



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org – cedaw@ohchr.org

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Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW), I have the honour to refer to the examination of the seventh periodic report of Kenya at the Committee's forty-eighth session, held in January-February 2011. At the end of that session, the Committee's concluding observations were transmitted to your Permanent Mission (CEDAW/C/KEN/CO/7). You may recall that in the concluding observations, the Committee requested Kenya to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraph 12 and in paragraph 22 of the concluding observations.

The Committee welcomes the follow-up report received in May 2014 (CEDAW/C/KEN/CO/7/Add.1) under the CEDAW follow-up procedure, although it was received with a 15-month delay. At its fifty-ninth session, held in October-November 2014 in Geneva, the Committee examined this follow-up report and adopted the following assessment.

Regarding the recommendation made in **paragraph 12** of the concluding observations that the State party “enact, within two years, the Family Protection Bill 2007”: The State party mentioned that the Family Protection Bill 2007, which was renamed and is now referred to as the Protection Against Domestic Violence Bill 2013, was published for parliamentary debate on 11 October 2013, and was adopted, in first reading, on 30 October 2013. The State party added that the Bill, which defines domestic violence, provides a framework enabling victims of domestic violence to access effective legal protection, and sets out the roles of different actors in relation to protection against such violence, has been submitted to the relevant departmental committee and is awaiting the second reading. The Committee considers that the State party took some steps towards the enactment of the Protection Against Domestic Violence Bill 2013. It considers that the recommendation **has been partially implemented**.

Regarding the recommendation that the State party “enact, within two years, the Unified Marriage Bill 2007”: The State party indicated that the Unified Marriage Bill 2007, which was renamed the Marriage Act, 2014, was passed by the Parliament on 25 March 2014, and assented to by the President on 29 April 2014. The State party specified that the Act provides for the

His Excellency
Mr. John O. Kakonge
Permanent Representative of the Republic
of Kenya to the United Nations
Avenue de la Paix 1-3
1202 Geneva

E-mail: mission.kenya@ties.itu.int

consolidation of the legal framework relating to marriage and divorce in Kenya, the bringing of customary and Islamic marriages within the ambit of the law, the prohibition of child marriages by setting 18 years as minimum age of marriage, and the requirement of registration of all marriages. The Committee welcomes the enactment of the Marriage Act 2014 and the advancement it provides for women's rights in relation to their matrimonial situation. The Committee considers that the recommendation **has been implemented**. However, it remains concerned about the maintenance of provisions authorizing polygamous unions.

Regarding the recommendation that the State party “enact, within two years, the Matrimonial Property Bill 2007”: The State party mentioned the enactment of the Matrimonial Property Act on 24 December 2013 and its entry into force on 16 January 2014, vesting the ownership of matrimonial property in spouses in equal shares, providing for equal division of matrimonial property between spouses in the event of divorce, embracing indirect and non-monetary contribution in the acquisition of matrimonial property, and outlawing the selling, leasing or mortgaging of matrimonial property without the consent of both spouses. The Committee notes that the State party enacted the Matrimonial Property Bill 2014. It considers that the recommendation **has been implemented**.

Regarding the recommendation that the State party “enact, within two years, the Equal Opportunity Bill 2007”: The State party stated that the Equal Opportunity Act 2007 has been shelved from the list of pending bills. However, the State party specified that initial discussions are underway to develop a national equality and non-discrimination legislation that will cover all the relevant issues. While welcoming the development of a national equality and non-discrimination legislation, the Committee considers that the State party failed to take actions to enact the Equal Opportunity Bill 2007. It considers that the recommendation **has not been implemented**.

The Committee recommends that, in relation to paragraph 12 of the concluding observations, the State party provide, **in its next periodic report**, information on further actions taken to:

- 1) Expedite the adoption and enactment of the Protection Against Domestic Violence Bill 2013;
- 2) Amend the Marriage Act 2014 in order to prohibit polygamous marriages, in accordance with the Committee's general recommendation No. 21;
- 3) Develop, adopt and enact a national equality and non-discrimination legislation and provide additional information on its content and in particular on whether its provisions cover all the issues laid out in the Equal Opportunity Bill 2007.

Regarding the recommendation made in **paragraph 22** of the concluding observations that the State party “repeal section 38 of the Sexual Offences Act under which women face the risk of being victimized for initiating prosecutions against their abusers”: The State party indicated that section 38 of the Sexual Offences Act was repealed in June 2012, enabling victims of sexual offences to report cases of sexual violence without fear of criminal sanctions. The Committee notes that the State party repealed section 38 of the Sexual Offences Act. It considers that the recommendation **has been implemented**.

Regarding the recommendation that the State party “adopt the regulations for implementation of the Sexual Offences Act”: The State party mentioned that the General Regulations and the Dangerous Offenders DNA Databank were adopted and gazetted in 2008. Moreover, the State party indicated that the Medical Treatment Regulations were adopted and gazetted in 2012. The State party added that the Regulations on the Inter-Sectoral implementation of the Act have been finalised and were awaiting launch by the Office of the Attorney General and Department of Justice as of May 2014. The Committee considers that the State party took

significant steps towards the adoption of the regulations for implementation of the Sexual Offences Act. It considers that, for the period under consideration, the recommendation **has been implemented**.

Regarding the recommendation that the State party “criminalize marital rape”: The State party indicated that the provisions of the Sexual Offences Act that de-criminalise marital rape have not been amended. However, the State party specified that these provisions will be amended once the Protection Against Domestic Violence Bill 2013, which recognises sexual violence within marriage as a form of domestic violence, is enacted into law. The Committee considers that the State party took some steps towards the implementation of the recommendation by recognizing sexual violence within marriage as a form of domestic violence in the Protection Against Domestic Violence draft Bill 2013. It considers that the recommendation **has been partially implemented**.

Regarding the recommendation that the State party “develop a coherent and multisectoral action plan to combat all forms of violence against women”: The State party mentioned that the Ministry of Devolution and Planning is finalising a National Gender Based Violence Policy. The State party added that, once the Policy is adopted, a national multisectoral action plan will be developed to address all forms of violence against women, children and men. The Committee considers that the State party took some steps towards the development of a coherent and multisectoral action plan to combat all forms of violence against women. It considers that the recommendation **has been partially implemented**.

The Committee recommends that, in relation to paragraph 22 of the concluding observations, the State party provide, **in its next periodic report**, information on further actions taken to:

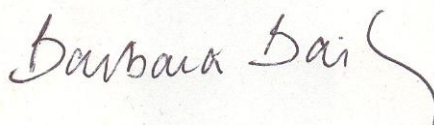
- 1) Expedite the launch of the multisectoral standard operating procedures for sexual violence prevention and response (Regulations on the Inter-Sectoral implementation of the Act) in order to finalise the adoption of the regulations for implementation of the Sexual Offences Act; and
- 2) Repeal the provisions of the Sexual Offences Act that de-criminalise marital rape; expedite the adoption of the Protection Against Domestic Violence Bill 2013 and ensure that it explicitly criminalizes “marital rape”.

The Committee also recommends that the State party indicate whether the National Gender Based Violence Policy was launched in June 2014 as foreseen by the State party in its follow-up report, and provide information on actions taken to develop a coherent and multisectoral action plan to combat all forms of violence against women.

The Committee looks forward to pursuing its constructive dialogue with the authorities of Kenya on the implementation of the Convention.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,



Barbara Bailey
Rapporteur on follow-up
Committee on the Elimination of Discrimination against Women