



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/2008/SR.35
12 November 2008

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Forty-first session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 7 November 2008, at 10 a.m.

Chairperson: Mr. TEXIER

CONTENTS

CONSIDERATION OF REPORTS (continued)

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH
ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Kenya (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Kenya (continued) (E/C.12/KEN/1; E/C.12/KEN/Q/1 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Kenya took places at the Committee table.
2. The CHAIRPERSON invited the delegation of Kenya to resume its exchange of views with the Committee, with particular reference to articles 6-9 of the Covenant.
3. Ms. KARUA (Kenya) said that the statistics provided the previous day were from the Kenya Human Rights Commission, a non-governmental organization (NGO), as distinct from the Kenya National Commission on Human Rights.
4. Ms. ONUKO (Kenya) addressed a number of questions on labour issues. The Government recognized that most new employment opportunities were in the informal sector and sought to ensure that decent jobs were offered. The Ministry of Labour had taken various measures to regularize the informal sector; inter alia, it encouraged workers, in particular domestic and informal-sector workers, to join social security and health schemes or organize such schemes through microfinance institutions and also secure their remittances through those institutions. Although employment laws could be difficult to implement in the informal sector, the Ministry sought to enable employers progressively to comply with the statutory requirements relating to remuneration, terms and conditions of work. It also encouraged cooperative groups to disseminate knowledge of labour laws and provide training in the informal sector, to further promote compliance with the law.
5. With respect to gender income disparities, her country had ratified seven of eight International Labour Organization (ILO) conventions on the fundamental principles of rights at work. Those conventions were organized around the four themes of freedom of association and the right to collective bargaining, the elimination of discrimination and the right to equality, the elimination of child labour, and the abolition of forced labour. Moreover, in 2001 Kenya had ratified the ILO Equal Remuneration Convention, No. 100, which had passed into law in December 2008. It was aware of gender disparities and was addressing the issues raised by the treaties it had ratified. That Convention was being applied and men and women received equal pay for equal work. Women in her country were encouraged to work; equal employment opportunities were being promoted and laws impeding women's effective participation in the labour market had been repealed.
6. Labour provisions had been reviewed and updated in a coordinated and effective manner by a Government task force, with assistance from a consultant from ILO. The previous labour laws had been replaced in 2007 with five new laws, namely, the Employment Act, the Labour Relations Act, the Work Injury Benefits Act, the Occupational Safety and Health Act and the Labour Institutions Act.

7. The new labour legislation redefined the issue of the casualization of labour and now included clauses on forced labour, child protection, discrimination on the basis of HIV/AIDS and disability, sexual harassment in the workplace, the worst forms of child labour and issues relating to severance pay, maternity protection and paternity pay.

8. The Labour Institutions Act, which dealt with the administration of labour relations, established and strengthened the various institutions arising from the new labour laws. Inter alia, it provided for permanent tenure for labour court judges and for the transfer of the office of the Registrar of Trade Unions to the Ministry of Labour. The Labour Relations Act provided specific time frames for the resolution of trade disputes, in order to enhance transparency and efficiency. It also facilitated the direct access of individuals to the industrial court and further streamlined the registration of trade unions and employers' organizations and federations. The Work Injury Benefits Act increased compensation and extended insurance cover for injury and work-related diseases to all categories of workers and ensured compensation should the employer become insolvent. The Occupational Safety and Health Act encouraged entrepreneurs to set achievable safety targets and promoted education and training in order to foster a health and safety culture in the workplace.

9. Her country had made satisfactory progress with regard to enforcement measures. It was creating the National Labour Board and conducting dialogue with social partners. The new labour laws were operational, being enforced by labour inspectors, and the ILO Tripartite Consultation (International Labour Standards) Convention, No. 144, had been ratified.

10. Her Ministry had been conducting inspections at export processing zones (EPZ) since 2003, following a number of wildcat strikes which had resulted in the clarification of the respective responsibilities of the Ministry of Trade and the Ministry of Labour. Since 2007, the EPZ had been classified in the same way as any other workplace under the Occupational Safety and Health Act. Inspections were now more targeted and specific. In 2007/08, over 8,000 inspections had been conducted in the EPZ, and a further 13,200 were planned for 2008/09. Trade unions were recognized by EPZ administrations, and she would provide updated statistics on trade union disputes settled since 2003.

11. Her Government had not considered it necessary to ratify the ILO Freedom of Association and Protection of the Right to Organise Convention, No. 87, in light of its existing industrial relations charter, which consisted of a memorandum of understanding between the Government, workers and employers pursuant to ILO Convention No. 144. The charter, which set out the roles and responsibilities of all parties, had made peaceful industrial relations possible. Under the charter, trade unions were formed on the basis of industry rather than occupation. The issues addressed by the charter were in conformity with ILO Convention No. 87 and had become part of domestic legislation. Under the charter, employers and employees enjoyed freedom of association and devised their own rules and constitutions; the role of the Ministry was purely regulatory.

12. With regard to the rights of trade unions, all trade unions must be affiliated with the central trade union organization and associate freely with it. The Union of Kenya Civil Servants had been deregistered but subsequently reinstated in 2003. Under current legislation, an aggrieved party could appeal a decision of the Registrar of Trade Unions within 30 days. All matters related to labour issues were handled by the industrial court.

13. Although under the former Trade Disputes Act all strikes had been unlawful, section 76 of the new Labour Relations Act protected strikes and lockouts. Seven days' prior notice of a strike must be given to the Minister, during which period, any aggrieved party could appeal to the industrial court. Section 78 of the new Act prohibited strikes that did not conform with the legal requirements. Moreover, the new law transferred the process of calling off a strike to the industrial court. Furthermore, it required employers in the EPZ to draft a policy statement on dealing with sexual harassment. The Ministry anticipated that it would be able to confirm some of the regulations that it was developing in that connection.

14. Her country was not in a position to provide State welfare or non-contributory old-age pensions, but intended to establish a consolidated protection fund for the elderly and vulnerable as part of its poverty eradication strategy. A non-contributory protection fund had been established for orphans and vulnerable children. The National Social Security Fund was a provident fund for formal-sector workers that also sought to include the informal and domestic sectors. It had recently been decided that all workers would receive their pension at 55 years of age, barring special circumstances, since there was a need to secure workers in their old age. The Government could not deny pension rights, although public servants summarily dismissed from office might lose their pension.

15. Mr. GITAU (Kenya), in response to a question as to how internally displaced persons (IDPs) were being incorporated into the labour market, said that a number of measures had been taken, including relocation. Most IDPs in the camps worked in agriculture, and much had been done through a national resettlement programme to allow them to resume economic activity on farms. IDPs seeking employment in the public sector were treated equally to other Kenyan citizens and did not suffer discrimination, and information about job vacancies was made readily available to them.

16. In response to a question about unemployment, he said that the Government collected data through the Annual Enumeration of Employees and Self-Employed Persons, which was carried out at the end of the financial year by the Kenya National Bureau of Statistics in cooperation with provincial and district labour offices. Data were collected using a range of sub-categories for the formal, informal, public and private sectors: for example, agriculture and forestry and building and construction. The Government faced challenges in collecting exhaustive data on employment given that the majority of the Kenyan population were employed in rural, small-scale farming activities and that those workers were often not included in the statutory tracking mechanisms; for example, the majority did not pay tax and were not registered for social security or the National Hospital Insurance Fund (NHIF). However, provision had been made in the Medium-Term Plan to develop an integrated data system to permit better data collection, processing and analysis.

17. In response to a request for figures on employment, he said that between 2003 and 2007, 2,376,700 new jobs had been created: 486,900 in 2003, 474,300 in 2004, 469,000 in 2005, 471,800 in 2006 and 474,700 in 2007.

18. Replying to a question about the benefits of tourism for Kenya, he said that the key benefits were revenue and job creation, on which he provided summary data for the period from 2002 to 2006. The data showed that the number of tourist arrivals had risen steadily from 1 million in 2002 to 1.57 million in 2006, that revenue from tourism had increased from

K Sh 24 billion in 2002 to K Sh 56 billion in 2006 and that the number of jobs created each year in the tourist industry had risen from 151,400 in 2002 to 179,600 in 2006. Figures for 2007 were still provisional.

19. He provided data from 2004 on the proportion of women in the labour force by different bands of monthly income, ranging from women making up 16 per cent of all workers earning less than K Sh 2,000, the lowest wage band, to 35.2 per cent of those earning K Sh 30,000 and above, the highest wage band.

20. Ms. NJAU KIMANI (Kenya), in response to a question about whether Government policy was to gear the education curriculum to market needs, said that the education system was structured to be relevant, so that students would be provided with the skills and professional qualifications that they required in the employment market while meeting other developmental and social needs. The system had previously focused too heavily on preparing students for white-collar jobs, and reforms to the education sector were designed to ensure a balance between job-market requirements and other developmental and social needs. The perfect balance had not yet been struck, but it was essential that Kenya should maintain its educational standards since not only did it train Kenyans, but it had become a training centre of choice for many people in the Central and East African Region.

21. Ms. KARUA (Kenya) said that the State party intended to introduce an amendment to a finance bill that was currently being examined to remove the EPZ exemption from application of the Occupational Health and Safety Standards. It was the State party's ultimate aim to achieve social security for all, but that was not currently possible. It was examining its policies to ensure that the bulk of the benefits from the tourism industry would be enjoyed by Kenyan nationals, and not by tour operators outside Kenya, as currently the case.

22. Ms. BRAS GOMES explained that her information on average monthly income had come from two sources: firstly, a report by Human Rights Watch in 2003 entitled "Double Standards: Women's Property Rights Violations in Kenya" had stated that women's average earnings were less than half those of men; secondly, and more recently, a country report by the United States Department of State published in 2007 had asserted that women's average monthly income was two thirds that of men.

23. She requested further information on the NHIF package. Noting the comments by the State party that it aimed to increase NHIF coverage for the informal sector, she recalled her suggestion at the previous meeting that it should consider dropping the penalty on persons who did not make their payments on time, since that penalty especially impacted on those with no fixed income and suppressing it would make the NHIF more accessible to the informal sector.

24. She enquired whether any work was in progress to bring national legislation into line with the ILO Social Security (Minimum Standards) Convention, No. 102, and the ILO Maternity Protection Convention (Revised), No. 103, and whether the State party envisaged ratifying those instruments in the near future.

25. Noting that the State party had decided to base increments in the minimum wage on productivity, she asked why there had been no increase since 2005. Since the minimum wage was not sufficient to ensure an adequate standard of living, it was important to increase it annually, however small the increment.
26. Mr. MULESHE (Kenya) said that the NHIF, which had been established by an Act of 1966, currently covered the working population only. The Fund covered meals and accommodation during hospital treatment, but not the medical care itself. In order to redress that situation, in which the common man was at a disadvantage since he was obliged to cover 53 per cent of expenses, a proposal for a National Social Health Insurance Fund, which would have covered all expenses, had been developed, and a bill presented to Parliament. However, the bill had not been passed owing to a number of problems, including private-sector opposition and the low levels of reimbursement for service providers. The current Government was in the process of reviewing the bill and planned to resubmit it to Parliament. Employers and workers would contribute to the new fund at a ratio of 2 to 1, and the Government would make contributions for unemployed persons.
27. Ms. ONUKO (Kenya), in response to the question about ratification of ILO Conventions Nos. 102 and 103, said that there were plans to refer the matter to the National Labour Board, which would determine whether sufficient funding was available to ratify them.
28. In response to a question on the minimum wage, she said that the body created to examine how best to measure productivity and to design a mechanism for increasing the minimum wage was due to report by the end of the year. Awareness-raising campaigns were being run to encourage people to increase their levels of productivity. It was hoped that the mechanism would be implemented soon, and that the minimum wage would be increased sufficiently to compensate for the lack of increment since 2005.
29. Ms. KARUA (Kenya) acknowledged the imperfections of the current wage policy. The State party was endeavouring to ensure that the minimum wage was sufficient to allow people to live in dignity. With regard to the NHIF, she said that since out-patient care was accessible and affordable, the Fund covered only in-patient and specialized treatment. It was hoped that by reviewing the bill on the new health fund in Parliament, a health service could be achieved that would apply to all types of treatment and to all citizens, not just those in employment.
30. The CHAIRPERSON invited comments and questions from members regarding articles 10 to 12 of the Covenant.
31. Mr. ATANGANA, noting a concern expressed by the Committee on the Rights of the Child in January 2007 that births were not always registered, especially in rural areas, as a result of such factors as discrimination against children born out of wedlock or to non-Kenyan fathers and despite legislation requiring registration, asked whether that situation had improved. He noted that the State party had not provided statistics regarding domestic violence as had been requested in question 22 of the list of issues, and asked it to do so either at the current meeting or in the second periodic report. He requested further information with respect to question 28 of the list of issues on sexual exploitation of and trafficking in children, given that the written reply had

consisted of a list of legislative acts without any explanation of their provisions. Recalling that the Committee on the Rights of the Child had noted in 2005 that the age of criminal responsibility was 8 years, he wanted to know whether that age had been increased.

32. Mr. PILLAY, noting the high number of children suffering from malnutrition and the high proportion of children, women and persons with disabilities among those living in poverty, asked whether the Poverty Reduction Strategy Paper (PRSP) specifically targeted those disadvantaged groups. Commenting that there seemed to be a direct link between living in poverty and not owning land, especially in the case of women and persons with disabilities due to the prejudices associated with those groups, he asked whether the Government had adopted a human-rights approach to poverty reduction and whether the PRSP incorporated economic, social and cultural rights.

33. Expressing disappointment that the State party in its report had simply stated that demand for housing far outstripped supply, he requested that more information should be provided in the second periodic report with regard to the existing housing stock, the deficit in housing units and the number of social housing units being built. Noting the huge shortfall in housing supply given that 70 per cent of the urban population lived in informal settlements or slums and recalling the definition of a slum provided by the Special Rapporteur on adequate housing, he commented that a grim situation existed regarding living standards for slum-dwellers. It was ironic that Kibera, the largest slum in Nairobi, had no access to water despite being located next to a golf course with irrigated greens. With respect to forced evictions, he noted that the State party had not, in its written reply to question 1 of the list of issues, explained reports that court orders obtained by residents against forced evictions were being deliberately flouted by the authorities. Noting that the report commented that there had been minimal, if not a halt to, forced evictions but that he had data from 2007 regarding the displacement of thousands of families who had not been given alternative housing or compensation and were consequently homeless, he requested that the second periodic report should contain information on the extent of homelessness, including disaggregated data. He was perplexed as to why the Government had not yet published guidelines on forced evictions despite having pledged to do so to the Human Rights Committee in 2005, given that it was such a simple process: the guidelines could be based on the content of general comment No. 7 of the Committee on Economic, Social and Cultural Rights, published in a general notice and then implemented by the Ministry of Lands. Such guidelines would significantly reduce the problem of forced evictions being carried out without due process of law and without prior consultation and/or notice. While it was true that some slums had been upgraded, the houses built were aimed at middle-income groups, not the slum-dwellers: he asked whether social housing units would be built for that marginalized and disadvantaged group. Noting that the Special Rapporteur on adequate housing had reported that the failure of various Governments to respect and protect the right to adequate housing, especially for the poorest sectors of society, had been accentuated by such factors as corruption, mismanagement of resources and increasing poverty rates, he expressed the hope that the new Government would rise to the huge challenge of addressing the housing problem in Kenya.

34. Mr. RIEDEL, noting that the reservation lodged by Kenya in 1976 in respect of article 10 had used wording implying that it would be temporary, asked for clarification as to why the State party had maintained that reservation, and called for it to be withdrawn. Turning to articles 11 and 12, he said that, while the State party had provided detailed information on programmes aimed at the provision of safe drinking water, little had been said about the practical effect of

such programmes. In the Kibera slum, in Nairobi, over 70 per cent of households were reportedly dependent on water kiosks, which provided water at high prices, and just 4 per cent had a reliable source of in-house piped drinking water. Did any Government programmes address that problem? The lack of maternal health care contributed to the high rate of maternal death. HIV/AIDS was nearly twice as prevalent among women as it was among men, and was particularly bad in certain provinces. Antiretroviral treatments were often unavailable. While the Committee was aware of the economic constraints faced by Kenya, neighbouring countries faced similar problems, but had dealt with HIV/AIDS more effectively. There was reportedly a very high rate of stunting and malnutrition among children, and the mortality rate for children under 5 years of age was on the rise. What was the Government doing to combat HIV/AIDS and to improve the nutritional status of children? The Government should in its future reporting include more concrete examples, providing for instance disaggregated data by year and lists of specific achievements, rather than merely listing programmes adopted to tackle the country's problems.

35. Ms. WILSON noted that, according to the initial report, the Children's Act prohibited child labour, and the Government had taken steps to combat it. What impact had those steps had? Had anyone been criminally prosecuted for employing children? What penalties were imposed? Despite the existence of laws prohibiting discrimination on the basis of HIV/AIDS, women and orphans who had contracted HIV/AIDS were reportedly stigmatized, segregated and denied treatment, even in hospitals. The delegation should comment on their situation, which was obviously of concern to the Committee.

36. Ms. BONOAN-DANDAN said that the Committee had received reports according to which 26 per cent of Kenyan children were involved in child labour, and in coastal areas, up to 30 per cent of girls over the age of 12 worked as sex workers, generally full-time. Did the Government have any programmes to combat that phenomenon? Many children suffered from acute malnutrition, especially in the North Eastern Province, and chronic malnutrition and stunting were prevalent throughout the country, including Nairobi. According to some reports there were up to 380,000 displaced people living in disastrous circumstances in the country. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people had pointed out that because indigenous people generally lived in remote areas that lacked health services, primary health care was generally unavailable to them. Infant mortality was high, and maternal care was lacking. The Kenya Medical Research Institute had proposed legislation to address such problems. Was its proposal currently under consideration? Notwithstanding the commendable work done by the adolescent reproductive health and development policy, which focused on education and sexual and reproductive health, the Committee had received reports according to which young people had difficulty obtaining contraceptives and information on safe sex. While female genital mutilation had been outlawed since 2001, it was still widely practised, particularly in certain rural areas and among some ethnic groups. She would welcome information on measures being taken to make contraceptives more readily available and to combat the practice of genital mutilation.

37. Ms. BARAHONA RIERA asked whether the Government had taken any specific measures to eliminate gender discrimination in respect of property and land rights, especially for widows, and inheritance and divorce law, and what dissuasive action it had taken with regard to the practice of polygamy. While Kenya had a Sexual Offences Act, it did not include specific provisions against domestic violence and marital rape. What specific measures had been taken by the Government to support reproductive health, and in particular for the provision of

contraceptives? The Government should change its abortion law so as to make abortion legal in cases of incest, for instance. According to information provided to the Committee, the mortality rate for women undergoing abortions was extremely high - up to 30 or 40 per cent. What was the Government doing to reduce that rate? While the transmission of HIV/AIDS had been criminalized, she asked the delegation to describe the practical effect of that legal provision, and how it fitted in with HIV/AIDS prevention measures. Noting that maternal and infant mortality rates had risen, and that childhood diseases and disorders such as pneumonia were claiming more victims among children, she asked whether the decrease in the budget for vaccinations was related to such trends. While the current Government had increased the budget for health care, a detailed description of the method used to determine how that budget was allocated would be appreciated.

38. Mr. RZEPLINSKI noted that the Government had not informed the Committee how many women had been killed or injured in acts of domestic violence. The Committee would like to know how many women had been among the 1,500 people killed during the post-election violence, and whether the Government had any assistance programmes for women who had been raped during those events; what effect the post-electoral violence had had on Government programmes such as those for land reform and rural development; and approximately how many people had been displaced. Noting from the replies to the list of issues that female genital mutilation had been condemned in particular by female members of parliament, he asked whether there were some officials and parliamentarians who were resisting measures to stop that practice and early forced marriage. Had any steps been taken to raise awareness, for example among the mothers of young girls, of the need to avoid such practices?

39. While the report and the replies mentioned laws prohibiting child labour, they provided little information on specific provisions or practices that combated exploitation of children. He asked the delegation to inform the Committee how many traffickers of children had been prosecuted and sentenced. The replies to the list of issues referred to the upgrading of slums, and to the prevention of further slum development on private land and open spaces. What would such upgrading entail, and what was the status of such open spaces? The Committee had received reports according to which such upgrading involved the construction of housing for middle-income families, which did not benefit the current inhabitants of the slums. Had the Government adopted the draft National Land Policy referred to in the replies to the list of issues and, if so, had it established an institution to carry out that policy? He further asked whether women's organizations had played a part in formulating that policy. The Government had failed to provide statistical data on the number of trained medical professionals in rural and urban areas. Lastly, how had the comprehensive care centres for HIV/AIDS patients been financed, and were there prospects for the establishment of more centres?

40. Mr. MARTYNOV said that the situation of disabled people was reportedly very serious. Very few had paid employment or ran their own businesses. How did such people survive? Did the Government have any programmes in place to help them make a living?

41. Mr. MULESHE (Kenya) said that the problems of acute and chronic malnutrition were particularly complex, not least because of the serious poverty in the country, in particular in the North Eastern Province. The United Nations Children's Fund, the World Health Organization and the Government had devised policies such as the child survival and development strategy to address not only nutrition, but also the treatment of illnesses such as diarrhoea and malaria. The

Ministry of Public Health and Sanitation was working to ensure that trained personnel were available in rural and marginalized areas, and the Government had taken steps to transfer doctors and nurses from urban to rural areas.

42. The high rates of maternal mortality since the 1990s were being addressed through the safe motherhood programme, which covered all aspects of obstetric care. A 2003 survey had revealed that, although more than 90 per cent of mothers received prenatal care, almost half was administered by unskilled workers. Traditional birth attendance was widespread, partly because health services were not easily accessible in remote areas. The Government was encouraging a move away from such practices by promoting community midwifery and sending trained personnel into the field. Malaria treatment and vitamin supplements were being provided during pregnancy where appropriate.

43. He asserted that any instances of discrimination against mothers with HIV must be sporadic, as it was Government policy that all mothers should receive obstetric care, including testing for HIV and counselling. Mothers with HIV could deliver their babies in hospitals. Although unfortunate attitudes and fears persisted among some health workers, training was in place to address the problem. Free antiretroviral drugs were available to HIV-positive women in public institutions without discrimination. Youth-friendly clinics provided information and counselling to adolescents on sexual and reproductive health, and free contraceptives were available to all, financed from the State budget. Abortion was legal only if the health of the mother was at risk, and there was no intention to change the status quo. Post-abortion care was included in the safe motherhood strategy. The Government was trying to ensure that trained personnel were available at local level, while advising that women be transferred to better-equipped facilities if complications arose. With regard to the distribution of medical staff, a 2003 survey had shown that 63 per cent were employed in rural areas. More specific data could be provided in Kenya's second periodic report. Moves towards comprehensive HIV/AIDS care, funded jointly by the Government and development partners and comprising various elements including nutrition and counselling, had proved very successful. Despite Kenya's efforts, however, the rate of HIV infection had unfortunately risen from 5.1 to 7.1 per cent in the previous year, and stronger prevention measures were required, focusing in particular on sexual behaviour issues. Health policy in general was tending to focus on prevention rather than cure.

44. Ms. KARUA (Kenya) said, with reference to the Kenya slum upgrading project, that the Government had fallen short of its target of building 150,000 new housing units per annum, largely through lack of resources, but was still working on the problem. Water pipes in some informal settlements had been extended to provide standpipes, although slum dwellings could not be given an individual water supply, and communal toilets had been built as an interim measure. Evictions in areas where it was planned to build water or oil supply facilities had ceased while alternative accommodation was found for those who genuinely had nowhere else to go, in line with as yet unpublished guidelines. Court rulings were seldom disregarded and penalties, including jail sentences, were in place for those found in contempt of court.

45. Data on homeless people indicated that they formed the majority in urban areas. As part of the Kibera housing project, accommodation intended for poor people living in informal settlements had been built but not yet occupied. The challenges of making such accommodation accessible to the poor and increasing the rate of provision of affordable housing remained. Making primary education free and compulsory had released many children from working to

support their families, and school enrolment had increased by 1 million. More accurate statistics on child labour would be provided in Kenya's second periodic report. She clarified that 30,000 children, not 30 per cent of children, were employed in sex work. Efforts were ongoing to improve enforcement of the Children's Act, under which it was illegal to engage a child in sex or work, and to penalize hotels and villas which admitted children for the purpose of commercial sex.

46. She refuted the allegation that discrimination led to some births not being registered. It was a legal requirement to register all births, although some parents failed to do so until their children started school, at which point a late registration would be carried out.

47. Although not currently available, disaggregated data for how many homicides resulted from domestic violence could be provided in the future. The forthcoming Family Protection Act would deal with domestic violence and related matters. Marital assault and rape were already criminal offences and a small number of offenders had been prosecuted, helping to raise awareness that force and violence within marriage were unacceptable.

48. The sexual trafficking and exploitation of children was an offence under the Children's Act; in addition, a general law on trafficking in persons was to be enacted. The Sexual Offences Act covered pornography. Most offences in that area occurred in the tourism industry, particularly in unregulated establishments, and a programme was under way to register all tourist accommodation to permit more effective monitoring. The age of consent had been 18, not 8, even before the enactment of the Children's Act.

49. Although poverty levels had fallen from 56 per cent at the time when the initial report had been prepared to 46 per cent in 2007, they had almost certainly risen again as a result of the post-election violence in 2008. It was hoped that Government recovery strategies and good economic growth would reduce poverty and bring benefits in all areas.

50. All of Kenya's 42 tribal groups were indigenous to the country. The problems experienced by some groups could be attributed to geographical marginalization rather than racial discrimination, and affirmative action was being taken by allocating more funds to those areas with the highest poverty indices for use on matters of local priority.

51. A bill to decriminalize abortion had met with strong opposition from religious groups, and efforts were therefore focusing on raising awareness, as illegal and unsafe abortions were unlikely to cease. Female genital mutilation was a criminal offence under the Children's Act, but there had been few convictions as the Government thought it better to focus on sensitizing the population. In many areas the practice had been drastically reduced, and those members of parliament who were spearheading campaigns on the issue came from areas where it was still highly prevalent. Their small number should not be taken as an indication of lack of interest among members of parliament in general.

52. The fighting following the 2008 election had resulted in an increase in violent sexual crimes against women, children and men. Many had not been properly investigated at the time, resulting in a public outcry. The establishment of a dedicated tribunal was anticipated, and a police help desk for post-election sexual violence had already been created. Disaggregated data on the number of women killed during the violence could be provided.

53. The number of persons internally displaced in the wake of the post-election violence had been estimated at 350,000, but could be as high as 500,000, because some had taken refuge with friends or relatives rather than in camps. The camps had been dismantled and most people had returned home, but the country was struggling to provide them with additional financial support. Resettlement of those remaining continued.

54. Some five years previously, the Government had introduced a policy to promote employment of disabled people. The problem had not yet been solved but efforts were ongoing. The Persons with Disability Act made it an offence to discriminate against a person on grounds of disability.

55. In concluding, she noted that the proportion of Kenya's national budget allocated to health was 25 to 30 per cent, second only to the share given to education. She expressed appreciation for the constructive dialogue with the Committee.

56. The CHAIRPERSON, speaking as a member of the Committee, asked whether any moves were afoot to withdraw Kenya's reservation to article 10, paragraph 2, of the Covenant, as there seemed to be no major obstacles to such an action. He requested further information on how the population was being educated about the negative impact of female genital mutilation.

57. Ms. BARAHONA RIERA requested more details on land ownership by women, particularly in the context of land reform. She also asked what specific measures were being taken to address the issue of polygamy and its effects on inheritance.

58. Mr. ATANGANA clarified that he had referred to the age of criminal responsibility being 8 years, not the age of consent. The Committee on the Rights of the Child had previously expressed concern in that regard.

59. Ms. KARUA (Kenya) said that, under the new Constitution, women and men would have equal rights in respect of access to and ownership of land. The Law of Succession Act allowed women to inherit, but lack of awareness of that fact prevented many women from claiming their rights.

60. With regard to female genital mutilation, the Government, in partnership with one of the largest women's organizations and various NGOs, was educating the population and encouraging young girls to undergo alternative rites of passage. Residential courses were organized during school holidays to teach them about their bodies and responsible behaviour and were proving popular.

61. Any marriage contracted under the Marriage Act must be monogamous, but customary marriages were also recognized. Although polygamy was decreasing, it was not uncommon for a married man to have one or more mistresses, who frequently came forward only when the man died, thereby creating problems of inheritance.

62. As to the age of criminal responsibility, it fell to individual courts to determine, through interviews, whether children had been aware of the wrongfulness of their actions, especially if the child was under 12. In any event, minors should not be mixed with adult offenders in prisons or remand centres.

63. Ms. WILSON said that information on alleged violations of the rights of HIV-positive women, including specific examples, had been provided by Kenyan NGOs.

64. Ms. BONOAN-DANDAN expressed surprise that children were being educated about female genital mutilation when the perpetrators were adults.

65. Ms. BARAHONA RIERA expressed dissatisfaction with the answer given to her question. It seemed that the issue was not one of needing to amend legislation, but rather of ensuring that existing legislation was enforced. Nevertheless, the fact that several draft acts had yet to be approved indicated serious legislative problems.

The meeting rose at 1 p.m.