THE REPUBLIC OF UGANDA

PARLIAMENT OF THE REPUBLIC OF UGANDA

REPORT OF THE COMMITTEE ON NATIONAL ECONOMY ON THE PROPOSAL TO ISSUE PROMISSORY NOTES NOT EXCEEDING US$ 379.71 MILLION TO FINASI/ROKO CONSTRUCTION SPV LIMITED FOR THE FINANCING OF THE INTERNATIONAL SPECIALIZED HOSPITAL OF UGANDA AT LUBOWA, WAKISO

Office of the Clerk to Parliament

Parliament Building

Kampala

MARCH 2019

1.0 INTRODUCTION

The Committee on National Economy is provided for under Rule 175(1) & (2) of the Rules of Procedure of Parliament with the mandate to, among others -

(a) Review, consider, and scrutinize all matters relating to national economy generally, finance and any other matter referred to it by the House.

(b) Examine and make recommendations to the House on all loan agreements required to be authorized or approved by the House under Article 159 of the Constitution.

On 12th February 2019, the Minister of State for Finance, Planning and Economic Development in Charge of Planning, Hon. David Bahati, tabled a Proposal to issue Promissory Notes not exceeding USD 379.71 Million to FINASI/ROKO Construction Special Purpose Vehicle Limited for financing the design, construction and equipping of the International Specialized Hospital of Uganda at Lubowa, Wakiso District. The Proposal was accordingly referred to the Committee on National Economy for consideration. The Proposal was premised on Sections 23 and 36 of the Public Finance and Management Act, 2015 (as amended), which provide for multi-year expenditure commitments and authority to raise loans.

Section 23(1) of the Public Finance and Management Act, 2015 (as amended), states that -

> *"A vote shall not enter into a contract, transaction, or agreement that binds the Government to a financial commitment for more than one financial year or which results in a contingent, except where the financial commitment or contingent liability is authorized by Parliament."*

Section 36(1) of the Public Finance and Management Act, 2015 states that -

> *"Subject to the Constitution, the authority to raise money by loan and to issue guarantees for and on behalf of the Government shall vest solely in the Minister and no other person, public corporation, state enterprise or*

local government council shall, without the prior approval of the Minster, raise any loan, issue any guarantee, or take any other action which may in any way either directly or indirectly result in a liability being incurred by the Government."

2.0 BACKGROUND TO THE PROJECT

Due to life style changes, increased life expectancy and genetic factors, non-communicable diseases (NCDs) in Uganda are increasingly becoming a major burden. Consequently, the fatality levels resulting from NCDs is rising significantly, with diabetes, cancer, cardiovascular diseases, self-harm, interpersonal violence and road injuries increasing by approximately 100 percent or more since 1990 (Health Sector Development Plan, pg. 28, 2015). A report on the surveillance of disease burden in Uganda conducted by the Ministry of Health in FY 2017/18, revealed that 7.3 percent of all Out-Patient hospital visits – equivalent to 2.7 million cases, are due to diseases other than the common ailments such as Malaria, non-pneumonia coughs and colds.

Despite this trend, there is lack of both the requisite infrastructure and human resource for health required to offer the much needed highly specialized treatment and medical care to combat the burden of disease within the Country. As a result, many Ugandans have been referred abroad (mainly in India) to receive this treatment but at very high cost while others have succumbed to death.

According to the Report of the Auditor General (2016), a total of 51 patients are referred broad for treatment on average every financial year on the recommendation of the Medical Board. The Report revealed that a total of 154 patients[1] were cleared for treatment abroad in a period of three financial years

[1] *The common ailments for which reference was made were: Neurology (46), Kidney diseases (30) Cancers (22), Heart conditions (13), Orthopedics (14), Ophthalmology (9) and Gastro-entorology (6).*

(2013/14 - 2015/16) at an estimated cost of USD 2,837,909 excluding flight, upkeep and attendants' costs; this translated to USD 18,428 per patient *(Table 1).*

Table 1: Expenditure on treatment abroad FY 2013/14 – 2015/16

Year	Number of patients	Treatment Cost (USD)
2013/14	46	831,752
2014/15	51	739,873
2015/16	57	1,266,284
Total	**154**	**2,837,909**
Average		18,427.98

Source: Auditor General's Report on MoH FY ended 30th June 2016

In an effort to reduce on medical referrals abroad, Government is investing in establishing centers of excellence (the Heart Institute, the Cancer Institute), rehabilitation and construction works to upgrade Mulago National Referral hospital into a super-specialized facility, the pediatric hospital at Entebbe and the newly completed neonatal and Women's hospital at Mulago. However, huge investment is still needed to have them functional.

Despite these efforts, affordability will remain a challenge without fully functional public health insurance in place. A report of the Committee of Health (2017) revealed that when the super-specialized hospital at Mulago is finalized, it will require an additional UGX 468 billion annually if free services are to be offered to Ugandans (current allocation is UGX 54 billion). While UGX 277 billion will be required to have it operate on a business modal under which patient charges will be classified as Platinum, Gold and Silver.

At the moment, none of the hospitals in Uganda (incl. private) is internationally accredited. Absence of the much needed highly specialized medical care and treatment has not only contributed to foreign exchange hemorrhage but also to the high levels of mortality due to the high costs involved to seek services abroad.

Consequently, in October 2014, Government approved the project to construct an International Specialized Hospital of Uganda, to be operated as a world-class internationally accredited health facility. This facility is expected to provide highly specialized medical care for the common ailments currently being referred abroad at very high cost. Government and FINASI/ROKO Construction SPV Ltd negotiated and signed a number of agreements to have this facility established on the 32-hectare piece of land located at Lubowa.

The following is the sequence of events to-date:

i. **November 2014:** the project framework agreement was signed in November 2014 to guide the negotiation of the final Project Agreements.
ii. **May 2015:** the project works investment agreement (PWIA) was signed for the design, finance, construction and equipping of a 240-bed hospital and staff training. It was agreed that construction would cost US$ 249.9 million and the financing cost of US$ 99.5 million.
iii. **December 2015:** the project services agreement was signed for the operation and maintenance of the hospital for a period of eight years. It was agreed that Ministry of Health among others shall pay the hospital operations remunerations (management services remunerations) of US$ 5 million per quarter during the first year and USD 6 million per quarter in the following years. In addition, the Ministry shall pay annual operations services remuneration to be agreed upon by the Ministry of health and the Hospital.
iv. **December 2018:** the Direct Agreement was signed with the Project's Promissory Note Funders.

Upon obtaining accreditation from the Joint Commission International (JCI), one of the world's leading non-profit patient safety organizations that certifies world-class healthcare facilities, it is envisaged that the hospital will attract patients both from Uganda and abroad, in particular neighboring countries.

This is expected to minimize Government costs on overseas treatment as well as providing speedier and more accessible response to medical needs of Ugandans. In addition, the realization of the project will promote Uganda's reputation internationally and provide a centre for health care training for Ugandans.

3.0 METHODOLOGY

In scrutinizing the Proposal, the Committee:

a) held meetings with;

   i. the Minister of Finance, Planning and Economic Development in Charge of Planning;
   ii. the Minister of Health;
   iii. the Minister of Lands, Housing and Urban Development;
   iv. Mr. Peter M. Mulira, a Partner in Mulira & Company Advocates; and
   v. Prince Joseph Kiggala and Ms. Victoria Semwanga, Administrator and Beneficiary respectively, of the Late Kasalina Nkizi, a daughter of the Late Yusufu Suna Kiwewa Omulangira.

b) made reference to the following documents;

   i. the Constitution of the Republic of Uganda;
   ii. the letter from the Minister of Health to the Minister of Finance, Planning and Economic Development on the construction and equipping of Entebbe specialized hospital and a specialized cancer centre at Uganda Cancer Institute, dated 28th February, 2013;
   iii. the letter from H.E the President to the Minister of Finance, Planning and Economic Development on reducing medical expenses incurred abroad dated 23rd April, 2014 (Ref: PO/12);
   iv. the Ministry of Health's Contracts Committee Decision on the Approval of the Project Framework Agreement dated 28th August, 2014;

v. the Report on the Due Diligence of FINASI LLC, PGXXII Specialised Hospital, Bergamo and ROKO Construction Limited;

vi. the Project Investment Proposal for the International Specialised Hospital of Uganda dated 5th November, 2014;

vii. the Project Framework Agreement for the design, construction, financing and operation of two top quality hospital facilities in the Republic of Uganda between the Government of Uganda and FINASI S.R.L entered into on 17th November, 2014;

viii. the projected income, balance sheet and cash flow statements for the International Specialized Hospital of Uganda developed by FINASI in February, 2015;

ix. the Public Finance and Management Act, 2015;

x. the Project Works Investment Agreement (PWIA) to finance, design, build and equip the International Specialized Hospital of Uganda between the Government of Uganda and FINASI/ROKO Construction SPV Ltd entered into on 27th May, 2015;

xi. the Public Private Partnership Act, 2015;

xii. the Project Services Agreement for the management, operation and maintenance of the International Specialized Hospital of Uganda between Government of Uganda and the International Specialized Hospital of Uganda entered into 27th January, 2016;

xiii. the copy of the Certificate of Title for the proposed project site land *(Block 269, Plot 2772 at Lubowa-Wakiso District-30.314 hectares)* dated 16th March, 2018;

xiv. the letter from the Minister of Health *(Minute Extract)* to the Permanent Secretary, Ministry of Health dated 17th May, 2018 on the Owner's Engineer for the International Specialized Hospital of Uganda;

xv. the FINASI/ROKO Construction SPV Ltd letter to the Permanent Secretary, Ministry of Health dated 9th July, 2018 (Ref:FR/18/03) on the appointment of the Owner's Engineer for the International Specialized Hospital of Uganda;

xvi. H.E the President's letter to the Minister of Health dated 4th September, 2018 (Ref: PO/12) on the Employment of Engineer Francis Wakabi as the Owner's Engineer for the International Specialized Hospital of Uganda;

xvii. the Permanent Secretary, Ministry of Health's letter to the Permanent Secretary, Ministry of Public Service dated 28th November, 2018 (Ref: ADM.124/341/01) on the Employment of Engineer Francis Wakabi as Owner's Engineer for the International Specialized Hospital of Uganda;

xviii. the Permanent Secretary, Ministry of Public Service letter to the Permanent Secretary, Ministry of Health dated 3rd December, 2018 (Ref: CP 105733) on the Employment of Engineer Francis Wakabi as the Owner's Engineer for the International Specialized Hospital of Uganda;

xix. the Direct Agreement between Government of Uganda and FINASI/ROKO Construction SPV Ltd and African Export-Import Bank and Barclays Bank of Uganda Limited entered into on 4th December, 2018;

xx. the Promissory Note Purchase Agreement dated 4th December, 2018 between FINASI/ROKO Construction SPV Limited *(As Seller)*; and African Export-Import Bank, ABSA Bank Limited, Barclays Bank of Uganda Limited and Eastern and Southern African Trade and Development Bank *(As Arrangers)*; and African Export-Import Bank *(As Note Purchaser, Administrative Agent and Security Agent)*; and Barclays Bank of Uganda Limited *(As Local Administrative Agent)*; and the Original Note Funders;

xxi. the Brief to Parliament by Ministry of Finance, Planning and Economic Development on the Proposal to issue Promissory Notes not exceeding USD 379.71 Million to FINASI/ROKO Construction Special Purpose Vehicle Limited for financing the design, construction and equipping of the International Specialized

Hospital of Uganda at Lubowa-Wakiso District *(Laid on Table on 12th February, 2019)*;

xxii. the Presentation by Ministry of Lands, Housing and Urban Development regarding the Ownership of Blocks 269, Lubowa;

xxiii. the Letter to the Speaker of Parliament from Mr. Peter M. Mulira, a Partner in Mulira & Company Advocates, on Block 269, Lubowa;

xxiv. the Submission to the Committee on Block 269, Lubowa by Prince Joseph Kiggala and Ms. Victoria Semwanga, Administrator and Beneficiary respectively, of the Late Kasalina Nkizi, a daughter of the Late Yusufu Suna Kiwewa Omulangira; and

xxv. H.E the President's letter to the Rt. Hon. Speaker of Parliament, dated 25th February 2019 (Ref: PO/12) on his position on the International Specialized Hospital of Uganda (ISHU) at Lubowa.

4.0 FINDINGS

4.1 PROJECT DESCRIPTION:

The objective of the project is to reduce morbidity and mortality attributable to Non-Communicable diseases through appropriate specialized interventions targeting Ugandans and the neighboring states. The project is located in Lubowa and is to be implemented in two phases namely:

i. Phase 1: Comprising a 264-bed specialized Healthcare Facility inclusive of an 80-bed oncology center, in addition to Doctors and Nurses school and accommodation, up to 72,000 sqm construction area, a 9MW power house and the proposed National Ambulance control center.

ii. Phase II (to be implemented later) expanding phase 1 facilities into a Medical City of up to 500 beds total capacity. There is need for clarity on what is envisaged in phase II, its potential financing options and expected implementation time frame.

4.2 CURRENT STATUS OF THE PROJECT:

The Project is comprised in the current PIP (project code 1393) as one of the Health Sector Planned multi-year projects. It is indicated as an on-going Public Private Partnership (PPP) project. It has been described as a Finance, Design, Build, Operate and Transfer public Private Partnership. The project start date is July 2016 and it is expected to be completed in June 2020. The PIP estimated project cost is UGX 955 billion (approx. US$ 258 million).

In line with the terms of the agreements, the company presented the first milestone completion certificate, duly certified by the Ministry of Health Owner's Engineer on 20th December 2018 totaling to US$ 86,370,954.13. The agreement requires that upon receipt of the Certificate, MoFPED must issue a Promissory Note (PN) within two (2) days. This means that the respective PN was required by 22nd December 2018.

However, on 21st December 2018 the Attorney General (AG) reversed his earlier opinion of 5th December 2018[2] to the effect that Parliamentary approval was required for issuance of Promissory notes. Upon default, on 30th January 2019, the company issued and delivered a notice of default with respect to the Direct Agreement executed on 4th December[3].

Whereas it is has not been reported, failure to provide for a remedy, could result into the company terminating the agreements - with far reaching financial implications – arbitration costs in London and costs awarded by the arbitration court in respect to works remuneration for completed works, all costs and liabilities incurred by the company, redundancy and breakage costs, termination costs among others – these costs must be paid within 20 days after arbitration decision.

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[2] *The Attorney General had advised that there was no requirement for prior authority of Parliament to issue Promissory Notes.*

[3] *The direct agreement required that if no remedy is made within 45 days from a notice of default, in this case, 30th January 2019, the company may issue a notice of termination within 30 days (clause 5.4(c) of direct agreement.*

4.3 CONSISTENCY OF THE PROJECT WITH COUNTRY STRATEGY:

This project contributes to the National Development Plan (NDP) II health sector objective of enhancing health sector competitiveness in the region through establishing centres of excellence in heart, cancer, renal care domains and highly specialized diagnostic services and health care. Provision of such super-specialized medical services is critical for a healthy and productive population.

4.4 PROJECT COST:

4.4.1 Estimated Project Cost;

The project is estimated to cost US$ US$ 557.9[4] (incl. cost of financing and operational management costs) during the first eight years. However, this cost excludes the cost of land, other operational costs of the hospital during the eight years other than hospital management costs and taxes. Of this, US$ 366.9 million (64 percent) is for construction costs including the cost of financing and the balance of US$ 191million (34 percent) will be incurred on management operation costs of the project during the eight (8) years after construction.

According to the PWIA, the initial cost of the project was estimated at US$ 345.2 million, of which US$ 249.9 million (72.4%) was for construction works (design, construction, equipping the hospital and drugs for the first year) while US$ 95.3 million was for cost of financing. However, in the Direct Agreement (DA), the amount for cost of financing was revised upwards from US$ 95.3 million to approx. US$ 116.986 million.

This is attributed to the changes in agreement conditions that saw the interest rate condition change from floating LIBOR under the PWIA to a fixed rate under the Direct Agreement. As a result, the effective interest rate increased from

4 This money will be required with effect from the third year of project implementation (2020) - through redeeming of promissory notes. In addition, taking the figure submitted to Parliament (US$ 379.71), the amount current is estimated at US$ 522,038,000. This has been attributed to rise in the Libor rate.

4.76 percent under PWIA to 6.49 percent under the Direct Agreement. Consequently, the total project cost as per the Direct Agreement is estimated at approx. US$ 366.436 million.

This adjustment resulted into changes in the shares of construction works costs and cost of financing to the current levels of 68% and 32% respectively *(Table 2)*. It should be noted that the cost of the facility (civil works, equipping of the facility and supplies for the operations of the hospital for the first year) amounts to US$ 249.45 million while the balance of US$ 116.99 million including the cost of financing (interest, hedging costs and commitment fees) and cost of financing for the investor.

4.4.2 Project Construction Costs;

Table 2: Total Project Costs (incl. financing) by Source

S/N	Purpose	PWIA Amount (US$)	Direct Agreement (US$)	Current Share (%)	Brief to Parliament (US$)
1	**Construction Works: design, construction and equipping the hospital**	**249,900,000**	**249,900,000**	**68%**	
	o/w Civil works excluding mobilization costs		88,889,430	36%	
	o/w Engineering, Design & Procurement		18,117,750	7%	
	o/w Medical equipment and Hospital Furniture		101,334,450	41%	
	o/w Engineering supervision		3,748,500	2%	
	o/w Staff training		4,998,500	2%	
	o/w Medicine and consumables for the 1st year		17,992,800	7%	
	o/w Project preliminary development		14,369,250	6%	
2	**Cost of Financing**	**95,300,000**	**116,985,881.91**	**32%**	
	Total	**345,200,000**	**366,885,881.91**		**379,710,000**

Source: PWIA, Direct Agreement (DA), Brief to by MoFPED

4.4.3 Project Operation Costs;

Table 3: Hospital Operational Remunerations Costs

Category (US$, million)	Year1	Year2	Year3	Year4	Year5	Year6	Year 7	Year 8
Management Services Remuneration	20.61	24.34	24.34	24.34	24.34	24.34	24.34	24.34
Operations Services Remuneration	To be agreed upon by MOH & ISHU annually							

Source: Project Service Agreement

As earlier indicated, management services remuneration amounting to US$ 191 million (excl. taxes), equivalent to 34 percent of the total estimated project cost shall be paid to the International Specialized Hospital (ISH) by the Ministry of Health in line with the Project Services Agreement (PSA) within the eight (8) years of operation after construction. Table 3 shows the annual payment projections which must be availed through annual budget appropriation to the Ministry's Annual Budget and the medium term expenditure plan (MTEF) with effect from FY 2020/21 as indicated in *Table 3.*

4.5 PROJECT FINANCING:

4.5.1 Construction Costs;

A review of the project agreements revealed that the Company is responsible for sourcing for the finances that are required to complete the construction and equipping of the International Specialized Hospital for Uganda (ISHU). Government's obligation shall be to issue a promissory note(s)[5] to the company at every stage of implementation upon certified approved completion of each milestone. Consequently, a Milestone Completion Certificate shall be issued by Government within 2 days after receipt of the approved certificate.

[5] *A promissory note shall be issued with 2 days after the Milestone certificate has been issued.*

A *Promissory Note* commits government to pay an amount equivalent to its face value when its maturity period comes due. The promissory notes shall be redeemable after the first two (2) years (after project completion) in line with the Promissory Note Redemption Profile Schedule-3 contained in the Direct Agreement (DA). As earlier indicated, the DA indicates that a total of US$ 366 million (incl. financing costs) shall be paid.

Government has committed to earmark all current expenditures currently incurred on medical treatment abroad towards the redemption of costs related to the promissory notes issued as and when they mature – with effect from 2020/2021. It remains unclear whether this amount is sufficient to meet the projected costs. A review of the Auditor General Report for the year ending June 2016, reveals that approximately US$ 2.84 million was spent on medical treatment abroad for 154 patients for three FY 2013/14 - 2015/16 (excl. costs of travel, accommodation and upkeep) – this is inadequate to meet the cost of redemption.

4.5.2 Financing Operation Costs;

Operation costs shall be borne by the Ministry of Health in respect to services rendered by the company - termed as operational remunerations (operational services remuneration and management services remuneration). Whereas it is projected that when operations commence, revenues shall be generated from patients, this is expected to be deposited in the Consolidated Fund (CF). The projected patient revenues in the first year of operation are projected at US$159.63 million, increasing to US$262.3 million in the 11th year, which is more than adequate to cover all the operational expenses.

To avoid penalties for breach of agreement, there will be need to ring-fence patient funds to ensure that there is no shortfall in covering operational expenses.

4.5.3 Collection and Deposit of Patient Revenues;

In line with the Project Services Agreement (PSA), the company under the instruction of the Ministry of Finance, Planning and Economic Development, shall open a Hospital Revenues Account where all Patient revenues generated by the hospital shall be deposited.

The hospital revenues account shall be operated by the Ministry of Finance, Planning and Economic Development. The proceeds from the account shall be paid into the consolidated fund. Government shall ensure that whenever a withdrawal is made from the Hospital revenue account to the consolidated fund account, there remains an amount equal to the hospital services operations remuneration costs for the previous two quarters.

This implies that depending on amount agreed by both parties for hospital operations services remuneration and number of patients at the hospital, it may take some reasonable time before funds are transferred to the CF. It will be risky to depend on patient revenues as a reliable source of financing Promissory Notes redemption.

5.0 PROJECT AGREEMENTS

5.1 PROJECT FRAMEWORK AGREEMENT (PFA):

- On 17th November, 2014 Government of Uganda (GoU) entered into a Project Framework Agreement with FINASI S.R.L., a company incorporated in Italy, that proposed to the GoU that it was willing to invest in Uganda and in particular the health sector. The cooperation was in respect of a FINASI investment, which was to consist of designing, construction, financing and operation of a modern state-of-the-art hospital facility to be owned by the Ministry of Health (MOH).
- The design, construction and financing of the hospital was to be performed or procured by a special purpose vehicle company, to be incorporated in Uganda by FINASI (the construction company) in accordance with a Project Investment Agreement with the GoU.

- The operation and maintenance of the hospital facility was to be performed or procured by a special purpose vehicle company, to be incorporated in Uganda by FINASI (the operation company) in accordance with a Project Investment Agreement with the GoU.
- Although developed as a public private initiative, the hospital facilities will always be owned by the MOH and will be constructed on GoU land. The hospital is intended to attract patients from Uganda and abroad, in particular African countries, and it will enable the GoU to minimize costs for overseas treatment of patients and provide a speedy and more accessible response to medical needs of Ugandan citizens.

5.2 PROJECT WORKS INVESTMENT AGREEMENT (PWIA):

- In fulfilment of sub-clause 2.2.1 of the Project Framework Agreement, GoU entered into a Project Works Investment Agreement (PWIA) to finance, design, build and equip the International Specialized Hospital of Uganda with FINASI/ROKO Construction SPV Ltd entered into on 27th May, 2015. The International Specialized Hospital of Uganda will be located in Lubowa-Wakiso District and owned by GoU.
- FINASI and ROKO prepared the plans, financial models and additional documentation relevant to the development of the hospital, making significant investment in the preparation of the hospital project. A concept plan to finance, design, construct, equip and operate the hospital was submitted to GoU on 29th October, 2014 and accepted by the GoU. Project Works Investment Agreement (PWIA) and the works received various approvals including the Solicitor General's Approval, Ref:ADM7/173/01 of 25th May, 2015.
- According to the Project Works Investment Agreement (PWIA), the hospital shall consist of a specialized cancer facility (the Specialised Cancer Unit) and a specialized medical facility (the specialized Medical Unit), and at completion shall offer to its patients the following services/facilities;

Accident & Emergency, Radiology & Imaging, Nuclear Medicine, Radiotherapy, Chemotherapy, Laboratory, Blood Bank, Administration, Outpatient Clinics, Main Surgery (Including, inter alia, Neurosurgery and Orthopaedics), Kidney Transplant, Catherisation Laboratory, Liver Diseases Diagnosis/Treatment, Fertility Medical Services, Epilepsy, Respiratory, Intensive Care Unit (ICU), Coronary Care Unit (CCU), Delivery and Labour, Gynaecology, Opthalmology, Physiotherapy, Plastic Surgery, Cardiology, Cardiothoracic, Trauma, Dialysis, Endoscopy, Paediatric Ward, Female Ward, Male Ward, VIP Ward, Administrative Offices, Mortuary, Pharmarcy, Central Sterilization Supply Department, Biomedical Engineering, Information Technology, Kitchen, Laundry and Staff Houses.

5.2.1 Project Works Remuneration;

In consideration of the works, it is further stated in clause 6 of the Project Works Investment Agreement (PWIA) that the GoU shall pay FINASI an amount equal to USD 345,200,000 (exclusive of taxes) being the aggregate of the following:

i. USD 249,900,000 being the cost of the design, construction and equipping of the hospital as well as other costs, expenses and fees payable in connection with the construction period; and

ii. USD 95,300,000 being the cost of financing being repaid by GoU over a period of eight years. The cost of financing was structured on a floating LIBOR basis and FINASI undertakes to enter into interest hedging arrangements necessary to mitigate increases in the LIBOR rate. The costs of hedging shall be covered by GoU and the additional cost of financing.

In September 2018, Government approved a new Project Works Remuneration amount of **USD 379,710,000** with computed time value of money amounting to **USD 129,810,000** reflecting an effective interest rate of 6.49% arising from the increase in USD LIBOR from 0.3995% per annum in March 2015 to USD LIBOR of 2.535% in September 2018. Conditions for the project financing are the following:

Table 4: Project Financing Plan

Item	**Terms**
Amount (Principal + Interest)	USD 379,710,000 *(Construct Sum of USD 249,900,00 and Time Value of money of USD 129,810,000 as a result of paying USD 249,900,00 over 6 years)*
Repayment Period	6 years
Grace Period	2 years
Effective Interest Rate (Over 8 Years)	6.49%
Borrower	SPV(FINASI/ROKO)

Source: MoFPED (Feb, 2019)

i. From *Table 4,* the SPV is constituted by FINASI, as the Lender and the Ugandan construction company ROKO Construction Limited and will be incorporated in Ugandan law. ROKO will exit the SPV after termination of the civil construction.

ii. The project model is based on a project financing plan, where the selected private bank (African Export-Import Bank) will finance the total amount of the project to the SPV for a period of 2 years of grace and will be repaid through the following 6 years. The interest on the principal amount will be repaid starting from the second year.

iii. The business model is based on the assumption that the SPV is going to be tax neutral.

5.3 LENDERS DIRECT AGREEMENT:

It is noted in sub-clause 26.12 of the Project Works Investment Agreement that as a condition to achievement of the construction effective date, the Ministry of Health and the Ministry of Finance, Planning and Economic Development shall upon request by the FINASI enter into the Lenders Direct Agreement with the finance parties, that is, African Export-Import Bank and Barclays Bank of Uganda.

5.3.1 Achievement of First Milestone;

Sub-clause 18.4 of the Project Works Investment Agreement state that on occurrence of the construction effective date, the first milestone in respect of part of the works will be achieved (including, for example, for approval of the designs, the completed study of the project site, the agreement on construction contracts with contractors and the raising of the finance for the construction works) and the first milestone completion certificate shall be deemed issued.

5.4 PROJECT SERVICES AGREEMENT (PSA):

For the purpose of the operations and facilities management of the hospital, GoU entered into a Project Services Agreement (PSA) with the International Specialized Hospital of Uganda Limited on 27th January, 2016 to undertake the operations and facilities management of the hospital for a period of 8 years from the date of completion of the construction of the hospital.

5.4.1 Management Service Remuneration;

In accordance with sub-clause 8.2 of the Project Services Agreement (PSA), Ministry of Health shall pay to International Specialized Hospital of Uganda Limited an amount covering the company's income for general overall management of the hospital pursuant to the PSA (and including payment of expatriate staff and top-up allowances for seconded staff, which shall be paid quarterly during the service period as follows:

i. USD 5,152,000 (exclusive of tax) per quarter for the first year of operation; and
ii. USD 6,086,000 (exclusive of tax) per quarter for the remainder of service period.

5.4.2 Operation Service Remuneration;

In accordance with sub-clause 8.3 of the Project Services Agreement, the Ministry of Health shall pay to the International Specialized Hospital of Uganda Limited, the operational costs to be borne by the hospital other than those related to general management of the hospital. Operational services remuneration costs shall be paid quarterly on the basis of the hospital operations budget.

5.4.3 Hospital Revenue Account;

According to sub-clause 10.2 of the Project Services Agreement, the patient revenues generated by the hospital shall be paid into a revenue collection account, which shall be opened by hospital under instruction of Ministry of Finance, Planning and Economic Development (MoFPED). The hospital revenues account shall be operated by MoFPED and the proceeds from that account shall be paid into the Uganda Consolidated Fund, provided that the GoU shall ensure that whenever a withdrawal is made from the hospital revenues account into the Consolidated Fund, there remains on the hospital revenues account an amount equal to the operations services remuneration for the preceding two quarters.

5.4.4 Events of Default;

a) Under clause 21 of the PWIA, the following are some of the events that shall be a Company Event of Default:
   i. the Company does not complete the Hospital by the Works Long Stop Date;
   ii. the Company abandons the Works otherwise than in accordance with this PWIA or without prior written consent of the Ministry of Health;
   iii. the Company has failed to fulfill any obligation under this PWIA, for which failure termination has been specified in this PWIA.

b) Upon the issuance of the Certificate of Practical Completion, the Works shall be deemed as successfully completed and finally accepted by GoU and GoU will not be entitled to terminate this PWIA with reference to any Company Event of Default relating to the Works of the quality of the same.

c) GoU Events of Defaults include:

   i) the failure by the GoU to make any payment when due under this PWIA;

   ii) the failure by the GoU to comply with its obligations under the Lenders Direct Agreement and/or misrepresentation by GoU under the Lenders Direct Agreement;

   iii) any change in law or change in tax that;

      - makes unenforceable, invalid or void any payment of other material obligation of the GoU under this PWIA or related documents;
      - makes it unlawful for the Company, the contractor or the sub-contractors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under any Applicable Permit, this PWIA or the Company's finance agreements.

5.4.5 Termination:

a) **Termination by the GoU;** save as otherwise provided in the PWIA, in the event that a Company Event of Default occurs, the GoU may deliver to the Company a "Notice of Default", after which the Company will have 90 days to remedy the default, failure of which GoU shall be entitled to terminate this PWIA by issuing an "Early Termination Notice" for a 30-days period; if the Company remedies the Company event of default within these 30 days, the termination notice shall be deemed revoked.

b) **Termination by the Company;** save as otherwise provided in the PWIA, in the event that any Government of Uganda Event of Default occurs;

i. If the GoU Event of Default relates to failure to meet a payment obligation, then the Company shall be entitled to terminate this PWIA by issuing an Early Termination Notice;

ii. In relation to any other GoU Event or Default, the Company may deliver to the GoU a Notice of Default after which the GoU will have 90 days to remedy the event. If the GoU fails to remedy the Event or Default within 90 days, the Company shall be entitled to terminate this PWIA by issuing an Early Termination Notice.

c) Effects of Termination;

i. upon termination, the Company acknowledges that -

- ownership of the Works carried out and performed by the Company up to the date of termination or the completed Hospital, as the case may be, shall vest in the Ministry of Health, and the Company shall take such reasonable steps as are necessary to achieve this;
- the Company shall secure and protect such works (or the Hospital) and give up possession of the Project Site as soon as practicable, and in any case no later than 30 days after the Date of Termination; and
- the GoU shall pay to the Company termination compensation pursuant to clause 23.

ii. upon termination, Ministry of Health shall -

- be deemed to have taken possession and control of the Project Site and any construction made on such Project Site up to the Date of Termination, and the Company shall no longer be liable for safety and security on the Project Site;
- take possession and control of all materials, stores, implements and construction and designs, which are part of the Hospital. Any material and documentation

which is property to the Company or a contractor shall be returned to the relevant entity; and

- be entitled to restrain the Company and any person claiming through or under the Company from entering upon the Project Site or any part of the Project.

d) Termination Compensation;

i. In case of termination by the GoU of the PWIA -
   - GoU shall pay to the Company a Termination Compensation in an amount equal to the aggregate of the works remuneration in respect of the works performed at such date, and all other costs and liabilities which were reasonably incurred by the Company in expectation of implementing and performing the works; and
   - GoU shall be entitled to enforce the Works Performance Security in the amount of the agreed performance amount.

ii. In case of termination by the Company of the PWIA, GoU shall pay to the Company the aggregate amount of –
   - the works remuneration in respect of the works completed at such date;
   - all other costs and liabilities, which in the circumstances were reasonably incurred by the Company in expectation of implementing and completing the works;
   - redundancy and contractor breakage costs; and
   - an amount equal to the Agreed Performance Amount.

6.0 BUDGETARY IMPLICATIONS OF THE PROJECT

6.1 The Ministry of Health, which will be the owner of the hospital, will pay the SPV, through its annual budget, during the 8 years of operations an annual fee to cover the provided services and repay the initial investment (including the interest rates). The MoFPED shall deliver to African Export-Import Bank, the Administrative Agent, the following documents and evidence in relation to the annual budget cycle of the Republic of Uganda showing the budgetary appropriations required for the payments relating to the Promissory Notes falling due in the relevant year:

a) no later than 15th February of each year, evidence of the national budget framework paper approved by Parliament of the Republic of Uganda; and
b) no later than 1st July of each year, the approved budget and legislation on appropriations approved by the Parliament of the Republic of Uganda.

6.2 A review of Auditor General's Report (FY 2015/16) reveals that this budget is inadequate. Given the projected funding requirements for PNs redemption and management services remuneration *(Table 5)* and the Health Sector MTEF *(Table 6)*, it is clear that the current projections (non-wage budget projections) do not take into account allocations to ISHU.

Table 5: Requirements for PNs Redemption and other costs[6] (US$ million)

Category	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
Promissory Note Redemption (US$ m)	66.16	87.28	77.97	63.57	47.80	15.63	8.47	
Promissory Note Redemption (UGX, Bn)	244.80	322.93	288.49	235.22	176.98	57.86	31.37	
Management services Remuneration (US$ m)	20.61	24.34	24.34	24.34	24.34	24.34	24.34	24.34
Management Services Remuneration (UGX, Bn)	76.30	90.13	90.13	90.13	90.13	90.13	90.13	90.13
Total (US$ million)	86.77	111.62	102.31	87.92	72.14	39.97	32.82	**24.34**
Total (UGX, Billion)	321.10	413.06	378.62	[illegible]	267.11	147.99	121.51	90.13

Source: Direct Agreement

[6] Addition costs for operations of the Hospital.

Based on the projections in the Health MTEF and the cash flow projections from patient revenues (US$ 43 million), if no additional resources are earmarked to the Health Ministry to finance this project (US$ 191 million) during the operational period, the project will erode the fiscal space for the Ministry's non-wage budget. This will have negative implications to heath service delivery due to constrained operation budget (non-wage). Government will have to provide for additional resource under the Ministry of Health starting with FY 2020/21 to finance the operations of the hospital and the redemption of the promissory notes. Moreover, additional resources may be at the expense of other projects or borrowing to finance the deficit.

Table 6: Ministry of Health MTEF Budget Allocation (excl. arrears & AiA)

Item (UGX, Billion unless otherwise stated	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
Wage	11.42	11.42	11.99	12.59	13.22	13.88
Non-Wage Recurrent	64.67	62.38	71.74	86.08	103.3 0	123.96
Domestic Dev	51.75	51.75	62.10	62.10	62.10	62.10
External Financing	1003.06	1037.56	100.19	85.38	0.00	0.00
Total excl. External	**127.84**	**125.55**	**145.82**	**160.77**	**178.62**	**199.94**
Total incl. External	**1130.90**	**1163.11**	**246.01**	**246.15**	**178.62**	**199.94**
Management services Remuneration USD			20.61	24.34	24.34	24.34
Management services Remuneration UGX			76.30	90.13	90.13	90.13
Balance on Non-wage after Management services remuneration for ISHU			**-4.56**	**-4.05**	**13.17**	**33.83**

Source: MFPED, Direct Agreement

6.3 ORGAN TRANSPLANTS:

GoU will use its best endeavours to introduce legislation to allow organ transplants in Uganda within 2 years of the date of the Direct Agreement. The Committee was informed that the First Parliamentary Council has completed drafting the Bill and it is to be presented to Cabinet for approval; thereafter, it will be gazetted and brought to Parliament. At any time after the hospital is capable of offering a treatment, and before any patient eligible to be recommended by the Uganda Medical Board for such treatment abroad is so recommended or referred to another hospital in Uganda, the GoU shall ensure that each such patient is referred to the Hospital for such treatment; and FINASI undertakes to ensure that the Operations Service Provider Contract provides specialised medical treatment at a cost equivalent to or lower than the average international costs for similar treatment.

6.4 RETURN ON INVESTMENT OF THE PROJECT:

Economic analysis indicated that the project is economically viable with the calculated return on investment that will accrue to Government estimated at 30%.

7.0 OWNERSHIP OF BLOCK 269 LUBOWA

7.1 In establishing the ownership of Block 269, Lubowa - the proposed land for construction of ISHU - the Committee interacted with the following:

i. the Minister of Lands, Housing and Urban Development;

ii. Mr. Peter M. Mulira, a Partner in Mulira & Company Advocates; and

iii. Prince Joseph Kiggala and Ms. Victoria Semwanga, Administrator and Beneficiary respectively, of the Late Kasalina Nkizi, a daughter of the Late Yusufu Suna Kiwewa Omulangira.

7.2 The Committee established as follows:

a) **History of Ssuna's Allotment of Land in Buganda Kingdom under the Uganda Agreement 1900;**

i. By the 1900 Uganda Agreement, YUSUFU SUNA KIWEWA OMULANGIRA became the original allottee of 8 square miles of land in Buganda Kingdom as per Allotment No.4142 *(See Annex A)*.

Allotment No.4142 shows that out of the allotment of 8 square miles, YUSUFU SUNA KIWEWA OMULANGIRA has 2 square miles of land at Bunamwaya, Nkumba, Nambi and Ngobe.

iii. In 1944 YUSUFU SUNA KIWEWA OMULANGIRA made a Will by which he itemized several pieces of land which he bequeathed to his successors, including his land at Bunamwaya, which did not make mention of the land at Lubowa as belonging to the said estate *(Courtesy of M/s Nshimye & Co. Advocates' Letter under Ref: LC/016/11/CK of 16th August 2018).*

b) **History of Ownership of Mitchell Cotts Land at Lubowa;**

i. Crown Grants No.9854 in respect of the land described as Nakukuba and Mutungo, Kyadondo Block 269 of approximately 843.6 acres, original grantee was Captain Hill.

ii. Crown Grants No.8843 in respect of the land described as Lweza, Lubowa and Naziba, Kyadondo Block 269 of approximately 708.8 acres, original grantee was Ormsby.

c) **History of Ownership of the land at Lubowa;**

i. By Crown Land Document No.408 being an Instrument of Transfer dated 13th June 1916 was registered on 20th April 1917 on Crown Lands Register Volume 29 Folio 18 by which ROBERT CONSTABLE HILL of Uasin Gishu, B.E. Africa transfer the land to LUBOWA ESTATE LIMITED.

ii. By Crown Land Document No.1647 being an Indenture dated 1st September 1925 the Liquidated LUBOWA ESTATES LIMITED transferred 1005.15 acres to THE UGANDA RUBBER AND COFFEE ESTATES LIMITED under Instrument No.1718 of 19th September 1925 under Freehold Register Volume 2 Folio 16.

Kabarwatsha

iii. Freehold Register Volume 2 Folio 15 (Formerly of C.L.R. Vol.29 Folio 18) was issued on 19th September 1925 under Crown Grant No.9854 in respect of 840.998 acres at Nakukuba and Mutungo Estate to THE UGANDA RUBBER AND COFFEE ESTATES LIMITED, Nsimbe Estate, Mawokota, Uganda under Instrument No.1717 of 19th September 1925.

iv. Transfers to the Land comprised in Freehold Register Volume 2 Folio 15:

- On 29th December 1947 the land comprised in FRV 2 Folio 15 was transferred to UGANDA ESTATES LIMITED of P. O. Box 1, Kampala under Instrument No.76586.

- On 28th June 1951 the land comprised in FRV 2 Folio 15 was transferred to THE UGANDA COMPANY LIMITED, 13, Rood Lane, London, E.C. 3, England and P. O. Box 1, Kampala under Instrument No.104122.

v. Freehold Register Volume 2 Folio 16 (Formerly of C.L.R. Vol.10 Folio 14) was issued on 19th September 1925 under Crown Grant No.8843 in respect of 993.15 acres at Lweza, Lubowa and Naziba Estate to THE UGANDA RUBBER AND COFFEE ESTATES LIMITED, Nsimbe Estate, Mawokota, Uganda under Instrument No.1718 of 19th September 1925.

vi. Transfers of the Land comprised in Freehold Register Volume 2 Folio 16:

- On the 26th October 1931 THE UGANDA RUBBER AND COFFEE ESTATES LIMITED transfer 12.00 acres being part of the said land to JOHN JAMIESON WILLIS Lord Bishop of Uganda House of Bishops, Kampala, Uganda a freehold certificate of title was issued under Freehold Register Volume 33 Folio 12 out FRV 2 Folio 16; the current registered proprietor is THE REGISTERED TRUSTEES OF THE CHURCH OF UGANDA who got registered upon a transfer under Instrument No.197671 of 31st May 1976.

- On 29th December 1947 the land comprised in FRV 2 Folio 16 was transferred to UGANDA ESTATES LIMITED of P. O. Box 1, Kampala under Instrument No.76586.

- On 28th June 1951 the land comprised in FRV 2 Folio 15 was transferred to THE UGANDA COMPANY LIMITED, 13, Rood Lane, London, E.C.3, England and P. O. Box 1, Kampala under Instrument No.104122.

vii. Freehold Register Volume 82 Folio 1 was issued on 25th January 1958 to THE UGANDA COMPANY LIMITED under Instrument No.139274 as a single certificate of title comprising Crown Grant No.9854 and Crown Grant No.8843.

d) **Acquisition of the Land at Lubowa Kyadondo Block 269 by Ms. Mitchell Cotts Uganda Limited;**

i. The certificate of title comprising Freehold Register Volume 82 Folio 1 issued on 25th January 1958 under Instrument No.139274 based on Crown Grants No.9854 and 8843 for land known as Lubowa Estate measuring 1834.148 acres and was originally registered in the names of THE UGANDA COMPANY LIMITED, 13 Rood Lane, London, E.C.3 England and P. O. Box 7001, Kampala.

ii. On 9th July 1969 the said land was transferred to THE UGANDA COMPANY (HOLDINGS) LIMITED of P. O. Box 7001, Kampala under Instrument No.178344.

iii. On 12th March 1988 a Certificate of Repossession No.0412 dated 18th December 1987 was registered under Instrument No.234323 in favour of UGANDA COMPANY (HOLDINGS) LIMITED of P. O. Box 7001, Kampala.

iv. On the 21st May 2013 the said land was transferred to MITCHELL COTTS UGANDA LIMITED of P. O. Box 7032, Kampala under Instrument No.482578.

e) **Acquisition of Land at Lweza by Uganda Land Commission;**

i. Plot 101 Lubowa Estate was sub-divided out of the Freehold Volume 82 Folio 1 by UGANDA COMPANY (HOLDINGS) LIMITED resulting in the creation of Freehold Register Volume 321 Folio 6 of 37.968 Hectares issued on 27th August 1993.

ii. On 17th September 1998 UGANDA COMPANY (HOLDINGS) LIMITED transfer Plot 101 Lubowa Estate comprised in Freehold Register Volume 321 Folio 6 to JOINT CLINICAL RESEARCH CENTRE LIMITED under Instrument No.296601.

iii. Plot No.2772 Busiro Block 269 of 30.3140 Hectares Lubowa Estate was sub-divided from Freehold Register Volume 321 Folio 6 to create Freehold Register WAK3941 Folio 18 which was then transferred by JOINT CLINICAL RESEARCH CENTRE LIMITED to UGANDA LAND COMMISSION (for Ministry of Health) on 16th March 2018.

f) **Findings on the Claim of Beneficiaries of Yusufu Suna Kiwewa;**

i. The late YUSUFU SUNA KIWEWA OMULANGIRA became the original allotee of 8 Square Miles of land in Buganda Kingdom under Allotment No.4142, part of which contained 2 Square Miles of land comprised in Mailo Register Kyandondo Block 265, Bunamwaya.

ii. Allotment No.4142 did not include the two pieces of land described as Nakukuba and Mutungo, Kyadondo Block 269 initially approximated to be 843.6 acreas originally held under Crown Grants No.9854 and Freehold Register Volume 2 Folio 13. The said allotment did not also include the land described as Lweza, Lubowa and Naziba, Kyadondo Block 269 initially approximated to be 708.8 acres held under Grant No.8843 and Freehold Register Volume 2 Folio 16 which measured approximately 993.15 acres.

iii. The Late YUSUFU SUNA KIWEWA OMULANGIRA did not include any of the two pieces of land situated at Lubowa when he made his Will in 1944.

g) **Statement of the Land Search (FRV WAK3941/18) by Ministry of Lands, Housing and Urban Development as at 28th February 2019;**

The Committee requested for a search on Block 269 Lubowa *(a copy of the Search Report is attached)*, which was carried out and submitted as follows:

TITLE:	FREEHOLD REGISTER VOLUME WAK3941 FOLIO 18 LAND AT LUBOWA KYADONDO BLOCK/ROAD 269 PLOT NO.2772
AREA:	MEASURING APPROXIMATELY 30.3140 HECTARES
REG. PROPRIETOR:	UGANDA LAND COMMISSION (MINISTRY OF HEALTH) OF P. O. BOX 36408, KAMPALA REGISTERED ON 01/06/2018 04:26PM UNDER INSTRUMENT NO.WAK-00174518
INCUMBERANCES:	NIL

8.0 COMMITTEE OBSERVATIONS

8.1 The project contributes to the NDP II Health Sector Objective of enhancing health sector competitiveness in the region through establishing Centres of excellence in heart, cancer, renal care domains and highly specialized diagnostic services and health care. Provision of such super-specialized medical services is critical for a healthy and productive population. However, to deliver the intended benefits to Ugandans, there is need to strengthen the health sector referral system as well as improve the functionality of the health service delivery systems across the country to aid early diagnosis and attendant medical care provision.

8.2 There is no doubt the implementation of the project has potential of increasing the availability of specialized medical services in the country and to promote medical tourism through referrals from neighboring countries. However, there is need to fast-track the implementation of the National Health Insurance to guarantee accessibility of the facility by making it affordable to Ugandans when completed.

8.3 Government has already defaulted on the requirement to issue to FINASI signed Promissory Notes for the first approved Certified of Completed Milestone of 5th December, 2018 and is liable to a penalty irrespective of the position of Parliament on the request (approval or non-approval).

8.4 The signing of this Agreement occurred without prior approval of Parliament, against the provisions of the law. This was based on the 5th December, 2018 opinion of the Attorney General, which stated that no Parliamentary approval was required for issuance of Promissory Notes. However, the signing of this Agreement prior to Parliamentary approval has not deterred Government from seeking the mandatory approval, especially after receiving a letter dated

21st December, 2018 from the Attorney General that reversed his earlier opinion contained in a letter dated 5th December, 2018.

8.5 **Ownership Of Block 269, Lubowa;** based on the findings of the Committee with regard to the ownership of Block 269, Lubowa *(Pages 26-31)*, the Committee notes that:

a) The most recent Statement of Search of Block 269 Plot No.2772 as at 28th February 2019 indicates that the land in question is owned by Uganda Land Commission (Ministry of Health), and it has no encumbrances. The Ministry of Lands, Housing and Urban Development submitted a Certificate of Title to the Committee to this effect.

b) The Committee considered two claims submitted to it to the effect that the land in question belongs to the Late Yusufu Suna Kiwewa Omulangira; one by Mr. Peter M. Mulira of Mulira & Company Advocates, and the other by Prince Joseph Kiggala and Ms. Victoria Semwanga, Administrator and Beneficiary respectively, of the Late Kasalina Nkizi, a daughter of the Late Yusufu Suna Kiwewa Omulangira. None of these claimants submitted proof of ownership of the said land. On the contrary, the Ministry of Lands, Housing and Urban Development submitted documents to the Committee detailing the 8 square miles of land in Buganda Kingdom as per Allotment No.4142 (*See Annex A*), which under the 1900 Uganda Agreement, were first allotted to the Late Yusufu Suna Kiwewa Omulangira. In 1944, the Late Yusufu Suna Kiwewa Omulangira made a Will - which the Ministry of Lands, Housing and Urban Development accessed – in which he itemized several pieces of land, which he bequeathed to his successors. The Will did not make mention of the land at Lubowa as belonging to the said estate.

8.6 **Budgetary Implications;** the Committee noted that the Ministry of Health, which will be the owner of the hospital, will pay the SPV through its annual budget during the 8 years of operations, an annual fee to cover the provided services and repay the initial investment (including the interest rates).

8.7 **Government Supervision of the Project;** the Committee noted that in fulfillment of sub-clause 17.1.6 of the Project Works Investment Agreement, the Ministry of Health on 28th November, 2018 appointed Eng. Francis Wakabi to act as the Owner's Engineer to the International Specialized Hospital in Lubowa, for a period of six (6) months. Eng. Wakabi had resigned from Public Service and is also under investigation. H.E. the President had in a letter dated 4th September, 2018 (Ref: PO/12) directed the Minister of Health, that given the importance of this project and in order to avoid delays and ensure that the project continues as earlier anticipated, to allow Eng. Francis Wakabi to continue working for the period of six months as the process of appointing a new engineer was being formalized. This was on the request of FINASI. It was wrong for the project contractor/implementer to recommend who should be the project owner's supervisor. This is clearly a conflict of interest and will most likely expose GoU to losses/risks.

8.8 **Project Implementation Delays;** the Committee noted that the preparation and appraisal of this project has taken a very long time. The project was conceived in 2013 and the launch/ground breaking was on 1st June, 2017. The project site land title to the Ministry of Health was obtained on 1st June, 2018 and negotiations with project financiers initially commenced with CITI Bank, and subsequently with African Export-Import Bank and Barclays Bank of Uganda Limited, on 4th December, 2018. The risk of delays in preparation and appraisal of this project and other risks associated with implementation delays could further put the project at risk of failure to be implemented on time.

9.0 COMMITTEE RECOMMENDATIONS:

9.1 In light of this project, Government should put in place mechanisms to ensure that on-going programmes such as rehabilitation and equipping of health facilities (lower level health facilities, general hospitals, regional referral hospitals as well as national referral hospitals) complements the existing specialized facilities such as the Uganda Heart Institute, Uganda Cancer Institute and Mulago Super-specialized hospital among others. In addition, Government should ensure that they are internationally accredited to widen the super-specialized service scope as a means of lowering service costs.

9.2 The design of the hospital must include a special wing, with subsidized costs for Ugandans that cannot afford the cost in the international set up.

9.3 The Attorney General's Office should be cautioned to be more careful and thorough when giving advice to Government to avoid or minimize losses to Government arising out of inconsistencies.

9.4 Government should in future strictly adhere to the provisions of the law that require the prior authorisation of Government financial commitments for more than one financial year or which results in a contingent. The authority of Parliament cannot be sought after Government has already signed/executed Agreements that bind Government to a financial commitment for more than one financial year or which results in a contingent liability.

9.5 On the **ownership Of Block 269, Lubowa;** based on the history of ownership of this land at Lubowa presented to the Committee, the evidence of the Certificate of Title submitted to the Committee, and the land search conducted upon the request of the Committee, Block 269 Lubowa belongs to Uganda Land Commission (Ministry of Health) with no encumbrances. The Committee therefore recommends that the construction of the International Specialized Hospital of Uganda (ISHU) should commence as soon as possible to avoid further penalties that Government will be paying by failing to issue Promissory Notes within the stipulated time.

9.6 On **Budgetary Implications,** the Committee recommends that the Ministry of Health should ensure timely integration of the budgetary appropriations required for the payments under the Project Works Investment Agreement (PWIA), the Lender's Direct Agreement and any other ancillary or connected agreement to which the Government of Uganda is a party, that will fall due in the relevant year.

9.7 On **Government Supervision of the Project,** the Committee recommends as follows;

i. The employment contract of Eng. Francis Wakabi as the Owner's Engineer should be terminated with immediate effect;

ii. The Ministry of Health should request the Ministry of Works and Transport (MoWT) to assign two internationally accredited Senior Engineers at the rank of Principles to the Project (a Civil Engineer and an Electro-Mechanical Engineer);

iii. The Ministry of Health should assign an internationally accredited Bio-Medical Engineer;

iv. The 3 (three) Engineers mentioned above should constitute a team of Owner's Engineers that will represent Government to supervise the Project in the interim as Ministry of Health recruits its own engineers in the established Infrastructure Department; and

v. Government should make appropriate transition arrangements not to delay the project.

9.8 On Project Implementation Delays; the Committee recommends that Government intensifies its efforts of timely preparation and appraisal of public investment projects by improving their quality and readiness. This will go a long way in fast tacking and addressing the glaring challenges constraining Uganda's development agenda.

10.0 CONCLUSION

Subject to the observations and recommendations herein, the Committee recommends that this House approves the Proposal for Government to issue Promissory Notes not exceeding USD 379.71 Million to FINASI/ROKO Construction Special Purpose Vehicle Limited for financing of the design, construction and equipping of the International Specialized Hospital of Uganda at Lubowa-Wakiso District.

REPORT OF THE COMMITTEE ON NATIONAL ECONOMY ON THE PROPOSAL TO ISSUE PROMISSORY NOTES NOT EXCEEDING US$ 379.1 MILLION TO FINASI/ROKO CONSTRUCTION SPV LIMITED FOR THE FINANCING OF THE INTERNATIONAL SPECIALIZED HOSPITAL OF UGANDA AT LUBOWA

1.	Hon. Bbumba Syda Namirembe	Nakaseke North	
2.	Hon. Bategeka Lawrence	Hoima Municipality	
3.	Hon. Tayebwa Thomas	Ruhinda North	
4.	Hon. Kajara Aston	Mwenge South	
5.	Hon. Yeri Apollo Ofwono	Tororo Municipality	
6.	Hon. Kiwanuka Keefa	Kiboga East	
7.	Hon. Seguya Lubyayi John Bosco	Mawokota South	
8.	Hon. Musoke Paul Sebulime	Buikwe North	
9.	Hon. Kabafunzaki Herbert	Rukiga County	
10.	Hon. Ayepa Michael	Labwor County	
11.	Hon. Katoto Hatwib	Katerera County	
12.	Hon. Lokeris Samson	Dodoth East	
13.	Hon. Rwemulikya Ibanda	Ntoroko County	
14.	Hon. Migadde Robert Ndugwa	Buvuma Islands	
15.	Hon. Mandera Amos	Buyamba County	
16.	Hon. Wamakuyu Mudimi Ignatius	Elgon County	
17.	Hon. Okello Anthony	Kioga County	
18.	Hon. Dhamuzungu Geoffrey	Budiope East	
19.	Hon. Guma Gumisiriza David	Ibanda North	
20.	Hon. Sematimba Simon Peter	Busiro South	
21.	Hon. Elotu Cosmas	Dakabela County	

NO.	NAME	CONSTITUENCY	SIGNATURE
22.	Hon. Alyek Judith	DWR, Kole	
23.	Hon. Turyahikayo K. M. Paula	Rubabo County	
24.	Hon. Isala Eragu Veronica Bichetero	Kaberamaido County	
25.	Hon. Azairwe Dorothy Nshaija K.	DWR, Kamwenge	
26.	Hon. Akol Anthony	Kilak North	
27.	Hon. Okupa Elijah	Kasilo County	
28.	Hon. Ariko Herbert Edmund	Soroti Municipality	
29.	Hon. Nzoghu William	Busongora North	
30.	Hon. Bakireke Nambooze Betty	Mukono Municipality	
31.	Hon. Akena James Jimmy	Lira Municipality	
32.	Hon. Baryayanga Andrew Aja	Kabale Municipality	
33.	Hon. Katwesigye Oliver Koyekyenga	DWR Buhweju	
34.	Hon. Akamba Paul	Busiki County	
35.	Hon. Atiku Bernard	Ayivu County	
36	Hon. Okumu Ronald Reagan	Aswa County	
37.	Hon. Kassiano Wadri Ezati	Arua Municipality	
38.	Hon. Kutesa Pecos Onesmus	UPDF Representative	

PARLIAMENT OF UGANDA

A MINORITY REPORT ON THE REQUEST BY GOVERNMENT TO ISSUE PROMISSORY NOTES NOT EXCEEDING USD 379.71 MILLION TO FINASI/ROKO CONSTRUCTION SPV LIMITED FOR THE FINANCING FOR THE DESIGN, CONSTRUCTION AND EQUIPPING OF THE INTERNATIONAL SPECIALISED HOSPITAL OF UGANDA AT LUBOWA.

MARCH, 2019

N·B

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LIST OF ACRONYMS AND ABBREVIATIONS

AGOA	African Growth Opportunity Act
BoU	Bank of Uganda
GoU	Government of Uganda
H.E	His Excellency
IMF	International Monetary Fund
ISHU	International Specialised Hospital Uganda
M	Million
MoFPED	Ministry of Finance, Planning and Economic Development
MoH	Ministry of Health
MoWT	Ministry of Works and Transport
PWIA	Project Works Investment Agreement
STM	Senior Top Management
USD	United States Dollars

N·B

1.0 Introduction

On 12th February, 2019, the Hon Minister of Finance, Planning and Economic Development in charge of Planning tabled a proposal seeking for the authority of Parliament to cause Government to issue Promissory Notes not exceeding USD 379.71 Million to FINASI/ROKO Construction Special Purpose Vehicle Ltd for financing the design, construction and equipping of the International Specialised Hospital of Uganda at Lubowa Wakiso District. The Proposal was accordingly referred to the Committee of National Economy for consideration.

The Minister sought cover in Sections 23 and 36 of the Public Finance Management Act, 2015 (as amended).

It is envisaged that if approved, the facility will manage complex cases/non communicable diseases such as cancer, kidney transplants, heart and brain surgery and other conditions requiring specialized treatment not available in Uganda. It is also expected that the country would save about USD 73m which Government incurs annually in referrals abroad.

2.0 Mandate

We avail ourselves Parliament's oversight role in promoting accountability and transparency.

To this end Rt. Hon Speaker, we are moving under Rule 202 of Parliament's Rules of Procedure which provides that;

1) Any Member or Members dissenting from the opinion of a majority of a Committee may state in writing the reasons for his or her or their dissent, and the statements of reasons shall be appended to the report of the Committee.

2) The Member dissenting from the opinion of the majority of the Committee shall be given time to present the minority report at the time of the consideration of the Committee report.

3) In preparing a minority report, a member shall be afforded reasonable assistance by the Office of the Clerk.

N.B

As Members of the Committee and after participating in the activities that should have led to the report, we take exception to recommendations therein and accordingly wish to dissent.

Much as we are not opposed to a project of that nature, we harbour serious concerns in both its motive and the manner in which the discrepancies which the proposal bears have been handled. We therefore contend that if approved in the current form as the Committee Report implies, the project is more of a liability to the country than is envisaged.

Points of dissent from the main report are as listed below:

- Legality/Procedure
- Priority
- Procurement standards in the choice of FINASI/ROKO SPV as the investor.
- Inconsistency in the Cost of financing the International Specialised Hospital Uganda (ISHU)
- Payment for completion of project works through the Escrow Account vs issuance of Promissory Notes.
- Project Monitoring component absent in project documents.
- Ownership of the Project Land
- Budgetary implication and consequent absence of the Note Purchase Document.
- Lack of clarity on the operation of the ISHU facility alongside other existing specialised facilities in the country.

2.0 Justification for Dissenting From the Main Report.

2.1 Legality/ Procedure

Article 159(2) of the Constitution of Uganda provides for Government's mandate to guarantee loans for public institutions. Equally, the Public Finance and Accountability Act (2003)3 also authorizes Government to guarantee loans for state enterprises and Local Governments in the interest of the public. According to Article 159(4) of the Constitution and section 13(1), (2) and (3) of the Budget Act (2001), Government is in turn tasked to provide accountability on loan guarantees and grants to individual companies and Statutory Corporations. Important however, is that all this is subject to the authorization of Parliament.

This carries a high degree of risk in that in the event of default in payment by the borrower, Government, as a guarantor undertakes to re-pay the outstanding loan balance using money from the consolidated fund as stipulated under section 28 of the Budget Act. This is in addition to the fact that resources from the consolidated fund which would otherwise have been used for public investments are diverted. There is also a high likelihood of financial loss of tax payers' money should the borrower default or fail to pay back the loan.

Incredulously, FINASI/ROKO SPV LTD issued and delivered a Notice on the 30th of January, 2019 to the Ministry of Finance, Planning and Economic Development in respect to the project agreements executed on the 4th December, 2018. Equally incomprehensible is that a penalty fee of USD 750,000 increasing on a daily basis is being incurred even before the project takes off. The likely event of failure will lead to the termination of the projects agreements, loss of government monies and cause serious damage to Uganda's reputation among international investors and the international financial community.

As for the guarantee in question, an unprecedented urgency is presented in the proposal to Parliament. It is quite suspicious for a process that started in 2014 only to emerge as an emergency in 2019.

The procedure and compliance with the enabling laws has all been flouted and already raises questions. The request to issue Promissory Notes is due to the illegal contractual obligations that had hitherto been signed between GoU and a private company FINASI/ROKO SPV LTD without due Parliamentary Approval.

As a Parliament, we must be seen to adhere to the highest standard of legality and Constitutionalism short of which we will be legislating in vain. It's therefore the considered view of the authors of this minority report that, Parliament should not be drawn into the unsolicited rush to approve Promissory Notes; rather parliamentary approval processes should be respected and adhered to.

2.2 Priority

Unlike public sector institutions, Government's control in private sector operations is limited since the latter is chiefly motivated by profit maximization. This renders private sector initiatives costly and subject to abuse as has been

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evidenced in the cases of Phoenix Logistics Project and Apparel Tri-Star (ATS) Uganda Ltd which this Parliament has full knowledge of. This calls for extra caution in assuming loan obligations in respect to a private sector entity.

There has been marked effort by Government in the provision of specialised health services in Uganda. This has seen the upgrade and expansion of health facilities some of which are now complete or near completion. Among these projects are the ongoing renovations at Mulago Institute at Mulago Complex and the expansion of the Heart Institute with a USD 64.9 million loan from the Islamic Development Bank. This is in addition to the Women and Paediatric hospitals at Mulago and Entebbe respectively. It is noteworthy that they are all aimed at providing similar specialized health services as envisaged for ISHU – Lubowa Facility, among them treatment, research, training and prevention.

Why should a private investor such as FINASI/ROKO SPV LTD be given precedence in accessing guarantees when less risky institutions can be revamped or upgraded to offer such services? Autonomous and national referral hospitals like the Uganda Heart and Uganda Cancer Institutes and other tertiary care units should be facilitated in the development of specialised hospital care functions.

2.3 Procurement standards in the choice of FINASI/ROKO SPV as the investor.

Questions have arisen as to the compliance to procurement policies in determining the FINASI/ROKO SPV LTD as the preferred investor for the ISHU-Lubowa facility. There is no allusion or reference to an open bidding or competitive process from which they were evaluated for the job at hand. Neither was there a Public Private Partnership arrangement towards the project. There is instead a deliberate move to circumvent due legal, institutional and policy provisions.

It is also indicated on page 40 of the Project Framework Agreement, where No.24.9 indicates that "nothing in this Project Framework Agreement shall be deemed to constitute a partnership between the parties or constitute either party the agent of the other party for any purpose" an indication that the type of agreement that government entered into with FINASI was neither a loan request nor a guarantee.

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Parliament is privy to precedents where Government has continued to award contracts to incompetent and resource-constrained companies with dire ramifications despite protest from stake holders. There is a risk of awarding contracts beyond the capacity of investors of choice who get overwhelmed by the volume works.

A background assessment would have revealed that FINASI/ROKO SPV LTD in wanting for a project of the magnitude proposed. There is no available information or testimonial evidence of the capacity of the company.

According to the Ministry of Finance, Planning and Economic Development, an investor who owns FINASI "a good ally of government" made a proposal to H.E the President in February, 2013 to build and manage specialized healthcare at Entebbe Grade A and the Uganda Cancer Institute. Acting on this, the President directed the Ministry of Health and Ministry of Finance, Planning and Economic Development to negotiate the project and the contractor financing to which there is no clear evidence that payments should be made through issuance of Promissory Notes. Rather the President suggested a Public Private Partnership arrangement and indicated that the company should not get any financial guarantee as they had initially sought. This arrangement is therefore against paragraphs 2 and 3 of the Presidents directive in a letter dated 23rd April, 2014 to the then Minister of Finance, Hon. Maria Kiwanuka.

2.4 Inconsistency in the Cost of financing the International Specialised Hospital Uganda (ISHU)

According to documents submitted by the Ministry of Finance, Planning and Economic Development, the total project cost breakdown is USD 249.9m with no tax payment component. However, the financing for which GoU is seeking Parliamentary approval is USD 379.71million thus an increment of USD 129.83 million, which is 52% of the original estimated cost. In the Direct Agreement between GoU and FINASI/ROKO SPV LTD which was entered into on 4th December, 2018, the agreed cost for the project was at USD 366.88M. How does the amount of USD 129.83 million of the original estimated cost request come about? and if it was an error, why does the difference in amounts rise and not necessarily decline?

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The investor seems assured of making a profit over the eight year horizon involving construction and operating the ISHU Lubowa Facility. What happens to this otherwise GoU/ tax payer's guarantee, in instances of low yields or even disasters and who takes the contingent liability on having this health facility in place?

The Promissory Note financing modality gives the private investor in this ISHU-Lubowa facility 100% funding and guarantees to safeguard them from any losses whatsoever.

2.4 Payment for completion of project works through the Escrow Account vs issuance of Promissory Notes

In the Project Agreement, on page 19, section 10.1, an Escrow Account would be opened and maintained at and by the Bank of Uganda to give comfort to the timeliness of payment between the Company and government, however, section 5.1 of the Amended Direct Agreement between GOU and FINASI/ROKO SPV on the other hand clearly indicates that there is no need for an Escrow Account for payment of completed works and henceforth it is no longer a requirement for payment by government to the company and all references to the same, and the obligations of the GOU with respect to the same under the Project Works Investment Agreement are no longer applicable.

There is no evidence whatsoever, for the decision regarding the undesirability of the Escrow Account thus causing suspicion that money is meant for individual private deals at the expense of Ugandan tax payers. This is also in total contradiction with the Minister's idea of multiyear commitments till the loan is paid off for a period of six years after which revenues generated by the facility would be deposited into the consolidated fund annually.

2.5 Project Monitoring component absent in the project documents

Any normal project is destined for monitoring and evaluation activities before effective payments are undertaken but a look at the amended ISHU Direct Agreement No.5.3 a (ii) (B, C&D), it provides for payments of works done by the company and thus issuance of Milestone Completion Certificate together with the Mile Stone Completion report prepared by the company to the technical advisor, the MoFPED for purposes of enabling the GoU authorized signatory's and thus payments.

A much more detailed work plan for supervision and monitoring of project activities before issuance of the Promissory Notes as evidence for complete work should have been clearly provided to avoid payments of huge sums of monies for works that have not been critically supervised and monitored. A practice which is very common with most Ugandan projects.

There is also no evidence whatsoever, that technical staff in the Ministries of Health, and Finance benchmarked on some accomplished hospital project works which have been previously undertaken by FINASI/ROKO SPV Company elsewhere as best practice requires for quality assurance to guarantee them as favourable candidates for the construction of the ISHU facility project.

2.6 Ownership of the Project Land

The attention of Mr.Peter Mulira the lawyer to the rightful owner of the land on which the ISHU facility project is to be located has been drawn to the proceedings of the Committee.

According to cadastral records at the Department of Surveys at Entebbe, Block 269, formerly MRV 82 Folios, 1, 2 and 3, was registered in the names of Prince Yusuf Ssuuna Kiweewa on 6th June 1906 pursuant to Final Certificate Number 18570.

The land has since then been the subject of several transactions over the years till 1982 when Mitchell Cotts fraudulently had the titles transferred in their names.

The title deed presented to Parliament by the Permanent Secretary, Ministry of Health is for plot 101 which originates from a fraudulent title issued in 1983 but backdated to 1969. It is a freehold title over mailo land which is not allowable under the law.

An application for Letters of Administration in respect to the estate of the late Suuna has already been lodged and claim will be made to the ownership of the said land. Now that the said land is the subject of dispute and its legal status is still unresolved, we risk litigation and might be forced to forfeit the investment thereon altogether. It is a legal position that a structure erected on land you don't own becomes the property of the rightful owner.

2.7 Budgetary implication and consequent absence of the Note purchase document.

The project lacks the Note Purchase Document that details the terms of financing which thus makes it an uphill task to calculate the total financial implication of the project to Government much as the direct agreement makes reference to terms in the Note Purchase Agreement which the Ministry of Finance, Planning and Economic Development hasn't availed.

2.8 Lack of clarity on the operation of the ISHU facility alongside other existing specialised facilities in the country

The Ministries of Health and Finance have not clarified on how the ISHU hospital will function alongside the existing specialised facilities like the Heart Institute, Cancer Institute and the Super Specialised hospital at Mulago and whether there is a possibility of the said facilities being accredited internationally.

3.0 Recommendations

- Government should source for funds to rehabilitate and equip the regional referral hospitals in the four regions of the country [Eastern, Central, Northern and Western]. The specific focus should be on Jinja, Mbale and Moroto hospitals for Eastern Uganda, Gulu and Arua hospitals for Northern Uganda, Mulago, Enteebe and Masaka hospitals for Central Uganda and Buhinga, Mbarara and Kabale for Western Uganda instead of guaranteeing a private company.

- There is need to rethink the Promissory Note financing modality which gives the private investor in this ISHU-Lubowa facility 100% funding and guarantees to safeguard them from any losses whatsoever. This is also

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similar to the case where between 2002 and 2006, GoU through the African Development Bank guaranteed loans worth USD 10m (22billion then) to Tri-Star Apparel, a private Company under AGOA, where Ugandans lost their money. Parliament should basing on this experience conduct more serious scrutiny than has been done.

- The Attorney General should be held responsible for failing to properly and legally guide government on the ISHU project. It should be noted that the Attorney General gave two contradicting legal opinions to government on the said project. At first, his legal opinion was that the government did not require the approval of Parliament on the ISHU project and later the same Attorney General draws another legal opinion that government was required to seek the approval of the project from the Parliament of Uganda.

- Government should deliberately sponsor a sizeable number of medical professionals for specialised courses abroad to prepare a competent manpower that will handle the complicated health related cases in future.

- Mulago and its constituent entities should be supported to build capacity for the requisite staffing and equipped to obtain international accreditation. Besides, since Mulago devolves to a number of specialty units and referral centres across the country, they can be upgraded and committed to provide the specialties being targeted under the ISHU_Lubowa to avoid duplication of services and build competence.

- Priority should be given to funding and aiding the establishment of autonomous facilities like the Heart and Cancer Institute to manage various complicated conditions. Partly due to underfunding, the facility remains underutilised after the installation of a multibillion operation theatre with the capacity to facilitate 1,000 surgeries a year.

- If the project is critical to the current health care situation in the country, then a thorough feasibility study should be done with a view to government implementing the project on its own without recourse to a third party who in this case is even a liability.

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4.0 Conclusion

Rt.Hon Speaker, the ministry of health has previously on the floor of parliament indicated that Mbarara regional referral hospital alone requires only USD30m approximately 120bn for the upgrade of the hospital infrastructure. This strategy and approach in our considered view is far cheaper and cost effective in terms of infrastructure accessibility and usability by the wider public as compared to the cost of one private facility (ISHU) which will cost approximately UGX 1.4 trillion .

The ISHU-Lubowa project is from the very onset a suspicious project which Parliament should run away from or risk being used to sanction an illegality and a liability to the country. It is all marred by ambiguities, irregularities and incredulities which all render it less than feasible or necessary for the common tax payer.

Government is destined to acquire the ISHU facility after eight years why then guarantee the private company that is profit motivated other than provision of health services for all(the rich and the poor).

Notably, government has not done due diligence on FINASI/ROKO SPV LTD in regard to their capacity and suitability in undertaking the implementation of this crucial project. We are therefore constrained to recommend government to guarantee this incredible liability.

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ENDORSEMENT OF THE MINORITY REPORT OF THE COMMITTEE ONNATIONAL ECONOMY ON THE ISSUANCE OF PROMISSORY NOTES NOT EXCEEDING USD 379.7M FOR THE ISHU FACILITY PROJECT AT LUBOWA.

NAME	CONSTITUENCY	SIGNATURE
William Nzoghu	Busongora County North	[signature]
ATIKU BENARD	AYIVU	[signature]
Nambooze Betty	Mukono Municipality	N-B

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