

27 July 2015

CEDAW Secretariat
OHCHR – Palais Wilson
52, rue des Pâquis
CH-1201 Geneva 10
Switzerland

Re: Supplementary information on Tanzania scheduled for review by the Committee on Elimination of Discrimination against Women during its 63rd Pre-sessional Working Group

Distinguished Committee Members:

This letter is intended to supplement the periodic report submitted by Tanzania to the Committee on Elimination of Discrimination against Women, which is scheduled to be reviewed during the Committee's 63rd pre-Session. The Women's Legal Aid Centre in Tanzania and the International Women's Human Rights Clinic (IWHRC) at Georgetown Law in Washington, D.C., USA, jointly submit this letter in order to further the work of the Committee.

The purpose of the letter is to request the Committee to place on the List of Issues to Tanzania questions about how the Government will implement the Committee's Views and Recommendations in *E.S. and S.C. v. United Republic of Tanzania*, U.N. Doc. CEDAW/C/60/D/48/2013 (2 March 2015), <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/JurisprudenceSession60.aspx>. Since Tanzania is due to respond to the Committee's Views on 1 September 2015, and has not previously responded to the Committee's requests for its observations about the Communication No. 48/2013 of E.S. and S.C., adding these questions to the List of Issues will be helpful in two ways. First, it will better inform Tanzanian officials about the need to take action on the Committee's Views before the September 1 due date. Second, it will give the Committee an early opportunity during the 15 February – 4 March 2016 Session to follow up with the State party representatives how they have complied or will do so with the Committee Views. Both steps will help bring relief to the two widows who presented this Communication to the Committee and to the millions of women and girls whose CEDAW rights will be guaranteed if Tanzania implements the Committee's Recommendations.

The Background

In November 2013, WLAC and IWHRC jointly brought Communication No. 48/2013, on behalf of *E.S. and S.C. v. United Republic of Tanzania*, to this Committee. The authors, two widows, claimed that many provisions in Tanzania's codified customary law of inheritance denied widows, women, and girls equal rights in violation of CEDAW. They noted especially the facts that under this law, widows may not inherit from their husbands, women may not inherit clan land or administer estates, and daughters always inherit a small share compared to sons. Under these laws, the widows and their children had been expelled from their marital homes after their

husband's deaths and left without any financial resources. Although they had brought the matter to Tanzania's High Court, the Court refused to issue any relief despite acknowledging that the law was discriminatory. In their subsequent appeal to the Court of Appeal, that Court refused to act for four years, and then refused to rule because of a minor technical error by the High Court. The Court of Appeal ruled the widows could refile once they obtained a High Court judgement and drawn order with only one date, but the High Court refused to act on their multiple attempts to obtain the corrected judgement and drawn order.

On 2 March 2015, the Committee issued its Views and Recommendations in the case in U.N. Doc. CEDAW/C/60/D/48/2013. The Views included the following points:

7.9 In the circumstances and in the light of the foregoing, the Committee considers that the State party, by condoning such legal restraints on inheritance and property rights, has denied the authors equality in respect of inheritance and failed to provide them with any other means of economic security or any form of adequate redress, thereby failing to discharge its obligations under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1) (c) and 16 (1) (h) of the Convention.

8. In accordance with article 7 (3) of the Optional Protocol and taking into account all the foregoing considerations, the Committee considers that the State party has violated the rights of the authors under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention, read in the light of general recommendations Nos. 21, 28 and 29.

This Committee also recommended that Tanzania grant the widows compensation and reparation, and that it take multiple other steps to address the violations. These include: repealing or amending the discriminatory codified customary inheritance law to bring it into compliance with CEDAW; ensuring access to justice by guaranteeing that courts not resort to "excessive formalism" or delays; training judges and other officials and lawyers on CEDAW's requirements; engaging in dialogue with traditional leaders on the issue; helping rural women understand their rights; creating a coordinating system for Tanzania to participate in the Optional Protocol procedures; and ensuring the new Constitution, when enacted, guarantees that CEDAW prevails over discriminatory customary laws.

To date, Tanzania has taken no steps toward acknowledging or acting on this Committee's Views. On 2 June 2015, WLAC sent a letter with copies of the Committee's Views to the Permanent Secretary of each of the following Ministries: Ministry of Community Development, Gender, and Children; Ministry of Constitutional and Legal Affairs; and Ministry of Foreign Affairs and International Cooperation. It also sent the Views to the Deputy Attorney General in the Attorney General's Chamber. In the letter, WLAC asked when the Government would respond to the Committee and stated that it was "ready to collaborate with the Government towards this process." To date, no Ministry or Attorney General's Chamber official has responded to WLAC's requests.

In addition, on 26 June 2015, WLAC sent a letter with copies of the Committee's Views to the Commission for Human Rights and Good Governance; the Law Reform Commission; and the Speaker of the Parliament. WLAC wrote that it brought the CEDAW Committee Views to their

attention in their capacity as human rights actors for their appropriate action. Further, WLAC informed them that WLAC was ready to collaborate with them on any appropriate action. To date, WLAC has received no response from any of these actors.

Tanzania's Report, U.N. Doc. CEDAW/C/TZA/7-8

Tanzania's Report says very little about this issue. In paragraph 6, it states:

In compliance with Article 2 of the Convention, the State Party has carried out a review of the inheritance laws in Tanzania Mainland; and, as soon the New Constitution is adopted, the State Party will embark on the amendment of these laws to enhance equality between men, women and children in succession issues.

Inexplicably, the Government relies on the High Court decision denying the widows any relief, *E.S. & Another v AG*, High Court of Tanzania at Dar es Salaam, Misc. Civil Cause No. 82 of 2005 (unreported), to support the statement that: "In its legal system, the State Party ensures that those customary laws which contradict with the constitution and formal legal provisions are invalid to the extent of the inconsistency." See paragraph 158 and footnote 138 of Tanzania's Report, U.N. Doc. CEDAW/C/TZA/7-8. Instead, that High Court decision is the one where this Committee noted: "despite having acknowledged in its judgement of 8 September 2006 that the authors were discriminated against by the application of the State party's customary law provisions, the High Court refused to impugn the relevant provisions on the ground that it was impossible to effect customary change by judicial pronouncement and that doing so would be opening a Pandora's Box."

Request for Questions Concerning Tanzania's Proposed Actions to Implement the Committee's Recommendations

In 1990, 1998, and 2008, this Committee repeatedly issued concluding observations stating that the discriminatory codified inheritance law violated CEDAW and urging the Government to take action to end this discrimination. See footnote 37 of the Committee's Views. The Government took no action. After the widows filed their Communication No. 48/2013 with this Committee in November 2012, the Committee five times requested the Government to provide its observations on admissibility and the merits. The Government did not respond. In light of the Government's failure to participate in the Optional Protocol procedure and its continued failure to take effective steps against discrimination that affects millions of women and girls in Tanzania, WLAC and IWHRC respectfully request that this Committee place the following questions on the List of Issues:

1. Which branch of government – the courts, the executive branch, or the Parliament – is responsible for "grant[ing] the authors [E.S. and S.C.] appropriate reparation and adequate compensation commensurate with the seriousness of the violation of their rights," as the Committee recommended in paragraph 9(a) of its Views? If the courts are responsible, is it possible for the widows to return to the Court of Appeals on the grounds that the High Court has refused to issue the corrected drawn order, thus denying the widows their right to relief before the Court of Appeal? Or must the widows start a new

action in the High Court to gain reparation and compensation? If the executive branch is responsible, which Ministry can grant the appropriate reparation and compensation?

2. Why is it necessary to wait for the New Constitution to be adopted to enact legislation to provide “women and girls with equal administration and inheritance rights upon the dissolution of marriage by death, irrespective of their ethnicity or religion” as the Committee recommended in paragraph 9(b)(ii) of its Views? In 2004, the Women’s Legal Aid Centre submitted to the Minister of Justice and Constitutional Affairs a proposed “Bill for An Act to Provide for the Procedures and Obligations in the Administration of the Deceased’s Estate and Other Related Matters”. See Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, 7 GEO. J. GENDER & L. 599, Appendix B at 652-662 (2006) (text of Bill). That Bill fully complies with the Committee’s recommendation. If it is possible to enact it now, have the Cabinet and President submitted it to Parliament for enactment? If not, when will they do so?
3. How will the Government “[e]nsure access to effective remedies by guaranteeing that courts will refrain from resorting to excessive formalism and/or unreasonable and undue delays,” as the Committee recommended in paragraph 9(b)(iii) of its Views? Has the Government sent the Court of Appeals a copy of the Committee’s Views? If not, when will it do so?
4. Has the Attorney General assigned anyone to draft proposed legislation to “[p]ut in place a coordinating mechanism in charge of the preparation of the State party’s observations on individual communications submitted under the Optional Protocol, as well as of the monitoring of the implementation of the Committee’s recommendations under the Optional Protocol,” as recommended by the Committee in paragraph 9(b)(vii)? This is necessary because no one in the Tanzania Government responded to the Committee’s five requests for the State party’s observations on the admissibility and the merits of the widows’ Communication. See paragraphs 4-5 of the Committee’s Views. A coordinating mechanism is necessary because Article 6(2) of the Optional Protocol to CEDAW requires that, after the Committee sends a communication to the State Party, “[w]ithin six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.” If the Attorney General has not yet assigned anyone, when will work on drafting this mechanism begin?
5. Does the Draft New Constitution have a provision ensuring that “rights guaranteed under the [CEDAW] Convention have precedence over inconsistent and discriminatory customary provisions,” as the Committee recommended in paragraph 9(b)(i)? If not, how will the Government ensure that it does?

We hope that this information is useful during the CEDAW Committee’s pre-session review of Tanzania. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,



Susan Deller Ross
Professor of Law
Director, International Women's Human Rights Clinic
Georgetown University Law School
600 New Jersey Ave., N.W.
Washington, D.C. 20001
202-662-9641
E-Mail: ross@law.georgetown.edu



Theodosia Muhulo
Executive Director
Women's Legal Aid Centre
P.O. Box 79212
Dar es Salaam
Tanzania
255-22-266-266-4051
E-mail: wlac@wlac.or.tz