

*The Preservation of Human Dignity and Enforcement of Economic
and Social Rights Bill, 2018*



REPUBLIC OF KENYA
PARLIAMENT

SENATE BILLS
(Bill No. 27 of 2018)

**THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT
OF ECONOMIC AND SOCIAL RIGHTS BILL, 2018**

(A Bill published in the Kenya *Gazette* Supplement No. 116 of 2018 and passed by the Senate, with
amendments, on 12th June, 2019)

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OF ECONOMIC AND SOCIAL RIGHTS BILL, 2018**

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**THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT
OF ECONOMIC AND SOCIAL RIGHTS BILL, 2018**

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

Short title.

1. (1) This Act may be cited as the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2018.

Interpretation.

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

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

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

“Commission” means the Kenya National

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

No. 2 of 2012. “Council of county Governors” means the Council of county Governors established under section 18 of the Intergovernmental Relations Act;

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

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

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

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

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(g) social security and social assistance;
and

(h) education.

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

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

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

“vulnerable persons” include infants, children, school going children, pregnant and nursing mothers, the elderly, internally displaced persons, persons with disability, persons with 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.

Object and
purposes.

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

(a) the preservation of human dignity as set out under Article 19 of the Constitution through the realisation of the economic and social rights under Article 43(1) of the Constitution;

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

Guiding principles

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—

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

PART II – ECONOMIC AND SOCIAL RIGHTS

Obligations of the
National and
county
governments with

5. (1) The National and county governments shall, to the extent of their constitutional mandate, respect, protect, promote and fulfil the rights and

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respect to economic and social rights.

fundamental freedoms set out under Articles 43(1) and 53(1)(c) of the Constitution and in particular, shall—

- (a) formulate and implement such policies, legislation, strategies and put in place such mechanisms for the realisation of the economic and social rights;
- (b) establish such mechanisms as they shall consider necessary for the enforcement of economic and social rights;
- (c) ensure the availability, accessibility, adaptability and acceptability of services that would facilitate the realisation of the economic and social rights;
- (d) put in place adequate infrastructure that would be necessary to meet their obligations in realising the economic and social rights;
- (e) put in place measures that target marginalised and vulnerable persons in ensuring that their economic and social rights are realised and that they have access to goods and services that are of an acceptable standard;
- (f) protect individual persons, groups and communities from encroachment or interference by any person of their economic and social rights; and
- (g) sensitise and build capacity in order provide an opportunity for the public to develop their understanding, skills and capacity necessary for achieving equitable and effective participation in the formulation, implementation and

monitoring of any policies, strategies or programme interventions aimed at realising their economic and social rights.

(2) The National and county governments shall, pursuant to subsection (1) —

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

rights;

(g) set out corrective measures for the purpose of identifying factors and preventing the causes of factors that impede the realisation of economic and social rights; and

(h) invest and promote investment that would facilitate the realisation of economic and social rights.

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

PART III — CONFERMENT ON THE COMMISSION OF AN OVERSIGHT ROLE

The role of the Commission.

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

(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.

Functions of the Commission.

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

(a) monitor the performance of the National and each county government in implementation of programmes and plans for the realisation of economic and social rights;

(b) initiate, undertake and participate in

the collection, preparation, production and dissemination of data and information on the realisation of economic and social rights within the county governments;

- (c) make recommendations to the National and county governments on the implementation of policies, strategies and programmes for the realisation of economic and social rights;
- (d) identify factors that impede the economic development of, and access to essential financial services by, marginalised groups and make recommendations on policies and strategies to address the barriers;
- (e) investigate any complaints that may be made in relation to the realisation of economic and social rights and take such measures as it may consider necessary to secure the appropriate redress;
- (f) annually evaluate existing policies, legislation, strategies and programmes by the National and county governments that provide for the realisation of economic and social rights and make such recommendations as it may consider necessary that would ensure the facilitation of the realisation of such rights;
- (g) advise and make recommendations to the National Social Assistance Authority established under the Social

Assistance Act regarding the delivery of social assistance programmes within the county governments;

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

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

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

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

PART IV - COUNTY STRATEGIC PLANS

FOR THE REALISATION OF ECONOMIC AND SOCIAL RIGHTS

County strategic plans.

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

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

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

No. 17 of 2012.

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

section 102 of the County Governments Act and shall—

- (a) ensure the collaboration of various departments, agencies and institutions in the relevant county in the implementation of the development plans;
- (b) allocate sufficient financial and human resources for the realisation of economic and social rights and the implementation of the respective strategic plans for such realisation;
- (c) adopt strategies and plans that facilitate the realisation of the economic and social rights including improving the availability, accessibility, acceptability and adaptability of goods and services aimed at facilitating the realisation of economic and social rights;
- (d) adopt plans that respond to the unique needs and issues affecting the respective county which hamper the realisation of economic and social rights;
- (e) adopt gender responsive policies and strategies in order to ensure equity in the socio-economic development of residents in the county;
- (f) formulate medium term and long term strategies and programmes over a ten year period and such further periods in the future as the county government shall consider necessary;
- (g) ensure that the strategies and programmes set out in the plans cater for the specific needs of the county and ensure the

realisation of economic and social rights amongst the marginalised persons within the county;

(h) formulate strategic plans that respond effectively to the urgent issues affecting the county including the marginalised persons and those who are vulnerable and afford such safety nets as may be necessary for the realisation of their economic and social rights;

No. 17 of 2012.

(i) formulate strategic plans through a participatory process with the residents of the respective county and in accordance with section 20 of this Act and section 115 of the County Governments Act; and

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

Objectives of the county strategic plans.

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

Preparation of a baseline survey.

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

(a) the existing situation and gaps within the county with regard to the supply of goods and delivery of services aimed at ensuring the realisation of economic and social 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.

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

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

No. 18 of 2012.

(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

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(1) and in addition to the requirements set out under section 138(6) of the Public Finance Management Act –

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

Approval of county strategic plans by the county assembly.

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

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

Reports on implementation of economic and social rights.

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

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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.

(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.

Recommendations on implementation of the report.

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

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

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

Court action.

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

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

Remedies.

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

Budgets statements to contain measures of social economic rights.

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

PART V - PROVISIONS ON DELEGATED LEGISLATION

Regulations.

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

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

(a) to provide a framework for the collaboration and the monitoring, by

the Commission with the National and county governments in the implementation of this Act;

- (b) to provide a mechanism for the management of direct and indirect conditional grants appropriated from the Equalisation Fund and to made to a county government under this Act;
- (c) to provide for the procedures for the conduct of public participation under this Act; and
- (d) the conduct of sensitisation programmes and the publication and dissemination of information under this Act.

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

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

Cap. 2.
No. 23 of 2013.

PART VI - MISCELLANEOUS PROVISIONS

Economic and
social rights index.

19. (1) The Commission shall, in addition to its observations made under section 13(2), prepare an

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economic and social rights index with respect to the realisation of economic and social rights by every county government.

(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).

Public participation.

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

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

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- (e) 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;
- (f) 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;
- (g) 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;
- (h) take into account the principles of citizen participation set out under section 87 of the County Governments Act;
- (i) 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.

No. 17 of 2012.

(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)

Sensitisation
programme
framework.

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

- (a) develop and implement public education and awareness programmes on the economic and social rights and the obligations of the 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

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rights.

Amendment of No.
18 of 2012.

22. The Public Finance Management Act is amended—

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

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

(b) in section 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;

Transition.

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

No. 17 of 2012.

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

Amendment of No.
17 of 2012

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

(a) in section 107(1) by inserting the following

new paragraph immediately after paragraph (d) –

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

National values principles to guide Commission.

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

SCHEDULE (s. 7(3))

CRITERIA FOR THE REALISATION OF SOCIAL AND ECONOMIC RIGHTS

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

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

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- (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.

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I certify that this printed impression is a true copy of the Bill as passed by the Senate, with amendments, on 12th June, 2019.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.



Speaker of the Senate

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