

REPUBLIC OF KENYA



TWELFTH PARLIAMENT (FOURTH SESSION)

THE SENATE

AD HOC COMMITTEE ON THE COVID-19 SITUATION IN KENYA

.....

**REPORT ON THE PANDEMIC RESPONSE AND MANAGEMENT
BILL (SENATE BILLS NO. 6 OF 2020)**

.....

PAPERS LAID	
DATE	26 TH MAY, 2020
TABLED BY	CHAIR, AD HOC COMMITTEE (SEN. SAKAJA)
COMMITTEE	AD HOC COMMITTEE on COVID-19
CLERK AT THE TABLE	<i>S. NJIRIA</i>

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

19TH MAY, 2020

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PREFACE

Mr. Speaker,

The Ad Hoc Committee on the COVID-19 Situation was established by the Senate on Tuesday, 31st March, 2020, with the mandate to oversight actions and measures taken by the national and county governments in addressing the spread and effects of COVID-19 in Kenya.

The Committee is mandated to address the following, among other matters-

- (a) provision of testing and medical equipment, including adequate ventilators in referral hospitals and in at least one public hospital in each county;
- (b) provision of adequate isolation centres and Intensive Care Unit (ICU) facilities in each county;
- (c) measures to ensure continuous supply of food and other essential commodities at affordable prices;
- (d) measures to enable learners in educational institutions to continue with their studies;
- (e) measures to ensure protection, safety and well-being of healthcare and other frontline workers;
- (f) enhancement of capacity and flexible deployment of healthcare staff;
- (g) financial assistance to vulnerable persons and groups;
- (h) protection of residential and commercial tenants;
- (i) establishment of a stimulus package for the Micro, Small and Medium sized Enterprises;
- (j) easing of legislative and regulatory requirements for doing business;
- (k) measures to protect employees from retrenchment and job losses; and
- (l) uniform policies and procedures aimed at slowing and eventually stopping the spread of the virus.

The Committee is comprised of the following members: -

- 1) Sen. Johnson Sakaja, CBS, MP - Chairperson
- 2) Sen. (Arch.) Sylvia Mueni Kasanga, MP - Vice Chairperson
- 3) Sen. (Dr.) Michael Maling'a Mbiti, MP - Member
- 4) Sen. Abshiro Soka Halake, MP - Member
- 5) Sen. Mithika Linturi, MP - Member
- 6) Sen. Erick Okong'o Mogeni, SC, MP - Member
- 7) Sen. Mwinyihaji Mohamed Faki, MP - Member

Mr. Speaker,

The Pandemic Response and Management Bill (Senate Bills No.6 of 2020) seeks to address various issues that may arise during a pandemic that may be cross-cutting in nature. Various laws are in place but none deals with the exceptional circumstances that citizens may face during a pandemic. This Bill will therefore apply only during a pandemic and suspend various provisions of existing legislation. The Bill is not restricted to the COVID 19 pandemic but addresses the issue of pandemics generally.

The Committee considered the Bill at length, conducted public participation, and deliberated on the submissions received. A call for submission of memoranda was placed in the local dailies on 22nd and 23rd April, 2020 and closed on 1st May, 2020. The Committee received **sixty-three (63)** submissions from the public on the Bill and held virtual meetings with various stakeholders.

Based on the deliberations and public participation, the Committee has made various observations and recommendations on the Bill set out in Chapter Three of this Report. Additionally, the Committee will present amendments with the view of strengthening the provisions of the Bill for consideration by this House.

Mr. Speaker,

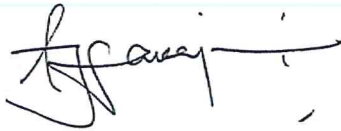
As I conclude, the Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this important assignment.

Further, the Committee wishes to thank members of the public who sent their submissions to the Committee, as well as the stakeholders who have appeared before and engaged with the Committee.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Ad Hoc Committee on the COVID-19 Situation on the Pandemic Response and Management Bill, 2020.

I thank you, Mr. Speaker.



19th May, 2020

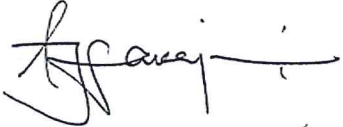


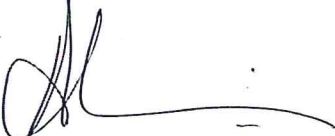



Signed.....

Date.....

**SEN. JOHNSON SAKAJA, CBS, MP,
CHAIRPERSON,
SENATE AD HOC COMMITTEE ON COVID-19**

**ADOPTION OF THE REPORT ON THE PANDEMIC RESPONSE
AND MANAGEMENT BILL, 2020**

We, the undersigned Members of the Senate Ad Hoc Committee on the COVID-19 Situation in Kenya, do hereby append our signatures to adopt the Report on the Pandemic Response and Management Bill, 2020-

Sen. Johnson Sakaja, CBS, MP	-Chairperson	
Sen. (Arch.) Sylvia Kasanga, MP	-Vice-Chairperson	
Sen. (Dr.) Michael Mbiti, MP	-Member	
Sen. Abshiro Soka Halake, MP	-Member	
Sen. Mithika Linturi, MP	-Member	
Sen. Erick Okong'o Mogeni, SC, MP	-Member	
Sen. Mwinyihaji Mohamed Faki, MP	-Member	

CHAPTER ONE

INTRODUCTION

1.0 Background on the COVID-19 Pandemic

Coronaviruses are a large family of viruses that are known to cause illness ranging from the common cold to more severe diseases, such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). A novel coronavirus (CoV) is a new strain of coronavirus that has not been previously identified in humans.

Coronaviruses are common in animals and, occasionally, people get infected with these viruses which may then spread to other people. For example, SARS-CoV was associated with civet cats and MERS-CoV was associated dromedary camels. Possible animal sources of COVID-19 have not yet been confirmed.

1.1. Publication of the Bill the Pandemic Response and Management Bill, 2020

The Pandemic Response and Management Bill (Senate Bills No.6 of 2020) is sponsored by Sen. Johnson Sakaja, CBS, MP, Chairperson of the Ad Hoc Committee on the COVID-19 Situation in Kenya.

The Bill seeks to address various issues that may arise during a pandemic that may be cross-cutting in nature. Various laws are in place but none deals with the exceptional circumstances that citizens may face during a pandemic. This Bill will therefore apply only during a pandemic and suspend various provisions of existing legislation. The Bill is not restricted to the COVID 19 pandemic but addresses the issue of pandemics generally.

The Bill was published on 17th April, 2020 and was read a First Time on 21st April, 2020. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 140 (2) , to the Ad Hoc Committee on the COVID-19 Situation for facilitation of public participation.

Subsequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 140 (5), invited submissions from members of the

public on the Bill via an advertisement for submission of memoranda placed in the local dailies on 22nd and 23rd April, 2020. The call for memoranda closed on 1st May, 2020.

The Committee received **sixty-three (63)** submissions from the public on the Bill and held virtual meetings with various stakeholders. Based on the deliberations and public participation, the Committee has made various observations and recommendations on the Bill set out in Chapter Three of this Report.

1.2. Objective of the Bill

The principal object of the Pandemic Response and Management Bill, 2020 is to provide a framework for the effective response to a pandemic in order to prevent the 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.

1.3. Overview of the Bill

The Bill proposes the following-

1.3.1. Part 1- Preliminary

Clause 1 of the Bill provides the short titled as the Pandemic Response and Management Act, 2020. Clause 2 defines various terms including the definition of a pandemic which means an '*infectious disease occurring across international boundaries*'.

Clause 3 of the Bill defines the scope of the Bill which will only apply during the period of a pandemic.

Clause 4 of the Bill sets out the objects of the Bill and its application.

Clause 5 of the Bill is on the conflict of laws and provides that where there a conflict with another Act, the provision of the Pandemic Response and Management Act would prevail.

1.3.2. Part II- Declaration of a Pandemic

Clause 6 of the Bill provides for the notification of a pandemic where the Cabinet Secretary shall make a recommendation to the President for the declaration of a Pandemic.

Clause 7 of the Bill provides that upon receipt of the recommendation by the Cabinet Secretary and in consultation with the National Security Council, the President issues a notice in the Gazette declaring a pandemic.

1.3.3. Part III- Establishment of the National Pandemic Response Committee

Clause 8 of the Bill provides that the President shall establish the National Pandemic Response Committee.

Clause 9 set out the functions of the National Pandemic Response Committee which will be required to spearhead the implementation of activities geared towards preventing the spread and mitigating against the negative impact of a pandemic.

Clause 10 of the Bill sets out the composition of the National Committee which will include the Cabinet Secretary as the Chairperson; Principle Secretary in the Ministry responsible for Finance; other Cabinet and Principle Secretaries as the President shall consider necessary; the Chairperson of the Council of Governors or such other Governor as may be designated in writing; and a maximum of three other public officers as the President may consider necessary. Under Clause 10(2) of the Bill, the mandate of the Committee lapses two months after the President declared the end of the pandemic.

Clause 11 of the Bill provides for the Secretariat of the National Committee to be designated by the Cabinet Secretary.

Clause 12 of the Bill allows the National Committee to establish sub-committees as may be considered necessary.

Clause 13 of the Bill requires the National Committee to submit bi-weekly reports to Parliament on the status of the pandemic and a final report one month after the declaration of the pandemic.

1.3.4. Part IV- Establishment of County Pandemic Response Committees

Clause 14 of the Bill requires each County Governor to establish a county pandemic response committee in their respective county.

Clause 15 of the Bill sets out the functions of the County Committees which includes implementing the strategies and measures as directed by the National Committee and co-ordinating the county's response and management to the threats caused by the pandemic.

Clause 16 of the Bill sets out the membership of the County Pandemic Response Committee which will consist of a county executive committee members responsible for health and finance; chief secretary responsible for health; county commissioner and a maximum of three county public officers as the County Governor may consider necessary. As with the National Committee, the tenure of the County Pandemic Response Committee will lapse two months after the President declares the end of the pandemic.

Clause 17 of the Bill allows the County Committee to establish sub-committees as may be considered necessary.

Similar to the National Committee under Clause 13 of the Bill, Clause 18 requires the County Committee to submit bi-weekly reports to the County Assembly on the status of the pandemic and a final report one month after the declaration of the pandemic.

1.3.5. Part V- Establishment of the Pandemic Response Fund

Clause 19 of the Bill provides for the establishment of the Pandemic Response Fund upon declaration of a pandemic.

Clause 20 of the Bill sets out the object of the Fund which shall be to mobilize resources for the response towards containing the spread and impact of the pandemic.

Clause 21 of the Bill provides for the sources of the Fund to include monies appropriated by the National Assembly; grants, donations or gifts; and monies received from any other sources approved by the Cabinet Secretary.

Clause 22 of the Bill provides for the expenditure of the Fund while Clause 23 designates the administrator of the Fund as the Principle Secretary responsible for matters relating to finance.

Clause 24 of the Bill provides for the winding up of the Fund within one month of the notice of the declaration of the end of the pandemic by the President.

1.3.6. Part VI- Socio-economic Protective Measures

Clause 25 of the Bill provides for the introduction of tax incentives to cushion the public.

Clause 26 of the Bill provides for various measures to cushion the public to meet its contractual obligations entered into prior to the declaration of a pandemic. Where a pandemic affects the financial ability of a borrower, a borrower and the respective lending financial institution shall enter into an arrangement to review repayment modalities and penalties shall not be imposed on a defaulter; neither shall a defaulter be listed by a credit reference bureau.

Clause 27 of the Bill provides for a moratorium of penalties by lending financial institutions.

Clause 28 of the Bill provides guidelines on performance of contractual obligations during a pandemic.

Clause 29 of the Bill provides guidelines on tenancy agreements during a pandemic. Where a pandemic affects the financial capacity of a tenant to meet their obligations, the tenant shall give a notice in writing to the landlord that they are unable to meet their obligations because of the

pandemic and upon receipt of the notice, the parties shall enter into an agreement on how the tenant shall meet their obligation at the end of the pandemic.

Clause 30 of the Bill provides the guidelines on labour relations and seeks to cushion employers and employees during a pandemic. Where a pandemic adversely affects the ability of an employer to pay salaries or wages, notwithstanding the provisions of the Employment Act, an employer shall not terminate a contract of service, dismiss an employee or coerce an employee to take a salary cut. However, the employer shall permit an employee to take leave of absence without pay for the duration of the pandemic.

Clause 31 of the Bill requires the National government and county governments are required to 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. Such schemes may include cash transfers to identified groups.

Clause 32 of the Bill provides that the relevant national and county government agencies may, during a pandemic waive water and electricity charges for identified vulnerable persons and households; and in consultation with water and electricity service providers adjust tariff rates in order to reduce utility charges to individuals and businesses; and withhold disconnections for non-payment of utility bills.

Clause 33 of the Bill gives the government the authority to issue directives regarding the use of information and communication technology in the conduct of business.

Clause 34 of the Bill provides that County governments may suspend fees payable on renewal of trade licences and payment of property rates during the pandemic.

1.3.7. Part VII- Miscellaneous Provisions

Clause 35 of the Bill provides for penalties for obstruction and refusal to comply with any direction given by a competent authority.

Clause 36 of the Bill makes it an offence to spread false information about the pandemic while Clause 37 makes it an offence to misuse funds meant to alleviate effects of a pandemic. Clause 38 further provides for a general penalty under the Act. The punishment ranges from penalties of one to ten million and imprisonment of one to five years.

As it may not be possible to envisage all matters that may need a legislative solution during a pandemic, Clause 39 of the Bill gives a lee-way to Cabinet Secretaries in charge of various dockets to make Regulations whenever need arises.

Clause 40 of the Bill provides for the declaration of the end of the pandemic by the President.

1.4. Consequences of the Bill

The Bill once passed will ensure a quick and coordinated response by the necessary national and county governments agencies, whenever a pandemic is declared. Once enacted, the Bill will supersede all existing legislation during a pandemic.

CHAPTER TWO PUBLIC PARTICIPATION

2.0 Introduction

The Committee, pursuant to Article 118 of the Constitution and Standing Order 140, invited submissions from members of the public on the Bill via an advertisement for submission of memoranda placed in the local dailies on 22nd and 23rd April, 2020 and closed on 1st May, 2020. The Committee received **sixty-three (63)** submissions from the public on the Bill and held virtual meetings with various stakeholders.

A matrix of with a summary of submissions from various stakeholders is attached at **Annex 2**.

The Committee received written submissions and held virtual sittings with various stakeholders as follows-

2.1. Senators

- 1) Sen. Beth Mugo
- 2) Sen. Ochillo Ayacko

2.2. Organizations

- 1) Federation of Kenya Employers
- 2) COTU-Kenya
- 3) National Gender and Equality Commission
- 4) Kenya Tea Growers Association
- 5) Kenya Association of Hotel Keepers and Caterers
- 6) Agricultural Employers Association
- 7) Association of Land/Plot Management Agencies
- 8) Civil Society Parliamentary Engagement
- 9) Mzalendo Trust
- 10) Civil Society Organizations
- 11) National Taxpayers Association, HENNET and AHF Kenya
- 12) Kenya Association of Tour Operators
- 13) Dagoretti District Landowners Welfare Association
- 14) Masinde Muliro University of Science and Technology (Nursing Midwifery and Paramedical Sciences Department)

- 15) Bowmans-Coulson Harney LLP
- 16) United Disabled Persons of Kenya
- 17) National Youth Council
- 18) Kenya Conference of Catholic Bishops
- 19) PATH
- 20) Institution of Surveyors of Kenya
- 21) Institute of Human Resource Management
- 22) Article 19 Eastern Africa
- 23) Kenya Bankers Association
- 24) Kakamega CSO Network
- 25) Edmund Rice Advocacy Network
- 26) Mental Health Advocates
- 27) Lawyers Hub Kenya
- 28) Electricity Sector Association of Kenya
- 29) Kenya Occupational Therapists Association
- 30) KELIN
- 31) PWD Office-Kuresoi South sub-county
- 32) Non-Communicable Disease Alliance of Kenya
- 33) Tunawiri Community Based Organization
- 34) Economic and Social Rights Centre- Haki Jamii
- 35) Institute of Certified Public Accountants of Kenya
- 36) Kenya Association of Manufacturers
- 37) Forum for Women in Development, Democracy and Justice
- 38) Coalition of Community Health Workers
- 39) Disability and Human Rights Organizations

2.3. Individuals

- | | |
|--|---|
| 1) Peter Njaramba | 9) Nancy Thuo |
| 2) Davies Okombo | 10) Marx Kahende |
| 3) Adolf Muchiri | 11) Njonjo Ng'ang'a |
| 4) Saad Yusuf Saad | 12) Neil Ribeiro |
| 5) Lawrence Nyaguti | 13) Amy Ochiel |
| 6) Legal Counsel from
Marsabit County
Assembly | 14) Kawira Muriungi |
| 7) Esther Aduma | 15) Edijoe Mwaniki |
| 8) Daniel Muki Kimuyu | 16) Makau1969@gmail.com
(No name indicated) |

2.4. Others

The following presented views generally on legislative proposals and other issues revolving around COVID 19-

- | | |
|--|------------------|
| 1) Messrs Anjarwalla and
Khanna Advocates LLP | 3) Cliff Randa |
| 2) Association of Public
Health Officers | 4) George Nandi |
| | 5) Isaiah Muhoro |
| | 6) Gloria Atenge |

CHAPTER THREE
COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 The Committee made the following observations—

- (a) That a clear definition of vulnerable persons and groups should be provided for in the Bill since the Bill caters for vulnerable persons and groups yet the terms are not defined.
- (b) That the functions of the National Pandemic Response Committee under clause 9 of the Bill should be expanded to include, among others, the development of an appropriate post pandemic recovery framework for all sectors affected by the pandemic. The impact of a pandemic is likely to be felt beyond the period declared to be the end of the pandemic by the President. In addition, in order for the country to effectively mitigate and manage a pandemic, it would be necessary to be able to assess the country's capacity to manage a pandemic. This would require having in place a strategy that is responsive to any pandemic that may arise and thereby enabling the relevant actors to move as quickly as possible in putting measures in order to manage the pandemic and enable the country to recover as quickly as possible from the adverse effects of the pandemic.
- (c) Part V of the Bill on the Establishment of a Pandemic Response Fund should be deleted and the Cabinet Secretary responsible for matters relating to finance may be mandated to establish a fund for the same under section 24 of the Public Finance Management Act. Not all pandemics would require the establishment of a fund as an intervention. Rather than providing for its establishment, it would be more appropriate to empower the Cabinet Secretary to establish a fund only where he or she considers it necessary for the purpose of managing a pandemic, given that the Public Finance Management Act already empowers a Cabinet Secretary to set up a national government fund.
- (d) Where a borrower, who enters into an agreement with a lender is unable, owing to a pandemic, to meet his or her obligations under the agreement, the parties should be given the opportunity to renegotiate the terms of the agreement and at the same time, halt any adverse action that may be

taken against a borrower during the intervening period. For this reason clause 26 should be amended to give the borrowers and lenders the power to enter into arrangement on repayment of loans and mortgages.

- (e) Statutory agencies should 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.
- (f) A party who is unable owing to a pandemic, to meet his or her obligations under the agreement should be given the opportunity to renegotiate the terms of the agreement in a way that balances the interests of both parties to the agreement. For this reason. That clause 28 of the Bill on contractual obligations should be reviewed to empower parties to a contract to review the terms of their contracts.
- (g) Landlords and tenants enter into contractual obligations already covered under clause 28 of the Bill and as such they are free to review the terms of such agreement if either party is adversely affected by the pandemic.
- (h) A pandemic may cause revenue losses to businesses and other enterprises, making it necessary for an employer to review employment contracts. There is therefore need to leave some flexibility for the parties to review the employment contract having regard to their circumstances.
- (i) Whereas it is important to have in place mechanisms that would allow companies and entities to continue with their business including their meetings in a way that ensures the safety of the employees, it would still be important to ensure that these are conducted in a manner that still adhere to the existing rules and regulations that govern the conduct of the meetings of the said entities. For this reason, it would be necessary to amend clause 33 to subject the holding of meetings to existing laws on conduct of meetings and the validity of resolutions.
- (j) In order to serve as a deterrent and ensure that persons who misappropriate money or goods do not ultimately benefit from the misappropriation, it would be necessary to review the existing penalty. Penalties at clause 37 need to be enhanced.

- (k) The pandemic may require Regulations that may cut across various ministries. It is therefore important that before the making of Regulations, the relevant Cabinet Secretary be consulted.
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3.1 The Committee makes the following recommendations—

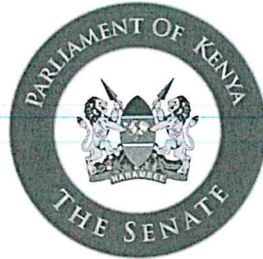
- (a) That the definition of vulnerable persons and groups as provided for under the Social Assistance Act, 2013 be incorporated into the Bill.
- (b) That clause 9 of the Bill be amended by inserting the following new functions of the National Pandemic Response Committee immediately after paragraph (j)—
- (i) assess the country's capacity to deal with the pandemic;
 - (ii) develop and publicise an appropriate national plan to manage the pandemic;
 - (iii) develop an appropriate post pandemic recovery framework for all sectors affected by the pandemic;
 - (iv) develop a community engagement strategy to manage the pandemic; and
 - (v) 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.
- (c) That clause 13 of the Bill be amended by including resource mobilization and expenditure on the pandemic among the issues to be reported to Parliament by the National Pandemic Response Committee.
- (d) That Part V of the Bill on the Establishment of a Pandemic Response Fund be deleted and mandate the Cabinet Secretary responsible for matters relating to finance to establish a fund for the same under section 24 of the Public Finance Management Act.
- (e) That the Cabinet Secretary responsible for matters relating to finance be empowered to prescribe measures restricting the Kenya Revenue Authority from the enforcement of tax obligations during a pandemic under clause 25 of the Bill.

- (f) That clause 26 on loans and mortgages be amended to give the borrowers and lenders the power to enter into an arrangement on repayment of loans and mortgages and to provide for a debt review criteria.
- (g) That clause 27 on moratorium on loans and penalties be amended to provide for criteria for moratoria and to bar statutory agencies from charging fees, interest or penalties for late payment or failure by a person to meet their obligations under a contract during the pandemic period. The clause should also mandate the Cabinet Secretary responsible for matters relating to finance to—
- (i) in consultation with the associations representing lending institutions in Kenya, prescribe an eligibility criterion for a moratorium under subsection (1); and
 - (ii) 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.
- (h) That clause 28 of the Bill on contractual obligations be amended to provide that where a contract was entered into before the declaration of a pandemic and the pandemic affects the performance of a contractual obligation—
- (i) 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
 - (ii) 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.
- (i) That clause 29 of the Bill be deleted to allow the landlords and tenants manage their contracts depending on the circumstances.
- (j) That clause 30 be amended to leave some flexibility for parties to an employment contract to review the terms of contract within the boundaries of existing employment and labour relations laws.

- (k) That holding of virtual meetings under clause 33 be subject to existing laws on conduct of meetings and the validity of resolutions.
- (l) That the penalty for misappropriation of relief money or materials be enhanced to repayment of three times of the value misappropriated in addition to fines and penalty provided for under clause 37 of the Bill.
- (m) That under clause 39 of the Bill each respective Cabinet Secretary whose ministry has been affected by a pandemic be consulted before regulations affecting their docket are made.

ANNEXES

- Annex 1:** Minutes of the 55th Sitting of the Ad Hoc Committee on the COVID-19 Situation
- Annex 2:** Matrix on Stakeholder Submissions
- Annex 3:** Committee amendments to the Pandemic Response and Management Bill



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE FIFTY-FIFTH SITTING OF THE SENATE AD HOC COMMITTEE ON THE COVID-19 SITUATION, HELD ONLINE ON THE ZOOM MEETING PLATFORM, ON TUESDAY, 19TH MAY, 2020, AT 1.35 PM

PRESENT

1. Sen. Johnson Sakaja, CBS, MP - Chairperson (**Chairing**)
2. Sen. (Dr.) Michael Maling'a Mbiti, MP - Member
3. Sen. Mwinyihaji Mohamed Faki, MP - Member
4. Sen. Erick Okong'o Mogeni, SC, MP - Member

APOLOGIES

1. Sen. (Arch.) Sylvia Mueni Kasanga, MP - Vice Chairperson
2. Sen. Abshiro Soka Halake, MP - Member
3. Sen. Mithika Linturi, MP - Member

SECRETARIAT

1. Ms. Elizabeth Muhia - Principal Legal Counsel
2. Ms. Josephine Kusinyi - Principal Legal Counsel
3. Mr. Charles Munyua - First Clerk Assistant
4. Ms. Clare Kidombo - Research Officer (**Taking Minutes**)
5. Mr. Jeremy Chabari - Legal Counsel
6. Mr. Mitchel Otoro - Legal Counsel
7. Mr. Hussein Ali - Fiscal Analyst
8. Mr. Simon Muinde - Audio Recording Officer

AHCC19. MIN. NO. 296/2020 PRELIMINARIES

The Chairperson called the meeting to order at 1.35 pm, and Sen. Mwinyihaji Mohamed Faki, MP commenced the meeting with a word of prayer.

AHCC19. MIN. NO. 297/2020

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Erick Okong'o Mogeni, SC, MP, and seconded by Sen. (Dr.) Michael Mbiti, MP: -

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of the Agenda*
2. Consideration of the proposed amendments to the Pandemic Response and Management Bill (Senate Bills No. 6 of 2020).
3. Consideration of the Committee Report on the Pandemic Response and Management Bill (Senate Bills No. 6 of 2020).
4. Date of the Next Meeting.
5. Adjournment

AHCC19. MIN. NO. 298/2020

CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE PANDEMIC RESPONSE AND MANAGEMENT BILL (SENATE BILLS NO. 6 OF 2020)

The Committee resumed its consideration of the proposed amendments to the Pandemic Response and Management Bill, 2020, arising from the public participation process as well as proposals from Senators. The pending amendments were on clauses 29 and 30 of the Bill, regarding tenancy agreements and labour relations, respectively.

Thereupon, the Committee concluded its consideration of and adopted the Committee amendments to the Bill.

AHCC19. MIN. NO. 299/2020

CONSIDERATION OF THE COMMITTEE REPORT ON THE PANDEMIC RESPONSE AND MANAGEMENT BILL (SENATE BILLS NO. 6 OF 2020)

The Committee considered and adopted its Report on the Pandemic Response and Management Bill, having been proposed by Sen. Mwinyihaji Mohamed Faki, MP and seconded by Sen. Erick Okong'o Mogeni, SC, MP.

The Committee further resolved that the Report be forwarded for approval by the Hon. Speaker to enable its tabling in the Senate.

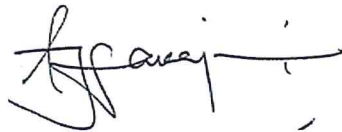
AHCC19. MIN. NO. 300/2020 ANY OTHER BUSINESS

The Committee was informed that a request had been received from the Kenya Transporters Association (KTA), with regard to the removal of number plates and harassment of drivers of long-distance trucks, at various points along the Nairobi-Mombasa highway in Machakos County. This followed a directive by the Governor of Machakos County that no trucks would be allowed to stop within the County due to fears of transmitting the Coronavirus.

The Committee resolved that KTA be requested to submit the complaint officially, in writing, to enable the Committee follow up with the relevant authorities.

AHCC19. MIN. NO. 301/2020 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 1.55 pm. The next meeting will be held on Wednesday, 20th May, 2020 at 2.30 pm.



SIGNED:

(CHAIRPERSON)

20th May, 2020

DATE:

THE SENATE AD-HOC COMMITTEE ON THE COVID-19 SITUATION IN KENYA

**MATRIX OF STAKEHOLDER SUBMISSIONS ON THE PANDEMIC RESPONSE AND MANAGEMENT BILL
(SENATE BILL NO. 6 OF 2020)**

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
1- Short Title	The Institute of Human Resource Management	The short title should be changed to: The Crisis Response and Management Bill, 2020.	Kenya faces many potential crisis which may not be a pandemic. This will help in tackling local crisis occurring in counties.	The Bill's focus is a pandemic other crisis may be dealt with other laws
	Coalition of Community Health Workers	We propose a new title to the Bill to be for instance, the Acute Epidemic and Pandemic Response and Management Bill	This is to ensure that the good provisions are not cast out <i>ab initio</i> and that epidemics are covered under the Bill.	
	COTU	Amend to include " <i>epidemics</i> ". This should be done in all parts of the Bill	" <i>pandemic</i> " means infectious disease occurring across international boundaries. How about occurrence of an epidemic, which is an outbreak of a disease that occurs over a wide geographic area and affects an exceptionally high proportion of the population?	Epidemics are covered in the Public Health Act
	The Institute of Certified Public Accountants of Kenya (ICPAK)	Amend the Bill to include a commencement date to read— This Act may be cited as Pandemic Response and Management Bill, 2020 and shall come into operation, or be	To provide clarity on effective date.	Article 116(2) of the Constitution is sufficient but Committee may decide

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	KEPSA	<p>deemed to have come into operation on the date of gazette</p> <p>Rename the long title and short title of the Bill as follows—</p> <p>AN ACT of Parliament to provide: a legal framework for a coordinated response and management of activities during the Covid-19 pandemic; temporary measures and relief during a pandemic; and for connected purposes.</p> <p>This Act may be cited as the Covid-19 Pandemic Response and Management Act, 2020</p> <p>The more general clauses can be incorporated in Senate's Disaster Risk Management Bill, 2018 that is currently before the National Assembly's Budget & Appropriations Committee for further review and the National Disaster Management Authority Bill, 2019 in the NA that went through the First reading in April 2019. There can also be amendments to the Public Health Act where necessary.</p>	<p>Limit the Bill to the Covid-19 outbreak as most provisions in the Bill will be obsolete once the Covid-19 pandemic is over. They will not necessarily work for other pandemics as the nature, duration, intensity and impact of pandemics vary.</p> <p>Limit the Bill to the Covid-19 outbreak as most provisions in the Bill will be obsolete once the Covid-19 pandemic is over. They will not necessarily work for other pandemics as the nature, duration, intensity and impact of pandemics vary.</p>	

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2- Interpretation	The Kenya Tea Growers Association.	Specific incidences can then be dealt with via regulations as has been done by the Ministry of Health through the Public Health Act In the definition of the term “pandemic” include pandemics that may originate within the country and other Act of God beyond human comprehension	Confining the definition to only infectious diseases across international borders limits the Countries reaction to such occurrences that happen within the country that are beyond human control.	Within the country is an epidemic
		Insert the definition of “Public Officer” to mean a) a public health officer, b) officers of the NPS	The word officer is very broad and ambiguous applying to all Government personnel irrespective of the Ministry, department or section and will be prone to abuse and exposes people and business entities	Public officer is defined in Article 260 of the Constitution
	National Taxpayers Association.	The definition of the term “pandemic” should be expanded to include an infectious disease occurring internally or across international boundaries. The Bill should expand the definition of vulnerable groups to include but not limited to Kenyans stranded abroad.	This definition limits the scope of the term pandemic, in the event that Kenya becomes the epicenter of the disease will this interpretation still stand?	Internally is an epidemic

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	PATH	Include and define 'essential services as facilities and amenities that are vital to the health and welfare of the nation'		Labour Relations Act has some but they can be expanded
	KNCHR	Define vulnerable persons includes children, pregnant women, elderly people, malnourished people, people who are ill or immune compromised, persons with disabilities, youth, minority and marginalised groups, nursing mothers, persons deprived of liberty, orphaned and vulnerable children, street children. Define vulnerable households as those where the adult(s) is(are) unable to provide an adequate livelihood for the household for reasons of disability, illness, age or some other characteristic; those whose resource	This is according to the World Health Organization health in emergencies and disasters: a practical guide. To be in line with the definition as provided by The Food and Agriculture Foundation.	

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		endowment is inadequate to provide sufficient income from any available source		
	Kenya Bankers Association	Definition of the term “pandemic” should read as follows— “pandemic” means an infectious disease occurring across international boundaries and which is declared as such by Gazette as provided under section 7(1) of the act.	The definition should be in line with the description of pandemic according to the World Health Organization.	The definition is same as what is in the Bill save for gazette
	Kenya Bankers Association	Adopt the definition provided in the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 as follows: “vulnerable persons” includes persons with special needs, older persons, pregnant women, orphans, vulnerable children and persons without a clear means of livelihood.		
	Civil Society Parliamentary Organization (CSPEN)	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.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Lawyers Hub	Amend the definition of pandemic to mean an infectious disease occurring over a wide geographical area and across international boundaries usually affecting a large number of people and declared as a pandemic.	The wider definition, which includes an aspect of declaration ensures that there is no confusion over the meaning nor the presence of the pandemic.	
	KELIN	<p>We recommend that the Bill adopt the definition of a pandemic from the World Health Organization (WHO). WHO defines a pandemic as—</p> <p>“A pandemic is the worldwide spread of a new disease”</p> <p>Alternatively, the definition by the Centers for Disease Control and Prevention can also be considered. CDC defines a pandemic as—</p> <p>“an epidemic that has spread over several countries or</p>	<p>This definition limits a pandemic to infectious diseases only.</p> <p>In this context an epidemic would refer to an increase, often sudden, in the number of cases of a disease above what is normally expected in that population in that area.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>continents, usually affecting a large number of people.”</p>		
	ICPAK	<p>Amend the definition of a “Pandemic” for purposes of this Act to read—</p> <p>“Pandemic” means an infectious disease affecting the entire country or occurring across international boundaries.</p>	<p>There is need to evaluate the viable options on how to best manage a pandemic other than creating a standalone Bill for it.</p>	
	KAM	<p>Amend the definition of “pandemic” to include Pandemics that may originate within the Country and other Acts of God beyond human comprehension.</p> <p>Amend this clause by inserting the definition of “Public Officer”—</p> <p>a) a public health officer, b) officers of the National Police Service.</p>	<p>Restricting the definition to only infectious diseases across international borders limits the country’s reaction to such occurrences that happen within the country that are beyond human control.</p> <p>The word officer is very broad and ambiguous applying to all Government personnel irrespective of the Ministry, department or section and will be prone to abuse and exposes people and business entities.</p>	

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3-Application	Civil Society Parliamentary Organization (CSPEN)	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 following parliamentary approval.	It is important for strict time limits to be imposed once a pandemic has been declared by incorporating sunset clauses.	
4-Objects	Coalition of Community Health Workers.	Objects of the Bill should include a clear objective to “protect and motivate frontline healthcare workers supporting the fight against the pandemic/ epidemic by addressing their medical and non-medical needs)”		
	PATH	Include (d) to provide coordination for the continuity of essential services including health and other sectors.		
	Civil Society Parliamentary Organization (CSPEN)	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.	
	KELIN	One objective of a pandemic law should be to define public health related reliefs and measures	The bill must have comprehensive provisions on public health emergencies, and	

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			<p>supplement other health-related legislations.</p> <p>All conceivable scenarios of pandemics should form part of this law, with COVID-19 providing good lessons.</p>	
6-Notification of a pandemic	Kenya Bankers Association	<p>Amend the clause by introducing a subclause to read as follows—</p> <p>(2) Where the Cabinet Secretary determines that it is no longer necessary for the measures referred to in sub-section (1) to be taken in connection with a pandemic, the Cabinet Secretary shall make a recommendation to the President for the declaration of the end of such pandemic in accordance with section 7(2).</p>		If necessary, it can be put at clause 40
6 and 7	Davies Okombo Director Uhuru Community Development Project (UCDP)	<p>Amend the Bill to read—</p> <p>The President may upon declaration of a pandemic by the World Health Organization and in consultation with the National Security Council, issue a</p>	<p>It is my humble submission that the World Health Organization (WHO) has the international obligation to declare a pandemic. This is due to the fact that for a disease to be declared a pandemic it must be</p>	

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		notice in the Gazette declaring a pandemic.	reported across different regions and countries.	
	KEPSA	Delete the clauses and introduce it via amendment to Section 63(1) (a) of the Public Health Act.	Under the Public Health Act, the Cabinet Secretary for Health is already empowered to declare a disease to be a formidable epidemic disease (the equivalent of a pandemic) in any place beyond or within Kenya. An amendment will suffice to avoid overlap of functions between the CS for Health under the Public Health Act and the President.	
	PATH	Specify the sector of the Cabinet secretary i.e. Cabinet secretary for health as there are other cabinet secretaries involved and mentioned in the bill. Provide a timeline for the cabinet secretary for health to curb delays and ensure that the national response is timely		Cabinet Secretary has been defined at clause 2, any other Cabinet Secretary has been mentioned by portfolio
7-Declaration of a pandemic	Kenya Bankers Association	Review the clause to read as follows— (1) The President may upon receipt of a recommendation from the		The proposal at (2) may be inserted at clause 40

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		<p>Cabinet Secretary under section 6 (1) and in consultation with the National Security Council, issue a notice in the Gazette declaring a pandemic.</p> <p>(2) The President may upon receipt of a recommendation from the Cabinet Secretary under section 6(2) and in consultation with the National Security Council, issue a notice in the Gazette declaring the end of a pandemic.</p>		
	Civil Society Parliamentary Organization (CSPEN)	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.	
9-Functions of National Committee	PATH	Under paragraph (j) there is need to also liaise with the counties for continuity of essential services such as health.		
	KNCHR	Include the socio-economic and mental health assessment of the pandemic	The effects of a pandemic go beyond 'economic' impacts, and the failure to take into account social and mental health dimensions may hinder	

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		<p>Include -promote linkages with constitutional commissions and independent bodies and Civil Society Organisations</p> <p>Clause 9 that deals with functions of the National Committee should also include the following functions—</p> <p>(a) conducting capacity assessment of the country to deal with the pandemic;</p> <p>(b) develop and make public government plan to deal with the pandemic – that outlines level of preparedness, public health measures that need to be taken etc</p> <p>(c) define a community engagement strategy to deal with the pandemic;</p>	<p>appropriate responses to pandemics/ render responses ineffective.</p>	
	KELIN			
10-Membership	<p>The Institute of Human Resource Management</p> <p>Kenya Bankers Association</p>	<p>Expand the membership of the National Committee to include the Chairperson of the Institute of Human Resource Management.</p> <p>To consider incorporating private sector representation on the National Pandemic Response Committee and</p>		<p>At clause 12 the committee is empowered to co-opt</p>

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		not just State Officials or Public Officers.		
	The Kenya Tea Growers Association	We propose addition of a) CS Industrialization Trade and Enterprise development and b) Private Sector representatives	This may give a business perspective to the pandemic response. Even with a total lock down, people will need to eat and wear masks, therefore, need for manufacture, transport etc.	Clause 10(c) is open for any other Cabinet Secretary not mentioned but considered necessary to be made a member
	KNCHR	<p>Include the Cabinet Secretary responsible for matters relating Social Protection as part of the National Committee Include a representative from the National Council For Persons with Disabilities</p> <p>Insert a clause to ensure that gender balance is observed in these appointments- it should be a consideration for appointments. Alternatively, include the State Department for Gender.</p>	<p>The Bill includes extensive provisions on vulnerable persons and the ministry responsible for social protection already has a database on vulnerable persons, as well as experience in identifying and disbursing funds to vulnerable groups.</p> <p>This will ensure the interest of persons with disabilities are represented in line with Article 54 (2) of the Constitution.</p> <p>In line with Articles 10, 27, 100, 175,232(1)(i)</p> <p>They are highly affected by pandemics.</p>	
	Agricultural Employers' Association	There should be inclusion of employers' and employees' organisations and the private sector.		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	National Gender and Equality Commission	Amend sub-clause (1) by inserting the following new paragraph after paragraph (e)— (g)The President shall ensure that not more than two thirds of the members of the Committees are of the same gender, shall observe the principle of regional and ethnic balance and shall have due regard to the principle.	To ensure that there is gender balance and inclusion of all special interest groups to represent the various interests. For accountability purposes of their monies/contributions and identification and inclusion of the issues of the persons they represent.	
	National Taxpayers Association.	For clarity purposes and to check the powers of the executive, we propose that the clause 10 (1) (e) the Bill should specify those three officers and should include the Chairperson Health Committee in the National Assembly, a representative from the Doctors Union and a representative from the Civil Societies. This should also be replicated under clause 16 (1) (e) of the Bill during the formation of the County Pandemic Response Committee.	The clause has not specified from which docket the Chairperson shall come from.	
	PATH	Specify the sector of the Cabinet secretary i.e. Cabinet secretary for health as there are other cabinet secretaries involved and mentioned in the Bill.		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>There is need for representation of development partners and/or Civil Society</p>		
	Coalition of Community Health Workers	<p>Subclause (1) on the membership of the national committee should include 2 representatives of Non State Actors working in the area of health that are involved and experienced in response to epidemics.</p>		
	COTU	<p>Amend Clause 10(1) (c) to specify the number/Ministries that the other Cabinet Secretaries/ Principal Secretaries to be drawn from.</p> <p>Amend Clause 10(1) to include one representative each from:</p> <ol style="list-style-type: none"> 1. Central Organization of Trade Unions (COTU-K) 2. Federation of Kenyan Employers (FKE) 	<p>Clause 10(1) excludes the social partners:</p> <ol style="list-style-type: none"> 1. Central Organization of Trade Unions (COTU-K) 2. Federation of Kenya Employers (FKE) <p>Pandemics and epidemics have direct effects on workers and their families, and employers at social and economic levels</p>	
	KELIN	<p>Clause 10 on the Composition of the National Committee be amended to include—</p> <ol style="list-style-type: none"> (a) public health expert(s); (b) representation from professional bodies of health care workers; (c) representation from health worker's unions; 		

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		<p>(d) representation from faith based organizations;</p> <p>(e) representation from civil society organization working on public health; and</p> <p>(f) representation from independent commissions with a human rights mandate;</p>		
	KAM	<p>We propose addition of the following to the composition of the National Committee</p> <p>a) Cabinet Secretary responsible for matters relating to Trade and Industry; b) Representatives from the Association of private sector and manufacturers.</p>	<p>The economic and trade situation of the country is critical during a pandemic. We therefore propose inclusion of the Cabinet Secretary of Trade and Industry. The reason for this is to prioritize trade and industry matters similar to finance matters, hence the inclusion of the Cabinet Secretary of finance.</p>	
	ICPAK	<p>Amend clause 10 (1) by deleting paragraph (e) and replacing it with the following new paragraph—</p> <p>(e) three other persons representing the following institutions—</p> <p>(i) Kenya Health Federation;</p> <p>(ii) Kenya Private Sector Alliance; and</p>	<p>For inclusivity. The private sector will provide invaluable input to the process</p>	

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		(iii)Institute of Certified Public Accountants of Kenya		
8, 9, 10, 11, 12 and 13	KEPSA	Delete the clauses	Executive order No. 2 of 2020 already created the National Emergency Committee on Coronavirus whose functions are very similar to those of the National Committee proposed to be established under this Bill. There will be duplication of roles at an extra cost of the tax payer as Clause 11 proposes a secretariat to the committee.	This is not possible as the Executive Order is only for COVID 19
11-Sub-Committees	PATH	Specify the sector of the Cabinet secretary as there are other cabinet secretaries involved and mentioned in the Bill.		
	KELIN	Clause 11 on the Committees of the National Committee be amended to explicitly provide that one of the subcommittees established by the National Committee should have a human rights monitoring and		

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		<p>advisory mandate. This should be chaired by an independent commission with a human rights mandate.</p> <p>An additional clause in this bill should make it mandatory for the National Committee to share real time information with the public by establishing a dashboard or an online platform that provides real time information on state of preparedness; measures being taken etc.</p>		
13-Report Parliament	Civil Society Parliamentary Organization (CSPEN)	<p>to</p> <p>Include quarterly financial reports – resource mobilized and expenditure. The report should be made public through Websites and other online platforms.</p>	<p>This will promote financial transparency and accountability.</p>	<p>This may work for the Fund but not for the reports to Parliament</p>
15-Functions of County Committee	Coalition of Community Health Workers.	<p>of</p> <p>Subclause (1) on the roles of the County Committee should mirror those of the national committee as contained in clause 9 of the Bill.</p>		<p>The functions have to be abt different as the National Committee will give policy direction</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	PATH	The county should also put in place mechanisms to ensure continuity of essential health services		
16-Membership of county committee	National Gender and Equality Commission.	<p>Amend subclause (1) by—</p> <p>(i) inserting the following new paragraph immediately after paragraph (c)—</p> <p>(ca) the chief secretary in the department responsible for gender, youth, children, PWDS and older members of the society;</p> <p>(ii) by inserting the following new paragraph immediately after paragraph (f)—</p> <p>(g) the County Governor shall ensure that not more than two thirds of the members of the Committees are of the same gender, shall observe the principle of regional and ethnic balance and shall have due regard to the principle of fair representation for persons with disabilities.</p>	<p>To ensure that there is gender balance and inclusion of all special interest groups to represent the various interests.</p> <p>The two committees at the national and county levels need to have representation from non State actors and private sector because part of the funds are from grants, donations and gifts.s</p>	<p>The proposal (ca) may be covered by 16(1)(e) where other county public officers deemed necessary may be members. Gender, youth, children, PWDS and older members of the society may fall under different dockets e.g as the current status in the national government</p>

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	Coalition of Community Health Workers.	Subclause (1) on the membership of the County committee should include 2 representatives of Non State Actors working in the area of health that are involved and experienced in response to epidemics.		At 17(2)(a) there is a provision to co-opt
	PATH	There is need for representation of development partners and or Civil society, Private entities		
	Kenya Bankers Association	To consider incorporating private sector representation on the County Pandemic Response Committees and not just State Officials or Public Officers.		
	KAM	Introduction of the following under Clause 16; (a) the county executive committee member responsible for matters relating to trade and industry; (b) Representatives from the Association of private sector and manufacturers;	The proposals seek to ensure prioritization of trade and industry matters in the County Committees due to the critical role the sector plays in such a crisis and to the economy. Representatives of private sector and manufacturers will ensure wider consultation and participation.	
	COTU	Amend Clause 16 (1) to include one representative each from: 1. Central Organization of Trade Unions (COTU-K)	Clause excludes the social partners: 1. Central Organization of Trade Unions (COTU-K)	

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		<p>2. Federation of Kenyan Employers (FKE)</p>	<p>2. Federation of Kenya Employers (FKE) Pandemics and epidemics have direct effects on workers and their families, and employers at social and economic levels</p>	
	Civil Society Parliamentary Organization (CSPEN).	<p>Include representatives of non-state actors and representatives of vulnerable groups. At least a third should be of the opposite gender.</p>	<p>Promotion of inclusion and representation.</p>	
	KNCHR	<p>Include a representative from the National Council for Persons with Disabilities Insert a clause to ensure that gender balance is observed in these appointments- it should be a consideration for appointments.</p>		
	KELIN	<p>Membership of County Committee on membership of the County Committees should be expanded to include— (a) public health experts; (b) representatives of health workers' unions or professional bodies; (c) representatives from the community – faith based</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		organizations, civil society organizations, community based organizations working on public health.		
	ICPAK	Amend subclause (1) by deleting paragraph (e) and substituting therefor with the following— Three other persons representing the following institutions— (i) Certified Health/Medical Professionals; (ii) Private Sector Representation; and (iii) Certified Finance/Accounting professionals	For inclusivity. The private sector and other Non-State Actors will provide invaluable input to the process.	
18- Report to County Assembly	Civil Society Parliamentary Organization (CSPEN)	Include quarterly financial reports – resource mobilized and expenditure The report should be made public through websites and other platforms.	Promotion of transparency and accountability.	This is not possible for the bi-weekly reports
19-Pandemic Response Fund	The Kenya Tea Growers Association	AddFurther, there will be established an “Un-employment Insurance Benefits Fund”	A national un-employment fund where Government will make funds available to businesses to mitigate some of the losses experienced due to a shutdown to enable business to	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>continue supporting their employees and mitigate effects of layoffs of workers during the lockdown. t insurance benefit fund</p>	
	KAM	<p>Insert the following under clause 19; “and an Un-employment Insurance Benefits Fund” to read as follows; “Upon the declaration of a pandemic, there shall be established, a Pandemic Response Fund and a Un-employment Insurance Benefits Fund”.</p>	<p>A national un-employment insurance fund where Government will make funds available to businesses to mitigate some of the losses experienced due to a shutdown to enable business to continue supporting their employees and mitigate effects of layoffs of workers during the lockdown.</p>	
19, 20, 21, 22, 23 and 24.	KEPSA	Delete the clauses	<p>There is an existing fund established under the Public Finance Management COVID-19 Emergency Response Fund Regulations 2020 (the Emergency Regulations). This will be duplication. Resources are better channeled to one fund.</p>	Existing Fund is specifically for COVID 19

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>Further, the fund under the Bill is imbalanced as it does not cater for the reviving of business or offer any relief to employers on the burden of the wage Bill nor does it provide post pandemic support and interventions. Employers hold the view that the only way to save jobs is to help sustain enterprises which are equally struggling through this crisis. Without a holistic approach, this one-sided effort to protect jobs may be in vain.</p>	
20-Objects of the Fund	National Taxpayers Association	<p>Insert the following as objects of the Fund too—</p> <ul style="list-style-type: none"> (i) cater for the evacuation costs of Kenyans stuck abroad during the pandemic abroad; and (ii) we propose that the fund should cater for the isolation costs of Kenyan citizens placed on forced quarantine in the facilities earmarked by government. 		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	KAM	<p>Insert the following additional objectives—</p> <p>(a) Provide funds for insurance to mitigate job losses;</p>	<p>This proposal seeks to provide for funds to have in place insurance to mitigate job losses by businesses in the country.</p>	
	ICPAK	<p>Introduce the following objective—</p> <p>(e) to fund restoration of the facilities being used for temporary shelters and isolation units for safe use by the hosting institutions and for environmental sustainability.</p>	<p>The facilities may have undergone major operational changes during the pandemic period. To resume normalcy require some cost outlay not within the budgetary estimates.</p>	
	PATH	<p>Under paragraph (d) allocate funds to cover all expenses incurred by individuals for quarantine, isolation and treatment at government facilities</p> <p>Amend paragraph (f) to read—</p> <p>(f) Prepare members of the public for research and development activities—</p> <p>(i) disseminate right information on clinical trials; and</p> <p>(ii) establish a mechanism for the vaccination of members of the public once a vaccine is approved for mass roll out.</p>		
	COTU	<p>Limit the objects of the Fund to those stated in Clause 20(a)-(c)</p>	<p>The Fund has been given too much responsibilities which it may not be able to deliver on.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>Transfer the others in Clause 20(d)-(h) to relevant MDAs and other non-state actors in the relevant sectors</p> <p>Introduce collaborative tone in the wordings to promote co-operation and building of synergy.</p>	<p>Functions in Clause 20(d)-(h) should continue to be executed by the relevant Government Ministries, Departments and Agencies (MDAs).</p> <p>Furthermore, the objects read as though Fund will unilaterally undertake the stated functions without recognizing the need to collaborate and co-operate with existing MDAs and other non-state actors in relevant sectors, which might bring confusion.</p>	
		<p>Under paragraph (g)— Indicate the envisaged basic services to be rolled out for the vulnerable persons</p>	<p>Establish a mechanism for the provision of basic services to the vulnerable persons</p>	
		<p>Include measures for care, provision and protection of medical personnel during the pandemic</p>		
		<p>Under paragraph (h)— Indicate the categories of citizens targeted as beneficiaries of stabilization measures proposed.</p>	<p>Workers always stand out as major casualties of pandemics through loss of employment, income and livelihoods. This is aggravated</p>	

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			<p>by weak social protection system in Kenya.</p> <p>Provide a buffer and financial stabilization mechanism for any economic losses that may have been suffered by citizens as a result of the pandemic</p>	
	KELIN	<p>Clause 20 on objects of the Fund should be amended to ensure that people are at the center of the response. That is, provision that the fund shall cover all treatment, isolation or quarantine costs of people affected by the pandemic. And that the fund, will supplement other available funds, to provide emergency support to people affected by the pandemic including transport to health facilities, emergency evacuations; etc.</p>		
	National Taxpayers Association (NTA), HENNET and AHF KENYA,	<p>Insert the following objects—</p> <p>(a) cater for the evacuation costs of Kenyans stuck abroad during the pandemic abroad;</p> <p>(b) cater for the isolation costs of Kenyan citizens placed on forced quarantine in the facilities earmarked by government;</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>(c) community testing will need to be in place;</p> <p>(d) Community sensitization on prevention, care, treatment and the integration of the cured people at the community level;</p> <p>(e) health workers support including: PPEs and support system for the health workers who will be infected or quarantined in the line of duty.</p>		
21-Sources of the Fund	<p>PATH</p> <p>ICPAK</p>	<p>Under paragraph (c) specify the sector of the Cabinet Secretary as there are other cabinet secretaries involved and mentioned in the Bill.</p> <p>Amend the clause to read—</p> <p>21. The Fund shall consist of—</p> <p>(a) monies appropriated by National Assembly for purposes of the Fund;</p> <p>(b) voluntary contributions from public officers and private persons;</p> <p>(c) monies unutilized from unclaimed assets funds;</p> <p>(d) forfeiture of seized cash and cash equivalent from</p>	<p>This will enable the economy tap from a wide range of funds including unclaimed financial assets, proceeds of crime and proceeds from graft.</p>	<p>Cabinet Secretary has been defined</p> <p>Proposed (c), (d),(e), (f) may be difficult to implement as the duration of a pandemic is unknown, collection and disbursement processes as well</p>

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		<p>proceeds of crime including proceeds of drug trafficking and anti-money laundering activities;</p> <p>(e) all proceeds recovered from graft and corruption cases;</p> <p>(f) fines and sanctions imposed under the Public Health Act and Environmental Management Coordination Act, 1990;</p> <p>(g) grants, donations, subscriptions, bequests or other gifts made to the Fund;</p> <p>(h) monies from any other source approved by the Cabinet Secretary; and</p> <p>(i) any donations by corporate bodies shall be deemed to have been made to a charitable institution and be tax deductible in the year made by the donor.</p>		
22-Expenditure of the Fund	COTU	<p>Prescribe—</p> <ol style="list-style-type: none"> i. specific grounds for pay ii. criteria for access of Funds iii. categories eligible for payment 	<p><i>There should be objectivity and transparency in disbursement of funds. Deserving cases for financial support and cushioning such</i></p>	

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		iv. requirement to publish list of persons to be cushioned/compensated	<i>as workers, informal sector workers and operators, employers, vulnerable groups and investors may miss out by virtue of not being specifically stated as part of the objects of the Fund but yet deserving.</i>	
23-Administrator of the Fund	National Taxpayers Association.	We propose the amendment of subclause (2) in paragraph (e) to read— (e) during the period of the pandemic, prepare and submit to Parliament bi-weekly status reports providing— (i) pandemic’s financial and in kind support; (ii) financial utilization; and (iii) the programs and interventions that benefitted from the pandemic resources.	Pandemics attract a lot of financial and in kind support. The above approach is also our recommendation for the County Committees’ reports to the County Assemblies.	
	COTU	Amend Clause 23 to allow for broader stakeholder involvement and participation in oversight of the Fund	<i>This provision lacks a check and accountability system. Since Pandemic Response Fund is contributed to by all not just government, the controls and oversight should allow for</i>	

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	Civil Society Parliamentary Organization (CSPEN)	<p>The Pandemic Response Fund should be open to scrutiny and oversight from Parliament.</p> <p>Have county based administrators reporting to the Principal Secretary.</p>	<p><i>auditing and access to the records of the Funds by all partners, including civil society organizations</i></p> <p>The Fund relies on monies appropriated from the National Assembly (taxpayers' money) that should be accounted for</p> <p>The Fund relies on monies appropriated from the National Assembly (taxpayers' money) that should be accounted for</p>	
24-Winding up of Fund	Bowmans	<p>To better achieve the objectives of this provision, we recommend—</p> <p>(a) That a provision be added requiring the publication of comprehensive guidelines on the administration, accountability and transparency of the fund before the fund is operational;</p> <p>(b) That the provision is amended requiring the residual funds to be remitted to either—</p> <p>(i) the National Exchequer Account for credit of the National Government in accordance with the</p>	<p>The provision fails to address what happens to the residual funds once the pandemic ends. The administration, and accountability and transparency of the utilization of the fund is also not clear from the Bill.</p>	

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		<p>Public Finance Management Act (No. 18 of 2012);</p> <p>(ii) the consolidated fund; or</p> <p>(iii) to a Public Health fund set up for national pandemic preparations.</p> <p>(c) That the time within which the CS is to wind up the fund, be extended to six (6) months, in accordance with the provisions of the Public Finance Management Act.</p> <p>(d) That the provision be amended to provide for the opening and closing of bank accounts in which monies for the fund are to be deposited.</p>		
	Kenya Bankers Association	<p>The Public Finance Management (National Government) Regulations, 2015 provide that the process of winding up of a national public fund established under section 24(4) of the PFMA shall commence within six (6) months from the date of the lapse. This is more reasonable period which should be adopted.</p>		

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25- Tax incentives	Adolf Muchiri Kamau	Amend to read— The Cabinet Secretary responsible for matters relating to finance may, with the approval of Parliament, introduce measures, including but not limited to taxes, to cushion the affected persons for the duration of the pandemic.	The Cabinet Secretary should operate with the freedom to prescribe a wide variety of measures beyond tax reforms.	
	KEPSA	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.	The word “may” is not mandatory, the use of “shall” makes it mandatory.	
	Bowmans	However, to achieve the intended objectives, we propose that the provision be amended to give the CS of the National Treasury, the power to restrict the Kenya Revenue Authority (KRA) from carrying out enforcement actions during a pandemic.		

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	ICPAK	Amend by including Clause 25(2) to read— “25(2) Parliament shall approve tax incentives within fourteen (14) days after introduction by the Cabinet Secretary”	To provide certainty and timeliness in approval of any tax incentives.	
	Kenya Bankers Association	The term “ public ” is not defined leaving this open to anyone with a facility.	It should be defined further (for example, in line with recent guidelines from CBK on handling customers and default arising after the pandemic is declared and not prior defaults).	
		The provision that a borrower and the respective lending institution “shall enter into an arrangement”, requires agreement.	The Bill does not make any provision if agreement cannot be reached or otherwise to resolve such disputes based on reasonableness. Any arrangements to review repayment modalities will result in either (a) extended terms for credit facilities or (b) increased instalments for the remaining tenure of the facilities, this clause should be clear that these results are not interpreted as penalizing borrowers.	

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26-Loans and mortgages	Adolf Muchiri and Kamau	Amend sub-clause (1) paragraph (a) to read— Automatic suspension of all repayments, of existing obligations, to lending financial institutions with all loan outstanding accruing interest with immediate effect subject to a rate prescribed by the Cabinet Secretary responsible for matters relating to finance.	To ensure lending financial institutions embrace the spirit of the Bill, protection of the affected person, without prejudice. Moreover, this will facilitate other protective measures such as clause 29(1).	
	Bowmans	To properly achieve the objective of the provision, we recommend as follows— (a) That the provision is amended to include a minimum criterion for the borrowers that will be eligible for the debt review. In addition, it should require that the CS of the National Treasury, in consultation with various lenders, agrees and publishes a criterion for borrowers that will be eligible for the debt review; (b) That a provision be added providing a statutory debt moratorium for Small and	By creating an obligation for lenders to enter into repayment arrangements with all borrowers, the provision makes the assumption that all borrowers will be unable to service their debts. It is also likely that not every contractual obligation will be negatively impacted by a pandemic. This will have the effect of alienating repayments that would have been payable, and that would have provided lenders such as banks, with the liquidity to avail more credit to assist the public during the period of the pandemic. It also	

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		<p>Medium Enterprises (SMEs) for a period of 3 months from the declaration of the pandemic. It should include a requirement for eligible SMEs to have been credit worthy before the pandemic. The provision should outline the procedural steps for the implementation of the moratorium, including notice requirements for borrowers and supporting information for lenders to use in determining eligibility; and</p> <p>(c) In addition, the provision should allow for the extension of the moratorium by the CS for finance, in consultation with lenders.</p>	<p>does not distinguish between good and bad borrowers. Further, the provision requires that penalties shall not be imposed on defaulters for contractual obligations entered into before the declaration of the pandemic. It is unclear whether the affected parties may pursue recoveries for defaults that occurred before the onset of the pandemic.</p> <p>Since the intention is to provide debt relief to borrowers, we think this is not adequately covered by the provision.</p>	
	Kenya Bankers Association	<p>Section 26 to be amended as follows:</p> <p>26. (1) In the absence of a contract to the contrary, where a pandemic makes a borrower to default on contractual obligations entered into prior to the declaration of a pandemic, the following may apply during the period of the pandemic and up to two months after the declaration of the end of the pandemic —</p>	<p>Implication here is that no lending institution should levy such charges even if the non-payment occurs after the agreed restructure contemplated under section 26(1)(a).</p> <p>It is not explained why financial institutions have been singled out in this regard when banks are businesses like</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>(a) the defaulting borrower may give notice of default in writing to the respective lending financial institution citing the reason for default as being as a result of the pandemic;</p> <p>(b) upon giving notice in section 26 (1) (a) above—</p> <p>(i) the defaulting borrower and the lending financial institution may enter into an agreement or arrangement extending the timelines for repayment for such period as the parties may agree or in case of failure to agree for the period which shall be reasonably determined by the lending financial institution;</p> <p>(ii) the defaulting borrower who has given notice as provided in section (1) (a) above shall not be listed by a credit reference bureau on account of such default for the duration of the pandemic and during the period accommodated following the</p>	<p>any other service providers in the Country.</p>	

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		<p>intervention in this section; and</p> <p>(iii) statutory notice of realization of any security given shall not be issued for the duration of the pandemic and during the period accommodated following the intervention in this section.</p> <p>(2) Without prejudice to the provisions of section 1 above, the Cabinet Secretary responsible for matters relating to finance may, with the approval of Parliament, provide measures to cushion lenders and borrowers.</p>		
	COTU	<p>Amend Clause 26(2) to use the word “shall” instead of “may”</p>	<p><i>This provision does not compel the Cabinet Secretary to act, yet in the preceding proviso it is clear that the pandemic has had negative impact on the capacity of contracting parties to meet contractual obligations entered into prior to the pandemic. The situation is extra ordinary and levels of socio- economic distress is high, making it mandatory for fiscal, monetary and social insurance policy</i></p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	KEPSA	<p>Clause 26 to be amended as follows:</p> <p>26. (1) In the absence of a contract to the contrary, where a pandemic makes a borrower to default on contractual obligations entered into prior to the declaration of a pandemic, the following may apply during the period of the pandemic and up to two months after the declaration of the end of the pandemic —</p> <p>(a) the defaulting borrower may give notice of default in writing to the respective lending financial institution citing the reason for default as being as a result of the pandemic;</p> <p>(b) upon giving notice in section 26 (1) (a) above—</p> <p>(i) the defaulting borrower and the lending financial institution may enter into an agreement or arrangement extending the timelines for</p>	<p><i>intervention. Such intervention should not be discretionary</i></p> <p>The proposed sections are unconstitutional and grossly interfere with the freedom of contract. The key determinants for freedom of contract are respect for private property and restraint of State from interfering with freedom to contract by private parties. These considerations impact on the assessment of a country's ease of doing business.</p> <p>The above sections of the Bill should be guided by established legal principles relating to either <i>frustration of contract</i> or where a contract becomes <i>onerous</i> to perform by reason of financial difficulty. Kenyan courts have made well-reasoned determinations on either circumstances that obviate the need for state intervention in private contracts.</p>	

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		<p>repayment for such period as the parties may agree or in case of failure to agree for the period which shall be reasonably determined by the lending financial institution;</p> <p>(ii) the defaulting borrower who has given notice as provided in section (1) (a) above shall not be listed by a credit reference bureau on account of such default for the duration of the pandemic and during the period accommodated following the intervention in this section; and</p> <p>(iii) statutory notice of realization of any security given shall not be issued for the</p>	<p>It should also be noted that Covid-19 circumstances have given rise to the need to ringfence risks of default by building into future contracts the requirement for insurance and other interventions to mitigate the concerns which the Bill purports to address. Accordingly, the Bill will need to take cognisance of any such measures agreed upon by the contracting parties and to subject the interventions to the provisions of the contract.</p> <p>The overriding principle must be that the State, just like the Courts, should not make or be seen to contracts on behalf of parties. In the alternative, there could be measures to support financial institutions and corporates through financial and nonfinancial solutions that subsequently allow them to support bank customers, tenants and employees. In other jurisdictions, there is defined funding to banks for onward</p>	

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		<p>duration of the pandemic and during the period accommodated following the intervention in this section.</p> <p>(2) Without prejudice to the provisions of subsection (1), the Cabinet Secretary responsible for matters relating to finance may, with the approval of Parliament, provide measures to cushion lenders and borrowers</p>	<p>support to customers (defaulting and non-defaulting customers who require support through the recovery phase of the pandemic).</p>	
27-Moratorium on penalties	The Kenya Tea Growers Association	<p>Add clause 27 (b) to read—</p> <p>(b) Statutory agencies shall not charge fees, interest or penalties for non-remittance or late payments of obligations during the pandemic period.</p> <p>It be deleted as it purports to preclude genuine costs incurred by a lender following a default by a borrower. It amounts to a compulsory acquisition of an asset of the lender.</p>	<p>This will cushion businesses that aren't able to make timely remittances to agencies like NSSF, NHIF, NITA, OSHA, NEMA etc. as a result of downturn on the businesses during the pandemic period.</p> <p>This provision will automatically lead all bank customers to default in their credit facility obligations during a pandemic with the eventual collapse of the</p>	
	KEPSA			

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			<p>banking industry and the economy in Kenya.</p> <p>The proposal is punitive to bank customers who would be servicing their credit facilities during a pandemic providing relief to those in default leading to 100% default by all bank customers to derive this relief.</p> <p>Moratoriums granted by financial institutions are usually on payment of principal while interest continues to be serviced on a monthly basis. It is imperative that the financial institutions' discretion remain so that the institutions approach every customer on their unique circumstances.</p> <p>Every bank lending has a cost which is paid by interest on the deposit, banks cannot afford not to charge interest on advances if the borrowers' default.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Bowmans	<p>To properly achieve the objectives of this provision, we propose that the provision is amended—</p> <p>(a) Limiting the application of the moratorium to loans undertaken before the declaration of the pandemic.</p> <p>(b) Providing for a criterion to be developed in consultation with lenders, outlining the requirements for the eligibility of borrowers to the moratorium; and</p> <p>(c) To provide for the development of a criterion on determination of how long the moratorium should apply after the declaration of an end to the pandemic.</p>	<p>This is a blanket provision that will have an effect on all loans, including those undertaken during the period of the pandemic and loans by borrowers who are in a position to meet their obligations. The consequence of this, is that lenders may also find themselves in financial distress as these measures will impact their income and for banks, their ability to meet Central Bank prudential guidelines.</p>	
	Kenya Bankers Association.	Section 27 be deleted as it purports to preclude genuine costs incurred by a lender following a default by a borrower. It amounts to a compulsory acquisition of an asset of the lender.	This provision will automatically lead all bank customers to default in their credit facility obligations during a pandemic with the eventual collapse of the banking industry and the economy in Kenya.	

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			<p>The proposal is punitive to bank customers who would be servicing their credit facilities during a pandemic providing relief to those in default leading to 100% default by all bank customers to derive this relief.</p> <p>Moratoriums granted by financial institutions are usually on payment of principal while interest continues to be serviced on a monthly basis. It is imperative that the financial institutions' discretion remain so that the institutions approach every customer on their unique circumstances.</p> <p>Every bank lending has a cost which is paid by interest on the deposit, banks cannot afford not to charge interest on advances if the borrowers' default.</p>	
	KAM	<p>Proposal to amend this section by adding clause 27 (b) to read—</p> <p>“Statutory agencies shall not charge fees, interest or</p>	<p>This will cushion business that aren't able to make timely remittances to agencies like NSSF, NHIF, NITA, OSH, NEMA etc. as a result of</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		penalties for non-remittance or late payments of obligations during the pandemic period..."	downturn on the businesses during a pandemic.	
28-30	KEPSA		<p>Clauses 28 to 30 appear to be framed to provide an open-ended and indefinite period of relief as opposed to Section 26 which stipulates that "the following measures shall apply during the pandemic up to two months after the end of the pandemic". This will lend these sections to abuse.</p> <p>Part VI does not provide for who and by what means 'compromised financial ability' will be determined. Reasonableness? Will it be left to be defined by common law interpretation of 'the common man's apprehension'?</p>	
28-Contractual obligations	Bowmans	To better achieve the objectives of this provision, we recommend that—	Due to the uncertainty of determining the duration of a pandemic, an unlimited prohibition period is	

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		<p>(a) The provision provide the possibility of applying to the court to lift any of the prohibited enforcement actions based on the circumstances of each case;</p> <p>(b) Alternatively, or in addition, the prohibition can be limited to the first three months of the pandemic to allow for the contractual counter parties to negotiate and agree on the future performance of their obligations during the pandemic;</p> <p>(c) In addition, the provision should include procedural steps for contractual counter parties before invoking the section such as notification requirements; and</p> <p>(d) To provide for the development of a criterion on the application of the prohibition on enforcement post the declaration of the pandemic.</p>	<p>unconscionably adverse to contractual parties. Based on the construction of the provision, it is likely that contractual parties may be unable to enforce their contracts for long periods without any flexibility. This would leave contractual parties sitting on contracts that cannot be performed and without any certainty of the outcome.</p>	
	The Institution of Surveyors of Kenya (ISK)	Delete paragraph (d).	This section effectively negates the operation of force majeure clauses and doesn't allow the Landlord the option of	

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	Kenya Bankers Association	<p>Amend section 28 to read: -</p> <p>28. In the absence of a contract to the contrary, where a pandemic makes a party to a contract (not being a finance contract under section 26 above or a tenancy contract under section 28 below) to default on contractual obligations entered into prior to the declaration of a pandemic, the following may apply during the period of the pandemic and up to two months after the declaration of the end of the pandemic-</p> <p>(a) the defaulting party may give notice of default in writing to the other party citing the reason for default as being as a result of the pandemic;</p> <p>(b) upon giving notice in 28 (1) (a) above the defaulting party and the other party may enter into an arrangement to</p>	<p>exercising his right of terminating the contract under force majeure.</p> <p>The provision prohibits creditors from undertaking recovery process usually available to them under normal circumstances, without taking into consideration: - different categories of borrowers/debtors; clarity on how to determine whether the breach of contract did in fact arise as a result of the pandemic (leaving this provision open to abuse).</p> <p>Privity of contract especially where there exists pre-agreed process and measures in contracts between parties (defining force majeure, business continuity measures and process of suspending or terminating contracts).</p> <p>In any event, such measures should only be applied where a borrower/ debtor is not already in distress prior to the onset of</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>review repayment modalities to accommodate more time for the defaulting party to meet the contractual obligations;</p>	<p>the pandemic (and therefore using it as an excuse for continuing default).</p>	
	<p>Electricity Sector Association of Kenya</p>	<p>Delete the clause. or as a minimum: We propose that a clear proviso be added to the effect that if the breach in contract occurred before declaration of the pandemic then actions under clause 28 (a) to (d) be allowed to proceed.</p>	<p>This will frustrate efforts at entering and enforcing commercial contracts. There is need to prevent abuse of the provisions of this Bill</p>	
	<p>KEPSA</p>	<p>In the absence of a contract to the contrary, where a pandemic makes a party to a contract (not being a finance contract under section 26 above or a tenancy contract under section 28 below) to default on contractual obligations entered into prior to the declaration of a pandemic, the following may apply during the period of the pandemic and up to two months after the declaration of the end of the pandemic:</p>	<p>The application is broad and could be subject to ambiguity. It treats all lenders and debtors equally and does not take into account the relative financial positions of different lending financial institutions and the broad spectrum of borrowers- imposing such drastic measures on even smaller financial institutions could significantly jeopardize lenders' whose financial position is not robust</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>(a) the defaulting party may give notice of default in writing to the other party citing the reason for default as being as a result of the pandemic;</p> <p>(b) upon giving notice in 28 (1) (a) above the defaulting party and the other party may enter into an arrangement to review repayment modalities to accommodate more time for the defaulting party to meet the contractual obligations</p>	<p>enough to absorb the sudden cut-off of payments related to their loan portfolios. This should be limited to negotiations under Clause 26 (1) (a).</p> <p>The restriction on the termination of lease for failure to pay rent should be deleted. Failure to do so places the entire burden of the restrictions on the landlord, which is unfair.</p>	
		<p>Paragraph (d) should be limited to those tenants who genuinely need protection from Parliament such as low income earners and small businesses, and they should provide reasonable proof of their financial status during the pandemic, by producing redundancy letters or where possible, informing the landlord of matters in the public domain such as prohibition of movement, closure of certain businesses and government institutions etc.</p>	<p>The proposal prohibits termination of leases and licenses of immovable property as a consequence of non-payment of rent and other monies. It does not take cognizance of any legitimate interests or concerns of landlords e.g. the interests of landlords who depend on rent as their source of income, or those that are repaying mortgages etc.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>It is open to abuse as there are no safeguards to ensure that tenants do not take advantage of the provision to stop paying rent when they have the resources to do so as not everyone financial status will be affected by the pandemic.</p> <p>It does not respect any freedom of contract and could amount to an excessive interference in private contracts.</p> <p>It could have the unintended effect of destroying the real estate market and discouraging investors from investing in the sector</p> <p>They do not factor in the landlord's ability to continue meeting his obligations under the lease when tenants are not paying rent e.g landlords' obligation to maintain the property, insure, provide security and cleaning etc</p> <p>It treats all tenants the same, which in and of itself is</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			factually incorrect e.g. a large corporate tenant or a tenant renting high-end premises may not necessary require protection from Parliament as they would be able to renegotiate terms with their landlords or could also have the option of moving to slightly cheaper premises.	
29-Tenancy Agreements	Agricultural Employers' Association	Amend paragraph (b) by inserting the following provision— "Provided that tenant shall not have any outstanding rent arrears, or any other breach or non-observance of any existing agreement the with their landlord at the time of the agreement and shall be in compliance with all other clauses of the tenancy"	To avoid the situation of tenants abusing the law and taking advantage of a pandemic to cover up their failure to adhere to their lease agreements. This relates to all contracts of whatsoever nature (and so loan agreements and leases would also be subject to these provisions) which contradicts the proposed section 26.	
	KEPSA	Delete the entire clause.	There would be need for state guarantee to the Landlords who rely on rent to meet their day to day obligations including loan repayments.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Bowmans	<p>To better achieve the objectives of this provision, we propose—</p> <p>(a) That the provision applies to good standing commercial tenants whose rentals are below say KES 50,000 per month, and to residential tenants whose rentals are below KES 30,000 per month.</p> <p>(b) That the provision be amended prohibiting the eviction of tenants on account of arrears during the period of the pandemic.</p> <p>(c) That the provision be amended to stipulate that the agreement shall be subject to the measures approved by Parliament to cushion landlords and tenants.</p> <p>(d) That a rent support fund, either independent or as part of the pandemic response public funds, be required to support the liquidity needs of landlords through interest free loans.</p> <p>(e) To require the National Lands Commission to suspend or waive land rents for eligible landlords. This should be limited to</p>	<p>We propose that the aim should be to cushion small tenants and residential tenants. Larger tenants should negotiate with landlords.</p> <p>Also, it does not take into consideration the economic effect on the commercial and residential landlords. It is also a blanket relief that covers both tenants who were in good standing and defaulters before the pandemic.</p> <p>The provision further fails to provide the effect of measures that may be proposed by the CS and adopted by Parliament to cushion landlords and tenants, on the agreements entered into between them.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>landlords that have provided relief to their tenants.</p> <p>(f) To provide that any forgone rents by landlords during the period of the pandemic, be deductible for purposes of calculating future income tax obligations.</p>		
	Coalition of Community Health Workers	<p>Art. 29. Consider deleting 29(1)(a) and (b). Article 29(2) is sufficient to communicate the spirit of the law. An assumption here could be focused on the big landlords. However, it may hurt the very citizens the law is seeking to protect.</p>		
	The Institution of Surveyors of Kenya (ISK).	<p>Amend the clause by inserting the following paragraphs immediately after paragraph (b)—</p> <p>(c) Provided that the tenant shall be obliged to pay any Rent arrears accumulated during pandemics, statutes, secured debts failure to which they shall be recoverable from his/her estate</p> <p>(d) The Rental income lost during such pandemics, either through voids or arrears, shall be deductible from Gross Rental Income before tax.</p>	This cushions both the tenants and landlords from losses incurred during this period.	

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		(e) Any person contravenes the provisions of these section shall be guilty of an offence and liable to imprisonment of no less than 6 months or fine of Kshs. 500,000 or both.		
	Kenya Bankers Association	There would be need for state guarantee to the Landlords who rely on rent to meet their day to day obligations including loan repayments. To have this section deleted in its entirety.		
	KAM	Proposal to include— Tenants for commercial buildings.	This does not make provision for commercial lease agreements that do not fall under the ambit of the Cabinet Secretary for housing. This ambiguity needs to be addressed.	
	Electricity Sector Association of Kenya	Emergency fund or proposed Pandemic Response Fund to provide or cash transfers for individuals unable to pay rent alternatively delete this clause.	This will provide safeguards for Landlords similar to utilities above.	
	Association of Land/Plot Management Agencies	Tenancy agreement: The cabinet secretary responsible for housing shall establish sub county landlord tenant grievances committee at all		

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		<p>sub counties in urban areas. The committee shall be chaired by the sub county commissioner and the housing officer shall be the secretary with 7 other members appointed by the cabinet secretary. The committee shall receive tenant's letters requesting for rescheduling of the rent payment. If the committee is satisfied with the justification, the landlord shall claim the equivalent of rent rescheduled from the pandemic response fund or a special fund established for landlord tenant rent relief. The tenant shall pay the rescheduled rent to the pandemic response fund after the pandemic.</p> <p>The sub county landlord tenant grievances committee shall become a permanent subcommittee under the supervision of rent restriction tribunal after the pandemic.</p>		
	<p>Ambassador M.G.N. Kahende</p>	<p>clause 29 (1) and (2) of the Bill as currently framed seeks to dictate the relationship between landlords and tenants and made the following recommendations to the Committee—</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>(a) from the pandemic disaster fund, the Government should allocate to each constituency, especially in the urban areas, a substantial sum of money to be loaned to needy tenants through a financial institution;</p> <p>(b) the identified institution should also add an equivalent sum to the tenant fund;</p> <p>(c) needy tenants upon presenting letters from their employees will be given loans to cover rent payments for the duration of the pandemic;</p> <p>(d) self-employed tenants should be covered through letters from the Public Administration like Chiefs, in their area of operation;</p> <p>(e) the tenants will furnish names and contacts of their landlords who will be</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
30- Employer/Employee	The Kenya Tea Growers Association.	<p>paid directly by the financial institution;</p> <p>(f) the landlords as a measure of sacrifice and support will pay interest on the loan to be deducted upfront; and</p> <p>the grace period for the loan repayment will be determined by the duration of the pandemic</p>		
		<p>In sub-clause (1) insert the phrase “... by reason of the pandemic” immediately after the word employee</p>	<p>This will further distinction of terminations occurring by reason of the pandemic from other regular terminations permitted by law. Read plainly, the clause may imply that no terminations, even lawful ones cannot be undertaken during the pandemic.</p>	
		<p>In subclause (2) add the phrase— “... until the employer is able to meet the salary and wage obligations or other entitlements that accrue due to a lawful termination of employment under the Employment Act”</p>	<p>The cause of the allowance for an employee to take leave of absence without pay is admittedly, the employer’s inability to pay.</p> <p>As currently framed in the Bill, the provision presumes that business operations will automatically regularize after the pandemic and that the</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>employer will be able thereafter to meet their salaries and wage obligations.</p> <p>Our proposal allows for the employment relationship to continue if the business recovers from the pandemic while it allows the employer and employee room to terminate the relationship as regularly as would be the case in the absence of a pandemic as long as the employer secures the employee's terminal benefits as per the Employment Act.</p> <p>This also acknowledges that the pandemic hampers the ability of both parties to meet their obligations under the contract.</p> <p>This will allow the parties leeway to review the contract of employment on terms that are agreeable to both as long as they secure compliance with the Employment Act.</p>	
		<p>Add Clause 2(1) (b) to read— “Despite subsection (1), parties to an employment contract may agree to vary the terms of the contract during the pandemic on condition that the provisions of this Bill and the Employment Act</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>Section 10 are complied with.”</p>		
	KNCHR	<p>Amend the blanket provision to anticipate situations whereby the employer may terminate contract (as discussed above); make provisions on need to follow due process.</p> <p>Prior consultation between employer and employee should be anticipated before unpaid leave or salary cut.</p> <p>Amend Clause 30(3) by deleting the word ‘may’ and substituting therefore the term ‘shall’.</p> <p>Clause 30 (3) be amended to unequivocally obligate the government during a pandemic, to take immediate measures to protect the jobs, pensions and other social benefits of workers, and to mitigate its economic impacts through, for example, subsidizing wages, providing tax relief and establishing supplementary social security and income protection programmes.</p>	<p>Measures contradict both national and international ILO conventions on termination of work. Provision is unreasonable and overly broad as explained in the ‘General Comments above’ It is a legitimate expectation that given the burden placed on employers during the time of pandemic, that Government plays its reciprocal role to enable an environment that employers can be able to extend the benefits to employees. The use of the permissive term ‘may’ does not provide the much needed security by employers and employees.</p>	

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		<p>Further, the Bill should be make an express provision to ensure that the said measures shall benefit particularly those in informal /jua kali sector and other non-mainstream fields.</p> <p>Additionally, a provision needs to be added so as to protect all workers from the risks of contagion at work during periods of pandemic.</p>		
	<p>Agricultural Employers' Association</p>	<p>Under subclause (1) (a) anyone with gross salary of less than Kes 50,000/- should not be coerced to reduce the salary</p> <p>(1)If the employer is unable to pay wages, Employment Act on Termination should be applicable.</p> <p>(2) Leave of absence without pay is open-ended what if a pandemic takes a longer period. Be period specific.</p> <p>(3) Replace may with 'shall'</p> <p>Limit the period of unpaid leave to upto a maximum of 3 months and</p>	<p>To support lower income strata of the society while giving ability to the employer to safe guard continuity of business</p> <p>(1)An employer cannot continue keeping employees if he is not able to pay wages.</p> <p>(2)A pandemic can lead to firms going down, the leave of absence should be fixed.</p> <p>(3)It's the obligation of the labour CS to develop measures to cushion employees and employers during pandemics.</p> <p>Placing an employee on an indefinite unpaid leave is as</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		specify the period of leave of absence under subclause (2)	good as terminating the contract without pay. The pandemic may take longer time for instant more than one year	
		Insert a clause on how the statutory obligations should be treated e.g. NSSF during leave of absence	The employee is not earning his or her monthly pay hence no deductions. Secondly some of these obligations are shared between employee and employer.	
		Under subclause (2) an employer and employee should mutually agree on the leave of absence without pay	This is a variation to a contract and should be mutually agreed upon. This clause gives the employee an upper hand and this can adversely affect business. If an employee who performs critical tasks during the pandemic requests to take unpaid leave, then the employer should have the right to deny this leave with reason.	
		Under subclause (3) insert a clause on measures to be taken to cushion the employers.	The pandemic is already with us and some companies have already shutdown hence the bill should have measures to curb such eventualities.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Neil Ribeiro	<p>Amend subclause (2) to read—</p> <p>(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 for the duration of the pandemic. During this period the employer shall continue to provide the employee with food or food vouchers valued at at least Ksh 4000 per employee per month. If the employer is unable to provide this, the employer must apply to the government for an exemption with the Name, ID Number, KRA PIN and phone number of the employee.</p>	<p>The government can then use those details to distribute relief after verifying that the employee was genuine (via PAYE returns).</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	KAM	<p>Delete the entire provision and replace with the following—</p> <p>(a) notwithstanding the provisions of the Employment Act, an employer shall notify the relevant Labour Office and Employment Authority on termination a contract of service or dismissal of an employee on grounds of the impact of a pandemic within 21 days of their intention and documentation ;</p> <p>(b) an employer shall not coerce an employee to take a salary cut during a pandemic period and any pay cut agreed to with an employee during a pandemic shall be notified to the relevant Labour Office and Employment Authority within 21 days after such agreement is agreed;</p> <p>(c) 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 or</p>	<p>We propose that the Government on labour relations, ensures that employers notify them of any termination, variation of contracts or pay cuts. This is as opposed to limiting employer's rights especially when facing a crisis.</p> <p>Although there is inclusion of provisions for "unpaid leave", it has legal implications on businesses and raises uncertainty on other critical issues surrounding on the same such as, clarity on post Covid-19 dealings with such employees.</p> <p>The proposed notification to the labour office and National Employment Authority will ensure that the Government is made aware of the layoffs or salary cuts in order to support businesses through the proposed Fund created.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>notify any termination to the relevant Labour Office and Employment Authority within 21 days of issuing such as Notice;</p> <p>(d) where an employer varies an employment contract during the pandemic in line with the Employment Act and requirements under Section 10 they shall notify the relevant Labour Office and Employment Authority within 21 days of varying such a contract.</p> <p>(2) 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 and Guidelines and regulations on the provisions under this section</p>	<p>The cause of the allowance for an employee to take leave of absence without pay is admittedly due to the employer's inability to pay. As currently framed in the Bill, the provision presumes that business operation will automatically regularize after the pandemic and that the employer will be able thereafter to meet their salaries and wage obligations.</p> <p>The proposal made allows for the employment relationship to continue if the business recovers from the pandemic while it allows the employer and employee room to terminate the relationship as regularly as would be the case in the absence of a pandemic as long as the employer secures the employee's terminal benefits as per the Employment Act.</p> <p>The proposals will also allow the parties lee-way to review</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>the contract of employment on terms that are agreeable to both as long as they secure compliance with the Employment Act.</p> <p>This proposal also seeks to define the scope of termination and limit it to termination on the basis of a pandemic. This will also ensure that regular termination are permitted by law. The clause as currently worded, may imply that no terminations can occur, including lawful ones during the pandemic.</p>	
	ICPAK	Delete this clause.	Create certainty in labour relations and allow employers to run their businesses without undue restrictions.	
	KEPSA	<p>Giving employers some reasonable flexibility such as salary cuts, paid or unpaid leave, flexi-working arrangements, furloughs, allowing employees to go on sabbaticals etc.</p> <p>This would not only give businesses a better chance to remain afloat, but it would also assist in saving some jobs</p>	<p>The Clause as currently drafted takes away all options from employers who may already be facing financial difficulties due to COVID and the economic downturn including airlines, eateries and pubs who have shutdown hence deriving no revenue.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>that are currently at risk and would assure employees that they have jobs to return to upon the end of the pandemic.</p> <p>An amendment to the Employment Act for a long term solution could also be preferable.</p>	<p>They are unlikely to have funds to continue paying employees at the same rates. If employers in such circumstances are not afforded any options with regard to their employees, they will be prone to insolvency.</p> <p>The Bill offends the provisions of the Constitution of Kenya in that it interferes with the enjoyment of fundamental rights and freedoms provided for in the Constitution and other statutory provisions including those on which the pillars of labour relations are founded.</p> <p>The right to fair remuneration is reciprocal to delivery of work or service to the employer. Remuneration without service would amount to unfair labour practices. Imposition of employees on an employer who cannot afford to sustain the employment relationship amounts to servitude and is an</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>unfair labour practice. Social Partners should be allowed to dialogue and find viable solutions to the current crisis which has affected employer and workers alike. Enterprises that have been forced to close for the duration of the crisis will not be able to pay unless they get some wage subsidy from the state.</p>	
	Bowmans	<p>To better achieve the objectives of this provision, we propose the following—</p> <p>(a) That the provision on termination of employment contracts be deleted;</p> <p>(b) That the provision is amended to allow for the suspension of allowances where an employer sends an employee on unpaid leave;</p> <p>(c) That the decision to send an employee on unpaid leave rests with the employer at its sole discretion (without the need to obtain consent of the employee);</p>	<p>Whereas the prohibition on terminating contracts of service and allowing employers to send employees on unpaid leave enhances the job security of employees, it fails to consider the commercial realities of employers.</p> <p>The impression of the provision is that it assumes that at the end of the pandemic, the employer will be in a position to absorb the employees on the same terms as before the pandemic. It also presents logistical issues as an employer would need time to work out a clear return to work strategy.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>(d) That where an employer sends an employee on unpaid leave, their social security obligations should be suspended or waived for the period of the unpaid leave;</p> <p>(e) That the provision provide a limit, expressed as a percentage of the contractual salary amount that a salary cut may not surpass. To be effected through employee consent;</p> <p>(f) That the provision provide that on termination of contracts of service on account of redundancy, where an employer had taken steps to avoid the redundancy, the employer to be allowed to pay or defer the terminal dues, during the period of the pandemic;</p> <p>(g) The pandemic response fund or other fund created for purposes of responding to a pandemic, be allowed to provide wage subsidies to large employers to allow them to keep employees on the payroll;</p>	<p>The Bill does not cater for a situation where the employee declines the request for the employee to proceed on unpaid leave.</p> <p>It is also not clear from the provision how employers would treat employees' benefits such as house allowances for employees on unpaid leave of absence owing to the economic ramifications of the pandemic.</p> <p>The provision does not consider the effect on businesses that liquidate due to economic conditions created by the pandemic, which in light of the provision, will be unable to terminate their contracts of service.</p> <p>In addition, the provision does not address the payment of social security contributions for furloughed employees.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>(h) That a small business scheme be created with one of the objectives being to provide interest free loans and grants to qualifying SMEs to be used specifically towards paying their employees; and</p> <p>(i) That large employers who retain a certain percentage of the employees in a month to be allowed to defer PAYE payments or to be entitled to a rebate</p>		
	Coalition of Community Health Workers.	<p>Consider expunging 30(1)(a),(b) and (2). Article 30(3) is sufficient to communicate the spirit of the law. While employers should not take the excuse of the pandemic/epidemic to terminate employment and whereas employment should be protected at all costs, it is impractical to keep people in employment when the very business has been hit by the epidemic/pandemic.</p>		
	Kenya Bankers Association.	<p>The new intervention should be limited to the introduction of unpaid leave during a pandemic as an option of the parties who are otherwise in a good working relationship and not bar</p>	This is sufficiently covered in the Employment Act, and thus no need to further legislate on it. The Employment Act has clear safeguards to employees	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>businesses from renegotiating contracts and or terminating employment engagement.</p>	<p>and employers in the event of redundancy or in the event of change of employment terms.</p> <p>It is counter-productive to prohibit employers from coercing employees to take pay cut yet allow employers to send employees on indefinite unpaid leave that is far worse than pay cut.</p> <p>The freedom to contract is an essential feature of employment laws. This includes the right to declare employees redundant as provided for in the Employment Act.</p> <p>The Employer should therefore not be obliged to keep in employment an employee in circumstances where the employer is unable to pay for the services. Similarly, the employee should not be coerced to remain in employment without pay.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>There ought to be choice between the parties.</p>	
	COTU	<p>Amend subclause (2) to provide for negotiation of an amicable agreement between the employer and employee where there is no trade union, and with representation of the relevant trade union organizing and representing workers in the firm/sector/industry where workers are members of a trade union.</p>	<p><i>The decision for an employee to take leave is not borne out of his/her desire but for the circumstances beyond the control of the employer to pay, which is caused by the pandemic. As drafted, it would seem as if it is the employee requesting to take leave.</i></p> <p><i>The need for leave without pay is a mutual decision that should be guided by contractual agreement between the employer and the employee</i></p>	
		<p>Amend Clause 30(2) to recognize that leave without pay is part of contractual relationship and can only be reached through a mutual agreement between the employer and the employee, taking into account provisions of existing Collective Bargaining Agreements (CBAs) and/or employment contracts. Such negotiation can be done directly between the employer and employee where there is no trade union, and with representation of the relevant</p>	<p><i>This Clause is too open and may lead to abuse and untold suffering by workers. It begs critical questions to be answered:</i></p> <ul style="list-style-type: none"> <i>i. How long is the pandemic?</i> <i>ii. Without a time frame what does the employee on unpaid leave do?</i> 	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>trade union organizing and representing workers in the firm/sector/industry where workers are members of a trade union.</p>	<p>iii. <i>Is there still a binding contract during this period?</i> iv. <i>If the contract is still intact how is it sustained or defined?</i></p>	
		<p>Amend Clause 30(2) to provide for the listed considerations and options but strictly within a social dialogue framework. Such negotiation can be done directly between the employer and employee where there is no trade union, and with representation of the relevant trade union organizing and representing workers in the firm/sector/ industry where workers are members of a trade union</p> <p>Introduce a new sub-clause before Clause 30(3) to safeguard the employment contract—</p> <p><i>During the period of such leave, the employment shall be deemed to be continuous and without loss of any accrued benefits</i></p>	<p>This Clause has left out important considerations and options that workers, employers and their trade unions can explore before resolving that workers take leave of absence. Such leave should be part of last resort and negotiated. Other options include:</p> <p>i. Putting in place mechanisms to facilitate and promote workers to work from home/remote work/telecommuting;</p> <p>ii. Work rearrangement to manageable shifts;</p> <p>iii. Encouraging workers to take unutilized leave days, compassionate leave, mandated paid sick leave, etc</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>Amend to Clause 30(3) to use the word “shall” instead of “may”</p> <p>Amend Clause 30(3) to require the Cabinet Secretary for labour matters to develop the measures to cushion workers and employers in consultation with COTU (K) and FKE.</p> <p>Expand the provision to include social protection, occupational safety and health, training and sensitization, and with freedom for mutual agreement by parties to review existing Collective Bargaining Agreements (CBAs) and/or employment contracts.</p>	<p>This provision does not compel the Cabinet Secretary to act neither does it recognize the need for social dialogue in addressing labour and employment relations.</p> <p>It is clear even in the preceding proviso that the pandemic has had negative impact on workers and employers and, therefore, require social insurance policy intervention to cushion workers and employers. Such intervention should not be discretionary but should also uphold the principle of social dialogue.</p>	
		<p>Introduce Clause 30(4) to provide for establishment of a Coordination Mechanism with representation from key stakeholders, including COTU(K) and FKE.</p>	<p><i>The entire clause does not mention the need to develop a coordination framework for the social safety nets. This is important to guard against duplication of efforts, thin spreading of interventions and loss of synergy.</i></p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
31-Social safety net	National Taxpayers Association.	<p>We propose that this section should set a minimum limit of for the unconditional cash transfer to the vulnerable groups to read as follows—</p> <p>(2) The schemes under subsection (1) may include unconditional cash transfers of not less than Kshs 5,000 to support the identified groups to meet their daily basic necessities</p> <p>Insert part (3) to define the modalities for transfer the unconditional cash which should be limited to mobile money transfers or bank transfers whichever is applicable.</p>		
	COTU	<p>Amend Clause 31(1) and expand the beneficiary groups to include vulnerable formal sector workers in non-standard employment such as those on casual contracts of service, temporary employment, fixed term contracts, piece rate, and sub-contracted workers are included in the vulnerable category. The sheer non-standard and precarious nature of their employment</p>	<p>It is not clear if vulnerable formal sector workers such as those on casual contracts of service, temporary employment, fixed term contracts, piece rate, and sub-contracted workers are included in the vulnerable category. The sheer non-standard and precarious nature of their employment</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>Introduce Clause 31(3) to specify how the groups will be identified</p> <p>Identification of vulnerable persons, vulnerable households and vulnerable workers can be done through existing trade union structures and informal sector associations.</p>	<p>automatically makes them vulnerable and should be included in beneficiary group.</p> <p><i>This clause nor the subsection does not indicate how the vulnerable persons, vulnerable households and informal sector workers whose incomes have been interrupted by the pandemic.</i></p>	
32-Utilities	Bowmans	<p>To better achieve the objective of the provision, we recommend that—</p> <p>(a) The provision be amended to prohibit the disconnection of water and electricity during the period of the pandemic for small customers – say whose bills are below KES 10,000 per month.</p> <p>(b) Alternatively, or in addition, that the provision provide that the government or the pandemic response fund may provide a utility subsidy for eligible businesses during the period of the pandemic.</p>	<p>We note that some utility charges may not fall within the mandate of the government, for example, electricity charges and the government may be unable to waive accrued or future charges.</p> <p>The provision leaves tariff adjustments and non-enforcement of utility bills to the discretion of the utility providers. Considering that utilities are essential for the continuity of many businesses, the provision fails to directly address the problem.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Kenya Bankers Association		This section is not mandatory like the ones proposed for all other entities; if this is in the law it must be mandatory, otherwise it serves no purpose.	
	Electricity Sector Association of Kenya	We propose that the state steps-in and caters for the utility bills for identified vulnerable persons, and reductions in utility charges to individuals and businesses.	There is need to ensure that the utilities have sufficient funds to run their operations and meet their obligations. Recommendations under 32 (a) and (b) have the potential of harming the value chain of electricity supply. The resulting reductions in revenue for the utility will likely affect its abilities to pay its suppliers who are also being affected by the pandemic.	
	Kawira Muriungi			
	KEPSA	Replace the word "MAY" with "SHALL"	This section is not mandatory like the ones proposed for all other entities; if this is in the law it must be mandatory, otherwise it serves no purpose.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
33-Information technology	Bowmans	<p>To better achieve the objectives of this provision, we recommend as follows—</p> <p>(a) The provision should be amended to require that save for the use of electronic means, the meetings will continue to be subject to the other existing requirements with respect to conduct of the meetings and the validity of resolutions; and</p> <p>(b) The provision should require the Data Commissioner and the Communications Authority of Kenya, to publish guidelines on data protection and cyber security for electronic meetings, respectively.</p>	<p>Whereas this is a welcome provision, the provision is general and does not factor in other requirements that may need to be satisfied to have successful non-physical meetings.</p> <p>For example, by providing that resolutions of meetings conducted electronically will be valid, the provision fails to appreciate that in instances such as general meetings of companies, certain requirements have to be met for resolutions to be considered as validly passed.</p> <p>The provision further fails to address data protection and cyber security issues that may arise as a result of conducting meetings and businesses electronically.</p>	
	Kenya Bankers Association	It would be prudent to not legislate on this; it should be permissive through internal instruments rather than mandatory.		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
34-Rates and licences	ICPAK	Amend Clause 34 to include approval of the County Assembly to read— “Where a pandemic is such that it affects the economic or purchase power of the public, the County Executive Member responsible for matters relating to finance may, with the approval of the County Assembly, introduce tax measures, such as suspension of fees payable on renewal of trade licenses and payment of property rates, to cushion the affected persons for the duration of the pandemic”.	To respect the Legislative Authority of County Governments as stipulated by Article 185(1) of the Constitution of Kenya.	
		waiver on county government fee including Single business permit for SMEs , market stall fee, matatu / manyanga / tuk tuk operation license fee.		
35-Penalty for obstruction	The Kenya Tea Growers Association.	Replace the word “persons” with “officers’ clause 35 (1)(a)	The word officer is very broad and ambiguous applying to all Government personnel irrespective of the Ministry, department or section and will	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Lawyers Hub	We propose a consideration in revising the severity of the punishment for crimes related to obstruction.	be prone to abuse and exposes people and business entities The penalty is disproportionate with the offence. Furthermore, incarceration for periods of 6 months to 1 year will have the effect of exposing petty offenders to hardened criminals, which could potentially influence their likelihood to become repeat offenders of more serious crimes upon release.	
	KAM	Replace the word “persons” with “officers” in clause 35 (1)(a) Further define in Clause 2 to read— ...obstructs a public officer in the discharge of the Officer’s functions under this Act; or...	The word officer is very broad and ambiguous applying to all Government personnel irrespective of the Ministry, department or section and will be prone to abuse and exposes people and business entities	
	KEPSA	It needs to be more specific or deleted.	There is no definition of what a competent authority is and the Bill does not make it clear and prescriptive what such directions could comprise of.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>Considering that these provisions create criminal offences with severe sanctions, they are prone to abuse and require review or deletion. It will also mean that the provisions can be challenged on Constitutional grounds</p>	
35, 36 and 38	<p>The Kenya Tea Growers Association</p>	<p>Delete “twice the value of the good or products”.</p> <p>Impose a standard penalty of Kshs two hundred thousand across the board.....except for clause 37 on board.....</p> <p>Penalty for misappropriation of relief money or materials which should remain “on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both”.</p>	<p>The Penalty at twice the value of the good or products is very punitive and cannot be affordable by some persons or business entities especially SMES</p>	
	KAM	<p>Delete the words “twice the value of the good or products” and replace with the following—</p> <p>a penalty of Kshs two hundred thousand (Kshs.200,000/=). penalties under clause 37 to remain as is.</p>	<p>The penalty set at twice the value of the good or products is very punitive and cannot be affordable by some persons or business entities especially SMES.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
36-Penalty for false claim	Kenya Bankers Association	Why only a public office? Why not the private sector too, in order to keep parties honest when they are asking for the contractual reliefs permitted by this Act?		
37-Penalty for misappropriation	Electricity Sector Association of Kenya	We propose that the penalty to include the disgorgement and recovery of any profits made from the misappropriation of relief funds or materials.	Proceeds of the offence must be recovered and used for the intended purpose.	
38-General Penalty	Bowmans	To better achieve the objective of this provision, we recommend that Section 38(2)(b) is amended to read that the director, partner or officer ought to have had knowledge of the commission of the offence in order to be found liable.	This provision is quite critical especially to corporate entities and the conduct of their responsibilities as it provides for the liability of directors, partners or officers of an entity for offences under the Bill. While the Bill under Section 38(2) (b), implies that it is a defense if the director or officer or partner had no knowledge, it does not address the issue of	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Kenya Bankers Association	This section infringes on the cardinal company law principal of corporate veil and individual director liability where companies are in violation of a statute.	whether he/she ought to have had knowledge nevertheless.	
	KEPSA	Limit it to the liable Principals only.	This section infringes on the cardinal company law principal of corporate veil and individual director liability where companies are in violation of a statute.	
39-Regulations	Bowmans	We recommend that on the power of Cabinet Secretary to make regulations under clauses 39— (a) Clause 39 of the Bill is amended to include a proviso expanding the definition of a Cabinet Secretary for purposes of the section, to allow for other Cabinet Secretaries to make regulations whose subject matter touches on their dockets. Alternatively, the section could be amended to limit the regulations that	The interpretation of these provisions is that the CS for Health will have the power to issue regulations beyond the health docket, affecting other sectors such as the transport industry, interior security and the treasury. We believe that this is a breeding ground for conflict between the various CS.	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
40-End of a pandemic	ICPAK	<p>may be enacted by the CS under Section 39 to public health measures.</p> <p>Amend to read as follows:</p> <p>40. The President shall, 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.</p>	For certainty purposes.	
NEW CLAUSES				
Conduct of general meetings	Bowmans	A provision allowing companies to conduct virtual/hybrid meetings, notwithstanding the provisions of their articles.	<p>Whereas the Companies Act does not mandatorily require the physical conduct of meetings by companies, certain companies may find themselves in a position where their articles do not allow for virtual/hybrid meetings.</p> <p>To provide perspective, whereas the members of a company may have the power to amend their articles to allow for virtual/hybrid meetings, such amendment would need to be passed in a physical</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
			<p>meeting, hence the current conundrum.</p> <p>Noting that the High Court recently issued orders allowing public companies to conduct virtual/hybrid meetings, this provision will go beyond the orders by allowing all companies to conduct virtual/hybrid meetings.</p> <p>This will enable companies to conduct urgent and necessary business during a pandemic and consequently, help to sustain economic activity.</p>	
Extension of time for AGM	Bowmans	A provision allowing public companies time to extend the period required to conduct an Annual General Meeting (AGM) under the Companies Act beyond the current limit of six (6) months.	The Companies Act requires public companies to conduct an AGM annually and within 6 months after the end of the financial year. However, due to government directives on COVID-19, it is likely impossible for public companies whose articles require physical meetings, to conduct an AGM by June, 2020. Even where these companies are allowed to	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
Stay of Enforcement by KRA	Bowmans	A provision to suspend the enforcement actions by the Kenya Revenue Authority (KRA) during the period of the pandemic	<p>conduct virtual/hybrid meetings, it may be difficult for them to put in place the appropriate systems and safeguards before the statutory deadline.</p> <p>A provision allowing for an extension of time beyond the current six-month limit, will assist companies who find themselves in this position, and relieve them of the sanctions of not conducting an AGM.</p> <p>Although the Chief Justice has publicly stated that enforcement actions by KRA will be stayed, the CJ does not possess such powers and a legislative framework is required to achieve the intended objective.</p> <p>We note that a suspension of enforcement actions will provide the much needed liquidity and breathing space for many businesses that will be fighting to survive.</p>	
Data Privacy	Bowmans	A provision expanding the limitations of the public interest exemption under	<p>We note that during a pandemic, personal</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>the provisions of the Data Protection Act (DPA) to include compliance with data retention principles and provisions.</p>	<p>information including sensitive personal data such as health information may be collected and processed under the public interest exemption; thus exempted from certain provisions of the DPA.</p> <p>However, at the end of a pandemic, most of the personal data is likely not necessary to be retained and data controllers/processors should be required to comply with the data retention principles and provisions under the DPA.</p>	
<p>Statutory Time Limits and Limitation of Actions</p>	<p>Bowmans</p>	<p>A provision extending or allowing the extension of existing statutory time limits for compliance and the suspension or extension of the limitation periods under the Limitation of Actions Act.</p> <p>In addition, the provision should waive penalties for late compliance of statutory deadlines for the extended period.</p>	<p>The closure of government offices and government directives restricting movement are likely to make it difficult for businesses to meet statutory deadlines.</p> <p>For perspective, the Stamp Duty Act requires that instruments must be presented for stamping before the expiration of thirty days after they were first executed.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
Temporary Stay of Insolvency Proceedings	Bowmans	<p>A provision to provide for a temporary stay of insolvency proceedings for companies that were solvent but have faced insolvency due to the ongoing crisis.</p> <p>The provision could provide for an application to Court to suspend any insolvency proceedings for a particular period subject to the assessment of the Court of the eligibility of the applicant.</p>	<p>The Lands Registry was closed for an initial period of 28 days on 17 March 2020, and the closure has since been for successive periods of 14 days. If an instrument was dated 16 March 2020, it means that it has been impossible to stamp it and penalties are already accruing.</p> <p>The provision will be a relief to businesses and ensure that even amidst the abnormality, transactions can be completed without strict time restrictions.</p> <p>Due to the unforeseeable nature of the current crisis, business that were healthy before a pandemic may find themselves subject to insolvency proceedings. It is therefore imperative that businesses that were healthy but suffered distress following a pandemic be allowed to apply for a temporary stay of all and any insolvency proceedings against them for a period of three to six months from the declaration of the pandemic</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
Suspension of Wrongful trading for Directors	Bowmans	A provision suspending the wrongful trading provisions under the Insolvency Laws for the next six months and to apply retrospectively from 1 March 2020.	<p>If the directors of a distressed company continue to trade after the time when they knew, or ought to have concluded, that there was no reasonable prospect of avoiding insolvent liquidation, they may find themselves personally responsible for the increase in the liabilities which the company incurs from that point onwards, if the company does subsequently move into liquidation. This provision was designed to protect creditors from further losses through the continued operation of an insolvent business.</p> <p>However, in a pandemic, businesses with strong fundamentals may be under financial distress, putting directors at the edge of the wrongful trading provisions. This provision will enable directors to attempt to rescue the affected businesses without fear of reprisal under the wrongful trading provisions.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
SME and Start-up Support	Lawyers Hub Kenya	<p>Due to the large contributions made to the economy by SMEs, Start-ups and other similar companies, the government should provide a safety net fund for such companies to ensure their survival during the pandemic that would be drawn from the main fund</p>		
Establishment of a National Social Safety Net Program	Lawyers Hub Kenya	<p>We recommend the establishment of a National Social Safety Net Program, which shall be a part of the Pandemic Emergency Fund, which shall—</p> <p>(a) be administered by the National Social Security Fund, in partnership with licensed telecommunications companies and;</p> <p>(b) on the advice of the Council, be used for the purposes of providing social security for all persons severely impacted by the pandemic, and who are otherwise not covered by the already existing State Safety Nets.</p>		
Tenancy Agreements	Lawyers Hub Kenya	<p>(a) Revise the amount for protected tenancy under the Rent Restriction Act to cater for inflation.</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
Rights of Infected Persons	Lawyers Hub Kenya	<p>(b) Suspend and reinforce a moratorium on forced evictions for failure to pay rent during this period.</p> <p>(c) Implement Fiscal measures proposed by the Central Bank including restructuring of loans.</p> <p>We recommend that all infected persons are accorded the right to—</p> <p>(a) emergency healthcare without charge;</p> <p>(b) the highest attainable standard of medical care;</p> <p>(c) protection of their personal data and identity as per the Data Protection Act of 2019;</p> <p>(d) the highest possible standards of health and sanitation; and</p> <p>(e) reject or opt out of acceptance of vaccination in line with the Bill of Rights.</p>	It is imperative that during pandemics, an emphasis is placed on the rights of infected persons. This is so as to ensure that other aspects of their physical and mental health are not negatively impacted during the pandemic.	
Virtual Learning	Lawyers Hub Kenya	<p>We recommend the development of virtual learning guidelines catering for among others cost in furtherance of the right to education and consumer protection.</p> <p>Kenya Revenue Authority (KRA) to waive penalties for delayed compliance until the pandemic is</p>		
Waiver of Penalties for Delayed Compliance	Electricity Sector Association Kenya		Businesses and people who despite the challenges of a pandemic makes an effort to	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		<p>declared over and three months thereafter.</p> <ol style="list-style-type: none"> 1. Insert a new clause waiving penalties for delayed presentation of documents for stamping under the Stamp Duty Act. 2. For instruments that are exempt from Stamp Duty (for example under the Movable Property Security Rights Act) waive the requirement for the exemption to be endorsed prior to registration. 3. Waive penalties for late payments of rates to County Governments. 4. Waive penalties and fees for late compliance under the Companies Act. 5. Waive penalties for late presentation of documents under the Land Registration Act <p>Waive penalties for late payment of land rates.</p>	<p>pay for or process statutory fees, though late, should be cushioned against penalties that accrue in normal times.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
	Saad Yusuf Saad	waiver on NHIF Individual Monthly contribution of 500/- Kenya Shillings for those self employed for a duration of 4 months from April 2020. On the same suspension of the NHIF late payment penalty fee of Kenya Shillings 250 for those failing to pay on or before 9th of every month. This to be applicable for those who have been at least in a position to have paid for six month prior to this pandemic; and		
	KNCHR	Post-pandemic and recovery: It is appropriate that the Bill addresses itself to adequate recovery, rehabilitation after the pandemic including the restoration and reconstruction of the socio-economic institutions and structures of the affected including promoting economic recovery for employment		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	OBSERVATIONS
		and decent work opportunities and socio-economic reintegration.		

OTHER COMMENTS

1. Federation of Kenyan Employers made the following presentation—

- (a) Whereas it is undeniable that the COVID-19 pandemic has affected all sectors, the proposed Bill is too prescriptive and seems to assume that the COVID-19 pandemic has impacted all sectors equally which is not the case.
- (b) The Bill has inconsistencies with the Constitutional and Statutory provisions that include but are not limited to—
- (i) Articles 19, 20, 21 and 22 on the rights and fundamental freedoms, their application, implementation and enforcement.
 - (ii) Clause 30 takes away the right of the employer to determine the employment relationship on reasonable grounds. Parties to a contract have the freedom to vary it. Section 30 of the proposed Bill imposes workers on employers which amounts to servitude contrary to the constitutional prohibitions.
 - (iii) Article 40 on the right to property - the provisions of clauses 27, 28 and 29 of the Bill are too prescriptive and imbalanced as the said sections do not consider or offer relief to the plight that lending institutions, businesses and landlords may face.
 - (iv) Article 41 on fair Labour practices and Article 47 on fair administrative action – clause 30 of the Bill, seeks to unilaterally interfere and override agreed terms and conditions between two independent parties without their consent, consultation or input. This offends the principals of fair labour practices and offends the law and sanctity of contract.
 - (v) Article 43 on economic and social rights. It places the responsibility to provide social security on Government.
- (c) Under Part VI of the Bill, sections 26-30 provide mandatory provisions that override existing legislation but in respect of reliefs provide that the Cabinet Secretary “may” meaning that the reliefs offered are discretionary and not guaranteed.

- (d) The Bill does not consider the social impact it will have on the delicate relationship between landlords and tenants, lenders and borrowers, employers and employees and parties to contracts. The Bill does not give the two independent parties room to negotiate and reconcile their losses.
- (e) The said proposed Bill does not provide any justification for its provisions. The rationale for the Bill though noble has a misguided or wrong approach on how to respond to the challenges of the corona pandemic.
- (f) Contrary to Article 41 of the Constitution, the right to fair remuneration is reciprocal to delivery of work or service to the employer. Remuneration without service would amount to unfair labour practices. Imposition of employees on an employer who cannot afford to sustain the employment relationship amounts to servitude and is an unfair labour practice.
- (g) This proposed bill if allowed to proceed is poised to bring a lot of conflicts between the employers and the workers. It is the prayer of the employers, through their Federation, FKE, that the provisions which interferes with the provisions of the employment and labour relations laws be withdrawn.
- (h) This Bill as currently crafted, will not only increase the cost of doing business in Kenya but also put many enterprises in jeopardy at a time the government is making effort to cushion industry.
- (i) The proposed Pandemic Response and Management Bill 2020 does not provide for post-pandemic interventions and measures to revive business and to deal with—
- (i) measures for business continuity and productivity;
 - (ii) grants from Government;
 - (iii) return to work formulas; and
 - (iv) other interventions to manage psycho-social and economic challenges
- (j) We propose the following policy interventions—
- (i) **Wage Relief Fund / Wage Subsidies** - to mitigate the impact of similar crises that may occur in future and to protect enterprises to maintain workers in jobs and sustain the livelihood of many households.

- (ii) **Decent Work & business sustainability** – The responsibility and provision of regular and Decent Work does not only lie with the employer providing social benefits to the Employees, but also looks at the sustainability of business enterprise and the net effect on employment creation.
- (iii) Injection of capital to revive SMEs and MSMEs - through the Disaster/ Covid -19 Relief fund.
- (iv) Donations and supplies by corporate entities towards prevention of the spread of the COVID-19 should be tax allowable.
- (v) Expanding the list of critical and essential Services we support the proposal to expand the list so as to accommodate industries that support and complement services such as security services, food production and distribution, transport within the Counties, medical facilities and institutions, research institutions and Counselling Services.
- (vi) Insurance of Covid – 19 disease: challenges exist regarding the insurance coverage of Covid -19 disease and related illnesses.
- (vii) Social protection policies being spearheaded by the Ministry of Labour & Social Protection with inputs from social partners. Such a policy would include aspect such as an “Unemployment Insurance Fund “which exist in various countries such as South Africa to provide needed support during pandemics and other national disasters. The government would then take over the payroll burden from businesses to protect jobs and sustain enterprises
- (viii) Framework Agreement or MOU between the social partners (Government COTU & FKE) – there is need for the social partners to formally agree on the management of Labour relations and labour related challenges during and post covid-19 in recognition of the special role played by the Social partners and the need for revival of the economy.
- (ix) Unemployment Relief fund – as a long-term solution FKE has strongly pushed for the setup of an Unemployment Relief Fund under the Ministry of Labour and Social Protection that cushions employers from the effects of natural disasters, crisis situations and pandemics that put jobs in jeopardy as exists in countries such USA, South Africa and many others including Europe

2. **Mr. Peter Njaramba** made the following presentation—

- (a) the Bill has captured most of his concerns; and

(b) the role of non-state actors and public participation organizations in fighting any pandemic that affects them individually, severally, and the general population has not been entrenched in the Bill.

3. **Mr. Lawrence Nyaguti Ochieng** made the following presentation—

(a) The bill is in conflict with the following laws—

(i) Public Health Act: which gives provisions for guidelines on pandemic response;

(ii) National Government Coordination Act: Creates administrative structures for management of pandemic response

(iii) Intergovernmental Relations Act: creates a cooperation mechanism between national and county governments on concurring functions;

(iv) Public Procurement and Finance Management Act: Which gives provision for tax waivers during pandemics including provisions to issue guidelines on management of pandemic resources and Socio-economic reliefs;

(v) Social Assistance Act: Law that supports social protection to vulnerable as a result of both economic and social shocks arising from pandemic;

(vi) Social Protection policy; and

(vii) Vision 2030: Which creates a consolidated social protection fund.

(b) There is no background evidence to show that the current laws are insufficient to meet the objectives of the bill.

(c) The country is capable of domesticating any pandemic guidelines issued by World Health Organization (WHO) based on the provisions in our Public Health Act as it is. Legislation on pandemics may affect flexibility that currently exist.

(d) Based on the standard definition of the term 'pandemic' which must meet the requirement of a spread of disease beyond our boundary, only WHO is left to make a declaration on a 'pandemic'. Management of both Pandemics and Epidemic in every state is based on WHO guidelines.

- (e) There is no new public health provisions that the bill advances to strengthen public health guidelines.
4. **Mr. Daniel Muoki Kimuyu** expressed his support for the Bill especially on the provisions on termination of employment and rent payment.
5. **Ms. Edijoe Mwaniki** expressed her support for the Bill but noted that the Bill has only cushioned tenants leaving landlords exposed to economic shocks.
6. **The National Taxpayers Association** also made the following observations—
- (a) the Bill should also provide a framework for the establishment of County Pandemic Response Fund;
 - (b) the Bill is very silent on public participation and the involvement of private sector and civil society;
 - (c) the Bill has not provided the Pandemic Response Fund management structure except for the mentioning of Principal Secretary Finance as the Funds Administrator;
 - (d) the Bill is so silent about the Kenyans abroad especially those affected by the pandemic; and
 - (e) the right to access to information has not been adequately addressed by the Bill.
7. **Coulson Harney LLP (Bowmans)** also noted that the Bill places the onus of realizing several relief measures on agreements to be entered voluntarily between parties. Whereas this may have been well intended, the Bill does not provide a way forward in the event that parties are unable to agree. Consequently, there is a likelihood that the intended beneficiaries of the proposed measures may not access the intended benefits. They therefore recommend that the affected provisions to be amended to provide statutory and mandatory relief measures, in the event that parties are unable to agree.
8. **Coalition of Community Health Workers** made the following observations—
- (a) the Bill assumes a pandemic as a short term disruption which may not be the case. Such a short term view makes the whole Bill unimplementable and may be treated as an anomaly in law; and

(b) Part V on the establishment of the Pandemic Response Fund. Given health is a devolved function, shouldn't a similar fund be created at the county level? If this is not the case, the Act needs to clearly articulate how the Counties will receive support from the pandemic response fund; and

(c) There is need to strengthen supervision and support for CHWs including deployment of sufficient Community Health Assistants as dedicated supervisors.

9. **The Kenya Bankers Association** made the following general comments—

(a) The proposed sections 26, 27, 28, 29 and 30 of the Bill are unconstitutional and grossly interfere with the freedom of contract. The key determinants for freedom of contract are respect for private property and restraint of State from interfering with freedom to contract by private parties. These considerations impact on the assessment of a country's ease of doing business.

(b) The above sections of the Bill should be guided by established legal principles relating to either frustration of contract or where a contract becomes onerous to perform by reason of financial difficulty. Kenyan courts have made well-reasoned determinations on either circumstances that obviate the need for state intervention in private contracts.

(c) It should be noted that Covid-19 circumstances have given rise to the need to ringfence risks of default by building into future contracts the requirement for insurance and other interventions to mitigate the concerns which the Bill purports to address. Accordingly, the Bill will need to take cognisance of any such measures agreed upon by the contracting parties and to subject the interventions to the provisions of the contract.

(d) The overriding principle must be that the State, just like the Courts, should not make or be seen to contracts on behalf of parties.

(e) Whilst the motivation for the proposed measures is well-understood, the proposed measures applicability and implication would negatively affect the economy and are virtually impossible to enforce, lack in clarity and rationale and highly discriminatory.

(f) The Bill's proposals are largely for the benefit of potentially defaulting bank customers, tenants and employees without consideration to their financial capacity and the possible plight these recommendations would have on financial institutions, landlords and businesses.

All the arrangements proposed to be addressed in the Bill are contractual, thus any safeguard measure should be for the mutual interests of all parties involved rather than a prescribed outcome that only favors customers, tenants and employees.

(g) It is difficult to segregate the inability to meet contractual obligations prior to the pandemic where the aggrieved party to the contract had not attempted to enforce their contractual rights prior to the pandemic.

(h) The Bill should—

- (i) cover measures to support financial institutions and corporates through financial and nonfinancial solutions that subsequently allow them to support bank customers, tenants and employees. In other jurisdictions, there is defined funding to banks for onward support to customers (defaulting and non-defaulting customers who require support through the recovery phase of the pandemic); and
- (ii) provide equitable guidelines to be applied in considering applications by bank customers, tenants and employees in order to arrive at an amicable solution for both parties affected.

(i) The Banking Industry, therefore, seeks that the Pandemic Response and Management Bill 2020 be withdrawn in its entirety by The Senate Ad-Hoc Committee on The Covid-19 Pandemic due to its negative impact to the sustainability of the banking industry, the economy and businesses in the Country.

10. **The Central Organization of Trade Unions (COTU)** made the following observations on the Bill—

- (a) The Bill lacks targeted policy measures to guard vulnerable workers, including those in the informal sector from falling into poverty, which could make them face greater challenges in regaining their livelihoods after the pandemic.
- (b) The response plan in the Bill is short term and reactive. No long-term proactive measures to cushion citizens against loss of employment, income and livelihoods due to pandemic. The Committee may consider—

- (i) increased safety nets to make up for employment, income and livelihood losses due to pandemic (need for both vertical and horizontal expansion): cash transfers, food subsidies;
 - (ii) employment retention and restoration interventions (wage subsidies, training, coaching and mentorship) to avoid the high transaction cost of firing and hiring;
 - (iii) robust Social Protection System for preparedness (expanding the registries); and
 - (iv) integrating approaches: social protection system, and labour market policies and interventions.
- (c) It is not clear how occupational fatalities/diseases/accidents that arise due to the pandemic particularly when an employee contracts the disease while at work shall be handled.
- (d) Who covers the medical/quarantine/isolation bills of workers who contract the disease either in the course of duty or outside spheres of work?
- (e) Employers should bear the cost of personal protective gears for workers who by nature of their work have to continue working
- (f) It is not clear how information and awareness on part of workers shall be handled.
- (g) The Bill should provide a clause to require employers to:
- (i) provide adequate protective clothing and protective equipment, at no cost to the worker;
 - (ii) provide adequate information and training on safety and health; and
 - (iii) develop Employee Assistance and Wellness Programs, including programs for support on psycho-social issues.

11. Kakamega Civil Society (CSO) Network made the following recommendations—

- (a) include a clause on provision of periodic reports on funds allocated and spent by the National Committee during the pandemic period to Parliament;
- (b) a proposed timeline of three months to give County Response Committees sufficient time to submit their reports;
- (c) create an avenue of collaboration and partnership in the counties;

- (d) the mandates of the National and County Committees should be extended to three months after declaration of an end of a pandemic;
- (e) the County Committees should report to County Assemblies within two months under clause 18;
- (f) the fund administrator under clause 21 should publicise the expenditures from the fund;
- (g) the time frame for winding up of the fund should be extended; and
- (h) employers should provide employees with written notice of unpaid leave prior to commencement of the leave.

12. **Edmund Rice Advocacy Network (ERAN)** made the following observations—

- (a) Clause 2, Expand the interpretation and representation to include definition of the representatives of the Civil Society and Faith based institution because over 55% of health and education facilities are ran by Faith Based Organizations in Kenya so they are a key stakeholder in matters pandemic management. The aim is to ensure human rights and human dignity is upheld amidst the pandemic period.
- (b) Clause 9, For transparency and accountability, the composition of both the National and County emergence committee shall at all times pay attention to the representation of the civil society, religious grouping (FBO) and the business community (this important actors are left out of the composition of the County COVID-19 response committee). (g, h,)
- (c) Clauses 10.12.13, Include Civil Society and religious institutions representation in both the Nation committee and County Committees
- (d) Ensure representation of both the civil society and Faith based organizations in the pandemic committee at all levels.
- (e) The law should protect online lenders from abuse by the scrupulous online entities such as Mpesa, M-Shwari, and Tala etc. who are not listed as financial institutions.
- (f) Amend section on leave without pay to leave with a half pay and offer specific protection on those working in informal sector including NGO.

- (g) As the act stands now the Employees may suffer double jeopardy if on mutual agreement the employee proceeds on leave without pay. Amend the act to make it mandatory for the employee to proceed on leave; he/she will be entitled to half pay during the epidemic period in order to facilitate their sustainability while at home.
- (h) A Clear criteria for how to identify vulnerable groups to benefit from the consolidate fund (government stimulus) and that should include, PLWD, those who may have completely lost their business or jobs.
- (i) Add a section on the protection of the family. The national committee shall work with county committee established under the pandemic response Act to establish call centres for counseling and specifically addressing family and household disputes/ stressors arising from the strict anti -pandemic measures.

13. **Disability and Human Rights Organizations** made the following submissions—

- (a) The Senate Bill needs to categorize those who qualify to be in the category of vulnerable groups, so that persons with disabilities are not left out.
- (b) There is need to recognise the role of caregivers because they represent persons with severe disabilities, who are highly dependent and cannot articulate their own issues or issues affecting their welfare, let alone handling their daily living activities, namely bathing, dressing, toileting among others.
- (c) Method of identification of the persons with this category of disabilities should be clear when sending cash transfers, as not all of them are in the list of cash transfers.
- (d) There needs to be a clear method/structure on the distribution and reception of PPEs to those who are challenged together with their aid who cannot avoid social distancing. That is, the need to push wheelchairs and transfer from one place to another for wheelchair users.
- (e) There needs to representation of persons with disabilities in the Committees dealing with Covid-19.

- (f) There is need to define the term vulnerable groups as it is too broad, and to have disability workers recognised as essential service providers.
- (g) The Bill should propose mechanisms to protect persons with albinism from discrimination and ultimately, humiliation, as they are accused of spreading the disease.
- (h) There are disproportionate effects of COVID-19 on women with disabilities- particularly increased gender based violence; and the fact that the majority of them are the heads of families. This could be addressed when defining vulnerable groups so that it is recognised that women with disabilities are more vulnerable.
- (i) County governments should develop mechanisms of prevention and response to gender based violence on women and girls with disabilities during the pandemics.
- (j) The plight of caregivers and the need to support them should also be considered and addressed.
- (k) The accessibility of Covid-19 response measures by PWDs. For example, there are instances where PWDs are unable to access sanitation points in public places because they are too high or too low.

14. **Mental Health Advocates** urged the Committee to take the following issues into consideration—

- (a) provision of a comprehensive NHIF outpatient cover and opening up access to any hospital to address economic challenges, curfews and restriction of movement to patients;
- (b) provide zero rated tax on medication to reduce drug costs, monitor supply of medication nationally to reduce stock outs as a result of slower distribution systems or panic buying;
- (c) meet all quarantine facility and covid/pandemic disease and comorbidity treatment costs without passing on costs to patients due to pandemic related economic challenges; and

(d) include persons with mental conditions in social protection cash transfer packages, to cushion the adverse economic effects, to provide access basic needs and treatment.

15. **The Kenya Ethical and Legal Issues Network (KELIN)** requested the Committee to amend the Bill to provide for the following Socio-

Economic Protective Measures—

- (a) there is need for a provisions outlining relief measures on cost of treatment during a pandemic;
- (b) there is need for provisions outlining relief measures on cost of isolation or quarantine services during a pandemic;
- (c) there is need for provisions outlining measures for emergency evacuations from other countries or regions;
- (d) there is need for provisions requiring the government to facilitate access to health services during a pandemic through for instance free transport; free ambulance services; mobile medical services;
- (e) there is need for provisions stating reliefs to health care workers during a pandemic, for instance, medical & life insurance, payment for over-time; provision of accommodation during a pandemic; provision of food, and transport to respective facilities;
- (f) need for provisions on emergency recruitment of health care workers during a pandemic; volunteers;
- (g) provisions for relief on prices of basic commodities; and
- (h) provisions for food and nutrition support programmes.

16. **Persons With Disability Office Kuresoi South Sub County** requested the Senate to come up with the following measures—

- (a) operationalize a comprehensive national emergency cover like NHIF that is free for Persons With Disabilities;
- (b) link the national disaster risk system to the disability fund; and
- (c) clarify various levels and types of emergencies.

17. **Non-communicable Diseases Alliance Kenya (NCDAK)** made the following submissions—

- (a) Define the vulnerable persons - the population group(s) that are defined as vulnerable with reference to the Bill. Non-communicable diseases (NCDs) disproportionately affect socially and economically vulnerable populations. The high cost of long-term treatment and care for persons living with NCDs push many families into poverty making them even more economically vulnerable.
- (b) Strengthening and or supporting health systems to ensure uninterrupted healthcare provision for all should be included in the Objects of the Bill.
- (c) Use of the balance of the Fund once the end of the pandemic has been declared by the President for the following:
 - (i) strengthening of health systems; and
 - (ii) provision of essential supplies (personal protective equipment, essential medicines and equipment, food, water, fuel etc.) through pre-contracting as contingency for possible future pandemics
- (d) Contingency plan or pandemic emergency financing mechanism for rapid response to future pandemics should be included in the Bill.
- (e) The fund should include provision for:
 - (i) NHIF to cover patient's pandemic-related medical costs;
 - (ii) KEMSA to maintain uninterrupted supply of medicines and commodities essential for management of the pandemic and other routine health-related supplies to ensure uninterrupted treatment and care of all; and
 - (iii) meet all expenses related to quarantine

18. **The Economic and Social Rights Center (HakiJamii)** made the following submissions—

- (a) The definition of pandemic as 'an infectious disease across international borders' is very wide. There needs to be an adequate and comprehensive definition of 'pandemic'.
- (b) The Bill seems punitive to landlords. The assumption that is evident is that, a majority of landlords have an upper hand over tenants, an assumption which is not necessarily true.

- (c) While the law certainly protects employees and guarantees them job security, it offers struggling employers no solution. The law protects employees from termination during a pandemic period. There is an agreement that employers should not terminate staff due to the pandemic, but the wording of the bill is open to abuse. An employee who is terminated due to reasons other than the pandemic may find a loophole from the wording of this Bill.
- (d) The Bill lacks soundness in its provisions on contractual obligations.
- (e) This doesn't consider the already existing remedial measures such as force majeure which are already part of contract law. Through this Bill, the Parliament oversteps its mandate by interfering in private contractual matters. The court which is the right forum to discuss issues of contractual obligations have in the past upheld the principle of sanctity of contracts. By including this provision, the principle of sanctity of contracts would be compromised. The principle of sanctity of contracts means that the court recognizes that its role is not to negotiate contractual terms for the parties.
- (f) Define vulnerable groups of people in the proposed law.

19. **The Institute of Certified Public Accountants Kenya (ICPAK)** noted that the Contingency Fund established under Article 208 of the Constitution should be used to cater for such pandemics. Other related funds proposed to be established include the Covid-19 Fund, the Disaster Management Fund which would amount to duplication.

20. **The National Taxpayers Association (NTA), HENNET and AHF KENYA** noted the following—

- (a) The Bill is very silent on public participation and the involvement of private sector and civil society.
- (b) The Bill has not provided a framework for the establishment of County Pandemic Response Fund.
- (c) The Bill has not provided the Pandemic Response Fund management structure except for the mentioning of Principal Secretary Finance as the Funds Administrator.
- (d) The Bill is so silent about the Kenyans abroad especially those affected by the pandemic

21. **Kenya Association of Manufacturers (KAM)** made the following submissions—

- (a) Inclusion of Trade and Industry in the Committees as well as representative Associations of private sector and manufacturers in the proposed National and County Committees.
- (b) Provide mandatory notification of any termination of employment, salary or wage variations, and employment contracts/agreement variations by employers to the relevant employment agencies who include Labour Office and National Employment Authority. This will ensure that the Government can intervene to mitigate job losses in the economy during a pandemic through measures and the Fund proposed under the Bill. This is as opposed to forcefully requiring employers to keep employees despite inability to maintain the same due to negative impact of a pandemic.
- (c) Borrowing from best practice, we propose inclusion of an objective of the fund to be invested for insurance purposes to mitigate job losses such as provision of wage subsidies to businesses that are able to demonstrate financially inability to retain employees. The Fund” allows the Government to avail funds to businesses so as to mitigate some of the losses experienced due to a shutdown to enable business to continue supporting their employees and mitigate effects of layoffs of workers during the lockdown.

22. **Article 19** made the following submissions—

- (a) Despite the Pandemic Bill (2020) being a timely initiative that has the potential to provide effective measures to respond to and manage pandemics in Kenya, it has not adequately adopted a human rights-based approach by incorporating human rights principles and addressing issues that are likely to be violated during the pandemic.
- (b) The Pandemic Bill (2020) generally addresses socio-economic measures but fails to address, and cater for, civil and political rights issues which are equally important in the response and management of pandemics and carry equal importance under the Constitution of Kenya, 2010.
- (c) Section 3, Pandemic Bill (2020) has not offered specificity of time periods for which the law may apply.

- (d) The establishment of the National Pandemic and County Pandemic Committees as provided for under Section 8 and 14, Pandemic Bill (2020) should incorporate a clause emphasizing on the need to uphold Article 56, Constitution of Kenya (2010) in the process of appointment to the committees.
- (e) Include incorporating provisions that protect and promote whistle blowing and enhance transparency and accountability of funds managed and administered by various structures provided for in the Bill. Additionally, forfeiture of anything that has been acquired illegally from the fund, should also be incorporated under Section 37, Pandemic Bill (2020), as a penalty for misappropriation of relief money or material.
- (f) The Bill has not addressed the safety and wellbeing of vulnerable groups who are at risk of further disenfranchisement during a pandemic situation.
- (g) The Bill makes provision for continued enjoyment of the Right to Protest by citizens especially in enhancing vigilance, transparency and accountability of State structures, processes and procedures during the pandemic.
- (h) The Bill should make explicit provisions for effective inclusion and participation of civil society in the membership of both the National and County structures and mechanisms as established by the Bill.
- (i) The use of surveillance technology to track patients and contact persons carries great potential for State overreach with consequent breach of citizens' right to privacy and data protection. This may also lay foundations for longer-term mass surveillance and data exploitation by state and non-state actors.
- (j) Despite this, section 33, Pandemic Bill (2020) fails to expound how ICT can be fully and effectively harnessed during pandemic periods.
- (k) ARTICLE 19 EA recommends enhanced clarity of clause 20 (c), Pandemic Bill (2020) especially on 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 right to privacy.

- (l) Clause 31 (1), Pandemic Bill (2020) should also be amended to give clarity on what permissible data sets will be used for the identification of vulnerable persons, households and informal sector workers.
- (m) ARTICLE 19 EA proposes the incorporation of a provision which advocates for the Internet to be recognised as a ‘public utility’ tool in enabling effective response and management of pandemics.
- (n) ARTICLE 19 EA proposes the review of section 36 (b), Pandemic Bill (2020) as it is vague and has the effect of limiting the right of free expression. It fails to recognise that the right to FOE is broad and may extend to untruthful statements and that the right to freedom of expression is not accompanied with a legal duty of ‘truth.’
- (o) Additionally, section 33, Pandemic Bill (2020) should be amended to provide enhanced provisions for transparency of State electronic discussions/deliberation records, information and data as transacted by various structures as prescribed by the Bill.

23. Hon. Senator (Dr.) Beth Mugo, EGH, CBS, MP made the following submissions—

- (a) The categories of persons to whom some of the provisions of the Bill apply should be defined, as the current ambiguity may create loopholes that may weaken the impact of the Bill on the intended beneficiaries.
- (b) The Bill attempts to dictate on contractual matters that should be left to the concerned parties to agree upon on a case by cases basis depending on individual capacities.
- (c) While the Bill seems to focus on protecting employees and tenants, it overlooks the fact that some employers (especially in Small and Medium Sized Enterprises) depend on that income to survive, as do landlords that charge modest rent (such as for low-income and semi-permanent housing in areas like Kawangware, Kangemi, Kibera, and Mathare, among others).
- (d) Under clause 20 (g), “Vulnerable persons” should be defined within the context of the Bill, and there should be a hierarchy whereby the most vulnerable are defined in line with Section 17 of the Social Assistance Act, as being households with orphans and vulnerable children (OVCs), the poor elderly, the unemployed, persons with disabilities (PWDs), and widows/ widowers.

- (e) Clause 20 (h) should be clear on what constitutes “economic loss”, how (if at all) it will be proven, and whether the stabilization mechanism will be a nationwide programme that applies to the entire population or a targeted programme for the most affected.
- (f) Under clause 26 Borrowers should be able to enter into contracts with lenders where they agree on an option of a time-frame of longer than 3 months before non-repayment results in penalties and listing by a credit reference bureau following a pandemic. This may depend on the amount and type of loan, nature and size of a borrowing business, and its income-generating capacity of an individual or business.
- (g) Clause 29 should require some level of proof that a tenant is unable to pay rent (for instance, bank statements or a letter from their employer or Public Administration in their locality). It should also allow tenants and landlords to enter into agreements, on a case by case basis, on how rent payment can be made during the pandemic as opposed to after the pandemic. In cases of vulnerable persons, which would have to be defined within the Bill, it should be clarified whether ensuring shelter (and thus rent) is considered a “basic service” under the Pandemic Response Fund in Clause 20(g) and is part of the social safety scheme in Clause 31.
- (h) Under clause 30 employers should be able to make an executive decision to implement salary cuts where business is still operational, after demonstrating an inability to pay full salaries. The salary cut percentages should be guided by regulations to ensure fairness. As such, employers benefit by keeping business running, while employees are able to at least have some income.

24. United Disabled Persons of Kenya (UDPK) and the Caucus on Disability Rights Advocacy (CDRA) made the following submissions—

- (a) In pursuance to the provisions of section 54 subsection 2 of the Kenya Constitution 2010 which provides for the progressive realization of five percent representation of persons with disabilities in all elective and appointive positions, persons with disabilities should have a representation in both the National Pandemic response Committee (ARTICLE 10) and County Pandemic Response Committee (clause16) to ensure disability inclusive response at both levels.
- (b) Clause 20 (g) provides for the establishing a mechanism for the provision of basic services to the vulnerable persons. It will be assumed that the term “Vulnerable” will include persons with Disabilities. However, in our experience, the needs of persons with disabilities are

often very unique and they tend to be subsumed in other groups when persons with disabilities are not specifically mentioned. We therefore recommend specific recognition of persons with Disabilities in this clause.

- (c) Clause 31 (1) provides that “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.” Our argument on 2 above also applies here. We need to mention disability as a specific group that is affected by the pandemic leading to many of them falling into abject poverty. We also need to recognize that many of them live on either petty business where they live from hand to mouth or under the care of other people and in times of scarcity, careers would rather care for themselves rather than have these as unbearable burdens.
- (d) Government policies should ensure community-based services continue and crisis counselling programs are accessible to all.

25. **Mr. Cliff Randa** urged the Committee to amend the Kenya Medical Laboratory Technicians and Technologist Board (CAP 253A), Act.

26. **The Kenya Private Sector Alliance (KEPSA)** also made the following additional submissions—

- (a) Although the Bill provides for a framework for a coordinated approach, it does not quite capture the inclusion and participation of the private sector and other key stakeholders For example in the proposed National and County Committees there is no inclusion of the private sector and major stakeholders despite the fact that a Public Private Partnership (PPP) approach to combating pandemics is envisaged.
- (b) The Bill does not consider the social impact it will have on the delicate relationship between landlords and tenants, lenders and borrowers, employers and employees and parties to contracts. The Bill does not give the two independent parties room to negotiate and reconcile their losses. Without a relief or subsidy to mitigate the cost of these contracts, an imposition by government may culminate into anarchy and hostility by the aggrieved and injured party.

- (c) The labour market operates under a tripartite structure where workers, employers and government are consulted before any new policy is introduced in the labour market. The originator of this Bill needed to have consulted widely with the affected stakeholders before bringing up the said bill. This ensures there is harmonious industrial relations in the country. This proposed bill if allowed to proceed is poised to bring a lot of conflicts between the employers and the workers. It is the prayer of the employers, through their Federation, FKE, that the provisions which interferes with the provisions of the employment and labour relations laws be withdrawn.
- (d) Extension or suspension of timelines that are required to be adhered to for making various filings by companies and the registration of securities and other documents e.g. requirements to make filings with Companies Registry within 14 days due to the closure of the registries.
- (e) Waiver of penalties under statutes, waiver of stamp duty penalties and other obligations for failure to undertake various actions or file certain documents within the prescribed timelines e.g. waiver of stamp duty penalties for failure to stamp documents within 30 days as the Office of Collector of Stamp Duties has been closed since 17 March 2020 and significant penalties are already accruing due to no fault of the parties.
- (f) Reduction in certain fees and reductions of timelines e.g. joint ventures, take-overs, mergers and other investment transactions require the prior approval of the Competition Authority of Kenya (CAK). The approval process attracts an official fee of up to KES 4 Million. However, companies in distress due to COVID-19 and which require additional investment or to be bought out in order to avoid falling into insolvency may not be able to afford the high official fees.
- (g) In addition, COVID-19 has revealed the weakness in the healthcare system and infrastructure in Kenya and in order to encourage investments to the healthcare sector, the fees should be reduced and timelines for the approval process (which can take between 45-90 days) should be reduced.
- (h) Allowing for electronic witnessing and attestation or commissioning of documents which affects the execution of simple contracts and land related agreements in light of the social-distancing requirements.

- (i) New insolvency law provisions to cater for COVID-19: the existing insolvency laws and administration regime that regulates insolvency and also only allows business rescue under a formal protracted process will not be appropriate during the COVID-19 outbreak in Kenya for a number of reasons e.g. directors of a company that is unable to continue paying its debts are required to file for insolvency and not continue trading in such circumstances. However, a number of businesses are already facing or likely to face such circumstances and requiring them to cease trading and file for insolvency may not achieve desired results. Alternative arrangements (similar to what is proposed in the United Kingdom) aimed at rescuing such businesses ought to be considered.
- (j) Licensing and creation of e-licensing portals: in the current environment where it is not possible for parties requiring licences to submit applications for new licences or to procure timely renewals of their expired licences or pay annual licence fees, we propose that the law be amended to provide for automatic extension of existing licences that would otherwise expire during COVID-19 and for the licensing authorities to make provision for online systems for receiving and processing licence applications.
- (k) Approval of critical communication equipment: During a pandemic, in order to ensure rapid supply of critical communications equipment, products that are necessary for the provision of essential communication services may not require type approval by the Communications Authority if they have already received equivalent approval from a recognized jurisdiction. Regulatory authorities are currently unable to approve communication products quickly; delays of up to two months approving products are causing critical shortages in products affecting Kenyans ability to communicate, go online and even the ability of the network to support increased demand.
- (l) Further, in order to ensure communications network can support increased demand during a pandemic, spectrum that is not currently being used commercially may be licensed temporarily to licensed operators to use during the duration of the pandemic by the Communications Authority. The mobile network is currently under severe pressure and a lack of

27. **Senator Dr. Ochilo G. M. Ayacko** made the following submissions—

- (a) Parliament is completely left out in either approving or ratifying the declaration of a pandemic. There is need to include Parliament in the declaration of a pandemic to avoid abuse of authority.
- (b) There must be a clause that saves Parliamentary and Judicial sovereignty to oversight the executive.
- (c) There is need to have Parliamentary regulations and programmes safeguarded from the whims of the respective Speakers.
- (d) Social and economic interventions must be from the public coffers.
- (e) There should be a framework for enforcing tenancy agreements.
- (f) Regulations during a pandemic must be forwarded to Parliament for scrutiny.
- (g) The role of county assemblies should be spelt out under the Bill.

19th May, 2020

The Clerk of the Senate

Parliament Buildings

NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE PANDEMIC RESPONSE
AND MANAGEMENT BILL, SENATE BILLS NO. 6 OF 2020**

NOTICE is given that Sen. Johnson Sakaja, the Chairperson to the Ad-Hoc Committee on COVID-19 Situation in Kenya, intends to move the following amendments to the Pandemic Response and Management Bill, 2020, at the Committee Stage—

CLAUSE 3

THAT the Bill be amended by deleting clause 3.

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (j)—

- (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.

CLAUSE 13

THAT clause 13 of the Bill be amended in subclause (1) by—

- (a) deleting the word “bi-weekly status reports providing” appearing immediately after the words “submit to Parliament” and substituting therefor the words “once in every two weeks a status report providing information on”; and
- (b) inserting the following new subparagraph immediately after subparagraph (iii) in paragraph (a)—
 - (iv) resource mobilization and expenditure on the pandemic; and

CLAUSE 19

THAT the Bill be amended by deleting clause 19.

CLAUSE 20

THAT the Bill be amended by deleting clause 20.

CLAUSE 21

THAT the Bill be amended by deleting clause 21.

CLAUSE 22

THAT the Bill be amended by deleting clause 22.

CLAUSE 23

THAT the Bill be amended by deleting clause 23.

CLAUSE 24

THAT the Bill be amended by deleting clause 24.

CLAUSE 25

THAT clause 25 of the Bill be amended—

- (a) by renumbering the existing clause as subclause (1);

(b) in the new subclause (1) deleting the word “may” appearing immediately after the words “relating to finance” and substituting therefor the word “shall”; and

(c) by inserting the following new subclause—

(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.

CLAUSE 26

THAT Bill be amended by deleting clause 26 and substituting therefor the following new clause —

Loans and mortgages.

26. (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 —

- (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 realisation 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.

CLAUSE 27

THAT clause 27 of the Bill be amended—

- (a) by renumbering the existing clause as subclause (1);
- (b) in the new subclause (1) by inserting the words “entered into prior to the declaration of a pandemic” immediately after the words “of obligations”;
- (c) by inserting the following new subclauses immediately after the new subclause (1)—

(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.

CLAUSE 28

THAT the Bill be amended by deleting clause 28 and substituting therefor the following new clause—

Contractual obligations.

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

- (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.

CLAUSE 29

THAT the Bill be amended by deleting clause 29.

CLAUSE 30

THAT the Bill be amended by deleting clause 30 and substituting therefor the following new clause—

Labour
relations.

30. (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.

(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.

CLAUSE 32

THAT clause 32 of the Bill be amended in the introductory clause by deleting the word “may” appearing immediately after the words “government agencies” and substituting therefor the word “shall”.

CLAUSE 33

THAT clause 33 of the Bill be amended—

- (a) by renumbering the existing clause as subclause (1);
- (b) in the new subclause (1) by—
 - (i) inserting the words “during a pandemic” immediately after the words “other law where” in the introductory clause;
 - (ii) inserting the words “subject to subsection (2)” immediately after the words “such business may” in paragraph (a);
 - (iii) deleting paragraph (b) and substituting therefor the following new paragraph—

- (b) the Speakers of Parliament shall, with the approval of the respective House, make guidelines on the conduct of plenary and committee sittings remotely;
- (iv) deleting paragraph (c) and substituting therefore the following new paragraph—
- (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;
- (c) by inserting the following clauses immediately after the new subclause (1)—
- (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.

CLAUSE 35

THAT clause 35 of the Bill be amended in subclause (1) by deleting the word “person’s” appearing immediately after the words “discharge of the” in paragraph (a) and substituting therefor the word “officer’s”.

CLAUSE 36

THAT clause 36 of the Bill be amended in paragraph (a) by deleting the words “from a public office” appearing immediately after the words “or other benefit” and substituting therefor the words “under this Act”.

CLAUSE 37

THAT clause 37 of the Bill be amended by—

- (a) renumbering the existing provision as subclause (1); and
- (b) inserting the following new subclause immediately after the new subclause (1)—
- (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.

CLAUSE 39

THAT the Bill be amended by deleting clause 39 and substituting therefor the following new clause —

Regulations.

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

(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;

(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

Act No. 14 of
2007.

regulations to provide for additional services to be categorized under essential services despite the provisions of the Labour Relations Act;

Act No. 46 of
2012.

(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, 2013 in relation to subsidiary legislation

Cap. 2.

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.

CLAUSE 40

THAT the Bill be amended by deleting clause 40.

NEW CLAUSE 7A

THAT the Bill be amended by inserting the following new clause immediately after clause 7—

Declaration of the
end of a pandemic.

7A. 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.

NEW CLAUSE 30A

THAT the Bill be amended by inserting the following new clause immediately after clause 30—

Designation
of
vulnerable
persons.

30A. (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.

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

- (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.

NEW CLAUSE 38A

THAT the Bill be amended by inserting the following new clause immediately after clause 38—

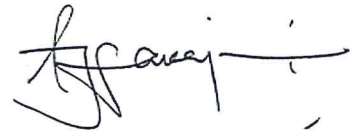
Establishment
of a fund.

No. 18 of 2012.

38.A 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.

CLAUSE 2

THAT clause 2 of the Bill be amended by deleting the definition of the term “Fund”.



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

