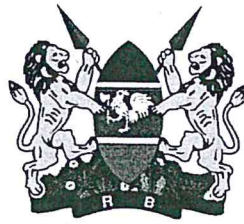


REPUBLIC OF KENYA



Approved!
23/3/23

THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL, 2022
(SENATE BILLS NO. 7 OF 2022)

PAPERS LAID	
DATE	23/3/23
TABLED BY	Sen Chimera
COMMITTEE	JKAC
CLERK AT THE TABLE	Abelrahman Dada

Rt. Hon Speaker
You may approve for
tabling
22/03/23

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

Clerk, Senate
Forwarded & recommended
for approval for tabling
22/03/2023

March, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

CIDP	County Integrated Development Plans
CRA	Commission on Revenue Allocation
ESCRs	Economic, Social and Cultural Rights
KLRC	Kenya Law Reforms Commission
KNCHR	Kenya National Commission on Human Rights
MP	Member of Parliament
NGEC	National Gender and Equality Commission
Sen.	Senator

PREFACE

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Order 228 of the Senate Standing Orders and is mandated *‘to consider all matters relating to constitutional affairs, the organisation 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.*

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2) Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5) Sen. Hamida Ali Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica W. Maina, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

Minutes of the Committee in considering the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022) are annexed to this Report as *Appendix 1*.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

1. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022), sponsored by Sen. Senator Danson Buya Mungatana, MGH, MP was published on 9th November, 2022 and was introduced in the Senate by way of First Reading on 1st December, 2022. The Bill was referred to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration as an Ordinary Bill.
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. In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* Newspapers on Friday, 9th December, 2022 inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.
4. Following the call for submissions, the Committee received written memoranda from seven stakeholders, namely; Kenya National Commission on Human Rights, National Gender and Equality Commission, Commission on Revenue Allocation, Office of the Attorney General and Department of Justice, the State Department for Devolution, and Natural Justice, a non-governmental organization.

Honourable Speaker,

5. The Committee proceeded to consider the Bill, and the stakeholder submissions received thereon, at length. Some key observations by the Committee, which were reflected in the stakeholder submissions, was that the Bill appeared to replicate provisions already contained in or which would directly conflict with the Constitution and other laws; the Bill introduced conflicts in mandates and reporting obligations among different commissions and offices; the Bill proposed

the establishment of structures for planning at national and county levels that were not aligned, and run parallel to, existing ones; and, the Bill did not adequately provide a framework for realization of economic and social rights and for the role of Parliament in monitoring such implementation.

6. Consequently, while the Committee observed that there were good aspects of the Bill that should not be lost altogether, the Committee was of the view that the Bill, as currently drafted, is not suitable for passage into legislation. Similarly, the amendments that would need to be made to the Bill, if it were to be amended at Committee stage, are so extensive that it would end up being an almost new Bill altogether.
7. Prior to the adoption of this Report, the Committee shared these reservations with the Sponsor of the Bill and accorded the Sponsor an opportunity to discuss the same as well as the next steps regarding the Bill.

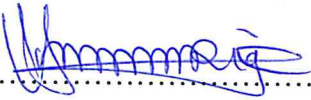
Honourable Speaker,

8. The detailed Committee observations are set out at Chapter Three of this Report.
9. Arising from its Observations, the Committee recommends that –
 - i) pursuant to standing order 159 of the Senate Standing Orders, the Sponsor of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022) **withdraws** the Bill to pave way for a fresh Bill to be drafted taking into account the concerns raised and recommendations made by stakeholders as well as by the Committee; and
 - ii) in the event the recommendation to withdraw the Bill is not acceded to, the Committee recommends that the Bill be **not** proceeded with by the Senate.

Honourable Speaker,

10. I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill possible. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment. Lastly, I wish to thank the stakeholders who submitted written memoranda which greatly aided the Committee in considering the Bill.



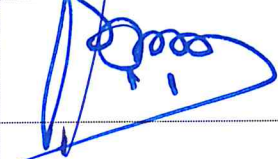
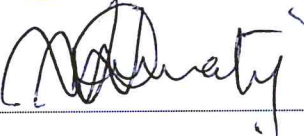
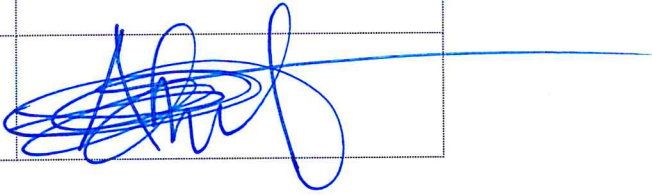
11. It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022).

Signed  Date... 22/03/2023

SEN. WAKILI HILLARY KIPROTICH SIGEL, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS

ADOPTION OF THE 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, 2022 (SENATE BILLS NO.7 OF 2022)

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

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP (Chairperson)	
2.	Sen. Raphael Chimera Mwinzagu, MP (Vice-Chairperson)	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Ali Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Maina, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

CHAPTER ONE: INTRODUCTION

1.1. Introduction

1. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022), sponsored by Sen. Senator Danson Buya Mungatana, MGH, MP, was published on 9th November, 2022 and was introduced in the Senate by way of First Reading on 1st December, 2022. The Bill was referred to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration as an Ordinary Bill. A copy of the Bill is annexed to this Report as *Appendix 2*.
2. The Bill seeks to –
 - i) fulfil the constitutional obligation on the State set out in Article 21(1) and (2) of the Constitution to observe, respect, protect, promote and fulfil the rights and fundamental freedoms set out in the Bill of Rights. Further, 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; and
 - ii) 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.

1.2. Implementation of Economic and Social Rights

3. Human rights have been divided into several categories: civil, political, economic, social, and cultural rights. Economic, social, and cultural rights are the freedoms, privileges and entitlements that individuals and communities require to live a life of dignity. These include the rights to food, housing, health, education, cultural identity, and more that are clearly set out under 43 of the Constitution of Kenya, 2010.
4. Although some economic, social, and cultural rights cannot be immediately implemented, States that have ratified the relevant treaties nonetheless have the obligation to guarantee these rights. The realization of economic and social rights, as opposed to civil or political rights, has often been dependent on the availability of resources and was rarely seen as being inherent rights. Consequently, there has

been little emphasis on realizing these rights thus requiring intervention through policy, legislation and other action.¹

5. However, it is argued that the division between the different categories of human rights – civil, cultural, economic, political, and social – does not imply that one category of human rights is more important than the other. Human rights are interrelated, indivisible, interdependent and equally important. For example, the right to health care, freedom from hunger or clean and safe water is intertwined with the right to life; the right to affordable housing is intertwined with the right to human dignity or privacy; while the right to free speech may be linked to the right to basic education.²

1.3. International Treaties and instruments addressing economic, social and cultural rights

6. The Constitution of Kenya under Article 2(6) states that “*any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution*”.
7. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the most comprehensive international treaty addressing economic, social, and cultural rights. Other international instruments that specifically address economic, social and cultural rights include-
 - (a) African Charter on Human and Peoples’ Rights (Banjul Charter) (Articles 2, 14-18, 20-22, 24) (including the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Articles 12-19))
 - (b) African Charter on the Rights and Welfare of the Child (Articles 11, 14, 18)
 - (c) Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Articles 4, 13-18, 21, 26-28)
 - (d) Convention on the Elimination of All Forms of Discrimination Against Women (Articles 10-16) (Including the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women)
 - (e) Convention on the Elimination of All Forms of Racial Discrimination (Articles 1–2, 5)
 - (f) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 11, 14–15, 25–28, 30–32, 40, 43–45, 54–55, 64, 70)

¹ UNESCO , Economic, Social and Cultural Rights (ESCR)
<http://www.unesco.org/new/en/social-and-human-sciences/themes/advancement/networks/larno/economic-social-and-cultural-rights/> [accessed 08.02.2023]

² The Center for Economic and Social Rights, *What are Economic, Social and Cultural rights?*
<http://www.cesr.org/what-are-economic-social-and-cultural-rights> [accessed 08.02.2023]

- (g) Convention on the Rights of the Child (Articles 9, 16, 19, 24–36) (Including the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Articles 1–3) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography)
- (h) Convention Relating to the Status of Refugees (Articles 17-24, 30)
- (i) International Covenant on Civil and Political Rights (Articles 1, 8, 22, 23, 27)
- (j) International Labour Organization Conventions
- (k) Universal Declaration of Human Rights (Articles 22-27)

1.4. Objects of the Bill

8. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022) seeks to impose obligations on National and County governments to-
 - (a) ensure the availability, accessibility, adaptability and acceptability of services that would facilitate the realization of the economic and social rights;
 - (b) put in place adequate infrastructure that would be necessary to meet their obligations in realizing the economic and social rights;
 - (c) adopt comprehensive strategic plans that ensure the protection and promotion of economic and social rights;
 - (d) Prioritize the allocation of resources to ensure that the economic and social rights are realized while taking into account the special needs of marginalized persons within the respective counties; and
 - (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.

1.5. Consequences of the Bill

9. Once enacted, the Bill will establish a framework for national monitoring, benchmarking and evaluation of progress by national and county governments in fulfilling their obligations under the Constitution, existing legislation and international treaties with respect to preserving human dignity and realisation of economic, social and cultural rights. The Bill therefore has the potential to eradicate poverty and inequality, to ensure the advancement of the living standards of the Kenyan people and to ultimately achieve these rights.

1.6. Overview of the Bill

10. The salient features of the Bill are as follows –

- (a) **Obligations of the National and County Governments-** Clause 5 (1) of the Bill sets out the obligations of the national and county governments with respect to the implementation of economic and social rights under Articles 43(1) and 53(1) of the Constitution. These include formulation and implementation of policies, legislation, strategies and putting in place mechanisms to realize these rights. It also entails putting in place adequate infrastructure to meet their obligations as creating awareness. Clause 5 (3) requires the Kenya National Commission on Human Rights (KNCHR), in consultation with the Cabinet Secretary responsible for devolution and the Council of County Governors (COG), to set out the minimum standards that county governments are required to meet in carrying out their obligations.
- (b) **Role of the Kenya National Commission on Human Rights-** Part III of the Bill confers on the Kenya National Commission on Human Rights the responsibility to oversee the implementation of and the enforcement of the provisions of the Bill. Clause 8 of the Bill further requires the Commission to prepare an economic and social rights index. The index is to be used to gauge the realization of economic and social rights in every County. The Commission is further required to publish and publicize the economic and social rights index in each County.
- (c) **County Strategic Plans-** Part IV of the Bill requires county governments to prepare a county strategic plan is to ensure that a county government as part of the County Integrate Development Plans (CIDP). The county strategic plan should be guided by principles of planning and development facilitation and ensure the availability, accessibility, acceptability, adaptability and quality of goods and services delivered within the county which are necessary for the realization of economic and social rights.
- (d) **Reporting progress-** Clause 14 of the Bill requires the National government and each county government to submit an annual report on the progress made in the realization 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. The Bill further requires

that the Senate to consider the reports and makes appropriate recommendations to the respective county governments and the National Government.

- (e) **Enforcement of rights/remedies-** Clause 17 of the Bill provides for the right of any aggrieved person to make an application to court in accordance with Article 22 of the Constitution.
- (f) **Public participation and public awareness-** Clause 20 of the Bill prescribes the principles that county governments are required to adhere to when undertaking public participation when preparing county strategic plans.
- (g) **Criteria for realization of social and economic rights-** The Schedule sets out the indicators that shall guide the Commission when assessing the National or County Government's effort in the implementation of Article 43 of the Constitution.

CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

2.0 Introduction

11. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022) was read a First Time in the Senate on 1st December, 2022 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
12. The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, proceeded to undertake public participation on the Bill.
13. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 9th December, 2022 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is annexed to this Report as **Appendix 3**.
14. In response to the advertisement, the Committee received written submissions from Natural Justice, described as Lawyers for communities and the environment. A copy of the said submissions is annexed to this Report as **Appendix 4**.
15. Subsequently, during consideration of the Bill, the Committee resolved to invite additional submissions from the key stakeholders, including –
 - i) Kenya National Commission on Human Rights;
 - ii) National Gender and Equality Commission;
 - iii) Commission on Revenue Allocation;
 - iv) Office of the Attorney General and Department of Justice;
 - v) State Department for Devolution;
 - vi) Kenya Law Reform Commission;
 - vii) Council of County Governors;
 - viii) County Assemblies Forum; and
 - ix) Two non-governmental organizations with expertise in the protection and enforcement of economic and social rights. These were Katiba Institute and the East African Centre for Human Rights (EACHRights).
16. In response to the said invitations, the Committee received written submissions from –
 - a) Kenya National Commission on Human Rights;

- b) National Gender and Equality Commission;
- c) Commission on Revenue Allocation;
- d) Office of the Attorney General and Department of Justice;
- e) State Department for Devolution; and
- f) Kenya Law Reform Commission.

17. Copies of the additional submissions are attached to this Report as *Appendix 5 (a) – (f)*. Additionally, a matrix analysing the stakeholder submissions clause-by-clause is annexed as *Appendix 6*.
18. The Committee proceeded to consider the Bill extensively, together with the stakeholder submissions received thereon.

2.1 Overview of Stakeholder Submissions on the Bill

19. Below is an overview of the stakeholder submissions on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022).

i) Natural Justice

20. Natural Justice, a non-governmental organization, submitted as follows –
 - i) That the long title of the Bill be amended to include the phrase “National Government”;
 - ii) That Clause 2 of the Bill be amended to include Article 42 of the Constitution of Kenya 2010 on the right to a clean and healthy environment;
 - iii) That Clause 3 be amended at paragraph (a) to include Article 42 of the Constitution, and at paragraph (d) to provide for the establishment of mechanisms to monitor and promote the realisation of economic and social rights by national government and county governments;
 - iv) That Clause 4(e) be amended to ensure that public participation on ESCRs is not only coordinated but also equitable, i.e. catering to the specific needs of those concerned, and effective so that it is not just a ticking a box affair;
 - v) That Clause 5 be amended to include Article 42 of the Constitution on the right to a clean and healthy environment;
 - vi) That Clause 5(1) be amended to obligate obligates the family and the state to give reasonable care to older members of society who are neglected and vulnerable for lack of a legislative framework to address pertinent issues;
 - vii) That Clause 5(2) (b) be amended to ensure a measurable time frame and uniformity in strategic planning across all the counties;

- viii) That a new clause be inserted on the coordination and overlap of functions between the national and county governments, such that the co-ordination of functions between the two levels is done in accordance with Schedule 4 of the Constitution;
- ix) That clause 8(3) be amended to include a clause on the forums that the publication will be done to the people of the relevant counties and to the general public at the national level. This will ensure that there is no ambiguity in the scope of the Commission's obligation to disseminate this information.
- x) That clause 9(3) (j), be deleted to remove the reference to "section 20 of the County Government Act", which has no co-relation with the contents of the clause;
- xi) That a new sub-clause be inserted under Clause 11 on publicizing of the baseline survey, to align with the right to access information and the guiding principles of the Bill;
- xii) That clause 23 be deleted as it falls outside the scope of the objects of this Bill as outlined in its Memorandum of Objects and Reasons;
- xiii) That clause 24 as it falls outside the scope of the objects of this Bill as outlined in its Memorandum of Objects and Reasons; and
- xiv) That the Schedule be amended to include a reference to Article 42 of the Constitution, on the criteria for realisation of social and economic rights.

ii) National Gender and Equality Commission

21. The National Gender and Equality Commission (NGEC) submitted as follows –
 - i) That Clause 2 of the Bill be amended to replace the terms "persons in need" with "Indigent", "vulnerable persons" with "vulnerable groups", and "Elderly" with "older members of society" to align with the interpretation in the constitution;
 - ii) That Clause 2 be further amended to replace the term "Commission" with "Commissions" and including the words "National Gender and Equality Commission";
 - iii) That clause 5(1) of the Bill be amended to insert the phrase "Article 57(d)", in addition to Article 43(1) and 53(1)(c) which were provided for. Additionally, that clause 5(2)(b) be amended by inserting the word "five years" before the word "strategic" so as to ensure a measurable time frame and uniformity across all the counties;
 - iv) That Clause 7 of the Bill be amended no the sub-title by replacing the word "Commission" with "Commissions". This is to reflect the distinct mandates of the KNCHR and NGEC, apportion distinct functions or roles, and avoid clash or overlap of mandates of the two commissions;

- v) That Clause 7(1) (g) be amended by substituting the words “National Social Assistance Authority” with the words, “the authority responsible for implementation of the Social Assistance programs”, since the Social Assistance Act, 2013, which established the National Social Assistance Authority, has never been operationalized;
- vi) That clause 13 be amended by inserting the word ‘relevant’ before the word “Commission” whenever the word appears. This is to reflect the distinct roles and functions of the KNCHR and NGEC;
- vii) That clause 19(1) be similarly amended by inserting the word ‘relevant’ before the word “Commission” whenever the word appears;
- viii) That Clause 20(2) be amended by inserting two new sub-clauses to ensure that that there is meaningful inclusion and participation of all residents of the county;
- ix) That clause 21 of the Bill be amended to make reference to the two Commissions, i.e., NGEC and KNCHR; and
- x) That the title of the first schedule of the Bill on the criteria for realization of social and economic rights be rearranged from “social and economic rights” to read “Economic and Social rights”, as phrased in Article 43 of the Constitution.

iii) State Department of Devolution

22. The State Department of Devolution submitted as follows –

- i) That Clause 9 of the Bill appeared to place a financial obligation on counties as all activities must be funded;
- ii) That Clause 13 should be amended to remove the need for separate approval of the strategic plan which is a component of the CIDP and hence does not require to go through another process of approval;
- iii) That Clause 19 be amended to require that the Cabinet Secretary responsible for matters relating to devolution be consulted;
- iv) That Clause 19 (2) (a) required the creation of a framework of collaboration between the national and county governments, which framework already existed;
- v) That Clause 20 be amended to have public participation done at the same time as that of CIDPs to minimize cost; and
- vi) That Clause 22 be amended to provide that amendments to the CIDP should take effect in the subsequent year, not immediately, to allow for proper planning and budgeting.

iv) Kenya National Commission on Human Rights

23. The Kenya National Commission on Human Rights (KNCHR) submitted as follows –

- i) That the definition of “vulnerable persons” at Clause 2 should be broadened to include “school going children”;
- ii) That under Clause 8 of the Bill, the KNCHR should be given leeway in partnering with other specialized state agencies, so as to enhance effective audit and evidence-driven monitoring of the realization of the rights provided for under the Bill;
- iii) That a provision be included under clause 5(a) to ensure the goods and services are of quality standards for the Bill to underscore the role of quality assurance in the provision of goods and services;
- iv) That under clause 5(b), an element of affordability of goods and services should be provided to enhance accessibility of goods and services;
- v) That a provision be included under clause 5(c) to ensure that vulnerable persons have special opportunities for employment and economic opportunities, to reduce the social inequalities as per article 56 of the Constitution;
- vi) That Clause 5(d) be amended to include an obligation to ensure that minorities and marginalised groups have reasonable access to water, health services and infrastructure;
- vii) That Clause 5(e) be amended to provide an obligation for both national and county governments to provide affirmative action programmes designed to support marginalized groups;
- viii) That Clause 5(f) be amended to provide an obligation for reasonable accommodation in access to goods and services for the vulnerable, particularly persons with disabilities in line with Articles 27 and 54 of the Constitution;
- ix) That under clause 11 of the Bill, the baseline should identify marginalized groups within counties. Some counties have huge disparities and have marginalized groups such as indigenous communities who have been left behind in development priorities and economic and social rights;
- x) That under clause 14(a), a provision be included that requires reports submitted to contain verifiable and disaggregated data, indicating specific measures adopted including towards the vulnerable. Further, that there should be an offence for an entity to misrepresent facts in the reports;
- xi) That clause 14(b) be amended to confer on the KNCHR the power to call for clarification of information contained in the report and to oblige the

respective entity to respond within a reasonable period to ensure that the information is factual and clear enough for use in decision making.

v) *Office of the Attorney General & Department of Justice*

24. The Office of the Attorney General & Department of Justice submitted as follows –

- i) That Clause 2 of the Bill be amended to domicile implementation of the proposed Act in the Office of the Attorney General, as the relevant Cabinet Secretary under section 2 of the Kenya National Commission on Human Rights Act, 2012;
- ii) That the Bill should provide for substantive text on the defined terms “subsidy programme”, “persons in need” and “vulnerable persons” or delete them if no provisions can be developed;
- iii) That references to the Equalization Fund should be removed because the Fund has already been operationalized under section 18 of the Public Finance Management Act, 2012 and the attendant Regulations and therefore the proposals in the Bill would result in confusion on how the fund shall be administered;
- iv) That Clause 5 of the Bill be amended to delineate the roles of each level of government for certainty, particularly with regard to policy formulation, to avoid conflicting policies and overlapping roles;
- v) That Clause 5 (1) (c) be amended to align the provision with international standards for the realization of economic, social and cultural rights;
- vi) That under clause 6 of the Bill on roles and functions of the Commission, the additional functions proposed for the Commission are a duplication of the provisions of the Kenya National Commission on Human Rights Act, 2012;
- vii) That the cross-referencing under clause 8(1) be amended by deleting section 13(2) and substituting to section 14(2) to address a cross-referencing error;
- viii) That clause 14(1) of the Bill be amended to include the Office of the Attorney General in the list of organizations receiving implementation progress reports of economic and social rights. Further, the reporting requirements should be aligned with those under the KNCHR Act;
- ix) Under clause 9 on County strategic plans, the AG’s Office submitted that County governments are guided by the provisions of the Part XI of the County Governments Act, 2012 on the formulation of their respective strategic plans and the rights envisaged under Article 43 of the Constitution are mainstreamed thereto;
- x) That under clause 19, the need for consultation when making regulations should be removed, as this will be done during public participation;
- xi) Under clause 22 of the Bill, the Office of the Attorney General was of the view that the transition period of six months should be extended to one year to give Counties adequate time to implement and mainstream the economic and social rights as well as harmonise the plans with other planning instruments including the annual work plans, performance contracts, sector and spatial plans;
- xii) That prior to the enactment of this Bill, the Senate should consider addressing the gaps in the existing legislation that cater for socio-economic rights and also engage

the concerned Ministries, State Departments or Agencies in order to comprehensively evaluate and address any gaps in the existing legislation as well as implementation challenges on effective realisation of the economic and social rights.

vi) Kenya Law Reform Commission

25. The Kenya Law Reform Commission (KLRC) submitted as follows –

- i) That the specific objects of the proposed Bill as stated are not reflected in the body of the Bill. Additionally, there is no mention of the Equalization Fund throughout the Bill;
- ii) That clause 2 should be amended to remove reference to the Equalisation Fund since there is no mention of the Fund anywhere in the body of the Bill. The Bill also creates a parallel framework for implementation of the Fund which would result in confusion;
- iii) Under clause 5 of the Bill, specific responsibilities and requirements for action should be placed on individual office holders otherwise the Bill may be unimplementable due to lack of specificity;
- iv) That the objects of the Bill replicate the functions of the KNCHR as set out in Section 8 of the Kenya National Commission of Human Rights Act;
- v) That under clause 14 of the Bill, KNCHR Act be amended to align the reporting requirements with those proposed under the Bill so as to remove the conflict between the reporting mechanisms in the Bill and those set out under the KNCHR Act; and
- vi) That it is neater to amend the KNCHR Act to incorporate the proposals in the Bill rather than having a separate Bill.

vii) Commission on Revenue Allocation

26. The Commission on Revenue Allocation (CRA) submitted as follows –

- i) That, the Title of the Bill should be shortened to “The Economic and Social Rights Bill” for ease of reference;
- ii) That clause 3(e) of the Bill on application of the equalization fund be deleted because there is an existing framework governing application of the Equalisation Fund under Articles 204 and 216 of the Constitution and the Public Finance Management (Equalisation Fund Administration) Regulations, 2021;
- iii) That, under clause 3(f) on provision of conditional grants to county governments, the clause be deleted since such a framework already exists;
- iv) That CIDP, CFSP, and CSP under clause 18 of the Bill should be aligned to provide for realization of the rights since this clause already provides that CECM Finance shall include in the County Fiscal Strategy Paper measures aimed at fulfilling Article 43 of the Constitution.

CHAPTER THREE: COMMITTEE OBSERVATIONS

3.0 Committee Observations on the Bill

27. Having considered the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights Based made the following observations-

- a) That the purpose and objectives of the Bill as provided in the Long Title are too broad. For this reason, the Committee observed that the Bill should be limited to the monitoring and enforcement of economic, social and cultural rights. As a result, the object and purposes of the Bill as provided for under clause 3 should be restructured to reflect the same;
- b) That based on the above, the purpose and objectives of the Bill should be limited to providing a framework for monitoring and enforcing the implementation of economic, social and cultural rights by various actors at both levels of government;
- c) That Article 21(1) and (2) of the Constitution impose a duty on the State and every state organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms provided for in the Constitution. The State is to take legislative, policy and other measures to set standards to achieve the progressive realisation of the rights provided for in Article 43. The Committee observed that the Bill did not set any specific standards on how progressive realization would be achieved;
- d) Additionally, the Committee observed that social and economic rights are cross-cutting in nature and fall in the different sectors hence they cannot be defined in one stroke. They should instead be addressed through the various sectoral legislation and implemented by various National Government Ministries, State Departments and agencies and county governments;
- e) That gaps in the existing legislation that cater for socio-economic rights should be identified and the concerned Ministries, State Departments, Counties or Agencies engaged in order to comprehensively evaluate and address any gaps in the existing legislation as well as implementation challenges on effective realisation of the economic and social rights;

- f) That pursuant to Article 59 of the Constitution, two commissions dealing with human rights issues, i.e. the KNCHR and the NGEK were created. The Bill however gives the mandate to only one of the commissions, whereas the two Commissions have mandates as concerns economic and social rights. The Bill ought to be clear and specific in apportioning distinct functions or roles, to avoid a clash or overlap of mandates of the two commissions;
- g) That the Bill replicates the functions of KNCHR as set out in section 8 of the Kenya National Commission of Human Rights Act. The Committee observed that there was no need to replicate these functions as they were adequately provided for in the KNCHR Act and Article 59 of the Constitution;
- h) That reference to the Equalisation Fund in the Bill should be removed since there is no mention of the Fund anywhere in the body of the Bill. The Bill also creates a parallel framework for implementation of the Fund which would result in confusion;
- i) That, under Article 204 of the Constitution, the Equalization Fund was established to fast track development in marginalized areas to the extent necessary to bring the quality of services in those areas to the level generally enjoyed by the rest of the nation. If the Fund was redirected to implementation of economic and social rights generally as was proposed in the Bill, its purpose as set out in the Constitution would have been lost;
- j) That the roles of each level of government should be clearly provided for with certainty, particularly regarding policy formulation, to avoid conflicting policies and overlapping roles;
- k) That the reporting mechanisms and requirements under the Bill should be aligned with those set out under the KNCHR Act;
- l) That the Bill did not address instances where factors such as insecurity contributed to non-realization of economic and social rights, either as the cause or effect of such insecurity, and what interventions can be taken to ensure that citizens residing in such areas also enjoy the economic and social rights as enshrined in the Constitution.
- m) That the Bill seems to suggest separate strategic plans for incorporating socio-economic rights. The County Integrated Development Plans (CIDPs) are expected to integrate all matters related to development within the county

and, as such, an amendment to the County Governments Act, 2012 would be preferred if the language in section 108 of the Act is found to not properly capture the obligation under Article 43 of the Constitution;

- n) That, arising from l) above, the Committee observed that development plans at both the national and county levels of government ought to integrate the realization of economic and social rights. There should be alignment, rather than separation, in planning and allocation of the available resources;
- o) That there was need for clarity on the efficiency of institutional framework and the oversight mandate of the KNCHR. For this reason, the Committee further observed that there is need for a feasibility study to determine the level of implementation of first-generation rights, that is, civil and political rights, and the capacity of the Commission to monitor the implementation of economic and social rights as proposed in the Bill;
- p) That there was need for a national conversation on the concept of progressive realization of economic and social rights, as provided for under the 2010 Constitution. This should include a review of measures taken by the national and county governments and their impact, an analysis of what has worked and what has not, a review of judicial decisions and the practice in comparative jurisdictions, as well the criteria or index that should be applied in measuring and tracking realization of economic and social rights; and
- q) That the oversight mandate of Parliament regarding monitoring implementation of economic, social and cultural rights should be more clearly provided for. This should include the development of indices that Parliament can use to, firstly, monitor the implementation of economic and social rights by the two levels of government and, secondly, oversight the work of national monitoring organizations, such as KNCHR and NGEC.

28. The Committee further observed that –

- i) It would not be ideal to seek to amend the Bill in this case as, if all the said observations were to be incorporated, it would amount to drafting an almost new Bill, which would not have been subjected to public participation; and
- ii) It was necessary that extensive stakeholder engagement be undertaken to determine whether there was need for introduction of a Bill as contemplated in this case and, if yes, what the Bill should provide for.

CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

4.0 Committee Recommendations on the Bill

29. Arising from its Observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights makes the following recommendations on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022) –
- i) That, pursuant to standing order 159 of the Senate Standing Orders, the Sponsor of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022) **withdraws** the Bill to pave way for a fresh Bill to be drafted taking into account the concerns raised and recommendations made by stakeholders as well as by the Committee.
 - ii) That, in the event the recommendation to withdraw the Bill is not acceded to, the Committee recommends that the Bill be **not** proceeded with by the Senate.

APPENDICES

Appendix 1: Minutes of the sittings of the Committee in considering the Bill

Appendix 2: The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022)

Appendix 3: Advertisement published in the *Daily Nation* and *Standard* Newspapers on Friday, 9th December, 2022

Appendix 4: Copy of submissions by Natural Justice

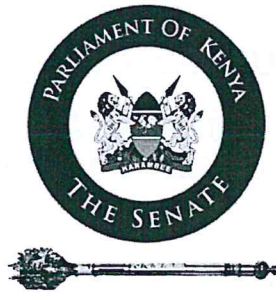
Appendix 5

(a) to (f): Copies of submissions by KNCHR, NGEC, CRA, AG's Office, State Department for Devolution, and KLRC

Appendix 6: Matrix of Stakeholder Submissions on the Bill

Appendix 1:

Minutes of the sittings of the Committee in considering the
Bill



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE TWENTY-EIGHTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 21ST MARCH, 2023 AT 8.00 A.M IN COMMITTEE ROOM 5, PARLIAMENT BUILDING AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Veronica W. Maina, MP | - Member |
| 6. Sen. Karen Njeri Nyamu, MP | - Member |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Raphael Chimera Mwizagu, MP | - Vice Chairperson |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Constant Wamayuyi | - Research Officer III |
| 6. Ms. Ndindi Kibathi | - Research Officer III |
| 7. Mr. Kennedy Owuoth | - Fiscal Officer III |
| 8. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 9. Ms. Judith Aoka | - Audio Officer III |
| 10. Ms. Ngesa Rosebella | - Public Communication Officer III |
| 11. Mr. David Barasa | - Assistant Serjeant at Arms |

MIN. NO. 156/2023

PRELIMINARIES

The Chairperson called the meeting to order at nineteen minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 157/2023**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Veronica W. Maina, MP as follows –

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Minutes of the Previous Meeting
4. Matters arising from Minutes of the Previous Meeting
5. Meeting with Sen. Danson Mungatana, MGH, MP to discuss the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022).
6. Consideration of the draft Committee Report on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022).
7. Any Other Business
8. Date of the Next Meeting and Adjournment

MIN. NO. 158/2023**CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING**

The minutes of the 27th Sitting held on Wednesday, 15th March, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 159/2023**THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL, 2022 (SENATE BILLS NO. 7 OF 2022)****a) Meeting with Sen. Danson Mungatana, MGH, MP - the Sponsor of the Bill**

The Committee noted that, while the Sponsor had been invited to attend the meeting to deliberate on the reservations to the Bill and the next steps thereon, the Sponsor was not present at the meeting. Consequently, it was resolved that the Committee proceeds to consider the draft Report on the Bill.

b) Consideration of the draft Committee Report on the Bill

The Committee resumed consideration of the draft Committee Report on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022).

The Committee expanded on the observations contained at Chapter Three of the Report and further adopted the following as the Committee Recommendations on the Bill –

- i) That, pursuant to standing order 159 of the Senate Standing Orders, the Sponsor of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No.7 of 2022) withdraws the Bill to pave way for a fresh Bill to be drafted taking into account the concerns raised and recommendations made by stakeholders as well as by the Committee; and
- ii) That, in the event the recommendation to withdraw the Bill is not acceded to, the Committee recommends that the Bill be not proceeded with by the Senate.

Thereupon, the Committee adopted its Report for approval and tabling in the Senate, having been proposed by Sen. William Cheptumo Kipkiror, CBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 160/2023

ANY OTHER BUSINESS

Members were informed that approval had been obtained from the Rt. Hon. Speaker of the Senate for the Committee to hold its Stakeholder Engagement Retreat, in Naivasha, Nakuru County, on 2nd – 6th April, 2023. Senators were urged to reserve the dates and attend the Retreat.

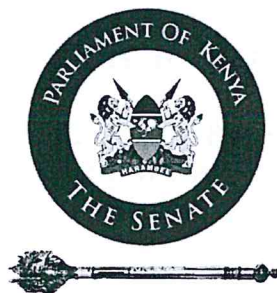
MIN. NO. 161/2023

ADJOURNMENT

The Chairperson adjourned the meeting at two minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 22nd March, 2023 at nine O'clock.

SIGNED: 

DATE: 22/03/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 15TH MARCH, 2023 AT 8.00 A.M HELD IN COMMITTEE ROOM 5, FIRST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Veronica W. Maina, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Raphael Chimera Mwizagu, MP | - Vice Chairperson |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Constant Wamayuyi | - Research Officer III |
| 6. Ms. Ndindi Kibathi | - Research Officer III |
| 7. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 8. Ms. Judith Aoka | - Audio Officer III |
| 9. Ms. Ngesa Rosebella | - Public Communication Officer III |
| 10. Mr. David Barasa | - Assistant Serjeant at Arms |

MIN. NO. 149/2023

PRELIMINARIES

The Chairperson called the meeting to order at twenty-six minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 150/2023**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Veronica W. Maina MP as follows –

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Minutes of the Previous Meeting
4. Matters arising from Minutes of the Previous Meeting
5. Consideration of draft Report on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 7 of 2022)
6. Any Other Business
7. Date of the Next Meeting and Adjournment

MIN. NO. 151/2023**CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING**

The minutes of the 26th Sitting held on Tuesday, 14th March, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Veronica W. Maina, MP.

MIN. NO. 152/2023**MATTERS ARISING FROM MINUTES OF THE PREVIOUS MEETING**

- a) Under Min. No. 146/2023 (i), the Committee was informed that the comments and observations by the Committee on the legislative proposal by Sen. Beth Syengo, MP were ready for submission to the Rt. Hon. Speaker of the Senate, upon being signed by the Chairperson.
- b) Under Min. No. 146/2023 (ii), the Committee was informed that the revised Committee amendments to the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 5 of 2022), had been signed by the Chairperson and transmitted to the Directorate of Legislative and Procedural Services.

MIN. NO. 153/2023**THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 7 OF 2022)**

The Committee was taken through and considered the draft report on the Preservation of Human and Enforcement of Economic and Social Rights Bill (Senate Bill No. 7 of 2022).

Noting that the Committee proposed to recommend that the Bill be not proceeded with, and that consultations with the Sponsor had not resulted to a meeting of minds on the matter, the Committee resolved that that Sponsor be formally invited to a meeting to discuss the next steps regarding the Bill.

The Committee further resolved that the Committee observations on the Bill, as well as copies of the submissions received from stakeholders, be transmitted to the Sponsor ahead of the meeting.

MIN. NO. 154/2023

ANY OTHER BUSINESS

The Chairperson informed Members that, following deliberations at the Senate Business Committee, it had been resolved that a Speaker's *Kamukunji* be held on Thursday, 16th March, 2023 to discuss, among others, the proposal to amend the Constitution to entrench certain specialised funds.

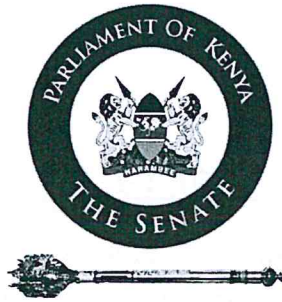
MIN. NO. 155/2023

ADJOURNMENT

The Chairperson adjourned the meeting at two minutes past nine O'clock. The next meeting was scheduled to be held on Thursday, 16th March, 2023 at eight O'clock.

SIGNED: 

DATE: 22/03/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE TWENTY-FIFTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 1ST MARCH, 2023 AT 8.00 A.M. IN COMMITTEE ROOM 5, FIRST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. William Cheptumo Kipkiror, MP | - Member |
| 5. Sen. Hamida Ali Kibwana, MP | - Member |
| 6. Sen. Catherine Muyeka Mumma, MP | - Member |
| 7. Sen. Veronica W. Maina, MP | - Member |
| 8. Sen. Karen Njeri Nyamu, MP | - Member |
| 9. Sen. Andrew Omtatah Okoiti, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Constant Wamayuyi | - Research Officer III |
| 6. Ms. Ndindi Kibathi | - Research Officer III |
| 7. Mr. Kennedy Owuoth | - Fiscal Officer III |
| 8. Ms. Judith Aoka | - Hansard/Audio Officer III |
| 9. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 10. Ms. Rosebella Ngesa | - Public Communications Officer III |

MIN. NO. 136/2023

PRELIMINARIES

The Chairperson called the meeting to order at fifteen minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 137/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. William Cheptumo Kipkiror, MP as follows –

1. Prayer
2. Adoption of the Agenda
3. Consideration of –
 - a) Petition by Mr. Paulo Mosbei concerning historical injustices suffered by the Torobeek community; and
 - b) Statement sought by Sen. Crystal Asige, MP on the status of implementation of the Legal Aid Act (No. 6 of 2016).
4. Consideration of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022) – *resumption*.
5. Any Other Business
6. Date of the Next Meeting and Adjournment

MIN. NO. 138/2023

**PETITION BY MR. PAULO MOSBEI CONCERNING
HISTORICAL INJUSTICES SUFFERED BY THE
TOROBEK COMMUNITY**

The Committee commenced consideration of the Petition and was informed that a similar Petition was considered by the Senate during the 12th Parliament but was left pending. Similar petitions had also been submitted to the County Assemblies of Nakuru and Kericho, and the Secretariat would liaise with the said Assemblies to find out what had been done so far.

Thereupon, the Committee resolved to consider the Petition substantively and to hold meetings with the petitioners, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, the National Lands Commission, and the Office of the Attorney General and Department of Justice.

The Committee further directed that background research be undertaken on similar cases of historical and land injustices suffered by various communities in Kenya, as well as implementation of decisions of courts and tribunals on issues of historical injustices and human rights violations. This would include the case of the *Ogiek/Endorois* which was litigated up to the African Court on Human and Peoples Rights.

MIN. NO. 139/2023

**STATEMENT SOUGHT BY SEN. CRYSTAL ASIGE,
MP ON THE STATUS OF IMPLEMENTATION OF THE
LEGAL AID ACT (NO. 6 OF 2016)**

The Committee considered the request for Statement and resolved to hold a meeting with the National Legal Aid Service on Wednesday, 22nd March, 2023 to discuss the Statement.

The Committee resumed consideration of the Bill and noted concerns that had arisen on whether the Bill could be proceeded with as currently drafted. This was on the basis that –

- i) some of the aspects the Bill sought to legislate on were already provided for in other pieces of legislation, and the provisions of the Bill conflicted with the said Acts without seeking to amend them;
- ii) some of the functions it sought to assign to certain Commissions, Ministries or agencies were already assigned in law or practice or were being performed by other entities. The Bill, if enacted, would give rise to conflicts in mandates and functions of the affected entities;
- iii) by seeking to address so many issues in one Bill, it was not clear what the main issue was that the Bill sought to address; and
- iv) if all the offending provisions of the Bill were deleted, what would be left would be a shell. Conversely, if the said provisions were amended, then it would give rise to an almost entirely different Bill.

The Committee further noted that the timeline for the Committee to consider and table its Report on the Bill had been exceeded by a period of two months.

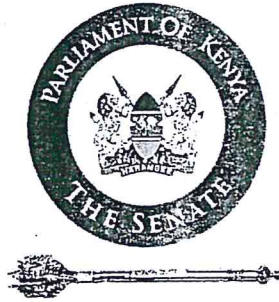
In the circumstances, the Committee resolved to hold an informal meeting with the Sponsor of the Bill with a view to having the Sponsor step down or withdraw the Bill. This would pave way for the drafting of a fresh Bill that incorporated stakeholder submissions as well as comments and recommendations by the Committee.

Thereupon, the Committee directed that a draft Report in this regard be prepared for consideration.

The Chairperson adjourned the meeting at fifty-three minutes past eight O'clock. The next meeting was scheduled to be held on Thursday, 2nd March, 2023 at eight O'clock.

SIGNED:

DATE:
22/03/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETEENTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 16TH FEBRUARY, 2023 AT 8.00 A.M. IN COMMITTEE ROOM 5, FIRST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Samson Kiprotich Cherarkey, MP | - Member |
| 4. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5. Sen. Veronica W. Maina, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|--|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Mr. Josphat Ng'enh | - Media Relations Officer III |
| 4. Mr. Constant Wamayuyi | - Research Officer III |
| 5. Ms. Ndindi Kibathi | - Research Officer III |
| 6. Ms. Judith Aoka | - Audio Officer III |

MIN. NO. 106/2023

PRELIMINARIES

The meeting was called to order at fifteen minutes past eight O'clock and commenced with a word of prayer by the Chairperson.

MIN. NO. 107/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Hamida Ali Kibwana, MP and seconded by Sen. Andrew Omtatah Okoiti, MP as follows –

1. Prayer

2. Adoption of the Agenda
3. Consideration of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022)
4. Communication from the Speaker on Approval for Appointment of Hon. Johnson Muthama to the Position of Male Non-Member Commissioner of the Parliamentary Service Commissioner
5. Any Other Business
6. Date of the Next Meeting and Adjournment

MIN. NO. 108/2023

**THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL (SENATE BILLS NO. 7 OF 2022)**

The Committee resumed consideration of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022).

Members were informed that written submissions on the Bill had been received from the National Gender and Equality Commission and the State Department for Devolution. Some additional stakeholders, including the Kenya National Commission on Human Rights and the State Law Office, had requested that they be allowed until Friday, 17th February, 2023 to send in their written submissions.

Arising from this, the Committee resolved to defer consideration of the Bill until Tuesday, 21st February, 2023.

MIN. NO. 109/2023

**COMMUNICATION FROM THE SPEAKER ON
APPROVAL FOR APPOINTMENT OF HON.
JOHNSON MUTHAMA TO THE POSITION OF
MALE NON-MEMBER COMMISSIONER OF THE
PARLIAMENTARY SERVICE COMMISSIONER**

The Committee was informed that, following tabling of the Report of the Parliamentary Service Commission on the recruitment of a male member of the Commission under Article 127(2)(d) of the Constitution, the Honourable Speaker of the Senate had referred the matter to the Committee to undertake vetting of the nominee. The Committee was required to consider the matter and table its report in the Senate by 28th February, 2023.

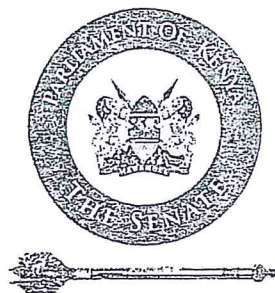
Thereupon, the Committee resolved that the newspaper advertisements inviting submissions from members of the public and notifying the public of the date, time and venue for the approval hearing, be published in two newspapers on Friday, 17th February, 2023.

The Committee further resolved that the approval hearing be held on Tuesday, 28th February, 2023 at 9.00 am in the Senate Chamber.

ADJOURNMENT

SIGNED:

DATE:



13TH PARLIAMENT | 1ST SESSION

MINUTES OF THE FIFTEENTH SITTING OF THE STANDING COMMITTEE
ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY,
7TH FEBRUARY, 2023 AT 8.00 A.M. ON THE ZOOM ONLINE MEETING
PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Hamida Ali Kibwana, MP | - Member |
| 5. Sen. Catherine Muyeka Mumma, MP | - Member |
| 6. Sen. Veronica W. Maina, MP | - Member |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Samson Kiprotich Cherarkey, MP | - Member |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Josphat Ng'enh | - Media Relations Officer III |
| 6. Ms. Judith Aoka | - Audio Officer III |
| 7. Mr. Constant Wamayuyi | - Research Officer III |
| 8. Ms. Rosebella Ngesa | - Public Communications Officer III |

MIN. NO. 86/2023

PRELIMINARIES

The meeting was called to order at nine minutes past eight O'clock and commenced with a word of prayer by the Chairperson.

MIN. NO. 87/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Catherine Muyeka Mumma, MP as follows –

1. Prayer
2. Adoption of the Agenda
3. Consideration of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022)
4. Any Other Business
5. Date of the Next Meeting and Adjournment.

MIN. NO. 88/2023

THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL, 2022 (SENATE BILLS NO. 7 OF 2022)

The Committee commenced consideration of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 (Senate Bills No. 7 of 2022) and was taken through the Bills Digest thereon.

Members were informed that submissions on the Bill had been received from one stakeholder, in response to the call for public participation as published by the Committee in December, 2022.

The Committee noted that the Bill creates obligations on various actors, among them constitutional commissions, the national and county governments, and the Ministry responsible for Devolution. The Committee further observed the need for input from experts and practitioners in the field to enrich the Committee's consideration of the matters provided for in the Bill.

Thereupon, the Committee resolved that invitations be sent to specific stakeholders requesting them to submit comments on the Bill, if any, within a week, following which the Committee would resume consideration of the Bill.

MIN. NO. 89/2023

ADJOURNMENT

The Chairperson adjourned the meeting at five minutes past nine O'clock. The next meeting was scheduled to be held on Thursday, 9th February 2023 at eight O'clock.

SIGNED: 14/02/2023

DATE: 



13TH PARLIAMENT | 1ST SESSION

MINUTES OF THE FIFTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 6TH DECEMBER 2022 AT 9.00 A.M. AT PRIDE INN PLAZA HOTEL, IN MACHAKOS COUNTY

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Hamida Kibwana, MP | - Member |
| 5. Sen. Catherine Muyeka Mumma, MP | - Member |
| 6. Sen. Veronica W. Nduati, MP | - Member |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Samson Kiprotich Cherarkey, MP | - Member |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |

SECRETARIAT

- | | |
|---------------------------|--|
| 1. Mr. Njenga Njuguna | - Director, Governance and Accountability Committees |
| 2. Dr. Johnson Okello | - Director, Legal Services |
| 3. Mr. Ahmed Odhowa | - Principal Clerk Assistant II |
| 4. Mr. Charles Munyua | - Senior Clerk Assistant |
| 5. Ms. Mercy Thanji | - Senior Legal Counsel |
| 6. Mr. Moses Kenyanchui | - Legal Counsel I |
| 7. Ms. Lilian Waweru | - Legal Counsel II |
| 8. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 9. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 10. Ms. Joyce Chelang'at | - Audio Officer III |
| 11. Ms. Ndindi Kibathi | - Research Officer III |
| 12. Mr. Constant Wamayuyi | - Research Officer III |
| 13. Mr. Kennedy Owuoth | - Fiscal Analyst III |
| 14. Mr. John Lekampule | - Serjeant at Arms |

MIN. NO. 33/2022**PRELIMINARIES**

The meeting was called to order at nine O'clock and commenced with a word of prayer by the Chairperson. This was followed by introductions of the Members and the Secretariat.

MIN. NO. 34/2022**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Hamida Kibwana, MP, as follows –

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Minutes of the Previous Meeting
4. Matters arising from Minutes of the Previous Meeting
5. Consideration of –
 - a) Legislative Proposal: The draft Constitution of Kenya (Amendment) Bill, sponsored by Sen. Beth Syengo, MP (*Committee Paper No. 13*)
 - b) The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 5 of 2022)
 - c) The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022)
6. Any Other Business
7. Date of the Next Meeting and Adjournment

MIN. NO. 35/2022**CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING**

The minutes of the 4th Sitting held on Wednesday, 16th November, 2022 were confirmed as a true record of proceedings, after being proposed by Sen. Fatuma Adan Dullo, CBS, MP and seconded by Sen. Veronica W. Nduati, MP.

MIN. NO. 36/2022**MATTERS ARISING FROM THE MINUTES OF THE PREVIOUS MEETING**

Under Min. No. 28/2022, Members were informed that a response from the Independent Electoral and Boundaries Commission was yet to be received on the Statement sought by Sen. Alexander Mundigi, MP regarding delayed payments to transport service providers in Embu County during and after the 2022 General Elections.

It was resolved that the Secretariat follows up with the Commission to have the said response sent, together with the comprehensive Report requested by the Committee on pending bills at the Commission.

MIN. NO. 37/2022

THE DRAFT CONSTITUTION OF KENYA
(AMENDMENT) BILL, SPONSORED BY SEN. BETH
SYENGO, MP

The Committee was briefed on and considered the contents of Paper No. 13 (*The draft Constitution of Kenya (Amendment) Bill, sponsored by Sen. Beth Syengo, MP*).

The Committee noted that the legislative proposal sought to amend Article 97 and 98 of the Constitution to create the number of special seats necessary to ensure that not more than two-thirds of the members of the National Assembly and the Senate are of the same gender. The Committee observed that it was necessary that extensive consultations be undertaken on the Bill to ensure it had broad support among stakeholders prior to its publication and introduction in Parliament.

Thereupon, the Committee resolved that the sponsor be invited to a meeting with the Committee the following week to discuss the legislative proposal and the observations thereon by the Committee.

MIN. NO. 38 /2022

BILLS READ A FIRST TIME IN THE SENATE ON
THURSDAY, 1ST DECEMBER 2022

The Committee was informed that the following Bills were read a First Time in the Senate on Thursday, 1st December 2022 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration and public participation –

- i) The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 5 of 2022); and
- ii) The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022)

Members were further informed that a newspaper advertisement has been processed for publication on Wednesday, 7th December, 2022 inviting stakeholders and the public to submit memoranda on the two Bills. Thereafter, the Bills would be considered substantively alongside the submissions received thereon.

MIN. NO. 39/2022

ADJOURNMENT

The Chairperson adjourned the meeting at eleven O'clock. The Committee would reconvene on the same date and venue at thirty minutes past eleven O'clock.

SIGNED:

DATE:17. 01. 2023.....

Appendix 2:
The Preservation of Human Dignity and Enforcement of
Economic and Social Rights Bill, 2022 (Senate Bills
No. 7 of 2022)

SPECIAL ISSUE

Kenya Gazette Supplement No. 178 (Senate Bills No. 7)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2022

NAIROBI, 9th November, 2022

CONTENT

Bill for Introduction into the Senate—

The Preservation of Human Dignity and Enforcement of Economic and
Social Rights Bill, 2022

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

ARRANGEMENT OF CLAUSES

Clause

PART I — PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object and purposes of the Act.
- 4—Guiding principles.

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

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

**PART III — ROLE AND FUNCTIONS OF THE
COMMISSION**

- 6—The role of the Commission.
- 7—Functions of the Commission.
- 8—Economic and social rights index.

PART IV — COUNTY STRATEGIC PLANS

- 9—County strategic plans for the realisation of economic
and social rights.
- 10—Objective of county strategic plans.
- 11—Baseline survey.
- 12—Receipt of grants and donations for the
implementation of a county strategic plan.
- 13—Approval of county strategic plans by the county
assembly.
- 14—Reports on implementation of economic and social
rights.
- 15—Recommendations on implementation of the report.
- 16—Court action.

17—Remedies.

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

PART V — MISCELLANEOUS PROVISIONS

19—Regulations.

20—Public participation.

21—Public awareness framework.

22—Transition.

23—Amendment of No. 18 of 2012.

24—Amendment of No. 17 of 2012.

SCHEDULE—CRITERIA FOR THE DETERMINATION OF MARGINALISED AREAS

**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—

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

- (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;

- (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

- (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.

- (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).

Appendix 3:

Advertisement published in the *Daily Nation* and *Standard*
Newspapers on Friday, 9th December, 2022

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | FIRST SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Thursday, 1st December, 2022, 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 145(5) of the Senate Standing Orders, 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 submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below; to be received on or before **Friday, 23rd December, 2022 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 5 of 2022)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlarc@parliament.go.ke
b)	The Natural Resources (Benefit Sharing) Bill (Senate Bills No. 6 of 2022)	Standing Committee on Land, Environment and Natural Resources	landenvironcommittee.senate@parliament.go.ke
C)	The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlarc@parliament.go.ke

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

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

Appendix 4:
Copy of submissions by Natural Justice



OUR REF: NJ/NEMA/PHDECSR/22/1
YOUR REF: TBA

Office of the Clerk of the Senate
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

*Advance copy sent via email to clerk.senate@parliament.go.ke &
senatejlahrc@parliament.go.ke*

Dear Sir/Madam,

RE: COMMENTS ON THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL, 2022

We write in response to your call for submissions on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022.

Attached to this letter please find our detailed comments and proposals which we hope will provide valuable insights.

We look forward to hearing back on the same.

Sincerely,

AMN

Anne Njoroge
Natural Justice: Lawyers for communities and the environment
Anne@naturaljustice.org

SPECIFIC COMMENTS

No	Part	Specific clause and name	Current clause and wording/Language in the Bill	Proposed Amendment (In red)	Rationale and Justification
1.	Preamble	Long Title	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.	<p>We propose the inclusion of the word "and national government"</p> <p>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 the national government and county governments to Article 43 of the Constitution; and for connected purposes.</p>	Throughout the reading of the Bill, the intention of the Bill is to investigate the adherence by both the national and county governments. The Fourth Schedule of the Constitution of Kenya 2010 provides for distinct functions of the national and county governments regarding the social & economic rights hence the adherence ought to be by both the national and county governments.
2.	I	Clause 2 - Interpretation	"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	<p>We propose the inclusion of Article 42 of the Constitution of Kenya 2010 on the right to a clean and healthy environment.</p> <p>"economic and social rights" means the rights accruing to every person specified under Articles 42, 43(1) and 53(1)(c) of the</p>	The memorandum and objects of reason of the Bill provide that the intent of the Bill is to give effect to the provisions of Article 2(6) of the Constitution of Kenya 2010 that provides that, <i>"Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."</i>

			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.	Constitution and includes the right to – (a) have a clean and healthy environment (b) the highest attainable standards of health which includes the right to health care services including reproductive health care services and emergency treatment; (c) accessible and adequate housing; (d) reasonable standards of sanitation; (e) be free from hunger and to have adequate food of acceptable quality; (f) basic nutrition for children; (g) clean and safe water in adequate quantities; (h) social security and social assistance; and (l) education.	<p>From the foregoing, Kenya is a party to the International Covenant on Economic and Social & Cultural Rights which recognize the right to a clean and healthy environment, as enshrined in Article 42 of the Constitution of Kenya 2010, as part of the economic and social rights.</p> <p>Article 12 of the Covenant provides that, “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health- (b) The improvement of all aspects of environmental and industrial hygiene;”</p>
3.	I	Clause 3 – Object and purpose	The object and purposes of this Act are to provide a framework for —	We propose the inclusion of Article 42 of the Constitution of Kenya 2010 on the right to a clean and healthy environment.	The memorandum and objects of reason of the Bill provide that the intent of the Bill is to give effect to the provisions of Article

				<p>(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 42, 43(1) of the Constitution;</p>	<p>2(6) of the Constitution of Kenya 2010 that provides that, <i>"Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."</i></p> <p>From the foregoing, Kenya is a party to the International Covenant on Economic and Social & Cultural Rights which recognize the right to a clean and healthy environment, as enshrined in Article 42 of the Constitution of Kenya 2010, as part of the economic and social rights.</p> <p>Article 12 of the Covenant provides that, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health-</p> <p>..... (b) The improvement of all aspects of</p>
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					environmental and industrial hygiene;"
				<p>We propose the inclusion of the word "national government and"</p> <p>(d) The establishment of mechanisms to monitor and promote the realisation of the economic and social rights by national government and county governments;</p>	<p>Throughout the reading of the Bill, the intention of the Bill is to investigate the adherence by both the national and county governments. The Fourth Schedule of the Constitution of Kenya 2010 provides for distinct functions of the national and county governments regarding the social & economic rights hence the adherence ought to be by both the national and county governments.</p>

4.	.I	Clause 4 – Guiding Principles	<p>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—</p> <p>(e) coordinated public participation in the formulation, implementation and monitoring of policies, strategies and plans aimed at ensuring the realization of economic and social rights;</p>	<p>Inclusion of the word “equitable, effective and.”</p> <p>(e) coordinated, equitable and effective public participation in the formulation, implementation and monitoring of policies, strategies and plans aimed at ensuring the realization of economic and social rights;</p>	<p>Public participation needs not only to be coordinated but also equitable (catering to the specific needs of those concerned) and effective so that it is not just a ticking a box affair.</p>
			<p>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—</p>	<p>Inclusion of Article 42 of the Constitution of Kenya 2010 on the right to a clean and healthy environment among the guiding principles.</p> <p>“Promotion of sustainable development and respect to the right to a clean and healthy environment as enshrined under Article 42 of the</p>	<p>The memorandum and objects of reason of the Bill provide that the intent of the Bill is to give effect to the provisions of Article 2(6) of the Constitution of Kenya 2010 that provides that, “<i>Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.</i>”</p>

			(a) Promotion of sustainable development.	Constitution of Kenya 2010."	<p>From the foregoing, Kenya is a party to the International Covenant on Economic and Social & Cultural Rights which recognize the right to a clean and healthy environment, as enshrined in Article 42 of the Constitution of Kenya 2010, as part of the economic and social rights.</p> <p>Article 12 of the Covenant provides that, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health- (b) The improvement of all aspects of environmental and industrial hygiene;"</p>
5.	II	Clause 5 – Obligations of national and	The National and county governments shall, to the extent of their constitutional mandate, respect, protect, promote and	Inclusion of Article 42 of the Constitution of Kenya 2010 on the right to a clean and healthy environment	The memorandum and objects of reason of the Bill provide that the intent of the Bill is to give effect to the provisions of Article

		county govern ments with respect to econo mic and social rights	fulfil the rights and fundamental freedoms set out under Articles 43(1) and 53(1)(c) of the Constitution and in particular, shall–		<p>2(6) of the Constitution of Kenya 2010 that provides that, <i>“Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”</i></p> <p>From the foregoing, Kenya is a party to the International Covenant on Economic and Social & Cultural Rights which recognize the right to a clean and healthy environment, as enshrined in Article 42 of the Constitution of Kenya 2010, as part of the economic and social rights.</p> <p>Article 12 of the Covenant provides that, “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health-</p> <p>..... (b) The improvement of all aspects of</p>
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					environmental and industrial hygiene;"
				<p>We propose inclusion of a clause on the coordination and overlap of functions between the national and county governments</p> <p>The co-ordination of functions between the national government and the county governments shall be done in accordance with Schedule 4 of the Constitution of Kenya 2010.</p>	<p>Schedule 4 of the Constitution of Kenya 2010 distinguishes the functions of the national and county governments so as to avoid an overlap in functions and to ensure that their efforts are coordinated.</p>
6.	III	Clause 8 (3) - Economic and social rights index	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).	Inclusion of a clause on the forums that the publication will be done to the people of the relevant counties and to the general public at the national level. This will include the relevant national newspapers, radio stations (both national and local) and the Kenya Gazette.	The inclusion of the clause will ensure that there is no ambiguity in the scope of the Commission's obligation to disseminate this information.
7.	IV	Clause 9 (3) (j) - County strategic plans for the realisation of economic and	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—	<p>Removal of the section - "section 20 of the County Government Act"</p> <p>In preparing a county strategic plan under subsection (1), a county government shall be guided by the principles of planning and development</p>	Section 20 of the County Governments Act has no co-relation with the contents of the clause.

		social rights	(h) 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	facilitation set out under section 102 of the County Governments Act and shall— (h) 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	
8.	IV	Clause 11 – Baseline survey	Each county government shall, when preparing its county strategic plan, carry out a baseline survey in order to determine —	Inclusion of a clause on the publicizing of the baseline survey. “The Commission in collaboration with the respective counties shall publish the baseline survey- (a) In two newspapers of nationwide circulation; (b) In the County Government's websites; (c) In the County Gazette; and (d) In the Kenya Gazette.”	This will be in line with Article 35 of the Constitution of Kenya 2010 on the right to access information. This will also be in line with the guiding principles of the Bill.
9.	V	Clause 23 – Amendment of No. 18 of 2012	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	Deletion of this Clause. The Public Finance Management Act is amended— (a) in section 12(1) by inserting the following new paragraph	Amendment should be in the parent Act or through a Statutory Miscellaneous Amendment Bill and not in this Bill. Further, this amendment falls outside the scope of the objects of this Bill as outlined in its

			<p>economic measures generally to facilitate the fulfillment of economic and social rights as set out in Article 43 of the Constitution;</p> <p>(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</p> <p>(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;</p>	<p>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;</p> <p>(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</p> <p>(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;</p>	Memorandum of Objects and Reasons.
10.	V	<p>Clause 24 — Amend ment to No. 17 of 2012</p>	<p>(1) The County Governments Act is amended in section 107(1) by inserting the following new paragraph immediately after paragraph (d) —</p> <p>(a) county strategic plans for the realization of economic and social rights under Part IV of the Preservation of Human Dignity and</p>	<p>Deletion of this Clause.</p> <p>(1) The County Governments Act is amended in section 107(1) by inserting the following new paragraph immediately after paragraph (d) —</p> <p>(a) county strategic plans for the realization of</p>	<p>Amendment should be in the parent Act or through a Statutory Miscellaneous Amendment Bill and not in this Bill. Further, this amendment falls outside the scope of the objects of this Bill as outlined in its Memorandum of Objects and Reasons.</p>

			Enforcement of Economic and Social Rights Act.	economic and social rights under Part IV of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Act.	
11.		Schedule – 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 —	<p>Inclusion of Article 42 of the Constitution of Kenya 2010</p> <p>The indicators for the assessment, by the Commission, of the effort by the National or a county government in the implementation of Article 42, 43 of the Constitution shall include —</p>	<p>The memorandum and objects of reason of the Bill provide that the intent of the Bill is to give effect to the provisions of Article 2(6) of the Constitution of Kenya 2010 that provides that, <i>“Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”</i></p> <p>From the foregoing, Kenya is a party to the International Covenant on Economic and Social & Cultural Rights which recognize the right to a clean and healthy environment, as enshrined in Article 42 of the Constitution of Kenya 2010, as part of the economic and social rights.</p> <p>Article 12 of the Covenant provides that, “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable</p>

					<p>standard of physical and mental health.</p> <p>The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health- (b) The improvement of all aspects of environmental and industrial hygiene;"</p>
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Appendix 5 (a) to (f):

Copies of submissions by KNCHR, NGEC, CRA, AG's
Office, State Department for Devolution, and KLRC



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON

**THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC
AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 7 OF 2022)**

PRESENTED TO

THE CLERK OF THE SENATE

DATED: 15th February 2023

Kenya National Commission on Human Rights (KNCHR)
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A. Introduction

1. The Kenya National Commission on Human Rights (the KNCHR) is an independent National Human Rights Institution established under Article 59 of the Constitution of Kenya, 2010 and operationalized under the Kenya National Commission on Human Rights Act 2011.¹ It is the successor to the Kenya National Commission on Human Rights established in 2003 under the Kenya National Commission on Human Rights Act 2002.² The Commission has a broad mandate to promote a culture of respect for human rights in Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles.
2. The National Commission is mandated under Article 249 to secure observance by all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the National Commission to secure observance by all state organs of democratic values and principles is through the issuance of advisories. It is in this regard that the Commission issues this advisory on **The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022)**.

B. General Observations

3. The KNCHR welcomes and lauds the efforts by the Senate to process the bill and notes the importance of The Preservation of Human Dignity and Enforcement of

¹ Act No 14 of 2011 available at

<http://www.kenyalaw.org/lex/actview.xhtml?actid=No.%2014%20of%202011>

² Act No 9 of 2002 (repealed). The History of the institution however dates further back in 1996 when the then His Excellency President Moi set up a Standing Committee on Human Rights (SCHR) vide a gazette notice of June 1996.

Economic and Social Rights Bill ("The Bill"), in the realization of economic social and cultural rights under Article 43 of the Constitution. The Commission commends the inclusion of some of the key principles in provision of socio-economic rights such as the accessibility, availability and acceptability. Indeed, the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.³

4. The preamble to the Constitution of Kenya espouses the commitment of the State to nurture and protect the well being of the individual, families and communities and the nation. Social economic development was at the centre of devolution. Amongst the objects of devolution were to protect and promote the interests and rights of minorities and marginalised communities; to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya and to ensure equitable sharing of national and local resources throughout Kenya. In the implementation of the proposed law, all organs at the national and county levels of governance need to be alive to this constitutional imperative.
5. Articles 185 and 186 as read with The Fourth Schedule to the Constitution provide the functions between county and national governments in the fulfilment of economic social and cultural rights and other rights.
6. The Bill is timely and important part of realisation of Kenya's development blueprint; Vision 2030 but also the 2015 global framework on Sustainable Development Goals (SDGs). Under the SDGs, the UN member States, including Kenya committed to putting into place measures towards the realisation of the 17 Goals by 2030 including the reduction of poverty and social inequalities and ensuring that no one is left behind in development.

³ Article 19(2) Constitution of Kenya, 2010.

7. Extreme poverty and disparities in food and economic well-being are still a reality across the nation, across counties and even within the counties and sub-counties⁴. Like many of the States, Kenya was devastated by the COVID-19 pandemic which ravaged many of the drivers of social economic development. Indeed, the covid-19 measures put in place had a knock-on effect on businesses and livelihoods.⁵ The situation was worse for the already vulnerable populations. It is therefore essential that a deliberate framework and conscious measures are put in place to accelerate and sustain growth and realisation of the well-being of the people at both levels of governance.
8. **Evidence-based data:** The centrality of data in fulfilment of economic and social cultural rights cannot be over emphasized. It is crucial to aid planning and monitoring of the progress. Progress should be measurable and data used verifiable according to standards. The Kenya National bureau of Statistics continues to provide data through various reports including Well-Being, Kenya, County Statistical Abstracts, Poverty Indices. It is crucial that both county governments and the national governments leverage on disaggregated data in their socio-economic planning and in fulfilment of the objectives of the Act. Furthermore, the reports submitted under the proposed law, must be ones that utilise disaggregated data and comparative to previous years in line with the parameters provided under the Schedule.
9. The KNCHR notes on a positive note that the County Governments of Kericho and Makueni have since adapted, enacted and are currently implementing the provisions of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 7 of 2022). By enacting this crucial law, it is hoped that more counties will follow suit to implement this law and also

⁴ See for instance KNBS, 'Basic Report on Well-Being in Kenya' Based on the 2015/2016 Kenya Integrated Household Budget Survey (KIHBS) available at <https://www.knbs.or.ke/download/basic-report-well-kenya-based-201516-kenya-integrated-household-budget-survey-kihbs/>.

⁵ KNBS(2020) Survey Report on Socio Economic Impact of COVID-19 on Households available at <https://www.knbs.or.ke/?wpdmpo=survey-report-on-socio-economic-impact-of-covid-19-on-households>.

domesticate it to suit the specific dynamics of the Counties, in line with the Constitution and the County Governments Act, 2012.

10. The KNCHR advises that the County Governments pass legislation that enhances the realization of Economic Social and cultural rights, to this end, the KNCHR recommends adaptation and customization of **The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill**, by the different Counties to guide their efforts towards the practical realization of Article 43 rights on the ground.
11. A strong legal framework for the realization of human rights ought to cover the expectations, rights and obligations of all parties concerned. Any policy and legal framework must be sensitive and responsive to the needs of the marginalised. Using human rights-based approach to policy and law making, the rights of special groups including children, youth, older people, persons with disability and minorities as well as marginalised communities must be catered for and prioritised.
12. To enhance and ensure efficient monitoring of the realization of the rights provided for under the Bill, there is need to expressly have clause that will call for the allocation of resources to the Kenya National Commission on Human Rights. This is an increased mandate that will be difficult to implement without resources.
13. The following table contains some of the specific issues noted for clarification and consideration.

C. Specific Comments

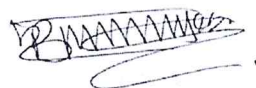
No	Clause in the Bill	Short title	Provision in the bill	Issue/Proposal/our position	Rationale
1.	2	Interpretation	"Vulnerable Persons"	Broaden the definition of vulnerable persons	"vulnerable persons" include infants, children, school going children, pregnant and nursing mothers, the elderly, internally displaced persons, people with disabilities, sick persons with chronic diseases such as HIV/AIDs, victims of conflict, rural people in precarious livelihood situations, marginalized populations in urban areas, groups at risk of social marginalization and discrimination and any other group that may be identified from time to time.
2.	8	Functions of the Commission		Commission should also be given leeway in partnering with other specialized state agencies e.g data collection to KNBS, NCPWD etc	To enhance effective audit and evidence-driven monitoring of the realization of the rights provided for under the Bill. To triangulate and verify content of the reports.
3.	5	Functions of national and county governments		<p>a. Include a provision to ensure the goods and services are of quality standards-</p> <p>b. Expressly provide an element of affordability of goods and services to enhance accessibility of goods and services. Under this, both</p>	<p>Quality of goods and services is essential. Therefore, the Bill should underscore the role of quality assurance in the provision of goods and services. Access is not enough; quality should be paramount to secure the right to health and dignity of the residents.</p> <p>Notably, the aspect of quality is mentioned in passing under Clause 10 under county strategic</p>

No	Clause in the Bill	Short title	Provision in the bill	Issue/Proposal/our position	Rationale
				national and county governments will have a role to ensure that the measures they put in place, including private/public partnerships and other measures etc do not disenfranchise the constituents through exorbitant pricing of basic goods and commodities such as water, particularly for the most vulnerable.	plans but no strong obligation on how to achieve this. While the element of 'affordability' is arguably relative, exorbitant pricing of goods and services make them inaccessible to the populations and this should be avoided.
				c. that they have special opportunities for employment, economic opportunities etc. This will reduce the social inequalities.	This is in line with Article 56 of the Constitution. Even within the counties, there are geographical, population and other disparities and it necessary to put in place measures geared to support those left farthest behind.
	5		-	d. ensure that minorities and marginalised groups have reasonable access to water, health services and infrastructure;	
	5		-	e. Provide an obligation for both national and county governments to provide	

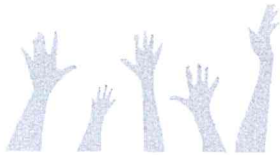
No	Clause in the Bill	Short title	Provision in the bill	Issue/Proposal/our position	Rationale
				affirmative action programmes designed to	
	5		-	f. Provide and obligation for reasonable accommodation in access to goods and services for the vulnerable particularly persons with disabilities.	This is in line with Articles 27, 54 of the Constitution; the Convention on the Rights of Persons with Disabilities and other regional and international obligations.
4.	11	Interpretation	Provision of the baseline report	<p>The baseline should identify marginalized groups within counties.</p> <p>The baseline/initial report is crucial to establish foundation for subsequent monitoring.</p>	This is in consideration of the fact that some counties have huge disparities and have marginalized groups such as Indigenous Communities, who have been left behind in development priorities and economic and social rights.
5.	14	Reports on implementation of economic and social rights. No.	-	a. Include a provision that states that the reports submitted should contain verifiable and disaggregated data, indicating specific measures adopted including towards the vulnerable. Also, it should be an offence for an entity to misrepresent facts in the reports.	The reports submitted by the entities and findings of the Commission have an implication on a lot other policy decisions including the allocation of resources and equalisation fund. It is therefore pertinent that data presented in those reports is based on factual information that is verifiable on the ground.

No	Clause in the Bill	Short title	Provision in the bill	Issue/Proposal/our position	Rationale
				b. Provide that the Commission has power to call for clarification of information contained in the report. And the obligation on the part of the entity to respond within a reasonable period.	That is also why Publicisation of the reports and public participation is crucial in the process.

SIGNED BY:



Dr. Bernard Mogesa, PhD, CPM
Secretary to The Commission/Chief Executive Officer
Kenya National Commission on Human Rights



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When replying please quote

Ref: No: NGECS/NAS/005/VOL.III (79)

10th February 2023

Jeremiah M. Nyegenye, CBS

Clerk of the Senate
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NAIROBI

clerk.senate@parliament.go.ke
senatejlahrc@parliament.go.ke

Dear Mr. Nyegenye,

**MEMORANDUM ON THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE
BILLS NO 7 OF 2022)**

Reference is made to your letter Ref. SEN/DGAC/DGC/JLAHRC/2023/(45) of 8th February 2023, and the call for submission of proposals on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022.

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;*

In line with its mandate, the Commission wishes to submit the attached Memorandum on the Bill.

Yours sincerely,

Betty Sungura, MBS
COMMISSION SECRETARY/ CEO

Encl.

"Gender Equality and Non-Discrimination"



MEMORANDUM WITH COMMENTS ON THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO 7 OF 2022)

Submitted to: clerk.senate@parliament.go.ke; senatejlahrc@parliament.go.ke

No.	Clause	Proposed amendment	Justification
1.	<p>Interpretations</p> <p>“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 inadequate quantities and quality for short or extended periods of time; and</p>	<p>Replace the term “persons in need” -with the term “Indigent”</p>	<p><i>Persons could be in need of other services which do not fall under Article 43 of the Constitution.</i></p> <p><i>“Indigent” means lacking food, clothing, and other necessities of life because of poverty; needy; poor; impoverished</i></p> <p>The term indigent has been adopted and interpreted in the recently amended National Health Insurance Act, 2022.</p>
	<p>“vulnerable persons” include infants, children, school-going children, pregnant and nursing mothers, the elderly, internally displaced persons, persons with disability, such persons with chronic illness, victims of conflict, rural people in precarious livelihood situations, marginalized populations in urban areas, groups at risk of social marginalisation and discrimination and any other group that may be identified from time to time.</p>	<p>Proposal of interpretation of vulnerable persons.</p> <p>Amend the term to “vulnerable groups”</p> <p>The term “Elderly” to be replaced by “older members of society” to also align with the</p>	<p>The definition in Article 21(3) of the Constitution of Kenya 2010 is as follows “vulnerable groups” include women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, members of particular ethnic, religious and cultural communities.”</p>

		interpretation in the constitution	
	<p>“Commission” means the Kenya National Commission on Human Rights established under section 3 of the Kenya National Commission on Human Rights Act;</p>	<p>Amend the term “Commission” by substituting the term with “Commissions” and including the words “National Gender and Equality Commission established under section 3 of the National Gender and Equality Commission National Gender and Equality Commission Act” after the word “Act.”</p>	<p>There are aspects of Economic and Social rights that concern equality and non-discrimination and the rights of Special Interest Groups that are the mandate of the National Gender and Equality Commission (NGEC) while other aspects fall under the mandate of Kenya National Commission on Human Rights (KNCHR).</p> <p>NGEC has a mandate under section 8 (n) of establishing <i>databases</i> on issues relating to equality and freedom from discrimination for different affected interest groups and produce periodic reports for national, regional and international reporting</p> <p>NGEC has a mandate under Section 8(g) to “<i>work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the constitution and other written laws</i>”</p> <p>8(e)<i>monitor, facilitate and advise</i> on the development of affirmative action implementation policies as contemplated in the Constitution;</p> <p>8(f)<i>investigate</i> on its own initiative or on the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned</p>

			The Bill has then to be clear on which Commission has the mandate for a specific aspect.
2.	<p>Clause 5- Obligations of the National and county governments with respect to economic and social rights.</p> <p>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—</p> <p>Clause 5(2) The National and county governments shall, pursuant to sub- section(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</p>	<p>1. To amend clause 5(1) by inserting after 53(1)(c), Article 57(d).</p> <p>”</p> <p>2. Amend clause 5(2) (b) by inserting before the word “strategic” the following words “five year”</p>	<p>Article 57 (d) of the Constitution obligates the family and the state to give reasonable care to older members of society who are however neglected and are vulnerable for lack of a legislative framework to address pertinent issues.</p> <p>2. This will ensure a measurable time frame and uniformity across all the counties.</p>
3.	<p>PART III—CONFERMENT ON THE COMMISSION OF AN OVERSIGHT ROLE</p> <p>7.(1) The functions of the Commission shall be to— (a)monitor the performance of the National and each county government in the 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</p>	<p>Propose to amend the sub title to read Conferment on the Commissions of oversight roles.</p> <p>Amend Clause 7(1)(g)by substituting the words “National Social Assistance</p>	<p>As noted in the interpretation section on Commissions, the two Commissions have mandates as concerns Economic and Social Rights and so the proposed law should be clear, specific and apportion distinct functions or roles. This will avoid clash or overlap of mandates of the two commissions</p> <p>The National Social Assistance Authority envisaged was not established because the Social</p>

<p>realisation of economic and social rights within the county governments; (c).....;</p> <p>(d).....;</p> <p>(e).....;</p> <p>(f).....;</p> <p>(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; (h).....;</p> <p>(i)perform such other functions as may be necessary for the implementation of this Act</p>	<p>Authority” with the words” the authority responsible for implementation of the Social Assistance programs”</p>	<p>Assistance Act of 2013 has never been operationalized.</p>
<p>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.</p> <p>(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 –</p> <p>(a)the Senate;</p> <p>(b)the National Assembly;</p> <p>(c)every county assembly;</p> <p>(d) the Commission for Revenue Allocation;</p> <p>(e)the Intergovernmental Budget and Economic Council established under the Public Finance Management Act; and</p>	<p>Amend by inserting the word “Relevant” before the word Commission whenever the word appears.</p>	<p>The mandate of each Commission is clear from their constitutive Act but for purposes of clarity, a schedule of the various mandates to be included in the Act.</p> <p>Clause 13 (2) (f) - dissemination of the report to the residents of the respective counties is lauded but we note that it is an undertaking that will require funding.</p>

	(f) The residents of the respective county through dissemination in such manner as it shall consider appropriate.		
4.	<p>PART VI – MISCELLANEOUS PROVISIONS</p> <p>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.</p>	To amend by inserting the word “Relevant “before the word “commission”	Each Commission will prepare an Economic and Social rights index relating to issues as per their mandate. For example, besides section 13 (2), when section 19 (2) is read together with section 7(d), the NGEC shall identify factors that impede the economic development of, and access to essential financial services by, marginalised groups. NGEC will also make recommendations on policies and strategies that reinforce discrimination.
	<p>20.(1) Each county government shall, in preparing its county strategic plans, carry out public participation with the residents of the respective county.</p> <p>(2) In carrying out public participation, a county government shall –</p> <p>(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;</p> <p>(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;</p> <p>(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;</p>	<p>Amend 20(2) by inserting new sub clauses as below;</p> <p>(f) Ensure that the plans are presented in an accessible format for various categories of persons with disabilities</p> <p>(g) Ensure that the infrastructure to the venue and the actual venue of the public participation is accessible for all persons with limited mobility.</p>	This will ensure that there is meaningful inclusion and participation of all residents of the county.

	<p>(d)take into account the principles of citizen participation set out under section 87 of the County Governments Act;</p> <p>(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;(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)</p>		
5.	<p>Clause 21 on sensitization programme framework</p> <p>The Commission shall, in consultation with the Cabinet Secretary and the Council of county Governors –</p>	<p>Amend so that the clause makes reference to the two Commissions as follows:</p> <p>The National Gender and Equality Commission and the Kenya National Commission on Human Rights shall, in consultation with the Cabinet Secretary and the Council of county Governors</p>	<p>Each of the two Commission have mandates on Economic and Social Rights.</p> <p>The proposed amendment will ensure consistency with sections 8 (h) of the Kenya National Commission on Human Rights Act No. 14 of 2011 and section 8 (k) of the National Gender and Equality Commission Act No. 15 of 2011 that obligates the commissions to ensure efficiency, effectiveness and <i>complementarity</i> in their activities, establish <i>referrals</i> and <i>collaboration</i>.</p>

6.	First schedule on the criteria for realization of social and economic rights	Rearrange the title of the schedule from “social and economic rights” to read “Economic and Social rights”	As phrased in Article 43 of the Constitution
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General Comments.

- I. The International Covenant on Economic, Social and Cultural Rights (ICESCR) which forms part of the Laws of Kenya by virtue of Article 2 (5) & (6) of the Constitution of Kenya 2010 provides several other Economic, Social and Cultural rights. The Convention further expounds on specific rights that are also provided for in Article 43 of the COK 2013. Article 6-15 of ICESCR makes provision for
- a) The right to work (Article 6)
 - b) The right of everyone to the enjoyment of just and favorable conditions of work (Article 7)
 - c) The right of everyone to form trade unions and join the trade union of his or her choice (Article 8)
 - d) The right of everyone to social security, including social insurance. (Article 9)
 - e) Widest possible protection and assistance should be accorded to the family (Article 10)
 - f) The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. (Article 11)
 - g) The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (Article 12)
 - h) The right of everyone to education (Article 13)
 - i) Compulsory primary education (Article 14). Kenya already progressively complied
 - j) The right of everyone: (i) To take part in cultural life; (ii) To enjoy the benefits of scientific progress and its applications; (iii) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 2 paragraph 1 of the ICESCR provides that;

“Each State Party to the present Covenant *undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving*

progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

- II. The highlight of provisions from the 2010 Kenya Constitution, the NGEA Act of 2011 and the ICESCR indicate that ECOSOC rights have implications on resources particularly in their implementation and subsequent realization. Both the Constitution and the ICESCR recognize that ECOSOC rights, because of their nature have to be implemented progressively.

In conclusion, the Commission supports the proposed Bill as it creates a legislative framework to implement the economic and social rights of the Special Interest Groups.



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

- 1. The long title is too wordy and only stipulates need for adherence by county governments to Article 43 of the Constitution**

Recommendation: “The Economic and Social Rights Bill”

“AN ACT of Parliament to provide mechanisms to monitor and promote adherence by county governments in compliance with Article 43 of the Constitution; and for connected purposes.”

Recommendations:

- a) Add ‘*national government*’ within the scope of the Act.

Rationale: The law covers both national and county governments

- b) Generally redraft to shorten the title

Rationale: for ease of understanding

2. Provisions on the Equalization Fund

a) Clause 3 (e)

Part of the objects and purposes of the proposed law is *the application of the Equalization Fund for the promotion of*

economic and social rights amongst the marginalized communities in accordance with Article 43 of the Constitution.

Recommendation: *This provision should be deleted.*

Rationale: there is in place an existing legal framework governing the application of the Equalization Fund under Articles 204 and 216 and the Public Finance Management (Equalization Fund Administration) Regulations, 2021.

b) Clause 3 (f)

Proposes as part of the objects and purposes of the Bill, a framework for the provision of conditional grants to county governments for the purpose of funding activities aimed at ensuring the realization of the economic and social rights set out under the Constitution.

Recommendation: *delete provision.*

Rationale: *Such a framework already exists i.e. The County Governments Additional Allocations Act (annual legislation)*

3. The Bill extensively provides for a county strategic plan for the realization of economic and social rights under part IV.

Recommendation: *Align the CIDP, CFSP and CSP to provide for realization of the rights.*

Rationale: Clause 18 of this Bill already provides that CECM Finance shall include in the County Fiscal Strategy Paper measures aimed at

ensuring fulfilment of Article 43 of the Constitution. This is duplicated in the County Integrated Development Plans and the need for the county strategic plan. To avoid duplication these three plans should be aligned in this section.



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/569/1/9

17th February, 2023.

The Clerk of the Senate
The Clerk's Chambers
Parliament Buildings
P.O Box 41842-00100
NAIROBI

**RE: INVITATION TO SUBMIT COMMENTS ON THE PRESERVATION OF HUMAN
DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILLS NO.7 OF 2022)**

Reference is made to your letter dated the 8th February, 2023, ref no. SEN.DGAC/DGC/JLAHRC/2023(47) on the above captioned matter.

We have comprehensively reviewed the proposed Bill in light of the Constitution and the relevant laws including the County Governments Act, 2012, Public Finance Management Act, 2012 and the Kenya National Commission on Human Rights Act, 2011, and our considered opinion is as discussed hereunder:

Clause 2

The Bill has defined Cabinet Secretary to mean the Cabinet Secretary responsible for planning. Hence the Bill designates the Cabinet Secretary for National Treasury and Economic Planning to be responsible for the administration of the Act.

We note that, the core mandate of the National Treasury is fiscal and planning in nature and therefore the proposal to domicile the Bill in the National Treasury falls outside the scope of the mandate of the National Treasury. The role of the National Treasury, in respect to planning on economic and social rights, is restricted to overseeing the planning and tracking of the progress of implementation of the strategic plans by Ministries, State Departments and Agencies. Economic and social rights are cross-cutting in nature and fall in the different sectors of both levels of government hence are addressed through various legislation and implemented by various National Government Ministries, State Departments and agencies and county governments. In

practice, the economic and social rights are mainstreamed within various National Government Ministries, State Departments and agencies and county governments strategic plans and the economic and social rights are components of the strategic plans developed by such entities. Therefore, a single legislation should not purport to provide for strategic planning and implementation of economic and social rights as is being proposed.

On the other hand, section 2 of the Kenya National Commission on Human Rights Act, 2012 provides that the Cabinet Secretary responsible for administration of the Act is the Cabinet Secretary responsible for human rights, and as such the Attorney General is responsible. In effect, the obligations on the administration of the Bill has been placed on two Cabinet Secretaries which creates confusion and conflict with the existing laws.

Further, the Bill has defined “subsidy programme”, “persons in need” and “vulnerable persons” which words have not been used in the text of the Bill. We propose that the Bill provides for substantive text on the defined terms or delete them if no provisions can be developed.

In addition, the Bill has defined the “Equalization Fund” to mean the Fund established under Article 204 of the Constitution. The Bill ought to delete any reference to the Equalization Fund since the Fund being a Constitutional Fund established for its specific mandate has been operationalized under section 18 of the Public Finance Management Act, 2012 and the attendant Regulations and therefore the proposals in the Bill would result in confusion on how the fund shall be administered.

Clause 5

Clause 5 of the Bill provides for the obligations of the National and county governments with respect to economic and social rights which includes formulating and implementing such policies, legislation and strategies and to put in place such mechanisms for the realization of the rights.

We note that the Bill does not delineate the function of the national government and county governments particularly with regard to policy formulation. This may lead to

formulation of conflicting policies and overlapping roles. There is need to delineate the roles of each level of government for certainty.

In addition, clause 5 (1) (c) ought to be amended in order to align the provision with international standards for the realization of economic, social and cultural rights as follows:

“(c)ensure the availability, accessibility, adaptability, acceptability and quality of services that would facilitate the realization of economic and social rights;”

Part III- Role and functions of the Commission (Clauses 6, 7 and 8)

Clause 6 of the Bill proposes additional responsibilities to the Kenya National Commission on Human Rights established under section 3 of the Kenya National Commission on Human Rights Act with respect to economic and social rights. Section 8 (c) of the Kenya National Commission on Human Rights Act, 2012 provides for the mandate of the Commission to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic. Therefore, the additional functions proposed for the Commission under the Bill are a duplication of the provisions of the Kenya National Commission on Human Rights Act, 2012.

Clause 14

Clause 14 (1) of the Bill provides as follows—

“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”.

The Attorney General has the mandate of issuing advisory opinions on human rights matters as well as coordinating state reporting on international human rights treaties that Kenya has ratified. Therefore, the Bill ought to include the Office of the Attorney General in the list of organizations receiving implementation progress reports of the economic and social rights.

In addition, the Bill proposes different reporting requirements to the Commission yet section 53 of the Kenya National Commission on Human Rights Act, 2012 has provided for a reporting mechanism for the Commission. The different procedures for reporting proposed in the Bill contradicts with the existing law.

Part IV County Strategic Plans for the realisation of Economic and Social Rights (Clauses 9 to 18)

Part IV of the Bill provides for the content of county strategic plans which content is a duplication of the provisions of Part XI of the County Governments Act, 2012 on County Planning. In particular, section 108 of the County Governments Act, 2012 provides for the County Integrated Development Plan which is a five-year county plan with clear goals and objectives. Section 109 of the County Governments Act, 2012 provides that each county department is required to formulate a ten-year county sectoral plan which is reviewed every five years by the county executive and approved by the county assembly, but updated annually. Section 110 of the County Governments Act, 2012 provides for a ten-year county Geographic Information System based database system spatial plan for each county, which shall be a component part of the county integrated development. County spatial plans are developed by the respective county executive committee and approved by the respective county assemblies and are reviewed and approved by the respective county assemblies every five years.

In addition, section 108(2)(b)(ii) of the County Governments Act, 2012, provides that each county integrated development plan shall at least identify strategies and programmes set out in the plan any development initiatives in the county, including infrastructure, physical, social, economic and institutional development. Consequently, section 102 of the County Governments Act, 2012 provides for the principles in undertaking planning to include promoting the pursuit of equity in resource allocation within a county.

Further, the content of clause 9 of the Bill relating to the content of County Strategic Plans are details contained in the workplans of the various County Departments or agencies. Essentially, strategic plans are intended to provide for the core mandate of the respective institutions and the institutions are expected to subsequently formulate

programmes or projects in the other planning instruments such as annual workplans and performance contracts.

The requirement under clause 11 for county governments to carry out a baseline survey preparing its county strategic plan and subsequently grants the Commission in consultation with the Council of Governors an overarching mandate to determine the conduct of such baseline survey. The requirement for county governments to conduct baseline surveys imposes significant financial implications on the county governments. As such the proposal makes the Bill a money bill therefore must be processed in accordance with the provisions of Article 114 of the Constitution.

In essence, the county governments are guided by the provisions of the Part XI of the County Governments Act, 2012 on the formulation of their respective strategic plans and the rights envisaged under Article 43 of the Constitution are mainstreamed thereto.

Clause 19

Clause 19 provides for the enabling power to make Regulations under the Act as follows:

“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”.

The Bill under clause 2 has defined the Cabinet Secretary to the one responsible for planning hence the Cabinet Secretary for National Treasury and Economic Planning is deemed responsible for administration of the Act. The provision under clause 19 requires the responsible Cabinet Secretary to consult the Cabinet Secretary responsible for finance who is one and the same person and further requiring consultations with the forty-seven county executive committee members responsible for finance and the Commission is unnecessary since such persons shall be engaged through the mandatory

public participation required while making statutory instruments in line with the requirement of the Statutory Instruments Act, 2013.

Clause 22

Clause 22 of the Bill provides for the requirement for county governments to amend their respective county integrated development plan within six months on the commencement of the amendments to bring it into conformity with the requirements in the Bill. County Governments develop strategic plans every five years as specified under section 108 of the County Governments Act, 2012. As such, the transition provisions proposed in the Bill should consider granting the county governments adequate timelines to implement and mainstream the economic and social rights as well as harmonise the plans with other planning instruments including the annual work plans, performance contracts, sector and spatial plans. The transition period of six months should be extended to one year in order to ensure effective mainstreaming of economic and social rights by county governments.

Consequential amendments (Clauses 23 and 24)

The Bill has under clauses 23 and 24 proposed consequential amendments to the Public Finance Management Act, 2012 and the County Governments Act, 2012 in order to expressly cater of for social economic rights. The engagement of the National Treasury and the State Department of Devolution and the forty-seven county governments on the proposed amendments would be crucial in order to ensure that the amendments are harmonised with the general content of the Public Finance Management Act, 2012 and the County Governments Act, 2012 and their attendant Regulations.

Editorial issues

- (a) delete the words “persons with **disability**, such persons **which** chronic illness” and substitute with the words “persons with **disabilities**, such persons **with** chronic illness” appearing in the definition of “vulnerable persons”;
- (b) amend the cross-referencing under clause 8(1) by deleting **section 13(2)** and **substituting to section 14(2)**.

In conclusion, the realization of the social economic rights specified under Article 43 of the Constitution is the responsibility of the various National Government Ministries,

State Departments and Agencies and County Governments. As such, the national and county governments pursuant to the relevant laws including the Public Finance Management Act, 2012, the County Governments Act, 2012, and the Kenya National Commission on Human Rights Act, 2012 and sector specific laws are the existing legislation that ensure realization of the economic and social rights.

Therefore, the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill 2022 duplicates the content of existing laws such as Part XI of the County Governments Act, 2012 relating to county planning and the Public Finance Management Act, 2012.

In view of the foregoing concerns, it is our considered view that prior to the enactment of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022, the Senate should consider addressing the gaps in the existing legislation that cater for socio-economic rights and also engage the concerned Ministries, State Departments or Agencies including the National Treasury, the Kenya National Commission on Human Rights, the State Department of Devolution in order to comprehensively evaluate and address any gaps in the existing legislation as well as implementation challenges on effective realisation of the economic and social rights.



Marion Muriithi
Deputy Chief Parliamentary Counsel
FOR ATTORNEY-GENERAL

Copy to: Hon. J.B.N Muturi, EGH
Attorney General

Mr. Kennedy Ogeto, CBS
Solicitor General

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Chief Parliamentary Counsel

REPUBLIC OF KENYA



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Ref: MDP/DD/L/GEN/VOL. II

15th February, 2023

The Clerk
The Senate
Parliament Buildings
P.O. Box 41842 -00100
NAIROBI

**RE: INVITATION TO SUBMIT COMMENTS ON THE
PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS
BILL (SENATE BILLS NO. 7 OF 2022)**

We acknowledge receipt of your letter Ref. SEN/DGA/DGC/JLAHRC/2023/
(48) of 8th February, 2023 on the above named subject.

Forwarded herewith please find a memorandum of the comments on the
above Bill by the State department for Devolution for your action.


P. N. Muriithi
FOR: PRINCIPAL SECRETARY

Encls.

REPUBLIC OF KENYA



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COMMENTS ON THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL 2022

PART IV - COUNTY STRATEGIC PLANS Section 9	This appears to place a financial obligation to counties as all activities must be funded.
Section 13	The strategic plan is a component of the CIDP and therefore doesn't require another/special approval.
Section 15	What happens when the recommendations require finances, and the county is unable to fund.
Section 19	The CS Devolution should also be consulted.
Section 19 (2)	Framework for collaboration exists. Intergovernmental sector forums established in sector by State Department for Devolution.
Section 20	The public participation should be done jointly with CIDPs. This also reduces cost.
Section 21	The public participation and civic education should be done jointly with devolution since the National Civic Education Framework materials and curriculum.
Section 22	Amendments to CIDP should take effect in the subsequent year and not immediately.

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

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When replying please quote

KLRC/RES/93 Vol. VII/(7)

Ref. No.
and Date

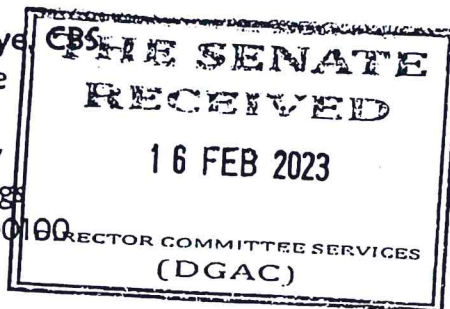
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KENYA LAW REFORM COMMISSION
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P.O. Box 34999-00100
NAIROBI, KENYA

14th February, 2023

Mr. J. M. Nyegenye
Clerk of the Senate
Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 00100
NAIROBI



① DGAC
DLS.
Note and deal.
15 FEB 2023

Dear *Jeremiah,*

Re: **KENYA LAW REFORM COMMISSION COMMENTS ON THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 7 OF 2022)**

Your letter on the above subject Ref SEN.DGAC/DGC/JLAHR/2023/(49) dated 8th February, 2023 refers.

The Commission has studied the proposed Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022 wishes to make the following observations:

1. The specific objects of the proposed Bill as stated are not reflected in the body of the Bill. For instance, while the objects of the Bill provide that the Act shall set the standards to be adhered to by the National and County Governments in the realization of economic and social rights and that it will also provide for application of the Equalisation Fund for the promotion of economic and social rights, the body of the Bill does not set out the said standards. There is also no mention of the Equalization Fund throughout the Bill.
2. The Bill places responsibilities on National and County Governments as entities without specifying the persons responsible to take action. It is recommended that specific responsibilities and requirements for action are placed on individual office

holders. If this is not done and the Bill is passed into law, it will largely be unimplementable due to lack of such specificity.

3. The Bill under Part IV appears to set out a parallel framework to the one created under Article 204 of the Constitution on Equalisation Fund. The Equalization Fund is established for purposes of enabling the National Government to provide water, transport and health facilities to marginalized areas. It is not clear how the proposed law will be implemented given the fact that the Equalisation Fund is already in place.
4. The objects of the Bill replicate the functions of the Kenya National Commission on Human Rights (KNCHR) as set out in Section 8 of the Kenya National Commission of Human Rights Act.
5. The additional mandate to the Commission contained under Part III of the Bill proposes to confer to the KNCHR appears to have been intentionally left out since Section 8(f) of the KNCHR Act provides that the Commission:
"shall act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights EXCEPT those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination".

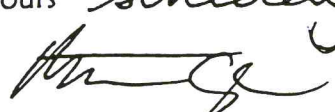
This implies that the Commission's oversight mandate was intentionally ousted in relation to certain aspects of human rights matters.

6. The proposed reporting procedures under Clause 14 the Bill, which provides that the National and County Governments are expected to report to the Commission conflict directly with those set out in the KNCHR Act, where the Commission reports to Parliament and the Cabinet Secretary implements the report. It is notable the Bill does not propose an amendment to reconcile the existing reporting framework with the proposed one.
7. It may be neater to amend the existing KNCHR Act to incorporate some of the proposals rather than developing a separate law altogether. Section 55 of the KNCHR Act anticipated that the mandate of the Commission was to be reviewed upon expiry of five years from the date of commencement of the Act. Perhaps during this review some proposals in the current Bill could be incorporated.

In view of the above, the Commission recommends that the salient issues be identified for incorporation by way of an amendment Bill to the KNCHR Act.

Thank you for your continued support and cooperation.

Yours

sincerely,


CHRISTINE A. AGIMBA
CHAIRPERSON

Appendix 6:
Matrix of Stakeholder Submissions on the Bill

THE SENATE



MATRIX

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

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
Title of the Bill	Commission on Revenue Allocation	Shorten title to "The Economic and Social Rights Bill"	For ease of reference	
Long Title	Natural Justice: Lawyers for communities and the environment	Amend the Long Title to include the phrase "National Government" as one of the entities the Act applies to.	Adherence ought to be by both the national and county governments.	
	Commission on Revenue Allocation	Include "National Government"	The law covers both the national and county governments, hence the national government should be mentioned.	
Clause 2- Interpretation	Natural Justice: Lawyers for communities and the environment	Include Article 42 of the Constitution on the right to a clean and healthy environment.	Kenya is a party to the International Covenant on Economic and Social and Cultural Rights which recognises the right of everyone to the enjoyment of the highest attainable standard of physical and	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			mental health as follows- (b) The improvement of all aspects of environmental and industrial hygiene;"	
	Office of the Attorney General	Obligations on the administration of the Bill have been placed on two Cabinet Secretaries which creates confusion and conflict with the existing laws. Also, the proposal to domicile the Bill in the National Treasury falls outside the scope of the mandate of the National Treasury.	Section 2 of the Kenya National Commission on Human Rights Act, 2012 provides that the Cabinet Secretary responsible for administration of the Act is the Cabinet Secretary responsible for human rights, and as such the Attorney General is responsible. The role of the Treasury is restricted to overseeing the planning and tracking of the progress of implementation of the strategic plans by Ministries, State Departments and Agencies.	
	Office of the Attorney General	The Bill should provide for substantive text on the defined terms "subsidy programme", "persons in need" and "vulnerable persons" or delete them if no provisions can be developed.	The terms have not been used in the text of the Bill.	
		Remove references to the Equalization Fund.	The Fund has already been operationalized under section 18 of the Public Finance Management Act, 2012 and the attendant Regulations and therefore the proposals in the Bill would result in confusion on how the fund shall be administered.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		Delete the words “persons with disability, such persons which chronic illness” and substitute with the words “persons with disabilities, such persons with chronic illness” appearing in the definition of “vulnerable persons”	To correct a typo	
	NGEC	Amend the term “Commission” by substituting the term with “Commissions” and including the “National Gender and Equality Commission” as one of the Commissions with a mandate on human rights related matters.	There are aspects of Economic and Social rights that concern equality and non-discrimination and the rights of Special Interest Groups that are the mandate of the National Gender and Equality Commission (NGEC) while other aspects fall under the mandate of Kenya National Commission on Human Rights (KNCHR).	
	NGEC	Replace the term “ persons in need ” - with the term “ indigent ”	Persons could be in need of other services which do not fall under Article 43 of the Constitution. “Indigent” means lacking food, clothing, and other necessities of life because of poverty; needy; poor; impoverished The term indigent has been adopted and interpreted in the recently amended National Health Insurance Act, 2022.	
		Amend the term “vulnerable persons” to “ vulnerable groups ” Replace the term “ Elderly ” with the	This is to align the words with those as specified and defined under Article 21(3) of the Constitution of Kenya as follows -	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		term “older members of society”.	“vulnerable groups” include women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, members of particular ethnic, religious and cultural communities.”	
	KNCHR	Broaden the definition of vulnerable persons to include school going children and other groups.	This will make the definition broad enough to cover any new categories of vulnerable persons.	
	Kenya Law Reform Commission	Remove reference to the Equalisation Fund	There is no mention of the Fund anywhere in the body of the Bill. The Bill also creates a parallel framework for implementation of the Fund which would result in confusion.	
Clause 3	Natural Justice: Lawyers for communities and the environment	<p>(a) Amend clause 3(a) to include Article 42 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 Article 42, 43(1) of the Constitution;</p> <p>(b) Amend paragraph (d) to read as follows:</p>	<p>Kenya is a party to the International Covenant on Economic and Social and Cultural Rights which recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as follows-</p> <p>..... (b) The improvement of all aspects of environmental and industrial hygiene;”</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		The establishment of mechanisms to monitor and promote the realisation of the economic and social rights by national government and county governments;		
	Commission on Revenue Allocation	Delete clause 3(e) on application of the equalization fund	There is an existing framework governing application of the Equalisation Fund under Articles 204 and 216 and the Public Finance Management (Equalisation Fund Administration) Regulations, 2021.	
		Delete clause 3(f) on provision of conditional grants to county governments	Such a framework already exists (The County Governments Additional Allocations Act)	
Clause 4	Natural Justice: Lawyers for communities and the environment	Amend paragraph (e) to include the words “equitable, effective and” as follows - (e) coordinated, <u>equitable and effective</u> public participation in the formulation, implementation and monitoring of policies, strategies and plans aimed at ensuring the realization of economic and social rights;	Public participation needs not only to be coordinated but also equitable (catering to the specific needs of those concerned) and effective so that it is not just a ticking a box affair.	
	Natural Justice: Lawyers for communities and the environment	Include Article 42 of the Constitution of Kenya on the right to a clean and healthy environment among the guiding principles.	Kenya is a party to the International Covenant on Economic and Social and Cultural Rights which recognises the right of everyone to the enjoyment of the highest attainable standard of physical and	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>mental health as follows-</p> <p>..... (b) The improvement of all aspects of environmental and industrial hygiene.</p>	
Clause 5	Natural Justice: Lawyers for communities and the environment	Include Article 42 of the Constitution on the right to a clean and healthy environment	<p>Kenya is a party to the International Covenant on Economic and Social and Cultural Rights which recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as follows-</p> <p>..... (b) The improvement of all aspects of environmental and industrial hygiene;"</p>	
		Amend clause 5(1) by inserting "Article 57(d)" on reasonable care to older members of society after 53(1)(c).	Article 57 (d) of the Constitution obligates the family and the State to give reasonable care to older members of society who are neglected and are vulnerable for lack of a legislative framework to address pertinent issues. Inclusion of this Article is crucial to promote social assistance.	
		Amend clause 5(2)(b) by inserting before the word "strategic" the words "five year" .	This will ensure a measurable time frame and uniformity across all the counties.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>Include a clause on the coordination and overlap of functions between the national and county governments as follows –</p> <p>“The co-ordination of functions between the national government and the county governments shall be done in accordance with Schedule 4 of the Constitution.”</p>	Schedule 4 of the Constitution distinguishes the functions of the National and county governments so as to avoid an overlap in functions and to ensure that their efforts are coordinated.	
	Office of the Attorney General	Delineate the roles of each level of government for certainty.	The Bill does not delineate the function of the National Government and county governments particularly with regard to policy formulation. This may lead to formulation of conflicting policies and overlapping roles.	
		<p>Amend Clause 5 (1)(c) to read as follows -</p> <p>“(c) ensure the availability, accessibility, adaptability, acceptability and quality of services that would facilitate the realization of economic and social rights;”</p>	The amendment is necessary so as to align the provision with international standards for the realization of economic, social and cultural rights.	
	KLRC	Specific responsibilities and requirements for action should be placed on individual office holders.	If not done the Bill may be unimplementable due to lack of specificity.	
	KNCHR	(a) Include a provision to ensure the goods and services are of quality standards.	Quality of goods and services is essential. Therefore, the Bill should underscore the role of quality	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		(b) Expressly provide an element of affordability of goods and services to enhance accessibility of goods and services. Under this, both national and county governments will have a role to ensure that the measures they put in place, including private/public partnerships and other measures etc do not disenfranchise the constituents through exorbitant pricing of basic goods and commodities such as water, particularly for the most vulnerable.	assurance in the provision of goods and services. While the element of “affordability” is arguably relative, exorbitant pricing of goods and services make them inaccessible to the populations and this should be avoided.	
	KNCHR	c. include a provision to ensure that that vulnerable persons have special opportunities for employment, economic opportunities etc. This will reduce the social inequalities. d. include an obligation to ensure that minorities and marginalised groups have reasonable access to water, health services and infrastructure; e. Provide an obligation for both national and county governments to provide affirmative action programmes	This is in line with Article 56 of the Constitution. Even within the counties, there are geographical, population and other disparities and it necessary to put in place measures geared to support those left farthest behind.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		designed to support marginalized groups.		
	KNCHR	f. Provide and obligation for reasonable accommodation in access to goods and services for the vulnerable particularly persons with disabilities.	This is in line with Articles 27, 54 of the Constitution; the Convention on the Rights of Persons with Disabilities and other regional and international obligations.	
Clause 7	NGEC	Propose to amend the sub title to read Conferment on the Commissions of oversight roles.	As noted in the interpretation section on Commissions, the two Commissions have mandates as concerns Economic and Social Rights and so the proposed law should be clear, specific and apportion distinct functions or roles. This will avoid clash or overlap of mandates of the two commissions	
		Amend clause 7(1)(g) by substituting the words “National Social Assistance Authority” with the words” the authority responsible for implementation of the Social Assistance programs”	The National Social Assistance Authority envisaged was not established because the Social Assistance Act, 2013 has never been operationalized.	
Clause 8(1)	Office of the Attorney General	Amend the cross-referencing under clause 8(1) by deleting section 13(2) and substituting to section 14(2).	To address a cross-referencing error.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
Clause 8(3)	Natural Justice: Lawyers for communities and the environment	Include a clause on the forums that the publication will be done to the people of the relevant counties and to the general public at the national level. This will include the relevant national newspapers, radio stations (both national and local) and the Kenya Gazette.	The inclusion of the clause will ensure that there is no ambiguity in the scope of the Commission's obligation to disseminate this information.	
Clause 9(3)(h)	Natural Justice: Lawyers for communities and the environment	Removal of the section - "section 20 of the County Government Act" so as to read as follows - "In preparing a county strategic plan under subsection (1), a county government shall be guided by the principles of planning and development"	Section 20 of the County Governments Act has no correlation with the contents of the clause.	
Clause 11	Natural Justice: Lawyers for communities and the environment	Include a clause on the publicizing of the baseline survey as follows – "The Commission in collaboration with the respective counties shall publish the baseline survey- (a) In two newspapers of nationwide circulation; (b) In the County Government's websites; (c) In the County Gazette; and (d) In the Kenya Gazette."	This will be in line with Article 35 of the Constitution on the right to access information and the guiding principles of the Bill.	
	KNCHR	The baseline should identify	The baseline/initial report is crucial	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		marginalized groups within counties.	to establish foundation for subsequent monitoring. This is in consideration of the fact that some counties have huge disparities and have marginalized groups such as Indigenous Communities, who have been left behind in development priorities and economic and social rights.	
Clause 13	NGEC	Amend by inserting the word "Relevant" before the word Commission whenever the word appears since the KNCHR and NGEC both have a role to play in human rights matters as per Article 59 of the Constitution.	The two commissions is clear from their constitutive Acts hence both should be included in the Bill. Additionally, for purposes of clarity, a schedule of the various mandates should be included in the Act.	
	State Department for Devolution	Amend to remove the need for separate approval of the strategic plan	The Strategic plan is a component of the CIDP and hence does not require to go through another process of approval.	
Clause 14	KNCHR	(a) Include a provision that requires reports submitted to contain verifiable and disaggregated data, indicating specific measures adopted including towards the vulnerable. Amend to include an offence for an entity to misrepresent facts in the reports.	The reports submitted by the entities and findings of the Commission have an implication on a lot other policy decisions including the allocation of resources and Equalisation Fund. It is therefore pertinent that data presented in those reports is based	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			on factual information that is verifiable on the ground.	
		(b) Amend to confer on the Commission the power to call for clarification of information contained in the report and to oblige the respective entity to respond within a reasonable period.	This is to ensure that the information is factual and clear enough for use in decision making.	
	Office of the Attorney General	Amend to include the Office of the Attorney General in the list of organizations receiving implementation progress reports of the economic and social rights.	The Attorney General has the mandate of issuing advisory opinions on human rights matters as well as coordinating state reporting on international human rights treaties that Kenya has ratified.	
		Align reporting requirements with those under the KNCHR Act.	The Bill proposes different reporting requirements to the Commission yet section 53 of the Kenya National Commission on Human Rights Act, 2012 has provided for a reporting mechanism for the Commission. The different procedures for reporting proposed in the Bill contradicts the existing law.	
	KLRC	Amend KNCHR Act to align the reporting requirements with those proposed under the Bill.	To remove the conflict between the reporting mechanisms in the Bill and those set out under the KNCHR Act.	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
Clause 18	Commission on Revenue Allocation	Align the CIDP, CFSP, and CSP to provide for realization of the rights.	This clause already provides that CECM Finance shall include in the County Fiscal Strategy Paper measures aimed at fulfilling Article 43 of the Constitution. This is duplicated in the CIDP and the need for the County Strategic Plan. To avoid duplication the three plans should be aligned in this section.	
Clause 19	NGEC	Amend by inserting the word “Relevant” before the word “commission” whenever it appears in the clause so as not to exclude NGEC.	This will allow the Cabinet Secretary to consult NGEC and KNCHR when making regulations.	
	Office of the Attorney General	Remove the need for consultation when making regulations, as this will be done during public participation.	The provision under clause 19 requires the responsible Cabinet Secretary to consult the Cabinet Secretary responsible for finance who is one and the same person and further requiring consultations with the forty-seven county executive committee members responsible for finance and the Commission. This is unnecessary since such persons shall be engaged through the mandatory public participation required while making statutory instruments in line with the requirement of the Statutory Instruments Act, 2013.	
	State Department for	The Cabinet Secretary responsible for	There are intergovernmental sector	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	Devolution	matters relating to devolution should be consulted.	forums already established by the State Department for Devolution.	
		Delete clause 19(2)(a) in so far as it requires the creation of a framework of collaboration between the national and county governments.	The framework for collaboration proposed in this clause 19(2)(a) already exists.	
Clause 20	NGEC	Amend clause 20(2) by inserting the following new sub clauses - (f) Ensure that the plans are presented in an accessible format for various categories of persons with disabilities (g) Ensure that the infrastructure to the venue and the actual venue of the public participation is accessible for all persons with limited mobility.	This will ensure that there is meaningful inclusion and participation of all residents of the respective county.	
	State Department for Devolution	Public participation should be done at the same time as that of CIDPs	To make the process cost effective	
Clause 21	NGEC	Amend so that the clause makes reference to the two Commissions	Each of the two Commissions have mandates tied to the implementation of economic and social rights.	
Clause 22	State Department for Devolution	Amendments to the CIDP should take effect in the subsequent year not immediately.	To ensure that proper planning and budgeting is done.	
	Office of the Attorney General	The transition period of six months should be extended to one year	To give Counties adequate time to implement and mainstream the	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			economic and social rights as well as harmonise the plans with other planning instruments including the annual work plans, performance contracts, sector and spatial plans.	
Clause 23	Natural Justice: Lawyers for communities and the environment	Delete Clause 23	The amendment should be in the parent Act or through a Statutory Miscellaneous Amendment Bill and not in this Bill. Further, this amendment falls outside the scope of the objects of this Bill as outlined in its Memorandum of Objects and Reasons.	
Clause 24	Natural Justice: Lawyers for communities and the environment	Delete clause 24 on the proposed amendment to County Government's Act.	The amendment should be in the parent Act or through a Statutory Miscellaneous Amendment Bill and not in this Bill. Further, this amendment falls outside the scope of the objects of this Bill as outlined in its Memorandum of Objects and Reasons.	
Schedule	NGEC	Rearrange the wording in the title of the schedule from "social and economic rights" to read "Economic and Social rights"	As phrased in Article 43 of the Constitution	
	Natural Justice: Lawyers for communities and the	Include of Article 42 of the Constitution as one of the areas of implementation as follows -	Kenya is a party to the International Covenant on Economic and Social and Cultural Rights which	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	environment	The indicators for the assessment, by the Commission, of the effort by the National or a county government in the implementation of Article 42, 43 of the Constitution shall include —	recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as follows- (b) The improvement of all aspects of environmental and industrial hygiene;”	

Stakeholders

1. Natural Justice: Lawyers for communities and the environment
2. National Gender and Equality Commission (NGEC)
3. Office of the Attorney General
4. Kenya Law Reform Commission
5. State Department for Devolution
6. Kenya National Commission for Human Rights
7. Commission for Revenue Allocation

Other comments:

State Department for Devolution

1. Clause 9 appears to place a financial obligation on counties as all activities must be funded.

Kenya National Commission for Human Rights

2. To enhance and ensure efficient monitoring of the realization of the rights provided for under the Bill, there is need to expressly have clause that will call for the allocation of resources to the Kenya National Commission on Human Rights. This is an increased mandate that will be difficult to implement without resources.

Office of the Attorney General

3. The core mandate of the National Treasury is fiscal and planning in nature and therefore the proposal to domicile the Bill in the National Treasury falls outside the scope of the mandate of the National Treasury.
4. Economic and social rights are cross-cutting in nature and fall in the different sectors of both levels of government hence are addressed through various legislation and implemented by various National Government Ministries, State Departments and agencies and county governments therefore a single legislation should not purport to provide for strategic planning and implementation of economic and social rights as is being proposed.
5. The additional functions proposed for the Commission under the Bill are a duplication of the provisions of the Kenya National Commission on Human Rights Act, 2012.
6. County governments are guided by the provisions of the Part XI of the County Governments Act, 2012 on the formulation of their respective strategic plans and the rights envisaged under Article 43 of the Constitution are mainstreamed thereto.
7. The engagement of the National Treasury and the State Department of Devolution and the forty-seven county governments on the proposed amendments to the Public Finance Management Act, 2012 and the County Governments Act, 2012 would be crucial in order to ensure that the amendments are harmonised with the general content of the Public Finance Management Act, 2012 and the County Governments Act, 2012 and their attendant Regulations.
8. Prior to the enactment of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022, the Senate should consider addressing the gaps in the existing legislation that cater for socio-economic rights and also engage the concerned Ministries, State Departments or Agencies in order to comprehensively evaluate and address any gaps in the existing legislation as well as implementation challenges on effective realisation of the economic and social rights.

Kenya Law Reform Commission

9. It is neater to amend the KNCHR Act to incorporate the proposals in the Bill rather than having a separate Bill.

National Gender and Equality Commission

10. Dissemination of the report to the residents of the respective counties is lauded but it is noted that it is an undertaking that will require funding.