



# musawah

For Equality in the Muslim Family

## Musawah Oral Statement: Tanzania

63<sup>rd</sup> Session of the CEDAW Committee

*Monday, 22 February 2016*

*Thank you, Madam Chair.*

My name is \_\_\_\_\_ from IWRAW-AP. Today, I read the following statement on behalf of [Musawah](#), the global movement for equality and justice in the Muslim Family. We are honoured to address the CEDAW Committee today about the implementation of Article 16 in Tanzania, specifically with regards to the use of religion, culture, and tradition to justify discriminatory law and practice.

Today, we briefly highlight polygamy as a key area of discrimination, and challenge the assertion that discriminatory laws and practices justified in the name of religion and tradition cannot be reformed. Finally, we make recommendations for reform, and point out good practices from OIC countries.

**(a) On polygamy:** Currently, both customary law and The Law of Marriage Act (1971) allow polygamy.<sup>1</sup> Not only is there a lack of real and enforceable legal restrictions to limit the practice, the Marriage Act's particular provisions further entrench discrimination. Existing wives may only file objections to polygamy if they can prove the 'bad character' of the intended wife, or that the polygamy will result in financial hardship;<sup>2</sup> the law further fails to protect the property rights of all co-wives upon divorce, in a context of increasing national divorce rates.<sup>3</sup>

The permissibility of polygamy further exists within the context of the *codification of complementary roles and responsibilities between husband and wife*. Although the Marriage Act supersedes customary or Islamic law, it retains the classical legal framework in Muslim family law, which regards the husband as the head of the household with the duty to protect and provide,<sup>4</sup> in return for the wife's obedience and sexual availability. Not only does this legal framework institutionalise discrimination against women in the family, it remains impervious to changing realities on the ground, where increasingly women too protect and provide.

<sup>1</sup> Sections 9 and 10 of the Law of Marriage Act (1971). Also see 2008 COBs, para. 49.

<sup>2</sup> The Law of Marriage Act (1971), Section 20(2).

<sup>3</sup> The Law of Marriage Act (1971) only contemplates divorce of monogamous couples: Non-divorcing co-wives cannot be a party to divorce proceedings; since only parties can claim a stake in marital assets, there is no way for non-divorcing co-wives to claim a stake in marital property. Howland, R.L., and Koenen, A. 'Divorce and Polygamy in Tanzania,' 2014.

<sup>4</sup> The Law of Marriage Act, Section 63.

Currently, one fourth of all registered marriages in Tanzania are polygamous,<sup>5</sup> while de facto polygamy is on the rise.<sup>6</sup>

**→ We turn to the Committee's own findings, in its GR 21, that '[p]olygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.'**

**(b) On the justification of polygamy in the name of religion + tradition:** The State party declared that proposed amendments to the Marriage Act will *not* address polygamy because, '*[it] is not a practice in contention, as it is associated with people's religions and traditional beliefs which sanction polygamy.*'<sup>7</sup>

Given the evidence of significant harm of polygamy to women and families, surely the Government did not consider the voices of women and children in defining their own traditions.

With regard to the Muslim minority community—indeed—it is imperative to note that polygamy is not intrinsically 'Islamic.' It was an institution that existed and continues to exist in various civilizations and cultures throughout the world. Those who support polygamy commonly refer to the *Sunnah* (practice) of the Prophet, who had multiple wives in his later years. However, Musawah notes that the Prophet was monogamous for more than 25 years, and that his polygamous marriages were to widowed or divorced women for political and tribal reasons. Finally, the fact is there are juristic tools and concepts that exist *within* Muslim legal theory that can be used to reform Muslim laws and practices that are discriminatory today.

There is often a great deal of resistance to the idea of reforming family laws and practices because of the notion that they are rooted in *unchangeable* religious and traditional practice and belief, as clearly demonstrated in the reservations expressed by Tanzania.

**→ However, the example of polygamy alone illustrates that discriminatory laws—even those justified in the name of religion and culture—can and should be changed to ensure equality and justice for women.**

**(c) Recommendations + good practices:** The rights-based principles and scholarship that exist within Islam and other religious traditions, the State party ratification of CEDAW without reservations, its constitutional recognition of equality—and most importantly—the realities of women's lives today, necessitate the urgent need for reform.

**→ We urge the Committee to recommend that the Government of Tanzania abolish polygamy in law and in practice—immediately, and independent of the referendum and adoption of the new Constitution, which has no clear timeline. We raise Tunisia, Turkey, Kyrgyz Republic, Tajikistan, and Uzbekistan as positive examples.**

Musawah concludes by asserting that the issue here is not about what constitutes accurate

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<sup>5</sup> Human Rights Watch, *No Way Out: Child Marriage and Human Rights Abuses in Tanzania*, 2014.

<sup>6</sup> Howland, R.L., and Koenen, A. 'Divorce and Polygamy in Tanzania,' 2014.

<sup>7</sup> Tanzania Replies to List of Issues and Questions, para. 181.

religious and traditional belief, but whether the State party has the *political will* to end discrimination against women, its use of religion and tradition to justify male authority over women, and its decision to legitimise only patriarchal voices in defining belief and practice.

***Musawah recommends the CEDAW Committee to urge Tanzania, and Governments everywhere that purport to speak for and in the name of religion and tradition, to:***

- ❖ ***Recognise that diversity of opinions and juristic concepts exist within religious legal traditions to enable reform towards equality and justice;***
- ❖ ***Promote human rights standards as intrinsic to the teachings of Islam and other religions;***
- ❖ ***Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim family laws and practices; and***
- ❖ ***Support civil society groups and individuals engaged in family law reform campaigns.***

*We thank you for this opportunity, Madame Chair.*