

**WAJIR COUNTY MINORITIES AND MAGINALIZED GROUPS BILL, 2020**

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**WAJIR COUNTY MINORITIES AND MAGINALIZED GROUPS BILL, 2020**

**A Bill for AN ACT of the County Assembly of Wajir to give effect to the County Government's constitutional mandate to eliminate discrimination and inequalities against any individual or group of person on the ground of race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing , political opinion , and take affirmative action in favour of groups marginalized on the basis of any other reason created by history, traditions or customs for the purpose of redressing which exists against them ;and to provide for other related matters.**

**ENACTED** by the County Assembly of Wajir as follows-

**PART I – PRELIMINARY**

**Short title and commencement**

1. This Act may be cited as the Wajir County Minorities and Marginalized Groups Act, 2020 and shall come into operation upon publication in the *Gazette*.

**Interpretation**

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

“Authority” means the Authority of Minorities and Marginalized Groups Authority established under section 5;

“County Assembly” means the County Assembly of Wajir;

“County Executive Committee Member” means the County Executive Committee Member responsible for gender, youth and culture;

“County Government” means County Government of Wajir;

“Court” means Court of competent jurisdiction.

“Discrimination” has the meaning assigned to it under Article 27 of the Constitution of Kenya 2010;

“Equal opportunities” means having the same treatment or consideration in the enjoyment of rights and freedoms, attainment of access to social services, employment, education, or the participation in social, cultural and political activities regardless of race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing ;

“Governor” means the Governor of Wajir County ;

“Marginalization” means depriving a person or a group of person of opportunities for living a respectable and reasonable life as provided for in the constitution of Kenya 2010;

“Marginalized Group” means a group of people who, because of laws or practices before, on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4) of the Constitution;

“Persons” includes any individual, firm, company, association, partnership or body of persons, whether incorporated or not;

“Public Service Board” means the Wajir County Public Service Board.

## **PART II- ESTABLISHMENT AND STATUS OF AUTHORITY**

**Objectives 3.** The objectives of this Act include:

- (a) To Guide the County Government on the composition of county governance and administrative structures aimed at expanding opportunities for the inclusion and participation of the minority and marginalized in all development agendas;
- (b) To address and eliminate discrimination to the greatest possible extent;
- (c) To further promote and protect the right to equality set out in the Constitution of Kenya;
- (d) To encourage the identification and elimination of systemic causes of discrimination;
- (e) To promote and facilitate the progressive realisation of equality, as far as reasonably practicable, by recognising that—
  - i. discrimination can cause political, social and economic disadvantage and that access to opportunities is not equitably distributed throughout society;
  - ii. equal application of a rule to different groups can have unequal results or outcomes;
  - iii. the achievement of substantive equality may require the making of reasonable adjustments and reasonable accommodation and the taking of special measures;
- (f) to enable the Minorities and Marginalized Group Authority to encourage best practice and facilitate compliance with this Act by undertaking research, educative and enforcement functions;
- (g) to enable the Marginalised Groups and Minorities Authority to resolve disputes about discrimination in a timely and effective manner;

(h) to increase the knowledge base among the minority and marginalized communities and groups through public education and information sharing on their rights and obligations.

**Establishment of Authority**

5. (1) There is established a Minorities and Marginalized Group Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name and, may do, enjoy or suffer anything that bodies corporate lawfully do, enjoy or suffer.

**Independence**

6. Subject to the Constitution, the Authority shall, in exercise of its functions, be independent and shall not be subject to the direction or control of any person or authority .

**Seal of the authority**

7. (1)The seal of the Authority shall be—

a. in such form as the Authority may determine;

b. applied in such circumstances as the Authority may determine, subject to any written law; and

c. kept under the custody of the Secretary.

(2) Judicial notice shall be taken of the seal of the Authority and any document sealed with the seal shall be admissible in evidence.

**Composition authority**

8.(1) The Authority shall consist of 6 members who shall include a

Chairperson, Vice-Chairperson, at least two(2) persons of not the same sex representing minority and marginalised ~~communities~~/groups in the county, and the County Attorney for the time being responsible for matters relating to legal affairs .

(2)The members of the Authority shall be appointed by the Governor with the approval of the County Assembly.

(3)Members of the Authority must be residents of Wajir County and shall be persons of high moral character and proven integrity and possess considerable experience in, and a record of commitment to, matters relating to the promotion of equal opportunities or human rights.

**Chairperson**

9(1). The Chairperson of the Authority shall—

a. be the head of the Authority;

b. preside over or chair all meetings of the Authority;

c. be responsible for the general direction of the affairs and administration of the Authority; and

d. monitor and supervise the work of the Secretary.

work

(2)The Vice-Chairperson shall deputize for the Chairperson and perform such other functions as the Chairperson or the Authority may assign.

(3) The Chairperson and Vice Chairperson of the authority shall be of opposite gender.

Secretary and other staff of the authority

10. (1)The Authority shall have a Secretary who shall be a public officer appointed by the Authority in consultation with the Wajir public service commission, on terms and conditions determined by the Authority in consultation with the Wajir Public Service Commission and specified in his or her instrument of appointment.

(2)The Secretary shall be a person—

- a. of high moral character and proven integrity, possessed with relevant qualifications and experience in the field of public administration; and
- b. qualified to be appointed to the office of the Chief Officer.

(3) Subject to section 9, the Secretary shall—

- a. be responsible for the carrying out of the policy decisions of the Authority and the day to-day administration and management of the affairs of the Authority;
- b. be responsible for the control of the other staff of the Authority;
- c. be responsible for recording all minutes of the meetings of the Authority, and keeping all records and documents of the Authority;
- d. have the custody of the seal of the Authority, and
- e. Perform any other function assigned to him or her by the Authority.

(4) The Secretary may be removed from office only for—

- a. inability to perform the functions of his or her office arising out of infirmity of body or mind;
- b. misbehavior or misconduct;
- c. incompetence; or
- d. Mismanagement or abuse of office.

(5)The Secretary shall be informed of the decision to remove him or her and shall be given adequate opportunity to defend himself or herself before he or she is removed.

(6)The Authority shall have such other officers and employees as may be necessary for the discharge of its functions.

(7)The officers and employees referred to in subsection (6) shall be appointed by the Authority in consultation with the Wajir County Public Service Authority and shall hold office upon such terms and conditions as may be specified in their instruments of appointment.

(8)A public officer may, at the request of the Authority, be seconded to the service of the Authority.

(9)The Authority may engage the services of consultants, experts or advisers to assist it in the discharge of its functions and may remunerate them at such rates as may be determined by the Authority.

**Function of the authority** 11. (1) The functions of the Authority are to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of—

- a. organs of the County Government;
- b. statutory bodies and agencies;
- c. public bodies and authorities;
- d. private businesses and enterprises;
- e. non-governmental organizations, and
- f. social and cultural communities,

Are compliant with equal opportunities and affirmative action in favour of groups marginalized on the basis of race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion or any other reason created by history, tradition or custom.

(2) Without prejudice to the generality of subsection (1) the Authority may—

- a. investigate or inquire into, on its own initiative or on a complaint made by any person or group of persons, any act, circumstance, conduct,
- b. omission, programme, activity or practice which seems to amount to or constitute discrimination, marginalization or to otherwise undermine equal opportunities;
- c. examine any law, proposed law, policy, culture, tradition, usage, custom or plan which is likely to have effect of nullifying, marginalizing a group, or impairing equal opportunities to persons in employment or enjoyment of human rights:

- d. develop, conduct and manage information and educational programs to facilitate and promote public awareness, understanding and acceptance of equal opportunities and treatment in employment, occupation, education and all social services;
- e. undertake research and organize, coordinate and promote workshops, seminars, conferences and public discussions on equal opportunities and treatment in employment, education, social services or social and cultural construct of roles and responsibilities in society;
- f. consider such recommendations, suggestions and requests concerning the promotion of equal opportunities as it may receive from any source;
- g. prepare and publish, guidelines for implementation of equal opportunities and the avoidance of acts, practices, usage, customs, tradition or cultures that undermine equal opportunities;
- h. monitor the compliance, in Wajir County, with the provisions of international and regional conventions, treaties and other instruments to which Kenya is a party, that relate to or are relevant to the functions and objects of the Authority; and
- i. perform such other functions that are incidental or conducive to the above functions.

(3)The Authority may rectify, settle or remedy any act, omission, circumstance, practice, tradition, culture, usage or custom that is found to constitute discrimination, marginalization or which otherwise undermines equal opportunities through mediation, conciliation, negotiation, settlement or other dispute resolution mechanism.

(4)Subject to subsection (3) the Authority may hear and determine complaints by any person against any action, practice, usage, plan, policy programme, tradition, culture or custom followed by any organ, body, business organization, institution or person which amounts to discrimination, marginalization or undermines equal opportunities.



**Power of the authority** 12.(1) In the performance of its functions under this Act, the Authority shall have the powers of a court to—

- a. require the attendance before the Authority of any person;
- b. require the production of any books, papers or documents;
- c. inspect any books, papers, materials or documents produced before it or otherwise and—
  - i. retain any such books, papers, materials, or documents for such reasonable period as the Authority deem fit
  - ii. make copies of any of them, or their contents;
- d. require any person to make oath or affirmation to answer truthfully all questions put by members of the Authority relating to any matter being inquired into by the Authority; and
- e. require any person appearing before the Authority, including the person whose conduct is subject to an inquiry, whether summoned to appear or not, to answer any question put by any member of the Authority, or by any other person appearing before the Authority.

(2) Subject to subsection (3), where a person—

- a. who has been served with a summons to attend before the Authority fails without reasonable excuse to attend in obedience to the summons; or
- b. who has been served with a summons to produce any books, papers, materials or documents fails without reasonable excuse to comply with the summons;
- c. misbehaves before the Authority, willfully insults the Authority or a member of the Authority, or interrupts the proceedings of the Authority;
- d. refuses to be sworn or to affirm or to answer a question when required to do so by the Authority,

That person commits an offence and shall, on conviction, be liable to a fine not exceeding Fifty thousand shillings or imprisonment not exceeding nine months or both.

(3) In the course of its proceedings, the Authority may—

- a. receive in evidence the transcript of evidence in proceedings before a court or tribunal and draw such conclusions of fact from that evidence as it considers proper; or
- b. adopt, as in its discretion it considers proper, any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.

(4) In the discharge of its functions, the Authority may—

- a. refer any matter to any other institution, body, tribunal or authority which, in the opinion of the Authority can best handle that matter;
- b. recommend to or order any institution, body, authority or person to adopt or take particular steps or action which, in the opinion of the Authority will promote equal opportunities;
- c. recommend to any County Executive Committee member, institution, body or authority to adopt a new legislation which is promoting equal opportunity, and the institution, body, authority, person or the County Executive Committee member shall implement or cause the implementation of the recommendation within six months from the date of communication of the recommendation .

(5) The Authority may, in writing, delegate to a member of the Authority any of its powers or functions under this Act other than this power of delegation.

(6) The Authority shall not investigate—

- a. any matter which is pending before a court or judicial tribunal or is under investigation by another constitutional Authority.
- b. a matter involving the relations or dealings the county government of Wajir and the national government or international organization;
- c. a matter relating to the exercise of the prerogative of mercy; or.

- d. any matter involving behaviour which is considered to be—
    - i. immoral and socially harmful, or
    - ii. unacceptable by the majority of the cultural and social communities in Kenya.
- (7) In the performance of its functions, the Authority—
- a. may establish its operational guidelines and rules of procedure;
  - b. may request the assistance of any department, bureau, office, agency or person in the performance of its functions; and
  - c. shall observe the rules of natural justice.

**Tenure**

13. (1) A member of the Authority shall hold office on a full-time basis for a single five years term and will not is eligible for reappointment.

(2) A member of the Authority may at any time resign his or her office in writing addressed to the Governor.

(3) A member of the Authority may be removed from office by the Governor, with the approval of the County Assembly—

- a. for inability to perform the functions of his or her office arising out of infirmity of body or mind;
- b. for misbehavior or misconduct;
- c. for incompetence;
- d. if the member is absent without prior communication to the

Chairperson for more than four consecutive meetings of the Authority, or is absent from Kenya for more than twelve consecutive months;

- e. if the member is or becomes bankrupt or insolvent or enters into a composition scheme with his or her creditors; or

- f. if the member is convicted of an offence involving dishonesty, fraud or moral turpitude.

(4) A member of the Authority shall not be removed from office—

- a. under paragraph (3) (a), unless the Medical Authority certifies that the person concerned is unable to perform the functions of the Authority;
- b. under paragraphs (3) (b) to (d), unless the person concerned is notified in writing and given an opportunity to defend himself or herself.

(5) Where a member is removed from office under this section, the Governor may appoint another person in accordance with section 8 to replace that member and the person appointed shall hold office for the remainder of the term of the member removed.

**Oath**14. Every member of the Authority shall, before assuming his or her duties under this Act, take and subscribe to the oath specified in the Schedule to this Act.

**Remuneration**

15. Emoluments of the members of the Authority shall be as prescribed by the Salary Runemeration Comission.

**Members to relinquish office**

16. A person holding any of the following offices shall relinquish that office on appointment as a member of the Authority—

- a. a member of County Assembly;
- b. a member of the national parliament;
- c. a member of the executive of a political party or organization at all levels; or
- d. a public officer.

**Modus operandi**

17. (1) The Authority shall meet for the discharge of business at least once in every three months at such time and place as the Authority may determine and the Chairperson shall convene all the meetings.

(2)The Chairperson may, at any time, convene a special meeting of the Authority and shall convene a meeting within fourteen days if requested to do so in writing by at least three members of the Authority.

(3) Except for a special meeting referred to in subsection (2), notice of a meeting of the Authority shall be given in writing to each member at least fourteen working days prior to the date of the meeting.

(4) The Chairperson shall preside at every meeting of the Authority and in the absence of the Chairperson the Vice Chairperson shall preside; in the absence of both the Chairperson and the Vice Chairperson, the members present shall elect one of their number to preside at the meeting.

(5) The quorum for a meeting of the Authority shall be three members, and all decisions at a meeting of the Authority shall, as far as possible, be arrived at by consensus.

(6) Where on any matter consensus cannot be obtained, the matter shall be decided by a majority of the votes of the members present and voting and in case of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) The Authority may invite any person who, in the opinion of the Authority, has expert knowledge to attend and take part in any discussion or meeting of the Authority on any matter with respect to which his or her advice is required, but shall not have the right to vote at that meeting.

(8) The Authority may act, notwithstanding the absence of a member or any defect in the appointment or qualification of a member or any vacancy, in the office of a member.

(9) A member of the Authority who is in any way directly or indirectly interested in any matter before the Authority shall disclose the nature or extent of his or her interest at a meeting of the Authority, and any disclosure made shall be recorded in the minutes of that meeting.

(10) A member who makes a disclosure at a meeting of the Authority shall not participate in any deliberation, or take part in any decision of the Authority with respect to that matter.

(11) Subject to the provisions of this Act, the Authority may regulate its own procedure.

**Self-accounting**

18. The Authority shall be a self-accounting body and shall deal directly with the County Executive Committee responsible for finance on matters concerning its finances.

- Complaints** 19. (1) A person may lodge a complaint relating to discrimination, marginalization or any act which undermines or impairs equal opportunities with the Authority.
- (2) A complaint made under subsection (1) shall be in writing and signed by the complainant or complainants.
- (3) The Authority shall consider or hear the complaint within six months after receipt of the complaint.
- Representation** 20. A person appearing before the Authority may be represented by a legal counsel at his or her own expense.
- Immunity to members of authority and staff** 21. A member of the Authority or an employee of the Authority or any other person performing any function of the Authority under the direction of the Authority shall not be personally liable to any civil proceedings for any act done in good faith in the performance of the functions or the exercise of the powers of the Authority under the Act .
- Immunity of witness** 22. A witness appearing before the Authority shall have the same immunities and privileges as if he or she were a witness before a court of law.
- Attendance allowance** 23. (1) Any person summoned to appear before the Authority as a witness is entitled to be paid by way of reimbursement of his or her expenses, such allowance as is payable to a witness appearing before the High Court in criminal proceedings.
- (2) Any other person invited by the Authority to attend any meeting of the Authority to assist the Authority may be paid by the Authority such allowances as the Authority may consider reasonable.
- Appeals** 24. Any person aggrieved by a settlement, recommendation or an order of the Authority may subject to this Act, appeal to the High Court within thirty days after the settlement, recommendation or order of the Authority is communicated to him or her.
- Application of court rules** 25. Where the rules of procedure of the Authority do not provide for a particular matter before the Authority, rules applicable to civil or criminal proceedings in a court of law may be applied by the Authority with such modifications as may be necessary.
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**PART III- FINANCIAL PROVISIONS**

- Funds of the Authority** 26. (1) The funds and assets of the Authority shall consist of—
- a. monies appropriated by the County Government;
  - b. monies received by the Fund as grants, donations or gifts from non-governmental or non-public sources; and
  - c. all moneys from any other lawful source provided, donated or lent to the Authority.
- Financial year** 27. The financial year of the Authority shall be the period of twelve months ending on the thirteenth June in each year.
- Annual estimates** 28. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.
- (2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for the—
- a. Allocation to and establish and sustain other institutions provided within the act;
  - b. payment of the salaries, allowances and other charges in respect of members and staff of the Board; and (c) proper maintenance of the buildings and grounds of the Authority; maintenance, repair and replacement of the equipment and other property of the Authority; and
- (3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the County Executive Committee member for finance for approval.
- (4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Authority given with prior written approval of the County Executive Committee member for finance.

**Accounts and  
Audit**

29. (1) The Authority shall cause to be kept proper books and records of accounts of the income, expenditure and assets of the Authority.

(2) Within a period of three months after the end of each financial year, the Authority shall submit to the Auditor-General, the accounts of the Authority together with —

- a. a statement of the income and expenditure of the Authority during that year; and
- b. a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act (Cap. 412B).

**Investment of funds**

30. (1) The Authority may invest any of its funds in securities in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

(2) The Authority may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Board.

**PART IV-MISCELLANEOUS PROVISION**

**Offences**

31. (1) A person shall not hinder, obstruct, molest or interfere with—

- a. a member participating in an inquiry or examination under this Act; or
- b. a person acting on behalf of the Authority, while that person is holding an inquiry or carrying out an investigation under this Act;
- c. a person implementing an order of the Authority.

(2) A person, who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding One Hundred thousand shillings or imprisonment for a term not exceeding twelve months, or both.

(3) A person who—



- a. refuses to employ another person;
- b. dismisses or threatens to prejudice another person in that other person's employment; or
- c. intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to another person, by reason that the other person—
  - i. has made, or proposes to make a complaint to the Authority; ii. has alleged, or proposes to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to this Act or impairs equal opportunities;
  - iii. has furnished, or proposes to furnish, any information or documents to the Authority or to a person acting on behalf of the Authority; or
  - iv. has given or proposes to give evidence before the Authority or to a person acting on behalf of the Authority,
- d. contravenes or refuses to implement any order, or settlement made by the Authority,

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding twelve months, or both

**Annual report**

32.(1) The Committee shall make an annual report to the County Executive Committee member on the performance of its functions state of equal opportunities for marginalized groups and minorities in the county within six months after the end of each financial year.

(2) The annual reports referred to in subsection (2) shall be signed by the Chairperson addressed to the Speaker of the County Assembly with a copy to the Governor.

**Tabling of reports**

33. The County Executive Committee member responsible for gender, youth and culture shall as soon as possible lay before the County Assembly the

- annual report of the Committee on its functions submitted to him or her under Section 32(1) with any comments on it as he or she may consider necessary.
- Further report** 34. The Authority may, at any time, submit a report to the County Executive Committee member responsible for gender ,youth and culture ,on any matter arising during the course of the performance of its functions under this Act; and shall when requested to do so, submit a report on any matter to the County Executive Committee member gender ,youth and culture
- Regulation** 35. (1) The County Executive Committee member responsible for gender , youth and culture may, by statutory instrument and in consultation with the Authority, make regulations prescribing any matter required to be prescribed under this Act and for carrying out or giving effect to the provisions of this Act.
- (2) Any regulation made under this section may prescribe in respect of a contravention of the regulation, or any provision of this Act where no penalty has been prescribed, a fine not exceeding One hundred thousand shillings or imprisonment not exceeding twelve months or both; and in the case of a continuing offence, an additional fine not exceeding twenty thousand in respect of each day on which the offence continues.
- Power to amend schedule** 36. The Count Executive Member responsible for gender, youth and culture may by, statutory instrument and with the approval of County Assembly, amend the Schedule to this Act.

**OATHS**

**Part I**

**OATH OF MEMBER OF THE MARGINALIZED GROUPS AND MINORITIES AUTHORITY**

I,..... ,being appointed Chairperson /Member of the Marginalized Groups and Minorities Authority swear in the name of the Almighty God/solemnly affirm that I will well and truly exercise the functions of chairperson/member of the Marginalized Groups and Minorities Authority and do right to all manner of people in accordance with the Constitution and in accordance with the laws of the Republic of Kenya without fear or favor affection or ill will. (So help me God.)

**Part 11**

I,.....,being the Authority being called upon to perform the functions of Secretary to /officer of the Authority swear in the name of the Almighty God /solemnly affirm that I will not directly or indirectly reveal to any unauthorized person, or otherwise than in the course of duty, the contents or any part of the contents of any documents, communication or information which may come to my knowledge in the course of my duties as such. (So help me God).

**MEMORANDUM OF OBJECTS AND REASONS**

In the Kenyan setting, marginalization is a continuing concern facing the government. The government, and more so the County Government of Wajir, has a compelling interest in ensuring that all residents of Wajir County have equal opportunity to advance their interests and ambitions without any fear of discrimination.

This Bill aims to give effect to the County Government’s constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on the ground of race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion, and take affirmative action in favour of groups marginalised on the basis any reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them.

The Bill proposes the establishment of a Minorities and Marginalized Group Authority intended to monitor, evaluate and ensure that all applicable policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs, within Wajir County, do not infringe on the rights of the marginalized groups and minorities.

It is the County Government’s duty to safeguard the interests of all residents of Wajir County without any discrimination. Thus, there is a need for a law that would address issues affecting marginalized groups and minorities within the County. As such the immediate passage of this bill is earnestly prayed for.

Dated the .....

**Hon Abdullahi Issack Mohamed**

**Member of County Assembly, Elnur/Tulatula Ward**