



LIST OF CONCERNS AND RECOMMENDATIONS
TO THE SEVENTH PERIODIC REPORT OF KENYA
(CEDAW/C/KEN /7)

Submitted to the Committee on the Elimination of Discrimination against Women

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Summary

Franciscans International (FI), Edmund Rice International (ERI), Marist Foundation for International Solidarity (FMSI), Pax Romana, Justice Peace and Integrity of Creation Franciscans Africa (JPICFA) are NGOs having a large number of members in Kenya who are engaged at various levels in community and social work. Based on the experience and expertise of our grassroots on the ground, we would like to draw the attention of the Committee on the Elimination of Discrimination against Women (CEDAW) with regard to the consideration of the 7th periodic report of Kenya in January 2011, to the following issues:

- Development and advancement of women;
- Trafficking in women and exploitation for prostitution;
- Women in political and public life
- Equality between men and women in the field of education
- Equality between men and women in the field of employment
- Equality between men and women in the field of health care
- Equality in marriage and family

This report was the outcome of a preparatory training and mission in Kenya (Summer 2010) carried out by FI in collaboration with its Franciscans partners in Kenya. This report is also the result of national forums on the issues of women's rights in the country carried out by the Franciscans Family in Kenya (Fall 2010).

Geneva, 21st December 2010

Article 3 CEDAW

Measures for ensuring the Development and Advancement of Women

Government efforts in putting in place special measures for ensuring the development and advancement of women are highly commended. They include, *inter alia*, the creation of the Women Enterprise Fund (WEF) which has contributed largely to the economic advancement and empowerment of women as stated in the government report¹. However there is need to diversify the methods of making the loans secure to cushion situations where the women are unable to repay the loan due to circumstances beyond their control² (i.e. in cases when an agricultural business is affected by drought). The government needs to ensure that the microfinance institutions, through which the funds from WEF are channelled, insure the loans given to the women³.

The Ministry of Gender, Children and Social Development developed a Training Manual on Gender Mainstreaming in June 2008 to coordinate and harmonize gender mainstreaming activities by various actors⁴. However, the content of the manual is unknown to grassroots women leaders⁵ and there is a lack of sufficient training of social service workers working under the judiciary, especially with regard to the girl child⁶.

Recommendations

The government should take the necessary steps to raise awareness on the content of the Training Manual on Gender Mainstreaming and provide adequate training to social workers in relation to the needs of women and young girls.

¹ The 7th Periodic Report of the Government of the Republic of Kenya on Implementation of the International Convention on the elimination of all forms of Discrimination against women (CEDAW/C/KEN/7), §. 53.

² Dave Opiyo "Alarm over Loan Default Rate" *Daily Nation on the Web* 13 May 2020 available at <http://allafrica.com/stories/printable/201005130760.html> accessed on 30th October 2010.

³ Haron Mwangi, "Strategies of Deepening and Broadening Client Base" Agricultural finance Corporation (Kenya) July 2-4 2008., <http://www.afraca.org/publications/66AFC%20Kenya%20Word%20Document.doc> accessed on October 30, 2010.

⁴ CEDAW/KEN/7 Para 47 ,Ministry of Gender and social development, Training Manual on Gender Mainstreaming, June 2008.

⁵ At a CEDAW consultative Forum organised by FI in Nairobi October 29, 2010, none of the 84 grassroots women leaders drawn from all over Kenya was aware of the existence of the Training Manual on Gender Mainstreaming.

⁶ International Humanist Union, Rights of s Child in Kenya, March 2010 available at <http://www.iheu.org/rights-child-kenya> accessed on November 2, 2010.

Article 4 CEDAW

Adoption of Temporary Special Measures to Accelerate De facto Equality between Men and Women

The government has taken temporary special measures for maternity related costs⁷. These costs are still unaffordable to a large number of women especially in slums and in the rural areas. Women continue to be held in the government hospitals especially Kenyatta National Hospital⁸ and Pumwani Maternity Hospital because of lack of admission and discharge fees⁹.

Recommendations

The government should take steps to enhance subsidizing the costs in line with Article 43 of the New Constitution¹⁰ and ensure that there are qualified medical practitioners in all public hospitals to facilitate safe maternal health care.

Article 6 CEDAW

Measures to suppress all Forms of Traffic in Women and Exploitation of Prostitution of Women

FI and its partners welcome the fact that the government has recently passed the Counter Trafficking in Persons Act.¹¹ However, there are still no concrete efforts to address the issue of child prostitution especially in the informal settlements. The issue of child prostitution is mainly and solely addressed by local NGOs. Although the new Act imposes hefty fines on the traffickers, corruption is still a big hindrance in implementing the gains of the Act. As the government acknowledges, poverty, increasing unemployment and deteriorating living conditions continue to foster trafficking of women and girls.

Recommendations

The Government should take concrete steps to implement the Trafficking in persons Act. The government should also take concrete measure to help eradicate the root causes of the phenomenon of child prostitution, including poverty reduction, creation of employment opportunities, access to education and health care services.

⁷ CEDAW/C/KEN/7, § 63.

⁸ see Kenyan mothers too poor to pay for treatment locked up in hospital <http://www.guardian.co.uk/world/2009/aug/13/kenya-maternity-poverty-detained-hospital> accessed on October 30, 2010.

⁹ see Poor Women illegally detained in Maternity Hospitals in Kenya: Urgent Action Needed! <http://www.bungelamwananchi.org/index.php> accessed November 2, 2010

¹⁰ As promulgated on August 27, 2010.

¹¹ Counter Trafficking in Persons Act No 8 2010

13 CEDAW/C/KEN/7, § 104.

Article 7 CEDAW

Measures to Eliminate Discrimination against Women and Ensure Equality in Political and Public Life

The government acknowledges that there has been a considerably low participation of women in political and public life. Factors such as: a limited organization of women as a political force; high fees for party nominations and electoral campaigns¹²; discrimination and acts of violence against women candidates; gender stereo-typing and gender roles interfering with the electoral process; intimidation of women voters by spouses, extended families, employers, and wider community, continue to encumber the participation of women in political and public life¹³. The national report fails to indicate whether there are programmes of action in empowering women in taking up political and public functions.

The New Constitution of Kenya passed in August 2010 provides for equal treatment and opportunities for both women and men in all spheres¹⁴, and a guarantee of forty-seven seats in the National Assembly for women¹⁵, eighteen seats in the Senate¹⁶, and at least one-third members of either gender in County Assembly.¹⁷ However, in higher decision making levels such as the Cabinet Secretaries¹⁸ and Judiciary¹⁹ the representation of women is not guaranteed, except for in lower levels of the Judiciary system where two positions have been earmarked for women.²⁰

Recommendations

The government should take a strong position as regards gender equality in politics and public life. The government should encourage political parties to promote gender equality and ensure a larger presence of women in high levels of decision-making such as Cabinet Secretaries and the Judiciary.

¹² See Promoting women's Participation in Kenya's governance http://www.idrc.ca/en/ev-5198-201-1-DO_TOPIC.html accessed on October 30, 2010.

¹³ At a CEDAW consultative Forum organised by FI in Nairobi October 29, 2010, none of the 84 grassroots women leaders drawn from all over Kenya was even remotely aware of the existence of the Training Manual on Gender Main Streaming.

¹⁴ Art. 27 (3).

¹⁵ Art. 97 (1) (b).

¹⁶ Art. 98 (1) (b,c,d).

¹⁷ Art. 177 (1) (b).

¹⁸ Art. 152.

¹⁹ Art. 161, 162.

²⁰ Art. 171 (2)(f, h) X.

Article 10 CEDAW

Equality in the Field of Education

The new Constitution of Kenya²¹ stipulates the right to basic education to both genders. However, in practice, the right to basic education is not necessarily upheld or attainable by all girls due to several constraints highlighted below. The 2009 Kenya census showed that the 51.2% of the Kenyan population is female. Despite this, girls and women are slightly underrepresented at schools with the number of girls and women attending school reported as follows:

- Pre-primary: 1,096,181 (48% of those attending Edmund Rice Schools in Mukuru Ruben Centre and Brother Sang Education Center in Nairobi. Primary: 4,587,112 (49% of those attending)
- Secondary: 833,580 (46% of those attending)
- University: 83,025 (41% of those attending).

Issues that prevents full realisation of the right to education:

(a) Early pregnancy

Statistics indicate that pregnancy accounts for 31% of school drop out amongst girls²².

The government developed a Gender and Education Policy in 2003, which sets provisions for the re-admission of girl students who become pregnant while still at school. However, in reality, it is left to the discretion of the head teachers of schools to readmit girls to school with some head teachers refusing to do so. The following case studies highlight this issue:

- The Forum for African Women Educationalists lobbies for girls education in Kenya. It also provides support some girls' education. The organization was contacted by a school in Mombasa to request that it stops paying fees for a girl because she had become pregnant and was expelled²³.
- Thirteen girls from Kikambala Primary School in Kilifi District were expelled from their school due to pregnancy and were not allowed to return to class for

²¹ The Constitution of Kenya, August 2010.

²² Mulanam Joyce, "Stopping Pregnancy From Being the End of the Educational Road", IPS News, 28 July 2010 (2003 figures provided by the Kenyan chapter of the Forum for African Women Educationalists (END/2006).

²³ Mulanam Joyce, Ibid (no 1).

the third term of the 2010 school year²⁴.

Recommendations

The government should take concrete steps to ensure girls return to school after giving birth. Punitive measures should be taken against head teachers who deny re-entry of girls to schools after pregnancy.

(b) Lack of access to sanitary pads

Access to sanitary towels, an item specific to girls is still a challenge and has been a cause of dropping out in some cases²⁵. This leads to the girl child staying home during menstruations. A girl child who stays home during menstruations loses up to 2 weeks of schooling per term. Girls attending a school in an informal settlement in the industrial area of Nairobi report that they stay home from school if they do not have sanitary pads or any substitute. Substitutes used by them are stuffing from mattresses or old rags.

Whilst the government has prepared a gender equity policy which included a policy that the girl child from low socio economic background will receive sanitary pads, one school located in an informal settlement in the industrial area of Nairobi reports that the supply of sanitary pads is infrequent and not enough are provided for each girl child.

The government allocated only US\$2300 towards provision of sanitary pads in 2007/08²⁶. This would only provide 12 packets of sanitary pads (and more than 1 packet is required each month) to approximately 500 girls. This is insufficient given the number of girl students in informal settlements (for example, at one government primary school which has only students from an informal settlement in the industrial area of Nairobi, there are 682 female students, with 228 in standards 6, 7 and 8).

Recommendations

The government should take adequate measures to properly implement its policy to access sanitary pads. These should be zero rated and manufactured locally.

(c) Child Labour

²⁴ “Culture condemns girls to pregnancy at 13”, The Citizen, 7 September 2010.

²⁵ See Primary school girls gain Life skills ,<http://kenya.usaid.gov/success-story/130>.

²⁶ Mwendwa, John; Munene, Jane; Kibui, Alice, “End of Project Evaluation Report”, Commonwealth Education Fund – Kenya, September 2008.

Girls are often required to stay home and care for the family or engage in work and are thus prevented from going to school. For example, at a child labour program in an informal settlement in Nairobi, the centre rescued 93 girls from child labour in 2009-10. Children participating in the workforce may attend school but have limited time to study due to the hours worked outside of school.

The Child Labour Module of Integrated Labour Force Survey indicates that 5.9% of Kenyan girls participate in the labour force with 2.9% participating in the labour force without attending school²⁷. Children who are participating in child labour are less likely to attend school than those who are not (52.8% vs. 71.5%)²⁸.

In its section regarding Education as a Preventive Strategy Against Child Labourⁱ, the Child Labour Report indicates that 15% of children aged 5 to 17 years were working, some of them for long hours (it was estimated that up to 38.5% of the working children were working for more than 41 hours each week)²⁹.

Recommendations

The government should take a strong position along with concrete steps to fight child labour and undertake national campaigns aimed at raising awareness on right to education, including measures that encourage parents to ensure their children go to school.

(c) Cost of education

Whilst the government has implemented an education policy, many government schools are full. Accordingly, not every child has access to education. Informal schools have been implemented in informal settlement areas by individual persons to provide education to children who have no access to government or private schools. In Kibera, there are many informal schools catering to large numbers of students. For example, one informal school has over 150 students, one has over 340 students and another has over 500 students.

Additionally, the government does not provide sufficient numbers of qualified teachers for public schools. This leads to parents or non-government organizations paying the wages of additional schoolteachers.

For example, at one government school in an informal settlement of the industrial area of Nairobi, there are 1617 students and only 28 teachers. Of those teachers, 20 are funded by a private non government organization and the government only

²⁷ IPEC/SIMPOC, 1998-99. Whilst these figures are from a 1998 survey, there do not appear to be recent statistics and the survey was quoted as recently as 2008 by the International Labour Office.

²⁸ International Labour Office, "Kenya Child Labour Data Country Brief", 2008.

²⁹ Republic of Kenya, "The 1998/99 Child Labour Report", Central Bureau of Statistics, Ministry of Finance and Planning, September 2001.

provided 8 teachers. The teachers provided by the government include the head teacher, deputy head teacher and the senior teacher who are mainly involved with administration of the school rather than teaching the students.

Students from low socio economic backgrounds may not have sufficient nutrition. This has an impact on their ability to learn. For example, one school near Kibwezi is trying to implement a feeding program as many of its students only eat one meal per day usually in the evening.

Another issue relates to schools requiring children to attend early childhood education as a pre-requisite to entry. Early childhood education is unaffordable to some families.

Recommendations

We urge the government to take the necessary measures to ensure the right to education to girls, including:

- Provide sufficient teachers in public primary schools and open more public schools
- Provide feeding programs for schools in low socio economic areas
- Implement a system of registration of teachers
- Harmonize the teachers/student ratio
- Ensure early childhood education is free or subsidized
- Increase teacher's remuneration to ensure qualified teachers are attracted to government schools.

(d) Trafficking

Trafficking can occur at two levels:

- Externally: women and girls being trafficked from Kenya to other countries
- Internally within Kenya, from rural to urban areas.

Traditionally, parents of poor rural families would send their children to live with wealth families. Today, that practice has been exploited by traffickers so that many of such children are in fact child domestic workers with no access to education, no freedom of movement and working long hours in poor conditions for little or no pay³⁰.

Young girls can also be taken from rural homes to engage in remunerated activities in the city (such as housekeeping). They are then sold to other persons, sometimes as a sex slave. This occurred to a girl who managed to escape and is

³⁰ Elaine Pearson, "Study on Trafficking in Women in East Africa", Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, 2003.

currently being assisted by social workers at a centre located in an informal settlement in the industrial area of Nairobi.

Trafficking can also occur through abduction as the following case study illustrates:

A nine years old girl was living in the outskirts of Nairobi and was abducted by a man. She was taken to a nearby house and locked in a room. Another girl was left locked up with her. On the sixth day, a woman came and took the other girl. The next day, a woman arrived to take the nine year old away. Whilst arranging a taxi, the nine year old was left on the veranda with another woman. The nine year old ran away when the other woman was distracted. Police investigated the kidnapping and discovered that the woman who tried to take her in the taxi intended to exchange the nine year old for another child and the nine year old was to be sent to work as a domestic worker³¹. That happened in Mombasa Beaches in Kenya Coastlands.

Recommendations

The government should

- Take concrete measures to address trafficking in human beings, in particular as regards young girls who are very likely to fall within the sex market.
- Ensure that traffickers are duly punished and brought to justice
- Protect victims of trafficking by encouraging girls to speak out and denounce their perpetrators and by providing shelters and homes where they can find refuge.

(e) Harmful cultural practices

Early marriages and Female Genital Mutilation (FGM) still occur in Kenya having a negative impact on girls' school attendance. A UNICEF report indicates that 19% of 15 to 19 year old Kenyans were married and in such cases girls are less likely to receive education³².

Reports indicate that FGM is not as popular as it has been historically³³. A girl child subjected to FGM may be absent from school whilst recovering from FGM or if complications or infections develop. For example, a Nairobi family

³¹ Pearson, Ibid (No 8).

³² UNICEF, "Early Marriage: A harmful traditional practice", The United Nations Children's Fund, 2005.

³³ In Kenya, the rate of FGM decreased from 32% in 2003 to 27% in 2009: UNICEF: "The dynamics of social change. Towards the abandonment of female genital mutilation/cutting in five African countries", The United Nations Children's Fund, 2010.

subjected their daughter to FGM in 2010. The girl was absent from school for 2 weeks whilst recovering from the intervention.

Recommendations

Legislation should be put in place to prosecute parents who force their children to undergo Female Genital Mutilation. The government should also undertake a strong campaign of awareness on FMG, especially at schools and in rural areas.

Article 11 CEDAW

Elimination of Discrimination against Women in the Field of Employment

The national report acknowledges that in public, private and self-employment sectors women continue to lag behind³⁴. Some of the areas highlighted in the report are low representation of women in high income brackets arising from biased attitudes and few promotion opportunities extended towards women in all sectors including security³⁵. In spite of Employment Act, which protects dismissal of women on grounds of gender and pregnancy among others, women continue to suffer discrimination from employers.³⁶

The sexual harassment act also ensures that women are protected from sexual harassment in their work environment, however reports indicate that a high prevalence of sexual harassment remains.³⁷ There is also a lack of proper remuneration for women in the informal sector particularly in agriculture and domestic house workers. Finally, women in the private and self employed sectors lack financial skills in management of resources.

Recommendations

The government should take concrete steps to ensure that:

- Ensure that gender mainstreaming be encouraged as a practice in public, private and self-employment sector in an attempt to increase representation of women in high-income brackets.
- Revise the recruitment and remuneration policy of low-income women workers engaged in the agricultural sector and domestic work. Government should popularise its social welfare programs to make rural women aware of such grants
- Encourage employers to adhere to the Employment Act with specific reference to the casual workers
- Design and implement additional measures (in collaboration with the Federation of Kenyan Employers) to protect women from sexual harassment and wrongful dismissal on

³⁴ CEDAW/C/KEN /7.

³⁵ Art 163 & 166.

³⁶ Armed forces woman terminated on grounds of pregnancy (October 2010).

³⁷ Standard Chartered employee was dismissed when she refused to engage in sexual favours to her superior.

gender-based grounds. Eradicate any gender-based discrimination on the side of employers

- Encourage women to join trade unions
- Empower women capacity in decision-making matters relating to land transactions including farm proceeds.

Article 12 CEDAW

Measures to Eliminate Discrimination against Women in the Field of Health Care

The government of Kenya has made progress in improving the access to the National Health Insurance Scheme. FI and its partners welcome the government's effort to reduce maternal mortality in conformity with the Millennium Development Goals (MDGs) as well as the increased access to anti retroviral therapy by people living with HIV/AIDS, two thirds of which are women.

However, the challenge of maternal mortality still persists. Over 50% of births are still carried out by traditional birth attendants. While it is known that “any improvement observed when traditional birth attendants training programmes have been introduced was because of the associated supervision and referral systems and because of the quality of essential obstetric services available at first referral level”³⁸ there are only two referral hospitals in Kenya. There is a shortage of skilled personnel to attend the mothers and the infrastructure remains a challenge for women to access hospitals for maternity related services³⁹.

The challenge in addressing the HIV/AIDS pandemic is that it has not been combined with adequate nutrition programmes. This aggravates the negative effects of the drugs on the infected and affected people.

Recommendations

FI and its partners urge the government to:

- Increase the number and distribution of referral hospitals and competent medical personnel.
- Streamline the involvement of traditional birth attendants.
- Promote the Natural Family Planning
- Promote nutritional programmes along side provisions of antiretroviral therapy.

³⁸ The Safe Motherhood Demonstration Project, Kenya - Ministry of Health, University of Nairobi and Population Council Safe Motherhood Policy Alert No. 4 – November 2003.

³⁹ See Where Life can be brutal and Short, <http://www.reliefweb.int/rw/rwb.nsf> accessed on November 1, 2010.

Article 16 CEDAW

Equality in Marriage and the Family

Although the Family Protection Bill officially criminalized violence against women, domestic violence represents a main challenge in Kenya. Even though the 2001 Child Act provides for protection against early marriage and prevention of consequential health and education implications, parents are still giving away young girls in marriage. The government should put in place laws that distribute matrimonial property equally in cases of dispute.

Recommendations

The government should

- Strengthen forensic services related to sexual offense.
- Facilitate mobile health care clinics with sufficient medical kits for rape. They should be managed by properly trained medical staff to counter the effects.
- Take concrete steps to assist women victims of sexual violence, including post-violence assistance and support that foresees shelter in the case of pregnancy.

ⁱ UNICEF Evaluation Working Paper of December 2003