



**Clerk of the Senate,
Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.**

1st May, 2020.

RE: Memorandum on the Pandemic Response and Management Bill

Civil Society Parliamentary Organization (CSPEN) is a platform bringing together like-minded Civil Society Organizations (CSOs) with the primary objective of undertaking joint advocacy on issues that are of common interest. The platform seeks to leverage amplified voice for prompt response. The scope of interest falls under five thematic areas; civic engagement, human rights, media and communication, public finance and governance.

In accordance with the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), we hereby submit our representations on certain provisions of the Pandemic Response and Management Bill as follows:

Section of the Bill	Proposed Amendment to the Bill Section	Justification
Section 2; Interpretation	It is important to include a definition of vulnerable persons/ households and poor households/persons	To provide for comprehensive identification and reach to persons who deserve special protection during a pandemic.
Section 3; "This Act shall apply only during the period of a pandemic."	Amend this provision to clarify that the emergency powers contained in the Bill (and any attendant regulations) can be used (in a proportionate manner) for a three (3) month period - subject to extension	It is important for strict time limits to be imposed once a pandemic has been declared by incorporating sunset clauses.

	following parliamentary approval.	
Section 4; Objects	Include an object on “To promote Transparency, Accountability and citizen participation in the administration of the Pandemic Response Fund” .	To promote good governance, integrity, transparency and accountability.
Section 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.	We recommend the addition of community media and various government platforms when announcing the gazette.	The President will announce the pandemic via gazette; however spreading this information across multiple platforms and making it more accessible is essential amidst a pandemic.
Section 9; Functions of the National Committee	Include ‘Supervise resource mobilization, administration and utilization/expenditure at National Level.’	To promote good governance, integrity, transparency and accountability.
Section 10; Composition of the National Committee	Include representatives from Parliament .	Parliament represents the will of the people whose power they delegated. It is important to have their voice in the National Committee as they deal with a pandemic.
	Include Director General, Kenya National Bureau of Statistics (KNBS) in the	For the purpose of collection, collation and analysis of accurate data and statistics

	committee.	about a pandemic.
	Include Civil Society Organisations and Private institutions to the National Committee.	The citizen voice is missing from the committee. The citizen voice is a crucial part of governance processes and as per the constitution citizens are given a right to participate in decision making processes. Private institutions as well are missing from the National Response Committee; the committee seeks to engage with for the management of the pandemic but yet they are lacking a voice on the committee to represent their interests.
Section 10 (2); The President shall notify the establishment of the National Response Committee by notice in the Gazette.	We recommend the addition of community media and various government platforms when announcing the gazette.	To ensure adequate access to information, this should be expanded beyond the gazette.
Section 10 (3); The Committee shall be an ad-hoc committee whose tenure shall lapse two months after the President declares the end of a pandemic.	We recommend that their tenure should be one month after the end of the pandemic is declared	The Act is supposed to last for the period of the pandemic. Once the pandemic is declared over, the Committee under the guidelines provided do not have a mandate post the end of the pandemic and their tenure should be more immediate.

<p>Section 13; Report to Parliament.</p>	<p>Include quarterly financial reports – resource mobilized and expenditure.</p> <p>The report should be made public through Websites and other online platforms.</p>	<p>This will promote financial transparency and accountability.</p>
<p>Section 15; Functions of County Committees</p>	<p>Include 'Supervise resource mobilization, administration and utilization/ expenditure at County Level.'</p>	
<p>Section 16; Membership of County Committees</p>	<p>Include representatives of non-state actors and representatives of vulnerable groups.</p> <p>At least a third should be of the opposite gender.</p>	<p>Promotion of inclusion and representation.</p>
	<p>Include KNBS county officers in the county committee.</p>	<p>To support accurate and a coordinated pandemic data collection at county level.</p>
<p>Section 18; Report to the County Assembly</p>	<p>Include quarterly financial reports – resource mobilized and expenditure</p> <p>The report should be made public through websites and other platforms.</p>	<p>Promotion of transparency and accountability.</p>
<p>Section 20 (c); Objects of the Fund:</p>	<p>Amend this provision. Crucially, the provision fails</p>	<p>Despite the recognition that contact tracing provides</p>

<p>“develop and implement surveillance for patients in outpatient and hospital settings and contact persons</p>	<p>to clarify what methods of contact tracing are permissible - analogue or digital (e.g., location data, contact tracing applications) methods - and what safeguards are in place to protect the patients’ and persons right to privacy.</p>	<p>important intervention capabilities, this provision falls short of Kenya’s international, regional and national obligations guaranteeing the right to privacy and data protection.</p> <p>Notably, all data-sharing agreements between the government, hospitals and private entities should be submitted to the National and County Committees for scrutiny and subsequently disclosed in the reports of both committees. These reports should be availed to the public for scrutiny.</p>
<p>Section 20(d); establish temporary shelters and isolation units as may be necessary to contain the spread of the pandemic;</p>	<p>Insert the words ‘and impact’, after the word spread to make the subsection read.....‘to contain the spread and impact of the pandemic.’</p>	<p>There should be equally concerted measures put in place through temporary shelters to protect people from other indirect impacts of pandemics e.g dangers from increased incidences of SGBV, and to also include protection of homeless people/street families.</p>
	<p>Add language ensuring such isolation centres do not impose financial obligations on citizens in</p>	

	forced isolation.	
Section 20 (f); establish a mechanism for the vaccination of members of the public;	There is no mention of allocation of funds for research , but only a reference for vaccination	Coordinated research is important in finding vaccinations for pandemics
Section 20(g); establish a mechanism for the provision of basic services to the vulnerable persons;	Criteria of who is considered vulnerable in this respect should be outlined under section 2 on interpretation.	This will ensure lack of vagueness and ensure those considered vulnerable persons access basic services.
Section 20 (h); The Pandemic Response Fund shall provide a buffer and a financial stabilisation mechanism for any economic losses that may have been suffered by citizens as a result of the pandemic.	While this is a welcome provision, it is vague and does not outline specific measures that will assist citizens. There should be a specific Part for this in the Bill. It would be helpful to state what these economic losses are. For example; <ul style="list-style-type: none"> a. Farmers losing out on export business; b. People in the tourism sector; c. Small business holders and; d. Casual workers who would normally earn daily income. 	This will ensure that the purpose and objectives of the Fund are met and that there is no room for misappropriation of resources. This will promote transparency and accountability.
Section 23; Administrator of the Fund.	The Pandemic Response Fund should be open to scrutiny and oversight from Parliament.	The Fund relies on monies appropriated from the National Assembly (taxpayers' money) that should be accounted for

		specifically.
	Have county based administrators reporting to the Principal Secretary.	Efficiency and effectiveness
23(2)(e); The Administrator of the Fund shall prepare quarterly financial and non-financial reports	Given the urgency and timeline of the pandemic, monthly reports would be more in order.	Promotion of transparency and accountability.
Section 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.	A provision should be put in place that outlines measures to be taken in the event that there is a remainder of the monies in the Fund.	Refers to the 'winding up' of the fund however it makes no mention as to what happens to the remaining money in the fund. Inclusion of such a provision will provide clarity.
Section 26 (1); Loans and Mortgages	The outlined measures should apply up to three months after the end of a pandemic.	Two months is a short time for non-performing business to rebound and meet salary/wage obligation for all employees who might have gone on leave in absence without pay. This has a subsequent direct implication on the public capacity to meet financial contractual obligations.
Section 29 (1); Tenancy agreement	While the provision is welcome in that it cushions the tenants from the economic burdens of the pandemic, there should be a provision regarding the waiver of utility billing rates and land rates for	This will assist both commercial and residential tenants on premises by lessening their burden.

	landowners.	
Section 29 (1) (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.	Agreements may not include sexual exchange instead of monies, penal interest rates or Sections that would otherwise place the tenant in a precarious position.	This section has wording that is too vague when dealing with matters of personal and income finance. This can put people in even more vulnerable and compromising positions.
Section 31; Social safety nets and economic safeguards	This provision seeks to create social safety schemes to support the vulnerable. There already exists the National Safety Net Program that acts as income support for the poorest and most vulnerable households. This programme should be utilized even during a pandemic. What the Bill should provide is for an increase in income for these vulnerable households.	Creating different parallel programmes for cash transfer will lead to fragmented and uncoordinated efforts to deal with the pandemic and an eventual misappropriation of funds.
	Include poor households/persons in the list of those who should benefit from the welfare package provided for under this section.	This will capture the difference between poverty and vulnerability. It is also necessary so as to avoid potentially leaving out deserving poor households/persons in the cause of implementing this law.
	Adherence to the Data	There is a failure to specify

	Protection Act.	what <i>permissible</i> data sets will be used for the identification of vulnerable persons, households and informal sector workers. Given the likelihood that these data sets will contain copious amounts of data subjects' personal information, it is important to stress adherence to the Data Protection Act (2019) by both state organs and public entities
Section 32; Utilities	The Section should be expanded on how the money will be sent to the groups, how they will determine the amount and how they will identify these groups.	Refers to those in the informal sector whose businesses may be affected by the pandemic. It mentions that unconditional cash transfers will be made however fails to account for where the money will be coming from. Will it be from the Pandemic fund? There is a lack of clarity on how the money would even be distributed to these groups.
Section 33; Information technology	Amend to include transparency provisions.	We acknowledge the Senate's recognition of the role technology plays in Kenya. Despite this, this provision fails to expound how ICT can be harnessed effectively during epidemics.

		<p>The provision allows use of IT, we recommend that it remains essential that full records are still kept of relevant data and information and discussions and remain available via open government requests</p>
<p>Section 36; Penalty for false claim. “makes or circulates a false alarm knowingly or warning as to a pandemic or its severity or magnitude leading to panic”</p>	<p>Delete the provision. We recommend that any restrictions on the dissemination of supposedly false information must comply with the strict requirements under Article 19 (3), International Covenant on Civil and Political Rights.</p>	<p>We acknowledge that misinformation represents a serious challenge in addressing any epidemic. Crucially, any response which “relies heavily on censorship, criminal sanction and custodial sentences raises concerns about the element of proportionality.”¹</p> <p>This provision is vague and has a chilling and limiting effect on the right of free expression. Further, it fails to recognize that the right to FOE is broad – and may extend to untruthful statements. Crucially, the right to FOE is not accompanied with a legal duty of ‘truth.’ Consequently, imposing criminal sanctions on individuals for spreading false information often leads</p>

		<p>to self-censorship.</p> <p>It is imperative that individuals feel empowered to raise concerns an epidemic or the response of authorities without fear of punishment if their concerns turn out to be unjustified.</p>
Section 37; Penalty for misappropriation of relief money or materials.	Added language, 'a person found and convicted of this shall be removed from office and not be allowed to take office in the public sector again. '	The rationale for this is that adding this language to this bill would set precedent such that such provisions can be added to other legal instruments.
Section 39 - Regulations 2 (b) limitation of rights and fundamental freedoms pursuant to Article 24 of the Constitution;	Amend provision	The State should continue upholding human rights during the coronavirus pandemic. Any limitations on rights and fundamental freedoms must be lawful, necessary, and proportionate with clear sunset clauses to ensure the measures are not permanent or normalised.
Section 39(2)(d); Regulations on collection and publication of data relating to the pandemic.	Should be done in accordance to the Data Protection Act or international data privacy laws where Kenyan laws do	

	not address certain issues specifically.	
Section 39 (2); Regulations	Amend this provision and introduce an additional regulation: <i>"care and protection of persons resident in Kenya without any form of legal identification"</i>	ARTICLE 19 EA's proposed regulation will provide an interim measure capable of comprehensively addressing the needs of persons residing in Kenya without any form of legal identification.
Part VI— Socio- Economic Protective Measures	Amend the bill to include provisions on Civil and Political Rights measures. We propose the following provisions be introduced into the Bill: 1. Insert a new section below section 9 (c)), which mandated the proposed National Committee to: a) Proposed Provision: "conduct human rights impact assessments on the effects of the pandemic and develop mitigation strategies." 2.Immediately after Part VI, Insert a new section titled 3. Proposed Part VII: 'Civil and Political Protective Measures" which addresses various media, digital, civic	The Bill sets aside extensive socio-economic measures in response to pandemic but fails to include provisions on civil and political rights.

	space, transparency and protection challenges.	
--	--	--

Respectfully,

Civil Society Parliamentary Engagement Network (CSPEN).

