



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

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**Committee on the Elimination of Discrimination
against Women**
Forty-eighth session

Summary record of the 964th meeting

Held at the Palais des Nations, Geneva, on Wednesday, 19 January 2011, at 3 p.m.

Chairperson: Ms. Popescu

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In the absence of Ms. Pimentel, Chairperson, Ms. Popescu took the Chair.

The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 18 of the Convention (continued)

Seventh periodic report of Kenya (continued) (CEDAW/C/KEN/7, CEDAW/C/KEN/Q/7 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Kenya took places at the Committee table.*
2. **Ms. Baraza** (Kenya), with regard to the issue of citizenship rights, said that the new Constitution granted women and men equal rights. Through marriage a woman could confer citizenship on a foreign spouse and her children would likewise be citizens. Dual citizenship was possible for women and they would not lose their citizenship as a result of marriage to a foreigner or the dissolution of a marriage. Some of the new constitutional rights, for example those just described, had come into effect immediately upon adoption of the Constitution; others would require implementing legislation or regulations. The Ministry of Immigration and Registration of Persons had created a task force to ensure full implementation of all citizenship-related provisions in the Constitution, with a view to their entry into force within one year.
3. **Ms. Majiwa** (Kenya), turning to the situation of women in the judiciary, said that 10 of 49 high court judges, 4 of 9 chief magistrates, 4 of 11 senior principal magistrates and 11 of 30 principal magistrates, were women. The only woman member of the nine members of the Court of Appeal had been appointed to the International Criminal Court. While women did not yet represent 50 per cent of the judiciary, their representation was increasing, and that trend would continue in the context of further reform of the judicial process and in keeping with constitutional guarantees of equality. The Judicial Service Commission had nine members chosen from the ranks of lawyers, judges and magistrates, three of whom were women. Three members of the Truth, Justice and Reconciliation Commission were women, one of whom had resigned; the chief executive officer of the Commission was a woman.
4. Great importance was attached to encouraging women's participation in municipal affairs, which served as a training ground for higher-level posts and helped women to ensure that the needs of women at the grass-roots level were met. The level of representation of women in Government at the county, municipal, city and town levels was respectively 15.6 per cent, 16.1 per cent, 15.2 per cent and 16.7 per cent. At the national level, 6 ministers, or nearly 17 per cent of the total number, were women; 6 of 40 assistant ministers were women; nearly 10 per cent of assistant deputy ministers were women; nearly 10 per cent of members of the National Assembly were women; 11 of 40 ambassadors were women; 5 of 30 permanent secretaries were women; 21 of 98 deputy secretaries were women; and 36 per cent of lawyers were women. The constitutional requirement of at least one-third representation would be implemented for all elected positions from the next elections.
5. **Ms. Bailey** said that it was difficult to ascertain whether progress was being made in the area of education for girls. For example, the State party's written replies (CEDAW/C/KEN/Q/7/Add.1) included a table on primary education completion rates, but no table on enrolment rates, making it difficult for the Committee to know how many girls attended school. On the other hand, there was a table for secondary enrolment rates, but none on completion rates. Complete data should be provided.

6. At the secondary level, girls' enrolment rates were significantly lower than boys. One factor affecting girls' enrolment rates was financial constraints; if, as the delegation had said in its opening statement, secondary education was currently offered free of charge, she wondered why girls' enrolment rates remained low. Another factor affecting girls' enrolment rates was early pregnancy and forced marriage; while it was possible for girls to return to school after marriage or pregnancy, no information had been provided on how many actually did so, and whether they faced any discrimination after returning. She wondered how many teachers guilty of sexual abuse of students were actually dismissed and how many had been prosecuted for such offences.

7. She welcomed the State party's policy on gender in education, but requested detailed information on measures adopted and on the effectiveness of that policy, in particular with regard to upper and post-secondary education. The delegation should likewise provide more information on the representation of women at the decision-making level in the education sector.

8. **Mr. Bruun**, with regard to article 11 of the Convention, requested more information on women in the formal sector of the economy, on implementation of the Employment Act of 2007, and on efforts to promote job evaluation measures with a view to guaranteeing women equal pay for equal work. He wondered what the State party was doing to address the serious problem of sexual harassment in the labour market, which was often the result of traditional practices and stereotypes.

9. Child labour continued to be a problem; while school attendance was in principle compulsory, many girls dropped out of school, often to join the labour force. The delegation should provide information on efforts to prevent child labour and to ensure children stayed in school.

10. **Ms. Patten** said that many women, in both urban and rural areas, were employed in the informal sector, where they suffered from poor pay and irregular incomes and worked in low status jobs, with few opportunities to enter the formal sector. Less than half of the enterprises in the informal sector were run by women and those enterprises tended to be based at home, and were smaller and less lucrative than enterprises run by men. Female entrepreneurs had less education and fewer skills than their male counterparts. She would welcome comprehensive data on the informal sector as well as information on any legal or administrative measures the State party had taken or envisaged, for example microcredit schemes or improved access to markets, to create a supportive environment for small entrepreneurs, in particular women.

11. **Ms. Arocha Domínguez**, turning to article 12, said that it was necessary to provide sexual and reproductive health education to adolescents, both boys and girls, and asked why the bill on reproductive health and rights had not yet been passed. Appropriate sexual and reproductive health education would promote more responsible behaviour, discourage rape and reduce the number of unwanted pregnancies, in particular early pregnancies. That would in turn reduce the number of unsafe abortions, which were no doubt a factor in the alarming increase in maternal mortality.

12. According to the State party's written replies to question 25 of the list of issues, article 26 (1) of the Constitution prohibited abortion except in emergency or life-threatening situations or if permitted by any other law; she asked whether any other laws or regulations governing abortion existed or were envisaged. She also asked how many health professionals had received abortion-related training, including with regard to different cultural and religious beliefs, in order to make a more informed decision about when an abortion might be performed in an emergency situation or to protect the life or health of the mother. Information on the number of medical facilities equipped to perform abortions,

which likewise had a direct effect on women's access to abortion services, should be provided.

13. While welcoming the decline in the HIV/AIDS prevalence rate in Kenya, she expressed concern that prevalence rates for women continued to be significantly higher than for men, for example four times higher in the 20–24 age group. Education and prevention campaigns must be strengthened and more must be done to educate pregnant HIV-positive women, in particular in the younger, more vulnerable age groups about measures available to prevent mother-to-child transmission of HIV.

14. **Ms. Jahan** said that, while the new Constitution recognized the right to reproductive and sexual health care, there was an imbalance in budget allocations for the related practical initiatives, in that they appeared to be concentrated on urban areas rather than the rural areas in which 80 per cent of Kenyans lived. That contradiction must be rectified. She asked what was being done to guarantee adequate sanitation and health care for underprivileged women living in slums and settlements for internally displaced persons (IDPs).

15. Since the persistent rise in maternal mortality could be linked to unsafe abortions, she was concerned that access to legal terminations remained too restrictive. The new Constitution introduced a degree of flexibility, for example, in cases where a pregnant woman's health was endangered, but on the right to life it maintained that life began at conception. Urgent clarification of the legal status of abortion was needed.

16. Details of the monitoring components of the HIV/AIDS strategic plan would also be welcome, since, as had been observed in other countries, laws and regulations changed nothing without effective enforcement and follow-up. Monitoring and enforcement were also vital in the fight to eliminate female genital mutilation (FGM). She was pleased to note that FGM was prohibited under the new Constitution and that specific action plans and policies were being developed. However, she was confused by the State party's response to question 13 of the list of issues, which stated that the Government had banned FGM for all women and outlawed it for girls below the age of 18, and sought clarification concerning the difference between banning and outlawing. Lastly, noting that the elderly women who traditionally performed FGM had a vested financial interest in its continuation, she asked about specific policies to address their situation.

17. **Ms. Ameline** requested up-to-date information about measures to improve access to water and land in rural areas, given their key role in poverty reduction. Noting that the Government had adopted a decentralized approach to poverty reduction, she asked whether it had involved rural women's associations, whether the system of microcredits worked effectively in rural areas, and whether the 20 per cent share of microcredits assigned to decentralized projects was sufficient. She also asked whether the situation of indigenous women, such as the Ogiek women in the Mau Forest and the Maasai women, who were frequent victims of direct and indirect discrimination, was given specific consideration in policy development.

18. Details of any legislative developments and practical policy measures to address the sensitive issue of female inheritance and land ownership would also be appreciated. In particular, given rural women's great attachment to the land, she would like to know if they were the central focus of policies to promote sustainable development and discourage deforestation.

19. **Ms. Jahan** asked what measures were in place to protect women's rights and safety in rural areas, where they constituted the majority population group and headed a large number of households. For example, how did the State party guarantee access to water, for which women often had to travel long distances, especially in the drought- and desertification-prone north-east? She would also like to know about initiatives promoting

access to education, health care and microcredits, including for women forming part of nomadic communities, and about plans for combating the rampant trafficking of rural women to urban areas that had been reported. Given that a national identity card was needed to obtain a job, she enquired how the employment rights of rural women who did not have such a document were safeguarded.

20. **Mr. Wango** (Kenya) said that, in 2009, net enrolment in primary education had been 90.7 per cent for girls and 94.8 per cent for boys. The primary completion rate in 2010 had been 78.2 per cent for girls and 88.3 per cent for boys. In secondary education, the 2009 net enrolment for girls had been 46.7 per cent and the 2010 completion rate had been 7.7 per cent. Free primary education had been introduced in 2003, helping raise enrolment from 5.9 million children in 2002 to 8.8 million in 2010. At the secondary level, enrolment had risen from 47 per cent in 2005 to 70 per cent in 2010. The gender parity index in primary schools was 0.95. Thus, progress had clearly been made.

21. Statistics on girls' readmission to education following pregnancy were unavailable because of the issue's sensitivity; girls were reluctant to reveal the reason for the break in their education, making accurate figures difficult to obtain. The problem had been discussed extensively with children's rights activists, who agreed that an effective tracking solution was needed. In the meantime, the increase in the number of students sitting the Kenya Certificate of Primary Education indicated that girls were increasingly returning to complete their studies after pregnancy. The increase in secondary education completion rates for girls further supported that conclusion.

22. Initiatives launched to address regional disparities in female enrolment and completion rates, which tended to be lower in the north, included the distribution of sanitary towels to girls in distant provinces, the introduction of mobile schools in the northern provinces and the availability of boarding facilities.

23. The Sexual Offences Act of 2006 criminalized sexual intercourse with a child under 18, irrespective of whether or not the sex was consensual. Thus, any teacher who engaged in sexual activity with a student was liable to prosecution. Under a new system of investigating complaints that had been introduced to facilitate enforcement of the legislative provisions outlawing sexual harassment in schools, child victims were no longer forced to travel to Nairobi to take part in proceedings, but could instead be heard by a dedicated Committee sent to investigate in situ. If the complaints were upheld, offenders would be disciplined and removed from the teaching register. In addition, a recent circular issued to school personnel stipulated that any staff member who failed to report child abuse would also be subject to disciplinary measures.

24. The introduction of free, compulsory basic education had constituted a major advance towards the elimination of child labour. The educational authorities worked with the provincial administration and the ministry responsible for children's affairs to identify and locate children not enrolled in schools and oversee their placement in education, at the same time ensuring their removal from illegal labour.

25. In Kenya, it was an offence to marry a child under 18. Any girl found to have been forcibly married would be visited by Government officials and police officers who would rescue her from the situation.

26. **Ms. Majiwa** (Kenya) said that recent data showed female employment in the formal sector to be rising, but mainly in private enterprise. The passing of the new Constitution should contribute to similar advances in the public sector. The Constitution also recognized the right to fair remuneration and the right to participate in trade unions. Furthermore, most employment law was now compliant with International Labour Organization conventions. The principle of equal pay for equal work was successfully applied in the public sector, but its enforcement in the private sector, where wages were negotiated individually rather than

collectively, remained a challenge. Statistics showed that in the private sector women earned 0.83 per cent of men's earnings. It was hoped that the increasing use of appraisal systems that linked pay to performance would help narrow the pay gap.

27. Legislation stipulated that all workplaces where more than 21 people were employed must have a sexual harassment policy and an HIV/AIDS policy. That requirement was already satisfied in all State and parastatal institutions. Smaller organizations were currently exempt from the requirement, but that situation would be redressed with the passing of the New Constitution.

28. Enforcing legislation in the informal sector, where the majority of women worked, was also a challenge. Employment in that sector could be unstable and wages were largely unregulated. In recognition of those problems, the Government had established a number of funds that could help women start and grow a business, including the Social Protection Fund to support vulnerable, indigent and/or poor women and the Youth Enterprise Fund, which to date had provided support for more women than men.

29. Both funds fell within the framework of the flagship Vision 2030 strategy, which aimed to make loans and grants of increasing value available to female entrepreneurs so that they could grow their businesses beyond the petty dimensions of traditional female-run enterprises. Vision 2030 incorporated an education component giving women who had dropped out of school the opportunity to complete their basic education, including after marriage, and envisaged gender equality in all areas. Recognizing that poverty among women generally had its roots in a lack of education and other benefits, Vision 2030 sought to provide the encouragement, support and economic incentives that would enable women to improve their quality of life and escape poverty.

30. The main programme tackling the problems faced by women in urban slum areas, which included violence and inadequate sanitation, was the Municipal Reform Programme funded by the World Bank, which had been launched in May 2010. The Programme sought to improve slum-dwellers' basic living conditions by investing in water, sanitation and sewerage systems and in transport infrastructures. It was being piloted in the most poverty-stricken districts of Nairobi, Mombasa, Nakuru and other major towns, but should ultimately be rolled out across the country. The objectives of the slum upgrade programme comprised a 35 per cent increase in safe water supply and a 40 per cent increase in housing. Women were given priority access to new homes built under the programme, although, so far, homes had been constructed in Nairobi only.

31. **Dr. Ndonga** (Kenya) said that most of the obstacles to enactment of the bill on reproductive health rights had been removed by the passing of the new Constitution. The Government had adopted a multi-sector approach to tackling sexual and reproductive health issues under which Government departments worked in cooperation with non-governmental organizations (NGOs), civil society and parastatal agencies.

32. Referring to the question about reducing unwanted pregnancies, especially early pregnancies, she explained that the Government took a two-pronged approach. On the one hand, the school curriculum included educational material on avoidance of pregnancy and how to deal with an unwanted pregnancy. Outside school, similar guidance was provided by youth centres, and community-based organizations and NGOs in a variety of ways.

33. Maternal mortality had dropped by 5 per cent, a significant portion of which was attributable to the decrease in deaths due to unsafe abortions. Training strategies had been put in place to enable health workers not only to educate women on prevention of pregnancy and the implications of abortion if pregnancy did occur, but also to deal correctly with women presented with abortion-related complications. When women had abortions outside health facilities, the procedures were often done incompletely, and the hospitals had to repair the damage.

34. The initiatives taken by the Government to ensure that health workers were able to deal with those situations included a programme under which specialized personnel stood ready to transfer temporarily from the hospitals in the urban areas to assist with abortion-related conditions arising at rural health facilities. The bill on reproductive health rights had still to be passed, and the Ministry of Medical Services was working hard to ensure that that did happen.

35. With regard to the issue of HIV among adolescents, the prevention of mother-to-child transmission was a major focus for the Government, which had ensured access to those services by arranging for voluntary counselling and testing services in non-governmental facilities, especially those run by community-based organizations and NGOs, under the coordination of the Constituency AIDS Coordinators.

36. **Ms. Shaban** (Kenya) said that article 26 of the new Constitution had opened up the possibility of abortion in cases of medical emergency, and the consequences of botched backstreet abortions generally constituted an emergency. However, until the relevant legislation was amended, non-emergency abortions were still not allowed.

37. Since women of childbearing age had a higher prevalence of HIV/AIDS and a greater likelihood than others of contracting the infection, the Ministry for Gender, Children and Social Development was making a particular effort to enable those women to protect their health and to have safe sex, notably through promoting awareness about the use of the female condom and by urging men to use condoms.

38. The policy was based on the slogan “ABC”: Abstinence, Be faithful, use a Condom. Initially, religious leaders had opposed the idea of condom use, but they had been persuaded that while they concentrated on promoting abstinence, the medical professionals and the politicians should be allowed to talk freely about condoms in order to raise public awareness of the whole issue.

39. Voluntary counselling and testing facilities were available in hospitals, health centres and dispensaries. The Constituency Development Fund had financed a considerable number of dispensaries, with the result that people in most villages had ready access to counselling and testing services. The HIV counselling and testing campaigns, which were normally done at three-month intervals, had each been expected to cover a million people, but all of them had so far exceeded that number.

40. The National Aids Control Council was located within the Office of the President, as was appropriate since AIDS had been declared a national disaster in 1999. Following expressions of concern by Kenya’s development partners over the years, monitoring and evaluation of the Council’s strategic plan had been stepped up. The partners had responded positively: for example, Round 10 of the Global Fund to Fight AIDS, Tuberculosis and Malaria had for the first time included assistance to Kenya.

41. Budgetary support to the Ministry of Public Health and Sanitation had been increased, with the equivalent of US\$ 60 million provided for the establishment of more rural health facilities and for upgrading district hospitals. Budgetary support had also been increased for the Ministry of Water and Irrigation, on the grounds that if clean drinking water could be supplied to all Kenyans, it would halve the country’s disease burden.

42. **Ms. Suda** (Kenya) said that female genital mutilation had been outlawed in Kenya; it was now illegal. The mutilation had been seen as a rite of passage for girls: after it, they were considered to be adults, eligible to drop out of school and get married. Thus the practice had adverse consequences for their education and health, could lead to difficulties in childbirth and contribute to maternal morbidity and mortality.

43. The Ministry of Gender, Children and Social Development, in partnership with other stakeholders including civil society organizations, had successfully introduced alternative

rites of passage to replace female genital mutilation which, together with the bill on reproductive health rights, would strengthen the Government's efforts to eradicate the practice.

44. Turning to the empowerment of rural women, she said that Kenya was an agrarian economy, and that the majority of farmers were women, most of whom were also effectively heads of household. Through the Ministry of Gender, Children and Social Development, the Government had established a number of funds to support rural women, such as the Women's Enterprise Fund, established in 2007.

45. **Ms. Baraza** (Kenya) said that article 60 of the new Constitution was very important to women, since it outlawed gender-based discrimination in land ownership. To give effect to that provision, the Constitution envisaged the establishment of a national land commission. Two bills on the matter were currently being scrutinized by the Law Reform Commission.

46. **Ms. Shaban** (Kenya) said that the Government made a contribution equivalent to US\$ 125 per child towards the costs of secondary education, and that tuition itself was free.

47. Budgetary support was being actively sought to ensure the recruitment of more registration officers so that all Kenyans could access the registration system wherever they were and claim their identity cards. The issuing of identity cards had posed certain problems, particularly for citizens living in border areas, which the Government was striving to resolve.

48. **Ms. Bailey** asked whether, given the dramatic difference in primary and secondary school enrolment, there was sufficient physical capacity at the secondary level to accommodate every eligible child who chose to pursue education.

49. **Ms. Shaban** (Kenya) said that there was the capacity to accommodate all children who wished to attend secondary school. The Constituency Development Fund had helped with the construction of additional classroom facilities. Nevertheless girls were still dropping out of secondary school. A major campaign had been directed at girls on the importance of education, which had improved attendance somewhat, but more work needed to be done.

50. **Ms. Jahan** reiterated her request for clarification of the State party's written reply to question 13 concerning female genital mutilation.

51. **Ms. Baraza** (Kenya) said that girls above the age of 18 could decide to submit to female genital mutilation voluntarily. That provision arose out of the politics of Kenya: any proposal to change the situation of women became a political issue, in which men had the controlling position. It had been a real struggle even to achieve the outlawing of the practice for girls under 18. However, now all the laws were going to be reviewed in the light of the new Constitution.

52. **Ms. Halperin-Kaddari** said she understood that, even when the bill on marriage had been passed, polygamy would still be allowed both for marriages under customary law and for those under Muslim law, but that it would be compulsory to register the choice of a polygamous or a monogamous marriage. She asked how that could be reconciled with the Constitution, which it seemed clearly to contravene.

53. Secondly, she pointed out that the question about marital rape had not yet been answered. Was it true that under the new bill on family protection, marital rape would not be criminalized?

54. With respect to the issue of matrimonial property, she welcomed the fact that the bill on matrimonial property provided for recognition of the non-monetary contribution of spouses. She requested clarification of the legal definition of matrimonial property and

whether it included both tangible and intangible assets. Turning to the issue of child custody and child support following the dissolution of marriages, she asked for details of the relevant provisions in force and whether there were mechanisms to ensure that mothers received child support payments. She also asked whether the existing exemption of Muslims from provisions on inheritance would be retained in any future legislation providing for equal inheritance rights for men and women. Lastly, in view of information in the universal periodic review report indicating that the practice of wife inheritance was continuing, she asked what steps the Government was taking to eradicate the practice.

55. **Ms. Baraza** (Kenya) said that polygamy was a feature of customary and Islamic marriages – systems of marriage that were recognized in the new Constitution. Consequently, polygamy was legal and would remain so as long as some Kenyans chose to marry under the customary or Islamic systems.

56. Concerning the question on marital rape, she said that a proposal to include marital rape as an offence in the Sexual Offences Act of 2006 had been rejected and therefore it was currently not criminalized. However, it was possible that the situation would be reviewed in the light of the adoption of the new Constitution.

57. Thanks to the new Constitution and its enabling legislation, matrimonial property would be defined for the first time in the Kenyan legal system. There were currently no provisions relating to tangible and intangible assets, but that was an issue that could be discussed when considering consequential legislation.

58. With respect to provisions for child custody and child support, she said that article 53 of the new Constitution established that both parents had equal parental responsibility to provide for children, regardless of whether the children were born in or outside wedlock.

59. Turning to the question of wife inheritance, she expressed the hope that the values and principles enshrined in the new Constitution would contribute to a change in attitudes that would eventually lead to the disappearance of that practice.

60. Regarding the issue of the exemption of Muslims from legislative provisions on equality, she confirmed that such a principle was upheld by the new Constitution and that, consequently, their exemption from the provisions of the bill on marriage would not be unconstitutional.

61. **Ms. Halperin-Kaddari** expressed appreciation for the frankness of the delegation's replies, which had enabled the Committee to have a broader understanding of the challenges facing Kenya. However, recalling the position expressed by the Committee in its general recommendation No. 21 on equality in marriage and family relations that polygamous marriage contravened a woman's right to equality with men, she urged the State party to bring its Constitution into line with the provisions of the Convention in that regard. She recommended that Kenya should consider the approach taken by other countries that had faced a similar situation and had succeeded in eradicating that practice.

62. **Ms. Bailey** asked whether there was any strategy in place to reduce the migration of rural populations to urban areas, since it was a major contributory factor to the poor living and social conditions in city slums.

63. **Ms. Belmihoub-Zerdani** asked whether it was obligatory for all marriages to be registered with the civil registry.

64. **Ms. Suda** (Kenya) said that a number of initiatives had been undertaken to empower rural women. They included a strategy put in place by the Ministry of Gender, Children and Social Development aimed at mobilizing rural women into groups with a view to their setting up government-funded, income-generating activities that would allow them to remain in rural areas.

65. **Ms. Baraza** (Kenya) said that currently only civil and Christian marriages were registered with the civil registry. However, under the new Constitution, all marriages, including customary polygamous marriages, would be registered.

66. **Ms. Shaban** (Kenya) thanked the Committee members for the constructive dialogue. She reiterated her Government's commitment to comply with all the provisions of the Convention and to ratify the Optional Protocol. The Government had put in place appropriate legislative and constitutional frameworks and institutional mechanisms in order to accelerate gender equality and women's empowerment. The new Constitution had created an enabling environment to address gender equality issues, such as the abandonment of gender-based violence, women's political participation and affirmative action. Her delegation was optimistic that the goals of gender equality and women's empowerment were achievable.

67. **The Chairperson** thanked the delegation for the sincere and constructive dialogue that had taken place. She commended the State party on the very important initiatives it had taken in many areas to further implement the provisions of the Convention and to promote the development of women. The new Constitution opened a window of opportunity for genuine equality between women and men. However, it was essential to ensure the full implementation of the Constitution as well as to accelerate the enactment of all the bills that were pending. Recalling that Kenya had played an active role in the drafting of the Optional Protocol, she encouraged the State party to accede to that instrument. She hoped that the Government would take further measures to address the concerns expressed by the Committee during the dialogue with a view to full implementation of the Convention.

The meeting rose at 5.20 p.m.