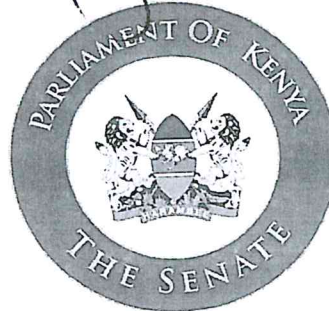


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for tabling. E 08/05/2024

approval for tabling  
08/05/2024



Rt. Hon. Speaker  
You may approve for tabling.  
J. M. Nyegenye, C.B.S.,  
Clerk of the senate/secretary, PSC  
Date: 08/05/24



THIRTEENTH PARLIAMENT  
THE SENATE

THE STANDING COMMITTEE ON HEALTH

PETITION REPORT ON THE MANAGEMENT AND USE OF KENYATTA  
UNIVERSITY TEACHING REFERRAL AND RESEARCH HOSPITAL BY  
KENYATTA UNIVERSITY MEDICAL STUDENTS

PAPER'S LAID	
DATE	9/5/2024
TABLED BY	Sen. Ledama ole Kingi
COMMITTEE	Health
CLERK AT THE TABLE	Cherop



Clerks Chambers,  
Parliament Buildings,  
**NAIROBI**

MAY, 2024

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## LIST OF ABBREVIATIONS

KMPDC	-	Kenya Medical Practitioners and Dentists Council
KU	-	Kenyatta University
KUTRRH	-	Kenyatta University Teaching, Referral and Research Hospital
MOH	-	Ministry of Health
MOE	-	Ministry of Education
MOU	-	Memorandum of Understanding
OAG	-	Office of the Attorney General
SCAC	-	State Corporations Advisory Committee
TNT	-	The National Treasury
UASU	-	Universities' Academic Staff Union

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4. *Annex 4:* Report of the Departmental Committee on Health on KUTRRH (2018).
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## **PRELIMINARIES**

### **A. Establishment and Mandate of the Committee**

The Standing Committee on Health is established pursuant to Standing Order 228(3) of the Senate Standing Orders and is mandated, pursuant to the Fourth Schedule to the Senate Standing Orders to consider all matters relating to medical services, public health, and sanitation.

### **B. Functions of the Committee**

Pursuant to Standing Order 228(3), the Committee functions to –

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of its assigned ministries and departments;
- b) study the programme and policy objectives of its assigned ministries and departments, and the effectiveness of the implementation thereof;
- c) study and review all legislation referred to it;
- d) study, assess and analyze the success of the ministries and departments assigned to it as measured by the results obtained as compared with their stated objectives;
- e) consider the Budget Policy Statement in line with Committee's mandate;
- f) report on all appointments where the Constitution or requires the Senate to approve;
- g) make reports and recommendations to the Senate as often as possible, including recommendations of proposed legislation;
- h) consider reports of Commissions and Independent Offices submitted to the Senate pursuant to the provisions of Article 254 of the Constitution;
- i) examine any statements raised by Senators on a matter within its mandate; and
- j) follow up and report on the status of implementation of resolutions within their mandate.

### **C. Government Agencies and Departments**

In exercising its mandate, the Committee oversees the County Governments, the Ministry of Health and its various Semi-Autonomous Government Agencies (SAGAs).

#### **D. Committee Membership**

The Standing Committee on Health was constituted by the House on 27<sup>th</sup> October, 2022, and comprises of the following Members -

##### **Chairperson**

Sen. Jackson Kiplagat Mandago, EGH, MP

##### **Vice-Chairperson**

Sen. Mariam Sheikh Omar, MP

##### **Members**

Sen. Erick Okong'o Mogeni, SC, MP,

Sen. Ledama Olekina, MP,

Sen. Abdul Mohammed Haji, MP

Sen. Joseph Nyutu Ngugi, MP

Sen. Raphael Chimera Mwinzagu, MP,

Sen. Hamida Kibwana, MP,

Sen. Esther Anyieni Okenyuri, MP,

### **E. Committee Secretariat**

The Committee Secretariat comprises the following staff -

- |                            |   |                                   |
|----------------------------|---|-----------------------------------|
| 1. Ms. Mary Chesire        | - | Director, Socio-Economic Services |
| 2. Mr. Boniface Lenairoshi | - | Deputy Director                   |
| 3. Mr. Stephen Gikonyo     | - | Principal Clerk                   |
| 4. Dr. Christine Sagini    | - | Lead Committee Clerk              |
| 5. Ms. Florence Waweru     | - | Committee Clerk Assistant         |
| 6. Mr. Mitchelle Otoro     | - | Legal Counsel                     |
| 7. Ms. Lilian Onyari       | - | Fiscal Analyst                    |
| 8. Mr. Dennis Amunavi      | - | Research Officer                  |
| 9. Mr. Victor Kimani       | - | Audio Officer                     |
| 10. Ms. Hawa Abdi          | - | Sergeant-at-Arms                  |
| 11. Mr. David Muthuri      | - | Intern                            |

## CHAIRPERSON'S FOREWORD

The right to petition Parliament is provided for under Article 119 of the Constitution which states that, *"Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right."*

At the sitting of the Senate held on 31<sup>st</sup> May, 2023, a petition by Mr. Jafar Muhsin Kasay and others on the management and use of Kenyatta University Teaching, Referral and Research Hospital by medical students of Kenyatta University was tabled before the House and committed to the Standing Committee on Health.

### A. The Petition

In the Petition, the petitioners averred that, despite Kenyatta University (KU) starting Kenyatta University Teaching, Referral and Research Hospital (KUTRRH) as a university hospital, it was established as a stand-alone parastatal vide Legal Notice No. 4 of 2019. This was reported to have put in jeopardy the entire medical education fraternity at the university, and disrupted the realization of its intended objectives.

The petitioners further averred that even though the facility was fully functional, lecturers and medical students from Kenyatta University had been denied access to it by the hospital management, and had been forced to rely on Kiambu Level 5 Hospital for teaching and learning. It was the position of the petitioners that Kiambu Level 5 Hospital was unsuitable for this purpose on the basis of long distance (40 km), congestion and under-resourcing.

The Petitioners therefore prayed that -

- a) The Senate intervenes in the matter through the relevant Committee, with a view to ensuring that full access to KUTRRH be granted to Kenyatta University medical students, to utilize the hospital for their learning purpose.
- b) The Senate recommends that Legal Notice No. 4 of 2019, which recognizes KUTRRH as a stand-alone parastatal, be revoked.
- c) KUTRRH be reverted to a university hospital for use by the students in the College of Health Sciences.

### B. Committee Proceedings

In conducting its inquiry into the Petition, at sittings held on diverse dates, the Committee held meetings with the Petitioners; the Ministry of Health; the Ministry of Education; the the Ministry of Planning and the National Treasury; Office of the Attorney General; the State Corporations Advisory Committee (SCAC); KU; KUTRRH; and, the Universities'

8. The Commission on University Education, the State Corporations Advisory Committee and the Kenya Medical Practitioners and Dentists Council act to ensure that outstanding governance issues at Kenyatta University are addressed with a view to ensuring the provision of the highest attainable standard and quality of medical training to its students.

A comprehensive summary of the Committee's findings, observations and recommendations in relation to the case have been included in the body of the report for reference.

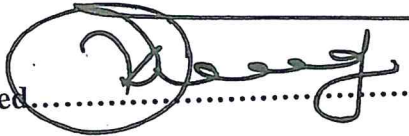

### Acknowledgements

On behalf of the Committee, I wish to thank the petitioners for bringing this very important matter to the attention of the House.

Further, I wish to thank the various stakeholders who came before the Committee and submitted their views, including: the Cabinet Secretary, Ministry of Health; the Cabinet Secretary, Ministry of Education; the Attorney General; the Principal Secretary, National Treasury; the Chief Executive Officer/Secretary, State Corporations Advisory Committee (SCAC); the Vice-Chancellor and Council, Kenyatta University; the Chairperson and Chief Executive Officer, Kenyatta University Teaching, Referral and Research Hospital; and, the members of the Universities' Academic Staff Union (UASU)

I also wish to thank the Offices of the Speaker and Clerk of the Senate for their support during the entire process of considering this matter.

It is now my pleasant duty and privilege to present this report of the Standing Committee on Health, for consideration and approval by the House pursuant to Standing Order No. 223(6) of the Senate Standing Orders.

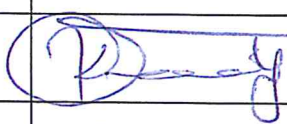


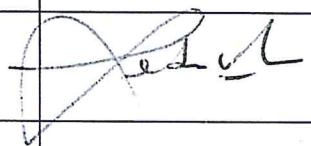

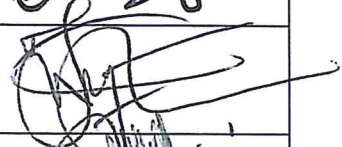



Signed.......... Date..........

SEN. JACKSON KIPLAGAT MANDAGO, EGH, MP

STANDING COMMITTEE ON HEALTH

**ADOPTION OF THE REPORT OF THE SENATE STANDING COMMITTEE  
ON HEALTH ON THE MANAGEMENT AND USE OF KENYATTA  
UNIVERSITY TEACHING REFERRAL AND RESEARCH HOSPITAL BY  
KENYATTA UNIVERSITY MEDICAL STUDENTS**

**We, the undersigned Members of the Senate Standing Committee on Health, do  
hereby append our signatures to adopt the Report-**

	Name	Designation	Signature
1.	Sen. Jackson Kiplagat Mandago, EGH, MP	Chairperson	
2.	Sen. Mariam Sheikh Omar, MP	Vice-Chairperson	
3.	Sen. Erick Okong'o Mogeni, SC, MP	Member	
4.	Sen. Ledama Ole kina, MP	Member	
5.	Sen. Raphael Chimera Mwinzagu, MP	Member	
6.	Sen. Joe Nyutu Ngugi, MP	Member	
7.	Sen. Abdul Mohammed Haji, MP	Member	
8.	Sen. Hamida Kibwana, MP	Member	
9.	Sen. Esther Anyieni Okenyuri, MP	Member	



## CHAPTER ON INTRODUCTION

### A. Background

1. The right to petition Parliament is provided for under Article 119 of the Constitution which states that, *"Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right."*
2. Parliament enacted the Petition to Parliament (Procedure) Act (No. 12 of 2012) to make provision for the procedure for the exercise of this right.
3. Standing Order 238(1) of the Senate Standing Orders provides for the committal of petitions to the relevant Standing Committee.
4. Standing Order 238(2) provides that *"whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes."*
5. Pursuant to the above, at the sitting of the Senate held on 31<sup>st</sup> May, 2023, a petition by Mr. Jafar Muhsin Kasay and others on the management and use of Kenyatta University Teaching, Referral and Research Hospital by medical students of Kenyatta University was tabled before the House and committed to the Standing Committee on Health. A copy of the Petition has been attached to this Report as **Annex 2**.
6. In the petition, the petitioners averred that -
  - a) The petitioners were students of Kenyatta University, representing the Kenyatta University Students Association;
  - b) In the year 2004, Kenyatta University started a School of Health Sciences in order to consolidate the training of medical professionals;
  - c) The plan was to use the school to enable students to get the absolute best exposure to enable them to level up to the global standards in health care training;



- d) The Government approved the proposal and the funding request by the Kenyatta University, to establish a state-of-the-art teaching, training, research and referral hospital at the main campus, to serve as a national referral center, as well as to aid medical students in the clinical training and research;
  - e) The Kenyatta University Strategic Plan 2016 to 2026 envisaged a medical hub that would incorporate the operationalization of KUTRRH, construction of a children's and women's hospital, establishment of a center for medical research and continuing education, a pharmaceutical manufacturing plant that will serve the entire region and offer training to pharmaceutical professionals and a research center in alternative medicine;
  - f) Despite the proposal by the Kenyatta University to establish KUTRRH as a university hospital, it was established as a stand-alone parastatal via Legal Notice No. 4 of 2019, which had put in jeopardy, the entire medical education fraternity at the university and disrupted the entire process of realization of its intended objectives;
  - g) Even though the facility was fully functional, lecturers and medical students from Kenyatta University had been denied access by the hospital management for teaching and learning. The situation threatened to render many of the medical students deregistered or forced to enroll afresh elsewhere to pursue their studies in medicine;
  - h) Kenyatta University had been relying on infrastructure and facilities from other health institutions to train health professionals, a situation that was not sustainable. Moreover, these institutions were not able to offer specialized training for healthcare professionals beyond undergraduate level, and yet there was enormous need for more health professionals and demand for training in the health sciences in Kenya; and
  - i) The Petitioners had made efforts to address the matter, but the relevant authorities, all of which had failed to give a satisfactory response.
7. Other salient issues contained in the Petition included –
- a) That the KU student fraternity was in a state of confusion and fear arising from the risk of the medical school being deregistered: During the last audit conducted by the EAC Medical and Dental Practitioners' Boards and Council, KU was given six months to put its house in order. This included access and ownership of KUTRRH and the ability to demonstrate that it can conduct teaching and research.
  - b) Even though the facility was fully functional, no student or lecturer of KU had ever been granted access to its perimeter fence to learn. That the training

section of the hospital which included lecture halls, skills labs, a library and teaching administration offices had been outsourced to an international organization.

- c) That students were forced to wake up every morning as early as 4.00 am to travel close to 40 km away, a trip that took close to 1 hour and forty minutes, using a strained university transport system to Kiambu Level 5 Hospital, which was under-resourced, overcrowded and incapable of providing a stimulating environment for medical studies.
8. The Petitioners therefore prayed that -
- a) The Senate intervenes in the matter through the relevant Committee, with a view to ensuring that full access to KUTRRH be granted to Kenyatta University medical students, to utilize the hospital for their learning purpose.
  - b) The Senate recommends that Legal Notice No. 4 of 2019, which recognizes KUTRRH as a stand-alone parastatal, be revoked.
  - c) KUTRRH be reverted to a university hospital for use by the students in the College of Health Sciences.

#### **B. Investigation of the Standing Committee on Health into the Petition**

9. At its sitting held on Tuesday, 18<sup>th</sup> July, 2023, the Committee deliberated on the Petition and resolved to invite various stakeholders to make submissions in relation to the inquiry as follows -
- a) The Petitioners
  - b) Ministry of Health
  - c) Ministry of Education
  - d) The National Treasury
  - e) Office of the Attorney General
  - f) State Corporations Advisory Committee (SCAC)
  - g) Kenyatta University (KU)
  - h) Kenyatta University Teaching, Referral and Research Hospital (KUTRRH)
  - i) Universities' Academic Staff Union (UASU)
10. A schedule of the Committee's meetings in relation to the same has been annexed to this report as *Annex 3*.
11. Further to the above, the Committee reviewed technical, non-partisan output from the Parliamentary Budget Office, the Senate Directorate of Legal Services and the Senate Research Services.

12. The aforementioned Committee proceedings were aimed at inquiring into the prayers raised by the petitioners in relation to the management and use of KUTRRH by medical students at Kenyatta University. The Committee's findings, observations and recommendations arising from this process are contained in this report.

**C. Previous Parliamentary Reports in relation to the Kenyatta University / Kenyatta University Teaching, Referral and Research Hospital**

13. A Report of the Departmental Committee on Health on the KUTRRH project was tabled in the National Assembly on 17<sup>th</sup> October, 2018, and adopted by the House on 26<sup>th</sup> May, 2019 (*Annex 4*).
14. In September, 2021, the Select Committee on Implementation of the National Assembly tabled a report on the *'Implementation Status of the Report of the Departmental Committee on Health regarding the Kenyatta University Hospital Project'* (*Annex 5*).

## CHAPTER TWO

### CONSTITUTIONAL, LEGAL AND REGULATORY CONSIDERATIONS

#### A. The Constitution

15. The right to petition Parliament is provided for under Article 119 of the Constitution, which states that, *"Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right."*
16. In furtherance to the above, the Petition to Parliament (Procedure) Act, 2012, and standing order 232 the Senate Standing Order outlines the procedure for the committal of a petition to a Committee and transmission of its decision to the Petitioner.

#### B. The Legal Framework

##### a) The Cabinet Secretary to the Treasury (Incorporation) Act (Cap 101)

17. The Cabinet Secretary to the Treasury (Incorporation) Act, Cap 101, provides for the incorporation of the Cabinet Secretary to the Treasury of Kenya.
18. Section 2(1) states that *the officer for the time being discharging the duties of Cabinet Secretary to the Treasury of Kenya, and his successors in office, shall be a body corporate under the name of "Cabinet Secretary to the Treasury of Kenya" (hereinafter called the corporation).*
19. Section 3 empowers the Cabinet Secretary to the National Treasury to *acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of, or deal with, any movable and immovable property vested in the corporation upon such terms as to the corporation seems fit; and in respect of or in connection with the matters aforesaid or any of them, the corporation may do all such things and acts as bodies corporate may lawfully do.*
20. Based on the foregoing, the National Treasury on behalf of the Government exercises oversight and ownership through shareholding, equity participation or State membership subscriptions in all government investments.

##### b) The State Corporations Act

21. The State Corporations Act, Cap. 446 of the Laws of Kenya, makes provision for the establishment, control and regulation of state corporations.

22. Section 3(1) of the State Corporations Act empowers the President, by order, to establish a state corporation as a body corporate to perform the functions specified in that order.

23. Section 6(1) of the State Corporations Act makes provision for the composition of Boards for State Corporations to consist of—

- a) Chairman appointed by the President (non-executive unless the President otherwise directs);
- b) the chief executive;
- c) the Principal Secretary of the parent Ministry;
- d) the Principal Secretary to the Treasury;
- e) the Attorney-General or a representative;
- f) not more than eleven other members, not being employees of the state corporation, of whom not more than three shall be public officers, appointed by the Cabinet Secretary.

24. Section 26 of the State Corporations Act establishes the State Corporations Advisory Committee. Section 27 thereafter makes provision for its functions as—

- a) with the assistance of experts where necessary, review and investigate the affairs of state corporations and make such recommendations to the President as it may deem necessary;
- b) in consultation with the Attorney-General and the National Treasury, advise the President on the establishment, reorganization or dissolution of state corporations;
- c) where necessary, advise on the appointment, removal or transfer of officers and staff of state corporations, the secondment of public officers to state corporations and the terms and conditions of any appointment, removal, transfer or secondment;
- d) examine any management or consultancy agreement made or proposed to be made by a state corporation with any other party or person and advise thereon; and
- e) examine proposals by state corporations to acquire interests in any business or to enter into joint ventures with other bodies or persons or to undertake new business or otherwise expand the scope of the activities and advise thereon.

**(c) Kenyatta University Teaching, Referral and Research Hospital Order, 2019**

25. The Kenyatta University Teaching, Referral and Research Hospital Order, 2019 was enacted by the President on 25<sup>th</sup> January, 2019. The enactment was in exercise of the powers conferred on the President pursuant to section 3(1) of the State Corporations Act, Cap. 446 of the Laws of Kenya.
26. Paragraph 3 of the Kenyatta University Teaching, Referral and Research Hospital Order, 2019 establishes the Kenyatta University Teaching, Referral and Research Hospital (the Hospital) as a State Corporation. It further stipulates that the Hospital would be a Level 6 hospital.
27. Paragraph 4 of the Kenyatta University Teaching, Referral and Research Hospital Order, on the other hand, states that the aim and objective of the Hospital is to, among others, to provide training and research services for issues of national importance.
28. Paragraph 5 thereafter provides the functions of the Hospital to include, among others, the provision of facilities for medical education for the Kenyatta University and for research either directly or through other cooperating health institutions and provision of facilities for education and training in nursing and other health and allied institutions.
29. Paragraph 6 of the Kenyatta University Teaching, Referral and Research Hospital Order established the Board of Directors (the Board) of the Hospital to consist of the following—
  - a) a non-executive Chairperson appointed by the President;
  - b) the Principal Secretary responsible for finance, or his or her representative;
  - c) the Principal Secretary responsible for health, or his or her representative;
  - d) the Principal Secretary responsible for university education, or his representative;
  - e) the Attorney-General or his representative;
  - 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 for Health by virtue of their knowledge and experience in matters relating to finance, management, economics, law or any other relevant field.
30. Paragraph 7 of the Kenyatta University Teaching, Referral and Research Hospital Order makes provision for the functions of the Board. It states that the Board shall be responsible for the management and administration of the Hospital. It further mandates the Board to, among other functions, provide facilities for medical education for the Kenyatta University and for research either directly or through other cooperating health institutions and provide facilities for education and training in nursing and other health and allied institutions.
31. Paragraph 10 of the Kenyatta University Teaching, Referral and Research Hospital Order provides that there shall be a Chief Executive Officer who shall be appointed by the Board. It also provides the qualifications for appointment as the Chief Executive Officer are—
- a) being registered medical practitioner who holds a Master's degree in a health-related field;
  - b) having a distinguished career in a senior management position in either the private or public sector for at least ten years; holding at least ten years' post qualification professional experience; and
  - c) satisfying the requirements of Chapter Six of the Constitution.
32. Paragraph 13 of the Kenyatta University Teaching, Referral and Research Hospital Order, on the other hand, provides that the funds of the Hospital shall consist of—
- 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;
  - 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 law.

**(d) Kenyatta University Teaching, Referral and Research Hospital  
(Amendment) Order**

33. The Kenyatta University Teaching, Referral and Research Hospital (Amendment) Order, 2021, made by the President on 1<sup>st</sup> March, 2021, makes amendments to the Kenyatta University Teaching, Referral and Research Hospital Order, 2019. It amends paragraph 6(1) of the Order by deleting subparagraphs (f), (h) and (i).
34. Paragraph 6(1) of the Kenyatta University Teaching and Referral and Research Hospital, Order, 2019 provided that the Board of Directors of the Referral Hospital will 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 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 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.
35. The effect of the amendment was to remove, from the Board of Directors of the Hospital—
- a) the Vice-Chancellor of Kenyatta University;
  - b) the Director of Medical Services; and
  - c) a representative of the Kenyatta University Council.

### **(e) The Health Act**

36. The Health Act, 2017 is the primary law regulating health and healthcare in Kenya. Section 25 of the Act states that the technical classification of levels of healthcare shall be as set out in the First Schedule. It however exempts health facilities under the management of county governments before 7<sup>th</sup> July, 2017 from the technical classification above.
37. The First Schedule to the Health Act thereafter provides the technical classification of levels of healthcare delivery i.e. from Level 1 to Level 6. It stipulates that the functions of a Level 6: Tertiary Hospital is to, among others, be a research center and provide training and research services for issues of national importance. It thereafter states that the in-charge is a registered medical practitioner with a Masters degree in a health-related field and with training and experience of over ten (10) years in senior management.

### **(f) Memorandum of Understanding and Agreements**

#### **(a) Memorandum of Understanding**

38. The construction of Kenyatta University Teaching, Referral and Research Hospital originates from a Memorandum of Understanding entered into between Kenyatta University and China Jiangxi Corporation for International Economic and Technical Co-operation on 28<sup>th</sup> May, 2010.
39. The Memorandum of Understanding provided for the construction of Kenyatta University Teaching, Referral and Research Hospital and noted that the Ministry of Higher Education, Science and Technology (as it then was) considered the project to be critical and advantageous to the interests of the Kenyan people and authorized Kenyatta University to enter into an agreement with China Jiangxi Corporation for International Economic and Technical Co-operation on the same.
40. The Memorandum of Understanding stipulated that Kenyatta University would set aside approximately ninety acres of land for the construction of the Kenyatta University Teaching, Referral and Research Hospital and related facilities.
41. The Memorandum of Understanding also stipulated that Kenyatta University would prepare and sign a detailed technical and commercial contract for presentation to the Government of China through the Ministry of Finance of the Government of Kenya and that the contract would be executed once financing from the Government of China is secured.

#### **(b) Contractual Agreement for the construction of KUTRRH**

42. Kenyatta University entered into a contract agreement with China Jiangxi Corporation for International Economic and Technical Co-operation for the

construction of Kenyatta University Teaching, Referral and Research Hospital on 12<sup>th</sup> August, 2010. The contract agreement stipulated that the Memorandum of Understanding entered into between the two parties on 28<sup>th</sup> May, 2010, among other documents, would form part of the contract between the parties.

43. The contract agreement stipulated that the construction of Kenyatta University Teaching, Referral and Research Hospital would be done at a cost of RMB YUAN 744,560,000/-. It mandated Kenyatta University to pay China Jiangxi Corporation for International Economic and Technical Co-operation for the construction of Kenyatta University Teaching, Referral and Research Hospital.
44. The agreement further stipulated that the contract between the two parties would take effect upon execution of the contract agreement by the parties and upon execution of a loan/financing agreement between the Government of China and the Ministry of Finance of the Government of Kenya.

### CHAPTER THREE

#### COMMITTEE PROCEEDINGS

45. Upon committal of the Petition to the Standing Committee on Health, at sittings held on diverse dates, the Committee held meetings with the Petitioners; the Cabinet Secretary, Ministry of Health; the Cabinet Secretary, Ministry of Education; the Attorney General; the Principal Secretary, National Treasury; the Chief Executive Officer/Secretary, State Corporations Advisory Committee (SCAC); the Vice-Chancellor and Council, Kenyatta University; the Chairperson and Chief Executive Officer, Kenyatta University Teaching, Referral and Research Hospital; and, the Universities' Academic Staff Union (UASU).
46. A schedule of the Committee's meetings in relation to the same has been annexed to this report as *Annex 3*.
47. The following section provides a summary of the submissions presented before the Committee by the various stakeholders.

#### A. Submissions by the Petitioners

48. The Committee met with the Petitioners led by Mr. Jafar Kasaya during their sitting held on Monday, 24<sup>th</sup> July, 2023. A summary of their testimony is provided below.
49. He affirmed that the petitioners were students of Kenyatta University, representing the Kenyatta University Students Association (KUSA).
50. He stated that KU started the School of Health Sciences in 2004 with the goal of the training of medical professionals with exposure to global standards in health care.
51. Following a funding request by the university, the Government approved the proposal to establish a state-of-the-art teaching, training, research and referral hospital at the main campus, to serve as a national referral center, as well as to aid medical students in the clinical training and research.
52. Despite the proposal by the Kenyatta University to establish KUTRRH as a university hospital, it was established as a stand-alone parastatal *vide* Legal Notice No. 4 of 2019, which had put in jeopardy, the entire medical education fraternity at the university and had disrupted the entire process of realization of its intended objectives.
53. He alleged that even though the facility was fully functional, lecturers and medical students from Kenyatta University had been denied access by the hospital management for teaching and learning.

54. Further, that whereas the university had been forced to rely on the infrastructure and facilities at Kiambu Level 5 Hospital to offer training, it was unsustainable as students were forced to wake up as early as 4.00 am every morning to travel to the hospital using a strained university transport system to the hospital; and, further that the hospital was under-resourced, overcrowded and incapable of providing a stimulating environment for medical studies.
55. He further stated that the student fraternity was in a state of confusion and fear arising from the risk of the medical school being deregistered owing to an audit report by the medical council that required KU to access and own KUTRRH in demonstration of its ability to conduct teaching and research.
56. The Petitioners therefore called for the Committee to intervene in the matter with a view to ensuring that full access to KUTRRH be granted to Kenyatta University medical students, to utilize the hospital for their learning purpose.

*A copy of the written submissions by the Petitioners have been attached herein as Annex 6.*

#### **B. Submissions by the University Academic Staff Union (UASU)**

57. The Committee met with UASU led by Mr. Peter Lemoosa, the Chair-Elect, UASU, during their sitting held on Monday, 24<sup>th</sup> July, 2023. A summary of their testimony is provided below.
58. In their submissions, UASU called to the attention of the Committee that the UASU-KU Chapter had not had a functional office since 20<sup>th</sup> August, 2023. As such, the delegation present had been delegated the responsibility of making the submissions by Dr. Constantine Wasonga, UASU National Secretary General, owing to their previous experience on the matter.
59. It was the submission of UASU that they presented a petition and a written memorandum to the Committee on Implementation of the National Assembly during the 12<sup>th</sup> Parliament.
60. They further aligned themselves to the issues raised by the petitioners and stated that they were similar to the issues that they had raised in their own petition.
61. UASU affirmed that the Petitioners were student leaders of Kenyatta University representing the interests of not only the Health Sciences students, but the entire students' body. They further noted that reversing the ownership of KUTRRH stood to benefit lecturers in their professional growth as they carried out research and oversaw the training of students. Further, doctors, specialists and students affiliated to the university would render free services to the hospital, thereby reducing costs.

62. They averred those lecturers and medical student from Kenyatta University had been denied access to the hospital by the hospital management as observed by the Petitioners.
63. It was further their submission that contrary to claims made by the hospital management in a press statement dated 12<sup>th</sup> June, 2023, the gate between the hospital and the university was kept under lock and key, and was manned by tight security.
64. They further submitted that a lot of time was being wasted by students shuttling to and from Kiambu Level Five Hospital, and that the experience at Kiambu could not be compared to KUTRRH owing to superior facilities at the latter facility.
65. UASU therefore called for the revocation of Legal Notice No. 4 of 2019, and for the reverting back of KUTRRH to KU for use by students in the School of Health Sciences.
66. UASU further called to question why KUTRRH had affiliated itself with ten (10) institutions but not Kenyatta University.
67. It was their submission that the hospital was hijacked from the university upon monies being availed for its operationalization by the Government as demonstrated by the following chronology of events -
- a. On 16<sup>th</sup> November, 2018, the Head of Public Service wrote to the National Treasury confirming the availability of Kshs. 655 million for the construction of the hospital.
  - b. On 21<sup>st</sup> January, 2019, the Principal Secretary, Ministry of Education, wrote to the Principal Secretary, National Treasury, requesting for the creation of a Sub-Head and Uploading of Operationalization Budget of Kshs. 655 million to the IFMIS system of KUTRRH.
  - c. On 25<sup>th</sup> January, 2019, Legal Notice No. 4 of 2019 was issued effectively making the hospital a parastatal.
68. With regards to the proceedings of the Senate sitting held on 31<sup>st</sup> May, 2023, UASU submitted that they agreed with the views expressed by Senators that the petition needed to be fast-tracked; that the best run hospitals were university hospitals; that the lecturers and students from the university would be an important source of free labor to the hospital; and, that appropriate action was needed to deter others from engaging in similar acts in the future.
69. With regards to the proceedings and recommendations of the Select Committee on Implementation of the National Assembly (12<sup>th</sup> Parliament), it was the submission

of UASU that, in view of the founding objectives, the management of KU had not been able to identify any merits of KUTRRH operating as a parastatal.

70. UASU further contended with a submission made by Chairperson of KUTRRH during the proceedings of the Select Committee on Implementation of the National Assembly in the 12<sup>th</sup> Parliament, that the hospital had stalled for three years, stating that she deliberately misinformed the Committee in order to justify the conversion of the hospital from a teaching and research institution to an independent parastatal.
71. UASU further contended that the financial struggles at the university had existed from the time the Chair of the KUTRRH Board exited as Vice-Chancellor in early 2016. This was as evidenced by the Auditor-General's Report of the FY 2015/2016 which declared KU technically insolvent. It was their submission that prior to that, the university had always reported a surplus.
72. With regards to the Chairperson, KUTRRH Board, it was the submission of UASU that she had served as the immediate former Vice-Chancellor of Kenyatta University; and, that despite having served her statutory two terms, in 2016, she attempted to seek an extension unprocedurally. However, her request for extension was stopped by the then UASU-KU Chapter leadership through a court order. A copy of the court orders has been annexed to this report.
73. UASU further submitted that a private company was registered with the aim of owning and running the hospital. The directors of the company, one of whom was purportedly the current Chair of the KUTRRH Board, went ahead to change the name of the hospital, a move that was once again thwarted by the UASU-KU Chapter leadership through a court order. Consequently, it was further their contention that in 2016, external forces attempted to influence the outcome of the UASU elections without success.
74. They further stated that in 2021, during the UASU elections, officials who had acted to stop the extension of the former Vice Chancellor, and the registration of the private company, were marked and prevented from securing another mandate. It was the submission of UASU that this was achieved through interference by the Judiciary through the JSC, of which the former Vice-Chancellor and current Chairperson, KUTRRH Board, was a member. It was further their submission that despite being re-elected, they had been unable to assume office owing to continued interference by the JSC.
75. They concluded their submission by stating that the threat of de-registering the School of Health Sciences at KU was real, and that there was an urgent need to revert the hospital to the university for the well-being of the students.

76. They further submitted that the current management of the hospital was mainly attracted to the monies generated from referrals. They submitted that the key objectives of the hospital ought to be teaching, training and research, with referrals being capped to special isolated cases intended to inform research.

*A copy of the written submissions by UASU have been attached herein as Annex 7.*

### **C. Submissions by Kenyatta University**

77. The Committee met with Kenyatta University led by Prof. Paul Wainana, the Vice-Chancellor, during their sitting held on Monday, 24<sup>th</sup> July, 2023. A summary of their testimony is provided below.
78. He commenced his submission by acknowledging receipt of the “Petition to the Senate concerning the management and use of Kenyatta University Teaching, Research & Referral Hospital (KUTRRH) by medical students at Kenyatta University,” from the Clerk of Senate *vide* letter Ref: SEN/DSEC/SCH/100/2023 (1) dated 4<sup>th</sup> July, 2023, and confirming that the petitioners were bona fide students of KU.
79. He stated that the University’s Master Plan 1990-2020 envisioned the establishment of a School of Health Sciences, and a University Hospital with teaching, research, and community outreach facilities within an academically based integrated healthcare delivery system.
80. Consequently, as clearly stated in the students’ petition, the university started offering School of Medicine programmes in 2004 while engaging independent public health institutions as it conceptualized the establishment of her University Hospital.
81. Over time however, challenges arose in providing quality training of medical students through its engagement with independent health institutions, noting that the independent hospitals focused on their core mandate of clinical service provision, while the School of Health Sciences prioritized teaching and research.
82. He stated that the goal was to make the University Hospital an integral part of the School of Health Sciences, in which medical education and research was prioritized, with quality clinical service provision being a byproduct. This was as opposed to the current structure of National Referral Hospitals (Level VI), that prioritized clinical service provision over teaching and research. In this vein, the Hospital was established as a laboratory/experiential learning center for medical education and research for Kenyatta University medical students.

83. Upon implementation, the academically based integrated healthcare delivery system was expected to address capacity building, research, highly specialized medical care provision, enhanced equitable access to healthcare, reversal of outbound medical tourism, and provision of safe, effective evidence-based care.
84. It was his submission that this model presented the best practice, in that emphasis on teaching and research ensured that highly specialized laboratories were established to attract collaborative research, including clinical trials. This would enable ordinary Kenyans to access expensive and cutting-edge interventions for the management of both communicable and non-communicable conditions such as COVID-19, Malaria, HIV, cancer, renal conditions, diabetes, hypertension, etc.
85. He further submitted that it was a known fact that most innovations and inventions in medicine arose from research activities done in university hospitals. For example, during the COVID-19 pandemic, the University of Oxford invented the AstraZeneca vaccine which targeted low-income countries and John Hopkins University Hospital championed predictive modeling which informed the world on targeted interventions.
86. He further noted that the best-ranked hospitals in the world were University Hospitals followed by Military Hospitals e.g., John Hopkins Hospital, (USA), University of Michigan Hospital (USA), Walter Reed National Military Medical Centre (USA), University Clinic Heidelberg (Europe), Erasmus Medisch Centrum (Europe), Istanbul University Hospital (Turkey), Xinnquiao Hospital Third Military University (Asia), National Taiwan University Hospital (Taiwan), University of Cape Town (South Africa), Steve Biko Academic Hospital (South Africa) and Kwazulu Natal University Hospitals (South Africa).
87. He further stated that the common practice in most world-class universities was to have their own academic hospitals. Within the Sub-Saharan region, universities offering medical-related programmes had established or were establishing their own teaching hospitals e.g. University of Botswana, University of Dar es Salaam, Aga Khan University, Kabarak University (in the process), Dedan Kimathi University of Technology, and Moi University, among others.
88. He further noted that the university management had conducted benchmarking visits to many university hospitals, and entered into joint collaborations and agreements on medical education, research, and evidence-based clinical service provision.
89. Owing to challenges occasioned by its engagement with independent health facilities, and the challenges experienced in the current model of teaching hospitals in Kenya, i.e. KNH & MTRH, KU sought advice from relevant ministries. Accordingly, the MoE and MoH worked together and tabled two

Cabinet Memos that were approved, recommending that Kenyatta University establish her own University Hospital. Following the approvals, KU developed a proposal to establish a hospital, which was supported by MoE, MoH, The National Treasury, and the Attorney General.

90. Consequently, the hospital came to fruition with the signing of an MoU between the Chinese Government and GoK that led to the loan agreement. The Hospital was thus developed through a loan from EXIM Bank of China. The loan was guaranteed by the GOK with an on-lending agreement between the government and KU. Under the loan agreement, Kenyatta University was mandated to manage the hospital and pay the loan post-construction.
91. The University further identified several key strategic projects to be implemented in its Strategic Plan 2016-2026 with a view to creating a medical hub. Amongst these was the operationalization of KUTRRH and the establishment of a Children's and a Women's Hospital. However, it later came as a shock to the University when the Hospital was established as a standalone Parastatal through Legal Notice No 4 of 2019.
92. Further Legal Notice No 4 of 2019 established the Hospital as a parastatal but did not include the other university projects as contained in the Strategic Plan. However, despite this, there had been attempts by the Hospital Board to take over the said projects thus making it very difficult for the University to implement its Strategic Plan e.g. the construction of a Children's Hospital which commenced in the FY 2015/2016 and which was to be funded by the Government through an annual budgetary allocation of Kshs.500 million under the management of Kenyatta University.
93. The initial amount of KES 500 million was disbursed to KU and works commenced but the project had since stalled as subsequent allocations had not been forthcoming. To this end, the project was about 18.5% complete. In relation to this, he noted that in the FY 2022/2023 budget estimates, through MoH, KES220 Million was allocated to KUTRRH to construct and equip the Children's Hospital.
94. Further, the University had developed a proposal for the establishment of a Women's Hospital and had been in the process of sourcing funds for the development of the same, when KUTRRH was established as a parastatal. However, the manner in which KUTRRH was taken away from the University caused withdrawals of potential partners and collaborators in the establishment of the Women's Hospital.
95. In relation to this, he observed that on the strength of owning the teaching hospital, the University had attracted and entered into collaborative agreements

with top universities in the world e.g. Istanbul University Hospital, Turkey, Cincinnati University Hospital, USA, John Hopkins University Hospital, USA and Duke University Hospital, USA. However, the establishment of the hospital as a separate entity from the University had hindered the activation of these collaboration agreements, including accrued benefits such as research grants.

96. Further, since establishing the Hospital as a parastatal, the implementation of the University strategic plan and Master Plan had seriously been interfered with, with the KUTRRH Board coming up with parallel projects and programs and going to the extent of demanding excision of university land.
97. KU had overseen the construction and equipping of the Hospital over a five (5) year period (2012-2017), in which, equipping took 2 years. The loan component consisted of design, infrastructure development, equipping and personnel & capacity building.
98. The loan however, did not include budgets for operations and staff recruitment. This therefore called for budgetary provision from the National Treasury through the line Ministry, MoE, and it took several engagements before the approval was given in December 2018 *vide* a letter REF: RES/1065/18/01/(31), dated 10<sup>th</sup> December 2018, in which Kshs. 656 million was allocated for the operationalization of the Hospital by the University. Accordingly, the university prepared an elaborate plan to operationalize the hospital in three phases as follows
  - a. Phase I - Dry run and testing of systems in the Hospital and recruitment of key staff to spearhead the operations.
  - b. Phase II - Partial opening of the Hospital of up to 160 beds capacity.
  - c. Phase III – Full capacity operationalization of the Hospital (650 beds).
99. Based on the budget approval, the faculty from the School of Health Sciences moved into the Academic Wing of the Hospital to make arrangements for Phase 1 operationalization of the Hospital and assessment of the clinical areas, in preparation for inspection by the regulatory bodies.
100. However, a mere four days after the approval and release of the operationalization funds, the Hospital was established as a stand-alone parastatal *vide* Legal Notice No. 4 of 2019. Consequently, despite KU having been the GoK implementing agency for the project, a directive was given for the Contractor to hand over the Hospital to the newly constituted Board with or without the involvement of the University. Consequently, a Team appointed from MoH unilaterally took over the Hospital from the Contractor without the involvement of the University.

101. He submitted that the Hospital's infrastructure for patient care, teaching and research were considered as part of the School of Health Sciences during a joint inspection by the East African Medical Council and Kenya Medical Practitioners and Dentists Council and on merit of having established the infrastructure, Kenyatta University was allowed to continue offering medical programmes. However, owing to lack of access to the hospital and research facilities, the course risked being deregistered.
102. Further, it was his contention that KUTRRH had failed to make a distinction between medical education and placements/attachments: He submitted that placements and attachments, were less rigorous, focused and short-term, with students typically being assigned to work under the supervision of experienced healthcare professionals, for a varied length of time, depending on their area of specialization. Further, the specific activities and responsibilities assigned to students during this time varied depending on their training level and the program's requirements, and did not require gazettement, and/or approvals by regulatory bodies.
103. On the other hand, medical education referred to the process of training high-level medical personnel beginning at the undergraduate to postgraduate level. It combined theoretical knowledge, practical skills, and clinical experience to prepare individuals for careers in healthcare, and was achieved through curricula that were designed to provide students with an integrative and comprehensive understanding of preclinical and clinical areas. It entailed a combination of classroom lectures, laboratory work, and clinical rotations in hospitals or other healthcare settings for supervised exposure of students to real-life patient cases with a view towards developing their clinical skills and decision-making abilities while providing quality clinical care to patients.
104. In recent years, there had been an increasing emphasis on incorporating technology and innovative teaching methods into medical education. This included the use of simulation tools, virtual reality, and online learning platforms to enhance learning experiences and provide opportunities for practice and feedback. It was his submission that all the above facilities were provided for in the design and development of KUTRRH for medical education for KU students. They had, however, since been repurposed, and KU denied access.
105. He observed that KMPDC regulations required the full operationalization of all mandatory sections/ functions of a teaching hospital to fully support curricula for various medical programmes. To this extent, training institutions had been allocated a teaching hospital each via gazettement, e.g. UoN-KNH, MOI-MTRH.
106. Similarly, Legal Order No. 4 of 2019, had gazetted KUTRRH as the teaching hospital to offer medical education and research facilities for Kenyatta University. However, KUTRRH needed to meet the requirements to offer medical education

as stipulated by the regulatory bodies. This would require preparation, inspection, and accreditation of KUTRRH before KU could train medical students at the Hospital.

107. He noted that the use of Kiambu Level V Hospital for medical education of KU medical students was posing financial, operational and logistical challenges owing to long distances, financial constraints and separate laboratory and theory classes at the Main Campus.
108. It was further his submission that the University had incurred additional costs to refurbish and repurpose facilities scattered around the University to accommodate teaching of the growing population of medical students, causing administrative and management challenges.
109. It was his testimony that KU had made efforts to address the matter as follows:
  - a) Following the unprocedural takeover of the Hospital by the Board, the University Council called for meetings between the University Council and the Hospital Board through the office of the Head of the Public Service.
  - b) At the intervention of the Head of Public Service, a meeting between KU and the KUTRRH Board was called at Harambee House. The meeting however aborted following the failure of the KUTRRH Board to attend. Further requests by the Council to reconvene the meeting were ignored and the meeting never took place.
  - c) Following the establishment of the hospital as a stand-alone parastatal, KU developed proposed policies for seamless integration between the Hospital and the University for consideration and adoption by the Hospital Board. However, the policies were disregarded by the Hospital Board which instead came up with an MoU.
110. With regards to the MOU, despite the proposed MoU being skewed against the University, due to the need and urgency to have medical students access the hospital at the time, KU signed it, but attached a protest letter detailing areas that required review for the MoU to meet the intended purpose of the Hospital.
111. The MoU provided for the creation of a Joint Implementation Committee (JIC) for the implementation of medical education and research for KU at the Hospital. However, whereas KU provided membership for the JIC, KUTRRH purportedly did not provide membership except for the Co-chair. As such, different members showed up in every JIC meeting making it difficult to have a progressive meeting. Further, joint recommendations to prepare the hospital for medical education were yet to be implemented by the Hospital.

112. In October, 2022, KU wrote to the Ministry of Education seeking assistance in ensuring that the Hospital reverts to the University for it to achieve its intended objectives. On 4<sup>th</sup> May 2023, the Ministry of Education responded by advising the University and the hospital to work on a formula for accessing the Hospital by KU without violating the law as advised by the Attorney General. With regards to the above, the University noted the following -

- a. There already existed a vehicle for engagement between the University and the Hospital (Joint Implementation Committee – JIC);
- b. The mandate of JIC was derived from the MoU which was a creation of the Hospital Board as constituted by the Legal Notice No. 4 of 2019;
- c. The Legal Notice No. 39 of 2021 amended the Legal Notice No. 4 of 2019 by removing the KU Council representative, the Vice-Chancellor and the Director General MoH; and
- d. Consequently, the mandate of JIC was technically rendered null and void considering the reporting structure and representation at the Board, particularly for KU.

113. Based on the above observations, KU had proposed the constitution of a Joint High-Level Committee between the two institutions noting that it would be appropriate in bringing the two institutions together to deliberate on concerns affecting access of KU students to the Hospital. Consequently, KU communicated the proposal to the CEO, KUTRRH, and copied the Cabinet Secretaries of Education and Health in a letter dated 12<sup>th</sup> May 2023.

114. In a letter dated 16<sup>th</sup> May 2023, the CS, MoH concurred with the proposal and nominated the Deputy Director-General to the Joint High-Level Committee. However, in a letter dated 17<sup>th</sup> May 2023, the CEO, KUTRRH declined the proposal and instead insisted on the use of JIC.

115. In a letter dated 14<sup>th</sup> June 2023, the CS MoE concurred with the proposal and nominated the PS State Department of Higher Education and Director University Education as Co-chair and Member to the Joint High-Level Committee respectively.

116. In conclusion, he proposed that in order to allow for KU medical students to access the hospital facilities before the commencement of the new academic year in September 2023, the following actions needed to be taken -

- a. Ministry of Health to facilitate the nomination of members from KUTRRH to the High-Level Committee to join the already nominated members from KU, and the parent Ministries (MoE and MoH), who will be co-chairing the Committee;

- b. The KU-KUTRRH Joint High-Level Committee to engage and ensure immediate access to the Hospital by the University;
- c. Preparation of the facilities for medical education and research by the faculty from Kenyatta University in readiness for inspection by the regulatory bodies for accreditation;
- d. Constitution of an objective, non-partisan Hospital Board;
- e. Revocation of Legal Notice No. 39 of 2021 which amended Legal Notice No. 4 of 2019 with a view towards reinstating the KU Council representative, the KU Vice-Chancellor and the Director-General MoH to the Hospital Board;
- f. Revocation of Legal Notice No.4 of 2019 with a view towards reverting KUTRRH to KU as recommended by the National Assembly on 30<sup>th</sup> September 2021, giving a period of six (6) months for implementation; and
- g. Amendment of the Health Act, 2017, the Universities Act and the State Corporations Act to allow for the establishment of university hospitals with a focus on academically based integrated healthcare delivery system with an emphasis on teaching, training, research and evidence-based clinical service delivery (possibly Level VII), distinct from the current Level VI referral hospitals.

*A copy of the written submissions by KU have been attached herein as Annex 8.*

#### **D. Submissions by the Kenyatta University Teaching, Referral & Research (KUTRRH)**

- 117. The Committee met with Kenyatta University Teaching, Referral and Research Hospital led by Prof. Olive Mugenda, the Chairperson, during their sitting held on Monday, 24<sup>th</sup> July, 2023. A summary of her testimony is provided below.
- 118. She stated that KUTRRH was established as a State Corporation under Legal Notice Number 4 of January 2019, and was a Level 6 national referral hospital within the meaning of section 25(1) as read with the First Schedule of the Health Act, 2017. She further stated that Executive Order No. 1 of 2023 placed the hospital as a state corporation under the Ministry of Health.
- 119. It was her testimony that construction of the hospital began in 2011 and was completed in 2016. Following its completion however, the hospital lay idle for 3 years despite the infrastructure and equipment being in place.

120. With regards to the above, she stated that by 2019, the warranty period for most of the equipment had lapsed. However, by the time, the University had not made any progress towards operationalizing the hospital, consequently triggering its gazettelement as an independent parastatal under the Ministry of Health. This decision was informed by the following factors -

- a. The National Treasury had been repaying interest on the loan from 2012 without the expected benefits accruing to the public, as the hospital lay idle from 2016 to 2019. And further that, by 2019, the principal amount of the loan on the hospital had become due.
- b. KUTRRH and KU were governed by different Ministries under different Acts, Regulations and Standards. Having the two institutions under one ministry would have compromised the efficiency and accountability of both institutions.
- c. Given (2) above, the reporting structures would have been very complicated.
- d. The regulatory bodies for health and education were different with varying demands, requirements, and policies.
- e. The mandate of the University Council was to regulate university education and would thus not have been legally bound to regulate health care provision.
- f. The university was represented in the Hospital Board of Directors and as such the board membership ensures that University matters are taken care of.

121. She further noted that the aim and objective of the hospital was to provide highly specialized services and to provide training and research services for issues of national importance. The Legal Notice further spelt out the functions of the hospital with regard to training as follows:

- a. Provide facilities for medical education for KU and for research either directly or through other cooperating health institutions.
- b. Provide facilities for education and training in nursing and other health and allied institutions.
- c. 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.

- d. 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.

122. On the matter of access of KUTRRH by KU students and lecturers, it was her submission that KUTRRH had not hindered the process: To achieve the objectives as set in the Legal Notice, KUTRRH and KU embarked on the development of a memorandum of understanding (MOU) to guide the implementation of medical training and research. The MOU was signed by KUTRRH on the 17<sup>th</sup> of December, 2020, and by KU on 21<sup>st</sup>, December 2020.

123. The MOU set up a Joint Implementation Committee (JIC) to oversee its implementation and subsequent meetings were held, with the first one being on the 25<sup>th</sup> of January, 2021 where members of both institutions were present, and during which the modalities of the committee were agreed upon and responsibilities shared out.

124. In November 2021, the process stalled with members from the KU side not honoring invitations despite several reminder letters. However, active discussions resumed in mid-2022, after the temporary ouster of the VC KU, only to stall again in September of the same year after an assessment of KUTRRH by the KU Heads of Departments.

125. She further submitted the following chronology of events in relation to the implementation of the MOU -

S/ N o	DATE	Activity	Remarks
1.	December 2020	MOU signed by both Institutions for the objective of providing Medical Education & Research as per the Legal Notice No.4 2019.	MOU still in force
2.	30 <sup>th</sup> December 2020 & 19 <sup>th</sup> March 2021	Representatives to JIC appointed by both parties	Both parties were free to appoint representatives from their institutions
3.	JIC Meeting on 25 <sup>th</sup> January 2021	JIC agreed to form two (2) subcommittees; Medical Training and Medical Research.	The Sub-Committees commenced their

			duties and submitted their reports to JIC;
4.	JIC Meeting on 24 <sup>th</sup> March 2021 and 28 <sup>th</sup> April 2021	<ul style="list-style-type: none"> <li>• Sub-Committee reports were adopted.</li> <li>• JIC observed that KUTRRH was ready to accept the KU Medical students in diverse areas.</li> <li>• KU was expected to initiate the process of accreditation by regulatory authorities (Kenya Medical Practitioners &amp; Dentist Council –KMPDC and Nursing Council of Kenya- NCK).</li> <li>• JIC discussed and agreed on Medical Research collaboration and came up with a working formula.</li> </ul>	KU never initiated the process with the regulators.
5.	27 <sup>th</sup> October 2021	KUTRRH reminded KU of the obligation to apply for accreditation from regulatory bodies.	Response was given almost a month later.
6.	On 24 <sup>th</sup> November 2021	KU acknowledged the need for inspection by KMPDC and requested that Heads of Medical Teaching Departments of KU be allowed to liaise with respective KUTRRH Heads of Departments.	Although KU acknowledged the need for inspection by KMPDC, <u>no</u> application had been made to date.
7.	On 2 <sup>nd</sup> December 2021 KUTRRH	KUTRRH acknowledged the letter and requested the KU team to indicate when they would be available for a meeting.	KU did not respond
8.	On 4 <sup>th</sup> of March 2022	KUTRRH did a subsequent reminder for the HoDs to meet. In response, KU raised issues that had already been addressed. KUTRRH then sought clarifications in a letter dated 16 <sup>th</sup> May 2022.	KU did not indicate when the HoDs would meet.
9.	6 <sup>th</sup> June, 2022	The Departmental Committee on Health of the National Assembly raised concerns regarding access of KU	The response to Parliament had clear steps that KU needed

		students to KUTRRH facilities for training purposes. A detailed response was given to the Committee and copied to KU.	to actualize to enable medical education.
10	14 <sup>th</sup> June 2022	KU acknowledged receipt of the letter in (9) above but only touched on matters that had already been addressed in the signed MOU.	Further delays were experienced.
11	25 <sup>th</sup> July 2022,	<ul style="list-style-type: none"> <li>• KUTRRH invited KU-JIC members for a meeting to discuss progress and fast-track students reporting to KUTRRH for medical training.</li> <li>• KU's response on 27<sup>th</sup> July 2022 was that <i>the notice was short since the members were processing end of year examinations.</i></li> </ul>	A convenient date was to be agreed upon.
12	3 <sup>rd</sup> August, 2022	The CEO, KUTRRH, and the Director Training, Research & Innovation visited KU to follow-up on the matter of when students would report to KUTRRH for medical training.	KUTRRH made the initiative to reach out to KU physically.
13	11 <sup>th</sup> August 2022	Then Ag. VC KU informed KUTRRH of the decision to hold consultations between the two Institutions.	This was good progress, from the then Ag. VC.
14	16 <sup>th</sup> August 2022	KUTRRH responded to the Ag. VC emphasizing the need for the JIC meeting as had been communicated earlier on 4th March 2022. The CEO invited KU to suggest a convenient date for the Heads of Departments to meet.	Date of the meeting was given.
15	September 9 <sup>th</sup> 2022	<ul style="list-style-type: none"> <li>• KUTRRH-KU Joint Implementation Committee (JIC) hosted the Heads of Departments from the two institutions at KUTRRH.</li> </ul>	It was expected that since the Heads of Departments met and agreed on the

		<ul style="list-style-type: none"> <li>• The team assessed the facility and concluded that the Hospital was ready to receive medical students from Kenyatta University.</li> <li>• Agreed that KU would pursue approval for accreditation from regulatory bodies to commence medical training for KU students.</li> </ul>	readiness of KUTRRH, an application for inspection would be made immediately by KU.
16	3 <sup>rd</sup> October 2022	<ul style="list-style-type: none"> <li>• One of the Heads of Department wrote to KUTRRH requesting for placement of Twenty (20) Medical Lab Science (BSc. MLS). KUTRRH accepted the request <i>vide</i> letter dated 15<sup>th</sup> November and students were placed as from January 3<sup>rd</sup> - 7<sup>th</sup> April 2023.</li> </ul>	This was a clear demonstration that KUTRRH has remained ready to accept students from KU.

126. It was her testimony that based on the above chronology of activities, the assertion by the petitioners that there was a burning crisis in the university in regard to accessing the hospital was inaccurate: The true position was that KUTRRH had been ready to receive KU students for medical and nursing training for more than two and a half years. That is, from the time that the MOU was signed in December 2020. However, KUTRRH had been waiting for KU to initiate accreditation by regulatory bodies.

127. She further submitted that Kenyatta University had not sought any regulatory approval that would allow their students to commence clinical placements at KUTRRH. The need for assessment and accreditation by regulatory bodies was exemplified by the fact that KUTRRH Training Institute for Specialized Nursing had to apply for approval to use its own facility as a training site. Accreditation of KUTRRH as a training site for KU students was therefore paramount.

128. From 2020, the Kenyatta University students undertaking courses that did not require regulatory approval had been utilizing the facilities at KUTRRH for their education. So far KUTRRH had placed students from KU in the following medical-related courses: Public Health, Medical Laboratory Sciences, Nutrition & Dietetics, Biomedical Engineering, Rehabilitation Services, Health Records and non-clinical areas such as Finance, Accounts, HR, ICT among others.

129. It was further her submission that KUTRRH had been accepting undergraduate and postgraduate medical and nursing students from other training institutions as approved by the relevant regulatory bodies. This included Kenya Defense Forces

Medical College, JKUAT, USIU-A, AMREF University, Egerton University, Moi University, Nairobi Women's Hospital College and KMTC Campuses. It was therefore not clear why KU had not sought the requisite approvals.

130. The East African Community Partner States National Medical and Dental Practitioners Boards and Councils noted in its report of March 2020, that KU had the requisite infrastructural capacity, and met the minimum requirements for training of medical/dental students. In relation to the same, she noted that the KU School of Medicine had been running from 2004 and had graduated many medical workers yet KUTRRH was only operationalized in 2019.
131. Further, according to Kenya Medical Practitioners and Dentists Council (KMPDC) guidelines, teaching institutions (Universities and Colleges) were required to apply to the KMPDC for approval of a training site (Hospital) for their undergraduate medical students. However, KU was yet to apply to the Council for them to undertake the necessary inspection and grant approval for KUTRRH to be a training site for the Institution. Accordingly, KUTRRH was yet to receive communication from KMPDC of any intended inspection visit of the facility. It had however sought the intervention of the Ministries of Education & Health to secure the necessary approvals.
132. With regards to undergraduate nursing students, she stated that despite the university failing to apply to the Nursing Council of Kenya (NCK) for KUTRRH to serve as its training institution, on 10<sup>th</sup> July 2023, inspectors from the Council visited KUTRRH on instructions from the Ministry of Health to inspect the hospital's readiness for use by KU's nursing students. Subsequently, following laid down procedures by NCK, KUTRRH was approved as a training site for KU nursing students.
133. Other institutions had been approved for specialized nursing courses including KUTRRH, KDF, AMREF University, Nairobi Women's College and Mama Ngina as indicated in the table below -

S/N o	Institution	Approved Area of Specialization
1	Training Institute of Specialized Nursing - KUTRRH	<ul style="list-style-type: none"> <li>● Critical care nursing</li> <li>● Oncology nursing</li> <li>● Nephrology nursing</li> <li>● Perioperative nursing</li> </ul>
2	Kenya Defence Forces Medical Training College (KDF - DFMTTC)	<ul style="list-style-type: none"> <li>● Critical care nursing,</li> </ul>

3	AMREF University	<ul style="list-style-type: none"> <li>• Bachelor of Science, Nursing</li> <li>• Critical Care nursing</li> <li>• Perioperative nursing</li> <li>• General nursing</li> </ul>
4	Nairobi Women's College	<ul style="list-style-type: none"> <li>• Critical Care nursing</li> <li>• General nursing</li> <li>• Perioperative nursing</li> </ul>
5.	Mama Ngina University College	<ul style="list-style-type: none"> <li>• Bachelor of Science, Nursing</li> </ul>

134. With regards to undergraduate Pharmacy students, the University had not made an application to the Pharmacy & Poisons Board for them to undertake the necessary inspection and grant approval for KUTRRH to be a training site for the Institution. This was despite acknowledging the importance of seeking the accreditation *vide* a letter dated 24<sup>th</sup> November, 2021. By the time of the meeting, PPB had approved KUTRRH as a training site for pharmacy students from Mount Kenya University (MKU) and United States International University-Africa (USIU-A).

135. Further, KUTRRH had accepted various students from KU who did not require regulatory approval including postgraduate students; undergraduate and diploma students in biomedical engineering, public health, health records and information management, nutrition and dietetics; and, interns.

136. She further responded to the specific issues raised by the petitioners as follows -

No.	Issues raised in the Petition	Response
1.	That Kenyatta University was in a state of utter confusion and fear borne out of the fact that very soon the Medical School will be deregistered.	In regard to the above assertion, she noted that Kenyatta University had not followed the due processes laid down by KMPDC, NCK and PPB that required the training institution to apply for inspection and accreditation of a training site.
2.	According to the last audit conducted by the East African Community National Medical and Practitioners Board and Councils, Kenyatta University was asked to own the hospital and demonstrate it can conduct training and research.	The East African Community National Medical and Practitioners Board and Councils noted in its report that KU had requisite infrastructural capacity. It also noted that KU School of Medicine met the minimum requirements for training of medical/dental students. To note, KU had been running the medical school from

		2004 yet KUTRRH was operationalized in 2019.
3.	That no student or lecturer has ever been granted access to the perimeter fence to learn.	This was not accurate as KU students and lecturers on placement had been accessing the facility.
4.	That the teaching section of the hospital which includes lecture halls, skills lab and a library and the teaching administration has been outsourced to an international organization at our expense.	<p>This assertion was not accurate for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Training Research and Innovation complex was a complex with a skills lab, computer center, lecture halls, library and auditoriums that were used by nursing students, doctors and nurses for their normal and routine continuous medical education respectively. The complex also hosts the medical innovation and accelerator hub that is supporting medical innovations from Kenyans.</li> <li>2. KUTRRH Training Institute of Specialized Nursing was housed in the complex.</li> <li>3. The complex had a dedicated medical research and clinical trials center. Among the ongoing research was a collaboration between KUTRRH and the University of Manchester focusing on oesophageal cancer survival in Kenya.</li> <li>4. The Directorate of Training, Research &amp; Innovation operated from the complex as well as other offices such as the Community Outreach, Projects &amp; Maintenance and ICT.</li> </ol>

		<p>5. There was allocated space for KU and other students/lecturers for use during their debriefing sessions before and after clinical rotations.</p> <p>6. The complex housed the World Health Organization – Regional Emergency &amp; Logistical Hub for Africa following an MOU which was signed between the Ministry of Health and WHO in 2022. This relationship was further ratified in 2023. His Excellency the President, Dr. William Ruto during his visit to KUTRRH on 24<sup>th</sup> April 2023 appreciated the presence of WHO in the country. It was expected that the WHO would construct its own offices on a portion of land as granted by the government in 2023.</p>
5.	Every morning the students wake up as early as 4 am and travel 40 kms using a strained university transport system to Kiambu sub county Level V Hospital.	KU medical students started training at Kiambu Hospital when the Medical School was established in 2004. Kiambu Hospital had been instrumental in training KU medical students for the last 20 years. The students had also been accessing Kenyatta National Hospital for higher and specialized training. Further, Kiambu Hospital remained an integral part of training for KU students because they still needed to learn to handle everyday ailments witnessed in level 4 and 5 hospitals where numbers were high. The students also needed to access level 6 hospitals like KUTRRH for specialized healthcare experience because it was a referral hospital.
6.	That the University of Nairobi had KNH while Moi University	KNH and MTRH were independent Level VI facilities just like KUTRRH.

	had MTRH, why can't KU have KUTRRH?	<p>The two hospitals were not owned by the universities, but rather had working relationships with the respective universities.</p> <p>That KUTRRH was ready and had sought this kind of a relationship with KU through the Joint Implementation Committee, as envisaged in Legal Notice Number 4 of 2019. However, all such efforts had been frustrated by KU.</p>
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137. Noting that KUTRRH was committed to receiving and placing KU medical and nursing students as soon as approval was given by the regulators, she concluded her submissions by recommending that -

- a) The management of Kenyatta University be requested to comply with the requirements for approval of KUTRRH by various regulatory bodies as its training site for students.
- b) KU should adhere to the advice by the parent ministry to demonstrate true leadership in regard to the matter herein, and restructure and formalize a working relationship with KUTRRH for the benefit of KU students in the schools of Medicine, Nursing, Pharmacy, Public Health and Dentistry.

*A copy of the written submissions by KUTRRH have been attached herein as Annex 9.*

#### **D. Submissions by the Ministry of Health**

138. The Committee met with the Ministry of Health led by Hon. Susan Wafula Nakhumicha, Cabinet Secretary of Health, during its sitting held on Friday, 28<sup>th</sup> July, 2023. A summary of her testimony is provided below.

139. In relation to the petition on the management and use of KUTRRH by medical students at Kenyatta University, she observed that an adequate and skilled health workforce was key to achieving UHC.

140. She noted that KUTRRH was established as a semi-autonomous government agency (SAGA) under the MoH via Legal Notice 4 of 2019. She observed that the dispute between KU and KUTRRH had been discussed extensively between the MoH and the Ministry of Education (MoE).

141. She noted that the MoE had sought legal advice from the Office of the Attorney General which had guided that the hospital remain as a parastatal under the MoH. The AG had further guided that the hospital collaborates with KU in medical education and research, which advice was accepted by the university.
142. She noted that through various correspondences, KU had raised key issues and proposed the establishment of a Joint High-Level Committee to be chaired by the two ministries. Key issues raised included -
- a. Accreditation of KUTRRH as a training hospital for KU students;
  - b. Occupation of the training and research wing of KUTRRH; and
  - c. Collaboration between university and hospital staff on research, medical education and provision of clinical services.
143. She reported that the MoH had undertaken fundamental steps to address the issues raised, including -
- a. Directing KMPDC to assess KUTRRH with a view towards accrediting it for training of KU medical and nursing students; and
  - b. Nominating the PS, State Department of Medical Services, as the co-Chair of the Joint High-Level Committee, in addition to two other senior officers, for purposes of unlocking acceptable solutions to the current stalemate.

*A copy of the written submissions by MOH has been attached herein as Annex 10.*

#### **E. Submissions by the Kenya Medical Practitioners and Dentist Council (KMPDC)**

144. The Committee met with the Kenya Medical Practitioners and Dentists Council (KMPDC) led by Dr. David Kariuki, the Chief Executive Officer, during its sitting held on Friday, 28<sup>th</sup> July, 2023. A summary of their submissions is provided below.
145. He indicated that the inspection of KUTRRH was carried out by a Council Inspection Team on 20<sup>th</sup> July, 2023, in collaboration with representatives from KU and KUTRRH. The inspection was carried out to assess its suitability for use in training of medical students of the KU School of Health Sciences.
146. KUTRRH was a Level 6 Hospital owned by the Government of Kenya. It commenced its operations in 2019, and had operationalized various departments including oncology, A&E, trauma and orthopedics, renal, laboratory imaging, theater, ICU, funeral home, oncology.

147. He confirmed that the hospital had been assessed by the Council on various occasions in relation to its training capacity e.g. as a training center for the East, Central and Southern Africa (ECSA) training in Internal Medicine, Anaesthesiology, Orthopaedic Surgery and Internship.
148. He noted that it had a bed-capacity of 650 beds, with a self-assessed average bed occupancy rate of approximately 50%.
149. The Council received a directive from the CS, MOH, vide letter Ref. MOH/ADM/Vol.II/82 dated 13<sup>th</sup> July, 2023, to assess the facility with a view towards accrediting it for the training of KU medical students. He summarized the Councils' key findings and observations as summarized below -
- a) KUTRRH was a level 6 publicly owned hospital serving a catchment population of 2.4 million people. It had a bed-capacity of 650 beds, and an average bed occupancy rate of 50%.
  - b) The hospital has excellent, well laid out infrastructure.
  - c) The hospital offered a wide range of services, including out- and in-patient services, maternity, renal, oncology etc.
  - d) It had four training rooms available, each with a capacity of 100, in addition to four teaching auditoriums capable of hosting 200 students.
  - e) It was accredited as a CPD provider, and held weekly departmental CMEs.
  - f) It had a resource center, as well as a department for research and innovation.
  - g) It had recruited a Family Medicine Specialist.
  - h) Its workload in surgery and internal medicine were good with an adequate case mix.
  - i) It had a training block with capacity to hold several offices, classrooms and space for training.
  - j) It had entered into an MOU with KU for the teaching and training of KU medical students.
150. Based on the above, the Council had recommended the accreditation of KUTRRH as a teaching hospital for the clinical training of KU MBChB students.
151. The hospital could currently handle a maximum of 100 students, based on its bed occupancy rate of 50%, and recommended student to bed ratio of 1:4.

152. The Council further recommended that the hospital grant access to relevant sections of the hospital for use by KU medical faculty and students; and that it progressively increase its workload in pediatrics and obs/gyn to support training.

153. Finally, the Council had recommended that KU and KUTRRH appoint and operationalize a Joint Implementation Committee with a view towards agreeing on the modalities and logistics and the clinical rotations, the use of the training block and the provision of consumables; and, facilitating the enforcement of discipline, good professional conduct and the observance of ethical standards.

*A copy of the written submissions by KMPDC has been attached herein as Annex II.*

#### **F. Submission by the Office of the Attorney General**

154. The Committee met with Hon. Justin Muturi, Attorney General, during its sitting held on Thursday, 21<sup>st</sup> September, 2023. A summary of his submissions is provided below -

155. The Kenyatta University Teaching, Referral & Research Hospital (KUTRRH) was conceptualized by Kenyatta University in the year 2006 and was meant to offer medical education for students, offer clinical services and undertake research.

156. Recognizing the urgency and necessity of the construction and completion of the project, the Government of Kenya requested a concessional loan towards the implementation of the project from the Government of the People's Republic of China.

157. Consequently, the Ministry of Higher Education, Science and Technology (as it then was) considered the project to be critical and advantageous to the interests of the Kenyan people and authorized Kenyatta University to enter into an agreement with CJIC to design, construct, equip and operationalize the project.

158. Construction of KUTRRH commenced following the execution of a Memorandum of Understanding (MoU) between Kenyatta University (represented by Prof. Olive Mugenda, the then Vice Chancellor) and China Jiangxi Corporation for International Economic and technical Cooperation (CJIC) represented by Zhong Ling) dated the 28<sup>th</sup> May, 2010.

159. KUTRRH was constructed *vide* a Commercial Contract dated the 12<sup>th</sup> August, 2010 between Kenyatta University (Employer) and China Jiangxi Corporation for International Economic and Technical Cooperation (Contractor) for the construction and development of a modern teaching, research and referral hospital at Kenyatta University for a Contract price of RMB YUAN 744, 560,000.00 Chinese Yuan (approx. Kshs. 8,748,579,988.00).

160. The Commercial Contract was executed between Prof. Olive Mugenda (then Vice Chancellor of Kenyatta University) and Mao Honghui (Contractor representative). The Parties thereafter signed Supplementary Agreements Numbers.1, 2 and 3 on 21<sup>st</sup> October, 2010, 29<sup>th</sup> November, 2010 and 28<sup>th</sup> January, 2013 respectively.
161. The construction was financed by way of a concessional loan agreement dated the 17<sup>th</sup> June, 2011 between GoK represented by the Ministry of Finance as the borrower and the Export Import Bank of China as the lender for a facility of 744, 560, 000 Yuan. The loan agreement provided that Kenyatta University was the “End User” and CJIC was the “Chinese Contractor”.
162. The construction of the hospital started in the year 2012 and was completed in 2016. However, between 2016 and the beginning of 2019 the fully equipped hospital lay idle, no operationalization had taken place and the equipment warranties were almost expiring.
163. Owing to the inactivity, the Departmental Committee on Health of the National Assembly sought an intervention from the Government for the operationalization of the project. Consequently, *vide* Legal Notice no. 4 of 2019, the hospital was turned into a parastatal, and a board was appointed to oversee its operationalization and management of the hospital.
164. *Vide* a letter dated the 15<sup>th</sup> October, 2018, the Head of Public Service convened a meeting scheduled for 17<sup>th</sup> October, 2018 to deliberate on the operationalization of KUTRRH. The invitees to the meeting were the Cabinet Secretaries of the National Treasury, Education, Health and the Attorney General. A paper justifying operating KUTRRH as a State Corporation was presented during the meeting. The paper *inter alia* observed the following:
- a) Research undertaken showed that most University hospitals and the University’s academic aspect are managed separately but are affiliated and work together in the areas of training and research.
  - b) The service provision mandate was complex and specialized and should not be offered under any other ministry except Health. An educational institution would not have the systems to oversee this role effectively.
  - c) There would be an agreement signed between the University and the Hospital whereby:
    - i. The University would use the medical school facility at the hospital for training and research;
    - ii. The students and staff would use the hospital for bedside training alongside other students from other universities;

- iii. Kenyatta University staff and partners would be allowed to undertake research alongside other professionals on agreed upon terms; and
- iv. Kenyatta University would be represented in the advisory board.
- d) Most of the key University hospitals were managed as separate entities including most of the ones based in the USA, with a clear demarcation between service delivery and training. They however, worked together seamlessly on training and research through well designed systems. Key University hospitals operated under this framework included: John Hopkins University Hospital; Duke University Hospital; University of Cincinnati Academic Health Centre; University of Botswana Hospital; Aga Khan University Hospital; and Moi University Hospital.

165. He further submitted that KUTRRH was constructed on a Government-to-Government loan, with Kenyatta University as the implementing agency. The Government was repaying the interest on the loan and the substantive loan was to be repaid by the Government after 5 years from the date of operationalization of the hospital.

166. Based on the foregoing, he stated that the paper proposed the following way forward:

- a) Kenyatta University to be established as a State Corporation through a Legal Order signed by the President;
- b) Contract management be considered with the idea of a future PPP arrangement;
- c) The Government to continue paying the loan interest;
- d) The Government to provide capitation to run the hospital for three years until the income steadily increases and the hospital starts to raise enough money to run on its own operations;
- e) The Government to renegotiate the terms of loan repayment so that the principal loan repayment start date is pushed forward to start in 5 years (2023). The start date in the contract was 5 years after completion and operationalization. The delay was inevitable and the repayment start date should be shifted.

167. He noted that the National Treasury had been repaying the loan with no obligations to the university. The National Treasury had been paying interest on

the loan from the year 2012 and was currently repaying the principal amount after the lapse of the grace period in 2019.

168. Regarding the land, he noted that it was determined in the case of *Kenyatta University & 1699 others vs Kimani Mbugua & 78 others eKLR*. The Court found in favor of Kenyatta University and dismissed the squatter's claim of possession by way of allotment letters and/or adverse possession. The Court in its judgment held *inter alia* that

- a) It was not in dispute that the Plaintiff (Kenyatta University) was the registered owner of LR No. 11026/2, the suit property. The said land was allocated to the Plaintiff vide a grant No. IR33404 on 1<sup>st</sup> October 1977;
- b) In any case the land held by the Plaintiff had already been allocated to it and it had a title. The same had already been alienated and could not be subject to subsequent allotment to individuals. The letter of allotments held by the defendants issued on 29<sup>th</sup> July 2002 were therefore illegal;
- c) The only evidence of occupation of some individuals in the Plaintiffs land was a letter written by the Chairman of Kamae Village (Mr. Wainaina K) to the Vice Chancellor of the University on 13<sup>th</sup> June 1995. In the said letter, he confirmed that as at 1995, there were 670 residents of Kamae Community. This confirmed the Plaintiff's position that as at 1984 there were 670 squatters. This meant that apart from the 670 the rest of the Defendants were not occupying the Plaintiff's land as at 1995;
- d) The Court found that the Defendants failed to prove factual possession by way of building plans submitted to the relevant Governmental agencies prior to the construction of the permanent structures on the suit land. The Defendants did not also adduce any evidence of utility bills such as electricity and water bills to show that they were in possession;
- e) The Court stated that it is on record that the Plaintiff already donated 30.82 acres for the settlement of the 670 squatters as per the list of 1984. This was the only portion the Plaintiff was ready to donate to accommodate the original squatters; and
- f) The Court therefore entered judgment in favor of Kenyatta University and restrained the squatters from continuing with occupation of the land; allowed Kenyatta University to possess suit land and ordered eviction of the squatters since they are trespassers.

169. On 17<sup>th</sup> October, 2018, the Departmental Committee on Health tabled a report on KUTRRH, which was adopted on 26<sup>th</sup> May, 2019. The Committee recommended that -

- a) The National Treasury immediately allocate Kshs. 555, 682, 207.00 for the dry run budget and Kshs. 1,060, 490, 567.19 for the soft run to the Kenyatta University Hospital. This allocation was to 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;
- b) The Kenyatta University and the National Treasury was to relook into the PPP approach and consider the original plan of the University running the hospital. If the model settled upon was PPP, then Treasury was to give clear guidelines on competitive identification of the private partner;
- c) That the Ministries of Health and Education, Science & Technology be actively involved in these discussions, and take a leading role in matters of health policy and teaching respectively; and
- d) That the National Treasury amends the on-lending agreement with Kenyatta University to allow Kenyatta University adequate time to reorganize its finances to enable it meet its loan repayment obligations under the on-lending agreement.

170. On the 29<sup>th</sup> September, 2021, the 12<sup>th</sup> Parliament Select Committee on Implementation chaired by Hon. Moitalel Ole Kenta considered the Report of the Departmental Committee on Health regarding KUTRRH to determine whether the Health Committee report had been implemented within 60 days as is required. The Committee recommended that -

- a) 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 comprised the Schools of Medicine, Pharmacy, Nursing, Public Health and Dentistry.
- b) H.E. The President should revoke Legal Notice No. 4 of 2019 and revert the KUTRRH to a University Hospital within six (6) months of the Adoption of its Report.

171. The 13<sup>th</sup> Parliament Public Investments Committee on Governance and Education considered the Reports of the Departmental Committee of Health together with the Select Committee on Implementation of the 12<sup>th</sup> Parliament regarding KUTRRH and restated the recommendations of both the Departmental Committee of Health and the Select Committee on Implementation of the 12<sup>th</sup> Parliament regarding KUTRRH.

172. On the current legal status of KUTRRH, the AG noted that the hospital was a State Corporation established pursuant to 3(1) of the State Corporations Act, Cap 446 Laws.
173. Section 3(1) of the State Corporations Act. The State Corporations Act allowed the President by order, to establish a state corporation as a body corporate to perform the functions specified in that order.
174. The President *vide* Legal Notice No.4 of 2019, established that KUTRRH falls under the Ministry of Health as a Level 6 Referral Hospital within the meaning of section 25(1) as read with the First Schedule of the Health Act, 2017.
175. Additionally, pursuant to Executive Order No.1 of 2023, KUTRRH was categorized as a state corporation under the Ministry of Health. The Fourth Schedule of the Constitution categorizes national referral health facilities as falling under the National Government, hence the hospital was under the functional mandate of the Ministry of Health.
176. On the handing over of the hospital, he noted that an inter-governmental committee was constituted to oversee the processes of handover of the hospital project from the contractor to the University and subsequently to the Hospital Board.
177. The Board was mandated to implement its functions as per the Legal Notice. In respect to KU, the Board was to ensure medical education and research of Kenyatta University students was facilitated in a manner similar to the Legal Notice No. 109 of 6<sup>th</sup> April 1987 of KNH providing facilities for University of Nairobi, and Legal Notice No. 78 of 1998 of MTRH making provision for medical education facilities for Moi University Medical Students.
178. The main aim of the Referral Hospital as set out in the legal Notice No. 4 of 2019 was to provide highly specialized services, and to provide training and research services for issues of national importance.
179. The Legal Notice further spelt out the functions of the hospital in regard to training as follows -
- a) .....
  - b) *provide facilities for medical education for the Kenyatta University and for research either directly or through other cooperating health institutions;*
  - c) *provide facilities for education and training in nursing and other health and allied institutions;*

- d) .....
  - e) .....
  - 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) .....
  - 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.*
180. To achieve the objectives as set out in the Legal Notice, KUTRRH and KU embarked on the development of a Memorandum of Understanding (MOU) that would guide the implementation of medical training and research for KU. The MOU was signed by KUTRRH on the 17<sup>th</sup> of December and by KU on 21<sup>st</sup>, December 2020.
181. The MOU set up a Joint Implementation Committee (JIC) to oversee its implementation and subsequent meetings were held with the first one being on the 25<sup>th</sup> of January 2021 where members of both institutions were present. The modalities of working for this committee were agreed upon and responsibilities shared out.
182. In November 2021, the process stalled with members from the KU side not honoring their roles despite several reminder letters. However, active discussions resumed in mid-2022 only to stall again in September of the same year after an assessment of KUTRRH by the KU Heads of Departments.
183. According to the Kenya Medical Practitioners and Dentist Council (KMPDC) guidelines, teaching institutions (universities and colleges) must apply to the KMPDC for approval of a training site (Hospital) for the undergraduate medical students. In this case therefore teaching institutions were expected to apply to KMPDC for approval of KUTRRH as their medical training site. Once the application by the teaching institution was received by KMPDC, the Council would inform the training site (Hospital) of the intended date of inspection of the facility. The inspection would be carried out and a letter of approval be issued for services that were ready for medical training.
184. The Ministry of Health instructed KMPDC to inspect KUTRRH. The Inspection took place on the 20<sup>th</sup> of July 2023 and thereafter the hospital was accredited as a

training site allowing the facility to act as an accredited teaching hospital for Kenyatta University School of Medicine.

185. The Regulatory accreditation was valid for a renewable three-year period, allowing the School of Medicine students from Kenyatta University to access the Level VI KUTRRH facility. Since then, the CEO of KUTRRH had written to KU indicating KUTRRH's readiness to receive undergraduate medical students starting September 2023.
186. KMPDC also recommended that KUTRRH and KU School of Health Sciences operationalize the Joint Committee; agree on the modalities and logistics of the clinical rotations such as those related to the use of the training academic block and provision of consumables; and, facilitate the enforcement of discipline, good professional conduct and observance of ethical standards among medical students, academic and hospital staff.
187. Further, on 10<sup>th</sup> of July 2023, inspectors from the Nursing Council of Kenya visited KUTRRH on instructions from the Ministry of Health to inspect the Hospitals readiness for use by KU's nursing students. The Nursing Council in its report to the Ministry of Health indicated that KUTRRH was ready and had the capacity to train nurses from KU. However, the University would need to apply for accreditation to be issued as per Nursing Council of Kenya Guidelines.
188. With regards to undergraduate pharmacy students, he noted that KU was yet to make an application to the PPB for them to undertake the necessary inspection and grant approval for KUTRRH to be a training site for the institution. Pharmacy students from Mount Kenya University and United States International University - Africa were currently using KUTRRH as a training site.
189. *Vide* a letter dated the 19<sup>th</sup> January, 2023 under Ref: MOE/CON/2/13 the Ministry of Education requested for a legal opinion on the reversion of KUTRRH back to Kenyatta University. The Office issued a legal opinion *vide* our letter dated the 24<sup>th</sup> February, 2023 under Ref: AG/CONF/9/59/1 and observed *inter alia* as follows:
  - a) From a legal standpoint, the Legal Notice No. 4 of 2019, in placing KUTRRH under the Ministry of Health, is properly based on the provisions of the Health Act, 2017.
  - b) In the AGs considered opinion, revoking the Legal Notice No. 4 of 2019 in order to remove the referral hospital from the responsibility of the Ministry of Health and to revert the same to the University, under the Ministry of Education, would be in conflict with the provisions of the Health Act, 2017;

- c) The legal framework governing KUTRRH, therefore, was the State Corporation Act and the Legal Notice No. 4 of 2019. The Legal Notice, in Section 3 therefore established KUTRRH as a referral hospital. This status was relevant for the purposes of the Health Act, 2017.
- d) That Legal Notice No. 4 of 2019 expressly advised that KUTRRH shall provide medical facilities for medical education for Kenyatta University. Therefore, the two institutions needed to work on appropriate arrangements to facilitate the utilization of KUTRRH for medical education and research as envisaged in the constructive instrument.
- e) That a revocation of Legal Notice No. 4 of 2019 would require that it be preceded by fundamental amendments of the Health Act, 2017 as well as other laws. This revocation would also cause harmful disruptions by interfering with existing financial and contractual commitments.
- f) It was the AGs' understanding that the two institutions signed an MoU in 2020 and formed a Joint Implementation Committee to operationalize the partnership. However, the MoU was skewed towards KUTRRH and the progress of one of the sub-committees of the Joint Implementation Committee (on Clinical Rotations) had been quite slow due to the strained relationship between Kenyatta University and KUTRRH. In his respectful opinion, this was a matter that should be addressed by the two institutions in the spirit of cooperation to serve the public interest. In the event of a continued stalemate the two key Ministries concerned should take deliberate positive efforts to mediate the dispute; and
- g) The two institutions should be encouraged to consider the existing collaborations between the universities and other public teaching and research hospitals, such as the Kenyatta National Hospital and Moi University Teaching and Referral Hospital, which, like KUTRRH, are also state corporations under the Ministry of Health. The leading public teaching and research Hospitals in Kenya are under the Ministry of Health with administrative arrangements for the training of medical students.

*A copy of the written submissions by OAG has been attached herein as Annex 12.*

#### **G. Submissions by the National Treasury**

190. The Committee met with the National Treasury led by Mr. Lawrence Kibet, Director-General, Public Investment and Portfolio Management, during its sitting held on Thursday, 21<sup>st</sup> September, 2023. A summary of his submissions is provided below.

191. Regarding the loan facility for the construction of KUTRRH by Exim Bank, TNT submitted that the GoK entered into a loan agreement with the Exim Bank of China for the sum of CNY 744,560,000.00. The loan was secured to finance the construction and equipping of KUTRRH.
192. The loan was taken in concession and being that the University lacked the financial muscle to repay the loan, The National Treasury were repaying the loan and were in the process of converting the said loan into a grant. As a government loan, it was neither sitting in the books of KU nor KUTRRH, but rather as a stock of public debt under the public debts and management office.
193. The loan was currently being repaid through TNT, with Kshs. 220,610,368.00 having been paid on the principal repayment, and Kshs. 496,373,332,23 in outstanding balance.
194. With regards to the financial status of KU and KUTRRH, TNT noted that the audited financial status of the two entities in the last five FYs (2017/2018 to 2020/2021) indicated -
- a) KU reported operating losses during the period under observation, and there were indications that the available revenue throughout the period could not meet the operating expenditure of the University;
  - b) Personal emoluments accounted for approximately 80% of the Universities' recurrent expenditure;
  - c) KUs total current liabilities were higher than total current assets, an indication that throughout the period under review, the University could not meet its current obligations and thus had accumulated pending bills;
  - d) KU had persistently committed and spent more than its realized revenue, thus accruing significant levels of commercial debt. Thus, it now faced liquidity challenges as seen in its cash flow statements;
  - e) On the other hand, KUTRRH was heavily reliant on the Exchequer. During the period under review, the Government grant increased throughout. Internally generated revenue, in the form of fees charged, had also been increasing throughout during the period under review.
  - f) KUTRRH reported an operating surplus for the three years under review, except for the FY 2020/2021, when the University reported operating losses due to increased personal emoluments and other operating costs;
  - g) The personal emoluments for the hospital were below 50% of its realized revenues throughout the period under observation;

- h) The liquidity of the hospital was good throughout the period under observation, with its current assets exceeding its liabilities, thus demonstrating that it could meet its financial obligations; and
  - i) Cash flows from the operating activities of the hospital for the FY 2019/2021, were not sufficient to meet its investing activities, with the hospital relying on Government development grants.
195. No audit queries had been raised by the Auditor-General or the National Assembly with regards to the utilization of monies during the construction of the hospital.

*A copy of the written submissions by TNT has been attached herein as Annex 13.*

#### **H. Submissions by the State Corporations Advisory Committee**

196. The Committee met with the State Corporations Advisory Committee led by Mr. Simon Indimuli, Secretary/Chief Executive Officer, during its sitting held on Thursday, 21<sup>st</sup> September, 2023. A summary of his submissions is provided below.
197. The Cabinet Secretary to the National Treasury was incorporated through an Act of Parliament (*Cabinet Secretary to the National Treasury (National Treasury Incorporations) Act (Cap 101)*). *The National Treasury on behalf of the Government exercises oversight and ownership through shareholding, equity participation or State membership subscriptions in all government investments, making it the legal owner of assets and properties. In the case of KUTRRH, it was 100% owned by the National Treasury on behalf of the people of Kenya as well as KUTTRH through the Legal Notice 4 of 2019.*
198. The provisions of the original enabling legal instrument, Legal Notice no. 4 of 2019, required KUTRRH to “*provide facilities for medical education for Kenyatta University and for research either directly or through other cooperating health institutions*”.
199. Although the education facility, as per section 5(b) of the legal notice, was to be available only to KU, the research component was made open to other cooperating health institutions. By making the provision of education and research open to all, KUTRRH had compromised the availability of the envisaged education platform for KU medical students.
200. With regards to proposals to revoke Legal Notice No. 4 of 2019, SCAC observed that -
- a) The need to have KU exercise itself in the ownership of KUTRRH was initially provided for under paragraph 6(1)(f), (g) and (i) of the enabling instrument which provided for representation of KU in the KUTRRH Board by four members. This demonstrated that the law anticipated the full

participation and influence of KU in decision making at KUTRRH, especially on matters relating to medical education, training and research;

- b) Section 6 of Legal Notice No. 4 of 2019 was however amended in 2021 through Legal Notice No. 39 of 2021, which had the overall effect of diluting the membership of KU in the KUTRRH Board to only one member, being the Dean of the School of Health Sciences.
- c) Although KU conceptualized the whole idea of KUTRRH, it was now owned by the Government through the Cabinet Secretary to the National Treasury Incorporation Act. Drawing on evidence that TNT was the one servicing the entire loan portfolio that funded the construction of the hospital, SCAC noted that KU would not be able to afford to buy it even if the Government was to allow its transfer.
- d) KUTRRH was participating in the country's clinical services with its current capacity standing at 56% of the national referral needs. Depleting the current referral capacity, which was heavily serviced by KUTRRH, would therefore imperil national health referral services.
- e) 85% of the capacity of KUTRRH was skewed towards the provision of clinical services, which was not a concern of KU, other than for the pursuit of medical education and research. Reserving the whole of such a facility for education and research would not only create huge idle capacity, but would similarly be a total waste of public resources.
- f) It was in the best interest of KU to have its medical students exposed to real life clinical experience, rather than have KU running its own 'mock' hospital.

201. In light of the foregoing, SCAC recommended that -

- a) The initial concept of KU medical students learning from KUTRRH be maintained by mandating KU to manage and be responsible for the medical school located within the precincts of KUTRRH as was the case of Moi University and Moi Teaching and Referral Hospital;
- b) An MOU be executed between KU and KUTRRH on how to access and utilize other specific clinical and medical research facilities, equipment and infrastructure within KUTRRH in the similar manner to the MOU between Moi University and MTRH.
- c) Action be taken to revert back to Legal Notice No. 4 of 2019 which provided for four (4) representatives of KU to the KUTRRH Board, and which also insulated the education platform of the hospital for KU.

*A copy of the written submissions by SCAC has been attached herein as Annex 14.*

#### **I. Submissions by the Ministry of Education**

202. The Committee met with Hon. Ezekiel Machogu, Cabinet Secretary, Ministry of Education, during its sitting held on Thursday, 5<sup>th</sup> October, 2023. A summary of his submissions is provided below-
203. KUTRRH was built using a loan guaranteed by the Government of Kenya, and the National Treasury was fully responsible for repaying the loan.
204. The Ministry of Education concurred with the advisory by the Attorney General on the legality and operationalization of Legal Notice No.4 of 2019;
205. A joint high-level committee had been established for purposes of finding an amicable resolution to the dispute between the two institutions. The Committee was co-chaired by the Principal Secretary, State Department for Higher Education and Research, and the Principal Secretary, State department for Medical Services. It further had representatives drawn from KUTRRH and KU.
206. The Committee held its first meeting on 6<sup>th</sup> September, 2023 at the Ministry of Health. However, Kenyatta university was absent;
207. The Ministry had appeared before the National Assembly Public Investments Committee on Governance and Education on the same subject matter on 4<sup>th</sup> October, 2023 together with the Cabinet Secretary National Treasury and Economic Planning and the Cabinet Secretary, Ministry of Health. It was resolved at the meeting that Kenyatta University medical students should have access to the Hospital for their education and training.
208. Personal differences between the leadership at the two institutions had so far derailed efforts at resolving the dispute. However, it was the position of the Ministry that the two institutions must agree on modalities of working together.

*A copy of the written submissions by MOE has been attached herein as Annex 15.*

#### **J. Visit to Kenyatta University**

209. The Committee conducted a site visit to Kenyatta University on Monday, 31<sup>st</sup> July, 2023, where they were met by the Vice-Chancellor, the University Council and the Executive Dean.
210. The Committee was taken to various offices housing the School of Health Sciences, including, departmental offices, student lecture rooms, the Nursing School and laboratories. General findings and observations made by the Committee during the visit included -

- a) The University was using one medical science training laboratory for its program against a requirement of five from the regulator. The Committee further found that the laboratory was shared between pharmacy and medical students.
  - b) Notably, the laboratory building had a side ramp for access by physically challenged students. The Committee was informed that in certain instances, lecturers/facilitators held classes on the ground floor to ease access. The Committee was further informed that plans were underway to build two more laboratories.
  - c) With regards to teaching facilities, the Committee found that the university was using lecture halls on a rotational and shared basis with other students from other disciplines. Notably, the halls were far from the labs, with students being forced to move long distances from one point to another leading to loss of time between lecture hours and practical laboratory lessons.
  - d) The Committee was informed that the original plan/vision of the University towards the development of KUTRRH was to house all facilities under one roof i.e. lecture halls, offices, pharmacy, labs etc. as the School of Health Sciences. The university Biomedical Engineer confirmed that the academic block at KUTRRH had been intended to accommodate 25 different departments, 4 major lecture halls, 8 smaller lecture halls, side labs, skills lab, library and administrative offices.
  - e) Offices for various departments like Obstetrics and Gynecology were housed in the Schools of Economics and Education, as well as the Science Complex and were hence quite scattered.
  - f) With over 800 medical students, the lecture halls were inadequate in size, thus necessitating the sub-division of students into two- learning groups.
  - g) The distance between the Skills Lab, the lecture halls and other departmental offices was inordinately long, thereby eating into the students' lecture hours and lab hours and compromising effective learning.
  - h) The school's clinical placement extended as far as Makindu, Nakuru, Nyeri, Embu, Kirinyaga, Kerugoya and other sub-counties and counties since Thika and Kiambu had limited vacancies.
211. The Committee was informed that in addition to the main hospital, KUTRRH had planned to construct a Children's Hospital, a perimeter wall, installation of a water tank and other notable infrastructure. However, these were no longer under the university's management and use, despite having been financed by the University.

212. The Committee was further informed that a lot of man hours and financial resources amounting to almost Kshs.1 billion had been committed to the KUTRRH project, and that it was therefore only just\ for the medical students to benefit from the hospital Services/facilities.
213. Despite the underfunding challenge being experienced by all public universities in Kenya, KU had developed a strategic working formula plan on how to successfully manage and run the hospital.
214. The Committee observed that access to KUTRRH from KU was secured by a gate manned by police officers.

**K. Visit to Kenyatta University Teaching, Referral and Research Hospital**

215. The Committee conducted a site visit to Kenyatta University Teaching, Referral and Research Hospital on Monday, 31<sup>st</sup> July, 2023, where they were met by the Chairperson and members of the Board and management of the hospital. Prof. Olive Mugenda, Chairperson, Kenyatta University Teaching, Referral and Research Hospital (KUTRRH), made submissions before the Committee as summarized below -
216. On the matter of access of KUTRRH by KU students and lecturers, it was her submission that KUTRRH had not hindered this process as illustrated by the following -
- a) The formation of the Joint Implementation Committee to formulate a framework for facilitating access to KUTRRH by KU medical students and staff;
  - b) Placement of 92 students from the KU College of Health Sciences in other disciplines including public health, biomedical engineering, health records, reproductive health, among others, that do not require regulatory approval;
  - c) Requests by KUTRRH for KU to seek assessment and accreditation of KUTRRH as a training site by the relevant regulatory bodies;
  - d) Delays by KU to request for regulatory assessment and accreditation for over 2 years; and
  - e) An intervention by the Ministry of Health to have the relevant regulatory bodies carry out assessment of KUTRRH as a training site for Kenyatta University. To this end, an assessment by the Nursing Council of Kenya (NCK) was conducted on 10<sup>th</sup> July 2023 and that of Kenya Medical Practitioners and Dentist Council (KMPDC) on 20<sup>th</sup> July 2023.

217. With regards to reverting KUTRRH back to KU, it was her submission that KUTRRH was established as a state corporation established under Legal Notice No. 4 of 2019 under the State Corporations Act with a board membership of nine (9). She noted that it was mandated to provide referral services, training, and medical research. Further, that Executive Order No. 1 of 2023 placed KUTRRH as a state corporation under the Ministry of Health.
218. Subsequently, Legal Notice No. 4 of 2019, was amended by Legal Notice No. 39 of 2021, which reduced the number of board members from 12 to 9. She noted that the amendment affected KUTRRH in addition to three other national referral hospitals.
219. The hospital was built and equipped through a Government guaranteed loan with KU being the implementing agency. Construction began in 2012 and was completed in 2016. However, the hospital remained unutilized until 2019 when a decision was reached to establish it as a state corporation through Legal Notice No. 4 of 2019, in line with the Health Act of 2017.
220. At the request of the Cabinet Secretary for Education in a letter dated 4<sup>th</sup> May, 2023, the Attorney General issued a legal opinion on the reversion of KUTRRH to KU dated 24<sup>th</sup> February 2023. In the opinion, the AG advised as follows:
- a) That Legal Notice No. 4 of 2019 which placed KUTRRH under the Ministry of Health was properly based on the provisions of the Health Act, 2017. Consequently, a reversion of the same would conflict with the provisions of the Health Act, 2017;
  - b) That Legal Notice No. 4 of 2019 expressly provided that KUTRRH shall provide medical facilities for medical education for Kenyatta University. The AG therefore advised that the two institutions should work on appropriate arrangements to facilitate the utilization of KUTRRH for medical education and research as envisaged in the constitutive instrument; and
  - c) That Legal Notice No. 4 of 2019 could not be revoked under the existing legal framework as it would require amendments to the Health Act, 2017 as well as other laws. This revocation would also cause harmful disruptions by interfering with existing financial and contractual commitments.
221. The Cabinet Secretary of Education in his letter dated 4<sup>th</sup> May, 2023, addressed to the KU VC and copied to the KUTRRH CEO communicated the AG's opinion as follows -
- a) KU and KUTRRH were entities of distinct ministries established under the Universities Act, 2012 and the Health Act, 2017 respectively. As such, to

revert KUTRRH to Kenyatta University, it would be necessary to revoke Legal Notice No. 4 of 2019. This would have to be preceded by fundamental amendments to the existing laws including the Health Act, 2017. It was also noteworthy that the change was likely to disrupt the operations of the hospital;

- b) The founding objectives of KUTRRH to provide medical education, training and research for Kenyatta University's College of Health Sciences could still be achieved within the existing legal framework through good faith and administrative arrangements that did not offend the law; and
  - c) In view of the foregoing, MoE was unable to facilitate the transfer of KUTRRH back to Kenyatta university.
222. The Cabinet Secretary in his communication further directed that KU demonstrate true leadership by restructuring and formalizing its working relationship with KUTRRH for the benefit of Kenyatta University students in the schools of medicine, nursing, pharmacy, public health and dentistry.
223. The CS further indicated that the Ministry was available to provide guidance and support in resolving the present stalemate with KUTRRH in accordance with the Government Advisory.
224. And further that, the VC KU, in a letter to the CEO, KUTRRH, dated 12<sup>th</sup> May, 2023, the VC KU acknowledged the CS's communication and proposed the formation of Joint High-Level Committee.
225. With regards to the utilization of the hospital, it was her submission that KUTRRH was continually implementing her organic growth in line with the strategic plan. This included expanding the range of services offered, recruiting additional staff to manage the increased workload, and implementing a revised pricing strategy. She further stated that data from 2019-2023 indicated optimal hospital utilization in outpatient, radiology, chemotherapy, radiotherapy, surgical, and in-patient services.
226. With regards to the Training, Research and Innovation (TRI) complex, it was her submission that the TRI had been optimized to provide the best possible environment for all learning institutions that train students at KUTRRH, including KU in line with the provision of Legal Notice No. 4 of 2019, as follows -
- a) Training and Capacity Building Section housing the Institute of Health Care Training and the Specialized Nursing Institute;
  - b) Medical Innovations and Accelerator Hub;

- c) Research and Development Centre for clinical research, clinical trials and research collaborations;
- d) Scientific Advisory Centre to advise the Ministry of Health on scientific trends in health care for evidence-based interventions in Cancer and other chronic diseases;
- e) Centre for Non-Communicable Diseases (NCDs) and Genomic Research Center;
- f) Partnerships and Collaborations offices e.g. collaboration with University of Manchester;
- g) Medical Education and Mentorship Centre where KU as well as other universities and colleges were expected to share spaces for their medical training debriefs and seminars; and
- h) The World Health Organization Regional Emergency & Logistical Hub for Africa. This followed an MOU which was signed between the Ministry of Health and WHO in 2022. This relationship was further ratified by the Government in 2023 when His Excellency the President, Dr. William Ruto visited KUTRRH on 24<sup>th</sup> April 2023 appreciated the presence of WHO in the country. It was expected that WHO would construct its own offices on a portion of land as granted by the Government in 2023.

227. On the engagement/empanelment of KU lecturers and consultants, it was her submission that the KUTRRH-KU Joint Implementation Committee had initiated the establishment of a framework for collaboration between the hospital and the university in accordance with the provisions of the MOU. In relation to the above, it was her submission that KUTRRH had a pool of experienced consultants supported by medical officers, nurses and other health personnel who are competitively hired.

228. She further observed that following the failure by KU to apply for assessment and accreditation of the hospital as a training institution from the regulatory bodies, the Ministry of Health had intervened to ensure the same, and that students from the university could now access the facility.

229. She clarified that KUTRRH did not amend Legal Notice No. 4 of 2019, but that rather the amendments were made by the Government, and applied to the three hospitals with a view towards ensuring compliance with Mwongozo guidelines which recommended a maximum of 9 members. Accordingly, as per the amended legal notices, the 3 training institutions i.e. UON, KU and Moi University had only one university representative in the board membership i.e. the Principal/Dean

of the College of Health Sciences. The changes were also intended to enhance governance by ensuring independence of members.

230. Regarding the loan facility for the construction of the Hospital EXIM Bank, it was her submission that The National Treasury was covering the cost of the loan, and not KU as had been suggested.
231. On allegations by KU that the hospital was currently underutilized, it was her submission that KUTRRH attended its first patient in October 2019. In March 2020, the hospital opened its doors for Covid patients. Even though during this period the hospital saw the highest number of patients, most of them were Covid-19 patients. The number of patients with other ailments gradually decreased during this period. The covid patient numbers went down towards the end of 2021 and the hospital started admitting more patients with other medical conditions. However, the hospital had steadily grown the numbers in various sections over time. She further submitted that KUTRRH had adopted the 2022-2024 NHIF NATIONAL SCHEME CONTRACT otherwise referred to as comprehensive NHIF cover. This development was set to make services more accessible to patients.
232. Regarding the use of the TRI Complex by KU staff and students, it was her submission that the complex had been optimized to provide the best possible environment for all learning institutions that train students at KUTRRH, including Kenyatta University students in line with the provision of Legal Notice No. 4 of 2019 as follows:
- a) Training and Capacity Building Section that houses the Institute of Health Care Training and the Specialized Nursing Institute in compliance with LN.4 of 2019- 5c.
  - b) Medical Innovations and Accelerator Hub in compliance with (LN.4 of 2019- 5h).
  - c) Research and Development Centre for clinical research, clinical trials and research collaborations in compliance with (LN.4 of 2019- 5 e & f).
  - d) Scientific Advisory Centre to advice the Ministry of Health on scientific trends in health care for evidence-based interventions in Cancer and other chronic diseases in compliance with (LN.4 of 2019- 5 e & g).
  - e) The Centre for Non-Communicable Diseases (NCDs) and Genomic Research Center – Hospital is working hard to acquire the NextGen Sequencer Machines with the support of the Ministry of Health in compliance with (LN.4 of 2019- 5 d, e & g).

- f) Partnerships and Collaborations offices e.g., collaboration with University of Manchester.
- g) Medical Education and Mentorship Centre where KU will have shared spaces for their medical training debriefs and seminars. Other universities and colleges will also have access to these shared spaces.
- h) The World Health Organization – Regional Emergency & Logistical Hub for Africa following an MOU which was signed between the Ministry of Health and WHO in 2022.

233. She further highlighted the services being provided at the hospital as follows -

- a) Oncology Center: This was a flagship project of KUTRRH offering comprehensive cancer care services, including chemotherapy, radiation therapy, and surgery. The original bed capacity for cancer treatment was 76 beds, but there are plans underway to have an additional 100 beds.
- b) Accident and Emergency Department: A department providing 24/7 emergency care for adults and children.
- c) In-patient Services
- d) Trauma and Orthopedics Department: A department providing specialized care for patients with injuries to the bones, joints, and soft tissues.
- e) Renal and Dialysis Unit: A unit providing dialysis and other renal care services to patients with kidney disease.
- f) A Covid -19 Isolation Centre
- g) ICU Unit with a 62-bed capacity.
- h) Eight (8) Operating Theatres equipped to perform a wide range of surgical procedures.
- i) Radiology Services: These services include X-rays, CT scans, and MRI scans.
- j) Funeral Home: With 130 compartments
- k) Support Services: such as the Pharmacy, Laboratory, Radiology
- l) Specialized Clinics in areas such as, Oncology, Cardiology, Cath Lab for Heart Ailments, Surgical In-patient, Out-patient Clinic, Obstetrics and Gynecology,

- m) Specialized Dental Services, Pediatric Unit: Maternity Unit, Dental Services, Infertility Clinic, Wellness Clinic
- n) Cyberknife machine for cancer treatment. Notably, this was the second machine in Africa, the other being in Egypt. The machine was used for the treatment of brain tumors, lung cancer, liver cancer, pancreatic cancer and prostate cancer providing real time tumor tracking.
- o) PET Scan Machine: A machine able to detect cancer at Molecular Level unlike MRI and CT scan that detect cancer after it has developed into a tumor.
- p) LINAC Machine: A linear accelerator used to deliver radiation therapy.
- q) Training facilities for specialized nursing training in areas such as critical care, oncology, and nephrology. The students were drawn from Kenya and other countries. So far the Hospital has graduated its first cohort.
- r) College partnership and training programs: A program for doctors to have specialized training and exposure in various fields. Some of the development and supporting partners include: CESCA, ONESCA and ECASCO
- s) Centre for Non-Communicable Diseases and Genomic Research Centre for research and education in the genetic makeup of cancer cells.
- t) Hospitality Centre for use by people who came from far and who needed to wait for their results. It was a 100-bed facility and charged Kshs. 200 per day
- u) Upcoming Projects approved by Government: The hospital was working with development partners and philanthropists like Manu Chandaria who was in the process of supporting the construction of a cancer care center to support cancer treatment.

234. It was the submission of KUTRRH that KU had manufactured the current crisis by failing to request the regulator to accredit KUTRRH as their preferred training institution. If this had been done, KU medical students would have already had access to the hospital.
235. The Committee was then taken through a tour of the academic block which hosted the research department, lectures halls, skills labs, administrative/departmental offices, the innovation hub etc. and 4 auditoriums with a 200-seating capacity largely for exam purposes.
236. Further the Committee toured the Funeral Home section, with an approximate 120 bodies-capacity. The section was notably well-equipped with state-of-the-art technology, preservative chemicals and adequate personnel.

## CHAPTER FOUR

### COMMITTEE OBSERVATIONS

237. Having considered the Petition and the submissions received thereon, the Committee found and observed that -
- a) **In respect to the prayer for full access of KUTRRH by lecturers and medical students of KU for learning purposes**
238. The Committee observed that Kenyatta University's Master Plan (1990-2020) envisioned the establishment of a School of Health Sciences, and a University Hospital with teaching, research, and community outreach facilities within an academically based integrated healthcare delivery system.
239. The university started offering School of Medicine programmes in 2004 and had been relying on the infrastructure and facilities at Kiambu Level 5 Hospital to offer training. The continued use of Kiambu Hospital by the university was however deemed untenable owing to financial, operational and logistical challenges arising from long distances, financial constraints and separate laboratory and theory classes at the Main Campus. Further, the Committee noted that according to the university and the petitioners, Kiambu Level 5 Hospital was under-resourced and overcrowded.
240. The committee noted that currently the teaching facilities used by the School of Health Sciences are spread out across the campus and therefore there is a need to have all of them located in the same place.
241. Nonetheless, the Committee observed that the 2<sup>nd</sup> Joint Inspection of KU by EAC Partner States National Medical and Dental Practitioners Boards and Councils Report (2016) had recommended that KU retain the use of Kiambu Sub-County Hospital as its base training hospital for undergraduates in addition to the university hospital.
242. The Committee further noted that the university had faced administrative and management challenges arising from the need to refurbish and repurpose facilities around its campus to accommodate the teaching needs of its growing medical student population.
243. Further, the Committee took note of submissions by KU that in November, 2018, having been appointed as the Acting Director of the Kenyatta University Hospital, the Dean of the School of Medicine at KU occupied the academic block within KUTRRH. However, in April, 2019, following the establishment of KUTRRH as a parastatal, the Chairperson of the hospital allegedly ordered the KU team to vacate.

244. The Committee observed that the said academic block hosted several facilities including a research department, lectures halls, skills labs, administrative/departmental offices, the innovation hub etc., 4 auditoriums with a 200-seating capacity largely for exam purposes that could be more effectively used for the medical education and training of medical students at KU.
245. The Committee further observed that paragraph 5 of Legal Notice No. 4 of 2019, obligated KUTRRH to *“provide facilities for medical education for Kenyatta University and for research either directly or through other cooperating health institutions”*.
246. The foregoing notwithstanding, the Committee found that as per Kenya Medical Practitioners and Dentist Council (KMPDC) guidelines, teaching institutions (universities and colleges) are required to apply to KMPDC for approval of a training site (Hospital) for undergraduate medical students. Upon application, inspection of the training site (Hospital) is carried out, following which approval may be granted for the provision of medical training.
247. The Committee found that whereas it had been the submission by KU and the petitioners that lecturers and medical students from Kenyatta University had been denied access to the hospital by the hospital management, there was no evidence to suggest that KU had not sought the requisite regulatory approvals that would have allowed their students to commence clinical placements at KUTRRH. This had consequently led to delays in the regulatory assessment and accreditation for over 2 years.
248. In view of a looming crisis, the failure by KU to trigger the requisite regulatory processes necessitated an intervention by the Ministry of Health to have the relevant regulatory bodies carry out an assessment of KUTRRH as a training site on behalf of KU. To this end, an assessment by the Nursing Council of Kenya (NCK) was conducted on 10<sup>th</sup> July 2023 and that of Kenya Medical Practitioners and Dentist Council (KMPDC) on 20<sup>th</sup> July 2023, in collaboration with representatives from KU and KUTRRH. The inspection was carried out to assess its suitability for use in training of medical students of the KU School of Health Sciences.
249. Following the inspection of the hospital by KMPDC on 20<sup>th</sup> July 2023, KUTRRH was accredited as a teaching hospital for Kenyatta University School of Medicine for a renewable period of three years, thus allowing the School of Medicine students from Kenyatta University to access its facilities. To note, the accreditation by KMPDC was up to a maximum of 100 students, based on KUTRRH’s bed occupancy rate of 50%, and recommended student to bed ratio of 1:4.
250. In relation to the above, the Committee noted that KUTRRH had expressed readiness and willingness to receive and place the students as recommended by the

regulators. Further, the Committee noted that, from 2020, the KU students undertaking courses that did not require regulatory approval were already utilizing the facilities at KUTRRH for their education. These included students pursuing degrees in Public Health, Medical Laboratory Sciences, Nutrition & Dietetics, Biomedical Engineering, Rehabilitation Services, Health Records and non-clinical areas such as Finance, Accounts, HR, ICT among others.

251. *Based on the foregoing, the Committee observed that -*

- a) *There was a need to maintain the initial concept of KUTRRH by mandating KU to manage and be responsible for the academic block located within the precincts of KUTRRH;*
  - b) *Following the accreditation of KUTRRH, medical students at KU now had access to KUTRRH within the parameters set out the relevant regulators;*
  - c) *There was a need for KU and KUTRRH to formalize a working relationship for the benefit of KU students in the schools of Medicine, Nursing, Pharmacy, Public Health and Dentistry with a focus on: the modalities and logistics and the clinical rotations; the use of the training block; the provision of consumables; facilitating the enforcement of discipline, good professional conduct and the observance of ethical standards; and, any other issue as would be deemed necessary; and*
  - d) *There was a need for KU to act to consolidate its medical education, training and research facilities with a view towards improving efficiencies and minimizing the spread and distance between lecture halls, departments, laboratories etc.*
- b) **In respect to the prayer for the revocation of Legal Notice No. 4 of 2019, which recognizes KUTRRH as a standalone parastatal**

252. The Committee observed that KUTRRH was a level 6 publicly owned hospital serving a catchment population of 2.4 million people. It had a bed-capacity of 650 beds, and an average bed occupancy rate of 50%.

253. Construction of KUTRRH followed the execution of a Memorandum of Understanding (MoU) between Kenyatta University (represented by Prof. Olive Mugenda, the then Vice Chancellor) and China Jiangxi Corporation for International Economic and Technical Cooperation (CJIC) represented by Zhong Ling) dated the 28<sup>th</sup> May, 2010.

254. A Commercial Contract for the construction of the hospital was executed on 12<sup>th</sup> August, 2010 between Kenyatta University (Employer) and China Jiangxi Corporation for International Economic and Technical

Cooperation (Contractor) at a contract price of RMB YUAN 744, 560,000.00 Chinese Yuan (approx. Kshs. 8,748,579,988.00). The contract was executed between Prof. Olive Mugenda (then Vice Chancellor of Kenyatta University) and Mao Honghui (Contractor representative). The Parties thereafter signed Supplementary Agreements No. 1, 2 and 3 on 21<sup>st</sup> October, 2010, 29<sup>th</sup> November, 2010, and 28<sup>th</sup> January, 2013, respectively.

255. According to submissions made by KUTRRH, and backed by OAG and SCAC, whereas construction and equipping of the hospital was completed in 2016, it remained idle until 2019 and its equipment warranties were almost expiring.
256. It was however the contention of KU that the hospital was not complete or ready for occupation until 18<sup>th</sup> December, 2018, owing to infrastructural and equipment installation phases, and various administrative activities toward the release of the operationalization funds.
257. It was further the observation of the Committee that monies necessary for the operationalization of the hospital amounting to approximately Kshs. 655 million were delayed until the establishment of the hospital as a standalone parastatal, thus casting in doubt the faith and goodwill by the National Treasury and other government departments and agencies in funding KU to complete the project;
258. Nonetheless, allegedly owing to the aforementioned inactivity, in 2019, the Departmental Committee on Health of the National Assembly recommended the urgent operationalization of the hospital. Consequently, pursuant to section 3(1) of the State Corporations Act, Cap. 446, KUTRRH was established as a State Corporation under Legal Notice No. 4 of 2019.
259. *In relation to the above, the Committee observed that section 3(1) of the State Corporations Act Corporations Act allowed the President by order, to establish a state corporation as a body corporate to perform the functions specified in that order. Consequently, vide Legal Notice No.4 of 2019, the then President properly established KUTRRH under the Ministry of Health as a Level 6 Referral Hospital within the meaning of section 25(1) as read with the First Schedule of the Health Act, 2017.*
260. *Paragraph 6(1)(f), (g) and (i) of Legal Notice No. 4 of 2019 provided for four (4) representatives of KU to the KUTRRH Board, demonstrating that the law anticipated the full participation and*

*influence of KU in decision-making at KUTRRH, especially on matters relating to medical education, training and research.*

261. *However, the role and participation of KU at KUTRRH was subsequently undermined by Legal Notice No. 39 of 2021, which amended Legal Notice No. 4 of 2019, to reduce the number of board members from twelve (12) to nine (9), and which had the overall effect of diluting the representation of KU in the KUTRRH Board to only one member, being the Dean of the School of Health Sciences; and which, removed the Vice-Chancellor of KU, the Director-General of Health, and the representative of the Kenyatta University Council from the Board.*
262. *In relation to the above, the Committee took note that contrary to the national values and principles of governance as contained in Article 10 of the Constitution, KU was not given an opportunity to participate effectively in the decision-making processes that led up to the revocation of Legal Notice No. 4 of 2019 by Legal Notice 39 of 2021*
263. *The Committee nonetheless noted that Legal Notice No. 39 of 2021 did not only affect KUTRRH, but also affected the board composition of Kenyatta National Hospital and Moi Teaching and Referral Hospital in similar fashion.*
264. *The Committee took note of the position of the Attorney General on the revocation of Legal Notice No. 4 of 2019, which stated that -*
- a) *From a legal standpoint, the Legal Notice No. 4 of 2019, in placing KUTRRH under the Ministry of Health, was properly based on the provisions of the Health Act, 2017;*
  - b) *Revoking the Legal Notice No. 4 of 2019 in order to remove the referral hospital from the responsibility of the Ministry of Health and to revert the same to the University, under the Ministry of Education, would be in conflict with the provisions of the Health Act, 2017;*
  - c) *The legal framework governing KUTRRH, therefore, was the State Corporation Act and the Legal Notice No. 4 of 2019. The Legal Notice, in section 3 therefore established KUTRRH as a referral hospital. This status was relevant for the purposes of the Health Act, 2017;*
  - d) *Legal Notice No. 4 of 2019 expressly advised that KUTRRH shall provide medical facilities for medical education for Kenyatta University. Therefore, the two institutions needed to work on appropriate*

*arrangements to facilitate the utilization of KUTRRH for medical education and research as envisaged in the constructive instrument.*

- e) *That a revocation of Legal Notice No. 4 of 2019 would require that it be preceded by fundamental amendments of the Health Act, 2017 as well as other laws. This revocation would also cause harmful disruptions by interfering with existing financial and contractual commitments.*

265. *Based on the foregoing, the Committee observed that there was a need to -*

- a) *Revoke Legal Notice No. 39 of 2021 which amended Legal Notice No. 4 of 2019 with a view towards reinstating the KU Council representative, and the KU Vice-Chancellor to the Hospital Board; and*
- b) *Amend the Health Act, 2017, the Universities Act and the State Corporations Act to allow for the future establishment of university hospitals with a focus on academically based integrated healthcare delivery system with an emphasis on teaching, training, research and evidence-based clinical service delivery (possibly Level VII), distinct from the current Level VI referral hospitals.*
- c) *In respect to the prayer to revert KUTRRH to a university hospital for use by the students in the College of Health Sciences at Kenyatta University*

266. *In respect to the prayer to revert KUTRRH to a university hospital for use by students in the College of Health Sciences at Kenyatta University, the Committee observed that -*

- a) *Based on their submissions, KU and KUTRRH had different key objectives with regards to the hospital: According to KU, medical education and research were its key priorities with quality clinical service provision being a byproduct. This was as opposed to the current structure of National Referral Hospitals (Level VI), that prioritized clinical service provision over teaching and research. Accordingly, the Committee observed that KU had submitted that the hospital had been conceptualized as a laboratory/experiential learning center for medical education and research for Kenyatta University medical students.*
- b) *In relation to the above, the Committee observed that according to SCAC, 85% of the capacity of KUTRRH was skewed towards the provision of clinical services with the current capacity at the hospital standing at 56% of the total national referral needs. The Committee further took note of the submission by SCAC that depleting the current referral capacity,*

*which was heavily serviced by KUTRRH, would imperil national health referral services. And further, that according to SCAC, reserving the whole of such a facility for education and research would not only create huge idle capacity, but would similarly be a total waste of public resources.*

- c) Further to the above, the Committee observed that according to submissions made by SCAC, KUTRRH was fully owned by the National Treasury on behalf of the people of Kenya in accordance with section 3 of the Cabinet Secretary to the Treasury (Incorporation) Act (Cap 101) which empowers the Cabinet Secretary to the National Treasury to acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of, or deal with, any movable and immovable property vested in the corporation upon such terms as to the corporation seems fit; and in respect of or in connexion with the matters aforesaid or any of them, the corporation may do all such things and acts as bodies corporate may lawfully do.*
- d) The Committee further observed that pursuant to Legal Notice No. 4 of 2019, and Executive Order No.1 of 2023, KUTRRH is categorized as a state corporation under the Ministry of Health. The Fourth Schedule of the Constitution categorizes national referral health facilities as falling under the National Government, hence the hospital was properly under the functional mandate of the Ministry of Health.*

#### **d) Other General Observations**

##### **i) Personality differences and conflicts**

- 267. The Committee found that serious personality differences affecting the leadership of the two institutions i.e. KU and KUTRRH, had contributed significantly to the continued stalemate between the two institutions. For instance, it was the contention of KU that the current Chairperson of KUTRRH had a vested interest in the establishment of the hospital as a separate entity from KU as demonstrated by her efforts to set up various entities to that end, including a private company.*
- 268. The Committee further noted that implementation of an MOU executed between KUTRRH and KU in December, 2020, had been slow and contentious owing to the strained relationship between the leadership of KU and KUTRRH.*
- 269. The Committee therefore observed that it was in the best interests of the public for the two institutions to work together in a spirit of*

*cooperation and collaboration. Members further noted that, in the event of a continued stalemate, the key line Ministries concerned should take deliberate steps to address the dispute and ensure continuity of services.*

**ii) Lack of coherence and clarity on statements by Government Agencies with regards to the matter**

270. The Committee observed that the continued stalemate between the institutions had been fueled by lack of coherence and clarity on the proper position by various government agencies: For example, the Committee observed that the Office of the Attorney General issued conflicting statements on the matter to the National Assembly and the Senate. This had resulted in unnecessary conflict and confusion with regards to the way forward.

**ii) In respect to payment of the loan by the China Exim Bank**

271. The Committee observed that the construction of KUTRRH was financed by way of a concessional loan agreement dated the 17<sup>th</sup> June, 2011, between GoK represented by the Ministry of Finance as the borrower, and the Export Import Bank of China as the lender at 744, 560, 000 Yuan. The loan agreement provided that Kenyatta University was the “End User” and CJIC as the “Chinese Contractor”. The loan was secured to finance the construction and equipping of KUTRRH.

272. The Committee further found that TNT had been repaying the loan with no obligations to KU: At the time of carrying out this investigation, the TNT had completed payments amounting to Kshs. 220,610,368.00 on the principal with Kshs. 496,373,332,23 in outstanding balance.

*273. The Committee therefore observed that KUTRRH was constructed on loan with KU as the implementing agency. However, the Committee observed that, according to the National Treasury, the loan was taken in concession being that KU lacked the financial muscle to repay the loan. Further, that as a government loan, it neither sat in the books of KU nor KUTRRH, but was rather captured as a stock of public debt under public debts and management office.*

**ii) Financial Status of KU and KUTRRH**

274. The Committee found that, according to TNT, the audited financial status of KU in the last five FYs (2017/2018 to 2020/2021) indicated that: it reported operating losses during the period under observation, an indication that its available revenue throughout the period could not meet

its operating expenditure of the University; personal emoluments accounted for approximately 80% of the Universities' recurrent expenditure; its total current liabilities were higher than total current assets; and, the university persistently committed and spent more than its realized revenue, thus accruing significant levels of commercial debt.

275. Conversely, according to TNT, the audited financial status of KUTRRH in the last five FYs (2017/2018 to 2020/2021) indicated that: whereas KUTRRH was heavily reliant on the Exchequer, internally generated revenue, in the form of fees charged, had been increasing throughout during the period under review; KUTRRH reported an operating surplus for the three years under review, except for the FY 2020/2021, when the University reported operating losses due to increased personal emoluments and other operating costs; personal emoluments for the hospital were below 50% of its realized revenues throughout the period under observation; and, liquidity of the hospital was good throughout the period under observation, with its current assets exceeding its liabilities,

276. *The Committee therefore observed that whereas KU was facing liquidity challenges as seen in its cash flow statements, KUTRRH was stable in comparison with its current assets exceeding its liabilities.*

277. *Nonetheless, the Committee observed that whereas KUTRRH was receiving Exchequer funding to support its operations and activities, KU in comparison was forced to rely on its own source revenue to support the bulk of its operations. The Committee observed that disparities in exchequer funding between the two institutions may have accounted for the comparable differences in their financial status as reported by the National Treasury.*

### **iii) Compensation of KU for the loss of KUTRRH**

278. The Committee observed that, according to the Attorney General, Kenyatta University was the registered owner of LR No. 11026/2, the land having been allocated to the university *vide* a grant No. IR33404 on 1<sup>st</sup> October 1977. According to KU, KUTRRH was occupying 71 acres of the land with an estimated value of Kshs. 4.615 Billion at Kshs. 65 million per acre.

279. The Committee took note of claims made by KU on the losses it had run following the establishment of KUTRRH as a standalone parastatal: According to KU, the losses amounted to Kshs. 11,117,055,655.00 arising from additional costs incurred by KU; other costs; and, lost opportunities as summarized below -

No.	Details	Amount (Kshs.)
<b>A. Additional costs incurred by KU</b>		
1.	Construction of perimeter wall	64,361,320.00
2.	Construction of underground water tank	72,595,925.00
3.	Construction of access road from the university	81,903,832.00
4.	Professional fees	50,096,869.00
5.	Partition and alteration	54,710,772.00
6.	Water pipeline diversion	32,000,000.00
7.	Landscaping	81,000,000.00
8.	Furniture and fittings	1,171,616.00
9.	Signage and murals	11,170,023.00
10.	PwC Professional Services	42,091,115.00
11.	Advertisements by PwC	1,991,030.00
12.	Personal Emoluments (2012-2019)	83,287,176.00
13.	Facilitation of meetings	6,674,854.00
14.	Sewer connection costs	23,000,723.00
15.	Benchmarking foreign travels and related costs	86,000,400.00
	<i>Sub-Total</i>	<i>692,055,655.00</i>
<b>B. Other Costs</b>		
16.	<ul style="list-style-type: none"> <li>- 71 acres of land with an estimated value of Kshs. 4,615 Billion at Kshs. 65 million per acre.</li> <li>- Maintenance costs of common utilities such as the sewer line and ponds.</li> </ul>	

	<ul style="list-style-type: none"> <li>- Kshs. 10 million in annual costs of sustaining medical education through independent health facilities.</li> <li>- Costs of feasibility study, proposal development, local and international collaborations, and the intellectual property of the university in the conceptualization, development and execution of the project.</li> <li>- In addition, it was KU's contention that the hospital utilized common services with the university that included the sewer line and ponds which required heavy maintenance costs.</li> </ul> <p><i>Sub-Total: Kshs. 1.2 Billion</i></p>
<b>C. Lost Opportunities</b>	
Lost opportunities amounting to Kshs. 4.6 Billion relating to expected revenues, unrealized collaborations, research activities and training etc.	

280. *In relation to the above, the Committee observed that whereas the losses to KU following the establishment of KUTRRH as a standalone parastatal appeared significant, there was a need to independently audit and verify the said costs, with a view towards compensating KU for the loss.*

**iv) Alleged risk of deregistration of the KU Medical School**

281. The Committee found that whereas it was the submission by the petitioners and KU that the KU School of Medicine risked being deregistered owing to lack of access to KUTRRH and research facilities, the 3<sup>rd</sup> EAC Joint Inspection Report of the EAC Partner States National Medical and Dental Practitioners Boards held on 4<sup>th</sup> March, 2020, emphasized on governance issues at the university including -

- a) Lack of effective management leadership of the program at the Medical School;
- b) Lack of qualified heads for the Anatomy and Physiology departments.
- c) Departments not being well established and functional.
- d) Inadequate contact hours between lecturers and students thus compromising the quality of learning.
- e) Poor coordination of the transition from the old to the new curriculum.
- f) Outdated laboratory equipment.

- g) Inadequate laboratory space.
- h) Gross understaffing in all pre-clinical years.
- i) Inadequate student accommodation,
- j) Wanting services at the student clinic.
- k) Inadequate performance appraisal of staff etc.

To note, the 3<sup>rd</sup> EAC Joint Inspection Report found that the University and the School of Medicine had the requisite infrastructural capacity

*282. The Committee therefore observed that there was a need for KU to strengthen its governance structures for purposes of providing continued medical training to its students.*

**v) In respect to other strategic projects initiated by KU**

283. The Committee took note that KU had expressed frustration that since the establishment of the hospital as a parastatal, the implementation of the University strategic plan and Master Plan had been compromised, with the KUTRRH Board allegedly coming up with parallel projects and programs:

For example, it was the testimony of KU that it had set out to construct a Children's Hospital in the FY 2015/2016 which was to be funded by the Government through an annual budgetary allocation of Kshs.500 million under the management of Kenyatta University. However, whereas an initial amount of KES 500 million was disbursed to KU and works commenced, the project had since stalled as subsequent allocations had not been forthcoming. To this end, the project was about 18.5% complete. However, in the FY 2022/2023 budget estimates, through the MoH, Kshs. 220 Million was allocated to KUTRRH to construct and equip a similar Children's Hospital.

*284. The Committee observed that liquidity challenges had compromised the ability of KU to effectively implement its strategic plan. Further, KU and KUTRRH were governed by different Ministries with different priorities and budget lines. As such, limiting growth and innovation of either institution would be ultimately counterproductive.*

## CHAPTER FIVE

### COMMITTEE RECOMMENDATIONS

285. Arising from its observations, Committee recommends -

- 1) That the initial concept of KUTRRH as an education and research facility of KU be safeguarded through the revocation of Legal Notice No. 39 of 2021, and the consequent reinstatement of the Vice-Chancellor of Kenyatta University and the Kenyatta University Council representative to the board of KUTRRH, without prejudice to the current position of the Dean of the School of Health Sciences at Kenyatta University.
- 2) Further to the above, the Committee recommends that the effective date of the revocation of Legal Notice No. 39 of 2021 and consequent reconstitution of the Board of KUTRRH should fall **upon the expiry of the term of the current Board.**
- 3) That the Senate amends the Health Act, 2017, the Universities Act and the State Corporations Act to allow for the establishment of university hospitals with a focus on academically-based integrated healthcare delivery systems with an emphasis on teaching, training, research and evidence-based clinical service delivery (possibly Level VII), distinct from the current Level VI referral hospitals within the period of **three (3) months** from the tabling of this report.
- 4) That KUTRRH grants KU medical students and faculty full and priority access to the hospital for their learning purposes with **immediate effect.**
- 5) That KUTRRH surrender of the academic/training block to KU School of Health Sciences for its management and use in medical education and research within a period of **three (3) months** from the tabling of this report.
- 6) That KUTRRH retain the management and ownership of the Funeral Home, with the two institutions working out modalities and operational guidelines for access and use of the teaching/anatomy section by KU students as appropriate within a period of **three (3) months** from the tabling of this report.
- 7) That Office of the Prime Cabinet Secretary convene, through the State Corporations Advisory Committee (SCAC), a High-Level Joint Committee comprising the Principal Secretary, Ministry of

Education (or his designate), the Principal Secretary, Ministry of Health (or his designate), the Principal Secretary, The National Treasury (or his designate), and representatives from KU and KUTRRH, within a period of **six (6) months** from the tabling of this report, for purposes of, amongst others -

- a) Overseeing and reporting back to the Senate on the implementation of the recommendations of this Report;
  - b) Recommending modalities and operational guidelines for the conduct of clinical rotations by KU medical students; the provision of consumables; facilitating the enforcement of discipline, good professional conduct and the observance of ethical standards;
  - c) Recommending strategies for the progressive improvement of the hospitals' workload, particularly in pediatrics and obstetrics/gynecology, with a view towards improving its bed occupancy rate, its student to bed ratio and ultimately its capacity to absorb higher numbers of medical students as may be prescribed by the relevant regulators;
  - d) Making recommendations regarding the provision of health-related education and training by referral hospitals *vis-a-vis* universities and institutions of higher training;
  - e) Any other duty as it may arise, or be deemed necessary.
- 8) An independent audit and verification exercise by the Office of the Auditor-General on the actual losses, or lack thereof, accruing to KU following the establishment of KUTRRH as a standalone parastatal within **three (3) months** from the tabling of this report; and
- 9) The Commission on University Education, the State Corporations Advisory Committee and the Kenya Medical Practitioners and Dentists Council act to ensure that outstanding governance issues at Kenyatta University are addressed with a view to ensuring the provision of the highest attainable standard and quality of medical training to its students with **immediate effect**.

**In light of the above, the Committee resolved that -**

This report be dispatched to the Office of the Prime Cabinet Secretary, the Office of the Attorney General, the Ministry of Education, the Ministry of Health, Kenyatta University, Kenyatta University Teaching, Referral and Research Hospital, the State Corporations Oversight Committee, the Commission on University Education and the Kenya Medical

Practitioners and Dentists Council for purposes of implementing its recommendations within a period of **six (6) months** from the tabling of this report.

