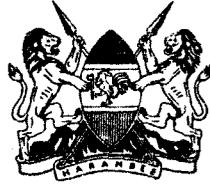


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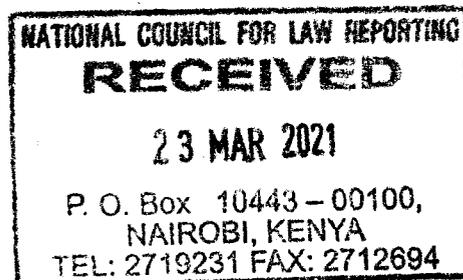
KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2021

NAIROBI, 8th March, 2021

CONTENT

| Bill for Introduction into the Senate— | PAGE |
|---|------|
| The Pandemic Response and Management Bill, 2021 | 123 |



**THE PANDEMIC RESPONSE AND MANAGEMENT
BILL, 2021**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects.
- 4—Conflict of laws.

PART II—DECLARATION OF A PANDEMIC

- 5—Notification of pandemic.
- 6—Declaration of a pandemic.
- 7—Declaration of the end of a pandemic.

**PART III— ESTABLISHMENT OF THE NATIONAL
PANDEMIC RESPONSE COMMITTEE**

- 8—Establishment of National Committee.
- 9—Functions of the National Committee.
- 10—Composition of the National Committee.
- 11— Secretariat.
- 12— Committees of the National Committee.
- 13— Report to Parliament.

**PART IV—ESTABLISHMENT OF COUNTY
PANDEMIC RESPONSE COMMITTEES**

- 14—Establishment of county committees.
- 15—Functions of county committees.
- 16—Membership of County Committee.
- 17—Committees of the County Committee.
- 18—Report to the county assembly.

**PART V—SOCIO-ECONOMIC PROTECTIVE
MEASURES**

- 19—Tax incentives.

- 20—Loans and mortgages.
- 21—Moratorium on penalties.
- 22—Contractual obligations.
- 23—Labour relations.
- 24—Designation of vulnerable persons.
- 25—Social safety net and economic safeguards.
- 26—Utilities.
- 27—Information technology.
- 28—Rates and licences.

PART VI—MISCELLANEOUS PROVISIONS

- 29—Penalty for obstruction, etc.
- 30—Penalty for false claim.
- 31—Penalty for misappropriation of relief money or materials.
- 32—General Penalty.
- 33—Establishment of a Fund.
- 34—Regulations.

**THE PANDEMIC RESPONSE AND MANAGEMENT
BILL, 2021**

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 I —PRELIMINARY

1. This Act may be cited as the Pandemic Response and Management Act, 2021.

Short title.

2. In this Act—

Interpretation.

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

“County Committee” means a county pandemic response committee established under section 14;

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

“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; and

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

3. The objects of the Act are to provide —

Objects.

(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.

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

Conflict of laws.

PART II—DECLARATION OF A PANDEMIC

5. 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.

Notification of pandemic.

6. The President may upon receipt of a recommendation from the Cabinet Secretary under section 5 and in consultation with the National Security Council, issue a notice in the Gazette declaring a pandemic.

Declaration of a pandemic.

7. The President shall, on the recommendation of the National 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.

Declaration of the end of a pandemic.

PART III—ESTABLISHMENT OF THE NATIONAL PANDEMIC RESPONSE COMMITTEE

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

Establishment of National Committee.

9. The National Committee shall—

Functions of the National Committee.

- (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;
- (j) liaise with the county governments on implementation of mitigation measures;
- (k) assess the country's capacity to deal with the pandemic;
- (l) develop and publicize an appropriate national plan to manage the pandemic;
- (m) develop an appropriate post pandemic recovery framework for all sectors affected by the pandemic;
- (n) develop a community engagement strategy to manage the pandemic; and
- (o) provide up-to-date information to the public on the pandemic and the steps the Committee has taken to manage the pandemic and mitigate against its impact.

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.

Composition
of the
National
Committee.

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

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

Secretariat.

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.

Committees of the National Committee.

(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.

13. (1) The National Committee shall —

Report to Parliament.

- (a) during the period of the pandemic, prepare and submit to Parliament once in every two weeks a status report providing information on—
 - (i) the rate of infection of the disease within the country;
 - (ii) measures taken to mitigate the pandemic;
 - (iii) challenges faced in mitigating the pandemic; and
 - (iv) resource mobilization and expenditure on 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

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.

Establishment of County Committees

15. The County Committee shall—

Functions of County Committees.

- (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.

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

Membership of County Committee.

- (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.

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

Committees of
the County
Committee.

(2) The County Committee may—

- (a) 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
- (b) 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.

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

Report to the
county
assembly.

- (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—SOCIO-ECONOMIC PROTECTIVE MEASURES

19. (1) 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 shall, with the approval of Parliament, introduce tax measures to cushion the affected persons for the duration of the pandemic.

Tax incentives

(2) The Cabinet Secretary for matters relating to finance may, for purposes of subsection (1) prescribe measures restricting the Kenya Revenue Authority from the enforcement of tax obligations during a pandemic.

20. (1) Where a pandemic has a negative impact on the capacity of a borrower to meet his or her contractual obligations entered into prior to the declaration of a pandemic, the following measures shall apply during the pandemic up to two months after the end of the pandemic—

Loans and mortgages.

- (a) the borrower may give notice of default in writing to the respective lending financial institution specifying the reason for default to be as a result of the pandemic;
- (b) the borrower and the lending financial institution may enter into an agreement for the extension of the timelines for repayment;
- (c) where the borrower and the lending financial institution fail to agree on the timeline for extension of the repayment, the lending financial institution shall determine a reasonable timeline for repayment;
- (d) the borrower shall not be listed by a credit reference bureau on account of a default; and
- (e) the statutory notice of realization of a security given shall not be issued.

(2) The Cabinet Secretary responsible for matters relating to finance shall—

- (a) in consultation with financial institutions, develop a criteria for debt review; and
- (b) with the approval of Parliament, implement measures to cushion lenders and borrowers.

21. (1) A lending financial institution shall not charge fees, interest or any other penalty during a pandemic period, for non-payment or late payment of obligations entered into prior to the declaration of a pandemic.

Moratorium on penalties.

(2) The Cabinet Secretary responsible for matters relating to finance shall—

- (a) in consultation with the association representing the largest number of lending institutions, prescribe an

eligibility criterion for a moratorium under subsection (1); and

- (b) prescribe the criteria to be applied by a lending financial institution in determining the period for which the moratorium will apply with respect to its borrowers.

(3) A statutory agency shall not charge fees, interest or penalties for late payment or failure by a person to meet their obligations under a contract during the pandemic period.

22. Where a contract was entered into before the declaration of a pandemic and the pandemic affects the performance of a contractual obligation—

Contractual obligations

- (a) the defaulting party may give notice of default in writing to the other party citing the reason for the default to be as a result of the pandemic; and
- (b) the parties to a contract may enter into an arrangement to review the terms of the contract and to extend the timelines for the defaulting party to meet the contractual obligations.

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

Labour relations.

(2) The measures taken by an employer who is adversely affected by a pandemic, with respect to an employee, shall not contravene the existing employment and labour relations laws.

24. (1) The Cabinet Secretary may, in consultation with the National Committee, the Council of County Governors and the Cabinet Secretary responsible for matters relating to social assistance, by notice in the *Gazette*, designate categories of vulnerable persons affected by a pandemic.

Designation of vulnerable persons

(2) Despite subsection (1), vulnerable persons shall include—

No. 55 of 2012.

- (a) orphans and at risk children;
- (b) persons with disabilities;
- (c) poor elderly persons;

- (d) persons who have lost their source of income owing to the pandemic;
- (e) poor widows and widowers;
- (f) persons disabled by acute chronic illnesses and who cannot meet their basic needs; and
- (g) micro, small and medium enterprises affected by a pandemic.

(3) In this Part,—

“at risk child” means a child who—

- (a) is under the care of a person who suffers a disability or serious long-term ailment which renders the person unable to care for the child;
- (b) has been abandoned by a parent or parents and is not under the care of a guardian who provides the basic needs of the child; or
- (c) is under the care of parents or guardians who are unable to provide for the child’s basic needs;

“medium enterprise” means a firm, trade, service, industry or a business activity—

- (a) whose annual turnover is at least five million shillings and does not exceed eight hundred million shillings; and
- (b) which employs between fifty and ninety-nine people.

“micro enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act;

“orphan” means a child with no parents, either biological or adoptive, and who is not under the care of a guardian who provides the basic needs of the child;

“person with a disability” means a person who—

- (a) suffers from severe mental or physical disability;
- (b) the disability renders the person incapable of catering for their basic needs; and
- (c) there is no known source of income or support for the person;

“poor elderly person” means a person who has attained the age of sixty-five years and cannot meet their basic needs;

“poor widow or widower” means a widow or widower who cannot meet her or his basic needs; and

“small enterprise” has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act.

25. (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.

Social safety net and economic safeguards.

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

26. The relevant national and county government agencies shall, during a pandemic—

Utilities.

- (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.

27. (1) Despite any other law, where during a pandemic the government issues directives that may adversely affect the conduct of on-site meetings or business —

Information technology

- (a) the meetings or such business may subject to subsection (2) be held remotely via appropriate electronic means and the resolutions made during such meetings shall be valid;
- (b) the Speakers of Parliament shall, with the approval of the respective House, make guidelines on the conduct of plenary and committee sittings remotely;
- (c) the Speaker of each county assembly shall, with the approval of the respective county assembly, 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.

(2) The holding of a meeting under subsection (1)(a) shall be subject to the existing laws on the conduct of meetings and the validity of resolutions.

(3) The Cabinet Secretary for matters relating to information, communications and technology shall make regulations for the protection of data and information transmitted during meetings held remotely.

28. County governments may suspend fees payable on renewal of trade licenses and payment of property rates during the pandemic.

Rates and licences.

PART VI—MISCELLANEOUS PROVISIONS

29. (1) A person who, without reasonable cause—

Penalty for obstruction, etc.

(a) obstructs a public officer in the discharge of the officer’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 is, on conviction, liable to imprisonment for a term not exceeding five years.

30. A person who knowingly—

Penalty for false claim.

(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 under this Act; 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.

31. (1) 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—

Penalty for misappropriation of relief money or materials.

- (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.

(2) Despite any penalty that may be imposed under subsection (1), a person who is found guilty of an offence under subsection (1) is liable to pay three times the value of the misappropriated money or goods.

32. (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.

General penalty.

(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.

33. The Cabinet Secretary responsible for matters relating to finance may, where he considers it necessary, establish a fund pursuant to section 24(4) of the Public Finance Management Act for the effective mitigation and management of the adverse effects of the pandemic.

Establishment of a fund.

No. 18 of 2012.

34. (1) The Cabinet Secretary may, in consultation with the National Committee and the Council of County Governors, make regulations—

Regulations.

(a) prescribing anything that is required to be prescribed under this Act; and

(b) generally, for the better carrying out of the provisions of this Act.

Act No. 14 of 2007.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may, in consultation with the National Committee and the Council of County Governors, make regulations —

(a) to provide for measures for prevention, mitigation, preparedness, response and recovery from the pandemic;

Act No. 46 of 2012.

(b) to provide for emergency registration of the relevant professionals;

(c) in consultation with—

(i) the Cabinet Secretary responsible for matters relating to information and communication technology, make regulations to provide for collection and publication of data relating to the pandemic;

(ii) the Cabinet Secretary responsible for the coordination of National Government functions, make regulations to provide for use of listed premises as shelters to manage a pandemic;

(iii) the Cabinet Secretary responsible for matters relating to labour, make regulations to provide for additional services to be categorized under essential services despite the provisions of the Labour Relations Act;

Cap. 2. No. 23 of 2013.

(iv) the Cabinet Secretary responsible for matters relating to trade and industry, make regulations to provide for consumer protection measures despite the provisions of the Consumer Protection Act;

- (v) the Cabinet Secretary responsible for matters relating to social assistance, make regulations to provide for care and protection of vulnerable persons;
 - (vi) the Cabinet Secretary responsible for matters relating to information and communication technology, make regulations to provide for conduct of public awareness and civic education on management of the pandemic; or
- (d) make regulations to provide for any relevant rules or standards required for the effective implementation of this Act.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the power of the Cabinet Secretary to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
 - (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, in relation to subsidiary legislation shall apply to regulations made under this Act
- (4) The Cabinet Secretary shall, within three days after the publication of a regulation under this Act, ensure that a copy of the regulation is transmitted to the Clerk of the National Assembly and the Senate for tabling before each House of Parliament.
- (5) Each House of Parliament shall consider and either approve or annul regulations made under this Act within seven days after the tabling of the regulations in the respective House

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 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 primary object of the Bill is to establish a framework for a coordinated response and management of activities during a pandemic. The Bill proposes temporary measures to alleviate adverse effects that may be caused by a pandemic. The Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

JOHNSON SAKAJA,
Senator.

