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SOAWR Strongly Condemns Discriminatory Kenyan Legislation

The **Solidarity for African Women's Rights Coalition (SOAWR)**, an initiative of 43 organizations working across 23 countries in Africa to promote and protect women's rights in Africa, strongly condemns discriminatory provisions of Kenya's 2013 Matrimonial Property Act and the Marriage Bill (pending presidential assent).

The Matrimonial Property Act, which was duly gazetted into law on 10th January 2014, is discriminatory and a retrogressive step for women's rights to land and property in Kenya. The Act, in brief, defines matrimonial property as only property that is jointly owned by the spouse, and disallows women the right to marital property upon the death or divorce of their spouse by requiring them to prove their contribution to the acquisition of the property during the marriage. Because few Kenyan women own or jointly own property with their spouses, and given that many Kenyan women do not work in paid employment, many are unable to contribute financially in the acquisition of matrimonial property. In effect the Act strips women of rights to family property, including the very homes in which they and their children live in, when they are unable to prove financial contribution. Christine Ochieng, Executive Director of Federation of Women Lawyers in Kenya (FIDA-K) has noted that "the issue of proving contribution is irrelevant because the Constitution does not talk about proof of contribution; the Constitution talks about equality at the dissolution of marriage. And it should be 50-50 automatically." Frances Raday, head of the of the UN Working Group on discrimination against women in law and practice warned that "women will effectively have no security of tenure, or place to live with their children if their husband leaves them or dies, which will also increase their risk of experiencing violence...The passage of the Act will have a detrimental impact on the right to food, the right to adequate housing and the right to an adequate standard of living for Kenyan women, children and communities."

Kenya's troubling legislative trend did not cease there. In late March 2014, Kenyan MPs voted to include a provision in the new Marriage Bill that formally permits polygamy, but omits the critical long existing cultural context that permitted first wives to weigh in or veto a husband's choice. In effect, the new clause permits men in Kenya to take as many wives as they desire without wife's consent, violating the Constitution and undermining the rights of women. The proposed concept of polygamy under the Marriage Bill is extremely demeaning to Kenyan women and waters down the gains the country has made against inequality. Instead of indoctrinating archaic notions of patriarchy that perpetuate a culture of violence and discrimination against women, it is imperative that the prevailing legal framework adequately protects a woman's right to assert control over her own life and family circumstances.

These two pieces of legislation are retrogressive in nature and in clear violation of Kenya's 2010 constitution, which gives significant prominence to human rights and international law, and entrenches the rights and fundamental freedoms of all, including the right to equality and freedom from discrimination. They are also contrary to Kenya's legal obligations embodied in regional and international instruments. Kenya has ratified – and thus is bound by - the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("the Maputo Protocol"), the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Article 2 of the Maputo Protocol underscores Kenya's affirmative duty to combat all forms of discrimination against women, which includes ensuring the principle of equality between women and men in its legal framework and ensuring its effective application. Article 6 of the Maputo Protocol discourages polygamy and underscores the importance of equality in marriage, especially in polygamous relationships, which includes *mutual agreement* – and the right of a married woman to acquire and manage her own property freely. The protection of these rights can only occur when women are given the right to have a say and bearing on decisions that will affect their lives and families, including the decision to take on an additional wife. Article 7(d) of the Maputo Protocol obligates Kenya to ensure that in the event of divorce or separation, parties "have the right to an equitable sharing of the joint property deriving from the marriage." Further, the Maputo

Protocol requires Kenya to guarantee the right to inherent human dignity and the protection of her human and legal rights (Article 3), the right to access to justice and equal protection before the law (Article 8), the right for women to live in a positive cultural context and participate in the determination of cultural policies (Article 17), the right to sustainable development (Article 19) and inheritance rights (Article 21).

Further underscoring the discriminatory nature of the Marriage Bill, the CEDAW committee, in General Recommendation 21, condemned polygamy by asserting that “polygamous 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.”

SOAWR therefore calls on:

- i. His Excellency The President of the Republic of Kenya, Uhuru Kenyatta to listen to and protect the majority of this country’s citizens - women - and refrain from signing the Marriage Bill into law, and allow for a review of the untenable provisions, guided by the spirit and letter of the Constitution and the obligations of the state under the Maputo Protocol.
- ii. The Kenyan Parliament to repeal discriminatory and unconstitutional provisions from the 2013 Matrimonial Property Act to ensure that women have equal rights and opportunity before the law.

About the SOAWR Coalition:

SOAWR is working to ensure that the Protocol to the African Charter on the Rights of Women in Africa remains on the agenda of policy makers and to urge all African leaders to safeguard the rights of women through ratification and implementation of the Protocol.

Members of the Coalition:

BURKINA FASO: Voix de Femmes; BURUNDI: Collectif des Associations et ONGs Féminines de Burundi; CAMEROON: Women’s Advocacy and Communication Network, Women Peace Initiatives Association; DJIBOUTI: Union Nationale des Femmes de Djibouti; EGYPT: Association of Egyptian Female Lawyers; ETHIOPIA: Inter-African Committee on Harmful Traditional Practices Affecting the Health of Women and Children; THE GAMBIA: African Centre for Democracy and Human Rights Studies; GHANA: African Women’s Development Fund; GUINEA: Cellule de Coordination sur les Pratiques Traditionnelles Affectant la Santé des Femmes et des Enfants; KENYA: African Women’s Development and Communication Network, Coalition on Violence against Women, Equality Now (Secretariat), Ipas Africa Alliance for Women’s Reproductive Health and Rights, FAHAMU Networks for Social Justice, Federation of Women Lawyers-Kenya, Oxfam GB, Reproductive Health and Rights Alliance, Tomorrow’s Child Initiative, Women Direct; LIBERIA: Women of Liberia Peace Network, Women NGO’s Secretariat of Liberia; MALAWI: NGO Gender Coordination Network; MALI: Association des Juristes Maliennes; MOZAMBIQUE: Forum Mulher; NAMIBIA: Sister Namibia; NIGERIA: Alliances for Africa, BAOBAB for Women’s Human Rights, Human Rights Law Service, Women’s Rights Advancement and Protection Alternatives; SENEGAL: Inter-African Network for Women, Media, Gender and Development, (FAHAMU Networks for Social Justice); SOUTH AFRICA: People Opposing Women Abuse, University of Pretoria Centre for Human Rights; SOUTH SUDAN: Steward-Organisation; SUDAN: Strategic Initiative for Women in the Horn of Africa (SIHA); TANZANIA: Legal and Human Rights Centre; UGANDA: Action for Development, Akina Mama wa Afrika, Centre for Justice Studies and Innovations, Eastern African Sub-regional Support Initiative for the Advancement of Women, (SIHA), Uganda Women’s Network; ZAMBIA: Women and Law Southern Africa, Women in Law and Development in Africa; ZIMBABWE: Girl Child Network

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