



**To: Mr. Jeremiah Nyegenye EBS,  
Clerk of the Senate,  
Main Parliament Building,  
P. O. Box 41842-00100,  
Nairobi.**

*30<sup>th</sup> April 2020.*

**RE: SUBMISSIONS ON THE PROPOSED PANDEMIC RESPONSE AND  
MANAGEMENT BILL, 2020**

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**Introduction**

This memorandum has been prepared by The Institute for Social Accountability (TISA).

The Institute for Social Accountability (TISA) is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. 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.

**About the memorandum**

The memorandum presents analysis, observations and recommendations on the proposed Pandemic Response and management Bill, 2020.

**Background**

The Pandemic Response and Management Bill, 2020 seeks 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.

While TISA commends the National Assembly in its effort to facilitate public participation in governance processes by coming up with the proposed Bill and for providing the opportunity for non-state actors to input into the development process of the bill, TISA wishes to bring fore the following:-

1. **THAT** according to our constitution sovereign power belongs to the people and it is to be exercised in accordance with the Constitution. This means that any policy measure put into place by the government in response to pandemic's must be in the best interest of Kenya citizens.

2. **THAT** in employing the aforesaid measures, all policy proposals, must observe a human rights-based approach.; Non-discrimination, Inclusive, human dignity, and protection of the vulnerable groups in the society.
3. **THAT** further, the provisions of **article 10** of our constitution national values and principles of governance which include participation of the people, inclusiveness, integrity, transparency, and accountability should be the basis of all policy proposals.
4. **THAT** public participation is the foundational principle of democracy. All citizens are equally entitled to have a say in decisions affecting their lives.
5. **THAT** public participation in the legislative activities of the parliament is a fundamental constitutional principle.

Whilst in accordance to the sovereignty of the people and the underlying principles of public participation in the legislative process as stipulated under Article ; **1(2), 10,118,124,201,221** and **232** of our constitution we present the following memorandum detailing our reviews and comments on the proposed **Pandemic Response and management Bill, 2020**.

### Review and Proposals

Clause and provision of section in the Bill	Comments	Recommendations
<b>Section 2: Interpretation</b>	There is need to have an interpretation of the word: - <b>Vulnerable Persons/households</b>	A clear definition of <b>vulnerable persons/households</b> will accord transparency and accountability during identification and resource allocation
<b>Section 4: Object of the Act</b>	There is need to include the National principles of governance as set out under <b>article 10(c)</b> of our constitution	The principles will act as the foundational basis of the Act.
<b>Section 7: Declaration of pandemic</b>	Coverage should aim at reaching all citizens; there is a need to include all modes of transmitting information.	We recommend a more concerted coverage when disseminating information on pandemic. In addition to gazette notice we recommend use of community media and various government platforms.
<b>Section 10: Composition of the National committee</b>	There is need to have an all-inclusive stakeholder in the National Committee. The provided list is for only state actors (Government)	We recommend that Civil Society Organisations, Religious leaders, and Private sector be added to the National Committee
<b>Section 10 (2)</b>	To ensure adequate access to information, this should be expanded beyond the gazette.	We recommend the addition of community media and various government platforms when announcing the gazette.

<b>Section 13</b>	In addition to the reports to the National assembly; The National committee can provide a good oversight over resource allocated and expenditure; therefore in addition to other reports to parliament, they can also report on resources allocated (Financial reports)	The National Committee will act as an oversight of pandemic response in the country; this will promote transparency and accountability.
<b>Section 15: Functions of the County Committee</b>	There is a need to have an oversight at the county level on resources allocated (Financial accountability). Therefore, the County committee can have an additional role of oversight	This will promote transparency and accountability at the county level.
<b>Section 16: Membership of the county Committee</b>	There is need to have an all-inclusive stakeholder in the National Committee. The provided list is for only state actors (Government)	We recommend that Civil Society Organizations, Religious leaders, and Private sector be added to the National Committee
<b>Clause 16 (2)</b>	To ensure adequate access to information, this should be expanded beyond the gazette.	We recommend the addition of community media and various government platforms when announcing the gazette.
<b>Section 18: Report to the County assembly.</b>	In addition to the reports submitted before the county assembly, the county committee should submit the financial reports detailing expenditure on resources allocated at the county	This oversight role on resources allocated at the county level will promote transparency and accountability
<b>Section 20(h)</b>	The provision under section 20(h)not clear <b><i>“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.”</i></b> Mechanism for identification should be well established inline with the identified vulnerable groups to ensure the right people/Sector benefit	We recommend participatory process in identification and passing of recommendations in supporting the affected.
<b>Section 23: Administration of fund</b>	There is need to have a clear oversight process in administration of the fund both at National and county level.	This being a special fund can be subject to abuse (misappropriated) ; National committee and county committee should be fully involved

		and relevant houses to scrutinize the reports from the committees o hold them accountable.
<b>Section 24:Winding up of funds</b>	There is need for the National and county committee to submit audited final financial reports showing expenditure, balances and recommendations on the remaining balance before winding up.	We recommend a provision detailing the role of the National and County committee in the winding up process ( <b><i>Submission of audited financial report detailing expenditure, balances, and recommendations</i></b> )
<b>Section 31: Social safety nets and economic safeguards</b>	The provision is vague- There is need to provide a transparency mechanism to be followed in identifying the needy groups affected.	To curb corruption there is need to ensure clear mechanisms in identification and support to the needy
<b>Section 35: Penalty for obstruction</b>	There is need to rationalize the offences, they are so punitive for common citizen <b><i>“a fine of one million or imprisonment of a term not exceeding one year”</i></b>	To harmonise the offences with other existing legislations
<b>Section 36: Penalty for false claim</b>	The section can be subject to abuse and a means to curtail freedom of speech and media	The section needs to be clear on verifying the information which the act considers false or untrue.
<b>Section 39: Regulations</b>	Regulations should be mandatory and not optional; Replace <b><i>“May”</i></b> with <b><i>“Shall”</i></b>	The section should be mandatory and not optional
<b>Section 40: Declaration of end of pandemic</b>	Declaration to mark the end of a pandemic should be mandatory where it is no longer a threat to the social, economic, or political stability of the country. Therefore replace <b><i>“May”</i></b> with <b><i>“Shal”</i></b>	Where a pandemic is no longer a threat to social, economic, or political stability of the country, the president should declare the end of a pandemic to help resume to normalcy

**For further information, please contact us through:**

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