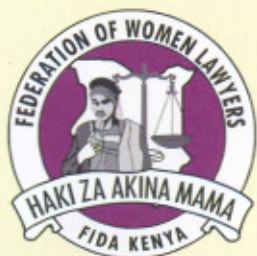




CONCLUDING COMMENTS
ON THE 5TH & 6TH KENYA
REPORT TO COMMITTEE
ON ELIMINATION OF
DISCRIMINATION
AGAINST WOMEN
(CEDAW)



BACKGROUND

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

- Was adopted in 1979 by the UN General Assembly
- Ratified in 1984 by Kenya.
- It is often described as an international bill of rights for women.
- It consists of a Preamble and 30 Articles.
- It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.
- Countries that have ratified CEDAW are legally bound to put its provisions into practice. They are committed to submit national reports at least every four years on measures they have taken to comply with their treaty obligations.

CEDAW defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

THE CEDAW COMMITTEE NOTED THE FOLLOWING POSITIVE ASPECTS

- Free and compulsory primary education was implemented in 2003
- Passing of the Children's Act (2001), preventing FGM and forced early marriages of minors
- Formation of The Council of Persons with Disabilities
- Enactment of The Public Officers Ethics Act (2003), prohibiting sexual harassment in the workplace
- Establishment of The Constituency Development Fund to improve the lives of rural women

AREAS OF CONCERN AND RECOMMENDATIONS

Discrimination against Women and Domestication of the Convention

Article 2

- 11-12. The Committee is concerned about Article 82 (4 (b) and (c) and Article 90 of the Constitution since they go against the prevention of discrimination against women and the domestication of the Convention.
- The Committee recommends that these articles and other discriminatory provisions be omitted from the Constitution and the incorporation of the Convention into domestic law.
- 13-14. Although Kenya consented to the terms of the Convention in 1984, a definition of direct or indirect discrimination against women (as stated in the CEDAW) is still absent from the Constitution.
- The Committee wants Kenya to include, in the Constitution and other bodies of law, an appropriate definition of discrimination.
- 15-16. The Convention is not yet central to the making of laws and policies aimed at ending discrimination against women and gender inequality.
- The Committee recommends that the ideals of the Convention be reflected in all policies and laws dealing with the needs and rights of women.
- 17-18. Despite the work of the Kenya Law Reform Commission, the elimination of provisions and gaps that foster gender discrimination in the law is not a high priority. Also, the Domestic Violence (Family Protection) Bill, the Matrimonial Property Bill and the Equal Opportunity Bill (1999) have still not been made into law.
- The Committee wants Kenya to conduct legislative reforms aimed at amending or overturning laws that discriminate against women.
 - It also recommends the passage of the above Bills and urges Kenyan legislators to prioritize the issue of gender discrimination.

Gender Equality

Article 3

- 19-20. Having both a National Commission on Gender Equality and a Ministry of Gender, Sports, Culture and Social Services might divide and weaken gender equality efforts. Additionally, placing the Gender Department under the broad heading of the Ministry of Gender, Sports, Culture and Social Services might not give that department enough room to focus on gender equality issues. Furthermore, the Ministry of Gender, Sports, Culture and Social Services might not have the resources or means to promote and implement the Convention.

- It is the Committee's recommendation that both institutions be strengthened and given the necessary power, financial resources and staff to work on promoting gender equality.

Culture and Violence against Women

Article 5

- 21-22. Some cultural norms, practices, traditions, and stereotypes around the roles of men and women have negative effects on or discriminate against women. These stereotypes, customs and practices are reflected in the disadvantageous and unequal status of women in the society. Yet Kenya has done little to modify or eliminate these problems.
- It is recommended that Kenya adopt legislation aimed at ending cultural practices and stereotypes that discriminate against women. It also reminded Kenya that culture, although important and dynamic, can be changed. Therefore more efforts should be made to address harmful customs such as bride price and polygamy.
- 23-24. Violence against women and girls, including cultural practices that are violent toward them, is wide spread in Kenya; yet, the Domestic Violence (Family Protection) Bill (2002) has not been made into law. The Children's Act (2001) protects girls under 18 years old from Female Genital Mutilation, but it makes the practice legal for women over 18 years. Consequently, many women of majority age are being pressured or forced to undergo FGM.
- The Committee recommends that Kenya adopt new measures or implement existing legislation aimed at ending all forms of violence against women, including FGM. The Committee also reminds Kenya that under the Convention, violence against women is a form of discrimination and is therefore a violation of women's rights. It also wants Kenya to raise awareness on the issue of violence against women and provide access to protection and redress for the victims.
 - Additionally, the Committee recommends that all women have access to justice and that law enforcement and medical personnel receive training on violence against women in order to effectively support these victims.
- 25-26. Kenya hosts refugees and internally displaced persons. However little information is provided about the women in these communities and in cases of violence against these women, their perpetrators are almost never brought to justice.
- The Committee recommends that Kenya gather detailed information about refugees and IDPs and take steps to protect these women from harm.
 - It also recommends that Kenya investigate the cases of violence against women and punish the perpetrators.

Women in the Public Sector

Articles 4 & 7

27-28. There are few women representatives in the public sector and politics. The main areas of concern are Parliament, government ministry, the Court of Appeal, diplomatic services and other senior decision-making levels.

- The Committee wants Kenya to strengthen or implement policies that will increase the number of women representatives in these areas. It also wants Kenya to quickly adopt the Political Parties Bill and raise awareness on the importance of women participation in society's decision-making.
- Additionally, the Committee wants Kenya to mentor future women leaders by providing them training programmes on leadership and negotiation.

Human Trafficking

Article 6

29-30. Although there is an anti-trafficking police unit, human trafficking, primarily for sexual exploitation, is widespread in Kenya. Most of the victims are poor, vulnerable women and girls. Also, sex tourism is an increasing occurrence which contributes to the problem of child prostitution. And while prostitution is illegal, it is the prostitutes and not the clients who are subject to punishment.

- Therefore, the Committee recommends that Kenya implements the revised draft Trafficking Bill and target the root causes for trafficking in order to eliminate the practice.
- It is also recommended that measures be taken to end sex tourism and the criminalization of women in prostitution.
- Additionally, support systems should be created for women wanting to leave prostitution.

Citizenship

Article 9

31-32. Women and men do not have equal citizenship rights. Only Kenyan men, here or abroad can pass on citizenship to their wives and children. Children born abroad to Kenyan mothers need permits (which specify their length of stay) to enter Kenya. This restriction does not exist for children of Kenyan fathers and non-Kenyan mothers. Also, to get a passport, single women need the consent of their fathers, while married women need their husbands' permission.

- Thus, the Committee requests that Articles 90 and 91 of the Constitution be amended to reflect equal citizenship between men and women. It also wants Kenya to abolish the woman's need for consent in order to get a passport.

Education

Article 10

33-34. Although Kenya has enacted free and compulsory primary education, there is a significant difference in the quality of and access to education between urban and rural areas. Fewer girls than boys enroll in secondary schools. There are also more men than women enrolled at the university level. Early and forced marriages, drop-outs due to pregnancy among other cultural or traditional beliefs and practices are obstacles to girls' education.

- It is recommended that Kenya raise awareness on the importance of education as a human right and the basis for women's empowerment.

Equal Compensation for Labour

Article 11

35-36. The pending Employment Bill states that women and men should be paid equally when they do the same work. However, there is a lack of data on women in the work force which makes it difficult to determine wage differences, the percentage of women in the work force and the types of jobs that they do among other labour statistics.

- The Committee recommends that Kenya adopts the Employment Bill and enforce the laws giving women equal opportunity in the public and private sector labour markets and equal pay (as men doing the same job) for their work.

Reproductive Health

Articles 5 & 12

37-38. Antenatal services are now free for pregnant women, but maternal (some from unsafe abortions) and infant death rates are still high. Also, there is limited access (in some cases because of the negative attitudes of medical personnel) to suitable sexual and reproductive health services. Additionally, existing sex education programmes do not give enough information about the prevention of early pregnancy and the control of sexually transmitted infections.

- It is the Committee's recommendation that Kenya do more to reduce the high maternal and infant mortality rates.
- It further recommends that: medical personnel adopt client-friendly attitudes as this might encourage more people to seek health care services; awareness be raised for men and women on the use of contraceptives; that sex education in schools, with a strong focus on the prevention of early pregnancy and sexually transmitted infections be widely promoted and that teenage boys and girls receive this information. Kenya, in an effort

to improve women's health, relies on the international community for monetary and technical support.

39-40. Kenya is addressing the HIV/AIDS pandemic through various programmes. Although the spread of HIV is declining, there is still a serious epidemic, especially among women. Current policies and programmes do not take into account the inferior status of women and the resulting imbalance of power between men and women in the Kenyan society. This gender inequality makes women and girls more vulnerable to HIV/AIDS from their partners. Also, HIV/AIDS has made many children orphans; and girls, in an effort to support their households, are turning to prostitution, which increases their risk of becoming infected.

- Thus, the Committee wants Kenya to address the impact of HIV/AIDS on women and girls as well as its social and family consequences.
- It also recommends that Kenya do more to empower women and that programmes and policies on HIV/AIDS address the challenges faced by women. It further recommends that Kenya addresses the issue of child-headed households.

Land Ownership

Article 14

41-42. Women, especially those living in rural areas, are disadvantaged in the ownership of land. Many are not aware that they are entitled to own land.

- The Committee wants Kenya to raise women's awareness, especially for those living in rural areas, on their right to land ownership. The draft National Land Policy attempts to end this discrimination against women, yet it has not been made into law.
- The Committee wants Kenya to adopt the draft National Land Policy and take measures to end discrimination against women in land ownership.
- It also wants Kenya to provide legal assistance for rural women who want to report instances of discrimination.

Marriage and Child Support

Article 16

43-44. There are multiple marriage systems in Kenya, some of which have discriminatory laws regarding marriage and family relationships. Customary law and the Islamic Marriage and Divorce Act allow polygamy. The Children's Act states that the minimum age for marriage is 18 years, but child marriages still occur. If the parents of a child do not marry each other, then legally it is the mother's responsibility alone to raise that child.

- The Committee wants Kenya to reform laws that deal with marriage and family relations to end the practice of child

marriage, polygamy and unequal treatment of women in marriages.

- It also recommends that civil, religious and customary laws be made to agree.
- Additionally, it wants Kenya to strengthen measures aimed at getting fathers to provide for children born out of wedlock.

ADDITIONAL RECOMMENDATIONS

45. In the next report to the Committee, Kenya is requested to provide information about older women and women with disabilities.
46. Kenya is encouraged to approve the Optional Protocol
47. Kenya is urged to use the Beijing Declaration and Platform for Action to implement the norms established by the Covenant
48. The Covenant must be implemented for Kenya to achieve its Millennium Development Goals
49. The Committee wants Kenya to agree to the International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Family
50. The Committee wants Kenya to widely distribute its (the Committee's) concluding comments
51. The Committee wants Kenya to respond to its (the Committee's) present concerns in the next periodic report.

Note: Kenya's next reporting to CEDAW is in 2011

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