



**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 800th meeting (Chamber B)

Held at Headquarters, New York, on Friday, 27 July 2007, at 3 p.m.

Chairperson: Ms. Šimonović

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The meeting was called to order at 3 p.m.

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

Combined fifth and sixth periodic report of Kenya (continued) (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.*

Articles 7 to 9 (continued)

2. **Ms. Zou**, recalling that the Government of Kenya had decided that women's representation in the public service should be increased to 30 to 50 per cent, wondered whether a deadline had been attached to that target.

3. **Ms. Saiga** asked whether Kenya's citizenship requirements could be altered without a constitutional amendment.

4. **Ms. Kamau** (Kenya) said that the directive regarding representation of women had been effective immediately, and the appointments of women had followed swiftly. The Ministry of Gender, Sports, Culture and Social Services had audited the situation in the public service in order to provide a baseline for the calculation. The practice of requiring women to seek the permission of their fathers or husbands to obtain a passport was clearly discriminatory but could be changed only by means of a clear constitutional amendment.

5. **Ms. Chelaite** (Kenya) said that it was unfortunate that the proposed new constitution had been rejected by the public; that situation had involved a great deal of political manipulation and had delayed improvements in a number of areas.

Articles 10 to 14

6. **Ms. Zou** said that, despite the introduction of free primary education for all, traditional and cultural prejudice against girls attending school appeared to persist, particularly in rural areas. She wondered whether the Government had taken steps to monitor compliance with the compulsory education policy, penalize parents who kept their children out of school and raise awareness of the problem.

7. While she welcomed the substantial sex-disaggregated education statistics provided by the Government, the next periodic report should also give a breakdown of figures between urban and rural areas. She would like to know whether the 35 per cent of girls who failed to complete their schooling dropped out, became pregnant, married at an early age or had some other reason for interrupting their studies, whether there were provisions to enable young mothers to continue their education and whether there were sex education and HIV/AIDS prevention efforts in schools.

8. Recalling the Millennium Development Goal of achieving universal primary education by 2015, and the Education for All policy, she asked what human and financial resources the Government of Kenya had devoted to attaining those aims. Recalling also that there had been no formal assessment of the education policy introduced in 2005, she emphasized that such an assessment should be carried out, as it was the only way to identify remaining problems.

9. **Ms. Suda** said that, when primary education had been fee-paying, parents had tended to send sons rather than daughters to school. The free primary education policy introduced in 2003 had increased enrolment and gender parity in schools. The Government was working with non-governmental organizations, including faith-based groups, to highlight the importance of educating girls, taking care to remain culturally sensitive. Schools themselves organized open days and invited women guest speakers who could be seen as role models for girls, while the Government sought to increase attendance by establishing mobile schools and school feeding programmes.

10. The Government planned to make secondary education free in 2008. In higher education, meanwhile, it had introduced affirmative action in admissions to public universities, where only 30 per cent of students were women. However, the efforts to improve gender equality in admissions must be backed up by efforts to improve the presence of women in the management of educational institutions. Similar efforts were made in adult and continuing education. The lack of data disaggregation by residence (urban or rural areas) stemmed from the research used as a basis for statistics. That shortcoming would be addressed in the next periodic report.

11. Teenage pregnancy and early marriage remained problems, but the Government had a policy of

readmitting young mothers to school. The Ministry of Education was working towards the Millennium Development Goals and Education for All targets by working with other sectors to improve the enrolment of girls.

12. **Ms. Chelaite** (Kenya) said that provincial administrations had been instructed by the President to enforce the compulsory education policy, together with education officers and heads of school. Parents keeping children out of school could be prosecuted under the Children's Act.

13. **Ms. Lichuma** (Kenya) said that the Ministry of Education had worked with the National AIDS Control Council to establish a curriculum on HIV/AIDS for all stages of the education system. The HIV/AIDS Prevention and Control Act referred explicitly to education on prevention. Sex education was a challenge, however, largely because of religious opposition.

Articles 11 and 12

14. **Ms. Halperin-Kaddari** said that, although there was clear evidence of a gender gap in wages, the report had provided insufficient detail on the public sector and almost none on the private sector or on the substantial informal sector. Without such information, it was impossible to gauge progress. She asked the delegation of Kenya whether, in its responses to the list of issues and questions (CEDAW/C/KEN/Q/6/Add.1), it was referring to the situation under the existing Employment Act or the situation as it would be if the pending Employment Bill became law, particularly in connection with equal pay for work of equal value. She asked whether pay equity varied between the public and private sectors and whether the Employment Bill proposed greater protection against harassment and dismissal, especially for women returning from maternity leave. Finally, the restrictions on women's working hours in Section 28 of the Employment Act seemed incompatible with the Convention, article 11, paragraph 3, of which called for a periodic review of protective legislation with a review to repeal or revision where appropriate.

15. **Ms. Kamau** (Kenya) said that the Employment Bill, if it became law, would increase protection of women employed in the public and private sectors alike. The wage gap in the private sector remained a problem, and a baseline must be developed to measure

progress. The Minister of Labour, by publication in the official gazette, could easily revise or amend Section 28 of the Employment Act, which restricted women and young persons from working between the hours of 6.30 p.m. and 6.30 a.m. in industry.

16. **Ms. Suda** (Kenya) said that the Government was unable to provide statistics on the informal sector, which women dominated, as it was by nature unregulated and unstructured. The Women's Enterprise and Development Fund, set up in 2006, would help to empower women economically, particularly if they worked in the informal sector.

17. **Ms. Arocha Domínguez** said that she was particularly concerned that child mortality rates had failed to improve, and wished to know whether mortality and morbidity rates for girls under five were different from the rates for boys, what had caused those rates, and what must be done to meet the relevant Millennium Development Goals.

18. Despite the reduced prevalence of HIV/AIDS, infection rates remained higher in rural areas. She wished to know what prevention and treatment programmes existed for rural women. As non-governmental sources had also indicated higher infection rates in girls and women aged 15 to 24 than in men of the same age, she wondered whether awareness-raising efforts had focused on those who did not attend school.

19. Particularly mindful of the difficulties involved in providing sex education in Kenyan schools, she asked why the number of married women who used contraceptives, particularly the condom, dropped rapidly from an initial 40 per cent to a much lower level after the first year of use and whether any information was available on abortion rates and the effects of abortion on maternal mortality.

20. **Ms. Coker-Appiah**, recalling that the Kenyan Government had pledged to improve maternal and child health services, asked what specific plans had been made to achieve that goal. Recalling also that unsafe abortions contributed to the high rate of maternal mortality, she wondered whether the Government had examined critically the question of criminalization of abortion and whether it had taken steps to convince medical personnel not to refuse treatment to women they suspected of having unsuccessful abortions.

21. Recognizing that — for biological, social and economic reasons — women were more vulnerable than men to HIV and AIDS and that women were also the primary caregivers for people with the condition, she wondered why some of the country's HIV and AIDS strategies did not appear to be targeting those phenomena effectively. One example was the abstinence, faithfulness and condom use policy, which was unlikely to work if women were in an inferior position in their relationships. She wished to know whether the National HIV/AIDS Strategic Plan had taken gender-based vulnerability into account, whether women's poverty stood in the way of access to treatment and whether the human rights of women and girls, including their reproductive rights, were protected if they were living with HIV or AIDS.

22. **Ms. Lichuma** (Kenya) said that her country was progressively implementing the provisions of the Convention in respect of health rights. Responding to the questions on HIV/AIDS, she said that the Government, despite a lack of funding, had experienced a measure of success in the fight against HIV/AIDS. That success was largely attributable to international donors, most notably the World Bank, which had helped fund a number of programmes. In that regard, she urged all international partners to continue their support for the fight against HIV/AIDS in Africa.

23. However, the Government's most significant achievement had been the HIV/AIDS Prevention and Control Bill, which criminalized the knowing transmission of HIV. That law, the first of its kind in Africa, had entered into force in December 2006. The Government would work with civil society and human rights organizations to ensure its effective implementation.

24. Infant and maternal mortality was high because of inadequate health-care facilities, poverty, parents' low educational levels and lack of medicines. In response, the Government had decided to waive all maternal health-care fees in public dispensaries and health centres, a move that was expected to benefit approximately 1.2 million women of child-bearing age. The Government, in cooperation with UNICEF, had also begun a vaccination campaign for children, and the Ministry of Health had started broadcasting an educational radio programme, in local languages, focused on reproductive and infant health. Those programmes and many others, however, required

funding and she hoped that international donors stood ready to provide the necessary assistance.

25. Voluntary HIV testing and counselling centres had been established throughout the country and anti-retroviral drugs were available free of charge at all public hospitals.

26. **Ms. Kamau** (Kenya) said that approximately five thousand women died each year of complications arising from unsafe abortions and that 70 per cent of admissions to gynaecological wards were the result of the consequences of such abortions. Although abortion was not illegal, access to safe abortion services was severely limited. Under the current law, two doctors must agree that a woman's health was in danger before she could terminate her pregnancy. However, despite the contentiousness of the issue, the medical and legal communities had lobbied intensively for a decrease in the restrictions on abortion in the public health system.

27. The Ministry of Health had also instructed all public health centres that any woman who had been sexually assaulted, and who had presented herself in a public health centre within a 72-hour period after the occurrence of such an assault, was eligible to receive emergency contraception, counselling and anti-retroviral treatment.

28. **Ms. Suda** (Kenya), recalling the question on the quality of medical care and its relationship to maternal mortality, said that, in addition to the distance of maternal health clinics from rural areas, the attitude of health-care providers deterred women from making use of the services available to them. The Government, in response, had established a number of pilot maternity clinics where best practices were followed, in order to ensure that pregnant women could receive the care they needed. That initiative, along with a number of others, had begun to have an effect on the number of HIV/AIDS infections, as well as on maternal mortality and morbidity.

29. **Ms. Tan**, noting that the majority of women lived in rural areas and were engaged in farming, was pleased that the National Agriculture and Livestock Extension Programme had been extended and asked for more information on the areas covered and on the knowledge and expertise being disseminated to the rural community.

30. She noted from the report that some of the biggest obstacles to the implementation of the draft

national land policy were customary land-right laws and wondered whether the Government had established any programmes to educate the rural community about women's land rights. Recalling that the policy did not specifically cater to female agricultural employees, she asked whether the Government planned to implement any policies to assist both male and female agricultural workers.

31. Finally, noting that women had access to credit from non-banking institutions which did not require collateral, she asked for information about those institutions, including their number and distribution, and data on the loans disbursed to women.

32. **Ms. Kamau** (Kenya) said that, as part of the National Agriculture and Livestock Extension Programme, the Government, working through the provincial administrations, had undertaken numerous efforts to sensitize rural communities to the contributions that women made to rural life and the support that men could offer them. The Government had also initiated a number of policies and measures aimed at giving women greater control over money. For example, Government agencies that supported agricultural development now required that both women and men have a say in how any credit granted was to be used. While such policies had been somewhat successful, cultural practices and the remoteness of rural communities had restricted their reach and effectiveness.

33. No exact figures were available for the number of women reached by efforts aimed at disseminating the national land policy. Working jointly, the Government and civil society had encouraged extensive consultation and deliberation on that policy in view of the effect that it would have on rural communities and of its far-reaching implications for land ownership and usage.

34. **Ms. Suda** (Kenya) said that, historically, the provision of extension services had been disproportionately attuned to the needs of large-scale farmers; women had had very limited access to such services because they were in charge of small subsistence farms. The Government, recognizing that small subsistence farms were contributing substantially to GDP, and that such farms were owned predominantly by women, had decided to restructure and reorient extension services to cater to the needs of enterprises owned by women.

35. With respect to land ownership, women had traditionally enjoyed only usufructuary rights. Having no collateral to pledge, they had been able to obtain credit only from non-formal financial institutions. In that regard, the two-billion-Kenya-shilling Women's Enterprise Development Fund was expected to be a major turning point in the economic empowerment of women.

36. **Ms. Dzombo** (Kenya) said that the Fund was to be administered by the Ministry of Gender, Sports, Culture and Social Services. To ensure that rural women would be able benefit from that Fund, the Government had sought expressions of interest from microfinancing institutions all over the country that served such women. In addition, grants had been made to rural women through various Government entities, such as the Agricultural Finance Corporation (AFC).

37. **Ms. Chelaite** (Kenya), stressing that, unlike the previous Government, the current Government targeted its policies on rural women at the grass-roots level, said the Government had established committees at the district and division level to ensure that credit was available to rural women.

38. **Ms. Halperin-Kaddari** wondered what protection, both under the current law and under proposed legislation, was offered to persons who sued for the right to equal pay and the right to take maternity leave without fear of termination.

39. **The Chairperson**, speaking as a member of the Committee, and recalling the comment that had been made by the delegation on the progressive realization of equal access to health services, said that States parties, under article 2 of the Convention, must pursue without delay a policy of eliminating discrimination against women.

40. **Ms. Kamau** (Kenya) said there were several means by which women who had been discriminated against could seek redress. The first line of protection was the trade unions, which could take action on behalf of their members against employers. Aggrieved parties could also turn to the Kenya Industrial Court, which was specialized in employer-employee dispute resolution, or to the Kenya National Human Rights Commission, which had a committee dedicated to labour issues. Finally, civil society organizations offered free advice to workers involved in labour disputes.

41. **Ms. Lichuma** (Kenya) said the National Human Rights Commission mediated many type of disputes, including labour disputes. Although no disaggregated data were available, many dismissal matters were brought before the Commission and resolved through mediation.

42. **Ms. Baraza** (Kenya) said the provision in the draft constitution which guaranteed the right to maternity leave enjoyed universal support among Kenyans. However, it was unclear when the new constitution would enter into force in view of its rejection by the Kenyan people in a recent referendum.

43. **Ms. Chelaite** (Kenya) said that the employment act currently being debated in Parliament addressed most of the labour-related issues that had been raised by the experts. In addition, there was a committee of Parliament whose remit was to investigate labour issues and advise the relevant ministries on the appropriate action to be taken.

Articles 15 and 16

44. **Ms. Belmihoub-Zerdani** said that there were many difficulties with article 16. According to the report (para. 166), the principle of equality established in the Constitution was contradicted by claw-back provisions that negated the right to equality as far as personal laws were concerned. Accordingly, a woman could have any role in public life, including Head of Government, but would not have equality in her personal life. There were five different categories of marriage and divorce and, as there was no definition of discrimination as provided for in article 1 of the Convention, there was discrimination against various groups of Kenyan women. Kenya was not the only country to have inherited laws and a constitutional system from the United Kingdom. Other African countries in the same position had found ways to change the situation. There should be one civil marriage code that applied equally to everyone, while those who wished additional religious or other forms of marriage could have them.

45. She asked whether any progress had been made with the new law on marriage and divorce that was to be presented to Parliament in June 2007, as indicated in the response to question 27 (CEDAW/C/KEN/Q/6/Add.1). She was prepared to offer her services to assist in efforts to find a solution. The top priority for Kenya should be domestication of the Convention, as otherwise its ratification served no purpose.

46. **Ms. Tan** asked for more information on the provisions of the new marriage law. According to the report (para. 168), many women were in favour of polygamous marriages. She asked whether any study had been made of women's views concerning the advantages of a polygamous marriage and requested details on the number of such marriages in Kenya. She wondered how many wives were allowed under customary law and in de facto unions and whether all wives had the same rights. She also asked whether a wife was entitled to maintenance for herself and her children in the case of divorce or breakdown of the relationship, whether they received a share of the husband's assets and whether those assets were shared with the other wives. She was interested to know whether those matters were covered in the proposed review of the marriage law.

47. According to the report (para. 169), only the mother was bound to maintain a child that was born out of wedlock, but the Children's Act was currently being interpreted by the courts. She asked whether the Act would be revised to include provisions for biological fathers to support children born out of wedlock.

48. She requested more information on court judgements in women's favour in cases concerning cohabitation. As the number of cohabiting couples was increasing, she wondered whether any figures were available, and whether there were plans to institute laws on such unions to ensure legal protection for those involved, especially the women.

49. She asked about the provisions for women's property rights in the Matrimonial Property Bill that was currently being prepared and about its current status.

50. **Ms. Halperin-Kaddari** shared the frustration over the current laws governing marriage and divorce in Kenya. Those laws were a substantial area of concern: if a woman was not autonomous in that area of life, then the whole Convention had no meaning.

51. She asked about the current law, how it was going to be changed and whether all the discriminatory provisions would be abolished by the new law. More specifically, in relation to polygamous marriages, she requested clarification of the reference in the report (para. 168) to the fact that, according to some types of customary law, a wife could not be granted "custody of children or maintenance of self".

52. She also asked for clarification of the apparent contradiction whereby mothers were solely responsible for children born out of wedlock, although both parents were obliged to provide maintenance for children.

53. She wondered whether there were any figures available on early marriages, whether such marriages had been criminalized and, if so, whether there was any kind of enforcement. She was interested to know whether the discriminatory inheritance provisions of Mohammedan Law would be abolished in the new law. She asked whether the discriminatory practice of bride price was going to be abolished and requested information on the definition of marital property that was included in the new Matrimonial Property Act.

54. **Ms. Baraza** (Kenya) said that the existence of so many different legal regimes for marriage in Kenya posed a problem. They were very complex, and the procedures for dissolution of marriage were also disparate. Accordingly, the Law Reform Commission was trying to establish a single comprehensive marriage act. A draft had already been prepared and it should be validated on 13 and 14 August. All national stakeholders had been invited to join the process and the law would then be sent to the Ministry for subsequent discussion in Parliament.

55. It was indeed frustrating that in Kenya a woman could take on any public role and yet have no control of her personal life. An attempt to address that issue in the draft of the new constitution had been defeated, and the crippling claw-back provision remained in place.

56. The domestic violence bill had been drafted eight years previously, without any results being achieved, and the efforts to reform the marriage laws had begun in 1968. The text of a comprehensive marriage law had been drafted by a task force, but had never been accepted, although in 1972 the United Republic of Tanzania had based its own very comprehensive law on the same draft. One of the reasons for the lack of success was the issue of polygamy, as the draft bill had recommended that it be abolished. Most men in Kenya were polygamous, including those who debated the law in Parliament. Abolishing polygamy was therefore not a realistic goal in Kenya's current circumstances and, indeed, many women said that they were happy as co-wives. It was therefore impossible to pass a law that complied with all the provisions of the Convention.

57. De facto unions — including the “come-we-stay” variety — were recognized under common law.

Recognition, however, was not automatic and, if a relationship broke down, there were problems in relation to the property accumulated during its existence. The standard of proof for “come-we-stay” unions was quite high. One recommendation of the Commission had been to see how presumed marriages could acquire greater security through registration. The draft that would soon be presented in Parliament proposed, among other things, that all marriages, however contracted, should be registered.

58. She could not promise the Committee that polygamy would be abolished, but there was at least a plan to ensure that every married woman should have her own marriage certificate. Another recommendation was that a certificate should be granted for a presumed marriage after two years.

59. The Task Force on Laws Relating to Women had reported that polygamy was favoured by a majority of Kenyans, but she did not have exact statistics. As for the number of wives permitted, African customary law allowed any number. One of the aims of the Matrimonial Property Bill was to establish a fair system for sharing matrimonial property, so that the share of the second wife would not affect the share of the first wife, and so on.

60. The draft law provided a definition of matrimonial property, as there was no substantive law on that subject. Until the new bill had been validated, it was not clear what definition would be used, as it was a controversial issue. Initially, matrimonial property had been defined as the matrimonial home and the land around it used for feeding the family. In the event of a break-up, that property should be shared on an equal basis. Other property acquired during marriage could be subject to proof of contribution.

61. According to the Children's Act, both parents were to provide for a child whether born in or out of wedlock. The issue currently being contested in court related to the fact that the father of a child born out of wedlock had to go to court to claim paternity.

62. The number of cohabiting couples in Kenya was increasing as fewer young people were going to church to get married or registering their marriages. When there was a break-up, the relatives would sometimes deny that the marriage had existed, sometimes even after a long period of cohabiting and when children had been born to the couple.

63. According to the current law, girls could get married at 16 years with parental consent. The reform was expected to harmonize the law with the Children's Act, which set the age of majority at 18 years.

64. Islamic law was a very contentious issue in Kenya. Many women said that they were happy with the division of property according to the Koran. The draft constitution had included a provision that did not make any sense to a human rights lawyer under which Muslims were exempt from equality provisions.

65. **Ms. Lichuma** (Kenya) wished to clarify that her country did not lack understanding of the Convention. Kenya was adopting a participatory approach and calling on the Kenyan population to express its wishes. The results were bound by those limitations, as any law that was unwelcome would not work.

66. **Ms. Chelaite** (Kenya) said that her delegation invited Ms. Belmihoub-Zerdani to visit Kenya in order to see what could be done to move forward on some of the issues that they had discussed. Kenya welcomed all visitors, and also any funds that could be offered to help with implementation work. She expressed appreciation to the agencies that had provided assistance, including UNFPA, UNIFEM in connection with health issues, and the World Bank in the area of HIV/AIDS.

67. **Ms. Chelaite** (Kenya) said that her delegation appreciated all the work done by the Committee for Kenya. It looked forward to receiving the comments and recommendations of the Committee, and would disseminate them and act on them. She thanked the Chairperson and all the members of the Committee and invited them to visit Kenya.

68. **The Chairperson** thanked members of the Kenyan delegation for their very useful answers. The Committee hoped that its concluding comments and recommendations would help to bring about changes at the national level in terms of implementation of the Convention. In relation to the invitation to visit Kenya, she hoped that in the future the Committee would develop follow-up procedures or seminars on its concluding comments, which could provide an opportunity to see the results of its work. The Government clearly had the political will to make progress with all the greatly needed law reforms that would allow implementation of the Convention.

The meeting rose at 5.15 p.m.