



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

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**Committee on the Elimination of Discrimination
against Women**
Thirty-ninth session

Summary record of the 799th meeting (Chamber B)

Held at Headquarters, New York, on Friday, 27 July 2007, at 10 a.m.

Chairperson: Ms. Šimonović

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

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

Combined fifth and sixth periodic report of Kenya (CEDAW/C/KEN/6; CEDAW/C/KEN/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Kenya took places at the Committee table.*

2. **Ms. Chelaite** (Kenya), introducing her country's combined fifth and sixth periodic report (CEDAW/C/KEN/6), said that, since ratifying the Convention in 1984, Kenya had fulfilled all the resulting reporting obligations. Its current report had been prepared with the participation of NGOs, civil society and community-based organizations. Since its last report, a Gender Secretary had been appointed with responsibilities for all gender-related policies and programmes; in addition, senior gender officers were being appointed in ministries and parastatal bodies to facilitate gender mainstreaming in their sectors.

3. A new Constitution, incorporating a number of provisions for the advancement of women and the promotion of gender equality, had been rejected in a referendum held in November 2005. However, the Government was continuing to press ahead with the constitutional reform process and hoped that, through minimum amendments, it would still be able to take on board all the requirements of the Convention. In the meantime, an alternative strategy was being pursued, which included a comprehensive review by the Kenya Law Commission of laws on marriage, gender equality and affirmative action, resulting in a number of legislative bills. Thus, the Equality Bill of 2007 defined discrimination in accordance with article 1 of the Convention, while the Employment Bill of 2007 outlawed discrimination on the basis of gender, inter alia, and provided for equal pay for equal work for men and women. The Domestic Violence (Family Protection) Bill, to which the Head of State had recently assigned priority, was currently pending before Parliament, as were the Matrimonial Property Bill and the Affirmative Action Bill.

4. The Government recognized its responsibility for ensuring lasting improvements in human rights promotion and protection, especially for women, and was accordingly developing a National Policy and

Action Plan on Human Rights. Steps had been taken to allow widows and orphans to inherit their deceased husband's or parent's property more easily and to provide poor members of society, who were mostly women, with legal advice and aid.

5. The representation of women in national institutions had increased, thanks in particular to a presidential directive that 30 per cent of all appointments, promotions and training opportunities should be reserved for women, a proportion that was due to be raised to 50 per cent. Both in the judiciary and in the diplomatic corps, the number of women had risen between 2003 and 2007, while at parliamentary level there were more women members than ever before, including two at the head of key ministries.

6. The Government had taken several measures to address the problem of gender violence, by establishing a police station specifically for victims, setting up gender desks in all police stations and training law enforcement officers in gender issues. Of particular importance was the enactment in 2006 of the Sexual Offences Act, monitored by a multisectoral task force made up of representatives of key ministries and civil society. Strict enforcement of that Act and of the Public Officer Ethics Act of 2003 would put an end to sexual harassment in the workplace.

7. Female genital mutilation and early marriage had been outlawed by the Children's Act, 2001; enforcement was, however, hampered by social and cultural resistance. In addition, victims were often reluctant to denounce those responsible, who were mainly family members on whom the household was financially dependent. Measures had therefore been taken to ensure their arrest and to promote community involvement in efforts to curb such practices, through discussions between elders and youth, training programmes, the development of educational materials and awareness-raising campaigns, supported by NGOs and faith-based organizations. Traditional circumcisers were encouraged to engage in alternative income-generating activities and to become agents of change in their communities.

8. In education, gender parity had been achieved at primary level, while loans and bursaries were available to allow needy children to benefit from secondary and higher education. Efforts were likewise being made to increase the enrolment of children with special needs, which was still very low, particularly in the case of

girls, and to improve literacy levels throughout the population, the goal being to achieve gender parity by 2015. The empowerment of women was also being sought in the economic sphere, notably through microfinance and self-help support schemes and the creation of a fund to facilitate business creation and development initiatives among women.

9. While Kenya was not yet a party to the Optional Protocol to the Convention, the Government was seeking to ratify it and had in 2006 set up an inter-agency committee to that end. A stakeholders' forum was also scheduled for October 2007 to make recommendations on the matter.

10. She concluded by expressing her Government's support for more frequent meetings of the Committee and its determination to ensure stricter enforcement of existing laws and the enactment of pending bills in keeping with the principles of the Convention.

Articles 1 to 6

11. **Mr. Flinterman** said he had been dismayed to learn of the Kenyan people's rejection of the new Constitution, and particularly sad to learn from the responses to the list of issues and questions (CEDAW/C/KEN/Q/6/Add.1, p. 4) that the reason had been its gender equality provisions. He asked whether the proposed minimum amendments would concern gender equality issues and requested information about the time frame for their adoption and for the constitutional review process, as well as for the amendment of existing laws that were not in conformity with the Convention. It would also be useful to know whether the 2007 Equality Bill contained specific provisions on gender equality, and the time frame for its enactment. He inquired about the steps taken to give effect to the recommendations of the dissemination workshops referred to in the responses, in particular on the elaboration of a simpler version of the Convention for easier understanding by the public at large. Clarifications would be appreciated concerning the policy issues said to be raised by articles 1 and 2 of the Optional Protocol in regard to the sovereignty of the State party. It would also be interesting to learn whether the decision of the Court of Appeal in the Rono case, invoking article 1 of the Convention, as reported in the periodic report (CEDAW/C/KEN/6, p. 3), heralded a systematic judicial policy or was likely to stand as an exception. He stressed the importance of judicial remedy for victims

of human rights violations and wondered whether the courts were easily accessible to women victims of such violations.

12. **Ms. Tavares da Silva** said that the positive judicial decisions referred to in the periodic report were contradicted by other decisions reported by other sources that seemed to go against the principle of equality for women. For example, there appeared to have been cases where women had not been able to benefit from matrimonial property upon the dissolution of their marriage and others where responsibility for children born out of wedlock had been assigned exclusively to the mother. In view of such decisions, which were unfair to women, there was clearly a need for wide-scale awareness-raising and training for men, particularly among community leaders, religious leaders, media, members of the judiciary, politicians and parliamentarians. She asked whether the fact that the delegation was composed mainly of women was a sign of the scant importance attached by men to issues of gender equality. Finally, she emphasized that article 2 of the Convention called for the implementation of a policy of eliminating discrimination against women "without delay". While there had been some improvements, the pace of change was too slow: legislative bills had been pending for too many years and gender equality policies were still far from being a reality.

13. **The Chairperson**, speaking as a member of the Committee, said that it would be interesting to know the number of men who took part in delegations on gender issues. Additional information should be provided on the incorporation of the Convention into domestic law and the use of its provisions following the rejection of Kenya's draft constitution in 2005.

14. **Ms. Chelaite** (Kenya) said that two men had been unable to join the delegation on that particular occasion because of unforeseen problems with travel arrangements. In general, there was a strong presence of men in the Government's delegations to meetings on gender issues.

15. **Ms. Baraza** (Kenya) said that it was unfortunate that some political factions had presented the draft constitution's gender provisions as undesirable. However, the Government had not given up its efforts to enact legislation aimed at promoting gender equality. The 2007 Equal Opportunities Bill defined discrimination in accordance with the Convention and

would ensure women's rights to equal employment opportunities and property inheritance.

16. The Government considered access to justice for all Kenyan citizens to be a pressing concern and the National Commission on Gender and Development had been given instructions to draft bills on access to justice and legal aid. With regard to whether the decision in the Rono case heralded a change, he said that the Convention had been invoked in another two court cases in 2007 and it seemed that those cases would serve as a precedent. In spite of the rejection of the draft constitution, the Government fully intended to continue its efforts to carry out reforms aimed at increasing women's participation in Parliament.

17. While it was true that the court had ruled, in one case, that a woman deserved only 25 per cent of the matrimonial property and that, in another, it had ruled that a child born out of marriage was the sole responsibility of the mother, the Government was taking steps to address those issues. A new Matrimonial Property Bill, which aimed to ensure the equal distribution of property had been submitted to the Office of the Attorney General for approval; of course, enactment of legislation was a lengthy process in Kenya.

18. **Ms. Kamau** (Kenya) said that constitutional review remained a priority for the Government but was a contentious issue. However, gender issues were top of the Government's agenda. With regard to the ratification of the Optional Protocol, the Government had established an inter-ministerial committee to study the potential impact of the protocol on domestic legislation.

19. **Ms. Saiga** said that it seemed that the Government's bills on gender issues, if passed by Parliament, would be at odds with the existing Constitution. It would be interesting to learn more about the national machinery responsible for coordinating gender policies, including its staffing levels and budget allocation. Additional information should also be provided on the status, function and staffing levels of the National Commission on Gender and Development. It would be useful to have clarification on the role and functions of the Gender Secretary and the relationship between the sessional paper on gender equality and development and the Plan of Action to implement the national policy on gender and development.

20. **Ms. Dzombo** (Kenya) said that the Government had made significant progress in establishing the national machinery required for promoting gender policies. The Department of Gender had been established within the Ministry of Gender, Sports, Culture and Social Services; with only 12 staff members, it had limited capacity, but it would serve as the coordinating body for the gender focal points in other ministries and local government offices. The Government had also set up the National Gender Commission as an advisory body. The post of Gender Secretary had been created to promote gender issues and it was the responsibility of the Gender Secretary to report directly to the Permanent Secretary. In addition, gender officers had been given the task of carrying out gender mainstreaming in the ministries. While the Ministry had not been given a large budget, the recruitment of gender officers would address some of the staffing concerns. The national policy on gender and development provided a framework for the advancement of women in the political, social, economic and cultural areas while the sessional paper provided a framework for the implementation of the policy.

21. **Ms. Arocha Domínguez**, while commending the Government for its efforts to address the problem of gender stereotypes, expressed concern that many of the legal provisions envisaged had not materialized or had not been put into practice. It would be interesting to know what steps had been taken to address the problem of gender stereotypes in remote parts of the country where there was a high illiteracy rate.

22. Noting that there had been a decrease in the practice of female genital mutilation, she said that additional information should be provided on the steps being taken to work with religious leaders to stop the practice and attempts were being made — if any — to use non-governmental organizations to raise awareness about the need to stop the practice. Additional information should also be provided on the work being done to combat discrimination and violence against disadvantaged women, including the elderly, disabled women, widows and orphans.

23. **Ms. Coker-Appiah** said that the Government should be commended for its efforts to address the problem of stereotypes in view of the fact that cultural traditions were deeply rooted in Africa. However, it remained unclear how the Government's efforts to tackle discrimination through the Equal Opportunities

Bill could have any impact if the Constitution permitted discrimination in matters of personal law, divorce, inheritance and adoption. The reporting State should also clarify whether the Equality Bill was the same law as the Equal Opportunities Bill. Additional information should be provided on the research that had been commissioned by the Government on the links between stereotypes and violence against women and the low social standing of women.

24. **The Chairperson**, speaking as a member of the Committee, noted that the Domestic Violence Bill, which had been drafted eight years earlier, was still pending. She wondered what was standing in the way of its adoption.

25. She enquired why the National Action Plan for 1999-2019 set the target for reducing the number of girls undergoing female genital mutilation at only 40 per cent and whether the prohibition on female genital mutilation for girls under 18 could be extended to cover adult women as well. Additionally, she would like to know what the Government was doing to change people's perception of the practice. Were there any plans, for example, to change its classification in the Penal Code from assault to a more serious offence, such as grievous bodily harm?

26. **Ms. Suda** (Kenya) said that, whereas, in the past, textbooks had portrayed women mainly in traditional domestic roles, they now conveyed the message that women could play any role, depending on their individual abilities.

27. One of the most important measures the Government had taken with regard to female genital mutilation was the implementation of the Children's Act, which not only outlawed female genital mutilation, but also addressed related cultural practices, such as forced marriage of minors. The Government was also working with religious leaders and other civil society organizations and was seeking to promote candid discussion of the subject between elders and youth. That was important because the practice was deeply entrenched in many cultures in Kenya. It was also working with civil society organizations and development partners to identify possible alternatives to female circumcision as a rite of passage.

28. Regarding steps being taken in remote parts of the country to deal with problems in access to education, the Government was working on several

initiatives, such as mobile schools to serve pastoral communities and other migratory populations. At the secondary and post-secondary levels, several policy measures had been taken, including affirmative action for girls seeking admission to public universities. As a result, women's access to university education had improved considerably.

29. With respect to discrimination against elderly women and women with disabilities, Kenya recognized that such women had specific needs and concerns and had put in place institutions and structures to address them. Examples were the National Council for Persons with Disabilities and the Disability Act.

30. **Ms. Baraza** (Kenya) agreed that as long as the clawback provisions remained part of the Constitution, it would be impossible to achieve true gender equality. Responding to Ms. Coker-Appiah's question, she said that the Equality Bill covered non-contentious issues, such as equal opportunities in respect of elected and appointed positions, but it did not really address the contradiction inherent in section 82 of the Constitution. The Equal Opportunities Bill covered equality issues beyond gender equality.

31. The Domestic Violence Bill had had to be redrafted because it was a policy of the current Government that laws must emanate from the people; that meant seeking the views of Kenyans regarding how the law should deal with domestic violence. In addition, the language had had to be modified, since one of the main obstacles to access to the justice system was that citizens did not understand the language used in laws. To ensure passage, the Law Reform Commission planned to mount a lobbying campaign to sensitize parliamentarians to the need for the law.

32. **Ms. Lichuma** (Kenya) adding to the response concerning discrimination against elderly women, said that the National Commission on Human Rights was about to complete a study on growing old in Kenya. The Government would thus be able to include clear, disaggregated data on the situation of elderly women in its next report.

33. **Mr. Flinterman**, following up on his earlier question, asked whether the proposed minimum amendments to the Constitution were aimed at repealing the clawback provisions and whether the recommendation by the dissemination workshops concerning the formulation of a plan of action for

dissemination of the Convention at the grass-roots level had been implemented. The Committee would also like to hear the delegation's views on what difficulties might impede Kenya's ratification of the Optional Protocol.

34. **Ms. Saiga**, noting the delegation had said that the Equality Bill did not contain any provisions that contradicted the Constitution, enquired whether that was true also of the other three bills under consideration (the Domestic Violence Bill, the Matrimonial Property Bill and the Affirmative Action Bill). If not, given the relationship between the Constitution and other domestic laws, she wondered how it would be possible to implement those bills if they were enacted. Regarding the national machinery for the advancement of women, it should be made clear which department within the Ministry of Gender, Sports, Culture and Social Services was responsible for gender issues.

35. **Ms. Coker-Appiah** observed that Kenya had a large number of both Somali refugees and internally displaced persons. Women and girls in such situations were frequently vulnerable to sexual and gender-based violence perpetrated by officials in charge of refugee camps, and the perpetrators often went unpunished. She asked what protective and punitive measures were in place to safeguard the rights of refugee and internally displaced women and protect them from gender-based violence, and what mechanisms existed to ensure that perpetrators were punished.

36. Noting that tourism, a key economic activity for Kenya, was often associated with prostitution, and that, under Kenyan law, prostitution was illegal for the women who practised it, but not for the men who purchased their services, she said that the Committee would be interested in knowing whether there were any plans to decriminalize prostitution, especially in the case of women and girls who found themselves forced into it by economic necessity.

37. Finally, she asked whether the delegation could provide any information on the impact thus far of the Universal Birth Registration Campaign, particularly in terms of any reduction in the incidence of trafficking in children.

38. **Ms. Lichuma** (Kenya) said that, while she could not speculate what difficulties might impede ratification of the Protocol, she and the rest of the

delegation undertook to try to persuade the Government of the need to ratify it.

39. **Ms. Suda** (Kenya), responding to the question concerning refugees and internally displaced women, said that the recently enacted Sexual Offences Act dealt with all cases relating to sex violence and applied equally to all persons in Kenya, whether they were foreigners or nationals.

40. **Ms. Baraza** (Kenya) said that the Law Reform Commission would be considering the law on prostitution as part of a broader review of the Penal Code. It would seek to establish a definition of prostitution and to determine how it should be treated legally, including whether it should be decriminalized. The views of Kenyans would be sought on the issue. The Commission would also look at the Penal Code provisions on abortion. She noted that the Law Reform Commission had existed since 1982, but it had been inactive for many years and it now faced a large backlog of laws that needed revising.

41. Regarding Ms. Saiga's question about the bills currently pending in Parliament, the aim of the Marriage Bill was to provide a single, simplified and comprehensive marriage law to replace the numerous and diverse marriage regimes that existed at present. The current Matrimonial Property Law had been inherited from the British and dated to 1882. The proposed new law would define matrimonial property and spell out how it would be divided in the event of dissolution of the marriage. Its provisions would not be affected by the clawback provisions of the Constitution. The Domestic Violence Bill would address issues of domestic violence, upon which the clawback provisions had no bearing.

42. **Ms. Kamau** (Kenya) said that trafficking in persons was recognized as a crime under the Sexual Offences Act of 2006. Even before its enactment, there had been comprehensive efforts within the Government to raise awareness among public officials who were in a position to act to prevent trafficking in women and children of both sexes. With respect to the link between sexual offences and tourism, the Government had been working to ensure that hotel owners and operators signed an agreement to be part of an international effort to stop trafficking and sexual exploitation within their establishments. In addition, various Government agencies had been using the media to raise public awareness of the issue of trafficking.

43. **Ms. Chelaite** (Kenya) stressed that, in a large country with more than 45 separate tribal communities, each of which had its own culture and traditions, the implementation of policies and programmes in all spheres took time.

44. Trafficking and prostitution were relatively new phenomena in Kenya. The Government had just earmarked the sum of 1 billion Kenyan shillings for projects designed to empower women, in the hope that such projects would help sex workers, prostitutes and trafficking victims to regain control of their own lives; a similar sum would be allocated the forthcoming year.

45. Around 10 microcredit institutions were currently operating in Kenya, and the Government was encouraging women, particularly those in rural areas, to avail themselves of microcredit facilities. Even in the absence of specific legislation, therefore, the measures introduced to promote women's rights were bearing fruit. She pointed to the invaluable contribution of NGOs, development partners and other relevant stakeholders in that regard.

Articles 7 to 9

46. **Ms. Belmihoub-Zerdani** noted that, despite the ongoing constitutional obstacles to gender equality, there had been progress in many areas. In order to effect lasting change, it was essential to ensure that women were able to participate in political life. The Government must demonstrate its political will in that regard by increasing the number of women appointed to high-level positions in the executive and judicial branches.

47. Recalling that the Committee had recommended that the State party should introduce temporary special measures to strengthen its efforts to promote and elect women to positions of power, she welcomed the introduction of the Political Parties Bill, pursuant to which political parties would not receive funding unless at least one third of their members were female, and stressed the need for further such incentives. Lastly, she expressed concern about Kenya's discriminatory nationality laws and implored the Government to take the necessary remedial measures.

48. **Ms. Zou Xiaojiao** commended the Government for its efforts to promote women's involvement in political life but expressed concern at the slow rate of progress. According to the report, inadequate resources and a lack of confidence prevented women from

entering the political arena. She enquired as to the specific steps being taken to address those issues in a proactive and constructive manner. She also wondered whether any thought had been given to raising awareness of the relevant provisions of the Convention among high-level officials through, inter alia, training and lobbying activities.

49. The United Nations Development Fund for Women (UNIFEM) was supporting the Government in the implementation of programmes designed to encourage women to run for political office. The State party should indicate how many women had participated in those programmes, whether they had had the desired effect and whether any measures had been taken to ensure the sustainability of the programmes if and when UNIFEM withdrew its support.

50. **Ms. Tavares da Silva** requested clarification of the State party's assertion that affirmative action to increase the number of women in Parliament would require a constitutional amendment because the number of seats in Parliament was fixed by the Constitution; introduction of a quota system would merely entail reserving a certain proportion of seats for female candidates. It was clear from both the report and the introductory statement that many Kenyan women were ready and able to occupy decision-making positions. Attempts to appoint more female judges had been successful, and she therefore urged the Government to undertake similar initiatives in other sectors.

51. **Mr. Flinterman** stressed the need to put an end to the glaring discrimination apparent in Kenya's nationality laws, and asked whether bringing those laws into conformity with the relevant provisions of the Convention would result in their being declared unconstitutional by the courts. In that connection, he enquired as to the significance of the decision in *Rono v. Rono*, and wished to know whether judges were aware of their obligation to interpret the Constitution in light of Kenya's international legal obligations. Lastly, referring to paragraph 101 of the report, he urged the State party to eliminate the need for women to obtain the consent of their husbands or fathers before applying for passports.

52. **Ms. Kamau** (Kenya) said that a sessional paper on gender equality and development, setting out a series of measures designed to achieve gender parity in

political and decision-making posts, was due to be resubmitted to Parliament. Moreover, a number of constitutional amendments allowing for greater female participation in the political sphere were being considered in the context of the constitutional review process, and Parliament was currently completing its third reading of the Political Parties Bill.

53. Although patriarchal governance structures continued to hinder women's participation in the political arena, the implementation of a Presidential Directive calling for 30 per cent representation in the civil service had led to a significant increase in the number of women holding high-level positions in key Government departments. In the absence of new legislation on gender equality, executive orders had been used as a way of promoting change.

54. In response to the remarks made by Mr. Flinterman, she said that amending Kenya's nationality laws was a matter of priority because the acquisition of citizenship was vital if women were to assert their identities and exercise their rights. Unfortunately, those laws could be changed only by means of a constitutional amendment; once such an amendment had been adopted, the courts would be obliged to respect its provisions.

55. **Ms. Lichuma** (Kenya) said that, in the run-up to the 2007 general elections, considerable attention was being devoted to women's rights. For instance, the National Commission on Human Rights had launched a campaign entitled "Wise Up", the objective of which was to encourage more women to put themselves forward as candidates for political office. In addition, the United Nations Development Programme and Kenya's Equity Bank had allocated 5 billion Kenyan shillings to programmes designed to support female electoral candidates.

56. **Ms. Chelaite** (Kenya) informed the Committee that more than 100 Kenyan women had already expressed an interest in standing for a seat in Parliament and three women had declared their intention to run for President. Awareness-raising campaigns had played a significant role in that regard.

57. As far as lobbying was concerned, representatives of women's organizations had recently met with the Minister for Gender, Sports, Culture and Social Services in order to demand the establishment of a separate Ministry of Gender. They had made similar requests to all the presidential candidates. She was

optimistic that those efforts would bear fruit and pave the way for further progress in the fight against discrimination against women.

The meeting rose at 1 p.m.