



TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE SENATE AD HOC COMMITTEE ON THE COVID - 19 SITUATION

Organization

Transparency International - Kenya (TI-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.

Introduction

TI Kenya has assessed the current situation where the government is faced with combating one of the worst ever pandemic in the history of mankind. As an organization we acknowledge the magnitude of the task ahead and at best wish to give the government all the support it requires to fight the pandemic.

The coronavirus (COVID-19) pandemic is creating public health and economic risks that cause serious alarm for citizens and governments alike. To counter the spread of the virus, save lives and reduce the economic damage post-crisis, both individuals and governments are forced to take quick decisions, often under intense pressure and stress. It is on this background that we wish to address two broad areas on transparency and accountability but specifically on the right to information and upholding the accountability in the Covid - 19 Response.

Right to information

Good decisions require timely and efficient information. For the public to be able to make informed choices, they rely on their government explaining its response to the extraordinary challenges of the coronavirus crisis with timely and quality information. In Kenya, Article 35(1) of the Constitution particularly guarantees all Kenyan citizens the



right to access any information held by the state or information held by another person and required for the exercise or protection of any right or fundamental freedom, this is read together with the Access to Information Act, 2016 and Section 96 of the County Government Act, 2012.

We therefore make the following observation and recommendations;

- While we note that government is working with a reduced staff, we aver that even with reduced resources it should prioritize collecting, organizing and delivering information to its citizens. Requests for information related to the emergency responses should be answered within 48 hours as stipulated under Section 9 of the Access to Information Act especially in scenarios where information sought concerns the life or liberty of a person. Other related requests during this period should be processed within the shortest time frame as ramifications include loss of public resources or even abuse of office. To avoid a scenario where this requests have to be made, we recommend that government should be proactively publishing all relevant information in its platforms and specifically during the daily briefings.
- Public officials working from home are not necessarily unable to provide information to the public. Unless the information management system of the authority is stuck in the age of purely paper-based administration, it should be possible to retrieve and provide information to the public. Moreover, those departments that are working directly on the crisis are likely to be in their offices, and in a position to share the information they are working with.
- In furtherance to the above, the Government should establish a public information portal on COVID-19 accessible to the public with all information including: current number of infections; affected geographical locations; preventive measures at personal, household, neighbourhood/community including informal settlements and rural areas, county and national levels; emergency response units and their activities across the country; resource allocations, at national and county level, including donations in cash and in kind; and other pertinent information.

The coronavirus pandemic is fast becoming the greatest global crisis since World War II. In many countries, it requires extremely difficult decisions and complex measures. Yet,



in the area of freedom of information, there is not much difference between the current crisis and 'peace time' conditions.

Accountability on Covid - 19 Funds.

We wish to laud the government for quickly establishing the Covid - 19 Fund and the consequent gazzement of the Board members. We however make reservations on Board as is constituted since they are only confined to the private sector, and representatives of the national and county governments, leaving behind critical actors such as independent oversight commissions and non-state actors such as non-governmental organizations and faith based institutions, this was an opportunity missed to amplify accountability and stakeholder participation. As an Ad hoc Committee, we expect that one of the mandates of the Committee would be to ensure prudent and effective use of the resources, we therefore wish to make the following recommendations;

- To enhance accountability in mobilisation and use of resources, agencies involved in the response should ensure transparency in the procurement of lifesaving medicines and other medical supplies, with greater effort taken to prevent price gouging of drugs, and other goods and services required to protect citizens from contagion (such as hand sanitizers, masks, gloves). All procurement information should be published in due course, with all procurement subjected to an audit.
- Consequently we recommend that the Public Procurement Regulatory Authority (PPRA) publishes a market price index for all equipment, and other medical supplies required for treatment of COVID-19 symptoms to guide the procurement of these essential items especially at a time when there is a deficit of crucial items. Due to the nature of procurement contemplated, PPRA should further publish Emergency Procurement Guidelines to ensure that procuring entities balance the need to act without delay to save or preserve life they uphold integrity, and ensure value for money and quality. The private sector (formal and informal) has been identified as a crucial ally in the fight against the pandemic. It is vital that KEBS sets out clear regulations on quality of products and services produced during this time to avoid putting masses at further risk.
- As various government agencies pool together resources to combat the pandemic, it is worrying that the attendant Regulations to the Funds have not been developed. We specifically recommend that the CS Treasury prioritizes the



gazettement of the Asset Recovery Fund Regulations, 2019 to operationalize the fund and by so doing embedding accountability measures in the use of funds recovered from corruption cases.

- Adequate resources should be mobilised at both National and County level to address any immediate shortages in medical provisions noting that the directives by County Officials and one by the President on use of One Billion Kenya Shillings from the Universal Health Coverage programme to address the shortage of health workers should also include the provision of resources for equipment and protective gear for use by the health workers.
- Protection of whistleblowers should be observed even as we continue to emphasise the need to urgently pass the Whistle-blower Protection Bill which has been pending for close to five years and would therefore offer proper legislative guidance to public officials in dealing with Kenyans wishing to share accurate and verifiable information for the public good.
- Meaningful and free participation of citizens and stakeholders in decision-making processes should be explored. A special response working group including state and non-state actors (civil society and private sector) should be established to enhance public participation and accountability in the formulation and implementation of responses measures to capture the circumstances and needs of all Kenyans.
- The Government should take swift and decisive action to protect vulnerable populations from health-related, economic and social inequalities in dealing with the current crisis. The government should plan and roll-out a raft of measures targeting vulnerable populations through measures such as: enhanced sanitisation and provision of social amenities including water; mobile medical services (preventive, testing and contact tracing services); and relief aid mobilisation and distributions systems with the support of other aid agencies.
- Reliable data and monitoring and evaluation systems should be urgently put in place at the national and county levels to facilitate the design of evidence-based responses and targeted interventions.



- The Ministry of Interior and Coordination of National Government and the Inspector General of Police should ensure that police officers are well facilitated with clear information and tools to enforce the curfew within the confines of the law as spelt out in the National Police Service Act and the Service Standing Orders. It is also crucial that the Internal Affairs Unit Anonymous Information Reporting System (ARIS) be fully facilitated to operate on 24/7 basis to receive and resolve complaints about misconduct of police officers. Officers contravening the law must be held to account to build public trust and confidence that the National Police Service lives up to its motto of service with dignity.
- The emergency response Board constituted by His Excellency the President to handle the COVID-19 Emergency Response Fund should exercise significant transparency and accountability measures in the mobilisation and allocation of the funds.
- Lastly, the Committee should scrutinize the quarterly financial and non-financial reports prepared by the fund administrator to ensure they reflect the true state of affairs.

Ultimately, our elected officials, state and public officers continue to have a choice between abuse of power and good governance, we hope that they choose the former they are held accountable for their actions.



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