Your REF: TBA **Our REF:** C/RBACSOs/20 **Date:** 24th April, 2020

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Dear UN Family,

RE: UNITED NATIONS SUPPORT TO COVID-19 INTERVENTIONS IN KENYA: A CALL TO STAND UP FOR HUMAN RIGHTS

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-base organizations and representatives of professional bodies, and governance experts. We write further to our advisory note dated 28 March, 2020 where we called upon the leadership of the UN and multilateral development institutions in Kenya to help

safeguard the progress made thus far to reach the Sustainable Development Goals; and to scale up efforts in supporting the Government to respond to the COVID-19 crisis in an inclusive, transparent and rights-based manner based on evidence of what works best in specific contexts.

We now take this opportunity to sincerely appreciate the invaluable contribution of the UN system in the fight against the COVID-19 pandemic in Kenya. We recognize your support in providing technical and financial support to the Kenyan government in various areas including strengthening emergency operations centres, coordination and leadership, case management, laboratory management, surveillance strengthening, communications and resource mobilization, procurement, among others. We also appreciate the UN system for the technical support to the coordination pillar of the National Task Force and for seconding technical officers to the Ministry of Health in order to boost capacity to ensure nationwide coverage.

We take note of the fact that UN agencies have continued to support interventions to improve governance, human rights and gender equality. This is clear in the statement by António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , where he called on governments to be "transparent, responsive and accountable." He proceeded to advise that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law. Looking ahead, we need to build back better. The Sustainable Development Goals — which are underpinned by human rights — provide the framework for more inclusive and sustainable economies and societies."*

We appreciate the fact that UNAIDS has called on countries to adopt a human rights-based approach in responding to the global outbreak of COVID-19 that puts communities at the centre and respects the rights and dignity of all. UNAIDS has further advocated for a response to COVID-19 that is *"grounded in the realities of people's lives and focused on eliminating the barriers people face in being able to protect themselves and their communities. Empowerment and guidance, rather than restrictions, can ensure that people can act without fear of losing their livelihood, sufficient food being on the table and the respect of their community."* UNICEF, WHO and IFRC have also developed guidance on preventing and addressing social stigma, stating that *"Stigma can undermine social cohesion and prompt possible social isolation of groups, which might contribute to a situation where the virus is more, not less, likely to spread. This can result in more severe health problems and difficulties controlling a disease outbreak".*

Relatedly, the Global Fund has in a guidance note underscored that *"a rights-based and gender-responsive approach will enable countries to best respond to the COVID-19 crisis, including in the context of their ongoing epidemics of HIV, TB and malaria."* The Office of the High Commissioner for Human Rights also provided crucial guidance calling for *"respect for human rights across the spectrum, including economic*

social, and cultural rights, and civil and political rights" as "fundamental to the success of the public health response and recovery from the pandemic." In addition, UN human rights experts (Special Rapporteurs, Independent Experts and Working Groups) in a joint statement advised that *"the COVID-19 crisis cannot be solved with public health and emergency measures only; all other human rights must be addressed too."*

Though COVID-19 is an unprecedented pandemic that poses various challenges, we note that the global community is united in emphasizing the need for the public health responses to respect human rights and the rule of law.

It is in this context that we write to express our concerns about three key issues that we have observed in the COVID-19 response in Kenya:

1. **The use of criminal law to enforce public health sanctions:**

We have increasingly seen the use of criminal law to enforce public health measures. For instance, in the initial stages of the pandemic in Kenya, the government communicated that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their own cost, and thereafter arrested and charged under the Public Health Act."

Later, on 3rd April 2020, the government enforced the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 which inappropriately criminalize the coronavirus response and using stigmatizing language. These hastily *gazetted* regulations ignored concerns from the public (with *gazettement* happening on the same day that the public was supposed to provide input). The regulations prescribe penal sanctions, with people who contravene the rules liable to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding six months, or to both. Despite this the government has opted to quarantine anyone who breaches the regulations despite the fact this is not envisioned nor provided for by the regulations.

We have also increasingly seen punitive approaches in enforcement of preventive measures, for instance, arrests for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. Some County Governments, for instance Mombasa County, have however adopted positive approaches that deserve to be recognized, with the Governor partnering with the police to distribute masks at police roadblocks instead of arresting those without.

Furthermore, there are reports that health care workers have been assaulted by the police who are enforcing the curfew order. The criminalized approach to COVID-19 has heightened stigma, as witnessed in the undignified manner in which a burial of a suspected COVID-19 patient was undertaken in Siaya County. We are concerned that the punitive and criminalized approach to enforcement of public health measures has seen increased instances of police brutality, violence, extortion and corruption.

Drawing from the HIV and TB responses, we know the danger of applying criminal sanctions in public health responses as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions mostly impact poor households; are disproportionately biased towards women; and lead to increased violations of rights, discrimination and stigma in the community.

We therefore would like to know what guidance, advice and or support, technical or financial, UN agencies have provided to the Government of Kenya to address the current pandemic without resorting to counterproductive measures such as use of criminal sanctions.

2. Use of mandatory quarantine as form of punishment:

We note that the government has now resorted to use quarantine as detention centers for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks and social gathering restrictions, among others. This is despite the fact that quarantine is not a form of punishment. It has purpose in public health to limit risk of infection to others and not to further expose them.

People in quarantine facilities have copied the OHCHR Senior Human Rights Advisor in Kenya in letters complaining about the deplorable state of quarantine facilities and the toll its having on people's mental health among many other violations. There are also reports of sexual harassment of women in the facilities, and lack of support to pregnant women in the facilities. There are reports that children have been quarantined without their caregivers, and the quarantine of adolescents and young students without the necessary safeguards to protect their safety and wellbeing. Measures implemented for the purpose of managing risks to public health– such as quarantine must be proportionate and subject to monitoring, to prevent arbitrariness or discrimination and must be based on Best Interests Assessment (BIA)/Best Interests Determination (BID) of the child.

We are concerned as to why the Ministry of Health is not utilizing progressive policies that are available, for instance, the recently enacted Tuberculosis (TB) Isolation Policy, which provides guidelines applicable to the isolation of patients with infectious diseases. Further, according to the Siracusia Principles it is clear that any public health restriction adopted by the government must be carried out in accordance with the law; is in the interest of a legitimate objective of general interest; is strictly necessary in a democratic society to achieve the objective; there are no less intrusive and restrictive means available to reach the same objective; and the restriction is based on scientific evidence and not drafted or imposed arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We would therefore want to know what guidance and technical support WHO and other relevant UN agencies are providing to the government in relation to the implementation of the mandatory quarantine practice, and safeguarding of

children. Has there been any technical guidance to the Kenyan government, by WHO, by UNICEF or any other UN agency in Kenya, against the use of mandatory quarantine as a form of punishment?

3. The lack of transparency & accountability in the COVID-19 Kenya response:

We are also concerned about the gaps in the information shared and contained in the public domain on the state of preparedness and precautionary measures being taken to curb the spread of COVID-19. For instance, the government has issued a number of policy directives to manage the pandemic but has failed to stipulate what each seeks to achieve and the timeframe under which it will be implemented. The lack of transparency around decisions taken (public health, behavioural or fiscal) make it near impossible for Kenyans to engage in a meaningful discourse around the potential costs and the benefits of these measures.

We appreciate the World Bank for making public loan information to the Kenyan Government whose objective is to prevent, detect and respond to the threat posed by COVID-19 and strengthen national systems for public health preparedness in Kenya. We request that the World Bank shares information on how it has proceeded to ensure proper utilization of the funds.

In our advisories to the government (which the UN family is copied), we have called on the Ministry of Health to set up a live dashboard that is updated on a regular basis with the following information included:

(a) **Testing kits:** Number by type, percentages by turnaround time or technology used e.g. point of care (like GeneXpert) or based, and how many testing kits have been delivered to various designated testing facilities.

(b) **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.

(c) **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, clinical officers, general physicians and critical care specialists. Number of health care workers deployed in every county. Support provided to health care workers, including community health volunteers (CHVs), to ensure all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

(a) Information on how resources allocated to the response are being utilised, bearing in mind that there have been numerous reports of corruption in the health sector. We have called for publication of allocated, issued and expended financial and non-financial resources for COVID-19 responses (including resources from private, bilateral and multilateral sources). We note that in epidemics there is always a rush to spend money but at times it can

lead to wastage if there is no transparency. In calling for transparency at this particular time, we are guided by lessons from the Ebola response where Transparency International reported that "systemic corruption in the health sector in West Africa hurt the response to the Ebola epidemic" and that "poor risk monitoring in managing the aid funds has also led to claims of corruption and mismanagement." As such it is important that there is transparency right from the beginning notwithstanding we are dealing with a pandemic.

We therefore would like to know the kind of technical support that UN agencies are providing the government to ensure transparency and accountability in the current pandemic.

Further, we want to know whether in providing support to the government, UN agencies sought reassurance that the government adopt measures that are transparent, evidence based and respect human rights.

We also would like to know what UN humanitarian agencies and social protection SDG working group have done as part of the response to the government, especially in providing support to the most vulnerable.

We look forward to your response to inform our interventions with the government and remain committed to work with you to ensuring Kenya wins the fight against COVID-19 in Kenya

Endorsed by the following organizations:

1. Amnesty International Kenya
2. CADAMIC
3. Coast Sex Worker Alliance (COSWA)
4. Dandora Community AIDS support Association (DACASA)
5. Kenya Female Advisory Organization KEFEADO
6. Happy Life Development CBO
7. Health Rights Advocacy Forum (HERAF)
8. Grassroots Trusr
9. International Commission of Jurists (ICJ-Kenyan Section)
10. KATIBA Institute
11. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
12. Kisumu Progressive Youth CBO
13. Kenya Union of Clinical Officers (KUCO)
14. Mildmay Kenya
15. Mumbo International
16. Nelson Mandela TB-HIV Resource Centre Nyalenda
17. National Nurses Association of Kenya
18. Persons Marginalized and Aggrieved in Kenya (PEMA Kenya)
19. Pamoja TB Group
20. National Empowerment Network of People Living with HIV and AIDS in Kenya (NEPHAK)
21. National Network of Clinical Officer Anaesthetists (NACOA-Kenya)

22. People's Health Movement Kenya
23. SHAPE Kenya
24. Stop TB partnership Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. The White Ribbon Alliance
28. Wote Youth Development Projects (WOYDEP)

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