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Evaluating the Legal Regime Governing Citizenship for Women in Tanzania: An Analysis of International and Domestic Laws for Conferring Citizenship to Foreign Spouses.



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Evaluating the Legal Regime Governing Citizenship for Women in Tanzania: An Analysis of International and Domestic Laws for Conferring Citizenship to Foreign Spouses.

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Abstract

Purpose: This paper provides a comprehensive analysis of Section 11(1) of the Tanzania Citizenship Act, which restricts Tanzanian women from conferring citizenship to their foreign spouses. By examining both domestic and international legal frameworks, this study aims to shed light on the discriminatory nature of this provision and proposes potential strategies to eradicate this issue.

Methodology: The paper combines a detailed examination of domestic legislations and relevant international conventions to provide a robust analysis of the current legal regime in Tanzania. Furthermore, it highlights the need for reform and suggests potential approaches to address this matter.

Findings: This paper aimed at making an assessment on the effectiveness of the current citizenship law in regard to the women of Tanzania and thus the research will be carried out in Mwanza region in Tanzania. The paper also analyzed the provisions of international treaties that protect and declare rights and interests of women with regards to protection of their spouses.

Unique Contribution to Theory, Practice and Policy: finally, this paper finds and recommends for the amendment especially the provision of section 11 (1) of the Tanzania Citizenship Act and also suggests the adoption and incorporation of the dual citizenship which will help resolving the issues surrounding citizenship.

Keywords: *Legal, Regime, Governing, Citizenship, Women, Tanzania*

INTRODUCTION

Citizenship laws play a crucial role in shaping a nation's identity and determining the rights and responsibilities of its people. Tanzania citizenship laws enshrined in the Tanzania Citizenship Act in conferring citizenship among spouses, this study takes an in-depth look at the aspect of which the law is discriminatory to women of Tanzanian citizenship in conferring their citizenship to their foreign spouses upon marriage. This is contrary to what the law states on the status for men in a similar situation, that foreign women married to Tanzanian men can acquire citizenship through naturalization upon marriage.

In Tanzania, the legal regime for conferring citizenship to foreign spouses is based on both international principles and domestic legislation. This article aims to provide a comprehensive analysis of the legal framework governing citizenship in Tanzania, with a specific focus on the rights of Tanzanian women to confer citizenship to their foreign spouses. A report made by Equality Now¹ has placed Tanzania as among the countries where the nationality of a married woman cannot pass to husband.²

INTERNATIONAL LEGAL FRAMEWORK

Tanzania, as a member of the international community, adheres to certain principles and International Conventions that influence its citizenship laws.

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** is one such crucial framework that promotes gender equality and non-discrimination in nationality matters. Tanzania ratified CEDAW in 1986, thereby committing to combating gender-based discrimination in all aspects of life, including citizenship rights. The Convention covers issues of nationality as the provision of Article 9 (1) states, "State Parties shall grant women equal rights with men to acquire, change or retain their nationality" therefore, the state laws are deemed to be gender neutral.³ Where a law is not gender neutral it signifies that it is in violation of individual rights against discrimination.

The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."⁴ Therefore, whatever socio – economic privileges that are enjoyed by men, such as the ability of a man to confer his citizenship to his spouse foreign citizenship should not be one sided. Women should enjoy the same privilege.

¹ Equality Now, Ending Sex Discrimination in Nationality and Citizenship Laws, May 2014, updated February 2015

² Equality Now (2014), Ending Sex Discrimination in Nationality and Citizenship Laws.

³ Article 9 of The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW)

⁴ Article 3 CEDAW

The **International Covenant on Civil and Political Rights** herein referred to as ICCPR,⁵ provides for the recognition of non – discrimination in member states and also where the laws are contrary to constitutional provisions the state must take necessary measures to wards that law. This is well provided for under article 2 of the covenant⁶.

Article 2(1.) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Furthermore, under article 2(3) the covenant⁷ seeks to address the issues of remedies for persons whose justice has been denied.

3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted⁸

The ICCPR creates a general obligation on States to provide nationality to children when born. It does not specifically show which State is responsible to confer this right. Notwithstanding this, the Convention creates an avenue to an insurance of the right to a nationality to every child when he is born. This is essential given the fragility of children being born stateless.

The **Universal Declaration of Human Rights**, is one of the significant piece or instruments under international law which provides generally on human rights and has gained recognition worldwide hence becoming the customary international law.⁹ Its structure is composed of seven recitals in the preamble and thirty articles. It is a non-legally binding instrument but so authoritative to the extent of being considered as the “Law of the United Nations.”

⁵ International Covenant on Civil and Political Rights, 1966. This Convention was adopted on 16 December 1966 and came into force on 23 March 1976

⁶ International Covenant on Civil and Political Rights, 1966

⁷ International Covenant on Civil and Political Rights, 1966

⁸ This is when a person has citizenship of two countries of which both are recognized.

⁹ The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the UN on 10 December, 1948

The Declaration comprises the basis of the right to a nationality under article 15 which creates the right to every person to have a nationality again the article also limits acts of arbitrary deprivation of an individual's nationality and finally gives entitlement for an individual to change his or her nationality. The article as previously noted does not create a specific obligation on a given State to grant nationality. Being a universally accepted declaration implies that inclusion of the right to a nationality in it obliges states that are not contracting parties to instruments of nationality to respect the right to a nationality as a human right.

The **African (Banjul) Charter** recognizes the right of individuals. Member states should recognize individual right without any discrimination of any form as stipulated under article 2;

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, color, sex, language, region, political or any other opinion national and social origin fortune birth or other status¹⁰".

Therefore, all states laws should be in conformity with the articles of the charter. On matters specifically related to women and nationality the African charter imposes a site on states to recognize women as having equal rights with men to acquire change or retain their nationality. The instrument ensures that neither marriage to an alien nor change of nationality by the husband during the marriage shall automatically modify the nationality of the wife render her stateless or force upon her the nationality of her husband. Finally, state is enjoined to grant women rights equal to men which respect to nationality of their children¹¹. Additionally, women have equal status as men to confer their citizenship to their spouses.

The African charter encourage nondiscrimination of women in any form that is from the family level to the state level. *Article 18(3)* states" the state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women" The articulates that state shall ensure that any law in violation of these has to undergo all measures to be in accordance with the convention.

DOMESTIC LEGAL FRAMEWORK

The history shows that after the colonial domination of Africa Tanganyika was placed under protection of the German following the 1885 Berlin Conference.¹² Tanganyika was later placed under the trusteeship of British on 20 July 1922, after the end of the First World War were German and thus Tanganyika became a British mandated territory.¹³ In that view the British Colonialists gained extra-territorial jurisdiction over its British subjects in this territory. This jurisdiction continued notwithstanding the shifts from British mandated territory to British trust territory under

¹⁰ The African charter on Human and People's Rights, 1981

¹¹ Langley. W., The Rights of Women, The African Charter and the Economic Development of Africa. P 217

¹² Atmore, A, et al (2004) *Africa Since 1800*, 5th Ed, Cambridge University Press, Cambridge, pp 136-137.

¹³ Fransman, L, (2011) *Fransman's British Nationality Law*, 3rd Ed, Bloomsbury Professional, p.1294.

the United Nation's Trusteeship Scheme on 13 December 1946 and to a trust territory in 1949. Tanganyika continued to be a trust territory until 9 December 1961 when it attained independence.¹⁴

Tanganyika became independent in 1961 but before that all matters relating to citizenship were governed by the British Nationality Act of 1948 and thus Upon attainment of independence on 9 December 1961 all issues of citizenship were placed under the Tanganyika's independence Constitution especially in the Second Schedule to the Tanganyika (Constitution) Order in Council 1961, and in the later year after independence, that is, on 9 December 1962 Tanganyika became a republic. Under the provision of Section 26(1) of the Republic of Tanganyika (Consequential, Transitional and Temporary Provisions) Act¹⁵ provided that, the citizenship laws that were contained in the Tanganyika Constitution¹⁶ would be in force as an Act of Parliament.

Thus the effect the provisions end up inviting the enactment of a separate Act namely, the Citizenship Act,¹⁷ which under adopts the provision of section 1(1) of the Tanganyika Independence Constitution with regard to who would be a citizen of Tanganyika on independence as it asserts that a person would be a citizen of Tanganyika on 9 December 1961 if he was born in Tanganyika; and at the same time being a citizen of the United Kingdom Colonies or British Protected Person prior to 9 December 1961 and if one of his or her parents was born in Tanganyika.

The period for transitional to register as Tanganyikans was given for two years (for those who, except for some reasons could not fulfill the above conditions) to register for Tanganyika citizenship,¹⁸ and thus in fulfilling this successfully, the Tanganyika government enacted the Citizenship Ordinance¹⁹. The law among other things it gives the definition of terms such as alien, certificate of naturalization, registration and what constituted citizenship by registration and naturalization. Under the Ordinance, an alien is defined to mean a person who is not a Commonwealth citizen, a protected person or a citizen of the Republic of Ireland.²⁰ An alien in this definition is the one who, in order to be Tanganyikan citizen was required to be naturalized. This would be possible only after an application made by the respective alien in accordance with section 7 of the Ordinance.

On the other hand, citizenship by registration was available to Commonwealth citizens, citizens of the Republic of Ireland, protected persons and children of citizens by descent.²¹ Registration was also available to citizens of African descent, who were born and one of their parents was also born

¹⁴ Manby, B., (2010), *Citizenship Law in Africa: A Comparative Study*, 2nd Ed, Open Society Foundations, Johannesburg, South Africa.

¹⁵ Constituent Assembly Act No. 2 of 1962.

¹⁶ With few amendments contained in Schedule 3 of the Act.

¹⁷ Cap 512 of 1961.

¹⁸ Section 2(6) of the Citizenship Act, *supra*.

¹⁹ Cap 452 of 1961.

²⁰ Section 2.

²¹ Section 3.

in Angola, Cape Verde Islands, French Somaliland, Mozambique, Portuguese Guinea and the Sao Tome and Principe Islands, Spanish West Africa,²² and the Republic of South Africa or who had been resident for a period of not less than ten years in those countries and who was not a citizen of an independent state on the continent of Africa.²³ This delineation was useful in determination as to what connection entitled a person to citizenship under such circumstances.

Thus, on 26th April 1964 the United Republic of Tanganyika and Zanzibar was formed and thus the Extension and Amendment of Laws²⁴ and it was extended on the provisions of the 1961 Citizenship Act relates to citizenship by birth or descent. Following this amendment, the 1961 Citizenship Act extended to recognize all those born before Union and after who were/would be citizens of Tanganyika or Zanzibar to be termed as citizens of the United Republic.²⁵ The enacted law on citizenship currently is governed by the Tanzania Citizenship Act and the Tanzania Citizenship Regulations.²⁶ Being a consolidation of laws above noted, it provides a saving provision under section 30 where status of citizenship prior to enactment of the Tanzania Citizenship Act continues to apply. The **Constitution of the United Republic of Tanzania**,²⁷ is the mother of the land thus all laws must conform with the constitution and places all citizenship matters as one of the Union matters.²⁸ The constitution asserts the rights and duties of a citizen of Tanzania which are related in franchising and those which specifying for holding of certain public positions.²⁹ .Again the Constitution describes on what rights are available to every person in the United Republic of Tanzania to include non-citizens and those which are exclusive for citizens.

The limit of the said rights the Constitution does not create a framework as to what then constitutes Tanzanian citizenship by birth, descent or naturalization, also it does not provide as to what constitutes proof of Tanzanian citizenship. In the big picture the Constitution mandates the powers to written laws to deal with issues of citizenship which is the Tanzania Citizenship Act³⁰ when specifying for what constitutes Tanzanian citizenship by birth qualifying for specific position. The provision of Article 39(1) of the URT Constitution provides that:

²² Comprising Ifri, Spanish Sahara, Fernando Po, Rio Irani and the Moroccan enclaves.

²³ Section 4A (1)(b).

²⁴ (No.5) Decree of 1964, Schedule 4, paragraphs 1-2.

²⁵ On 29 October 1964 the country was renamed the United Republic of Tanzania as per the Union Republic (Declaration of Name) Act, No.61 of 1964.

²⁶ GN No.658 of 1997.

²⁷ 1977 (as Amended from time to time)

²⁸ Article 4 read together with the first schedule to the Constitution of the United Republic of Tanzania.

²⁹ See article 5(1) on the right to vote; article 17(1) on the right to freedom of movement, article 21 on freedom to participate in public affairs, article 22(2) on entitlement to equal opportunity and right to equal terms to hold any office or discharge any function under the state authority, article 28(1) and (3) on duty of defense of the nation, article 29(3) and (4) on prohibition of conferral of right, status or special position based on lineage, tradition or descent, article 39(1)(a) on qualifications for election as President of the United Republic of Tanzania and article 47(4)(a) on qualifications for election as Vice President of the United Republic of Tanzania.

³⁰ Cap 357 R.E 2002.

“39(1) A person shall not be entitled to be elected to hold the office of President of the United Republic save only if-

(a) He is a citizen of the United Republic by birth in accordance with the citizenship law.”

The constitution gives mandate for specifications of what constitutes Tanzanian citizenship to the Tanzanian written citizenship law. This reliance requires the latter to be as perfect as possible since its shortfalls becomes of great impact.

According to the provision of Article 13 (1) and (2) of the Constitution of the United Republic of Tanzania states that;

Article 13. -(1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.

(2) No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect.

The provision stated above entails when the laws which are enacted in the United Republic of Tanzania must not be discriminating in nature but shall ensure that all people are treated equally before the law. But the Tanzania Citizenship Act³¹ which is mandated with the duty to govern all matters of citizenship but has discriminatory provisions which goes against the provision of the constitution which requires all people to treated equally before the law. Men are mandated with the power to confer citizenship to their foreign spouses after marriage and it is possible only when the requirement for registration are fulfilled but women who are married to foreign people, they are not allowed to confer citizenship to their foreign husbands which is the legal challenges facing women married to foreign people.

The **Citizenship Act**³² of Tanzania governs the acquisition, loss, and conferment of Tanzanian citizenship. While the Act does not explicitly differentiate between men and women in terms of conferring citizenship to their spouses, the interpretation and implementation of the law have at times been subject to gender disparities. It provides for the means of attaining the Tanzanian citizenship which are by birth³³ and descent,³⁴ and also acquisition of Tanzanian citizenship by naturalization,³⁵ thus in Tanzania there are three categories of Tanzanian citizenship are found to be by birth, descent and naturalization.

The law provides that a foreign woman married to a citizen of the United Republic is entitled to be naturalized as a citizen of the United Republic at any time during the life-time of the husband upon making an application in the prescribed form³⁶ for naturalization as other foreigners subject

³¹ Cap 357 R.E 2002.

³² Cap 357 R.E 2002.

³³ Sections 4 and 5.

³⁴ Section 6.

³⁵ Section 9.

³⁶ Section 11(1) of the Tanzania Citizenship Act.

to fulfillment of the following conditions as provided for under the second schedule of the Tanzania Citizenship Act as follows:

- (a) have resided in the United Republic throughout the period of twelve months immediately preceding the date of application; and
- (b) that during the ten years immediately preceding the said period of twelve months he resided in the United Republic for periods amounting in the aggregate to not less than seven years; and
- (c) that he has an adequate knowledge of Kiswahili or the English language; and
- (d) that he is of good character; and
- (e) that, in terms of his past and potential contribution to the national economy, scientific and technological advancement and to the national social and cultural welfare, he would be a suitable citizen of the United Republic;
- (f) that he intends, if naturalised, to continue to reside permanently in the United Republic.

Using of the conjunction ‘and’ at the end of each condition means that all conditions must be fulfilled and it must be noted that the decision to grant or refuse an application for naturalization by the Minister is final as he is not bound to assign reason(s) for such a decision which is also not subject to appeal or review in any court.³⁷

Since the Tanzanian citizenship regime does not allow dual nationality, it is pertinent to note that when an applicant for naturalization has been notified that his or her application has been approved and granted citizenship, he or she is required to renounce the nationality or citizenship of any other country other than the United Republic and take an oath of allegiance within a period of twenty-eight days from the date of notification. Failure to meet this condition renders the application to being quashed and deemed never to have been made.³⁸

The Act clearly stipulates under the section 11 “a foreign woman married to a Tanzanian citizen of the United Republic shall at any time during the lifetime of her husband be entitled to acquire citizenship through naturalization if she so wishes.” In interpreting this particular section, one is left to imagine that, if you were to measure citizenship in a cup, then, the men’s cup is so full that they are even able to give some to their spouses. Women on the other hand, are not so privileged. And, if one is to question the validity of the section 11³⁹ in regard to women, it is clear that they are disadvantaged in their ability to confer their citizenship to spouses making it clear that they are discriminated by a provision of the law.

³⁷ Section 23 of the Tanzania Citizenship Act.

³⁸ Section 12 (2) *ibid.*

³⁹ Cap 357 R.E 2002.

Section 20 of the Citizenship Act⁴⁰ allows for the conferment of citizenship to foreign spouses but places a higher burden of proof on women compared to men. It requires a Tanzanian woman to reside in Tanzania for not less than ten years after marriage before her foreign spouse can be eligible for citizenship. On the other hand, a Tanzanian man is only required to reside in Tanzania for not less than five years after marriage to confer citizenship to his foreign wife. This gender disparity has been criticized as discriminatory and inconsistent with international standards of gender equality.

CHALLENGES AND PROGRESS

As slight as the non- inclusion of women's ability to confer citizenship may be, it has adverse consequences discussed hereunder. That first is the loss of nationality since Tanzania does not recognize dual citizenship meaning that you are either a Tanzanian citizen or not. One cannot possess nationality of two or more nations. In Tanzania citizenship is granted on the basis of the husband. Women therefore married to non-citizens automatically acquire the spouse's citizenship in accordance with the laws of the country of origin of the spouse. The problem faced here is that a woman may not want to cease to be a citizen of Tanzania but not much choice is given to her.⁴¹ With the loss of the citizenship, it means that the state no longer has a duty of diplomatic protection towards her and she is given treatment such as that of a foreigner. These include having a permit if she wants to continue residing in the country. If she is working, she also requires a permit as per the provision of the immigration laws.⁴²

Despite these legal disparities, it is important to acknowledge that progress has been made in recent years. In 2013, a Constitutional Review Commission was established in Tanzania to assess and propose constitutional amendments. The Commission recommended the elimination of gender-based disparities in the country's citizenship laws, aiming to ensure equal rights and opportunities for both men and women in conferring citizenship to their foreign spouses.

Furthermore, Tanzania's Gender Policy of 2000 highlights the importance of gender equality in all spheres of life, including citizenship, and advocates for the removal of discriminatory legislation. The government's commitment to addressing gender inequality also aligns with the United Nations Sustainable Development Goals (SDGs), particularly Goal 5, which aims to achieve gender equality and empower all women and girls.

CONCLUSION

It is safe to say that the current legal regime governing citizenship of Tanzania has a loophole with regard to citizenship to women and in a world, which determines to give women equal rights as men in every aspect of life the Tanzania citizenship laws are a disappointment to this global

⁴⁰ Cap 357 R.E 2002.

⁴¹ Shivji I.G (Ed), et al, (2004) Constitutional and Legal System of Tanzania, 1st Ed, Mkuki na Nyota Publishers, Dar Es Salaam.

⁴² William A. B., (1998), Ethics of Citizenship: Immigration and Group Rights in Germany, Duke University Press.

outreach of gender equality. They are a disappointment for failure to be in the forefront of laws to give women the right of conferring their citizenship to their foreign spouses if they so wish. Tanzania does not recognize dual Citizenship meaning that you are either a Tanzanian citizen or not. One cannot possess nationality of two or more nations. In Tanzania citizenship is granted on the basis of the husband. Women therefore married to non-citizens automatically acquire the spouse's citizenship in accordance with the laws of the country of origin of the spouse. The problem faced here is that a woman may not want to cease to be a citizen of Tanzania but not much choice is given to her. Qualification for membership is usually determined by non-voluntary criteria. One cannot choose to belong; one belongs because of who one is. With the loss of the citizenship, it means that the state no longer has a duty of diplomatic protection towards her and she is given treatment such as that of a foreigner. These include having a permit if she wants to continue residing in the country. If she is working, she also requires a permit as per the provision of the immigration laws.

Thus, the legal challenges which were assessed and discovered by this study includes the gender discrimination of the Tanzania Citizenship Act on conferring citizenship, challenges faced by women married to foreigners due to the provisions of section 11(1) of Tanzania Citizenship Act and the discriminatory aspect of the law to prohibit Tanzanian women to confer citizenship to children born abroad with a foreign spouse.

While Tanzania has made notable progress towards gender equality in its legal framework governing the conferment of citizenship to foreign spouses, challenges and disparities continue to persist. Harmonizing the domestic legal regime with international standards, such as the principles outlined in CEDAW, is crucial to ensure equal rights for Tanzanian women to confer citizenship to their foreign spouses. Through continuous legal reforms and education, Tanzania can create a legal regime that upholds gender equality, ensuring that all individuals, regardless of their gender, can exercise their rights fully.

REFERENCES

Equality Now (2014), Ending Sex Discrimination in Nationality and Citizenship Laws

Manby, B., (2010), Citizenship Law in Africa: A Comparative Study, 2nd Ed, Open Society Foundations, Johannesburg, South Africa

Shivji I.G (Ed), et al, (2004) Constitutional and Legal System of Tanzania, 1st Ed, Mkuki na Nyota Publishers, Dar Es Salaam.

William A. B., (1998), Ethics of Citizenship: Immigration and Group Rights in Germany, Duke University Press



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