, Prof. Olive Mugenda is on Secondment and yet she continues earning from KU. Evidence is through a letter from the Vice Chancellor to the Acting Chief Finance Officer, KU dated 29th August, 2019 instructing him to reinstate Prof. Mugenda's Salary following instructions stated in (e) above.
- g) On 29th April 2019, Prof. Olive Mugenda wrote to Mrs. Githemo, a staff at KU appointing her, among others to an operationalization team of the hospital without the knowledge and involvement of the University management.
- h) On 30th April 2019, Prof. Olive Mugenda wrote to the Vice Chancellor of KU requesting particular individuals from the university for secondment at the hospital. Apparently this request was being made after the staff had already received letters confirming that the university management had not nominated them contrary to (g), above.
- i) On 29th May 2019, the Senior Chief, Kahawa West Location wrote to the Chairperson of Kenyatta University Hospital forwarding names of four (4) casuals as per their discussion during a meeting on 27th May 2019. If this is not corruption, then UASU stands to be guided.
- j) In an email dated 1st October, 2019 from the Chief Executive Officer of the Hospital updating the Chair and Board of Directors on the progress of the hospital, he informed them at paragraph 8 that a team comprising of public works official and staff of the hospital were assessing the Chinese contractor variation claims amounting to 1.3 billion.

It is surprising that the board and the Hospital management were engaging a team from public works and other external bodies and staff who had no clue on how the project was developed in determining the variation without involvement of the university which was the government implementing agent of the Hospital project. Additionally, the technical team that was responsible for the project is still available within the university. This opens doors for corruption. UASU is privy to information that the university technical team of the hospital had only approved variation not exceeding KShs. 600,000,000.00 and not KShs. 1.3 billion as claimed by the Chinese contractor.

CONCLUSION

UASU wishes to bring to the attention of this committee that at page 20 of the Wednesday Daily Nation Newspaper of 20th November, 2019, it is reported that the Ministry of Health has retained the 2nd position among the most corrupt Ministries in Kenya. UASU KU is convinced that the change of the status of the KUTRRH to a parastatal under the Ministry of Health has to do with personal interests of a few individuals. Time will tell if the KUTRRH is left to operate as a parastatal. UASU implores this Committee to do whatever it can (if possible) to ensure that the hospital returns to its initial status and purpose and managed by the university if the purpose and intended objectives have to be achieved.

Yours Sincerely



Dr. George L. Makokha

CHAPTER SECRETARY, UASU, KENYATTA UNIVERSTIY

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