



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 7 of 2022)

THE ECONOMIC AND SOCIAL RIGHTS BILL, 2022

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THE ECONOMIC AND SOCIAL RIGHTS BILL, 2022

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

THE ECONOMIC AND SOCIAL RIGHTS BILL, 2022

A Bill for

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

ENACTED by the Parliament of Kenya, as follows —

PART I — PRELIMINARY

Short title. 1. This Act may be cited as the Economic and Social Rights Act, 2022.

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

“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;

No. 14 of 2011. “Commission” means the Kenya National Commission on Human Rights established under section 3 of the Kenya National Commission on Human Rights Act;

No. 2 of 2012. “Council of county Governors” means the Council of county Governors established under section 19 of the Intergovernmental Relations Act;

“county executive committee member” means the county executive committee member responsible for

matters related to planning within the county;

No. 17 of 2012. “county integrated development plan” means the five-year plan developed by a county government in accordance with section 108 of the County Governments Act.

“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; and

“vulnerable persons” means persons who are unable to meet their economic and social needs and include children, pregnant and nursing mothers, older members of society, internally displaced persons,

persons with disabilities, the sick, persons with chronic illnesses, victims of conflict, persons living in marginalised areas, and members of marginalised communities or groups and such other groups as the Cabinet Secretary may, by notice in the Gazette, or the respective county governor may, by notice in the Gazette and county Gazette, designate.

Object and purposes.

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

- (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; and
- (e) 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.

Guiding principles

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—

- (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 effective 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

Obligations of the National and county governments with respect to 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), 53(1)(c) and 57(d) 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, affordability, accessibility, adaptability, acceptability of quality goods and services that would facilitate the realization 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;
- (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

The role of the Commission.

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

Functions of the Commission.

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

- (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 authority responsible for implementation of social assistance programs regarding the delivery of social assistance programmes;
- (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.

(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.

Economic and social rights index.

8. (1) The Commission shall, in addition to its observations made under section 14(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.

(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

County strategic plans.

9. (1) In preparing a county integrated development plan under section 108 of the County

No. 17 of 2012. 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.

(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, affordability, accessibility, adaptability and acceptability of quality 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—

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 enhance the availability, affordability, accessibility, adaptability and acceptability of quality 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 county and in accordance with section 115 of the County Governments Act; and
- (i) set out, in the strategic plans, such mitigation measures and programmes,

No. 17 of 2012.

including the delivery of goods and services at a subsidised rate, to ensure accessibility of goods and services by all within the county.

Objective of county strategic plans.

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.

Baseline survey.

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

- (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.

Receipt of grants and donations.

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.

No. 18 of 2012.

(2) The provisions of section 138 of the Public Finance Management Act and the annual County Governments Additional Allocations Act applicable in the respective financial year shall apply with respect to a grant received under subsection (1).

(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.

Approval of county strategic plans by the county assembly.

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.

No. 17 of 2012.

(2) The county governor shall, upon the approval of the county strategic plan, publish the plan in the *Gazette* and 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.

Reports on implementation of economic and social rights.

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.

(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) the Attorney-General;
- (d) respective county assemblies;
- (e) the Commission for Revenue Allocation;
- (f) the Intergovernmental Budget and Economic Council established under section 187 of the Public Finance Management Act; and
- (g) the residents of respective counties through dissemination in such manner as

No. 18 of 2012.

it shall consider appropriate.

Recommendations
on implementation
of the report.

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—

- (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).

Court action.

16. (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.

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

Remedies.

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.

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

18. Each county treasury shall include in its 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.

PART V — MISCELLANEOUS PROVISIONS

Regulations.

19. (1) The Cabinet Secretary shall, within twelve months from the commencement of this Act and in consultation with the Commission, 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 Statutory Instruments Act and the Interpretation and General Provisions Act in relation to

No. 23 of 2013.

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subsidiary legislation shall apply to regulations made under this Act.

Public awareness framework.

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

- (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.

Transition.

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

No. 17 of 2012.

(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).

Amendment of No. 18 of 2012.

22. The Public Finance Management Act is amended—

(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;

Amendment to No.
17 of 2012

23. (1) 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

(s. 7(3))

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

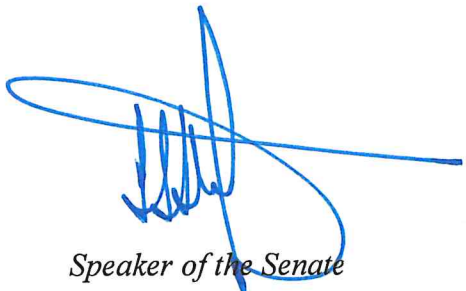
The indicators for the assessment, by the Commission, of the effort by the National or a county government in the implementation of Article 43 of the Constitution shall include —

- (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.

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 20th June, 2023.


Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 161 of the Senate Standing Orders.


Speaker of the Senate

