

# CASE SUMMARY

## Request for Advisory Opinion 001/2016

1. THE CENTRE FOR HUMAN RIGHTS
2. FEDERATION OF WOMEN LAWYERS KENYA
3. WOMEN'S LEGAL CENTRE
4. WOMEN ADVOCATES RESEARCH AND DOCUMENTATION CENTRE
5. ZIMBABWE WOMEN LAWYERS ASSOCIATION

1. The Applicants state that they are Non-Governmental Organizations (NGOs) from four (04) African countries (Kenya, Nigeria, South Africa and Zimbabwe) and involved in advocating and defending the rights of woman and children in Africa. They state that they have Observer Status with the African Commission on Human and Peoples' Rights.
2. The Applicants are informally joined in this application by:(i)The Initiative for Strategic Litigation in Africa (ISLA), (ii)Legal Advocacy for Women in Africa Alumnae Incorporated, (iii)The Women and Law in Southern Africa – Zimbabwe and Malawi Chapters and (iv)Women Legal Aid Centre (WLAC).
3. They request the Court to give its Advisory Opinion on the interpretation of Article 6(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the States' obligations consequent thereto.
4. The request is made under Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (The Court Protocol) and Rule 68 of the Rules of the African Court (The Rules of Court).
5. The Applicants submit that they as co-applicants, qualify as African organisations recognized by the African Union for the purposes of Article 4(1) of the Court Protocol and Article 68(1) of the Rules of Court.
6. The Applicants state that their request for an Advisory Opinion is a "*legal matter relating to the [Protocol established under the] Charter*" and "*does not*

*relate to a matter being examined by the African Commission on Human and Peoples' Rights (the Commission)*". The Applicants contend that their application complies with Article 4 of the Court Protocol and therefore falls within the jurisdiction of the Court to receive the request pursuant to Article 4 of the Court Protocol.

7. They state that the main issue for determination in their request is for the Court to offer an advisory opinion on the precise meaning of Article 6(d) of the Maputo Protocol. Also that, the request is anchored on Articles 2(1) (a-e) and 2(2) of the Maputo protocol, which provides for the elimination of discrimination against women by requiring Member States to prevent all forms of discrimination against women through appropriate legislative, institutional measure and other appropriate measures.
8. Their view is that Article 6(d) imposes an obligation on Member States to enact national legislative measures to guarantee that every marriage is recorded in writing and registered in accordance with national laws in order to be legally recognized. They argue that, the import of Article 6(d) is two-fold. (i) It imposes a positive obligation on states to enact legislative measures to facilitate marriage registration procedures and (ii) it provides that marriages shall be recorded in writing and registered to become legally recognised. Therefore, the application is for an advisory opinion of the Court in relation to the legislative import of (i) and (ii) aforementioned.
9. The Applicants opine that Article 6(d) of the Maputo Protocol is very important in combatting and eliminating all forms of discrimination against women with regard to marriage and that if it is misinterpreted, women will be subjected to inevitable dangers and discrimination.
10. The Applicants maintain that unrecorded and unregistered marriages are common in Africa, caused by a variety of factors, including but not limited to, the lack of laws stipulate requirements or procedures for the compulsory registration of all forms of marriages, issues relating to cost of registration, onerous registration requirements, lack of awareness and lack of legal

frameworks regulating the consequences of unrecorded and unregistered marriages.

11. The Applicants submit that non-recording and non-registration of marriages render women vulnerable in that, they will be unable to provide proof of their marriages and hence they can easily be divorced; they are unable to enforce the enforcement requirement that a woman's consent must be sought before the man can take a second wife in a polygamous marriage; they are unable to secure land and propriety rights and finally that, it makes it difficult for countries to collect, monitor and analyse vital information about a population.

12. The Applicants conclude that the language in Article 6(d) of the Maputo Protocol seems to have been interpreted as meaning that unregistered marriages are invalid and/or should not receive legal recognition. Their position is that such an interpretation causes prejudice and injustice to women across Africa, whose marriages are unrecorded and unregistered. They submit further that this interpretation is contrary to the overall purpose of the Maputo Protocol and to the objectives of Article 2 thereof.

### **THE APPLICANT'S PRAYERS**

The Applicants pray the Court to;

- i. confirm that a failure to enact laws that require and regulate marriage registration constitute a violation of the Maputo Protocol by a member State; and
- ii. advise on the nature and scope of State obligation that Article 6(d) prescribes in respect of recording and registration of marriages, taking into account the broader duty of State parties to, respect, protect and promote the rights of women, as enshrined in the Maputo Protocol;
- iii. Confirm that Article 6(d) does not suggest or require that non-registration invalidates a marriage;
- iv. Advise whether State parties are required to enact national laws that provide for condonation procedures to correct or remedy non-compliance with registration requirements ; and

- v. Advise on the legal consequences that flow from non-registered marriages, having regard to the overall purpose of the Maputo Protocol and the specific protections and commitments set out in Articles 2 and 6(e-j) of the Maputo Protocol and other instruments.