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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON HEALTH

**COMMITTEE INQUIRY INTO THE UTILISATION OF THE
APPROPRIATED FUNDS FOR COVID-19 PANDEMIC TO
THE MINISTRY OF HEALTH IN 2019/20 FINANCIAL YEAR
WITH FOCUS ON KENYA MEDICAL SUPPLIES
AUTHORITY**

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ABBREVIATIONS

AIA	-	Appropriation in Aid
AIE	-	Authority to Incur Expenditure
CEO	-	Chief Executive Officer
COVID-19	-	Corona Virus Disease 2019
CRA	-	Commission for Revenue Allocation
GoK	-	Government of Kenya
HPTs	-	Health Products and Technologies
KEMRI	-	Kenya Medical Research Institute
KEMSA	-	Kenya Medical Supplies Authority
KMTC	-	Kenya Medical Training College
KMPDC	-	Kenya Medical Practitioners and Dentist Council
KNH	-	Kenyatta National Hospital
KRA	-	Kenya Revenue Authority
KUTRRH	-	Kenyatta University Teaching, Referral and Research Hospital
MDAs	-	Ministries, Departments and Agencies
MOH	-	Ministry of Health
MTRH	-	Moi Teaching and Referral Hospital
KMTC	-	Kenya Medical Training College
NERC	-	National Emergency response Committee
NIS	-	National Intelligence Service
NMS	-	Nairobi Metropolitan Service
PPDA Act, 2015	-	Public Procurement and Asset Disposal Act, 2015
PPE	-	Personnel Protective Equipment
PPRA	-	Public Procurement regulatory Authority
SAGAs	-	Semi-Autonomous Government Agencies
SO	-	Standing Orders
SRC	-	Salaries and Remuneration Commission
WSTF	-	Water Services Trust Fund

CHAIRPERSON'S FOREWORD

The Country and a majority of Kenyans have never experienced a health pandemic like COVID-19 in their lifetime. The epidemic has disrupted everyday lives, our work, and business, connections with family and friends and learning institutions. It is posing a risk to our very sense of safety and wellbeing. For the most vulnerable people in our community, it has resulted in an entirely new level of stress on everyday living.

After the MOH announced the first case of COVID 19 in Kenya in March 2020, the government began mobilizing resources to respond to the pandemic. Since the pandemic struck the country in the middle of the 2019/20 financial year, the government re-organized its budget priorities to provide the needed resources to respond to the epidemic. This prioritization culminated to the submission for approval by the National Assembly of two supplementary budgets which provided funds for COVID 19 response.

Besides, given the risk the pandemic posed, the National Assembly provided Kshs 3 Billion as part of its contribution in responding to the pandemic. These funds were ring-fenced to specific hospitals which were at the forefront in receiving and treatment of COVID 19 patients.

Thus, in August 2020, the Departmental Committee on Health commenced an inquiry into the utilization of funds by the Ministry of Health (MOH) allocated in 2019/20 in response to the COVID-19 pandemic. The Committee developed terms of reference which enabled the Committee to obtain evidence from the MOH, Semi-Autonomous Agencies (SAGAs) in MOH as well as County governments on how these entities utilized the funds.

The Committee also took time to sample several health facilities and county governments which received the COVID 19 funds and carried out physical inspection visits to ascertain how SAGAs utilized the funds. The culmination of this inquiry is this report which the Committee recommends that the National Assembly adopts.

Whereas the Committee was able to investigate the utilization of COVID 19 funds in MOH and all its SAGAs, the Committee used a considerable amount of time on inquiry around KEMSA whose utilization of COVID 19 resources had generated a lot of public interest.

On behalf of the Committee, I thank the MOH, the SAGAs and County Governments for sharing their insights on the impacts of the pandemic and the Government's response in a continually evolving situation and at a very challenging time. I would like to acknowledge the hard work and commitment of my colleagues' Members on this inquiry. My thanks to the Committee Secretariat staff for the high quality of support and assistance in this inquiry. I commend our report for your consideration

HON. SABINA CHEGE, MP

EXECUTIVE SUMMARY

Following the World Health Organization's declaration of the COVID-19 pandemic, Kenyan Government established the National Emergency Committee on 27th February 2020 as an intergovernmental forum that brings together the various Ministries and agencies, to ensure a coordinated response across the country to the many issues that relate to the management of the COVID-19 pandemic.

Kenya's first COVID-19 case was -announced on 13th March 2020. The Government undertook planning activities at the outset of the pandemic, including establishing a National Emergency Response Committee as well a Technical Committee in the MOH. The teams participated in developing and reviewing model to estimate scenarios of the likely magnitude and timescale of the COVID-19 pandemic.

On March 10 2020, the Government published several COVID-19 Pandemic protocols for Health Sector, which set out response frameworks for government departments and organizations within the health sector to manage the pandemic. The implementation of restrictions outlined by the National government has led to the reduced spread of COVID-19 and prevented the number of cases reaching the levels predicted in the MOH modelling.

The Kenyan Government announced funding of Kshs 26 billion to the MOH to boost the fight against the pandemic as the frontline government agency in the battle against COVID 19. The funds were to enable an expansion of the number of beds available in the county hospitals and national referral facilities among other interventions such as payment of allowances to frontline health workers which was increased further as a result of an agreement with the county governments. The Government has also ensured that healthcare workers were effectively supported throughout this period through provisions of personal protective equipment, albeit tragically losing a few of our frontline health workers to the scourge. The government also provided allowances to frontline health workers across the country.

In response to its solemn role of oversight, the Departmental Committee on Health resolved on 5th August 2020 to undertake an inquiry examining Kenya's reaction to the COVID-19 pandemic and more specifically the utilization of appropriated and donated funds towards the fight against the epidemic by MOH in 2019/20.

The Committee, in particular, has endeavoured to examine how MOH utilized funds appropriated by National Assembly in the fight against the pandemic and general issues of concern to the people as contemplated under Article 95 of the Constitution and S.O. 216 of the National Assembly.

In developing the roadmap into this inquiry, the Committee identified the following four key issues which assisted the Committee in developing the Terms of Reference of the investigation.

- i. Establish and evaluate the quantum amounts of funds/monies from GOK and development partners appropriated to Ministry of Health towards the fight against the pandemic, how these funds were allocated and utilized to the various SAGAs, Counties and other State departments.
- ii. Assess adherence to the Constitution of Kenya and the Public Finance Management Act, 2012 on the budgeting utilization of appropriated funds towards the fight against COVID-19 pandemic.
- iii. Adherence to the Public Procurement and Disposal Act, 2015 in the sourcing of COVID-19 related HPTs and other items by MOH and all agencies charged with the fight against the pandemic and
- iv. Establish the status of all donations received by the government of Kenya from well-wishers towards the fight against the Pandemic, specifically donations received by the Ministry of Health.

The Committee in this report sets out to provide answers to the following pertaining issues regarding the utilization of the public funds in the fight against the pandemic:-

- i. Funds MOH received from the government of Kenya and development partners towards the fight against the COVID-19 pandemic?
- ii. Whether the MOH had an approved Ministerial contingency plan and framework to guide the utilization of the appropriated COVID-19 related funds? How the MOH implemented the contingency plan?
- iii. How did the Ministry of Health spend the funds appropriated to it towards the fight against the COVID-19 Pandemic?
- iv. What was the total amount of COVID related procurements undertaken by the Ministry of Health and its SAGAs;
- v. Whether while undertaking procurements of COVID-19 related HPTs, MOH and its agencies complied and adhered to the Public Procurement policies, Public Procurement and Disposal Act, 2015 and its attendant regulations.
- vi. Establish whether the public lost money in the various procurement in the COVID-19 HPTs
- vii. Establish whether all companies awarded contracts by KEMSA are appropriately registered in the registrar of companies as well as being tax compliant?
- viii. Whether the Committee can verify the existence of all procured items by MOH and its agencies;
- ix. Status report of all donations received by the government of Kenya from well-wishers towards the fight against the Pandemic; Whether the MOH had in place an approved operational framework of acquiring and managing these donations.
- x. Whether Kenyans lost money in the procurement processes in KEMSA

1.0 PREFACE

1.1 MANDATE OF THE COMMITTEE

01. The Departmental Committee on Health derives its mandate from the provisions of Standing Order No. 216(5) which grants the Committee amongst other functions:
- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
 - c) To study and review all legislation referred to it;
 - d) To study, assess and analyse- the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
 - e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House; and
 - f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

1.1.1 COMMITTEE SUBJECTS AND OVERSIGHT

- 02 Further, the Second Schedule to the Standing Orders mandates the Committee considers matters relating to matters related to health, medical care and health insurance
03. In executing this mandate, the Committee oversees the State Department of Health and following SAGAs:
- a. Ministry of Health
 - b. Kenya Medical Supplies Authority
 - c. Kenyatta National Hospital
 - d. Moi Teaching and Referral Hospital (MTRH)
 - e. Kenya Medical Training College (KMTC)
 - f. National Hospital Insurance Fund (NHIF)
 - g. Kenya Medical Research Institute (KEMRI)
 - h. National Aids and Control Council (NACC) and
 - i. Kenyatta University Teaching, Referral & Research Hospital (KUTRRH).

1.2 MEMBERS OF THE COMMITTEE

04. The Committee comprises the following Members-

Chairperson

Hon. Sabina Chege, MP

Murang'a County

Jubilee Party

Vice-Chairperson

Hon. Joshua Kutuny, MP

Cherangany Constituency

Jubilee Party

Members

Hon. (Dr.) Eseli Simiyu, MP

Tongaren Constituency

Ford Kenya Party

Hon. (Dr.) James Nyikal, MP

Seme Constituency

ODM Party

Hon. Alfred Agoi Masadia, MP

Sabatia Constituency

ANC Party

Hon. (Dr.) James K, Murgor, MP

Keiyo North Constituency

Jubilee Party

Hon. Muriuki Njagagua, MP

Mbeere North Constituency

Jubilee Party

Hon. (Dr.) Mohamed D. Duale, MP

Daadab Constituency

KANU Party

Hon. Beatrice Adagala, MP

Vihiga County

ANC Party

Hon. James G Wamacukuru

Kabete Constituency

Jubilee Party

Hon. Prof. Mohamud Sheikh, MP

Wajir South

Jubilee Party

Hon. Gedion Ochanda, MP

Bondo Constituency

ODM Party

Hon. Sarah Puleta Korere, MP

Laikipia North Constituency

Jubilee Party

Hon. Capt. Ruweida Mohamed, MP

Lamu County

Jubilee Party

Hon. Kipsengeret Koros, MP

Sigowet-soin Constituency

Independent Party

Hon. Martin Peters Owino, MP

Ndhiwa Constituency

ODM Party

Hon. Joyce Ekai Emanikor, MP

Turkana County

Jubilee Party

Hon. Said Hirabe, MP

Galole Constituency

Ford Kenya Party

Hon. Tongoyo Gabriel Koshal, MP

Narok West Constituency

CCM Party

1.3 COMMITTEE SECRETARIAT

05. The following Secretariat facilitates the Committee:-

Mr Benjamin Magut
Senior Clerk Assistant

Mr Muyodi Meldaki Emmanuel
Clerk Assistant III

Mr Eric Kanyi
Fiscal Analyst

Ms Lynette Otieno
Legal Counsel I

Ms Winnie Kiziah
Media Officer

Ms Catherine Wangui
Serjent at Arms

CHAPTER ONE

2.0 INTRODUCTION

2.1 BACKGROUND

06. On February 28th H.E President Uhuru Kenyatta, CGH, EGH issued an Executive order establishing the National Emergency Response Committee to coordinate the country's preparedness and response to the Corona Virus threat. MOH confirmed the first Kenyan case of COVID-19 on March 12th, 2020.
07. On 15th March, the President announced travel restriction from countries hardest hit by COVID-19, closure of all schools and colleges, advised against congressional meetings and encourage the use of the cashless system. Further, the government put in place other mitigation measures aimed at reducing the spread of the virus that included the suspension of all international flights except cargo, the closing of clubs/bars, rest of all religious gatherings, issuing protocols on burials. Also, the government imposed cessation of movement In & Out of Nairobi, Kilifi and Mombasa Counties, the imposition of the night to dawn curfew and setting up of quarantine and isolations facilities throughout the country and enhanced testing.
08. Further, His Excellency the President has convened the Summit, which brings together both the National and County Governments to review their preparedness to combat the COVID-19 Pandemic. At the time the Committee prepared this report, Kenya's caseload stood at 37,624 with estimated 24,332 and 700 recoveries and deaths respectively.
09. Towards the fight against the Pandemic, the National Government presented to the National assembly two (2) supplementary budget in 2019/20 financial year to align the government expenditure to the urgent need to combat the pandemic. The approved re-aligned funds provided Kshs 23.4 billion to MOH.

2.2 OVERSIGHT ROLE OF THE DEPARTMENTAL COMMITTEE ON HEALTH.

10. Article 95 of the Constitution of Kenya 2010 mandates the National Assembly amongst others to oversight state organs and deliberate issues of concern to the people.
11. The Departmental Committee on Health is established under Standing Order 216. It is mandated to amongst others, "*investigate and inquire into and report on all matters*

relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments”.

2.3 TERMS OF REFERENCE

12. In developing the roadmap to the said inquiry, the Committee identified the following four key issues assisted the Committee in setting the terms of reference for questions under the investigation.
- i. Examine the total amounts of funds/monies from GOK and development partners appropriated to the Ministry of Health towards the fight against the pandemic in 2019/20. How these funds were disbursed and utilized to the various SAGAs, Counties and other State departments in adherence to the Constitution of Kenya and the Public Finance Management Act, 2012.
 - ii. Adherence to the Public Procurement and Disposal Act, 2015 in the sourcing of COVID-19 related HPTs and other items by MOH and all agencies charged with the fight against the pandemic and
 - iii. Establish the status of all donations received by the government of Kenya from well-wishers towards the fight against the Pandemic, specifically donations received by the Ministry of Health.
13. The inquiry's foundation is on the following four critical items for which the Committee used to address the pertinent question :
- i. **Establish and evaluate the total quantum of funds/monies appropriated from GOK and our development partners to Ministry of Health towards the fight against the pandemic in 2019/20, the utilization of these funds by MOH, SAGAs, County Governments and other State departments.**
 - a) What did the National Assembly appropriate to MOH towards the fight against COVID-19?
 - b) How much and when did MOH receive the funds appropriated in (a) above from Treasury; How much and when did MOH transfer this funds mentioned in (1) above to the relevant SAGAs.
 - c) How much and when did MOH receive funds meant for the counties from Treasury.
 - d) How much and when did MOH transfer these funds mentioned in (4) above to the counties
 - e) When did the SAGAs receive the funds mentioned in (3) above
 - f) When and what is quantum of funds did MOH or its SAGAs receive in (b) above?

- ii. **Adherence to the Public Procurement and Disposal Act, 2015 while sourcing of COVID-19 related HPTs by MOH and its SAGAs.**
 - a) The existence of an Annual Procurement Plan in MOH and its SAGAs as envisioned by the PPDA 2015.
 - b) Existence of Accounting Officer approvals for procurements by the MOH and Board's Approval for the procurements undertaken by the SAGAs
 - c) Evaluate the tendering procedure used by the various SAGAs and MOH.
- iii. **Establish the status of all donations received by the government of Kenya from well-wishers towards the fight against the Pandemic, specifically donations received by the Ministry of Health.**
 - a) Status of all donations received by the government of Kenya from well-wishers towards the fight against the Pandemic?
 - b) How relevant were various donations to the Kenya situation and how did it assist in the fight against COVID-19 pandemic.
 - c) Did the Government of Kenya and MOH have in place an approved operational framework of receiving and managing these donations?
 - d) The agency charged with the responsibility of distributing received donations
 - e) What procedure was used by the agency in (4) above to distribute the donations

2.3 METHODOLOGY OF THE INQUIRY

14. In conducting the inquiry, the Committee undertook several activities including requesting written and oral submissions, conducting research and analysis of the various presentations made on the investigation in line with terms of reference. The Committee also held meetings with various national government agencies and institutions including county governments as well as undertaking physical inspection visits to selected hospitals and county governments.

CHAPTER TWO

3.0 ESTABLISH THE FUNDS APPROPRIATED TO MINISTRY OF HEALTH IN 2019/20 TOWARDS THE FIGHT AGAINST COVID 19 PANDEMIC.

3.1 BACKGROUND

15. In establishing the quantum of funds allocated to the Ministry of Health in 2019/20 for COVID 19 response, the Committee referred to the approved 2019/20 budget estimates for the Ministry of Health extracted from the approved 2019/20 budget estimates prepared by the National Treasury. The Committee also referred to the Budget and Appropriations Committee report on supplementary estimates for 2019/20; Appropriations law passed by the National Assembly as well as submissions previously made by the Ministry of Health during the scrutiny of the 2019/20 budget estimates.
16. In 2019/20 financial year, the Committee established that a total of Kshs 23.4 Billion was allocated to the Ministry of Health to support the COVID 19 mitigation measures. The allocation comprised of Kshs 16.7 Billion from the exchequer (GOK) and Kshs 6.7 Billion from development partners (World Bank and DANIDA). Table 1 and 2 below summarizes the allocations to MOH in 2019/20 financial year.

Table 1: 2019/20 GOK support for COVID 19 response to MOH

2019/20 ALLOCATION-GOK (KSHS)	PURPOSE
300,000,000	The NA provided this allocation under the 2019/20 supplementary estimates II. It was meant to be utilized towards the early intervention for COVID 19.
1,000,000,000	This allocation was provided under 2019/20 supplementary estimates II for recruitment of Health workers for COVID 19 response
3,000,000,000	This allocation was provided under the 2019/20 supplementary estimates II and was earmarked for eight hospitals in the country for COVID 19 emergency response.
526,500,000	The allocation was provided under 2019/20 supplementary estimates II for 2019/20 for KUTRRH for operationalization of the 300 bed capacity for the COVID 19 cases
140,000,000	This allocation was provided under 2019/20 supplementary estimates II to KNH for the conversion of the daycare centre to a Ward to cater for Health workers who may contract COVID 19.

2019/20 ALLOCATION-GOK (KSHS)	PURPOSE
5,850,000,000	This allocation was provided as a conditional grant in 2019/20 supplementary estimates III to the county governments to support in putting in place infrastructure to respond to COVID 19.
700,000,000	This allocation was provided for administration of quarantine and isolation facilities in the country and was allocated under 2019/20 supplementary estimates III.
300,000,000	The NA provided this allocation in 2019/20 supplementary estimates III towards the purchase of facemasks for the vulnerable groups in the country.
1,500,000,000	This allocation was provided for the purchase of testing kits and reagents and was delivered under supplementary estimates III.
3,432,000,000	This allocation was provided under supplementary estimates III to cater for allowances for the frontline health workers at both the county and national level.
16,748,500,000	

Source: National Treasury (2019/20 approved Budget Estimates)

Table 2: 2019/20 external support for COVID 19 response to MOH

2019/20 ALLOCATION- EXTERNAL (KSHS)	PURPOSE
5,350,000,000	This allocation was provided under the 2019/20 supplementary estimates II under Kenya COVID 19 emergency response project supported by the World Bank.
1,000,000,000	This allocation was provided under the 2019/20 supplementary estimates II under the transforming Health System Project for COVID 19 Phase 1 supported by the World Bank.
350,000,000	The allocation was provided under 2019/20 supplementary estimates III for support to UHC in a devolved system under DANIDA grant.
6,700,000,000	

Source: National Treasury (2019/20 approved Budget Estimates)

17. The National Assembly approved the above allocations in line with the provisions of the Constitution and the public finance management Act 2012 which gives power to the National Assembly to appropriate funds to government entities. The allocation was to support various interventions spearheaded by the Ministry of Health, and MOH allocated funds to multiple Semi-Autonomous Government Agencies (SAGA's) within the Ministry. The National Assembly approved the allocation in the 2019/20 supplementary estimates II and III.
18. The Committee made the following observations regarding the approved budget for COVID 19 in the financial year 2019/20 for the Ministry of Health:
- That the funds allocated to the Ministry of Health for COVID 19 response were within the law, this is because the National Assembly granted the approvals during the approval of the 2019/20 supplementary budget II and III as provided in the Constitution and the public finance management act 2012.
 - That, the National Treasury allocated MOH Kshs 23.4 Billion towards COVID 19 response. This allocation is equivalent to 17.4 % of the total resources mobilized for COVID 19 estimated at Kshs 130 Billion based on the National Treasury submission.
 - That a significant allocation of funds allocated to MOH for COVID 19 response was from own government resources (Kshs 16.7 Billion) whereas the National Treasury mobilized Kshs 6.7 Billion from external partners;
 - That the National Treasury disbursed COVID 19 resources to MOH for onwards remittance to its SAGAS and other government Agencies outside MOH.
 - That there was a need to ascertain whether MOH SAGAs received the disbursements as budgeted funds promptly while confirming if the funds were utilized prudently and in line with the law as the utilization of COVID 19 funds had generated public interest and concern.

3.2 UTILIZATION OF THE COVID 19 FUNDS APPROPRIATED TO THE MOH.

19. In determining and establishing how funds allocated towards the response to the COVID 19 pandemic in 2019/20 FY were utilized, the Committee received submissions from the National Treasury, Ministry of Health and the various SAGA's within the Ministry. The submissions are summarized below:

3.2.1 THE NATIONAL TREASURY

20. The National Treasury appeared before the Committee and made the following submissions;
21. That since March 2020 the National Treasury had disbursed through the Ministry of Health Kshs 10.2 billion to county governments which comprise of Kshs 9.7 billion from GoK and Kshs 502 million from DANIDA. That the funding was not part of CARA, 2019 allocations; however, they were approved by the National Assembly during the Supplementary budget of FY2019/20. The funds were disbursed to county governments as follows:
22. That out of the Kshs 9.7 billion from the GoK National Government's share of revenue, Kshs 5 billion was distributed among Counties using the equitable revenue share distribution formula, to set up the requisite infrastructure for an urgent response to the COVID 19 pandemic.
23. That, MOH distributed Kshs 2.4 billion based on recommendations by the Salaries and Remuneration Commission (SRC) to supplement allowances for frontline healthcare workers.
24. That, National Assembly allocated Kshs 850 million to caution vulnerable population in four counties, namely Mombasa, Kilifi, Kwale and Mandera.
25. That Kshs 3.0 billion was ring-fenced by Parliament to specific National referral and county hospitals due to a surge of cases in those counties and their surroundings. These hospitals are MTRH, KNH, KUTRRH, Jaramogi Hospital, Mandera Hospital, Coast General Hospital and Kitui Hospital.
26. That, out of the Kshs 502 million from the Royal Danish Embassy, the National Treasury disbursed Kshs 350 million through MOH and Ksh. 152 million through the Water Services Trust Fund (WSTF).
27. That in terms of resource mobilization for COVID 19 from development partners, the National Treasury had received Kshs 130.4 billion from various bilateral and multilateral development partners out of which the National Treasury disbursed Kshs 82.4 billion leaving a balance of Kshs 47.9 billion in the exchequer at the end of FY2019/20.

28. That domestically through the COVID -19 Emergency Response Fund Kshs 9.9 billion had been mobilized and not utilised.
29. Regarding the preparedness of counties to combat the COVID 19, the National Treasury submitted that MOH and Council of Governors would provide status update adequately.

3.2.2 MINISTRY OF HEALTH

30. The MOH appeared before the Committee and made submissions regarding the utilization of COVID 19 funds in 2019/20;
31. That the National Assembly allocated MOH Kshs 23.5 Billion in the financial year 2019/20 budget. This allocation comprised GOK own revenues and external funding.
32. The Ministry disbursed these funds to county governments, State agencies and National referral facilities. The funds received were distributed, as indicated below. Annexed in this report is MOH submission. *(MOH Annexure -001-)*.

a) Kshs 300,000,000

33. That **Kshs 300 Million** allocations was made to the Ministry out of the National Emergency response fund under the recommendation of the National Emergency response Committee (NERC). The budget was to facilitate early preparation of national response towards COVID 19.
34. That the Ministry received the funds and disbursed as Authority to Incur Expenditures (AIE's) to the following institutions:
- Kshs 10,000,000 was allocated to the Ministry of Foreign Affairs to support Kenyan students in Wuhan China.
 - Kshs 75,000,000 was disbursed to the Ministry of Defence to for preparedness and readiness for response
 - Kshs 10,000,000 to the National Youth Service to provide personnel to assist coordination activities at the airport when all passengers were subjected to 14 days quarantine as well as assist in manning of quarantine facilities and buses to carry passengers
 - Kshs 150 Million to Kenyatta National Hospital to equip the first COVID 19 isolation centre at Mbagathi Hospital;

- Kshs 5,000,000 to State Department for Broadcasting and Telecommunication for community outreaches and media engagement
- Kshs 1,500,000 to the State Department for Public Works for fencing, construction works and provision of access roads to Mbagathi isolation centre.
- The Ministry of Health utilized Kshs 48,500,000 for purchase of equipment and chemicals for fumigation as a public health measure.

b) Kshs 3,000,000,000

35. That, the National Assembly provided this allocation under the 2019/20 supplementary estimates II to support COVID 19 treatment in seven Hospitals.

36. The funds were received and disbursed to the Hospitals as follows:

- Coast General Hospital – Kshs 500 Million
- Jaramogi Oginga Odinga Teaching and Referral Hospital- Kshs 400 Million
- Kitui Hospital – Kshs 300 Million
- Mandera Hospital – Kshs 300 Million
- Kenyatta National Hospital- Kshs 600 Million
- Moi Teaching and Referral Hospital – Kshs 400 Million
- Kenyatta University Teaching, Research and Referral Hospital- Kshs 500 Million

c) Kshs 5,000,000,000

37. That, the National Assembly provided this allocation as a conditional grant to county governments in 2019/20 supplementary estimates III and was meant to support county governments' preparedness against the COVID 19 pandemic.

38. That the funds were received and disbursed to the respective county governments based on the revenue sharing formula from Commission on Revenue Allocation (CRA) following consultations between the Council of Governors and CRA (*MOH Annexure -002-*)

39. That the county governments were requested to prioritize quarantine and isolation expenditures using the funds disbursed by MOH.

d) Kshs 3,432,000,000

40. That the MOH received allocation to cater for allowance for frontline medical health workers and medical insurance/benefits for the frontline health workers from counties that did not have any insurance;
41. That the MOH disbursed the funds to counties as per the quantum of funds agreed upon following consultations between Council of governors and the Salaries and Remuneration Commission (SRC) *(MOH Annexure 003-)*.
42. That Kshs 500 million was provided for the roll-out of medical cover for 15,000 health workers in 22 county governments not covered in any medical scheme while Kshs 20 Million was provided for psycho-social support for health care workers. *(MOH Annexure -004-)*.
43. That Kshs 500 Million and Kshs 20 Million provided for medical benefits and psycho-social support respectively were unutilized due to lack of a framework for the insurance and psycho-social support. Further, there was no time to establish the frameworks as the funds were received at the end of the financial year. Consequently, MOH requested for the re-voting Kshs 520 Million in 2020/21.

e) Kshs 1,500,000,000

44. The funds were received by the MOH for provision of test kits, and laboratory reagents and these funds were approved in 2019/20 supplementary estimates III;
45. That the funds were transferred to KEMSA and that requisitions have been raised by the MOH to KEMSA to procure the test kits and the reagents.

f) Kshs 300,000,000

46. That the funds were received by the Ministry for the purchase of reusable facemasks to be provided to the vulnerable in the country;
47. That the funds were transferred to KEMSA for procurement of the masks;
48. That the distribution of the facemasks will be through the national government using the provincial administration of in identifying the vulnerable persons.

g) Kshs 200,000,000

49. That the funds were provided to MO for support towards the administration of quarantine centers.

50. The funds were meant to compensate public institutions for accommodation of persons held in quarantine within public institutions including schools, colleges and Universities at the rate of Kshs 2,000 per day. This was meant to defray the costs incurred on meals, cleaning and related general expenses.

51. That for effective and timely payments to these institutions, the funds were received and transferred to Kenya Medical Practitioners and Dentists Board which is the institution in charge of coordinating activities of quarantine and isolation centres in line with their mandate.

h) Kshs 500,000,000

52. That the funds were received by the Ministry of Health and disbursed to the KMTC for the conversion of 36 campuses across the country to isolation centres for COVID 19 asymptomatic/mild cases

53. That KMTC is in the process of preparing the identified campuses into isolation centres.

i) Kshs 140,000,000

54. That the funds were received and disbursed to the Kenya National Hospital for conversion of daycare center into a medical Ward for treatment of health workers who contract COVID 19.

k) Kshs 526,500,000

55. That the funds were received by the Ministry of Health and disbursed to Kenyatta University Teaching, Referral and Research hospital for the operationalization of the 300 bed capacity for the COVID 19 patients.

l) Kshs 850,000,000

56. That the funds allocated as conditional grants by the National Treasury for four county governments who were deemed to have a heavy COVID 19 burden given their location, that is being border and transit counties. The counties were Mombasa (Kshs 250 Million), Kilifi (Kshs 150 Million), Kwale (Kshs 150 Million) and Mandera (Kshs 300 Million);

57. That the Ministry sought for the re-distribution of this fund to 17 counties which were highly exposed due to presence of truck drivers with each county getting Kshs 50 Million. The National Treasury responded and advised that the proposal by the Ministry was untenable since communication had already been done to the four counties to benefit.

58. That the funds had not been disbursed at the close of the financial year 2019/20 hence was not utilized.

m) Kshs 350,000,000

59. That this was a conditional grant to the county governments from the Government of Denmark through DANIDA under support to UHC in the devolved system of Kenya;

60. That the funds were meant to assist county governments in meeting utility costs and therefore enable them to direct more funds towards COVID 19 interventions;

61. That the funds were received by the Ministry and disbursed to the county governments as conditional grants for level II and III facilities (*MOH Annexure -005-*);

n) Kshs 5,350,000,000

62. That this was the support from the World Bank under the Kenya COVID 19 emergency response project. This allocation of Kshs 5 Billion was a loan facility while Kshs 350 Million was a grant.

63. That the funds were earmarked for the following interventions: medical supplies and equipment, capacity building and training, quarantine isolation and treatment centres, medical waste management, community information and outreach, availability of safe blood and blood products and social and environmental safeguards.

64. That Kshs 377 Million has been spent on ventilators, lab testing kits, reagents and vehicles for contact tracing teams in various counties. The balance will be utilized in 2020/21 financial year (*MOH Annexure -006-*).

o) Kshs 1,000,000,000

65. That this was the support from the World Bank under the Transforming Health system for UHC project through the contingency emergency response component;

66. The funds were earmarked for provision of COVID 19 test kits and laboratory reagents, personal protective equipment, communication, contact tracing and support operations of the National Emergency operation centre.

67. That Kshs 461 Million had been utilized and that the balance will be utilized in 2020/21 financial year (*KEMSA Annexure -008-*).

3.2.2 MOI TEACHING AND REFERRAL HOSPITAL –MTRH

68. The MTRH Board and management submitted as follows regarding the utilization of funds towards COVID 19 response. Details of the submission are annexed to this report (*MTRH Annexure 008*).

- i.) That MTRH received from the Ministry of Health a total of Kshs 549,504,700 for human resource for health and infrastructure support.
- ii.) That Kshs 42,824.700 was received on 23rd April 2020 and was utilized towards recruitment of contract health staff (for three months). A total of 132 staff were recruited, and the funds were used to pay for their April, May and June salaries.
- iii.) That Kshs 106.680,000 was received on 7th July 2020 and was utilized towards payment of allowances to frontline health workers. The allowances were paid in a one-off through the July payroll to the workers;
- iv.) That Kshs 400,000,000 was received from the Ministry of Health on 7th July 2020 and was meant to purchase COVID 19 support equipment and related infrastructure. The funds had not yet been expended as the procurement process was still ongoing.
- v.) In terms of donations, MTRH reported that it had not received any financial donations from any other source apart from the COVID-19 emergency funds from the government of Kenya. However, he acknowledged that MTRH received donations in Kind from various partners since March 2020.

3.2.3 KENYATTA NATIONAL HOSPITAL (KNH)

69. The KNH Board and management submitted as follows regarding the utilization of funds towards COVID 19 response. More details regarding the submissions made are annexed to this report (*KNH Annexure -009-*).

70. That Kenyatta National Hospital received a total of Kshs 1.3 billion from the Ministry of Health in seven (7) AIEs towards managing COVID-19 pandemic. The funds were as follows:

- i.) That Kshs 150 Million was received on 5th March 2020 for the renovation and equipping of the Mbagathi Isolation centre;
- ii.) That Kshs 126 Million was received on 22nd April 2020 for recruitment of additional health workers
- iii.) That Kshs 85 Million was received on 22nd April for compensation of temporary employees engaged in COVID 19.
- iv.) That Kshs 157 Million was received on 7th July 2020 for payment of allowances for frontline health workers;
- v.) Kshs 600 Million was received on 7th July for COVID 19 emergency response;
- vi.) That Kshs 140 Million was received on 7th July 2020 for the conversion of the daycare centre to Ward for COVID 19 positive health workers.

71. In terms of utilization, out of the total COVID-19 funding received of Kshs 1,257,496,392 the Hospital spent Kshs 298,432,565 as at 20th August 2020 leaving a balance of Kshs 959,063,827. The Utilization as at 20th August is as follows:

- i.) That out of Kshs 150 Million for renovation and equipping of the Mbagathi renovation centre, Kshs 66 Million has been utilized on the acquisition of equipment namely patient monitors, suction pumps, ventilators, CCU beds, biological safety cabinets, dialysis machines with reverse osmosis, and mechanical ventilator.
- ii.) That Kshs 22,753,395 has been utilized in the provision of medical gases, public health consumables and general repairs and maintenance services at Mbagathi Isolation centre.
- iii.) On personnel emoluments, the Hospital was allocated Kshs 245 million. During the period between March 2020 and August 2020, Kshs 85,621,670 had been utilized on this item. This expenditure covered the cost of 433 temporary staff who were recruited to fill in the gap created after 144 experienced staffs who were seconded to the Mbagathi IDU.
- iv.) The Hospital also received Kshs 157 M medical allowances for the front-line workers that were approved by the Salaries and Remuneration Commission. As

at July 2020 a total of Kshs 124,305,000 had been paid, the balance of Kshs 32,490,000 is to be paid on August 2020.

v.) Kshs 600 Million was allocated to the Hospital as COVID-19 emergency response fund. Of this amount, Kshs350M is earmarked for improvement of infrastructure at KNH main hospital specifically to improve patients transfer/transport system, while Kshs 250 million was directed towards infrastructure improvement at KNH Othaya Hospital. The facility was targeted to handle all COVID-19 related complications from the region. As at 20th August this allocation had not been utilized. However, the procurement process is ongoing.

vi.) Kshs 140M was allocated to convert the Daycare Surgical Centre into COVID-19 isolation ward for healthcare workers. As of 20th August 2020, this allocation had not been utilized. However, the procurement process is ongoing.

3.2.4 KENYATTA UNIVERSITY TEACHING, REFERRAL & RESEARCH HOSPITAL

72. The KUTRRH Board and management submitted that the Hospital received a total of Kshs 1,294,416,150 from the MOH to support it as a Centre for treatment and Isolation for COVID-19 patients. The allocations were as follows:

- i.) Kshs 10.4 Million for furnishing of 45 COVID 19 staff apartments received on 14th April 2020;
- ii.) Kshs 245 Million for recruitment of health personnel received on 22nd April 2020.
- iii.) Kshs 526.5 Million for COVID 19 infrastructural development received on 23rd June 2020
- iv.) Kshs 500 Million for COVID 19 emergency response was received on 7th July 2020.
- v.) Kshs 12.3 Million for allowances for frontline health workers was received on 7th July 2020.

73. The funds were utilized as follows:

- i.) Out of the Kshs 245 Million earmarked to hire and train staff for COVID-19 response, a total of Kshs 125 Million has already been utilized, and the balance of Kshs 120 Million has been committed. A total of 144 staff were hired on contract comprising of Doctors, Nurses, Health Allied Services and Support staff in key patient contact areas. In addition, a number of Locum staff were retained to boost capacity whenever the need arises.

- ii.) Kshs 12,270,000 allocated for the front-line workers' allowance has entirely been utilized. These funds were used to pay the COVID-19 front-line workers allowance as per the guidelines issued by the Salaries and Remuneration Commission. The actual allowances for three months for 345 staff amounted to Kshs 13,210,457 against AIE of Kshs 12,270,000. Thus, Kshs 940,457 was utilized from the funds for recruitment of health staff.
- iii.) Out of the Kshs 500 million allocations from COVID 19 emergency response, Kshs 257.49 million had already been expended with commitments in the form of LPOs amounting to Kshs 75.4 million, thus Kshs 332.9 million is already committed leaving a balance of Kshs 167.1 million unspent funds. The funds have been utilized to defray clinical costs and other operating expenses *(KUTRRH Recurrent expenditure Annexure -10-)*
- iv.) Out of the Kshs 526.5 million allocated for development expenditure, a total of Kshs 80 Million has already been spent, and Kshs 353 Million committed, leaving a balance of Kshs 94 Million. The funds were allocated to facilitate the operationalization of 400 beds for COVID-19 response and move administrative staff from the main Hospital building to the Centre for specialized clinics facility to reduce the chance of infection for non-front line staff. The works are at different stages of completion, and the procurement process is ongoing. *(KUTRRH Development expenditure Annexure -11-);*
- v.) The Hospital also received Kshs 10,450,000 donation from IGAD which were used to furnish staff houses that accommodate staff working in COVID-19 isolation wards. The entire amount has been utilized to purchase various items.

3.2.5 KENYA MEDICAL TRAINING COLLEGE (KMTC)

74. The KMTC Board and management submitted that it received a total of Kshs 577 Million towards COVID 19 response. The funds received are as follows:

- i.) Kshs 500 Million from the Ministry of Health received on 7th July 2020 to fund COVID 19 budget ;
- ii.) Kshs 45.6 Million from the Ministry of Health received on 7th July 2020 as reimbursement of accommodation expenses;

- iii.) Kshs 28 Million received from the Ministry of Foreign Affairs received on 30th July 2020 as reimbursement of accommodation expenses;
- iv.) Kshs 3.8 Million received on various dates from quarantine clients for settlement of accommodation expenses.

75. As at 25th August 2020, out of the Kshs 500 Million allocated for COVID 19 the KMTTC's actual expenditure on fighting COVID-19 pandemic stood at Kshs 221,251,549.35. This leaves a balance of Kshs 275 Million unspent.

76. Details the actual expenditure breakdown into various activities which were funded (KMTTC Annexure -12-)

3.2.6 KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

77. The KMPDC submitted as follows regarding the utilization of funds towards COVID 19 response. More details regarding the submissions made are annexed to this report (KMPDC Annexure -13-).

- i.) That KMPDC received Kshs 154,338,619 from the Ministry of Health for payment of quarantine facilities verified bills on 7th July 2020. These costs involve expenses utilized by facilities to host COVID 19 quarantined persons;
- ii.) That KPMDC has paid out a total of Kshs 92,215,228 as at 27th August 2020 leaving a balance of Kshs 62,123,391;
- iii.) That the Institutions paid out for offering quarantine services is as follows:

- KMTTC- Kshs 27.3 Million
- Kenya School of Government- Kshs 11 Million
- St. Georges secondary school –Kshs 40 Million
- Kenya Institute of Special Education- Kshs 2.4 Million
- Royal Tulip Hotel (for NMS health workers)- Kshs 2.2 Million
- Cooperative University- Kshs 441,000
- Kenya Water Institute- Kshs 54,000
- Makueni Boys High School- Kshs 8.8 Million

3.2.7 KENYA MEDICAL RESEARCH INSTITUTE

78. The KEMRI Board and management submitted that it received Kshs 8.4 Million for payment of COVID 19 allowance for frontline health workers. That the funds were utilized to pay 16 clinical research scientists, 25 clinical officers, 88 research scientists, 191 laboratory technologists and 8 nursing staff.

79. That KEMRI had Kshs 39.8 Million grant (AIA) and Kshs 118.9 Million for the government (January and February 2020 tranches) for regular research;

80. That through the Board's approval, these allocations were converted/reallocated for COVID 19 research since the Institution had not been allocated any funds towards COVID 19 pandemic response save for the funding for allowances.

3.2.8 KENYA MEDICAL SUPPLIES AGENCY

81. The KEMSA Board and management submitted that, since March 2020, KEMSA received a total of Kshs 2, 181, 934, 518 from the Ministry of Health (**KEMSA Funds received Annexure -13-**). The Funds were as follows;

- Kshs 1,500,000,000 was earmarked for the procurement of reagents and test Kits. Of these funds, Kshs 450,377,593 had been committed, but no payment had been made against the amount.
- Kshs 300 million was earmarked for locally produced re-usable facemasks. This was expected to be done in collaboration with the Kenya National Chamber of Commerce. No payment had been made against this amount.
- Kshs 77,774,400 was set aside for the procurement of PCR Tests & Extraction Kits and Virus Transport media for COVID-19. This was a partial payment against a total allocated amount of Kshs 88,900,000.
- Kshs 304, 160, 118 was used to settle payment for HPTs, these funds were delivered under the World Bank and were earmarked for Transforming Health Systems for Universal Health Care Program. It was a partial payment from the total allocated amount of Kshs 758,690,583.25. The Ministry of Health remits the funds to KEMSA upon submission of evidence for full delivery of HPTs by the Suppliers to the Ministry of Health, for KEMSA to make payments.

82. That KEMSA procured using KEMSA capital HPT's of a total value of Kshs 7,641,759,788(**KEMSA Annexure -14-**).

CHAPTER THREE

4.0 ADHERENCE TO THE PUBLIC PROCUREMENT AND DISPOSAL ACT, 2015

4.1 BACKGROUND

83. Article 227 (1) of the constitution of Kenya provides that “*When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.*”

84. Further, in order to give effect to Article 227 (2) of the Constitution, Parliament enacted the Public Procurement and Disposal Act 2015, an Act that provides procedures for efficient public procurement and assets disposal by public entities; and for connected purposes.

85. Section 44(2) of the PPDA Act provides for the responsibility of the Accounting Officer as follows

- a. ensure that procurements of goods, works and services of the public entity **are within approved budget** of that entity;
- b. constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act;
- c. **ensure procurement plans are prepared in conformity** with the medium-term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury;
- d. ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act;
- e. ensure compliance with sections 68, 147, 148 and 149 of the Public Finance Management Act, 2012 (No. 18 of 2012);
- f. approve and sign all contracts of the procuring entity;
- g. ensure the procurement and asset disposal process of the public entity shall comply with this Act;
- h. ensure that the **procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;**
- i. submit to the Authority the part in its procurement plan demonstrating the application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year; and
- j. ensure compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations.

86. Section 92 of the PPAD Act sets out various methods of procurement, with section 91(1) setting out open tendering as a preferred procurement method. However, section 92 does recognize other forms of procurement, including direct procurement.
87. Section 103 of the Act allows the procuring entity to use direct procurement so long as the purpose is not to avoid competition and subject to the following conditions
- a) Due to war, invasion, disorder, natural disaster or
 - b) there is an **urgent need** for goods, works or services and engaging in tendering proceedings of other methods of procurement would be impractical, provided the circumstance giving rise to the urgency were neither foreseeable by the procuring entity.
88. Section 2(1) of the PPDA Act defines **urgent needs** as follows ‘*the need for goods, works or services in the circumstances where there is an imminent or actual threat to public health, welfare, safety or damage to property, such that engaging in tendering proceedings of other methods of procurement would be impractical.*’
89. COVID-19 pandemic qualifies to be an **actual threat to public health** and therefore COVID-19 related procurement, e.g. for masks other COVID related items and equipment to mitigate the spread of the virus meets the requirement as an urgent need provide it is totally impractical to engage in tendering proceedings
90. Section 104 of the PPAD Act provides that, an accounting officer of a procuring entity shall adhere to the following procedures with respect to direct procurement—
- (a) Issue a tender document which shall be the basis of tender preparation by the tenderer and subsequent negotiations.
 - (b) appoint an ad hoc evaluation committee pursuant to section 46 to negotiate with a person for the supply of goods, works or no consultancy services being provided;
 - (c) Ensure appropriate approvals under this Act have been granted;
 - (d) Ensure the resulting contract is in writing and signed by both parties.

4.2 PROCUREMENT OF COVID-19 RELATED HPTS AND ITEMS

91. In determining and establishing the adherence to the Public Procurement and Disposal Act, 2015 in the sourcing of COVID-19 related HPTs and other associated items by MOH and all agencies charged with the fight against the pandemic within MOH, the Committee on diverse dates received submissions from following entities/individuals:-

4.2.1 MINISTRY OF HEALTH

92. The Principal Secretary, Ms Susan Mochache, told the Committee that the role of the Cabinet Secretary was to provide policy direction for the bilateral support from World Bank whereas her roles as the Accounting Officer were as follows:

- i. Requisition funds from the World Bank;
- ii. Make a request to KEMSA to procure items on behalf of the Ministry, based on needs analysis and available resources; and
- iii. Based on needs analysis, give distribution instructions to KEMSA for the procured commodities that are funded through the Ministry of Health.

93. The MOH did not directly procure any COVID-19 related items neither did it have any role in the procurement in respect of the Ksh. 7.6 Billion, which was related to KEMSA capital funds.

94. On procurements related to Ksh 758 Million, which was part of the Kshs 1 Billion that was provided by the World Bank for Strengthening of Health Systems. The PS submitted that MOH and the World Bank jointly agreed on a budget and procurement plan based on the priority areas in mitigation of COVID-19. Subsequently, the MOH formally requested KEMSA to undertake the procurement and delivery of commodities to National and County facilities (*MOH Annexure-15-Letter to the KEMSA*).

95. The Principal Secretary informed the Committee that she reminded KEMSA to follow the right procedures in procuring the COVID-19 related items. She noted an incidence where a letter dated 2nd June 2020 (*MOH Annexure-16-Letter to the National Treasury*) was written by KEMSA seeking for budgetary support for COVID 19 totalling to Kshs 5, 140, 943, 000 from the National Treasury to facilitate payment for the Health Products and Technologies and to cater for the distribution to public health facilities and other institutions providing COVID-19 related services without passing through the Ministry of Health as required. Even though the National Treasury did not avail any funds to KEMSA as requested, it was against the procedure for KEMSA CEO to bypass the Ministry in asking for the budget support.

96. The Committee heard that the suspended CEO KEMSA Mr Jonah Manjari had addressed the request directly to the National Treasury, therefore, bypassing the MOH.

97. The Committee further heard that in a letter dated 6th August 2020 (*MOH Annexure-17-Letter from KEMAS*) KEMSA requested for further additional budgetary support from

the MOH to cater for procurement of COVID-19 emergency supplies, KEMSA went further and asked for permission to utilize funds set aside for Universal Health Coverage. The Principal Secretary in a letter dated 11th August 2020 (*MOH Annexure-18-Letter from KEMAS*) decline to approve and instead encouraged KEMSA to seek for an internal mechanism to address the cash flow issues that they were facing.

98. The Principal Secretary strongly refuted the allegations that she directed KEMSA on whom to buy from and that she dictated the prices of the COVID-19 related items. She said that her concern was to ensure that the budget was within the available resources. She further stated that the letter Ref MOH/ADM/1/1/171 Vol 1(196) dated 15th April 2020 (*MOH Annexure-19-Letter to the KEMSA*) from her office to KEMSA CEO was a reply to a letter from KEMSA CEO that had submitted the schedule of procurement in question.

99. In respect to why KEMSA bought the PPEs at exorbitant prices, the Cabinet Secretary MOH, attributed the high prices to supply-and-demand factors. However, the situation changed when the government called for the local manufacture of COVID-19 supplies made in Kenya.

100. The Committee was informed that according to Cabinet Secretary MOH, no money or commodities were lost at KEMSA. However, the Cabinet Secretary noted that KEMSA would undergo operational loss based on prices costs due to dead stock worth 6.1B it held in its warehouses. The Cabinet Secretary said that majority of the stock was procured while they were inadequate in the country and at that period they were expensive.

101. He further noted that KEMSA had requested his authority to be allowed to get sell off the stock at the current market price (lower than the purchase price) so that they can raise money to pay suppliers.

4.2.2 KENYATTA NATIONAL HOSPITAL

102. Since March 2020, the Kenyatta National Hospital has received a total of Kshs 1.257 billion from the MOH in seven (7) AIEs towards managing COVID-19 pandemic. Significant of this fund amounting to Kshs 897 M was received in July 2020 and not expended (*KNH Annexure-20-Received by KNH from March to 20th August 2020*)

103. Out of the total COVID-19 funding received of Kshs 1,257,496,392 the Hospital had spent Kshs 298,432,565 as at 20th August 2020 leaving a balance unspent of Kshs 959,063,827. (*KNH Annexure -21- Utilization of COVID-19 funds received*)

104. In the Executive Order No. 2 of 2020 KNH was directed to take-over Mbagathi hospital and convert it to a National Isolation and Treatment Centre within seven days. On 25th February 2020, the Ministry of Health confirmed an allocation of Kshs150M towards renovation and equipping of the facility. The Board of Management prioritized utilization of these funds as follows; Kshs 88,942,758 for procurement equipment; Kshs 27,102,784 for procurement of consumables; and Kshs 33, 954,456 for hire of additional temporary staff.

- a) As at 20th August 2020, Kshs 65,752,000 out of Kshs 88,942,758 allocated for the acquisition of equipment had been utilized on the purchase of equipment such as patient monitors, suction pumps, ventilators, CCU beds, biological safety cabinets, dialysis machines with reverse osmosis, and mechanical ventilator (*KNH Annexure -22- List of items procured*)
- b) As at 20th August 2020, Kshs 22,753,395 out of Kshs 27,102,784 allocated for consumable had been utilized in the provision of medical gases, public health consumables and general repairs and maintenance services (*KNH Annexure -23- List of items procured*)

105. Kshs 600M was allocated to the Hospital as COVID-19 emergency response fund. Of this amount, Kshs 350M was allocated for improvement of infrastructure at KNH main hospital specifically to improve patients transfer/transport system. At the same time, Kshs 250M was directed towards infrastructure improvement at KNH Othaya Hospital. The facility was targeted to handle all COVID-19 related complications from the region.

106. Kshs 140M was allocated to convert the Daycare Surgical Centre into COVID-19 isolation ward for healthcare workers.

107. The CEO also submitted a report on all procurements that were undertaken between March 2020 and August 2020. The Committee was informed that the Hospital had procured goods, services and works costing Kshs 88,505,895 funded by the COVID-19 fund. (*KNH Annexure -24-Details of procurement, firms, directors, payment status and detail list of suppliers' services and consumable*).

4.2.3 MOI TEACHING AND REFERRAL HOSPITAL

108. Since the first case of COVID-19 was reported in the country on 13th March 2020, MTRH played a vital role in implementing strategies for containment and suppression

against the spread of the pandemic including coordinating strategy meetings with Governors of the North Rift Economic Block (NOREB).

109. They rolled out contract tracing, training of health care workers within the region, and enhancing the capacity of MTRH to manage COVID-19 cases through support from National Government and Ministry of Health and providing advisory and working closely with the National Emergency Response Committee (NERC).

110. The Committee heard that the funds to enhance preparedness capacity of MTRH to manage COVID-19 cases had not yet been expended as the procurement process was still ongoing. *(MTRH Annexure -25– Utilization status of funds received)*

111. Regarding procurements undertaken, the CEO informed the Committee that an allocation of Kshs 400,000,000 was appropriated to MTRH for COVID-19 emergency response. MTRH Board discussed and approved the utilization of the funds and the adjusted Procurement Plan in its 69th Board meeting held on 17th -18th July 2020 and the procurement process was ongoing. *(MTRH Annexure-26-Minutes of 69th Board Meeting and Tender under COVID-19 projects and Copy of the Procurement Plan)*

112. The CEO informed the Committee that MTRH is using an open tendering process in all COVID-19 related procurements *(MTRH Annexure-27-Tender Advert)*.

4.2.4 KENYATTA UNIVERSITY TEACHING REFERRAL AND RESEARCH HOSPITAL

113. Kenyatta University Teaching Referral and Research Hospital had received a total of Kshs 1,294,416,150 from the MOH to support it as a Centre for treatment and Isolation for COVID-19 patients.

114. The Hospital also received Kshs 10.45 million donations from IGAD which were used to furnish staff houses that accommodate staff working in COVID-19 isolation wards. *(KUTRRH Annexure -28-Donation by IGAD)*

115. Out of the Kshs 500 million recurrent expenditure, Kshs 257.49 million had already been expended with commitments in the form of LPOs amounting to Kshs 75.4 million, thus Kshs 332. 9 million is already committed leaving a balance of Kshs 167.1 million unspent funds. *(KUTRRH Annexure-29- Recurrent expenditure)*

116. The hospital had a Development expenditure of Kshs 526.5 million. These funds were allocated to facilitate the operationalization of 400 beds for COVID-19 response and

move administrative staff from the main Hospital building to the Centre for specialized clinics facility to reduce the chance of infection for non-front line staff. The Funds are fully committed, although some of the works are different in stages of completion and/or procurement process. *(KUTRRH Annexure -30-Development expenditure)*

4.2.5 KENYA MEDICAL TRAINING COLLEGE

117. Hon Prof Philip Kaloki, PhD, Chairman of the Board and Prof Michael Kiptoo, CEO KMTC appeared before the Committee on 28th August 2020 submitted that KMTC is a middle-level training college for health professional established by an Act of Parliament. It mandated with admitting, training and examining middle-level health professionals. The college has 71 campuses spread across 43 counties.
118. At the onset of the COVID-19 pandemic in March 2020, KMTC was called upon to provide quarantine facilities and services for returnees from other countries and those who had had contact with suspected and confirmed COVID-19 cases. Forty-four campuses were identified to be used as quarantine facilities.
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119. MOH requested KMTC to prepare a budget for funding of the 44 campuses which was earmarked to be used as quarantine facilities. A budget of Kshs 554,775,704 was submitted to MOH on 14th May 2020.
120. In May 2020, KMTC was finally designated to be an isolation facility to complement the existing ones as the government expected a surge in confirmed cases.
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121. KMTC was invited alongside other departments to deliberate on the COVID-19 related budgets that the departments had submitted to MOH. KMTC was expected to factor in the amounts already expended while providing quarantine services with anticipated expenditure as it provides isolation service for three (3) months. As a result, the KMTC COVID-19 related budget was capped at Kshs 500 million.
122. KMTC prepared a total budget of Kshs 500 million as per the resources allocated by the Ministry of Health. The Board of Directors granted approval of both the budget and the procurement plan in a board sitting held on 29th July 2020. *(KMTC Annexure-31-Approved budget)*
123. As at 25th August 2020, the KMTC's actual expenditure on fighting COVID-19 pandemic stood at Kshs 221,251,549.35 with goods, services and works worth Kshs 185,456,958 had been procured. Majority of the procurements was aimed at

renovations and equipping of hostels. Payment is at various stages on how suppliers had been submitting their invoices. *(KMTC Annexure -32- Names of the Companies/Entities awarded tenders)*

4.2.6 KENYA MEDICAL SUPPLIES AUTHORITY

124. Hon. Kembi Gitura, Chairman, KEMSA accompanied by the Board and the Ag. CEO appeared before the Committee in two consultative meetings held on 28th August 2020, and 3rd September 2020 submitted that, since March 2020, KEMSA received a total of Kshs 2,181,934,518 from the MOH. The Funds were used as follows;

- a) Kshs 1,500,000,000 was earmarked for the procurement of reagents and test Kits. Of these funds, Kshs 450,377,593.73 had been committed, but no payment had been made against the amount.
- b) Kshs 300 million was earmarked for locally produced re-usable facemasks. This was expected to be done in collaboration with the Kenya National Chamber of Commerce. No payment had been made against this amount.
- c) Kshs 77,774,400 was set aside for the procurement of PCR Tests & Extraction Kits and Virus Transport media for COVID-19. This was a partial payment against a total allocated amount of Kshs 88,900,000.
- d) Kshs 304, 160, 118 was used to settle payment for HPTs, these funds were delivered under the World Bank and were earmarked for Transforming Health Systems for Universal Health Care Program. It was a partial payment from the total allocated amount of Kshs 758,690,583.25. The Ministry of Health was to remit the funds to KEMSA upon submission of evidence for full delivery of HPTs by the Suppliers to the Ministry of Health, for KEMSA to make payments.

125. On procurement undertaken worth Kshs 7.61 billion using its capital, KEMSA informed the Committee that it used retrospective procurement under direct procurement owing to the urgent need to procure HPTs for the fight against the pandemic.

126. The Chair of the Board informed the Committee that the Board did not approve the Procurement Plan for COVID-19 related HPTs.

127. The Chairman defended KEMSA's decision of buying COVID-19 supplies expensively. He attributed the massive price increase at the period to supply-and-demand factors, export restrictions from the governments of the countries manufacturing pharmaceutical products.
128. He admitted that KEMSA had a considerable dead stock worth 6.1B, and he requested to be allowed to get sell off the stock at the current market price so that they can raise money to pay suppliers.
129. Mr Mureithi, the Principal Secretary Representative at the Board, said that there was a communication breakdown between the Management and the Board. He noted that few meetings were called between the Board and the Management to ratify some of the procurements decisions made by the Management in regards to COVID-19 items

4.2.7 DR JONAH MANJARI THE SUSPENDED CHIEF EXECUTIVE OFFICER

The suspended Chief Executive Officer Dr Jonah Manjari, appeared before the Committee on 3rd September 2020 and submitted as follows:

130. The procurement of the Covid-19 related items was undertaken on an emergency basis by way of Direct Procurement in line with the Public Procurement and Asset Disposal Act (PPADA), 2015 Section 103(2) (b) (c) and Section 69 (2).
131. He submitted that there were also advisories from the Solicitor General and the Public Procurement Regulatory Authority (PPRA) NO. 02/220 dated 27th March 2020 and 17th April 2020 respectively *((PPRA Advisory Annexure- 33- and Solicitor General Advisory Annexure-34-)*
132. As the CEO, he used to receive all the requests from the suppliers then he would mark them to the Procurement Director to verify whether they were eligible to supply.
133. The Procurement Director would then draft a commitment letter to the said supplier for his signature. Since KEMSA was undertaking Direct Procurement because of the COVID-19 Pandemic (emergency), the process would be retrospective manner, documentation, the appointment of an Ad-hoc Opening; negotiating; evaluation committee, signing of the contract and issuance of an LPO was made after the delivery and verification of the said HPTs. Payment vouchers would be prepared by the finance department for the final payments.
134. The commitment letters, the professional opinions, the contracts, the LPO's and the payments; all must bear the CEO's approval and signature where applicable.

- 135.Regarding the procurement of COVID-19 supplies worth KES 7.6 B; Dr Jonah Manjari said that the Board of Directors Authorized the Management to procure adequate PPEs as well as other HPTs, in line with procurement laws based on a letter dated 18th March 2020 (Ref: No. MOH/ADM/1/1/2) from the Principal Secretary-Health Ministry for the Procurement of Personal Protective Equipment (PPEs) (*MOH Annexure-36- Letter to the KEMSA*)
- 136.The suspended CEO did confirm that KEMSA undertook price survey in March and April 2020 before undertaking procurement of COVID-19 supplies.
- 137.But the prices were too high due to supply chain disruption and the governments where major suppliers of pharmaceutical products are domiciled banned the export of COVID-19 related products.
- 138.Dr Manjari told the Committee the initial funds set aside for COVID-19 HPTs was Kshs 758M. However, considering that the country was in a panic mode and that KEMSA was directed to ensure there were enough products to help mitigate COVID-19 Pandemic. KEMSA management resolved to use the FY 2019/2020 budget allocation, which was 4.6B to procure COVID-19 related HPTs.
- 139.He pointed out that, KEMSA hoped to use the revolving funds to pay suppliers and later recover the funds through debts that as at 30th June 2020 amounted to Kshs 6.736B from counties (*KEMSA Financial Statement, Annexure-37-*), customer operations (rent), development partners, government and private facilities, SSD customers and Ministry of Health Parallel Programs.
- 140.KEMSA also expected to be permitted to use funds set aside for Universal Health Coverage (UHC) to stock COVID-19 related HPTs.
141. KEMSA went beyond the ceiling provided by the MOH and procured COVID-19 supplies worth Kshs 7.6 B since they had hoped that the overlap budget would be covered in the FY 2020/2021 budget.
- 142.Dr Manjari admitted that he directly requested from the Ministry of Treasury and National Planning additional budgetary support of Ksh 5,140,943, 000 and that in that correspondence he copied the Principal Secretary, Ministry of Health. (*KEMSA Letter to Ministry of Treasury and National Planning, Annexure-38-*)
- 143.On the criteria of identifying companies to supply KEMSA, Dr Manjari said that since they were dealing with an emergency, KEMSA engaged with any company that would

supply the needed supplies within a short period. They did this since some of the COVID-19 supplies were not stocked by KEMSA's registered suppliers.

144. On why the commitment letters for nine companies (*KEMSA Annexure-39-Copies of commitment letters*) originated from his office and not the office of the Director of Procurement, Dr Majari informed the Committee that KEMSA does not have Standard Operating Procedures (SOPs) as to where the commitment letters are to be done during an emergency. He said that all the letters that originated from his office were in the period when the Director of Procurement was indisposed.

4.2.8 CHARLES JUMA EZEKIEL THE SUSPENDED DIRECTOR OF PROCUREMENT - KEMSA

145. The Suspended Director of Procurement Mr Charles Juma Ezekiel appeared before the Committee on 3rd September 2020 and submitted that the procurement of COVID-19 HPTs was undertaken on an emergency basis by way of Direct Procurement in line with the Public Procurement and Asset Disposal Act (PPADA) 2015 Section 103(2) (b) (c) and Section 669 (1) (2).

146. He quoted the following sections:

"Pursuant to section 103(1) of the PPADA 2015, a procuring entity may use Direct Procurement as allowed under subsection (2) as long as the purpose is not to avoid competition.

(2) A procuring entity may use direct procurement if the following are satisfied-

(b) due to war, invasion, disorder, natural disaster or there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;

(c) Owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods.

Section 69 of the Public Procurement and Asset Disposal Act 2015 provides for ;(2) retrospective approvals of procurements in response to an urgent need. "Urgent need" is defined as follows;

"the need for goods, works or services in circumstances where there is an imminent or actual threat to Public Health, Welfare, Safety, or of damage to property, such

that engaging in trending proceedings or other procurement methods would not be practicable.”

147. Mr Juma informed the Committee that the Solicitor General issued an advisory on procurement procedures to urgent purchases to deal with COVID-19 pandemic. *(Solicitor General Advisory Circular Annexure-40-)*

148. He informed the Committee that, the Public Procurement Regulatory (PPRA) in its circular PPRA Circular No.02/220 dated 27th March 2020 on the preventive Measure for Handling of Procurement Activities of Procuring Entities Due to Corona Virus (COVID-19) provided guidelines to be followed by the procuring entities while undertaking procurement during this time of COVID-19. PPRA provided advice on how to undertake emerging procurements to mitigate against the spread of COVID-19. *(PPRA Circular Annexure-41-)*

149. The Committee was informed that in the current period of COVID-19 pandemic, procuring entities at both national and county governments have deployed resources in laying down measures and interventions to address the COVID-19 pandemic some of which may involve procurement.

150. He said that accounting officers were reminded to ensure that such emerging procurements were reflected/captured in the approved procurement plan maintained as per Section 53 of the PPAD Act and Budget set aside to meet the resultant financial obligations before the commencement of such procurements in line with sections 53(8) of the PPAD Act. Further, Accounting officers were told to ensure that necessary approvals were secured in line with the provisions under Section 69 of the PPAD Act, especially with regards to retrospective approvals.

151. Mr Juma described to the Committee how procurement of COVID-19 related HPTs was carried at KEMSA as follows:

- i. Prospective suppliers wishing to supply the various items under COVID-19 submitted letters of intent indicating that they want to provide to KEMSA with HPTs showing expected delivery dates. The intent letters indicated the item description, quantities, expected delivery date and price. The suppliers were required to submit samples that were evaluated by the technical personnel to ascertain conformance to technical specifications.
- ii. Once the samples were found responsive, the suppliers were issued with commitment letters indicating item description, quantities and delivery date.

- iii. After the suppliers delivered the goods, a request from Commercial Directorate approved by the Chief Executive Officer was forwarded to the Procurement Department.
- iv. Procurement Department prepared and issued a tender document to the supplier with a submission date and time.
- v. The Chief Executive Officer appointed an ad hoc evaluation committee pursuant to Section 46 of the PPAD Act to undertake evaluation and negotiate with the supplier.
- vi. The evaluation committee prepared minutes of the negotiation and an evaluation report with recommendations which were duly signed by all the committee members. Purchase orders were raised on the basis of the negotiated prices. Copies of the approved purchase orders were sent to the warehouse to facilitate receipt of goods in the ERP. The warehouse prepared receipt documents and forwarded them to the Finance Department.
- vii. The evaluation report and the minutes were forwarded to the Director Procurement who prepared professional opinion to the Chief Executive Officer for an award.
- viii. Upon approval of the award recommendations, Director of Procurement would send out notification letters to the suppliers. Subsequently, the suppliers submitted acceptance letters.
- ix. Procurement Department prepared contracts and forwarded them to the Legal Department for verification and signing.
- x. After signing of contracts and upon receipt of necessary delivery documents, the Finance Department processed payment.

152. All the above process was in line with the provision of the PPAD Act 2015, the Solicitor General's advisory and PPRA circular as regards emergency procurement.

153. He told the Committee that KEMSA did undertake prices survey before carrying out procurement of COVID-19 supplies where the COVID-19 items were available in the market. KEMSA even reached out to organizations doing similar business like MEDS and traditional suppliers to determine the market prices.

154. The suspended Director of Procurement informed the Committee that on four occasions he wrote advisories to KEMSA management to cancel commitment letters due to the following reasons :

- i. The value of the commitment letters was almost equivalent to KEMSA's capital budget (*KEMSA Memo, Annexure -42-*);

- ii. The total value of direct procurement exceeded KEMSA's FY 2019/2020 approved budget (*KEMSA Memo, Annexure -43-*);
- iii. The commitment letters amount exceeded the approved budget (*KEMSA Memo, Annexure -44-*); and
- iv. Due to budgetary constraints.

155. He confirmed that he was not involved in all the commitment letters, especially nine (9) letters that were issued in the suspended CEO's office (*KEMSA Copies of commitment letters, Annexure -45-*). He added that all the commitment letters were signed in the CEO's office, and he only signed the notification of awards after the delivery of goods and familiarization process was undertaken.

156. He disputed claim from the suspended CEO that he was not in the office for an extended period due to illness. He informed the Committee that he was only absent from the office on 5th June 2020 in which he had applied for a one-day absence leave.

4.2.9 MR. ELIUD MURIITHI, SUSPENDED DIRECTOR COMMERCIAL SERVICES

The suspended Director of Commercial Services Mr Eliud Muriithi of KEMSA appeared before the Committee on 3rd September 2020 and submitted as follows:

The role he played in the procurement of COVID-19 related items

157. Based on his designation, his specific roles included overseeing sales and marketing and developing marketing opportunities, overseeing the establishment and growth of strategic partnerships with stakeholders and meeting the needs of customers, identifying revenue-generating opportunities for KEMSA, as well as managing key client relationships, in line with KEMSA's overarching mandate.
158. As a public entity within the meaning of the Public Procurement and Asset Disposal Act (PPADA), KEMSA is required to undertake its procurement within the provisions of the said Act. The PPAD Act requires all procuring entities to establish a functioning procurement unit to manage procurement and asset disposal processes. KEMSA has a fully functional procurement department as required by the PPAD Act, and all procurement processes are domiciled within that department. As the Director Commercial Services, he doesn't have an active involvement in procurement processes.
159. As a result of the method of procurement adopted by the Procurement Department, the Commercial Services Directorate would only be involved at the tail end after the commitment letters have been issued, goods delivered to the warehouse and quality verification confirmed by the Quality Assurance Department. The Procurement

Directorate would then consolidate a list of deliveries made as established by the Operations Directorate and prepare requisitions for my signature. He understood from the procurement department that this was allowed by the PPAD Act, 2015, where the procurement relates to direct procurement of emergency supplies.

160. He firmly stated that the Commercial Directorate was not involved in the identification of suppliers, issuance of letters of intent and commitment letters, negotiation of prices, the formalities of receiving deliveries, cross-checking quantities, quality and developing the schedule of supplies.

3.2.10 KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY

Mr Richard Ngatia, President of the Kenya National Chamber of Commerce, appeared before the Committee on 3rd September 2020 and submitted as follows:

161. In support of the “Buy Kenya Build Kenya Initiative” the Ministry of Health engaged the Kenya National Chamber of Commerce to identify local manufacturers of re-usable facemasks.

162. KNCCI was identified to be the lead in this initiative due to the presence of its membership in the 47 counties. It is comprised of small, micro enterprises (MSEs) medium and large enterprises.

163. They were informed that KEMSA was allocated Kshs 300,000,000 to procure for locally produced re-usable facemasks and it was to be undertaken in collaboration with the Kenya National Chamber of Commerce.

164. KNCCI had completed all significant process including identification of local manufactures capable of producing non-pharmaceutical products and medical equipment, receiving of sample test from the Kenya Bureau of Standards (KEBS) and updating KEMSA on the updated specification for re-usable facemasks. However, up to date, KEMSA is yet to engage the KNCCI in terms of signing the contract.

165. The CEO confirmed that the identified local manufacturers are capable of producing 1,800,000 masks per day.

4.2.10 MS. CROWN HEALTHCARE

The Chief Executive Officer, Crown Healthcare appeared before the Committee on 3rd September 2020 and informed it as follows:

166.The CEO informed the Committee the Crown Healthcare Company has been in the business of the provision of total hospital solutions, namely supply of medical, Laboratory equipment and pharmaceuticals since 1998.

167.In relation to COVID-19 supplies, since March 2020 Crown Healthcare had supplied two items under the following contracts:

a. TENDER NO. KEMSA/DP25/2019-2020 SUPPLY OF MIDRAY SV300 TURBINE DRIVEN VENTILATOR

b. TENDER NO. KEMSA/DP73/2019-2020 SUPPLY OF GLOVES STERILE SURGICAL

168.He stated that their dealings with KEMSA in the discharge of the aforementioned contracts were in compliance with procurement provisions and adhered to the express and implied provisions and principles of Article 227 of the Constitution.

169.In participation of such procurement, Crown Healthcare satisfied all the criteria under provisions of section 91, 92 and 103 of the PPAD Act in relation to direct procurement legally recognized alternative of procurement.

170.He also stated that as one of the reputable medical distributor company in the country and the region, they had the requisite capacity and expertise to meet the government's urgent need for COVID-19 supplies. They were the only company that had stocks of the ventilators in the country at the time.

4.2.11 MS. MEGASCOPE HEALTHCARE KENYA LIMITED

Mr Richard Ngatia, Managing Director/CEO Megascope Healthcare (K) Ltd, appeared before the Committee on 3rd September 2020 and informed it as follows:

171. Megascope Healthcare (K) Ltd was registered in 2002. The company is one of the reputable suppliers and distributor of medical equipment and hospital disposable.

172.He stated that Megascope Healthcare (K) Ltd had never been registered as a clearing agent of any sort and did not have the mandate to clear any consignments.

173.He further stated that Megascope had never been engaged by any government agency, not KEMSA to clear any COVID-19 related consignments including Jack Ma's Foundation donations.

174. The Committee heard that upon the detection of the first case of COVID-19 in Kenya on 12th March 2020, KEMSA requested Megascop to submit any samples of coveralls with shoe covers, medical goggles, KN95 face masks, nitrile gloves and face shields for quality checks.
175. The request was to enable KEMSA to determine if they would meet their specifications that guided quality assurance. Upon quality checks of the samples and sample acceptance, Megascop was issued with a commitment letter dated 17th March 2019. It was also issued with a Pre-inspection Quality Report of PPE kits that confirmed their samples met the standards.
176. They were also tasked to urgently deliver a ventilator to Msambweni Level 5 Hospital on 23rd March 2020.
177. On the procurement process, Megascop said that they satisfied all the criteria under provisions of section 91, 92 and 103 of the PPAD Act in relation to direct procurement.

4.2.12 MS. SHOP “N” BUY KENYA

178. Mr James Cheluley, the CEO Shop ‘n’ Buy Ltd appeared before the Committee on 3rd September 2020 and submitted that Shop ‘n’ Buy Ltd was incorporated on 14th February 2020.
179. On three occasions, i.e. 9th, 14th 29th April 2020 the company submitted to KEMSA letters of intent indicating the products they were able to supply. The company had never supplied to KEMSA, and this was its first time. (*SHOP & BUY Letters of Intent Annexure -46-*)
180. They received a commitment letter from KEMSA on 30th April 2020. (*SHOP & BUY Commitment letters, Annexure -47-*)
181. The company supplied to KEMSA Personal protective Kits and KN95 facemask 100,000 pieces each and KEMSA is yet to pay Shop ‘n’ Buy Ltd for the supplied items.
182. The Committee heard that KEMSA is yet to negotiate with Shop ‘n’ Buy Ltd on the amount to be paid for the goods it supplied.
183. Mr James Cheluley, CEO Shop ‘n’ Buy Ltd, noted that prices of what he supplied had dropped and the company was ready to negotiate with KEMSA

CHAPTER FOUR

5.0 STATUS OF DONATIONS RECEIVED BY MOH

5.1 MINISTRY OF HEALTH

While appearing before the Committee on 2nd September 2020, Hon. Mutahi Kagwe, Cabinet Secretary MOH gave the following submissions:

The role played by the MOH in clearing the Jack Ma's Foundation COVID-19 supplies donations and other donations

184. The procedure of receiving donation commences with communication received from the donor directly, or through the Ministry of Foreign Affairs, informing the intention of donating commodities, equipment or services and their quantities; when to be received; and the point of entry/delivery.

185. The Ministry then gets in-touch with the Government Clearing Agency, which is responsible for the clearance of Government cargo, to confirm arrival and requirements for clearance. Once the commodities are cleared, they are transported to KEMSA or KEMRI for storage and subsequent distribution.

186. In regard to Jack Ma's Foundation donations, the Ministry of Health received communication from the Ministry of Foreign Affairs for three consignments.

187. The 1st Jack Ma Foundation donation was received by the Government Clearing Agency on 24th March 2020 and delivered to KEMSA on the same day.

188. The 2nd donation came in two consignments;

- i. The 1st consignment was received by the Government Clearing Agency on 15th April 2020, cleared and delivered to KEMSA on the same day.
- ii. The 2nd consignment was received on 28th May 2020 and delivered to KEMSA on the same day.
- iii. The 3rd consignment was received on 24th May 2020 and delivered to KEMSA the same day.

189. In regards to local donations, the Ministry of Health was notified by donors on the intent to support in the fight against COVID-19, indicating the type of donations, quantities and any preference of the recipient.

5.2 MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

The role of the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works in Jack Ma's Foundation COVID-19 supplies donation

Mr Solomom Katungu, the Principal Secretary, State Department of Transport, Hon. Chris Obure, the Chief Administrative Secretary, Ministry of Transport and Mr Felix Ateng, Director, Government Clearing agency appeared before the Committee in two sittings held on 2nd. and 3rd September 2020 and submitted as follows:

190. The role of the Ministry of Transport in Jack Ma's Foundation COVID-19 supplies was limited to providing clearing services through the Government Clearing Agency.
191. The Agency was domiciled in the Ministry of Transport until 11th May 2020 when it was transferred to the Ministry of National Treasury and Planning through an Executive Order.
192. All the 697 packages of Jack Ma's Foundation donations were cleared exclusively by the Government Clearing Agency and the ground handling, and storage services were provided by Kenya Airways, a licensed ground handler.
193. The donations arrived at Jomo Kenyatta International Airport on various dates (*Details of the Airway-bill, numbers, the description of the goods received, and the flight details, Annexure –48-*) Upon Arrival at JKIA, the licensed handler, Kenya Airways moved the cargo from the aircraft to their bonded warehouse, after which the Government Clearing Agency undertook the clearing process.
194. Before the release of the goods to the consignees, the consignee verified that the details and quantities of the goods received were consistent with the details in the airway bills.
195. It was during this process that it was discovered that consignment *no. AWB: 071-37019975* from Ethiopian African Centre for Disease was short delivered by 21 packages. Its contents or worth is unknown.
196. They immediately raised the issue with African Cargo Handling Ltd who confirmed that they did not receive all packages. They further took up the matter with the Ministry of Health who assured them that they would follow up with the Ethiopian Public Health Institute.

197. Mr Felix Ateng, Director, Government Clearing Agency, confirmed that they were not provided with air cargo insurance for the Jack Ma's Foundation consignments.

5.3 MR. CHARLES JUMA, SUSPENDED DIRECTOR OF PROCUREMENT - KEMSA

198. The Suspended Director of Procurement Mr Charles Juma Ezekiel appeared before the Committee on 3rd September 2020 and submitted that his office did not have any role in the receipt and distributions of donations. The donations were received and warehoused at KEMSA's Embakasi warehouse.

5.4 MR. ELIUD MURIITHI, SUSPENDED DIRECTOR COMMERCIAL SERVICES- KEMSA

199. The suspended Director of Commercial Services Mr Eliud Muriithi appeared before the Committee on 3rd September 2020 and submitted that warehousing and distribution of COVID-19 HPTs donations were managed by the Operations Directorate. He said that he was only involved in following on status of the processing of the deliveries according to queries from Ministry of Health, tertiary hospitals and county public health facilities, isolation centres among other participating public facilities/entities.

200. Noting that processing of Covid-19 HPTs from the warehouse was fundamental in serving intended beneficiaries timely, he created a WhatsApp group and a group email address to ensure that all relevant KEMSA officers are in a copy of all the receipts and distribution lists. The group is still in existence.

CHAPTER FIVE

6.0 COMMITTEE OBSERVATIONS/FINDINGS

201. The Committee, in accordance with its mandate, and as per all the submissions - both written and orally presented before it as well the inspection visit, made the following findings and observations:

1. That the National Assembly allocated MOH Kshs 23.4 Billion towards COVID 19 response in 2019/20 FY. This allocation is 16.7 % of the total resources mobilized for COVID 19 estimated at Kshs 140. Billion based on the National Treasury submission. The allocation to MOH comprised of Kshs 16.7 Billion from the exchequer (GOK) and Kshs 6.7 Billion from development partners (World Bank and Royal Danish Embassy- DANIDA).
2. The National Assembly passed regulations that established the National COVID-19 Fund. The National Treasury submitted that as at August 2020 the Fund Board had mobilized a total Kshs 9.9 billion which has not been utilized.
3. That the submissions made MOH on the allocations and expenditures were in line with the approved budget for 2019/20 appropriated funds for the MOH towards COVID 19 response. The funds were appropriated and approved during the 2019/20 supplementary estimates II and III.
4. That most of the funds disbursed to various SAGAs by MOH are not yet utilized, especially funds earmarked for infrastructure improvement and purchase of medical equipment. This is because the funds were approved towards the end of the financial year under supplementary budget II and III coupled by delays in exchequer releases by the National Treasury. However, the procurement process is ongoing in various institutions. 5
5. In the course of the physical inspections to sample institution by the Committee, it was noted that various donations and purchases for COVID-19 were not being utilized. For instance, Kenyatta University Hospital had procured its own ventilators and also received ventilators from MOH. However, not all the ventilators were not being used.
6. That all referral health facilities, KEMRI and health facilities under county governments, have utilized the funds earmarked for allowances for the frontline

health workers for the three (3) months as per the SRC guidelines. The Committee further observed that other cadres of staff who play a very critical role in the operations of the health facilities did not receiving the allowances hence occasioning disquiet among the staff. The Committee also noted that the recruitment of health staff is still ongoing.

7. That the health institutions mainly engaged contractual staff for three months only which have already lapsed. However, the contracted health staff are still working in hospitals. Further, noting that COVID-19 pandemic still poses a threat to the country, coupled with the fact that health facilities persistently face health human resources challenges, the services of these contracted health workers are still required.
9. That, all the SAGAs except KEMSA utilized the funds disbursed by MOH in 2019/20 FY. KEMSA received funds from MOH and also used its reserves to procure HPTs.
10. That KNH earmarked Kshs 250 Million out of the Kshs 600 Million ring-fenced to support Othaya Hospital. However, based on the approval made by the National Assembly under the Supplementary Appropriation Act, 2020, the Kshs 600 Million ring-fenced was intended to be utilized by KNH and Mbagathi Hospital.
11. That KEMRI has not been adequately funded, despite the critical role it plays in terms of COVID 19 related research, including the ongoing development of a vaccine.
12. That given the threat posed COVID 19 in terms of overstressing the health facilities, the funds allocated to the various hospitals and the county governments are inadequate hence posing a challenge to the country in the event the COVID 19 incidences surge.
13. That despite the threat posed by COVID 19 being treated as an emergency, there were instances where there were delays in exchequer releases by the National Treasury. This resulted in delays in undertaking procurements by hospitals and county governments that had received funds.
14. That the MOH did not give clear guidelines on how the ring-fenced and conditional allocation to referral hospitals and county government respectively were to be applied, this gave the hospital Boards and county governments discretion on the utilization of the funds.

15. That, the Committee observed that KEMSA received a consignment of COVID-19 HPTs from National Intelligence Service. This included 100 ventilators. However, it is unclear how the NIS obtain and acquired this consignment.
16. That the MOH is yet to establish a proper monitoring and evaluation framework for the utilization of COVID 19 funds at the national and county level and a framework for the assessment of the level of preparedness to respond to the COVID 19 pandemic.
17. That in 2019/20, KEMSA received a total of Kshs 2.1 billion from the Ministry of Health for purchase of COVID 19 related health products and technologies (HPT's). Out of the Kshs 2.1 Billion which KEMSA received from the Ministry of Health, it has utilized Kshs 831 Million hence leaving a balance of Kshs 1.4 Billion. This is as indicated below:

Purpose	Amount Allocated (Kshs Millions)	Amount Utilized (Kshs Millions)	Balance (Kshs Millions)
Purchase of reagents and test kits	1,500	450	1,050
Purchase of re-usable facemasks	300	-	300
Procurement of PCR and extraction kits	78	77	1
Payment of HPTs under World Bank	304	304	-
Total	2,182	831	1,351

Source: KEMSA submission

18. That KEMSA engaged a total of eighty-three (83) suppliers to supply various COVID 19 related HPT's in the Kshs 7.6 Billion worth of supplies. The payment status is as follows See (*Annexure – 49*):-
- a. HPTs delivered, negotiated and paid - Kshs 4,712,869,916.00
 - b. HPTs delivered, negotiated not paid - Kshs 379,247,814.00
 - c. HPTs delivered, not negotiated, not paid- Kshs 2,540,586,756.00
- Kshs 7,632,065,588.65**
19. That KEMSA claims to have used Direct procurement with retrospective approval in accordance with section 69 of the Public Procurement and Asset Disposal Act, 2015. However, the Committee noted that Commitment letters were issued to

entities with no negotiations prior to delivery. Further, the Commitment letters lacked vital information such as prices of commodities and schedule of full delivery. There was no documentary evidence submitted to the Committee to ascertain the existence of an ad-hoc Committee constituted by the Accounting officer to undertake negotiations.

20. There is lack of clarity on how KEMSA identified their suppliers as the majority of companies awarded COVID-19 related tenders were not part of prequalified suppliers. Noting that some companies like Shop and Buy were registered two (2) months before being contracted by KEMSA, Ms Briema Grains holdings and Ms Regal Freighters was involved in the supply of HPTs, yet the two companies were not in the business of pharmaceuticals.
21. **That KEMSA procured COVID 19 related HPTs worth Kshs 7.6 Billion in 2019/20 FY** out of the KEMSA Capital, which was contrary to the approved budget of Kshs 4.6 Billion meant to be utilized in 2019/20 FY. KEMSA went ahead and gave commitment letters worth Kshs 7.6 billion, and subsequently, suppliers delivered HPT's worth Kshs 7.6 billion to KEMSA warehouses. Further, the Authority has paid a total of Kshs 4.7 Billion. The spending above the 2019/20 FY approved budget amounts to an irregular and unauthorized expenditure contrary to section 74 (4) of the Public Finance Management Act, 2012. This section makes it an offence for accounting officers/public officers to permit unlawful or unauthorized expenditures;
22. That section 46 of the Public Procurement and Disposal Act 2015 prohibits public entities from undertaking procurements without having a matching budget in place. Consequently, the procurement by KEMSA of HPT's worth Kshs 7.6 Billion, which was above the approved budget of Kshs 4.6 Billion in 2019/20 FY contravenes this provision.
23. That the Committee is in receipt of a letter Ref No. MOH/ADM/1/1/171 Vol.1 (196) dated 15th April 2020 addressed to CEO KEMSA (*MOH Letter to the KEMSA Annexure-50-*) approving the procurement of goods worth Kshs 758,690,583.25 as contained in the schedule annexed to the letter. Upon inquiry on the genesis and import of the letter, the Principal Secretary submitted documentation including several emails clarifying the role of her office in the process. However, the verbal explanation given by the Principal Secretary was inconsistent with the documentation submitted.

24. As of September 2020, KEMSA had a stock of COVID 19 HPTs worth Kshs 6.1 Billion which it cannot sell given that the market prices are now below the price KEMSA bought the HPTs. In the event KEMSA disposes off the HPT's at the current market prices, the Authority will incur an estimated loss of Kshs 2.1 Billion. Therefore, KEMSA would not have utilized public funds prudently and efficiently contrary to the principles of management of public finances envisaged in the Constitution and Public Finance Management Act 2012.
25. That there is no documentary evidence submitted to the Committee which indicated that KEMSA undertook a price survey for the COVID 19 HPT's in line PPAD Act, 2015 before engaging the various suppliers. The market survey could have been part of risk management which ought to have been taken by the KEMSA management to safeguard loss of public funds. Besides, there was clear conflicting information from the KEMSA Board and the suspended CEO regarding market survey issues. The suspended CEO submitted that KEMSA had undertaken a price survey. In contrast, the Board submitted that there was no time to launch a price survey since KEMSA carried out the procurements under an emergency. However, other institutions that interacted with the Committee such as MTRH and KNH were able to undertake market survey within a short period.
26. Section 6 (2) of the KEMSA Act 2013 gives the Board power to determine the budget of the Authority. Further Section 16(3) of the KEMSA Act 2013 prohibits any budget adjustment without the approval of the Board and the Cabinet Secretary. The Committee noted that KEMSA management procured HPTs above the approved budget without approval from the Board and upon inquiry by the Committee no documentary evidence was submitted to ascertain KEMSA management sought approval to vary the budget of the Authority.
27. The KEMSA Board was unaware of far-reaching decisions made by the management as regards to the COVID 19 procurements. The KEMSA management never consulted the Board on critical decisions such as approval of the procurements for COVID 19 HPTs which went beyond the approved budget for 2019/20 financial year. However, Section 6(2)(a) of KEMSA Act, 2013 provides that the Board shall have power to control supervise and administer assets of the Authority, in this regard the Board ought to have been proactive and exercise its supervisory role through giving guidance and directions to KEMSA management in view of critical point where the country was and is still facing a pandemic.

28. The suspended KEMSA CEO failed to follow laid down government procedures by writing directly to the National Treasury soliciting for budgetary support worth Kshs 5.1 Billion for COVID-19 interventions before consulting the parent Ministry. Besides, there was no evidence that the suspended CEO sought the approval of the Board before requesting for budgetary support from the National Treasury. This action amounts to insubordination, contravenes section 6 (2) and 16 (3) of the KEMSA Act, 2013 and against the public officers' code of ethics.
29. That on several occasions, the head of procurement wrote advisories (*Annexure - 50-*) to the KEMSA management regarding the COVID 19 procurements. The first advisory was related to KEMSA having procured adequate COVID 19 HPT's hence needed to halt the direct procurements. The subsequent advisories were concerning KEMSA surpassing the approved budget for 2019/20 in the procurement of HPT's. There was no documentary evidence submitted to show that both KEMSA management and the Board took action on given advisories. However, the Committee noted that the head of procurement despite giving advisories went ahead and facilitated the queried procurement.
30. The Committee observed that there was no advisory given to the KEMSA management from the Head of Finance on prudent utilization of funds given that the Authority had exceeded its budgetary allocation.
31. KEMSA was complacent on the procurements of the COVID-19 HPTs and did not undertake due diligence/background checks in identifying the companies to supply commodities. For instance, the Committee noted that MS Shop 'n' Buy (*Annexure- 51-*) only incorporated on 14th February 2020 supplied HPTs worth Kshs 970 million. Its Tax Compliant Certificate was issued in 27/4/2020 thereafter the commitment letters was issued to the company on 30th April, 2020.
32. That there was a communication breakdown between the Ministry of Health, KEMSA Board and the Management. The Principal Secretary Representative in the Board admitted that few meetings were held between the Board and the management to ratify some of the procurements decisions made by the management in regards to COVID-19 items. Further, the representative did not update the Principal Secretary on the deliberations or lack of deliberations of the Board.

33. That there was a strenuous relationship between the Principal Secretary MOH and the suspended KEMSA CEO such that suspended CEO designated the Director of Commercial Services as the key contact person at KEMSA in terms of correspondence between KEMSA and the MOH on matters relating to COVID 19.
34. That the suspended CEO prepared and signed commitment letters to nine (9) companies in the absence of the head of procurement which was not the standard procedure. Ordinarily, the commitment letters were prepared by the Head of Procurement for signature by the CEO. However, in his defence, the suspended CEO submitted that the Head of procurement was indisposed at the time of signing the (9) commitment letters, a position that was contested by the Head of procurement.
35. Based on the various correspondence between the MOH and KEMSA, it can be inferred that the Senior officials of MOH were indirectly involved in procurement and administrative processes at KEMSA.
36. That, the government received several donations from development partners and friends. However, in regards the Jack Ma foundations **21 packages under consignment no. AWB 071-37019975** of donations towards COVID-19 response were missing.
37. That, Committee notes that the KEMSA in their submissions stated the Universal Health Coverage funds allocated to the Authority had not been utilized.
38. That, the Committee inquired on KILIG LTD which had been awarded a tender to supply PPEs, which KEMSA submitted that the tender had been cancelled. However, upon the field visit to KEMSA warehouse, they observed KILIG had delivered 1000 samples of PPEs.

CHAPTER SIX

7.0 COMMITTEE RECOMMENDATIONS

202. The Committee, in accordance with its mandate, and as per all the submissions - both written and orally presented before it as well the inspection visit, made the following recommendations :

KENYA MEDICAL SUPPLIES AUTHORITY -KEMSA

1. THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on the procurement processes at the Kenya Medical Supplies Authority with a view of establishing if there were any procurement malpractices and institute appropriate legal action.
2. THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on the suspended Chief Executive Officer on the following grounds –
 - (i) for the irregular and unauthorized expenditure of KEMSA's funds contrary to section 68 and 74 (4) of the Public Finance Management Act, 2012 through procurement of COVID 19 related HPTs;
 - (ii) for undertaking procurement beyond the approved budget contrary to PPAD Act, 2015 section 44 (2) which provides that all procurement of goods works and services of a public entity be within the approved budget of that entity;
 - (iii) for undertaking procurement without an approved Procurement plan contrary to PPAD Act 2015 section 44 (2) (c); and
 - (iv) for contravention of any other relevant laws.
3. THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on the suspended Head of Procurement on the following grounds –
 - (i) for failure to discharge his functions in the procurement process pursuant to Section 47 read together with Section 45(5) of the PPAD Act, 2015 leading to the irregular and unauthorized expenditure of KEMSA's funds through procurement of COVID 19 related HPTs;
 - (ii) for undertaking procurement without an approved Procurement plan contrary to PPAD Act, 2015 section 44 (2) (c) read together with sections 45(5) and 47 of the PPAD Act, 2015; and

- (iii) for contravention of any other relevant laws.
4. THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on the suspended Head of Commercial Services on the following ground –
- (i) for failing to advise on the undertaking of market survey, therefore, failing to discharge his functions in the procurement process pursuant to Section 45(5) of the PPAD Act, 2015 which has exposed KEMSA to an estimated loss of Kshs 2,1 billion; and
 - (ii) for contravention of any other relevant laws.
5. THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on the Head of Finance on the following grounds –
- (i) for approving payments for the COVID-19 related procurement beyond the approved budget contrary to PPAD Act, 2015 section 44 (2) which provides that all procurement of goods works and services of a public entity be within the approved budget of that entity; and
 - (ii) for contravention of any other relevant laws.
6. THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on the Senior Management in KEMSA including Head of Operations and Head of Legal on their role in the disputed procurement processes at the Kenya Medical Supplies Authority and take appropriate legal action where necessary.
7. THAT, the State Corporation Advisory Committee in accordance with the Kenya Medical Supplies Authority Act, 2013, Employment Act, 2011, Fair Administrative Action Act, 2015 and any other relevant laws institute an investigation of the staff directly involved in the impugned Covid-19 procurement processes and handling of donations at Kenya Medical Supplies Authority and appropriate remedial action be undertaken.
8. THAT, within thirty (30) days of tabling of this report in the National Assembly, the Board of the Kenya Medical Supplies Authority be reconstituted in accordance with the Kenya Medical Supplies Authority Act, 2013 and the State Corporations Act, Cap.446 for failure to effectively discharge its function as enumerated in section 6(2) of the Kenya Medical Supplies Authority Act, 2013. Thereafter, the Director of

Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on members of the Board.

9. THAT, within sixty (60) days of the tabling of this report in the National Assembly, the Kenya Medical Supplies Authority establish standard operating procedures (SOPs) to achieve efficiency in procurement and other administrative processes in the Authority.

MINISTRY OF HEALTH

10. THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission undertake investigations on the role of the Principal Secretary, Ministry of Health on disputed procurement processes at the Kenya Medical Supplies Authority and take appropriate legal action where necessary.
11. THAT, the MOH in consultation with State Corporations Advisory Committee, in accordance with section 27 of the State Corporations Act, Cap.446 undertake a review of the structure and organization of the Kenya Medical Supplies Authority and submit recommendations to the National Assembly on the reorganization of the Authority, within sixty (60) days of the tabling of this report.
12. THAT, the National Government through the Salaries and Remuneration Commission to consider including all staff in hospitals in the payment of risk allowance.
13. THAT, the National and County Government considers retaining the temporary contracted staff to enhance the number of health personnel in health institutions during the Covid-19 pandemic and post-pandemic period and the National Assembly to appropriate the requisite funding in FY 2020/21.
14. THAT, the National Government through the Ministry of Health to adequately fund the Kenya Medical Research Institute to improve capacity, staffing, innovations and enhance health research capabilities including the development of vaccines and National Assembly to appropriate the requisite funding in FY 2020/21.
15. THAT, the Ministry of Health through the National Hospital Insurance Fund, in consultation with County Governments expedite the process of rolling out insurance for health workers in the twenty-two (22) County Governments that do not have any insurance scheme for health workers.

16. THAT, the Ministry should expedite the establishment of a framework for offering counselling services to health workers noting the non-utilization of funds set aside for psych-social support to frontline workers due to lack of a framework.
17. THAT, the Ministry of Health within fourteen days (14) of tabling this report, should ensure KEMSA procure and distribute the re-usable face masks designated for the vulnerable in the society noting that the National Assembly appropriated Kshs. 300 million in June 2020 for this purpose and the funds have been available in KEMSA since July 2020.

KEMSA SUPPLIERS

18. THAT, the Director of Criminal Investigations and Ethics and Anti-Corruption Commission undertake in-depth investigations of any irregularities on all companies including the eighty-three (83) companies (*Annexure-53-*) that were awarded tenders by the Authority with regards to the disputed COVID-19 procurement and institute relevant action against those companies found to have contravened the Public Procurement and Asset Disposal Act, 2015 and any other applicable laws.
19. THAT, upon conclusion of relevant investigations any company involved in the disputed COVID-19 procurement and found to have contravened the Public Procurement and Asset Disposal Act, 2015 and engaged in other malpractices be blacklisted and barred from doing business with any government entity.
20. THAT, the Registrar of Companies in accordance with the Companies Act, 2015 undertake an audit, within sixty (60) days of the tabling of this report, on all companies including the eighty-three (83) companies (*Annexure-53-*) that were awarded tenders by the Authority with regards to the disputed COVID-19 procurement to ascertain their compliance with the Companies Act, 2015 and take appropriate action in instances of non-compliance.
21. THAT, the Kenya Revenue Authority within sixty (60) days of the tabling of this report, undertake an audit on all companies including the eighty-three (83) companies that were awarded tenders by the Authority in the disputed COVID-19 procurement to ascertain their tax compliance status and take appropriate action in instances of non-compliance (*Annexure-53-*)
22. THAT, Kenya Medical Supplies Authority upon conclusion of the investigation by Ethics and Anti-Corruption Commission and in line with relevant laws undertake

steps to resolve the issue of stocks delivered to KEMSA without regard to due procedures. However, no payments should be made for goods irregularly procured and recovery of assets undertaken as per relevant laws for irregular payments.

23. THAT, the Cabinet Secretary should establish a policy to utilize the stock delivered to Kenya Medical Supplies Agency within sixty days (60) with minimal loss to the country.

DONATIONS

24. THAT, within thirty (30) days of the tabling of this report, MOH submits to the National Assembly a report on the status of the recovery of twenty-one (21) packages under the Jack Ma donations towards COVID-19 response.
25. THAT the Director of Criminal Investigations undertake in-depth investigations into the receipt and distribution of all COVID-19 related donations including but not limited to Jack Ma donations received by the Government.
26. THAT, the National Government should establish clear guidelines for the use of donations including COVID -19 Funds and donations, including those related to the response in line with the state of the pandemic. These guidelines must include clear procurement plans at the National and County level.

OTHERS

27. THAT, the Auditor General immediately undertakes a special audit of the Kenya Medical Supplies Authority and other institutions on the utilization of funds disbursed towards COVID-19 response in FY 2019/2020, including County Governments.
28. THAT, the Public Procurement and Asset Disposal Act, 2015 amended-
- (i) in section 69 to provide clear guidelines on how retrospective approvals shall apply in indirect procurement; and
 - (ii) in section 35 to set a timeline within which the Public Procurement Review Authority undertakes investigations.
29. THAT, every county should establish an Emergency Response Committee for purposes of co-ordinating emergencies and disasters.

Signed 

Date 1st, October, 2020

Hon. Sabina Chege, MP
Chairperson, Departmental Committee on Health

THE NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON HEALTH ATTENDANCE SCHEDULE

Date: 01/10/2020

Venue: 2nd Floor CONTINENTAL

Time Started: 9:25 am

Time Ended: 12:59 pm

Adoption of the Committee on Health Report on Inquiry into the utilization of the appropriated funds for COVID-19 Pandemic to the Ministry of Health in the FY 2019/2020 with focus on Kenya Medical Authority

	NAME	SIGNATURE
1.	Hon. Sabina Chege, MP – Chairperson	
2.	The Hon. Joshua Kutuny, MP – Vice Chairperson	
3.	Hon. (Dr.) Eseli Simiyu, MP	
4.	Hon. (Dr.) James Nyikal, MP	
5.	Hon. (Dr.) Mohamed Dahir Duale, MP	
6.	Hon. (Dr.) James Kipkosgei Murgor, MP	
7.	Hon. Alfred Agoi Masadia, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	The Hon. Joyce Akai Emanikor, MP	
10.	Hon. Prof. Mohamud Sheikh Mohamed, MP	
11.	Hon. Martin Peters Owino, MP	
12.	Hon. Kipsengeret Koros, MP	
13.	Hon. Tongoyo Gabriel Koshal, MP	
14.	The Hon. Sarah Paulata Korere, MP	
15.	The Hon. Gideon Ochanda, MP	
16.	The Hon. Beatrice Adagala, MP	
17.	The Hon. Said Hiribae, MP	
18.	The Hon. (Capt.) Ruweida Mohammed, MP	
19.	The Hon. James Githua Kamau Wamacukuru, MP	

