



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

Pre-session working group

Forty-eighth session

17 January – 4 February 2011

### List of issues and questions with regard to the consideration of periodic reports

#### Kenya

The pre-session working group considered the seventh periodic report of Kenya (CEDAW/C/KEN/7).

#### General

1. As stated in its paragraph 1, the report was prepared under the auspices of the Ministry of Gender, Children and Social Development in collaboration with various government and non-governmental organizations and was preceded by workshops organized for representatives of all Government ministries and several civil society organizations. Please specify the extent of consultation and participation of Government ministries and non-governmental organizations and whether the report was submitted to Parliament.

#### Definition of discrimination

2. The New Kenyan Constitution, approved by public referendum on 4 August 2010, explicitly prohibits direct or indirect discrimination, inter alia, on the basis of sex, pregnancy, and marital status. Please provide information as to whether initiatives for the revision of existing legislation or enacting new legislation, where necessary, are envisaged to eliminate discrimination on such grounds so as to reflect article 27 of the New Constitution.

3. The report discusses that “being a Common Law country, Kenya, legally, requires national implementing legislation for every international agreement it ratifies, to operationalize the applicability of the agreements within the country” (para. 21). The report further indicates that “there is no national implementing legislation for [the Convention] ... or an umbrella national legislation authorizing the domestic application of all international agreements which Kenya ratifies [which] means that there would be no legal framework for [the] applicability of [the Convention] in the country” (ibid.). Please provide information as to what steps have been taken or are envisaged towards the full incorporation of the

Convention into the domestic legal system in line with the Committee's recommendation contained in its last concluding observations (CEDAW/C/KEN/CO/6, para. 12).

#### **Discriminatory laws, provisions (compatibility, repeal)**

4. The report discusses several court decisions striking down certain legal provisions, including those of customary laws, which were discriminatory on the basis of sex, inter alia, in the area of succession (paras. 22 et seq., 79 et seq. and 261).<sup>1</sup> The report does not contain information as to whether the New Constitution would in effect repeal articles 82 (4 (b) and (c)) of the Constitution currently in force, as recommended by the Committee in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 12). These articles provide 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. Please provide information as to whether the New Constitution implements the Committee's recommendation on the level of constitutional law.

5. In its previous concluding observations (CEDAW/C/KEN/CO/6, paras. 17 and 18), the Committee expressed particular concerns about the delay in the passage of certain bills 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 and requested the State party to complete without delay its legislative reform in this respect. Please inform the Committee whether the Marriage Bill of 2007 (paras. 18, 76 and 256), the Matrimonial Property Bill of 2007 (paras. 18, and 76) and the Equal Opportunity Bill of 2007 (paras. 19 and 76) have been enacted into law and provide detailed information about how their provisions would bring the legislative framework of Kenya into full compliance with the Convention.

#### **Access to justice**

6. Given the conclusion of the pilot stage of the National Legal Aid and Awareness Programme (NALEAP) (para. 33), please report on the programme's successes and challenges in relation to women's access to justice.

#### **National machinery for the advancement of women**

7. In its previous concluding observations (CEDAW/C/KEN/CO/6, paras. 15, 16, 19 and 20), the Committee, inter alia, raised concerns about the possible fragmentation of efforts of the National Commission on Gender Equality and the Ministry of Gender, Sports, Culture and Social Services, their lack of resources and the latter's lack of institutional authority and capacity. It recommended that the national machinery be strengthened, in particular, to provide it with the necessary authority and adequate human and financial resources. Please provide information on: the status of the Ministry of Gender, Children and Social Development, and namely its Department of Gender, and the National Commission on Gender and Development; their funding and staffing situation at present; and how their respective powers and mandates have been delineated in relation to the promotion of gender mainstreaming and implementation of policies and programmes for the advancement of women (paras. 41–59).

8. Please report on the impact of the mandate and activities of the Committee on Equal Opportunity of the National Assembly in relation to addressing discrimination on the grounds of sex and gender.

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<sup>1</sup> Paragraph numbers in brackets unaccompanied by a document symbol refer to the seventh periodic report of Kenya, published under symbol CEDAW/C/KEN/7.

### **Stereotypes, cultural practices**

9. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 22), the Committee recommended that the State party put in place without delay a comprehensive strategy, including legislation, to modify or eliminate cultural practices and stereotypes that discriminate against women. The State party's report concedes that the persisting prevalence of retrogressive cultural practices in the country still lead to discrimination against women (para. 265). In addition to the few measures that have been taken by the State party to address harmful traditional practices and gender stereotypes with a view to their elimination, is there a more systematic approach envisaged by the State party, taking into account regional disparities (para. 74)? In responding to this question, please include information on the prevalence of the payment of a bride price, polygamy (see para. 22), wife inheritance or levirate and ritual "cleansing" of widows, which is reported to persist in some communities and involves widows forced to have sex with a "social outcast".

10. Please specify whether the Marriage Bill of 2007 (paras. 18, 76, and 256), if adopted and once having come into force, would prohibit polygamy.

### **Violence against women**

11. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 24), the Committee, reiterating previous recommendations, urged the State party to ensure the speedy enactment of laws to guarantee that women and girls who are victims of violence have access to immediate means of redress and protection; that perpetrators are effectively prosecuted and punished; and that any impediments women face in gaining access to justice are removed so as to make legal aid available to all victims of violence, including in rural or remote areas. Please provide information on progress made in relation to these concerns. Furthermore, in view of the alarming figure that at least 47 per cent of married women have been subjected to domestic violence (para. 206), please state whether the Family Protection Bill of 2007 referred to in the report (paras. 18, 76 and 258) has been adopted and expand further on whether its contents or other applicable legislation, especially in relation to criminalization of marital rape, complies with the provisions of the Convention and the Committee's general recommendation No. 19.

12. Please elaborate further on the features of the Witness Protection Act No. 16 of 2006 (para. 17), and its application and use in practice for victims of sexual abuses and other forms of violence against women. Does the Witness Protection Act also apply to victims of trafficking in human beings, and has it been used in such cases, given that the report concedes that victims of trafficking are usually unwilling to testify in criminal cases owing to fear for their own lives and integrity or those of their families (para. 100)?

13. The report admits that female genital mutilation is still practiced in Kenya. It is reported that in 2003 an alarming 32 per cent of women in Kenya have undergone this practice, which is a decrease compared to 1998 (38 per cent). However, girls are increasingly subjected to this harmful practice at an earlier age than before (para. 48). Please elaborate on measures taken by the State party, including awareness-building and drafting of legislation, in order to eradicate the practice of female genital mutilation (paras. 48 and 49), and the involvement of non-governmental organizations and other relevant stakeholders in this regard. Please also indicate whether laws have been amended or passed so as to outlaw the practice for women over the age of 18 years as recommended by the Committee in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 24).

### **Trafficking, exploitation of prostitution**

14. Please report on the delay in the passing of the Anti-Trafficking Bill (para. 102) and whether the bill contains prevention measures and provides for the effective prosecution

and punishment of traffickers and protection and support for victims as recommended by the Committee in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 30).

15. In view of the Committee's recommendations (CEDAW/C/KEN/CO/6, para. 30) to 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, please also elaborate on the measures taken in this respect, including those aimed at combating sex tourism.

16. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 30), the Committee called 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. Please explain the rationale behind the assertion contained in the report that "government efforts to address or redress exploitation of women's or men's prostitution within the country cannot be expected, in view of the official prohibition" (para. 97).

### **Political participation and participation in public life**

17. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 28), the Committee recommended the strengthening, implementation and the monitoring of the effectiveness of a variety of measures to be taken, including temporary special measures, to increase the number of women in elected and appointed offices. While there has been some progress made in certain sectors of public and political life, the report identifies the lack of commitment on the part of top political officers in the country as a hindrance to women's advancement in their participation in public and political life (para. 112). Please report on any initiatives or strategies, including awareness-raising activities, targeted training and mentoring programmes for women candidates, women who hold a public office (see CEDAW/C/KEN/CO/6, para. 28), and women in diplomacy, undertaken by relevant Government departments to overcome this obstacle. In particular, please provide information on the status and substance of the Affirmative Action Bill of 2000.

### **Education**

18. The report indicates the willingness of the State party to undertake advocacy for girls' education to change cultural biases against girls' education and to undertake community empowerment and sensitization targeting harmful cultural practices inhibiting girls' education, such as female genital mutilation, child labour and forced early marriage of girls. Please provide information on whether such measures have been implemented, including on the role civil society has played, and about their impact on achieving de facto equality of girls and women with boys and men in the field of education.

19. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 34), the Committee recommended that the State party strengthen the implementation of re-entry policies so that girls return to school after giving birth. Taking into account the fact that a still considerable number of girls drop out of school according to the report (para. 148), please provide information on measures taken to ensure non-discrimination of schoolgirls during pregnancy and supply data on the re-entry rate for such girls. Please also provide reasons for the delay in implementing the policy of free secondary education and provide specific data on the dropout rate for girls.

20. Please provide information on access for women to higher education and the extent to which curricula in these institutions are sex-segregated and measures being taken to ensure women's access to scientific and technical fields of study.

21. Sexual harassment by male teachers is seemingly on the rise and the Teachers Services Commission issued new measures in April 2010 to contain cases of sexual abuse of students, measures pegged to the Sexual Offences Act. What impact are these measures having on eliminating the sexual abuse of children, particularly girls?

#### **Employment, data collection and analysis**

22. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 36), the Committee called on the State party to provide in the report detailed information on the situation of women in the field of employment, including data disaggregated by sex, in both the formal and informal sectors, trends over time, and information about measures taken and their impact on realizing equal work opportunities, including in new fields of employment and entrepreneurship. The report contains very limited data, namely on distribution of waged employment by sex and income (para. 161 and table 20). Please provide statistics and data as requested by the Committee in its previous concluding observations in order to enable it to obtain a clear picture with regard to women's participation in the labour force in urban and rural areas, the pay gap, vertical and horizontal labour force segregation and women's ability to benefit from new economic opportunities.

23. Following the enactment of the Employment Act No. 11 of 2007, and other pertinent legislation, please also provide detailed information, as requested by the Committee in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 36), on whether the legal requirement of equal pay for work of equal value is being observed (para. 155), whether there have been reported cases of sexual harassment at the work place and their outcomes (para. 156), whether the provisions of the Employment Act on maternity leave and the right to return to the workplace are being observed in practice (para. 157), whether there have been incidents of discriminatory termination of employment of pregnant women (para. 158), and on the existence of complaints mechanisms and their use by women and their outcomes in general.

24. Please also provide information on efforts undertaken to re-examine existing work restrictions in order to bring them in line with article 11, paragraph 3, of the Convention, as requested by the Committee in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 36).

#### **Health**

25. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 38), the Committee recommended that the State party step up its efforts to reduce the incidence of maternal and infant mortality, to adopt measures to increase knowledge of and access to affordable contraceptive methods and safe abortion, and to provide sex education with special attention to the prevention of early pregnancy and the control of sexually transmitted infections. Please indicate what specific measures are being taken against infant and maternal mortality, which is, alarmingly, on the rise again (paras. 180, 203 and 207)

26. Please give further details as to whether all women of childbearing age are receiving free contraceptives, whether the Reproductive Health and Rights Bill has been adopted and what provisions it makes, especially with a view to access to safe abortions (para. 264), and indicate the measures undertaken to address the increase of teenage pregnancies and their impact (para. 166).

27. Please provide information as to whether there has been a positive impact on women and girls of the HIV and AIDS Prevention and Control Act, 2006, that came into force on 30 April 2009, and makes certain discriminatory acts in relation to HIV and AIDS a

criminal offence (para. 26) and prohibits compulsory HIV testing in relation to marriage, employment, admission to educational institution, provision of health care or insurance.

28. Please provide information on the impact of the measures undertaken, including the integration of monitoring and evaluation mechanisms, to address: the identified deterioration of the situation for women with respect to prevention of mother-to-child transmission of HIV due to physical and financial inaccessibility of services, especially for rural women; the lack of awareness campaigns to educate women, particularly in rural areas; and the reduction of assistance to Kenya by development partners, including assistance in the provision of anti-retroviral drugs (paras. 73, 190 et seq. and 199).

#### **Property, land ownership, rural women**

29. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 42), the Committee requested the State party to include in its 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. The report reflects on a number of initiatives taken to address the still very low ratio of women's land ownership of 3 per cent, compared to men (para. 95), including governmental and non-governmental awareness campaigns about women's – especially rural women's – rights (para. 248). It, however, notes that functional and legal illiteracy remain strong barriers to the advancement of rural women (para. 249), and that most rural women are preoccupied with the quest for survival and hardly pay attention to legal awareness campaigns, adult education and other measures intended to improve their socio-economic status (para. 250). Against this background, please provide information on whether further policies and programmes are being initiated or planned in order to redress these short-comings.

#### **Disadvantaged groups of women**

30. The Committee, in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 26), requested the State party to provide in its seventh periodic report comprehensive information on the situation of refugee and internally displaced women in Kenya, in particular in respect of the means used to protect these women from all forms of violence and the mechanisms available for redress and rehabilitation, and steps taken to investigate and punish all perpetrators of violence against refugees and internally displaced women. The report limits itself to the situation of women internally displaced because of the violence following the presidential and general elections in December 2007 (para. 94, see also para. 243). It does not, however, address the issue of violence against women and impunity of the perpetrators in these and other camps for internally displaced women or refugees. Please provide the information requested in the previous concluding observations.

#### **Family relations**

31. Please report on the impact of State party and civil society efforts to prevent girls from being forced into marriage (para. 259), in view of the Committee's call to the State party in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 44) to effectively enforce the Children's Act prohibiting child marriages.

32. Has the Children's Amendment Bill been enacted into law? Such an enactment would address, as recommended by the Committee in its previous concluding observations (CEDAW/C/KEN/CO/6, para. 44), one of the shortcomings of the Children's Act, which is that it does not require men who father children out of wedlock to take responsibility for their children.

**Older women, women with disabilities**

33. In its previous concluding observations (CEDAW/C/KEN/CO/6, para. 45), the Committee requested that information be provided in the seventh periodic report about the situation of older women and women with disabilities in the areas covered by the Convention. The report, however, does not provide any information on the situation of older women in the country and includes only a cursory reference to the situation of women with disabilities when introducing the national plan and strategy titled “Vision 2030” (paras. 34 and 220). Please provide information thereon.

**Optional Protocol, amendment to article 20, paragraph 1**

34. Please indicate any progress made towards the accession to the Optional Protocol to the Convention and the acceptance of the amendment to its article 20, paragraph 1, pertaining to the Committee’s meeting time.

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