



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

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**Committee on the Elimination of Discrimination
against Women**

Twenty-eighth session

Summary record of the 593rd meeting

Held at Headquarters, New York, on Wednesday, 15 January 2003, at 3 p.m.

Chairperson: Ms. Açar

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

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

Combined third and fourth periodic report of Kenya (continued) (CEDAW/C/KEN/3-4; CEDAW/PSWG/2003/I/CRP.1/Add.3 and CRP.2/Add.2)

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 members of the delegation to continue responding to questions raised at the previous meeting relating to articles 1 to 6 of the Convention.

3. **Ms. Koome** (Kenya) said, regarding constitutional issues and pending bills, that her delegation had just been informed that the new Government had republished the draft Constitution which had been sent to Parliament before its dissolution, and that it had pledged to hold the national Constitutional Conference in March 2003. That conference would be attended by all members of Parliament and of the Constitutional Review Commission, three elected representatives from every district in the country, one of whom had to be a woman, and 25 delegates elected by women's non-governmental organizations. A pre-conference training programme for delegates had been established and a basic agenda adopted that included essential women's issues.

4. In order to ensure the consideration of pending bills, the draft Constitution stipulated that action had to be taken within one year on all pending bills, with a prior review for compliance with the new Constitution, and timelines had also been set for the adoption of laws affecting women, many of which were behind schedule.

5. Regarding the training of officials responsible for enforcing the law, a committee on the reform of the judiciary and the administration of the law had started a programme to train all judges in the provisions of the Convention and the other human rights instruments and in the human rights approach that they must take in ruling on all matters brought before them, including matters of personal law. Her own organization, the International Federation of Women Lawyers (FIDA), also had an ongoing programme to inform the members

of Parliament about the human rights treaties to which Kenya was a party. It had offered training to the eighth Parliament and would do so with the ninth as well.

6. **Ms. Kiragu** (Kenya) said that the current laws on prostitution unquestionably favoured the client, but that, as in the case of the rape laws, they were being reviewed to ensure their compatibility with the new Constitution. There was a general movement towards reform of the Penal Code to bring it into line with the Government's policy of principle to defend the dignity of every individual; her organization, FIDA, was very hopeful because the Ministry of Justice and Constitutional Affairs had also endorsed the reform.

7. In addition, the Government was studying the possibility of adopting models that had worked well in civil society to rehabilitate prostitutes, especially in view of their vulnerability to AIDS, and to assist victims of domestic violence.

8. **The Chairperson** invited the Committee to put questions under the remaining articles of the Convention.

Articles 7 to 9

9. **Ms. Achmad** said, with reference to article 7, that she would appreciate data on the numbers of women active in political parties and on their party positions; she asked whether the Government was establishing its own programmes to promote women to leadership positions or was simply relying on non-governmental organizations.

10. **Ms. Kuenyehia** said that the problem was most acute in the rural areas, where 70 per cent of Kenyan women lived, and that it was they who must be urged to get involved in government at the local level. She trusted that the new Government would be holding local elections soon, and would like to know what it would be doing to encourage those women specifically to join the political process, despite the constraints they faced.

11. **Ms. Belmihoub-Zerdani** observed that a Kenyan delegation composed entirely of women was certainly evidence of progress. There had been encouraging accomplishments in Kenya since independence, and promising new developments like the decision to hold the Constitutional Conference in the spring. But the Government must keep working in all areas, and award women had to be sent to Parliament to carry on the struggle.

12. One crucial problem, common to all African countries, was the population explosion in Kenya, referred to in the report (CEDAW/C/KEN/3-4) in table 11 and the preceding paragraph (iii). As long as the birth rate in Kenya exceeded the economic growth rate, it, like any third world country, was doomed to poverty. The Government should demand assistance from the appropriate United Nations agencies to bring its demographic growth under control through contraceptives and to educate women in that regard, freeing them and future generations to militate politically and culturally for advancement on all fronts.

13. **Ms. Tavares da Silva** said that although the report indicated, under article 7, that women were actively involved in political parties and represented over 50 per cent of the voters, that was incompatible with the low figures given for women candidates and elected representatives. The situation in the judiciary was more positive, and the delegation had indicated that the trend was towards greater representation, but historic trends were often slow and the Government must take special measures, either legislative or political, to involve women more actively in public life. Also, with reference to article 8, although the Government's position was that diplomatic posts were awarded according to merit and not gender, the sparse number of women cited in table 5 of the report belied that statement.

14. Regarding article 9, she asked whether the constitutional review of discriminatory provisions in the citizenship and nationality laws had addressed all the problems and whether women still needed the consent of their fathers or spouses to travel and accompanying children needed the consent of their fathers.

15. **Ms. Popescu** asked whether the Government was using a quota system to promote women candidates, and whether the political parties applied quotas and had set up women's caucuses that might encourage greater participation. Also, since the new Government had not yet named its foreign service officials, she wondered whether the National Machinery for the Advancement of Women could argue for balance in the forthcoming appointments. She looked forward to receiving data, now or in the next report, regarding the participation of women in international organizations.

16. **Ms. Shin** reiterated the hope that the Government would put in place either quotas or targets among its temporary special measures to increase the participation of women in public life. However, it also

had to give thought to changing the conditions that held women back. The manner in which the laws and the system of proportional representation were framed was crucial if women were to rise to decision-making positions.

17. **Ms. Ongewe** (Kenya), responding to some of the questions, said that in the past the Government's chief means of encouraging the participation of women in politics had been the Electoral Commission, which was responsible for preparing potential candidates to enter the electoral process. In the previous two or three years, the Commission had become more progressive and had worked closely with women's organizations and other non-governmental organizations in providing civic education. It had created an environment that encouraged participation by civil society in the public sector. However, advocacy had proven more effective when it was done by civil society organizations, and the Government recognized the unique strengths of that sector.

18. As for temporary special measures to encourage participation in government, the new Constitution, setting out the national goals in the preamble, stipulated explicitly that from the national to the grass-roots level, women must comprise at least one third of all elected bodies. That target, and the whole chapter in the Constitution on the enhancement of women and their political participation, were significant. The Government did indeed set quotas for the participation of women in politics. The party now in power had reserved positions for women, a pledge that it had managed to honour in only 14 days.

19. The Government had so far not given thought to the contradiction between merit appointments to the diplomatic and foreign service and the low representation of women, but it would study the question. One explanation might be that women in Kenya, despite all the consciousness-raising, were not ready to relocate as easily, since their lives were involved in that of the whole clan and they were very conscious of those responsibilities, which in other respects had a positive side. Under the new Constitution, women no longer needed anyone's permission to travel.

20. **Ms. Koome** (Kenya) said that there were five key political parties represented in Parliament out of 45 in total. None of those parties was headed by a woman. There was one woman on the national executive committee of the new ruling party and one on the national executive committee of the former ruling

party. Other parties had no women holding key positions. The National Electoral Commission had, however, enacted the political parties bill, and the draft Constitution established the principle of proportional representation. The Government was working on the establishment of a clear affirmative action mechanism for decision-making positions.

21. **Ms. Ongewe** (Kenya) said that her Government, perhaps more than any other in Africa, recognized the unique role played by non-governmental organizations (NGOs) and other elements of civil society. The NGO Coordination Act provided for non-governmental organizations to be self-regulating for the purposes of national development at the macro and micro levels. It was therefore sometimes difficult to distinguish between the role of government and that of non-governmental organizations. The Government was interested in collaborating with civil society on women's issues and expected advocacy groups to continue the work they had been doing. Kenya had a strategic plan, a development plan and benchmark targets, and would continue to implement policies accordingly. Poverty reduction programmes now had a gender approach. Her Government would work on setting goals and would inform the Committee on its progress towards achieving them in the next report.

Articles 7 to 16

22. **Ms. Gaspard** said that the State party should furnish statistics on the representation of women in the government administration and in political posts. It was worthwhile to strive to achieve 30 per cent representation by women, but that should be seen merely as a starting point, as women accounted for more than 50 per cent of the population.

23. Turning to the matter of health, she enquired as to whether Kenya had considered providing alternative professions to women who derived their income from performing female genital mutilation, as a means of eliminating that practice.

24. **Ms. Kapalata** observed that the report contained no information on such diseases as ovarian and cervical cancer. If such illnesses occurred there Kenya should provide statistics on their incidence and describe any measures to combat them. In addition, the replies to the list of issues discussed the prevalence of HIV/AIDS, but contained no gender-specific information.

25. **Ms. Schöpp-Schilling** noted that in rural areas 55 per cent of the population lived below the poverty line and half of the rural poor were women. The report

indicated that credit institutions were not helpful to women because credit was only available to landowners, and women did not own land. In addition, it stated that the Kenya Women Finance Trust and the Kenya Rural Enterprise, which did offer credit to women, lacked sufficient resources. In order to utilize the potential of rural women, the Government should undertake a major effort to devise credit schemes that were not based on land ownership.

26. **Ms. Patten** said that the draft Constitution was a powerful tool for the empowerment of women and should be widely disseminated. The gender perspective of the new Constitution would require the Government to take significant measures to improve the lives of women. The focus of such efforts should be the alleviation and eradication of poverty, the removal of obstacles to women's full participation in public life and decision-making at all levels, the promotion of health services and the encouragement of autonomy, with an emphasis on the needs of rural women.

27. More information would be welcome on measures undertaken by the Government to prevent girls from dropping out of school. In particular, she would like to know when that programme had been launched, whether it was a pilot programme or an ongoing one, how many persons had benefited from those measures, and what resources had been allocated for that purpose. In addition, she would like to know what had been the impact thus far of the Children's Act on the lives of women, in particular on such practices as forced early marriage and female genital mutilation.

28. **Ms. Tavares da Silva** said that government efforts to employ women in the formal sector should be accompanied by protective measures that would accord equal rights to men and women. She had seen no mention of paternal rights and responsibilities or of paternal leave. As long as the care of children was considered solely the domain of women, equality could not be achieved.

29. **Ms. Gnacadja** enquired about the main reforms incorporated into the school curriculum adopted in 1997 and whether that curriculum had altered stereotyped views of women and men. She would also be grateful for more information on cost-sharing and its impact on girls. Noting that the future of rural women depended on access to property, she asked whether Kenya had considered developing credit structures that would be helpful to women. She also wished to know what had been the impact of the national AIDS policy instituted in 1997, particularly on young men and

women. It would be useful to learn whether there had been any signs of progress and whether any studies had been conducted on the effect of domestic violence on health and on such harmful practices as female genital mutilation, forced marriage and rape.

30. Turning to the matter of employment, she said that the State party should provide information regarding measures to ensure equal pay for equal work. Attention must be paid to redressing inequalities in the social security system, which did not allow women to be independent contributors and beneficiaries.

31. **Ms. Saiga** said that she would appreciate information on measures to combat sexual harassment in the private sector.

32. **Ms. Belmihoub-Zerdani** asked whether, in the view of the delegation, the new Government would be able to ensure a place for women in its development policies and plans and, in particular, guarantee access to credit for rural women.

33. **Ms. Mutinda** (Kenya) said that her delegation would provide more information about assistance to secondary-school students, especially girls, in the next report. In general, girls benefited more than boys, since a portion of the budget was set aside for needy girls. The Government also rescued girls without families, and provided fully for their care and education. Some funds for that purpose came from the Forum for African Women Educationalists and from the United Nations Educational, Scientific and Cultural Organization (UNESCO).

34. It was too soon to assess the impact of the Children's Act, which had come into force in March 2002.

35. The 8-4-4 system of education was revolutionary in Kenya because it allowed both boys and girls to follow the same curriculum. The practice of clustering subjects at the university level ensured that all students would take courses in both languages and sciences, regardless of the discipline they had chosen. Cost-sharing had been initiated by the World Bank in the 1980s and it involved both education and health. The purpose was to encourage participation by all parties in the education of children. For instance, the Government paid teachers and purchased materials, while parents contributed towards the school infrastructure. More information would be provided in the next report.

36. **Ms. Olende** (Kenya) said that, following the launch of a public awareness campaign, many

practitioners of female genital mutilation had come to realize the harm done by that practice and no longer engaged in it. A number of non-governmental organizations and women's groups provided training in other income-generating activities to former practitioners.

37. On the question of access to credit by women farmers in rural areas, while the Government did not provide such credit, it did provide extension services to farmers, including women. Some private institutions and non-governmental organizations provided credit to rural women, but title to the land was required as collateral.

38. Generally speaking, the main problem faced by the rural population in Kenya was the absence of infrastructure and such basic services as water supply, sanitation, roads and energy. Provision of those services would significantly improve the lot of rural women in Kenya.

39. **Ms. Ongewe** (Kenya) said that cooperative societies were the only avenue through which the poor in Kenya could gain access to credit. Efforts were being made by the newly elected Government to revitalize the Ministry of Cooperative Development, which had previously played an important role in improving the social and economic conditions under which the majority of the population lived.

40. On the question of HIV/AIDS and health in general, the National AIDS Council had elaborated a gender mainstreaming policy, following extensive consultations with non-governmental organizations active in that area, and the Government had pledged its support for a media campaign to educate the public about HIV/AIDS.

Articles 15 and 16

41. **Ms. Šimonović** said that she doubted whether the provisions governing the property rights of divorced women were compatible with article 15 of the Convention, which required States parties to accord to women equality with men before the law. Given the multiplicity of laws that governed marriage and divorce in Kenya, she wondered whether the Government had any plans to enact legislation to harmonize the existing laws and to give married women the right to choose their family name. She would also welcome information on the measures taken by Kenya to implement the recommendations of the Fourth World Conference on Women and the Beijing Platform for Action.

42. **Ms. González Martínez** expressed concern at the persistence of discrimination against women in Kenya and at the Government's failure to bring its national legislation, in particular the laws governing domicile, into line with the provisions of articles 15 and 16 of the Convention. She noted, for example, that a wife could not in practice include her children on her passport unless her husband gave his express consent, and she wondered whether the reverse was also true.

43. **Ms. Khan** said that the Government should follow the example of countries like India and Bangladesh, which had reformed the multiple laws governing marriage and divorce and consolidated them into a uniform civil code that provided for equal rights within marriage.

44. **Ms. Tavares da Silva** sought clarification of what appeared to be a contradiction between the complex provisions of customary or religious laws and the national legislation on the question of marriage and divorce. While the report stated that marriage of children was forbidden and the administration took all possible measures to prevent its occurrence (CEDAW/C/KEN/3-4, art. 16 (vi)), at the same time it acknowledged that the Mohammedan Marriage and Divorce Act allowed the marriage of minors where a school-age girl was forcibly married under the Act (art. 16 (i)).

45. **Ms. Shin** asked whether the constitutional review process initiated by the Government in 1998 contemplated measures to protect widows from being evicted from their family home by their in-laws.

46. **Ms. Gnacadja** sought clarification of the apparent contradiction between religious and national laws governing marriage and divorce. She wondered, for example, whether there were any provisions in the civil law to protect women from being beaten by their spouses, a practice permitted by religious laws under certain circumstances. In her view, the various religious and customary laws governing marriage and divorce must be made subordinate to civil law and to the provisions of the Convention. Political will was needed to address the problem and women must be educated to be more aware of their rights.

47. **Ms. Morvai** said that, in addition to awareness-raising, women also needed legal assistance to enforce their rights. She wondered whether any mechanisms were in place to provide legal assistance to women who could not otherwise afford it.

48. On the question of the posting of women in the diplomatic service to duty stations abroad, she noted the delegation's reply that the role of women as caregivers at home was in part responsible for the paucity of such postings. In her view, however, caregiving should not be seen as the only attribute of women and should in fact be the joint responsibility of men and women within the family and community at large. It was a message that women in positions of prominence in Kenya should seek to spread within the society.

49. **Ms. Belmihoub-Zerdani** noted that the Constitution reserved the right to discriminate in matters of marriage and divorce; where there was a right to discriminate, inequality followed. She too was concerned at the numerous contradictions between religious laws and the national law in such areas as marriage, divorce and adoption.

50. **Ms. Patten** asked whether the Government had any plans to establish a legal aid system for the benefit of disadvantaged women.

51. **Ms. Koome** (Kenya) said that the authorities had been using a very old instrument from English law, the Married Women's Property Act of 1882, to determine the property rights of women; pursuant to the report of the task force, however, work was in hand to develop new legislation in that area. The courts, including the Supreme Court, had been setting very progressive precedents, such as the principle that property acquired during marriage was the joint property of both spouses. That principle had been extended to all marriages, including those governed by customary law. That was one of the areas currently under consideration by the Law Reform Commission.

52. The harmonization of marriage laws was a challenging issue in Kenya, where women's rights organizations had been campaigning for uniform legislation giving equal rights to spouses. Three attempts to legislate had failed in Parliament, but the jurisprudence currently developing was that, notwithstanding the type of marriage, spouses should receive equal treatment, particularly in relation to the welfare of children. The high courts and magistrates' courts had jurisdiction over all marital cases regardless of the type of marriage.

53. Bearing in mind the numbers of women in Parliament and the great diversity of religious and cultural customs, not all the needed reforms could take place immediately, but a coordinated campaign would be maintained in order to bring about the codification

of marriage laws. The problem of conflict among laws would be lessened under the new Constitution, which would enshrine the principles of equality, justice and dignity of the human person; cases would then be decided according to those principles rather than customary laws. As for the issues of legal aid and the eviction of widows from the marital home following the husband's death, the major challenge was the need to make people aware of their rights and obligations under existing legal provisions. A national legal aid scheme was being developed with participation by Kenyan non-governmental organizations and support from the donor community and development partners; she hoped that it would also receive government funding.

54. No law in Kenya obliged anyone to change his or her name upon marriage; it was a matter of individual choice, and women were increasingly choosing to retain their own names. However, the law relating to the issue of passports and identity cards was discriminatory in that married women who had kept their own names, when applying for such documents to be changed to show their married status, had to be accompanied to the registrar's office by their husbands.

55. **Ms. Ambwere** (Kenya) said that a stakeholders' workshop held after the Fourth World Conference on Women had produced a plan of action for the implementation of the Beijing Declaration and Platform for Action. That plan had served as the guide for implementation activities over the following five years. Her Government had submitted a progress report on that implementation at the twenty-third special session of the General Assembly, held in New York in 2000, and afterwards had drawn up a strategic plan of action for the period 2001-2006, a copy of which was available to members of the Committee.

56. Responding to an earlier question relating to equal pay, she said that Kenya did not discriminate in that regard on grounds of gender.

57. **Ms. Ongewe** (Kenya) said that the necessary political will to bring about change did indeed exist in Kenya. A multiparty political system had been in place for 10 years, and there was a very urgent need to educate the members of all the political parties and promote awareness of gender issues in national and local government and the public sector. Women must also be made aware that behaving kindly towards members of their families was a form of behaviour that should be expected of both men and women.

58. **The Chairperson** thanked the representatives of Kenya for their sincerity and frankness and for the energy and goodwill which they had shown in their oral presentations and their responses to the Committee's questions. She was impressed by the strong political will being shown by a Government which had only very recently come to power, and she expressed good wishes for success in achieving improvements in the situation of women at a time which was a historical milestone for Kenya.

59. The Committee remained concerned at the discrimination prevailing in Kenya, particularly in the area of traditional practices such as female genital mutilation; it appreciated the efforts being made in that respect and hoped that they would be intensified. Another area of concern was the multiplicity of legal systems and the ways in which they affected the enjoyment of women's rights under the Convention. Of particular concern to her were the continuing practice of polygamy and the conflict existing between discriminatory customary laws and the constitutional provisions relating to gender equality.

60. Religious and cultural diversity could not justify violations of women's human rights, and it was incumbent upon the Government to prevent such violations notwithstanding that diversity. She hoped that the Committee would in future receive good news from Kenya regarding the implementation of the Convention, and that the new Constitution would bring about the elimination of discrimination against women.

The meeting rose at 5.25 p.m.