

THE PANDEMIC RESPONSE AND MANAGEMENT BILL, 2020

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**THE PANDEMIC RESPONSE AND MANAGEMENT
ACT, 2020**

A Bill for

AN ACT of Parliament to provide: a legal framework for a coordinated response and management of activities during a pandemic; temporary measures and relief during a pandemic; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART 1 – PRELIMINARY

Short title.

1. This Act may be cited as the Pandemic Response and Management Act, 2020.

Interpretation.

2. In this Act—

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to health;

“County Committee” means a county pandemic response committee established under section 16;

“county executive committee member” means the county executive committee member responsible for matters relating to health;

“Fund” means the Pandemic Response Fund established under section 19;

“lending financial institution” includes a bank, mortgage company, cooperative society, investment company or any other entity which is registered and duly licensed to make loans to persons;

“National Committee” means the National Pandemic Response Committee established under

section 8;

“pandemic” means an infectious disease occurring across international boundaries.

Application.

3. This Act shall apply only during the period of a pandemic.

Objects.

4. The objects of the Act are to provide —

- (a) a framework for the coordinated approach in the response and management of activities during a pandemic;
- (b) temporary relief from the inability to perform contractual obligations where the inability is caused by a pandemic; and
- (c) temporary measures to address various matters during a pandemic.

Conflict of laws.

5. Where the provisions of this Act conflict with the provisions of another Act, the provisions of this Act shall prevail.

PART II – DECLARATION OF A PANDEMIC

Notification of pandemic.

6. Where the Cabinet Secretary determines that it is necessary to take measures to prevent or control the spread of a pandemic, the Cabinet Secretary shall make a recommendation to the President for the declaration of a pandemic.

Declaration of a pandemic.

7. The President may upon receipt of a recommendation from the Cabinet Secretary under section 7 and in consultation with the National Security Council, issue a notice in the Gazette declaring a pandemic.

PART III – ESTABLISHMENT OF THE NATIONAL PANDEMIC RESPONSE COMMITTEE

Establishment of
National
Committee.

8. The President shall establish a National Pandemic Response Committee upon declaration of a pandemic

Functions of the
National
Committee.

9. The National Committee shall –

- (a) co-ordinate the country's response and management to the threat caused by the pandemic;
- (b) co-ordinate capacity building of the relevant personnel for quick and effective response to the pandemic;
- (c) conduct economic impact assessments on the effects of the pandemic and develop mitigation strategies;
- (d) advise the national and county governments on management of the pandemic;
- (e) co-ordinate, collate, review and analyse disaggregated information relevant to the management of the pandemic;
- (f) coordinate and support public awareness campaigns and civic education programmes on the pandemic at the national level;
- (g) promote linkages with relevant ministries, international organizations, county, sub-county and community-based entities;
- (h) mobilize public-private partnerships in managing the pandemic;
- (i) monitor and evaluate interventions made for mitigation of the pandemic; and
- (j) liaise with the county governments on

implementation of mitigation measures.

Composition of the National Committee.

- 10.** (1) The National Committee shall consist of –
- (a) the Cabinet Secretary, who shall be the chairperson;
 - (b) the Principal Secretary in the Ministry responsible for finance;
 - (c) such other Cabinet and Principal Secretaries as the President shall consider necessary;
 - (d) the chairperson to the Council of County Governors or such other Governor as the chairperson shall designate in writing; and
 - (e) such other public officers, not exceeding three as the President shall consider necessary.

(2) The President shall notify the establishment of the National Response Committee by notice in the Gazette.

(3) The Committee shall be an ad-hoc committee whose tenure shall lapse two months after the President declares the end of a pandemic.

Secretariat.

11. The Cabinet Secretary shall designate officers within the Ministry to serve as the secretariat to the National Response Committee.

Committees of the National Committee.

12. (1) The National Committee may establish such sub-committees as it may consider necessary for the effective performance of its functions under this Act.

(2) The National Committee may—

- (a) co-opt into the membership of a committee established under subsection (1), such other persons whose knowledge and skills are found necessary for the effective performance of the Committee; and

- (b) by resolution either generally or in any particular case, delegate to another government entity, the exercise of any of the powers or the performance of any of the functions of the committee under this Act.

Report to Parliament.

13. (1) The National Committee shall —

- (a) during the period of the pandemic, prepare and submit to Parliament bi-weekly status reports providing-
 - (i) the rate of infection of the disease within the country;
 - (ii) measures taken to mitigate the pandemic; and
 - (iii) challenges faced in mitigating the pandemic; and
- (b) within one month after the declaration of the end of a pandemic, prepare and submit to Parliament its final report on its activities.

(2) Parliament shall, upon receipt and consideration of the reports under subsection (1), make such recommendations as it may consider necessary for mitigation of the impact of current and future pandemics.

PART IV— ESTABLISHMENT OF COUNTY PANDEMIC RESPONSE COMMITTEES

Establishment of County Committees.

14. Upon the declaration of a pandemic by the President under section 8, each County Governor shall establish a county pandemic response committee in their respective county.

Functions of County Committees.

15. The County Committee shall –

- (a) implement the strategies and measures as directed by the National Committee;

- (b) co-ordinate the county's response and management to the threats caused by the pandemic;
- (c) establish a communication strategy that is in line with the national communication strategy;
- (d) promote civic education and public awareness on the pandemic;
- (e) collaborate with the national government and relevant agencies in overseeing management of the pandemic in the county; and
- (f) initiate and facilitate efforts to make funding of the management of the pandemic in the county available.

Membership of
County Committee.

16. (1) The County Pandemic Response Committee shall consist of –

- (a) the county executive committee member;
- (b) the county executive committee member responsible for matters relating to finance;
- (c) the chief secretary in the department responsible for health;
- (d) the county commissioner; and
- (e) such county public officers, not exceeding three, that the county governor shall consider necessary.

(2) The county governor shall notify the public of the establishment of the county response committee by notice in the *Gazette*.

(3) The Committee shall be an ad-hoc committee whose tenure shall lapse two months after the President

declares the end of a pandemic.

Committees of the
County Committee.

17. (1) The County Committee may establish such subcommittees as it may consider necessary for the effective performance of its functions under this Act.

(2) The County Committee may –

(c) co-opt into the membership of a committee established under subsection (1), other persons whose knowledge and skills are found necessary for the functions of the Committee; and

(d) by resolution either generally or in any particular case, delegate to another county government entity, the exercise of any of the powers or the performance of any of the functions of the committee under this Act.

Report to the county
assembly.

18. (1) The county committee shall during the period of the pandemic-

(a) prepare and submit to the respective county assembly bi-weekly status reports providing-

(i) the rate of infection of the disease within the county;

(ii) measures taken to mitigate the pandemic within the county; and

(iii) challenges faced in mitigating the pandemic within the county; and

(b) within one month after the declaration of the end of a pandemic, prepare and submit to the relevant county assembly its final report on its activities.

(2) The county assembly shall, upon receipt of the reports under subsection (1) make recommendations it may consider necessary for mitigation of the impact of

current and future pandemics.

**PART V- ESTABLISHMENT OF A PANDEMIC
RESPONSE FUND**

Pandemic Response
Fund.

19. Upon the declaration of a pandemic, there shall be established, a Pandemic Response Fund.

Objects of the Fund.

20. The object of the Fund shall be to mobilize resources for the response towards containing the spread and impact of the pandemic including, where necessary, to –

- (a) purchase the necessary equipment and supplies for the prevention and containment of the spread of the pandemic;
- (b) increase laboratory testing and networking capacity;
- (c) develop and implement surveillance for patients in outpatient and hospital settings and contact persons;
- (d) establish temporary shelters and isolation units as may be necessary to contain the spread of the pandemic;
- (e) establish a communication system between the public and the health care system for the effective isolation, transfer and treatment of infected persons;
- (f) establish a mechanism for the vaccination of members of the public;
- (g) establish a mechanism for the provision of basic services to the vulnerable persons; and
- (h) provide a buffer and a financial stabilisation mechanisms for any economic losses that may have been suffered by citizens as a result of the pandemic.

Sources of the Fund.

21. There shall be paid into the Fund-

- (a) monies appropriated by the National Assembly;
- (b) grants, donations or gifts made to the fund; and
- (c) monies received from any other source approved by the Cabinet Secretary.

Expenditure of the Fund.

22. There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purpose for which the Fund is established.

Administrator of the Fund.

23. (1) The administrator of the Fund shall be the Principal Secretary responsible for matters relating to finance.

(2) The Administrator of the Fund shall-

- (a) supervise and control administration of the Fund;
- (b) cause to be established proper systems of control and oversight as per the Public Finance Management Act;
- (c) cause to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund;
- (d) prepare, sign and transmit to the Auditor-General financial statements; and
- (e) prepare quarterly financial and non-financial reports

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Winding up of the Fund.

24. The Cabinet Secretary shall wind up the fund within one month of the publication of a notice in the Gazette declaring the end of the pandemic by the President.

PART VI- SOCIO-ECONOMIC PROTECTIVE MEASURES

Tax incentives.

25. Where a pandemic is such that it affects the economic or purchase power of the public, the Cabinet Secretary responsible for matters relating to finance may, with the approval of Parliament, introduce tax measures to cushion the affected persons for the duration of the pandemic.

Loans and mortgages.

26. (1) Where a pandemic has a negative impact on the capacity of the public to meet its contractual obligations entered into prior to the declaration of a pandemic, the following measures shall apply during the pandemic up to three months after the end of the pandemic —

- (a) a borrower and the respective lending financial institution shall enter into an arrangement to review repayment modalities;
- (b) penalties shall not be imposed on a defaulter; and
- (c) a defaulter shall not be listed by a credit reference bureau.

(2) The Cabinet Secretary responsible for matters relating to finance may, with the approval of Parliament, provide measures to cushion lenders and borrowers.

Moratorium on penalties.

27. A lending financial institution shall not charge fees, interest or any other penalty for non-payment or late payment of obligations during the pandemic period.

Contractual

28. Where a contract was entered into before the

obligations. declaration of a pandemic and the pandemic affects the performance of a contractual obligation, the following shall be prohibited —

- (a) commencement of levying of execution;
- (b) enforcement of security over movable and immovable property used for the purpose of a trade, business or profession;
- (c) repossession of any goods used for the purpose of a trade, business or profession; or
- (d) termination of lease or licence of immovable property in connection with non-payment of rent or other monies.

Tenancy agreements.

29. (1) Where a pandemic has affected the financial capacity of a tenant to meet their obligations —

- (a) the tenant shall give a notice in writing to the landlord or contracting party that they are unable to meet their obligations because of the pandemic;
- (b) upon receipt of a notice under paragraph (a) the contracting parties shall enter into an agreement on how the tenant shall meet their obligation at the end of the pandemic.

(2) The Cabinet Secretary responsible for matters relating to housing may, with the approval of Parliament, provide measures to cushion landlords and tenants.

Labour relations.

30. (1) Where a pandemic adversely affects the ability of an employer to pay salaries or wages—

Act No. 11 of 2007.

- (a) notwithstanding the provisions of the Employment Act, an employer shall not terminate a contract of service or dismiss an employee; and

(b) an employer shall not coerce an employee to take a salary cut.

(2) Despite subsection (1), where an employer is unable to meet his obligations to pay salaries or wages, the employer shall permit an employee to take leave of absence without pay for the duration of the pandemic.

(3) The Cabinet Secretary responsible for matters relating to labour may with the approval of Parliament, develop measures to cushion employers and employees during the pandemic.

Social safety net
and economic
safeguards.

31. (1) National and county governments shall put in place social safety schemes designed to support vulnerable persons, vulnerable households and informal sector workers whose incomes have been disrupted by the pandemic.

(2) The schemes under subsection (1) may include unconditional cash transfers to support the identified groups to meet their daily basic necessities.

Utilities.

32. The relevant national and county government agencies may, during a pandemic, —

(a) waive water and electricity charges for identified vulnerable persons and households; and

(b) in consultation with water and electricity service providers —

(i) adjust tariff rates in order to reduce utility charges to individuals and businesses; and

(ii) withhold disconnections for non-payment of utility bills.

Information

33. Despite any other law, where the government

- technology. issues directives that may adversely affect the conduct of on-site meetings or business —
- (a) the meetings or such businesses may be held remotely via appropriate electronic means and the resolutions made during such meetings shall be valid;
 - (b) the Speakers of the respective Houses of Parliament shall make guidelines on the conduct of plenary and committee sittings remotely;
 - (c) the Speakers of the respective county assemblies shall make guidelines on the conduct of plenary and committee sittings remotely;
 - (d) court proceedings may be held remotely and the Chief Justice may make Rules for the conduct of such proceedings; and
 - (e) respective heads of institutions may make guidelines on how business shall be transacted remotely.

Rates and licences. **34.** County governments may suspend fees payable on renewal of trade licenses and payment of property rates during the pandemic.

PART VII- MISCELLANEOUS PROVISIONS

- Penalty for obstruction, etc. **35. (1)** A person who, without reasonable cause—
- (a) obstructs a public officer in the discharge of the person's functions under this Act; or
 - (b) refuses to comply with any direction given by a competent authority in the furtherance of provisions under this Act,
- commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or both.

(2) Despite the penalty provided under subsection (1), a person who commits an offence under subsection (1) and the offence results in the loss of life shall, on conviction, be liable to imprisonment for a term not exceeding five years.

Penalty for false claim.

36. A person who knowingly-

- (a) makes a claim which the person knows or has reason to believe to be false, for the purpose of obtaining any relief, assistance, repair, reconstruction or other benefit from a public office; or
- (b) makes or circulates a false alarm knowingly or warning as to a pandemic or its severity or magnitude leading to panic

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

Penalty for misappropriation of relief money or materials.

37. A person who, being entrusted with any money or materials, or otherwise being in custody of money or goods meant for providing relief during a pandemic-

- (a) misappropriates the money or goods;
- (b) appropriates the money or goods for the person's own use;
- (c) compels another person to misappropriate the money or goods;

commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

General penalty.

38. (1) A person who commits an offence under this Act for which no penalty is provided is liable, on conviction, to a fine of not less than one hundred thousand shillings or a fine not exceeding twice the value of the goods or products or, to imprisonment for a term not exceeding six months, or to both.

(2) Where an offence under this Act is committed

by a partnership, company, association or co-operative society, every person who at the time when the offence was committed –

- (a) was director, partner or officer;
- (b) had knowledge or should have had knowledge of the commission of the offence; and
- (c) did not exercise due diligence to ensure compliance with this Act,

commits an offence and is liable for the offence as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance and that he exercised diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions as director, partner or officer concerned.

Regulations.

39. (1) The Cabinet Secretary may make regulations–

- (a) prescribing anything that may be prescribed under this Act; and
- (b) generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations to provide for-

- (a) measures for prevention, mitigation, preparedness, response and recovery;
- (b) limitation of rights and fundamental freedoms pursuant to Article 24 of the Constitution;
- (c) emergency registration of the relevant professionals;
- (d) collection and publication of data

- relating to the pandemic;
- (e) use of listed premises as shelters to manage a pandemic;
- Act No. 14 of 2007.
 - (f) additional services to be categorized under essential services notwithstanding the provisions of the Labour Relations Act;
- Act No. 46 of 2012.
 - (g) consumer protection measures notwithstanding the provisions of the Consumer Protection Act;
 - (h) care and protection of vulnerable groups;
 - (i) conduct of public awareness and civic education on management of the pandemic; or
 - (j) any relevant rules or standards required to be prescribed.

Declaration of end of a pandemic.

40. The President may, in consultation with the National Pandemic Response Committee and by notice in the Gazette, declare that a pandemic is no longer a threat to the social, economic or political stability of the country.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a framework for the effective response to and management of a pandemic in order to prevent the occurrence or spread of a pandemic whenever it arises. It also seeks to provide measures to mitigate against the effects of the pandemic and provide a mechanism to cushion those that may be adversely affected by the pandemic.

The unique threats posed by a pandemic owing to its spread across the country and the globe generally and the extent of the damage that it may cause particularly owing to the fact that it may occur over a long period of time means that a specific coordinated response needs to be taken by the National and the county governments in order to direct the required resources as quickly and efficiently as possible and thereby effectively respond to the pandemic. This Bill therefore seeks to provide a mechanism for the coordinated response by the National and County Governments and a framework setting out specific measures required to be undertaken to address the socio-economic issues that may arise following a pandemic.

The Bill provides for the establishment of a National Pandemic Response Committee as an ad-hoc committee whenever a pandemic is declared. The Committee is required to spearhead the implementation of activities geared towards preventing the spread and mitigating against the negative impact of a pandemic. The Bill further outlines the functions required to be undertaken by the Committee in order to prevent the spread and address the adverse consequences of the pandemic. It further requires the Committee to submit a report on its activities together with its recommendations to Parliament at least one month after the declaration of the end of a pandemic.

The Bill also sets out the role of the county governments in the event of a pandemic. The County Governments are required to collaborate with, and complement the efforts of the National Government in responding to a pandemic. It provides a framework for the establishment of a County Pandemic Response Committee should a county consider the establishment of such a committee necessary in order to effectively respond to the pandemic. It further requires the Committee to submit a report on its activities together with its recommendations to the respective County Assembly at least one month after the declaration of the end of a pandemic.

The Bill provides for the establishment of a Pandemic Fund whenever a declaration of a pandemic is made. The Fund would serve as a mechanism for ensuring that there are adequate resources geared towards containing the spread and mitigating against the impact of a pandemic. The fund is to be administered by the Principal Secretary responsible for

matters relating to finance and is expected to be would up upon the publication of a notice in the Gazette declaring the end of the pandemic.

The Bill sets out various measures that would be undertaken in order to cushion the citizens against the negative impact of a pandemic on the social and economic activities. It seeks to compel various players at the National and County levels of government to take measures including economic or tax reprieves, provision of basic goods and services and interventions targeting vulnerable groups and those who may lose their income or whose businesses may be negatively affected in order to mitigate against the adverse impact of the pandemic.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates power to various Cabinet Secretaries. The Bill does not limit any fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill sets out a framework for the coordinated implementation of various activities by County Governments in collaboration with the National Government in order to prevent and contain the spread of a pandemic. Some of the activities anticipated to be undertaken, including provision of water, sanitation and health services fall within the ambit of County Governments under Part 2 of the Fourth Schedule to the Constitution.

Therefore, the Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 14th of April, 2020.

Johnson Sakaja,
Chairperson,
Ad-Hoc Committee on COVID-19 Situation in Kenya.