

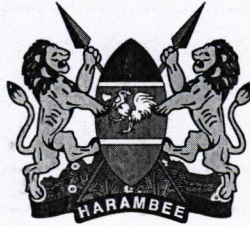
THE SENATE
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Rt. Hon. Speaker
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J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 22/02/22

REPUBLIC OF KENYA



TWELFTH PARLIAMENT (SIXTH SESSION)

THE SENATE

Approved
22/02/2022

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

REPORT ON THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILLS NO. 27 OF 2021)

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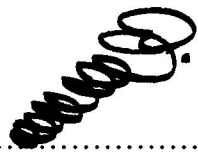
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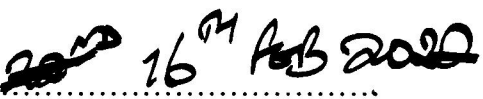
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FOREWORD BY THE CHAIRPERSON

1. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021) seeks to provide a framework to give effect to Article 43 of the Constitution which sets out the economic and social rights that accrue to every person. By giving effect to these rights, the Bill would ensure the preservation of the dignity of all persons and communities in line with Article 28 of the Constitution.
2. The Standing Committee on Justice, Legal Affairs and Human Rights considered the Bill at length. A call for submission of memoranda was placed in two newspapers with national circulation on Friday, 9th July, 2021. The advertisement was also posted on the Parliament website and social media platforms. In response to the advertisement, the Committee received written submissions from four stakeholders which were considered by the Committee in making its recommendations on the Bill.
3. Based on its deliberations, the Committee has made various observations and recommendations on the Bill set out in Chapter Three of this Report. Additionally, the Committee will move committee stage amendments for consideration by this House with a view of strengthening the provisions of the Bill.
4. 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. The Committee further wishes to thank the stakeholders who submitted written memoranda on the Bill.
5. It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021).

Signed.....

Date.....

**SEN. ERICK OKONG'O MOGENI, SC, MP,
CHAIRPERSON,
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS**

PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to standing order 218(3) and the Second Schedule to the Senate Standing Orders and is mandated to –

'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'



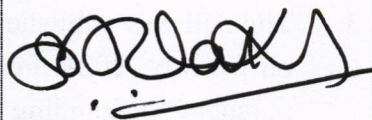




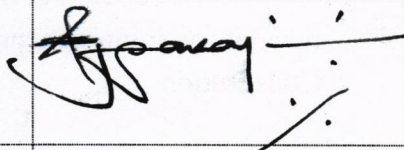

The Committee is comprised of –

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, SC, FCI Arb, MP
- 4) Sen. James Orengo, EGH, SC, MP
- 5) Sen. Fatuma Dullo, CBS, MP
- 6) Sen. Mutula Kilonzo Junior, CBS, MP
- 7) Sen. (Dr) Irungu Kang'ata, CBS, MP
- 8) Sen. Johnson Sakaja, CBS, MP
- 9) Sen. Isaac Ngugi Githua, MP

The Minutes of the Sittings of the Committee in considering the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021) are attached to this Report collectively as *Annex 1*.

ADOPTION OF THE REPORT ON THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF 2021)

We, the undersigned Members of the Senate Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report –

Sen. Erick Okong'o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, CBS, MP	-Member	
Sen. (Dr) Irungu Kang'ata, CBS, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	
Sen. Isaac Ngugi Githua, MP	-Member	

CHAPTER ONE: INTRODUCTION

A. Background on The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021)

1. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021) is sponsored by Sen. Abshiro Halake, MP. A copy of the Bill is attached to this Report as *Annex 2*.
2. The Bill seeks to provide a framework to give effect to Article 43 of the Constitution which sets out the economic and social rights that accrue to every person. By giving effect to these rights, the Bill would ensure the preservation of the dignity of all persons and communities in line with Article 28 of the Constitution.
3. The Bill was published on 23rd March, 2021 and was read a First Time in the Senate on 6th July, 2021. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 140(1), to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
4. Two previous versions of the Bill were considered by the Senate and passed on 15th June, 2017 and 12th June, 2019, respectively. On both occasions, the Bills were referred to the National Assembly for concurrence, pursuant to Article 110 of the Constitution.
5. The republication of the Bill in the present case followed the Judgment of the High Court in Petition No. 284 of 2019 - *The Senate of the Republic of Kenya & 4 others vs. Speaker of the National Assembly & 7 others*, in which it was held that the concurrence process under Article 110(3) of the Constitution is mandatory and is a condition precedent before any House of Parliament can consider a Bill. The Court ordered the immediate cessation of consideration of all Bills that were pending before either House of Parliament, for which joint concurrence by the Speakers of both Houses could not be demonstrated, to allow such Bills to be subjected to the mandatory joint concurrence process contemplated under Article 110(3) of the Constitution.
6. As part of implementing the Court decision, it was determined that concurrence as required under the Constitution could not be demonstrated in respect of this Bill. The Bill was therefore withdrawn and republished in compliance with the Court orders in Petition No. 284 of 2019.

B. Justification for the Bill

7. Article 21(1) of the Constitution imposes an obligation on the State and every State Organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms set out in the Bill of Rights. Further, under Article 21(2) of the Constitution, the State is required to take legislative, policy, and other measures, including the setting of standards aimed at ensuring that the rights guaranteed under Article 43 of the Constitution are progressively realized.
8. Human rights are inalienable rights that are inherent in every person by virtue of being a human being. The economic and social rights as contained in the Constitution reflect the rights as set out in the International Covenant for Economic, Social and Cultural Rights to which Kenya is a signatory.
9. The Bill therefore seeks to provide a framework to give effect to Article 43 of the Constitution which sets out the economic and social rights that accrue to every person. By giving effect to these rights, the Bill would ensure the preservation of the dignity of all persons and communities in line with Article 28 of the Constitution.

C. Overview of the Bill

10. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021) seeks to provide a framework to give effect to Article 43 of the Constitution which sets out the economic and social rights that accrue to every person. By giving effect to these rights, the Bill would ensure the preservation of the dignity of all persons and communities in line with Article 28 of the Constitution.

11. To achieve the above objective, the Bill proposes the following—

(i) Obligations of the National and County Governments

12. Part II of the Bill imposes obligations on the National and County Governments, to the extent of their constitutional mandate, to among other things, -
 - (a) ensure the availability, accessibility, adaptability and acceptability of goods and services that would facilitate the realisation of economic and social rights;
 - (b) put in place adequate infrastructure that would be necessary to meet their obligations in realising economic and social rights;

- (c) adopt comprehensive strategic plans that ensure the protection and promotion of economic and social rights;
 - (d) prioritise the allocation of resources to ensure that economic and social rights are realised while taking into account the special needs of marginalised persons within the respective counties; and
 - (e) avoid actions that would limit economic and social rights that are conferred under the Constitution except as provided under Article 24 of the Constitution.
13. The Kenya National Commission on Human Rights, in consultation with the Cabinet Secretary responsible for devolution and the Council of County Governors, is required to set out the minimum standards that the National government and county governments are required to meet in carrying out their obligations.

(ii) Role of the Kenya National Commission on Human Rights

14. Part III of the Bill confers on the Kenya National Commission on Human Rights the responsibility to monitor and report on the implementation of and the enforcement of the provisions of the Bill.
15. The Bill further requires the Commission to prepare an economic and social rights index. The index is to be used to gauge the realisation of economic and social rights in every County. The Commission is further required to publish and publicise the economic and social rights index in each County.

(iii) County Strategic Plans

16. Part IV of the Bill provides for county strategic plans for the realisation of economic and social rights. The principal objective of a county strategic plan is to ensure that a county government is able to ensure the availability, accessibility, acceptability, adaptability and quality of goods and services delivered within the county which are necessary for the realisation of economic and social rights as set out under the Constitution.
17. The Bill imposes an obligation on every county government to prepare, with the approval of the respective county assembly, a county strategic plan for the realisation of economic and social rights of the residents within the respective county. In preparing such a strategic plan, a county government is required to adopt plans that respond to the unique needs and issues affecting the County. The strategic

plan is to be incorporated in the county integrated development plan prepared pursuant to section 108 of the County Governments Act.

(iv) Reporting progress

18. Clause 13 of the Bill provides for reporting on implementation of economic and social rights. The Bill requires the National Government and each county government to submit an annual report on the progress made in the realisation of economic and social rights to the Kenya National Human Rights Commission, the Senate, the National Assembly, the relevant County Assembly, the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council.
19. The Bill requires that the Senate to consider the reports and make appropriate recommendations to the National Government and the respective county governments. Further, each county executive committee member responsible for finance is required, in the budget statement to the County Assembly, to include measures aimed at ensuring the fulfilment of Article 43 of the Constitution and activities for that year and any progress achieved at availing these to the residents of the county.

D. Consequences of the Bill

20. Socio-economic rights are an indicator as well as a constitutive element of development. The realization of these rights ensures improved quality of life for citizens and ensure that people live a life of dignity. Therefore, by establishing a framework for the realisation of economic and social rights, this Bill seeks to fortify development and efficient delivery of essential public services.

CHAPTER TWO: PUBLIC PARTICIPATION

A. Invitation and consideration of stakeholder submissions on the Bill

21. The Standing Committee on Justice, Legal Affairs and Human Rights, pursuant to Article 118 of the Constitution and Standing Order 140, invited submissions from members of the public on the Bill via an advertisement placed in the Daily Nation and Standard newspapers on Friday, 9th July, 2021 (*Annex 3*). The advertisement was also posted on the Parliament website and social media platforms.
22. In response to the advertisement, the Committee received written submissions from four stakeholders, namely –
 - i) Federation of Women Lawyers (FIDA-Kenya);
 - ii) Transparency International – Kenya (TI-Kenya);
 - iii) Esther Mururi (PhD); and
 - iv) Pauline Vata, Advocate.

Copies of the said submissions are attached to this Report collectively marked as *Annex 4*.

23. The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this Report as *Annex 5*.

CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

A. Committee Observations

24. Clause 3(e) of the Bill provides that one of the objects of the Bill is to provide for a framework for the application of the Equalisation Fund for the promotion of economic and social rights amongst the marginalised communities in accordance with Article 43 of the Constitution. Additionally, clause 18(2)(b) of the Bill obligates the Cabinet Secretary for finance to make regulations to provide a mechanism for the management of direct and indirect conditional grants appropriated from the Equalisation Fund and made to a county government under this Act. However, the Bill has not made provisions for the framework referred in clause 3.
25. Further, Article 204 of the Constitution establishes the Equalisation Fund to be used to provide basic services, which extend beyond economic and social rights, to marginalised areas. Article 204(2) states as follows –
- (2) The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.*
26. Section 18 of the Public Finance Management Act on its part provides that the National Treasury shall administer the Equalisation Fund in accordance with Article 204 of the Constitution.
27. With a view of putting in place a comprehensive legal framework for the administration of the Equalisation Fund, the 12th Parliament commenced enacting the Equalisation Fund Bill, 2019. The Equalisation Fund Bill, 2019 was passed by the National Assembly and forwarded to the Senate for concurrence. However, consideration of the Bill was affected by Petition No. 284 of 2019 and is currently in abeyance.
28. In addition to processing the Equalisation Fund Bill, 2019, there is in place the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 made by the Cabinet Secretary for the National Treasury pursuant to section 205 of

the Public Finance Management Act. The Regulations provide guidance on the administration and management of the Equalisation Fund.

29. The Committee observed that having a multiplicity of laws providing for the administration of the Equalisation Fund may result in conflicts which may lead to an undesirable consequence of hampering the effective application of the Equalization Fund.
30. The Bill has used the words ‘marginalised community’, ‘marginalised group’ and ‘marginalised person’. Whereas the Constitution has defined the words ‘marginalised communities’ and ‘marginalised groups’, the word ‘marginalised person’ has not been defined. Article 260 of the Constitution has defined the terms “marginalised community” and marginalised group” as follows –

“marginalised community” means —

- (a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;*
- (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;*
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or*
- (d) pastoral persons and communities, whether they are—*
 - (i) nomadic; or*
 - (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;*

“marginalised group” means a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4);

31. Additionally, the Bill has used the word ‘person in need’ which has been defined to mean a person who is unable to access essential goods and services, and the word vulnerable person which has been defined in line with how it has been used in Article 21(3) of the Constitution. Article 21(3) of the Constitution states as follows –

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.

32. The Committee observed that the use of the words ‘marginalised community’, ‘marginalised group’, ‘marginalised person’, ‘person in need’ and ‘vulnerable person’ is intended to ensure the realisation of economic and social rights as regards the disadvantaged persons in society. Hence the need to ensure consistency and clarity with regard to the use of words referring to disadvantaged persons in society.
33. The Title of the Bill is the Preservation of Human Dignity and Enforcement of Economic and Social Rights, Bill. Additionally, the Long Title of provides that the Bill seeks to, among others, *‘establish a framework for the preservation of human dignity; for the promotion, monitoring and enforcement of economic and social rights; to establish mechanisms to monitor and promote adherence by county governments to Article 43 of the Constitution.*
34. The Committee observed that human dignity is one of the fundamental human rights and freedoms provided for under Article 28 of the Constitution as well as other international instruments, such as the Universal Declaration of Human Rights and the African Charter on Human and People’s Rights. Additionally, other fundamental rights and human rights such as freedom and security of the person, freedom from slavery, servitude and forced labour, the right to fair labour practices, the rights of arrested, detained or imprisoned persons as wells as economic and social rights encompass aspects of human dignity.
35. Further the Bill has not set out provisions providing for the enforcement of economic and social rights. The enforcement of the Bill of Rights, which include economic and social rights, is provided for under Article 22 of the Constitution. Further, pursuant to Articles 23 and 165 of the Constitution, the High Court has jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
36. On the other hand, Article 22(3) of the Constitution, empowers the Chief Justice to make rules providing for the court proceedings for relating to enforcement of the Bill of Rights. Pursuant Article 22(3) of the Constitution, on 28th June, 2013 vide Legal Notice No. 117 the Chief Justice gazetted the Constitution of Kenya

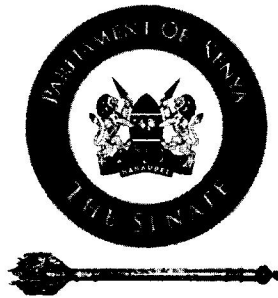
(Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 for the enforcement of the Bill of Rights.

B. Committee Recommendations

37. Arising from the above observations, the Committee makes the following recommendations –
- a) That clause 3(e) of the Bill provides for a framework for the application of the Equalisation Fund for the promotion of economic and social rights amongst the marginalised communities, and clause 18(2)(b) of the Bill which obligates the Cabinet Secretary for Finance to make regulations to provide a mechanism for the management of direct and indirect conditional grants appropriated from the Equalisation Fund and made to a county government be deleted;
 - b) That the meaning of the word ‘vulnerable person be revised to cover all disadvantaged persons within the society including members of marginalised community or group in line with Article 21(3) of the Constitution to ensure clarity and consistency; and
 - c) That the Title of the Bill be changed to ‘Economic and Social Rights Bill’ and the Long Title of the Bill be amended by deleting reference to preservation of human dignity and enforcement economic and social rights in order to be in line with the provisions of the Bill.
38. The text of the proposed committee stage amendments is set out at *Annex 6* of this Report.

LIST OF ANNEXES

- Annex 1:** Minutes of the Sittings of the Committee in considering the Bill.
- Annex 2:** The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021)
- Annex 3:** Advertisement for submission of memoranda placed in the *Nation* and *Standard* newspapers on Friday, 9th July, 2021.
- Annex 4:** Copies of the submissions received on the Bill
- Annex 5:** Matrix on consideration of public submissions on the Bill.
- Annex 6:** Proposed committee stage amendments to the Bill



TWELFTH PARLIAMENT | SIXTH SESSION

MINUTES OF THE NINETEENTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON WEDNESDAY, 16TH FEBRUARY, 2022, AT 8:25 A.M.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member |
| 5. Sen. Johnson Sakaja, CBS, MP | - Member |
| 6. Sen. Isaac Ngugi Githua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Ms. Mary Chesire | - Deputy Director, Committee Services |
| 2. Mr. Charles Munyua | - Clerk Assistant |
| 3. Mr. Moses Kenyanchui | - Legal Counsel |
| 4. Ms. Mercy Thanji | - Legal Counsel |
| 5. Mr. Said Osman | - Research Officer |
| 6. Ms. Lucianne Limo | - Media Relations Officer |
| 7. Ms. Purity Orutwa | - Clerk Assistant (<i>Takin Minutes</i>) |
| 8. Ms. Hawa Abdi | - Sergeant at Arms |
| 9. Mr. James Kimiti | - Hansard/Audio Officer |
| 10. Mr. Titus Michubu | - Pupil |
| 11. Ms. Sandra Alusa | - Intern |

MIN. NO. 89/2022

PRAYER

The sitting commenced with a word of prayer by Sen. Isaac Ngugi Githua, MP.

MIN. NO. 90/2022

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP

MIN.NO. 91/2022

**STATUS REPORT ON SUPREME COURT PETITION
NO. 19 E027) OF 2021**

The Committee was briefed on the status of Supreme Court Petition No. 19 E027) of 2021 – *The Senate of the Republic of Kenya & 3 Others -Vs- The Speaker of the National Assembly & 10 Others, as follows –*

- a) The Senate was yet to be served with any responses and/or documents by the Respondents in the suit;
- b) The Senate legal team appeared at the High Court on 1st February, 2022 for mention on the Cross-Petition by the National Assembly in Petition No. 284 of 2019. The 3-Judge bench ruled that they did not wish to proceed with consideration of the cross-petition, and referred the matter to the Honourable Chief Justice to constitute a new Bench;
- c) The National Assembly had indicated that they would not proceed with the appeal filed by the Senate at the Supreme Court, before the cross-petition filed at the High Court was heard and determined. Consequently, it was important that the issues for determination at the High Court and at the Supreme Court be distinguished/ separated;
- d) The proposals submitted by Members on the Senate submissions to the Supreme Court had been incorporated in a further revised draft;
- e) The suit at the Supreme Court was scheduled for Mention on 7th March, 2022 to confirm compliance with the Directions issued on 28th December, 2021; and
- f) Procurement of an external law firm to represent the Senate in the said suit was ongoing.

Thereupon, the Committee resolved that a physical meeting be scheduled for the Committee to consider and approve the Senate submissions for filing.

MIN.NO. 92/2022

**CONSIDERATION OF THE PRESERVATION OF
HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC
AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF
2021)**

The Committee was taken through the draft Report and committee stage amendments to the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021).

Thereupon, the Committee adopted the Report on the Bill, having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. (Dr.) Irungu Kang'ata, CBS, MP.

MIN. NO. 93/2022

CONSIDERATION OF THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021), AND THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021)

The Committee commenced consideration of the merged matrix of stakeholder submissions on the Election (Amendment) Bill (Senate Bills No. 42 of 2021), and the Election (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021).

Thereupon, the Committee directed that a brief be prepared on –

- a) the academic qualifications for elective offices in selected comparative jurisdictions;
- b) the percentage of Members in the 12th Parliament who would be affected by the degree requirement if the law was not amended; and
- c) the likely impact of the proposed amendments on the remuneration of Members of Parliament and Members of County Assemblies.

The Committee resolved to proceed with consideration of the said matrix at its next sitting.

MIN. NO. 94/2022

ANY OTHER BUSINESS

The Committee recalled and reviewed one of the recommendations and proposed committee stage amendment to the Elections (Amendment) (No. 3) Bill (Senate Bills No. 48 of 2021), relating to sections 109(3) and (4) of the Elections Act, 2011.

Thereupon, the amended Report was adopted by the Committee, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Canon) Naomi Jillo Waqo, MP.


MIN. NO. 95/2022

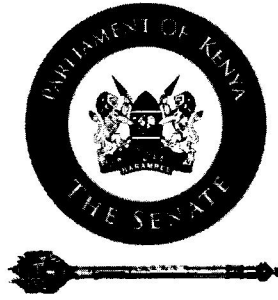
ADJOURNMENT

There being no other business, the meeting was adjourned at 9.40 a.m. The next sitting will be held on Thursday, 17th February, 2022 at 8:00 a.m.

SIGNED: 

(CHAIRPERSON)

DATE: 



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE NINETY-FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON TUESDAY, 16TH NOVEMBER, 2021 AT 8.15 A.M.

PRESENT

- | | |
|--|--|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson (Chairing) |
| 3. Sen. Fatuma Dullo, CBS, MP | - Member |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 5. Sen. Isaac Ngugi Githua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP | - Member |
| 3. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member |
| 4. Sen. Johnson Sakaja, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Clerk Assistant |
| 2. Mr. Said Osman | - Research Officer |
| 3. Mr. Moses Kenyanchui | - Legal Counsel |
| 4. Mr. Javan Nang'eyo | - Sergeant at Arms |
| 5. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking Minutes</i>) |
| 6. Ms. Hawa Abdi | - Sergeant at Arms |
| 7. Mr. James Kimiti | - Hansard Officer |
| 8. Ms. Cynthia Wanjiku | - Pupil |

MIN. NO. 452/2021 PRAYER

The sitting commenced with a word of prayer by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 453/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Fatuma Dullo, CBS, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 454/2021 NAIROBI HIGH COURT CONSTITUTIONAL PETITION NO. E229 OF 2021: COUNTY ASSEMBLY FORUM & 6 OTHERS -VS- THE ATTORNEY-GENERAL & 4 OTHERS

The Committee was taken through a brief on the Judgment delivered by the High Court in Constitutional Petition No. E229 of 2021: *County Assembly Forum & 6 Others -Vs- The Attorney-General & 4 Others*.

It was noted that the orders of the Court were specific to the academic qualifications for Members of County Assemblies (MCAs) and did not affect the qualifications for other elective positions.

Consequently, the Committee resolved to resume consideration of the Election (Amendment) Bill (Senate Bills No. 42 of 2021).


MIN. NO. 455/2021 THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF 2021)

The Committee was taken through the proposed Committee amendments and draft Report on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021).

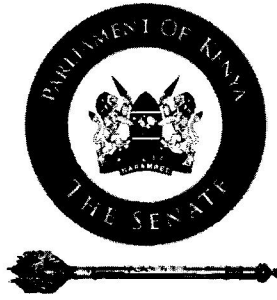
Thereupon, it was resolved that a copy of the Report be circulated to Members and that it be scheduled for adoption at a subsequent sitting.

MIN. NO. 456/2021 ADJOURNMENT

There being no other business, the meeting was adjourned at 9.25 am. The next sitting will be held on Thursday, 18th November, 2021 at 8.00 am.

SIGNED: .....
(CHAIRPERSON)

DATE: 16th FEB 2022.....



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE EIGHTY-FIFTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON THURSDAY, 14TH OCTOBER, 2021 AT 8.15 A.M.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3. Sen. Fatuma Dullo, CBS, MP | - Member |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 5. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member |
| 6. Sen. Johnson Sakaja, CBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel |
| 3. Ms. Lucianne Limo | - Media Relations Officer |
| 4. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking Minutes</i>) |
| 5. Mr. James Kimiti | - Hansard Officer |

MIN. NO. 409/2021 PRAYER

The sitting commenced with a word of prayer by Sen. Fatuma Dullo, CBS, MP.

MIN. NO. 410/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Fatuma Dullo, CBS, MP.

MIN. NO. 411/2021

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO 21 OF 2021)

The Committee resumed consideration of the Committee amendments to the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No 21 of 2021).

Thereupon, the Committee was taken through and adopted the proposed amendments to the Bill. It was further resolved that the definitions of the terms 'social assistance' and 'social safety nets' be reviewed to align with the terminology used in other legislation.

MIN. NO. 412/2021

JUDGEMENT OF THE INTERNATIONAL COURT OF JUSTICE ON THE MARITIME DELIMITATION CASE ON THE INDIAN OCEAN (SOMALIA -VS- KENYA)

The Committee was taken through and noted the Brief on the Judgment delivered by the International Court of Justice in the maritime boundary case between the Republics of Kenya and Somalia.

MIN. NO. 413/2021

ANY OTHER BUSINESS

Members were reminded of the meeting coming up later that week, in Mombasa County, to discuss the Global Compact for Migration and its domestication into Kenyan law. The meeting nominated Sen. (Dr) Irungu Kang'ata to attend and represent the Committee.

MIN. NO. 414/2021

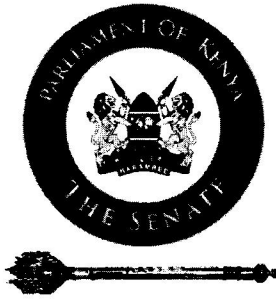
ADJOURNMENT

There being no other business, the meeting was adjourned at 9.15 am. The next sitting will be held on Tuesday, 19th October, 2021 at 8.00 am.

SIGNED: 

(CHAIRPERSON)

DATE: 



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE EIGHTY-FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON WEDNESDAY, 13TH OCTOBER, 2021 AT 8.25 A.M.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP | - Member |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member |
| 5. Sen. Johnson Sakaja, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Clerk Assistant |
| 2. Mr. Said Osman | - Research Officer |
| 3. Mr. Moses Kenyanchui | - Legal Counsel |
| 4. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking Minutes</i>) |
| 5. Mr. James Ngusya | - Serjeant at Arms |
| 6. Mr. James Kimiti | - Hansard Officer |

MIN. NO. 405/2021

PRAYER

The sitting commenced with a word of prayer by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 406/2021

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 407/2021

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO 21 OF 2021)

The Committee resumed consideration of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No 21 of 2021). Thereupon, the Committee was taken through the draft Committee amendments to the Bill, and adopted the proposed amendments to clauses 3, 4, 5, 6, 7, 8, 9 and 12 of the Bill.

The Committee further resolved that the strategic plans proposed in the Bill be included in the County Integrated Development Plans (CIDP), and that consequent amendments be drafted to the Bill and the County Governments Act in this regard.

The Committee resolved to resume consideration of the draft amendments at a later date.

MIN. NO. 408/2021

ADJOURNMENT

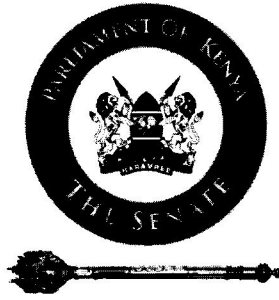
There being no other business, the meeting was adjourned at 8.40 am. The next sitting will be held on Thursday, 14th October, 2021 at 8.00 am.



SIGNED:

(CHAIRPERSON)

DATE: 16th Feb 2022



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE SIXTY-SECOND SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD AT WINDSOR HOTEL, KIAMBU COUNTY, ON TUESDAY, 31ST AUGUST, 2021 AT 10.00 A.M.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 4. Sen. Fatuma Dullo, CBS, MP | - Member (V) |
| 5. Sen. Irungu Kang'ata, CBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. James Orengo, EGH, SC, MP | - Member |
| 2. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 3. Sen. Johnson Sakaja, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Clerk Assistant |
| 2. Mr. Said Osman | - Research Officer |
| 3. Mr. Moses Kenyanchui | - Legal Counsel |
| 4. Ms. Lucianne Limo | - Media Relations Officer |
| 5. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking Minutes</i>) |
| 6. Mr. James Ngusya | - Serjeant at Arms |
| 7. Mr. James Kimiti | - Hansard Officer |

MIN. NO. 312/2021 PRAYER

The sitting commenced with a word of prayer by Sen. Irungu Kang'ata, CBS, MP.

MIN. NO. 313/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Irungu Kang'ata, CBS, MP.

MIN. NO. 314/2021

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF 2021)

The Committee resumed consideration of the Bill, whereupon it was taken through the proposed Committee amendments to the Bill.

The committee resolved to –


- i) amend clauses 5,7,8,19, 25, and allowed the legal counsel to edit and find an alternative for clause 21 and the schedule; and
- ii) shorten the title of the Bill to “The Economic and Social Rights Bill”

The Committee noted there was need for further research and consultations on the definition and inclusion of the term “marginalized groups” in the Bill. Consequently, it resolved to defer further consideration of the affected clauses to a later date.

MIN. NO. 315/2021

ADJOURNMENT

The sitting adjourned at 12.30 pm, to resume at 2.00 pm on the same date and venue.

SIGNED: .....
(CHAIRPERSON)

DATE: *16th FEB 20 22*.....



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE FIFTY-NINTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON THURSDAY, 26TH AUGUST, 2021 AT 8.15 A.M.

PRESENT

- | | |
|--------------------------------------|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. Fatuma Dullo, CBS, MP | - Member |
| 3. Sen. Johnson Sakaja, CBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 2. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 3. Sen. James Orengo, EGH, SC, MP | - Member |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 5. Sen. Irungu Kang'ata, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Clerk Assistant |
| 2. Mr. Said Osman | - Research Officer |
| 3. Mr. Moses Kenyanchui | - Legal Counsel |
| 4. Ms. Sylvia Nasambu | - Clerk Assistant |
| 5. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking Minutes</i>) |
| 6. Mr. James Ngusya | - Serjeant at Arms |
| 7. Mr. James Kimiti | - Hansard Officer |

MIN. NO. 300/2021 PRAYER

The sitting commenced with a word of prayer by Sen. Johnson Sakaja, CBS, MP.

MIN. NO. 301/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Fatuma Dullo, CBS, MP and seconded by Sen. Johnson Sakaja, CBS, MP.

MIN. NO. 302/2021

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF 2021)

The Committee resumed consideration of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 21 of 2021), whereupon it was taken through a brief on the Committee stage amendments that had been made to the previous version of the Bill, in 2018, as well as the matrix of stakeholder submissions received on the current version of the Bill.

The Committee noted that the proposed definition of 'marginalized groups' might conflict with the definitions contained in the Constitution and other statutes. Thereupon, the Committee directed that further research be undertaken and a brief prepared for the Committee on the matter.

MIN. NO. 303/2021

ANY OTHER BUSINESS

Some Members of the Committee noted that they would not be able to attend the Committee retreat scheduled for the following week in person due to other official engagements. Consequently, it was resolved that the retreat be organized in a hybrid format and that a link be shared with Members to join virtually.

MIN. NO. 304/2021

ADJOURNMENT

There being no other business, the meeting was adjourned at 9.00 am. The next sitting will be held on Monday, 30th August, 2021 at 9.00 am, in Kiambu County.

SIGNED: 
(CHAIRPERSON)

DATE: 16th FEB 2022.

SPECIAL ISSUE

Kenya Gazette Supplement No. 43 (Senate Bills No. 21)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2021

NAIROBI, 23rd March, 2021

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**THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL, 2021**

A Bill for

AN ACT of Parliament to establish a framework for the preservation of human dignity; for the promotion, monitoring and enforcement of economic and social rights, to establish mechanisms to monitor and promote adherence by county governments to Article 43 of the Constitution; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. (1) This Act may be cited as the Preservation of Human Dignity and Enforcement of Economic and Social Rights Act, 2021.

Short title.

2. In this Act, unless the context otherwise requires —

Interpretation.

“access” in relation to economic and social rights means the physical, economic and social access by a person or households to goods and services through production, purchase or through programmes implemented by the National and county governments to ensure that the economic and social rights of every person, including persons in need, is actualised;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to planning;

“Commission” means the Kenya National Commission on Human Rights established under section 3 of the Kenya National Commission on Human Rights Act;

No. 14 of 2011.

“Council of county Governors” means the Council of county Governors established under section 18 of the Intergovernmental Relations Act;

No. 2 of 2012.

“county executive committee member” means the county executive committee member responsible for matters related to planning within the county;

“county strategic plan” means the county strategic plan for the realisation of economic and social rights prepared by a county government pursuant to section 8;

“economic and social rights” means the rights accruing to every person specified under Articles 43(1) and 53(1)(c) of the Constitution including the right to –

- (a) the highest attainable standards of health which includes the right to health care services including reproductive health care services and emergency treatment;
- (b) accessible and adequate housing;
- (c) reasonable standards of sanitation;
- (d) be free from hunger and to have adequate food of acceptable quality;
- (e) basic nutrition for children;
- (f) clean and safe water in adequate quantities;
- (g) social security and social assistance; and
- (h) education.

“Equalisation Fund” means the equalisation fund established under Article 204 of the Constitution;

“subsidy programme” refers to programme established by the National government or a county government for the benefit of persons in need of access to goods and services for the realisation of their economic and social rights under the Constitution;

“persons in need” means a person who in spite of having a competent social support system is unable to produce or purchase essential goods and services in adequate quantities and quality for short or extended periods of time; and

“vulnerable persons” include infants, children, school going children, pregnant and nursing mothers, the elderly, internally displaced persons, persons with disability, such persons which chronic illness, victims of conflict, rural people in precarious livelihood situations, marginalised populations in urban areas, groups at risk of social marginalisation and discrimination and any other group that may be identified from time to time.

3. The object and purposes of this Act are to provide a framework for —

Object and purposes.

- (a) the preservation of human dignity as set out under Article 19 of the Constitution through the realisation of the economic and social rights under Article 43(1) of the Constitution;
- (b) the realisation, of economic and social rights by the National and county governments;
- (c) standards that are to be adhered to by the National and county governments in the realisation of economic and social rights;
- (d) the establishment of mechanisms to monitor and promote the realisation of the economic and social rights by the county governments;
- (e) the application of the Equalisation Fund for the promotion of economic and social rights amongst the marginalised communities in accordance with Article 43 of the Constitution;
- (f) the provision of conditional grants to county governments for the purpose of funding activities aimed at ensuring the realisation of the economic and social rights set out under the Constitution; and
- (g) for co-operation between the National Government and county governments on the fulfilment of their respective obligations with regard to the realisation of economic and social rights.

4. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles in addition to the national values and principles set out under Article 10 and 174 of the Constitution—

Guiding
principles

- (a) to promote sustainable development;
- (b) non-discrimination;
- (c) preservation of the well-being and dignity of every human being and in particular, the marginalised persons;
- (d) the promotion of good governance and accountability of duty bearers in meeting their obligations for the realisation of the economic and social rights;

- (e) coordinated public participation in the formulation, implementation and monitoring of policies, strategies and plans aimed at ensuring the realisation of economic and social rights;
- (f) empowerment and capacity building as a means of promoting the realisation of the economic and social rights;
- (g) transparency in the implementation of programmes and activities aimed at ensuring the realisation of economic and social rights as set out under the Constitution; and
- (h) availability and access to services and timely and reliable information that facilitates the realisation of economic and social rights.

PART II – ECONOMIC AND SOCIAL RIGHTS

5. (1) The National and county governments shall, to the extent of their constitutional mandate, respect, protect, promote and fulfil the rights and fundamental freedoms set out under Articles 43(1) and 53(1)(c) of the Constitution and in particular, shall–

Obligations of the National and county governments with respect to economic and social rights.

- (a) formulate and implement such policies, legislation, strategies and put in place such mechanisms for the realisation of the economic and social rights;
- (b) establish such mechanisms as they shall consider necessary for the enforcement of economic and social rights;
- (c) ensure the availability, accessibility, adaptability and acceptability of services that would facilitate the realisation of the economic and social rights;
- (d) put in place adequate infrastructure that would be necessary to meet their obligations in realising the economic and social rights;
- (e) put in place measures that target marginalised and vulnerable persons in ensuring that their economic and social rights are realised and that they have access to goods and services that are of an acceptable standard;

- (f) protect individual persons, groups and communities from encroachment or interference by any person of their economic and social rights; and
 - (g) sensitise and build capacity in order provide an opportunity for the public to develop their understanding, skills and capacity necessary for achieving equitable and effective participation in the formulation, implementation and monitoring of any policies, strategies or programme interventions aimed at realising their economic and social rights.
- (2) The National and county governments shall, pursuant to subsection (1) —
- (a) take measures to create the opportunities and an environment in which the economic and social rights can be realised;
 - (b) adopt comprehensive strategic plans that ensure the protection and promotion of economic and social rights;
 - (c) integrate, within their respective policies, strategies, actions and such other measures as it would consider necessary for the realisation of the economic and social rights under the Constitution;
 - (d) prioritise the allocation of resources to ensure that the economic and social rights are realised while taking into account the special needs of marginalised and vulnerable persons within the respective counties;
 - (e) avoid actions that would limit the economic and social rights that are conferred under the Constitution except as provided under Article 24 of the Constitution;
 - (f) put in place measures that mitigate against the factors that hinder the realisation of economic and social rights;
 - (g) set out corrective measures for the purpose of identifying factors and preventing the causes of factors that impede the realisation of economic and social rights; and
 - (h) invest and promote investment that would facilitate the realisation of economic and social rights.

(3) The Commission shall, in consultation with the Cabinet Secretary and the Council of county Governors, set out the minimum standards that the National government and county governments are required to meet in carrying out their obligations under subsection (2).

PART III – CONFERMENT ON THE COMMISSION OF AN OVERSIGHT ROLE

6. (1) The Commission shall oversee the implementation of and be responsible for the enforcement of this Act.

The role of the Commission.

(2) In the performance of its functions under this Act the Commission shall be guided by the national values and principles set out under the Constitution.

7. (1) The functions of the Commission shall be to —

Functions of the Commission.

- (a) monitor the performance of the National and each county government in implementation of programmes and plans for the realisation of economic and social rights;
- (b) initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on the realisation of economic and social rights within the county governments;
- (c) make recommendations to the National and county governments on the implementation of policies, strategies and programmes for the realisation of economic and social rights;
- (d) identify factors that impede the economic development of, and access to essential financial services by, marginalised groups and make recommendations on policies and strategies to address the barriers;
- (e) investigate any complaints that may be made in relation to the realisation of economic and social rights and take such measures as it may consider necessary to secure the appropriate redress;
- (f) annually evaluate existing policies, legislation, strategies and programmes by the National and county governments that provide for the realisation of economic and social rights and make such

recommendations as it may consider necessary that would ensure the facilitation of the realisation of such rights;

- (g) advise and make recommendations to the National Social Assistance Authority established under the Social Assistance Act regarding the delivery of social assistance programmes within the county governments; No. 24 of 2013.
- (h) mobilise and sensitise the community on their economic and social rights as set out under the Constitution in collaboration with the relevant stakeholders and institutions in the area, conduct capacity building, education and information campaigns for this purpose; and
- (i) perform such other functions as may be necessary for the implementation of this Act.

(2) The Commission shall, in performing its functions under this Act—

- (a) have regard to the applicable international information management and dissemination standards relating to the implementation of economic and social rights;
- (b) consult with such entities as it may consider necessary for the carrying out of its functions under this Act; and
- (c) take such action as may be necessary for the performance of its functions under this Act.

(3) The Commission shall, in monitoring the realisation of economic and social rights under the Constitution and the county strategic plans, be guided by the criteria set out under the Schedule to this Act.

PART IV – COUNTY STRATEGIC PLANS FOR THE REALISATION OF ECONOMIC AND SOCIAL RIGHTS

8. (1) Each county government shall prepare a county strategic plan for the realisation of economic and social rights of residents within the respective county.

County strategic plans.

(2) A county government shall set out in its county strategic plan the following information —

- (a) variables and specific actions required to be undertaken for the realisation of economic and social rights within the county integrated development plan of the county government;
- (b) programmes and projects aimed at the realisation of economic and social rights of residents within the county;
- (c) programmes and policies aimed at social protection and promotion of economic rights of marginalised groups within the county;
- (d) objectives that would facilitate the availability, accessibility, acceptability and adaptability of goods and services relevant to the realisation of economic and social rights; and
- (e) a framework for the implementation of such programmes and projects including timelines, targets and expected outcomes in the realisation of the economic and social rights.

(3) In preparing a county strategic plan under subsection (1), a county government shall be guided by the principles of planning and development set out under section 102 of the County Governments Act and shall—

No. 17 of 2012.

- (a) ensure the collaboration of various departments, agencies and institutions in the relevant county in the implementation of the development plans;
- (b) allocate sufficient financial and human resources for the realisation of economic and social rights and the implementation of the respective strategic plans for such realisation;
- (c) adopt strategies and plans that facilitate the realisation of the economic and social rights including improving the availability, accessibility, acceptability and adaptability of goods and services aimed at facilitating the realisation of economic and social rights;
- (d) adopt plans that respond to the unique needs and issues affecting the respective county which hamper the realisation of economic and social rights;

- (e) adopt gender responsive policies and strategies in order to ensure equity in the socio-economic development of residents in the county;
- (f) formulate medium term and long term strategies and programmes over a ten year period and such further periods in the future as the county government shall consider necessary;
- (g) ensure that the strategies and programmes set out in the plans cater for the specific needs of the county and ensure the realisation of economic and social rights amongst the marginalised persons within the county;
- (h) formulate strategic plans that respond effectively to the urgent issues affecting the county including the marginalised persons and those who are vulnerable and afford such safety nets as may be necessary for the realisation of their economic and social rights;
- (i) formulate strategic plans through a participatory process with the residents of the respective county and in accordance with section 20 of this Act and section 115 of the County Governments Act; and
- (j) set out, in the strategic plans, such mitigation measures and programmes including the delivery of goods and services at a subsidised rate in order to ensure accessibility of goods and services by all within the county.

No. 17 of 2012.

9. The principle objective of a county strategic plan shall be to ensure that a county government is able to ensure the availability, accessibility, acceptability, adaptability and quality of goods and services necessary for the realisation of economic and social rights as set out under the Constitution.

Objectives of the county strategic plans.

10. (1) A county government shall, for the purpose of preparing its county strategic plan, carry out a baseline survey in order to determine —

Preparation of a baseline survey.

- (a) the existing situation and gaps within the county with regard to the supply of goods and delivery of

services aimed at ensuring the realisation of economic and social needs of the residents within the county;

- (b) the areas of priority that require immediate intervention by the county government in the realisation of the economic and social rights of residents within the county;
- (c) the best interventions that would ensure that the gaps identified under paragraph (a) are addressed;
- (d) the financial implications and the resources that would be required to address the gaps;
- (e) the outcomes of previous interventions; and
- (f) the appropriate interventions that should be carried out subsequent to the survey in order to ensure the realisation of economic and social rights of the residents of the respective county and the expected outcomes.

(2) The Commission shall, in consultation with the Council of county Governors, determine the parameters for the conduct of, and the manner in which the baseline survey under subsection (1) shall be conducted.

11.(1) A county government may, subject to subsection (3), receive a grant or donation for the purpose of implementing its county strategic plan for the realisation of economic and social rights of residents within the respective county.

Receipt of grants and donations for the implementation of county strategic plan.

(2) The provisions of section 138 of the Public Finance Management Act shall apply with respect to a grant received under subsection (1).

No. 18 of 2012.

(3) A county government shall, prior to the appropriation of the grant or donation under subsection (1) and in addition to the requirements set out under section 138(6) of the Public Finance Management Act –

- (a) undertake an assessment of the gaps that exist within the county in relation to the realisation of the economic and social rights of residents within the county;
- (b) identify, in consultation with the Commission, the areas under paragraph (a) that require intervention on a priority basis;

- (c) undertake a costing and analysis on the technical support requirements to ensure that the any proposed projects or procurement of services are adequately funded;
- (d) prepare standards and guidelines that are required to be met for the realisation of the economic or social rights in relation to the activities to which the grant or donation is put to; and
- (e) prepare a report in relation to the utilisation of the grant or donation.

12. (1) The respective county governor shall, within fourteen days of the preparation of the county strategic plan, submit to the clerk of the county assembly, a copy of the plan for tabling before, and approval by the county assembly.

Approval of county strategic plans by the county assembly.

(2) The county governor shall, once the county strategic plan is approved, circulate and publicise the strategic plan through such means as it considers necessary to the residents of the county.

13. (1) The National and each county government shall, not later than thirtieth September, in each year, submit to the Commission and the Senate, a report on the progress made on the realisation of economic and social rights and in particular, action taken in giving effect to Article 43 of the Constitution.

Reports on implementation of economic and social rights.

(2) On receipt of the report under subsection (1), the Commission shall make its observations regarding the progress made by each county and shall submit its report to

- (a) the Senate;
- (b) the National Assembly;
- (c) every county assembly;
- (d) the Commission for Revenue Allocation;
- (e) the Intergovernmental Budget and Economic Council established under the Public Finance Management Act; and
- (f) the residents of the respective county through dissemination in such manner as it shall consider appropriate.

No. 18 of 2012.

14. (1) The Senate shall, upon receipt of the report from the Commission, consider the report and make such recommendations on such action that may need to be taken by—

Recommendations on implementation of the report.

- (a) the respective county governments; and
- (b) the relevant organs of the National Government.

(2) Each institution that receives the recommendation of the Senate shall take into account the recommendation in the implementation of economic and social rights in the subsequent year and report thereon in its report to the Commission in its next report in the following year.

15. (1) A person aggrieved by the implementation or non-implementation of a recommendation under this Part, may make an application to court for the implementation of the right in accordance with Article 20(5) of the Constitution.

Court action.

(2) The court may give such directions as it may consider appropriate for the effective enforcement of the right in question.

16. Nothing in this Act may be deemed to deny any person the right to seek the enforcement of any right under Article 20(5) of the Constitution only by reason that the Senate has not made a recommendation in that regard pursuant to this Part.

Remedies.

17. Each county executive committee member responsible for finance shall in the budget statement to the county assembly include measures aimed at ensuring the fulfilment of Article 43 of the Constitution rights and activities for that year and any progress achieved at availing these to the residents of the county.

Budgets statements to contain measures of social economic rights.

PART V –PROVISIONS ON DELEGATED LEGISLATION

18. (1) The Cabinet Secretary responsible for finance, in consultation with the county executive committee members responsible for finance and the Commission, shall, within a period not exceeding twelve months from the commencement of this Act, make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations-

- (a) to provide a framework for the collaboration and the monitoring, by the Commission with the National and county governments in the implementation of this Act;
 - (b) to provide a mechanism for the management of direct and indirect conditional grants appropriated from the Equalisation Fund and to made to a county government under this Act;
 - (c) to provide for the procedures for the conduct of public participation under this Act; and
 - (d) the conduct of sensitisation programmes and the publication and dissemination of information under 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 shall apply to regulations made under this Act.

Cap. 2.
No. 23 of 2013.

PART VI – MISCELLANEOUS PROVISIONS

19. (1) The Commission shall, in addition to its observations made under section 13(2), prepare an economic and social rights index with respect to the realisation of economic and social rights by every county government.

Economic and
social rights
index.

(2) The Commission shall, in preparing the index under subsection (1), set out –

- (a) the criteria used to gauge the realisation of economic and social rights within the county;
- (b) the extent to which a county government has realised the economic and social rights of residents within the respective county;
- (c) the extent to which a county government has adhered to its county strategic plan and the

achievements of the county government within the relevant period; and

- (d) its recommendations regarding the delivery of goods and services by the county government in ensuring the realisation of economic and social rights of residents within the county.

(3) The Commission shall publish and publicise, within the county and in such manner as it considers appropriate, the economic and social rights index prepared under subsection (1).

20. (1) Each county government shall, in preparing its county strategic plans, carry out public participation with the residents of the respective county.

Public participation.

(2) In carrying out public participation, a county government shall -

- (a) inform the residents of the respective county of the intended preparation, by the county government, of the county strategic plan at least three months before such preparation;
- (b) ensure that the residents of the county have access to such information as may be necessary for them to make an informed decision regarding the preparation of the county strategic plan;
- (c) identify the relevant stakeholders representing the relevant sectors and who are directly or indirectly affected by the decisions relating to the preparation and implementation of the county strategic plan;
- (d) take into account the principles of citizen participation set out under section 87 of the County Governments Act;
- (e) hold such forums as the county government shall consider necessary for—
 - (i) the dissemination of information relating to the preparation of the county strategic plan;
 - (ii) receipt of submissions and any petitions from the residents of the county;

No. 17 of 2012.

(iii) the clarification or verification of any issues raised by the residents of the county.

(3) The county executive committee member shall -

(a) for the purpose of subsection (1), -

(i) use such modalities and platforms for citizen participation that may be established by the county government under section 91 of the County Governments Act; and

(ii) ensure that adequate notice is issued with regard to the holding of meetings or such forums for public participation; and

(b) take into account the submissions made by the residents under subsection (2)

21. The Commission shall, in consultation with the Cabinet Secretary and the Council of county Governors -

Sensitisation programme framework.

(a) develop and implement public education and awareness programmes on the economic and social rights and the obligations of the respective county governments towards the residents in the realisation of such rights;

(b) develop and implement a framework for the participation of the residents of the respective counties in the formulation of the county strategic plan of the county; and

(c) collaborate with the relevant agencies and stakeholders within the county in enhancing the capacity of the residents to effectively participating in the affairs of the county governments in the delivery of goods and services that are aimed towards the realisation of the economic and social rights.

22. The Public Finance Management Act is amended—

Amendment of No. 18 of 2012.

(a) in section 12(1) by inserting the following new paragraph immediately after paragraph (c)—

(ca) formulate and advise on financial and economic measures generally to facilitate the fulfillment of economic and social rights as set out in Article 43 of the Constitution;

(b) in section 187(2) by inserting the following new paragraph immediately after paragraph (g) —

(ga) the facilitation of the achievement of Article 43 of the Constitution of Kenya;

23. (1) Every county government with a county integrated development plan which took effect prior to the commencement of this Act, shall within six months after the commencement of this Act, amend its county integrated development plan to bring it into conformity with this Act.

Transition.

(2) The procedure set out under section 112 of the County Governments Act shall apply to the process of amendment of a county integrated development plan under subsection (1).

No. 17 of 2012.

24. (1) The County Governments Act is amended —

Amendment to
No. 17 of 2012

(a) in section 107(1) by inserting the following new paragraph immediately after paragraph (d) —

(e) county strategic plans for the realization of economic and social rights under Part IV of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Act.

25. In the performance of its functions under this Act the Commission shall be guided by the national values and principles set out under the Constitution.

National Values
and Principles to
guide
Commission.

SCHEDULE (s. 7(3))

CRITERIA FOR THE REALISATION OF SOCIAL AND ECONOMIC RIGHTS

The indicators for the assessment, by the Commission, of the effort of a county government in the implementation of Article 43 of the Constitution shall include—

- (a) whether or not it has allocated tasks and responsibilities to the different levels of government;
- (b) whether or not it has ensured that sufficient human and financial resources are made available for its implementation;
- (c) whether or not it is capable of facilitating the realisation of the rights in question;
- (d) whether or not its plan or programme is reasonable in its conception and implementation;
- (e) whether or not its plan or programme is balanced and flexible enough to among other things, respond to unforeseeable circumstances;
- (f) whether or not it is inclusive or excludes a significant segment of the populace, leading to unfair discrimination;
- (g) whether or not it balances short, medium, and long-term needs;
- (h) whether or not it has sufficient safety nets such as cash transfers to vulnerable groups and other social assistance; and
- (i) whether or not its plan or programme responds to the needs of the vulnerable and those in crisis situations.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of the Bill is to give effect to Article 43 of the Constitution in order to ensure the preservation of human dignity as set out under Article 19 of the Constitution. Article 43 of the Constitution guarantees economic and social rights for all persons which includes the right of every person to—

- (a) the highest attainable standards of health, which includes the right to healthcare services, including reproductive health care;
- (b) accessible and adequate housing, and to reasonable standards of sanitation;
- (c) be free from hunger, and to have adequate food of acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) social security; and
- (f) education.

Article 21(1) and (2) of the Constitution imposes an obligation on the State to ensure the realisation of rights and fundamental freedoms under the Constitution by providing as follows –

(1) it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of rights.

(2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

The realisation of the economic and social rights has more often than not been tied to the availability of resources and hence, these rights were rarely seen as being inherent in a person by virtue of being a human being. As a result, there has been little emphasis in availing goods and ensuring that services are delivered that would see to it that the economic and social rights are realised. Large gaps therefore exist that require urgent intervention through policy, legislation and other action to compel both the National and county governments meet their obligations under the Constitution, existing legislation and international treaties and agreements which are applicable to Kenya by virtue of Article 2(6) of the Constitution and to which Kenya is a signatory.

This also Bill seeks to establish a framework for national monitoring, benchmarking and evaluation of progress made in fulfilling economic and

social rights by all actors in the Republic. Since the sectors relevant to these rights fall under the county governments, it is critical that mechanisms be established at the county level by the county governments for the realisation of these rights. The mechanisms developed at the county level should then be subjected to monitoring by the relevant national institutions to ensure that progress is being made at the county level for the realisation of economic and social rights. The realisation of these rights has the potential to eradicate poverty and inequality, to ensure the advancement of the living standards of the Kenyan people and to ultimately achieve the economic, social, cultural and political transformation that the Constitution of Kenya envisaged.

Part I of the Bill deals with preliminary matters and sets out the objects and purposes of the Bill and the principles that are to guide the counties and other actors in the implementation of this Bill.

Part II of the Bill elaborates on economic and social rights as per Article 43 of the Constitution. It also imposes various obligations on the National and county governments in ensuring that the economic and social rights are realised.

Part III of the Bill provides confers on the Kenya National Commission on Human Rights an oversight role in ensuring that the National and county governments including the relevant agencies and institutions carry out their duties in ensuring the realisation of the economic and social rights under the Constitution.

Part IV imposed an obligation on county governments to incorporate within their county integrated development plans, county strategic plans that are aimed at ensuring that the economic and social rights set out under Article 43 of the Constitution are realised. This Part sets out the process through which the strategic plans are to be prepared and for this purpose, imposes an obligation on the county government to carry out a baseline survey which would set out a quantitative analysis of the marginalised areas and point to the existing gaps that exist and which require redress if the economic and social rights of residents in these areas are to be realised. This Part also sets out the basis upon which county governments are to receive grants and donations and imposes an obligation on county governments to prepare a report which is to be submitted to the Commission which thereafter circulates the same to various institutions together with its recommendations on the actions taken by, and further actions required to be undertaken by the respective county government for the realisation of economic and social rights.

Part V provides for the formulation of regulations by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for finance and the Commission, for the better implementation of this Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

Section 22 of the Bill delegates legislative powers to the Cabinet Secretary, who is required to make regulations for the better carrying out of the purposes and provisions of this Act in consultation with the Cabinet Secretary responsible for finance and the Commission.

The Bill does not, however, limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill imposes obligations on the National and county governments to put in place mechanisms for the realisation of the economic and social rights set out under Article 43 of the Constitution. This Bill also imposed an obligation on county governments to prepare county strategic plans which would provide the county governments with a framework for the implementation of the economic and social rights. These rights are tied to the functions and powers of county governments conferred on them under Part 2 of the Fourth Schedule to the Constitution including agriculture county health services, county planning and development, provision of pre-primary and vocational education and public works including water and sanitation services. It is in the efficient and effective carrying out of these functions that the county governments will work towards ensuring the realisation of the economic and social rights set out under Article 43.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

The principle objective of the Bill is to provide a framework through which county governments realise the economic and social rights conferred on every person as set out under Article 43 of the Constitution. In doing so, it compels county government to adhere to Article 204 of the Constitution with regard to the use to which conditional grants appropriated by the National Government are to be put to.

This Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th February, 2021.

ABSHIRO HALAKE,
Senator.

Section 12(1) of No.17 of 2012 which it is proposed to amend –

12. (1) Subject to the Constitution and this Act, the National Treasury shall—

General responsibilities of the National Treasury.

- (a) formulate, implement and monitor macro-economic policies involving expenditure and revenue;
- (b) manage the level and composition of national public debt, national guarantees and other financial obligations of national government within the framework of this Act and develop a framework for sustainable debt control;
- (c) formulate, evaluate and promote economic and financial policies that facilitate social and economic development in conjunction with other national government entities;
- (d) mobilise domestic and external resources for financing national and county government budgetary requirements;
- (e) design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution:

Provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government;

- (f) in consultation with the Accounting Standards Board, ensure that uniform accounting standards are applied by the national government and its entities;
- (g) develop policy for the establishment, management, operation and winding up of public funds;
- (h) within the framework of this Act and taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, prepare the annual Division of Revenue Bill and the county Allocation of Revenue Bill;
- (i) strengthen financial and fiscal relations between the national government and county governments

and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and

- (j) assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet Secretary responsible for matters relating to intergovernmental relations.

Section 187(2) of No.17 of 2012 which it is proposed to amend –

187. (2) The purpose of the Council is to provide a forum for consultation and cooperation between the national government and county governments on—

- (a) the contents of the Budget Policy Statement, the Budget Review and Outlook Paper and the Medium-Term Debt Management Strategy;
- (b) matters relating to budgeting, the economy and financial management and integrated development at the national and county level;
- (c) matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees;
- (d) agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections;
- (e) any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;
- (f) any proposed regulations to this Act; and
- (g) recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190; and
- (h) any other matter which the Deputy President in consultation with other Council members may decide.

Establishment, purpose and composition of the Intergovernmental Budget and Economic Council.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Tuesday, 6th July, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Standing Orders of the Senate, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address: csenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Friday, 23rd July, 2021 at 5.00pm.**

	Bill	Committee Referred To	Email Address
a)	The County Oversight and Accountability Bill (Senate Bills No. 17 of 2021)	Standing Committee on Devolution and Intergovernmental Relations	senatedevolution@gmail.com
b)	The National Cohesion and Peace Building Bill (Senate Bills No. 19 of 2021)	Standing Committee on National Cohesion, Equal Opportunity and Regional Integration	nationalcohesionc@gmail.com
c)	The County Boundaries Bill (Senate Bills No. 20 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senateilahrc@parliament.go.ke
d)	The Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No. 21 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senateilahrc@parliament.go.ke
e)	The Heritage and Museums Bill (Senate Bills No. 22 of 2021)	Standing Committee on Labour and Social Welfare	senatecommittee.labour@parliament.go.ke
f)	The Coconut Industry Development Bill (Senate Bills No. 24 of 2021)	Standing Committee on Tourism, Trade and Industrialization	senatetourismandtrade@gmail.com
g)	The Kenya Citizenship and Immigration (Amendment) Bill (Senate Bills No. 33 of 2021)	Standing Committee on National Security, Defence and Foreign Relations	scnsdfr2021@gmail.com
h)	The Alternative Dispute Resolution Bill (Senate Bills No. 34 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senateilahrc@parliament.go.ke
i)	The County Governments Grants Bill (Senate Bills No. 35 of 2021)	Standing Committee on Finance and Budget	scfinanceandbudget@gmail.com

The Bills may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**



REPUBLIC OF KENYA
THE SENATE - FIFTH SESSION

J.M. Nyegenye, CBS
The Clerk of the Senate
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI

csenate@parliament.go.ke

21st July 2021

FEDERATION OF WOMEN LAWYERS (FIDA-KENYA) SUBMISSIONS ON THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL, 2021 (SENATE BILLS, 2021)

NO.	CLAUSE (AS IT IS IN THE Bill)	PROPOSED AMENDMENT	JUSTIFICATION
1.	Purpose of the bill AN ACT of Parliament to establish a framework for the preservation of human dignity; for the promotion, monitoring and enforcement of economic and social rights, to establish mechanisms to monitor and promote adherence by county governments to Article 43 of the Constitution; and for connected purposes.	The proposed title be amended to read: “AN ACT of Parliament for the preservation of human dignity in the context of promotion, monitoring and enforcement of economic and social rights; to establish mechanisms to monitor and promote adherence by county governments to Article 43 of the Constitution; and for connected purposes.”	Human dignity cannot be a functionality of Economic and Social Rights. When an act of parliament makes human dignity a functionality of enforcement of economic and social rights it creates conflict in the rights, which is contrary to Article 20 of the Constitution of Kenya. Article 19(2) and 3(b) of The Constitution of Kenya which provides that there should be no exclusion of fundamental rights. The original meaning of dignity establishes that all human

			<p>beings deserve respect, on the basis that they are human.</p> <p>Article 1 of the Universal Declaration of Human Rights (UDHR) states that all human beings are born free and equal in rights and dignity. ICESCR further states that; recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.</p> <p>Therefore, Human Dignity qualifies as a principle of inalienability and universality of Human Rights.</p>
2.	<p>Clause 2: Interpretations Interpretation of Human Dignity is not included</p>	<p>The proposed Bill be amended to include the definition of Human Dignity as stipulated in the Constitution under Art. 28.</p> <p>“Human Dignity- the recognition that human beings possess a special value intrinsic to their humanity and as such are worthy of respect simply because they are human beings”</p>	<p>The definition of human dignity is important to set the ground for the role of human dignity in the promotion, monitoring and enforcement of economic and social rights.</p>
3.	<p>Clause 3: Object and purpose of the Act</p> <p>3(a) the preservation of human dignity as set out under Article 19 of the Constitution through the realisation of the economic and social rights under Article</p>	<p>The clause be amended by deleting Article 19 and replacing it with Article 28, to read:</p> <p>3(a) the preservation of human dignity as set out under Article 28 of the Constitution through the realisation of the economic and social rights under</p>	<p>The preservation of human dignity is provided under Article 28 of the Constitution which reads,” Every person has inherent dignity and the right to have that dignity respected and protected.”</p>

	43(1) of the Constitution	Article 43(1) of the Constitution	
4.	<p>PART III — CONFERMENT ON THE COMMISSION OF AN OVERSIGHT ROLE</p> <p>Section 6 - the role of the commission</p> <p>Section 7 - the function of the Commission.</p>	The proposed Bill should be amended by deleting the entire Part III	<p>The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution created by Article 59 of the Constitution of Kenya 2010 and established through the KNCHR Act of Parliament (the Kenya National Commission on Human Rights Act, 2011).</p> <p>The Commission's functions are constitutionally provided for and no act of parliament or legislation should purport to deviate from the functions as provided in the Constitution.</p> <p>Further, Section 8 of the KNCHR Act establishes the commission and its functions as stipulated in The Constitution.</p> <p>Therefore, the conferment of the oversight functions as set out in part III of the bill, is unconstitutional and ultravires to the role of the legislature.</p>
5.	<p>PART IV — COUNTY STRATEGIC PLANS FOR THE REALISATION OF ECONOMIC AND SOCIAL RIGHTS</p> <p>*Section 8- County Strategic plans</p> <p>*Section 9- The principle objective of a county strategic plan shall be to ensure that a county government is able to ensure the availability,</p>	<p>The proposed bill be amended by deleting Section 8</p> <p>The proposed bill be amended by deleting section 9. The principle objective of county strategic CAN NOT be limited to ensuring</p>	<p>The County Government Act sets out the functions of the county government including the plans that need to be put in place for the purpose of economic growth and service delivery to the people of the Republic of Kenya.</p> <p>The County Government Act, which is the primary Act that</p>

	<p>accessibility, acceptability, adaptability and quality of goods and services necessary for the realisation of economic and social rights as set out under the Constitution.</p> <p>*Section 10(2)-The Commission shall, in consultation with the Council of county Governors, determine the parameters for the conduct of, and the manner in which the baseline survey under subsection (1) shall be conducted.</p>	<p>availability, accessibility, adaptability and quality of goods and services for the realisation of economic and social rights.</p> <p>The proposed bill be amended by deleting section 10(2)</p>	<p>deals with the conduct of the County Governments provides for the role of the County governments.</p> <p>The Functions of The Commission are clearly set out under Section 59 of the Constitution and Kenya and under Section 8 of the KNCHR Act.</p>
6.	<p>Section 19(1) Economic and social rights index-The Commission shall, in addition to its observations made under section 13(2), prepare an economic and social rights index with respect to the realisation of economic and social rights by every county government.</p> <p>Section 9(2)(3), on the preparation of the index in clause (1) and publication of the same</p>	<p>The Proposed Bill be amended by deleting in whole Section 19</p>	<p>The functions of the Commission is clearly stipulated In Article 59 of the Constitution of Kenya and Section 8 of KNCHR.</p>



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INTERNATIONAL
KENYA**

Transparency International Kenya
Kindaruma Rd, Off Ring Rd
Gate No. 713; House No. 4
Tel +254-20-2727763/5|0722 296 589
Email: transparency@tikenya.org
<http://www.tikenya.org>

TRANSPARENCY INTERNATIONAL KENYA

PROPOSED AMENDMENTS TO THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL 2021

To: The Senate

23rd July 2021

S/No	Provisions of the Bill	Proposed Amendment	Rationale for Amendment Recommendation
8. (1)	Each county government shall prepare a county strategic plan for the realisation of economic and social rights of residents within the respective county.	Each county government shall prepare, and incorporate into its County integrated development plan, a county strategic plan for the realisation of economic and social rights of residents within the respective county within the first four months of implementation of this Act.	Important to include timelines by which counties are expected to prepare the county strategic plan to ensure prompt realisation of the social and economic rights. Important to incorporate this into the county integrated plan to mainstream economic and social rights planning into the existing county planning framework.
13. (1)	The National and each county government shall, not later than thirtieth September, in each year, submit to the Commission and the Senate, a report on the progress made on the realisation of economic and social rights and in particular, action taken in giving effect to Article 43 of the Constitution.	The National and each county government shall, not later than thirtieth September, in each year, submit to the Commission and the Senate and the Auditor General, a report on the progress made on the realisation of economic and social rights and in particular, action taken in giving effect to Article 43 of the Constitution.	This is to ensure that the funds provided for the realisation of economic and social rights are audited to guarantee accountability on the use of these funds.



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Transparency International Kenya
Kindaruma Rd, Off Ring Rd
Gate No. 713; House No. 4
Tel +254-20-2727763/5|0722 296 589
Email: transparency@tikenya.org
<http://www.tikenya.org>

19. (1)	<p>The Commission shall, in addition to its observations made under section 13(2), prepare an economic and social rights index with respect to the realization of economic and social rights by every county government.</p>	<p>The Commission shall, in addition to its observations made under section 13(2), prepare an annual economic and social rights index with respect to the realization of economic and social rights by every county government.</p>	<p>Having the index prepared annually will help in tracking the counties progress on realisation of the economic and social rights and will also correspond with the annual progress report provided for under S. 13. (1) and enable the tracking of the Senate's recommendations under s. 14. (1)</p>
2	<p>"Economic and social rights" means the rights accruing to every person specified under Articles 43(1) and 53(1)(c) of the Constitution including the right to – basic nutrition for children;</p>	<p>"Economic and social rights" means the rights accruing to every person specified under Articles 43(1) and 53(1)(c) of the Constitution including the right to – basic nutrition, shelter and healthcare for children;</p>	<p>It is important to capture the entirety of Article 53 1 (c) of the Constitution for the avoidance of doubt.</p>
2	<p>"Vulnerable persons" include infants, school going children, pregnant and nursing mothers, the elderly, internally displaced persons, persons with disability, such persons which chronic illness, victims of conflict, rural people in precarious livelihood situations, marginalised populations in urban areas, groups at risk of social marginalisation and any other group that may be identified from time to time.</p>	<p>"vulnerable persons" include infants, children, school going children, pregnant and nursing mothers, the elderly, women, youth, internally displaced persons, persons with disabilities, such persons which chronic illness, victims of conflict, rural people in precarious livelihood situations, marginalised populations in urban areas, groups at risk of social marginalisation and discrimination, members of minority or marginalised communities, particular ethnic, religious or cultural communities</p>	<p>The definition of vulnerable persons should capture the definition provided for under the Constitution.</p>



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KENYA**

Transparency International Kenya
Kindaruma Rd, Off Ring Rd
Gate No. 713; House No. 4
Tel +254-20-2727763/5|0722 296 589
Email: transparency@tikenya.org
<http://www.tikenya.org>

		and members of and any other group that may be identified from time to time.	
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P.O. Box 25312-00603

Nairobi

Email: esther@talklabs.co.ke

22nd July, 2021

The Clerk of the Senate

Parliament Buildings

P.O. Box 41842 – 00100

NAIROBI

Attn: J.M. Nyegeye

Email: csenate@parliament.go.ke

Dear Sir,

Re: **MEMORANDUM ON THE PRESERVATION OF HUMAN DIGNITY AND PROTECTION OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF 2021)**

Reference is made to the above subject and to the Invitation for Public Participation and Submission of Memoranda advertised on 8th July, 2021.

Please find my comments and suggestions below.

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
2 (Interpretation): 'Access'	"access" in relation to economic and social rights means the physical, economic and social access by a person or households to goods and services through production, purchase or through programmes implemented by the National and county governments ...	i) The word ' <i>access</i> ' that is being described should not be used as part of the definition it seeks to explain, as it will not aid in comprehension. ii) Consider <u>replacing</u> the phrase " <i>the physical, economic and social access</i> " with: " <u>the ease of reach, use, understanding, affordability and acceptability¹</u> " by a person or households to goods and services ...
2 (Interpretation): 'Access'	"... to ensure that the economic and social rights of every person, including persons in need, is actualised"	"to ensure that the economic and social rights of every person, including persons in need, are actualised"

¹ This definition has been adapted from the Social Protection and Human Rights Platform at <https://socialprotection-humanrights.org/framework/principles/standards-of-accessibility-adaptability-and-acceptability/> [Accessed 20 July 2021].

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
<p>Section 2 (Interpretation):</p> <p>'Cabinet Secretary'</p> <p>and</p> <p>'county executive committee member':</p>	<p>"Cabinet Secretary" means the Cabinet Secretary responsible for matters related to planning"</p> <p>"county executive committee member" means the county executive committee member responsible for matters related to planning within the county;</p>	<ul style="list-style-type: none"> - The Cabinet Secretary responsible for 'Planning' is quite vague; - The same concern above is arguably applicable to the definition for 'county executive committee member'; <p>Please therefore consider allocating this function more explicitly to the <i>Finance</i> docket, so that the respective definitions will then read as follows:</p> <p>"Cabinet Secretary" means the Cabinet Secretary responsible for matters related to <u>finance</u>"</p> <p>"county executive committee member" means the county executive committee member responsible for matters related to <u>finance</u> within the county;</p>
<p>Section 2 (Interpretation):</p> <p>'Council of county Governors'</p>	<p>"Council of county Governors" means the Council of county Governors established under <u>section 18</u> of the Intergovernmental Relations Act</p>	<ul style="list-style-type: none"> i) Grammar: All first letters in 'Council of <u>C</u>ounty <u>G</u>overnors should be capitalised. ii) The relevant section in the Intergovernmental Relations Act is <u>section 19</u> and <u>not</u> section 18.
<p>Section 2 (Interpretation):</p> <p>'county strategic plan'</p>	<p>"county strategic plan" means the county strategic plan for the realisation of economic and social rights prepared by a county government pursuant to section 8</p>	<p>Consider deleting the words 'strategic' and 'plan' in the definition as they seem unduly repetitive. The amended definition should read, "county strategic plan" means <u>the actions to be taken by a county towards the realisation of economic and social rights, as prepared by a county government pursuant to section 8.</u>"</p>
<p>Section 2 (Interpretation):</p> <p>'economic and social rights'</p>	<p>"economic and social rights" means the rights accruing to every person specified under Articles 43(1) and 53(1)(c) of the Constitution including the right to –</p>	<ul style="list-style-type: none"> i) Articles 43(1) and 53(1) of the Constitution specify <i>rights</i> and not <i>persons</i>, which would make the definition somewhat confusing as is. ii) The right to free and compulsory basic education in Art. 53(1)(b) of the Constitution is surely an economic and social right. Why it is missing from the definition is not clear, and it ought to be included. <p>The same could be said for the right of a child under Art. 53(1)(d) to be protected from abuse; and under</p>

		<p>53(1)(e) not to be detained. These ought not to be left out as they carry corresponding obligations.</p> <p>iii) Please therefore simply re-word to: “economic and social rights” means the rights <u>under Articles 43(1) and 53(1) of the Constitution that accrue to every person and child respectively including the right to – “</u></p>
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Section 2 (Interpretation): ‘economic and social rights’		iv) Arising from Point (iii) above, the list in section 2 under ‘economic and social rights’ from (a) to (h) will need to be adjusted accordingly.
Section 2 (Interpretation): ‘subsidy programme’	“subsidy programme” refers to programme established by the National government or a county government for the benefit of persons in need of access to goods and services for the realisation of their economic and social rights under the Constitution	Consider re-wording to: “subsidy programme” refers to <u>any</u> programme established <u>by the National or county governments</u> for the benefit of <u>persons in need towards the realisation of their economic and social rights”</u>
Section 2 (Interpretation): ‘persons in need’	“persons in need” means a person who in spite of having a competent social support system is unable to produce or purchase essential goods and services in adequate quantities and quality for short or extended periods of time	Consider re-wording to: “persons in need” <u>includes any individual who for any reason is unable to access economic and social rights”</u>
Section 3(a): (Objects and Purposes)	(a) the preservation of human dignity as set out under Article 19 of the Constitution through the realisation of the economic and social rights under Article 43(1) of the Constitution	In keeping with the suggested definition of ‘economic and social rights’ above, please include Article 53(1) of the Constitution here, so that it reads as follows: “the preservation of human dignity as set out under Article 19 of the Constitution through the realisation of the economic and social rights under Articles 43(1) and 53(1) of the Constitution”
Section 3(b): (Objects and Purposes)	(b) the realisation, of economic and social rights by the National and county governments	Please <u>delete</u> the comma between ‘realisation’, and ‘of’
Section 3(e): (Objects and Purposes)	(e) the application of the Equalisation Fund for the promotion of economic and	i) Please include “ <u>marginalised community</u> ” in the interpretation section (Section 2);

	social rights amongst the marginalised communities in accordance with Article 43 of the Constitution;	<p>ii) The definition of “<i>marginalised community</i>” in section 2 should be as it is in the Constitution, so that it would read as follows: <u>“<i>marginalised community</i>” shall be construed in accordance with the meaning in Article 260 of the Constitution;</u></p> <p>iii) It would also add value to include “<i>marginalised group</i>” in section 2, so that the added definition (section 2) would read as follows: <u>“<i>Marginalised group</i>” shall be construed in accordance with the meaning in Article 260 of the Constitution;</u></p> <p>iv) The definitions in (ii) and (iii) above would necessitate a slight amendment to section 3(e) to read as follows:</p> <p><u>“<i>the application of the Equalisation Fund for the promotion of economic and social rights amongst a marginalised community or group in accordance with Article 43 of the Constitution</i>”;</u></p>
Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 3(g): (Objects and Purposes)	(g) for co-operation between the National Government and county governments on the fulfilment of their respective obligations with regard to the realisation of economic and social rights	Please delete ‘for’, so that the clause begins at “co-operation between the national and county governments ...” This is because ‘for’ is already part of the main section 3.
Section 4 (c): Guiding principles)	(c) preservation of the well-being and dignity of every human being and in particular, the marginalised persons;	<p>i) While it may be assumed that “<i>marginalised persons</i>” refers to persons who are part of a marginalised community or group, the term “<i>marginalised person</i>” has not been specifically defined in this Bill, and it would be better to be unambiguous.</p> <p>ii) Please add a comma between “<i>human being</i>”; and the “and” preceding “<i>in particular</i>”</p> <p>Please therefore consider amending this to:</p>

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
		(c) <i>preservation of the well-being and dignity of every human being, and in particular, <u>persons in a marginalised community or group</u></i> ;
Section 4 (d): Guiding principles)	(d) the promotion of good governance and accountability of duty bearers in meeting their obligations for the realisation of the economic and social rights;	Please <u>delete</u> “the” between ‘of’ and ‘economic’, so that section 4(d) reads as follows: “the promotion of good governance and accountability of duty bearers in meeting their obligations <i>for the realisation of economic and social rights</i> ”;
Section 4(f): (Guiding principles)	(f) empowerment and capacity building as a means of promoting the realisation of the economic and social rights	Please <u>delete</u> “the” between ‘of’ and ‘economic’, so that section 4(f) reads as follows: “empowerment and capacity building as a means of promoting <i>the realisation of economic and social rights</i> ”;
Section 5(1)	5. (1) The National and county governments shall, to the extent of their constitutional mandate, respect, protect, promote and fulfil the rights and fundamental freedoms set out under Articles 43(1) and 53(1)(c) of the Constitution and in particular, shall–	In keeping with the comments and suggestions concerning <u>Section 3(a)</u> above, please consider including Article 53(1) as a whole, rather than just Article 53(1)(c), so that this section reads as follows: <i>5. (1) The National and county governments shall, to the extent of their constitutional mandate, respect, protect, promote and fulfil the rights and fundamental freedoms set out under Articles 43(1) and <u>53(1)</u> of the Constitution and in particular, shall–</i>
Section 5(1)(a)	(a) formulate and implement such policies, legislation, strategies and put in place such mechanisms for the realisation of the economic and social rights;	Please <u>delete</u> “the” between ‘of’ and ‘economic’, so that section 5(1)(a) reads as follows: “formulate and implement such policies, legislation, strategies and put in place such mechanisms <i>for the realisation of economic and social rights</i> ”;
Section 5(1)(c)	(c) ensure the availability, accessibility, adaptability and acceptability of services that would facilitate the realisation of the economic and social rights;	i) Please <u>delete</u> “the” between ‘of’ and ‘economic’; ii) <u>IF</u> the definition proposed in section 2 above for ‘access’ is accepted, <u>then</u> this section 5(1)(c) can be amended to read

		as follows: <i>“ensure <u>access and adaptability of services that would facilitate the realisation of economic and social rights</u>;</i>
Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 5(1)(d)	(d) put in place adequate infrastructure that would be necessary to meet their obligations in realising the economic and social rights;	Please <u>delete</u> “the” between ‘realising’ and ‘economic’, so that section 5(1)(d) reads as follows: “put in place adequate infrastructure that would be necessary to meet their obligations <i>in realising economic and social rights</i> ;
Section 5(1)(e)	(e) put in place measures that target marginalised and vulnerable persons in ensuring that their economic and social rights are realised and that they have access to goods and services that are of an acceptable standard;	In keeping with the suggestion made with regard to section 4(c) above, please amend section 5(1)(e) to read as follows: “put in place measures <u>that target persons in a marginalised community or group, and vulnerable persons, to ensure access and realisation of their economic and social rights</u> ;
Section 5(1)(f)	(f) protect individual persons, groups and communities from encroachment or interference by any person of their economic and social rights;	Please consider <u>deleting</u> the first ‘persons’ (after the word ‘individual’), so that the section reads as follows: (f) protect <u>individuals</u> , groups and communities from encroachment or interference by any person of their economic and social rights;
Section 5(1)(g)	(g) sensitise and build capacity in order provide an opportunity for the public to develop their understanding, skills and capacity necessary for achieving equitable and effective participation in the formulation, implementation and monitoring of any policies, strategies or programme interventions aimed at realising their economic and social rights.	i) Please <u>delete</u> the word ‘sensitise’ which has a somewhat different meaning than “ <i>create awareness</i> ”, which is a better option here. ii) The section is also quite long and can be slightly shortened as follows: “ <u>create awareness and build capacity to enable the public to develop their understanding, skills and capacity for equitable and effective participation in the formulation, implementation and monitoring of any policies, strategies or programme interventions aimed at realising their economic and social rights.</u> ”

Section 5(2)(a)	(a) take measures to create the opportunities and an environment in which the economic and social rights can be realised;	Please delete " <i>the</i> " in this section, so as to read: (a) take measures to <u>create opportunities</u> and an environment <u>in which economic and social rights</u> can be realised;
Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 5(2)(c)	(c) integrate, within their respective policies, strategies, actions and such other measures as it would consider necessary for the realisation of the economic and social rights under the Constitution;	i) Please pluralise ' <i>it</i> ' to ' <i>they</i> ' since the subject is National and county governments; ii) Please delete " <i>the</i> " immediately after ' <i>of</i> ' and before ' <i>economic</i> '. The amended section will then read as follows: (c) integrate, within their respective policies, strategies, actions and such other measures as they would consider necessary for the <u>realisation of economic and social rights</u> under the Constitution;
Section 5(2)(d)	(d) prioritise the allocation of resources to ensure that the economic and social rights are realised while taking into account the special needs of marginalised and vulnerable persons within the respective counties;	i) Please delete " <i>the</i> " immediately after ' <i>that</i> ' and ' <i>economic</i> '; ii) Please refer to the proposed amendments to sections 4(c) and 5(1)(e) above and amend this section 5(2)(d) to read as follows: <i>(d) prioritise the allocation of resources to ensure <u>that economic and social rights are realised while taking into account the special needs of persons in a marginalised community or group and vulnerable persons within the respective counties</u>;</i>
Section 5(2)(e)	(e) avoid actions that would limit the economic and social rights that are conferred under the Constitution except as provided under Article 24 of the Constitution;	i) Please delete ' <i>the</i> ' immediately after ' <i>limit</i> ' and ' <i>economic</i> ', so that the amended clause will read as follows: (e) avoid actions <u>that would limit economic and social rights</u> that are conferred under the Constitution except as provided under Article 24 of the Constitution;
Section 5(2)(g)	(g) set out corrective measures for the purpose of identifying factors and preventing the causes of factors that impede the realisation of economic and social rights;	i) One could rightly argue that corrective measures can only be undertaken where a problem has already been identified. ii) Thus, the identification of impediments to the realisation of economic and

		<p>social rights must precede any corrective measures.</p> <p>Please therefore consider the following suggestion(s) for this particular section: (g) <u>“identify factors and their causes that impede the realisation of economic and social rights, and institute corrective measures;</u></p> <p>iii) Arising from the above, it would therefore be neater (sequentially) for this section 5(2)(g) (<i>Identification and correction of factors</i>) to precede the <u>mitigation</u> of these factors in section 5(2)(f) in the Bill.</p> <p>Kindly therefore:</p> <p>i) Re-number the above amended section 5(2)(g) to 5(2)(f); and re-number the current section 5(2)(f) to section 5(2)(g). ALTERNATIVELY:</p> <p>ii) <u>Limit the current section 5(2)(g) to identification of factors and their causes ONLY, then:</u></p> <ul style="list-style-type: none"> - <u>amend section 5(2)(f)</u> in the current Bill, so that it caters for both mitigation and corrective measures. <p>Option (ii) above will result in the <u>current section 5(2)(g)</u> (*to be re-numbered as section 5(2)(f), reading as follows:</p> <p><i>(f) “<u>identify factors and their causes that impede the realisation of economic and social rights</u>”;</i></p> <p>The <u>current section 5(2)(f)</u> (*to be re-numbered as section 5(2)(g), will in turn read as follows:</p> <p><i>(g) “put in place <u>mitigation and corrective measures</u> against the factors that hinder the realisation of economic and social rights;</i></p>
<p>Section 7(1)(d)</p>	<p>(d) identify factors that impede the economic development of, and access to essential financial services by, marginalised groups and make recommendations on policies and strategies to address the barriers;</p>	<p>Please include persons in a ‘<i>marginalised community</i>’ here as well, so that it reads:</p> <p><i>(d) identify factors that impede the economic development of, and access to, essential financial services by <u>persons in a marginalised community or group</u>, and make recommendations on policies and strategies to address the barriers;</i></p>

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 7(1)(f)	(f) annually evaluate existing policies, legislation, strategies and programmes by the National and county governments that provide for the realisation of economic and social rights and make such recommendations as it may consider necessary that would ensure the facilitation of the realisation of such rights;	Please make a slight amendment to: (f) annually evaluate existing policies, legislation, strategies and programmes by the National and county governments that provide for the realisation of economic and social rights and make such recommendations as it may consider necessary <u>to ensure the realisation of such rights</u> ;
Section 7(1)(h)	(h) mobilise and sensitise the community on their economic and social rights as set out under the Constitution in collaboration with the relevant stakeholders and institutions in the area, conduct capacity building, education and information campaigns for this purpose;	i) As with section 5(1)(g) above, please <u>delete</u> the word 'sensitise' which has a somewhat different meaning, and use "create awareness", which is a better option here. ii) The word "mobilise" also seems somewhat inappropriate here, and may be superfluous. It is likely that "create awareness" is sufficient. The amended section would therefore read as follows: (h) " <u>create awareness</u> " in communities on <u>economic and social rights as set out under the Constitution in collaboration with the relevant stakeholders and institutions in the area, conduct capacity building, education and information campaigns for this purpose</u> ;
Section 8(1)	8(1) Each county government shall prepare a county strategic plan for the realisation of economic and social rights of residents within the respective county.	Please consider including words to the effect that the county strategic plan must be in writing in the first instance. The amended section could read as follows: 8(1) Each county government shall prepare a <u>written</u> county strategic plan for the realisation of economic and social rights of residents within the respective county.
Section 8(2)(c)	(c) programmes and policies aimed at social protection and promotion of economic rights of marginalised groups within the county;	(c) As with the suggestion in section 7(1)(d) above, please include persons in a 'marginalised community' here as well, so that it reads: (c) programmes and policies aimed at social protection and promotion of economic rights <u>of persons in a</u>

		<u>marginalised community or group within the county;</u>
Section 8(2)(d)	(d) objectives that would facilitate the availability, accessibility, acceptability and adaptability of goods and services relevant to the realisation of economic and social rights;	IF the definition proposed in section 2 above for 'access' is accepted, <u>then</u> this section 8(2)(d) can be amended to read as follows: (d) " <u>objectives that would facilitate access and adaptability of goods and services relevant to the realisation of economic and social rights</u> ";
Section 8(3)(c)	(c) adopt strategies and plans that facilitate the realisation of the economic and social rights including improving the availability, accessibility, acceptability and adaptability of goods and services aimed at facilitating the realisation of economic and social rights;	i) Please delete "the" between 'of' and 'economic'; ii) Note that the phrase "the realisation of economic and social rights" is unnecessarily repeated; ii) IF the definition proposed in section 2 above for 'access' is accepted, <u>then</u> this section 8(3)(c) can be amended to read as follows: (c) <u>adopt strategies and plans that facilitate the realisation of economic and social rights including improving access and adaptability of goods and services;</u>
Section 8(3)(e)	(e) adopt gender responsive policies and strategies in order to ensure equity in the socio-economic development of residents in the county;	The words "gender responsive" ought to be hyphenated, so that the section reads as follows: (e) <u>adopt gender-responsive policies and strategies in order to ensure equity in the socio-economic development of residents in the county;</u>
Section 8(3)(f)	(f) formulate medium term and long term strategies and programmes over a ten year period and such further periods in the future as the county government shall consider necessary;	The words "medium term", "long term", and "ten year period" ought to be hyphenated, so that the section reads as follows: (f) <u>formulate medium-term and long-term strategies and programmes over a ten-year period and such further periods in the future as the county government shall consider necessary;</u>

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
<p>Sections 8(3)(g) and (h)</p>	<p>(g) ensure that the strategies and programmes set out in the plans cater for the specific needs of the county and ensure the realisation of economic and social rights amongst the marginalised persons within the county;</p> <p>(h) formulate strategic plans that respond effectively to the urgent issues affecting the county including the marginalised persons and those who are vulnerable and afford such safety nets as may be necessary for the realisation of their economic and social rights;</p>	<p>Sections 8(3)(g) and (h) seem to have a considerable degree of overlap.</p> <p>Apart from a recommendation here to:</p> <p>i) change the phrase “<i>marginalised persons</i>” to read “<i>persons in a marginalised community or group within the county</i>”; (as previously suggested for sections 4(c), 5(1)(e), and 5(2)(d) above, it is possible to combine elements of both sections without much loss in meaning.</p> <p>To this end, one suggestion is as follows:</p> <p>Amend section 8(3)(g) to read: <u>“ensure that the strategies and programmes in the plans cater for the specific requirements of the county, and are responsive to the needs of persons within the county, including those of persons in a marginalised community or group, and vulnerable persons.</u></p> <p>Section 8(3)(h) can then be amended as follows: <u>“afford such safety nets as may be necessary for the realisation of economic and social rights of persons within the county;</u></p>
<p>Section 8(3)(j)</p>	<p>(j) set out, in the strategic plans, such mitigation measures and programmes including the delivery of goods and services at a subsidised rate in order to ensure accessibility of goods and services by all within the county.</p>	<p>Consider using ‘<i>access</i>’ instead of ‘<i>accessibility</i>’, so that the section reads as follows:</p> <p>(j) “<i>set out, in the strategic plans, such mitigation measures and programmes including the delivery of goods and services at a subsidised rate in order to ensure <u>access</u> to goods and services by all within the county.</i>”</p>

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 9	9. The principle objective of a county strategic plan shall be to ensure that a county government is able to ensure the availability, accessibility, acceptability, adaptability and quality of goods and services necessary for the realisation of economic and social rights as set out under the Constitution	<p>i) Please correct the spelling of 'principle' to 'principal';</p> <p>ii) Please rephrase "ensure that a county government is able to ensure the availability, accessibility"; to read: <i>" The principal objective of a county strategic plan shall be to ensure that a county government can secure"</i></p> <p>iii) <u>IF</u> the definition of 'access' as proposed in section 2 above is accepted, <u>then</u> the entire section can read as follows: <i>"The principal objective of a county strategic plan shall be to ensure that a county government can secure access and adaptability of quality goods and services necessary for the realisation of economic and social rights as set out under the Constitution...."</i></p>
Section 10(2)	(2) The Commission shall, in consultation with the Council of county Governors, determine the parameters for the conduct of, and the manner in which the baseline survey under subsection (1) shall be conducted.	In keeping with the amendment proposed in section 2 above, please ensure to capitalise all first letters of " <u>C</u> ouncil of <u>C</u> ounty <u>G</u> overnors.
Section 12(1)	12. (1) The respective county governor shall, within fourteen days of the preparation of the county strategic plan, submit to the clerk of the county assembly, a copy of the plan for tabling before, and approval by the county assembly.	Please insert a comma after 'approval', so that this section reads: 12.(1) "The respective county governor shall, within fourteen days of the preparation of the county strategic plan, submit to the clerk of the county assembly, a copy of the plan for tabling before, and approval by, the county assembly."
Section 12(2)	(2) The county governor shall, once the county strategic plan is approved, circulate and publicise the strategic plan through such means as it considers necessary to the residents of the county	This section should be <u>amended</u> and <u>expanded</u> to compel the county governor (or government) " <u>to circulate and publicise the strategic plan through such means and modes of communication as are necessary for all residents of the county, including persons in a marginalised community or group, and vulnerable persons, to be aware of and able to engage with it.</u> "

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 15(1)	15. (1) A person aggrieved by the implementation or non-implementation of a recommendation under this Part, may make an application to court for the implementation of the right in accordance with Article 20(5) of the Constitution.	Please <u>delete</u> the phrase "for the implementation of the right" after the word 'court' as it presumes that all applications to court will be geared towards implementing rights. This limits the section, since what might be at issue is <i>the manner</i> of implementation, or other matters. The amended section will then read as follows: <i>15. (1) "A person aggrieved by the implementation or non-implementation of a recommendation under this Part, may make an application <u>to court in accordance with Article 20(5) of the Constitution.</u>"</i>
Section 17	17. Each county executive committee member responsible for finance shall in the budget statement to the county assembly include measures aimed at ensuring the fulfilment of Article 43 of the Constitution rights and activities for that year and any progress achieved at availing these to the residents of the county.	Please <u>re-word</u> to: <i>17. "Each county executive committee member responsible for finance shall in the budget statement to the county assembly include measures aimed at ensuring the fulfilment of <u>rights in</u> Article 43 of the Constitution and <u>associated</u> activities for that year, and any progress achieved at <u>making these accessible</u> to the residents of the county."</i>
Section 18(1)	18. (1) The Cabinet Secretary responsible for finance, in consultation with the county executive committee members responsible for finance and the Commission, shall, within a period not exceeding twelve months from the commencement of this Act, make regulations generally for the better carrying out of the provisions of this Act	i) Please correct the spelling of 'finance' immediately after the phrase "The Cabinet Secretary responsible for"; ii) Please note that this section is also in keeping with the recommendation made above concerning the definition of 'Cabinet Secretary' and 'county executive committee member' in section 2 , which further justifies adopting it.
Section 18(2)(a)	(a) to provide a framework for the collaboration and the monitoring, by the Commission with the National and county governments in the implementation of this Act;	This section is somewhat disjointed. Please consider amending as follows: <i>(a) "to provide a framework for the <u>Commission to collaborate with and monitor the implementation of this Act together with the National and county governments</u>";</i>

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 18(2)(b)	(b) to provide a mechanism for the management of direct and indirect conditional grants appropriated from the Equalisation Fund and to made to a county government under this Act;	<p>Please <u>delete</u> the 'to' between 'and' and 'made', so that it reads as follows:</p> <p>(b) <i>"to provide a mechanism for the management of direct and indirect conditional grants appropriated from the Equalisation Fund and made to a county government under this Act;"</i></p>
Section 18(2)(d)	(d) the conduct of sensitisation programmes and the publication and dissemination of information under this Act.	<p>i) This section should be preceded by the word "<u>for</u>";</p> <p>ii) As recommended in sections 5(1)(g) and 7(1)(h), please avoid the use of the word 'sensitise', and use 'awareness' instead.</p> <p>The section would read as follows:</p> <p>(d) <i>"<u>for the conduct of awareness programmes and the publication and dissemination of information under this Act.</u>"</i></p>
Section 20(3)(a)(i)	(3) The county executive committee member shall – (a) for the purpose of subsection(1), - (i) use such modalities and platforms for citizen participation that may be established by the county government under section 91 of the County Governments Act;	<p>i) Please consider the recommendation with regard to section 12(2) above, and the need to engage <u>all</u> persons in a county (including the vulnerable), in a manner that will aid their awareness and understanding.</p> <p>ii) Arising from the above, and in order to capture any means and modes of communication that may not have been captured under <u>section 91</u> of the County Governments Act, consider the following amendment to this section:</p> <p>(3) <i>"The county executive committee member shall – (a) for the purpose of subsection(1), - (i) use such modalities and platforms for citizen participation <u>including those established by the county government under section 91 of the County Governments Act, to ensure awareness and engagement of all persons in a county</u>;"</i></p>

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 21	21. The Commission shall, in consultation with the Cabinet Secretary and the Council of county Governors –	<p>i) In keeping with the amendment proposed in sections 2 and 10(2) above, please ensure to capitalise all first letters of “<u>C</u>ouncil of <u>C</u>ounty <u>G</u>overnors.</p> <p>ii) Please change the guiding title of the section (“currently described as ‘Sensitisation programme framework’) to ‘Awareness programme framework’, so as to avoid the use of the word ‘sensitisation’ as recommended for sections 5(1)(g), 7(1)(h) and 18(2)(d) above.</p>
Section 21(b)	(b) develop and implement a framework for the participation of the residents of the respective counties in the formulation of the county strategic plan of the county;	<p>i) Please <u>delete</u> the phrase “of the county”, which is superfluous;</p> <p>ii) <u>Replace</u> ‘the’ between ‘of’ and ‘county’ with ‘each’.</p> <p>The section will then read as follows:</p> <p><i>(b) develop and implement a framework for the participation of the residents of the respective counties in the formulation of <u>each</u> county strategic plan;</i></p>
Section 21(c)	(c) collaborate with the relevant agencies and stakeholders within the county in enhancing the capacity of the residents to effectively participating in the affairs of the county governments in the delivery of goods and services that are aimed towards the realisation of the economic and social rights.	<p>i) Please <u>amend</u> “participating” to ‘<u>participate</u>’;</p> <p>ii) Please <u>delete</u> the phrase ‘in the’, between “governments” and “delivery”, and <u>replace with</u> “towards”;</p> <p>iii) Please <u>delete</u> “governments”;</p> <p>iv) Please <u>delete</u> “towards” (the one which immediately follows “aimed”), and <u>replace with</u> “at”; and</p> <p>v) Please <u>delete</u> “the” between ‘of’ and ‘economic’.</p> <p>The section will then read as follows:</p> <p><i>(c) “collaborate with the relevant agencies and stakeholders within the county in enhancing the capacity of the residents to effectively <u>participate</u> in the affairs of the county <u>towards</u> delivery of goods and services that are <u>aimed at</u> the realisation of economic and social rights.”</i></p>

Section Number	As stated in Bill	Reasons for amendments and/or Recommendations
Section 25	In the performance of its functions under this Act the Commission shall be guided by the national values and principles set out under the Constitution.	Please <u>delete</u> this entire section, as it is a replica of section 6(2) in this Bill, and therefore, superfluous.
Schedule (under section 7(3):	(g) whether or not it balances short, medium, and long-term needs;	Please amend slightly by including <u>hyphens</u> after 'short' and 'medium', so that the section reads as follows: (g) " <i>whether or not it balances <u>short-</u>, <u>medium-</u>, and long-term needs</i> ";

FINALLY:

Please consider amending the **TITLE** of the Bill to make it shorter, more accurate, and also easier to understand as amended.

I propose amending the title to "**The Realisation of Economic and Social Rights Bill**", for the following reasons:

- i) The overall emphasis in the majority of the sections in the Bill is on the **realisation** of economic and social rights. There is really no "*enforcement*" of these rights as such in the Bill, but rather, the creating of a facilitative and accountable environment for these rights to thrive.
- ii) Arguably, "*the preservation of human dignity*" is concomitant to, and as a result of, the **realisation** of social, economic, political, cultural, and other rights. The phrase "*preservation of human dignity*" therefore need not be self-standing here. Besides, nothing in the Bill has been said **specifically** concerning "preservation of human dignity", perhaps in cognisance of its inevitable association with the realisation of economic, social and other rights.

Following on from the above, should the proposal be accepted, all references in the Bill to "**The Preservation of Human Dignity and Protection of Economic and Social Rights Bill**" should be amended accordingly; as should the Preamble.

Yours faithfully,



Esther M. Muiruri (PhD)

esther@talklabs.co.ke

Pauline Vata
Advocate of the High Court of Kenya
P.O. Box 35572-00200
NAIROBI.
E-mail: pvmusangi@gmail.com

J.M. Nyengenyne, CBS
The Clerk of the Senate
Clerk's Chambers
Parliament building
P.O Box 41842-00100
NAIROBI

23rd July 2021

Dear Sir,

RE: SUBMISSIONS ON THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL, 2021 (SENATE BILLS, 2021)

I write in response to the development of The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2021.

Attached to this letter is my detailed comments on the abovementioned Bill which I hope will provide valuable insights to your deliberations.

Yours Sincerely,

Pauline Vata
pvmusangi@gmail.com

PART IV – COUNTY STRATEGIC PLANS FOR THE REALISATION OF ECONOMIC AND SOCIAL RIGHTS

Section 8. (1) Each county government shall prepare a county strategic plan for the realization of economic and social rights of residents within the respective county.

Recommendation: You cannot have a strategic plan just for economic and social rights given the interdependence and indivisibility of rights. The County Government Act also speaks to planning and economic functions of counties which the bill should adhere to. There is also need to indicate the duration of the Strategic Plans developed by the County Governments. My proposal is to have a five-year strategic plan on economic and social rights that should be in tandem with the County Integrated Development Plan (CIDP).

Section 10. (1) A county government shall, for the purpose of preparing its county strategic plan, carry out a baseline survey in order to determine..

Recommendation: Add a timeline to the frequency of the baseline survey to be done every five years. The baseline survey should be done simultaneously with the CIDPs to inform the planning of the County.

Section 13. (1) The National and each county government shall, not later than thirtieth September, in each year, submit to the Commission and the Senate, a report on the progress made on the realization of economic and social rights and in particular, action taken in giving effect to Article 43 of the Constitution...

Recommendation: The Commission as the oversight body on implementation of the bill should submit independent reports on each county's performance to the Senate, National Assembly and the other bodies mentioned under subsection 2. My proposal is to have all counties submit their reports to the Commission only at first instance then the Commission makes independent reports to both parliaments. Otherwise, section 13 as drafted involves a lot of reporting that might be at cross purpose on the role of the Commission as an oversight body.

PART VI – MISCELLANEOUS PROVISIONS

Section 19. (1) The Commission shall, in addition to its observations made under section 13(2), prepare an economic and social rights index with respect to the realization of economic and social rights by every county government...

Recommendation: This section should be merged with section 13 such that the Economic and social rights index is an outcome of the independent reports made by the commission to parliament. I also propose the index to be done on an annual basis as a progressive measure on implementation of socio-economic rights.

SCHEDULE (s. 7(3)) CRITERIA FOR THE REALISATION OF SOCIAL AND ECONOMIC RIGHTS

The indicators for the assessment, by the Commission, of the effort of a county government in the implementation of Article 43 of the Constitution shall include....

Recommendation: The indicators proposed in the Schedule s.7(3) are ambiguous and measuring the realization of economic and social rights using the same could be an exercise in futility. I propose the following four indicators for assessment of these rights:

Non-discrimination and equality: inclusivity of all members of the populace including the vulnerable and marginalized

Participation: Incentive and awareness measures extended by the duty bearer to address specific human rights issues including participation of the public to inform the assessment

Accountability: progressive budget allocations and coverage of targeted population groups under public programmes

Effective remedies: Reported cases of miscarriage of justice and proportion of victims who received compensation within a reasonable time; Human rights complaints received and the proportion redressed;

THE SENATE



MATRIX

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL,
2021

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
3	FIDA-Kenya	Replace Article 19 with Article 28 in paragraph (a).	The preservation of human dignity is provided under Article 28 of the Constitution.	Rejected
	Esther M. Muiruri (PhD)	Amend paragraph (a) to include Article 53(1). Amend paragraph (e) so as to include marginalised group. Delete the word "for" appearing at the beginning of paragraph (g).		
4	Esther M. Muiruri (PhD)	Amend paragraph (c) to read – (c) preservation of the well-being and dignity of every human being, and in particular, persons in a marginalised community or group;	While it may be assumed that "marginalised persons" refers to persons who are part of a marginalised community or group, the term "marginalised person" has not been specifically defined in this Bill, and it would be better to be	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
5	Esther M. Muiruri (PhD)	<p>In subclause (1) –</p> <p>i. Amend so that it captures the entire Article 53(1), and not just 53(1)(c);</p> <p>ii. Amend paragraph (e) to read as follows –</p> <p>(e) put in place measures that target persons in a marginalised community or group, and vulnerable persons, to ensure access and realisation of their economic and social rights</p> <p>iii. Amend paragraph (f) to read –</p> <p>(f) protect individuals, groups and communities from encroachment or interference by any person of their economic and social rights;</p> <p>iv. Amend paragraph (g) to read –</p> <p>(g) create awareness and build capacity to enable the public to develop their understanding, skills and capacity for equitable and effective participation in the formulation, implementation and monitoring of any policies, strategies or programme interventions aimed at</p>	<p>unambiguous.</p> <p>The word 'sensitize' has a somewhat different meaning than "create awareness", which is a better option here.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>realising their economic and social rights.</p> <p>In subclause (2), amend paragraph (g) to read as follows –</p> <p>(g) identify factors and their causes that impede the realisation of economic and social rights, and institute corrective measures;</p>		
6	FIDA-Kenya	Delete Part III	<p>The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution created by Article 59 of the Constitution of Kenya 2010 and established through the KNCHR Act of Parliament (the Kenya National Commission on Human Rights Act, 2011).</p> <p>The Commission's functions are constitutionally provided for and no act of parliament or legislation should purport to deviate from the functions as provided in the Constitution.</p> <p>Further, Section 8 of the KNCHR Act establishes the commission and its functions as stipulated in The Constitution.</p> <p>Therefore, the conferment of the oversight functions as set out in part III of the bill, is unconstitutional and</p>	<p>Pursuant to Article 59 of the Constitution, KNCHR is responsible for, among others –</p> <ul style="list-style-type: none"> a) promoting respect for human rights; b) promoting protection, and observance of human rights; and c) monitoring, investigating and reporting on the observance of human rights. <p>Part III is in line with Article 59 of the Constitution.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			ultra-vires to the role of the legislature.	
7	Esther M. Muiruri (PhD)	Amend 7(1) – i. in paragraph (d) to include marginalised community; ii. delete paragraph (h) and replace with the following – (h) create awareness in communities on economic and social rights as set out under the Constitution in collaboration with the relevant stakeholders and institutions in the area, conduct capacity building, education and information campaigns for this purpose;	Replace the word ‘sensitise’ which has a somewhat different meaning, with the word “create awareness”, which is a better option here. Additionally, the word “mobilise” seems somewhat inappropriate here, and may be superfluous, “create awareness” is sufficient.	
8	Transparency International Kenya (TI-Kenya)	Amend subclause (1) to provide that a county strategic plan for the realisation of economic and social rights be incorporate into a county integrated development plan (CIDP), and be prepared within the first four months of implementation of this Act.	Incorporating these plans into CIDPs will mainstream economic and social rights planning into the existing county planning framework. Timelines will ensure prompt realisation of the social and economic rights.	Pursuant to sections 107 and 108 of the County Governments Act, CIDPs are prepared after every five years and they form part of the basis for all budgeting and spending in a county. Clause 24 of the Bill amends section 107 to include a county strategic plan as one of the plans to be prepared

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
				by a county government. There is therefore need to provide the timelines and revisions of such plans.
	FIDA-Kenya	Delete the clause	The County Government Act sets out the functions of the county government including the plans that need to be put in place for the purpose of economic growth and service delivery to the people of the Republic of Kenya. The County Government Act, which is the primary Act that deals with the conduct of the County Governments provides for the role of the County governments.	
	Pauline Vata, Advocate	Amend subclause (1) to provide for a five-year strategic plan on economic and social rights that should be in tandem with the County Integrated Development Plan (CIDP).	You cannot have a strategic plan just for economic and social rights given the interdependence and indivisibility of rights. The County Government Act also speaks to planning and economic functions of counties which the bill should adhere to. There is also need to indicate the duration of the Strategic Plans developed by the County Governments.	
	Esther M. Muiruri (PhD)	Amend subclause (1) to provide that a county strategic plan must be in writing. Amend subclause (2)(c) to include marginalised community.		

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>Amend subclause (3)(c) to read as follows –</p> <p>(c) adopt strategies and plans that facilitate the realisation of economic and social rights including improving access and adaptability of goods and services;</p> <p>Amend subclause (3)(g) and (h) to read as follows –</p> <p>(g) ensure that the strategies and programmes in the plans cater for the specific requirements of the county, and are responsive to the needs of persons within the county, including those of persons in a marginalised community or group, and vulnerable persons.</p> <p>(h) afford such safety nets as may be necessary for the realisation of economic and social rights of persons within the county;</p>	<p>The phrase “the realization of economic and social rights” is unnecessarily repeated, and also to delete the word “the” appearing after the said phrase.</p> <p>To change the phrase “marginalised persons” to read “persons in a marginalised community or group within the county, and to remove unnecessary repetition.</p>	
9	FIDA-Kenya	Delete the clause.	The principal objective of county strategic CAN NOT be limited to ensuring availability, accessibility, adaptability and quality of goods and services for the realisation of	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	Esther M. Muiruri (PhD)	Amend the clause to read – The principal objective of a county strategic plan shall be to ensure that a county government can secure access and adaptability of quality goods and services necessary for the realisation of economic and social rights as set out under the Constitution.	economic and social rights.	
10	FIDA-Kenya Pauline advocate Vata,	Delete subclause (2). Add a timeline to the frequency of the baseline survey to be done every five years.	The Functions of The Commission are clearly set out under Section 59 of the Constitution and Kenya and under Section 8 of the KNCHR Act. The baseline survey should be done simultaneously with the CIDPs to inform the planning of the County.	
12	Esther M. Muiruri (PhD)	Amend subclause (1) to read – 12.(1) “The respective county governor shall, within fourteen days of the preparation of the county strategic plan, submit to the clerk of the county assembly, a copy of the plan for tabling before, and approval by, the county assembly.” Amend subclause (2) to expand it and compel the county governor.		

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		(2) The county governor shall, once the county strategic plan is approved, circulate and publicise the strategic plan through such means and modes of communication as are necessary for all residents of the county, including persons in a marginalised community or group, and vulnerable persons, to be aware of and able to engage with it.		
13	TI-Kenya Pauline Advocate Vata,	Amend subclause (1) to provide that reports on the progress made on the realisation of economic and social rights be also submitted to the Auditor-General. Have all counties submit their reports to the Commission only at first instance then the Commission makes independent reports to both parliaments. Otherwise, section 13 as drafted involves a lot of reporting that might be at cross purpose on the role of the Commission as an oversight body.	To ensure that the funds provided for the realisation of economic and social rights are audited to guarantee accountability on the use of these funds.	
15	Esther M. Muiruri (PhD)	Amend subclause (1) to read – 15. (1) A person aggrieved by the implementation or non-implementation of a recommendation under this Part, may make an application to court in accordance with Article 20(5) of the Constitution.	The phrase “for the implementation of the right” after the word ‘court’ presumes that all applications to court will be geared towards implementing rights which limits the section, since what might be at issue is the manner of implementation, or other matters.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
17	Esther M. Muiruri (PhD)	Amend the clause to read – 17. Each county executive committee member responsible for finance shall in the budget statement to the county assembly include measures aimed at ensuring the fulfilment of rights in Article 43 of the Constitution and associated activities for that year, and any progress achieved at making these accessible to the residents of the county.		
18	Esther M. Muiruri (PhD)	Amend subclause (2)(a) to read – (a) to provide a framework for the Commission to collaborate with and monitor the implementation of this Act together with the National and county governments Amend subclause (2)(d) to read – (d) for the conduct of awareness programmes and the publication and dissemination of information under this Act.	The section is somewhat disjointed. To replace the use of the word “sensitisation” with the word “awareness”.	
19	TI-Kenya	Amend subclause (1) to provide that economic and social rights index be prepared annually.	This will help in tracking the counties progress on realisation of the economic and social rights and will also correspond with the annual	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	Pauline Advocate Vata,	This section should be merged with section 13 such that the Economic and social rights index is an outcome of the independent reports made by the commission to parliament. Also, the index to be done on an annual basis as a progressive measure on implementation of socio-economic rights.		
	FIDA-Kenya	Delete the clause	progress report provided for under S. 13. (1) and enable the tracking of the Senate's recommendations under s. 14. (1)	The functions of the Commission are clearly stipulated In Article 59 of the Constitution of Kenya and Section 8 of KNCHR.
20	Esther M. Muiruri (PhD)	Amend subclause (3)(a)(i) to read – (i) use such modalities and platforms for citizen participation including those established by the county government under section 91 of the County Governments Act, to ensure awareness and engagement of all persons in a county	So as to compel the county to engage all persons in a county (including the vulnerable), in a manner that will aid their awareness and understanding, and also to capture any means and modes of communication that may not have been captured under section 91 of the County Governments Act	
21	Esther M. Muiruri (PhD)	Replace the word “sensitisation” in the marginal note with the word “awareness”.		

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		Amend paragraph (c) to read – (c) collaborate with the relevant agencies and stakeholders within the county in enhancing the capacity of the residents to effectively participate in the affairs of the county towards delivery of goods and services that are aimed at the realisation of economic and social rights.		
25	Esther M. Muiruri (PhD)	Delete the clause	It is a repetition of clause 6(2).	
The Schedule	Pauline Vata, Advocate	Replace the indicators with the following – Non-discrimination and equality: inclusivity of all members of the populace including the vulnerable and marginalized Participation: Incentive and awareness measures extended by the duty bearer to address specific human rights issues including participation of the public to inform the assessment Accountability: progressive budget allocations and coverage of targeted population groups under public	The indicators proposed in the Schedule are ambiguous and measuring the realization of economic and social rights using the same could be an exercise in futility	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>Effective remedies: Reported cases of miscarriage of justice and proportion of victims who received compensation within a reasonable time; Human rights complaints received and the proportion redressed;</p>		
2	TI-Kenya	<p>Amend the definition of the word “Economic and social rights” to include a paragraph providing for - (i) basic nutrition, shelter and healthcare for children;</p> <p>Amend the definition of the word “vulnerable persons” to include women, youth, members of minority or marginalised communities, particular ethnic, religious or cultural communities.</p>	<p>So as to capture the entirety of Article 53 1 (c) of the Constitution for the avoidance of doubt.</p> <p>So as capture the definition provided for under the Constitution.</p>	<p>Basic nutrition for children is provided for under paragraph (e), shelter is covered under paragraph (b), and healthcare is covered under paragraph (a).</p> <p>The Constitution has not defined the word “vulnerable persons”. However, this definition is similar to the definition of the term vulnerable groups provided for under Article 21(3) of the Constitution which provides that vulnerable groups within society, include 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.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	FIDA-Kenya	<p>Include the definition of the word "Human dignity"</p> <p>"Human Dignity- the recognition that human beings possess a special value intrinsic to their humanity and as such are worthy of respect simply because they are human beings"</p>	<p>The definition of human dignity is important to set the ground for the role of human dignity in the promotion, monitoring and enforcement of economic and social rights.</p>	<p>Has not been defined internationally; it varies from one jurisdiction to another, one issue to another, is a right in itself and also touches other right.</p>
	Esther M. Muiruri (PhD)	<p>Amend the definition of the word "access" by omitting the of the word "access" in the definition.</p> <p>"access" in relation to economic and social rights means the ease of reach, use, understanding, affordability and acceptability by a person or households of goods and services through production, purchase or through programmes implemented by the National and county governments to ensure that the economic and social rights of every person, including persons in need, are actualised;</p> <p>In the definition of "Cabinet Secretary" replace CS responsible for planning with CS responsible for finance, and in the definition of "county executive committee member" replace with CEC responsible for planning with CEC responsible for finance.</p>	<p>The word 'access' that is being described should not be used as part of the definition it seeks to explain, as it will not aid in comprehension.</p> <p>The Cabinet Secretary responsible for 'Planning' is quite vague.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>Amend the definition of the word “county strategic plan” by deleting the words “strategic” and “plan” so as to read –</p> <p>“county strategic plan” means the actions to be taken by a county towards the realisation of economic and social rights, as prepared by a county government pursuant to section 8.</p>	<p>i. Articles 43(1) and 53(1) of the Constitution specify rights and not persons, which would make the definition somewhat confusing as is;</p> <p>ii. To include the right of every child to free and compulsory basic education, to be protected from abuse and not to be detained as provided in Art. 53(1)(b), (d) and (e) as they carry corresponding obligations.</p>	<p>The definition of the word “county strategic plan” is for ease of reference and the contents of a county strategic plan is provided for in clause 8.</p>
		<p>Amend the introductory clause in the definition of the word “economic and social rights” to read –</p> <p>“economic and social rights” means the rights under Articles 43(1) and 53(1) of the Constitution that accrue to every person and child respectively including the right to –</p>		
		<p>Amend the definition of the word “subsidy programme” to read –</p> <p>“subsidy programme” refers to any programme established by the National or county governments for the benefit of</p>		

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>persons in need towards the realisation of their economic and social rights”</p> <p>Amend the definition of the word “persons in need” to read –</p> <p>“persons in need” includes any individual who for any reason is unable to access economic and social rights”</p> <p>Include the following new definitions –</p> <ol style="list-style-type: none"> 1. marginalised community - as defined in the Constitution; 2. marginalised group – as defined in the Constitution; 		
Long Title	Federation of Women Lawyers (FIDA-Kenya)	<p>Amend the long title to read –</p> <p>AN ACT of Parliament for the preservation of human dignity in the context of promotion, monitoring and enforcement of economic and social rights; to establish mechanisms to monitor and promote adherence by county governments to Article 43 of the Constitution; and for connected purposes.</p>	<p>Human dignity cannot be a functionality of Economic and Social Rights.</p> <p>When an act of parliament makes human dignity a functionality of enforcement of economic and social rights it creates conflict in the rights, which is contrary to Article 20 of the Constitution of Kenya.</p> <p>Article 19(2) and 3(b) of The Constitution of Kenya which provides that there should be no exclusion of fundamental rights.</p> <p>The original meaning of dignity establishes that all human beings deserve respect, on the basis that</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>they are human. Article 1 of the Universal Declaration of Human Rights (UDHR) states that all human beings are born free and equal in rights and dignity. ICESCR further states that; recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Therefore, Human Dignity qualifies as a principle of inalienability and universality of Human Rights.</p>	
Short Title	Esther M. Muiruri (PhD)	Amend the Short Title to read – The Realisation of Economic and Social Rights Bill	<p>To make it shorter, more accurate, and also easier to understand as amended. The Bill focusses on the realisation of economic and social rights. There is really no “enforcement” of these rights in the Bill, but rather, the creating of a facilitative and accountable environment for these rights to thrive. Arguably, “the preservation of human dignity” is concomitant to and as a result of, the realisation of social, economic, political, cultural, and other rights. The phrase</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>“preservation of human dignity” therefore need not be self-standing here. Besides, nothing in the Bill has been said specifically concerning “preservation of human dignity”, perhaps in cognisance of its inevitable association with the realisation of economic, social and other rights.</p>	

Stakeholders

1. Federation of Women Lawyers (FIDA-Kenya);
2. Transparency International – Kenya (TI-Kenya);
3. Esther Mururi (PhD); and
4. Pauline Vata, Advocate.

16th February, 2022

The Clerk of the Senate

Parliament Buildings

NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE PRESERVATION OF
HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL, SENATE BILLS NO. 21 OF 2021**

NOTICE is given that Sen. Erick Okong’o Mogeni, SC, MP, the Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, Senate Bills No. 21 of 2021, at the Committee Stage —

CLAUSE 3

THAT clause 3 of the Bill be amended —

(a) by deleting paragraph (e); and

(b) in paragraph (g) by deleting the word “for” appearing at the beginning of the paragraph and substituting therefor the word “the”.

CLAUSE 4

THAT clause 4 be amended in paragraph (c) by deleting the words “the marginalised” appearing immediately after the words “and in particular” and substituting therefor the word “vulnerable”.

HEADING TO PART II

THAT the Bill be amended by deleting the heading to Part II and substituting therefor the following new heading —

**PART II – OBLIGATIONS OF THE NATIONAL AND COUNTY
GOVERNMENTS**

CLAUSE 5

THAT clause 5 of the Bill be amended –

(a) in subclause (1) –

(i) by deleting paragraph (e) and substituting therefor the following new paragraph –

(e) put in place measures that target vulnerable persons to ensure the realisation of their economic and social rights and that such persons have access to goods and services that are of acceptable standards;

(ii) by deleting paragraph (g) and substituting therefor the following new paragraph –

(g) create awareness and build capacity of citizens to enable them develop their understanding, skills and capacity for equitable and effective participation in the formulation, implementation and monitoring of policies, strategies or programmes aimed at realising economic and social rights;

(b) in subclause (2) –

(i) by deleting paragraph (d) and substituting therefor the following new paragraph –

(d) prioritise the allocation of resources to ensure the realisation of economic and social rights while taking into account the special needs of vulnerable persons within the respective countries;

(ii) by deleting paragraph (g) and substituting therefor the following new paragraph –

(g) identify factors that impede the realisation of economic and social rights and their causes, and institute corrective measures;

CLAUSE 6

THAT clause 6 of the Bill be amended –

(a) in subclause (1) by deleting the word “oversee” appearing immediately after the words “The Commission shall” and substituting therefor the words “monitor and report on”; and

(b) in subclause (2) by inserting the words “of governance” immediately after the

words “national values and principles”.

CLAUSE 7

THAT clause 7 of the Bill be amended in subclause (1) –

(a) by deleting paragraph (d) and substituting therefor the following new paragraph –

(d) identify factors that impede the economic development of and access to essential financial services by vulnerable persons, and make recommendations to the Cabinet Secretary on policies and strategies necessary to address those factors;

(b) by deleting paragraph (g) and substituting therefor the following new paragraph –

(g) make recommendations to State agencies responsible for the delivery of social assistance programmes at the National and county governments levels on measures for the effective delivery of the programmes;

(c) by deleting paragraph (h) and substituting therefor the following new paragraph –

(h) in collaboration with relevant stakeholders, create awareness on the realisation of economic and social rights.

CLAUSE 8

THAT clause 8 of the Bill be amended –

(a) by deleting subclause (1) and substituting therefor the following new subclause –

(1) In preparing a county integrated development plan provided for under section 108 of the County Governments Act, each county government shall prepare a county strategic plan for the realisation of economic and social rights as a component of the county integrated development plan.

(b) in subclause (2) by deleting paragraph (c) and substituting therefor the following new paragraph –

(c) programmes and policies aimed at social protection and the promotion of economic and social rights of vulnerable persons within the county;

(c) in subclause (3) –

- (i) by deleting paragraph (c) and substituting therefor the following new paragraph –
 - (c) adopt strategies and plans that enhance the availability, accessibility, acceptability and adaptability of goods and services aimed at facilitating the realisation of economic and social rights;
- (ii) by deleting paragraph (g); and
- (iii) by deleting paragraph (h) and substituting therefor the following new paragraph –
 - (h) formulate strategic plans that respond effectively to issues affecting the realisation of economic and social rights within the county and provide such safety nets as may be necessary.

CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefor the following new clause –

Objectives of a county strategic Plan.

9. The principal objective of a county strategic plan prepared under section 8 shall be to enhance the ability of a county government to secure access, availability, acceptability, adaptability and quality of goods and services necessary for the realisation of economic and social rights.

CLAUSE 12

THAT the Bill be amended by deleting clause 12 and substituting therefor the following new clause –

Approval of county strategic plans by the county assembly.

12. (1) The respective county governor shall, within fourteen days of the preparation of a county strategic plan, submit a copy of the plan to the county assembly for approval.

(2) The county governor shall, upon the approval of the county strategic plan, publish the plan in the respective county gazette and publicise it within the county through such means as provided for under section 95 of the County Governments Act.

CLAUSE 15

THAT clause 15 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause –

(1) A person aggrieved by the decision to implement or refrain from implementing a recommendation under this Part, may make an application to court in accordance with Article 22 of the Constitution.

CLAUSE 16

THAT clause 16 of the Bill be amended by deleting the expression “20(5)” appearing immediately after the words “right under Article” and substituting therefor the expression “22”.

CLAUSE 17

THAT the Bill be amended by deleting clause 17 and substituting therefor the following new clause –

County Fiscal Strategy
Paper to contain measures
on social economic rights.

17. The respective county treasury shall include in the County Fiscal Strategy Paper –

- (a) measures aimed at ensuring the realisation of economic and social rights and associated activities for that year; and
- (b) any progress made in the realisation of economic and social rights.

HEADING TO PART V

THAT the Bill be amended by deleting the heading to Part V.

CLAUSE 18

THAT the Bill be amended by deleting clause 18.

CLAUSE 19

THAT clause 19 of the Bill be amended in subclause (1) by inserting the word “annual”

immediately after the words “prepare an”.

CLAUSE 21

THAT clause 21 of the Bill be amended –

- (a) by deleting the marginal note and substituting therefor the following new marginal note –

Public awareness framework.

- (b) by deleting paragraph (c) and substituting therefor the following new paragraph –

- (c) collaborate with relevant agencies and stakeholders in each county in enhancing the capacity of residents to effectively participate in county affairs aimed at the delivery of goods and services for the realisation of economic and social rights.

CLAUSE 22

THAT clause 22 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a) –

- (aa) in section 126(1) by inserting the words “including for the realisation of economic and social rights” immediately after the words “strategic priorities” in paragraph (a).

CLAUSE 24

THAT the Bill be amended by deleting clause 24.

CLAUSE 25

THAT the Bill be amended by deleting clause 25.

INSERTION OF NEW CLAUSE 21A

THAT the Bill be amended by inserting the following new clause immediately after clause 21 –

Regulations.

21A. (1) The Cabinet Secretary shall, in consultation with the county executive committee members responsible for

finance and the Commission and within twelve months from the commencement of this Act, make regulations 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 make regulations –

- (a) to provide a framework for collaboration between the National and county governments, and monitoring by the Commission on the implementation of this Act;
- (b) to provide for the procedures for the conduct of public participation under this Act; and
- (c) on the conduct of awareness programmes and the publication and dissemination of information under 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 shall apply to regulations made under this Act.

Cap. 2.
No. 23 of 2013.

INSERTION OF NEW CLAUSE 21B

THAT the Bill be amended by inserting the following new clause immediately after the new clause 21A –

Amendment to
No. 17 of 2012.

21B. The County Governments Act is amended in section 107(1) by inserting the following new paragraph immediately after paragraph (d) –

- (e) county strategic plans for the realization of economic and social rights under Part IV of the

Economic and Social Rights Act.

SCHEDULE

THAT the Schedule to the Bill be amended –

- (a) in the introductory clause by inserting the words “the National Government and” immediately after the words “the effort of”;
- (b) in paragraph (a) by deleting the words “levels of government” appearing immediately after the words “to the different” and substituting therefor the words “departments, agencies and institutions”;
- (c) by deleting paragraph (h) and substituting therefor the following new paragraph –
 - (h) whether or not it has put in place sufficient social safety nets such as cash transfers to vulnerable persons;
- (d) in paragraph (i) by deleting the words “and those in crisis situations” appearing immediately after the words “of the vulnerable” and substituting therefor the words “persons”.

CLAUSE 2

THAT clause 2 of the Bill be amended –

- (a) in the definition of the word “access” by deleting the words “persons in need” appearing immediately after the words “every person including” and substituting therefor the words “vulnerable persons”;
- (b) in the definition of the word “Council of County Governors” by deleting the expression “18” appearing immediately after the words “established under section” and substituting therefor the expression “19”;
- (c) by inserting the following new definition immediately after the definition of the word “county executive committee member” –
 - “county integrated development plan” means the five-year plan developed by a county government in accordance with section 108 of the County Governments Act;
- (d) by deleting the definition of the word “Equalisation Fund”;
- (e) by deleting the definition of the word “subsidy programme”;

(f) by deleting the definition of the word “person in need”;

(g) by deleting the definition of the word “vulnerable persons” and substituting therefor the following new definition –

“vulnerable persons” include children, pregnant and nursing mothers, older members of society, internally displaced persons, persons with disability, persons with chronic illnesses, victims of conflict, persons living in marginalised areas, members of marginalised communities or groups and such other group as may be identified by the Cabinet Secretary or the respective county governor from time to time.

LONG TITLE

THAT Bill be amended by deleting the Long Title and substituting therefor the following new Long Title –

AN ACT of Parliament to establish a framework for the realisation of economic and social rights; for monitoring and reporting on the realisation of economic and social rights; and for connected purposes.

SHORT TITLE

THAT clause 1 of the Bill be amended by deleting the words “Preservation of Human Dignity and Enforcement of” appearing immediately after the words “be cited as the”.

Dated ... *16th Feb*, 2022.

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Sen. Erick Okong’o Mogeni, SC, MP,
Chairperson,
Standing Committee on Justice, Legal Affairs and Human Rights.