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To.

**Director for Social Development  
State Department for Social Protection  
Ministry of East African Community, Labour and Social Protection  
P.O. Box 40326  
NSSF Building  
Nairobi.**

*Tuesday, March 6, 2018*

**The Institute for Social Accountability (TISA) Memorandum on the Community Group Registration Bill, 2018**

TISA is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

Kindly find in the following pages our submission with respect to the Community Group Registration Bill, 2018. This submission is made in response to the invitation for public participation advertised in the Daily Nation on Tuesday 20<sup>th</sup> February 2018.

**Yours Faithfully,**



**Wanjiru Gikonyo  
National Coordinator**



## MEMORANDUM ON THE COMMUNITY GROUPS REGISTRATION BILL, 2018

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### General Remarks

The main objective of the Bill as stated is *“to provide a legal framework for the co-ordination of community groups; provide for the registration of community groups; provide guidance for community groups mobilisation; provide guidance to governance structures within community groups, promote collaboration and linkages between community groups, State and county organs, financial institutions and other stakeholders; and create an enabling operational environment that promotes community empowerment, self-reliance and sustainability of groups and community projects”*.

It is our observation that the constitution places responsibility for the coordination of communities on the county governments; Art 185 (2) Part 2 (14) *ensuring and coordinating the participation of communities and locations in governance at local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.*

The national government is charged with the function of Art 186 (2) Part 1 (14) *consumer protection, including developing standards for social security and professional pension plans.*

The constitution does not explicitly assign the function of provision of social security to either level of government and so it may be considered a residual function of the national government.



## 1. Constitutionality:

In proposing that national government will organize communities this bill encroaches the functional mandates of county governments and will therefore be deemed unconstitutional if passed as is. Further to this, the development of community structures and attendant legislation is the mandate of county governments as there is no one size fits all.

**Proposal:** *The Kenya Law Reform Commission should adopt this bill as a model bill for enactment by county governments subject to the feedback by public stakeholders during this process*

## 2. Memorandum and Objects and Reasons

The Bill should include a memorandum of objects and reasons to provide the context of the Bill and the problem it seeks to solve, and an overview of the objectives of the bill.

## 3. Intergovernmental Relations

The Constitution provides that the governments at the national and county levels are distinct and interdependent and shall **conduct their mutual relations on the basis of consultation and cooperation** as provided by Article 6(2). According to Article 189, the national and county governments *are expected to assist, support and consult and, as appropriate, implement the legislation of the other level of government, and liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.*

### Proposed New Clause

INTERGOVERNMENTAL RELATIONS to give effect to Article 6(2), 189 and 190 of the Constitution.

- i. The National Government in accordance with this Act will develop mechanisms to support county governments.
- ii. The Cabinet Secretary will monitor compliance with norms and standards by county governments.
- iii. The National Government in accordance with this Act will establish mechanisms for consultation in line with the provisions of the Intergovernmental Relations Act 2012.

## 4. Interpretation

**Clause 2** of the Bill states that “community based organisation” means a community groups amalgamated in terms of this Act. This definition should be revised by deleting the word “ a”

## 5. Administration

According to the Bill, “The Director for Social Development is responsible for the administration of this Act”. The Bill also provides that “the Director may in writing delegate to a social development officer such powers or duties as may be specified in the instrument of delegation, which officer shall for such purposes, have all the powers, privileges and authority of the Director under this Act”. However, the bill fails to provide clarity on the appointment process of the director and the social development officer. It is therefore important for the bill to explain *how the director*

*and social development officer are to be appointed and the academic and professional qualifications for one to be appointed as director.*

#### **6. Registration of community groups**

Section 9 and 11 of the bill provides for rejection and cancelation of the registration of a community group, however, it fails to provide opportunity for Appeal. We therefore recommend inclusion of a section on appeal by community group whose registration is not accepted. We also note that clause 18, 19, 23, 24, 25,26 contain additional provisions on registration of community groups, *we therefore recommend the aforementioned sections to be merged.*

*We also recommend the Bill include a Schedule providing for the prescribed forms for application for registration of community groups and a model constitution for community groups.*

#### **7. Determination of Special interest community groups**

The bill provides that “the Director may declare a community group to be a special interest group and that these are groups of community members with certain conditions or needs such as disability, chronic diseases or others as determined by the Director”. The National Gender and Equality Commission identify special interest groups as women, children, youth, older members of the society, persons with disabilities (PWDs), minorities and marginalized groups and communities in all spheres of life.

*We therefore note that, in determining a special interest groups, the Director shall require a group present certificate form National Gender and Equality Commission.*

#### **8. General observations**

- a) The bill should articulate the rights and protection afforded to community groups in the implementation of the act including and not limited to the right to information, feedback and complaints mechanisms, and the right to review administrative decisions made by the director.
- b) The bill should address the need for awareness creation and capacity building of groups.
- c) The bill should make provision for reporting to county assemblies as an accountability measure.

*There is inconsistency in section numbering i.e. from section 19 to 23*

**For further information, please contact us at  
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