

BILLS UPDATE

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1.0 INTRODUCTION

On 4th August 2010, Kenyans ratified the proposed Constitution at a national referendum held on that day. This ratification was followed by the promulgation on 27th of the same month. At last, Kenya began its transition to good governance, characterized by democracy, public participation, accountability, equity, equality and adherence to the rule of law. For many decades Kenya had been grappling with a moribund of challenges with regards to issues of democracy, rule of law, equity and equality.

The Constitution provides the greatest opportunity to the people of Kenya to advocate for their rights founded on the provisions of the Constitution and also welcome in a new era of institutional overhaul. After 14 months since the promulgation, the dust has now settled and

the KHRC has now shifted its attention to ensuring that full implementation of the Constitution to enhance justice and accountability. Cases of impunity and misinterpretation of the Constitution are the key challenges to the implementation of the Constitution. This has led to blatant violation of the Constitution and enactment of unconstitutional laws.

KHRC is investing a lot to ensure that all the legislation is in line with the spirit and letter of the Constitution. It has recognized the four aspects of legislation: the need for new legislation, the need for amendments to existing laws, the need for supportive legislation and the time lines spelled out by the Constitution.

KHRC also feels that there is need for further civic education so that the Kenyan populace can be fully informed especially as the upcoming General Elections draw near. KHRC continues to engage with public both directly and indirectly to enhance implementation. KHRC interacts with the public and other stake holders through attendance of workshops, meetings and making presentations.

The Commission for the Implementation of the Constitution (CIC) has also undertaken various activities such as meeting with Constitutional Implementation Oversight Committee (CIOC) to review progress in the implementation process. These meetings are useful in ensuring that all actors in the implementation process are focused on the agreed priorities in the process and any potential setbacks are addressed at the onset. It also sent a team of commissions and other senior technical staff on a bench making visit to South Africa with a

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purpose of studying the process and mechanism employed in implementing the 1996 Constitution of South Africa. This choice was informed by the fact that South Africa adopted a new Constitution in 1996 leading to a *paradigm shift* in governance based on a Constitutional democratic governance system. In addition, South Africa has successfully implemented a devolved system of government.

Unfortunately, political disagreement within the grand coalition government and vested interests amongst the political class remain the key challenge to implementation of the Constitution.

2.0 BILLS

The Constitution of Kenya 2010 is anchored on the fundamental human rights principles which are reinforced in nearly all the chapters. It is therefore imperative for all implementers in all sectors to appreciate their role in integrating human rights in their legal and policy frameworks. It has a whole chapter dedicated to the protection of specific civil, political, economic and social rights.

The implementation process should also be driven by the fact that good legislation is also a civil and political right that the Kenyan populace is entitled to. Therefore we should not see the scenario that arose prior to August 27th 2011 see the light of the day again where members of parliament had to burn the midnight oil in the house passing legislation in hurry.

The president has signed several Bills into law, we also have some Bills that were signed into law but according to CIC the Bills are unconstitutional, we have Bills that have been raised into the house since it resumed back on 5th October.

In 2011-12, KHRC is working under three broad thematic areas of: justice, economic and social rights and equality and anti-discrimination. This issue of *Bills Update*

provides information on bills according to the above thematic areas.

3.0 BILLS ON JUSTICE

Successive Kenyan governments have been defined by an imperial presidency, disregard of human rights and the excess in arrogance of power. These problems could be found in varying levels in all post-independence governments. Prior to 2002, there was extensive control over free speech, assembly and the press. Political assassinations, politically-instigated ethnic clashes, detention without trial, arbitrary arrests, false prosecutions and massacres (such as Wagalla) took place.

Further, there was looting of public coffers, land grabbing and fraud. Human rights violations were common. Worse, there was culture of impunity as few if any culpable people were brought to justice. In 2002 the NARC government was elected into power on a platform of reforms including justice. Unfortunately, by 2007 the reform agenda had been abandoned. The new Constitution is streamlining the agenda back.

3.1 ACTS ON JUSTICE

KHRC's objectives under justice are: a) to contribute to the development of effective and accountable land and security systems; b) to influence the formulation of and compliance with principles of leadership and integrity, public participation and accountability in governance; and, c) to contribute towards the pursuit of effective and enforceable remedies for survivors and victims.

In pursuit of this, one Act has been passed to stop and prohibit Female Genital Mutilation (FGM). KHRC has been working with 27 grass roots human rights groups (HURINETS) in Taita Taveta, Marakwet and Narok to advocate for abolition of the practice. We celebrate this victory! Hooray!!!

(A) THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT

The president signed into law The Prohibition of Female Genital Mutilation Act, 2011. Every year three million women and girls in Africa continue to be at risk of undergoing FGM. Just a few decades ago, human rights organizations were reluctant to address FGM because of misgivings that it was a cultural right. It took the hard work of African women's rights activists to clarify to the world that FGM is in fact a form of violence against women and girls perpetuated in the name of religious/cultural identity.

The Act is meant to prohibit the practice of female genital mutilation, to safeguard against violation of a person's mental or physical integrity through the practice of female genital mutilation and for connected purposes.

3.2 PENDING BILLS ON JUSTICE

These Bills are meant to enhance justice in various ways but they have not yet been enacted into law. Majority of them are either in parliament or at the stakeholders' consultations according to the CIC website and the Kenya Law Review Bill Tracker.

(A) THE CITIZENSHIP AND IMMIGRATION BILL 2011

A research report by KHRC (*Foreigners at Home*) found that the acquisition of National Identification cards and Birth certificates remain a tiring and discriminative process. Many Kenyans especially in northern Kenya continue to face difficulties in attaining recognition of and accessing citizenship rights and related resulting rights through the process of acquiring national IDs.

KHRC advocated for the issuance of one personalized number that would be used to register every Kenyan at birth and the same number would be used for immunization,

registration of all national examinations, bank details, marriage and death.

This personalized number would also be used to track family members of children who are deemed to be stateless. This mode of registration would also be used to curb corruption and 'buying' of Kenyan citizenship by foreigners. According to CIC, the Bill is currently undergoing stakeholders consultations and KHRC and other likeminded organizations (under the auspices of the *Chapter 3 Coalition*) have made a lot of contribution on it and are hoping that it will be put into consideration to address the complains raised.

(B) IDENTIFICATION AND REGISTRATION OF KENYA CITIZENS BILL 2011

This is the Bill that will provide for Identification and Registration of Kenya citizens and issuance of National Identity cards and other related purposes.

KHRC has opined that there is discrimination especially in Section 6 (1) (b) of the Bill concerning biometrics. The use of thumb or toe was discriminating against many Kenyans who had lost these parts of their bodies either through accidents or sickness. For example in Kwale district there were many cases cited of Kenyans who had suffered from leprosy and as a result lost their toes and thumbs. AHADI Kenya also had cited some Kenyans whose fingers and toe prints were not readable because of jiggers' infestation.

KHRC is also concerned with section 19 of the Bill that leaves Kenyans with the burden of prove. KHRC feels that this will go ahead to be used as a tool of discrimination since there is no clear way to do that. This is informed by the fact that Birth Certificates clearly indicate that there are not prove of citizenship and right now we have some Kenyans who are facing this problem of proving that there are Kenyans

(C) NATIONAL CORONERS SERVICE BILL 2011

This is the Bill that provides for the establishment of the National Coroners Service; to model forensic medical services into coronial system and to prescribe the functions and powers of coroners, and for connected purposes. Putting into consideration many deaths that occur to Kenyans in the hands of policemen, KHRC feels that there is a need to have the Bill signed into law to handle such cases of Kenyans who die in police custodies, remands and prisons. Currently the Bill is at the stakeholders' consultations stage.

(D) THE REFUGEE (AMENDMENT) BILL, 2011

A report released recently by the UNHCR indicated that the majority of 404,000 refugees in Kenya are from the neighboring collapsed state of Somalia. The presence of Somalia refugees in Kenya has led to a lot of discrimination of Kenyan Somalis especially when it comes to their citizenship rights. Refugees and other asylum seekers are real people too who have rights that need to be protected as well.

This legislation when enacted into law will provide protection to refugees and other asylum seekers in Kenya. This will be facilitated by quick issuance of their identification documents to stop harassment from government authorities especially the police who have been using this as a method to extort money from this group of forced immigrants especially in areas like Eastleigh.

The law will also address some insecurity problems in the country due to the high influx of Somalis in the country making it vulnerable to terrorists. The Bill is currently at the stakeholders' consultations.

(E) THE LEGISLATION ON LAND.

This will include the community land Bill, land registration Bill and the National Land Commission Bill. The legislation on land will revise, consolidate and rationalize existing laws on land. KHRC's concern with the legislation on land is informed by the fact that land is the major economic contributor in the country. Agriculture is the economic backbone of the country and agricultural activities are pegged on land.

KHRC is also concerned with issues of land ownership especially women ownership of land. Land also is one of the key issues that are supposed to be addressed in agenda four. KHRC is concerned with legislation on land to make sure that the incidents of 2007/08 do not see the light of the day again in future bearing in mind that land has been a major cause of ethnic conflicts in Kenya. Cases in evasion have led to retaliation attacks and creation of tension among communities leading to high levels of insecurity.

(F) TEACHERS SERVICE COMMISSION BILL, 2011

The concern of KHRC on this legislation is to ensure that it addresses issues of the access to education, availability of that education, affordability of that education and quality of education that children of Kenya get especially those who are in public schools where the teacher -pupil ratio is very discouraging.

(G) THE MARRIAGE BILL, 2011

On coming into effect, the Act will define marriage, define who a child is (as per the Constitution and Children's Act, 2001) to avoid early marriages and also protect children who are born out of marriage. It will also consolidate laws concerning marriage and divorce. The KHRC is happy that this Bill is that it protects young girls from forcible marriages by defining who a child is. It also protects

children who are born out of marriage in line with the Constitution (Article 53).

(H) THE FAMILY PROTECTION BILL, 2011

This Act when it comes into force will make provisions for the protection and relief of victims of domestic violence. In the modern world where cases of violence among spouses have become high the concern of KHRC is that the Bill will ensure that justice is seen by victims of domestic violence including children.

(I) UNCLAIMED ASSETS BILL, 2011

This Bill escalates public awareness and provokes thought and discussion on an important aspect of financial sector reforms and legislation. By enacting unclaimed assets legislation, Kenya would be conforming to international best practices in handling of third party monies by institutions that exercise fiduciary responsibility joining the ranks of Canada, Malaysia, Ireland and the USA.

Currently, there is no uniform position of what third party financial service institutions may or may not do with multiplicity of options of what to do with funds held by institutions such as 'collapsed' pyramid schemes, abandoned bank accounts and insurance policy benefits, unclaimed pension entitlements, bail and bond monies, lotteries and prize monies, unclaimed dividends and share scripts, abandoned safe deposits box contents, among others.

(J) KENYA HEROES BILL, 2011

This will provide for the recognition, identification and selection of heroes and the category of heroes. The criteria shall be based on such values as patriotism, integrity, visionary, courage, enterprise, sacrifice and lasting national impact.

KHRC's work around heroes' policy has recorded high impact by this Bill, which has been a result of many years of advocacy.

(K) MEDIA BILL, 2010

The role played by the media in Kenya especially in regard to human rights and democratization process cannot be ignored. If this Bill is enacted into law, it will provide for the realization of the right to freedom of expression and freedom of the media, for the establishment of the media council of Kenya, for the conduct and discipline of journalists and the media

(L) THE INTERNALLY DISPLACED PERSONS BILL, 2011

Intra-State conflict and resultant internal population displacement is one of the greatest challenges facing Africa today. Like all human beings, displaced persons within the boundaries of their own states also have fundamental human rights. Governments have the responsibility for protecting their own citizens' lives and all their rights. Kenya has about 250,000 to 400,000 unsettled IDPs due to the post-election violence on 2008 and other conflicts before.

This Bill will make provisions for the protection and assistance of internally displaced persons. It will also give effect to the Great Lakes Protocol on the protection and assistance to internally displaced persons and the UN guiding principles on internal displacement. KHRC and other like-minded organizations held a discussion on the IDPs draft Bill on 1st November 2011.

(M) THE CHIEF'S (AMMENDMENT) BILL, 2009

The principle objective of amending this Bill is two-fold. First, it seeks to amend the Chief's Act (cap 128) so as to give statutory recognition to the important role played by village headperson (formally known as village elders) in the governance of this country. Secondly, the bill seeks to cure the anomaly in section 7 of the chiefs' Act which allows the chief to employ

persons to assist him in the execution of her duties but does not expressly provide for the mode of termination, of their remuneration, terms of service or termination of their service.

This Bill will assist in fighting corruption at the grassroots level, institutionalizing the quasi-judicial role played by village elders in alternative dispute resolution, dissemination of important policy information at the grassroots, enhancement of peace building and integration efforts and enhancement of community policing.

(N) NATIONAL INTELLIGENCE SERVICE BILL, 2011

This Bill will give effect to the constitution, provide for the composition, functions, powers, control and administration of the National Intelligent Service. It will also provide for the appointment of the Director General, provide for the issuance of warrants authorizing certain actions to be undertaken by the service in the national interest.

While the Bill is currently undergoing internal review and stake holders' consultations, KHRC's main concern was the opacity with which the bill was hurriedly drafted and presented to CIC.

4.0 BILLS ON ECONOMIC AND SOCIAL RIGHTS

4.1 ACTS ON ESCR

Chapter four of the Constitution of Kenya provides for all the rights that Kenyans are entitled to. This includes economic, social and cultural rights among others. KHRC advocates for legislation of laws that will provide for these rights. It does this by influencing the formulation of gender responsive devolution policy and laws that improve social service provision and improvement of workers livelihoods and standards of living. The following Acts currently signed by the president address economic, cultural and social rights of Kenyans:-

(A) THE PRICE CONTROL (ESSENTIAL GOODS) ACT, 2011

This Act provides for the regulation of price of essential commodities in order to secure their availability at reasonable price and for connected purposes. The Constitution of Kenya provides for every Kenyan's right to be free from hunger, and to have adequate food of acceptable quality.

This will therefore enable Kenyans to easily access basic goods at a relatively cheap price that every Kenyan can afford. However, there are critiques of pricing control systems as not a sure way to ensure access to food and livelihoods.

(B) THE NURSES (AMMENDMENT) ACT

With regard to the Nurses (Amendment) Act, 2011 the amendment repeals section 4 of the Nurses Act to make new provisions in the membership of the Nursing Council of Kenya to include among others the Director of Medical Services, Director of Education, the Chief Nursing Officer, the Attorney General and other persons appointed by the concerned minister.

The Nurses Act makes provision for the training, registration, enrolment and licensing of nurses; to regulate their conduct and to ensure their maximum participation in the health care of community and for connected purposes. A research carried out by KHRC in 54 constituencies across the country indicated that access to quality health services was one of the greatest desires for all Kenyans.

Currently, the nurse- patient ratio was very low especially in arid and semi arid areas. The provisions on this act especially in regard to regulation of their training, conduct and to ensure their maximum participation in health care of the community are supposed to address the issues of quality health services. Incidents of patients dying due to incompetence of nurses will be brought to a stop by this Act.

4.2 BILLS PENDING ON ECONOMIC AND SOCIAL RIGHTS.

These are Bills that address ESCR but they are still pending. That is they have not been enacted into law but they are in the process. Majority of them are at the stakeholders' consultation stage according to CIC.

(A) THE MALARIA PREVENTION BILL, 2010

This will provide an act of parliament that will repeal and re-enact the malaria prevention act, to establish the national malaria prevention and control institute, to provide for the prevention and control of malaria. In 2010 a total of 30,475 Malaria reported deaths were reported across the country which accounted for 16.8 percent of all total deaths. A report by WHO and UNICEF attributes the high malaria death rates in Africa to inadequate medical care, increased resistance to drugs and failure to use insecticide treated nets. Article 43(a) provides for the rights of Kenyans to highest standards of health care. KHRC concern with the Bill is informed by a research conducted across 54 constituencies across the country which indicated that adequate health care was of paramount need to Kenyans. Currently the Bill is awaiting second reading.

(B) THE WATER AMENDMENT BILL

Recent years have witnessed increased public participation in the management and administration of resources. This has been the case for Constituency development funds and Constituency roads funds. This Bill seeks to replicate these models, which have largely been found to be successful, to the water sector. In so doing, the Bill proposes to amend the Water Act (No. 10 of 2003) in order to establish:

- (i) A Constituencies Water Services Trust Fund, in place of the Water Services Trust Fund, as a fund earmarked for the provision of water services at the constituency level. The primary objective

of the Water Services Trust Fund as presently established under section 83 of the Water Act is to provide water services to areas of Kenya which are without adequate water services. In reality, although the extent and nature may vary, virtually all constituencies in the country suffer from lack of adequate water services and the establishment of the Constituencies Water Services Trust Fund is intended to reflect this reality;

- (ii) A Constituency Water Services Committee for each constituency with the function of advising the Constituencies Water Services Trust Fund on the formulation of the annual constituencies water services programme in respect of the relevant constituency; and
- (iii) A Constituency Water Services Tender Committee for each constituency with the function of procuring water services for the respective constituency with the funds allocated to the constituency by the Constituencies Water Services Trust Fund under the Act.

KHRC has been working with local communities to enhance accessibility, affordability and availability of water to all Kenyans. It has done a lot in Isiolo where it has been organizing sensitization forums with stakeholders in the water sector in that region. Such steps we are sure will solve water problems in the regions.

(C) THE SUGAR (AMENDMENT) BILL 2011

The Committee on Agriculture, Livestock and Cooperatives of the Kenya National Assembly, in pursuance of its mandate, embarked on a fact-finding exercise to assess the impact of cane farming in Kenya's sugar belts. The Committee conducted public hearings in the sugar belts in Nyanza and Western Kenya between 6th and 13th of September, 2009 and in the sugar belts in the Coast region between 14th and 18th October, 2009.

In the end, the Committee, in its report, made several recommendations aimed at revamping the sugar industry. Key among the recommendations was the proposal to review several sections of the Sugar Act, No. 10 of 2001. The amendments proposed to the Sugar Act seek to review the composition of the Kenya Sugar Board in order to inject professionalism into the Board by the inclusion of members with knowledge and experience in agriculture, business management, law, finance or marketing.

The amendments further seek to specify the purposes to which the monies in the Sugar Development Fund shall be applied. This will include the development of infrastructure in sugar growing areas as well as research and the dissemination of research findings.

The enactment of this Bill will go a long way in reforming the sugar industry and maximizing the benefits to be reaped by all stakeholders in the industry and this happens to be the major concern of the KHRC were the economic rights of sugarcane farmers in the country have for so long been infringed on. The bulk of sugar cane farmers earn peanuts whereas sugarcane is supposed to be the major source of income to them.

(D) THE CANCER PREVENTION BILL

This is the Bill that will provide for the treatment of cancer and other connected purposes. Cancer is currently the most dangerous disease that is claiming lives of Kenyans. It also seeks to establish a cancer prevention institute which will be charged with the promotion of public awareness about the causes, consequences and means of prevention and control of cancer. KHRC's concern with this Bill is informed by some statistics in Kenya that have shown that about 50 Kenyans die daily from various forms of cancer. According to International Atomic Energy Agency (2010), the cancer situation in Kenya is dire with severe lack of medical practitioners and a large number of new cancer cases being diagnosed annually. An article published in Global

Medicine (2011) showed that the incidence of cancer in Kenya is on the rise with over 82,000 new cases being reported annually.

(E) LEGISLATION ON LAND

Land is valued for its productive potential, as a capital asset, a source of identity and to some individuals, it is a spiritual value. Since land is a valuable resource for meeting the basic needs, prestige and a symbol of economic strength and political influence, the legislation on land is one of the cardinal matters that Kenya has. This includes the community land Bill, land registration Bill and the National Land Commission Bill.

The legislation on land will revise, consolidate and rationalize existing laws on land. KHRC is for the idea that proper legislation on land will curb vices like double allocation of land, land grabbing especially of public land and landlessness in the country.

(F) THE CAPITAL MARKETS (AMENDMENT) BILL, 2011

KHRC feels that there is a lot of injustice that has been going on in the capital markets especially by schemes that have been robbing Kenyans off their monies such as dubious stockbrokers. This Bill when it comes into action will prevent a repeat of such happenings. Currently the Bill is awaiting the committee of the whole House

(G) BANKING AMENDMENT BILL

This is Bill for an act of parliament to amend the Banking act enacted by the parliament of Kenya. The amendment is done by inserting sections 16B and 16C after section 16A. Section 16B provides for maximum interest rates chargeable while 16C provides for the minimum interest rate payable.

(H) THE MICRO AND SMALL ENTERPRISES BILL, 2011

If enacted into law it will make provisions for the promotion, development and regulation of micro and small enterprises to provide for the establishment of the micro and small enterprises authority and other connected purposes. The Bill is not yet mature.

(I) COUNTY GOVERNMENT FINANCIAL MANAGEMENT BILL, 2011

The devolution of political, economic and social power is one of the major benefits that Kenyans will reap from the Constitution. County governments will have the chance of getting several Kenyan billion shillings to facilitate development. The argument behind this being that the economic inequalities and marginalization will be curbed. This Bill will facilitate secure, sound and sustainable management of the financial affairs of the county governments, cities and urban areas. Currently the Bill is undergoing internal review at CIC.

(J) DEVOLVED GOVERNMENT BILL, 2011

Devolution is the statutory granting of powers from the central government of a sovereign state to a government at a sub national level, such as regional, local or state level. The devolved government Bill will give effect to chapter 11 of the Constitution. It will provide for county government powers, functions and responsibilities to deliver services. Currently the Bill is undergoing internal review.

(K) PUBLIC FINANCIAL MANAGEMENT BILL, 2011

Article 10 of the Constitution of Kenya provides for national values and principles of governance. These are supposed to bind all state organs, state officers and public officers.

This Bill will provide for an Act of parliament to provide for management of the public finances of the Republic of Kenya by the national government and county government in a manner that is responsible, transparent and accountable.

KHRC believes that power and resources must be used with integrity and responsibility. It is only through accountable governance that human rights can be protected and enjoyed by all Kenyans. The Bill is currently undergoing internal review at CIC.

(L) INTERGOVERNMENTAL FISCAL RELATIONSHIP BILL

This will provide for cooperation and consultations between the national and county levels of government on fiscal, budgeting and financial matters. It will also prescribe a process for budgeting and the determination of equitable sharing and allocation of revenue raised nationally. It will also provide how loans will be granted and proper management of debts. This Bill is currently at the internal review.

(M) THE EMPLOYMENT AND LABOUR COURT BILL, 2011

This will provide for the establishment of a labor court in Kenya. It will also provide for its powers, functions and duties. Currently the Bill is awaiting publication since the cabinet has approved it.

(N) THE INTERGOVERNMENTAL RELATIONS BILL, 2011

The 47 county governments will be the next and only level of devolved government. The devolved government structure aims at enhancing national unity through recognition of diversity among other things. The Bill will provide an Act of parliament to establish a framework for intergovernmental and intra governmental consultations, cooperation and dispute resolution. This will facilitate smooth operation between the two and enhance quality service delivery to Kenyans.

(O) THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2011

Kenya has witnessed a large number of persons losing their lives through road

carnage. In most of these cases, there is an emerging body of evidence that the drivers involved are normally intoxicated with alcohol or other substances of abuse. Evidence from the Aids Control Council also points an accusing finger at the link between new HIV and AIDS infection with the consumption of alcoholic drinks. The amendment will provide for comprehensive manufacture, sale, consumption, distribution and promotion of alcoholic drinks in Kenya.

5.0 EQUALITY AND ANTI- DISCRIMINATION

Even before Kenya achieved independence in 1963, the country was plagued with inequalities on various fronts due to the structure of the colonial economy. Inequalities could be found in the entitlement to political, civil and human rights, and large disparities in incomes and access to education, health and land, as well as basic needs such as clean water, adequate housing and sanitation.

The post-independence governments tried, but did not succeed in closing these inequalities. But, considerable progress has been made since independence towards resolving these problems, particularly in access to education, health services and clean water. However, a lot still remains to be done to provide Kenyans with equal opportunities so that all Kenyans can have equal chances of realizing their full potential in their lives.

5.1 ACTS ON EQUALITY AND ANTI-DISCRIMINATION

KHRC believes that all individuals and groups are equal, should be treated with dignity and due regard must be given to their diversity. Genuine democracy can never exist in a society that does not recognize its women and men as equals and that discriminates against individuals and groups based on their race, creed, health status, political opinion, sexual orientation or any other ground. Women, who constitute more than half of the population,

have a right to participate and participate in government.

Democratic governance must be gender sensitive and inclusive, must respect and honour equality and employ affirmative action in promoting equity. Likewise, people of different health status and sexual orientation must be treated with dignity, and mechanisms to protect their human rights as citizens and groups must be put in place and implemented with their participation as equals. The Prohibition of Female Genital Mutilation Act was currently signed into law by the president and it addresses the issue of equality and anti-discrimination, with regard to the girl child.

5.2 PENDING BILLS ON EQUALITY AND ANTI- DISCRIMINATION.

(A) THE LEGISLATION ON LAND

It is not in dispute that inequality in property ownership is one of the greatest problems of our times. Gender discrimination is one of the factors that constrain sustainable use of land. The devastating effects of property rights violations include poverty, disease, violence and homelessness harm women, children and the economy.

The legislation on land is expected to provide durable solutions to the above problems. This will include the Community Land Bill, Land Registration Bill and the National Land Commission Bill. The legislation on land will revise, consolidate and rationalize existing laws on land.

(B) BIRTHS AND DEATHS REGISTRATION BILL, 2011

This is the Bill that will provide for the notification and registration of births and deaths and for connected purposes. KHRC feels that there is some discrimination especially in the preliminary part 2 in the prescribed particulars (b) where the mother is required to

produce a lot of information while in (c) the father is required to provide very little information. This Bill is undergoing internal review at CIC.

(C) MATRIMONIAL PROPERTY BILL, 2011

This Bill makes provision for the rights of spouses in relation to matrimonial property and other related purposes. It gives provisions for rights and liabilities of a married woman. One of the KHRC's thematic areas being equality, the Bill addresses issues on equality by providing for rights of spouses in a matrimonial property. The Bill is undergoing internal review at CIC.

(D) THE MARRIAGE BILL, 2011

On coming into effect, the Act will also consolidate laws concerning marriage and divorce. By defining marriage, it prevents anti discrimination of women in matters relating to matters of property in case of a divorce. The Bill is undergoing internal review at CIC.

6.0 OTHER RELEVANT BILLS

This section includes other Bills that KHRC may not have a direct interest at right now but they heavily touch on human rights and therefore they have been included in this *Bills Update*. It is therefore incumbent upon all concerned to read and reflect on how to do advocacy within the context of the three themes informing KHRC's work this year.

(A) THE BOOKS AND NEWSPAPERS (AMENDMENT) BILL OF 2011

The principal object of this Bill is to amend the Books and Newspaper Act (Cap 111 of the Laws of Kenya) in order to require the deposit of published works in the library of Parliament. Many Parliament libraries in the world also serve as national libraries. Some examples

include the Parliaments of South Korea, Indonesia and South Africa.

Currently, the Books and Newspapers Act provides for deposit and registration of books and newspapers published in Kenya to the Kenya National Library Services, and Kenya National Archives.

A legal deposit system at Parliament is important as it acts as a mirror wherein all the glory of a nation's literature is faithfully reflected. It stands as a permanent record of the thoughts, aspirations and discoveries of successive ages and further operates as an instrument to gather a permanent record of the nation's published work. It will also be useful to scholars and researchers since it will enhance easy access to information.

(B) THE ENERGY AND COMMUNICATIONS LAW (AMENDMENT) BILL, 2011

If enacted into law, it will amend the law relating to the energy and communications sector to prevent damage to energy and communications installations caused by vandalism. The parliamentary Departmental Committee on Energy, Communications and Information held a stakeholders consultations meeting on 25th October to discuss the Bill.

(C) NATIONAL CONSTRUCTION AUTHORITY BILL, 2011

Over the last few months, Kenyans have witnessed a high level of deaths related to collapse of buildings. This highly emanates from incompetence and ignorance of constructors, who are either not fully trained or do their work in hurry. With proper measures in registration of contractors who can also be deregistered, such deaths can be prevented. This Bill if signed into law will make provision for the establishment, powers and functions of the national construction authority. It will also provide for the registration and de registration of contractors.

Currently the Bill is awaiting committee of the whole house.

(E) INSOLVENCY BILL

This is meant to amend and consolidate the law relating to receivership, insolvency, provisional supervision, winding up and individual bankruptcy, to provide for corporate and individual insolvency, to provide for the rehabilitation of the insolvent debtor and for connected purpose.

(F) STATUTORY INSTRUMENTS BILL

This Bill if enacted will provide for the making scrutiny. Publication and operation of statutory instruments and for matters connected therewith

(G) KENYA DEPOSIT INSURANCE BILL

This Act will provide for the establishment of a deposit insurance system and for the receivership and liquidation of deposit taking institutions, to provide for the establishment of the Kenya deposit insurance corporation and other related purposes.

(h) NATIONAL PAYMENT SYSTEM BILL, 2011

This is a Bill for an act of parliament to make provisions for the regulation and supervision of payment systems and payment service providers, and for connected purposes.

7.0 UNCONSTITUTIONAL BILLS

The implementation of the Constitution with regard to the mandate of CIC involves developing new laws, new policies and administrative procedures required to implement the Constitution.

Further, it is also supposed to ensure the participation by the people of Kenya in the review process since the Constitution provides that all powers belong to the people of the republic of Kenya and the people shall determine how they wish to be governed at the

national level and at the county level and also ensuring that the legislative process adhere to the provisions of Article 261 Of the Constitution Bills as being unconstitutional on consequential provisions. Of the thirty eight Bills that the parliament has passed since the referendum, the CIC has listed the following two:

(A) THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUNDS ACT, 2011

An Act that was meant to provide legislation for the effective operation of the contingencies fund and county emergency funds established by the county governments

(B) THE NATIONAL GOVERNMENT LOANS GUARANTEE ACT, 2011.

This was an Act that was meant to provide for terms and conditions under which the National Government may guarantee loans to the county governments in accordance to Article 213 of the Constitution of Kenya.

8.0 PUBLIC PARTICIPATION OF THE IMPLEMENTATION PROCESS

The Commission for the Implementation of the Constitution (CIC) is established under section 5 (1) of the Sixth Schedule of the Constitution. The mandate that the CIC is stipulated in section 5(6) of the Sixth Schedule and Section 4 of the Commission for the Implementation of the Constitution Act, 2010.

The functions of CIC as set out in the above sections are to monitor, facilitate and oversee the development of legislation and administrative procedure required to implement the constitution and to coordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in parliament, the legislation required to implement the Constitution.

CIC is also required to work with each Constitutional Commission to ensure that the letter and spirit of the constitution is respected.

In various Articles in the Constitution including Article 10 and 118, the Constitution provides that Kenyans to participate in the process of implanting the Constitution including participation in the process of law making.

Therefore, any person wishing to make submissions on matters relating to review of policies, legislation and administrative procedures aimed at making them complaint with the Constitution can submit them in any language to the CIC.

The above can either be done through writing and sending them via postal address, emailing them, through CBO's, NGO's, churches and mosques. Kenyans should demand to be served by the implementing arm of the government or government institutions according to the provisions of the Constitution, new policies, laws and administrative procedure.

If such services are not provided accordingly, members of the public have a the right to question, complain to the implementing arm of government or formally notify or seek redress in the institutions provided in the Constitution. Kenyans are therefore urged to fully participate in implementation process since it's only through active participation of Kenyans that the Constitution will be a people's Constitution.

However participation by the people directly has been wanting, especially with strict deadlines that must be met. This however is no excuse not to involve people, since the CIC should ensure that there is a public outreach on these Bills as they undertake internal review, by inviting as many stakeholders as possible and also ensuring that public town-hall meetings are organized. It is a matter of strategic and organizational acumen that can bring out this public participation.

9.0 CONCLUSION

The complete implementation of Kenya's Constitution that was made by Kenyans is expected to put in place several reforms. Some of these are; considerable changes in the country's governance structure, a broader concept of human rights, transparency in public positions appointment, entrenched institutional independences, devolution of power and guaranteed checks and balances on the executive.

However, the process of implanting the Constitution is facing several setbacks. For example it was noted that the parliament passed 15 Bills in the last month of the August 27th deadline, while during the previous 11 months since the Constitution was promulgated; only 11 Bills were passed. This can be attested to several factors such as delays in the process of drafting the Bills which seems to lack a strategic and focused approach, poor coordination between and among various actors, interference and rollback attempts from vested interests and lack of commitment for Constitutional Implementation.

This led to producing low quality bills, leaving them to further legal challenges. This we hope will not be repeated on the bills that are supposed to be put into legislation by 27 February 2012 and in future. As the Commission for the Implementation of the Constitution recommends, the process of implementing the Constitution will be achieved when all the implementing agencies and stakeholders including the political elites start working harmoniously. This will also guard the sovereign power of the people of Kenya that is exercised through the Constitution.

END

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Researched and written by Jesse Mugambi

Edited and formatted by Tom Kagwe