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THE SENATE

TWELFTH PARLIAMENT

SECOND SESSION

INTERIM REPORT

ON THE ACQUISITION OF MEDICAL EQUIPMENT FOR COUNTIES

BY

THE STANDING COMMITTEE ON HEALTH, THE STANDING COMMITTEE ON
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS & THE STANDING
COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

*Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.*

December, 2018

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ABBREVIATIONS AND ACRONYMS

HCIT	Health Care Information Technology
ICU	Intensive Care Unit
KES	Kenya Shillings
MES	Managed Equipment Services
MOH	Ministry of Health
MOU	Memorandum of Understanding
NHIF	National Hospital Insurance Fund
UHC	Universal Health Coverage
USD	United States Dollar

ANNEXES

- Annex 1 Managed Equipment Services equipment Allocation by County
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- Annex 4 Brief on the Contracts and Memorandum of Understanding between the Ministry of Health and Various Counties Relating to the Provision of Medical Equipment and related services.
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- Annex 7 Memorandum of Understanding between County Government and Ministry of Health.
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EXECUTIVE SUMMARY

Mr. Speaker Sir,

At the Senate Sitting of Wednesday 21st November 2018, Senator Fatuma Dullo, M.P., pursuant to Standing Order No. 48 (1), sought a Statement from the Standing Committee on Health on the policy and implementation of universal healthcare in the counties.

Following extensive debate on the matter, the Deputy Speaker directed the Senate Leader of the Majority Party on behalf of the House and the Committee on Health, to invite the Cabinet Secretary for Health on Tuesday, 27th November, 2018 to reply to the issues raised in the request for a statement by the Senator for Isiolo County, Sen. Fatuma Dullo M.P.

On Tuesday, 27th November, 2018 the Senate Leader of the Majority Party appraised the House on the outcome of the meeting with the Cabinet Secretary Health and various pertinent issues that arose including matters surrounding the acquisition of health equipment for counties. The Senate Leader of the Majority Party informed the House that there was need to further interrogate the documents submitted to the Senate by the Ministry of Health on the matter.

Following the debate in the House, the Senate Deputy Speaker directed that under the coordination of the Senate Leader of the Majority Party, the Chairpersons of the Standing Committee on Health, Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights to further interrogate the matter.

The Senate Deputy Speaker directed that an interim Report be tabled in the House on Wednesday, 5th December, 2018 at 2.30pm.

Mandate of the Standing Committee on Health

The Senate Standing Committee on Health is mandated, under the Second Schedule of the Senate Standing Orders, to, *“to consider all matters relating to medical services, public health and sanitation.”*

Mandate of the Standing Committee on Devolution and Intergovernmental Relations

The Senate Standing Committee on Devolution and Intergovernmental Relations is mandated, under the Second Schedule of the Senate Standing Orders, to, *“to consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.”*

Mandate of the Standing Committee on Justice, Legal Affairs and Human Rights

The Standing Committee on Legal Affairs and Human Rights is mandated, under the Second Schedule of the Senate Standing Orders, to *“to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.”*

Mr. Speaker Sir,

The Committees on Health, Devolution and Intergovernmental Relations and Justice, Legal Affairs and Human Rights considered the submissions by the Cabinet Secretary on Health and made various observations and recommendations.

Acknowledgement

The Committees on Health, Devolution and Intergovernmental Relations and Justice, Legal Affairs and Human Rights wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it during the preparation of this Interim Report.

Mr. Speaker Sir,

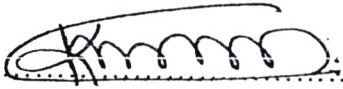
It is now our pleasant duty, pursuant to Standing Order 51 (b), to present the Interim Report on the Acquisition of Health Care Equipment for Counties.

Signed.......... Date..... 6TH DEC 2018.....

SEN. MBITO MICHAEL MALING'A, MP
CHAIRPERSON, STANDING COMMITTEE ON HEALTH

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

SEN. NDERITU JOHN KINYUA, MP
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

Signed.......... Date..... 6. Dec. 2018.....

SEN. SAMSON CHERARKEY, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

CHAPTER 1 INTRODUCTION

1.0 Background

During the Senate Sitting of Wednesday, 21st November 2018, Senator Fatuma Dullo, M.P., pursuant to Standing Order No. 48 (1), sought a Statement from the Standing Committee on Health on the policy and implementation of universal healthcare in the counties. In the Statement, the Ministry of Health was to explain-

- (1) Why the Senate input in the formulation and approval of the universal healthcare in the counties was not taken into consideration;
- (2) Explain why the Senate has not been involved in the entire exercise of planning for universal healthcare;
- (3) Avail details of the agreements that were entered into between the Ministry of Health and county governments regarding the health package in terms of the leased medical equipment;
- (4) Explain the variation in the figures for the payment of the equipment from the initial figure to the current figures that the counties are paying; and lastly,
- (5) Explain what policy, legal and regulatory framework govern the Ministry of Health in contracting the three companies through National Hospital Insurance Fund (NHIF) to offer universal healthcare in four counties and provide the contractual agreement between the companies and the Ministry of Health.

Following extensive debate on the matter, (the Deputy Speaker directed the Senate Leader of the Majority Party on behalf of the House and the Committee on Health, to invite the Cabinet Secretary for Health on Tuesday, 27th November, 2018 to reply to the issues raised in the request for a statement by the Senator for Isiolo County, Sen. Fatuma Dullo M.P. and also to

furnish the Senate with any information that relates to the whole issue of the management of the equipment scheme and health in general.

In the sitting on Tuesday, 27th November, 2018 the Senate Leader of the Majority Party appraised the House on the outcome of the meeting and various pertinent issues that arose including matters surrounding the acquisition of health equipment for counties. The Senate Leader of Majority informed the House that there was need to further interrogate the documents submitted to the Senate by the Ministry of Health on the matter.

Following debate, the Senate Deputy Speaker directed that under the coordination of the Senate Leader of the Majority Party, the Chairpersons of the Standing Committee on Health, Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights scrutinizes documents submitted by the Ministry of Health.

The Senate Deputy Speaker further directed that the Senate Leader of the Majority Party and the Chairpersons of the Respective Committees should engage with representatives of the Council of Governors (COG), County Assemblies Forum (CAF) and other stakeholders as they may determine. The Senate Deputy Speaker directed that an interim Report be tabled in the House on Wednesday, 5th December, 2018 at 2.30pm.

Pursuant to the meeting held on Tuesday, 27th November, 2018, the Senate Leader of the Majority Party observed that the matter regarding Universal Healthcare Coverage required continuous consultation between the Committee on Health and the Ministry of Health. However, the matter regarding the acquisition of health equipment for counties was a recurring concern to the Senate and the serious issues raised therein needed to be interrogated to their final conclusion.

1.1 Background on the Acquisition of Health Equipment for Counties

The acquisition of Health Equipment for Counties was done by the Ministry of Health through the Managed Equipment Service (MES) project which refers to a flexible, long-term contractual arrangement that involves outsourcing the provision of specialized, modern medical technology and equipment to private sector service providers (“MES Provider”). The project comprises 7-year contracts between the Ministry of Health and various contractors for the supply, installation, maintenance, replacement and disposal of various equipment, as well as training and reporting for the entirety of the contract period.

The programme, which is currently in its fourth year, has been implemented in 98 hospitals across the 47 counties, with a focus on theatre, central sterile services department (CSSD), renal, ICU and radiology equipment. The **total tender sum** for the MES Program amounts to USD 432,482,160.00 paid in **quarterly installments** of USD 15,445,790.00. The amount that has been paid to date is USD 181,711,277.84. A balance of USD 287,850,780.00 remains. Contracts under the MES project were signed on 5th February, 2015 by the Ministry of Health, respective counties and the MES provider(s).

Initially, counties were paying Kshs. 95Million annually under the scheme. This figure has since been revised upwards to Kshs. 200 Million representing a cumulative figure of Kshs. 9.4Billion per year up from KShs. 4.5Billion. These monies are deducted directly from county allocations and paid to private suppliers by the National Treasury. The term of the MES contract is seven (7) years with a possibility of an extension for an additional three (3) years.

1.1.1 Leasing contracts under the MES agreements

In February 2015, the Ministry of Health awarded leasing agreements for the provision of specialized medical equipment to counties worth Kshs. 38 Billion.

According to the Ministry of Health, the type of equipment prioritized under the MES project was informed by a Needs Assessment conducted in March 2014. Following the assessment, seven categories (LOTS) of equipment were prioritized as follows:

LOT No.	Item
1	Theatre equipment
2	Theater, CSSD equipment
5	Renal equipment
6	ICU equipment
7	Radiology equipment

The project was implemented in all the forty-seven counties with two hospitals in each county receiving equipment, in addition to four national referral hospitals.

The scope of services offered under the MES contracts included:

- Fitting out works to the rooms designated for equipment
- During the term, replacement of old infrastructure, furnishings and fittings
- Supply of equipment
- Delivery and instalment of equipment
- Testing of equipment
- Commissioning of equipment
- Maintenance (both scheduled and reactive)
- Repairs and replacement of spare parts
- Upgrading of equipment software
- Supply of consumable and reagents
- Insurance over the equipment

- Replacement of equipment upon expiry of its useful lifespan
- Decommissioning of equipment
- Training of staff using the equipment in the hospitals

Further, as per the original agreement, recurrent costs such as supply of consumables and reagents as well as equipment maintenance and replacement of spare parts were to be covered at no additional cost to the facilities.

1.1.2 General concerns with respect to the Managed Equipment Service (MES)

The total tender sum for the MES Program amounts to USD 432,482,160.00 paid in quarterly instalments of USD 15,445,790.00. The amount that has been paid to date is USD 181,711,277.84. A balance of USD 287,850,780.00 remains.

Despite several accountability and transparency issues raised by counties, counties were compelled to pay Kshs. 95 Million per annum for the project. Counties argued that the requirement to include the Kshs. 95Million in their budgets had adversely affected their budget ceilings. This figure has since been revised upwards to Kshs. 200Million.

In the 2018 Budget Policy Statement, the government indicated an intention to equip 21 hospitals with specialised equipment under the MES project as part of support initiatives towards Universal Healthcare. In its report, the Senate Standing Committee of Health stated that the Ministry should provide a detailed implementation plan of the extended MES program with details of the hospitals that were set to benefit. In addition, the Committee observed the need for the Ministry to provide requisite technical support and capacity building to counties.

General concerns which have been raised with respect to the project included:

- Lack of requisite infrastructure and support systems for the equipment in some counties
- Lack of full disclosure by the Ministry on the contract details
- Lack of specialised health personnel to operate the equipment
- High charges for the specialised services being provided following the installation of the MES equipment, under-utilization of installed equipment
- Lack of adequate consultation between the national and county governments with some facilities receiving equipment that had already been provided by the county government
- Lack of access to consumables in contravention to the MES agreement among others

CHAPTER 2

SUBMISSIONS BY THE CABINET SECRETARY, MINISTRY OF HEALTH

2.0 Invitation to reply to the issues raised in the Statement by the Senator for Isiolo County

By a letter Ref. No. COS/CRR/2018/174 dated 22nd November, 2018, a copy of which is attached to this report as **Annex 3**, the Leader of Majority invited the Cabinet Secretary for Health to attend a meeting with the Senate on Tuesday, 27th November, 2018.

Under the coordination of the Senate Leader of the Majority Party, a sitting was held in the Senate Chamber, Main Parliament Buildings on Tuesday, 27th November 2018 to interrogate issues raised in the Statement by the Senator for Isiolo County.

2.1 Submissions by the Cabinet Secretary, Ministry Of Health Submissions

During the meeting with the Senate, the Cabinet Secretary for Health submitted as follows-

Universal Health Care

(1) On why the Senate input in the formulation and approval of the healthcare in the counties was not taken into consideration

The Cabinet Secretary submitted that the Ministry had held several engagements with different stakeholders including the Ministries of Energy, Water and Roads among others. During the processes, the Senate had been involved and updated in the developments towards developing the roadmap towards Universal Health Coverage (UHC). There had been engagements with the Senate Standing Committee on Health as follows-

S/No.	Date	Activity
1.	24 th March 2018	Attended a retreat with the Senate Standing Committee on Health and gave a presentation on the strategic direction of the Health sector in which the progress of Universal Health Coverage (UHC) was done among other strategic/ priority projects handled by the Ministry.
2.	9 th October 2018	Provided a statement at the Committee request on the implementation of UHC, progress on Health Act 2017, the NHIF Programme and the Managed Equipment Services Programme vide letter REF. MOH/ADM/SN/01 dated 9 th October 2018
3.	13 th November 2018	Volunteered to give an update on policy change in terms of implementation of benefit packages and the proposed pilot phase of UHC
4.	14 th November 2018	Invited the Chairperson of the Senate Standing Committee on Health and the Senator of Kisumu County during the fourth launch of the registration process on 15 th November 2018 in Kisumu County.

(2) On why the Senate has not been involved in the entire exercise of planning for universal healthcare

The Cabinet Secretary submitted that the Senate had been involved during the entire exercise of planning for the Universal Health Coverage and pointed to the previously mentioned activities with the Senate Standing Committee on Health.

(3) On the policy, legal and regulatory frameworks that govern the Ministry of Health in contracting the three companies through the national hospital insurance fund (NHIF) to offer universal health coverage in the four (4) counties and provide the contractual agreement between the companies and the Ministry of Health

The Cabinet Secretary submitted that the Ministry of Health requested NHIF (a parastatal established under the NHIF Act No. 8 of 1988) to use its wide network to rapidly register households in the four (4) pilot counties noting that the NHIF process is fully automated and it has a database from which member utilization and reports on service utilization can be retrieved.

Managed Equipment Services (MES) Project

The Cabinet Secretary submitted that the Managed Equipment Services is a seven (7) year contract between the Ministry of Health and various contractors that provides for equipment supply, installation, maintenance, replacement and disposal including training and reporting throughout the contract period. The MES program is implemented through two (2) health facilities from each county government and four (4) National Referral Hospitals. The contractors involved are:

Lot 1: Implemented by Shenzhen Mindray Bio- Medical Electronics Company Ltd involving theatres in 96 hospitals as a value of US\$ 45,991,449.78 equivalent to KES 4,737,119,327.34

Lot 2: Implemented by Esteem Industries Inc. involving Central Sterilization Supply Department (CSSD) theatres in 96 hospitals at a value of US\$ 4 88,027,973.00 equivalent to KES 9,066,881,219.00

Lot 5: Implemented by Belco S.R.L involving Dialysis Centres in 49 hospitals at a value of US\$ 23,691,059.00 equivalent to KES 2,440,179,077.00

Lot 6: Implemented by Phillips Medical Systems Nederland B.V involving intensive care units (ICU) in 11 hospitals at a value of US\$ 36,492,176 equivalent to KES 3,758,694,128.00

Lot 7: Implemented by GE East Africa Services Ltd involving Radiology Diagnostics in 98 hospitals at a value of US\$ 238,279,499.00 equivalent to KES 25,542,788,397.00

(i) On the equipment supplied to each County

The Cabinet Secretary submitted that the Managed Equipment Services (MES) involves the supply, installation, testing, maintenance and replacement of medical equipment and associated training for county and sub-county referral health facilities. Included in the MES program are two (2) health facilities selected by each county government and the four (4) national hospitals.

The MES project is funded through the National government share of revenue. This is reflected under section 5 of the County Allocation of Revenue Act (CARA) and the Second Schedule of the same Act.

The list of hospitals where MES is being implemented is attached as **Appendix 1**

(ii) On Equipment currently in use in each County and those which have not been used

The Cabinet Secretary submitted that as at November 2018, equipment under MES had been installed and were operational in 97% of all health facilities. The list of Hospitals where and why equipment are not being utilized is attached as **Appendix 2**

(iii) On the schedule of payments for the equipment

The Cabinet Secretary submitted as follows-

Counties responsibilities included:

- Provision of utilities, cold water, mains services and electricity to the quantity and quality required for each equipment

- Ensure the availability of trained staff in order to ensure optimal Equipment use and performance
- Make available such number of staffs as notified by the Ministry from time to time to be trained on the use of the Equipment.

The contractor's responsibilities included:

- Supply, installation, testing, maintenance and replacement of medical equipment and associated training for the provided county staff
- Train provided county staff on the use of the MES Equipment
- Ensure the uptime of the equipment as per the contract

Obligations of the Ministry included:

- Observe all its obligations under the MES Contracts and the MOU
- Make all payments due to the Contractors under the MES Contracts
- Facilitate capacity building for the County on management, administration and implementation of the Project

The Cabinet Secretary noted that, MES payments were made based on the performance of each contractor. Where the uptime guarantee was less than the agreed uptime and the equipment was not available for use when needed, penalties were applied and financial deductions were calculated as per the contract.

Lot	Equipment Type	Contractor	Tender Sum US\$	Amount Paid US\$	Penalty Deductions	Contract Balance
1.	Theatre Equipment	Shenzhen Mindray Bio- Medical Electronics Company Ltd	45,991,449.78	22,532,349.43	11,377.67	23,447,722.68
2.	Theatre CSSD Equipment	Esteem Industries Inc.	88,027,973.32	42,109,815.19	3,502.00	45,914,656.13
5.	Renal Equipment	Belico S.R.L	23,691,059.00	12,991,929.00	19,113.00	10,680,017.00
6.	ICU Equipment	Phillips Medical Systems Nederland B.V	36,492,176.00	13,675,581.00	2,039.02	22,814,55.98
7.	Radiology Equipment	General Electric EA Services	238,279,502.00	109,179,541.53	1,450,225.90	127,649,734.57
TOTAL			432,482,160. 10	200,489,216.15	1,486,257.59	230,506,686.36

(iv) On the contracts entered into with equipment manufacturers

The Cabinet Secretary submitted that the following contracts were signed between MOH and the equipment manufacturers-

(i) Shenzhen Mindray Bio- Medical Electronics Co- for Lot1- Theatre Equipment

(ii) Esteem Industries Inc.- for Lot 2- CSSD and surgical instruments

(iii) BellcoSrl- Lot 5- Dialysis equipment

(iv) Phillips Medical Systems Nederland B.V for Lot 6- ICU Equipment

(v) General Electric EA Services Ltd for Lot 7- Radiology Equipment

(4) On the increased cost of the medical equipment from Kshs 4.5 billion to Kshs 9.4 billion in Financial Year 2018/19

The Cabinet Secretary submitted that the total cost for MES contracts in 2015 was USD 432,482,160.10 equivalent to KES 38,923,394,409.00. The contracts are for seven (7) years. In 2015, the annual payment was KES 5,560,484,915.57. This amount progressively increased to KES 6,301,882,830 in 2017/18 FY due to changes in the exchange rate. However over the years from 2015/16 to 2017/18 financial year, the amount captured in the County Allocation of Revenue Act (CARA) has been KES 4.5 billion.

The reasons given by the Cabinet Secretary for the increase in the cost of MES from KES 6,301,882,830.00 to 9.4 billion were as follows-

(i) Expansion of MES to New Hospitals: MES services had been expanded by an additional twenty-one (21) hospitals. The expansion had been necessitated by the need for the specialized equipment in the identified hospitals so as to ensure access as the Ministry implemented Universal Health Care (UHC) MES services. The rationale for the variation was:

- Requests from counties and referral hospitals
- To expand MES services to hospital with a high volume of patients
- To cover additional hospitals in remote areas
- To improve access and equity of MES services

The signing of deeds of variations was done on 16th October 2017. The expansion was at a value of KES 4,789,833,486.00 for 5years translating to annual payment of KES 957,966,697.20

(ii) Procurement of HCIT: The HCIT solution was procured at a contract value of KES 4,756,773,074.00 for 5years translating to annual payment of KES 970,381,692 at the current exchange rate.

(iii) Service Level monitoring and Administration: Due to the nature of the MES program, a service level monitoring was envisioned. Currently, this monitoring is being conducted by PKF Consulting at annual cost of KES 98,548,722.00. Additionally, MES Implementation Committee requires resources for travelling to supervise and monitor MES activities across the entire country. In addition, the Ministry plans to undertake a Mid- Term Review of the MES Program. All these are expected to be at a cost of KES 200,000,000.00. The 2018/19 FY service level monitoring and administration, Mid- Term Review and PKF payments will therefore be at a cost of KES 298,548,722.90.

(iv) Local Currency depreciation: There has been a Kenyan shilling fluctuation compared to the dollar from February 2015 when the Commercial Contracts were signed. In February 2015 the exchange rate was 89.97 but it is currently at about KES 103 to the dollar.

Item	Annual Amount
Initial Contract Annual Payment (at current exchange rate)	6,301,882,830.00
HCIT	970,381,692.00

Annual payment due to expansion to 21 new hospitals	1,829,186,755.60
PKF Monitoring and Evaluation	98,548,722.90
Mid-term review and administration	200,000,000.0
Grand Total	9,400,000,000.50

(5) On availing details of the agreement that was entered between the Ministry of Health and County governments regarding the health package of medical leased equipment

The Cabinet Secretary noted that the information had been tabled at the Senate. Further, she submitted as follows-

Impact of MES Services: Last 3 years (Data from 51 sites)

According to the Cabinet Secretary, the MES project has allowed Kenyans to enjoy full benefits of MES investment as evidenced by the increased demand for more services at the county level and consequent decongestion of our referral facilities. Additionally, the ninety-eight (98) hospitals generate substantial revenue for these services. By the end of 2017 over KES 1,182,785,500 had been generated in fifty-one (51) hospitals (Data is not yet in for the forty-seven (47) health facilities. However, the Ministry is in liaison with the health facilities/ County Governments for data provision). The amount of revenue generated is retained by the county governments.

Types of MES Service	No. of patients using service					Revenue Generated (KES)
	Jan-Dec 2015	Jan-Dec 2016	Jan- Dec 2017	Total		
MES Theatre	2,844	23,782	25,372	51,998	155,994,000.00	
MES Dialysis	974	24,152	30,155	55,271	525,074,500.00	

Types of MES Service	No. of patients using service					Revenue Generated (KES)
	Jan-Dec 2015	Jan-Dec 2016	Jan- Dec 2017	Total		
MES ICU	94	206	431	731		2,211,000.00
MES General X-ray	12,029	167,485	160,710	340,224		340,224,000
MES Mammography	14	764	5,177	5,955		595,500.00
MES Mobile X-ray	51	17,711	19,573	37,335		3,733,500.00
C- Arm	-	20	19	39		-
MES Ultra sound unit	5,531	76,075	66,788	148,394		148,394,000.00
CR System	-	836	1,231	2,067		-
OPG Unit	6	2,926	3,627	6,559		6,559,000.00
Total Amount of Revenue Generated						1,182,785,500

CHAPTER 3

COMMITTEE OBSERVATIONS

3.0 General Observations

The Chairpersons made various observations based on the oral and written submissions by the Cabinet Secretary and the Principle Secretary of the Ministry of Health on each issue raised in the Statement by the Senator for Isiolo County.

The Chairpersons noted that the Statement requested on Wednesday 21st November, 2018 by Senator Fatuma Dullo, M.P., pursuant to Standing Order No. 48 (1) sought responses from the Ministry of Health as follows-

- (1) Why the Senate input in the formulation and approval of the universal healthcare in the counties was not taken into consideration;
- (2) Explain why the Senate has not been involved in the entire exercise of planning for universal healthcare;
- (3) Avail details of the agreements that were entered into between the Ministry of Health and county governments regarding the health package in terms of the leased medical equipment;
- (4) Explain the variation in the figures for the payment of the equipment from the initial figure to the current figures that the counties are paying; and lastly,
- (5) Explain what policy, legal and regulatory framework govern the Ministry of Health in contracting the three companies through National Hospital Insurance Fund (NHIF) to offer universal healthcare in four counties and provide the contractual agreement between the companies and the Ministry of Health.

Pursuant to the meeting held on Tuesday, 27th November, 2018, the Chairperson made the following general observations-

- (1) That, the matter regarding Universal Healthcare Coverage required continuous consultation between the Committee on Health and the Ministry of Health. However, the matter regarding the acquisition of health equipment was a recurring concern to the Senate and the serious issues raised therein needed to be interrogated to its final conclusion;
- (2) That, various documents relating to the acquisition of health equipment were missing and that the documents submitted to the Senate required further scrutiny as far as their authenticity was concerned. Specifically the documents missing were the following;
 - i. A list of equipment delivered to counties, including the cost of each of the equipment, when the equipment was delivered and installed and when payments for the equipment began;
 - ii. A detailed response on the reason for the variation of contracts from the time the programme began to the present time;
 - iii. A schedule of hospitals being on-boarded to the Managed Equipment Services programme from when the programme began to the present time;
 - iv. The initial contracts signed with the equipment manufactures in 2015;
 - v. A feasibility report prepared for each county;
 - vi. The total sum of all contracts when the seven year lease period for the equipment expires; and
 - vii. A detailed explanation of what will happen to the equipment once the lease expires.
- (3) That, while Ministry of Health indicates that the initial contract annual payment was Ksh 6.3 billion, the actual initial contract annual payment as per the Senate was Ksh 4.5 billion.

(4) That, the while the Ministry indicates that they have been in consultation with the Senate with reference to UHC, there has been only four engagements between the Ministry of Health and the Senate Committee on Health. The engagements are as follows-

- (i) On March 24th 2018 during an induction of the Committee;
- (ii) 9th October, 2018 during a meeting to discuss a Statement on UHC at the Committee's request;
- (iii) 15th October, 2018 during an invitation on for a function; and
- (iv) 14th October, 2018 for an invitation which the Committee did not attend due to the short notice.

(5) That, there is need to further interrogate the legal structure that governs the agreements under the Managed Equipment Services (MES) Project.

3.1 Specific Observations on the Managed Equipment Services (MES) Project

The Chairpersons made the following observations regarding the Managed Equipment Services (MES) Project –

(1) Concept Development for the Project

The Chairpersons observed that, based on the submissions, the basis of the Project was the Medium Term II (2013-2017) of the Vision 2030. They were informed that the flagship projects for the health sector enumerated in the Medium Term Plan II were aimed at accelerating the progress towards attaining the health sector goal of provisions of equitable, affordable and quality health care of the highest standard. Additionally, the Health Sector Strategic and investment Plan (KHSSP) July 2013-June 2017 identified critical infrastructure required to improve health service delivery.

The Ministry submitted that on 20th September 2013, the Cabinet Secretary wrote to the Council of Governors on the Financing Structure and requested Governors to facilitate

assessment of the Health facility capacity in their respective Counties. From the letter. The Cabinet Secretary informed Governors that the Ministry of Health, through the Public Private Partnership initiative, in consultation with the National Treasury was in the process of negotiating with two (2) multinational companies to equip hospitals. The County Government would be the lessee whilst the National Government would be the Principle Agent. **(Annex 8)**

Further, on 22nd October, 2013 Cabinet Secretary met with the County Executive Members of health and Finance and County Directors of Health at Multi-Media University, Nairobi where a resolution to fully support the proposal to equip public health facilities with Modern Equipment was signed. **(Annex 9)**

From the foregoing-

- It is not clear whether County Government were involved at the policy formulation stage and the conceptualization of the project. The consultative processes with counties took place *ex post facto*, after the Ministry had conceptualized the initial project;

(2) Increased Cost of the Medical Equipment from Ksh 4.5 Billion to Ksh 9.4 Billion in Financial Year 2018/2019

The Chairpersons noted from the submissions from the Cabinet Secretary the total cost for MES contracts in 2015 was USD 432,482,160.10 equivalent to KES 38,923,394,409.00. The contracts are for seven (7) years. In 2015, the annual payment was **KES 5,560,484,915.57**. This amount progressively increased to **KES 6,301,882,830 in 2017/18 FY** due to changes in the exchange rate. However over the years from 2015/16 to 2017/18 financial year, the amount captured in the County Allocation of Revenue Act (CARA) has been **KES 4.5 billion**.

The reasons given by the Cabinet Secretary for the increase in the cost of MES from KES 6,301,882,830.00 to 9.4 billion were as follows-

- **Expansion of MES to New Hospitals:** MES services had been expanded by an additional 21 hospitals. The expansion had been necessitated by the need for the specialized equipment in the identified hospitals so as to ensure access as the Ministry implemented Universal Health Care (UHC) MES services. The signing of deeds of variations was done on 16th October 2017. The expansion was at a value of **KES 4,789,833,486.00** for 5years translating to annual payment of **KES 957,966,697.20**. It is worth noting that expanding the MES programme is to 21 hospitals yet all counties are going to be charged for them.
- **Procurement of HCIT:** The Health Care IT solution was procured at a contract value of KES 4,756,773,074.00 for 5years translating to annual payment of KES 970,381,692 at the current exchange rate.
- **Service Level monitoring and Administration:** Due to the nature of the MES program, a service level monitoring was envisioned. Currently, this monitoring is being conducted by PKF Consulting at annual cost of **KES 98,548,722.00**. Additionally, MES Implementation Committee requires resources for travelling to supervise and monitor MES activities across the entire country. In addition, the Ministry plans to undertake a Mid- Term Review of the MES Program. All these are expected to be at a cost of **KES 200,000,000.00**. The 2018/19 FY service level monitoring and administration, Mid-Term Review and PKF payments will therefore be at a cost of KES 298,548,722.90
- **Local Currency depreciation:** There has been a Kenyan shilling fluctuation compared to the dollar from February 2015 when the Commercial Contracts were signed. In February 2015 the exchange rate was KES 89.97 but it is currently at about KES 103 to the dollar.

The Chairpersons observed that the variation of contracts could not be due to the above. Some of the pertinent questions arising from the submissions include –

- Was the monitoring and evaluation of the project a component of the Contracts?

- What is the composition of the MES Implementation Committee which requires resources for travelling to supervise and monitor MES activities in the country and why would it be resourced by the counties?
- What are the terms of reference of the MES Implementation Committee?
- What are the terms of reference of PKF consulting?
- What does the Ministry contribute in terms of resources or is financial burden left to the counties?
- The additional 21 hospitals are not spread in the entire counties-why is the service payment uniform across all the counties?
- Counties did not receive uniform equipment under the project. This puts counties that had received less support at a distinct disadvantage from those who had received proportionately more support.

(3) Equipment currently in use in each County

The Committee observed that according to submissions, as at November 2018, equipment under MES had been installed and were operational in 97% of all health facilities. Information availed to the Committee shows underutilization of the installed equipment in some facilities. However from the submissions, the Committee observed that-

- For theatre equipment (Lot 1) was not in use because of lack of specialized staff (including surgeons and nurses) to operate the equipment, inadequate water, and insufficient electric power. This was the case in Vihiga, Elgeyo Marakwet, Samburu and West Pokot Counties;
- For Renal Equipment (Lot 5) was not in use because of lack of specialized staff (including surgeons and nurses) to operate the equipment, and insufficient electric power. This was the case in Mandera, Tana River, Wajir and West Pokot Counties; and
- For Radiology Equipment (Lot 7) was not in use because of lack of specialized staff (including surgeons and nurses) to operate the equipment, and insufficient electric

power .This was the case in Bomet, Busia, Elgeyo Marakwet, Isiolo, Kakamega, Kitui, Kwale, Makueni, Meru, Migori, Narok, Nyamira, Samburu, Siaya, Tana River Tharaka Nithi, Trans Nzoia, Turkana, and West Pokot.

The Committee observed that the lack of specialized staff (including surgeons and nurses) to operate the equipment, inadequate water, and insufficient electric power were the major challenges facing the facilities in relation to the implementation of the MES project, which begged the question if a feasibility study was done. **Annex 2**

(4) Lack of full disclosure by the Ministry on the contract details

Some facility heads are not fully aware of the exact equipment they expect to benefit from. As such some MES providers are suspected to have supplied incomplete sets of equipment to facilities. The total cost of the project should be clarified by the Ministry including the recurrent costs of consumables, equipment maintenance and replacement of spare parts.

5) Observations on the MOUs with County Governments (Annex 4)

1. Copies of MOUs from the following counties only had the first and last pages, making it impossible to analyse the content-

1. Kirinyaga	9. Kericho	17. Kitui
2. Embu	10. Baringo	18. Trans Nzoia
3. Marsabit	11. Bungoma	19. Migori
4. Mombasa	12. Elgeyo/Marakwet	20. Narok
5. Murang'a	13. Busia	21. Homabay
6. Nyamira	14. Makueni	
7. Nairobi	15. Isiolo	
8. Taita/ Taveta	16. Turkana	

2. Copies of MOUs from the following counties had the content relating to Mandera County-

1. Nyeri	9. Tharaka- Nithi	17. Siaya
2. Tana River	10. Laikipia	18. Kajiado
3. Kiambu	11. Kisii	19. Nandi

- | | |
|---------------|------------|
| 4. Meru | 12. Kilifi |
| 5. Wajir | 13. Kisumu |
| 6. Machakos | 14. Nakuru |
| 7. Nyandarua | 15. Lamu |
| 8. West Pokot | 16. Kwale |

3. Copies of MOUs from the following counties were not availed-

1. Garissa
2. Samburu
3. Bomet
4. Kakamega
5. Vihiga

4. The copy of MOU relating to Uasin Gishu County contained details of Mandera County but was not signed.

5. The copy of a signed MOU between the Ministry of Health and Mandera County was the only complete document submitted. From this document we observed that-

- a. the county had an obligation under item 2.3 to supply to the contractors at the county's cost, cold water mains services and electricity to the quantity and quality as may be requested by the ministry or contractors, throughout the contract period;
- b. there was no express clause stating how much the counties were to pay for the equipment provided by the different contractors save for item 2.4 under obligations of the county, which states that the county shall co-operate at its own cost, with the Ministry and the Contractor in the fulfilment of the purposes and intent of the MOU; and
- c. Under the termination clause, only the ministry can terminate the MOU.

6) OBSERVATION ON THE CONTRACTS FOR LOT 1 (Annex 5)

1. The Parties to the Contract are the **GOVERNMENT OF THE REPUBLIC OF KENYA** (through the **MINISTRY OF HEALTH, KENYA**) and **SHENZHEN MINDRAY BIO-MEDICAL ELECTRONICS CO. LTD** (Registered in China).
2. The contract commenced on 6th May, 2015 for a period of 7 years as per the implementation program (Schedule 7- page 32) but the contract was signed on 13th March, 2017 (page 81).

7) OBSERVATION ON THE CONTRACTS FOR LOT 2(Annex 5)

1. The Parties to the Contract are the **GOVERNMENT OF KENYA** (Through the Ministry of Health) and **ESTEEM INDUSTRIES INC** (a partnership registered in India)
2. Commencement date was 6th February, 2015 as per the implementation program (schedule 7, page 34) for a period of 7 years. The Contract was signed on 20th July, 2016 as per page 1.

8) OBSERVATION ON THE CONTRACTS FOR LOT 5 (Annex 5)

1. The Parties to the Contract are the **GOVERNMENT OF KENYA** (Through the Ministry of Health) and **BELLCO S.R.I** (a company registered in Italy).
2. Commencement date was 6th May, 2016 as per the contract date, page 1 of the Contract. The contract runs for a period of 7 years as per the program in **Appendix 1: Equipment Replacement Plan and Lifecycle Model (page 40)**.

9) OBSERVATION ON THE CONTRACTS FOR LOT 6 (Annex 5)

1. The Parties to the Contract are the **GOVERNMENT OF KENYA** (Through the Ministry of Health) and **PHILLIPS MEDICAL SYSTEMS NEDERLAND B.V** (Incorporated in the Netherlands) (the Contractor).
2. The contract was expected to commence on 6th February, 2015 for a period of 7 years as per the implementation program

10) OBSERVATIONS ON THE CONTRACT FROM LOT 7 (Annex 5)

1. The Parties to the Contract are the **GOVERNMENT OF KENYA** (Through the Ministry of Health) and **GE EAST AFRICA SERVICES LIMITED (INCORPORATED IN KENYA)**
2. The contract starts on 6th February 2015 for a period of 7 years.

CHAPTER 4 RECOMMENDATIONS

4.0 Recommendations

Based on the foregoing submissions and observations, it is recommended as follows-

1. Visit all the 94 health facilities being service by the Managed Equipment Services programme (or in the alternative, a significant representative sample) to verify the type of equipment supplied, date they were installed and the operational status.
2. That a special audit be conducted on the Managed Equipment Services project by the Auditor General and reported tabled in the Senate within 60 days.
3. Isolate each of the five contracts and establish on a case by case basis the value for money (or lack thereof) for each contract rather than generalized conclusion on all the contracts. The Five contacts to be isolated and scrutinized are;
 - a) **Lot 1:** Implemented by Shenzhen Mindray Bio- Medical Electronics Company Ltd involving theatres in 96 hospitals as a value of US\$ 45,991,449.78 equivalent to KES 4,737,119,327.34
 - b) **Lot 2:** Implemented by Esteem Industries Inc. involving Central Sterilization Supply Department (CSSD) theatres in 96 hospitals at a value of US\$ 4 88,027,973.00 equivalent to KES 9,066,881,219.00
 - c) **Lot 5:** Implemented by Bellco S.R.L involving Dialysis Centres in 49 hospitals at a value of US\$ 23,691,059.00 equivalent to KES 2,440,179,077.00

- d) **Lot 6:** Implemented by Phillips Medical Systems Nederland B.V involving intensive care units (ICU) in 11 hospitals at a value of US\$ 36,492,176 equivalent to KES 3,758,694,128.00
 - e) **Lot 7:** Implemented by GE East Africa Services Ltd involving Radiology Diagnostics in 98 hospitals at a value of US\$ 238,279,499.00 equivalent to KES 25,542,788,397.00
4. That an extensive and in-depth investigation into this matter by the relevant authority be conducted to;
- a) Clearly establish the legal basis of the MES contracts, in particular whether the legal requirements of the Constitution under article 186 and 189 as read together with article 6(2) of the Constitution of Kenya was respected; and whether County Governments were coerced or entered into the MES arrangements under duress; and if so, the legal implications thereof on the MES contracts and the consequential activities should be established.
 - b) Recommend legal and /or administrative action(s) that should be taken on any person who may have directly or indirectly involved in any impropriety in the MES contracting and/or implementation process.
 - c) Interrogate all Cabinet Secretaries and Principal Secretaries who served in the Ministry of Health from February, 2015 to date in order to properly assign responsibility for any gaps or impropriety.
 - d) The County Governors, County Assemblies directly and /or indirectly through their respective umbrella bodies the Council of Governors (CoG)

and the County Assemblies Forum (CAF) should be invited to make written observations/comments on the MES and UHC programs, and their observations/ comments should be input into the final report.

