

After 10:15

By the chair, Committee on Health, Hon. Rachel Ngunjiri on Tuesday 19.7.16

REPUBLIC OF KENYA



Approved

19 JUL 2016

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ELEVENTH PARLIAMENT – FOURTH SESSION - 2016

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON A PETITION REGARDING ALLEGED MISMANAGEMENT AND MISAPPROPRIATION OF FUNDS AT THE KENYA MEDICAL RESEARCH INSTITUTE

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2016

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ABBREVIATIONS

AIDS	-Acquired Immune Deficiency Syndrome
CBA	-Collective Bargaining Agreement
CDC	-Centre for Disease Control
CEO	-Chief Executive Officer
FACES	-Family AIDS Care and Education Services
GBV	-Gender Based Violence
HIV	-Human Immuno-Deficiency Virus
IDC	-Infrastructural Development Committee
INTROMID	-Institute of Tropical Medicine and Infectious Diseases
JICA	-Japan International Cooperation Agency
KEMRI	-Kenya Medical Research Institute
MOU	-Memorandum of Understanding
NACOSTI	-National Commission for Science, Technology & Innovation
NAPREDA	-Natural Products Research & Drug Development
NGO	-Non-Governmental Organization
RCTP	-Research Care and Training Program-
SCAC	-State Corporations Advisory Committee
STIs	-Sexually Transmissible Infections
TB	-Tuberculosis
UCSF	-University of California, San Francisco
UK	-United Kingdom
UNRISK	-Union of National Research Institutes Staff of Kenya
US	-United States
USAID	-United States Agency for International Development
WAITRO	-World Association of Industrial and Technological Research Organizations
WHO	-World Health Organization

CHAIRPERSON'S FOREWARD

The petition by Mr. Peter Orowe Nyambok on alleged mismanagement and misappropriation of funds at the Kenya Medical Research Institute (KEMRI) was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Hon. David Eseli, MP on behalf of the Petitioner on 8th July, 2015.

In considering the petition, the Committee invited and held meetings with the petitioner, Mr. Peter Orowe Nyambok and his team, the Ministry of Health and the Kenya Medical Research Institute (KEMRI). The meetings were aimed at responding to issues raised by the petitioner.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the inquiry. I also wish to express my appreciation to the Honorable Members of the Committee who, with commitment, participated in the activities of the Committee and preparation of this Report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Health, to table its Report on the alleged Mismanagement and Misappropriation of Funds at the Kenya Medical Research Institute (KEMRI) pursuant to Standing Order 227 for adoption by the National Assembly.

HON. (DR.) RACHAEL NYAMAI, MP.

EXECUTIVE SUMMARY

This report has considered and responded to the prayers sought by Mr. Peter Orowe Nyambok in a petition on alleged mismanagement and misappropriation of funds at the Kenya Medical Research Institute (KEMRI). The committee found that the prayers pursued by the petitioner were reasonable as he was an employee of the Kenya Medical Research Institute and was also an official of the umbrella union which had recognition agreement and a registered collective bargaining agreement (CBA) gazetted as binding document with KEMRI. The union represents the interests of all employees in the Institute.

The report entails presentations made in meetings held the Committee. These include presentations by: the petitioner, Mr. Peter Orowe Nyambok and his team; officials of the Ministry of Health and the management of the Institute, the institute's Board of Management and employees of the institute who were adversely mentioned. The meetings were aimed at responding to issues raised by the petitioner.

The petitioner had prayed that the National Assembly through the Committee: recommends immediate probe into the affairs of the Kenya Medical Research Institute in particular the management structure, human resource management policy and practices and financial management; Ensures the petitioner's plight is addressed; and makes any other order or direction that it deems fit in the circumstances of the case.

In responding to the petitioner's prayers, the Committee recommended as follows:

- i) The KEMRI Board of Management should: ensure that the State Corporations Advisory Committee (SCAC) fast tracks the approval of the KEMRI human resource policy and manual and the same be implemented immediately after approval; ensure the KEMRI management puts in place a scheme of service for all employees serving the institute and guidelines for performance contracting to ensure objectivity; review cases of conflict of interest with respect to the following members of staff's relationship with the RCTP-FACES NGO and institute appropriate disciplinary action if they are found culpable: Prof. Elizabeth Anne Bukusi, Dr. Betty Wanjiru Mburu Njoroge and Dr. Patrick Oyaro (former member of staff); and start negotiations with the RCTP-FACES NGO with a view to having it drop the use of the name of one of its programs.
- ii) The Ministry of Health should: Ensure a policy on management of grants at KEMRI is put in place and make budget proposals with respect to research funding at KEMRI for consideration by the National Assembly in the 2017/18 Financial Year; Present proposals to the National Assembly on legislation to be reviewed and/or generate

legislation that could guide a medical research institution such as KEMRI as the current legal framework was either obsolete or inadequate;

- iii) Ministry of Health and the KEMRI Board of Management should report to the National Assembly on the implementation of these recommendations within 90 days from the date of tabling of this report.
- iv) The Ethics and Anti-Corruption Commission should investigate, in liaison with other relevant state agencies, alleged misappropriation of funds under the KEMRI/CDC program; INTROMID program; the mortgage scheme that was being run by KEMRI through Family Bank and take action against those found culpable of mismanagement and misappropriation of funds.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee.

The Committee on Health is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia;

1. 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. Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
3. Study and review all legislation referred to it;
4. Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. **Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;**
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
7. Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee is mandated, under Schedule Two of the Standing Orders to, consider the following subjects:-

- i. Health
- ii. Medical Care
- iii. Health Insurance

1.2 Oversight

In executing its mandate, the Committee oversees the following government Ministries, departments and/or agencies, namely:

- i. The Ministry of Health
- ii. The Kenyatta National Hospital
- iii. The Moi Teaching and Referral Hospital
- iv. National Hospital Insurance Fund

- v. Kenya Medical Supplies Agency
- vi. The National Aids Control Council
- vii. Kenya Medical Research Institute
- viii. Kenya Medical Training College

1.3 Committee Membership

- Hon. Dr. Rachel Nyamai, M.P. - **Chairperson**
- Hon. Dr. Robert Pukose, M.P. - **Vice Chairperson**
- Hon. Dr. Naomi Shaban, M.P.
- Hon. Dr. Enock Kibunguchy, M.P.
- Hon. Dr. James Nyikal, M.P.
- Hon. Dr. James Gesami, M.P.
- Hon. Dr. Eseli Simiyu, M.P., CBS
- Hon. Fred Outa, M.P.
- Hon. Alfred Sambu, M.P.
- Hon. John Nyaga Muchiri, M.P., HSC
- Hon. Alfred Agoi, M.P.
- Hon. David Karithi, M.P.
- Hon. Dr. Dahir Mohamed, M.P.
- Hon. Dr. James Murgor, M.P.
- Hon. Dr. Patrick Musimba, M.P.
- Hon. Eng. Stephen Mule, M.P.
- Hon. Dr. Stephen Wachira, M.P.
- Hon. Dr. Susan Musyoka, M.P.
- Hon. Hassan Aden Osman, M.P.
- Hon. James Gakuya, M.P.
- Hon. Kamande Mwangi, M.P.
- Hon. Leonard Sang, M.P.
- Hon. Michael Onyura, M.P.
- Hon. Mwinga Gunga, M.P.
- Hon. Paul Koinange, M.P.
- Hon. Raphael Milkau Otaalo, MP
- Hon. Zipporah Jesang, MP
- Hon. Robert Mbui, MP
- Hon. Jared Opiyo, MP

1.4 Committee Secretariat

Ms. Esther Nginyo	-	Clerk Assistant
Mr. Dennis Mogare Ogechi	-	Clerk Assistant
Ms. Ruth Mwihaki Gakuya	-	Clerk Assistant
Ms. Sande Marale	-	Research & Policy Analyst
Ms. Marlene Ayiro	-	Legal Counsel

1.5 List of Recommendations

The Committee recommends that:

1. The KEMRI Board of Management should: ensure that the State Corporations Advisory Committee (SCAC) fast tracks the approval of the KEMRI human resource policy and manual and the same be implemented immediately after approval; ensure the KEMRI management puts in place a scheme of service for all employees serving the institute and guidelines for performance contracting to ensure objectivity; review cases of conflict of interest with respect to the following members of staff's relationship with the RCTP-FACES NGO and institute appropriate disciplinary action if they are found culpable: Prof. Elizabeth Anne Bukusi, Dr. Betty Wanjiru Mburu Njoroge and Dr. Patrick Oyaro (former member of staff); and start negotiations with the RCTP-FACES NGO with a view to having it drop the use of the name of one of its programs.
2. The Ministry of Health should: Ensure a policy on management of grants at KEMRI is put in place and budget proposals made with respect to research funding at KEMRI for consideration by the National Assembly in the 2017/18 Financial Year; present proposals to the National Assembly on legislation to be reviewed and/or generate legislation that could guide a medical research institution such as KEMRI as the current legal framework was either obsolete or inadequate.
3. Ministry of Health and the KEMRI Board of Management should report to the National Assembly on the implementation of these recommendations within 90 days from the date of tabling of this report.
4. The Ethics and Anti-Corruption Commission should investigate, in liaison with other relevant state agencies, alleged misappropriation of funds under the KEMRI/CDC program; INTROMID program; the mortgage scheme

that was being run by KEMRI through Family Bank and take action against those found culpable of mismanagement and misappropriation of funds.

1.6 Acknowledgements

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings and the preparation of this Report.

1.7 Adoption of the Report

We, Members of the Departmental Committee on Health, have, pursuant to Standing Order 227 adopted this Report on the alleged Mismanagement and Misappropriation of Funds at the Kenya Medical Research Institute (KEMRI) and affixed our signatures (*Annex A*) to affirm our approval and confirm its accuracy, validity and authenticity on 9th June, 2016.

2.0 INTRODUCTION

2.1 Pursuant to Standing Order 227 (1), the petition on alleged mismanagement and misappropriation of funds at the Kenya Medical Research Institute (KEMRI) was referred to the Departmental Committee on Health on 8th July, 2015 for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227 (1) and (2).

2.2 In considering the petition, the Committee invited and held meetings with the petitioner, Mr. Peter Orowe Nyambok and his team, officials of the Ministry of Health and the management and board of the Kenya Medical Research Institute (KEMRI). The meetings were aimed at responding to issues raised by the petitioner.

The petitioner had prayed that the National Assembly through the Committee:

- i) Recommends immediate probe into the affairs of the Kenya Medical Research Institute in particular the management structure, human resource management policy and practices and financial management;
- ii) Ensures the petitioner's plight is addressed; and
- iii) Makes any other order or direction that it deems fit in the circumstances of the case.

2.3 Kenya Medical Research Institute (KEMRI) is a State Corporation established through the Science and Technology (Amendment) Act of 1979, which has since been amended to Science, Technology and Innovation Act 2013. The 1979 Act established KEMRI as a National body responsible for carrying out health research in Kenya.

2.4 The mandate of KEMRI includes to: carry out research in human health; cooperate with other research organizations and institutions of higher learning on matters of relevant research and training; liaise with other relevant bodies within and outside Kenya carrying out research and related activities; disseminate and translate research findings for evidence-based policy formulation and implementation; cooperate with the Ministry of Health, the National Commission for Science, Technology & Innovation (NACOSTI) and the Medical Sciences Advisory Research Committee on matters pertaining to research policies and priorities and do all things as appear to be necessary, desirable or expedient to carry out its functions.

2.5 KEMRI has over time collaborated regionally and internationally. Regionally, KEMRI has developed very useful linkages with the following local, regional and international institutions.

- i) Noguchi Memorial Institute of Medical Research -Accra, Ghana

- ii) National Institute of Medical Research, Dar es salam, Tanzania
- iii) Ethiopia Health and Nutrition Research Institute, Addis Ababa, Ethiopia
- iv) Virus Research Institute - Entebbe, Ethiopia
- v) Makerere University Medical School, Kampala, Uganda
- vi) University of Zambia Medical School, Lusaka, Zambia
- vii) Blair Research Centre, Harare, Zimbabwe
- viii) Medical Research Council of South Africa, Cape Town, South Africa
- ix) Suez Canal University, Ismailia, Egypt

2.6 Internationally, KEMRI also collaborates with the World Health Organization (WHO), the Japan International Cooperation Agency (JICA), US Centers for Disease Control and Prevention (CDC), the Walter Reed Army Institute of Medical Research, Wellcome Trust-UK, United States Agency for International Development (USAID), British Medical Research Council, Royal Tropical Institute, Amsterdam, and World Association of Industrial and Technological Research Organizations (WAITRO) among others.

2.7 KEMRI's research regulation is comprised of the following research committees:-

- i) Scientific Programme Committee (SPC)
- ii) Scientific Steering Committee (SSC)
- iii) Ethical Review Committee (ERC)
- iv) Animal Care and Use Committee (ACUC)
- v) Publications Committee (PC)

2.8 KEMRI has Six (6) Main Programmes. These include:

- i) **Biotechnology** - To promote, harness and apply biotechnology for the discovery and development of tools and strategies for use in medicine and healthcare. The flagship project areas include: Vaccine Development, Diagnostics, Genetic Engineering and Bioinformatics.
- ii) **Natural Products Research & Drug Development (NAPREDA)** - To Identify and develop effective traditional / alternative medicines and drugs for use against human diseases. The flagship project include: Traditional Medicine, Conventional Medicine and Alternative Medicine. This programme is a vision 2030 flagship project.
- iii) **Infectious and Parasitic Diseases** - To conduct research aimed at developing tools and technologies for reduction of disease burden due to infectious and

parasitic agents. The flagship project areas include: Bacterial, Fungal and Viral Diseases, Parasitic Diseases, HIV/AIDS, TB & Malaria, Neglected Tropical Diseases.

- iv) **Public Health & Health Research Systems** - To conduct multi-disciplinary epidemiology, biostatistics, environmental, occupational, nutritional, social, dental population and health systems and policy. The flagship project areas include: Epidemiology, Behavioral and Social Sciences, Nutrition, Environmental/Occupational Health, Oral Health, Health Care Financing, Governance and Leadership and Service Delivery.
- v) **Non-Communicable Diseases** - To conduct basic, clinical, operational, implementation and applied research in all matters related areas to non-communicable diseases such as: cancer, diabetes, lifestyle disease, mental health etc. The flagship project areas are: Life Style Diseases, Obesity, Diabetes, Hypertension, Drug and Substance Abuse, Cardiovascular, Cancer (Breast, cervix, prostate, throat, stomach, ovaries and skin), Road Traffic Accidents, Domestic/Occupational Injuries, Mental Health.
- vi) **Sexual, Reproductive, Adolescent & Child Health** - To conduct basic, clinical, operational, implementation and applied research in all matter related to sexual, reproductive, adolescent and child health. The flagship project areas include: Maternal Health, child health, adolescent health, STI's, Gender Based Violence (GBV), infertility, sexual dysfunction, family planning, harmful traditional practices, aging and sexual and reproductive health, gender and human rights.

2.9 The following are the Research and Training Centres in the Institute:

- i) Centre for Biotechnology Research and Development (CBRD) Nairobi.
- ii) Centre for Clinical Research (CCR) Nairobi.
- iii) Centre for Public Health Research (CPHR) Nairobi.
- iv) Centre for Infectious and Parasitic Diseases Control Research (CIPDCR), Busia.
- v) Centre for Microbiology Research (CMR) Nairobi.
- vi) Centre for Respiratory Diseases Research (CRDR) Nairobi.
- vii) Centre for Traditional Medicine and Drug Research (CTMDR) Nairobi.
- viii) Centre for Global Health Research (CGHR) Kisumu.
- ix) Centre for Virus Research (CVR) Nairobi.
- x) Centre for Geographic Medicine Research, Coast (CGMRC) Kilifi.
- xi) Eastern and Southern Africa Centre of International Parasite Control (ESACIPAC), Nairobi.

xii) KEMRI Graduate School of Health Sciences (KGSHS), Nairobi.

2.10 The petitioner drew the attention of the House on the following, that:-

- i) The Kenya Medical Research Institute (KEMRI) was an institute under the state department of health performing a national function as a research institute;
- ii) The Kenya Medical Research Institute had failed in its mandate and did not have a clear human resource policy and manual to guide its human resource practices resulting in employee frustration;
- iii) The Kenya Medical Research Institute had severally failed to obey court orders in regard to human resource malpractices, in particular failure to adhere to collective bargain agreement;
- iv) The institution's management allegedly misappropriated donor funding which to withdrawal of funding by development partners in particular the Centre for Disease Control (CDC) leading to loss of employment of over 700 employees;
- v) Efforts to resolve the matters with the relevant government institutions had been futile;
- vi) The matters presented in the petition were not pending before any tribunal or court of law.

3.0 SUBMISSIONS AND EVIDENCE

Having received the Petition, the Committee commenced its consideration by inviting the petitioner, Mr. Peter Orowe Nyambok, the Principal Secretary responsible for Health and the management and board of KEMRI on diverse dates. During the meetings, written and oral evidence was adduced as recorded hereunder:-

3.1 MEETING WITH THE PETITIONER (MR. PETER OROWE NYAMBOK)

The Petitioner, Mr. Peter Orowe Nyambok appeared before the Committee on 15th October, 2015 and informed the Committee that:

1. He was an employee of the Kenya Medical Research Institute and was also a chief shop steward at the institution. He was also an official of the umbrella union which had recognition agreement and a registered collective bargaining agreement (CBA) gazetted as binding document with KEMRI and which represents the interests of all employees in the Institute.

2. KEMRI is a key state corporation created through an act of parliament with an express mandate to carry out research for health, its core business to achieve its mission and vision is collaborate with both National and International collaborators and other stakeholders.
3. By virtue of his position in the union, he directly gets involved with staff welfare in the Institute, therefore all issues facing staff of the Institute which might arise as a result of mismanagement and misappropriation of funds come to his attention and hence some form the basis of the petition.
4. He was petitioning the Committee on two major issues directly affecting KEMRI namely mismanagement and misappropriation of funds.
5. In terms of mismanagement, the following were the issues:
 - a) Human Resource Manual - The institute was operating without a Human Resource Manual. This had led to some members of staff gaining access to other collaborators' pay rolls and hence earning two salaries and not paying taxes to the Government. Particularly, this had been experienced with regard to the collaboration with the Centre for Disease Control, CDC.
 - b) Lack of scheme of service for the institute's employees which has led to staff stagnation in terms of career progression resulting into intimidation during staff appraisal and low performance of staff due to low morale/motivation.
 - c) Lack of guidelines in performance contracting
 - d) Lack of transparency in hiring new staff.
 - e) Retiring scientists selectively and defying court orders.
 - f) Allocation of staff houses selectively and renting them in a manner that lacks transparency.
6. In terms of Misappropriation of Funds, the following were the issues:
 - a) Audit reports on the Institute Financial management and operations painted a grim picture of misappropriation of funds a case in point is misappropriation of collaborators' and donor funds which was already in the public domains through the media.
 - b) Procurement of services and goods by the institute is the den of corruption through the corrupt tendering system in the institute e.g. out sourced security services and cleaning services of which the number of

- personnel in the contract form which was 110 was different from the number of only 60 personnel on the ground.
- c) Insurance services for staff and institutes properties.
 - d) No status of Inventory of Institute assets and liabilities such as Land, other movable and immovable assets e.g. Title Deeds.
 - e) Out sourcing of legal services at high cost yet the Institute has employed legal officers on its payroll.
 - f) Post graduate program/interns (INTROMID Program) had reported cases of loss of money from the programs.
 - g) Mortgage, the management took some money to local financial institution (Bank) which most staff members would not meet the rules and condition of the bank to get loans.
7. In support of his petition, the petitioner tabled the following documents:
- a) Letters related to alleged loss of funds under the INTROMID Program.
 - b) Medical Insurance Policy - First Assurance. In which only in patient cover was provided not out patient cover
 - c) Guard service contract between Kenya Medical Research Institute and Apex Security Services Limited
 - d) Two Letters on tender for provision of Medical Insurance Cover, Group Personal Accident (GPA), and Workman Injury Benefit Act (WIBA) scheme. The contract was allegedly evaluated and awarded within one day. It was worth Ksh 19, 292, 591.
 - e) A KEMRI Human Resource Policy and Procedure Manual.
 - f) A ruling by the Industrial Court of Kenya delivered by Hon. Mr. Justice Isaac E.K. Mukunya.
 - g) Three documents of the Industrial Court of Kenya
 - h) Two letters related to a Schemes of Service for KEMRI staff.
 - i) Collective Bargaining Agreement (CBA) between KEMRI and Union of National Research and Allied Institutes Staff of Kenya (UNRISK).
 - j) Two letters related to double payment of salaries/allowances through the KEMRI/CDC program.

3.2 MEETING WITH THE PRINCIPAL SECRETARY, MINISTRY OF HEALTH

The then Principal Secretary, Ministry of Health, Dr. Khadija Kassachoon, appeared before the Committee on 27th October, 2015 and informed the Committee that:

1. KEMRI had lived up to its mandate and had made contributions with regard to: malaria research, surveillance, treatment regimens for infectious diseases, testing kits for HIV 1 and 2 and viral hepatitis, visceral leishmaniosis, traditional medicine and capacity building through training programs for disease control personnel in eastern and southern Africa. Achievements in the foregoing areas had earned KEMRI international recognition in the promotion of global health and designation as a World Health Organization (WHO) collaborating Centre for HIV/AIDS, Polio immunization, viral hemorrhagic fevers leishmaniosis, leprosy, and microbial drug resistance.
2. KEMRI had a human resource policy and manual which was duly approved by the board of management in the year 2010. The manual had been reviewed and forwarded to the Ministry of Health and the State Corporations Advisory Committee (SCAC) for approval before implementation. KEMRI had also approved an Organizational Structure and a Finance Manual.
3. KEMRI had a CBA with the Union of National Research and Allied Staff of Kenya (UNRISK) which was registered on 25th August, 2014 with an implementation date of 18th June, 2014. Most of the terms mutually agreed to by the parties were implemented with effect from 1st July, 2014 as agreed. Both parties also agreed that any other issue not implemented with effect from 1st July, 2014 was to be implemented upon availability of funds. Owing to lack of sufficient funds, payment of basic salary arrears for the period 1st July, 2013 to 30th June, 2014 could not have been implemented immediately. However, KEMRI implemented 50 percent of that obligation in the 2015/16 Financial Year and the remaining 50 percent shall be released on receipt of additional funds. Such arrangement had been agreed upon by both KEMRI and UNRISK.
4. On the institution's alleged misappropriation of donor funding in particular the CDC funding leading to a loss of employment for over 700 employees, she stated that KEMRI/CDC Cooperative Agreement was a program that was set up through a memorandum of understanding between Center for Disease Control and Prevention and the Institute. The relationship between the two had lasted 36 years.
5. The KEMRI/CDC collaboration was affected by allegations of loss of Ksh 7.2 Billion advanced to KEMRI by CDC which the petitioner appeared to be alluding to. The matter had been brought to the attention of the board through articles in the media in March, 2015. The Board immediately

engaged the Office of the Auditor General to conduct a special audit. The audit did not directly point towards loss of funds but instead pointed towards systemic weaknesses in the KEMRI/CDC Cooperative Agreement which the Board moved to address.

6. CDC continued to fund KEMRI activities and discussions were ongoing between KEMRI and CDC on how to further the collaboration in light of the changing US government policy on funding of cooperative agreements.
7. On the failure to solve the matters in the petition through relevant government institutions, KEMRI continued to cooperate with the Kenya National Audit Office and other government institutions to improve financial management and accountability in the institute.

3.3 MEETING WITH A WITNESS AND FORMER KEMRI RESEARCHER

(DR. KIZITO LUBANO)

Dr. Kizito Lubano, Private Consultant Doctor, who had worked at KEMRI, appeared before the Committee on 27th October, 2015 and informed the Committee that:

1. There existed an NGO disguised as a project in KEMRI which had contributed to comingling of funds and subsequent loss of funds. The NGO was housed within KEMRI premises and all correspondence from the NGO was on a KEMRI letter head. To back up his allegations, he produced the following:
 - a) A copy of an unsigned Memorandum of Understanding dated 2014 between Research Care and Training Program – Family AIDS Care Education Services (RCTP- FACES) and KEMRI relating to the collaboration and transfer of certain internal operations and assets from KEMRI to RCTP- FACES.
 - b) A copy of the series of exchanges of correspondence between officials of the NGO, RCTP FACES and who also staff of KEMRI from January 30th to February 2nd 2014.
 - c) A copy Confidential, unsigned Board Paper titled Request for approval of MoU between KEMRI and RCTP-FACES NGO.
 - d) A copy of the Certificate of registration of the NGO “Research Care and Training Program – Family AIDS Care Education Services (RCTP- FACES)” with the Non-Governmental Organizations Board on 6th July, 2011.
 - e) A copy of a document with both the current and first officials of the RCTP-FACES NGO.

- f) A copy of the KEMRI Annual Report for the period ending June 30th 2011 which shows a suspicious declaration of huge sums of money supposedly to carry out projects. The said sums are not reflected in the audited reports or subsequent financial reports.
2. There were widespread human resource malpractices at KEMRI which include: hiring not based on qualifications as per the advertisements, nepotism and favoritism, deliberate stereotyping and making unprofessional comments during appraisals. To back up his allegations, he produced the following:
 - a) A copy of an advertisement for jobs at KEMRI with the position of Assistant Director, Human Resources being one of those on offer.
 - b) The application and curriculum vitae of the eventual appointee for the position of Assistant Director, Human Resources, Ms. Anne Njoki Wang'ombe.
 - c) A short list of the candidates for the position of Assistant Director, Human Resources.
 - d) A series of correspondence which show Dr. Kizito Lubano warning his colleagues with regard to: the unprofessional conduct of appraisals and promotions, funds set aside and used to run a mortgage scheme under the family bank.
 3. The KEMRI board had prepared a report to the Cabinet Secretary, Ministry of Health on the status of the challenges facing the KEMRI/CDC collaboration - an indication that there was misappropriation of funds due to the audit queries raised by the Auditor General that the board was responding to. He provided a copy of the said report.

3.4 MEETING WITH THE KEMRI BOARD OF MANAGEMENT

The KEMRI Board of Management appeared before the Committee on 15th March, 2016 and its Chairperson, Dr. Lillian Apadet Ojamong, informed the Committee that:

1. On the role of the Board regarding the relationship between KEMRI and RCTP-FACES NGO and its alleged activity or inactivity about the conflict of interest on the part of KEMRI staff involved in the NGO and on the alleged fraud by KEMRI she stated that:
 - i) The matter of RCTP-FACES NGO first came to the attention of the KEMRI Board of Management on June 26, 2014 during a meeting held at the KEMRI Headquarters. The Board deliberated upon that request and rejected it for reasons

which are captured in the Board minutes of the same day. Once this decision was made, it was the duty of Management to ensure that the decision was implemented.

- ii) The Director however opened further communication with the Deputy Director, Professor Elizabeth Bukusi on the matter culminating in an appeal by the NGO vide letter dated 17th September, 2014, wherein the NGO sought to explain and /or address the concerns of the Board.
 - iii) This appeal was channeled to the relevant Committee of the Board, The Infrastructure and Development Committee (IDC). IDC discussed the matter during its meeting held on the 18th December, 2014 and rejected the same while recommending that more information and/or opinion on the matter be sought. During its next meeting, IDC did not recommend signing of the MOU. The Board, on recommendation and advice of the committee upheld its earlier decision and rejected the signing of the MOU.
2. On Prof. Bukusi's involvement with the RCTP-FACES and her role in drafting the MOU between KEMRI and RCTP-FACES NGO, she stated that from records availed to the Board; communication concerning the process of drafting of the MOU was exchanged between the Director KEMRI and Professor Bukusi on behalf of the NGO.
 3. On the list of board members of the RCTP-FACES NGO and their relationship with KEMRI, she stated that records retrieved from the NGO Council list the officials of the NGO as follows:-
 - i) Dr. Dorothy Mbori Ngacha
 - ii) Dr. Betty Wanjiru Mburu Njoroge
 - iii) Dr. Philip Mbuti Mwangi

She further stated that Dr. Betty Wanjiru Mburu Njoroge was an employee of KEMRI while the rest did not have any relationship with KEMRI. However, Dr. Betty Wanjiru Mburu Njoroge had since resigned from the NGO Board.

4. On allegations of possible conflict of interest involving KEMRI employees and the NGO she stated that:
 - i) The KEMRI Board of Management during its meeting of 11th February, 2016 initiated disciplinary action against its employees who were suspected to be involved in activities of the NGO in a manner that would give room for

conflict of interest. Professor Elizabeth Bukusi was interdicted through a letter dated 11th February, 2016.

- ii) Dr. Betty Wanjiru Mburu Njoroge was required to show cause why she should not face disciplinary action for conflict of interest through a letter dated 12th February, 2016.
 - iii) The two employees were scheduled to appear before the Board for further questioning on Friday, 18 March, 2016. She promised that the Board will take serious actions against anyone found culpable.
5. KEMRI was facing a lot of challenges which the Board, though relatively new, was seized of and was addressing as follows:-
- i) KEMRI had not been having a clear policy on management of grants and collaborative agreements. A Management team was tasked with this assignment and it had researched, benchmarked with various institutions and had come up with a comprehensive Collaborators and Partnership Policy draft to be discussed by the Board on 24th March, 2016.
 - ii) The Board had issued a directive to all KEMRI staff to declare conflicts of interests after its meeting of 28th January, 2016.
 - iii) The Board had advised Management to commission a thorough audit of the Institute's systems for management of scientific programs. The outcome of the audit would further inform decision making.
 - iv) The Board was committed to strengthening the Grantmanship office as part of its Rapid Results Initiative (RRI) to enable the office effectively support scientists in grant management.
 - v) A Chief Finance Officer (Grants) was recruited and reported to work on 1st March, 2016. Her key mandate will be to streamline management of grants.
 - vi) The Board had strengthened the Internal Audit Department by recruiting the Head of that unit with effect from October 2015. The Board had advertised for three more Internal Auditors.
 - vii) In a bid to improve on governance and, in compliance with *Mwongozo*, the Board re-designated the newly recruited Chief Legal Officer to the position of Corporation Secretary from 1st September, 2015.
 - viii) The Human Resource Manual had been reviewed and forwarded to the State Corporations Advisory Committee (SCAC) through the Ministry of

Health on 29th December, 2015. The Procurement Manual was also reviewed and sent to Public Procurement Oversight Authority (PPOA) in November, 2015.

- ix) The Finance Manual was reviewed and a new manual passed for use effective 1st November, 2015.
 - x) KEMRI set out to procure an Enterprise Resource Planning (ERP) system alongside many ICT installations in the year 2011. Regrettably, five years later, these projects had not been successfully completed, a position that was verified by the ICT Authority. The Board was currently addressing responsible management staff while at the same time, budgetary allocations have been made for procurement of new ERP system and adoption of e-procurement.
 - xi) KEMRI's Strategic Plan for 2013-17 was launched in December 2013. The Board had projected to have a mid-term review of the plan in the Month of April, 2016. Some of the emerging issues that called for review of the strategic plan included: financial sustainability, management systems and processes, establishment of a KEMRI University, Cost benefit analysis of KEMRI's business ventures, aligning the strategic plan to new government policy documents e.g *Mwongozo* code of governance.
6. Part of the challenges facing KEMRI was arising from the fact that over 80% of its research budget was funded by donors who control the research agenda. The Board was engaging the parent Ministry for enhanced research funding. She therefore requested for assistance from the Health Committee on the same.
 7. On the lack of a clear policy on management of grants at KEMRI, the Board Chairperson stated that there was no policy on management of grants at KEMRI however; it was in the process of preparing one. KEMRI was relying on other documents such as its finance and human resource manuals and the Public Officer Ethics Act, 2005.
 8. On the reaction of the Board to the formation of the RCTP-FACES NGO, the Board Chairperson stated that it considered that as conflict of interest especially with regard to a draft MOU proposing transfer of property from KEMRI to the NGO and involvement of a senior KEMRI staffer, Prof. Elizabeth Bukusi, the founder member of the NGO.

3.5 MEETING WITH A WITNESS (PROF. ELIZABETH BUKUSI)

Prof. Elizabeth Bukusi, Deputy Director for Research and Development (DDRD) at KEMRI, appeared before the Committee on 15th March, 2016 and informed the Committee that:

1. She had been accused of a conflict of interest, which was said to arise from the fact that while serving as Deputy Director for Research and Development (DDRD) at the Kenya Medical Research Institute (KEMRI) she simultaneously served as Principal Investigator (PI) of a number of projects being supported by the Research, Care and Training Programme-Family AIDS Care and Education Services (RCTP-FACES) NGO.
2. She had been accused of abuse of office because RCTP was considered to somehow be in competition with KEMRI in matters of funding and the implication subsequently was that there was an abuse of office that involved the deliberate channeling of funds meant for KEMRI to RCTP-FACES.
3. On the foregoing accusations, she stated that:
 - i) No funds meant for KEMRI had ever been diverted to the functions of RCTP-FACES. Indeed, the opposite was true – that RCTP-FACES was a major contributor to the funding of KEMRI research projects. Hence the creation of RCTP-FACES had led to additional funds being channeled into KEMRI.
 - ii) The relationship between RCTP-FACES and KEMRI was mutually collaborative and supportive and their functions did not conflict. She was only keeping with global best practice by conducting a number of independent research projects through RCTP-FACES while simultaneously serving as the DDRD at KEMRI.
 - iii) The financing arrangements between the two institutions – KEMRI RCTP-FACES had at all times been transparent.
4. It would be in the national interest for the National Assembly's Health Committee to meet with the group of those involved in biomedical research, at least once a year to discuss the challenges they face in their field and the opportunities that, if effectively seized, would be of great benefit to the country.
5. On why the NGO was using the name of an existing RCTP-FACES KEMRI program, Prof. Elizabeth Bukusi indicated that this was meant to build on and take advantage of the track record established by the KEMRI program.

6. On the seeming conflict of interest inherent while she served as Deputy Director at KEMRI and her writing to the Director, KEMRI over an MOU that seemed to favor an NGO she founded, she stated that that was a standard procedure at KEMRI where as a point person, she communicated with the KEMRI Director just like she would have if any other organization was involved.
7. On her apparent support for secondment of staff to the NGO, she stated that it was done on the understanding that KEMRI would benefit through support to its programs.
8. On the motivation for setting up the RCTP-FACES NGO, she stated that PEPFAR indicated that it wasn't keen on funding care programs within KEMRI as the institution had research as its core business hence the motivation to start the NGO that would qualify for such funding.
9. On allegations of frustrations by the KEMRI Board to access the University of California, San Francisco management over establishment of the RCTP-FACES NGO, she stated that she hadn't and the fact that Prof. Cohen was responding through her as the Principal Investigator was the mode of operation at the UCSF.

3.6 MEETING WITH A WITNESS (DR. PATRICK OYARO)

Dr. Patrick Oyaro, CEO, RCTP-FACES NGO appeared before the Committee on 15th March, 2016 and informed the Committee that:

1. He was employed by the Kenya Medical Research Institute (KEMRI) to work on the FACES project between February 2008 and December 2015 on annual renewable contracts, with renewal pegged on annual performance appraisals.
2. He joined the FACES program as a District Coordinator and rose through the years to the position of Director of the FACES program. In his role as the Director of the FACES program, he reported to Prof. Elizabeth Bukusi, the KEMRI/KENYA Principal Investigator and through her to Prof. Craig Cohen the overall Principal Investigator based at the University of California San Francisco (UCSF).
3. On the KEMRI and RCTP – FACES NGO relationship he stated that the RCTP-FACES NGO was formed to play a complementary role to KEMRI's goals in two main ways:-
 - i) By seeking funding where KEMRI as a Semi-Autonomous Government Agency, would not be eligible to apply as the prime (main) applicant with the goal being that the RCTP-FACES NGO would work closely with

KEMRI and international Universities like UCSF and University of Washington through tripartite teaming agreements.

- ii) By playing an important role in supporting the Ministry of Health in the target Districts/Counties to implement health care programs, a role for which KEMRI, as a core research institution, would not be as favored for funding.

4. On his role with regard to the RCTP – FACES NGO he stated that:

- i) On 14th February 2014, he was appointed in the interim position as the acting CEO of the RCTP-FACES NGO pending the outcome of the proposed MOU between the RCTP –FACES NGO and KEMRI.
- ii) His role in the interim position of CEO of the RCTP –FACES NGO, was to coordinate the managerial decisions on any of the NGO specific projects or studies that had any funding channelled through the NGO and as per the various donor stipulations.
- iii) In the interim position as the acting CEO, he reported to the Board of Management chaired by Prof. Dorothy Mbori Ngacha. The Board of the RCTP FACES NGO had 8 members.
- iv) Dr. Betty Njoroge who had stepped in as the Secretary to the Board when Prof Bukusi resigned was the only Board member who was affiliated to KEMRI, but her membership was on personal basis and not as a KEMRI representative. However, Dr. Betty Njoroge had since resigned.
- v) The RCTP-FACES NGO had requested for a formal MOU with KEMRI and indicated the wish to have a senior KEMRI management staff to join the Board to officially ensure KEMRI interests were taken care of and a decision by the KEMRI Board regarding this request was still pending.

6. On alleged possible conflict of interest he stated that:

- i) The process of waiting for the MOU to be agreed upon had possibly caused the perception of conflict of interest, since he was serving both as the Director for FACES (KEMRI) and also as the acting CEO of the RCTP FACES NGO. However he stated that his previous involvement in the NGO during his employment with KEMRI was done in good faith to ensure continuity and also to safeguard KEMRI's interests. It was a position with no personal gain and despite the additional responsibilities he received no additional remuneration. During the period in question, he was a KEMRI employee and only drew one salary, paid by KEMRI.

- ii) In the interim, he had been waiting for further guidance on the finalization of the MOU which would have allowed for exchange of staff and formalized his position. He transitioned to a full employee of the RCTP FACES NGO after 2 years of waiting and was later confirmed to the position of the CEO after his transition to the NGO payroll.
 - iii) The transition to the RCTP NGO pay roll was necessitated by audit concerns as he was still a KEMRI contract employee and there was no executed MOU between the NGO and KEMRI.
7. On the audit process for the co-funded projects i.e. funding going both to RCTP-FACES NGO and RCTP-FACES program, Dr. Patrick Oyaro stated that funds going to the KEMRI program were audited through KEMRI while those going to the RCTP-FACES NGO were audited through the NGO coordination board and pipeline reports demanded by donors every quarter.

3.7 MEETING WITH THE PROF. NJERI WAMAE – A FORMER EMPLOYEE AT KEMRI.

Prof. Njeri Wamae, the Chairperson National Commission for Science, Technology and Innovation Commission appearing in her individual capacity as former employee of KEMRI where she held the position of the Director, Centre for Microbiology Research informed the Committee as follows:

- i. She was the Director of the Centre for Microbiology Research between 2002 and 2009 where the RTCP-FACES program is based. At inception, the program was known as RTCP, and the MOU for the collaborative research in the program was between KEMRI and the University of California, San Francisco (UCSF).
- ii. She left KEMRI in 2009 under constructive dismissal having requested for a three year leave of absence without pay after the work environment became difficult to operate in, owing to her stand on the running of the RTCP program. The request was made to the then Acting Director/KEMRI-Dr. Monique Wasunna in a letter dated April 27th 2009 and the response of acceptance dated May 6th 2009 from the then Deputy Director Administration and Finance Dr. Patrick A Orege received. Another response of acceptance was received from Dr. Solomon Mpoke dated 22nd September 2009. In his letter, her obligation to sustain the pension scheme was highlighted.
- iii. She resumed her position in 2012 but during that period, she was unable to access records or any information relating to the program between 2009 -2012.
- iv. In 2015, she opted for early retirement and is currently the Chairperson National Commission for Science, Technology and Innovation (NACOSTI)

- v. As the Director, CMR she helped in the drafting of the original MOU dated November 1, 2004. She however could not access the final MOU signed and what she was privy to was the draft MOU.
- vi. The draft MOU provided that ownership of any facility or equipment constructed or acquired in the course of collaboration with funds jointly solicited by the parties for that research project would reside in the institution that was the site of the project for which the facility or equipment was bought or purchased unless otherwise specified by the project sponsor or by the parties in writing in a separate written agreement provided however that the party whose institution was not the site of the project would have full use of and access to such facility or equipment throughout the term of the MOU.
- vii. The MOU did not address operationalization of accounts but funds to the Program were allocated as a vote within the KEMRI budget and therefore audited by KEMRI. The Director CMR and the project Accountant were signatories to the account.
- viii. At the point of drafting the MOU, KEMRI did not have a legal officer and the institution was outsourcing.
- ix. As the Director, CMR, she was sidelined in decisions involving the RCTP program i.e. in decisions occasioning financial expenditure where the then Centre for Microbiology Research (CMR), Accountant frustrated her efforts in streamlining financial operations. In June 2009, she wrote to the then Principal Research Officer and Co- Director RCTP concerning the progress in the CMR-RCTP/FACES project Dr. Bukusi and raised several issues of concern amongst them the high costs incurred on per diems, air fares and cab hires for project staff based in Nairobi but with frequent travel to Kisumu.
- x. She was privy to information that there was an attempt to revise the MOU in 2014 but the MOU being revised was between the RTCP- FACES Program and KEMRI.

4.0 FINDINGS

The Committee made the following findings from evidence adduced in meetings, that:-

1. There was need to properly fund KEMRI through government budgeting to ensure a Kenya driven research agenda as overreliance on donor supported research meant donors prioritize their interests;
2. There was need to review the KEMRI Act and also enact a law to guide a research institution as the current legal framework seems inadequate;

3. The problems of procurement and finances at KEMRI had led to donors like the CDC seeking to work with systems/organizations outside KEMRI. It was notable that formation of the RCTP-FACES NGO was an attempt to circumvent the inefficient procurement and finance systems at KEMRI;
4. The comingling of funds under the CDC/KEMRI collaboration led financial impropriety due to conflict of interest among the KEMRI employees which consequently had led to loss of jobs of many employees;
5. The appointment of an agent to manage the CDC/KEMRI collaboration finances indicated lack of confidence in the KEMRI systems.
6. There was evidence of cases of hiring of staff at KEMRI without due regard to their qualifications vis-a-vis the advertised qualifications even when qualified applicants exist.
7. There was evidence of cases of conflict of interest among the employees of Kemri who doubled up as employees of the RCTP-FACES NGO. The employees with vested interest had drafted a defective memorandum of understanding that contemplated to transfer Kemri assets to the NGO. This was tantamount to defrauding government of public resources.
8. It was evident that the KEMRI operated without an up-to-date finance manual, human resource policy and manual, guidelines for performance contracting and a scheme of service for its employees that may have led to human resource malpractice at the institution.
9. The Kemri Board of Management had not taken action on issues of clear conflict of interests among the employees, human resource malpractice and financial mismanagement and misappropriation.
10. There was clear loss of confidence in KEMRI by the donors some of whom had appointed their own agents to manage the funds they were contributing to the institution. Further, such lack of confidence may have resulted to the formation of the RCTP-FACES NGO
11. There was need to properly fund KEMRI through government budgeting to ensure a Kenya driven research agenda as overreliance on donor supported research meant research was donor driven hence donors prioritize their interests.
12. The formation of RCTP-FACES NGO was a clear case of defrauding KEMRI RCTP-FACES Program by leveraging on the track record for purposes of attracting donor funding for the NGO.

13. There was no policy on management of grants at KEMRI, a major weakness to have been exploited by staff to benefit themselves at the expense of the institute's interests.
14. There was an initial investigation by EACC on the KEMRI – Family Bank Scheme but no conclusive findings were relayed (Letter Ref. No. EACC/14/5 (23)).

5.0

COMMITTEE RECOMMENDATIONS

In response to the prayers by the petitioner, the Committee recommends that:-

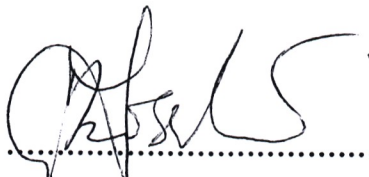
1. On Human resource management policy and practices, the KEMRI Board of Management should:

- i) Through the Ministry of Health, ensure that the State Corporations Advisory Committee (SCAC) fast tracks the approval of the KEMRI human resource policy and manual and the same be implemented immediately by the KEMRI management.
- ii) Ensure the KEMRI management puts in place a scheme of service and guidelines for hiring and performance contracting for all employees serving the institute.
- iii) Review cases of conflict of interest with respect to the following members of staff's relationship with the RCTP-FACES NGO and institute appropriate disciplinary action if found culpable:
 - a) Prof. Elizabeth Anne Bukusi
 - b) Dr. Betty Wanjiru Mburu Njoroge
 - c) Dr. Patrick Oyaro (former member of staff)

2. On financial management:

- i. The Ethics and Anti-Corruption Commission and other relevant state agencies to conduct investigations on alleged misappropriation of funds under the KEMRI/CDC program; the INTROMID program; the mortgage scheme that was being run by KEMRI through Family Bank and the nineteen (19) bank accounts held by Prof. Elizabeth Anne Bukusi as the deputy director of KEMRI and take action against anyone found culpable of mismanagement and misappropriation of funds.
- ii. The Ministry of Health should put in place a policy on management of grants at KEMRI by December 2016.
- iii. The Ministry of Health should make budget proposals with respect to research funding at KEMRI for consideration by the National Assembly in the 2017/18 Financial Year to reduce dependence on grants from donors to encourage research on local problems.

3. The National Assembly in collaboration with the Ministry of Health to review, amend or enact a legal framework to guide medical research institutions such as KEMRI as the current legal framework was either obsolete or inadequate.
4. The KEMRI Board of Management should initiate negotiations with the RCTP-FACES NGO with a view to having it drop the use of the name of one of its programs. If such negotiations fail, the Board should consider instituting a legal process to challenge the same.
5. The Ministry of Health should report to the National Assembly on the implementation of the above recommendations within 90 days from the date of tabling of this report.

Signature:  Date: 5/7/2016

HON. (DR.) ROBERT PUKOSE, MP.
FOR: CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

ANNEX A

ADOPTION LIST

DC-H: DEPARTMENTAL COMMITTEE ON HEALTH

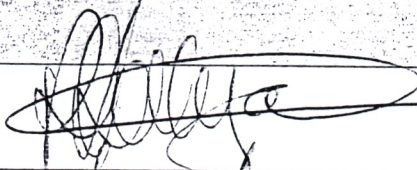
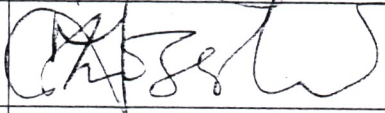
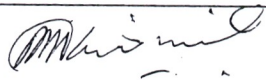
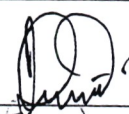
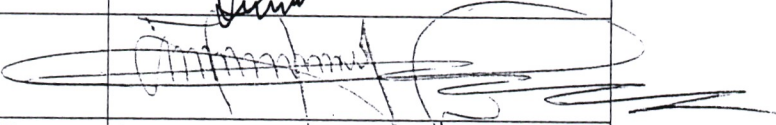
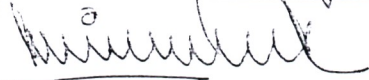
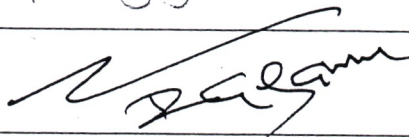

ATTENDANCE REGISTER




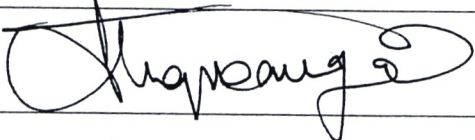
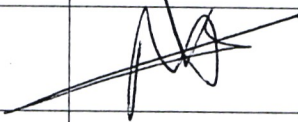



AGENDA:

CONSIDERATION AND ADOPTION OF PENDING REPORTS

DATE: 9th June 2016

VENUE: Small dining

	HON. MEMBER	SIGNATURE
1.	The Hon. Dr. Rachel Nyamai, M.P. Chairperson	
2.	The Hon. Dr. Robert Pukose, M.P. Vice Chairperson	
3.	The Hon. Alfred Agoi, M.P.	Absent
4.	The Hon. Alfred Sambu, M.P.	Absent
5.	The Hon. David Karithi, M.P.	
6.	The Hon. Dr. Dahir D. Mohamed, M.P.	
7.	The Hon. Jared Opiyo, M.P.	
8.	The Hon. Dr. Enoch Kibunguchy, M.P. Chairman	
9.	The Hon. Dr. James Murgor, M.P.	Apology
10.	The Hon. Dr. James Nyikal, M.P.	Apology
11.	The Hon. Dr. James O. Gesami, M.P.	
12.	The Hon. Dr. Naomi Shaban, M.P.	
13.	The Hon. Dr. Patrick Musimba, MP	Absent
14.	The Hon. Dr. Stephen Wachira, M.P.	

	HON. MEMBER	SIGNATURE
15.	The Hon. Dr. Susan Musyoka, M.P.	
16.	The Hon. Fred Outa, M.P.	Absent
17.	The Hon. Hassan Aden Osman, M.P.	
18.	The Hon. James Gakuya, M.P.	
19.	The Hon. John Nyaga Muchiri, M.P., HSC	Absent
20.	The Hon. Joseph O. Magwanga, M.P.	
21.	The Hon. Kamande Mwangi, M.P.	Absent
22.	The Hon. Leonard Sang, M.P.	Absent
23.	The Hon. Michael Onyura, M.P.	
24.	The Hon. Robert Mbui, M.P.	Absent
25.	The Hon. Mwinga Gunga, M.P.	Apologies
26.	The Hon. Paul Koinange, M.P.	
27.	The Hon. Raphael Milkau Otaalo, M.P.	
28.	The Hon. Stephen M. Mule, MP	Absent
29.	The Hon. Zipporah Jesang, M.P.	

ANNEX B

A COPY OF THE PETITION

THE NATIONAL ASSEMBLY
RECEIVED
09 JUL 2015
DIRECTOR COMMITTEE SERVICES
Time: 10:00 am

Directorate of Legislative and Procedural
Services

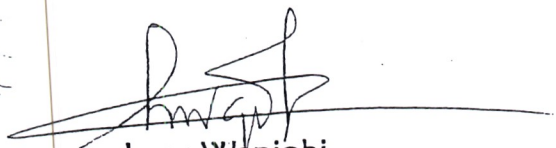
MEMO

TO : DIRECTOR, COMMITTEE SERVICES
FROM : PRINCIPAL CLERK
DATE : 8TH JULY, 2015
SUBJECT : PUBLIC PETITION

Pursuant to *Standing Order 220*, the following Petition was presented to the House on Wednesday, 08 July 2015;

- 1. Petition presented by Hon. David Eseli, MP, regarding alleged mismanagement and misappropriation of funds at the Kenya Medical Research Institute.

Please find the enclosed Petition for your action.

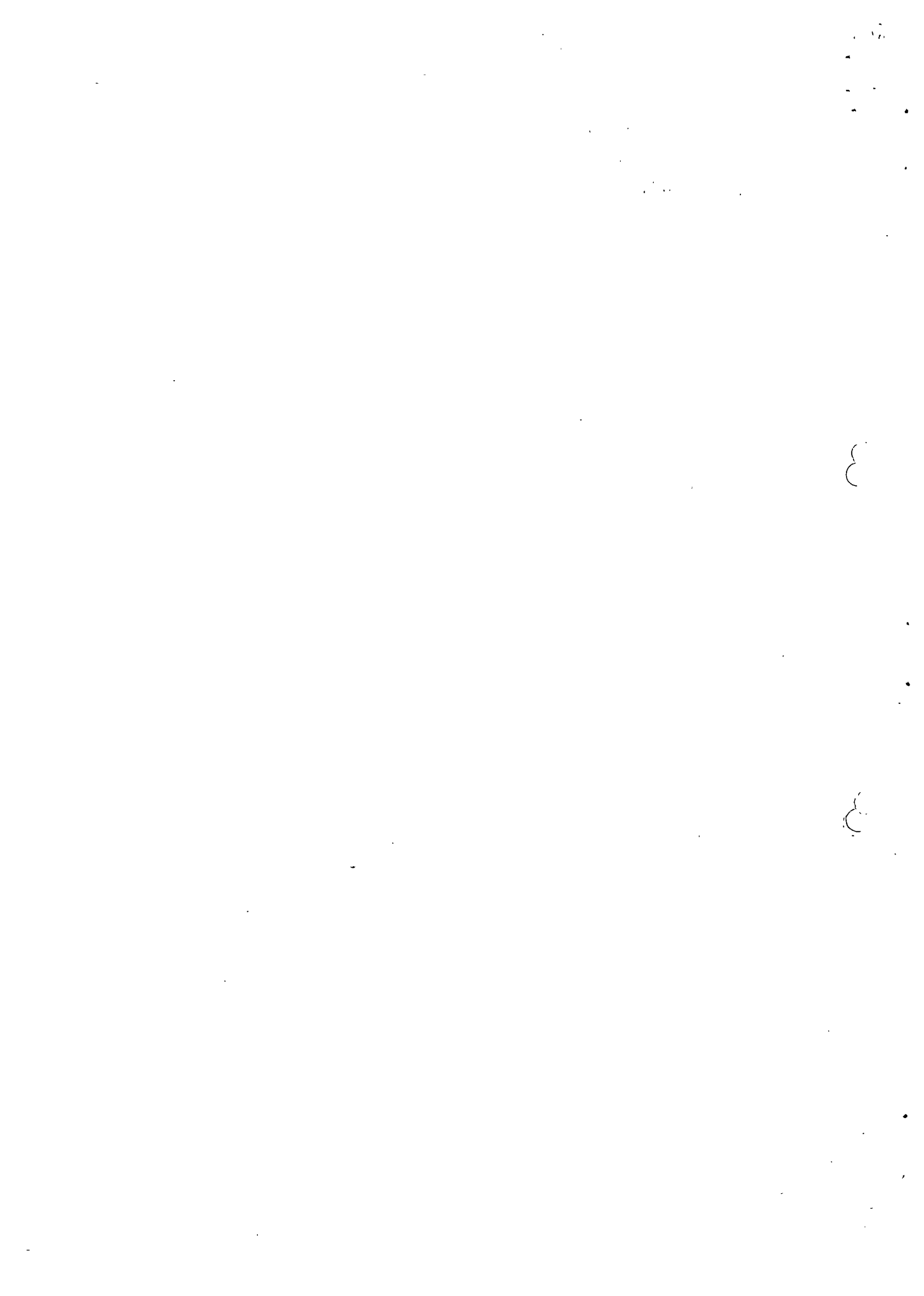

Lucy Wanjohi

ES/HER

pls deep
FA
09/7

Copy to: Clerk of the National Assembly
Director, Legislative and Procedural Services
Chair, Departmental Committee on Health

Encl.



REPUBLIC OF KENYA



Approved by
SMA
7/7/15

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT
(THIRD SESSION)

PUBLIC PETITION

BY PETER OROWE NYAMBOK ON ALLEGED MISMANAGEMENT &
MISAPPROPRIATION OF FUNDS AT THE KENYA MEDICAL RESEARCH INSTITUTE
(KEMRI)

I, the UNDERSIGNED, on behalf of Mr. Peter Orowe Nyambok, a resident of Rodi Kopany, Homa Bay County;

DRAW the attention of the House on the following: -

- i. THAT the Kenya Medical Research Institute (KEMRI) is an institute under the State Department of Health performing a National function as a research institute;
- ii. THAT, the Kenya Medical Research Institute has failed in its mandate and does not have a clear Human Resource Policy and manual to guide its Human Resource practices resulting in frustration of employees;
- iii. THAT, Kenya Medical Research Institute has severally failed to obey court orders in regard to Human Resource malpractices, in particular failure to adhere to collective bargaining agreement;
- iv. THAT, the institution's management allegedly misappropriated donor funding which resulted to withdrawal of funding by development partners in particular the Centre for Disease Control (CDC) leading to loss of employment of over seven hundred employees;
- v. THAT, efforts to resolve this matter with the relevant government institutions has been futile.
- vi. THAT, the matter presented in this petition is not pending before any tribunal or court of law;

PUBLIC PETITION

BY PETER OROWE NYAMBOK ON ALLEGED MISMANAGEMENT &
MISAPPROPRIATION OF FUNDS AT THE KENYA MEDICAL RESEARCH INSTITUTE
(KEMRI)

HEREFORE your humble Petitioner pray that the National Assembly, through the Departmental Committee of Health: -

- i. Recommends immediate probe into the affairs of the Kenya Medical Research Institute in particular the management structure, human resource management policy and practices and financial management;
- ii. Ensures that the Petitioner's plight is addressed; and
- iii. Makes any other order or direction that it deems fit in the circumstances of the case.

And your PETITIONERS will ever pray.

PRESENTED BY: 

HON. (DR.) DAVID ESELI SIMIYU, MP
MEMBER FOR TONGAREN CONSTITUENCY

DATE:.....7.7.2015.....

2012

Petitions to Parliament (Procedure)

No. 22

Name of petitioner	Full Address	National ID. or Passport No.	Signature/ Thumb impression
PETER DROWE NYAMBAKI	Box 100 R.O.A.- KARANTH VIA HAMBURG	9306504	Signature
.....
.....
.....

PETITION concerning..... *PETER DROWE NYAMBAKI on Alleged*
 (Here, repeat the summary in first page) *mismanagement & misappropriation of*
fund of the Kenya Medical Research Institute
(KEMRI)

Name of petitioner
Signature/Thumb

impression

.....

(Subsequent Pages)

* This form may contain such variations as the circumstances of each case may require.

The undersigned Citizen of republic of Kenya and resident of RODI - KOPANY – Homa Bay county draw the attention of the National Assembly to the following:

- 1 That Kenya Medical Research Institute (KEMRI) which is an institution under the state department of health performing a National function mainly as a research institute is gradually failing in its mandate.
- 2 That KEMRI doesn't have a clear Human Resource Policy and manual to guide its HR practices resulting in frustration of employees and loss of employment by many such employees and failure to obey court orders related to HR malpractices
- 3 That KEMRI has not prudently handled financial resources brought in by International Research partners resulting in the withdrawal of funding by these partners leading to loss of employment of over 700 people as the research project was halted..
- 4 That employees have been intimidated into silence and over 700 have lost their jobs due to withdrawal of donors

Wherefore your humble petitioner prays that National Assembly through the relevant Committee of Health:

- 1 Initiates an immediate overall probe into the affairs of KEMRI to address the following issues and any other coincidental matters they may come across.
 - (a) Overall management of structure of KEMRI
 - (b) Human Resource Management policy and practices
 - (c) Financial management especially for the payroll
 - (d) Utilization of research partners Funds in paying non – research people two salary's, one of which is not taxed

PETITION MADE TO THE NATIONAL ASSEMBLY PURSUANT TO
ARTICLE 119 OF THE CONSTITUTION OF KENYA (2010) AND
THE NATIONAL ASSEMBLY STANDING ORDERS

BY

MR. PETER OROWE NYAMBOK

ID NO 9306504

P.O.BOX 100 RODI – KOPANY

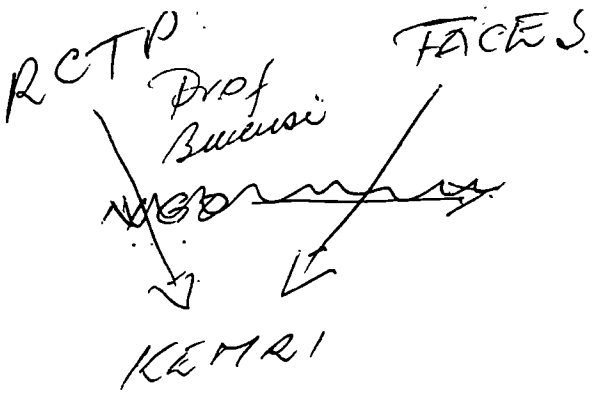
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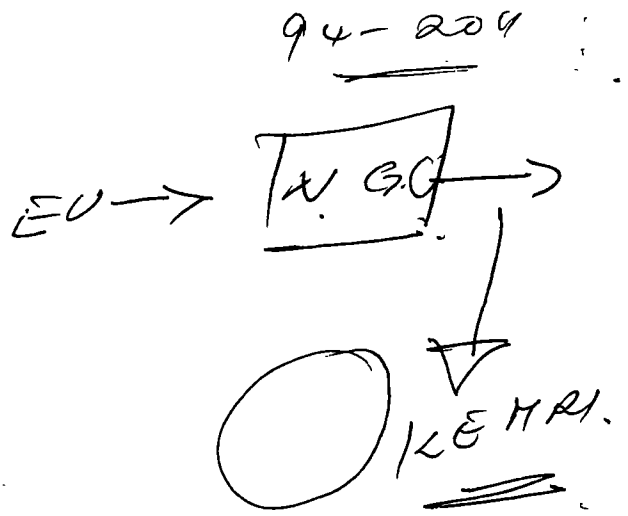
HON. Dr. DAVID ESELI SIMIYU

MP. TONGAREN CONSTITUENCY

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ANNEX C

COMMITTEE MINUTES

MINUTES OF THE 41ST SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 9TH JUNE, 2016, IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS, AT 10.00 AM.

PRESENT

1. The Hon. Dr. Enoch Kibunguchy, M.P.- Chairing
2. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
3. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
4. The Hon. David Karithi, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Hassan Aden Osman, M.P.
7. The Hon. Joseph Oyugi Magwanga, M.P.
8. The Hon. Paul Koinange, M.P.
9. The Hon. Jared Opiyo, M.P.
10. The Hon. Dr. James O. Gesami, M.P.
11. The Hon. Dr. Naomi Shaban, M.P.
12. The Hon. Dr. Susan Musyoka, M.P.
13. The Hon. James Gakuya, M.P.
14. The Hon. Michael Onyura, M.P.
15. The Hon. Raphael Milkau Otaalo, M.P.
16. The Hon. Zipporah Jesang, M.P.

ABSENT WITH APOLOGY

1. The Hon. Alfred Agoi, M.P.
2. The Hon. John Nyaga Muchiri, M.P.
3. The Hon. Dr. James Nyikal, M.P.
4. The Hon. Dr. James Murgor, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Alfred Sambu, M.P.
7. The Hon. Fred Outa, M.P.
8. The Hon. Robert Mbui, M.P.
9. The Hon. Stephen M. Mule, M.P.
10. The Hon. Dr. Stephen Wachira, M.P.
11. The Hon. Leonard Sang, M.P.
12. The Hon. Mwinga Gunga, M.P.
13. The Hon. Kamande Mwangi, M.P.

IN ATTENDANCE

National Assembly Secretariat

1. Ms. Ruth Mwihaki - Third Clerk Assistant.
2. Mr. Dennis Mogare - Third Clerk Assistant.

MIN.NO. DCH 165/2016:**PRELIMINARIES.**

The Chairperson called the meeting to order at 10.25 am and a prayer was said by Hon. Dr. Susan Musyoka, M.P.

MIN.NO.DCH 166/2016:**CONFIRMATION OF MINUTES**

Minutes of the 28th Sitting held on Tuesday 26th April, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. James Gakuya, M.P. and Hon. Michael Onyura, M.P. respectively.

Minutes of the 29th Sitting held on Thursday 28th April, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Michael Onyura, M.P. and Hon. Zipporah Jesang, M.P. respectively.

Minutes of the 30th Sitting held on Tuesday 3rd May, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Zipporah Jesang, M.P. and Hon. Dr. Robert Pukose, M.P. respectively.

Minutes of the 31st Sitting held on Thursday 5th May, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Michael Onyura, M.P. and Hon. Raphael Milkau Otaalo, M.P. respectively.

Minutes of the 32nd Sitting held on Tuesday 10th May, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Raphael Milkau Otaalo, M.P. and Hon. Michael Onyura, M.P. respectively.

MIN.NO.DCH 167/2016:**MATTERS ARISING**

The following matters arose from the previous Minutes:

1. Under MIN.NO.DCH 118/2016:

1. In regards to concerns raised by two senior Doctors, Prof Richard Muga and Prof George Magoha regarding the Management of County Referral Hospitals, Members noted that before its disbandment, the Constitutional Implementation Commission had advised that it was not possible to have a Commission on Health established without a constitutional referendum. Members further noted that there was need to come up with a way, either through pushing for a constitutional amendment to address either the Human Resource Aspect or the entire devolution of Health in order to address the issues facing the sector.

It was resolved that the Hon.Dr. Enoch Kibunguchy, M.P would bring an initiative to the committee aimed at having some health functions revert back to the National Government.

2. Under **MIN.NO.DCH 124/2016:**

The Committee resolved that two teams be formed to conduct inspection visits on the Managed Equipment Service to Kakamega, Kisumu, Malava, Busia, Moi Teaching and Referral Hospital and Nakuru, Naivasha, Nyahururu respectively before the end of the 2015/2016 financial year.

The Committee further resolved that an inspection visit to Coast General Hospital be scheduled for Friday 17th June 2016 alongside the scheduled Committee retreat in Mombasa between 16th and 19th June 2016 to consider reports and Legislative proposals.

The report arising out of the inspection to form the basis of requesting for an audit of the MES project.

MIN.NO.DCH 168/2016:

**CONSIDERATION AND ADOPTION
OF PENDING REPORTS.**

The Committee considered the following report:

**i. REPORT ON THE CONSIDERATION OF A PETITION REGARDING
ALLEGED MISMANAGEMENT AND MISAPPROPRIATION OF FUNDS
AT THE KENYA MEDICAL RESEARCH INSTITUTE**

The report was adopted after being proposed by the Hon. Dr. Susan Musyoka, M.P and Seconded by the Hon. Dr. Enoch Kibunguchy, M.P.

**ii. REPORT ON THE CONSIDERATION OF THE PETITION BY MR.
ELIJAH KINGORI GITHIMA REGARDING THE DEPLORABLE STATE OF
MENTAL HEALTH CARE FACILITIES IN KENYA**

The report was adopted after being proposed by the Hon.Dr. Naomi Shaban, M.P and seconded by the Hon. Paul Koinange, M.P.

MIN.NO. DCH 169/2016:

ADJOURNMENT

There being no other business the meeting was adjourned at 12.30 pm.

SIGNED: 

**HON (DR.) RACHAEL NYAMAI, M.P.
CHAIRPERSON**

DATE: 28/06/2016

MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 12TH APRIL, 2016, IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS, AT 10.00 AM.

PRESENT

1. The Hon. Dr. Robert Pukose, M.P. (Chairing)
2. The Hon. Dr. James O. Gesami, M.P.
3. The Hon. Christopher Nakuleu, M.P.
4. The Hon. Dr. Naomi Shaban, M.P.
5. The Hon. Michael Onyura, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. Dr. Eseli Simiyu, M.P.
9. The Hon. Dr. James Murgor, M.P.
10. The Hon. David Karithi, M.P.
11. The Hon. Raphael Milkau Otaalo, M.P.
12. The Hon. Dr. Enoch Kibunguchy, M.P.
13. The Hon. Dr. Stephen Wachira, M.P.
14. The Hon. Dr. Susan Musyoka, M.P.
15. The Hon. Kamande Mwangi, M.P.
16. The Hon. Mwinga Gunga, M.P.
17. The Hon. Leonard Sang, M.P.
18. The Hon. Stephen M. Mule, M.P.

ABSENT WITH APOLOGY

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. John Nyaga Muchiri, M.P.
3. The Hon. Fred Outa, M.P.
4. The Hon. James Gakuya, M.P.
5. The Hon. Joseph O. Magwanga, M.P.
6. The Hon. Dr. Dahir D. Mohamed, M.P.
7. The Hon. Alfred Agoi, M.P.
8. The Hon. Paul Koinange, M.P.
9. The Hon. Zipporah Jesang, M.P.
10. The Hon. Mwahima Masoud, M.P.
11. The Hon. Dr. Patrick Musimba, M.P.

IN ATTENDANCE

1. Prof. Njeri Wamae - Former Director, Centre for Microbiology Research (CMR) KEMRI

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Ruth Mwhaki - Third Clerk Assistant.

MIN.NO. DCH 96 /2016: PRELIMINARIES.

The Chairperson called the meeting to order at 10.27 am with a word of prayer and thereafter welcomed Members present and the witness to the meeting and asked them to introduce themselves.

MIN.NO.DCH 97/2016: MEETING WITH THE PROF. NJERI WAMAE ON THE PETITION BY HON. DR. DAVID ESELI, MP ON ALLEGED MISMANAGEMENT AND MISAPPROPRIATION OF FUNDS AT KEMRI.

Prof. Njeri Wamae, the Chairperson National Commission for Science, Technology and Innovation Commission appearing in her individual capacity as former employee of KEMRI where she held the position of the Director, Centre for Microbiology Research informed the Committee as follows:

- i. She was the Director of the Centre for Microbiology Research between 2002 and 2009 where the RTCP-FACES program is based. At inception, the program was known as RTCP, and the MOU for the collaborative research in the program was between KEMRI and the University of California, San Francisco (UCSF).
- ii. She left KEMRI in 2009 under constructive dismissal having requested for a three year leave of absence without pay after the work environment became difficult to operate in, owing to her stand on the running of the RTCP program. The request was made to the then Acting Director/KEMRI-Dr. Monique Wasunna in a letter dated April 27th 2009 and the response of acceptance dated May 6th 2009 from the then Deputy Director Administration and Finance Dr. Patrick A Orege received. Another response of acceptance was received from Dr. Solomon Mpoke dated 22nd September 2009. In his letter, her obligation to sustain the pension scheme was highlighted.
- iii. She resumed her position in 2012 but during that period, she was unable to access records or any information relating to the program between 2009 - 2012.
- iv. In 2015, she opted for early retirement and is currently the Chairperson National Commission for Science, Technology and Innovation (NACOSTI)
- v. As the Director, CMR she helped in the drafting of the original MOU dated November 1, 2004. She however could not access the final MOU signed and what she was privy to was the draft MOU.
- vi. The draft MOU provided that ownership of any facility or equipment constructed or acquired in the course of collaboration with funds jointly solicited by the parties for that research project would reside in the institution that was the site of the project for which the facility or equipment was bought or purchased unless otherwise specified by the project sponsor or by the parties in writing in a separate written agreement provided however that the party whose institution was not the site of the project would have full use of and access to such facility or equipment throughout the term of the MOU.

- vii. The MOU did not address operationalization of accounts but funds to the Program were allocated as a vote within the KEMRI budget and therefore audited by KEMRI. The Director CMR and the CMR Accountant were signatories to the account.
- viii. At the point of drafting the MOU, KEMRI did not have a legal officer and the institution was outsourcing.
- ix. As the Director, CMR, she was sidelined in decisions involving the RCTP program i.e. in decisions occasioning financial expenditure where the then Centre for Microbiology Research (CMR) Accountant frustrated her efforts in streamlining financial operations. In June 2009, she wrote to the then Principal Research Officer and Co- Director RCTP concerning the progress in the CMR-RCTP/FACES project Dr. Bukusi and raised several issues of concern amongst them the high costs incurred on per diems, air fares and cab hires for project staff based in Nairobi but with frequent travel to Kisumu.
- x. She was privy to information that there was an attempt to revise the MOU in 2014 but the MOU being revised was between the RTCP- FACES Program and KEMRI.

The Committee observed that:-

- i. There was a lacuna in law in regard to research institutions in that they are not well covered in the current legal regime leading to mismanagement of funds for research funded programs/projects.
- ii. There was a management issue in KEMRI in relation to the donor funded programs and projects. There was therefore need to assess and review the structure of KEMRI in relation to the management of various programs, and also review the enabling law.

The Committee resolved that:-

- i. The Current Director Centre for Microbiology Research, the then Deputy Director Administration and Finance and the then CMR Accountant be invited to appear before the Committee two weeks from the date of the Sitting to shed more light on the Petition.
- ii. The Act establishing KEMRI and the Gazzete notice establishing KEMRI be availed to the Committee.
- iii. Prof. Njeri Wamae to make a written submission to the Committee in two weeks from the date of the sitting on the following areas:-
 - a) Any additional information that may be useful to the Committee in as far as the petition was concerned.
 - b) Provide the name of the Law firm representing KEMRI at the time of drafting the MOU between KEMRI and UCSF.
 - c) Provide any recommendations in her capacity as the Chairperson NACOSTI, and as a former Director CMR.

MIN.NO.DCH 98/2016: ANY OTHER BUSINESS.

The Committee noted the following under this agenda item that:-

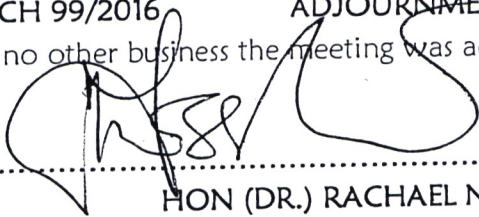
- i. The Cabinet Secretary for Health was yet to give a progress report to the Committee on the Managed Equipment Service (MES) project and the Slum upgrading project despite the projects being allocated funds in the 2014/15 and 2015/16 financial Years.
- ii. The Committee resolved that the Cabinet Secretary be invited to appear before the Committee to give a progress report on the MES and Slum upgrading projects as well as provide a list of the equipment, where supplied and also provide a list of dialysis centres. The Committee will consequently schedule inspection visits once the report is received from the Ministry.

MIN.NO. DCH 99/2016

ADJOURNMENT

There being no other business the meeting was adjourned at 12.06 pm.

SIGNED.....



HON (DR.) RACHAEL NYAMAI, M.P
CHAIRPERSON

DATE:.....

14/9/16

MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 15TH MARCH, 2016 IN THE BOARDROOM ON 2ND FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM.

PRESENT

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Hassan Aden Osman, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Christopher Nakuleu, M.P.
6. The Hon. Dr. James O. Gesami, M.P.
7. The Hon. David Karithi, M.P.
8. The Hon. Mwinga Gunga, M.P.
9. The Hon. Zipporah Jesang, M.P.
10. The Hon. Dr. Enoch Kibunguchy, M.P.
11. The Hon. Dr. Eseli Simiyu, M.P.
12. The Hon. Dr. James Murgor, M.P.
13. The Hon. James Gakuya, M.P.
14. The Hon. Joseph O. Magwanga, M.P.
15. The Hon. Michael Onyura, M.P.
16. The Hon. Raphael Milkau Otaalo, M.P.

ABSENT WITH APOLOGY

1. The Hon. Paul Koinange, M.P.
2. The Hon. Kamande Mwangi, M.P.
3. The Hon. John Nyaga Muchiri, M.P.
4. The Hon. Fred Outa, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. Stephen M. Mule, M.P.
8. The Hon. Dr. Naomi Shaban, M.P.
9. The Hon. Alfred Agoi, M.P.
10. The Hon. Dr. Susan Musyoka, M.P.
11. The Hon. Mwahima Masoud, M.P.
12. The Hon. Leonard Sang, M.P.
13. The Hon. Dr. Patrick Musimba, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Esther Nginyo - Third Clerk Assistant.
2. Mr. Dennis Mogare - Third Clerk Assistant.
3. Ms. Ruth Mwhaki - Third Clerk Assistant.
4. Mr. Albert Atunga - Serjeant-at-Arms
5. Ms. Christine Maeri - Audio Recording Officer

KENYA MEDICAL RESEARCH INSTITUTE (KEMRI)

1. Dr. Lillian Apadet Ojamong - Chairperson, Board of Management
2. Dr. Michael Ambito - Board of Management
3. Prof. Gerald Mkoji - Acting Director
4. Dr. Wenwa Akinyi Odinga - Board of Management
5. Dr. Naomi Mutea - Board of Management
6. Mr. Ibrahim A. Maalim - PS, Ministry of Health Representative
7. Mr. Mohamed Adow - Board of Management
8. Dr. Joseph K. Mutai - Board of Management
9. Mr. Lazarus Tanui - Board of Management
10. Dr. Moses Alobo - Board of Management
11. Dr. Noor M. Ali - Board of Management
12. Prof. Elizabeth A. Bukusi - Staff
13. Mr. Antony Wachira - Staff
14. Ms. Jennifer Ngetich - Staff

RCTP-FACES NGO

1. Dr. Patrick Oyaro - Chief Executive Officer

MEMBER OF THE PUBLIC

1. Prof. Njeri Wamae - Former Employee, KEMRI

MIN.NO. DCH 62/2016:

PRELIMINARIES.

The Chairperson called the meeting to order at 10.25 am and a prayer was said by Hon. Dr. Robert Pukose, M.P. The Chairperson thereafter welcomed all those present to the meeting and asked them to introduce themselves.

MIN.NO.DCH 63/2016:

CONFIRMATION OF MINUTES

Confirmation of the Minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DCH 64/2016:

MEETING WITH THE KEMRI BOARD, PROF.ELIZABET BUKUSI AND DR.PATRICK OYARO REGARDING THE PETITION ON ALLEGED MISMANAGEMENT AND MISAPPROPRIATION OF FUNDS AT KEMRI

Before the start of the meeting, the Committee resolved as follows, that:

1. One Prof. Njeri Wamae, a former employee at KEMRI, should be allowed to be in the meeting to listen in on the matter of the petition on KEMRI having worked for long in the Institution and as one of the founders of RCTP-FACES Program.

2. Prof. Elizabeth A. Bukusi and Dr. Patrick Oyaro should be excluded from the Committee's interaction with the KEMRI Board of Management since the two were facing disciplinary action from the board and their presentation be made thereafter.

Presentation by the Chairperson, KEMRI Board of Management

The Chairperson, KEMRI Board of Management, Dr. Lillian Apadet Ojamong, appeared before the Committee and presented that:

1. On the role of the Board regarding the relationship between KEMRI and RCTP-FACES NGO and its alleged activity or inactivity about the conflict of interest on the part of KEMRI staff involved in the NGO and on the alleged fraud by KEMRI she stated that:
 - i) The matter of RCTP-FACES NGO first came to the attention of the KEMRI Board of Management on June 26, 2014 during a meeting held at the KEMRI Headquarters. The Board deliberated upon that request and rejected it for reasons which are captured in the Board minutes of the same day. Once this decision was made, it was the duty of Management to ensure that the decision was implemented.
 - ii) The Director however opened further communication with the Deputy Director, Professor Elizabeth Bukusi on the matter culminating in an appeal by the NGO vide letter dated 17th September, 2014, wherein the NGO sought to explain and /or address the concerns of the Board.
 - iii) This appeal was channeled to the relevant Committee of the Board, The Infrastructure and Development Committee (IDC). IDC discussed the matter during its meeting held on the 18th December, 2014 and rejected the same while recommending that more information and/or opinion on the matter be sought. During its next meeting, IDC did not recommend signing of the MOU. The Board, on recommendation and advice of the committee upheld its earlier decision and rejected the signing of the MOU.
2. On Prof. Bukusi's involvement with the RCTP-FACES and her role in drafting the MOU between KEMRI and RCTP-FACES NGO, she stated that from records availed to the Board; communication concerning the process of drafting of the MOU was exchanged between the Director KEMRI and Professor Bukusi on behalf of the NGO.
3. On the list of board members of the RCTP-FACES NGO and their relationship with KEMRI, she stated that records retrieved from the NGO Council list the officials of the NGO as follows:-
 - i) Dr. Dorothy Mbori Ngacha
 - ii) Dr. Betty Wanjiru Mburu Njoroge
 - iii) Dr. Philip Mbuti Mwangi

She further stated that Dr. Betty Wanjiru Mburu Njoroge was an employee of KEMRI while the rest did not have any relationship with KEMRI. However, Dr. Betty Wanjiru Mburu Njoroge had since resigned from the NGO Board.

4. On allegations of possible conflict of interest involving KEMRI employees and the NGO she stated that:

- i) The KEMRI Board of Management during its meeting of 11th February, 2016 initiated disciplinary action against its employees who were suspected to be involved in activities of the NGO in a manner that would give room for conflict of interest. Professor Elizabeth Bukusi was interdicted through a letter dated 11th February, 2016.
- ii) Dr. Betty Wanjiru Mburu Njoroge was required to show cause why she should not face disciplinary action for conflict of interest through a letter dated 12th February, 2016.
- iii) The two employees were scheduled to appear before the Board for further questioning on Friday, 18 March, 2016. She promised that the Board will take serious actions against anyone found culpable.

5. KEMRI was facing a lot of challenges which the Board, though relatively new, was seized of and was addressing as follows:-

- i) KEMRI had not been having a clear policy on management of grants and collaborative agreements. A Management team was tasked with this assignment and it had researched, benchmarked with various institutions and had come up with a comprehensive Collaborators and Partnership Policy draft to be discussed by the Board on 24th March, 2016.
- ii) The Board had issued a directive to all KEMRI staff to declare conflicts of interests after its meeting of 28th January, 2016.
- iii) The Board had advised Management to commission a thorough audit of the Institute's systems for management of scientific programs. The outcome of the audit would further inform decision making.
- iv) The Board was committed to strengthening the Grantmanship office as part of its Rapid Results initiative (RRI) to enable the office effectively support scientists in grant management.
- v) A Chief Finance Officer (Grants) was recruited and reported to work on 1st March, 2016. Her key mandate will be to streamline management of grants.
- vi) The Board had strengthened the Internal Audit Department by recruiting the Head of that unit with effect from October 2015. The Board had advertised for three more Internal Auditors.
- vii) In a bid to improve on governance and, in compliance with *Mwongozo*, the Board re-designated the newly recruited Chief Legal Officer to the position of Corporation Secretary from 1st September, 2015.

- viii) The Human Resource Manual had been reviewed and forwarded to the State Corporations Advisory Committee (SCAC) through the Ministry of Health on 29th December, 2015. The Procurement Manual was also reviewed and sent to Public Procurement Oversight Authority (PPOA) in November, 2015.
 - ix) The Finance Manual was reviewed and a new manual passed for use effective 1st November, 2015.
 - x) KEMRI set out to procure an Enterprise Resource Planning (ERP) system alongside many ICT installations in the year 2011. Regrettably, five years later, these projects had not been successfully completed, a position that was verified by the ICT Authority. The Board was currently addressing responsible management staff while at the same time, budgetary allocations have been made for procurement of new ERP system and adoption of e-procurement.
 - xi) KEMRI's Strategic Plan for 2013-17 was launched in December 2013. The Board had projected to have a mid-term review of the plan in the Month of April, 2016. Some of the emerging issues that called for review of the strategic plan included: financial sustainability, management systems and processes, establishment of a KEMRI University, Cost benefit analysis of KEMRI's business ventures, aligning the strategic plan to new government policy documents e.g *Mwongozo* code of governance.
6. Part of the Challenges facing KEMRI were arising from the fact that over 80% of its research budget was funded by donors who control the research agenda. The Board was engaging the parent Ministry for enhanced research funding. She therefore requested for assistance from the Health Committee on the same.

Members' Concerns/Observations

Members expressed the following concerns which were responded to as follows:

1. On the lack of a clear policy on management of grants at KEMRI, the Board Chairperson stated that there was no policy on management of grants at KEMRI however; it was in the process of preparing one. KEMRI was relying on other documents such as its finance and human resource manuals and the Public Officer Ethics Act, 2003.
2. On the reaction of the Board to the formation of the RCTP-FACES NGO, the Board Chairperson stated that it considered that as conflict of interest especially with regard to a draft MOU proposing transfer of property from KEMRI to the NGO and involvement of a senior KEMRI staffer, Prof. Elizabeth Bukusi, the founder member of the NGO.
3. The appointment of an agent to manage the CDC/KEMRI collaboration finances indicated lack of confidence in the KEMRI systems. Such a negative image that was detrimental to the country.

4. There was need to properly fund KEMRI through government budgeting to ensure a Kenya driven research as overreliance on donor supported research meant research donor driven research prioritizing on their interests.
5. There was need to review the relevant laws in Kenya or generate laws that could guide a research institution as the current legal framework seems inadequate.
6. The problems of procurement and finances at KEMRI had seemingly led to some donors like the CDC seeking to work with systems outside KEMRI. It was also plausible that formation of the RCTP-FACES NGO was an attempt to circumvent the inefficient procurement and finance systems at KEMRI.

Resolutions

1. The KEMRI Board should submit a report on suspension and reinstatement of the KEMRI finance officer by Friday 18th March, 2016.
2. The acting Director, KEMRI should submit the CVs of the entire board by Friday 18th March, 2016.
3. The KEMRI Board should conclude its investigations and submit its report on the findings to the Committee on Health.
4. The Committee resolved to meet one Prof. Njeri Wamae at a later date to get her insights on the matters of the petition as a former employee KEMRI.

Presentation by Prof. Elizabeth Bukusi

Prof. Elizabeth Bukusi appeared before the Committee and presented that:

1. She had been accused of a conflict of interest, which was said to arise from the fact that while serving as Deputy Director for Research and Development (DDRD) at the Kenya Medical Research Institute (KEMRI) she simultaneously served as Principal Investigator (PI) of a number of projects being supported by the Research, Care and Training Programme-Family AIDS Care and Education Services (RCTP-FACES) NGO.
2. She had been accused of abuse of office because RCTP was considered to somehow be in competition with KEMRI in matters of funding and the implication subsequently was that there was an abuse of office that involved the deliberate channeling of funds meant for KEMRI to RCTP-FACES.
3. On the foregoing accusations, she stated that:
 - i) No funds meant for KEMRI had ever been diverted to the functions of RCTP-FACES. Indeed, the opposite was true – that RCTP-FACES was a major contributor to the funding of KEMRI research projects. Hence the creation of RCTP-FACES had led to additional funds being channeled into KEMRI.
 - ii) The relationship between RCTP-FACES and KEMRI was mutually collaborative and supportive and their functions did not conflict. She was only keeping with global best practice by conducting a number of independent research projects through RCTP-FACES while simultaneously serving as the DDRD at KEMRI.

iii) The financing arrangements between the two institutions – KEMRI RCTP-FACES had at all times been transparent.

4. It would be in the national interest for the National Assembly's Health Committee to meet with the group of those involved in biomedical research, at least once a year to discuss the challenges they face in their field and the opportunities that, if effectively seized, would be of great benefit to the country.

Members' Concerns/Observations

Members raised the following concerns/observations:

1. On why the NGO was using the name of an existing RCTP-FACES KEMRI program, Prof. Elizabeth Bukusi indicated that this was meant to build on and take advantage of the track record established by the KEMRI program.
2. On the seeming conflict of interest inherent while she served as Deputy Director at KEMRI and her writing to the Director, KEMRI over an MOU that seemed to favor an NGO she founded, she stated that that was a standard procedure at KEMRI where as a point person, she communicated with the KEMRI Director just like she would have if any other organization was involved.
3. On her apparent support for secondment of staff to the NGO, she stated that it was done on the understanding that KEMRI would benefit through support to its programs.
4. On the motivation for setting up the RCTP-FACES NGO, she stated that PEPFAR indicated that it wasn't keen on funding care programs within KEMRI as the institution had research as its core business hence the motivation to start the NGO that would qualify for such funding.
5. The use of the RCTP-FACES which was a name of a program at KEMRI to name the NGO was tantamount to taking advantage of the program and a fraud on the KEMRI program's positive reputation.
6. Prof. Elizabeth Bukusi had been a principal investigator for both the RCTP-FACES NGO and the RCTP-FACES program.
7. On allegations of frustrations by the KEMRI Board to access the University of California, San Francisco management over establishment of the RCTP-FACES NGO, she stated that she hadn't and the fact that Prof. Cohen was responding through her as the Principal Investigator was the mode of operation at the UCSF.

Resolutions

It was resolved that Prof. Elizabeth Bukusi should:

1. Provide a list of the 12 personal bank accounts she was using to run various KEMRI projects by close of business on the date of the meeting.
2. Provide evidence that the RCTP-FACES NGO had funded KEMRI projects.

Presentation by the CEO, RCTP-FACES NGO

The CEO, RCTP-FACES NGO, Dr. Patrick Oyaro, appeared before the Committee and presented that:

1. He was employed by the Kenya Medical Research Institute (KEMRI) to work on the FACES project between February 2008 and December 2015 on annual renewable contracts, with renewal pegged on annual performance appraisals.
2. He joined the FACES program as a District Coordinator and rose through the years to the position of Director of the FACES program.
3. In his role as the Director of the FACES program, he reported to Prof. Elizabeth Bukusi, the KEMRI/KENYA Principal Investigator and through her to Prof. Craig Cohen the overall Principal Investigator based at the University of California San Francisco (UCSF).
4. On the KEMRI and RCTP – FACES NGO relationship he stated that the RCTP-FACES NGO was formed to play a complementary role to KEMRI's goals in two main ways:-
 - i) By seeking funding where KEMRI as a Semi-Autonomous Government Agency, would not be eligible to apply as the prime (main) applicant with the goal being that the RCTP-FACES NGO would work closely with KEMRI and international Universities like UCSF and University of Washington through tripartite teaming agreements.
 - ii) By playing an important role in supporting the Ministry of Health in the target Districts/Counties to implement health care programs, a role for which KEMRI, as a core research institution, would not be as favored for funding.
5. On his role with regard to the RCTP – FACES NGO he stated that:
 - i) On 14th February 2014, he was appointed in the interim position as the acting CEO of the RCTP-FACES NGO pending the outcome of the proposed MOU between the RCTP –FACES NGO and KEMRI.
 - ii) His role in the interim position of CEO of the RCTP –FACES NGO, was to coordinate the managerial decisions on any of the NGO specific projects or studies that had any funding channelled through the NGO and as per the various donor stipulations.
 - iii) In the interim position as the acting CEO, he reported to the Board of Management chaired by Prof. Dorothy Mbori Ngacha. The Board of the RCTP FACES NGO had 8 members.
 - iv) Dr. Betty Njoroge who had stepped in as the Secretary to the Board when Prof Bukusi resigned was the only Board member who was affiliated to KEMRI, but her membership was on personal basis and not as a KEMRI representative. However, Dr. Betty Njoroge had since resigned.

v) The RCTP-FACES NGO had requested for a formal MOU with KEMRI and indicated the wish to have a senior KEMRI management staff to join the Board to officially ensure KEMRI interests were taken care of and a decision by the KEMRI Board regarding this request was still pending.

6. On alleged possible conflict of interest he stated that:

- i) The process of waiting for the MOU to be agreed upon had possibly caused the perception of conflict of interest, since he was serving both as the Director for FACES (KEMRI) and also as the acting CEO of the RCTP FACES NGO. However he stated that his previous involvement in the NGO during his employment with KEMRI was done in good faith to ensure continuity and also to safeguard KEMRI's interests. It was a position with no personal gain and despite the additional responsibilities he received no additional remuneration. During the period in question, he was a KEMRI employee and only drew one salary, paid by KEMRI.
- ii) In the interim, he had been waiting for further guidance on the finalization of the MOU which would have allowed for exchange of staff and formalized his position. He transitioned to a full employee of the RCTP FACES NGO after 2 years of waiting and was later confirmed to the position of the CEO after his transition to the NGO payroll.
- iii) The transition to the RCTP NGO pay roll was necessitated by audit concerns as he was still a KEMRI contract employee and there was no executed MOU between the NGO and KEMRI.

Members' Concerns/Observations

- 1. On the audit process for the co-funded projects i.e. funding going both to RCTP-FACES NGO and RCTP-FACES program, Dr. Patrick Oyaro stated that fund going to the KEMRI program were audited through KEMRI while those going to the RCTP-FACES NGO were audited through the NGO coordination board and pipeline reports demanded by donors every quarter.

MIN.NO. DCH 65/2016:

ADJOURNMENT

There being no other business the meeting was adjourned at 12.47 pm.

SIGNED.....


HON (DR.) RACHAEL NYAMAI, M.P
CHAIRPERSON

DATE:.....

14/04/16

MINUTES OF THE 3RD SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 9TH FEBRUARY, 2016 IN THE COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM.

PRESENT

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Christopher Nakuleu, M.P.
4. The Hon. Dr. Eseli Simiyu, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. Dr. James Murgor, M.P.
8. The Hon. Dr. James Nyikal, M.P.
9. The Hon. Hassan Aden Osman, M.P.
10. The Hon. Paul Koinange, M.P.
11. The Hon. Kamande Mwangi, M.P.
12. The Hon. Michael Onyura, M.P.
13. The Hon. Raphael Milkau Otaalo, M.P.
14. The Hon. James Gakuya, M.P.
15. The Hon. Stephen M. Mule, M.P.

ABSENT WITH APOLOGY

1. The Hon. Dr. Stephen Wachira, M.P.
2. The Hon. Dr. James O. Gesami, M.P.
3. The Hon. David Karithi, M.P.
4. The Hon. Dr. Susan Musyoka, M.P.
5. The Hon. Alfred Outa, M.P.
6. The Hon. Dr. Naomi Shaban, M.P.
7. The Hon. Mwahima Masoud, M.P.
8. The Hon. Zipporah Jesang, M.P.
9. The Hon. Joseph O. Magwanga, M.P.
10. The Hon. John Nyaga Muchiri, M.P.
11. The Hon. Leonard Sang, M.P.
12. The Hon. Alfred Agoi, M.P.
13. The Hon. Mwinga Gunga, M.P.
14. The Hon. Dr. Patrick Musimba, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Esther Nginyo - Third Clerk Assistant.
2. Mr. Dennis Mogare - Third Clerk Assistant.
3. Ms. Ruth Mwhaki - Third Clerk Assistant.
4. Mr. Sydney Lugaga - Legal Counsel
5. Mr. John Mungai - Audio Recorder.

- | | | |
|------------------------|---|------------------------------|
| 6. Ms. Fatuma Abdi | - | Audio Recorder. |
| 7. Ms. Noelle Chelagat | - | Media Relations Officer III. |

KENYA MEDICAL RESEARCH INSTITUTE (KEMRI)

- | | | |
|--------------------------|---|---|
| 1. Gerald M. Mkoji | - | Ag. Director, KEMRI |
| 2. Solomon Mpoke | - | Director, KEMRI |
| 3. Eunice Kitche | - | Corporation Secretary |
| 4. Antony Stephen Wachie | - | Assistant Director, Finance |
| 5. J.B. Ochieng | - | Ag. Assistant Director (Human Resource) |
| 6. Raphael Lihana | - | Ag. Director, ITROMID |
| 7. Betty Njoroge | - | Senior Research Officer |

MIN.NO. DCH 08/2016:

PRELIMINARIES.

The Chairperson called the meeting to order at 10.28 am and a prayer was said by Hon. James Gakuya, M.P. Thereafter, there was a self-introduction by all those present in the meeting.

MIN.NO.DCH 09/2016:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed and seconded by Hon. Stephen M. Mule, M.P and Hon. James Gakuya, M.P. respectively.

MIN.NO. DCH 10/2016

CONFIRMATION OF MINUTES

Minutes of the 93rd Sitting held on 10th December, 2015 were confirmed as the true record of the Committee deliberations after being proposed and seconded by Hon. (Dr.) Eseli Simiyu, M.P and Hon. Dr. James Murgor, M.P. respectively.

MIN.NO. DCH 11/2016

MATTERS ARISING

The following matters arose from the previous Minutes:

1. Under **MIN.NO. DCH 407/2015** it was reported that:
 - KEMRI had since provided the additional information the organization had been directed to submit to the Committee.
 - The slum upgrading project was ongoing although the Ministry of Health had been directed to stop it, through a Committee resolution on 23rd October, 2015, until proper records on utilisation of previously allocated funds were provided to the Committee. The Ministry explained that it had signed contracts which would not be shelved. It was however noted that the then Principal Secretary had informed the Committee categorically that there was no slum upgrading project run by the Ministry in Kibera, Nairobi.

Resolution: The Ministry of Health should furnish the Committee with the latest in terms of progress of the slum upgrading project during the retreat scheduled for 18th -19th February, 2016 in Mombasa.
 - The Kangundo Level 4 Hospital had closed down its new born unit and all cases were being referred to Machakos County Referral Hospital.

Resolution: The Report from the Kenya Medical Practitioners and Dentist Board should be presented to the Committee for deliberation as the Committee prepared its own report.

- On the visit to India, the Kenyan Embassy in India had not yet secured the necessary appointments.

Resolution: The secretariat to report on progress of the same in the next meeting.

MIN.NO. DCH 12/2016

**MEETING WITH KEMRI MANAGEMENT
REGARDING THE PETITION ON
ALLEGED MISMANAGEMENT AND
MISAPPROPRIATION OF FUNDS AT
KEMRI.**

The Chairperson briefed the Committee on the progress of the Petition on alleged mismanagement and misappropriation of funds at KEMRI which was presented to the house on 8th July, 2015 by Hon. Dr. David Eseli, MP on behalf of Mr. Peter Orowe Nyambok Pursuant to Standing Order 227. Being a follow up meeting on the matter with KEMRI, she invited the Acting Director, KEMRI to make his presentation on the areas of concern as requested by the Committee;

PRESENTATION BY GERALD M. MKOJI, ACTING DIRECTOR, KEMRI

He informed the Committee that:

1. The matters forming the substance of the petition were being addressed by the KEMRI board of management and that the same had led to the sending on compulsory leave of the following persons:
 - a) Prof. Solomon Mpoke - Director, KEMRI
 - b) Ms. Linah C. Boit - Deputy Director, Administration Finance
 - c) Ms. Anne N. Wang'ombe - Assistant Director, Human Resources

He urged the Committee to allow the Board to complete its investigations before the Committee proceeds with its own investigation. However, he was ruled out of order by the Chairperson as the Committee was handling the petition on behalf of the House and had strict times lines to do so.

2. On the relationship between KEMRI and RCTP (the program) and between KEMRI and RCTP-FACES (NGO) he stated that:
 - a) The Research Care and Training Program (RCTP) was founded in 1994 by Professors Elizabeth Bukusi and Craig Cohen. It was a unit within the Centre for Microbiology Research (CMR).
 - b) Family Aids Care and Education Services is the care component of RCTP which had enrolled more than 160,000 persons living with HIV/AIDS.
 - c) The RCTP-FACES NGO was registered in 2007 in anticipation of the PEPFAR call for applications for the second round of funding which was starting in 2010 and ending in 2015. The registration was a response to the trend where local organizations were being favoured for HIV care funding.

- d) The initial Chairperson and Secretary of the RCTP NGO, Prof Craig Cohen and Prof. Elizabeth Bukusi stepped down due to conflict of interest on 20th May 2010 and 10th October 2013 respectively.
 - e) RCTP-FACES NGO was governed through a board of 9 directors which comprise of different specialities.
 - f) To formalise the relationship between KEMRI and RCTP-FACES, the NGO proposed an MOU that would allow joint applications and implementation of programs. However, the board in its 96th sitting considered but did not approve the MOU citing various irregularities in the provisions of the MOU including a breach of procedures that had already occurred whereby a legal entity the (NGO) was being accommodated by KEMRI without Board approval.
3. On the KEMRI staff mortgage scheme, he stated that:
- a) KEMRI had been investigated by the EACC in the past but no anomalies in the scheme had been communicated by the EACC to the institute.
 - b) The rationale of the mortgage scheme was to motivate staff to stay in the institute once it was realised that universities and other competing organizations were attracting staff that the institute had invested heavily in.
 - c) Other government institutions had the same facility and the Salaries and Remuneration Commission had issued a circular guiding the same.
 - d) KEMRI engaged Family Bank after it got clearance from the National Treasury and the Central Bank of Kenya. Family Bank was further preferred among the three banks that were considered because it committed in writing to provide the funds deposited as and when required without placing a lien on the funds. Other banks considered were KCB and Cooperative bank. The security for the mortgage was going to be the actual property for which the mortgage was advanced.
 - e) As at the date of the meeting, a total of 52 staff members at various levels across the institute had benefitted from the mortgage facility. The list of beneficiaries was provided.
4. On alleged human resource malpractices he stated that:
- a) On the termination of contracts of the KEMRI/CDC staff, the program ran into financial problems towards the end of the 5th year and had difficulties in meeting staff salaries and other obligations. Hence the program was forced to lay off 517 staff out of 1,252 staff employed under the program. Those who remained belonged to critical and essential aspects of the program.
 - b) All affected staff were paid their dues including gratuity for the period worked under the last contract (list of those laid off and paid provided). The termination followed contract terms and relevant labour laws.
 - c) Other KEMRI collaborative programs at the KEMRI centre in Kisumu had since re-employed 139 of the staff who lost their jobs at the KEMRI/CDC

program and would continue to give first priority in employment to those whose services were terminated.

- d) On human resource malpractices with regard to recruitment he stated that staff recruitment process in KEMRI were rigorous and fair in selecting the right staff to deliver on KEMRI mandates.
 - e) On the matter of double payment under the CDC/KEMRI collaboration, the KEMRI board was handling the matter and some officers at KEMRI were on compulsory leave awaiting conclusion of the board's investigations. Those on leave include the KEMRI Director, Prof. Solomon Mpoke. Further, the Board had instituted recovery of money from those who had benefitted from the double pay.
 - f) There was an operational Human Resource manual which had been reviewed by the KEMRI board and was awaiting approval by the State Corporations Advisory Committee (SCAC).
5. There was an operational finance manual at KEMRI which became operational on 1st November, 2015.
 6. The INTRMID program involved collaboration between KEMRI and the Jomo Kenyatta University of Science and Technology where students conduct their research at KEMRI while the university graduates them. He observed that the program was running well so far. He was however directed to submit the list of beneficiaries since inception of the program and a breakdown of the utilisation of funds realised from the fees paid by students through the program.

Prof. Solomon Mpoke, the Director KEMRI informed the Committee that:

1. The funds that had been exchanged between KEMRI and the NGO were not clear but the NGO runs a budget of about KSH 1 Billion annually.
2. The KEMRI board was concerned that since KEMRI depends of foreign funding, existence of the NGO was a threat to that flow of foreign funding to the institute.
3. The NGO was no longer receiving any funding through KEMRI and that KEMRI was now funding only the individual projects.
4. There was a thin line between the projects and the NGO and the board was investigating the matter of possible conflict of interest though no action had been taken this far.

Betty Wanjiru Njoroge, the registered secretary, RCTP-FACES NGO informed the Committee that:

1. She was the registered Secretary to the NGO but did not know the Directors of the NGO apart from the Chairperson.
2. One Dr. Patrick Oyaro always acted the Secretary to the NGO whenever the NGO held any meetings.
3. Dr. Patrick Oyaro had been appointed the CEO to the NGO and was due to formally replace her as the Secretary to the NGO.

OBSERVATIONS

The Committee made the following observations, THAT:

1. It was evident that while KEMRI dealt with donors to attract funding, the RCTP-FACES NGO was being sub contracted to carry out the actual implementation of programs. This amounts to massive conflict of interest on the part of KEMRI staff involved and a possible fraud on KEMRI finances.
2. Prof. Elizabeth Bukusi, one of the initial architects of the NGO, who had risen to be a Deputy Director at KEMRI seemed to be having a conflict of interest and potential abuse of office in pushing for the recognition of a patently defective MOU between KEMRI and the RCTP-FACES NGO.
3. The KEMRI board seems to be deliberately lax in handling the matters surrounding the relationship between the KEMRI and the RCTP-FACES NGO as it makes clear observations and conclusions but had never acted on clearly flouted procedures.
4. One Ms Betty Wanjiru Njoroge, the registered secretary to the RCTP-FACES NGO, was being used as a front to cover the real architects behind the NGO especially Prof. Elizabeth Bukusi who was her boss at KEMRI.
5. One Dr. Patrick Oyaro, who had been appointed the CEO to the RCTP-FACES NGO was still serving at KEMRI, a clear case of conflict of interest.

RESOLUTIONS

It was resolved that the acting director KEMRI, Prof. Gerald M. Mkoji should:

1. Engage the KEMRI board to ensure that no more dealings went on between the RCTP-FACES NGO and KEMRI.
2. Ensure that no employee of KEMRI served both the RCTP-FACES NGO and KEMRI.
3. Ensure that Ms. Betty Wanjiru is protected from victimization for giving evidence before the Committee.

MIN.NO. DCH 13/2016

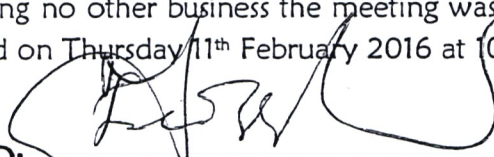
ANY OTHER BUSINESS

1. It was resolved that the Committee and the Ministry of Health should deliberate on the need for regulations on referral of patients outside the country for treatment during the retreat scheduled for 18th - 19th February, 2016 in Mombasa.

MIN.NO. DCH 14/2016

ADJOURNMENT

There being no other business the meeting was adjourned at 1.50 pm. The next meeting to be held on Thursday 11th February 2016 at 10.00 am


 SIGNED:
 HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE: 16 / 02 / 2016

MINUTES OF THE 81ST SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD AT THE 4TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 15TH OCTOBER, 2015, AT 10:00 AM

PRESENT

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)**
3. The Hon. Alfred Agoi, M.P.
4. The Hon. David Karithi, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Dr. James Murgor, M.P.
7. The Hon. Mwinga Gunga, M.P.
8. The Hon. Raphael Milkau Otaalo, M.P.
9. The Hon. Dr. Eseli Simiyu, M.P.
10. The Hon. Michael Onyura, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Kamande Mwangi, M.P.
13. The Hon. Joseph O. Magwanga, M.P.
14. The Hon. Dr. Stephen Wachira, M.P.
15. The Hon. Dr. Susan Musyoka, M.P.
16. The Hon. Dr. James O. Gesami, M.P.
17. The Hon. Alfred Outa, M.P.
18. The Hon. Dr. Naomi Shaban, M.P.
19. The Hon. Christopher Nakuleu, M.P.
20. The Hon. Hassan Aden Osman, M.P.
21. The Hon. Paul Koinange, M.P.
22. The Hon. Stephen M. Mule, M.P.
23. The Hon. Leonard Sang, M.P.

ABSENT WITH APOLOGY

1. The Hon. John Nyaga Muchiri, M.P.
2. The Hon. Dr. Enoch Kibunguchy, M.P.
3. The Hon. Dr. James Nyikal, M.P.
4. The Hon. Zipporah Jesang, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Mwahima Masoud, M.P.

IN ATTENDANCE

Individual Petitioner

Mr. Peter Orowe Nyambok

National Assembly Secretariat

- | | | |
|----------------------|---|---|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant (Lead Clerk) |
| 2. Mr. Dennis Mogare | - | Third Clerk Assistant. |
| 3. Mr. Hassan Arale | - | Third Clerk Assistant. |
| 4. Ms. Sande Marale | - | Senior Researcher |
| 5. Mr. Sydney Lugaga | - | Legal Counsel |

MIN.NO. DCH 347/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10:26 am and a prayer was said by Hon. Alfred Outa, M.P. Thereafter, all those present made a self-introduction after which the Chairperson informed members that the meeting's agenda was meeting with Mr. Peter Orowe Nyambok regarding a Petition presented by Hon. Dr. Eseli Simiyu, MP on alleged Mismanagement and Misappropriation of Funds at the Kenya Medical Research Institute (KEMRI). The Chairperson observed that the meeting was initially scheduled for Tuesday 13th October, 2015 but has rescheduled. She also stated that the Ministry of Health and KEMRI had been invited to the meeting, however, they had requested for rescheduling of the meeting through a letter before the Committee.

MIN.NO. DCH 348/2015: CONFIRMATION OF MINUTES

Confirmation of the minutes of previous meetings was deferred to the next meeting.

MIN.NO. DCH 349/2015: MEETING WITH MR. PETER OROWE NYAMBOK REGARDING A PETITION PRESENTED BY HON. DR. ESELI SIMIYU, MP ON ALLEGED MISMANAGEMENT AND MISAPPROPRIATION OF FUNDS AT THE KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).

Mr. Peter Orowe Nyambok appeared before the Committee to make his presentation on his Petition regarding the alleged misappropriation and mismanagement of funds at KEMRI. In his presentation, he informed the Committee that:

1. He was an employee of the Kenya Medical Research Institute and was also a chief shop steward at the institution.
2. Apart from being an employee, he was an official of the umbrella union which had recognition agreement and a registered collective bargaining agreement (CBA) gazetted as binding document with KEMRI and which represents the interests of all employees in the Institute.
3. KEMRI is a key state corporation created through an act of parliament with an express mandate to carry out research for health, its core business to achieve its mission and vision is collaborate with both National and International collaborators and other stakeholders.
4. By virtue of his position in the union, he directly gets involved with staff welfare in the Institute, therefore all issues facing staff of the Institute which might arise

as a result of mismanagement and misappropriation of funds come to his attention and hence some form the basis of the petition.

5. He was petitioning the Committee on two major issues directly affecting KEMRI namely mismanagement and misappropriation of funds.
6. In terms of mismanagement, the following were the issues:
 - a) Human Resource Manual -The institute was operating without a Human Resource Manual. This had led to some members of staff gaining access to other collaborators' pay rolls and hence earning two salaries and not paying taxes to the Government. Particularly, this had been experienced with regard to the collaboration with the Centre for Disease Control, CDC.
 - b) Lack of scheme of service for the institute's employees which has led to staff stagnation in terms of career progression resulting into intimidation during staff appraisal and low performance of staff due to low morale/motivation.
 - c) Lack of guidelines in performance contracting
 - d) Lack of transparency in hiring new staff.
 - e) Retiring scientists selectively and defying court orders.
 - f) Allocation of staff houses selectively and renting them in a manner that lacks transparency.
7. In terms of Misappropriation of Funds, the following were the issues:
 - a) Audit reports on the Institute Financial management and operations painted a grim picture of misappropriation of funds a case in point is misappropriation of collaborators' and donor funds which was already in the public domains through the media.
 - b) Procurement of services and goods by the institute is the den of corruption through the corrupt tendering system in the institute e.g. out sourced security services and cleaning services of which the number of personnel in the contract form which was 110 was different from the number of only 60 personnel on the ground.
 - c) Insurance services for staff and institutes properties.
 - d) No status of Inventory of Institute assets and liabilities such as Land, other movable and immovable assets e.g. Title Deeds.
 - e) Out sourcing of legal services at high cost yet the Institute has employed legal officers on its payroll.
 - f) Post graduate program/interns (INTROMID Program) had reported cases of loss of money from the programs.
 - g) Mortgage, the management took some money to local financial institution (Bank) which most staff members would not meet the rules and condition of the bank to get loans.

In support of his petition, the petitioner tabled the following documents:

1. Letters related to alleged loss of funds under the INTROMID Program.
2. Medical Insurance Policy - First Assurance. In which only in patient cover was provided not out patient cover

3. Guard service contract between KenyaMedical Research Institute and Apex Security Services Limited
4. Two Letters on tender for provision of Medical Insurance Cover, Group Personal Accident (GPA), and Workman Injury Benefit Act (WIBA) scheme. The contract was allegedly evaluated and awarded within one day. It was worth Ksh 19, 292, 591.
5. A KEMRI Human Resource Policy and Procedure Manual.
6. A ruling by the Industrial Court of Kenya delivered by Hon. Mr. Justice Isaac E.K. Mukunya.
7. Three documents of the Industrial Court of Kenya
8. Two letters related to a Schemes of Service for KEMRI staff.
9. Collective Bargaining Agreement (CBA) between KEMRI and Union of National Research and Allied Institutes Staff of Kenya (UNRISK).
10. Two letters related to double payment of salaries/allowances through the KEMRI/CDC program.

Members' Observations

Members made the following observations, THAT:

1. Matters regarding pension as raised by the petitioner were in court hence should be withdrawn from being part of the petition.
2. The petitioner needed to give specific details on the allegation misappropriation of funds.
3. The petitioner needs to provide details of attempts to resolve some of the matters in the petition through other channels and progress made, if any.
4. Although the letters provided by the petitioner had some details struck off for confidentiality, the Committee resolved to have them admitted and be used as a basis for conducting investigations into the allegations cited.
5. The KEMRI management should clarify the concept, challenges and the cause of insufficiency in funds under the INTROMID Program.
6. The Committee needed to review the budget on legal fees at KEMRI and the cases handled in the past one year.
7. That the petitioner needed to present additional documents on conditions attached to the mortgage meant for KEMRI staff.
8. The KEMRI management needed to be compelled to present a copy of the special audit report prepared by the office of the Auditor General on KEMRI.

**MIN.NO. DCH 350/2015: CONSIDERATION AND ADOPTION OF A REPORT
ON THE CONSIDERATION OF THE HEALTH BILL,
2015.**

The Senior Researcher, Ms. Sande Marale, took members through the highlights of the Report. After lengthy deliberations, Members adopted the Report after it was proposed and seconded by Hon. Dr. Susan Musyoka, M.P. and Hon. Paul Koinange, M.P. respectively.

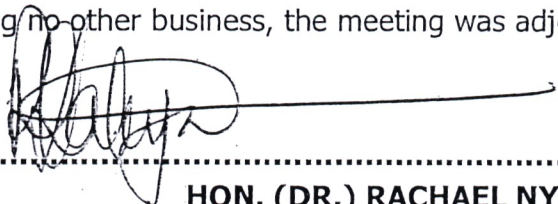
MIN.NO. DCH 351/2015: ANY OTHER BUSINESS

1. It was resolved that the meeting with the Cabinet Secretary, Ministry of Health initially scheduled for Thursday 15th October, 2015 should be rescheduled to Tuesday, 27th October, 2015.
2. The CEO, KEMRI should be invited, at a convenient date to be established by the secretariat, to respond to the petition by Mr. Peter OroweNyambok.
3. The Chairperson brought to the attention of Members a communication made by the Speaker with regard to weekly reports on pending business before Committees. The Committees would present the reports in the order in which they appear in the Second Schedule of the Standing Orders.

MIN.NO. DCH 352/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.18am.

SIGNED:



HON. (DR.) RACHAEL NYAMAI, M.P
CHAIRPERSON

DATE:

31/11/2015

MINUTES OF THE 85TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE 4TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, ON TUESDAY 27TH OCTOBER, 2015, AT 8:30 AM

PRESENT

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)**
3. The Hon. Dr. Eseli Simiyu, M.P.
4. The Hon. Kamande Mwangi, M.P.
5. The Hon. Stephen M. Mule, M.P.
6. The Hon. Hassan Aden Osman, M.P.
7. The Hon. Dr. James Murgor, M.P.
8. The Hon. Alfred Agoi, M.P.
9. The Hon. David Karithi, M.P.
10. The Hon. Dr. James O. Gesami, M.P.
11. The Hon. Michael Onyura, M.P.
12. The Hon. Raphael Milkau Otaalo, M.P.
13. The Hon. Mwinga Gunga, M.P.
14. The Hon. Joseph O. Magwanga, M.P.
15. The Hon. Dr. James Nyikal, M.P.
16. The Hon. James Gakuya, M.P.
17. The Hon. Paul Koinange, M.P.

ABSENT WITH APOLOGY

1. The Hon. Dr. Dahir D. Mohamed, M.P.
2. The Hon. Dr. Patrick Musimba, M.P.
3. The Hon. Mwahima Masoud, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Dr. Susan Musyoka, M.P.
6. The Hon. Dr. Naomi Shaban, M.P.
7. The Hon. Christopher Nakuleu, M.P.
8. The Hon. Zipporah Jesang, M.P.
9. The Hon. Leonard Sang, M.P.
10. The Hon. Dr. Enoch Kibunguchy, M.P.
11. The Hon. Fred Outa, M.P.
12. The Hon. John Nyaga Muchiri, M.P. HSC.

IN ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------------|---|--|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant. (Lead Clerk) |
| 2. Mr. Hassan A. Arale | - | Third Clerk Assistant. |
| 3. Mr. Dennis M. Ogechi | - | Third Clerk Assistant. |
| 4. Mr. Sidney Lugaga | - | Legal Counsel |
| 5. Sande Marale | - | Senior Researcher |

Ministry of Health

- | | | |
|---------------------------|---|---------------------|
| 1. Dr. Khadija Kassachoon | - | Principal Secretary |
| 2. I.M. Abdi | - | Under Secretary |

Kenya Medical Research Institute

- | | | |
|------------------------|---|--|
| 1. Prof. Solomon Mpoke | - | Director |
| 2. Eunice Kitche | - | Corporation Secretary |
| 3. J.B. Ochieng' | - | Ag. Assistant Director, Human Resource |

Petitioner's team

- | | | |
|----------------------|---|---------------------------|
| 1. Peter O. Nyambok | - | Petitioner |
| 2. Dr. Kizito Lubano | - | Private Consultant Doctor |
| 3. Dr. Akwe Felix S. | - | Petitioner |
| 4. Alice Watahi | - | Petitioner |

MIN.NO. DCH 365/2015: PRELIMINARIES

The Chairperson called the meeting to order at 8:50 am and a prayer was said by Hon. Dr. Robert Pukose, M.P.

MIN.NO. DCH 366/2015: CONFIRMATION OF MINUTES

Confirmation of the minutes of previous meetings was deferred to the next meeting.

MIN.NO. DCH 367/2015: CONSIDERATION OF COMMITTEE AMENDMENTS TO THE HEALTH BILL, 2015

The Committee considered proposed amendments to the Health Bill, 2015 and agreed as follows:

Amendment	Justification
<p>Clause 26DD delete the proposed clause and replace with - "</p> <p>26DD.The Authority shall be governed by a Board consisting of –</p> <p>(a) a chairperson, who shall be appointed by the President;</p> <p>(b) a representative nominated by the Council of Governors, who holds a master's degree from a recognised University;</p> <p>(c) the Attorney General or a representative designated by the Attorney General;</p> <p>(d) the Principal Secretary of the Ministry of health or his representative;</p>	<p>The amendment is aimed at providing cross cutting representation of the stakeholders of all cares of health care professionals and fields directly interplaying with human resource personnel.</p>

<p>(e) one representative nominated from the Public Service Commission;</p> <p>(f) one representative nominated from the Intergovernmental Consultative Forum;</p> <p>(g) one representative nominated from County Public Service Boards;</p> <p>(h) the Chief Nursing Officer or a representative designated by the Chief Nursing Officer;</p> <p>(i) a representative nominated from the Directorate of Public Service Management;</p> <p>(j) a representative nominated from among institutions offering medical training; and</p> <p>(J) the Chief Executive Officer, appointed by the President, recruited by the Public Service Commission, vetted by Parliament and who shall be the secretary to the Authority.</p>	
<p>Clause 27- adopted with changes to the numbering under sub clause (2) to deal with typos;</p>	<p>To correct errors in the numbering.</p>

**MIN.NO. DCH 368/2015:MEETING WITH THE PRINCIPAL SECRETARY,
MINISTRY OF HEALTH, KEMRI MANAGEMENT AND
MR. MR. PETER OROWE NYAMBOK REGARDING A
PETITION ON ALLEGED MISMANAGEMENT AND
MISAPPROPRIATION OF FUNDS AT THE KENYA
MEDICAL RESEARCH INSTITUTE (KEMRI).**

The Chairperson welcomed all parties present and asked each to do self-introduction. She then welcomed the Principal Secretary, Ministry of Health to make her presentation. In her presentation, she informed the Committee THAT:

1. The issues raised by the petitioner included that:
 - a) The Kenya Medical Research Institute (KEMRI) had failed in its mandate and does not have a clear human resource policy and manual to guide its human resource practices resulting in frustration of employees.
 - b) The Kenya Medical Research Institute (KEMRI) had failed to obey court orders in regard to human resource malpractices, in particular failure to adhere to collective bargaining agreement (CBA).
 - c) The institutions management allegedly misappropriated donor funding in particular the CDC funding leading to a loss of employment for over 700 employees.
 - d) Efforts to resolve the matters with the relevant government institutions had failed.

2. On the mandate of the Kenya Medical Research Institute, KEMRI had lived up to its mandate and had made contributions with regard to: malaria research, surveillance, treatment regimens for infectious diseases, testing kits for HIV 1 and 2 and viral hepatitis, visceral leishmaniosis, traditional medicine and capacity building through training programs for disease control personnel in eastern and southern Africa. Achievements in the foregoing areas had earned KEMRI international recognition in the promotion of global health and designation as a World Health Organization (WHO) collaborating Centre for HIV/AIDS, Polio immunization, viral hemorrhagic fevers leishmaniosis, leprosy, and microbial drug resistance.
3. On the KEMRI human resource policy, KEMRI had a human resource policy and manual which was duly approved by the Board of Management in the year 2010. The manual had been reviewed and forwarded to the Ministry of Health and State Corporations Advisory Committee (SCAC) for approval before implementation.
4. On failure to obey court orders with regard to human resource malpractices, in particular failure to adhere to Collective Bargaining Agreement (CBA), KEMRI had a CBA with the Union of National Research and Allied Staff of Kenya (UNRISK) which was registered on 25th August, 2014 with an implementation date of 18th June, 2014. Most of the terms mutually agreed to by the parties were implemented with effect from 1st July, 2014 as agreed. Both parties also agreed that any other issue not implemented with effect from 1st July, 2014 was to be implemented upon availability of funds.

Owing to lack of sufficient funds, payment of basic salary arrears for the period 1st July, 2013 to 30th June, 2014 could not have been implemented immediately. However, KEMRI implemented 50 percent of that obligation in the 2015/16 Financial Year and the remaining 50 percent shall be released on receipt of additional funds. Such arrangement had been agreed upon by both KEMRI and UNRISK.

On the institution's alleged misappropriation of donor funding in particular the CDC funding leading to a loss of employment for over 700 employees, she stated that KEMRI/CDC Cooperative Agreement was a program that was set up through a memorandum of understanding between Center for Disease Control and Prevention and the Institute. The relationship between the two had lasted 36 years.

The KEMRI/CDC collaboration was affected by allegations of loss of Ksh 7.2 Billion advanced to KEMRI by CDC which the petitioner was alleging. The matter had been brought to the attention of the Board through articles in the media in March, 2015. The Board immediately engaged the Office of the Auditor General to conduct a special audit

The audit did not directly point towards loss of funds but instead pointed towards systemic weaknesses in the KEMRI/CDC Cooperative Agreement which the Board moved to address.

CDC continued to fund KEMRI activities and discussions were ongoing between KEMRI and CDC on how to further their collaboration in light of the changing US government policy on funding of cooperative agreements.

KEMRI had also approved an Organizational Structure and a Finance Manual.

5. On the failure to solve the matters in the petition through relevant government institutions, KEMRI continued to cooperate with the Kenya National Audit Office and other government institutions to improve financial management and accountability in the institute.

Presentation by Dr. Kizito Lubano

Dr. Kizito Lubano, Private Consultant Doctor, who had worked with KEMRI informed the Committee that:

1. There existed an NGO disguised as a project in KEMRI which had contributed to co-mingling of funds and subsequent loss of funds. The NGO was housed within KEMRI premises and all correspondence from the NGO was on a KEMRI letter head. To back up his allegations, he tabled the following documents:
 - a) A copy of an unsigned Memorandum of Understanding dated 2014 between Research Care and Training Program – Family AIDS Care Education Services (RCTP- FACES) and KEMRI relating to the collaboration and transfer of certain internal operations and assets from KEMRI to RCTP- FACES.
 - b) A copy of the series of exchanges of correspondence between officials of the NGO, RCTP-FACES and who also staff of KEMRI from January 30th to February 2nd 2014.
 - c) A copy Confidential, unsigned Board Paper titled Request for approval of MoU between KEMRI and RCTP-FACES NGO.
 - d) A copy of the Certificate of registration of the NGO "Research Care and Training Program – Family AIDS Care Education Services (RCTP- FACES)" with the Non-Governmental Organizations Board on 6th July, 2011.
 - e) A copy of a document with both the current and first officials of the RCTP-FACES NGO.
 - f) A copy of the KEMRI Annual Report for the period ending June 30th 2011 which shows a suspicious declaration of huge sums of money supposedly to carry out projects. The said sums are not reflected in the audited reports or subsequent financial reports.

2. There were widespread human resource malpractices at KEMRI which include: hiring not based on qualifications as per the advertisements, nepotism and favoritism, deliberate stereotyping and making unprofessional comments during appraisals. To back up his allegations, he tabled the following documents:
 - a) A copy of an advertisement for jobs at KEMRI with the position of Assistant Director, Human Resources being one of those on offer.
 - b) The application and curriculum vitae of the eventual appointee for the position of Assistant Director, Human Resources, Ms. Anne Njoki Wang'ombe.
 - c) A short list of the candidates for the position of Assistant Director, Human Resources.
 - d) A series of correspondence which show Dr. Kizito Lubano warning his colleagues with regard to: the unprofessional conduct of appraisals and promotions, funds set aside and used to run a mortgage scheme under the family bank.
3. The KEMRI board had prepared a report to the Cabinet Secretary, Ministry of Health on the status of the challenges facing the KEMRI/CDC collaboration- an indication that there was misappropriation of funds due to the audit queries raised by the Auditor General that the board was responding to. He provided a copy of the said report.

MEMBERS' OBSERVATIONS

Members observed that:

1. The contemplation by KEMRI to even consider an MOU that involved transfer of assets to an NGO was contrary to the law and government regulations.
2. The human resource policy seemed to have been an issue of concern at KEMRI since the year 2010. The rush to consider the policy for adoption after the petition had been submitted to the National Assembly seemed informed purely by an intention to defeat the purpose of the petition.
3. The co-mingling of funds under the CDC/KEMRI collaboration led to loss of jobs to those employees who never even handled the said funds in the first place. This was unjustified and needed to be probed further.
4. The Chief Executive Officer of KEMRI presided over the recruitment of officers whose qualifications and/or experience did not match the advertisements put up by the organization. He therefore needed to explain the circumstances under which such happened.

RESOLUTIONS

After lengthy deliberations, it was resolved that:

1. The Director KEMRI should provide the committee with the following documents:
 - a) A contract document with contractual staff under the KEMRI/CDC collaboration.

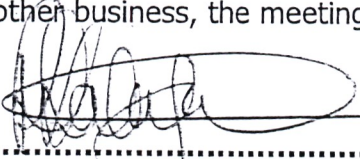
- b) A contractual agreement with Family Bank in respect of the mortgage financing for select staff of KEMRI through idle KEMRI funds held at the bank.
 - c) A complete list of those who had benefited from the mortgage facility run through the Family Bank.
2. Another meeting with KEMRI management be held within two weeks from the date of this meeting.

MIN.NO. DCH 369/2015: ANY OTHER BUSINESS

- 1. Members were reminded that the Committee had resolved to visit Kangundo District Hospital on 29th October, 2015 with regard to four (4) newborn deaths at the hospital. They were urged to confirm their participation for the trip with the secretariat.
- 2. On a visit to Israel with regard to Universal HealthCare, the Chairperson promised to report on the progress of her consultations with NHIF in the next meeting.

MIN.NO. DCH 370/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.04 pm.


.....
HON. (DR.) RACHAEL NYAMAI, M.P
CHAIRPERSON

DATE: 10/12/2015

MINUTES OF THE 91ST SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE 4TH FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, ON TUESDAY, 24TH NOVEMBER, 2015 AT 10:00 AM.

PRESENT

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)**
3. The Hon. David Karithi, M.P.
4. The Hon. Zipporah Jesang, M.P.
5. The Hon. Leonard Sang, M.P.
6. The Hon. Fred Outa, M.P.
7. The Hon. Michael Onyura, M.P.
8. The Hon. John Nyaga Muchiri, M.P.
9. The Hon. Stephen M. Mule, M.P.
10. The Hon. Dr. James Murgor, M.P.
11. The Hon. Dr. Eseli Simiyu, M.P.
12. The Hon. Mwinga Gunga, M.P.
13. The Hon. Alfred Agoi, M.P.
14. The Hon. Dr. James O. Gesami, M.P.
15. The Hon. Dr. Dahir D. Mohamed, M.P.
16. The Hon. Joseph O. Magwanga, M.P.
17. The Hon. Dr. James Nyikal, M.P.
18. The Hon. Raphael Milkau Otaalo, M.P.
19. The Hon. Dr. Stephen Wachira, M.P.
20. The Hon. James Gakuya, M.P.

ABSENT WITH APOLOGY

1. The Hon. Paul Koinange, M.P.
2. The Hon. Dr. Susan Musyoka, M.P.
3. The Hon. Dr. Naomi Shaban, M.P.
4. The Hon. Kamande Mwangi, M.P.
5. The Hon. Christopher Nakuleu, M.P.
6. The Hon. Dr. Patrick Musimba, M.P.
7. The Hon. Mwahima Masoud, M.P.
8. The Hon. Dr. Enoch Kibunguchy, M.P.
9. The Hon. Hassan Aden Osman, M.P.

IN ATTENDANCE

Petitioner and Interested Parties

1. Mr. Kithinji Dennis - Petitioner
2. Mr. Rapahel Gikera - Editor, Association of Kenya Medical Laboratory Scientists

National Assembly Secretariat

1. **Ms. Esther Nginyo** - **Third Clerk Assistant (Lead Clerk)**
2. Mr. Dennis M. Ogechi - Third Clerk Assistant.

- | | | |
|------------------------|---|------------------------|
| 3. Mr. Hassan A. Arale | - | Third Clerk Assistant. |
| 4. Mr. Sidney Lugaga | - | Legal Counsel |
| 5. Ms. Marale Sande | - | Senior Researcher |

MIN.NO. DCH 393/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10:26 am and a prayer was said by Hon. Fred Outa, M.P. Then there was a self-introduction of all those present in the meeting.

MIN.NO. DCH 394/2015: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as follows after being proposed and seconded by Hon. James Gakuya, M.P. and Hon. Mwinga Gunga, M.P. respectively:

- 1) Meeting with Mr. Dennis Githinji and KMLTTB Regarding Registration and Regulation of the Practice of Degree Holders in Medical Laboratory Science and Technology.
- 2) Adoption of the following reports:
 - a) Report on the Consideration of the Petition by Mr. Solomon Muriungi Mburung'a Regarding Amendment of the Cancer Prevention and Control Act, 2012.
 - b) Report on the Consideration of the Biomedical Engineers Bill, 2015.
 - c) Pre-Publication Scrutiny Comments on the Clinical Officers (Training, Registration and Licensing) Bill, 2015.
 - d) Pre-Publication Scrutiny Comments on the Occupational Therapist (Training, Registration and Licensing) Bill, 2015.

MIN.NO. DCH 395/2015: CONFIRMATION OF MINUTES

Confirmation of the minutes of previous meetings was deferred to the next meeting.

MIN.NO.DCH 396/2015: MEETING WITH MR. DENNIS GITHINJI AND KMLTTB REGARDING REGISTRATION AND REGULATION OF THE PRACTICE OF DEGREE HOLDERS IN MEDICAL LABORATORY SCIENCE AND TECHNOLOGY.

The Chairperson briefed the Committee that the said petition was presented to the National Assembly on 26th August, 2015 and subsequently submitted to the Committee on Health on 28th August, 2015 for consideration. She further stated that the petitioner, Mr. Dennis Githinji, was invited via a letter to appear before the Committee and brief it on the said petition. She therefore invited the petitioner to make his presentation.

Presentation by the Petitioner

In his presentation, the petitioner informed the Committee THAT:

1. During drafting of the KMLTTB ACT, 1999, Kenya was training only certificate and diploma holders in Medical Laboratory Technology. No Kenyan University had started training degree holders in Medical Laboratory Science and Technology. Hence, the KMLTTB Board formed by the KMLTTB ACT, 1999 was formed in major consideration of certificate and diploma holders in medical laboratory technology.
2. Due to national and global demands for experts in medical laboratory diagnosis and research, Kenyan universities have started offering degree courses in the field of laboratory medicine.
3. Medical Laboratory Science and Technology is a major degree course in the universities with most of students pursuing it having performed excellently in Kenya Certificate of Secondary Education. However, the degree holders face difficulties in a bid to exercise their professional mandate and progress with the existing board (KMLTTB).
4. In KMLTTB Act, 1999 the institutions recognized for training medical laboratory professionals are KMTCs and its equivalent yet universities are not equivalent to KMTC.
5. According to the Act, Medical laboratory technologist means a person holding a diploma, higher diploma or degree in medical laboratory technology issued by the Kenya Medical College or other similar institution approved by the Board. Abilities and responsibilities of degree holders are not equivalent to those of diploma and higher diploma holders, and therefore deserve a distinct designation.
6. In composition of KMLTTB, the platform through which degree holders can have a representative in the board is through the provision that requires three registered laboratory technologists, two of whom shall be in private practice, elected by the Association to be part of the board. Medical laboratory technologist refers to a diploma, higher diploma and degree holder in medical laboratory science and technology. Due to the high number of diploma and higher diploma holders in the association compared to degree holders, it is difficult for a degree holder to be voted in.
7. Administration and regulation of licensing examinations for medical laboratory professionals was not clearly stipulated in the Act.
8. Internship for medical laboratory graduates is necessary. KMLTTB, according to its log books for degree students, requires them to undertake a 1 year internship after graduation. However, it does not allocate internship slots to the graduates.
9. The KMLTTB Act, 1999 does not clearly define the abilities, responsibilities and designations of degree holders in medical laboratory science and technology. However, the Ministry of Devolution has defined the scheme of service for medical laboratory personnel with degree holders being categorized as medical laboratory officers.
10. The matters in the petition were not pending in a court of law or any other constitutional or legal body.

Presentation by the Parliamentary Research Services

Ms. Sande Marale, in her presentation, informed the Committee THAT:

1. The policy and legislative issues with regard to the petition include that the Medical Laboratory Technicians and Technologists Act, Cap 253A is the law that governs the training, registration and licensing of medical laboratory technicians and technologists, including providing for the establishment of a regulatory body, the Kenya Medical Laboratory Technicians and Technologists Board, (KMLTTB).
2. The way forward in the context could be:
 - a) There already exist a statutory body to regulate the laboratory technicians and technologists, (Certificate, diploma and degree holders in the Medical laboratory technology). However, there seems to be rapid growth in numbers of the degree holder laboratory technologists (following expansion of degree courses in Medical laboratory technology in various universities. Therefore, in collaboration with the various stakeholders, the Committee may consider amending the Medical Laboratory Technicians and Technologists Act, Cap 253A to ensure adequate representation of Technologists (both diploma and Degree holders) and Technicians at the Board level.
 - b) As regards the Management of Health Professions in General; there is need to develop clear principles and operational considerations for future regulation of health professionals within the National Health systems.

Members' Observations

1. There is need to review the KMLTTB Act, 1999 to ensure it recognizes and caters for the interests of degree holders in the laboratory medicine profession.
2. On the designation of degree holders to distinguish them from other cadres in the profession, the public service commission and the Ministry of Health should agree on the designation of the degree holders.
3. There was also need to review the law to provide for the administration of pre-registration examinations for all the levels in this cadre including the degree holders.
4. On the internship of degree holders in the field, there was need to ensure that training institutions make the final year practical to avoid the need of post qualification internship.

5. The Association of Kenya Medical Laboratory Scientists ought to provide its membership broken down in terms of the qualifications held by its membership.

Resolution

The current Medical Laboratory Technicians and Technologists Act, Cap 253A was enacted when diploma holders were the majority in the profession hence the tendency of provisions in the act to be skewed in their favor. The Committee resolved therefore to work on modalities of amending the act in conjunction with relevant stakeholders.

MIN.NO.DCH 397/2015:BRIEF FROM THE PARLIAMENTARY RESEARCH SERVICES ON THE PETITION BY MR. PETER OROWE NYAMBOK ON THE ALLEGED MISMANAGEMENT AND MISAPPROPRIATION OF FUNDS AT THE KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).

Ms. Sande Marale, in her presentation, summarized the issues in the document presented by Dr. Kizito Lubano, Former Head of Planning, Monitoring and Evaluation Department, KEMRI and then informed the Committee that key issues to base the interrogation of KEMRI on include:

Financial Mismanagement

- i. Request to avail to the Committee the Special Audit report of July 2015 by the Auditor General
- ii. Communication between KEMRI and the Ministry of Health show financial irregularities noted in the Special Audit Report and as summarized in Table 1. How is KEMR addressing these?
- iii. The Relationship between KEMRI and RCTG- FACES (the Programme) and KEMRI and RCTG – FACES (NGO) - Evidence show indicate conflict of interest. Has KEMRI been collaborating with an NGO (*RCTG- FACES was registered in 2011*) whose officials are KEMRI Staff. What terms has KEMRI been collaborating with RCTG- FACES and what are the reasons behind the proposed MoU which clearly has provisions that are likely to place the Institute at a disadvantage?
- iv. The proposed MoU between KEMRI and RCTG FACES came to the role in early, January 2014. Why was KEMRI (Board of Management) taking too long to dispense it?
- v. To substantiate the Check- Off loans Facility with Family Bank allegedly to be used for Mortgage for Staff? KEMRI to submit contractual agreement with

Family Bank and the latest updated beneficiary list of the mortgage facility
(Claims were also that conditions for mortgage entitlement were too punitive?

- vi. Update on the Institute of Tropical Medicine and Infectious Disease (TROMID) program.

Human Resources Issues

- i. Is the financial Mismanagement at KEMRI a symptom of lack of capacity within the financial, procurement and human resource departments owing to unaddressed Human resource malpractices?
- ii. Existence of the revised finance and HR manuals
- iii. Unfair termination of employment for CDC staff and selective termination of scientists' contracts following the current financial challenges. KEMRI to provide a copy of the contract with employees.

Members' Observations

1. The use of salary demanded by top interviewees as an excuse to leave out top candidates was not backed by any documentary evidence hence it stands out as mere allegations.
2. There was an acute human resource mismanagement problem at KEMRI as evidenced by the large number of cases in court on human resource matters due largely to recruitment of an incompetent Deputy Director. This had occasioned KEMRI losing out in terms of the huge payouts after losing on such cases.
3. The arrangement with Family Bank, a bank which had been mentioned in other malpractices in dealings with other government departments, was suspect as it wasn't clear how the bank stood to benefit from the arrangement put in place for mortgages for select KEMRI employees.
4. There was need to invite the listed RCTP- FACES NGO officials to appear before the Committee to shed light on the relationship between the NGO and KEMRI.

Resolution

The Committee noted that the KEMRI petition matter was complex and resolved that the Chairperson ought to request for extension of timelines for consideration of the petition for up to three (3) months to enable it get to the root of the matter and come up with a comprehensive report.

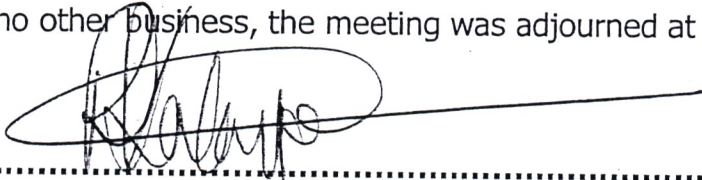
MIN.NO. DCH 398/2015:CONSIDERATION AND ADOPTION OF A REPORT ON THE PETITION BY MR. SOLOMON MURIUNGI MBURUNG'A REGARDING AMENDMENT OF THE CANCER PREVENTION AND CONTROL ACT, 2012.

The Committee considered and adopted the report on the Petition by Mr. Solomon Muriungi Mburung'a Regarding Amendment of the Cancer Prevention and Control Act,

2012 after being proposed and seconded by Hon. Michael Onyura, M.P. and Hon. John Nyaga Muchiri, M.P. respectively.

MIN.NO. DCH 399/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.55 pm.



SIGNED:

HON. (DR.) RACHAEL NYAMAI, M.P
CHAIRPERSON

DATE: 10 / 12 / 2015

