KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON THE PANDEMIC RESPONSE AND MANAGEMENT BILL, 2020

PRESENTED TO

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

1ST MAY 2020
A. Introduction


2. The National Commission under Article 249 of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.

3. It is in this regard, that the National Commission issues this advisory on the Pandemic Response and Management Bill, 2020.

B. General Comments

4. The Commission takes this opportunity to laud the Senate as a whole, and particularly the Senate Ad Hoc Committee on the COVID-19 Situation for the oversight and legislative work it continues to undertake, despite the prevailing difficulties, towards addressing the spread and effects of COVID-19 in Kenya since its establishment on 31st March.

5. Disaster Management is the function of the National government as stipulated under Part I of the Fourth Schedule to the Constitution of Kenya, 2010. The Commission welcomes the Pandemic Response and Management Bill, 2020 in as far as it seeks to provide a framework for the effective response to and management of a pandemic in order to prevent the occurrence or spread of a pandemic whenever it arises. It also seeks to provide measures to mitigate against the effects of the pandemic and provide a mechanism to cushion those that may be adversely affected by the pandemic. In the ensuing paragraphs, the Commission shall be addressing itself to the content of this Bill and making recommendations thereof.
6. The Commission takes cognisance of existing policies and other ongoing legislative attempts on disaster management generally (not confined to a pandemic). The National Policy for Disaster Management, 2009 notes the lack of a coordinated disaster management policy, legal and institutional frameworks. In addition, the Policy observes that disaster response activities have been poorly coordinated, due to lack of Standard operational procedures and Disaster Emergency Operation Plans. The Policy further provides for an integrated and co-ordinated Disaster Risk Management that focuses on preventing or reducing the risk of disasters, mitigating their severity, improves preparedness, rapid and effective response to disasters and post-disaster recovery. The Commission will be pushing for the executive to have review of this Policy fast-tracked so as to bring it up to date to reflect the advancing needs in the areas of disaster management including pandemics and endemics. That nonetheless, the Policy provides a useful framework and relevant that should be used as a basis for legislative enactments in this matter, including the current Bill.

7. In an effort to manage disasters in the country, the National Assembly developed the National Disaster Management Authority Bill, 2019 dated 1st March 2019. The Bill seeks to establish a centralized system of responding to and managing disasters in the country by creating the National Disaster Management Authority; which is to liaise with other agencies in both the National and County Governments in discharging its functions. As at the time of this advisory, the Bill was yet to undergo the second reading. The two Bills have similar functions of providing a coordinated response and coordination between the National and County Governments in the event of a pandemic or disaster.

8. Moreover, the Commission is aware of the more recent proposed actions from the National Assembly with regard to amendment of the Law of Contract Act and the Employment Law to insert clauses specific on the COVID. We urge that both Houses of Parliament consider establishing a joint Committee of the House, rather than two parallel ones where the legislative and oversight interventions by the national Parliament are approached in a unified way. This does not however take away the respective mandates of either House.

9. **Scope of application:** The Bill confines itself to a pandemic in the strict sense defined under Clause 2 to mean, ‘an infectious disease occurring across international boundaries’. Clause 3 of the Bill is categorical that, “This Act shall apply only during the period of a pandemic.” By so doing, the Bill does appear to be narrowly focused on the current COVID 19 pandemic and does not take into account possible future cases of infectious diseases as defined under the Public Health Act, which though not necessarily
occurring across international boundaries, are equally communicable and could lead to disruption of economic and normal socio-economic activities and repercussions meant to be addressed by the Bill. The Bill therefore is minimalistic in terms of target. Laws should be forward looking and it is therefore prudent that the Legislature does not just legislate for the COVID situation. It is therefore the Commission’s proposal that the Committee considers expanding the application of this Bill to include epidemics.

**Pandemic Response Fund**

10. KNCHR welcomes the move to create the pandemic response fund that is aimed at inter alia, cushioning the vulnerable persons and vulnerable households in the society from the negative effects of the pandemic. The Commission however cautions on the need for transparency and prudence in the administration of the Fund to ensure it fully and objectively meets the intended benefits under Clause 20. In terms of application of the fund, while noting the penalty under **Clause 37** on Penalty for misappropriation of relief money or materials, the Commission recommends that the Bill clearly stipulates the basic **principles governing the application of the fund** in the Bill which must include Article 10 of the Constitution on national values and principles of governance including transparency, accountability, equity, non-discrimination, public participation, good governance, protection of the marginalised and human rights. Other values governing the public finance system under Chapter 12 of the Constitution such as openness and accountability as well as prudence and responsible utilisation of resources should also be clearly stipulated in the Bill as principles governing the application of the Fund.

11. Moreover, the Commission proposes that provision be made for an accountability structure where queries regarding the application of the fund and the beneficiary projects can be channelled. The relevant information, appertaining the use of fund should be made available in line with the provisions of the Access to Information Act 2016.

12. The Commission notes that the Bill tasks the Cabinet Secretary responsible for matters relating to health in declaring a pandemic, chairing the National Pandemic Response Committee, appointing secretariat to the committee, authorizing sources of fund under **Clause 21** and even winding up the fund under **Clause 24**. Ironically, the Bill at **Clause 23** designates the Principal Secretary National Treasury as administrator of the Fund whose duties are akin to those of an accounting officer including causing to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund; preparing and transmitting to the Auditor-General financial statements; and preparing quarterly financial and non-financial reports.
13. The proposed accounting structure may be problematic considering the provisions of the Public Finance Management Act, 2012 on the role of accounting officers. Furthermore, this obfuscates accounting functions especially keeping in mind the objects of the fund under Clause 20 of the Bill. The Clause states that funds are to be applied towards the purchase of equipment and supplies for the prevention and containment of the spread of the pandemic; laboratory testing and networking capacity; surveillance for patients in outpatient and hospital settings and contact persons; mechanism for the vaccination of members of the public; temporary shelters and isolation units as may be necessary to contain the spread of the pandemic; communication system between the public and the health care system for the effective isolation, transfer and treatment of infected persons. These are matters falling within the health docket.

Socio-Economic Protective Measures

14. The Commission notes with approval the spirit behind the provision for socio economic buffer to the public upon the onset of a pandemic. The Commission particularly welcomes the measures providing for social safety net and economic safeguards for the vulnerable and informal sector workers whose incomes have been disrupted by the pandemic as well as waivers on utilities such as electricity and water during periods of pandemic. Indeed, the protection of the vulnerable persons is in line with Articles 21 and 56 of the Constitution. Article 21 states that all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities. Article 56 details the obligation of the State towards the protection of minorities and marginalised groups including the affirmative action programmes.

15. While welcoming the relief measures including tax incentives and moratorium on loans and mortgages provided therein, the Commission however cautions on the need to consider the impact of the proposed measures holistically. The Commission takes note that the proposed measures on contracts, tenancies, labour relations will impact on a number of other laws such as the Public Health Act, Laws of Contract, Moveable Properties Act and Employment law amongst others. Thus, the specific law would have to be amended. The Commission notes the blanket Clause 5 which states that; ‘Where the provisions of this Act conflict with the provisions of another Act, the provisions of this Act shall prevail’. It is the Commission’s position that such a blanket provision is ‘lazy’ in approach and fails to take into account the general rules of statutory interpretation on a
statute governing a particular subject matter. We therefore urge the House to consider the impact on these other laws individually to avoid unintended consequences including introducing conflict of laws in the body of laws.

16. The Commission welcomes the intention of Clause 30 in terms of cushioning employees during the time of the pandemic. Article 41 of the Constitution safeguards labour relations including the right to fair labour practices. Indeed, it is the duty of State to protect its citizens from violations of rights by third parties and this includes businesses/employers. The emergence of the COVID-19 pandemic has had negative effects on various contractual relationships leaving parties unable to fulfil their contractual obligations either in part or wholly. As a result of the pandemic, some employers have laid off their employees on grounds of redundancy since the businesses cannot sustain a large workforce while others have relied on the ground of force majeure in order to renegotiate new terms.

17. Part of the constitutional mandates of the Kenya National Commission on Human Rights is to act as the designated as the principle organ in ensuring compliance with Kenya’s obligations under human rights treaties and conventions.¹ Worth noting, the State is constitutionally bound to, ‘enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.’²

18. Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and the State will take appropriate steps to safeguard this right. In its General Comment No 18, the Committee on Economic and Cultural Rights observes that the right to work, as guaranteed in the ICESCR, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly.³

19. Moreover, the ILO Convention No. 158 concerning Termination of Employment (1982) forbids termination of employment of a worker, ‘unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service’.⁴ The Convention

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¹Article 59 (2)(g) and s. 8 KNCHR Act, 2011.
imposes the requirement to provide valid grounds for dismissal as well as the right to legal and other redress in the case of unjustified dismissal. **ILO Employment and Decent Work for Peace and Resilience Recommendation, 2017** emphasizes that crisis responses need to ensure respect for all human rights and the rule of law including respect for fundamental principles and rights at work and for international labour standards\(^5\). The Commission therefore calls upon the State and other employers to uphold fair labour practices amidst the pandemic.

20. The Commission wishes to use this opportunity to draw the attention of the Honourable House of the following specific legal obligations of the State with regard to the right to work\(^6\):

- **Duty to respect:** States parties are under the obligation to respect the right to work. This includes through prohibiting forced or compulsory labour and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups. In particular, States parties are bound to respect the right of women and young persons to have access to decent work and thus to take measures to combat discrimination and to promote equal access and opportunities.

- **Duty to protect:** Obligates States to prohibit forced or compulsory labour by non-State actors.

- **Duty to fulfil:** 26. States parties are obliged to provide the right to work when individuals or groups are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. According to General Comment No. 18 of the Committee on Economic and Socio Cultural Rights, the obligation includes, the obligation to recognize the right to work in national legal systems and to adopt a national policy on the right to work.

  - This obligation further requires States parties, to take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment. The obligation also extends to requiring States parties to undertake educational and informational programmes to instil public awareness on the right to work.

21. **Clause 30** of the Bill provides that where a pandemic adversely affects the ability of an employer to pay salaries or wages, the employer may not terminate a contract of service or dismiss an employee or coerce an employee to take a salary cut. The employer is obligated to, ‘permit an employee to take leave of absence without pay for the duration

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\(^5\) Preamble and Paras 7 (b) and 43 of the Employment and Decent Work for Peace and Resilience Recommendation, 2017.

\(^6\) Drawn from General Comment No. 18 of the Committee on Economic and Socio-Cultural Rights.
of the pandemic’. This provision is well meaning in terms of cushioning workers from the effects of Covid but it is problematic on three accounts as discussed herebelow:

22. First, it does prohibit termination in absolute terms, with no exceptions and does not factor redundancy due to the pandemic, it ousts the operation of the Employment Act when it comes to termination in cases where the employee is unable to pay salaries and/or wages. What recourse would employers have against employees who grossly misbehave during the pandemic? Second, under common law principles (which are still applicable in Kenya) frustration of contracts and force majeure are circumstances under which contracts may be terminated. The provision does not even anticipate situations or contracts which have express force majeure clauses that excuse a party or both parties performance of obligations when circumstances arise beyond the parties’ control. Given, for the defence of force majeure to be applicable, the party arguing it has to show that indeed the COVID-19 Pandemic has affected his contractual abilities and therefore there is need to renegotiate more favourable terms. The most recent court of appeal decision in Kenya Bureau of Standards v Geo Chem Middle East [2019] eKLR is a classic example to demonstrate the application of force majeure in contracts.

23. The blanket clause presents serious challenges and ambiguity especially when the proposed law absolutely prohibits termination even in circumstances under which it would be practically impossible to honour contractual obligations through no fault of any party. This arguably invites slavery, whereby employers and employees must be tied down with each other, and regardless of the duration of the pandemics. Thirdly there are employees who were serving on contractual basis and some of those contracts were to expire within this period of the Pandemic. Clearly, Clause 30 does not even contemplate such kinds of arrangements.

24. **Clause 30(2)** provides for leave of absence without pay during the period of the pandemic where employers cannot meet their obligation during the pandemic. To note is that the time period is indefinite as no one knows how long a pandemic will last. The rationale of the Bill is to cushion employees, if such employees can take leave of absence without pay for unspecified duration, they are left exposed as there will be serious difficulties in securing alternative employment/source of income. In any case, the provision fails to acknowledge that international labour standards forbid employers from unilaterally requiring workers to use their annual holiday in case of a decision that leave is necessary as a precautionary measure to avoid potential exposure. The **Holidays with Pay**
Convention (Revised), 1970 (No. 132)\(^7\) provides that the timing of holidays is to be determined by employers after consultation with the worker.\(^8\) Back home, **Section 10(5)** of the *Employment Act* provides that where the terms of contract change, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing. This infers that the employer is required to consult with the employee on any proposals for unpaid leave or salary cuts.

25. With regard to unilateral reduction of salaries, the Court in *Ibrahim Kamasi Amoni v Kenital Solar Limited* [2018] eKLR held that *for a reduction of salary to be valid, an employer ought to obtain the approval of an employee by communicating the reduction to an employee in a letter and causing the letter to be accepted by the employee. This is because salary is a fundamental term of employment whose reduction has negative impact on an employee’s livelihood and should not be done arbitrarily or unilaterally by an employer.*

26. From the above, and without prejudice to the earlier observations, **the Commission recommends** that Clause 30 (2) should be rephrased to reflect that before any salary deductions are effected or unpaid leave taken; the same should be with prior consultation and agreement between the employer and employee.

27. **Section 2** of the Employment Act as read with **Section 40** provides for the procedure for termination on the grounds of redundancy. Where the employee is a Member of a trade union, subsection (1) requires the employer to inform the officials of the trade union within the area the employee is presently working not less than thirty days prior to the termination courtesy of redundancy. Where the employee is not a member of a trade union, the employer is mandated to inform the employee and the labour office in person through writing. In the case of *Bernard Misawo Obor v Coca Cola Juices Kenya Limited* [2015] eKLR, the Court elaborated that the notice to the Labour Officer is meant to, ‘elicit advice to the employer on the modalities to be employed in the redundancy process. This is an important process which not only ensures proper preparation for the affected employees but also acts as a control measure to curb against unlawful termination clothed as redundancy’.\(^9\) Once terminated, the employee is entitled to one month’s

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\(^8\) Art. 10 of the Holidays with Pay Convention (Revised), 1970 (No. 132). In this regard, in its 1984 General Survey, the CEACR emphasized that the purpose of holidays, which is to grant workers a minimum period of rest and leisure, is best attained when they are granted at a time which suits the worker (para. 275) as cited in ILO Standards and COVID-19 (coronavirus) 23 March, 2020 accessible at [https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_739937.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_739937.pdf).

\(^9\) Cited in *Margaret Mumbi Mwago v Intrahealth International* [2017] eKL para 19.
payment in lieu of notice, severance pay, and accrued leave days. An earlier holding by the Court of Appeal in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, stipulated that for any termination of employment under redundancy to be lawful, it must be substantially justified and be procedurally fair.

28. Similar due process is provided under the **Termination of Employment Convention, 1982 (No. 158)** with respect to collective dismissals. The Convention stipulates that an employer contemplating terminations for economic reasons shall provide workers' representatives with relevant information (including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out) and give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

29. It is clear from the foregoing that the Employment laws and even Court’s interpretation of the law anticipate a situation whereby either party would be unable to meet its obligations, and in such a time of calamities. While taking cognisance of Clause 5 of the Bill, (and for which we made reference to earlier), it is the position of the Commission that while aiming to cushion employees from the effects of the COVID 19 and ensure that some unscrupulous employers do not take advantage of a pandemic to unleash unfair labour practices on especially vulnerable workers, care should be taken to ensure an otherwise voluntary contract of employer/employee does not turn into a form of forced labour or slavery. Conclusively therefore, the blanket nature with which the Clause is tailored portends challenges in implementation and is likely to result into irrationality. The Commission therefore proposes that the Clause should not be absolute and should anticipate scenarios whereby employers may result to redundancy and or force majeure. What the law should seek to do is to ensure that the necessary safeguards and that due process are followed in line with national laws and international labour conventions even as the government devises ways of cushioning against loss of income.

**Role of the State**

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10 While Kenya is yet to ratify this Convention, it is of great persuasive value and the provisions have arguably gained customary international law significance. The Convention is available here https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158.
30. **Clause 30(3)** states that 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. The operative word here is ‘may’; it is permissive in nature and therefore the government is under no obligation to actually develop these measures. It effectively shackles employers (who include the private sector with the responsibility of cushioning the employees but without any correlative obligation on the part of the government to regulate the business employment to make it easier for employers to fulfil the demands. Such a provision could easily be successfully challenged in court on rounds of unreasonableness and unfairness.

31. **The Commission proposes** that Sub-Clause (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. 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. We wish to stress that the primary obligation is incumbent upon the State directly and indirectly and in doing so, could internally enter into social dialogues and workplace cooperation as well as international assistance to realise this obligation.

32. The Commission proposes that the State should cater for the cost of treatment and other related expenses (accommodation, food) that may be associated with treatment or containment of the disease.

**Additional provisions**

33. Additionally, a provision needs to be added so as to protect all workers from the risks of contagion at work during periods of pandemic. As such, the Committee on Economic, Social and Cultural Rights most recently advised States to adopt, ‘appropriate regulatory measures to ensure that employers minimize the risks of contagion according to best practice public health standards’. Further, that until such measures are adopted, ‘workers cannot be obliged to work and should be protected from disciplinary or other penalties for refusing to work without adequate protection’. In other words, workers should have the ‘right to remove themselves from a work situation that they have

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12 Ibid.
reasonable justification to believe presents an imminent and serious danger to their life or health’. This is in line with ILO’s (Occupational Safety and Health Convention, 1981 (No. 155)) as well as our own national law (Kenya Occupational Safety and Health Act, 2007).

34. **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 and decent work opportunities and socio-economic reintegration. The government should be tasked to ensure that affected and displaced persons are given sufficient, relevant and adequate care including adequate permanent resettlement and social protection until their complete recovery. The measures should also include counseling services, psycho-social support services. These measures are anticipated by the National Policy on Disaster Management\textsuperscript{13} as well as the ILO standards.

35. The Commission further wishes to draw attention that even though Article 43 rights are subject to progressive realisation\textsuperscript{14}, there are certain core obligations for which the State is obliged to implement, regardless of its resource capacity. This includes ensuring ‘the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity’; avoiding any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups; and adopting and implementing a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers’ and workers’ organizations.

\textsuperscript{13} Ministry of State for Special Programmes, ‘National Policy for Disaster Management In Kenya(March, 2009) p 28.

\textsuperscript{14} Article 21(2), Constitution of Kenya, 2010.
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<tr>
<th>Clause and Title</th>
<th>Proposed Amendment</th>
<th>Justification</th>
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<tr>
<td>2 interpretation</td>
<td>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 endowment is inadequate to provide sufficient income from any available source.</td>
<td>This is according to the World Health Organization <em>Environmental health in emergencies and disasters: a practical guide.</em> (WHO, 2002) available at <a href="https://www.who.int/environmental_health_emergencies/vulnerable_groups/en/">https://www.who.int/environmental_health_emergencies/vulnerable_groups/en/</a> To be in line with the definition as provided by The Food and Agriculture Foundation (FAO) available at <a href="http://www.fao.org/3/w6808e04.htm">http://www.fao.org/3/w6808e04.htm</a></td>
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<td>3</td>
<td>Insert the marginal note to the clause as ‘Scope of Application’ Expand the scope of application to infectious diseases that may not necessarily have international character</td>
<td>The Clause lacks marginal note. Scope too narrow. Expansion in the scope will be helpful in situations whereby a disease is communicable having countrywide character or region and similar measures need to be applicable.</td>
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<td>7 Declaration of a pandemic</td>
<td>Amend to read ‘...under section 6...’</td>
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<td>9 (c) functions of the National Committee</td>
<td>Include the socio-economic and mental health assessment of the pandemic</td>
<td>The effects of a pandemic go beyond ‘economic’ impacts, and the failure to take into account social and mental health dimensions may hinder appropriate responses to pandemics/ render responses ineffective.</td>
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<td>(g) functions of the National Committee</td>
<td>Include -promote linkages with constitutional commissions and independent bodies and Civil Society Organisations</td>
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<td>10 (1) Composition of the National Committee</td>
<td>Include the Cabinet Secretary responsible for matters relating Social Protection as part of the National Committee</td>
<td>The Bill includes extensive provisions on vulnerable persons and the ministry responsible for social protection</td>
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<td><strong>Include a representative from the National Council For Persons with Disabilities</strong>&lt;br&gt;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.</td>
<td>already has a database on vulnerable persons, as well as experience in identifying and disbursing funds to vulnerable groups.&lt;br&gt;This will ensure the interest of persons with disabilities are represented in line with Article 54 (2) of the Constitution.&lt;br&gt;In line with Articles 10, 27, 100, 175,232(1)(i)</td>
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<td><strong>14 Establishment of County Committees</strong> Amend to read ‘...Upon the declaration of a pandemic by the President under section 7....’</td>
<td>The Bill makes reference to section 8 which is on establishment of National Committee as opposed to the intended section 7 on declaration of a pandemic.</td>
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<td><strong>16 Membership of County Committee</strong> Include a representative from the National Council For Persons with Disabilities&lt;br&gt;Insert a clause to ensure that gender balance is observed in these appointments- it should be a consideration for appointments.</td>
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<td><strong>18 Report to the County Assembly</strong> Clause 18 requires County Committees to submit status reports to the County Assembly, while clause 13 requires the National Committee to submit reports to Parliament. That is the position of the Constitution and the law anyway in terms of accounting and therefore bears no additional value.</td>
<td>The Reporting structure is already established under law and therefore the provision is superfluous.</td>
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<td>The Clause should cross reference the applicable provisions of the Constitution and the law including PFMA and County Government’s Act, 2012. The Bill could bring some value add by providing for a clear mechanism through which the reports produced at county level feed into those that are produced at national level, so that the recommendations made by County Assemblies are aligned to those made by Parliament at National level.</td>
<td>For better coordination and efficiency.</td>
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<td>20 (g) objects of the Fund</td>
<td>Define vulnerable persons</td>
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<td>24 Winding up of the Fund</td>
<td>Clause 24 should make reference to the Public Finance and Management Act as well as article 201 of the Constitution on principles of public finance.</td>
<td>To ensure openness and accountability in the winding up of the Fund.</td>
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<td>30. Labour Relations</td>
<td>Insert marginal note to Clause as ‘Labour relations’. The provision needs to be qualified and amended: Amend the blanket provision to anticipate situations whereby the employer may terminate contract (as discussed above); make provisions on need to follow due process. Prior consultation between employer and employee should be anticipated before unpaid leave or salary cut. Amend Clause 30(3) by deleting the word ‘may’ and substituting therefore the term ‘shall’.</td>
<td>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.</td>
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<td>34 Rates and licenses</td>
<td>Clause 34 gives county governments the leeway to suspend fees payable on renewal of trade licenses. The provision should require that rules/regulations be developed to guide the suspension of rates and licenses.</td>
<td>To enhance transparency, accountability and predictability.</td>
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SIGNED BY:

Dr. Bernard Mogesa (PHD, CPM)  
Commission Secretary