

Your REF: TBA

Our REF: COVID-19 RBA

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Dear Sirs,

**RE: OPEN LETTER: CORRUPTION IN THE HEALTH SECTOR IS NEGATIVELY AFFECTING
REALIZATION OF THE RIGHT TO HEALTH**

We, the undersigned organizations, associations and individuals, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, and economic and governance experts.

We write further to the [press statement of 23rd August 2020](#) by over 26 civil society organizations and other non-state actors calling for immediate measures to guarantee integrity, transparency and accountability in COVID-19 response efforts. We wish to draw the attention of the public to the fact that the [#covid-19 millionaires](#) scandal is not an isolated case of corruption in the health sector. For a long time, the health sector has been facing high instances of corruption which is negatively impacting on the realization of the right to health. We are concerned that such corruption is robbing the country of critical funds meant to ensure citizens can access quality health services, vaccines for children, essential drugs for the vulnerable and marginalized, better health facilities, guaranteed healthcare personnel, quality health equipment and supplies, among others.

The following is a link to a [matrix](#) detailing reported corruption cases in the health sector since 2013 and reported instances of lack of transparency. In almost all of these cases, no conclusive investigations have been conducted nor have any prosecutions been undertaken.

In summary, the matrix shares details of the following, among other corruption scandals in the health sector:

- (i) **Managed Equipment Services (MES) scandal:** In 2015, the Ministry of Health entered into an agreement with five global companies for the supply of medical equipment services (MES) to two hospitals in each of the 47 counties at Ksh. 3.8 billion per year for a seven-year period. Counties were required to each contribute Ksh. 97.7 million annually to contribute to the scheme, with the funds being directly debited from their budgets. The annual payment price for counties rose steadily throughout the past four years without explanation. [A Senate Ad Hoc Committee](#) has since then established that the *“MES project was a criminal enterprise shrouded in opaque procurement processes and that the Ministry of Health relied on a faulty tool (public sector comparator) to justify a predetermined outcome in relation to the award of tenders that likely resulted in imprudent use of public finances...”*
- (ii) **Theft of donor funds:** (a) **GAVI monies for vaccines:** In 2016, [a GAVI audit](#) revealed that Kshs. 160 million of donor money meant to provide vaccines for children could not be accounted for. The Ministry of Health had to refund the misappropriated funds from the pockets of taxpayers. (b) **Global Fund monies for TB:** A 2017 [audit report](#) on the National Tuberculosis, Leprosy, and Lung Disease Programme raised queries that from the period 2014 - 2016 Kshs. 8.1 million had been misappropriated.
- (iii) **#MafyaHouse Scandal:** Then there was the Kshs. 5 billion #Mafyahouse scandal. [It was reported that](#) Ministry of Health officials manipulated IFMIS to log fraudulent transactions in the 2015/16 financial year including: payments to phony suppliers; diversion of funds and double payment of goods. Included in this scandal was the diversion of approximately Ksh. 889 million funds to be disbursed to county governments to support free maternity care programmes. [100 portable mobile clinics were irregularly procured with the ‘portable clinics’ currently rotting away in an NYS yard in Mombasa.](#)

Additionally, [an analysis of the Auditor General Reports](#) for Financial Year (FY) 2013/14 through to FY 2015/16 show that the auditor raised questions regarding transactions involving Kshs. 49 billion and similar audit queries in the subsequent audit reports at the Ministry of Health. The large shares of the queried amount relative to the budget in this period is a revelation of the multiple transparency and accountability concerns at the Ministry of Health. Even though the queried amounts do not directly mean that the money was lost, it may mean that a significant number of the transactions are not being done procedurally or in a manner that adheres to the established financial reporting rules and regulations which raises the risk of potential financial loss.

[Transparency International](#) has recently cautioned that corruption often thrives during times of crisis, particularly when institutions and oversight are weak, and public trust is low - having learnt from previous global health emergencies, like the Ebola virus and swine flu, that even in times of crisis, there are those who aim to profit from others’ misfortune. This, therefore, calls for increased vigilance during this pandemic period and for action to be taken against perpetrators. Similarly, past corrupt acts that remain unpunished diminish public trust and give confidence to current perpetrators to loot critical funds meant to protect the public.

As noted by the [UN Special Rapporteur](#) corruption undermines the State's obligation to realize the right to health "to the maximum of its resources" with the most affected being the millions who depend on the public health system including vulnerable and marginalized communities.

Kenya, a country with a high prevalence of both communicable and non-communicable diseases, is heavily dependent on donor support towards the health sector. For instance, up to 75% of funds spent on HIV, TB and malaria programmes comes from donors. It, therefore, goes without saying that a continued culture of lack of transparency and accountability, and outright embezzlement of funds invariably erodes donor confidence exposing millions of vulnerable and marginalized communities to threats of serious harm if this support is withdrawn. This, including continued embezzlement of taxpayers' monies supporting the health sector, threatens realization of the right to the highest attainable standard of health for Kenyans. It also threatens the realization of all other rights guaranteed in the Constitution and threatens the life and livelihood of Kenyans. This is what has contributed to the state of the near-collapse of the health sector, poor quality health services, frequent strikes by health care workers, drug stock-outs in health facilities, lack of essential equipment, poor sanitation in facilities, etc. As recently stated by the Director-General of WHO, it is murder.

With such levels of corruption, Kenya will not meet any of its goals including SDGs, UHC and the right to health.

We, therefore, call upon the following to urgently undertake the following measures to put an end to corruption in the health sector:

1. The Ministry of Health:

- (i) The Ministry of Health should as a matter of urgency institute measures to ensure transparency and accountability. This should be through proactively disclosing information to the public and by proactively ensuring public participation in design and implementation of projects, as required by the Constitution.
- (ii) As recently directed by the President, the Ministry of Health should urgently create a live portal to share expenditures related to COVID-19, procurement information, supplies received and available etc. The Ministry of Health should further create a live portal for all other procurements in the health sector in line with Executive Order No 2 of 2018 on publication of all public procurement data.
- (iii) The Ministry of Health, should as a matter of urgency, and in compliance with the law, stop performing any county function without the relevant intergovernmental agreement [procedurally ratified]. The huge budgetary allocation to the Ministry of Health for county functions is a matter of concern and has been the subject of mismanagement and theft.

2. County Governments

- (i) County Governments should urgently establish mechanisms for transparency and accountability. This should be through proactively making available to the public information

on expenditures in the health sector including procurement information, and available stocks; proactively ensuring public participation in health governance, in compliance with the Constitution.

- (ii) County Governments should make public any intergovernmental agreements with the national government on the health function.

3. Office of the Auditor General:

- (i) The Office of the Auditor General (OAG) should expedite all pending Audit Reports including on expenditure of COVID-19 resources and provide these reports for public scrutiny. The OAG should further make public, within one month, details of reports or recommendations sent to oversight, prosecutorial and investigatory agencies.

4. Ethics and Anti-Corruption Commission (EACC) & Directorate of Criminal Investigations (DCI)

- (i) EACC and DCI should urgently, within one month, provide details of all investigations undertaken on corruption in the health sector and the actions taken.
- (ii) EACC and DCI should proactively share with the function, through an online portal, all corruption cases in the health sector investigated, the outcome of investigations and actions are taken.

5. Office of the Director of Public Prosecutions (DPP):

- (i) The DPP should urgently provide information to the public of all prosecutions (if any) of people involved in corruption scandals in the health sector.
- (ii) The DPP should urgently commence prosecutions of all people involved in corruption in the health sector. Some of the information on such responsible persons is publicly available [for instance in the GAVI Audit Report, Global Fund Audit Report, OAG Reports, Senate Ad Hoc Committee Report, among others].

6. National Assembly and Senate Health & Public Accounts Committees

- (i) The National Assembly and Senate Health and Public Accounts Committees should immediately make public any actions taken by the committees with regards to the numerous reported corruption cases in the health sector.
- (ii) The National Assembly and Senate Health and Public Accounts Committees should as a matter of urgency hold to account all public officials adversely mentioned in health sector corruption and provide oversight to ensure investigative and prosecutorial agencies perform their responsibilities.
- (iii) The National Assembly and Senate Health and Public Accounts Committees should play a proactive role to prevent further loss of public funds in the health sector.

7. Development partners and the UN family

- (i) We call upon development partners providing financial or technical aid to Kenya to urgently make public all audit reports they have undertaken on projects supported by them.
- (ii) Further, we call upon the development partners to make public any specific recommendations they have previously made to the national or county governments to enhance transparency and accountability and actions taken afterwards.
- (iii) Moving forward, development partners should make it a requirement for government entities to proactively disclose to the public all information on health interventions they have supported/funded/advanced loans.
- (iv) We call upon development partners to support social audits on funded health interventions by members of the public by requiring access to information and public participation in all processes for supported interventions.

8. Commission on Administrative Justice

The Commission on Administrative Justice should in the exercise of its mandate ensure the Ministry of Health provides access to information on projects, procurement which information is critical to realize the right to health of the public.

This Open Letter is supported by:

1. Let's Be Tested Queens (WKLFF)
2. Pamoja TB Group
3. Health NGOs Network (HENNET)
4. National Association of Clinical Officer Anaesthetists Kenya (NACOA-K)
5. Kenya Legal and Ethical Issues Network (KELIN)
6. Transparency International Kenya (TI-Kenya)
7. SHAPE
8. Mumbo International
9. KESWA
10. Nelson Mandela TB-HIV Resource Centre Nyalenda
11. White Ribbon Alliance
12. Women Fighting AIDS in Kenya (WOFAK)
13. Inuka Kenya Ni Sisi
14. Kenya Swiss Foundation
15. MAAGYO
16. The Institute for Social Accountability (TISA)
17. Good Health Community Programmes
18. Nyabende Support Programmes CBO
19. NEPOTEHC
20. Kenya Network for HIV Positive Teachers (KENEPOTE)
21. County Governance Watch – Kenya
22. Kenya Union of Clinical Officers (KUCO)
23. National Empowerment Network of People living with HIV/AIDS in Kenya (NEPHAK)

24. Happy Life for Development CBO
25. Fountain of Hope CBO
26. Wote Youth Development Projects (WOYDEP)
27. Youth Ventures Initiative (YOVI)
28. Magharibi Community Justice Centre
29. Aninas Community Networks for Development (ACND)
30. Lean on Me Foundation
31. AYARHEP
32. Pema Kenya
33. Y+
34. Centre for Minority Rights & Strategic Litigation
35. Nkoko Iju Africa
36. MOPESUN
37. KETAM
38. Esther Nelima
39. National Taxpayers Association (NTA)
40. Happy Feeding Women Group
41. Trust for Indigenous Culture and Health (TICAH)
42. Health Systems Advocacy Partnership
43. People's Health Movement Kenya
44. Global Compact Network Kenya
45. ICJ Kenya