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August 25, 2014

Hon. Samuel Sitta
Chairman, Tanzania Constituent Assembly
Dodoma Parliament House
P.O Box 941
Dodoma

Re: Joint Letter to Members of the Tanzania Constituent Assembly: Recommendations to the Constituent Assembly on Specific Provisions Relating to Marriage to be Included in the New Constitution of the Republic of Tanzania

Dear Honorable Samuel Sitta,

Children's Dignity Forum (CDF)¹ -- Chair of the Tanzania Ending Child Marriage Network TECMN,² Human Rights Watch,³ Foundation for Women Health, Research and Development (FORWARD),⁴ Tanzania Media

¹ Children's Dignity Forum is a non-profit and nongovernmental organization working in Tanzania to promote and reinforce rights of vulnerable children, particularly girls, by placing children's legal and human rights on the public agenda; creating a working forum to empower children, families and the society in general; and developing capacity and skills to address harmful traditional practices, including child marriage and female genital mutilation (FGM) in Tanzania (<http://www.cdftz.org/keyissue.php>).

² Tanzania Children, Ending Child Marriage Network (TECMN) is a network of 26 nongovernmental organizations committed to ending child marriage. TECMN provides a platform.

³ Human Rights Watch is an independent international nongovernmental organization dedicated to promoting and protecting human rights around the world, including a substantial body of work on women's and girls' rights. Human Rights Watch is investigating child and forced marriages globally, and we have documented how these practices impact girls' and women's rights, especially their right to education, to

Women’s Association (TAMWA),⁵ and Graca Machel Trust (GMT)⁶ commend the government of Tanzania for its efforts to enhance women and children’s rights in Tanzania, including ratifying key international and regional human rights treaties and developing national policies aimed at addressing violence against women and children.⁷

We also commend the Government of Tanzania for its current steps to develop a new Constitution, which we hope will fully aim to improve the human rights, social, economic and political wellbeing of all Tanzanians irrespective of their gender, religion, and ethnicity.

We urge you to use your position as chairman of the constituent assembly to ensure the new Constitution addresses the major challenge of child, early and forced marriage, including ensuring the inclusion of the specific provisions discussed below. We believe these provisions are critical components in dealing with marriage, divorce, and family relations and to mitigate the worst abuses linked to child, early, and forced marriage. The Marriage Act adopted in 1971, which currently governs marriage in Tanzania, fails to protect girls from child, early, and forced marriage. The Marriage Act is discriminatory and permits girls aged 15 years to marry with parental consent and children aged 14 years to marry if a court of law is satisfied that special circumstances exist.

Child, early, and forced marriage violates the human rights of girls and women, including the right to education, freedom from violence, reproductive rights, employment, freedom of movement, the right to consensual marriage, and hinders the attainment of the millennium development goals (MDGs). Child, early and forced marriage affects both boys and girls although research shows girls are disproportionately affected by the practice.⁸ Every year 14 million girls are married worldwide⁹ and one in seven girls in the

health, to be free from violence; and their overall wellbeing. We have done this work in Malawi, South Sudan, Yemen, and Afghanistan (<http://www.hrw.org/topic/womens-rights/child-marriage>).

⁴ Foundation for Women’s Health Research and Development (FORWARD) is an African Diaspora Women’s Campaign and support charity set up in 1985. Forward’s work responds to the need to safeguard dignity and advance sexual and reproductive health and human rights of Africa women and girls. Forward works with individuals, communities and organizations to transform harmful practices and improve the quality of life of vulnerable girls and women. We focus on female genital mutilation (FGM), child and forced marriage, obstetric fistula through strengthening our development partners and influencing and shaping policies and programs. FORWARD operates in the United Kingdom (UK), Europe, Ghana, Ethiopia, Kenya, Sierra Leone and Tanzania.

⁵ Tanzania Media Women’s Association (TAMWA) is a non-profit sharing, non-governmental, and non-partisan organization working in Tanzania and committed to advocating for women and children’s rights by conducting awareness, raising activities for cultural, policy, and legal changes or transformation in society through the use of media (<http://www.tamwa.org/index.php/about-us/aboutus.html>).

⁶ The Graca Machel Trust is a platform to embrace, nurture, enable and inspire women and children to soar to the fullest of their potential. It consolidates the work of Graca Machel and seeks to build her legacy, empower new generations to take up the challenges of their times and create caring societies that value social justice. Leveraging her access to key national, regional and global networks and champions, the Trust amplifies the voices of those who otherwise might not be heard in certain spaces.

⁷ The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW Convention), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on the Rights and Welfare of the Child (ACRWC), and the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol). The National Action Plan for the Prevention and Eradication of Violence against Women and Children (2007-2015) and the National Management Guidelines for the Health Sector Response to and Prevention of Gender Based Violence (GBV), 2011.

⁸ UNICEF, “Child Protection from Violence, Exploitation and Abuse, 2012,” <http://www.unicef.org/protection/5792958008.html> (accessed March 19, 2014).

developing world is married before her 15th birthday – some as young as eight or nine. **On average, 4 out of 10 girls are married before the age of 18 in Tanzania** according to the 2010 Tanzania Demographic Health Survey. **It is estimated that 37 percent of women 20-24 years old in 2000-2011 were married or in union by age of 18 in Tanzania.**¹⁰

Child, early, and forced marriages violate the human rights of girls and have lasting effects that follow them in adulthood as they struggle with the health effects of getting pregnant too young and too often, their lack of education and economic independence. Child marriage threatens the health and well-being of girls: complications from pregnancy and childbirth are the main cause of death among adolescent girls aged 15-19 in developing countries. Girls aged 15 to 20 are twice as likely to die in childbirth as those in their 20s, and girls under the age of 15 are five times as likely to die. Child, early and forced marriage increases neonatal, infant and child mortality and children of child mothers are less healthy than those born over 18 years. According to the United Nations, Tanzania was one of the 10 countries that accounted for 58 percent of global maternal deaths in 2013.¹¹

Child marriage exposes girls and young women to the risk of violence, including marital rape, sexual and domestic violence, and emotional abuse. Married girls and young women with low levels of education are at a much greater risk of domestic and sexual violence than older and more educated women. Research cites spousal age difference, typical of child marriage, as a significant risk factor associated with violence and sexual abuse against girls.

Where legal provisions do not exist to protect girls from child marriage or related forms of violence, the practice continues and women and girls continue to suffer serious abuses linked to child marriage. Existing legal provisions aimed at protecting girls from the discriminatory harmful traditional practice of child marriage demonstrates government's commitment to promoting women and girls' human rights.

We believe the drafting of a new Constitution provides a unique opportunity for the government of Tanzania to establish legal provisions aimed at ending child, early and forced marriages and mitigating its impact on women and girls in Tanzania. The process presents the government with the opportunity to incorporate the Committee on the Rights of the Child (CRC Committee), the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the African Charter on People and Human Rights Committee recommendations calling on Tanzania to provide for a universal minimum age set at an internationally acceptable standard of 18 years, regardless of parental consent.

We urge the Assembly to consider and include the following provisions in the new Constitution:

1. Definition of a Child

⁹ Girls Not Brides, "What is the Impact, 2014," <http://www.girlsnotbrides.org/what-is-the-impact> (accessed March 19, 2014).

¹⁰ UNFPA, "Marrying Too Young: End Child Marriage, 2012"

<https://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> (accessed March 19, 2014), p. 23.

¹¹ WHO, UNICEF, UNFPA and the World Bank, "Trends in Maternal Mortality: 1990-

2013," http://apps.who.int/iris/bitstream/10665/112682/2/9789241507226_eng.pdf?ua=1 (accessed January 9, 2014), p. 21.

The ACRWC and the CRC define a child as every human being below the age of 18 years. The CRC Committee recommends that States Parties ensure that all laws and policies, including religious laws, reflect a uniform definition of “child” that is consistent with international laws and standards. ***We urge that the Constituent Assembly include a provision in the new Constitution that expressly and clearly defines a child to mean every person below the age of 18 years to ensure consistency in all Tanzanian laws.***

2. Minimum Marriage Age

The Maputo Protocol (see article 6) and the ACRWC (see article 21) recognizes 18 as the minimum age of marriage for boys and girls. The ACRW also expressly puts obligations on States Parties to prohibit, including through legislation, child marriage and betrothal of girls and boys below 18 years. In Tanzania, the Marriage Act 1971 permits girls aged 15 to marry with parental consent and boys to marry at 18 and also allows children aged 14 years to marry if court is satisfied that special circumstances exist.

To ensure both boys and girls are legally and equally protected from child and forced marriage, ***we recommend that the new Constitution includes a uniform, internationally recognized minimum marriage age of 18 for both boys and girls.***

3. Free and Full Consent to Marry

The right of spouses to marry only if they are able to provide their “full and free consent” is recognized in a number of international and regional covenants.¹² Although the Marriage Act 1971, provides for free and voluntary consent of parties to a marriage, the Act (see article 17) allows parents and guardians of a girl who has not yet attained the age of 18 years to consent to a marriage on her behalf. This provision violates the rights of girls to decide whether and when to marry and to choose their own spouse – rights that are also well established in international human rights instruments Tanzania ratified. International and regional instruments ratified by Tanzania also recognize older children’s evolving capacity for autonomous decision-making in matters affecting them.

Therefore, to provide clear and uniform promotion of the right to fully and freely consent to a marriage and to choose a spouse, ***we urge the Constituent Assembly to include a provision establishing the requirement for full and free consent of both partners and removing the right of parents and guardians to consent to a marriage on behalf of girls.***

Also, to provide a mechanism to determine if consent is fully and freely given, the provision should clearly define what constitutes free and full consent; including that free and full consent is absent if got by fraud, violence and abduction and clearly require a marriage registrar to interview both parties before a marriage is celebrated.

¹² International Covenant on Economic, Social and Cultural Rights, art. 10 and the Maputo Protocol, art. 6(a).

4. Compulsory Registration of Births and Marriages

Compulsory birth and marriage registration is an important mechanism to address child, early and forced marriage because it requires an intending spouse to provide evidence of age before the marriage is concluded and provides legal protection against child, early and forced marriage. Domestic laws, including the Marriage Act, 1971 provides for compulsory marriage registration. However, research shows customary marriages remain unregistered for varied reasons.¹³

We urge the Constituent Assembly to include a provision in the new Constitution that reinforces the compulsory registration of all marriages and births in Tanzania.

5. Equality of Spouses

The Marriage Act 1971 recognizes equality between spouses in polygamous marriages under Article 57 but it however fails to address the equal rights of men and women in a marriage at its dissolution as it allows courts to apply the customs of parties when deciding on the division of property during divorce. Allowing courts to apply customs of parties undermines women and girls' right to equality and their right to ownership of property because most customary norms in Tanzania consider women inferior to men and do not allow them to own property.¹⁴

To ensure women and men are regarded as equal partners in a marriage, during the marriage and at its dissolution, ***we urge the Constituent Assembly to include a provision in the new Constitution that expressly and clearly guarantees full equality for women, and full equality to both spouses in a marriage, including in matters relating to marriage, child custody, property ownership and inheritance, and divorce. We also urge that a clear provision explicitly guaranteeing the equal rights and status of women and girls in polygamous marriages be included in the new Constitution.***

Sincerely,

Names of the Directors and signatures

Koshuma Mtengeti

Naana Otoo-Oyortey

Liesl Gertholtz

¹³ The United Republic of Tanzania Law Reform Commission, "Report of the Commission on Law of Marriage Act, 1971 (No. 5 of 1971) presented to the Minister of Justice and Constitutional Affairs, Dar es Salaam, 1994"

<http://www.commonlii.org/tz/other/TZLRC/report/R2/2.pdf> (accessed March 19, 2014), p. 17.

¹⁴ The United Republic of Tanzania Law Reform Commission, "Report of the Commission on Law of Marriage Act, 1971, p. 10.



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Executive Director
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CC: Hon. Anne Makinda
The Speaker of the National Assembly

CC: His Excellency Dr. Jakaya M. Kikwete
The President of the United Republic of Tanzania

CC: All Cabinet Secretaries