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PRESS STATEMENT

Transparency and Accountability in COVID-19 Response Measures: Observations and a Call to Action

Nairobi, Kenya –7th August 2020: Several measures have been instituted to control the COVID-19 Pandemic including huge monetary investments by the Government since the first case was reported in Kenya in March 2020. While the World Health Organization (WHO) has pointed at the need to focus more on containment and living with the virus, there is no doubt that the Government will need to undertake significant investments to protect the lives and livelihoods of Kenyans.

Transparency International Kenya has previously raised concerns and demanded a [detailed account](#) following a report by the Ministry of Health to Parliament on the expenditure of Ksh 1.3 billion spent under the Transforming Health Systems for Universal Care which is yet to be made public. The Cabinet Secretary for Health has also been [on record](#) conceding that “...there are cartels in Afya House”. The continued lack of transparency and accountability by the Ministry of Health and other government agencies charged with managing public resources during this crisis has led to reported cases of embezzlement of commodities including donated Personal Protective Equipment (PPEs) and misappropriation of public funds meant to procure PPEs and support social protection programmes.

It is clear that efforts and measures put in place by the Government have not given enough consideration to governance and corruption related issues as highlighted below:

- a) Transparency in Public Procurement** - There have been concerns around enhancement of measures to protect health workers dealing with COVID-19 patients due to lack of proper and adequate PPEs therefore casting aspersions on the use of resources allocated for these items. Officials of the Kenya Medical Supplies Authority (KEMSA) have been questioned by the Ethics and Anti-Corruption Commission (EACC) and appeared before the Senate Health Committee following the alleged breaching of provisions of the Public Procurement and Asset Disposal Act (PPAD), 2015 in the procurement of PPEs. This coupled with irregularities in procurement processes and concerns raised at county level and by health workers' unions regarding the quality and cost of goods supplied including PPEs, point to the potential loss of taxpayers' money, and the high risks that these deficient equipment pose to frontline healthcare workers in the line of duty.

There is an unclear policy framework on urgent need procurement. The Public Procurement Regulatory Authority (PPRA) issued a circular guide for procurement during the pandemic crisis, further requiring that all emerging procurement is reflected on approved procurement plans and necessary approvals are sought as per the law. PPRA however fell short of issuing policy direction or clarifying the law with regards to procurement in a time of emergency especially in situations where the market for required items is uncertain.

There has been little or no data publicly available on COVID-19 procurement by most state agencies as this process has been characterized as urgent and as such is not subject to compliance to Executive Order 2 of 2018 on the publication of public procurement data. While the urgency for these goods and services is evident, that should not in any way give leeway for flouting procurement guidelines and ignoring basic principles of good governance. So far, there are no audit reports published on procurement related to COVID-19 items by MoH and other government agencies.

PPRA is yet to publish a Market Price Index for essential drugs and commodities required for the management of COVID-19. This is important to guide procuring entities and provide a safeguard against the purchase of required items at inflated costs.

- b) Access to Information** – There have been Government efforts to engage the public, with the Acting Director General of Health using social media for such engagements, but this has not been adequate in regard to the provision of information on accountability issues with queries related to these largely ignored in these engagements. There has been limited or no response to Access to Information requests¹ made to entities responsible for frontline response and management of COVID-19. Civil Society Organisations, including Katiba Institute, KELIN, ICJ Kenya and TI-Kenya among others, have had to seek judicial recourse through Petition 218 of 2020 on the Right of Access to Information having presented requests for information to the Ministry of Health on various issues including the expenditure of COVID-19 resources without any response.
- c) Protection of Human Rights** – From the onset of response measures, it was evident that the law enforcement agencies, in this case the police were going to play a critical role in ensuring compliance to set guidelines and adherence to the containment measures. These were however enforced through the use of excessive force and other illegal actions, leading to the loss of lives in some instances. There have also been cases of forced eviction of people from their homes in disregard to court orders which has further exacerbated the humanitarian crisis.
- d) Integrity** – Compliance to set guidelines and directives on COVID-19 has not been without challenges with instances of people including leaders at the highest level flouting the set

¹ <https://tikenya.org/wp-content/uploads/2020/07/Communique-Access-to-Information-petition.pdf>

rules and guidelines. We have however witnessed double standards in the application of the COVID-19 measures where some leaders continue to flout the rules without any repercussions as others are held accountable. Several bribery incidents have also been reported especially during enforcement of curfew and previous cessation of movement directives thus necessitating all Kenyans, both leaders and ordinary citizens, to uphold integrity and adhere to all measures put in place.

- e) **Planning and coordination** – The National Co-ordination Committee on the Response to the Coronavirus Pandemic (NCCRCP) has provided a good platform for the coordination of response measures by the government. However, some critical players such as oversight commissions and offices, civil society organisations and trade unions more so the health workers unions have been excluded from this process thus affecting accountability efforts. The Government is yet to develop a comprehensive long-term plan as the measures being adopted are not sufficiently elaborate on various aspects such as: ensuring preparedness of public health facilities; instituting a comprehensive needs assessment at both national and county levels; establishing strategies on mobilising and allocating resources with a view of cushioning the lives and livelihoods of the most vulnerable; economic recovery strategies for different sectors and enhanced support for those sectors that could support humanitarian responses and cushion Kenyans from further loss of livelihoods.
- f) **Social Protection Measures** – In his speech on 25th March 2020, President Uhuru Kenyatta directed the appropriation of Ksh 10 billion to the elderly, orphans and other vulnerable members of our society through cash transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic. While this is a great initiative aimed at helping these vulnerable groups through cash transfers, it is also critical that these funds are used appropriately to ensure the right target groups benefit from these funds devoid of any corruption or mismanagement.
- g) **National Debt** – Owing to the high level of public debt and the burden on the Kenyan economy, it is critical that the Government enhances transparency on debt repayment measures and renegotiates debt relief terms given the adverse impact of the pandemic. Equally, the government must enhance transparency and accountability in the utilisation of borrowed funds.
- h) **County Level Efforts** – The national government must publically disclose funds disbursed to county governments towards COVID-19 mitigation or support. The county governments should also account for the funds that have been channelled towards initiatives and projects in mitigating COVID-19 such as development of infrastructure

particularly in health facilities. It is important that all financial information regarding these projects is published and made widely available.

- i) **Oversight Efforts** – Over the past few months, media and civil society actors have continued to play their critical role in oversight and have exposed issues touching on accountability and transparency in the management of funds. While there have been efforts to promote transparency from some of the players, it is critical that oversight institutions including EACC, Office of the Director of Public Prosecution (ODPP), Directorate of Criminal Investigations (DCI) and Judiciary move with haste to support these efforts by effectively playing their role in investigating and prosecuting the suspects, and in the adjudication of attendant cases. The President must also play his role in calling to task the Cabinet Secretaries of ministries where fund misappropriations have been reported. Independent audits must be undertaken in these departments and those found culpable brought to book.

In summary, we recommend the following:

- **Enhance transparency and accountability in procurement processes** – Government agencies must comply to Executive Order 2 of 2018 on publishing of procurement data on the Public Procurement Information Portal (PPIP) particularly in regard to COVID-19 expenditure including publication of all companies and individuals awarded any contracts to provide COVID-19 essential commodities or services to date at national and county level. The Public Procurement Regulatory Authority should publish a Market Price Index for essential drugs and commodities for management and response to COVID-19. Parliament should enact laws that will cap price gouging of drugs and other medical supplies to reduce the already witnessed scenarios of inflated and unregulated prices and prevent further exploitation by unscrupulous dealers.
- **Quality Assurance** - The Kenya Bureau of Standards (KEBS) should perform quality assurance on all products procured to respond to COVID-19 to avoid placing health workers and Kenyans at large at further risk.
- **Independent Audit** – The new Auditor General should institute an independent audit of all funds raised / contributed, allocated, disbursed and utilised in COVID-19 response efforts to date.
- **Ensure compliance to Access to Information requirements** – The Government should proactively disclose public information relating to budgets, allocations, disbursements and expenditure of COVID-19 funds and aid, as well as comply to Access to Information requests to promote transparency as provided by the Constitution of Kenya and the Access to Information Act, 2016.
- **Protection of Human Rights** – Government actions must be in line with the Bill of Rights and those that contravene these rights must be held accountable. The Government should also be at the fore of protecting Human Rights including the rights

- of expression and picketing which have been flouted during this COVID-19 period as activists and Civil Society actors demand accountability for contraventions to the law.
- **Uphold Integrity** – All Kenyans, leaders and citizens, should take personal responsibility for their actions and inactions, and promote leadership with integrity as envisioned under Chapter Six of the Constitution.
 - **Planning and Coordination** – The Government should involve anti-corruption and other oversight agencies in the national coordination committee; identifying and assessing corruption risks as part of the situation analysis; and acting to promote transparency, participation, accountability and integrity.
 - **Social protection** – The Government should publish information on the criteria for allocation and distribution of social protection funds. Up-to-date information on beneficiaries of the cash transfers programmes during the COVID-19 pandemic should be published as a matter of urgency. Further, the social protection unit needs to conduct analysis of the intermediate and long-term socio-economic impacts of the pandemic and thereafter put in place appropriate policies and programmes, including advising and supporting relevant ministries and county governments to ensure public institutions and facilities are COVID-19 prepared.
 - **Investigations and accountability** - The relevant investigative authorities should fast-track their efforts to investigate the already suspected cases of procurement violations at the national and county levels, bring to book the individuals involved and recover any resources stolen in the process.

Transparency International Kenya continues to track COVID-19 funds through the Action for Transparency (A4T) portal², despite increasing difficulties in accessing information on their allocation and utilisation. We continue to urge the government to ensure that there is transparency and accountability³ in the management of the COVID-19 funds. In addition, the government should take all necessary measures within the confines of our legal frameworks to save lives and livelihoods. We urge all citizens to unite in surmounting the crisis, by adhering to all measures and directives, and exercising vigilance to ensure that there is accountability of all public resources at all levels.

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² <https://actionfortransparency.org/covid-19/aid/>

³ <https://tikenya.org/wp-content/uploads/2020/04/Press-Statement-on-Accountability-Measures-in-the-COVID-19-Response.pdf>