



Your Ref: TBA

The Cabinet Secretary,  
Ministry of Health,  
Afya House, Cathedral Road,  
P.O. Box 30016-00100,  
Nairobi, Kenya.

Our Ref:  Date: 14 November 2016

Dear Dr Cleopa Mailu,

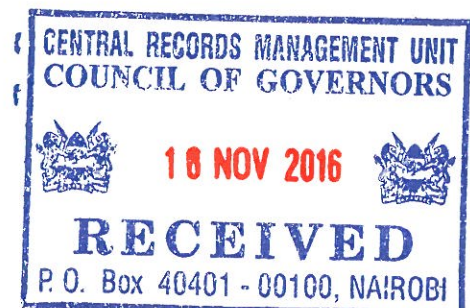
**RE: MINISTRY OF HEALTH INTERIM AUDIT 2016 - REQUEST FOR INFORMATION**

We the undersigned are organizations and associations being representatives of institutions drawn from the health, human rights and governance sector. We write pursuant to our individual rights as Kenyan citizens and our organizations constitutional mandate at Article 3, 10 and 35 on the responsibility to defend and protect the Constitution, the right to participate in matters concerning us and to access public information respectively.

We make reference to the above subject matter and media reports on an interim audit report of the Ministry of Health. We note that the audit report raised questions on the possible loss, misappropriation and/or theft of at least Kshs 5 Billion, being public funds meant for delivery of health services. We also make reference to a response by your ministry dated 31 October, 2016 responding to the audit report.

As you may be aware we convened a health, human rights, governance and development partner's stakeholder's dialogue, of over 60 persons representing over 30 organisations to discuss these revelations. This took place on 3 November, 2016.

During the meeting the stakeholders made various observations and raised various concerns as follows:



- (i) **Ministry of Health undertaking county functions:** The interim audit report and the Ministry's subsequent response revealed that the Ministry of Health has been engaging in the management of county functions including the procuring goods and services meant for primary health care despite the fact that these functions have been transferred to the County government in line with the constitution and the applicable devolution law.
- (ii) **Value for money on procurement:** Stakeholders were concerned as to whether some of the procurement as revealed in the interim audit report represented value-for-money. For instance why did the Ministry opt to procure some goods instead of channeling the money to Kenya Medical Supplies Authority (KEMSA) to undertake the procurement for counties since it is an organ that was established to carry out value for money procurement and is the one that has been procuring drugs and commodities for county governments? Of particular concern was the acknowledgment by the Ministry on page 10 of its the report dated 31 October 2016 indicating that "portable medical clinics" were purchased at a cost of Kshs. 10 Million per 'container' when the cost of containers is far less?. Can the Ministry confirm whether the containers purchased are special containers that warranted such expenditure? Kindly also disclose the information on the quantities of the HIV supplements that were imported. Was the purchase done at a competitive market rate?
- (iii) **Engagement of an external auditor:** Whereas the stakeholders welcomed the ministry proposal of having an external auditor, they cautioned that the law must be followed and the office of the Auditor General should take the lead in such an audit process noting that officials in the ministry are interested parties in regard to the outcome of the audit.
- (iv) **Transparency and Conflict of Interest:** stakeholders noted the lack of transparency and potential likelihood that conflict of interest and favouritism may have influenced the award of tenders and that the affirmative action opportunity as related to Access to Government Procurement Opportunities (AGPO) may have been abused.
- (v) **Intimidation of Journalists and the Internal Auditor:** stakeholders took note of the aggression, threats and intimidation to the media by officials from your Ministry prior to the publication of this audit report. They also took note of the formal request

to have the internal auditor transferred before completing his audit and you're own and other government official's castigation of his capabilities as a professional.

In light of the above and Pursuant to Article 35 of the Constitution and the Access to Information Act 2016, we hereby request as individuals and on behalf of our organization for access to the following documents from your ministry:

- a) The intergovernmental agreements re-assigning or delegating the county functions of primary health care, maternal health care services and HIV services to the national government as signed between your ministry and county governments concerned in line with Article 187 of the Constitution and Section 26 of the Intergovernmental Relations Act 2012.
- b) The minutes, reports, and any other documents relating to the award of tenders under question in the draft Audit.
- c) The final audit report with management responses to the queries raised in the interim audit report once it is available.
- d) Also related to the matter of the lease of equipment by the national government for county governments are copies of the inter-governmental agreements entered into with county governments for the procurement and lease of the managed equipment services for county governments and the contract signed between the government and the company/nies supplying and leasing these equipment to county governments.
- e) Related to (d) above, we further request for information on the names of local companies that were involved in this project including names of their directors and the roles of these companies in the project.
- f) Information on the amount of money that has so far been transferred as conditional grants by the national government to County governments towards the flagship free maternity programme.
- g) Information on the number of counties involved in projects funded by the Global Fund to Fight AIDS Tuberculosis and Malaria (GFTAM) and the nature and duration of the projects or activities being undertaken with the support of Global Fund to Fight AIDS Tuberculosis and Malaria.

- h) Related to (g) is the information on the structure of operation that the national government agents are using to deliver the HIV, TB and Malaria activities and services supported by the Global funds given that these services are County Government functions.

We would be grateful if this information can be shared with us within the next 14 days, or not later than 28 November, 2016 to enable us to meaningfully engage in the public discourse on this matter and to determine any cause of action that may be required of us as individuals and representatives of different interest groups in Kenya.

Yours sincerely,



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**On my own behalf and on behalf of Society for  
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**On my own behalf and on behalf of KELIN**




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Kenya Medical Practitioners,  
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**On my own behalf and on behalf of KMPPDU**




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**On my own behalf and on behalf of TI –  
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**On my own behalf and on behalf of HENNET**



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**On my own behalf and on behalf of KETAM**



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**On my own behalf and on behalf of NEPHAK**

cc

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- (ii) *The Chairperson,  
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- (iii) *The Secretary/Chief Executive Officer  
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- (iv) *The Director  
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