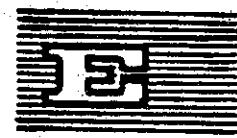


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UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL



Distr.
LIMITED
E/CN.14/SW/INF.26
8 April 1969
Original : ENGLISH

ECONOMIC COMMISSION FOR AFRICA
Regional Meeting on the Role of Women
in National Development
Addis Ababa, 17-26 March 1969

COUNTRY REPORT - KENYA*

The name 'Kenya' was derived from one of its most famous mountains known as mount Kenya which is over 17,000 ft. It lies on the equator in the boundaries of Uganda on the west, Tanzania in the south, Somalia on the east and Ethiopia to the north.

Kenya covers an area of 225,000 sq miles and has a population of over 11 million. Kenya is famous internationally for abundance of its game and the beauty of its scenery. It has a pleasant climate which ranges from 40°F in the highlands to 90°F at the coast and in semi-arid areas. Equator line divides the country almost in half. Official language is English and Kiswahili, a mixture of Arabic and African Bantu dialects. There are over 40 African tribes.

Less than 10 per cent of Kenya has over 30 inches of rainfall a year but from the semi-arid to the rain forests it ranges from practically none to over 80 inches a year. Long rains are between the months of March and May; short rains are from November to December.

The main towns are: Nairobi - the capital city, is over 5,452 feet above sea level and with a population of approximately 500,000. Mombasa is the chief port. The great Rift Valley which cuts through Kenya from north to south is 2,000-3,000 feet below the sea level on either side. The Republic of Kenya has its own currency in cents and shillings.

Economic development

We are primarily an agricultural country and economic development is based on the development of this sector. Most of our people live in the rural areas. In fact only about eight per cent of our population live in the urban areas. As far as women are concerned, there are very few of them living in urban areas - although their proportion is increasing rapidly. There are more women in Kenya than men and for this reason

* Presented by the Kenya Delegation: Mrs. Dananis Ayodo, Mrs. Muthoni Likimani, Mrs. Jael Mbogo and Mrs. Ann Ndegwa.

alone women play a major role in national development. Agricultural education for women is considered to be of vital importance. There are several farmers training centres and colleges for both women and men. It is realised that for any change to be achieved in securing rural development, women must play their full part. Women must change their attitudes and practices and accept new agricultural techniques whose implementations will lead to greater material benefit and better living conditions. This is because in the African society women play a very big part in every activity for example in farming, looking after the home and family, etc. The Kenya Government has recognised the role of women in introducing the necessary and desirable changes in accordance with the national development plan.

Major agricultural exports are coffee, tea, sisal, pyrethrum, meat and dairy products, maize in a small way. We have now started to export fresh and tinned vegetables, fruits and flowers to various parts of the world.

Another major source of revenue to our national income is derived from tourism. This is because of the many facilities and attractions that Kenya offers to the tourists. Tourist industry contributes greatly to the national development economy in the fields of employment and trade.

Kenya's traditional handicraft movement has reached a very important development stage. Through ILO the Government of Kenya and Maendeleo ya Wanawake Organization have been privileged to acquire the services of two ILO experts in handicrafts, who visited our country in 1967 and 1968 respectively in order to assess the scope and possibilities of expanding this trade. The experts revealed that there were tremendous resources, manpower and potentiality, both nationally and internationally. Many attempts have since been made to establish handicraft movement on a commercial basis and although the women's organization (Maendeleo ya Wanawake) has an established shop with more than 200 working groups in the rural areas, a lot has to be done in the line of co-ordination and research with a view to setting up an East African handicrafts centre to cater for all our interests. This proposal came up for discussion at the last United Nations Commission on the Status of Women at its twenty-second session under Agenda Item No. 9 (Dist. Limited - E/CN.6/L.559 of 5th February, 1969). The president of the International Council of Women had sent to us the following resolution passed at the above meeting which states as follows:

"ECONOMIC RIGHTS AND OPPORTUNITIES FOR WOMEN"

Countries which presided were: Guinea, Liberia, Madagascar, Tunisia, Costa Rica, Chile and Peru.

The Commission on the Status of Women being:

Aware of the importance of the efforts being made by the ILO in the sphere of handicrafts,

Recognizing the increasing participation of women in developing countries in this sphere of activity,

1. Expresses its gratification at the action of the ILO in arranging meeting of experts in India in November 1968 on the role of handicrafts in developing countries;
2. Expresses the hope that the ILO will find it possible to organise regional seminar on the role of handicrafts in the economy of developing countries in Africa, Latin America and Asia with a view to greater participation of women in the economic development of these States".

Adopted unanimously 6 - II - 69.

Doc. 69 - 02341.

Kenya delegation fully endorses this resolution. This resolution calls for open debate by the present General Plenary session of this Regional Meeting on the Role of Women in National Development as we strongly believe that this is the most appropriate place for such a resolution to be dealt with.

Industrial development in Kenya has expanded considerably since independence. There are today several agricultural and commercial industries booming up from various towns and in the rural areas throughout the country. For example, there are factories where products such as soap, paper bags, oil refineries, textiles, radios and batteries, breweries, glassware, etc., are being manufactured. Most of the products described above are for domestic consumption but to a smaller extent, Kenya is known for its high quality goods which have won top international prizes in various international exhibitions in different parts of the world.

Education, training and employment of women

Since independence, the Government of Kenya, through the Ministry of Education has embarked on a very realistic and diversified educational programme for women. Women have primary, secondary and university facilities and more and more girls are now aiming for degree work in various fields of academic advancement.

Of the total enrolment in primary schools of 1,050,000 children in 1968, over 40 per cent were girls. In secondary schools, enrolment of girls has risen from 8,970 in 1963 to 17,000 in 1968. In other words the number of girls in secondary schools has doubled since independence.

Generally mass adult education has been fully embarked upon and all media are being used to effect the programme fully. Student volunteers and teachers throughout the country are involved in trying to help those unfortunate adults to know how to read and write. This programme is fully backed by our Republican Government whereby it has employed adult education officers in every district to co-ordinate all these activities. It is envisaged that by the end of 1970, over 80 per cent of Kenya's population will be able to read and write.

The preparation of women to play an increasing role in the economy of the country is not confined to academic education only. More girls are now being trained as nurses, home visitors, social workers, community development officers, secretaries, teachers, lawyers, doctors, agricultural instructors, nutritionists, engineers and technicians. There is a national youth service sponsored by the Government and trains men and women in various aspects of careers and practical skills. At the moment there are more than 5,000 young people in three major camps established in different parts of the country.

Employment of women in the monetary sector of the economy has increased greatly since 1963:

<u>Sector</u>	<u>Year</u>	<u>No. of employees</u>
Public service	1963	10,638
	1968	22,000
Private industry and commerce	1963	11,819
	1968	25,000
Agriculture and forestry	1963	32,151
	1968 approx.	75,000

From these figures it will be noticed that the number of women employed in the three sectors have increased rapidly. Women can also be found in the trade and marketing fields and in the self-employment fields as well. However, women's contribution in every sector of monetary economy depends mostly on education and training facilities which must be made available to them. One of the major reasons why employment of women in some sectors is insignificant compared with the number of men employed is that in pre-independence days, education and training of women was not given the necessary emphasis it required. Today there is ample scope for women to participate actively in the development programmes of the country and we have realised that many of the jobs in which we are working must be tackled with confidence. In doing so we are not only serving our country directly but indirectly in the sense that those who have prejudice against women in certain jobs or positions of authority will see that such prejudice is irrational.

Women in public and voluntary service

Kenyan women are very active in the fields of public and voluntary work. In the pre-independence days, they fought side by side with men and have contributed effectively in the struggle to liberate our country from under-development. In fact Kenyan women have initiated a kind of revolution in rural and urban areas, but more emphasis has been given to the development of the rural areas in an effort to improve the standard of living of the rural population.

There are several women's organizations which are engaged in various fields of development programmes. The major ones are:

1. The National Council of Women of Kenya

This is an umbrella body for all women's organizations and it has 19 member societies.

2. Maendeleo ya Wanawake Organization (Women's Progress)

This is the largest single African women's organization in Kenya with more than 60,000 members in over 3,000 women clubs throughout the country. The Organization runs courses for women in nutrition, adult education, training of nursery school instructors, home-economics, dress-making, handicrafts, recruiting and training of local volunteer leaders, etc.

3. The Young Women's Christian Association

The Association runs short courses in commercial subjects for young girls and early school leavers. The Organization is also currently engaged in a mass fund-raising campaign to enable it to put up more hostels for working girls in various towns of Kenya. YWCA has several community development programmes for its members.

4. Child Welfare Society of Kenya

The Society is responsible for children and the rehabilitation of the destitute children. The Society also takes the necessary steps to place unwanted children in and where possible makes arrangements for their adoption. The Society enjoys full government support. It has 16 branches and two sub-branches situated in various parts of the country.

5. The Housewives Consumer Organization

This Organization plays a major role in educating women members on the quality, standard and prices of all consumable goods in the Kenya market.

Health education and family planning programme

Health and nutrition education in Kenya is undertaken by the Ministry of Health in co-operation with the WHO. Apart from these two major bodies, there are other private and voluntary organizations which contribute effective programmes in this field.

The Kenya Family Planning Association is fully backed by the Government and as a result of which there are today more than 20 health centres in the country which offer family planning services to those who are in need, free of charge. Most of the centres are government owned but make available room for family planning workers to attend to women. A special radio programme sponsored by IPPF in co-operation with Maendeleo ya Wanawake Organization, the National Freedom from Hunger Campaign Committee of Kenya and the Equator Sound Studio was launched six months ago.

Women's contribution through the Government's Department of Community Development in conjunction with the local women leaders has achieved remarkable results. Many projects such as the building of nursery centres, roads, social centres, secondary and primary schools and several others have been accomplished on self-help basis through the spirit of harambee.

Political rights of women in Kenya

The Constitution of Kenya makes no distinction on the basis of sex to what persons are qualified to be elected as members of the national assembly. Although we have no women members of parliament, this does not mean that women are not politically involved. They contribute the largest block of voters in the country and also played an important part in the struggle for independence. Today we have women members of the local authorities and municipal councils. There are over 129 women nominated councillors out of a total number of 474 whereas we have 52 women elected councillors out of 1708, thus giving us a total figure 181 women councillors in Kenya. Kenya women can be found in all fields of political aspect of the country and some are holding offices within the ruling party - KANU - as chairmen or secretaries of the sub-branches in various locations.

Legal status of women in Kenya (with special reference to family law)

The legal status of a woman in Kenya is made complex by the existence of a multiplicity of legal systems operating within the country and affecting the different communities in different ways. There is firstly, the general system derived from English law. Secondly, there is the Hindu system which applies to Hindus only. Thirdly, there is the Islamic system applying to Muslims. Finally, and perhaps the most important system because it applies to the majority of the African population, there is the customary law system. Each of these systems grants a woman a legal status different from the other.

It would follow, therefore, that it is more appropriate in the situation of Kenya to talk of the legal statutes of women rather than their legal status.

In this paper, it will be evident that the married woman features prominently. This is not by accident. It is in the field of family law (that is the law that governs the relationships of the husband, the wife and the children, between themselves and the world in general) that legal status of a woman is easily discernable from that of her husband. Outside the realm of family law, women are generally in the same legal status as men. For example, our Constitution makes no discrimination as to sex in relation to voting, standing for election to Parliament and so on, in fact as had been described in the previous paragraphs.

We have indicated that it is necessary to deal with the legal status of women under the different system of law applying in Kenya. We shall deal very briefly, therefore, with the position under the general law and the Hindu and Islamic law because no special problem seem to have been experienced in any field. The bulk of this paper will deal with the position of women under customary law because it is in this field that the women have made remarkable advancement and brought about reforms. This is in keeping with the recommendation and resolution of the United Nations Declaration on the prevention of discrimination of women. The thesis will be therefore, that whereas certain reforms are urgently needed, the status of women under customary law is not as "inferior" as has been suggested.

I. The general law (including Hindu law)

The reason for including Hindu law under this head is that in 1960 the Hindu law relating to marriage and divorce was codified in the Hindu Marriage and Divorce Act (Cap. 157). The general effect of the Act is to give Hindu marriages substantially the same status as a marriage under the Marriage Act and to apply many of the provisions of the latter Act, e.g., relating to maintenance, alimony, etc. to Hindu marriages. Succession to the estates of deceased Hindus is still, however, governed by Hindu law (Hindu Succession Act, Cap. 158).

Under this head is included statutes, common law and principles of equity. This head should cover any person other than persons covered under the customary law or the Islamic law. Rights of women created under this head are quite clear generally. They are to be found in the Marriage Act, the African Christian Marriage and Divorce Act, the Matrimonial Causes Act, the Subordinate Court (Separation and Maintenance) Act, and the Hindu Marriage and Divorce Act plus the decision of the courts.

A woman married under these laws will be entitled to the company of her husband, maintenance by her husband and reasonable treatment. She has the same rights as the husband in regard to petitioning for divorce, nullity, judicial separation and restitution of conjugal rights. On divorce or separation, a wife will be entitled to maintenance.

II. Islamic law

The Islamic law applies only to Muslims. Unlike the customary law it is clearly recorded in the Koran and other writings plus the custom which forms part of the Islamic law. The legal position of a woman under Islamic law will therefore be easily ascertainable. It is, however, useful to remember that Islamic law is divided into various schools, each representing a different kind of law in some detail, e.g., the Shia law, Hanafi law and so on. The status a woman has under one may differ slightly from that under the other.

It suffices to mention briefly some of the main rules with a view to indicating the status of a woman under Islamic law generally. She should not marry more than one husband but the husband may marry as many as four provided he treats all of them equally. A Muslim woman cannot contract a valid marriage with a non-Muslim but a Muslim man can contract a valid marriage with a limited category of non-Muslims. The woman, on marriage, is entitled to receive some property from the husband, called "Mahr"; she is further entitled to maintenance. She is capable of owning separate property from that of her husband. On the other hand, she cannot leave the home without the leave of the husband. Upon divorce, except in certain circumstances, the wife's right to maintenance ceases.

As regards inheritance, Islamic law provides that a widow gets a specific share of the inheritance - one-eighth of the property.

III. Customary law

This is the law that applies to the greatest majority of the people of Kenya. But it is well to remember that Kenya has over forty tribes, each having its own customary law and the status of women may well differ from one customary law to another. Until 1961, the customary laws of Kenya were, to a large extent, unwritten, but in that year the Government initiated a project with the collaboration of the School of Oriental and African Studies, University of London, for the comprehensive recording of the customary laws of the Kenya tribes. The work was done by Mr. E. Cotran of London University with the collaboration and assistance of the Kenya authorities. These restatements of customary law have filled the gaps in our knowledge of customary law and have enabled us to examine the areas where reform is most urgently needed.

Although, as we have indicated, the customary laws are different for each tribe, there are certain basic common principles in relation to the status of widows. We shall try here to enumerate certain customs which have been thought to be incompatible with the status of woman in a democratic society and examine how far these customs are in fact so.

- (1) Polygamy. All customary laws, without exception, allow a man to have a plurality of wives. Naturally, this custom has been subjected to severe criticisms but the significant thing to notice is that these criticisms have come not from the women themselves, but invariably from Christian religious organizations. The fact is that polygamy is so much part of an African's way of life, that (apart from Christian teaching), it is generally acceptable to both African men and women. Most customary laws provide that before taking a second wife, a man should consult his first wife, and research has shown that most of our women folk, far from raising any objections, welcome this as providing a help and companion. Our law now provides that if an African opts to marry under the statutory law, he should remain monogamous and not take other wives by customary law. Reports do indicate, however, that many such persons do take other wives. This shows conclusively that polygamy cannot be combatted by legislation and if it were to die out, it will invariably be for economic reasons and therefore die a natural death.
- (2) Consent of woman to marriage. It has been suggested by writers in the past that customary marriages were "forced" and that the girl had little or no say in the choice of her partner. This is a gross exaggeration. In effect most customary laws provided special ceremonies for ascertaining a girl's wishes and certainly nowadays it can be stated as a general rule that a marriage under customary law would be invalid unless the girl's consent thereto has been obtained. It is true that the spouses' families still play a very important role in the marriage negotiations and in many cases take a part in the selection of a bride, but that is not to say that the marriage is forced.
- (3) Payment of bride-price. Customary marriages are accompanied or followed by a payment or payments by the bridegroom or his family to the bride's family, normally in the form of cattle or other livestock. This payment was given in the past the unfortunate name of "bride-price". And this had led uniformed observers to think that marriage under customary law was no more than "wife purchase". (See for example the dictum of Hamilton C.J. in Rev. Amekyo 7 E.A.L.R. (1917) 4). A more appropriate term, which we have used in recent Kenya legislation, is "dowry".

If the true significance of the payment of dowry is understood, then there is no reason to suggest that it lowers the status of women in any way. Marriage under customary law is an alliance between two family groups and the payment of dowry is an important factor in strengthening this alliance. To a rural African - whether a man or woman - marriage without dowry is no marriage at all, and most women would in fact take the view that their status is in fact being lowered if no dowry was paid for their marriage.

- (4) Divorce. Here again, there is a generally held misconception that under customary law, a husband could simply turn away his wife at his will and pleasure. This could not be further from the truth. In fact, divorce under customary law was traditionally either unknown altogether or only resorted to in very exceptional circumstances, e.g., where there were no children, or where the wife has committed some outrageous act such as witchcraft or repeated adultery. As marriage is an alliance between two family groups, its dissolution is very much the concern of the families because divorce invariably means the return of the dowry. It is, therefore, untrue to suggest that women are at any disadvantage in connexion with the divorce law under customary law.
- (5) Widow-inheritance or Levirate Union. This is the custom under which a widow is required to cohabit with a brother or other relative of her deceased husband. Although any element of compulsion here is to be deplored, in fact there is usually no compulsion and it is left to the widow to decide whether she wants to enter into such an arrangement. Here again, the term "widow-inheritance" is unfortunate because it suggests to the uninformed observer that the widow is inherited as though she was property. In effect, the custom can be justified in a traditional setting as:
 - (a) Providing a guardian and a person to maintain the widow in the days when social security schemes were absent;
 - (b) Providing a means to procreate children for the deceased husband - it is really a continuation of the previous marriage.

It should be noted that African women married under the Marriage Act or the African Christian Marriage and Divorce Act are given special status under section 13 of the latter Act, which exempts them from the obligation of "widow-inheritance" and makes them the guardian of their children. The section provides:

- (i) Any African woman married in accordance with the provisions of this Act or of the Marriage Act or of the Native Christian Marriage Act (now repealed), whether before or after the commencement of this Act, shall be deemed to have attained her majority on widowhood and shall not be bound to cohabit with a brother or any other relative of her deceased husband or any other person or to be at the disposal of such brother or other relative or other person, but she shall have the same rights to support for herself and her children of such marriage from such brother or other relative as she would have had if she had not been married as aforesaid.
- (ii) Any such woman shall upon the death of her husband become the guardian of any children of the marriage, and shall, so long as she remains a Christian, continue to be the guardian of such children until such children, if males, attain the age of 16 years, or if females, attain the age of 16 years or marry, and shall be competent to dispose of her children in marriage, but in such event the customary bride price shall on demand be paid to such person as is entitled thereto by native law and custom.

We hope we have not given the impression that all is well with the status of women under customary law in Kenya. There are certain malpractices and ancient customs which must be done away with. The principal point we were trying to elucidate above is that the law relating to the status of woman needs reform, but not because there is anything intrinsically evil about it. Looked at in its traditional setting, the customary laws worked perfectly and afforded good protection to women. The reason why reform is needed is that due to modern conditions, e.g., urbanisation, education, religion, economic advancement, etc., the customary law sanctions are no longer effective and the dying influence of the family, clan, or tribe necessitates the introduction of new rules designed to protect women.

In what fields are reforms most urgent? The following list, we think, is paramount:

- (1) Chastisement of a wife. The right of a husband to chastise his wife given to him under customary law must go.
- (2) Right to maintenance. Although wives have a right to be maintained by their husbands under customary law, in effect, the dying influence of customary sanctions has resulted in many abuses, whereby husbands go to

work in the towns leaving their wives in the country without adequate provision. This aspect must be remedied. Further, the law should be extended so as to make provision for maintaining a wife after divorce which is not available under the existing customary laws.

- (3) Guardianship of wife. A wife should no longer as hitherto be under the perpetual guardianship of her husband and should have the rights to sue and be sued in her own name.
- (4) Wife's property. Under customary law, a wife's property is generally speaking under the control of her husband and on divorce, she is normally not given any property except possibly that which she obtained from her own family. This should be remedied so as to give a wife a right to property especially if acquired through her own efforts.
- (5) Rights of inheritance. Here again, the customary law is very inadequate. Daughters inherit nothing under customary law. Wives do not inherit absolutely, but may have a life interest in some of the property of the deceased husband. This should be remedied so as to allow - women - whether daughters or wives - to get a specific share of the inheritance.

Because the government is conscious that certain reforms in the laws regulating the status of women in Kenya are needed, we have recently set up two Commissions - one on the law of marriage and divorce and the other on the law of succession. The terms of reference of the Commissions were to try and produce a unified law of marriage and succession to replace the existing multiple laws on the subject. One of the specific terms of reference was that the Commissions shall "pay particular attention to the status of women in a free democratic society" and two of our leading Kenya women, Miss Margaret Kenyatta and Mrs. Phoebe Asiyo were members of the Commission.

The report of these Commissions, have no doubt made recommendations to remedy the defects we have been talking about and produced something acceptable to the Kenya women of today. This report has so far been adopted by the Kenya Assembly and is now operative.

But let us end by stressing that the status of women cannot be enhanced solely by legislation. All the law can do is to lay down the minimum principles acceptable in a modern society. The rest of the fight must remain with the women who must assert the rights given to us by law and play our proper and important role in both public and family life.