



Memorandum on the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020

To the Principal Secretary, National Treasury

1st April 2020

Introduction

This memorandum prepared jointly by The Kenya Human Rights Commission, Katiba Institute, Transparency International Kenya, The Institute for Social Accountability and PAWA 254 seeks to give input on the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 that establishes the COVID-19 Emergency Response Fund. The main purpose of the fund is to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.

Background

Kenya, like many other countries worldwide, is facing the Corona Virus Disease crisis that has affected almost every sector in the country. The situation continues and it is uncertain when it shall subside. We have however seen commendable efforts by the government in trying to combat this crisis including the measures put in place and the necessary tough decisions that have been made so far. Kenya has 59 confirmed cases and 1 death as a result of COVID-19. The Ministry of Health made an announcement that their preliminary modelling data shows that coronavirus cases will hit 5,000 by mid-April and rise to 10,000 by end of April in the absence of drastic intervention. The COVID-19 pandemic will have drastic consequences in Kenya, which does not have adequate public health infrastructure and social welfare system to contain and manage the highly contagious virus. Additionally, the country is highly likely to experience economic shock resulting in the drastic loss of revenues and slow economic growth due to the decline in economic activities. The government therefore needs to mobilize resources to enable it respond appropriately to the COVID-19 pandemic to contain and manage the outbreak. There is an unanticipated increase in health care expenditure on tests, treatment including medication and equipment, and other measures to support the population.

Past health crises in developing countries such as Ebola and the Swine Flu, showed that **accountability and transparency requirements may need to be modified during emergency situations, but should be not done away with. Public Finance Management (PFM) systems need to be responsive and flexible, while ensuring value for money and minimizing fraud and corruption.** Developing countries should make several quick fixes to ensure that their PFM systems best support COVID-19 responses.¹

We applaud the National Treasury for the expedient measure put in place to have the Emergency Response Fund Regulations to enable the government to cater for the expenditure arising from the COVID19 pandemic. **It is however paramount to remember that all these initiatives are put in place on behalf of the people of Kenya and to constantly emphasis the principles of transparency and accountability as envisioned in our constitution including ensuring that initiatives like these are properly utilized for the benefit of the rights holders as intended.** As CSOs we support this initiative and further make the following specific recommendations to the Regulations.

¹ <https://blogs.worldbank.org/governance/getting-government-financial-management-systems-covid-19-ready?cid=ECR TT worldbank EN EXT>

Issues and Recommendations

Regulation	Brief rationale	Proposals
2. Interpretation.	Persons in mandatory quarantine pose a threat to the public and to themselves. The government should therefore put up measures on how such persons shall enjoy protection of their fundamental human rights, by ensuring they are taken care of and have essential supplies provided to them to ensure the realization of right to highest attainable standards of health as envisioned in the Bill of Rights as provided in the Constitution.	Include persons in mandatory quarantine in the definition of vulnerable persons.
4 (2)(a) Object and purpose of the Fund	There is need to target all public hospital. Majority of citizens are likely to move to the public hospital nearest to them as such underpinning the need to have local hospitals ready to respond.	Replace “public hospitals” with “all public hospitals”
	Supplies such as hand sanitizers, soaps, water and masks are unavailable, prices hiked or hoarded by a few. As a result, the Government should consider producing/purchasing and making them available for public use with prioritization of the vulnerable, old and poor who are likely to feel the impact first.	Insert new provision as follows, “To fund the production/purchase and distribution to the public of essential COVID-19 prevention supplies such as hand sanitizers, soaps, water and masks.”
4 (2)(b) Object and purpose of the Fund	The social and economic impact of COVID-19 is likely to have negative impact on all Kenyans willy-nilly of their status in society and areas of habitation. It is therefore critical that emergency relief initiatives target all with a prioritization of the most vulnerable, old and poor who are likely to feel the impact first.	Rewrite clause 4 (2)(b) to read as follows, “To fund programmes and initiatives towards cushioning and provision of emergency relief to all Kenyans with priority being given to the most vulnerable, older and poor persons in the urban and rural areas”
5. Sources of the Fund	In fulfillment of the Constitution values on good governance, integrity, transparency and accountability as envisioned in Article 10, and the National Treasury’s function on promoting transparency and accountability in public finances as required in section 12(2)(a) of the Public Finance Management Act, 2012.	Insert a provision as follows, “All sources of funds should be declared and the amounts.”

<p>7 (1).</p> <p>Board of the Fund</p>	<p>The Board of the Fund should include oversight institutions and allow the cooption of other members.</p> <p>This is in recognition that the pandemic has affected all sectors within the country and the composition of the Board should be representative.</p> <p>This will ensure compliance with corporate governance policies (Mwongozo) and constitutional principle of accountability.</p>	<ul style="list-style-type: none"> • The board membership should include the Controller of Budget, and the Chair of the Commission on Revenue Allocation. • The composition of the Board should include a representative from the Judiciary, Parliament and the Senate. • The board should be able to coopt other officers that it deems fit.
	<p>The fund is put in place as an emergency response to a global health pandemic in which Kenya is affected. It is therefore logical that the Cabinet Secretary responsible for health be part of the decision-making team in the generation and utilization of resources to deal with the pandemic in Kenya.</p>	<p>Insert new provision as follows</p> <p>“Cabinet Secretary responsible for matters relating to public health and sanitation”</p>
<p>7 (1)(d).</p> <p>Board of the Fund</p>	<p>The eight other members, who shall not be public officers, appointed by the President should not be political appointees.</p> <p>The membership of the board should serve an inclusive role.</p> <p>The members should all serve on a voluntary basis.</p> <p>This will provide the opportunity and also enhance public participation in the management of the COVID-19 Emergency Response Fund.</p> <p>This will also provide compliance with public participation requirements as per the Constitution Article 10, 201 and 232</p>	<ul style="list-style-type: none"> • Representatives names should be forwarded by designated institutions for approval by the President. • The nominating institutions should bring on board key stakeholders namely associations representing professionals, religious, civil society organizations, informal traders, residents, women, youth, persons living with disabilities, creative sector and the County Budget Economic Forums. • Members should serve on a voluntary basis and not be eligible for any remuneration or allowances. • Travel reimbursements should be limited to a maximum of Kshs. 1,500 for those within Nairobi and 5,000 for those from outside Nairobi.
<p>Include a provision establishing a community oversight committee at the ward and village level.</p>	<p>Ensure community engagement and oversight.</p>	<p>To ensure transparency and accountability in the fund government shall establish a community oversight committee at the ward and village level. It may meet physically or virtually as required.</p>

		<p>a) All committee members shall engage on a volunteer basis and will not be eligible for any support.</p> <p>b) The committee members will be published and disseminated to the community.</p> <p>c) The officer responsible at ward and village level shall publish a list of vulnerable households and persons in each village and ward.</p> <p>d) The officer responsible shall establish a virtual stakeholder coordination and oversight committee including community members designated by their respective committees and associations from the nyumba kumi, community health worker facility level assistant, neighborhood association, religious, community based associations, county ward administrator, member of county assembly, and other vibrant groups at the village and ward level.</p> <p>e) The committee is mandated to provide a forum for consultation and oversight and</p> <ul style="list-style-type: none"> • The officer responsible will avail written confirmation of all gifts and awards received, list of vulnerable persons and other relevant information. This information will also be published via social media and posted at the relevant office notice board. • The committee will verify all such information. They will sensitize members of the public on such receipts. • Committee members will report all discrepancies, irregulars, suspected cases of corruption. • Reports may be made to the responsible officer, and, or by use of citizen petition, to the Board and such complaints made public. • All complaints will be published publicly on the official COVID portal and actions taken and tracked until resolution.
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8. Functions of the board	Should also include the promotion of public participation and transparency as well as the promotion of efficiency and effectiveness.	<ul style="list-style-type: none"> • Promote public participation by representing their nominating constituencies in deliberations, assist efforts of public sensitization and specifically sensitization of their constituencies. Promoting volunteerism and solidarity. • Approve Standard Operating Procedures and guidelines to ensure effectiveness and efficiency • Resolutions of board meetings should be made public.
	There is need for accurate, timely access to information relating to the performance of the COVID-19 Emergency Response Fund in compliance with the Access to Information Act and Constitution Article 35.	<p>Insert new provision as follows,</p> <p>“The Board shall publish monthly, in at least two local daily newspapers and the National Treasury website, the financial statement of the fund: income, expenditure, assets, equipment and properties of the fund.”</p>
9. Administrator of the fund	To ensure adherence with national values especially public participation, transparency and accountability in the administration of the fund.	Include a provision to ensure public participation and transparency in the administration of the fund.
9(2). Functions of Administrator of the Fund	The global, regional and national patterns and science have indicated unpredictability of the COVID-19 pandemic. It is dynamic and has a short- and long-term impact on the economy. Thus, a yearlong estimate may not reflect the realistic financial changes as a result of the pandemic.	<p>Insert new provision as follows,</p> <p>“Prepare the estimates of revenue quarterly instead of annually, considering that this is a moment to moment changing pattern of a pandemic”</p>

<p>13. Financial and procurement regulations</p>	<p>The regulations need to ensure clear lines of authority and accountability.</p>	<ul style="list-style-type: none"> • The Cabinet Secretaries of Finance and Health will ensure that the total funding envelope is appropriately identified and based on quick costing estimates and vulnerability analysis. • The Cabinet Secretary Finance will ensure designated budgeting and accounting codes shall be introduced to ensure traceability of all COVID-19 allocations and expenditures. • Mandates and controls related to COVID-19 should be effectively delineated and delegated through a clear designation and decentralization of decision making and reporting at national, county and sub-county and ward levels. All designations shall be made in writing, approved by the board and made public.
	<p>Transparency in procurement</p> <p>Whereas government cannot afford to undertake competitive bidding at this time, it should take express measures to ensure transparency in procurement by adopting open contracting measures.</p> <p>Open contracting is an approach that transforms government contracting from secrecy to publishing open, accessible and timely contracting data. The benefits of open contracting include <i>it builds trust, value for money, higher-quality goods, works, and services; preventing fraud and corruption; and better solutions for public problems.</i></p> <p>Principles of open contracting include <i>affirmative disclosure, participation, monitoring and oversight.</i></p>	<ul style="list-style-type: none"> • Standardized costing - The government to provide standardized costing to guide all procurement for key items such as protective gear, testing kits, food. • Efficient and accountable procurement is needed. All procurement information related to COVID-19 to be posted on government portals including the tender, bill of quantity, delivery note, and payments. The responsible officer and department at each stage of the procurement should also be published. • Payment management should be optimized. Payments made outside the IFMIS system need to be recorded ex-post in IFMIS with minimal time lag. • Internal audit could compensate for some ex-ante controls. Internal audit reports should be submitted to parliament and the auditor general every two months. • Financial reporting for timely assurance. Create separate budget lines for the COVID-19 response. Create financial reporting code for COVID response to maximize transparency and accountability of the COVID inputs. Ensure reporting every two months.

	<p>Right to information and transparency Sharing accurate and timely information is a constitutional obligation promotes transparency and accountability which builds public trust in these difficult times.</p> <p>The provision of comprehensive information will also help alleviate misinformation, public fear, anxiety and hysteria around COVID-19.</p>	<p>Government will share and publish updated information on a regular basis including:</p> <ul style="list-style-type: none"> • Testing kits: Number by type, percentages by turnaround time or technology used, and how many testing kits have been delivered to various designated testing facilities. • Protective equipment: The number of protective equipment packs delivered, financial value, the numbers distributed and designated recipients at county, subcounty and ward level. • Facilities: Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen. • Health workers: Number trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, general physicians and critical care specialists. Number of health care workers deployed in every county. • Resources: Publication of allocated, issued and expended financial and nonfinancial resources for COVID-19 responses. Including resources from private, bilateral and multilateral sources. • Vulnerable populations: Number of vulnerable populations targeted and numbers reached. • Food distribution program: The number of food packages delivered, the financial value, the numbers distributed and designated recipients at county, subcounty and ward level.
<p>14. Quarterly reports</p>	<p>This will help in rapid decision making and adoptability to changing regularly changing patterns. These regular reports are crucial in ensuring adaptable decision making.</p>	<p>Insert new provision as follows,</p> <p>Prepare the reports more frequently, after every month.</p>

INPUTS INTO THE EXPLANATORY NOTE:		
	<p>Community health systems Community health system provides sustainable level 1 services aimed at promoting dignified livelihoods. It decentralizes health services and enhances accountability and responsibility among all concerned partners. According to the Community Strategy the community-based approach <i>is the mechanism through which households and communities strengthen their role in health and health related development</i> by increasing their knowledge, skills and participation. WHO identifies the activation of community health systems as one of the highest priorities in an effective COVID response.</p>	<ul style="list-style-type: none"> The fund will support level one hospitals and Community Health Volunteers in urban settlements up to the village level. <p>Notes: In Nairobi there are 5,000 CHV who reach 10,000 informal settlements. They require support by monthly stipends (Ksh 50,000,000 @ Ksh 2,000 each for five months) and protective gear. Public sanitization spots (8,500 targeted in Nairobi Ksh 100,000,000). Level 1 hospitals require support as the first line of reporting on COVID through provision of protective gear and testing kits. (we do not have these estimates)</p>
Economic safeguards for MSMEs	<p>The tax reductions will have little impact on the majority of informal that make up over 80% of employment. Kenyans that survive off a daily wage cannot afford to stay at home. They will also be negatively affected by the downturn of business. We propose the following tax measures to support small scale traders.</p>	<ul style="list-style-type: none"> Make access to water and garbage collection services free to informal settlements and public markets/trading places. Remove county levies on rental payments for three months. Public safety – zero rating of inputs and price regulation of sanitizer, masks, gloves and essential commodities for public safety Remove all taxation (ToT, presumptive) on enterprises with a turnover of Ksh 1,000,000 and less per year until June 2021.
Oversight and enforcement		<p>To ensure transparency and accountability in the fund government shall establish a (virtual) community oversight committee at the ward and village level.</p> <ol style="list-style-type: none"> All committee members shall engage on a volunteer basis and will not be eligible for any support. The committee members will be published and disseminated virtually to the community. The officer responsible at ward and village level shall publish a list of vulnerable households and persons in each village and ward. The officer responsible shall establish a virtual stakeholder coordination and oversight committee

		<p>including community members designated by their respective committees and associations from the nyumba kumi, community health worker facility level assistant, neighborhood association, religious, Community based associations, county ward administrator, MCA's and other vibrant groups in the village and ward.</p> <p>4. The committee is mandated to: provide a forum for consultation and oversight and</p> <ul style="list-style-type: none">• The officer responsible will avail written confirmation of all gifts and awards received, list of vulnerable persons and other relevant information. This information will also be published via social media and posted at the relevant office notice board.• They committee will verify all such information. They will sensitize members of the public on such receipts.• Committee members will report all discrepancies, irregulars, suspected cases of corruption.• Reports may be made to the responsible officer, and, or by use of citizen petition to the public service complaints service, and such complaints made public.• All complaints will be published publicly on the official COVID portal and actions taken tracked until resolution.• Investigations into all matters must be concluded within 2 months of the complaint.• Officers deemed to have abused fund guidelines may be subject to a fine of an amount equivalent to the value of the goods/services of the compliant. They will also subject to immediate termination and ineligible for other public position in the country.
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It is our sincere view that the above recommendations will be considered in the deliberations of the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020.

CIVIL SOCIETY ORGANISATIONS PARTNERS

About Kenya Human Rights Commission

The Kenya Human Rights Commission (KHRC) is a premier and flagship Non-Governmental Organization (NGO) in Africa that was registered in Kenya in 1994. The KHRC is committed to its mandate of enhancing human rights-centered governance at all levels and a vision to secure human rights states and societies. Our Mission is to foster human rights, democratic values, human dignity and social justice. This mandate and vision are executed under four independent strategic objectives and thematic programmes that synergize to deliver at the local, national and global levels of governance.

About Transparency International - Kenya (TI-Kenya)

Transparency International - Kenya is a not-for-profit organization founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. The global movement provides a platform for sharing knowledge and experience, developing strategies to respond to regionally distinct patterns of corruption and initiating advocacy campaigns at both the regional and sub-regional level. The vision of TI Kenya is that of a transparent, accountable and corruption-free Kenya and the mission is to transform the society and institutions by supporting the development of high integrity leadership in all sectors and at all levels.

About Katiba Institute

The Katiba Institute (KI), Located in Nairobi, was established in 2011 to promote knowledge and studies of constitutionalism and to facilitate the implementation of Kenya's new constitution. The principal objective of KI is to achieve social transformation through the constitution. In the immediate, KI works to help promote the implementation of the constitution. In the medium term, KI hopes that its work will help establish a culture of constitutionalism.

About PAWA 254

PAWA Initiative is a Non-Profit established in Kenya in 2009. It is Kenya's unique art and cultural collaborative hub that houses, fosters and catalyzes creative and community-driven projects for social change. The acronym "PAWA" is Swahili corruption for "power" while "254" is Kenya's international telephone code. PAWA has cut a niche as a bold 'artivism' organization that creatively integrates art and activism to promote active civic participation, livelihoods and employment development for Kenyan youth. PAWA leverages the power of arts to strengthen understanding and exploration of emerging issues in Kenya and increase youth involvement in positive development processes. PAWA 's vision is to facilitate a bold, innovative and thriving art and media landscape to create social change in Kenya.

About The Institute for Social Accountability

TISA is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. TISA has been operational since March 2008 and is a locally registered trust. TISA has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.