



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

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Concluding comments of the Committee on the Elimination of Discrimination against Women: Kenya

1. The Committee considered the combined fifth and sixth periodic report of Kenya (CEDAW/C/KEN/6) at its 799th and 800th meetings, on 27 July 2007 (see CEDAW/C/SR.799 (B) and 800 (B)). The Committee's list of issues and questions is contained in CEDAW/C/KEN/Q/6 and the responses of Kenya are contained in CEDAW/C/KEN/Q/6/Add.1.

Introduction

2. The Committee expresses its appreciation to the State party for its combined fifth and sixth periodic report, which followed the Committee's guidelines for the preparation of reports. The Committee expresses its appreciation to the State party for the oral presentation, the written replies to the list of issues and questions raised by its pre-session working group and the further clarifications to the questions orally posed by the Committee.

3. The Committee commends the State party for its delegation, headed by the Assistant Minister of Gender, Sports, Culture and Social Services, which included representatives of different government departments with expertise in a broad range of areas covered by the Convention. The Committee appreciates the frank and constructive dialogue that took place between the delegation and the members of the Committee.

4. The Committee notes with appreciation that the report was prepared in a participatory process involving government bodies and non-governmental organizations. The Committee also appreciates the fact that the Government has held workshops with a range of governmental bodies and non-governmental organizations on the implementation of the concluding comments subsequent to the consideration of Kenya's combined third and fourth periodic report in 2003 (see A/58/38).



Positive aspects

5. The Committee commends the State party for implementing free and compulsory primary education since 2003.
6. The Committee commends the State party on the passage of the Children's Act 2001, which prohibits female genital mutilation and forced and early marriages of minors.
7. The Committee welcomes the State party's attention to people with disabilities, as reflected in the enactment of the Persons with Disabilities Act (Chap. 14 of the Laws of Kenya) (2003) and the establishment of the Council of Persons with Disabilities.
8. The Committee notes with appreciation the enactment of the Public Officers Ethics Act 2003, which prohibits sexual harassment in the workplace.
9. The Committee commends the State party on the establishment of the Constituency Development Fund aimed at improving the lives of rural women.

Principal areas of concern and recommendations

10. While recalling the obligation of the State party to systematically and continuously implement all the provisions of the Convention, the Committee views the concerns and recommendations identified in the present concluding comments as requiring its priority attention between now and the submission of the next periodic report. Consequently, the Committee calls upon the State party to focus on those areas in its implementation activities and to report on action taken and results achieved in its next periodic report. It also calls upon the State party to submit the present concluding comments to all ministries and to Parliament in order to ensure their full implementation.

11. While noting attempts by the State party to adopt a new constitution that would remove discriminatory provisions against women, the Committee is deeply concerned that article 82 (4 (b) and (c)) of the Constitution of Kenya remains, which provides that the Constitution's guarantee of non-discrimination does not apply with respect to personal laws, in particular in the areas of marriage, divorce, adoption, burial and succession. The Committee is also concerned about article 90 of the Constitution, which stipulates that the father's citizenship determines acquisition of citizenship by birth in marriage. The Committee notes that these provisions discriminate against women and are incompatible with the Convention. The Committee also notes with concern that the Convention has not been fully incorporated into the domestic legal system.

12. The Committee urges the State party to adopt amendments to the Constitution without delay that would repeal articles 82 (4 (b) and (c)) and 90 of the Constitution, as well as other discriminatory provisions, in order to guarantee equal rights of women and men in line with articles 2 (a) and 9 of the Convention. The Committee encourages the State party to proceed without delay with the full incorporation of the Convention into the domestic legal system.

13. The Committee is concerned that although Kenya ratified the Convention in March 1984, a definition of discrimination against women in accordance with

article 1 of the Convention, which prohibits direct and indirect discrimination, is yet to be incorporated in the Constitution or other appropriate legislation.

14. The Committee calls on the State party to include in the Constitution or other appropriate legislation a definition of discrimination against women that encompasses both direct and indirect discrimination in line with article 1 of the Convention.

15. The Committee is concerned that the Convention has yet to be given central importance in the preparation of laws and policy for the elimination of all forms of discrimination against women and the achievement of gender equality.

16. The Committee requests the State party to base its efforts to achieve gender equality and the advancement of women on the comprehensive scope of the Convention. It encourages the State party to reflect the scope of the Convention in appropriate legislation and in all Government plans and policies across all sectors and levels.

17. While welcoming the efforts of the State party to achieve legislative reform, specifically the work of the Kenya Law Reform Commission, the Committee is concerned about the lack of priority given to comprehensive legal reform to eliminate sex-discriminatory provisions and close legislative gaps to bring the country's legal framework fully into compliance with the provisions of the Convention and to achieve women's de jure equality. The Committee is concerned, in particular, about the delay in the passage of the Domestic Violence (Family Protection) Bill, the Matrimonial Property Bill and the Equal Opportunity Bill, which has been under preparation in different forms since 1999.

18. The Committee requests the State party to complete without delay, its legislative reform in order to ensure that all discriminatory legislation is amended or repealed to bring it into compliance with the Convention and the Committee's general recommendations. It encourages the State party to set a clear timetable for such reforms and in particular for the passage of the Domestic Violence (Family Protection) Bill, the Equal Opportunity Bill and the Matrimonial Property Bill. It urges the State party to raise the awareness of legislators about the need to give priority attention to such reforms in order to achieve de jure equality for women and compliance with the State party's international treaty obligations.

19. While the Committee notes the State party's recognition of the need for effective national mechanisms by setting up the National Commission on Gender Equality and the Ministry of Gender, Sports, Culture and Social Services, the Committee is concerned about the possible fragmentation of efforts of these two institutions as well as their lack of resources. The Committee is also concerned that the Ministry of Gender, Sports, Culture and Social Services lacks the institutional authority, capacity and resources to effectively promote implementation of the Convention and coordinate the use of the gender mainstreaming strategy across all sectors and levels of Government, including in rural areas. The Committee is furthermore concerned that the institutional status of the Gender Department within the Ministry of Gender, Sports, Culture and Social Services may not be sufficient to exert adequate influence within the Government structure and act as an effective catalyst and advocate for gender equality.

20. **The Committee recommends that the State party expeditiously strengthen the national machinery, namely the National Commission on Gender and Development and the Ministry of Gender, Sports, Culture and Social Services, in order to ensure a strong institutional mechanism for the promotion of gender equality. In particular, the Committee urges the State party to provide the national machinery with the necessary authority and adequate human and financial resources to coordinate implementation of the Convention and work effectively for the promotion of gender equality.**

21. The Committee is concerned about the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life. The Committee is concerned that such customs and practices perpetuate discrimination against women, and that they are reflected in women's disadvantageous and unequal status in many areas, including in public life and decision-making and in marriage and family relations, and the persistence of violence against women, and that, thus far, the State party has not taken sustained and systematic action to modify or eliminate stereotypes and negative cultural values and practices.

22. **The Committee requests the State party to view its cultures as dynamic aspects of the country's life and social fabric and as subject, therefore, to change. It urges the State party to put in place without delay a comprehensive strategy, including legislation, to modify or eliminate cultural practices and stereotypes that discriminate against women, in conformity with articles 2 (f) and 5 (a) of the Convention. Such measures should include efforts to raise awareness of this subject, targeting women and men at all levels of society, including traditional leaders, which should be undertaken in collaboration with civil society. The Committee urges the State party to address harmful cultural and traditional customs and practices, such as the use of the bride price and polygamy, more vigorously. The Committee encourages the State party to effectively use innovative measures to strengthen understanding of the equality of women and men and to work with the media to enhance a positive and non-stereotypical portrayal of women.**

23. The Committee is concerned about the prevalence of violence against women and girls, including cultural practices that constitute, or perpetuate, violence against women. While welcoming the enactment of the Children's Act (2001) which prohibits female genital mutilation, the Committee is concerned about the continued prevalence of the practice in some areas of the country and about its continued legality for women over 18 years of age, who are usually pressured or forced into undergoing the practice. The Committee is also concerned over the slow pace of work on the Domestic Violence (Family Protection) Bill that has been pending since 2002.

24. **The Committee urges the State party to give priority attention to combating violence against women and to adopt comprehensive measures to address all forms of violence against women and girls, in accordance with its general recommendation 19. It requests the State party to raise public awareness, through the media and education programmes, of the fact that all forms of violence against women, including female genital mutilation, are a form of discrimination under the Convention and therefore are in violation of**

women's rights. The Committee urges the State party to implement existing legislation prohibiting the practice of female genital mutilation and to adopt new legislation, as necessary, to eliminate this and other harmful traditional practices for all women. The Committee reiterates its previous recommendation (see A/58/38, para. 208) that the State party ensure the speedy enactment of the Domestic Violence (Family Protection) Bill and encourages Parliament to prioritize the Bill in order to ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are effectively prosecuted and punished. The Committee requests the State party to remove any impediments women face in gaining access to justice and recommends that legal aid be made available to all victims of violence, including in rural or remote areas. The Committee recommends the implementation of training for the judiciary and public officials, in particular law enforcement personnel, and health-service providers in order to ensure that they are sensitized to all forms of violence against women and can provide adequate support to victims.

25. While commending the State party for its efforts to host refugees from neighbouring countries, the Committee expresses concern about the lack of information provided by the State party about refugee women in camps in Kenya and about internally displaced people, many of whom are women. The Committee is particularly concerned at information about women's inadequate protection from and redress for all forms of violence in communities of refugees and internally displaced people and the apparent impunity of the perpetrators of such violence.

26. **The Committee requests the State party to provide in its next report comprehensive information on the situation of refugee and internally displaced women in Kenya, in particular in respect to the means used to protect these women from all forms of violence and the mechanisms available for redress and rehabilitation. It further urges the State party to take steps to investigate and punish all perpetrators of violence against refugees and internally displaced women. It also encourages the State party to continue to collaborate with the international community, especially the Office of the United Nations High Commissioner for Refugees (UNHCR), in these efforts.**

27. The Committee is concerned about the under-representation of women in political and public life, in particular in Parliament (where women represent 4.8 per cent of elected members of Parliament), government ministries (where women make up 5.8 per cent of ministers), the Court of Appeal (where there are no women judges), the diplomatic service (where women make up 27 per cent of ambassadors and high commissioners) and in appointed decision-making bodies, in particular at decision-making levels.

28. **The Committee requests the State party to strengthen and implement measures to increase the number of women in elected and appointed office, including the judiciary, in order to enhance compliance with articles 7 and 8 of the Convention. The Committee recommends that the State party fully utilize general recommendation 23, concerning women in public life. It calls on the State party to use temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, in order to accelerate women's full and equal participation in public and political life, in particular at high levels of decision-making. It also recommends**

speedy adoption of the Political Parties Bill, which would provide incentives to achieve greater gender balance in leadership positions of political parties. It suggests the implementation of awareness-raising activities about the importance of women's participation in decision-making for society as a whole; and the development of targeted training and mentoring programmes for women candidates and women elected to public office. It further recommends that the State party offer training programmes on leadership and negotiation skills for current and future women leaders. The Committee urges the State party to carefully monitor the effectiveness of measures taken and results achieved and to report thereon in its next periodic report.

29. While welcoming the measures undertaken to combat trafficking in human beings such as the establishment of an anti-trafficking police unit, the Committee remains concerned about the persistence of trafficking and the exploitation of women and girls in the country. In particular, the Committee expresses concern about the trafficking and sexual exploitation of girls stemming from poverty and from their need to provide support to their families. It is also concerned about the growing phenomenon of sex tourism in the country leading to increased child prostitution, especially of young girls and women from disadvantaged backgrounds. The Committee is also concerned that while prostitution in Kenya is illegal, only prostitutes and not clients are subject to prosecution.

30. **The Committee calls upon the State party to expedite the adoption of the revised draft Trafficking in Persons Bill and urges the State party to ensure that this bill includes prevention measures and provides for the effective prosecution and punishment of traffickers and protection and support for victims. It recommends that the State party address the root causes of trafficking in order to eliminate the vulnerability of girls and women to exploitation and traffickers and to undertake efforts for the rehabilitation and social integration of women and girls who are victims of exploitation and trafficking. The Committee also calls upon the State party to implement measures aimed at combating sex tourism, including in cooperation with tourists' countries of origin. The Committee calls on the State party to review its laws on prostitution in order to ensure that women in prostitution are not criminalized and to enhance its efforts to support women who wish to leave prostitution.**

31. The Committee is concerned that the Constitution does not provide equal citizenship rights for women. The Committee is particularly concerned that Kenyan men may confer citizenship to their wives and children while Kenyan women do not enjoy the same right. The Committee is also concerned that children born to Kenyan mothers abroad have to apply for citizenship and are given entry permits of limited duration only, while no such restrictions apply to children of Kenyan fathers born to non-Kenyan mothers. The Committee is further concerned that single women must obtain their father's consent to obtain passports and those who are married must obtain their husband's consent.

32. **The Committee requests the State party to amend without delay articles 90 and 91 of the Kenyan Constitution as well as the Kenya Citizenship Act (Chap. 70 of the Laws of Kenya) in order to bring them fully into compliance with article 9 of the Convention. The Committee also requests that the State**

party repeal without delay measures requiring women to obtain a father's or a husband's consent to obtain a passport.

33. While welcoming the significant progress made in the area of education through the provision of free and compulsory primary education, the Committee expresses concern about the marked difference in the quality of and access to education between urban and rural or remote areas, the disparity in enrolment rates between young women and young men in public universities and the lower transition rate for girls from primary to secondary school as compared to that of boys. The Committee is also concerned about traditional attitudes that constitute obstacles to girls' education, as well as girls' drop-out rates due to pregnancy and early and forced marriage. The Committee notes that education is a key to the advancement of women and that the low level of education of women and girls remains one of the most serious obstacles to their full enjoyment of their human rights.

34. The Committee urges the State party to enhance its compliance with article 10 of the Convention and to raise awareness in society of the importance of education as a human right and basis for the empowerment of women. It encourages the State party to take steps to overcome traditional attitudes that in some areas constitute obstacles to girls' and women's education. The Committee commends the State party on its plans to introduce free secondary education in 2008 and recommends that the State party implement measures to ensure equal access of girls and women to all levels of education, retain girls in school and strengthen the implementation of re-entry policies so that girls return to school after giving birth. The Committee requests the State party to provide information on the measures taken and on their impact in its next report.

35. The Committee regrets the lack of data on the situation of women in the labour force, which prevented it from obtaining a clear picture with regard to women's participation in the labour force in urban and rural areas, the wage gap, vertical and horizontal labour force segregation and women's ability to benefit from new economic opportunities. The Committee notes that the pending Employment Bill would provide for equal remuneration for men and women for work of equal value. The Committee also notes with concern the legal restrictions that persist with respect to women's working hours in industrial businesses.

36. The Committee requests the State party to ensure equal opportunities for women in the labour market, in accordance with article 11 of the Convention. It calls on the State party to ensure that employment legislation applies to and is enforced in the public and private sectors. The Committee urges the speedy adoption of the Employment Bill currently pending in Parliament. It calls on the State party to provide, in its next report: detailed information, including data disaggregated by sex; analysis on the situation of women in the field of employment, in both the formal and informal sectors, and trends over time; information about measures taken and their impact on realizing equal opportunities for women in the world of work, including in new fields of employment and entrepreneurship. The Committee also requests the State party to provide in its next periodic report detailed information about: legal provisions and their monitoring and enforcement; equal pay for work of equal value; and complaints mechanisms and statistical information concerning their

use by women and their outcomes. The Committee also calls upon the State party to re-examine the work restrictions in line with article 11 (3) of the Convention.

37. While welcoming the introduction of free antenatal services for pregnant women, the Committee expresses its concern that the maternal mortality rate, including deaths resulting from unsafe abortions, and the infant mortality rate remain high. The Committee is deeply concerned about women's lack of access to quality sexual and reproductive health services and that the existing sex education programmes are not sufficient and may not give enough attention to prevention of early pregnancy and the control of sexually transmitted infections. It is also concerned that negative attitudes of health workers may be an impediment to women's access to health-care services. The Committee is further concerned about the unmet demand for family planning services and the low level of contraceptive use.

38. The Committee recommends that the State party step up its efforts to reduce the incidence of maternal and infant mortality. It urges the State party to make every effort to raise awareness of and increase women's access to health-care facilities and medical assistance by trained personnel, especially in rural areas. The Committee urges the State party to ensure that health workers adopt a client-friendly attitude that will lead to improved access to quality health care. It also recommends the adoption of measures to increase knowledge of and access to affordable contraceptive methods, so that women and men can make informed choices about the number and spacing of children, and access to safe abortion. It further recommends that sex education be widely promoted and targeted at adolescent girls and boys, with special attention to the prevention of early pregnancy and the control of sexually transmitted infections. The Committee recommends that the State party continues to seek financial and technical support from the international community in order to implement measures to improve women's health.

39. While noting the recent decline in HIV prevalence and appreciating the existing programmes and the State party's priority attention to addressing the HIV/AIDS pandemic, including the development of the Kenya National HIV/AIDS strategic plan and the adoption of the HIV/AIDS Prevention and Control Act, the Committee is concerned that the State party still faces a serious epidemic, especially among young women. It is concerned that current policies and legislation do not adequately take into account gender-specific vulnerabilities and do not protect the rights of women and girls affected by HIV/AIDS. The Committee is especially concerned that the persistence of unequal power relations between women and men and the inferior status of girls and women hamper their ability to negotiate safe sexual practices and increases their vulnerability to infection. The Committee is further concerned about the number of child-headed households of orphans of the HIV/AIDS crisis, where girls have disproportionate responsibilities that make them vulnerable to HIV/AIDS and prostitution.

40. The Committee recommends continued and sustained efforts to address the impact of HIV/AIDS on women and girls, as well as its social and family consequences. It urges the State party to enhance its focus on women's empowerment and to include clearly and visibly a gender perspective in its policies and programmes on HIV/AIDS. The Committee further urges the State

party to take measures to address the situation of child-headed households and to report on measures taken and results achieved in its next report.

41. The Committee remains concerned about the disadvantaged position of rural women, in particular with regard to the ownership of land, as reflected in the low percentage of women who own or inherit land. It is also concerned about the slow progress towards the finalization and subsequent enactment of the draft National Land Policy, which is aimed at eliminating discrimination against women with respect to access to and ownership of land. In addition, it is concerned about women's limited knowledge of their property rights and their lack of capacity to claim them.

42. The Committee urges the State party to take appropriate measures to eliminate all forms of discrimination against women with respect to ownership and inheritance of land. The Committee urges the State party to place high priority on implementing legislative reforms and, in particular, to complete the process towards adoption of the draft National Land Policy. It invites the State party to enhance women's, especially rural women's, awareness of their land and property rights through legal literacy programmes and extension services. It encourages the State party to expand legal assistance to rural women wishing to bring claims of discrimination. The Committee requests the State party to include in its next report comprehensive data on the situation of rural women in all areas covered by the Convention, including the causes for the low percentage of women, as compared to men, who own land, and on efforts by the State party to increase this percentage.

43. The Committee is concerned about the multiple marriage regimes that apply in the State party and the discriminatory provisions that persist in the laws governing marriage and family relations. It is particularly concerned that customary law and the Mohammedan Marriage and Divorce Act allow polygamy. The Committee is furthermore concerned that, although the Children's Act sets the minimum age of marriage at 18 years, child marriages continue to take place. The Committee expresses its concern that in cases where parents were not married at the time of the child's birth and have subsequently not married, legal responsibility for the upbringing of the child falls solely on the mother, as affirmed in a court decision of 2002.

44. The Committee urges the State party to harmonize civil, religious and customary law with article 16 of the Convention and to complete its law reform in the area of marriage and family relations in order to bring its legislative framework into compliance with articles 15 and 16 of the Convention, within a specific time frame. It also calls on the State party to effectively enforce the Children's Act prohibiting child marriages. The Committee calls upon the State party to implement measures aimed at eliminating polygamy, as called for in the Committee's general recommendation No. 21 on equality in marriage and family relations. The Committee recommends that the State party strengthen measures to ensure that fathers contribute to the upbringing of their children born out of wedlock.

45. The Committee requests that information be provided in the next report about the situation of older women and women with disabilities.

46. **The Committee encourages the State party to ratify the Optional Protocol to the Convention.**

47. **The Committee urges the State party, in its implementation of its obligations under the Convention, to fully utilize the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.**

48. **The Committee also emphasizes that a full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next periodic report.**

49. **The Committee notes that the adherence of the State party to the seven major international human rights instruments enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life.¹ The Committee therefore encourages the Government of Kenya to consider ratifying the treaty to which it is not yet a party, that is, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

50. **The Committee requests the wide dissemination in Kenya of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard. The Committee requests the State party to continue to disseminate widely, in particular to women's and human rights organizations, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly on the theme "Women 2000: gender equality, development and peace for the twenty-first century".**

51. **The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention, which is due in April 2009.**

¹ The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.