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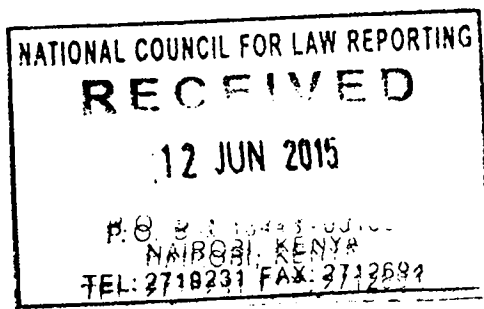
NAIROBI, 29th May, 2015

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RIGHTS BILL, 2015**

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**THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL, 2015**

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. This Act may be cited as the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2015.

Short title.

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

Interpretation.

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

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

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

“subsidy programme” refers to the programme established by a County Government for the benefit of persons with limited capability and access to goods and services for the realisation of their economic and social rights under the Constitution;

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

“vulnerable persons” include infants, children, school going children, pregnant and nursing mothers, the elderly, internally displaced persons, people with disabilities, sick persons with chronic diseases such as HIV/AIDS, 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—

Object and purposes.

- (a) provide a framework for 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) provide a framework for the realisation, of economic and social rights by the National and County Governments;
- (c) provide a framework for the standards that are to be adhered to by the National and County Governments in the realisation of economic and social rights;
- (d) provide a framework for the establishment of mechanisms to monitor and promote the realisation of the economic and social rights by the County Governments;
- (e) provide a framework for the application of the Equalisation Fund for the promotion of economic and social rights amongst the marginalised

communities in accordance with Article 43 of the Constitution;

- (f) establish a framework for 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) establish a framework for co-operation between the National Government and County Governments on the fulfilment of their respective obligations with regard to the realisation of economic and social rights.

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

Guiding principles

- (a) to promote sustainable development;
- (b) non-discrimination;
- (c) preservation of the well-being and dignity of every human being and in particular, the marginalised persons;
- (d) the promotion of good governance and accountability of duty bearers in meeting their obligations for the realisation of the economic and social rights;
- (e) co-ordinated public participation in the formulation, implementation and monitoring of policies, strategies and plans aimed at ensuring the realisation of economic and social rights;
- (f) empowerment and capacity building as a means of promoting the realisation of the economic and social rights;
- (g) transparency in the implementation of programmes and activities aimed at ensuring the realisation of economic and social rights as set out under the Constitution; and
- (h) availability and access to services and timely and reliable information that facilitates the realisation

of economic and social rights.

PART II—ECONOMIC AND SOCIAL RIGHTS

5. (1) Pursuant to Article 43(1) of the Constitution, every person has the right to the highest attainable standards of economic and social rights including the right to—

Economic and social rights.

- (a) the highest attainable standards of health which includes the right to health care services including reproductive health care services;
- (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.

6. (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 the Constitution and in particular, shall—

Obligations of the National and County Governments with respect to economic and social rights.

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

economic and social rights are realised and that they have access to goods and services that are of an acceptable standard;

- (f) protect individual persons, groups and communities from encroachment or interference by any person of their economic and social rights; and
- (g) sensitise and build capacity in order provide an opportunity for the public to develop their understanding, skills and capacity necessary for achieving equitable and effective participation in the formulation, implementation and monitoring of any policies, strategies or programme interventions aimed at realising their economic and social rights.

(2) The National and County Governments shall, pursuant to subsection (1) —

- (a) take measures to create the opportunities and an environment in which the economic and social rights can be realised;
- (b) adopt comprehensive strategic plans that ensure the protection and promotion of economic and social rights;
- (c) integrate, within their national and county development plans, strategies, actions and such other measures as it would consider necessary for the realisation of the economic and social rights under the Constitution;
- (d) prioritise the allocation of resources to ensure that the economic and social rights are realised while taking into account the special needs of marginalised persons within the respective counties;
- (e) avoid actions that would limit the economic and social rights that are conferred under the Constitution except as provided under Article 24 of the Constitution;
- (f) put in place measures that mitigate against the factors that hinder the realisation of economic and social rights;

- (g) set out corrective measures for the purpose of identifying factors and preventing the causes of factors that impede the realisation of economic and social rights; and
- (h) invest and promote investment in such infrastructure 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 County Governments are required to meet in carrying out their obligations under subsection (2).

PART III—CONFERMENT ON THE COMMISSION OF AN OVERSIGHT ROLE

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

The role of the
Commission.

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

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

Functions of the
Commission.

- (a) monitor the performance of the National and each County Government in implementation of programmes and plans for the realisation of economic and social rights;
- (b) initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on the realisation of economic and social rights within the County Governments;
- (c) make recommendations to the National and County Governments on the implementation of policies, strategies and programmes for the realisation of economic and social rights;
- (d) 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;
- (e) periodically evaluate existing policies, legislation, strategies and programmes by the National and

County Governments that provide for the realisation of economic and social rights and make such recommendations as it may consider necessary that would ensure the facilitation of the realisation of such rights;

- (f) 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;
- (g) mobilise and sensitise the community on their economic and social rights as set out under the Constitution in collaboration with the relevant stakeholders and institutions in the area, conduct capacity building, education and information campaigns for this purpose; and
- (h) 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) take such action as may be necessary for the performance of its functions under this Act.

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

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

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

County strategic plans.

No. 17 of 2012.

(2) A County Government shall, for the purpose of subsection (1), incorporate within its county integrated development plan prepared pursuant to section 108 of the County Governments Act, the county strategic plan.

(3) A County Government shall set out in its the county strategic plan the following information —

- (a) variables and specific actions required to be undertaken for the realisation of economic and social rights within the integrated development plan of the County Government;
- (b) programmes and projects aimed at the realisation of economic and social rights of residents within the county;
- (c) objectives that would facilitate the availability, accessibility, acceptability and adaptability of goods and services relevant to the realisation of economic and social rights; and
- (d) 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.

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

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

further periods in the future as the County Government shall consider necessary;

- (f) ensure that the strategies and programmes set out in the plans cater for the specific needs of the county and ensure the realisation of economic and social rights amongst the marginalised persons within the county;
- (g) formulate strategic plans that respond effectively to the urgent issues affecting the county including the marginalised persons and those who are vulnerable and afford such safety nets as may be necessary for the realisation of their economic and social rights;
- (h) formulate strategic plans through a participatory process with the residents of the respective county and in accordance with Part VII; and
- (i) set out, in the strategic plans, such mitigation measures and programmes including the delivery of goods and services at a subsidised rate in order to ensure accessibility of goods and services by all within the county.

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

Objectives of the
county strategic
plans.

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

Preparation of a
baseline survey.

- (a) the existing situation and gaps within the county with regard to the supply of goods and delivery of services aimed at ensuring the realisation of economic and social needs of the residents within the county;
- (b) the areas of priority that require immediate intervention by the County Government in the realisation of the economic and social rights of residents within the county;
- (c) the best interventions that would ensure that the gaps identified under paragraph (a) are addressed;

- (d) the financial implications and the resources that would be required to address the gaps;
- (e) the outcomes of previous interventions; and
- (f) the appropriate interventions that should be carried out subsequent to the survey in order to ensure the realisation of economic and social rights of the residents of the respective county and the expected outcomes.

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

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

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

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

(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—

No. 18 of 2012.

- (a) undertake an assessment of the gaps that exist within the county in relation to the realisation of the economic and social rights of residents within the county;
- (b) identify, in consultation with the Commission, the areas under paragraph (a) that require intervention on a priority basis;
- (c) undertake a costing and analysis on the technical support requirements to ensure that the any proposed projects or procurement of services are adequately funded;
- (d) prepare standards and guidelines that are required to be met for the realisation of the economic or social rights in relation to the activities to which the grant or donation is put to; and
- (e) prepare a report in relation to the utilisation of the grant or donation.

13. (1) The county executive committee member responsible for planning within the county shall, within fourteen days of the preparation of the county strategic plan, submit to the clerk of the County Assembly, a copy of the plan for tabling before, and approval by the County Assembly.

Approval of county strategic plans by the County Assembly.

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

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

Reports on implementation of economic and social rights.

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

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

No. 18 of 2012.

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

Recommendations on implementation of the report.

- (a) the respective County Governments; and
- (b) the relevant organs of the National Government.

(2) Each institution that receives the recommendation of the Senate shall act on the recommendation and report thereon in its report to the Commission in its next report in the following year.

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

Court action.

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

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

Remedies.

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

Budgets statements to contain measures of social economic rights.

PART V—APPLICATION OF EQUALISATION FUND

19. (1) This Part shall apply to direct or indirect conditional grants made by the National Government pursuant to Article 204 of the Constitution from the Equalisation Fund to Counties in which marginalised communities exist.

Application of equalisation of fund in promoting economic and social rights in marginalised areas.

(2) The Commission on Revenue Allocation shall, for the purposes of Articles 204(4) and 216(4) of the Constitution, analyse the economic and social circumstances in each County for the purposes of determining the criteria by which to identify Counties in which marginalised areas are found and which are eligible for a conditional grant under Article 204 of the Constitution.

(3) In determining the criteria for the identification of marginalised areas under subsection (2), the Commission on Revenue Allocation shall be guided by the criteria set out under the Second Schedule.

20. (1) The monies shall not be withdrawn from the Equalisation Fund unless the Controller of Budget has

Principles for the application and distribution of the Equalisation Fund.

approved such withdrawal and the National Treasury has, pursuant to section 18(5) of the Public Finance Management Act, issued written instructions requesting for such withdrawal.

(2) The monies appropriated from the Equalisation Fund shall be—

- (a) applied to provide basic services in the areas that have been identified as marginalised areas; and
- (b) in the case of conditional grants, distributed either directly or indirectly to the counties for the benefit of each identified ward and shall be managed on behalf of the National Government by the respective County Government.

(3) The County Government shall be guided by the following principles in addition to the principles of public finance management set out under Article 201 of the Constitution—

- (a) equitable disbursement of the funds in ensuring that residents in the marginalised areas enjoy the same standards of living as those in other areas of the county;
- (b) transparency and efficiency in the management of the funds;
- (c) public participation in the determination of the use to which the funds will be put to;
- (d) accountability to the National Government and the residents of the County in the utilisation of the funds;
- (e) targeted use of funds that ensure that the programmes and projects that are put in place lead to the realisation of economic and social rights of residents in the marginalised areas; and
- (f) prioritisation of marginalised areas in urgent need of redress.

21. (1) The national Government shall consult with the relevant County Government in the application of the Equalisation Fund in the respective identified wards in each County.

(2) In allocating the Equalisation Fund, the Commission for Revenue Allocation shall consider the

Consultation in the
allocation of funds.

impact on the economic and social rights and the distribution of services and facilities to as wide a section of the population as possible.

PART VI—PROVISIONS ON DELEGATED LEGISLATION

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

Regulations.

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

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

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the power of the Cabinet Secretary to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to regulations made under this Act.

Cap. 2.

No. 23 of 2013.

PART VII—MISCELLANEOUS PROVISIONS

23. (1) The Commission shall, in addition to its observations made under section 14(2), prepare an economic and social rights index with respect to the realisation of economic and social rights by every County Government.

Economic and social
rights index.

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

- (a) the criteria used to gauge the realisation of economic and social rights within the county;
- (b) the extent to which a County Government has realised the economic and social rights of residents within the respective County;
- (c) the extent to which a County Government has adhered to its county strategic plan and the achievements of the County Government within the relevant period; and
- (d) its recommendations regarding the delivery of goods and services by the County Government in ensuring the realisation of economic and social rights of residents within the County.

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

24. (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;

No. 17 of 2012.

- (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).

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

Sensitisation
programme
framework.

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

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

- (c) collaborate with the relevant agencies and stakeholders within the county in enhancing the

capacity of the residents to effectively participating in the affairs of the County Governments in the delivery of goods and services that are aimed towards the realisation of the economic and social rights.

26. The Public Finance Management Act is amended—

Amendment of No.
18 of 2012.

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

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

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

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

FIRST SCHEDULE

(s. 8(3))

CRITERIA FOR THE REALISATION OF SOCIAL AND ECONOMIC RIGHTS

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

- (a) whether or not it has allocated tasks and responsibilities to the different levels of government;
- (b) whether or not it has ensured that sufficient human and financial resources are made available for its implementation;
- (c) whether or not it is capable of facilitating the realisation of the rights in question;
- (d) whether or not its plan or programme is reasonable in its conception and implementation;
- (e) whether or not its plan or programme is balanced and flexible enough to among other things, respond to unforeseeable circumstances;

- (f) whether or not it is inclusive or excludes a significant segment of the populace, leading to unfair discrimination;
- (g) whether or not it balances short, medium, and long-term needs;
- (h) whether or not it has sufficient safety nets such as cash transfers to vulnerable groups and other social assistance; and
- (i) whether or not its plan or programme responds to the needs of the vulnerable and those in crisis situations.

SECOND SCHEDULE (s. 19(3))

**CRITERIA FOR THE DETERMINATION OF
MARGINALISED AREAS**

1. The level of development in the area.
2. Standards of delivery of services and basic goods necessary for the realisation of economic and social rights.
3. The levels of poverty in the County.
4. The level of infrastructural development in the County and the state of such infrastructure.
5. Existing health facilities and accessibility to such facilities and health services.
6. Existing education facilities and access to such facilities.
7. Access to water and other basic services.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

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

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

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

- (1) it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of rights.*
- (2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.*

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

This also Bill seeks to establish a framework for national monitoring, benchmarking and evaluation of progress made in fulfilling economic and social rights by all actors in the Republic. Since the sectors relevant to these rights fall under the County governments, it is critical that mechanisms be established at the County level by the County

Governments for the realisation of these rights. The mechanisms developed at the County level should then be subjected to monitoring by the relevant national institutions to ensure that progress is being made at the County level for the realisation of economic and social rights. The realisation of these rights has the potential to eradicate poverty and inequality, to ensure the advancement of the living standards of the Kenyan people and to ultimately achieve the economic, social, cultural and political transformation that the Constitution of Kenya envisaged.

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

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

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

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

Part V provides for the application of conditional grants appropriated from the Equalisation fund established under Article 204 of the Constitution. These funds are to be applied specifically to marginalised areas in the provision of basic services. Its sets out the principles that are to be adhered to by a County Government in utilising the funds. This Part also sets out the criteria for the determination of marginalised areas by the Commission on Revenue Allocation.

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

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

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

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

Statement on how the Bill concerns County Governments

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

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

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

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

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

HASSAN OMAR HASSAN,
Senator.

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

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

General
responsibilities of
the National
Treasury.

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

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

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

Bill and the County Allocation of Revenue Bill;

- (i) strengthen financial and fiscal relations between the national government and county governments and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and
- (j) assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet Secretary responsible for matters relating to intergovernmental relations.

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

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

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

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