

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 39<sup>TH</sup> SESSION (23 JULY – 10 AUG 2007) KENYA, 5<sup>TH</sup> & 6<sup>TH</sup> PERIODIC REPORTS

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### Information Submitted to the Committee

On 27 July 2007 Kenya submitted its fifth and sixth combined periodic reports under the *Convention on the Elimination of All Forms of Discrimination against Women* (the Convention), as well as written responses to the list of issues and questions raised by the Committee on the Elimination of Discrimination against Women (the Committee).<sup>1</sup> The Kenyan delegation was led by Ms. Alicen Chelaite, the Assistant Minister for Gender, Sports, Cultural and Social Services.

The Convention was ratified by Kenya in 1984 without reservation or declaration. Kenya has not yet ratified the Optional Protocol to the Convention.

Since its last report in 2003, the most significant, and discouraging, development in Kenya has been the rejection by referendum of the 2005 draft constitution which would have made significant progress on issues of gender equality. The delegation explained to the Committee that the provisions for gender equality became a political issue surrounded with propaganda which, unfortunately, convinced many Kenyans that gender equality would not be a positive step.

In its opening statement, the delegation acknowledged that “gender equality under the Constitution remains a challenge.” In an effort to comply with the provisions of the Convention, the Government has undertaken a

<sup>1</sup> <http://www.un.org/womenwatch/daw/cedaw/39sess.htm>.

review of legislation affecting gender equality through the Kenya Law Reform Commission (KLRC). This effort has produced four pieces of draft legislation aimed at addressing inequality. These bills are the Domestic Violence (Family Protection) Bill, the Matrimonial Property Bill, the Equality Bill and the Affirmative Action Bill.

While highlighting the progress made in the last four years, the delegation and the report did draw attention to the significant hurdles the country faces in achieving gender equality, especially in the areas of political participation of women, education, employment and matrimonial laws.

A shadow report submitted by the Federation of Women Lawyers – Kenya (FIDA Kenya) on behalf of 13 women’s organizations sought to analyse all aspects of the implementation of the Convention by Kenya, and proposed questions and recommendations to the Committee.<sup>2</sup> The shadow report emphasises its concern regarding the “Government’s minimal commitment to the advancement of women.”<sup>3</sup>

Kenya is party to a number of international instruments including the *Convention on the Elimination of All Forms of Racial Discrimination*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *Convention on the Rights of the Child*.<sup>4</sup>

## Themes and Issues<sup>5</sup>

### National Machinery

In its opening statement and responses the delegation explained new developments in its national machinery including the creation of a Gender Secretary in the Gender Department of the Ministry of Gender, Sports, Cultural and Social Services and a Gender Commission as a lobby and advisory body to the Government. The delegation presented these developments as an overall positive step towards gender equality, although they described the budgetary allocation as ‘pathetic’.

The Gender Secretary is charged with the formulation and implementation of gender development policies and programmes, promoting gender mainstreaming in both the public and private sector, compiling sex disaggregated data and providing guidance to the various national programmes. The national Gender Commission is an independent body within the Ministry of Gender mandated to advise on gender issues.

The delegation also called attention to the Government’s Paper #5 of 2005, which was approved by Parliament and is intended to provide a framework for creating awareness on gender policies, issues and discrimination. The Committee commended the commitment of the Kenyan Government to enacting the Convention’s provisions but expressed concern about the pace of implementation and the lack of strategies for implementation. The delegation explained that the new draft legislation, to be reviewed by Parliament soon, would alleviate many of the Committee's concerns.

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<sup>2</sup> A Shadow Report to the 5<sup>th</sup> and 6<sup>th</sup> Combined Report of the Government of Kenya, on the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), available at <http://www.iwraw-ap.org/resources/pdf/Kenya%20SR%20final.pdf>.

<sup>3</sup> A Shadow Report to the 5<sup>th</sup> and 6<sup>th</sup> Combined Report of the Government of Kenya, on the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Ibid Pg 4.

<sup>4</sup> <http://www.ohchr.org/english/law/index.htm>.

<sup>5</sup> For a more comprehensive description of the dialogue between the delegation and the Committee please refer to the United Nations press briefing, available at <http://www.un.org/News/Press/docs/2007/wom1644.doc.htm>.

## **Political Representation and Participation**

Committee members expressed concern that the number of women in government is low and that progress on this issue has been slow, even though the Committee recognised that challenges arise from both cultural tradition and the lack of societal understanding about the importance of women's participation. The Committee welcomed the quota of 30 per cent for women in government ministries, and also that in some areas, this quota would be raised to 50 per cent in the future.

The delegation recognised the concerns of the Committee. They discussed a broad range of efforts currently undertaken and some measures on the horizon to help address these gender disparities. The Political Parties Bill, which is now in its final stages of preparation, was anticipated to have an impact on the number of women coming into Parliament. The delegation also spoke about the Equity Bank created in conjunction with the United Nations which has funds available for female candidates. The delegation also drew attention to sensitisation efforts in communities which have increased the number of women declaring their interest in political posts.

## **Education**

The delegation drew attention to the 2003 introduction of free primary education which has led to gender parity in primary schools in Kenya. The delegation also discussed steps taken to provide loans and bursaries for children pursuing secondary and higher education and that the Government had undertaken a comprehensive review to identify and remove stereotypes from textbooks. Finally, the delegation discussed the creation of a national Gender and Education Policy which will recognise and address the issue of gender inequalities in schools.

The Committee commended the Kenyan delegation on the steps already taken in the area of gender equality in education while simultaneously enumerating a list of concerns or areas for additional work to be done. The Committee noted the disparity between the urban and rural populations, noting that nearly all of the success in gender equality is in urban areas, while poverty and stereotypes still persist in many rural communities.

The delegation acknowledged the gap between rural and urban communities in regard to education and described several programs designed to increase school enrolment in the more remote areas. The delegation outlined that the creation of mobile schools, increased efforts at sensitisation in communities, and school feeding programmes have all provided an impetus for change in the rural areas. Finally, as part of the 2001 Children's Act, the Government has also appointed provincial representatives and headmasters to monitor locally that every child actually attends school.

## **Employment**

The Committee commented that the information in the State report regarding employment was inadequate and missing many relevant statistics. While the report noted a wage gap with respect to men and women exists, there is no accompanying data to elaborate. The Committee also questioned the delegation on women's participation in the informal sector of the economy.

The delegation acknowledged that much of the available information and the statistics related to the public sector only. They further commented that it is challenging to get statistics for the female-dominated, less structured informal economy.

In addition to the proposed Employment Bill, which will provide equal remuneration for work of equal value, the delegation discussed a draft paper on employment policy. This paper, the Economic Recovery Strategy for Wealth and Employment Creation, aims to promote full employment by creating approximately 500,000 jobs

a year. Further, the delegation noted the creation of the Women Enterprise Fund, located in the Ministry of Gender, the goal of which is to empower women economically.

### **Judicial Access and Relevant Decisions**

The delegation frankly explained to the Committee that access to courts remains a challenge for women. The delegation assured the Committee that this is an important area to the Kenyan Government and that there are efforts in place to remedy this situation. One such tactic is the drafting by the KLRC of the Legal Aid Bill. The delegation expressed confidence that, by the next report, they would be able to report on the positive developments of this and other pending legislation.

The Committee and the delegation discussed two recent judicial decisions relevant to provisions of the Convention. In the first, *Mary Rono vs. Jane Rono and William Rono* in the Kenyan Court of Appeals, the judge used Article One of the Convention. Since this decision, Article One has been invoked in one other case. The delegation expressed hope that this was the beginning of a precedent for using the Convention in deciding cases.

The Committee asked if Kenyan judges were aware of the requirement required to use international conventions when considering cases before them. This question came in light of the case of *Peter Mburu Echaria vs. Pricilla Njeri Echaria*, where the Kenyan Court of Appeal held that neither domestic duties in the home nor the status of marriage entitled a woman to a share of the matrimonial property. Previously, case law ensured that women received 50 per cent of matrimonial property. The delegation further commented that the case should not be seen as overturning previous case law completely. Rather, the judgement stated that it was the responsibility of the Parliament to make the laws, not that of the courts.

### **Health and Access to Care**

The Committee noted the adoption of several important measures in Kenya regarding healthcare. They also commented on several areas that remain a concern to the Committee including maternal and child mortality, abortion, HIV/AIDS, and access to care.

In addressing the issue of maternal and child mortality, the delegation pointed out that it is not just an issue of access to healthcare which remains a challenge, but the closely interrelated issues of poverty, education and distance to facilities. The delegation also noted that in the case of abortion over 60 per cent of women who arrive at gynaecological centres are there as a result of unsafe abortions and their pursuant complications.

In respect to HIV/AIDS, the delegation acknowledged the concerns of the Committee especially the higher rates of infection in rural populations and in 15 to 25 year-old women. While HIV/AIDS rates are in a clear trend of decline in Kenya, the delegation enumerated a variety of programs designed to continue this downward trend including more testing sites and a National AIDS Control Council.

The delegation explained that access to healthcare is still limited. Additionally, when Kenyans arrive at a healthcare clinic they may be faced with inadequate services and supplies, or a low quality of care. This issue is especially true for women who have been suspected of trying to abort a pregnancy, in which case many healthcare providers will not provide treatment without a full explanation of the health situation.

### **Trafficking, Prostitution and Vulnerable Populations**

In a series of questions, the Committee asked for information on the interrelated issues of human trafficking, prostitution and the status of vulnerable populations within Kenya. The Committee noted that trafficking in Kenya is a problem with the frequency of child trafficking seemingly on the rise.

The delegation explained to the Committee that there are comprehensive efforts underway to sensitise government officers who may be in a position to stop trafficking in children, as well as to support media campaigns, and to bring hoteliers into the effort to curb trafficking. The delegation again called attention to efforts such as the Women's Enterprise Fund, noting that in rural areas increased access to credit and grants would help to curb child trafficking, given that such trafficking is an issue closely interlinked with poverty.

The Committee listed several concerns regarding prostitution in Kenya, including that groups of women and girls who are already marginalised are often those that enter prostitution. In addition to being marginalised, the women involved in prostitution face criminal charges whilst any other parties involved do not. The Committee noted that an increase in tourism may strengthen this cycle with an increased demand for prostitution. The delegation acknowledged that the penal code is in dire need of review and that the KLRC needs to address this issue. The delegation again commented on programs intended to economically empower women, especially those dealing with commercial sex or prostitution.

Finally, the Committee questioned the delegation on the status of vulnerable populations in Kenya, especially Somali refugees and internally displaced persons. Women and girls in these groups face double or multiple levels of discrimination. These individuals, especially those living in poverty, are particularly vulnerable to trafficking, prostitution and violence. The delegation responded that the Sexual Offences Act applies equally to nationals and refugees alike.

### **Violence against Women**

In its opening statement, the delegation drew attention to several important steps to combat violence against women, whilst admitting that violence against women has actually increased. One of the significant steps forward in this area is the adoption in 2006 of the Sexual Offences Act that led to the creation of a task force comprised of members of relevant ministries and civil society to prepare a national policy for its full implementation. It is hoped that the Domestic Violence (Family Protection) Bill will help to eliminate violence against women in the home.

Since its last report, incidences of Female Genital Mutilation (FGM) have decreased. However, as the delegation noted, FGM lies at the core of cultural practices and remains extremely difficult to eradicate. A positive development has been the Children's Act which outlaws FGM for girls less than 18 years of age. Participation of religious leaders, the provision of alternative rights of passage, and community sensitisation efforts are slowly shaping community beliefs.

### **Matrimonial Laws**

The Committee regretted to note that Kenya still lacks a comprehensive marriage law that encompasses the rights of women in all six of the types of marriage recognised in Kenya. The rights of women entering into marriage in Kenya are governed by separate laws for each type of marriage and in the case of dissolution the legislation is, at best, complicated.

Particularly complex is the institution of polygamous marriage which is supported by a majority of Kenyans. The delegation noted that this situation, combined with the fact that many Parliamentarians themselves are polygamists, makes it unlikely that the practice will be outlawed.

The delegation called attention to the Matrimonial Property Bill which, if adopted, would provide a systematic approach to matrimonial property division in the case of dissolution of marriage. Currently, matrimonial property is governed by the Married Women's Property Act of 1882 and is more procedural than substantive. In light of the recent *Echaria vs. Echaria* case discussed above, the delegation expressed the importance of a clear law that defines property and its division.

The Committee also noted the discriminatory nature of nationality and passport laws in Kenya. Article Nine of the current Kenyan Constitution stipulates that the father's nationality determines the nationality of the children. The Committee recommended that this be changed without delay. The Committee also called attention to the fact that women must obtain the permission of their father, if single, or if married, their husband, to obtain a passport. Both the Committee and the delegation lamented that a woman in Kenya could theoretically hold the highest office in the country, but still be unable to obtain a passport without permission from her husband or father.

The delegation acknowledged that the current state of nationality and passport laws is unacceptable, and noted that the issue of nationality is one that is currently being considered in a group of reforms. The delegation expressed hope that the passport legislation would be changed in the Constitutional review process and that Kenyans would recognise that this as a positive step for gender equality.

### **Optional Protocol**

The Committee questioned when Kenya would be likely to ratify the Optional Protocol. The delegation did not have a specific timeframe for ratification. They did however draw attention to the creation of an inter-ministerial committee to investigate the implications of ratifications of optional protocols of all international conventions to which Kenya is party, which the delegation saw as a positive development.

### **Conclusions and Next Steps**

The Kenyan delegation reported to the Committee in an honest and frank manner. Several members of the delegation expressed frustration at the current state of gender issues during its responses. The delegation emphasised the importance of partnerships with NGOs and multilateral institutions and called out to the donor community to continue in its efforts in all areas affecting gender equality. The delegation repeatedly underlined the impossibility of change overnight.

In its closing remarks, the delegation assured the Committee that any recommendations would be carried out insofar as they were possible, acknowledging that there is much work to be done. The delegation also stressed that the report and concluding comments will be disseminated.

During the meeting, the Committee repeatedly commended the Kenyan delegation on positive developments in gender equality and the implementation of the Convention. The Committee also made note of areas where implementation is lacking and where additional statistical data is still needed.

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