



**UNIVERSITY OF NAIROBI**

# **THE COVID-19 RESPONSE AND MANAGEMENT**

**DRAFT BILL**

**April 5th 2020**



## UNIVERSITY OF NAIROBI

# THE COVID-19 RESPONSE AND MANAGEMENT BILL WORKING GROUP

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### PREAMBLE

The academic staff at the School of Law; School of Medicine; and the Centre for Advanced Studies in Environmental Law and Policy; University of Nairobi, in collaboration with experts in public health, corporate governance and other sectors, have taken keen interest in the challenges facing Kenya due to the coronavirus pandemic. In this context, a team of volunteers convened a Technical Working Group to identify key areas of law where specific interventions and measures are required. The outcome of the collaborative effort of the Working Group is the Draft COVID-19 Response and Management Bill.

This Draft Bill will be shared with the Government of Kenya as our contribution to the national response to the COVID-19 pandemic.

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### THE COVID-19 RESPONSE AND MANAGEMENT BILL, 2020

A Bill for AN ACT of Parliament to provide for the framework, and, to define specific actions through which Kenya responds and manages the COVID-19 pandemic including through enhanced medical and public health actions; social protections; economic stimulus; public order and emergency measures; financing of various actions; to provide for required mechanisms and measures for the country to maintain competent function during and after the COVID-19 pandemic; and for connected purposes.

**ENACTED** by the Parliament of Kenya, as follows-

PART I. PRELIMINARY PROVISIONS	
Marginal Note	Description
Short title	1. This Act may be cited as The COVID-19 Response and Management Act, 2020.
Interpretation	2. In this Act, unless the context otherwise requires-  “County Water Service Providers” means county water service providers within the meaning of the Water Act No.43 of 2016;  “Covid-19” means an infectious disease caused by coronavirus;  "Coronavirus" means Severe Acute Respiratory Syndrome (SARS-COV-2);



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	<p>“Pandemic” means an epidemic of disease that has spread across most or all the territory of the Republic of Kenya;</p> <p>“Epidemic” means the rapid and widespread occurrence of disease beyond normal trends whether in a community or a wider geographical region of Kenya;</p> <p>“Essential Supplies” includes human medicine, prescription medicines, medical equipment, medical consumables, medical protective gear, quarantine facilities, test kits, food, logistics, water, electricity, sanitary towels, baby food, and medical disposal bins;</p> <p>“Emergency Items” includes health product, health technology, medical supplies, pharmaceutical product, equipment, among others;</p> <p>“Frontline Workers” includes immigration workers, custom officers, security officers, community health assistants and volunteers;</p> <p>“Fund” means the COVID-19 Emergency Response Fund established under Section 24(4) of the Public Finance Management Act;</p> <p>“Healthcare Professionals” means doctors, nurses, pharmacists, technologists, midwives, technicians, clinical officers, mortuary attendants, social workers, psychologists, morticians, cremators, undertakers;</p>
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	<p>“Handling” means handling, storing, transportation and disposal of bodies from persons deceased from COVID-19;</p> <p>“Last Rites” means any ceremony or ritual performed for a person in danger of dying because of COVID-19;</p> <p>“Medical Services” means care and treatment provided by a licensed health care provider directed at preventing, diagnosing, treating, managing, alleviating or remedying a medical problem provided through health care systems;</p> <p>“Medical Surveillance” means the keeping of a person under medical supervision; persons under such surveillance may be required by the medical officer of health or any duly authorized officer to remain within a specified area or to attend for medical examination at specified places and times;</p> <p>“Personal Protective Equipment” means protective clothing, helmets, goggles, or other garments or equipment designed to protect healthcare professionals from injury or infection;</p> <p>“Medical Waste” means any kind of waste that contains infectious material including waste generated by healthcare facilities including infectious waste, pathological waste, chemical waste, pharmaceutical waste, and general waste;</p>
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	<p>“Public Health” means a science and art of preventing disease, prolonging life, promoting physical and mental health and efficiency through organised community efforts for the sanitation of the environment, control of community infections, the education of the individual in principles of personal hygiene, the organisation of medical and nursing services for the prevention and early diagnosis of disease, and development of social machinery which will ensure, to every individual in the community, a standard of living adequate for the maintenance of health;</p> <p>“Precautionary Principle” means that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;</p> <p>“Utility Model” means any form, configuration or disposition of element of some appliance, utensil, tool, electrical and electronic circuitry, instrument, handicraft mechanism or other object or any part of the same allowing a better or different functioning, use, or manufacture of the subject matter or that gives some utility, advantage, environmental benefit, saving or technical effect not available in Kenya before and includes microorganisms or other self-replicable material, products of genetic resources, herbal as well as nutritional formulations which give new effects;</p> <p>“Technovation” means a technological solution to a specific problem proposed by any individual relating to COVID-19;</p>
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	<p>“Vulnerable Persons” includes persons with special needs, older persons, pregnant women, orphans, vulnerable children and persons without a clear means of livelihood, including persons whose source of livelihood has been disrupted substantively in any way by the COVID-19 crisis.</p>
<p>Objects and Purposes of the Act</p>	<p>3. (1) This Act shall govern the responses to, and management of The Covid-19 pandemic within Kenya to safeguard and protect the rights of citizens and lawful residents to public health, medical services, social protections, economic functions; ensure that the country maintains competent function; and for connected purposes.</p> <p>(2) Without prejudice to (1) above, this Act shall be applied at all levels of government and by all persons to -</p> <ul style="list-style-type: none"> <li>(a) ensure critical preparedness, readiness and response actions with respect to medical services and public health;</li> <li>(b) minimize social and economic impact and ensure that vulnerable citizens are protected;</li> <li>(c) maintain public order and ensure that actions are aligned to the Bill of Rights and the Constitution;</li> <li>(d) ensure availability of all the necessary skills and resources to deal with the COVID-19;</li> </ul>



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	<ul style="list-style-type: none"> <li>(e) create exceptions to patent rights during the pandemic to permit acquisition of critical supplies and equipment;</li> <li>(f) apply the precautionary principle to ensure that medical waste does not cause irreversible harm to the environment;</li> <li>(g) ensure protection of data and personal information obtained by any person during the pandemic;</li> <li>(h) provide mechanisms to support businesses during the pandemic;</li> <li>(i) mainstream gender-perspectives across the various tenets;</li> <li>(j) ensure stabilization of the supply chain for food, emergency items and essential supplies;</li> <li>(k) define institutional mechanisms to implement various actions for COVID-19 Response and management;</li> <li>(l) promote the use of traditional knowledge in dealing with the pandemic;</li> <li>(m) provide oversight mechanisms for actions taken to deal with the pandemic under this Act.</li> </ul>
Guiding Values and Principles	<p>4. This Act shall be guided by the following national principles and values premised on article 10, and, article 232 of the Constitution of Kenya, including-</p> <ul style="list-style-type: none"> <li>(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;</li> </ul>





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	<p>(b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;</p> <p>(c) Good governance, integrity, transparency and accountability;</p> <p>(d) Sustainable development;</p> <p>(e) High standards of professional ethics;</p> <p>(f) Efficient, effective and economic use of resources;</p> <p>(g) Responsive, prompt, effective, impartial and equitable provision of services;</p> <p>(h) accountability for administrative acts; and</p> <p>(i) transparency and provision to the public of timely, accurate information.</p>
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### PART II. MEDICAL SERVICES AND PUBLIC HEALTH

Emergency registration and deployment of health care professionals	<p>5.(1) During the COVID-19 pandemic, the Cabinet Secretary responsible for Health shall put in place and continuously update an integrated register of all qualified and duly licensed healthcare professionals.</p> <p>(2) In undertaking (1) above, the Cabinet Secretary responsible for Health shall obtain the details of the healthcare professionals from the relevant registration and regulatory bodies.</p> <p>(3) The Cabinet Secretary responsible for Health shall, on the basis of (1) above, prepare and publicly disseminate a deployment plan for facilities across the country.</p>
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	(4) In undertaking (3) above, the Cabinet Secretary responsible for Health shall coordinate with counties through the Council of Governors.
Temporary hiring of additional healthcare professionals	6. The Cabinet Secretary responsible for Health shall, in consultation with the Public Service Commission, recruit and employ on a temporary basis, such number of additional healthcare professionals as shall be necessary for deployment to provide adequate nationwide coverage during the COVID-19 pandemic period.
Special measures for protecting healthcare professionals	<p>7. The Cabinet Secretary responsible for Health shall, during the Covid-19 pandemic -</p> <ul style="list-style-type: none"> <li>(a) Provide certified personal protective equipment for all healthcare professionals;</li> <li>(b) Provide guidelines, standards and periodic certification for all healthcare professionals on safety procedures and prevention of hospital-acquired infections based on risk levels;</li> <li>(c) Develop and implement a comprehensive infectious disease exposure control plan to protect health care workers from exposure to the SARS-CoV-2 virus that causes COVID-19;</li> <li>(d) Provide regular testing of healthcare professionals for possible exposure to coronavirus; and</li> <li>(e) Provide life insurance for all healthcare professionals valid for twelve months after the end of the pandemic.</li> </ul>



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Social and Psychological Support	<p>8. During the COVID-19 pandemic, the Cabinet Secretary responsible for Health shall, in accordance with section 5 above -</p> <ul style="list-style-type: none"> <li>(a) Deploy a sufficient number of counselors, psychologists, and psychiatrists as needed to provide mental health support to individuals and families throughout the country.</li> <li>(b) Deploy a sufficient number of social workers to provide support to vulnerable persons and children whose support systems have been disrupted.</li> </ul>
<b>PART III. SOCIAL AND ECONOMIC PROTECTIONS</b>	
Food security measures and Essential Supplies during pandemic	<p>9.(1) In order to protect vulnerable citizens from hunger and lack of essential supplies, the Cabinet Secretary responsible for Interior and Coordination of National Government, in coordination with county governments, shall -</p> <ul style="list-style-type: none"> <li>(a) Undertake, in every location across the country, a rapid assessment to map households and individuals facing food insecurity and acute lack of essential supplies and determine in each case whether it is appropriate to provide food and essential supplies, or periodic cash grants, or a proportionate combination of both;</li> <li>(b) Establish a Location Food Security and Essential Supplies Committee in every location across the country;</li> <li>(c) ensure physical access to food that meets the minimum dietary needs of persons or communities during the COVID-19 pandemic;</li> </ul>



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	<p>(d) Put in place adequate infrastructure to facilitate access and circulation of food particularly in areas affected by food insecurity;</p> <p>(e) Ensure that, in order to observe minimum standards of social distancing, food and essential supplies distribution is carried out from door to door as far as practicable; and</p> <p>(f) Ensure that distribution mechanisms uphold standards of human dignity for recipients.</p> <p>(2) The County Commissioner shall determine the composition of each Location Food Security and Essential Supplies Committee, which will be chaired by the Chief, while ensuring representativeness and gender balance.</p> <p>(3) The Location Food Security and Essential Supplies Committee shall perform the following functions –</p> <p>a) Distribute food and essential supplies to vulnerable households and individuals based on the results of the mapping exercise in section (9)(1)(a) above;</p> <p>b) Receive and distribute such additional essential supplies to vulnerable school going children that they ordinarily receive during the school term;</p> <p>c) Receive money and distribute direct cash transfers to vulnerable persons to meet additional daily needs not directly met by the food and essential supplies distribution;</p>
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	<p>d) Keep an accurate register of all vulnerable households and individuals who receive food, and submit monthly returns to the County Commissioner and copy to the respective County Governor;</p> <p>e) Ensure there is equity, good governance, transparency and accountability in undertaking (a), (b), and (c) above;</p> <p>(4) It shall be an offence for any person, to willfully divert, refuse to distribute to individuals or households mapped as vulnerable under this section, or apply the food, essential supplies and money to unlawful purposes.</p> <p>(5) A person convicted of an offence in (4) above shall be liable to a fine not exceeding one million shillings or a term of imprisonment not exceeding two years or to both fine and imprisonment.</p> <p>(6) The Cabinet Secretary for Interior and Coordination of National Government shall receive implementation and expenditure reports from County Commissioners.</p>
Water and Sanitation services	<p>10.(1) In order to ensure provision of adequate water, and reasonable sanitation services, the Cabinet Secretary responsible for Water and Sanitation, in coordination with county governments, shall -</p> <p>(a) Put in place emergency mechanisms for provision of clean water in adequate quantities, for citizens without piped water connections</p>



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	<p>in urban and rural areas including through mobile distribution, community water points, and emergency drilling of boreholes;</p> <p>(b) Ensure that water service providers maintain a minimum level of water supply as directed by the Water Services Regulatory Board;</p> <p>(c) Install and maintain sufficient ablution facilities that provide reasonable standards of sanitation in urban informal settlements; and</p> <p>(d) Install and maintain adequate and clean handwashing stations with continuous water supply and soap in all public spaces including public schools and hospitals.</p>
Transportation	<p>11. (1) In order to regulate transportation services during the pandemic, the Cabinet Secretary responsible for Transportation, in coordination with County Governments, shall -</p> <p>a) Put in place emergency mechanisms to ensure social distancing and use of personal protective equipment;</p> <p>b) Ensure that passengers and crew observe social distancing as well as all other public health guidelines; and</p> <p>c) Install and maintain adequate and clean hand washing stations in public service vehicle termini.</p>
Continuation of Learning	<p>12 (1) In order to uphold and protect the universal right to basic education for all children in Kenya, the Cabinet Secretary responsible for Basic Education shall -</p>



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	<p>(a) Through the Kenya Institute of Curriculum Development develop innovative curriculum support materials and content and disseminate them through television, radio, and other forms of mass media and technological platforms;</p> <p>(b) Ensure that minimum basic education and daily learning standards are upheld for all children in performing the function in (a) above;</p> <p>(c) Ensure that the content to be developed and disseminated under this section shall be in a such a form as to enable parents to provide support to the children learning from home without requirement for teacher training skills;</p> <p>(d) Ensure that in developing and disseminating learning material, attention is paid to the needs of children with disabilities;</p> <p>(e) Ensure that the learning and curriculum support provided to children during the pandemic maintains equality of basic education.</p> <p>(2) The Cabinet Secretary shall, based on a technical assessment, determine whether to administer final year primary and secondary school examinations or to start the 2020 academic year afresh.</p> <p>(3) The Cabinet Secretary shall require Vice Chancellors of universities licensed to operate in Kenya to submit proposals on how they will ensure continuity of learning, assessments and examinations during and in the immediate aftermath of the pandemic.</p>
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	<p>(4) The Cabinet Secretary shall require Principal and Heads of colleges technical, industrial and vocational training institutions licensed to operate in Kenya to submit proposals on how they will ensure continuity of learning, assessments and examinations during and in the immediate aftermath of the pandemic.</p>
Job Security	<p>13 Notwithstanding the provisions of the Employment Act, no employer shall terminate, lay-off or declare any employee redundant during the pandemic, and for a six-month period thereafter.</p>
Water and Electricity Utility Bills	<p>14.(1) During the pandemic, county water service providers and the Kenya Power and Lighting Company Limited shall not disconnect water and electricity services for non-payment of fees and charges or any late payment of fees, levies and or charges, and, further there shall be a reconnection of those disconnected prior to the Covid-19 crisis until the effluxion of the Covid-19 pandemic period.</p> <p>(2) To implement (1) above, each county government shall submit to the Cabinet Secretary responsible for Water the reasonable quantified costs required to finance operating and maintenance costs where an operating deficit has resulted from (1) above.</p> <p>(3) The Cabinet Secretary for Water shall submit the quantifiable costs in (2) above to the Fund, as necessary during the pandemic, after verification by the Water Services Regulatory Board to finance the deficit in the operating and maintenance costs, caused by (1) above.</p>





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	<p>(4) The County Water Service Providers in (1) above shall submit monthly expenditure reports to the respective county governments, who shall submit to the Cabinet Secretary responsible for Water.</p> <p>(5) The Kenya Power and Lighting Company Limited may, as necessary, submit the reasonable quantified costs to the Cabinet Secretary responsible for energy to meet the operating and maintenance costs only where a deficit has resulted from (1) above.</p> <p>(6) The Cabinet Secretary in (5) above shall, after verification by the Energy and Petroleum Regulatory Authority, submit the quantifiable costs to the Fund to finance the deficit in the operating and maintenance of the utility, caused by (1) above.</p> <p>(7) The Kenya Power and Lighting Company shall submit monthly expenditure reports to the Cabinet Secretary responsible for Energy.</p>
<p>COVID-19 Emergency Response Fund</p> <p>No.18 of 2012</p>	<p>15 The Cabinet Secretary for the National Treasury shall, under section 24(4) of the Public Finance and Management Act, establish a Fund to finance COVID-19 emergency responses.</p>

### PART V. SUPPLY CHAIN AND PROCUREMENT



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Strategic Supplies	<p>16.(1) During the COVID-19 pandemic, the Government shall ensure continued availability of strategic supplies through procurement, safe storage and release to the market in a manner that reduces price volatility by: -</p> <ul style="list-style-type: none"> <li>(a) Enhancing strategic food reserves;</li> <li>(b) Ensuring that there is a build- up of fuel reserves;</li> <li>(c) Ensuring that there is sufficient provision of water bowzers, trucks and water tanks;</li> <li>(d) Ensuring that there is sufficient supply of medical equipment and any other essential supplies.</li> </ul>
Export Processing Zones  Cap. 517	<p>17. The Cabinet Secretary responsible for Industrialization shall, under section 35(1) of the Export Processing Zones Act, waive regulatory restrictions and permit mass production of emergency items and essential supplies for sale in the Kenyan market during the pandemic.</p>
<b>PART VI. INTELLECTUAL PROPERTY RIGHTS AND TECHNOLOGY</b>  <b>APPROVALS</b>	
Traditional Knowledge	<p>18. During the pandemic, the Cabinet Secretary responsible for Trade shall promote the use of traditional knowledge in the production of Emergency Items and Essential Supplies.</p>
Market Approvals  No. 3 of 2001	<p>19. During the pandemic, the Cabinet Secretary responsible for Intellectual Property shall, under section 58 of the Industrial Property Act, waive market approvals, validation and licenses and permit the use and sale of Emergency Items and Essential Supplies.</p>



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Compulsory Licensing  No. 3 of 2001	<p>20. During the pandemic, notwithstanding the provisions of section 80 of the Industrial Property Act requiring application by third parties prior to compulsory licensing, the Cabinet Secretary responsible for Intellectual Property shall determine the patented inventions required under section 80(1)(a) and authorize exploitation of the protected innovations without reference to the patent owner.</p> <p>21. During the pandemic, the Cabinet Secretary responsible for intellectual property shall promote the use of Utility Models, Technovations and Industrial Designs to produce Emergency Items and Essential Supplies without undue regard to technicalities.</p>
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### PART VII. ENVIRONMENT AND WASTE MANAGEMENT

Environment and Waste Management	<p>22. (1) In order to protect the human right to a clean and healthy environment during the pandemic, the Cabinet Secretary responsible for environment, through the National Environment Management Authority, shall -</p> <ul style="list-style-type: none"> <li>(a) Undertake a rapid assessment to map out all facilities, where treatment, quarantine, isolation or other handling of people and goods relating to COVID-19, is being undertaken;</li> <li>(b) Provide mandatory standards for disposal of solid waste, medical waste and effluent by the facilities in (a) above;</li> <li>(c) Undertake a control environmental audit of each facility in (a) and issue an environmental management plan to be complied with;</li> <li>(d) Deploy environmental inspectors to monitor compliance with the environmental management plan</li> </ul>
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	<p>(e) Provide technical advice to each facility on the requirements for sorting out solid waste, and pre-treatment of effluent before discharge to public sewers.</p> <p>(2) Every facility referred to in (1)(a) above shall, prior to discharge to public sewers, environment or water sources, undertake pre-treatment of effluent to the standards prescribed by the Cabinet Secretary for environment.</p> <p>(3) The Cabinet Secretary for Environment, in consultation with the Cabinet Secretary responsible for Health shall provide standards for the handling, storage, transportation and disposal of medical waste.</p>
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### PART VIII. DATA PROTECTION

Data Protection	<p>23. Any personal information and data collected during the Pandemic shall be treated with confidentiality, and shall only be used for the purposes intended under this Act.</p>
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### PART IX: HANDLING HUMAN REMAINS AND BURIAL RITES

Human Remains and Burial Rites	<p>24 (1) The Cabinet Secretary for Health shall issue standards for safe handling, transportation and disposal of remains of persons who die from COVID-19, to ensure safety for concerned healthcare professionals and the public.</p> <p>(2) The Cabinet Secretary responsible for industrialization shall issue guidelines relating to alternative materials for construction of coffins and caskets, other than wood.</p>
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	<p>(3) The Cabinet Secretary responsible for Interior and Coordination of National Government shall issue guidelines for the conduct of burials and other last rites, which may include reasonable and temporary limitation of customary and religious rites and practices relating to burial and cremation.</p> <p>(4) The provisions in this section shall, as far as practicable, preserve the rights and dignity of the family of the deceased.</p>
<b>PART X: INSOLVENCY AND RISK MANAGEMENT</b>	
Support for Companies	28. Notwithstanding the provisions of the Insolvency Act, the relevant Cabinet Secretary shall put measures in place to prevent sound businesses from becoming insolvent during the pandemic.
<b>PART XI: FINAL PROVISIONS</b>	
Parliamentary oversight	<p>29. For purposes of this Act, Parliament shall, through its respective Committees, have oversight over implementation of the provisions of this Act, and for this purpose:</p> <p>(1) Each Cabinet Secretary with a responsibility under this Act shall submit monthly implementation reports to both Houses of Parliament; and</p> <p>(2) Each county government shall submit monthly implementation reports to the County Assembly, and the Senate of Kenya.</p>
Maintenance of Public Order	30. Notwithstanding the imposition of any measures restricting freedom of movement during the Pandemic under any law in Kenya,



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	<p>the Cabinet Secretary for Interior and Coordination of National Government shall -</p> <p>(1) provide a mechanism for essential service providers to generate movement permits using mobile phone applications, unstructured supplementary service data (USSD) or other electronic means that can be presented to law enforcement officers;</p> <p>(2) provide a mechanism through which persons with credible emergencies or who need to acquire essential supplies can generate movement permits using mobile phone applications, unstructured supplementary service data (USSD) or other electronic means that can be presented to law enforcement; and</p> <p>(3) in undertaking (1) and (2) above, the Cabinet Secretary will have due regard to technological options to ensure easy access by all persons.</p>
Expiry of this legislation	31. The provisions of this statute will cease to be operational upon a declaration by the President of the Republic.
Saving Offences under the Statute	32. Notwithstanding the expiry of the Statute, offences provided under this Act will be prosecuted even after the end of the pandemic.