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**THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL, 2022**

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, 2022. 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 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 19 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 9;

“economic and social rights” means the rights accruing to every person specified under Articles 43(1) and 53(1)(c) of the Constitution and includes 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, 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 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) co-operation between the National and county governments in the fulfilment of their respective obligations with regard to the realisation of economic and social rights.

4. All persons 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 of the Constitution and the objects of devolution set out under Article 174 of the Constitution— Guiding principles

- (a) promotion of sustainable development;
- (b) non-discrimination;
- (c) preservation of the well-being and dignity of every human being;

- (d) promotion of good governance and accountability of duty bearers in meeting their obligations for the realisation of 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 – OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

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–

- (a) formulate and implement such policies, legislation and strategies and put in place such mechanisms for the realisation of 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 economic and social rights;
- (d) put in place adequate infrastructure that would be necessary to meet their obligations in realising economic and social rights;

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

- (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;
 - (f) protect individual persons, groups and communities from encroachment or interference, by any person, of their economic and social rights; and
 - (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 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 the realisation of economic and social rights while taking into account the special needs of vulnerable persons;
 - (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) identify factors that impede the realisation of economic and social rights and their causes and institute corrective measures; and
- (h) invest and promote investments 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 and county governments are required to meet in carrying out their obligations under subsection (2).

PART III — ROLE AND FUNCTIONS OF THE COMMISSION

6. The Commission shall monitor and report on the implementation of this Act.

The role of the Commission.

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

Functions of the Commission.

- (a) monitor the performance of the National and county governments in their 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;
- (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, vulnerable persons 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 to ensure the realisation of such rights;
- (g) advise and make recommendations to the National Social Assistance Authority established under section 3 of the Social Assistance Act regarding the delivery of social assistance programmes to respective counties;
- (h) in collaboration with relevant stakeholders, create awareness on the realisation of economic and social rights; and
- (i) perform such other functions as may be necessary for the implementation of this Act.

No. 24 of 2013.

(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; and
 - (b) consult with such entities as it may consider necessary for the carrying out of the functions.
- (3) The Commission shall, in monitoring the realisation of economic and social rights be guided by the criteria set out in the Schedule.

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

Economic and social rights index.

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

- (a) the criteria used to measure the realisation of economic and social rights;

- (b) the extent to which the National or 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 National and county governments in ensuring the realisation of economic and social rights of residents within respective counties.

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

PART IV — COUNTY STRATEGIC PLANS

9. (1) In preparing a county integrated development plan 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.

County strategic plans for the realisation of economic and social rights.

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

- (a) variables and specific actions required to be undertaken for the realisation of economic and social rights within its county integrated development plan;
- (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 the promotion of economic and social rights of vulnerable persons 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 facilitation set out under section 102 of the County Governments Act and shall—

- (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 enhance 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 in 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 as the county government shall consider necessary;
- (g) 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;
- (h) formulate strategic plans through a participatory process with the residents of the respective

No. 17 of 2012.

No. 17 of 2012.

county and in accordance with section 20 of this Act and section 115 of the County Governments Act; and

- (i) set out, in the strategic plans, such mitigation measures and programmes, including the delivery of goods and services at a subsidised rate, to ensure accessibility of goods and services by all within the county.

10. The principal objective of a county strategic plan prepared under section 9 is 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.

Objective of county strategic plans.

11. (1) Each county government shall, when preparing its county strategic plan, carry out a baseline survey in order to determine —

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 rights 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 identified under paragraph (a);
- (e) the outcomes of previous interventions, if any; 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 and the manner in which the baseline survey under subsection (1) shall be conducted.

12. (1) A county government may 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 a 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 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.

13. (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.

Approval of county strategic plans by the county assembly.

(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.

No. 17 of 2012.

14. (1) The National and each county government shall, not later than thirtieth September, in each year, submit to the Commission, the Senate and the National Assembly a report on the progress made on the realisation of economic and social rights and in particular, action taken to give 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 the National and each county government and shall submit its report to —

- (a) the Senate;
- (b) the National Assembly;
- (c) respective county assemblies;
- (d) the Commission for Revenue Allocation;
- (e) the Intergovernmental Budget and Economic Council established under section 187 of the Public Finance Management Act; and
- (f) the residents of respective counties through dissemination in such manner as it shall consider appropriate.

No. 18 of 2012.

15. (1) Each House of Parliament 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 Parliament shall take into account the recommendation in the implementation of economic and social rights in the subsequent year and report thereon in its subsequent report under section 14(1).

16. (1) A person aggrieved by the decision to implement or refrain from implementing a

Court action.

recommendation under this Part may make an application to court in accordance with Article 22 of the Constitution.

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

17. Nothing in this Act may be deemed to deny any person the right to seek the enforcement of any right under Article 22 of the Constitution only by reason that Parliament has not made a recommendation in that regard pursuant to this Part.

Remedies.

18. Each county treasury shall include in its County Fiscal Strategy Paper —

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

- (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.

PART V — MISCELLANEOUS PROVISIONS

19. (1) The Cabinet Secretary shall, within twelve months from the commencement of this Act and in consultation with the Cabinet Secretary responsible for finance, the county executive committee members responsible for finance and the Commission, 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 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 Statutory Instruments Act and the Interpretation and General Provisions Act in relation to subsidiary legislation shall apply to regulations made under this Act.

No. 23 of 2013.

Cap. 2.

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;

No. 17 of 2012.

- (ii) receipt of submissions and any petitions from the residents of the county on the county strategic plan; and
- (iii) the clarification or verification of any issues raised by the residents of the county on the county strategic plan.

(3) Each county executive committee member shall

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- (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) before finalising a county strategic plan.

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

Public awareness framework.

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- (a) develop and implement public education and awareness programmes on the economic and social rights and the obligations of the National and 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 county strategic plans; and
- (c) collaborate with the relevant agencies and stakeholders within counties in enhancing the capacity of the residents to effectively participating in the affairs of the National and county governments in the delivery of goods and services that are aimed towards the realisation of the economic and social rights.

22. (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.

23. 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 126(1) by inserting the words “including for the realisation of economic and social rights” immediately after the words “priorities and plans” appearing in paragraph (a); and

(c) 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;

24. (1) The County Governments Act is amended in section 107(1) by inserting the following new paragraph immediately after paragraph (d) — Amendment to No. 17 of 2012.

(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.

SCHEDULE

(s. 7(3))

**CRITERIA FOR THE REALISATION OF SOCIAL AND
ECONOMIC RIGHTS**

The indicators for the assessment, by the Commission, of the effort by the National or 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 respective departments, agencies and institutions;
- (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 put in place sufficient social safety nets such as cash transfers to vulnerable persons; and
- (i) whether or not its plan or programme responds to the needs of vulnerable persons.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The realisation of the economic and social rights has continually been tied to the availability of resources and 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 services that would ensure that economic and social rights for all are realised. Large gaps therefore exist that require urgent intervention through policy, legislation and other action to compel both the National and county governments to 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.

This Bill achieves this as its principal object 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.*

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

social rights by all actors. Since most sectors relevant to these rights fall under county governments, it is critical that mechanisms be established at the county level by the county governments for the realisation of these 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 envisaged.

Part I of the Bill provides preliminary matters and sets out the objects and purposes of the Bill and the principles that are to guide the National and county governments and other actors in its implementation once enacted.

Part II of the Bill imposes various obligations on the National and county governments in ensuring that economic and social rights are realised.

Part III of the Bill provides the Kenya National Commission on Human Rights with a monitoring role over the National and county governments, including the relevant agencies and institutions, to ensure the realisation of economic and social rights under the Constitution.

Part IV of the Bill 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 Kenya National Commission on Human Rights which thereafter circulates the same to various institutions together with its recommendations on the actions taken and further actions required to be undertaken by the National and county governments for the realisation of economic and social rights.

Part V of the Bill provides for miscellaneous provisions. It stipulates the formulation of regulations necessary for the implementation of the provisions of the Bill and makes detailed provisions on the conduct of public participation and awareness in implementing the functions

stipulated under the Bill. This Part further amends the Public Finance Management Act, 2012 and the County Governments Act, 2012 to bring them to conformity with the provisions of the Bill.

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

Section 19 of the Bill delegates legislative powers to the Cabinet Secretary responsible for matters related to planning, who is required to make regulations for the better carrying out of the provisions of the Bill once enacted in consultation with the Cabinet Secretary responsible for finance, county executive committee members 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.

Economic and social rights are tied to the various functions of county governments as designated under Part 2 of the Fourth Schedule to the Constitution. These functions include agriculture, county health services, county planning and development, provision of pre-primary and vocational education and county 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 therefore concerns county governments in terms of Articles 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

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

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

Dated the 12th October, 2022.

DANSON BUYA MUNGATANA,
Senator.

Section 12(1) of No. 18 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 126(1) of No. 18 of 2012 which it is proposed to amend —

126. (1) Every county government shall prepare a development plan in accordance with Article 220(2) of the Constitution, that includes—

County
government to
prepare
development plan.

- (a) strategic priorities for the medium term that reflect the county government's priorities and plans;
- (b) a description of how the county government is responding to changes in the financial and economic environment;
- (c) programmes to be delivered with details for each programme of—
 - (i) the strategic priorities to which the programme will contribute;
 - (ii) the services or goods to be provided;
 - (iii) measurable indicators of performance where feasible; and
 - (iv) the budget allocated to the programme;
- (d) payments to be made on behalf of the county government, including details of any grants, benefits and subsidies that are to be paid;
- (e) a description of significant capital developments;
- (f) a detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the county, including measurable indicators where those are feasible;
- (g) a summary budget in the format required by regulations; and
- (h) such other matters as may be required by the Constitution or this Act.

Section 187(2) of No. 18 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—

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

- (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.

Section 107(1) of No. 17 of 2012 which it is proposed to amend —

107. To guide, harmonize and facilitate development within each county there shall be the following plans—

Types and purposes of county plans.

- (a) county integrated development plan;
- (b) county sectoral plans;
- (c) county spatial plan; and
- (d) cities and urban areas plans as provided for under the Urban Areas and Cities Act (No. 13 of 2011).