



The Institute for Social Accountability (TISA)

Public Statement on Doctors Strike

Monday, 16 January 2017

It is now 43 days since commencement of the doctor's strike, and it is of great concern that positions on either side appear to be hardening. We therefore issue this statement in the public interest and in line with our institutional mandate:

1. The Collective Bargaining Agreement (CBA) seeks to recentralise health and is therefore unconstitutional

We note that the Collective Bargaining Agreement (CBA) as negotiated is not aligned to the Constitution in its proposed functional assignment of responsibilities. This is primarily so in placing the employment and management of doctors under the Ministry of Health. Health is a devolved function including the management of doctors, as enshrined in the Constitution of Kenya.

In this respect the national government (Ministry of Health) offended the Constitution in signing the agreement. The doctors unions have subsequently also ignored the directions of the industrial court in refusing to align the CBA to the Constitution.

The proposal to recentralise health functions is untenable within the present Constitution and can only be achieved through a constitutional amendment. The correct channel to challenge a constitutional position is a constitutional amendment and in this case through a referendum. However, in taking this course of action, the doctors should be aware that they would be challenging the very foundations of devolution in Kenya and consider the implications of their demands.

2. Payment of doctors/Financing health

The health sector in Kenya is grossly under resourced and the national government of Kenya is yet to meet the 15% p.a Abuja Declaration budget allocation deemed to be the basic minimum for positive health outcomes as a basis for economic growth.

Further, the present government funding structure retains too much money at national level, to the detriment of actual service delivery at county level. The Ministry of Health at the national

level is retaining up to Ksh60 billion, part of which should go towards payment of doctors, and support of training and health services. In addition the failure by NG to rationalise and rationalise parastatals is yet another area contributory factor to the present underfunding of basic services.

On the other hand the demand by medics for a 300% increment must be assessed alongside the other needs of the health sector as well as other sectors of government. The demand also brings to the fore the failure of the Salaries and Remuneration Commission to address systemic and structural distortions in the public wage bill. It also highlights the need for sustainable solutions to the financing of basic services to ensure they attract and retain competent staff at attractive remuneration albeit sustainable basis.

The demand for increased salaries should therefore be viewed in terms of short-term harmonisation of terms of services and the mid-term reform of the public wage bill and strategies for sustainability.

3. Accountability in Health Sector

We also note that the doctors union has previously not been vocal on gross infringements in the sector including corruption and professional malpractice, which have undermined health standards and outcomes in the country. We note with concern that there has been no action taken against the perpetrators of the 5billion Afya House scam.

We call on the unions to adopt a rigorous accountability agenda to stamp out corruption and malpractice in the sector beyond the demand for higher salaries.

4. Threats to medics unbecoming

Whereas the legality of the strike may be questionable, we call upon the President and the Council of Governors to adopt a consultative approach to the negotiations and stop attempts at intimidating the doctors. We reject the proposal to bring in foreign doctors as a means to arm twist the medics. It is an abdication of sovereign responsibility to even suggest such a move.

5. Declare strike a national disaster

Given the catastrophic impacts of the ongoing strike, we call upon the national government to declare the strike a national emergency, and make its resolution a top priority. This is not time for grand standing.

6. External Mediation Needed

In view of the increasingly hard-line positions taken and prevailing low levels of trust in the negotiation process - we call for a mediated process, the top priority of which would be a return to work agreement, which would allow services to resume while negotiations take place.

- The mediation would also allow the isolation of contentious issues to avoid the mixed and ineffectual communication that is presently evident;
- The mediation would also work create a framework for in depth civic dialogue with the health sector on the implications on devolution of recentralising health;
- It would also allow widespread public discourse on the viability of the proposal.
- The mediators would then work with the national assembly to craft a constitutional amendment bill to secure the support of legislatures at all levels to allow a referendum.

7. Medics need remedies within the law

Lastly, we call upon the medical profession and its leaders to seek recourse to its demands within the law and by all times respecting the law. They should also explore ways of industrial action that do not result in the loss of life.



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The Institute for Social Accountability (TISA) is a Kenyan civil society organization committed to promoting social accountability and good governance in local governance through research, policy and advocacy.

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