

**COMMUNIQUE ON EQUALITY AND NON-DISCRIMINATION UNDER THE
CONSTITUTION OF KENYA: *HAVE WE PROGRESSED OR REGRESSED?***

HELD ON TUESDAY 4 AUGUST 2020

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) and Strathmore University Law School have partnered to host a series of weekly webinars dubbed the “Katiba @ 10 Series”.
2. The fourth in the series of the joint webinars was held on 4 August 2020 with the theme, ‘Equality and Non-discrimination under the Constitution of Kenya: Have we progressed or regressed?’
3. The panellists and participants were drawn from all sectors including the government, civil society, the legal fraternity, and the private sector.
4. The participants and the general public joined the webinar on our social media platforms and online streaming services including YouTube, Twitter, Facebook, and WhatsApp.
5. **The panellists and participants acknowledged and noted THAT:**
 - a) The marginalisation of communities commenced during the colonial era and has continued to date even though marginalised areas contribute significantly to the economic growth of the country;
 - b) The 2010 Constitution guarantees equal rights for special categories of persons and vulnerable groups; persons living with disabilities, marginalised groups, refugees, women and children;
 - c) The government of Kenya is obligated under international law principles to bridge the historical gaps by guaranteeing equality and freedom of all persons from discrimination;
 - d) The Constitution of Kenya is very deliberate about the ideology of inclusivity for all persons in economic, social and political spheres, which makes it imperative for the government to implement;
 - e) Article 27 of the Constitution obligates the government to achieve parity and inclusivity for all its citizens;
 - f) Marginalised communities lack opportunities in educational and economic fields. In addition to this, they are often left out in decision making;
 - g) The measures that have been put in place to ensure equality and inclusion for women, persons living with disabilities, marginalised and minority communities are tokenistic in nature;
 - h) To date, there has been no political goodwill to realise the two-thirds gender rule, especially in the National Assembly despite court rulings and constitutional imperatives;

- i) No mechanisms have been put in place in the Political Parties Act, 2011 or the Elections Act, 2011 to guarantee that two-thirds gender rule in elective public bodies is realised;
- j) Many judicial and administrative decisions have pushed back on the need to respect differences by negating the distinct identities of persons with disabilities;
- k) Sufficient measures have not been put in place to ensure that persons with disabilities are treated with dignity and access various services that enhance equality and human dignity;
- l) The realisation of Article 54 of the Constitution of Kenya on the rights of persons with disabilities is still a mirage and there are noted regression on the gains that had been made soon after the promulgation of the Constitution;

6. Therefore in the view of the foregoing, ICJ Kenya calls upon:

A. Parliament to:

- i. Ensure that they name and affirm persons with disabilities in legislation rather than using general terms like “vulnerable persons”;
- ii. Put in place legislative and policy frameworks to address historical marginalisation and unequal development across Kenya;
- iii. Develop frameworks for the delivery of basic services in areas with marginalised communities to address the specific needs of those communities;
- iv. Fast track and enact the Gender Representation Bill intended to realise the two-thirds gender rule;
- v. Fast track the legislative amendments that will facilitate the inclusion of marginalised groups in the party primaries before elections;
- vi. Involve the special categories of persons; persons with disabilities, women and marginalised communities in decision making on issues affecting them, such as exploitation of natural resources and revenue sharing.

B. The Executive to:

- i. Develop policy and programs that ensure persons with disabilities access basic services such as education, health care, public institutions, and access to materials to enable them overcome constraints arising from their disability;
- ii. To adhere and implement the two-thirds gender principle in appointive positions including the Cabinet and other public offices;
- iii. Allocate adequate resources to political parties to promote political participation of marginalised communities and other special categories of persons.

C. The Judiciary to:

- i) Put in place mechanisms to promote access to justice for persons with disabilities such as through ensuring there’s sign language for deaf persons, braille for blind persons amongst others;
- ii. Continue to advance the development of jurisprudence on equality and non-discrimination that will contribute to the promotion of rights for all.

D. The Media Council of Kenya to:

- i. Put in place requirements for television stations to ensure that the persons offering sign language are visible to viewers.



E. The Office of the Registrar of Political Parties to::

- i. Ensure that political parties submit party lists that comply with the two-thirds gender rule;
- ii. Monitor political parties to ensure that they put in place proper mechanisms to facilitate the participation of persons with disabilities and marginalised persons in party primaries.

F. The Independent Electoral and Boundaries Commission to::

- i. Put in place measures to ensure that every political party should provide a list that complies with the two-thirds gender rule;
- ii. Institute measures that will address noncompliance and disregard of constitutional and legal imperatives on equality and non-discrimination in electoral processes;

G. Civil Society actors to:

- i. Raise awareness amongst minority groups on their right to participate in elections;
- ii. Continue sensitising different duty bearers on the need to include minority and vulnerable groups in decision making.

H. ICJ Kenya commits and undertakes to:

- i. Continue engaging in and promoting discourse on equality and non-discrimination;
- ii. Partner with like-minded organisations to promote equality for vulnerable and marginalised groups.

Signed



Kelvin Mogeni
Chairman
ICJ Kenya