



REPUBLIC OF KENYA
THE SENATE - FIFTH SESSION

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**FEDERATION OF WOMEN LAWYERS (FIDA-KENYA) SUBMISSIONS ON THE
PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND
SOCIAL RIGHTS BILL, 2021 (SENATE BILLS, 2021)**

NO.	CLAUSE (AS IT IS IN THE Bill)	PROPOSED AMENDMENT	JUSTIFICATION
1.	Purpose of the bill 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.	The proposed title be amended to read: “AN ACT of Parliament for the preservation of human dignity in the context of 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.”	Human dignity cannot be a functionality of Economic and Social Rights. When an act of parliament makes human dignity a functionality of enforcement of economic and social rights it creates conflict in the rights, which is contrary to Article 20 of the Constitution of Kenya. Article 19(2) and 3(b) of The Constitution of Kenya which provides that there should be no exclusion of fundamental rights. The original meaning of dignity establishes that all human

			<p>beings deserve respect, on the basis that they are human.</p> <p>Article 1 of the Universal Declaration of Human Rights (UDHR) states that all human beings are born free and equal in rights and dignity. ICESCR further states that; recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.</p> <p>Therefore, Human Dignity qualifies as a principle of inalienability and universality of Human Rights.</p>
2.	<p>Clause 2: Interpretations Interpretation of Human Dignity is not included</p>	<p>The proposed Bill be amended to include the definition of Human Dignity as stipulated in the Constitution under Art. 28.</p> <p>“Human Dignity- the recognition that human beings possess a special value intrinsic to their humanity and as such are worthy of respect simply because they are human beings”</p>	<p>The definition of human dignity is important to set the ground for the role of human dignity in the promotion, monitoring and enforcement of economic and social rights.</p>
3.	<p>Clause 3: Object and purpose of the Act</p> <p>3(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</p>	<p>The clause be amended by deleting Article 19 and replacing it with Article 28, to read:</p> <p>3(a) the preservation of human dignity as set out under Article 28 of the Constitution through the realisation of the economic and social rights under</p>	<p>The preservation of human dignity is provided under Article 28 of the Constitution which reads,” Every person has inherent dignity and the right to have that dignity respected and protected.”</p>

	43(1) of the Constitution	Article 43(1) of the Constitution	
4.	<p>PART III — CONFERMENT ON THE COMMISSION OF AN OVERSIGHT ROLE</p> <p>Section 6 - the role of the commission</p> <p>Section 7 - the function of the Commission.</p>	<p>The proposed Bill should be amended by deleting the entire Part III</p>	<p>The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution created by Article 59 of the Constitution of Kenya 2010 and established through the KNCHR Act of Parliament (the Kenya National Commission on Human Rights Act, 2011).</p> <p>The Commission’s functions are constitutionally provided for and no act of parliament or legislation should purport to deviate from the functions as provided in the Constitution.</p> <p>Further, Section 8 of the KNCHR Act establishes the commission and its functions as stipulated in The Constitution.</p> <p>Therefore, the conferment of the oversight functions as set out in part III of the bill, is unconstitutional and ultravires to the role of the legislature.</p>
5.	<p>PART IV — COUNTY STRATEGIC PLANS FOR THE REALISATION OF ECONOMIC AND SOCIAL RIGHTS</p> <p>*Section 8- County Strategic plans</p> <p>*Section 9- The principle objective of a county strategic plan shall be to ensure that a county government is able to ensure the availability,</p>	<p>The proposed bill be amended by deleting Section 8</p> <p>The proposed bill be amended by deleting section 9. The principle objective of county strategic CAN NOT be limited to ensuring</p>	<p>The County Government Act sets out the functions of the county government including the plans that need to be put in place for the purpose of economic growth and service delivery to the people of the Republic of Kenya.</p> <p>The County Government Act, which is the primary Act that</p>

	<p>accessibility, acceptability, adaptability and quality of goods and services necessary for the realisation of economic and social rights as set out under the Constitution.</p> <p>*Section 10(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.</p>	<p>availability, accessibility, adaptability and quality of goods and services for the realisation of economic and social rights.</p> <p>The proposed bill be amended by deleting section 10(2)</p>	<p>deals with the conduct of the County Governments provides for the role of the County governments.</p> <p>The Functions of The Commission are clearly set out under Section 59 of the Constitution and Kenya and under Section 8 of the KNCHR Act.</p>
6.	<p>Section 19(1) Economic and social rights index-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> <p>Section 9(2)(3), on the preparation of the index in clause (1) and publication of the same</p>	<p>The Proposed Bill be amended by deleting in whole Section 19</p>	<p>The functions of the Commission is clearly stipulated In Article 59 of the Constitution of Kenya and Section 8 of KNCHR.</p>