



Enlightenment Candle

# JOURNAL OF THE TANZANIA WOMEN JUDGES' ASSOCIATION (TAWJA)

APRIL, 2026

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## **PREFACE**

This Journal is published by the Tanzania Women Judges Association (TAWJA) as part of its continued commitment to advancing jurisprudence, judicial dialogue, and legal scholarship on contemporary and emerging issues affecting justice delivery in Tanzania and beyond. The Journal brings together ten scholarly articles that critically examine pressing legal and socio-legal challenges, with particular emphasis on child marriage, cyberbullying, probate and succession, the application of the Sexual Offences Special Provisions Act (SOSPA), and the evolving role of artificial intelligence (AI) within the justice system.

The selected themes reflect the dynamic nature of law and society and underscore the judiciary's responsibility to respond to changing realities while safeguarding fundamental rights, human dignity, and the rule of law. Issues such as child marriage and sexual offences continue to test the effectiveness of legal frameworks and judicial interpretation, while cyberbullying and AI present new frontiers that require thoughtful legal analysis and ethical consideration. Probate and succession matter remain central to access to justice, particularly for women and children, and demand sustained doctrinal clarity and sensitivity.

This Journal serves as a platform for judges, legal practitioners, academics, and policy actors to engage in informed discourse, share experiences, and contribute to the development of progressive and gender-responsive jurisprudence. It is our hope that the insights contained herein will inform judicial reasoning, support legal reform, and inspire further research and dialogue.

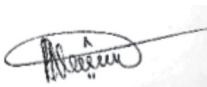
## EDITORIAL NOTE

The Tanzania Women Judges Association is pleased to present this Journal, which represents a significant milestone in TAWJA's mandate to promote excellence in the administration of justice and to amplify women's voices in legal scholarship and judicial leadership. The articles featured in this publication demonstrate intellectual rigor and practical relevance, addressing both long-standing legal concerns and emerging challenges posed by technological advancement.

The focus on child marriage, sexual offences under SOSPA, and cyberbullying speaks directly to the lived realities of vulnerable groups, particularly women and children, and highlights the judiciary's crucial role in protecting rights and upholding justice. Equally, the inclusion of probate and succession issues reaffirms the importance of equitable access to justice in family and property relations. The exploration of artificial intelligence and its implications for the legal system reflects TAWJA's forward-looking approach and recognition of the need for the judiciary to engage proactively with technological change.

I commend the authors for their valuable contributions and the Editorial Committee for their dedication and professionalism in bringing this Journal to fruition. This publication is a testament to TAWJA's ongoing efforts to foster informed debate, strengthen jurisprudence, and contribute meaningfully to legal development at the national and regional levels.

It is my sincere hope that this Journal will serve as a useful reference for judges, legal practitioners, scholars, policymakers, and all stakeholders committed to advancing justice.



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Hon. Patricia Fikirini  
Justice of Appeal  
**Editorial Board Chairperson**

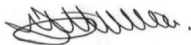
## ACKNOWLEDGEMENT

The Tanzania Women Judges Association extends its sincere appreciation to all individuals and institutions whose support and contributions made the publication of this Journal possible. We are particularly grateful to the authors who generously shared their expertise, research, and insights, thereby enriching this publication and advancing legal discourse on critical issues.

We acknowledge the invaluable efforts of the Editorial Committee for its meticulous review, coordination, and editorial guidance throughout the preparation process. Special thanks are also extended to peer reviewers, advisors, and contributors whose constructive feedback enhanced the quality and scholarly integrity of the articles.

TAWJA further appreciates the support of its members, partners, and stakeholders who continue to champion judicial scholarship, gender equality, and access to justice. Their unwavering commitment remains instrumental in strengthening the role of the judiciary in addressing both traditional and emerging legal challenges.

To all who contributed in various capacities, we express our profound gratitude.



.....  
**Hon. Justice Barke Sehel**  
**Justice of Appeal**  
**Chairperson (TAWJA)**



.....  
**Hon. Judge Gladys Barth**  
**Judge of the High Court**  
**Secretary (TAWJA)**



# ARTIFICIAL INTELLIGENCE AND TECHNOLOGY-FACILITATED VIOLENCE IN TANZANIA: A CRITICAL ANALYSIS OF LEGAL GAPS, CHALLENGES, AND EMERGING PROTECTIONS FOR WOMEN AND CHILDREN

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Atuganile Florida Ngwala\*

## **Abstract**

The rapid development of artificial intelligence (AI) has reshaped digital environments, creating new opportunities for communication, education, and innovation. However, it also increases the risk of cyber violence, particularly against women and children. In Tanzania, emerging issues like deepfakes, AI-produced child abuse content, digital grooming, and synthetic avatars engaging in sexual content introduce complex forms of technology-enabled gender-based violence (TFGBV). Despite recent updates to laws such as the Law of the Child Act (2024), the Cybercrimes Act, and the Penal Code, the legal framework remains fragmented, limited, and slow to respond to new AI-driven threats. This paper explores AI's dual role both as a tool for harm, including online grooming, AI-generated non-consensual intimate images (AIG-NCII), and harassment and as a means of prevention through automated detection, digital forensics, and victim support systems.

Drawing from Tanzanian laws, international standards, and comparative insights, the study exposes significant gaps, including the absence of definitions for AI-generated content, lack of accountability for developers and platforms, limited institutional capacity, and challenges in investigating and prosecuting AI-driven offences. The paper also explores ethical issues surrounding privacy, data protection, and algorithmic bias, emphasizing their impact on marginalized groups. Ultimately, the study proposes targeted

legal reforms, institutional strengthening, AI-ethical guidelines, and multi-sector collaboration to ensure comprehensive protection of women and children in digital environments. By highlighting both the risks and opportunities of AI, the paper underscores the urgent need for a coherent national strategy to safeguard vulnerable populations from technology-facilitated violence in Tanzania.

**Key words:** *Artificial intelligence, cyber violence, technology-facilitated gender-based violence, AI-generated child sexual abuse material, deepfakes, synthetic media.*

## 1.0 Introduction – The Digital Shadow of Violence

*“In my 8 years of tackling OGBV, I was confident I had secured a shield against it at a personal level. I’ve undertaken sacrificing myself as a case study just to collect tangible data and share experiences. To understand it from the victim’s perspective. To be in a better position to support.”<sup>1</sup>*

This testimony from an Online Gender violence Tanzanian woman encapsulates a growing reality: violence is no longer confined to the physical realm. It has transcended borders, infiltrating the digital spaces we once considered safe. In this age of rapid technological advancement, women across Africa, and indeed the world, are facing an evolving threat *cyber violence*.

Cyber violence, a form of gender-based violence (GBV) enabled by technology, includes online harassment, stalking, non-consensual pornography, and the manipulation of digital content through deepfake technology. It is an insidious problem that is often dismissed or overlooked, yet its psychological, social, and legal implications are profound. As a retired judge from Tanzania, I have witnessed firsthand how our justice systems are struggling to keep pace with these digital threats.

In the new terminology online GBV are referred as the Technology-Facilitated Gender-Based Violence (TFGBV). As defined by the United

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1 TMC (2024): “*Echoes of Harm: Dissecting Technology Facilitated GBV Through the Eyes of the Victim*”. P. 7

Nations Population Fund (UNFPA), TFGBV is “an act of violence perpetrated by one or more individuals that is committed, assisted, aggravated and amplified in part or fully by the use of information and communication technologies or digital media against a person on a basis of gender”.<sup>2</sup>

According to a 2023 report by the **World Health Organization (WHO)**, nearly 70% of women who are active online have experienced some form of cyber violence, ranging from online harassment to threats of physical harm or sexual violence.<sup>3</sup>

In Tanzania, the **Cybercrimes Act of 2015** was enacted to address various forms of online abuse, including cyberstalking, identity theft, and online defamation. While this law marked a significant step forward, it has been criticized for its limited scope in addressing the gendered nature of cyberviolence and the unique challenges faced by women in digital spaces.<sup>4</sup> For example, the law does not adequately account for the psychological trauma inflicted by cyber harassment or the societal stigma faced by victims who come forward.

### 1.1 Technology as a Double-Edged Sword

Technology has transformed our lives, especially for women in Africa, offering opportunities in communication, education, and entrepreneurship. However, it has also facilitated abuse. Social media, meant to connect people, has become a platform for cyber violence. A 2022 study found that women in Africa are 27% more likely than men to face online harassment, often by anonymous users exploiting the lack of accountability.<sup>5</sup>

The rise of artificial intelligence (AI) has added new dimensions to cyber violence. Deepfake technology allows for the manipulation of video and audio, leading to the creation of nonconsensual pornography

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2 UNFPA - Making All Spaces Safe - <https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA-TFGBV-Making%20All%20Spaces%20Safe.pdf>

3 World Health Organization. (2023). Global Report on Violence Against Women in Digital Spaces. Geneva: WHO.

4 Cybercrimes Act, Tanzania. (2015). Retrieved from [www.tanzania.gov.org](http://www.tanzania.gov.org)

5 Journal of Gender and Technology. (2022). Online Harassment in Africa: A Gendered Analysis. Volume 14, Issue 3

and harmful fake videos targeting women in leadership. A notable case in Kenya involved a female politician who withdrew from the 2023 elections after a viral deepfake video falsely portrayed her in a compromising situation.<sup>6</sup>

Since women and children have been the most affected by this development of science and technology, law tries to cover in some extent about protection of children in digital space however the law is still lacking, as follows

## **1.2 The Law of the Child Act**

This Act serves as the primary legal instrument for child protection in Mainland Tanzania, outlining the rights, duties, and protections of the child under Tanzanian law. The provides the meaning of the child whereby child has been defined to mean a person below eighteen years old.<sup>7</sup> The Act provides that a child has right to live free from all form of discrimination whereby no child shall be discriminated basing on his/her color, age, culture etc.<sup>8</sup> Parents has responsibilities and duties whether imposed by the law or not to ensure that they protect their children from all form of dangers, neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression.<sup>9</sup>

The 2009 law of the Act was in adequate as it based much on the protection of children from traditional harms. However, due to development of science and technology the parliament decided to do some amendments that is 2024 amendment<sup>10</sup>, whereby this amendment has strengthened the Child Act by amending Section 159 previously 158 which defines sexual abuse, has been broadened to include non-contact sexual exploitation, enhancing its relevance in the context of AI-generated content, whereby it criminalize the aspect of digital sexual exploitation activities, such as manipulating a child to engage in sexual acts, intimidating to use real or fabricated digital images, and

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6 Odhiambo, M. (2023). "The Impact of Deepfake Technology on Women in African Politics." *African Journal of Media Studies*, 21(4), 345-368

7 Ibid Section 4(1)

8 Ibid Section 5 (1) (2)

9 Ibid Section 9 (3) (a)

10 The Child Protection Laws (Miscellaneous Amendments) Act, 2024

possessing or disseminating child sexual abuse material via ICT tools.<sup>11</sup>

However, while these legal advancements mark progress, the Act still falls short in explicitly addressing AI-generated threats such as autonomous AI systems, deepfake avatars, synthetic child sexual abuse material, deepfakes, and avatars used for exploitative virtual interactions. It lacks definitions for digital and AI-generated content, leaving ambiguity in interpretation and enforcement, and does not address whether interactions involving AI-generated person as or reproductions can establish grooming or abuse. Moreover, effective implementation remains constrained by technological illiteracy within enforcement agencies and limited judicial precedents. Furthermore, there is no direction on handling AI-generated explicit material that does not involve real children but which may still cause significant harm, confusion, or trauma.

This legal gap presents a challenge for law enforcement and the judiciary in prosecuting offences that are technologically cultured and not easily hush-hush under the existing statutory framework. Therefore, while the amendments to the Law of the Child Act represent a foundational step toward protecting children from AI-generated sexual exploitation, further legal reform is urgently required to specifically criminalize and regulate AI-generated forms of abuse and ensure children are protected in both physical and cyber environments.

### **1.3 The Cybercrimes Act**

This is Tanzania's principal legal instrument for addressing offenses committed through computer systems, digital platforms, Information Communication Technologies including crimes involving child pornography, identity theft, cyberbullying, and unlawful content publication, the Act provides for procedures of investigation of cybercrimes, Collection, and use of electronic evidence and also provides for punishment for offences committed in cyberspace.

The Act protects children from child pornography, whereby the Act criminalizes the creation, possession, and dissemination of child pornography, including any visual representation of a child engaged in

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11 Ibid Section 40(e-k) of the Amendment

sexually explicit conduct. The Act has been amended so as to ensure protection of children from emerging issues including digital sexual exploitation and abuse, the Act, through amendment of 2024<sup>12</sup> it adds the definition of Child sexual abuse material to mean”

*“Child sexual abuse material” or “child sexual exploitation material” means any kind of material or visual display, including images, videos, audio or written content which depicts sexual acts involving a child or portrays a child in a sexualized manner, and includes any image, video or any computer-generated material, whether created, adopted or modified, which cannot be differentiated from a real child;<sup>13</sup>”*

However, despite this language, the Act was not crafted with the capabilities of modern artificial intelligence in mind, particularly the emergence of deepfakes, generative adversarial networks (GANs), and virtual reality environments that simulate child abuse without the involvement of real children. Also, the Act does not provide protection of children from engaging themselves from avatar sexual activities which in one way or the other affect children in digital environment. As such, law enforcement officers face explanatory difficulties when determining whether synthetic media falls within the scope of prohibited content. Moreover, the Act does not define or regulate digital avatars, AI-generated personas, or automated grooming technologies, all of which can now be used by offenders to engage with and manipulate children online.

Enforcement is further troubled by the lack of technical capacity and training among law enforcement agencies to detect and investigate AI-related digital crimes, coupled with limited judicial precedent to guide interpretation. Additionally, while the Act addresses cross-border offenses in theory, it offers no clear strategy for cooperation with international platforms and actors responsible for hosting AI-generated exploitative content. As AI tools become increasingly accessible, the absence of explicit provisions on AI-generated abuse significantly undermines the law’s effectiveness in protecting children in cyberspace.

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12 The Child Protection Laws (Miscellaneous Amendments) Act, 2024

13 Ibid, Section 4(c) of the Amendment

Therefore, while the Cybercrimes Act provides a critical foundation for combatting technology-facilitated abuse, it requires urgent reform and expansion to adequately address the unique and evolving nature of AI-generated sexual exploitation and abuse of children.

#### **1.4 The Penal Code**

This Act provides for offences, ingredients of offences and it states the punishments for numbers of criminal offences in Tanzania, this is considered to be a foundation of Tanzania's criminal justice system. The Act has embraces key provisions relevant to the protection of children from sexual abuse and exploitation. the revised edition, Sections 138C to 138F criminalize acts of sexual exploitation and abuse of children, including procuring, trafficking, and facilitating the commission of sexual offenses involving minors. Notably, Section 138D prohibits the production and distribution of pornographic materials involving children, which may be interpreted to include AI-generated images or videos that depict children in sexually explicit contexts, regardless of whether a real child was involved. Section 131A further criminalizes the use of threats, coercion, or deception to obtain sexual acts from children, a provision that can encompass digital grooming and manipulation using AI-generated personas or chatbots designed to lure minors. Additionally, Section 175 addresses offenses related to obscene publications, making it an offense to produce, possess, or circulate any obscene material, which may extend to deepfake pornography or synthetic media involving simulated child abuse. Despite these strengths, the Penal Code lacks specific language addressing digital or AI-generated content, creating legal ambiguity around whether non-physical but realistic digital simulations fall within the scope of criminal liability. Moreover, the current framework does not adequately address virtual offenses, such as using generative AI tools to create avatars or digital simulations for exploitative purposes. The absence of such clarity limits the ability of law enforcement and prosecutors to pursue AI-related child sexual exploitation cases effectively. As such, while the Penal Code R.E. 2023 contains strong provisions against child sexual abuse, it requires interpretive guidance and targeted amendments to ensure it fully encompasses emerging threats from artificial intelligence and synthetic media technologies.

The Current legal framework often fails to disperse liability to AI tools or their creators, there's no legal framework that holds AI model creators, developers, or hosting platforms responsible for producing, detecting, or removing harmful synthetic content. One of the respondents shared with the researcher that it is very complex and difficult to hold someone liable unless there is a liability which the law itself imposes on anyone who commits an offence. Imagine with AI-generated material, which also affects children's protection, the law was supposed to state clearly who will be liable in case of AI-generated sexual abuse and exploitation content, to know to whom the liability will be held, but since the law is silent, he believes that children will be affected more and more.<sup>14</sup> This inaccuracy allows offenders to exploit AI technologies without facing direct legal consequences, undermining the effectiveness of laws intended to prevent exploitation.<sup>15</sup>

Generally, Tanzania has made noteworthy progress in firming its legal framework against online child sexual exploitation by amending the Cybercrimes Act and related laws to explicitly criminalize computer-generated or synthetic child sexual abuse material. However, the framework remains largely mercurial, fragmented, and limited in scope. It primarily targets the content itself without adequately regulating the AI technologies, developers, or platforms that enable its creation and distribution, there is lack of a clear meaning of AI-generated sexual abuse and exploitation towards children.

## **2. Foundations: AI and Online-Based Violence**

### **2.1 Artificial Intelligence?**

Artificial Intelligence (AI) is a branch of computer science that allows machines to perform tasks typically requiring human intelligence. These tasks include learning from data, recognizing patterns, making decisions, and even understanding language.<sup>16</sup> In simpler terms, AI enables computers to think and act in ways that mimic human behavior.

AI is embedded in everyday technologies, often unnoticed. It powers the

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14 Mdoe. B.J, Interview by author (09th August 2025, Baistar Advocates Mbeya)

15 <https://www.gchumanrights.org/preparedness/ais-chilling-impact-on-child-sexual-abuse-material-a-wake-up-call-for-the-international-community/> Accessed on 19<sup>th</sup> August 2025

16 IBM; What is Artificial Intelligence (AI)?

recommendations we see on platforms like YouTube or Netflix, filters spam in our email, and even drives voice assistants like Siri or Alexa. While these applications make our lives easier, the same technology can be misused, as seen in the rise of AI-generated deepfakes used to harm individuals, particularly women in leadership positions.<sup>17</sup> Therefore, understanding AI is critical in tackling the challenges it creates and leveraging its potential to protect vulnerable populations.

## 2.2 Online-Based Violence

Online-based violence, often referred to as cyber violence, includes harmful acts perpetrated through digital means. This form of violence is insidious because it transcends physical boundaries, allowing perpetrators to harm victims from virtually anywhere. Examples of online-based violence include cyberbullying, online harassment, stalking, non-consensual pornography, and identity theft.<sup>18</sup>

Women and marginalized groups are disproportionately affected. A 2023 report by the World Health Organization revealed that nearly 70% of women online have experienced some form of cyber violence, ranging from abusive comments to threats of physical harm.<sup>19</sup> In Tanzania, where digital technology is rapidly growing, women increasingly face cyber harassment, often by anonymous users emboldened by the lack of accountability on digital platforms.<sup>20</sup>

The impact of online violence extends beyond the digital realm, causing significant psychological, social, and economic harm. Victims often suffer from anxiety, depression, and in some cases, are driven to self-harm or suicide.<sup>21</sup> These effects underline the necessity for stronger laws, supportive technologies, and public awareness to combat this growing menace.

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17 Odhiambo, M. (2023)

18 The Journal of Gender and Technology. Definition and examples of cyberviolence

19 World Health Organization (2023): Report on cyberviolence against women online

20 TMC (2024): "Echoes of Harm: Dissecting Technology Facilitated GBV Through the Eyes of the Victim"

21 *Ibid*

### 3. The Role of AI in Cyber violence

Artificial Intelligence (AI) plays a dual role in the context of cyber violence: it is both a tool for perpetuating harm and a powerful mechanism for combating it. Understanding this duality is essential for developing comprehensive strategies to address online violence, particularly as it disproportionately affects women and marginalized communities. This section explores the harmful uses of AI, as well as the innovative ways it can be leveraged to protect victims and ensure accountability.

#### 3.0 Harassments conducted through AI

##### 1. Online Grooming

Online grooming refers to the way of adults using the Internet to manipulate and prepare children for sexual exploitation. It includes building trust and emotional connections, often leading to harmful situations that the child may not recognize as threats.<sup>22</sup> Online grooming is the way by which an adult uses the Internet to sexually influence and victimize a minor, directing to obtain sexual content or arrange an encounter through online contact, exploiting the minor's vulnerabilities.<sup>23</sup>

Online grooming is the process by which an adult uses information and communication technologies to gain a minor's trust, ultimately leading to sexual interaction. It involves various persuasion strategies to progressively manipulate the child into compliance.<sup>24</sup> It is a social engineering attack where an adult forms a sexually abusive relationship with a child using technology, often through deceptive practices on social media platforms, aiming for sexual gratification.<sup>25</sup> *R v. GS*<sup>26</sup> in this case, the offender was convicted of grooming a child online and inciting sexual activity. The court held that even in the absence

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22 N. Pendzialek, The Experience of Online Grooming in the Perspective of "Digital Native" *Edukacyjna Analiza Transakcyjna*, vol. 12, pp. 187–202, 2023. DOI: 10.16926/eat.2023.12.10

23 M. Botija, et al, "He Flattered Me". A Comprehensive Look into Online Grooming Risk Factors: Merging Voices of Victims, Offenders and Experts through in-Depth Interviews, *Cyberpsychology*, vol. 18, no. 4, 2024. DOI: 10.5817/cp2024-4-3

24 The Multidimensional Online Grooming Questionnaire, Springer eBooks, pp. 1–13, 2022

25 Street, J. and Olajide, F., Evaluating a Non-Platform-Specific OCR/NLP System to Detect Online Grooming, Proceedings of the ... International Conference on Information Warfare and Security, vol. 18, no. 1, pp. 504–11. 2023. DOI: 10.34190/iccws.18.1.967

26 [2012] EWCA Crim 1570 (UK)

of physical contact, intention and manipulation alone were enough to constitute an offence.

## 2. AI-generated pornography

AI-generated pornography refers to synthetic media created using generative AI technology, producing hyper-realistic images or videos depicting individuals, often in intimate or sexual contexts, without their consent, commonly known as AIG-NCII (AI-generated non-consensual intimate imagery).<sup>27</sup> AI-generated pornography refers to sexually explicit content (images, videos, or audio) that is created, modified, or enhanced by artificial intelligence technologies, rather than captured from real-life sexual acts. This type of content uses advanced machine learning tools such as Generative Adversarial Networks (GANs) or deepfake algorithms to produce realistic yet synthetic depictions of sexual acts, often involving real or fictional individuals.

## 3. Sexualized AI Avatar

A sexualized AI avatar refers to a digital representation of artificial intelligence designed to embody sexual characteristics or appeal, often reflecting societal desires and fantasies. This concept explores the intersection of technology, intimacy, and human attraction in various cinematic contexts.<sup>28</sup>

Sexualized AI avatars refer to digital representations that emphasize or exaggerate sexual characteristics, often reflecting societal biases. In the context of the paper, female figures in AI-generated imagery are frequently portrayed in a sexualized manner, contrasting with male figures' authoritative depictions.<sup>29</sup>

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27 N.G. Brigham, et al, Violation of My Body: Perceptions of AI-Generated Non-Consensual (Intimate) Imagery, 2024

28 G.V. Aguinaga, Metal y fantasía: La Dimensión Sexual de La Inteligencia Artificial En El Cine, *Revista Policía y Seguridad Pública*, no. 032, pp. 34–43, 2024. DOI: 10.26439/vent.indiscreta2024.n032.7476

29 A.Foka, She Works, He Works: A Curious Exploration of Gender Bias in AI-Generated Imagery, arXiv.Org, vol. abs/2407.18524, 2024. DOI: 10.48550/arxiv.2407.18524

### **3.1 AI as a Perpetrator**

#### **3.1.1 Deepfakes and Synthetic Media**

One of the most alarming misuses of AI is the creation of deepfakes—hyper-realistic but fake images, videos, or audio recordings generated using AI algorithms. Deepfakes have been weaponized to produce non-consensual explicit content, often targeting women. These fabricated materials are not only damaging to individuals' reputations but can also lead to significant emotional and psychological harm. A report by The Atlantic highlighted the troubling trend of AI-generated child sexual abuse material circulating in high schools, exacerbating the issue of cyberbullying among teenagers.<sup>30</sup>

Deepfake technology has also been used to create false narratives, manipulate public opinion, and spread misinformation, further amplifying its harmful effects. Despite efforts to combat these abuses, the rapid development of AI-driven synthetic media tools continues to outpace the development of regulatory frameworks.

#### **3.1.2 AI-Driven Phishing and Harassment**

AI is increasingly being utilized to enhance phishing attacks and online harassment. By analyzing vast amounts of user data, AI tools can craft highly personalized and convincing phishing messages. These tactics exploit individuals' vulnerabilities, making it easier for perpetrators to deceive and harm their targets. In a 2024 report, the FBI highlighted how AI enabled phishing campaigns are becoming more sophisticated, targeting vulnerable groups, including women in professional and personal contexts.<sup>31</sup> Similarly, AI chatbots have been manipulated to harass users, sending abusive messages at scale while evading detection by traditional content moderation systems.

#### **3.1.3 Automated Cyber Attacks and Exploitation**

Cybercriminals are leveraging AI to automate attacks such as brute-force password guessing, vulnerability scanning, and the spread of malicious software. This automation has increased the efficiency and scale of cyber-attacks, making digital spaces more dangerous for users.

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30 The Atlantic (2024): High School Is Becoming a Cesspool of Sexually Explicit Deepfakes.

31 FBI report on the growing use of AI in phishing and cyber-attacks (2024)

The use of AI for such purposes represents a growing threat, particularly in regions like

Africa, where cybersecurity infrastructure and legal protections are still developing.<sup>32</sup>

## 3.2 AI as a Solution

### 3.2.1 AI-Powered Detection and Prevention Systems

Despite its potential for harm, AI offers robust tools for detecting and preventing cyber violence. Social media platforms like Facebook and Twitter use AI to monitor and moderate content, identifying abusive language, threats, and harassment in real time. Advanced Natural Language Processing (NLP) algorithms analyze text for harmful intent, enabling the removal of abusive posts before they spread widely. For instance, a 2023 report by Facebook revealed that 89% of hate speech content was detected and removed by AI systems before users flagged it.<sup>33</sup> Additionally; platforms like KID\_ACTIONS utilize AI to protect minors from cyberviolence by identifying and mitigating harmful interactions.<sup>34</sup> Such proactive measures are crucial in creating safer online spaces, especially for women who face disproportionate levels of abuse.

### 3.2.2 Victim Support Technologies

AI-driven platforms are empowering victims of cyberviolence by providing support and resources. Tools like chatbots and mobile applications offer confidential assistance, helping victims report incidents, seek counseling, and access legal advice. These tools can also assist in collecting evidence and documenting incidents, facilitating legal actions against perpetrators. The development of AI-powered anti-cyberbullying systems demonstrates the potential of AI in providing real-time assistance to those affected.<sup>35</sup>

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32 Cybersecurity challenges in Africa: Insights from The Hacker News (2023)

33 Facebook transparency report on AI's role in content moderation (2023)

34 Kids Action (2024): Stop Cyberbullying with Artificial Intelligence

35 Cornell University (2022) AI Powered Anti-Cyber Bullying System using Machine Learning Algorithm of Multinomial Naive Bayes and Optimized Linear Support Vector Machine

### **3.2.3 Enhancing Cybersecurity and Forensics**

AI is revolutionizing digital forensics and cybersecurity by enabling faster and more accurate analysis of electronic evidence. Tools like Microsoft's Video Authenticator detect deepfake content with high accuracy, providing critical evidence in legal cases. Additionally, AI enhances cybersecurity by monitoring network activity, identifying anomalies, and responding to threats in real time.

### **3.3 Balancing the Dual Role of AI**

While AI offers immense potential to combat cyber violence, its misuse highlights the urgent need for safeguards. Governments, technology companies, and civil society must work together to establish ethical guidelines, improve technological literacy, and enforce legal protections. Addressing AI's dual role requires a proactive approach that prioritizes victim safety, accountability, and equitable access to justice.

## **4. Ethical and Legal Considerations**

The integration of Artificial Intelligence (AI) in combating cyber violence brings both opportunities and challenges. While AI has proven its ability to detect, prevent, and address online abuse, its implementation raises significant ethical and legal questions. These issues must be carefully navigated to ensure that the use of AI upholds justice, protects victims, and respects fundamental rights.

### **4.1 Privacy and Data Protection**

#### **4.1.1 Balancing Victim Protection with Privacy Rights**

The effectiveness of AI-driven solutions in combating cyber violence often depends on access to large amounts of personal data. For example, detecting online harassment might require analyzing private messages, social media activity, or even biometric information. While such measures can help identify and protect victims, they also raise concerns about privacy breaches and data misuse.

In Tanzania, the Data Protection Act of 2022 established guidelines for collecting, processing, and storing personal data. However, enforcement remains inconsistent, particularly when international tech platforms

are involved. Victims of cyberviolence often face a dilemma: sharing sensitive data to access support services or risking further harm through inadequate protections. Inspired by the European Union’s General Data Protection Regulation (GDPR), Tanzania could strengthen its legal frameworks to ensure data is used ethically and stored securely.<sup>36</sup>

#### 4.1.2 Protecting Sensitive Victim Data

AI-powered platforms, such as chatbots and reporting tools, must implement robust data security measures. These platforms handle sensitive information about victims, such as their identity, location, and the nature of abuse they’ve experienced. Inadequate safeguards could expose victims to additional risks, including retribution from perpetrators or identity theft.

In South Africa, the Protection of Personal Information Act (POPIA) mandates stringent data protection protocols, serving as a model for other African countries. By adopting similar standards, Tanzania can enhance the safety and trustworthiness of its AI-driven victim support systems.<sup>37</sup>

### 4.2 Addressing Algorithmic Bias and Discrimination

AI systems are only as good as the data they are trained on. Unfortunately, many AI algorithms reflect the biases present in their training datasets, which are often dominated by Western languages, cultures, and norms. This can lead to discriminatory outcomes, such as misidentifying abusive content or failing to recognize culturally specific forms of harassment.

#### 4.2.1 Gender and Cultural Bias

Studies have shown that facial recognition algorithms are significantly less accurate for women and people of color. Similarly, NLP systems may struggle to detect abusive language in African languages like Swahili, where meaning often depends on cultural context. For example, the word “*bibi*” in Swahili can mean “grandmother” or “lady,” and its interpretation depends on the context.<sup>38</sup> Misunderstandings like these

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36 Tanzania Data Protection Act (2022) and its implementation challenges

37 South Africa’s Protection of Personal Information Act (POPIA)

38 Case study on linguistic challenges in AI moderation for Swahili

could result in harmful content being overlooked or flagged incorrectly.

#### 4.2.2 Solutions to Mitigate Bias

To address these issues, developers must prioritize inclusive datasets that represent diverse languages, cultures, and experiences. Independent audits of AI systems can also help identify and rectify biases. There is a need of an audit of an AI moderation tool used by a global social media platform revealed that can predict abusive content in various languages like Swahili.

### 4.3 Legal and Regulatory Gaps

The rapid advancement of AI has outpaced the development of corresponding legal frameworks. Many countries, including Tanzania, lack comprehensive legislation to govern the use of AI in combating cyberviolence.

#### 4.3.1 Regional and International Standards

The African Union's Malabo Convention on Cyber Security and Personal Data Protection provides a framework for addressing cybercrime and protecting personal data. However, only a few African nations have ratified and implemented it. At a national level, Tanzania's Cybercrimes Act of 2015 focuses on traditional forms of cybercrime, such as hacking and fraud, but does not adequately address emerging threats like deepfake technology and AI driven harassment.<sup>39</sup>

#### 4.3.2 Recommendations for Legal Reforms

- i. **Criminalizing Emerging Offenses:** Amend existing laws to explicitly address AI driven abuses, such as the creation of non-consensual deepfakes.
- ii. **Establishing Accountability Mechanisms:** Mandate transparency in AI systems, requiring developers to disclose how their algorithms function and how decisions are made.
- iii. **Independent Oversight Bodies:** Create regulatory agencies

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39 Malabo Convention on Cyber Security

tasked with monitoring AI use in cyberviolence cases and ensuring compliance with ethical standards.

#### **4.4 The Role of Women Judges in Addressing Ethical Challenges**

Women judges bring unique insights to the ethical and legal challenges posed by AI. Their perspectives, informed by lived experiences and professional expertise, are invaluable in shaping victim-centered legal responses. For example, in Tanzania, female judges have played a pivotal role in advocating for amendments to the Cybercrimes Act to better protect women from online harassment.

By engaging with technology experts, policymakers, and civil society, women judges can ensure that ethical considerations are embedded in AI-driven solutions. Their leadership is essential in bridging the gap between technological innovation and human rights protection.

### **5. Innovations and Case Studies**

To effectively combat cyberviolence, it is essential to examine innovative approaches and draw lessons from successful implementations across jurisdictions. This section highlights key innovations and case studies that showcase the potential of technology, particularly AI, in addressing online violence.

#### **5.1 Innovations in Combating Cyberviolence**

##### **5.1.1 AI-Powered Detection Systems**

AI has transformed the way online abuse is detected and addressed. Social media platforms and digital tools now rely on machine learning algorithms to identify harmful content in real-time. For instance, AI systems powered by Natural Language Processing (NLP) can flag abusive comments, detect threats, and moderate harmful posts even before they are reported by users. One notable example is Meta's AI system, which automatically removed 89% of hate speech across its platforms in 2023 without the need for user intervention.<sup>40</sup>

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40 Meta's AI moderation system: Transparency report (2023)

### **5.1.2 AI for Digital Forensics and Evidence Collection**

AI-powered tools are revolutionizing digital forensics by enabling law enforcement to recover and analyze evidence more efficiently. For instance, Microsoft's Video Authenticator detects deepfake content with high accuracy, which is critical in prosecuting cases involving manipulated media.

In Tanzania, the Tanzania Communications Regulatory Authority (TCRA) has partnered with cybersecurity firms to enhance its forensic capabilities. This collaboration may lead to successful investigations and prosecutions, setting a precedent for addressing cyberviolence through technology.

## **5.2 Case Studies of Successful Approaches**

### **5.2.1 The European Union: GDPR and Ethical AI**

The European Union (EU) has been at the forefront of protecting digital rights through comprehensive regulations like the General Data Protection Regulation (GDPR). The GDPR emphasizes informed consent, data minimization, and the right to be forgotten—protections that are vital for victims of cyberviolence.

Moreover, the EU has established guidelines for ethical AI development, ensuring that AI systems are transparent, accountable, and fair. These measures have inspired countries worldwide to adopt similar frameworks, highlighting the importance of integrating ethics into technological advancements.<sup>41</sup>

### **5.2.2 Australia: The eSafety Commissioner**

Australia's eSafety Commissioner is a global pioneer in combating online abuse. The office offers a centralized platform where victims can report cyberviolence and request the removal of harmful content.

One notable success is the rapid response mechanism for non-consensual intimate images, which has significantly reduced the spread of such materials. The eSafety Commissioner also conducts public awareness campaigns to educate users about online safety, creating a

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41 European Union General Data Protection Regulation and ethical AI guidelines

more informed and resilient digital community.<sup>42</sup>

### 5.2.3 Tanzania: Emerging Innovations and Challenges

Tanzania has made commendable progress in leveraging technology to modernize its judicial system and address cyberviolence. Initiatives such as the Online Case Management System

(OCMS) and AI-driven transcription services have improved efficiency and accessibility.<sup>43</sup>

However, significant challenges remain. Low digital literacy rates, limited technological infrastructure, and gaps in regulatory frameworks hinder the country's ability to fully utilize AI in combating cyberviolence. Despite these obstacles, Tanzania has an opportunity to build on its existing efforts by fostering international partnerships and investing in digital education and infrastructure.

## 6. Conclusion and Recommendations

### 6.1 Conclusion

Artificial Intelligence (AI) and digital technologies have revolutionized how society approaches gender-based violence (GBV) in the digital age. While these tools offer unparalleled opportunities for detection, prevention, and victim support, they also present new challenges, including privacy concerns, algorithmic bias, and the misuse of AI to perpetrate harm. This dual nature of technology underscores the need for a balanced, innovative approach to leverage its strengths while mitigating its risks.

The fight against cyberviolence requires collaborative efforts involving governments, the private sector, civil society, and international organizations. It is essential to establish a global framework that fosters ethical AI development, ensures accountability, and prioritizes the protection of vulnerable groups. This collective effort will create safer digital spaces and empower women and marginalized communities worldwide.

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42 Australia's eSafety Commissioner: Programs and impact reports

43 Tanzania's Online Case Management System and challenges in addressing cyberviolence

## **6.2 Recommendations**

To address the complexities of AI and cyberviolence effectively, the following general recommendations are proposed:

### **6.2.1 Establish Comprehensive Legal Frameworks**

- i. Develop international and national laws that explicitly address emerging threats such as deepfake technology, AI-driven harassment, and digital impersonation.
- ii. Create legal provisions for victim protection, including safe reporting mechanisms, anonymity safeguards, and access to justice.
- iii. Strengthen enforcement mechanisms to hold perpetrators accountable while ensuring that technology platforms comply with regulatory standards.

### **6.2.2 Promote Ethical AI Development and Deployment**

- i. Advocate for global ethical standards for AI development, emphasizing transparency, accountability, and fairness.
- ii. Encourage the use of diverse and inclusive datasets to reduce algorithmic bias, especially in detecting gendered abuse in digital spaces.
- iii. Mandate regular audits of AI systems used in combating cyberviolence to identify and address potential harms.

### **6.2.3 Empower Victims Through Technology**

- i. Develop AI-powered platforms that provide real-time support, including reporting tools, legal guidance, and mental health resources for victims.
- ii. Increase access to digital literacy programs, particularly for women and marginalized groups, to enhance their ability to navigate online spaces safely.

#### **6.2.4 Foster Global Collaboration and Partnerships**

- i. Encourage international cooperation to combat transnational cyberviolence, including information sharing and joint investigations.
- ii. Establish public-private partnerships to develop and deploy innovative solutions tailored to combatting online abuse.
- iii. Leverage the expertise of global organizations such as the United Nations, the European Union, and the African Union to promote best practices and capacity building.

#### **6.2.5 Strengthen Institutional Capacities**

- i. Invest in training for judicial officers, law enforcement, and policymakers on AI technologies and their implications in addressing cyberviolence.
- ii. Equip institutions with advanced digital forensic tools to enhance their ability to investigate and prosecute cyberviolence cases effectively.
- iii. Encourage interdisciplinary research to explore the intersections of technology, gender, and violence, driving informed policymaking and innovation.

#### **6.2.6 Raise Awareness and Advocate for Digital Safety**

- i. Conduct global awareness campaigns to educate individuals about online safety, focusing on the risks of cyber violence and available resources.
- ii. Promote gender-sensitive technology design to ensure platforms prioritize user safety and inclusivity.
- iii. Encourage collective action by involving schools, workplaces, and community organizations in the fight against cyber violence.

# CHILD MARRIAGE AND INDIGENOUS GIRL'S EDUCATION IN TANZANIA: A CRITICAL REVIEW

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Patricia Anthony Kisinda\*

## Abstract

The current legal framework (Law of Marriage Act) governing the contract of marriage in Tanzania undermines a girl's child welfare by allowing a female person to get married at the age of 15 years. Moreover, bride price is traditionally practiced with legal justification. It is governed by the Local Customary Law (Declaration) Order and the Law of Marriage Act that allows a marriage contract to be concluded without a female child's consent rather between the parent of the child and the prospective husband.

In Tanzania, many female children are dying on the process of delivering a child. Childbirth has become a big factor of death to children at the age of 15 to 19. Children born out of childbirth are also being subjected to a greater risk of death. In addition, their right to education is being denied by early motherhood.

A child at the age of 15 is biologically not ready for marriage because her body is not prepared for giving birth. In the traditional African society marriage is characterized by procreation of children, it is a fact that when she enters into a contract of marriage procreation is what is expected from her while her body is not ready for that process. It is clear that her right to health and right to education are been infringed.

**Key words:** *Child marriage, girl child, traditional practices, indigenous communities, customary law*

## 1. Introduction

The Law of the Child Act has made remarkable progress in terms of fulfilling children's rights to survival, development, protection and participation in matters that affect them broadly.<sup>1</sup> However, many challenges still hinder the effective implementation and realization of the rights and well-being of the children, particularly the indigenous female children whose cultures considerably differ from the dominant mainstream society.<sup>2</sup>

Indigenous peoples of the United Republic of Tanzania mainly include pastoralists and hunter-gatherers. The indigenous pastoralists and hunter-gatherers' communities constitute the most vulnerable parts of the Tanzanian society.<sup>3</sup> In Tanzania, most tribes/societies originated from the Bantu and are thus known as the Bantu people.<sup>4</sup> Whereas the minority groups/societies compose the indigenous peoples. The groups of indigenous peoples that exist within the United Republic of Tanzania include: *Hadzabe, Maasai, Barabaig, Akie, Sonjo, Taturu (Datoga) and Mang'ati*.<sup>5</sup> The majority of these

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1. The African Child Policy Forum, *Implementing Child Rights in Tanzania: What is working well, what is not?* (2016) 2
2. Coalition of Indigenous Pastoralist and Hunter Gatherer Organizations, A report concerning the situation of Economic Social and Cultural Rights of Indigenous Pastoralists and Hunter gatherers of Tanzania, *Combine Initial, Second and Third Periodic Reports of the United Republic of Tanzania, Submitted to the International Covenant on Economic, Social and Cultural Rights, (UN Doc E/C.12/TZA/1-3, 28 March 2011) at the Occasion of the 48th Session of the Committee on Economic Social and Cultural Rights*, 23
3. Coalition of Indigenous Pastoralist and Hunter Gatherer Organizations, A report concerning the situation of Economic Social and Cultural Rights of Indigenous Pastoralists and Hunter gatherers of Tanzania, *Combine Initial, Second and Third Periodic Reports of the United Republic of Tanzania, Submitted to the International Covenant on Economic, Social and Cultural Rights, (UN Doc E/C.12/TZA/1-3, 28 March 2011) at the Occasion of the 48th Session of the Committee on Economic Social and Cultural Rights*, 5. See also Commission for Human Rights and Good Governance, 'A Shadow Report Relating to the 7<sup>th</sup> and 8<sup>th</sup> Tanzania Report on the Discrimination on the Elimination of all Forms of Discrimination Against Women (CEDAW) presented by the Tanzania National Human Rights Institution' (2016) 8
4. See generally IFAD *Country Technical Notes on Indigenous Peoples' Issues: The United Republic of Tanzania* (June, 2012) <https://www.ifad.org/documents/38714170/40224460/tanzania.pdf/59a6ddbc-fb50-4ae0-a4df-9277a89152d7>, visited on 25 November 2023
5. *Ibid*, at 9

indigenous peoples are located in the northern and central-northern parts of Tanzania that is Arusha and Manyara regions and part of Singida region.<sup>6</sup> The *Akie* and *Hadzabe* are hunter-gatherers while the rest *Barabaig*, *Maasai*, *Taturu (Datoga)*, *Sonjo*, and *Mang'ati* are predominantly pastoralists.

Against that backdrop, this paper discusses circumstances under which the female child encounters early/child marriage and persistent limitations within contemporary child welfare systems in addressing vulnerability and risk which many indigenous children face. It explores how the existing culture and traditions practices especially in the indigenous communities have disadvantaged female children generally and female indigenous children in particular.

## 2. A girl child welfare in relation to an institution of a Marriage

Despite the existence of positive gender equality laws, globally, indigenous female children do not suffer the same discrimination equally to all other female children. In Tanzania, more than one in three indigenous female children experience child marriage.<sup>7</sup> This also happens in other Eastern African countries such Kenya and Somalia.<sup>8</sup> They are regularly deprived the right to education.<sup>9</sup> Very few female children are enrolled in Primary and Secondary schools.<sup>10</sup> Most of them are forced to leave school before completion at the age of 12-15<sup>11</sup> in order to undergo female genital mutilation (FGM) or to be married.<sup>12</sup>

6 IFAD *Country Technical Notes on Indigenous Peoples' Issues: The United Republic of Tanzania* (June, 2012) 5 <https://www.ifad.org/documents/38714170/40224460/tanzania.pdf/59a6ddbc-fb50-4ae0-a4df-9277a89152d7>, visited on 25 November 2023

7 See UNICEF Report, 'Understanding the Relationship between Child Marriage and Female Genital Mutilation: A Statistical overview of their co-occurrence and risk factors' 32, See <https://www.Understanding-the-Relationship-between-Child-Marriage-and-FGM.pdf>, visited on 25 November 2023

8 See *Ibid*

9 N. Swainson, S. Bendera, R. Gordon. E. Kadzamira, 'Promoting girls' education in Africa – The design and implementation of policy interventions' Education Research Paper No. 25 (1998) file:///C:/Users/LENOVO/Downloads/er980025.pdf visited on 22 November 2023

10 The limited education they get reduces their chances of acquiring skills and economic opportunities – See UNFPA, *Marrying Too Young*, (2012) 13 <https://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf> visited on 24 November 2023

11 *Ibid*

12 "Ndoa za utotoni zinaua ndoto za utotoni" the phrase means, child marriages kill childhood dreams, many children have their dreams when they are young, but harmful practices such as

Indigenous female children experience other discrimination caused by the systemic policies and lack of basic necessities.<sup>13</sup> Most of the policies do not prioritize rural areas where indigenous peoples reside, which caused them to lack necessities such as schools and health services especially the services which are customized according to their cultural needs.<sup>14</sup> For instance; Tanzanian female child with no education is sixteen times more likely than the most educated female child to have experienced child/early marriage.<sup>15</sup>

Indigenous female children also suffer cultural challenges. These cultural challenges include African cultural values which are harmful to indigenous female children. Most of these cultural values cause indigenous female children to lag behind academically<sup>16</sup> For instance, an indigenous female child is twice more likely to get married as a child than her urban counterpart because of the social norms and traditional practices within her community.<sup>17</sup>

In most areas within Tanzania, a girl child is facing a number of challenges to access schools. Some of the schools are allocated at hundred miles from where a child is living. In this circumstance, most girl students are exposed to the risks of early pregnancy as they find themselves in the traps of being the victims of early pregnancy.

Testimonies given by girl students in Tanzania have proved that early pregnancies are the result of challenges they are facing in the process of

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child/forced marriage, FGM, and the application of primogeniture rule deprive female children to reach personal aspirations and full potential in life

- 13 The inequality and social norms combined with a fast-changing economy, technology and environmental background restrict their full potential and put them behind men and their fellow urban female children and women
- 14 Ruth Meena, "Situational Analysis of Education of Girls/Women in Tanzania", *Utafiti (new series) Vol. 3* No. 2, (1996) 39 – 90 file:///C:/Users/LENOVO/Downloads/aejp003002NS004.pdf visited on 25 November 2023
- 15 See UNICEF Report, 'Understanding the Relationship between Child Marriage and Female Genital Mutilation: A Statistical overview of their co-occurrence and risk factors' 32, See <https://www.Understanding-the-Relationship-between-Child-Marriage-and-FGM.pdf>, visited on 22 November 2023
- 16 See Karin Martensson, *educating girls for development – A study of organizational legitimacy in donor dependent NGOs in Tanzania*, (2010) [www.uppsats.se/uppsats/22762644c7/](http://www.uppsats.se/uppsats/22762644c7/) visited on 30/11/2023, See also Ruth Meena, at 39
- 17 First of all, she is a female child and second, she lives within marginalized community

getting their education.<sup>18</sup> In some cases these pregnancies are the result of student's relationships (a girl student and a boy student). While these challenges stand as a barrier to a girl child right to education, there is no any administrative policy to expel a boy student who impregnated a girl student from attending school.

In the traditional communities,<sup>19</sup> as long as a female child goes to school or has acquired formal education, the bride price “*mahari*” reduces.<sup>20</sup> The reduction of a bride price is undesirable news to indigenous parents and thus makes them unwilling to take their female children to school. Some parents forbade their female children from passing in their Primary school education examinations so that they do not proceed further with their education.<sup>21</sup>

Further, to deter a female child from acquiring education, most opportunities are given to a male child while all house chores remain with a female child.<sup>22</sup> At home, while a female child is occupied with house chores a male child is given time for leisure and study. Parents assign all these unbalanced responsibilities between male and female children to make sure that a female child does not find time to study and go to school. Thus, because of the way indigenous communities perceive formal education for a female child most families are not inspired to take her to school.

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18 The center for reproductive rights, report on forced out mandatory pregnancy testing and the expulsion of pregnant students in Tanzania Schools, 82-83,86-87,93,104-105, 113-114: See file://C:/Users/LENOVO/Desktop/REPORT%20ON%20FORCED%20OUT%202.pdf visited on 22 November 2023

19 In this Article a “Traditional community” is referred to as indigenous community

20 This practice is different from the modern societies where bride price may increase based on the fact the girl is educated and may be having a job. In the indigenous communities, when a female child is educated is presumed to have been westernized and not suitable for the traditional marriage

21 Parents believe that there is an advantage in marrying early, that completion of education may not be the best way for a daughter to ensure a good future. That educated girls may be limited in getting married – See UNFPA, *Marrying Too Young*, (2012) <https://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf> visited on 28/11/2023, See also United Nations Children's Fund (UNICEF), *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change* (2013) [https://www.unicef.org/media/files/UNICEF\\_FGM\\_report\\_July\\_2013\\_Hi\\_res.pdf](https://www.unicef.org/media/files/UNICEF_FGM_report_July_2013_Hi_res.pdf) visited on 28 November 2023

22 See Bart Rwezaura, ‘Competing ‘images’ of Childhood in the Social and Legal Systems of Contemporary Sub-Saharan Africa’ *International Journal of Law, Policy and the Family*, Vol. 12 (1998)

As a result of all such practices, female children themselves feel like they are only good for marriages and having kids. They believe and accept that their role is only in the household chores while their brothers are given time for leisure and studies. The elderly and their mothers indoctrinate them with that mentality which becomes part of them as well.

### **3. An indigenous child's right to education: The *status quo***

Among the indigenous societies in Tanzania, livestock is considered to be of a higher value than a female child's education. The value of a female child in the indigenous communities depends on a girl's "virginity" which determines higher bride price payable in kind in form of cattle given to her father.<sup>23</sup>

Within indigenous communities, child marriage has an economic implication. It is seen as insurance for economic security for a daughter and also building social networks and ties between families. This factor makes indigenous parents believe that it is important for a female child to get married at an early age before her "purity", in this case her virginity, can be threatened in any way. To keep the girl's purity, a female child gets married between the ages of 13 and 17 but a male child may not marry before he becomes a man and has finished his warriorhood, that is, at the age of 30-35.<sup>24</sup> Thus, most indigenous communities prefer to send a female child to a marriage than to educate her.

A girl-child in traditional African marriages has always been a victim of betrothal. It is a fact reveal from her childhood to the adolescence stage. She is forced to get married to a 'man' who had an eye on her from her childhood, the fact leads to the infringement of her right to pursue education and to have choice of what she wants for the betterment of her future life.<sup>25</sup>

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23 The practice is that the younger the age of a girl is, the more payment of dowry/bride price *mahari* is given to the father in terms of cows. See <https://www.forwarduk.org.uk/violence-against-women-and-girls/female-genital-mutilation/> visited on 25 November 2023. See also Pastoral Women Council (PWC), <http://www.bbc.co.uk/tribe/tribes/akie/index.shtml> visited on 25 November 2023

24 See IFAD *Country Technical Notes on Indigenous Peoples' Issues: The United Republic of Tanzania* (June, 2012) 7, visit <https://www.ifad.org/documents/38714170/40224460/tanzania.pdf/59a6ddbc-fb50-4ae0-a4df-9277a89152d7>, visited on 28 November 2023

25 This is the practice of the customary law being practiced in the indigenous societies where "cows" are used as payment of dowry in exchange for a girl-child. The younger the girl, the more the payment of dowry in terms of cows!

In this aspect the girl's choice to receive education and to have a choice of her own spouse are being violated. CEDAW states that; 'the betrothal and the marriage of a child shall have no legal effect and that states parties should ensure equality of men and women to have the same right to enter into marriage, and the same right freely to choose a spouse and to enter into marriage only with their free and full consent'.<sup>26</sup> While early pregnancy has become a big problem towards the welfare of a girl child in Tanzania, still forced marriage remains a result of early pregnancies.

Among the indigenous communities, a bride price plays a central role in child marriage. In most indigenous communities, marriage is arranged by two families, the families of the intended Bride and the Bridegroom. Since bride price has an economic gain, it is a settled practice for the bride's family to receive a price of an average of 10 to 20 cows for their daughters.<sup>27</sup> Other items and gifts accompanying that number of cattle may include a blanket for a father, two traditional cloths (*Kitenge/Kanga*), a big cooking pan for the mother, a hoe, and drinks (depending on the bride price culture of a particular tribe).

#### **4. Sneaking a girl's child right into Tanzanian's legal system through side door**

The current legal framework (Law of Marriage Act)<sup>28</sup> governing the contract of marriage in Tanzania undermines a girl's child welfare by allowing a female person to get married at the age of 15 years and a male person to get married only upon attaining the age of 18 years. Moreover, bride price is traditionally practiced with legal justification. It is governed by the Local Customary Law (Declaration) Order<sup>29</sup> and the Law of Marriage Act<sup>30</sup> that allows a marriage contract to be concluded without a female child's consent rather between the father of the child and the prospective husband.

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26 Article 16(1) (a) (b) & (2) of the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW), 1979

27 See Chapter 1 of the First Schedule of the Local Customary (Declaration) Order GN 279/1963

28 Section 13(1) & (2) and Section 17 of the Law of Marriage Act, (1971) provide that: "No person shall marry who, being male has not attained the apparent age of eighteen years, or being a female, has not attained the apparent age of fifteen years" Section 17- "A female who has not attained the apparent age of eighteen years shall be required, before marrying, to obtained the consent"

29 Rule 11 A of the Local Customary Law (Declaration) Order, Government Notice No. 279/1963

30 Section 17 of the Law of Marriage Act of 1971

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol) states that; 'no marriage shall take place without the free and full consent of both parties.'<sup>31</sup> This vital aspect in a marriage formation has never been a reality on the ground in most African societies.

In Tanzania, many female children are dying on the process of delivering a child. Childbirth has become a big source of death to children at the age of 15 to 19.<sup>32</sup> Born children are being subjected to a greater risk of death as well.<sup>33</sup>

The case of *Attorney General V. Rebeca Gyumi*<sup>34</sup> is a landmark case decided by the Court of Appeal of Tanzania the highest Court in the judicial system of Tanzania affirming the decision of the High Court of Tanzania which nullified the provisions of the Law of Marriage Act that are in violation of a girl child's rights.<sup>35</sup> The judgment is a cause for celebration towards the welfare of a girl child generally on the age to enter into a contract of marriage.

The judgment has suggested an amendment of the Law of Marriage Act by the Parliament of Tanzania. However, it has only dealt with one aspect patterning a girl child's welfare which is a marriage issue while the *status quo* of other aspects remains unaddressed. Tanzania is predominantly a patrilineal society which mainly practices primogeniture, the practice that really undermines a girl child's wellbeing in the society and makes her neglected, for example educating a boy child is preferred to a girl child.

A consent to a marriage through a legal and practical requirement in most African marriages is nonetheless frequently overlooked.<sup>36</sup> After the rights

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31 Article 6(a) of Maputo Protocol (Women Protocol)

32 Report prepared by Tanzania Demographic and Health Survey and Malaria Indicator Survey (2015-2016 TDHS-MS) 'children childbearing' 105-107 [www.dhsprogram.com/pubs/pdf/FR321.pdf](http://www.dhsprogram.com/pubs/pdf/FR321.pdf) visited on 22 November 2023

33 Reported by United Nations Population Fund Tanzania, 'Fact Sheet: Teenage Pregnancy' 3 [www.tanzania.unfpa.org/sites/default/files/pub\\_pdf/factsheet\\_teenage%20pregnancy\\_UNFPA\\_14oct.pdf](http://www.tanzania.unfpa.org/sites/default/files/pub_pdf/factsheet_teenage%20pregnancy_UNFPA_14oct.pdf) visited on 22/11/2023

34 Civil Appeal No. 204 of 2017- Decided on 23 October 2019

35 *Rebeca Z. Gyumi V. Attorney General* Miscellaneous Civil Case no 5 of 2016

36 M Hansungule 'The status of women contemporary African society with special reference to Zena Mahlangu (Swaziland) and Amina Lawa (Nigeria)' Paper presented at a public discussion jointly organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law of

of a female child to sexual pleasure and to go to school are being denied, she finds herself in this ‘marriage’, where now things worsen because the society has already determined on what is expected of her in the institution of marriage.

Right to health as provided under the UN Convention on Social economic and Cultural Rights (ICESCR) cannot be left without being associated with the trauma which the female children in Tanzania go through in the middle of dilemma towards their better future because of being denied the freedom to make decisions for their future life. Early marriages subject the children to the detrimental of physical, psychological, emotional and social well-being.<sup>37</sup>

A child at the age of 15 is biologically not ready for marriage. In the traditional African society marriage is characterized by procreation of children, it is a fact that when she enters into a contract of marriage procreation is what is expected from her while her body is not ready for that process. It is clear that her right to health is been infringed.

#### 4.1 What does ‘sneaking through side door’ means?

The “door” itself is the legislature whose role is to make laws and amendments when a need to change the law arises. The courts have seen no need for such legislation to remain in the law books and have proposed change of legislation with regard to the historical background of the Law of Marriage Act. The legislation suits the old time which was enhancing the welfare of a girl child and safeguard the dignity and integrity of women generally at that time.<sup>38</sup>

Although the act of amending laws is the function of the legislature, however, in the above case of *Attorney General V. Rebeca Gyumi* the motion derived from the judiciary which creating laws is not among the functions it is vested with but an incidental one. The declaration by the

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the University of Lund, Sweden and Amnesty International, Swedish Section, Lund, Sweden, (2003) 9 & 17. Available at <http://www.rwi.lu.se/pdf/seminar/hansungule.pdf> visited on 22 November 2023

37 NH Msuya, ‘Analysis to child marriage and third part consent to child marriage’ (2019)14 *De Jure Law Journal*, at 312-314 [www.saflii.org/za/journals/DEJURE/2019/14.html](http://www.saflii.org/za/journals/DEJURE/2019/14.html) visited on 22 November 2023

38 *Rebeca Z. Gyumi V. Attorney General*, Civil Appeal No. 204 of 2017- Decided on 23 October 2019 page 23

court that the provisions of the Law of Marriage Act are unconstitutional and suggested a change of law to be done by the Parliament, is to sneak towards the betterment of the girl child welfare through the ‘side door’ of which is not the legislature itself.

The decision in this case has contributed to the country’s efforts of advocating for legal reforms to ensure that existing domestic laws and policies conform to international human rights standards.<sup>39</sup> However, the fundamental question remains how the courts should contextualize this decision for indigenous female children’s rights in relation to child marriage.

In Tanzania, the legal traditions and cultural practices are incompatible with the international human rights standards.<sup>40</sup> In this regard, the case of *Rebecca Gyumi V. Attorney General* is very significant with respect to the elimination of discrimination against indigenous female children as to marriage. It sets an example of how the court can make effective use of international and regional treaties to reach its decision.

The Court made reference to the fact that provisions of the Marriage Act are inconsistent with international human rights instruments. This implies that, Tanzania is obligated to fully comply with her international obligations<sup>41</sup> to eliminate harmful and discriminatory legislations. For instance, the government’s attempt to amend the Law of Marriage Act shows its willingness to commit itself to adopting the minimum age of marriage for female children as established by CEDAW<sup>42</sup> and Maputo Protocol.<sup>43</sup>

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39 Norah Hashim Msuya, ‘The Analysis of child marriage ad third party consent’ *De Jure Law Journal*, 14 (2019) 308, [www.saflii.org/za/journals/DEJURE/2019/14.html](http://www.saflii.org/za/journals/DEJURE/2019/14.html) visited on 28 November 2023

40 Practices such as FGM, forced marriage, primogeniture practices, marital rape, and other sexual abuses are still taking place in Tanzania. The rate of female children abuses particularly in the rural areas where indigenous female children reside is going high - See UN Committee on the CEDAW of 2008, <https://reliefweb.int/report/united-republic-tanzania/impeding-tanzanian-efforts/implement-womens-convention-were-male> visited on 30 November 2023

41 See Norah Hashim Msuya, ‘The Analysis of child marriage ad third party consent’ *De Jure Law Journal*, 14 (2019) 312, [www.saflii.org/za/journals/DEJURE/2019/14.html](http://www.saflii.org/za/journals/DEJURE/2019/14.html) visited on 28 November 2023

42 Article 16 (a) of the CEDAW – “State Parties shall ensure equality of men and women the same right to enter into marriage”

43 Article 6 of the Maputo Protocol – “State Parties shall enact appropriate national legislative measures to guarantee that the minimum age of marriage for women shall be 18 years”

## 5. Conclusion and Recommendations

### 5.1 Conclusion

The study shows that there are existing challenges in protection of female children from early/child marriage. The persistence of social norms within the Tanzanian communities and existing loopholes within Tanzanian legal framework facilitates the continuation of early/child marriages. Thus, the contemporary frameworks both legal and institutional call for reforms.

### 5.2 Recommendations

#### 5.2.1 To the Judiciary

The Judiciary of Tanzania has in most cases become a ‘side door’ to initiate a change of laws which are outdated and or discriminatory to certain groups of people. In the case study<sup>44</sup> of this paper; the Judiciary has acted as a savior to a girl child whose future was blurred by early marriage under the pretext that the law allows such a bizarre situation.

Although the decision in *Rebecca Gyumi’s* case is a cause for celebration, however it could as well be a celebration of another cause for the fight to promote a girl child’s welfare. The practice shows that the exact age which a girl child starts school would still make the age of 18 not be viewed as a victory in girl’s child welfare. In Tanzania, especially in the rural areas, a girl child of 18 years is still at school let alone being at the level of university as most of them begin primary schools at the age 7 to 9. It is most likely the decision has not been in favor of an indigenous female child where this fact mostly applies to their communities.

The Judiciary is the temple of justice; indigenous child’s well-being should be interpreted by Tanzania’s juvenile courts in light of the international human rights law framework. Judges and Magistrates should have the knowledge of the concept of indigenous issues and apply them when hearing and determining juvenile cases involving an indigenous child. The focus should not only be on delivering justice but the most important consideration should be on the values of the Indigenous children societies so that the context of the indigenous child’s well-being could be well interpreted and advocated.

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<sup>44</sup> *Rebecca Z. Gyumi V. Attorney General*, Civil Appeal No. 204 of 2017- Decided on 23 October 2019

All matters pertaining to a child's welfare are governed by a general law, the Law of the Child Act<sup>45</sup> which as well precludes the consideration of a child's welfare uniqueness when such law is interpreted and applied by courts. Courts ought to have made exceptions in their decisions when deciding matters on Indigenous child as a child's identity is flexible, it has no one shape.<sup>46</sup> A child's identity is a key question to be considered when adjudicating children welfare cases and as well making plans for their well-being.<sup>47</sup> Judges and Magistrates should be guided by the Law of the Child Act, its rules and guidelines.<sup>48</sup> The Law of the Child Act<sup>49</sup> provides for the principle of the "best interest of the child" which should be applied in matters involving child marriage to address the harmful practices affecting indigenous female children.

Thus, there should be trainings for capacity building to Judges and Magistrates on the existing children's rights in international human rights law framework including but not limited to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 which Tanzania voted for.

### 5.2.2 To the Parliament

The good work which the legislature is doing towards the creation and repealing of laws which are repugnant to the Constitution is appreciated. However, there is still a need for legislative intervention towards the discriminatory legislation against not only a girl child but the indigenous girl child whose welfare depends on the way of life

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- 45 Section 4 of the Act No.21, 2009- It provides for the duty to consider the best interest of a child to be carried out by the such law and define who is a child under the law
- 46 Barbara Ann Atwood 'Flashpoints under the Indian Child Welfare Act: Toward a new understanding of State Court resistance' 674
- 47 Barbara Ann Atwood 'Flashpoints under the Indian Child Welfare Act: Toward a new understanding of State Court resistance' 595
- 48 Paragraph 2.1 (b) of a Guide Book for Effective Administration of Cases Relating to Vulnerable Groups, August, 2019
- 49 The principle of the "best interest of the child" is referred to in the law as the "welfare principle" though it is not specifically reflected in the Constitution. The case of *Maria Tumbo v. Harold Tumbo* affirmed in its holding that "in matters of custody the welfare of the infant is of paramount consideration, but where the infant is of an age to express an independent opinion, the court is obliged to have regard to his or her wishes". However, The Law of the Child Act expanded the range of the principle of the "best interest of the child" to cover all actions concerning a child undertaken by public or private institutions, courts or administrative bodies – Section 4 (2) of the Law of the Child Act

within the indigenous community.

However, despite having in place laws and policies which protecting children's rights, these practices are still conducted within indigenous communities. Although the current situation has improved from the past, the Tanzania legal system still has a long way to go. Customary law does not accord with international standards for protection of children's rights, most of these laws are contradicting with the Constitution which is the supreme law of the country, they are also not in line with the international Convention/Treaties which have been ratified by Tanzania.

Nevertheless, there is a need to embrace customary laws that satisfy the specific needs of indigenous peoples while ensuring that female children are treated as equal to male children. There is no doubt that not all customary laws are bad and oppressive to female children. Their respective cultural norms should be considered in order to support the supremacy of their rights to self-determination and cultural survival within the country's legal framework.

In addition to the above, the Parliament undoubtedly should expunge<sup>50</sup> the existing loopholes<sup>51</sup> within the legal framework by get rid of various outdated laws which conflict with existing laws. For instance, the case of *Rebecca Gyumi V. Attorney General* declared the provisions of sections 13 and 17 of the Law of Marriage Act to be invalid and unconstitutional and therefore ordered their amendment. The decision of the Court clearly shows that this law is outdated and cannot be used to justify child marriage.

Besides, there is still a need for a free consent from a female child to enter into marriage even after attaining the age of eighteen years. This

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50 This was emphasized by Dr. Harrison Mwakyembe, Member of Parliament in the United Republic of Tanzania, *Parliament Debate (Hansard) National Assembly Official Report*, 11<sup>th</sup> meeting sitting from 6<sup>th</sup> to 19<sup>th</sup> April 2008

51 Traditional and cultural practices justified by codified customary law create loopholes which hinder the effectiveness of female children's protection – See Gaps in Policies and Laws that Perpetuated Gender Based Violence in Tanzania: An Analysis and Synthesis, Report prepared by Human Development Trust (HDT) 2011, 5, See; [https://www.healthpromotiontanzania.org/index.php/en/library122/doc\\_view/112-gaps-in-policies-and-laws-that-perpetuate-gbv-in-tanzania.html](https://www.healthpromotiontanzania.org/index.php/en/library122/doc_view/112-gaps-in-policies-and-laws-that-perpetuate-gbv-in-tanzania.html), visited on 22 November 2023. See also Lisa Avalos, *et al*, 'Ending Female Genital Mutilation & Child Marriage in Tanzania' *Fordham International Law Journal*, Vol. 38 (2015) 668

is so because the marital age of eighteen years may not actually advance the female child's welfare, particularly an indigenous female child. In the rural areas where indigenous peoples reside, a girl of eighteen (18) years is still at school, as most of them begin primary schools at the age of seven to nine. There is no doubt that moving the marriage age to eighteen years would bring Tanzania into line with most nations, but other factors such as education must also be considered when a child of eighteen years is about to be married.

### **5.2.3 To the Executive**

The Executive should make a policy of sex education in schools; this refers to the incorporate sexual and reproductive health into school curricula starting with the Primary School level (Elementary School). This knowledge will help female children to be fully informed about reproductive health including family planning and contraceptives. The knowledge will also support efforts to address the high rate of teenage pregnancies.

The government should ensure that re-entry of pregnant or married female children in schools is permitted and develop alternative education programs such as skills acquisition and vocational training when a female child is unable to return to school after being pregnant or married.

There should also be an establishment of a complaint mechanism in schools which would enable a girl child including a pregnant student to confidentially report any abuse, violence or any other form of violation of her rights. These complaint mechanisms can be established in the school locations or in the local government offices which are placed in every village.

Also, the Executive should ensure that government schools have good standards and education environment to lower drop outs cases; these include having enough teachers and resources especially in the rural areas where indigenous communities are found.

### **5.2.4 To the Academia**

The law of the child is one of the courses taught at the university level

in Tanzania. It is high time now to include the law of the child into the university curricula as a mandatory course and not as it is currently treated as just a course which is optional and many students hardly opt to study the course.

### **5.2.5 To the Civil Societies**

Civil Societies work is particularly vital in Tanzania as it has been proved that some of the communities are still embracing practices which are discriminatory and oppressive to a girl child believing that they are practicing good cultures.

There is a need to organize awareness-raising programs and also devise campaigns particularly for children, parents and members of the communities such as traditional and religious leaders. The campaigns should focus on the negative consequences of child marriage. Civil Society organizations should initiate and facilitate awareness programs in the rural areas where most of these cultures and traditions are practiced.

There is also a need to create awareness in young female children while at school on cultural oppression. The awareness would help them develop self-understanding and enable them to guard against harmful cultural practices and to make positive decisions. This approach can be implemented by creating different programs that would bring female children together and impart to them different knowledge and skills such as vocational trainings, health issues and entrepreneurship. For instance, it is believed that FGM transforms a female child from childhood to womanhood. For that reason, these programs would focus on educating female children at adolescence stage that they can become women by applying the acquired skills and knowledge without undergoing the cultural practices which lead them into early marriages.

# CYBERBULLYING IN TANZANIA: A GROWING CHALLENGE IN THE DIGITAL ERA

Aisha Ally Sinda\* Mwajabu Mvungi\* & Husna Abbas Rweikiza\*

## Abstract

Cyberbullying poses serious legal and societal challenges, especially in developing countries like Tanzania, where digital literacy and legal frameworks are still evolving. The rise in internet access and social media usage has created opportunities for connection and expression, but has also facilitated online harassment, defamation, and identity theft. Unlike traditional bullying, cyberbullying can be relentless, anonymous, and far-reaching, leaving victims feeling powerless and vulnerable. Cyberbullying is a social problem that requires legal, educational and technological responses. Strengthening legal protections, promoting digital literacy, and encouraging ethical online behavior are crucial. This article explores the root causes, consequences, and most affected groups, including children, women, and marginalized communities, to contribute to an improved understanding of the unique challenges Tanzania faces in curbing cyberbullying, advocating for holistic strategies that address legal, educational, and technological dimensions.

**Key words:** *Cyberbullying, digital behavior, social harassment*

## 1.0 Introduction

Cyberbullying has emerged as a significant social and legal challenge in the digital era. The rapid expansion of digital connectivity has transformed how people interact, communicate, and conduct business.

In Tanzania, internet penetration has surged significantly over the past decade due to increased mobile usage, affordable data plans, and the widespread adoption of social media. While this digital evolution has brought numerous benefits, including economic opportunities, access to information, and enhanced social interactions, it has also introduced a new

crisis in the form of cyberbullying.<sup>1</sup>

Tanzania has not been spared from this growing crisis. One study indicates that as many as 65% of Tanzanian social media users have experienced some form of cyberbullying, including online threats, impersonation, defamation, and non-consensual sharing of intimate images.<sup>2</sup>

## **2.0 Understanding Cyberbullying**

Cyberbullying is a modern form of harassment that takes place in digital spaces, where perpetrators use digital platforms to intimidate, defame, or threaten their victims. Unlike traditional bullying, cyberbullying extends beyond physical spaces, occurring in virtual environments where perpetrators can often act anonymously.<sup>3</sup> Anonymity online often encourages perpetrators because they feel protected from consequences. These activities affect individuals in both private and public settings.

Beyond its psychological and emotional toll, cyberbullying can have severe social and economic consequences. Research indicates that its psychological effects can include anxiety, depression, and diminished self-esteem, while in extreme cases, cyberbullying has been linked to self-harm and even suicide. This modern form of harassment, enabled by digital technology, has become increasingly common with the rise of social media and digital communication.<sup>4</sup> Although it affects people of all ages, its impact on women and children is particularly severe.

Cyberbullying has a broader reach and greater permanence. Once content is uploaded online, it can be shared and viewed by an unlimited audience,

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1 2023 Annual Report of the Legal and Human Rights Centre

2 Ibid

3 Tanzania Communications Regulatory Authority (TCRA), 'Quarterly Communications Statistics' (2023) <https://www.tcra.go.tz> accessed 7th February 2025

4 Hinduja, S., & Patchin, J. W. (2014). Cyberbullying. Cyberbullying Research Centre

making it difficult for victims to escape the harassment<sup>5</sup>. Understanding the nature and mechanisms of cyberbullying is crucial for developing effective interventions and legal protections<sup>6</sup>.

### 3.0 The Digital Landscape in Tanzania

Tanzania has witnessed significant growth in digital transformations over the past decade. According to the Tanzania Communications Regulatory Authority (TCRA), internet penetration has increased significantly due to rising mobile phone usage and the availability of affordable data plans.<sup>7</sup>

Social media platforms such as Facebook, Instagram, WhatsApp, TikTok, Snapchat, and X (formerly known as Twitter) have become popular, providing avenues for communication, entertainment, business, and information sharing, particularly among young people. This surge in internet access has opened up new opportunities for innovation, education, and economic growth, particularly following the COVID-19 pandemic, which accelerated the need for remote education and digital collaboration tools. Government services are gradually being digitalized, with the Judiciary of Tanzania as an example that has transformed the courts into paperless courts.<sup>8</sup>

However, with this growth, challenges such as online harassment, misinformation, and digital fraud have also intensified. Many users, particularly young people, engage with online spaces without adequate awareness of the risks involved. Additionally, regulatory mechanisms struggle to keep pace with technological advancements, leaving gaps in protection against cybercrimes, including cyberbullying.<sup>9</sup>

Although the Tanzanian government has enacted laws such as the Cybercrimes Act<sup>10</sup> (the CA), The Personal Data Protection Act<sup>11</sup> (the

5 Vaillancourt, T., Faris, R., & Mishna, F. (2017). Cyberbullying in children and youth: Implications for health and clinical practice. *Canadian Journal of Psychiatry*, 62(6), 368–373

6 UNESCO, 'The Effects of Cyberbullying on Youth' (2022) <https://www.unesco.org> accessed 7 February 2025

7 Tanzania Communications Regulatory Authority. (2024). *The Regulator*, January–March 2024, p. 5. Retrieved from [Mar%202024%20english.pdf](https://www.tcra.go.tz/Portals/0/2024%20english.pdf)

8 Kemp, S. (2024). Digital 2024: Tanzania. Datar portal. Retrieved from <https://datareportal.com/reports/digital-2024-tanzania>

9 Ibid

10 [CAP. 443 R.E. 2023]

11 [CAP. 44 R.E. 2023]

DPA), and the Electronic and Postal Communications Act of 2010 (the EPOCA), which provides legal mechanisms to combat cyberbullying, enforcement remains a challenge as many cases go unreported due to victims' fear of revenge or lack of awareness about their legal rights. Internet users often lack knowledge about digital rights and responsibilities, making them vulnerable to exploitation. Digital platforms have struggled to implement effective content moderation in Swahili and local dialects, making it easier for harmful content to circulate unchecked.<sup>12</sup> Therefore, addressing cyberbullying requires a multi-faceted approach involving legal frameworks, public awareness, and technological solutions<sup>13</sup>.

#### **4.0 Most Vulnerable Groups**

Cyberbullying has become an increasingly serious social concern in Tanzania, mirroring global patterns in the digital age. Besides, cyberbullying does not affect all internet users equally; certain demographic groups are more susceptible to online harassment due to social, economic, and cultural factors. Among the most vulnerable are children, adolescents, women, girls, persons with disabilities, political activists and sometimes journalists.

Children and adolescents are commonly faced with body shaming, hate speech, manipulative online games, and academic pressure due to their lack of experience in dealing with online harassment and their susceptibility to peer pressure. According to the World Health Organization (WHO), adolescents aged 10 to 19 years have experienced alarming health trends over the past decade, with violence, including bullying, affecting millions of young people worldwide. As internet access expands and mobile device usage grows, particularly among the youth, cyberbullying has emerged as a pressing challenge for educators, parents, and policymakers alike.<sup>14</sup>

Although comprehensive national statistics on cyberbullying in Tanzania are limited, existing data highlight the issue as both significant and, on the rise, particularly among young people. Addressing this growing problem requires sustained efforts in public awareness, strengthening legal

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12 Tanzania Communications Regulatory Authority (TCRA), 'Quarterly Communications Statistics' (2023) <https://www.tcra.go.tz> accessed on 21<sup>st</sup> March 2025

13 Cybercrimes Act 2015 (Tanzania), Part III, Section 23

14 Ansary, N.S., "Cyberbullying Concept, theories and correlates informing evidence-based best practices for prevention of Aggression and violent behavior", 2020

safeguards, and improving mechanisms for reporting and intervention.<sup>15</sup>

Research further reveals demographic disparities in cyberbullying patterns. Girls are often more likely to be targeted, while boys are generally more prone to perpetrating cyberbullying behaviors. Some surveys indicate that up to 40% of female participants have experienced online harassment.<sup>16</sup>

Also, factors such as age, gender, and socio-economic background influence the prevalence of cyberbullying. Younger adolescents, especially those aged 12 to 15, tend to be more vulnerable due to their greater engagement with social media platforms and digital technologies.<sup>17</sup> Some studies indicate that about 41% of secondary school students in urban centers such as Dar es Salaam, Arusha, and Mwanza have experienced cyberbullying, including online threats, impersonation, and the spread of false rumors.<sup>18</sup>

Women and girls in Tanzania face high levels of gender-based cyberbullying, often in the form of online harassment, doxxing, threats of violence and revenge porn. Over 120 cases of revenge porn were reported to the Tanzania Police Cybercrime unit between 2019 and 2023.<sup>19</sup>

Journalists covering sensitive topics report high levels of online abuse, defamation campaigns, and online threats, especially when reporting on corruption, human rights violations, and sometimes political issues. A survey from the Media Council of Tanzania found that 65% of journalists have experienced online harassment and 42% have received direct threats through social media.<sup>20</sup>

Moreover, persons with disabilities and individuals expressing political

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- 15 Danielle, M., Bowen, X., & Onditi, H., "Measurement invariance and relationship among school connectedness, cyberbullying and cybervictimization; a comparison among Canadian, Chinese, and Tanzanian Adolescents", 2022
  - 16 Craig, W. M., Pepler, D., & Atlas, R., "Observation of bullying in the playground and in the classroom", 21 (1), *School Psychology International*, 2000, pp. 22-36
  - 17 Danielle, M., Bowen, X., & Onditi, H., (n. 16), p. 21
  - 18 TEN/MET Contribution Report in Education Sector for 2022/2023 <https://tenmet.or.tz> (accessed on 21<sup>st</sup> March 2025)
  - 19 Tanzania Police Cybercrime Unit. (2023). Annual Cybercrime Report: Cyberbullying and Digital Threats. Dar es Salaam: Tanzania Police
  - 20 Media Council of Tanzania (MCT). (2023). Cyber Harassment in the Tanzanian Journalism Sector: A Report on Digital Attacks on Media Professionals. Dar es Salaam: MCT. Retrieved from <https://www.mct.or.tz>

opinions are frequently subjected to online abuse.<sup>21</sup> Cyberbullying has been used as a political tool, with activists, opposition leaders, and human rights defenders being frequent targets of coordinated digital attacks. Women in politics are sometimes subjected to digital intimidation and misogynistic abuse.<sup>22</sup>

## 5.0 Legal and Institutional Response

### 5.1 Legal Frameworks Addressing Cyberbullying in Tanzania

Tanzania has established several legal frameworks and institutional mechanisms to combat cyberbullying and other forms of online harassment. While these laws regulate certain aspects of online misconduct, they do not explicitly define or comprehensively address cyberbullying, which often complicates enforcement efforts.<sup>23</sup>

Moreover, these laws have been criticized for their vague definitions and limited scope, occasionally restricting freedom of expression without offering sufficient protection for victims of cyberbullying.

#### a. The Cybercrimes Act (CA)<sup>24</sup>

This is the primary legal instrument dealing with cyber offences, including online harassment, cyberstalking, and publication of false information. The CA does not specifically define cyberbullying, but has some key provisions relevant to cyberbullying, including section 16, which criminalizes cyber harassment, section 23, prohibiting publication of false information intended to harm an individual's reputation, and section 24, cyberstalking and repeated digital harassment.

#### b. The Electronic and Postal Communication Act (EPOCA)<sup>25</sup>

This EPOCA regulates digital communications and provides a legal

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21 Internet Watch Foundation (IWF). 'Online Harassment and Gender-Based Violence' (2021) <https://www.iwf.org.uk> accessed 7 February 2025

22 Legal and Human Rights Centre (LHRC). (2022). Tanzania Digital Rights Report: Cyberbullying and Online Harassment Trends. Dar es Salaam: LHRC. Retrieved from <https://www.humanrights.or.tz>

23 Mutunga, E., "Challenges in Enforcing Cybercrime Laws in Tanzania", 15, East African Law Journal, 2023, p. 101

24 Act No. 14 of 2015

25 Cap 306 R.E 2022

basis for prosecuting hate speech, online defamation, and harassment. It requires internet service providers and digital platforms to monitor and remove harmful content. It also empowers TCRA to block access to websites or social media accounts that promote cyberbullying. Lastly, it imposes fines and penalties on platforms that fail to comply with content moderation requirements.

**c. The Data Protection Act (DPA)<sup>26</sup>**

This law protects personal data and online privacy, addressing one of the key components of cyberbullying, which is the unauthorized sharing of personal information (doxxing). The Act also comprises some provisions relevant to cyberbullying, including the prohibition of unlawful collection, processing and sharing of personal data without consent, mandating digital platforms to safeguard users' personal information to prevent online abuse, and holding companies accountable for data breaches that expose users to cyber threats. See section 27 (1) of the Act

*27.-(1) A data controller and his representatives shall ensure that personal data is protected by such security safeguards that is reasonable in the circumstances necessary for the personal data protection against negligent loss or unauthorized destruction, alteration, access or processing of the personal data."*

**d. The Electronic and Postal Communications (Online Content) Regulations<sup>27</sup>**

These regulations are designed to oversee and regulate online content, prohibiting the publication of content that incites violence, promotes hate speech, or facilitates online harassment. It requires bloggers, influencers, and online media houses to adhere to strict guidelines when publishing digital content. However, some provisions in these regulations have been widely criticized for being excessive and potentially violating the right to freedom of expression.

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26 Act No. 2 of 2022

27 GN No. 538 published on 17/7/2020

**e. The Penal Code**<sup>28</sup>

The Penal Code is not explicitly designed to address cyberbullying; it outlaws harassment, threats, and defamation, which are common elements of cyberbullying. Sections 89 and 90 outlaw threats, intimidation, and intentional harassment, including those conducted digitally, and defamation laws under sections 230 to 234 have been used to prosecute cases of online allegations.

**5.2 International Laws and Conventions Ratified in Tanzania**

Tanzania also aligns its legal framework with several international treaties and conventions that address cybercrime and digital rights, including the United Nations Convention on the Rights of the Child (UNCRC), which recognizes the protection of children from online abuse as a fundamental digital right, and the Malabo Convention<sup>29</sup> that provides a framework for regulating cybercrime, protecting digital privacy, and improving online safety in African countries.

Despite all these legal provisions, enforcement remains weak due to challenges such as a lack of technical expertise among law enforcement agencies, limited public awareness of digital rights, and underreporting of cyberbullying cases. Many victims refrain from seeking legal recourse due to fear of retaliation or skepticism regarding the effectiveness of the legal system.

**5.3 Institutional Mechanisms for Addressing Cyberbullying in Tanzania**

Several government agencies and institutions play a role in regulating online behavior and handling cyberbullying in Tanzania. They include;

First, TCRA regulates digital platforms, internet service providers, and telecommunications companies to ensure compliance with cybercrime laws. It has the authority to shut down websites and online accounts involved in cyber harassment. It also runs digital safety awareness campaigns in schools and public institutions.<sup>30</sup>

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28 Cap [16 R.E 2023]

29 African Union. (2014) African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention). Retrieved from <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>

30 Ibid, Tanzania Communications Regulatory Authority. *The Regulator*, Jan–Mar 2024

Second, Tanzania Police Cybercrime Unit investigates cybercrimes, digital fraud, and online harassment cases. It uses digital forensics to track anonymous cyberbullies and online predators. It also collaborates with Interpol and regional enforcement agencies to combat transnational cyber offences.<sup>31</sup>

Third, Judiciary of Tanzania, which handles cybercrime cases under particular legal provisions. However, prosecution of cases for cyberbullying remains low, with many cases either delayed or dismissed due to insufficient evidence and legal loopholes.<sup>32</sup>

Fourth, Civil society groups also help in advocating for digital rights and offering support to victims of cyberbullying including LHRC which provides legal aid to victims and conducts digital literacy programs, Tanzania Education Network which works with schools to promote cyber safety education for students and teachers and lastly is the Media Council of Tanzania which supports journalists facing online harassment and works on policy advocacy for press freedom in digital spaces.<sup>33</sup>

These institutions have developed targeted strategies to detect, investigate, and mitigate such offences. The entities also engage in public awareness campaigns and specialized training initiatives to better equip law enforcement and the community with the knowledge and tools needed to effectively counter cyberbullying incidents. However, more proactive measures, including capacity-building for law enforcers and judicial officers, are required to enhance the efficacy of legal responses.<sup>34</sup>

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31 *Tanzania Police Force Cybercrime Unit Reports; Ministry of Information, Communication and Information Technology – National Cybersecurity Strategy (2023); and INTERPOL’s Regional Cybercrime Programme for Africa*

32 **Kweka, F. W.**, *Challenges in prosecution and investigation of cybercrimes in Tanzania: A Case study of High Court of Tanzania and Kisumu Resident Magistrate Court*

33 Legal and Human Rights Centre, *Legal Aid and Human Rights Education Programmes*, available at: <https://humanrights.or.tz/en/programmes> (accessed March 21, 2025)

34 The institutional roles described here are synthesized from publicly available information, official websites, and policy reports, combined with the authors’ professional knowledge of the Tanzanian legal and policy framework

## 6.0 The Role of Education and Awareness

Education and awareness play a fundamental role in combating cyberbullying in Tanzania, since they serve as proactive measures to create safer online environments. Public sensitization on responsible digital behavior, ethical social media use, and online safety is essential in promoting a culture of respect and accountability.<sup>35</sup>

Integrating cyberbullying awareness into school curricula, engaging communities, and leveraging media platforms are essential steps in building a responsible digital culture. Collaborative efforts from schools, parents, government institutions, NGOs, and social media companies are necessary to ensure that individuals are both protected and informed about their digital rights and responsibilities.<sup>36</sup>

To bring these ideas into practice, it is important to recognize that no single actor can address cyberbullying alone. A collaborative and coordinated approach are needed, where various stakeholders such as schools, families, government bodies, civil society organizations, and digital platforms work together to implement sustainable solutions. The following slices outline the specific roles each of these actors plays in promoting digital safety and combating cyberbullying in Tanzania.

### 6.1 Educational Initiatives in Schools

Schools serve as a critical space for shaping young people's digital behavior. Integrating cyberbullying education into primary and secondary school curricula can help students understand online safety, responsible digital engagement, and the consequences of harmful online behavior. Subjects like civic education and ICT can incorporate topics on digital ethics, privacy, and cyberbullying prevention.<sup>37</sup>

Furthermore, interactive student workshops and seminars can create safe spaces for young people to discuss cyberbullying experiences, peer pressure, and digital peer support networks. Schools should also introduce peer mentorship programs where trained students mentor

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35 United Nations Children's Fund (UNICEF), 'Protecting Children Online: Strategies and Challenges' (2023) <https://www.unicef.org> accessed 7 February 2025

36 Ibid

37 **Daily News Reporter. (2024, February 13).** *TCRA launches campaign on responsible internet use.* Daily News. <https://dailynews.co.tz/tcra-launches-campaign-on-responsible-internet-use>

their peers on online safety and responsible social media use.

## 6.2 Community and Parental Engagement

Beyond schools, communities and families also play a crucial role in preventing and mitigating cyberbullying. Community awareness campaigns can help educate the public on online threats, responsible digital behavior, and legal consequences for cyberbullying offenders. Local organizations, religious institutions, and community leaders can host educational sessions that emphasize ethical internet use and respectful digital interactions.<sup>38</sup>

Parents and guardians must play an active and informed role in monitoring and guiding their children's online activities. While many struggle to keep up with rapidly evolving social media trends and emerging cyber threats, their involvement is crucial in recognizing whether a child is experiencing or engaging in cyberbullying.<sup>39</sup> Effective digital parenting goes beyond supervising device use; it requires fostering open communication, building trust, and educating children about online risks and responsible behavior.<sup>40</sup> To support this effort, digital parenting workshops, often facilitated by schools and NGOs can provide parents with the necessary knowledge and skills to navigate the digital landscape alongside their children. These efforts are particularly impactful in urban areas such as big cities like Dar es Salaam, where non-governmental organizations have been at the forefront of promoting cyberbullying awareness among adolescents.

## 6.3 Digital Literacy Programs

Promoting digital literacy is essential for helping individuals navigate the internet safely, recognize cyber threats, and respond to online harassment appropriately. Online safety education should teach users how to secure their personal data, use strong passwords, and adjust

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38 Uludaşdemir, D., & Küçük, S. (2023). Raising awareness among adolescent cyberbullies and their parents in Türkiye through a web-based cyberbullying education program based on Pender's health promotion model. *Archives of Psychiatric Nursing*, *43*, 161–170. <https://doi.org/10.1016/j.apnu.2023.02.013>

39 Hutson, E., Kelly, S., & Militello, L. K. (2018). Systematic review of cyberbullying interventions for youth and parents with implications for evidence-based practice. *Worldviews on Evidence-Based Nursing*, *15*(1), 72–79 <https://doi.org/10.1111/wvn.12257>

40 Ibid

privacy settings on various platforms. This knowledge is particularly important for young people and first-time internet users, who are often targeted by online predators, scammers, and cyberbullies.<sup>41</sup>

Additionally, social media use campaigns should emphasize the importance of digital footprints, the risks of oversharing personal information, and the long-term consequences of harmful online behavior. Many individuals, particularly young people, fail to recognize that online content is permanent and can be used against them in the future. Schools and universities can also introduce peer mentorship programs, where trained students help others learn about safe digital practices, cyberbullying reporting mechanisms, and ethical social media engagement.<sup>42</sup>

## 6.4 Media and Public Awareness

Public awareness campaigns using mainstream and social media platforms can be highly effective in addressing cyberbullying. Television and radio stations can highlight the dangers of cyberbullying, the legal consequences for offenders, and available support services for victims.<sup>43</sup>

Social media platforms can also be used as powerful tools to promote online kindness and ethical digital engagement. Hashtag campaigns, social media challenges, and influencer partnerships can help spread positive messages and discourage cyberbullying behaviours. In Tanzania, collaborating with popular content creators, musicians, and influencers to speak out against cyberbullying can resonate with a broad audience and encourage responsible digital interactions.<sup>44</sup>

## 6.5 Research and Policy Development

Ongoing research on cyberbullying trends and digital safety challenges is essential for informing policy decisions and creating targeted

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41 Digital Literacy, [https://about.meta.com/actions/safety/topics/digital-literacy/?utm\\_source=chatgpt.com](https://about.meta.com/actions/safety/topics/digital-literacy/?utm_source=chatgpt.com)

42 Ibid

43 TikTok and UNICEF South Africa call on SA to stand together against online bullying and harassment [https://www.unicef.org/southafrica/press-releases/tiktok-and-unicef-south-africa-call-sa-stand-together-against-online-bullying-and?utm\\_source=chatgpt.com](https://www.unicef.org/southafrica/press-releases/tiktok-and-unicef-south-africa-call-sa-stand-together-against-online-bullying-and?utm_source=chatgpt.com)

44 Ibid

interventions. Studies on the prevalence of cyberbullying, the most affected groups, and the effectiveness of existing laws can provide valuable insights for policymakers, educators, and law enforcement agencies. Institutions such as the Commission for Science and Technology (COSTECH) and universities should conduct nationwide studies to track emerging cyberbullying patterns and recommend improved intervention strategies.<sup>45</sup>

In addition to research, policy advocacy efforts should push for stronger legal protections for victims of cyberbullying. This includes revising existing laws, strengthening enforcement mechanisms, and ensuring better support systems for victims. Monitoring and evaluation of education programs and awareness campaigns should also be prioritized to ensure their effectiveness and long-term sustainability.<sup>46</sup>

## 7.0 Recommendations

Addressing cyberbullying in Tanzania requires a comprehensive and multi-stakeholder approach that strengthens legal protections, improves law enforcement capabilities, enhances public awareness, and promotes collaboration between government agencies, educational institutions, civil society, and digital platforms. A well-structured response will help prevent cyberbullying, provide support for victims, and hold perpetrators accountable. The following recommendations outline key areas for intervention.

### 7.1 Strengthening Legal Frameworks and Enforcement

Tanzania's Cyber Crime Act provides a legal basis for prosecuting cyber offences, but it lacks a clear definition of cyberbullying and specific provisions addressing online harassment, cyberstalking, and doxxing. To improve legal protections, the government should amend the CA to explicitly define cyberbullying and outline stronger penalties for perpetrators.

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45 Byera, A. K. (2024) Legal and practical challenges in preventing cyberbullying in Tanzania: Navigating legislative gaps, enforcement hurdles, and social realities. *East African Journal of Law and Ethics*, 7(1), 111–122 <https://doi.org/10.37284/eajle.7.1.2416>

46 Ibid

Law enforcement agencies, particularly the Tanzania Police Cybercrime Unit, must be equipped with better digital forensics tools and specialized training to effectively track and prosecute cyberbullying offenders. Furthermore, improving coordination between the judiciary, law enforcement, and regulatory bodies like the TCRA will ensure a streamlined and effective legal response.

## **7.2 Enhancing Public Awareness and Education on Cyber Safety**

One of the biggest challenges in tackling cyberbullying is the lack of awareness about digital rights, reporting mechanisms, and legal protections. Many victims do not report incidents due to fear of revenge or skepticism about law enforcement's ability to act. To address this, digital safety education should be integrated into school curricula, ensuring that students learn about responsible internet use, online privacy, and cyberbullying prevention from an early age.

Awareness campaigns using television, radio, and social media should be conducted to educate the public on the dangers of cyberbullying and available legal protections. Parents also play a crucial role in ensuring online safety. Parental digital literacy programs should be introduced to equip guardians with the skills to monitor children's internet usage, recognize warning signs of cyberbullying, and create open communication channels for reporting abuse. Finally, teachers, community leaders, and social workers should receive training to identify and intervene in cyberbullying cases, ensuring that victims receive timely support.

## **7.3 Providing Victim Support Services**

Victims of cyberbullying often experience mental health struggles, reputational damage, and social isolation. Unfortunately, many do not seek help due to limited access to psychological and legal support services. To address this gap, Tanzania should establish a national cyberbullying helpline, where victims can receive confidential counselling, legal guidance, and emotional support.

Legal aid should be made available to cyberbullying victims, ensuring they can navigate legal proceedings without financial barriers.

Expanding mental health services, including counselling in schools, universities, and community health centers, will help victims cope with trauma and rebuild their confidence. Furthermore, online victim support platforms should be developed to allow victims to report incidents anonymously, access expert advice, and connect with peer support groups. Lastly, the government should encourage partnerships between NGOs, law enforcement, and private sector stakeholders to fund and sustain these initiatives.

#### **7.4 Improving Regulatory Oversight and Industry Collaboration**

TCRA plays a critical role in monitoring online behavior and enforcing cybercrime laws, but stronger collaboration with social media platforms and digital service providers is necessary to combat cyberbullying effectively. One way to achieve this is by enforcing stricter regulations that require social media platforms to monitor and remove abusive content in Swahili and local dialects. Many harmful posts and messages remain online due to ineffective content moderation systems that do not recognize Swahili-language abuse.

Telecommunications companies must work closely with law enforcement to track and identify cyberbullying offenders, particularly those using anonymous accounts or VPNs. Social media platforms should also be required to improve reporting mechanisms, making it easier for Tanzanian users to flag abusive content.

#### **7.5 Promoting Research and Data Collection on Cyberbullying**

A data-driven approach is essential for understanding cyberbullying trends, identifying vulnerable groups, and designing effective interventions. Tanzania should conduct nationwide studies on cyberbullying, focusing on its psychological, social, and economic impact. Universities and research institutions should be encouraged to study emerging digital threats and propose evidence-based solutions for improving cyber safety policies.

## **7.6 Strengthening International Cooperation on Cybersecurity**

Cyberbullying is a borderless issue, and Tanzania must strengthen international partnerships to combat cross-border digital threats. One crucial step is for Tanzania to fully ratify and implement the African Union's Malabo Convention on Cybersecurity 2014, which offers a regional framework for cybercrime prevention and online safety. Additionally, Tanzania should work closely with East African Community (EAC) member states to develop joint strategies for cyberbullying prevention and digital safety education.

## **8.0 Conclusion**

Cyberbullying is becoming an increasingly serious issue in Tanzania's digital world, and it requires a collective effort from various groups, including legal authorities, regulatory agencies, educational institutions, and the general public. Although there are legal frameworks like the CA that provide a foundation for tackling online harassment, there are still many challenges, such as gaps in enforcement, low public awareness, and a lack of digital literacy. To effectively address these issues, it is essential to strengthen legal frameworks, improve law enforcement capabilities, and promote education that encourages responsible behavior online.

In the long run, creating a safer online environment requires a comprehensive approach involving legal action, preventive strategies, education, and active community participation. Prioritizing efforts to ensure cyber safety, Tanzania has the potential to create a more inclusive and secure digital space where all citizens can engage without fear of harassment or abuse.

# WIDOWS' PROPERTY RIGHTS IN TANZANIA: DOES THE LEGAL ARM STRETCH TO ADDRESS THE PRESENT AND FUTURE HURDLES?

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Daniel Mirisho Pallangyo\*

## Abstract

In Tanzania women are regarded as subordinates to husbands and in case a husband dies, the surviving family members of the husbands' family views a widow as a visitor who is supposed to vacate after burial. Widows have been deprived of their jointly owned property in the absence of their co-owners (husband). This practice of denying women equal property rights is obnoxious to the principles of natural justice and equality before the law. This article adopts the desktop research to examine the available laws and customary practices related to property ownership and how the law in development has scanned new changes.

This Article scrutinizes the dynamics that have escalated the repudiation of property rights to the widows and what should be done to balance the interests of both genders in the society. The study found out that many factors that hinder widows to enjoy their property rights involve discriminatory customary practices, ignorance of law, the reluctance in making wills making distribution of property difficult. The study therefore recommends promotion of human rights like the right to be heard, and sensitization of the widows of their rights to property.

**Key words:** *Widow, property rights, family law, customary law*

## 1.0 Introduction

The marginalization of girls and women in many African Societies has been in numbers in the recent years. The societies have been skeptical with regards to inheritance of the property of the deceased fathers and or husbands.<sup>1</sup> The Tanzania report on the vulnerability of women and girls to inheritance of 2008 revealed that the inheritance of land between women and men is 50 to 67 (%) in favor of men.<sup>2</sup> the trend has risen in the recent years and many cases have been filed in domestic courts in numbers. the increased cases on unequal distribution of property between men and women and unlawful transfer of property that belongs to the widows is a clear reflection of the growing problem in the society.

Land plays an important role in the social-economic development of women and girls in the sub-Sahara Africa. Owning and controlling assets such as land, has a bearing on the economic bearings of a family.<sup>3</sup> The increased activism of women rights together with their involvement in provision of their families brings them close to property ownership. This explains why several campaigns have been steered to defend women (widows) property rights.

Even with several attempts to ensure that women rights to inheritance are elevated, the emerging conflicts and contestations are conjoint in many parts of the country. The rights of widows become unwarrantable in the absence of any advocacy from the family or even close relatives. The 2008 study reported that the problem becomes enormous when it appears that the widow has no children with the deceased husband. The relatives from the husband's side pressurize the widow till when she decides to leave for her life.<sup>4</sup>

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1 Kessy F., Kweka J., Makaramba R., and Kiria I. (2008) *Vulnerability and Property Rights of Widows and Orphans in the Era of the HIV and AIDS Pandemic: A Case Study of Muleba and Makete Districts, Tanzania*, Food and Agriculture Organization of the United Nations, Pg. 20

2 ibid

3 Daniela M, Groussard H, Vikitoria K, and Liang S. (2023) Women's Land Rights in Sub-Sahara Africa: Where do we stand in Practice? 2-7

4 ibid, 21

The 2008 report listed by percentage listed a number of widows who were asked to leave the premises of their late husbands. The writers used Muleba and Makete in Kagera and found that in Muleba 20% of the widows were asked to leave their husbands property, and 17% in Makete.<sup>5</sup> All the presented statistical data is just a sample of the big numbers that go unnoticed in many societies in Tanzania.

With so many definitions on the term, the simplest meaning of ‘a widow’, means a wife who has lost a husband or a surviving wife of an individual male. However, the United States code of house and government requires that such wife must have born the deceased a son or daughter to qualify in this category.<sup>6</sup> There is no specific law that defines the term but the Maputo protocol<sup>7</sup> has provided for the specific rights of a widow. The provisions of the protocol requires that widows should not be subjected to inhuman, humiliating or degrading treatment. The instrument also provides that widows have a right to inheritance of the property of their late husbands.<sup>8</sup>

Though, Tanzania approximating the rest of the international community is a signatory to a number of international instruments including the United Nations Charter, the Convention on all forms of discrimination Against Women (CEDAW),<sup>9</sup> The African Charter on human and Peoples’ Rights and the domestic laws which all protect the rights of women to inheritance. The rights of widows in Tanzania have not been given priority and the increased number of cases in courts is a proof that the situation has been prevalent in many societies in Tanzania. The High Court of Tanzania categorically held in *Ephraim v. Pastory*<sup>10</sup> that restrictions on women’s inheritance is oppressive and unjust law.

Therefore, this study analyzes the current legal regime in Tanzania, decided case on inheritance, reports and country statistical information. The study is

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5    ibid

6    See Section 416 (c) of the United States Code of House and Government

7    See Article 20 of the protocol to the African Charter on Human and Peoples’ Rights on the rights of women in Africa (Maputo protocol)

8    See Article 21 of the protocol to the African charter on human and peoples’ rights on the rights of women in Africa (Maputo protocol)

9    Tamar E. (2006) Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters, vol. VII, Pg. 602-603

10   *Ephraim v. Pastory*, [1990] LRC (Const.) 757, 767 (Tanz. High Ct. 1990)

divided into five parts with each part analyzing a different aspect. Part I of this study discusses the major terms in the study, Part II of the study analyzes the legal instruments, Part III of the study analyzes the compendium of cases on inheritance and how the courts have been caught in this web, Part IV will assess whether the available laws are sufficient to protect the rights of the widows, and the last part (Part V) will give a conclusion and recommendation.

## **2.0 Elucidating Major Concepts**

### **2.1 Equality**

The Concept equality before the law has attracted a number of studies and debates in the contemporary legal scholarship. Equality connotes that the machinery of the law should make no distinctions among people in the society<sup>11</sup> its footprints in the foundational human rights instruments' paints on its continued paramountcy in shaping the legal fraternity and a yardstick for legislation of laws in many parts of the world. Though the principle is a custom in creating a balanced society, some have viewed it as a tip-runner to amplify the rights of women over men and an alteration in the patrilineal systems to a society of 'who leads who'.

The principle of Equality before the law becomes a cherry-pick effective in the measures of legality and legitimacy. For a particular norm to be acquainted of acceptance in the society should be replicated in the palms of law and its application undeniably poses no question to the one seeking a right. On the other hand, the principle has scored legitimacy in many jurisdictions conforming to the moral, genuine, and ethical path of the society in which such laws are enacted.<sup>12</sup> The principle of equality is inherent in every legal system regardless of whether it's just or unjust.<sup>13</sup> However, the difficulty has always been surfacing when it comes to customary practices of different communities in Africa.

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11 Alfonso M. Equality before the law and precedent, *Ratio Juris*. Vol. 10, Issue No.4, Pg. 373

12 Between legality and legitimacy: Which is more important? available at <https://www.responsiblemines.rg/en/2015/11/between-legality-andlegitimacy-which-is-more-important/> last accessed on October 19, 2024 at 22:49 hours

13 Alfonso M. Equality before the law and precedent, *Ratio Juris*. Vol. 10, Issue No.4, Pg. 373

The Tanzanian community is undeniably a mixture of different cultures and for the past decades all been responsible for shaping the law of the land through adopting a common custom to be used in a certain community. Some of the available customs to date have been built on a patrilineal system that capitalize on men and subordinates women when it comes to property ownership.<sup>14</sup>

Customary law, though not religiously followed in all parts of the country, have different cultural backgrounds customs that have developed into law in such places. This position was discussed in a case of *Charles Lala vs Abdallah Mangi* where Judge Mwalusanya stated that Customary law shall be applicable and courts shall exercise jurisdiction in accordance therewith in matters of a civil nature, between members of a community in which rules of customary law relevant to the matter are established and accepted except in any case where it is apparent, from the nature of any relevant act or transaction, manner of life or business, that the matter is or was to be regulated otherwise than by customary law.<sup>15</sup>

This case though has survived decades has been a green light to the application of customary laws in Tanzania. Most of these customs are architecture of the past when marginalization of women in the society was legit<sup>16</sup> but the present-day Tanzania came with promising reforms with regards to rights women to own property and the constitution stands as a key instrument providing for the eights of all people in the country.<sup>17</sup> The constitution provides for the right to equality<sup>18</sup> while giving validity to laws enacted in the country. The provisions of the constitution negate the validity of any law that contradicts with the provisions of the constitution.<sup>19</sup>

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14 Genicot G. & Henandez B. (2021) Wome’s Land Rights and Village Institutions in Tanzania, Pg. 2-3

15 *Charles Lala vs Abdallah Mangi* [1992] TZHC 35 (10 November 1992)

16 Genicot G. & Henandez B. (2021) Wome’s Land Rights and Village Institutions in Tanzania, Pg. 5

17 See Articles 12, 13, 14, 15,16, 17, 18, 19, & 20 of the Constitution of the United Republic of Tanzania, 1977

18 See Article 13 of the Constitution of the United Republic of Tanzania, 1977

19 See Article 64 (5) of the constitution of the United Republic of Tanzania, 1977

## 2.2 Widows

Understanding the term ‘widow’ will strain us to define the term in two distinct ways, firstly; the dictionary definition and secondly; who is considered a widow when it comes to succession and inheritance of the deceased husband’s property. The term ‘widow’ finds its origin from a Latin word ‘videre’ which simply means to separate. The Merriam Webster dictionary defines ‘a widow’ as a woman who has lost her spouse or partner by death and usually has not remarried.<sup>20</sup>

The second tier of the definition simply questions whether a woman whose husband remarried before death would qualify to be a widow. The definition by Merriam Webster concludes the statements ‘usually has not remarried’<sup>21</sup> In *Leticia Mtanihonde vs. Adventina Valentina Masonyi*<sup>22</sup> the appellant was married to the deceased husband right from 1989 and upon the transfer of the deceased to Mbeya for work he filed a divorce due to some issues that arose between the two. The deceased married another wife and after his death in 2020 the first wife embarked on tracing his late husband’s property each of the wives claiming that they worked jointly with the late husband to acquire the property. The court ruled in favor of the newly married wife.<sup>23</sup>

The case at hand implies that a widow entitled to the property of the deceased is one that was a wife at the time before the husband departed.

## 2.3 Inheritance

The dictionary definition of inheritance the term has been defined as the process or act of passing assets down to other individuals after the death of the initial owner.<sup>24</sup> An inheritance may involve a number of aspects from cash, investments, stocks and bonds, and other assets. However, the study at hand explores the widows’ land rights and whether the law has provided a fair trial. Well in the ancient African Society deceased’s male relative felt entitled to inherit everything that the deceased owns

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20 Who is a widow? available at <https://www.merriam-webster.com/dictionary/widow> last accessed on October 25, 2024 at 13:29hours

21 ibid

22 *Leticia Mtanihonde vs. Adventina Valentina Masonyi* CIVIL APPEAL NO. 521 OF 2021

23 ibid

24 Inheritance: Definition, How it works and Taxes available at <https://www.investopedia.com/terms/i/inheritance.asp> last accessed on October 24, 2024 at 17:30hours

including his wife.<sup>25</sup>

This was a tradition not only in Tanzania but all over Africa but in the modern times it's fading with the increased activism for human rights. The old tradition was equally acclaimed during those days as a way of protecting the deceased's property. The widow was also seen as part of the property that the deceased owned and therefore could pass on to the close relative of the deceased preferably his young brother.<sup>26</sup> In addition the scourge of HIV/AIDS also changed the way people interact with each other and therefore the society remained vigilant with respect to exchange of wives.

However, the inheritance discussed in this section extends to the property of the deceased. The inheritance is objective in supporting the children and the surviving wife. That the widow assumes fatherhood of the children and administration of the property of the deceased for the furtherance of the family.<sup>27</sup> The provisions of the Marriage Act awesomely concrete the concept of inheritance and co-ownership when it categorically requires that women have the same right as man to hold and dispose land. The concept of co-ownership is important in determining whether the wife inherits the deceased husband's property. The court had this to say in *Leticia Mtanihonde vs. Adventina Valentina Masonyi*,<sup>28</sup>

‘Staying together as wife and husband couples collect property and in the same regard are considered joint owners of the said article.

Therefore, death of the husband can't be counted as vanish in the widow's interest in the property that they co-owned with the deceased husband. The cultural stance and other customs in the community view women as visitors that are meant to vacate the matrimonial assets once the husband dies. However, looking onto the position held in *Leticia case*<sup>29</sup> the courts have started realizing the injustice against widows and

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25 Kaniki A. Widow Inheritance, *The Law and Modernity in Tanzania: A critique*, Pg. 132

26 Kaniki A. Widow Inheritance, *The Law and Modernity in Tanzania: A critique*, Pg. 132

27 Kaniki A. Widow Inheritance, *The Law and Modernity in Tanzania: A critique*, Pg. 138

28 *Leticia Mtanihonde vs. Adventina Valentina Masonyi* CIVIL APPEAL NO. 521 OF 2021

29 *Leticia Mtanihonde vs. Adventina Valentina Masonyi* CIVIL APPEAL NO. 521 OF 2021

categorically extend a helping hand to save their interest in property.

### 3.0 Theories

#### 3.1 Gender in- equality

Many theories relating to the status of women in the society are instituted on the socialist thought. The socialist thought blames the existing material inequality in the society and its negatives effects on the society whole.<sup>30</sup> The socialists believe that if the society has a smaller differential, then there will be smaller differentials between men and women. The Marxists believe that what brings about inequalities in the society are the growing concerns of private property ownership. They therefore suggest that if the society works together for the benefit of the community as a whole the inequalities won't be a mention.<sup>31</sup>

Engels has a different perspective on the idea of equality of men and women where he categorically scans the society as a 'society of class'. He was of the considered view that the society has created classes whereby withering away the importance of women from participating in community activities.<sup>32</sup> He states that the shift to capitalism created selfishness among individuals and made man believe they can succeed without the society. He blames the family structure for confining non-productive work to women. These include childcare, household work which makes women less productive in the community affairs a factor catalyzes their deteriorated importance in the community hence the inequality

The sociological Feminist theory criticizes the family structure that settles women for less productive and burdensome work which excludes them from the production cycle of the society. This has led to women economic dependence within the marriage and once such marriages evaporate there is nothing left for them saver for what is left behind by the husband.<sup>33</sup> The above expounded theories are a picture-perfect resemblance of the situation in the present-day societies where

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30 Agassi J. (1989) Theories of Gender Equality: Lessons from the Israel Kibbutz, Gender & Society, 163

31 ibid

32 Agassi J. (1989) Theories of Gender Equality: Lessons from the Israel Kibbutz, Gender & Society, 166

33 Agassi J. (1989) Theories of Gender Equality: Lessons from the Israel Kibbutz, Gender & Society, 166

women are pickled as objects of sympathy in exploitative blending leaving them poor widows in case of death of the partner.

## 4.0 Legal Framework on the Right to Property

### 4.1 Convention on All forms of Discrimination against Women

Discrimination against women in the society has continued to exist despite various efforts and instruments adopted by the international community.<sup>34</sup> Equality of all persons before the law is a basic principle of the United Nations. The central objectives of the United Nations is to reaffirm faith in the fundamental human rights, dignity, and equality of all men and women.<sup>35</sup> The Human Rights Charter stands as the first international legal instrument to campaign for equality of all men and women and this aims at a full realization of human rights in all the parts of the world.<sup>36</sup>

The Convention on all forms of discrimination against women also puts in account the provisions of the international covenant on Civil and Political rights which without discrimination are applicable to all persons (including women).<sup>37</sup> The mid-twentieth century saw the emergency in many parts of the world, of many forms of discrimination against women. The adoption of the Convention on the elimination of all forms of discrimination against women was prepared by the working 1976 which set a foundation for the convention.

The Language of the Convention points out that discrimination against women violates the fundamental principles of human rights set out in the human rights instruments.<sup>38</sup> Women are part and important to the development of the family and the Community. Equal treatment of all people in the society uplifts the importance of women in the society and the need to open all opportunities to all people. Recognizing the

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34 The Convention on the Elimination of All forms of discrimination against women and its Optional Protocol, A handbook for parliamentarians, Pg. 11

35 Convention on the Elimination of all forms of Discrimination against women, United Nations Entity for Gender Equality and the Empowerment for Women, available at <https://www.un.org/womenwatch/daw/cedaw/history.htm> last accessed on October 4, 2024 at 11:27hours

36 *ibid*

37 Convention on the Elimination of all forms of Discrimination against women, United Nations Entity for Gender Equality and the Empowerment for Women, available at <https://www.un.org/womenwatch/daw/cedaw/history.htm> last accessed on October 4, 2024 at 11:27hours

38 See the preamble to Convention on the Elimination of All forms of Discrimination Against Women

growing need of women to participate in the affairs of the community shows the importance of treating them on the equal footing with men.<sup>39</sup>

The convention defines the term '*discrimination against women*' to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on the basis of men and women, of human rights, and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>40</sup> The definition provided for in this instrument provides a wider scope of protection of the rights of women.

The contracting parties to the convention condemn the discrimination directed against women and vow to take all possible measures to eliminate the same in their jurisdictions. The efforts to effect this include inculcating the same in the national constitutions, repeal or amend all laws that promote inequality against human persons.<sup>41</sup>

Contracting states of the Convention (CEDAW) have to a greater extent emulated the provisions of the CEDAW in their domestic laws including state constitutions. The constitution of the United Republic of Tanzania provides that all human beings are equal<sup>42</sup> the same constitution requires that all people be treated equally before the laws of the land.<sup>43</sup> The provisions of the constitution have been translated into a number of legal instruments with a sole objective of promoting equality of persons. The same has been upheld in the number of cases and the courts have not been shy to declare unconstitutional such laws that go against the provisions of the constitution on equality of persons.

The Convention on all forms of discrimination against women also calls upon states to accord equality of men and women before the law. this include a right to fair trial in cases that involve sexual offences against women<sup>44</sup> *In R.P.B. v The Philippines*, the case involved sexual violence

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39 See preamble to the Convention on the elimination of All forms of Discrimination Against Women

40 See Article 1 of the Convention on the Elimination of all forms of discrimination against women

41 See Article 2 of the Convention on the Elimination of All forms of discrimination against women

42 See Article 12 of the Constitution of the United Republic of Tanzania, 1977

43 See Article 13 of the Constitution of the United Republic of Tanzania, 1977

44 See Article 15 of the Convention on the elimination of all forms of discrimination against women

against a disabled woman who was mute and a hearing disability. When the case was brought before the court, the presentation of the evidence was biased and backed with stereotype given the nature of the victim. The CEDAW committee affirmed that stereotyping affects women's right to a fair trial and urged the state party to ensure that all criminal proceedings involving rape and other sexual offences are conducted free from prejudices.<sup>45</sup>

## 4.2 The African Charter on Human and Peoples' Rights

The United Nations Charter puts into consideration the traditions and the values of the African civilization and align the same with the new human rights regime.<sup>46</sup> The radical practices of the African society cannot be recounted to exist independent of the Human Rights Regime, rather a working coordination and working cooperation between the two regimes aiming at achieving a better life of all peoples in the society.<sup>47</sup> The charter affirms and recognize that fundamental human rights stem from attributes of human beings and the dignity of the human person without discrimination as to color, race or gender.

The enjoyment of rights is not religiously read on the piles of the human rights instruments, rather should be accompanied by the performance of the duties on the part of every individual. The word 'every individual' as used in this sense implies all human beings both men and women.<sup>48</sup> While the preamble and other preliminary parts expound on the need to coordinate the community values with the human rights regime, Article 3 of the Charter categorically provides from equality of all persons before the law. In addition, the laws enacted by the member States of the African Union should accord equal protection to all persons residing in their jurisdictions.<sup>49</sup>

In the case of *Antoine vs. Republic of Congo*<sup>50</sup> it was decided that the acts of the government of Congo were in total violation of Article 3 of

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45 R.P.B. v The Philippines Communication NO. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014)

46 See the Preamble to the African Charter on Human and Peoples Rights

47 *ibid*

48 See the Preamble to the African Charter on human and people's rights

49 See Article 3 of the African Charter on Human and Peoples rights

50 *Antoine vs. Republic of Congo* Communication NO. 253/2002

the African Charter on Human and peoples' rights. The notion that all are equal before the law also demands for equal participation of all the peoples and the protection of the law is cognizant of the marginalization of women in the society.<sup>51</sup> Therefore the African Charter provides for the rights of women and ensures that there is no discrimination of women and that all rights are accorded to them on equal footing as men.<sup>52</sup>

The trend in Tanzania and other parts of Africa reports that women and children have been deprived of their rights to inherit property after the death of the husband. This is not only surfacing in the present but a continuous practice of the Africa tradition and practices. The provisions of the African Charter capture this situation and includes such provisions protecting the rights of children and wives of the deceased husbands.<sup>53</sup> However the sub-Sahara Africa reports the least percentage of women owning land as compared to men who solely and or jointly taker lead over the women.<sup>54</sup> On the face of it the presence of the African Charter on Human rights has not stopped the recurrence of the violation of women property rights as veiled in the auspices of the African Charter.

### **4.3 Protocol to the African Charter on Human and Peoples' Rights of Women in Africa**

The protocol on the rights of women finds its roots in Article 2 of the African Charter on Human and peoples' Rights. the provisions of the African Charter enshrine on the principle of non-discrimination on the race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.<sup>55</sup> The member states of the African union are urged to eliminate all forms of discrimination against women and to ensure the protection of the rights of women as provide for in the international declarations and conventions.<sup>56</sup>

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51 See Article 18 of the African Charter on Human and Peoples rights

52 ibid

53 See Article 18 of the African Charter on Human and Peoples Rights

54 Daniela M. (2023) Women's Land Rights in sub-Sahara Africa; Where do we Stand in Practice, Global indicators briefs No. 23, World Bank group, Pg. 2-3

55 See the preamble to the protocol to the African Charter on Human and Peoples' Rights of Women in Africa

56 See the preamble to the protocol to the African Charter on Human and Peoples' Rights of Women

There is no doubt that Human Rights are widely recognized in international instruments and the norms and practices of people in Africa are to be aligned with the provisions of the African Charter. The same rights are guaranteed in other international instruments like Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Convention on the elimination of all forms of discrimination against women.<sup>57</sup> The protocol remains an important legal instrument as far as protection of women rights is concerned. It defines the term ‘discrimination against women’ and giving a wider scope of protection. The provisions of the protocol state as follows;

*“Any distinction, exclusion or restriction or any differential treatment based on sex and whose objective or effects compromise or destroy the recognition, enjoyment or the exercise by the women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”*

The definition provided for in the Protocol provides a wider scope of protection by simply mentioning all forms of discrimination common in almost all parts of the world.<sup>58</sup> The report by the Amnesty International on the rights of women lists discrimination based on sex, as the major catastrophe facing women in the society. Some African societies that are aligned with the patrilineal system have been made to believe that women rights are not human rights. The marginalization in such societies is countless and have made women to shy away from their potentials.<sup>59</sup>

#### **4.4 Constitution of the United Republic of Tanzania of 1977 (as amended)**

The Constitution of the United Republic of Tanzania is the fundamental  
in Africa

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57 See the preamble to the protocol on African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

58 Women’s Rights available at <https://www.amnesty.org/en/what-we-do/discrimination/womens-rights> last accessed on October 5, 2024 at 23:00hours

59 Women’s Rights available at <https://www.amnesty.org/en/what-we-do/discrimination/womens-rights> last accessed on October 5, 2024 at 23:00hours

law of the land that also give validity to other laws. The constitution stands as the superior law and any law that goes against the constitution is considered null and void. The constitution has mirrored the efforts of the people of Tanzania to uplift the principles of justice, fraternity, and concord.<sup>60</sup> The constitution of the United Republic of Tanzania also creates a democratic society that is accountable to the society, and dispenses justice to all peoples without fear or favor.<sup>61</sup>

The constitution of the United Republic of Tanzania remains a cornerstone with regards to the idea of equality of persons. The constitution contains a bill of rights which categorically state that all people are equal<sup>62</sup> and are entitled to equal protection under the laws of the land.<sup>63</sup> Any legal regime enacted in Tanzania should be free of any discriminatory provisions. The constitution is protective of all human persons and categorically protects all people against discrimination.<sup>64</sup> The same constitution protects interests of all people when it comes to property ownership. The constitution terms it 'unlawful' where a person is deprived of their property without a proper legal process.<sup>65</sup>

The provisions of the constitution make it possible for judicial organs to dispense justice putting in account the principles of fairness and justice for all.<sup>66</sup> The tribunals and courts dispensing justice should conform to the provisions of the constitution that's equal treatment of all people, fast tracking of cases, avoid technicalities, and impartiality. While the constitutional provisions are rich when it comes to equality, practice has revealed that most of these provisions have been disregarded in some courts and tribunals, society customs, and inheritance holding that women and girl child have no entitlement to property of their late husbands.

#### **4.5 The Law of the Marriage Act**

The law of the marriage Act categorically protects the rights of the

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60 See the preamble to the constitution of the United Republic of Tanzania, 1977

61 See the preamble to the constitution of the United Republic of Tanzania, 1977

62 See Article 12 of the constitution of the United Republic of Tanzania, 1977

63 See Article 13 of the constitution of the United Republic of Tanzania, 1977

64 See Article 13 of the constitution of the United Republic of Tanzania, 1977

65 See Article 24 of the constitution of the United Republic of Tanzania, 1977

66 See Article 107 A of the constitution of the United Republic of Tanzania, 1977

widows. The framers of the legal instrument were conscious that in the absence of the husband the widows were likely to be denied of their rights including losing her matrimonial home. The provisions highlight on the right to residence by providing that widows have a right to reside where they may please.<sup>67</sup> However, there has been cases where widows have been extricated from their matrimonial home by the relatives of the deceased husband. A few of these cases have gone unreported for fear of revenge or even being unaware of the legal remedies available to that effect.

There have been cases where the relatives of the deceased husbands force marriages on the widows after the husband has left. Most these cases are aligned with the customary laws of different tribes and societies in many African societies Tanzania being one of them. The effects have been far reaching to the ownership of property by the widows in the society. The vulnerable groups of human rights violations throughout the world and history are women and the modern society has been slow to accept their importance in the society irrespective of the changing legal regime.<sup>68</sup> In some African Societies they widows have been forced to marry the relatives of the deceased husband without their consent. Many have been out of traditions while others have been tricks to take the property of the deceased.<sup>69</sup>

## **5.0 My land, her land: The journey of women property rights in Tanzania**

Since the union between Tanganyika and Zanzibar in 1964, the United Republic of Tanzania has undertaken significant initiatives in the area of protection and promotion of human rights by ratifying and domesticating various international and regional human rights instruments, repealing unconstitutional laws. The same efforts have also been invoked in constitutional development, legislation and amendments maximizing the enjoyment of human rights.

### **5.1 1965 Interim Constitution**

The post-independence came with a number of changes and strategies on the side of the then newly independent state (Tanganyika). The

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67 See Section 68 (a) of the Law of Marriage Act, 1971

68 See Tanzania Human Rights report 2010

69 See The Tanzania Human Rights Report of 2010, Pg. 164

changes came with the drafting of the interim constitution in 1965 that could act as the basic law of the country awaiting new constitutional developments.<sup>70</sup> The interim constitution did not however carry with it the bill of rights and the rights to property. The British colonialists prepared constitutional developments for its colonies preparing them for independence.<sup>71</sup>

However, the same procedure was not applicable to Tanzania given that the British were not treating Tanzania as a colony rather were taking on administrative role in the country. The only human rights provisions by that time were on the rights to vote.<sup>72</sup> The Bill of rights was adopted in the later constitutional amendments that among other things contained the right to property and also promoted equality of men and women.<sup>73</sup>

## 5.2 1984 Constitutional Amendment (Bill of Rights)

Human rights are fundamental and a state is squarely important in availing measures that can help in availing such rights to its people as held in *Kudla v. Poland*.<sup>74</sup> In the absence of a bill of rights in the Tanzania constitution the state was caught unaware in defending itself in cases involving human rights violation. The state had signed the African Charter on Human rights but did not take steps to domesticate the same in its laws a thing of worry to its citizens.<sup>75</sup>

A bill of rights is a crucial part of the constitution for it acts as a mirror to the enactment of other laws while also containing provisions for enforcement of the fundamental rights.<sup>76</sup> The inclusion of the Bill of rights in the constitution of Tanzania was a remarkable victory assuring existence of these rights in the state. The constitution in Article 12 through 24 provides for the fundamental rights of people in the United

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70 See the Interim Constitution of Tanzania, 1965

71 Mashamba C. (2016) *The Law and Procedure on Litigation of Human Rights in Tanzania: An Appraisal of the New Rules of Procedure*, LST Law Review, Vol. 1, Issue 1, Pg. 41

72 See Article 4 of the Interim Constitution of Tanzania, 1965

73 Mashamba C. (2016) *The Law and Procedure on Litigation of Human Rights in Tanzania: An Appraisal of the New Rules of Procedure*, LST Law Review, Vol. 1, Issue 1, Pg. 41

74 *Kudla v. Poland* Application No. 30210/1996

75 Ruhangisa J. (1998) *Human Rights in Tanzania, the role of the Judiciary*, Pg. 131

76 Mashamba C. (2016) *The Law and Procedure on Litigation of Human Rights in Tanzania: An Appraisal of the New Rules of Procedure*, LST Law Review, Vol. 1, Issue 1, Pg. 50

Republic including the rights to property, equality of men and women<sup>77</sup> and the right to redress from the competent courts and tribunals.

The courts since inclusion of these rights have acted as vessels interpreting a number of laws gauging them against the constitutional provisions. However, the widow's rights to property has on many occasions been violated by the actions of deceased husband's relatives, community authorities and elder children all viewing the widow as a visitor meant to leave after the death of the husband. The state should adopt a more sophisticated means of addressing this issue or otherwise the efforts by the state to have a bill of rights remains in vain.

### 5.3 1971 Law of the Marriage Act

The Marriage Act of 1971 was among the first post-colonial legal instruments to recognize the rights of the wives to be co-owners of their husbands' property. The wording of the preliminary information of the law categorically relates the provisions of the act to marriage, and property rights between husbands and wives.<sup>78</sup> The law defines matrimony as a union between man and woman that is intended to last for their joint lives.<sup>79</sup> The gist of the definition clearly puts it that when the two united the union is to last for a lifetime. Therefore, every reasonable person would think that in the life time commitment the two persons work together and acquire property jointly a matter that implies a joint ownership of property.

The court of appeal in *Leticia Mtaniihonde Vs. Adventina Valentina Masonyi*<sup>80</sup> defined 'matrimonial assists' to mean those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provisions for them and their children during their joint lives, and used for the benefit of the family as a whole.<sup>81</sup>

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77 See Articles 12 -24 of the constitution of the United Republic of Tanzania, 1977

78 See Preliminary information of the Tanzania Law of Marriage Act, 1971

79 See Section 9 of the Tanzania Law of Marriage Act, 1971

80 *Leticia Mtaniihonde vs. Adventina Valentina Masonyi* CIVIL APPEAL NO. 521 OF 2021

81 *ibid*

## 6.0 Denial of property rights to widows? A look into a set of reasons (Findings)

### 6.1 Ignorance of registration formalities and procedure

The Court has been faced with a number of cases where the legality of the procedures has been a challenge to retrieving of the property of the deceased husbands by the widows. In the case of *Amina Maulid Ambali & 2 others vs. Ramadhan Juma*,<sup>82</sup> a widow and her children (referred to as Orphans in the case) filed the case claiming a disputed property that belonged to the deceased husband. The evidence brought before the court by the respondent included a Tittle Deed identifying the respondent as the rightful owner of the land. The court in dismissing the appeal filed by the appellants stated that;

*‘The court cannot determine ownership on the mere allegations that one has occupied the land for a determined period of time’*

To concrete this position the same was held in English case of *Moses v. Lovegrove*<sup>83</sup> and later *Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 others*<sup>84</sup> that;

*‘It has always been the law that permission or consensual occupation is not adverse possession. Adverse possession is occupation inconsistent with the title of the true owner, that is, inconsistent with and in denial of the right of the true owner of the premises.’*

The other problem facing the widows and Orphans could be the complex nature of the adversarial system which invokes technicalities. The issue that was raised by the appellants in the above case was based on the fraudulent registration of the disputed land in the names of the respondent. The court of appeal in addressing this ground stated that;

*“The appellants have argued that registration in the*

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82 *Amina Maulid Ambali & 2 others vs. Ramadhan Juma* Civil Appeal NO. 35 of 2019

83 *Moses v. Lovegrove* [1952] 2 QB 533

84 *Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo and 136 Others*, Civil Appeal No. 193 of 2016 (unreported)

*name of the respondent was done fraudulently. That is an allegation which ought to have been proved through cogent evidence at the trial and it ought to have involved the filing of a counterclaim and joining of the relevant authority which was responsible for registration of the plot in the name of the respondent. As it stands however, the available evidence on the record supports the finding of the learned trial Judge that the respondent is the lawful owner of the suit property.”<sup>85</sup>*

Looking on the above quotation the court had no further inquiry in the allegations brought forward by the appellants, but took a position on the procedures that were not complied with in the trial and the first appellant court. Statistics prove that the highest number of vulnerable widows are those that are illiterate and poor. The above fact impairs their ability to understand the required procedures and hiring of legal aid from learned advocates. Given this fact the government and the civil society organizations should come up with extended aid to the widows through sensitization and financial assistance to defend their rights.

In addition to the above in *Leticia Mtaniihonde vs. Adventina Valentina Masonyi*<sup>86</sup> the court had this to say;

*“The suit land or the matrimonial home or property as the trial High Court labelled it, formed part of the estate of the deceased following his death. Whether the deceased died testate or intestate, its distribution to its beneficiary or beneficiaries provided it was not disposed of by the deceased inter vivos was governed by the laws of probate and administration of deceased estates.... Indeed, after the learned trial judge had annulled the earlier probate proceedings (and all the transactions made on the authority of the annulled granted probate), the only logical thing to have been done was to advise the parties to apply for probate letters of administration in a court of competent jurisdiction.”*

85 *Amina Maulid Ambali & 2 others vs. Ramadhan Juma* Civil Appeal NO. 35 of 2019

86 *Leticia Mtaniihonde vs. Adventina Valentina Masonyi* CIVIL APPEAL NO. 521 OF 2021

In the above case the court of appeal before dismissing the appeal filed by a widow relied on the procedural impropriety stating that the party meant to open a probate cause as opposed to a matrimonial cause. It should be noted that the many parties filing cases seeking for remedies are ignorant of the procedure and in many cases, they have failed to pursue their rights. The judicial system in Tanzania is founded on technicalities making parties view going to court as a mere formality and in which they have no confidence in.<sup>87</sup>

## 6.2 Family Interests in the Property

In several cases the families of the deceased husbands have shown interest in the property left by the deceased and they have been willing to deprive widows of their right to the property left by the deceased husband. The position was witnessed in the case of *Naftal Joseph Kalalu vs. Anjela Mashirima*<sup>88</sup> in this case the husband who was married to the respondent died leaving behind the respondent (wife) and three children. The respondent was appointed the administratrix of the property left by the deceased husband. The father of the deceased was not contented with her appointment and filed a matter to the court. The appellant (the father) appealed on two grounds firstly; that the appointment was made in his absence, and secondly; the respondent was not the legal wife of the deceased.

The court in considering the customs of the Chagga community which discriminate a widow against becoming an administrator of the deceased husband, instead, the said customs require that other men from the clan should be appointed an administrator instead. The court held that the customs are discriminatory in nature and against the constitution of the United Republic of Tanzania.

## 6.3 Discriminatory Laws

The status quo in Africa proves that the available customary laws are still aligned with the past African traditions that deny women of the right to inherit property of their late husbands. The laws have gone steps to extend such discriminatory sentiments to the daughters giving

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87 Ramadhani A. South African Chief Justices' forum conference, sustaining the independence of the judiciary, Pg. 4-5

88 *Naftal Joseph Kalalu vs. Anjela Mashirima* P.C. Civil Appeal NO. 145 of 2001

them unequal portions as compared to the men and boy child.<sup>89</sup> In this perspective the laws cannot be taken to emulate the constitutional principles of equality before the law.<sup>90</sup>

There has also been a trend where women are sidelined with regards administration of the deceased husband's property. Many traditions view a widow as a last resort when appointing an administrator of the deceased's assets. Most of the administrators appointed have threatened the widow's interest in the property of the deceased husband's property.<sup>91</sup> Though Tanzania had to amend her constitution in the early to 2000s eliminating discrimination as to gender,<sup>92</sup> the number of cases proving its existence are immense.<sup>93</sup>

### 6.3 Absence of a will

Another problem that has escalated denial of property rights to the widows is related to husbands that die interstate. Among other crucial roles a 'will' is that it ensures that your wishes will be carried out and your loved ones are provided for.<sup>94</sup> Absence of a will in itself is one step down towards failing the wishes of the deceased. Many surviving widows have been denied their rights by the family of the deceased who may take over the property after burial.

In the case of *McBratney v. McBratney*<sup>95</sup> the court while emphasizing on the right of the widow to relieve stated that;

*“The discretion he exercised when he determined what provision should be made for his wife and other persons having moral or legal claims on him. The statute certainly*

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89 See the Tanzania Human Rights Report, 2010, Pg. 165

90 See Article 23 of the Constitution of the United Republic of Tanzania, 1977

91 Tamar E. (2006) Inheritance law in Tanzania: The Impoverishment of Widows and Daughters, Vol. VII, Issue 599, Pg. 618

92 Tamar E. (2006) Inheritance law in Tanzania: The Impoverishment of Widows and Daughters, Vol. VII, Issue 599, Pg. 602

93 See the Tanzanian Report before Women's Anti-discrimination Committee, affirmative action and obstacles described available at [www.ohchr.org](http://www.ohchr.org) last accessed on October 29, 2024 at 00:49 hours

94 The importance of a will available at <https://www.wilmingtontrust.com/library/article/the-importance-of-a-will> last accessed on October 29, 2024 at 13:05 hours

95 *McBratney v. McBratney* (1919) 59 SCR 550

*does not go so far, and merely entitles the wife to relief when she receives less under her husband's will than she would have obtained had there been no will. At the most therefore the measure of relief would seem to be the share she would have received in the case of intestacy, but I do not wish to be understood as holding that that share and no lesser amount should be allowed her. But she certainly should not obtain more."*

Though we can't capitalize that a will is the sole solution to the inheritance problems in the country, but we can strongly say that it minimizes the changes of depriving widows of their property. This is so because a will give a share to the widow as intended by the deceased husband.

## 7.0 Conclusion and Recommendations

### 7.1 Conclusion

In Tanzania besides inheritance, women and girls have faced discrimination over property ownership in both urban and most crucial parts of the country. Women have particular difficulties securing and retaining urban housing, a problem made more acute by a housing crisis. Laws and practices are discriminatory relating to inheritance, ownership, mortgage, and divorce. Patriarchal attitudes are entrenched, as regards titling, land, and renting or selling to single women. As a result, women spend significantly more time in informal settlements living in poor quality housing. In addition, they experience more acutely the lack of basic services, and are more exposed to gender-based violence and health risks.<sup>96</sup>

In *Rev. Christopher Mtikila v A.G.*<sup>97</sup> the late Justice Lugakingira observed that;

*"Fundamental rights are not gifts from the State. They inhere in a person by reason of his birth and are therefore prior to the State and the law [...]. Modern constitutions*

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<sup>96</sup> See the TANZANIA–LAND TENURE AND PROPERTY RIGHTS PROFILE

<sup>97</sup> *Rev. Christopher Mtikila vs Attorney General* [1994] TZHC 12 (24 October 1994)

*like our own have enacted fundamental rights in their provisions. This does not mean that the rights are thereby created; rather it is evidence of their recognition and the intention that they should be enforceable in a court of law.”*

Borrowing the wisdom from our EAC counterparts, the constitution of the Republic of Uganda provides that the fundamental human rights are inherent and not granted by the state.<sup>98</sup> The state’s role is to avail conditions favorable for the citizens to enjoy their rights through enacting laws, creation of tribunals and speedy implementation measures.

## **7.2 Recommendations**

### **1. Promote the Right to be heard**

There have been several cases where the court has played a key role in the protection of the widows’ rights over property jointly owned with their late husbands. in the case of *Anthony M. Masanga vs. Penina (mama Mgesi) & Lucia (mama Anna)*<sup>99</sup> that involved two widow neighbors (respondents) whose land was encroached by the appellant on grounds that they sold they sold the disputed property to him. The court of appeal in going through the evidence on record found out that the widows were not heard on the fact that their late husbands were the owners of the disputed land.

The Court in citing the case of *The Judge i/c High Court Arusha & Another v. N.I.N. Munuo Ng’uni*<sup>100</sup> stated that,

*‘In fact, nowadays, courts demand not only that a person should be given a right to be heard, but that he be given an “adequate opportunity” to be heard so as to achieve the quest for a fair trial. The right to be heard drives a party to present its case on the balance of probabilities not leaving any facts that will make a court rule in its favor.’*

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98 See Article 20 of the Constitution of the Republic of Uganda, 1995

99 Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna) Civil Appeal NO. 118 OF 2014

100 The Judge i/c High Court Arusha & Another v. N.I.N. Munuo Ng’uni [2006] T.L.R. 44

The position was discussed in *Re vs. B* where Lord Hoffman in defining the term balance of probabilities stated that:

*“If a legal rule requires a fact to be proved (a ‘fact in issue’), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.”<sup>101</sup>*

## **2. Law reform by the government is urgent to address the matter**

It's a clear case that the Tanzania laws on inheritance need an urgent reformation to address the niche that brings about discrimination and inequalities in inheritance.<sup>102</sup> While Tanzania Mainland has led the way in the reform of Marriage laws in Sub-Saharan Africa, it has lagged behind in the reform of the laws of Succession and this would mean embarking on amendments that among other things will recognize the widows and assure their property rights in the absence of their husbands.<sup>103</sup> Though International law mandates the elimination of discrimination in both law and custom Tanzania is still adamant and discriminative customary practices are still practiced in Tanzanian courts.

In *Edward Ntinkule vs. Evarist Ntafato*<sup>104</sup> the court while emphasizing the application of customary law stated that;

*“it is thus correct to say, as, I do, that, where people have sat at clan/family level and made a decision of allowing a person to inherit the land of his father, uncle, mother*

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101 *Re vs. B* [2008] UKHL 35

102 Tamar E. (2006) *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*

103 Tamar E. (2006) *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, Pg. 642

104 *Edward Ntinkule vs. Evarist Ntafato* MISC. Land Appeal NO. 11 of 2022

*or aunt under customary law and there has not been a resistance by anybody in the clan/family for a considerable period of time, title can pass to the person who was given the land despite the fact that there was no administrator of the deceased estate. This person gets a good title to the land under customary law and becomes an owner. He can sue or be sued in his name”<sup>105</sup>*

From the above case the application of customary law in the country is still valid and the court attaches importance to its application. However, its application in some parts of the country poses a threat to property ownership when they restrict women from owning property. Therefore, the state should come heads-up to reform any laws that stage a continued discrimination of women in property ownership.

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105 *Edward Ntinkule vs. Evarist Ntafato* MISC. Land Appeal NO. 11 of 2022

# THE COMPLEXITIES SURROUNDING EARLY MARRIAGE IN TANZANIA: LAW AND PRACTICE

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Rwezaula Kaijage\*

## **Abstract**

Early marriage is synonymous to child marriage and in most cases, people have been confusing these two terms. To the author in this article, the two terms are distinguishable. That is, although all child marriages are early marriages, but not all early marriages are child marriages. For that purpose, the author will first distinguish the two terms and subsequently discuss on the complexities surrounding early marriage in Tanzania.

Early marriages curtail girls' development not in one locality but rather across Tanzania. The escalation of these early marriages has been partly caused by prevailing customs, ignorance and sometimes gender superiority influenced by males. Ignoring this social cum gender-based violence problem has greatly affected the society since once a girl/woman is affected in any way, the family is affected and eventually the whole community is affected. This is because early/child marriage is a catalyst for disproportionately subjecting girls to negative impacts on their health, education and other opportunities in life. The most affected group of girls is that which falls in the years between 18 and 22 who on the face of records, are pure school-going young ladies. In order to eliminate this social problem, there is a great need of amending the existing relating laws and also sensitizing the citizens on the dangers of embracing this bad practice. Letting or leaving these young women to fall in early marriages is akin to denying them their human rights to conducive family life, to proper education, and sometimes healthy parentage of children.

In this article, the author is deliberating and highlighting on the nature and existence of early marriages in Tanzania, their causes, the greatly affected persons and the measures that may be taken to curb the situation.

**Key words:** *Child marriage, discretion, minimum age, age of majority.*

## 1. Introduction

Marriage according to the Law of Marriage Act<sup>1</sup> is a voluntary union of a man and a woman, intended to last for their joint lives. The law in its provision as seen above is raising three factors which must be assessed to evaluate whether they have any weight in the contraction of early cum child marriages. These are “voluntary union”, “intention” and “joint lives of the parties”.

The Law of Marriage Act<sup>2</sup> does not define or mention anything regarding early marriages. What the law defines is “child marriage” which in a way, may turn to be early marriage. Early marriage to the author’s understanding may be contracted between two adults provided that one of them or both of them has no prior arrangement for marriage. There is no preparation for the couples to enter into this life lasting institution. Meaning that, either both of them or one of them, leaped into the marriage institution out of instincts or fashion without undergoing the ordinary steps of engagement and courtship. This is what is happening to some of the couples who meet for the first time at higher learning institutions or make first contacts via emails and decide to leap into marriages. Some of such marriages survive and some collapses for a simple reason that there were no prior preparations for the marriage.

Currently, the society has departed from the tradition of preparing marriages where families were lining up the potential couples to engagement and courtship before marriage although the bad side of those traditions is that such procedures did not rule out child marriages. For real and respectful marriages, the procedure for marriage would be dating, engagement, courtship and finally marriage. Anyone passing through these stages would be skeptic looking at his/her son/daughter bypassing the stages to enter into early marriage. The legislators who are the creators of our laws therefore have to acknowledge and intimate these stages before early marriages may

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1 Section 9(1) Cap. 29 R.E 2023.

2 Cap. 29 R.E 2023.

be completely wiped out.

## **2. Child Marriages and Their Causes**

Like early marriages, child marriage is also not defined by the Law of Marriage Act<sup>3</sup>. Meaning that, you may not read the law of marriage to its letters and realize what child marriage is. However, if the law is read by interpretation, child marriage may be understood although even then, it remains controversial. It is so argued for the following reasons:

The law defines a child to be any person who has not attained the age of majority, which is 18 years of age.<sup>4</sup> The interpretation section on the terms<sup>5</sup> does not define or interpret the term “age of marriage”. Thus, in construing what the age of marriage would be in Tanzania, one has to read Part II (b) of the Law of Marriage Act<sup>6</sup> which provides for the “restrictions on marriage”. This provision gives the minimum age at which, the person may be eligible to marry.<sup>7</sup> The provision of the law provides clearly that: “No person shall marry who, being male, has not attained the apparent age of eighteen years or, being female, has not attained the apparent age of fifteen years”.<sup>8</sup> But this child of 15 years who has a legal right to marry is in the course losing her human right to health care because at that age her body and physic is not ready for marriage cores like pregnancy and family burdens. Because of this lacuna in the law, some children may apparently fall into early marriages while their family members and the community at large closing their eyebrows because there is no breach of law! While the law in Tanzania has set 15 years as the minimum age at which a girl may be married,<sup>9</sup> other States have adopted 18 years as the legal age for marriage for girls, although many countries allow younger girls to marry with parental or judicial consent.<sup>10</sup>

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3 Note 2 above

4 Section 2 Cap 29 R.E 2023

5 Note 4 above

6 Note 2 above

7 Section 14 Cap 29 R.E 2023

8 Section 13(1) Cap 29 R.E 2023

9 Section 13(1) Cap 29 R.E 2023; but also, under some circumstances described under Section 13(2)(a)(b), a person of 14 years may marry

10 Quentin Wodon et al. Ending Child Marriage: Child Marriage Laws and Their Limitations Note 1 above

The Law of Marriage Act<sup>11</sup> is creating a confusion regarding who may or may not marry. At the interpretation section,<sup>12</sup> it is indicated that a child is any person who has not attained the age of majority. This provision corresponds with what is provided under the Age of Majority Act.<sup>13</sup> The Law of Marriage Act while recognizing the child to be any person who has not attained the age of majority, at the same time sanctions children of fourteen years to marry. In the words of the statute, the court of law has discretion to permit the parties to marry even if they are below the ages prescribed by Section 13(2) provided it may be proved that the parties or either of them has attained the age of fourteen years of age. The contradiction here is that, what is restricted by the Law of Marriage Act by its right hand, it is granted by its left hand. In other words, there is a crow back on the provision relating to minimum age of marriage and this crow back may cultivate either child marriages or early marriages. That is to say, if the Law of Marriage Act continues as it is without amendment, child marriages cum early marriages may not be completely wiped out.

By reading the provision of Section 13(2) of the Law of Marriage Act, it is very apparent that, the court has been granted high powers to make determination on the present and future lives of the people who legally have no capacity to contract. According to the Law of Marriage Act,<sup>14</sup> marriage is a lifelong contract projected for the couples' joint lives.<sup>15</sup> This is a very big and binding commitment which has to be made by a sane and mature person. Leaving a person of fourteen years to enter into marriage at the aid of the court's discretion is too dangerous.

The court in applying its discretion while granting right to the parties of ages below those subscribed under Section 13(1) of the Law of Marriage Act, is required to satisfy itself that there are special circumstances making the proposed marriage to be desirable.<sup>16</sup> The desirable marriage according to the law might be instigated by the prevailing circumstance; for example where the boy has impregnated a girl of under majority pregnant and if the

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11 Note 2 above

12 Note 4above

13 Cap. 43 R.E 2002

14 Cap 29 R.E 2023

15 Section 12 Cap 29 R.E 2023 read together with Section 13(2) Cap 29 R.E 2023

16 Section 13(2)(b) Cap 29 R.E 2023

families of the two sides have no dispute on the anticipated marriage of these two-underage people. Thus, a boy (husband to be) might be below the age of majority provided he is above fifteen years and the girl (wife to be) a delicate child of fourteen years. This is a kind of psychosis blessed by the Law of Marriage Act and in such a circumstance, the father, mother or guardian of a female may give consent for her to get married.<sup>17</sup> But this consent by whoever is mentioned under the provision of Section 17 does not imply the girl's consent; and even if it could have impliedly meant consent by her, the cure is under the provision of the law of contract act which provides that an agreement by a person not competent to contract is void.<sup>18</sup> The incompetency of the child here is hooked on the fact that, he/she has no capacity to make rational decisions. "Rational" according to the Oxford Advanced Learner's Dictionary, means the ability to think clearly and make decisions basing on reason rather than on emotions.<sup>19</sup> The special circumstances provided by the Law of Marriage Act and which may entitle the court of law under its discretion to grant a permission to the underage people to enter into marriage are not specifically mentioned. That means, the court's discretion is left with the wide-open end through which early marriages may enjoy legal protection. In other words, the judicial officer is privileged to wear the shoes of both the law and social parentage in making the decision. This is very dangerous and may intricate these young people who are entering into marriage at an early age. Judicial discretion like the one provided under Section 13(2) of the Law of Marriage Act has to be end-bound letting the judicial officer chose among the options available rather than leaving the Pandora box unattended. Commenting on this aspect, Pauline T. Kim is of the view that:

“Discretion also implies ... that a decision should be made not randomly or arbitrarily, but by exercising judgment in light of some applicable set of standards, guidelines, or values. Those standards or norms may rule out certain options while still permitting the decision maker to exercise some choice”.<sup>20</sup>

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17 Section 17(1)(2)(3) Cap 29 R.E 2023

18 Section 11(2) Cap 345 R.E 2023

19 Oxford University Pres Section Oxford Advanced Learner's Dictionary. New 8<sup>th</sup> ed. 2010 p. 1216

20 Pauline T. Kim. Lower Court Discretion. NYULawReview-82-2-Kim.pdf downloaded on 27/2/2025 at 1438hours Section

What we can see in the provision of Section 13(2)(b) is an open-ended contemplation of the judicial officer in respect of the “special circumstances” surrounding those who are applying to enter into the marriage institution at their early ages.

The law of contract<sup>21</sup> is creating yet another incongruity by providing that: “every person is competent to contract who is of the age of majority according to the law to which he is subject. . . .”<sup>22</sup> The law to which the victims of early marriages are subjected to, is the Tanzanian law and particularly the Constitution of the United Republic of Tanzania,<sup>23</sup> the Law of Marriage Act,<sup>24</sup> the Law of Contract Act<sup>25</sup> and the Age of Majority Act.<sup>26</sup> When these laws are read together not in isolation, it is clearly seen that early marriage is not restricted in Tanzania.

To be specific, the Law of Marriage Act is setting fourteen years to be the minimum age at which a person may enter into marriage although with some observations.<sup>27</sup> The law of contract on its side gives way to the contracting parties to be of the age of majority and of “sound mind”. The controversial in the provisions of the Law of Marriage Act read together with the provisions of the Law of Contract Act as shown above, is whether a minor person as recognized under the Age of Majority Act is mature enough to make a rational decision in respect of his/her future life? The answer is in the negative because if according to ordinary contractual relationships a person of below the age of majority has no right to enter into a contract, why allow such a person to enter into a life binding contract? This is a highly binding contract required to be made by a person capable of making rational judgments or decisions.

The law of contract is further fortifying its barrier to the minors to enter into a marriage contract by providing that: “A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as

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21 Cap 345 R.E 202023

22 Section 11 Cap 345 R.E 2023

23 Cap. 2 R.E 2023

24 Cap 29 RE 2023

25 Cap 345 RE 2023

26 Cap. 43 R.E 2023

27 Section 13(3) Cap 29 R.E 2023

to its effect upon his interests.”<sup>28</sup> The issue here is very clear that, a child who enters into marriage whether voluntarily or under pressure from the family members and assisted by the court of law has no capacity of forming rational decisions as to the early marriage’s effect upon his/her interests. If the Law of Contract Act already acknowledges that, a person of under the age of majority has no capacity to enter into contract, means that he/she is not capable of making rational judgments especially for serious contracts binding his/her future life.

In cases and issues of marriages, the principal law applicable is the Law of Marriage Act which as we have previously seen, is not water tight in restricting child marriages. Now the Law of Contract Act which must be read together with the Law of Marriage Act to evaluate whether child marriage is allowed, respected and honoured in Tanzania, it provides that nothing contained in that law,<sup>29</sup> which shall affect any law in force that has not been repealed or is not in force, and by which any contract is required to be made in writing or in electronic form or in the presence of witnesses, or any law relating to the registration of documents. That means, the law of contract act in a way respects the provisions of the law of marriage act sanctioning child marriage.<sup>30</sup>

The Age of Majority Act<sup>31</sup> is very clear on who attains the age of majority and this could have been a base for other laws to form their basic provisions in respect of what should be done by an adult and what should not be done by a person of under age. Regarding the age of majority, the law provides that: “Every person domiciled in Tanzania shall attain full age and cease to be under any disability of minority at the beginning of the eighteenth anniversary of the day on which he was born.”<sup>32</sup> Very unfortunately and to the detriment of all those who are falling victims of early marriages, the Age of Majority Act further provides that, nothing in that Act shall affect the capacity of any person to marry.<sup>33</sup> That means, the Age of Majority Act is less concerned with at which age a person in Tanzania may have capacity to marry. The law is leaving this issue to the Law of Marriage Act which as

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28 Section 12(1) Cap 345 R.E 2023

29 Cap. 345 R.E 2023

30 Section 13 and 17 Cap 29 R.E 2023

31 Cap 43 R.E 2023

32 Section 2 Cap 43 R.E 2023.

33 Section 3(1)(a) Cap 43 R.E 2023

the author has already analyzed above, is a bit slipshod on the strict age of people entering into marriages.

### **3. What is Child Marriage and how is it Encouraged / Discouraged?**

Child marriage according to the Twaweza factsheet<sup>34</sup> implies an instance where persons of below the age of 18 years live in a formal or informal union of marriage.<sup>35</sup> Child marriage is not as simple as it may be thought to be. It is a highly complex issue which is cutting across the globe. In different parts of the world there might be different causative agents of this problem but mainly the major ones are: family poverty, lack of resources, traditional practices and beliefs associated with the low value placed on the girl, customary laws and societal control of women's sexuality.<sup>36</sup> It is very rare to find a minor person planning and arranging his/her marriage at his/her minor age because as pointed above these are the people lacking capacity to contract and further lacking the quality of making rational decisions. Thus, where minors find themselves in the early/child marriage being under the influence of the family members or assistance of the court, such marriage is akin to "forced marriage" which under the law of marriage in Tanzania is restricted.<sup>37</sup>

### **4. Who are caught in the Web of Early Marriages?**

Talking of child marriages, one should be talking of marriage involving school going children, which are those who are below the age of 18 years. Very unfortunately, the Education Act<sup>38</sup> has no specific provision providing that a person of school going age even if he/she is not at school shall not marry. Meaning that, although the government is doing all what is possible to make sure that all school going children attend schools, but it may not be denied that there are some drop-outs who are found in every street in Tanzania. Once such children are out of school, the Education Act does not care about them. The author is so arguing because every person of school going age is a potential school candidate for tomorrow or the day after

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34 Twaweza Factsheet: Give them space to blossom

35 Twaweza Factsheet P. 2

36 Socio-Legal Information Centre. The Status of Child Marriage in India: A Guide for NGOs and CSOs on Using the Law to End Child Marriage in India. P. 10

37 Section 16(1) Cap 29 R.E 2023

38 Cap 353 R.E 2023

tomorrow. Non-inclusion of a provision binding school age children not to marry whether they are at school or out of school, gives a wide freedom to the unreasonable parents and sometimes the parties themselves to grab this chance created by the lacuna in the law, to enter into early marriages.

It is not disputed that, the minister of education has powers under the law to supervise and promote education in Tanzania but to be reasonable, once a person has engaged himself/herself in early marriage; it is more difficult to curb him/her from family matters back to education. There are some few individuals who remember the lost chances when it is but however, they grab the chances and join the adult education centers for their educational development but that is not how matters should be going.

There are penal clauses found in the Primary School (Compulsory Enrollment and Attendance) Rules<sup>39</sup> by which any parent/guardian who fails to enroll any child under his/her care is deemed to commit an offence and be liable on conviction, to several penalties depending on the persistence of the commitment.<sup>40</sup> While the local government authorities are given a blanket cover of powers to oversee the running of schools under their jurisdictions,<sup>41</sup> no any local government authority may be penalized by the law for failure of the school going children to attend schools or to be specific, getting married. Always the accusing fingers are pointed to the parents and/or guardians as if this responsibility that has been imposed on local government officers has no effect.

## **5. Community's Dilemma on Early Marriages in Tanzania**

In other words, this part of the paper seeks to evaluate whether the Tanzanians are generally comfortable with child marriages. They might be comfortable or not but the issue of child/early marriages remains to be a thorn in the circle of human rights. Whether there might be comfort or not, the issue remains to be that of human rights. A girl, who is allowed by force or otherwise to engage in early marriage, is subject to lose a greater part of her bright future life. What is apparent is that, it may not be denied that Tanzanian children are part and parcel of Close to 100 million girls globally who are not legally protected against child marriage just because of the exceptions allowing their marriages at a younger age with parental

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39 GN No. 280 of 2002

40 Rule 4(1) GN. No. 280 of 2002

41 Section 10 Cap 353 R.E 2023

or judicial consent.<sup>42</sup> The adults and/or parents who may force these girl children to enter into early/child marriage may be comfortable since they gain something from such unethical marriages because in some cultures, a family may receive cattle from the groom or the groom's family, as the bride price for their daughter.<sup>43</sup> Comfort of an adult who may force the girl child to enter into early/child marriage should not shield this child's basic rights because every human being is unique in accessing his/her human rights.

## 6. Position of the Courts in Tanzania in Respect to Sanctity of Girls

It is hard to affirm cum to deny whether the courts in Tanzania respect the sanctity of child girls. But going by the available records, the response is more in the affirmative. The judiciary is the only organ in Tanzania charged with the duty of dispensing justice and interpreting the laws. Regarding the sanctity of child girls, the judiciary has tried hard to pinpoint out the dangers involved in child marriages.

This observation is obtained from the deliberation of the High Court of Tanzania in the case of *Rebeca Gyumi*.<sup>44</sup> While deliberating on Section 13(1) of the Law of Marriage Act which permits girls to enter into marriage at the age 15 or even 14, the court was of the view that, girls are discriminated by this law. The court went on to observe that: such discrimination disregards the principle of equality enshrined in Articles 12(1) and 13(1)(2) of the Constitution of the United Republic of Tanzania.<sup>45</sup>

The High court of Tanzania in the above-mentioned case of *Rebeca*, and while making reference to the case of *Loveness Madzulu and Ruvimbo Tsopodz Vs. Minister of Justice Legal and Parliamentary Affairs & Others*,<sup>46</sup> ruled that; a girl aged under 18 is a child in all respects. The court further pointed out that, it is not desirous to subject such a girl child to complex matrimonial and conjugal obligations. It was in the observation

42 Note 9 above and Sections 13(3) and 17 Cao 29 R.E 2023

43 Rwezaura, B, 'The Changing Context of Sub-Saharan Africa' in Alston, P, *The Best Interests of the Child*, Clarendon Press, Oxford, 1994 as quoted by Innocenti Research Centre, *Early Marriage*, Innocenti Digest, No.7, March 2001 as quoted in Isabera Warioba Note 2 above. p. 4

44 *Rebeca Z. Gyumi Vs. Attorney General*. Misc. Civil Case No. 5 of 2016 High Court of Tanzania (DSM).

45 Cap. 2 R.E. 2029

46 Zimbabwe Constitution Application No. 79 of 2014 (unreported)

of the court that, such a girl child is unreasonably put at high health risk. The court cemented its observation by stating that: girls under the age of 18 years are not free and have no capacity to contract because if they want to get married, they have to seek leave of the court and so they are not free to make their own decisions. Putting such child girls under marriage for whatever reason according to the court's decision, it implies infringing their constitutional and human rights.<sup>47</sup>

The High Court directed the government through the Attorney General that, within one year from the date of judgment, the government should correct the complained anomalies within the provisions of Sections 13 and 17 of the Law of Marriage Act and in lieu put 18 years as the minimum age for a girl to marry.<sup>48</sup> The directives of the High Court upon the State were based on the provisions of The Constitution of the United Republic of Tanzania<sup>49</sup> and the Basic Rights and Duties Enforcement Act (BRADEA). The decision of the High Court was delivered on 8<sup>th</sup> July, 2016. It is on record that, in the following year,<sup>50</sup> the State appealed against the High Court's decision,<sup>51</sup> meaning that, the State was not ready to prepare a white paper for the Parliament to amend the law as directed by the High Court.<sup>52</sup> On 15 October, 2019, the Tanzania Court of Appeal<sup>53</sup> dismissed the entire appeal with the words: "We find and hold that, the entire appeal has no merit. The appellant was supposed to abide by the Order of the High Court and cause the amendment of the Law of Marriage Act as directed." That means, the judiciary has already seen the dangers of maintaining in the Law of Marriage Act, these provisions which deny or infringe girl children's Constitutional and human rights. However, the judiciary is not there to enact laws but to interpret and that is why it gave directives to the Attorney general who is part of the law-making organ. For any anomaly in the law, the judiciary is required to direct the proper organ vested with the power of enacting the laws, to do the necessary. As of now, it is almost six years since the Court of Appeal made its findings and holding, but the law is still the same and girl children continue to suffer.

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47 Rebeca Z. Gyumi Note 44 above

48 Note 36 above

49 Cap 2 R.E 2002 Articles 13(2) and 30(5)

50 2017

51 Court of Appeal Civil Appeal No. 204 of 2017 (DSM)

52 Lila, JK, Kihio, J. and Munis, J

53 Mwarija, J.A., Korosso, J.A., and Revila, J.A

## 7. Position of the Elites Regarding Dangers of Child Marriages

According to the Oxford Advanced Learner's Dictionary, elites, implies a group of people in the society who are powerful and have a lot of influence because they are rich, intelligent etc.<sup>54</sup> They may not be leaders in the administration but they have influence on the matters affecting the society. Evaluating the roles of the elites in this myth of early/child marriage, the author analyzes obiter the positions taken by the parliament and the executive. In order to understand whether the elites are sensible or not on the issue of early/child marriage in Tanzania, one has to look on how this issue of child marriage is argued, debated and protected. A beam has first to be casted on the Parliament. The parliament is the only organ in the State charged with the duty of enacting laws.<sup>55</sup> The Constitution of the United Republic of Tanzania empowers the Parliament to enact, amend, repeal and reenact laws.<sup>56</sup> The members of the Tanzania Parliament are coming from all corners of Tanzania meaning that, no village; street or occupied area is left unknown to these members of Parliament.<sup>57</sup> The sections creating controversy in the Law of Marriage Act<sup>58</sup> has been in existence and embraced for over fifty years as if the members of Parliament are not part of the suffering community. Definitely there are no known driving forces preventing these members of Parliament to amend the law but impliedly one might think in the opposite. It is an expectation of the author that, if really the members of Parliament are part and parcel of the Tanzania community who can feel the pinch created by child/early marriages, they should not hesitate to amend the law as it was directed by the court on one side, and on the second side it has been a persistent cry from members of the public.

The second beam has to be casted on the executive. The Executive which is the government has powers delegated to it by the Constitution of the United Republic of Tanzania.<sup>59</sup> According to this Constitution, the authority of the Government of the United Republic relates to the implementation and upholding of the Constitution and to all other matters over which

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54 Oxford P. 475

55 Constitution of the United Republic of Tanzania 1977 Article 63(3)d

56 Note 55 above

57 Constitution of the United Republic of Tanzania Article 66

58 Cap. 29 R.E 2023

59 Cap 2 R.E 2023

Parliament has power to legislate.<sup>60</sup> That means, had the Parliament been bold enough to amend the Law of Marriage Act so as to do away with child marriage, the executive may not be left with any other alternative apart from enforcing the new provisions. Currently the executive is a bit slipshod in openly fighting against child marriages because of the loopholes that exist in the law. The law is not watertight protecting the vulnerable little girls who are finding themselves trapped in early/child marriages.

As if the foregoing is not enough, impliedly the office of the Attorney General is behind the scene doing nothing to rescue the situation relating to child/early marriages. This can be seen from the arguments of the state attorney who represented the Attorney General in the case of Rebeca.<sup>61</sup> The Attorney General defendant in Rebeca's Application was represented by lady attorney. It is not on record or rather known whether this lady attorney had any experience or exposure to child/early marriage apart from theories she acquired at school. The lady attorney boldly argued that, the Law of Marriage Act was a product of the White Paper that obtained the opinions of the members of the public and therefore the law has a community back-up. However, and as argued above, the matter was decided in favor of the applicant Rebeca. Not satisfied, the respondent State appealed to the Court of Appeal. Before this court, the State challenged the decision of the High Court on five grounds but relevant to this topic are three grounds listed as follows: That the High Court erred in law by holding that, Sections 13 and 17 of the Law of Marriage Act are discriminatory towards the girls; that the High Court erred in law in equating the age of child with the age of marriage; and that the High Court erred in law by holding that, Sections 13 and 17 of the Law of Marriage Act have lost their usefulness thus, they deserve to be declared null and void. At the appeal before the Court of Appeal, the appellant Attorney General was represented by two counsels and very fortunately, one of them being a lady. It is on record that, although the leading counsel was a principal state attorney and a gentle man, but the arguments were made by the lady attorney who was assisting the principal state attorney. In her arguments she vehemently defended the controversial sections in the Law of Marriage Act. It was the argument of the appellant counsel that early marriages for girls below 18 years are preferred in order to save the drop-outs who do not continue with secondary education.<sup>62</sup>

60 Article 34(2) Cap 2 R.E 2023

61 Note 39 above

62 *A.G Vs Rebeca Gyumi* CAT Civil Appeal No. 204 of 2017 p. 7

However, the state attorney completely failed to give data justifying that all who enter into child/early marriages are secondary school drop-outs. But even if it could have been the case, the burning issue remains to be the fact that, a person dropping out of secondary education is not a guarantee for the society to exterminate her education dreams.

## **8. Conclusion**

It has been observed that, early/child marriage is still a problem in Tanzania despite many efforts that have been made. The big stumbling block to the elimination of this practice is in two folds. One is that, currently the two organs of the State to wit the Parliament and the Executive are still skeptic on the elimination of this practice. If the two organs may thoughtfully consider the fate of poor Tanzanian girls as they are thought of by the judiciary, this practice may be eliminated. Considering what was done in Chad, Costa Rica, Ecuador, Guatemala, Malawi, Mexico, Nepal, Panama and Zimbabwe in the years between 2015 and 2017 the minimum age of marriage for girls may be raised by eliminating exceptions with parental or judicial exceptions.<sup>63</sup> These nine States made changes in their laws leading to elimination of the dangers facing girl children in Tanzania relating to early marriages

The second fold is that of allowing the society to continue hugging outdated customs on the pretext of preserving traditions. While in the years before independence the level of development was very low and the level of civilization was questionable, currently matters have changed. Every person would like to be educated. Currently the Education Act<sup>64</sup> is providing for compulsory primary education. The Rules under this Act, provides for the compulsory enrolment and regular attendance of every child in primary school.<sup>65</sup> Secondary education has also been made compulsory to every Tanzanian.<sup>66</sup>

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63 Quentin Wodon et al. Ending Child Marriage Note 10 above p. 4

64 Cap. 353 R.E 2002

65 Rule 3 of the Primary School (Compulsory Enrolment and Attendance) Rules (1979) (G.N. No. 280 of 2002)

66 Circular 5 of 2015 which implements the Education and Training Policy 2014

Thus, although early/child marriage is still a complex problem in Tanzania, still with determination it may be reduced to a greater extent or completely wiped out if the three organs of the state may work together towards this objective.

# ASSESSMENT OF EFFECTIVENESS OF SOSPA IN ERADICATING INCIDENTS OF SEXUAL VIOLENCE IN TANZANIA

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Rehema Joseph Kerefu\*

## Abstract

The main objective of this Article is to examine the effectiveness of legal reforms introduced to the criminal justice by the Sexual Offences Special Provisions Act,<sup>1</sup> (the SOSPA) through amendments of the Penal Code and other laws. The said amendments aimed at enhancing the protection of women's and children's rights against gender-based violence. Gender-based violence range from domestic violence, arbitrary killings, torture and mutilation, sexual violence, forced marriages, forced prostitution, forced impregnation to forced termination of pregnancy and sterilization. The occurrence of incidences of gender-based violence is influenced by various factors all of which are society based. This reality makes it quite complex as the cultural norms causing it, differs from one society to the other. Apparently, this is why there is no clear and common acceptable language of gender-based violence. Specifically, for women and children, it may be narrowed down to violence against women and children, which constitute a human right violation, such as right to life, right to physical integrity, right to liberty and personal safety, right against torture or cruel, inhuman or degrading treatment or punishment, right to education and right to health.

Key words: *SOSPA, sexual violence, gender-based violence, cultural norms*

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1 Act No. 4 of 1998

## **1.0 Introduction**

According to various studies<sup>2</sup> on gender-based violence focusing on Tanzania, gender-based violence incidents are quite rampant in our communities. As it is a case for global studies, the local literatures on the subject found out that, gender-based violence is deeply enshrined in the community traditions, customs and culture. Those sources further state that, gender-based violence occurs on a vast scale and takes different forms throughout women's and children's lives, ranging from early marriage, Female Genital Mutilation (FGM), rape, desertion, wife beating to abuse of elderly. A series of international human rights instruments<sup>3</sup> adopted by States over decades have increasingly influenced the promotion and protection of women's rights by providing a legal framework for ending discrimination and gender-based violence at the international, regional and country levels. These instruments affirm the equality of men and women as the fundamental principle in protecting the human rights of women and children. A good example is the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which give specific protection to all women against discrimination.

In Africa, the African Charter on Human and Peoples' Rights enshrines the principle of gender equality as set forth under the international human rights instruments. It envisages the protection of women under Article 18(3) which obliges States to ensure the elimination of discrimination against women and to ensure the protection of the rights of women and children as enshrined under international instruments. This is the most specific provision that binds African countries as most of them have signed and ratified the Charter. In addition, the Protocol to the African Charter on Human and People's Rights on the Rights of Women adopts broad and clear definitions of gender-based violence which covers private and public life. Therefore, states have an obligation under these international and regional human rights instruments to respond to all acts of violence against

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2 See for instance the Tanzania Demographic Health Survey (TDHS) Report of 2010

3 Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic Social and Cultural Rights, 1966; Convention on Elimination of All Forms of Discrimination against Women, 1979; Declaration on the Elimination of Violence against Women, 1993; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Convention on the Rights of the Child, 1989; African Charter on Human and Peoples' Rights, 1981; Protocol to the African Charter on Human and People's Rights of Women in Africa, 2003

women, including gender-based violence. They have a duty to prevent, investigate and punish acts of gender-based violence whether such acts are perpetrated by state officials or by private persons. These includes, enacting and enforcing laws prohibiting all forms of gender-based violence and identifying the causes and consequences and taking appropriate measures to prevent and eliminate such violence. There is no doubt that this Article will enable us to take stock and assess the effectiveness and efficiency of SOSPA towards eradicating and or /minimizing incidents of gender-based violence in our communities. It will point out various success and/ or obstacles related to the implementation of the envisaged amendments introduced by SOSPA in our criminal justice system.

## 2.0 An overview of laws of Tanzania on GBV

It is noted that in an attempt to abide with principles enshrined in the international and regional human rights instruments, Article 9 of the Constitution of the United Republic of Tanzania, 1977, as amended from time to time, among others, requires the State and its agencies to direct its policies towards ensuring freedom, justice, human dignity and elimination of all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism. Moreover, Articles 12 to 24 lists down a number of rights and entitlements ranging from, right to equality; right to life; right to freedom of expression; and right to work.

In addition, the United Republic of Tanzania has enacted several laws to prohibit some of forms of crimes related to gender-based violence. Although, there is no specific law on domestic violence or the gender-based violence, the Penal Code, Cap. 16 which came into force in September, 1945 contain several provisions relating to gender-based violence offences under Chapters XV to XXV. It is noteworthy that, some of these GBV related offences were introduced into our criminal justice regime through the Sexual Offences and Special Provisions Act No. 4 of 1998<sup>4</sup> which was enacted to amend a number of specific legislations as one of the interventions to address the menace of sexual offences in the country. The said laws included; (i) the Penal Code<sup>5</sup>; (ii) the Criminal Procedure Act<sup>6</sup>; (iii) the Evidence Act<sup>7</sup> and

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4 (Cap. 101)

5 (Cap. 16)

6 (Cap. 20)

7 (Cap. 6)

(iv) the Minimum Sentences Act.<sup>8</sup>

Furthermore, the adoption of the Convention on the Right of the Child (the CRC) in 1989 was also demonstrated by enactment of the Law of Child Act, No. 21 of 2009 (the LCA) that repealed the Young and Persons Act. The LCA created several offences that may be committed by child abusers. Besides, the LCA addressed almost all issues related to the rights of children who are considered to be under the age of eighteen (18) years. However, it is silent on the marriages of young girls at the age of fifteen (15) years old. It is common knowledge that, early marriages may perpetuate gender-based violence and can also have negative impact on the long-term prospects of girls as they often do not complete their education after becoming mothers at a young age. This increases risks to their health during pregnancy and delivery. Early marriages support and perpetuate gender power imbalances that already exists in the society.

There are others laws that have been enacted with several provisions relating to gender-based violence offences such as: One, the Employment and Labour Relations Act,<sup>9</sup> which prohibits any form of discrimination at the workplace and child labour.<sup>10</sup> Two, the Prevention and Combating of Corruption Act,<sup>11</sup> which prohibits all types of corruption incidents including those which are gender related such as, demand or offer of sexual favours in exchange for official services, promotion and other labour related rights.<sup>12</sup> Three, the Anti-Trafficking in Persons Act.<sup>13</sup> Four, the HIV and AIDS Prevention and Control Act, 2008. Five, the Law of Marriage Act (the LMA).<sup>14</sup> Nevertheless, in this Article, I will mainly focus on the offences introduced in the Penal Code through SOSPA and its effectiveness and efficient in addressing Sexual Offences related to gender-based violence cases.

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8 (Cap. 90)

9 No. 4 of 2004]

10 See sections 5, 7, 33 and 34 above

11 (Cap. 329)

12 Section 125 above

13 Act, No. 6 of 2008

14 (Cap. 29)

### **3.0 Sexual offences introduced in the criminal justice system through SOSPA and its effectiveness**

The SOSPA was enacted twenty-five (25) years ago, that is on 21 April 1998 as an amending piece of legislation. It was specifically geared to amend provisions of several written laws by making special provisions in those laws with regard to sexual and other offences to further safeguard the personal integrity, dignity, liberty and security of women and children. Therefore, apart from effecting amendments of provisions of law, it also created completely new sexual offences provisions and procedures into existing laws. As intimated earlier, amongst the pieces of legislation that were substantially and procedurally affected by the SOSPA were the Penal Code, the Criminal Procedure Act (the CPA) and the Evidence Act.

#### **3.1 The Penal Code**

##### **3.1.1 Immature Age for Criminal Responsibility**

Section 15 of the Penal Code was amended to provide that a person under the age of ten years is immature (*doli incapax*) and thus not criminally responsible for any act or omission (instead of previous age of seven years). The law is to the effect that a person aged ten but below twelve years is also not criminally responsible for his act or omission unless proved that he had capacity to know that what he was doing was wrong. Generally, the increase of immature age for criminal responsibility from seven to ten years was geared to promote the principle of the best interest of the child in Tanzania as spelt out in the CRC. In most cases, children below that age are rather victims than culprits for lack of mental growth to enable them to appreciate their actions.

##### **3.1.2 Rape**

Sections 130, 131 and 131A of the Penal Code were amended with an attempt to clear the ambiguities of the law of rape especially on the requirements of consent, penetration and resistance which by that time, were singled out as amongst the reasons why the rapists were escaping punishment. The sections also addressed the issue of non-consensual sexual intercourse between separated couples, gang rape and rape by boys below 18 years. Pursuant to the amendment of section 130 (2), rape is based on the following circumstances:

- (a) *a man having nonconsensual sexual intercourse with a girl or a woman, including with a wife who is at the material time had separated from the assailant regardless of how the marriage separation is obtained or arranged;*<sup>15</sup>
- (b) *sexual intercourse as a result of use of force, threats, intimidation or fear of the victim's life or limb, or while the girl or woman is in unlawful detention;*
- (c) *sexual intercourse with a girl or woman of unsound mind or in the state of intoxication unless there is evidence of prior consent between the two;*<sup>16</sup>
- (d) *sexual intercourse with a woman under a belief that the man is her husband;*
- (e) *sexual intercourse with a girl or a woman below eighteen years unless lawfully married and is over fifteen years of age or above.*

It is noteworthy that, prior to 1998, the scope and categories of the offence of rape were limited that it would not have been possible for women and children to bring some of those claims and complaints under the law. The amendments, to a larger extent, brought clarity on sexual offences. It also addressed the issue as to when penetration is deemed complete for purposes of constituting the offence of rape. Thus, the law came out clearly that penetration however slight is sufficient to constitute the sexual intercourse necessary to constitute the offence.<sup>17</sup> Moreover, the strict requirements of corroboration of the child's evidence was removed. In addition, the evidence of resistance or physical injuries on the part of the victim became not necessary to prove or establish that sexual intercourse was without consent. It has to be noted that, section 153 of the Penal Code states that, except where it is expressly stated otherwise, belief about the age of a girl or woman is immaterial in cases relating to sexual offences. That, it is immaterial for the accused to raise the defence of an honest belief that the girl was above the age. Despite the guidelines provided on how to implement the

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15 Section 130 (4) of the Penal Code

16 The issue of prior consent between the two relates only to the state of intoxication and not where the woman is of unsound mind

17 See the case of *Selemani Makumba v. Republic* [2006] TLR 379

provisions, the issue of age, in some cases creates some challenges due to lack of birth records, specifically when the victim and the accused had actually agreed to sexual intercourse but subsequently allegations surface as to the age of the victim. In a number of cases, the Court, in most desirable circumstances considered the proof of age to come from the victim, parent, relative, medical practitioner or, where available, by production of the birth certificate.<sup>18</sup>

The maximum punishment for rape is imprisonment for life, the minimum being imprisonment of not less than thirty years with corporal punishment, and with a fine, and in addition payment of compensation to the victim on an amount to be determined by the court. This punishment includes boys who are recidivists.<sup>19</sup> For a boy who is eighteen years or less, if a first offender, is corporal punishment, if second time offender, imprisonment for a term of 12 months with corporal punishment.<sup>20</sup> The punishment for a person (whether an adult or a boy below eighteen years) raping a girl child below ten years is life imprisonment as a minimum.<sup>21</sup> The punishment for gang rape is life imprisonment regardless of the roles played by the assailants, and whether or not the member of the gang is a boy, girl, man or woman.<sup>22</sup> A person in authority, manager and staff of a correctional or custody facility, hospital as well as a religious leader and traditional healer who takes advantage of his position and commits rape on a girl or a woman is liable to be punished as a rapist. The punishment for attempted rape is thirty years imprisonment term.

### 3.1.3 Sexual and Indecent Assaults

The above offences are committed where any person who, with the intention to cause any sexual annoyance to any person utters any word or sound, makes any gesture or exhibits any word or object intending that such word or object shall be heard, or the gesture or object shall be seen, by that other person. Consent is a defence in a charge of sexual assault. However, such a defence does not apply to a person

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18 See the case of *Issaya Renatus v. Republic*, Criminal Appeal No. 542 of 2015 [2016] TZCA 218 [26 April 2016: Tanzlii]

19 Section 131 (2) (c) of the Penal Code

20 Section 131(2) (a) and (b) of the Penal Code

21 Section 131 (3) above

22 Section 131A above

who sexually assault boys and girls below eighteen years even if they consented to it. Punishment for sexual assault is five years imprisonment or a fine not exceeding three hundred thousand shillings or to both, fine and imprisonment.

### **3.1.4 Defilement by Husband**

Defilement by husband of a wife<sup>23</sup> is committed where any person who, being married to a woman below the age of fifteen years, has or attempts to have sexual intercourse with her, whether with or without her consent, before she has attained the age of fifteen years, is guilty of an offence and is liable to imprisonment for ten years. It should be noted that consent in this case is immaterial. This is presumably so, because the LMA allows marriage of a girl below fifteen years but not below fourteen years. Hence, the Penal Code seem to bless such marriages provided they are not consummated till the girl attains the age of fifteen years. In addition, subsection 2 to section 138 of the Penal Code states clearly that any person, who being a parent and or having custody of a girl below the age of fifteen years, parts with the possession, or otherwise disposes of the girl with the intention that, she shall, while still below fifteen years and whether with or without her consent, have sexual intercourse with her husband or knowing it to be likely that the woman will, while still below fifteen years, have sexual intercourse, is guilty of an offence and is liable to imprisonment for ten years. Other persons not related to a girl below fifteen years may also commit an offence where the person concerned procures or attempts to procure any married girl below that age with an intent that she shall have sexual intercourse with her husband, whether with or without her consent, when she is below the age of fifteen years. The punishment here is imprisonment for ten years. It is absurd to allow a girl to be married at the age of fourteen years.<sup>24</sup> Section 13 of the LMA has however been declared null and void by the Court what is being awaited is the amendment to the LMA.

### **3.1.5 Acts of gross Indecency between Persons**

Gross indecency is defined to mean any sexual act that is more than ordinary but falls short of actual intercourse. Such acts may include

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23 Section 138 of the Penal Code

24 See the decision of the Court in *Attorney General v. Rebeca Z. Gyumi*, Civil Appeal No. 204 of 2017 [2019] TZCA 348: [23 October 2019: Tanzliii]

masturbation and indecent physical contact or any indecent behaviour that is not accompanied with physical contact. Any person who procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable, upon conviction, to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand Tanzanian shillings. Where the offence of gross indecency is committed by a person of eighteen years of age or more in respect of any person below eighteen years of age, a pupil of a primary school or a student of a secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.

### **3.1.6 Sexual Exploitation of Children**

This offence is committed in the circumstances where the offender permit, procure, induce, lure, threaten or force a child below the age of eighteen years into sexual activity or abuse or in any form of obscene or indecent exhibition or show, regardless of the media used. The punishment for this offence is imprisonment for not less than five years but not more than twenty years. Considering the poverty level in the country, protection of children against exploitation is challenging as in most cases, people tend to confuse between sexual exploitation and child labour. In other circumstances, it may be difficult to protect children from exploitation due to the existence of conflicting laws as regards the age of the child. For instance, other people may view married children under the age of eighteen years are being exploited by their parents through dowry or the husbands whose interests may not be so much on marriage but on the fact that the girls were still very young to be involved in any form of sexual intercourse. On the other hand, the social welfare department which would have been on the fore front in protecting exploitation of children is highly understaffed, under-funded and with absence of shelters for victims and survivors of gender-based violence.

### 3.1.7 Grave Sexual Abuse

The offence of Grave sexual abuse is committed where any person without the consent of the victim, does any act, by the use of his genital or any other part of the human body or any instrument or any orifice or part of the body of another person for sexual gratification and the act complained of does not amount to rape.<sup>25</sup> The punishment for the offence of grave sexual abuse is imprisonment for not less than fifteen years and not exceeding thirty years, with corporal punishment. Furthermore, the offender shall also be ordered to pay compensation to the victim on the amount to be determined by the court. Punishment increases where grave sexual abuse is committed on a child below fifteen years. The punishment in this case is imprisonment for a term of not less than twenty years and not exceeding thirty years, and the offender shall, in addition, be ordered to pay compensation of an amount to be determined by the court. The severity of punishment again, in this case, is premised on the need to protect young people.

### 3.1.8 Unnatural Offence

This is an offence where, any person who has carnal knowledge of any person against the order of nature, or carnal knowledge of an animal, or permit a male person to have carnal knowledge of him or her against the order of nature commits an offence and upon conviction is liable to life imprisonment and in any case to imprisonment for a term not less than thirty years.<sup>26</sup> Attempting to commit an unnatural offence attracts imprisonment for a term not less than twenty years. It is common knowledge that despite the above punishment, incidents of unnatural offences in the country have presently increased. The prevalence of this offence may be attributed to the global trend where in some countries there are programmes that glorify ‘homosexuality’ and the state of being a ‘gay’. That, due to that laxity, some of the young men and or women maybe trafficked to other areas where unnatural offences are somehow accepted.

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25 See the case of *Christopher Marwa Mrutu v. Republic*, Criminal Appeal No. 561 of 2019 [2022] TZCA 652 [27 October 2022: Tanzlii]

26 See the decision of the Court in *Shani Chamwela Suleiman v. Republic*, Criminal Appeal No. 481 of 2021 [2022] TZCA 592 [28 September 2022: Tanzlii]

### 3.1.9 Incest by Males or Females

Any male person who has prohibited sexual intercourse with a female person, who is to his knowledge his granddaughter, daughter, sister or mother, commits the offence of incest. Likewise, any female person, who with consent permits her grandfather, father, brother or son to have carnal knowledge of her commits the offence of incest and upon conviction is liable to life imprisonment or less than thirty years and shall, in addition, be ordered to pay compensation of an amount to be determined by the court.

### 3.1.10 Cruelty to Children

The offence of cruelty to children is essentially aimed at protecting children against harmful practices including FGM. Therefore, forms of cruelty to children vary from FGM to assault, ill treatment, neglect, and abandonment of children. The punishment for cruelty to children is imprisonment for a term not less than five years but not exceeding fifteen years or a fine not exceeding three hundred thousand shillings or to both fine and imprisonment plus an order to compensate the victim as will be determined by the court.

There have been many reports in the media on how children are assaulted or ill-treated by their parents/guardians, teachers and some of them have either been killed or seriously wounded and a number of cases have been brought before the court and prosecuted.<sup>27</sup> Similarly, FGM is still being practiced in a number of places<sup>28</sup> although there is an absence of comprehensive information on the number of cases<sup>29</sup> brought to court and the outcome of any prosecutions. Lack of evidence and social pressures on victims often lead to withdrawal of such cases before being filed in court and or witness fail to appear. Therefore, more education and awareness programmes and intelligence sharing are still needed on this area.

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27 See the decision of the Court in *Edina Wilson v Republic*, Criminal Appeal No. 294 of 2019 [2023] TZCA 17363 [28 June 2023: Tanzlii]

28 Camilla Yusuf and Yonatan Fesha (2013) '*Female Genital Mutilation as a Human Rights issue: Examining the Effectiveness of the Law against Female Genital Mutilation in Tanzania*': African Human Rights Journal (2013)

29 See the decision of the High Court of Tanzania, Arusha Registry in *Thadei Porokwa Mamasita v. Salome Lengoje Kelele*, MSc. Juvenile Civil Application No. 3 of 2022 (unreported)

Other sexual offences introduced in the Penal Code through SOSPA includes; abduction<sup>30</sup>; sexual harassment<sup>31</sup>; procuration for prostitution<sup>32</sup>; trafficking in persons<sup>33</sup>; procuring rape<sup>34</sup> and indecent assault of boys under fourteen years.<sup>35</sup> However, according to the judiciary statistics many cases of gender-based violence brought before the courts are related much with the offences of rape, attempted rape, defilement and unnatural offences.

## 4.0 Amendments of procedural aspects of sexual offences

### 4.1 The Law of Evidence Act

As intimated earlier, corroboration is now unnecessary in criminal proceedings involving sexual offences where the only independent evidence is that of a child of tender years or the victim of the sexual offence. The courts are required to receive the evidence of a single child witness, notwithstanding that it is not corroborated, proceed to convict on the basis of that evidence, if it is satisfied that the child witness or victim of the sexual offence is truthful.<sup>36</sup> In addition, in 2016 section 127 (2) was amended<sup>37</sup> to simplify the recording of the evidence of the child of a tender age by providing that, *“A child of tender age may give evidence without taking an oath or making an affirmation but shall, before giving evidence, promise to tell the truth to the court and not to tell lies.”* Furthermore, in 2023, the said section, was, again, amended by adding sub-section (7) to further simplify the recording of the evidence of the child of tender age by clearly stating that, *“...failure by a child of tender age to meet the requirement of subsection (2) shall not render the evidence of such child inadmissible.”* The intention is to make it possible for victims of sexual offences to get justice without too many technicalities and in a dignified environment.

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30 Section 133 and 134 of the Penal Code

31 Section 138D of the Penal Code

32 Section 139 of the Penal Code

33 Section 139A of the Penal Code

34 Section 140 of the Penal Code

35 Section 156 of the Penal Code

36 Section 127(6) of the Evidence Act

37 The Written Laws (Miscellaneous Amendment) (No.2 of 2016) Act No. 4 of 2016 which came into force on 8<sup>th</sup> July, 2016. *Geoffrey Wilson v. Republic*, Criminal Appeal No. 168 of 2018 [2019] TZCA 109 [6 May 2019; Tanzlii] and *Hamimu Yunusu v. Republic*, Criminal Appeal No. 293 of 2019 [2022] TZCA 673 [4 November 2022; Tanzlii]

## **4.2 The Criminal Procedure Act**

SOSPA also effected improvement in the way sexual offences were to be addressed through criminal procedure. For instance, section 168 (5) of the CPA<sup>38</sup> requires that when a court convicts an accused person of a sexual offence, it shall pass the sentence as prescribed for the offence in the Penal Code. Furthermore, all courts with jurisdiction to hear cases of sexual offences have equally been given the power to pass such sentences.

**Payment of Compensation** is one of the sentencing tools which came out very clearly through SOSPA. That, a court when convicts an accused person for sexual offence, that court, is in addition required to also make an order requiring the convict to pay such effective compensation to the victim as may be determined by the court to be commensurate to possible damages obtainable by a civil suit. However, there are concerns about the procedure and assessment of compensations payable to the victims of sexual offences especially the fact that compensation is assumed payable at the conclusion of the imprisonment period. This is seen as a challenge especially for cases which attract life imprisonment or other longer custodial sentences.

## **4.3 Restrictions on Open Courts**

SOSPA brought changes on the modality of conducting proceedings on sexual offences cases. That, evidence of all persons in all trials involving sexual offences is to be received by the court in camera. The said evidence shall not be published in any media but can be printed or published in a bona fide series of law reports or in a newspaper or periodical of a technical character intended for circulation among members of the legal fraternity. Likewise, where a child below eighteen years of age is a witness, a victim or an accused or a co-accused in a case involving a sexual offence, the child shall be tried in camera and separately from the adult co-accused and his or her identity must not be disclosed.

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38 See also section 160A of the Penal Code

#### **4.4 Power of A Superior Court to Enhance Punishment**

The seriousness with which sexual offences are viewed following the amendment of sexual offences in 1998 is reflected in the power by the superior courts to enhance sentences passed by the subordinate courts. Where the High Court and or the Court of Appeal revises the record of proceedings in a subordinate court involving a sexual offence and/or in cases of appeal, it may, if it considers that the justice of the case so requires, inflict a punishment greater than that which the convicting court might have imposed.

#### **5.0 Impediments and Recommendations**

- i. Failure to harmonize the laws. For example, the LMA, in special circumstances, allows early marriages with the approval of the court from the age of 14 years while the Penal Code is punishing early marriage and sexual intercourse below 15 years. For the law to be effective, measures are needed that harmonize the laws related with the gender-based violence.
- ii. Stiff punishment attached to the sexual offences: That, one, they are too stiff and discriminatory in nature, thus opening opportunities for blackmail or compromises out of the formal criminal justice system consequently, defeating the purpose of SOSPA. Two, the punishment meted out to boys under eighteen years of age is destructive to the boys concerned than being of any correctional value. Three, the court is left with no discretion to determine how the offenders were to be punished along with the known principles of punishment of reformation and rehabilitation. Four, that, the law should have been designed in such a way that punishment in sexual offences cases should be issued based on the circumstances of each case.
- iii. Traditions and customs among various communities in Tanzania still play a major role in making the amendments made ineffective. Strongly held traditional and community prejudices generally drive some members of the society not to report sexual offences either because, such members do not view the conduct prohibited as an offence or that even if prohibited, such cases should first be sorted out within the family or community in question before any

other person is involved in the matter. In this way, most of the sexual offences are condoned and hardly get to the knowledge of the law enforcement agencies. Therefore, public awareness is still key to change the mindset of the people.

- iv. Delay and poor investigation of sexual offences cases.
- v. Failure to summon the material witnesses to testify, like the victim (need more witness protection mechanisms), investigators, doctors and social welfare officers.
- vi. Failure by the judicial officers to impose compensation as provided by the law.
- vii. Failure by the parties to appeal, through proper channels on unjustified acquittals.
- viii. Costs of litigation - The Court has been criticized of undue delays in determining some of the gender-based violence cases and in some cases, relying too much on technicalities as opposed to substantive justice. In some cases, parties are invariably forced to initiate the matter afresh. However, this challenge has been minimized through the timelines to handle cases together with the introduction of the principle of overriding objective.<sup>39</sup> Currently, many cases are determined timely and on merit. This spirit must be upheld.
- ix. Issues of shame and stigma around these offences should be resolved through crisis reporting and counselling centres and such other initiatives which will help to break the silence and encourage victims of sexual offences to report and heal psychologically.
- x. Legal representation in cases related to gender-based violence should be encouraged.
- xi. Apathy, stereotypical, perceptions, and limited knowledge and capacity of some of judicial officers, prosecutors, (gender desks officers where these matters are reported) and other key stakeholders handling sexual offences cases. There should be

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<sup>39</sup> The Written Laws (Miscellaneous Amendment) Act, No. 3 of 2018

groups to seek justice on the gender-based violence cases. The on-going initiative to fight corruption should be strengthened.

- xiii. Insufficient application of international human rights standards in some of our laws and in courts decisions together with a slow pace or response by government to some of the judicial pronouncements.

## **6.0 Conclusion**

There is no doubt that the amendments done to the Penal Code and other procedural laws through SOSPA has brought tremendous changes in handling gender-based violence cases by the court and other stakeholders. However, to determine the real success, we may consider to conduct baseline survey/research to compare the previous criminal justice legal regime and past twenty-six (26) years. Moreover, the Government and the interested civil society organization should also continue with awareness programs on the gender-based violence and its consequences in the society. All in all, it is important to note that having the law in place is in itself a success, the challenge, therefore, is to ensure that areas of concerns/challenges which make the law ineffective are being addressed.

# A LINKED APPROACH TO EARLY MARRIAGES AND GENDER-BASED VIOLENCE: LEGAL IMPLICATIONS AND PREVENTING HURDLES

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Angela Kanyanyinyi Byera\*

## Abstract

Early marriages and gender-based violence (GBV) are pressing challenges in Tanzania, significantly impacting the rights and well-being of women and girls. These practices are rooted in cultural norms, economic pressures, and systemic gender inequality, perpetuating cycles of poverty, health risks, and educational disruption. Despite legal reforms such as the Law of Marriage Act and the enactment of the Sexual Offenses Special Provisions Act (SOSPA), enforcement gaps and societal resistance hinder progress. This paper examines the legal and social implications of early marriages and GBV in Tanzania, highlighting the shortcomings of existing frameworks and proposing comprehensive strategies that harmonize statutory and customary laws, strengthen enforcement mechanisms, and empower affected communities through education and economic opportunities. Addressing these intertwined issues is critical for achieving gender equality and safeguarding the fundamental rights of all Tanzanians.

**Key words:** *Early marriages, GBVs, implications, prevention, hurdles, solutions.*

## 1.0 Introduction

Early marriages and GBV remain pervasive issues in Tanzania, undermining the fundamental rights and well-being of women and girls. Early marriage, often defined as any formal or informal union where one or both parties are under the age of 18, is a violation of human rights that exposes girls to health risks, educational disruption, and economic dependency. Despite legal protections, such as the Law of the Child Act<sup>1</sup> and international

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1 CAP 13 R.E 2023

commitments<sup>2</sup>, cultural norms, poverty, and weak enforcement perpetuate this practice.<sup>3</sup> Marriage before the age of 18 constitutes a serious breach of human rights. Numerous factors contribute to the risk of child marriage, including poverty, the belief that marriage offers protection, concerns about family honor, entrenched social norms, and customary or religious practices that permit such unions. Additional contributing factors include weak legislative protections and deficiencies in a country's civil registration system. While child marriage disproportionately affects girls, it violates fundamental rights regardless of gender.<sup>4</sup>

For girls, early marriage often hinders personal development by leading to premature pregnancies, social exclusion, and the disruption of their education. It also limits career prospects and increases their vulnerability to domestic abuse. Though less studied, child marriage can similarly affect boys by thrusting them into adult responsibilities they are ill-equipped to handle, imposing financial burdens, and restricting their access to further education and professional opportunities.<sup>5</sup> GBV, encompassing physical, sexual, and psychological abuse, is closely linked to early marriages. Married girls often face heightened vulnerability to domestic violence and sexual abuse, compounded by societal attitudes that normalize such behavior. Although Tanzania has enacted laws like the SOSPA in 1998, enforcement gaps and cultural resistance continue to hinder progress.<sup>6</sup> These legal and systemic challenges underscore the urgent need for a comprehensive approach that harmonizes statutory law with cultural realities, strengthens enforcement mechanisms and addresses the root causes of early marriages and GBV.<sup>7</sup>

Early marriage remains a significant issue in Tanzania, perpetuating GBV and undermining the human rights of young girls. Despite legislative

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2 Under the Convention on the Rights of the Child (CRC) of 1989

3 UNICEF: Child Marriage Latest Trends and Challenges in Tanzania available at <https://data.unicef.org/topic/child-protection/child-marriage>, accessed on 2<sup>nd</sup> January, 2025

4 **Child Marriage and Guardianship: Robbing Girls of Their Childhood and Infantilizing Women** by Women's Legal Aid Centre, 2009

5 **Ending Female Genital Mutilation & Child Marriage in Tanzania** by Mary Wandia, published in the *Fordham International Law Journal*, 2015

6 **UN Women, Gender-Based Violence in Tanzania: Policy and Practice** (2020), <https://africa.unwomen.org/en/stories/news/2024/12/stakeholders-call-for-enhanced-action-to-end-gender-based-violence-in-tanzania>, accessed on 2<sup>nd</sup> January, 2025

7 Ibid

efforts, such as the Law of Marriage Act<sup>8</sup>, which sets the minimum marriage age at 18 for boys and 15 for girls (with exceptions), the disparity in age requirements continues to expose girls to exploitation and abuse. This legal framework contravenes Tanzania's international obligations under instruments,<sup>9</sup> which emphasize the elimination of practices harmful to children's well-being.<sup>10</sup>

The persistence of early marriages is deeply rooted in cultural norms, economic pressures, and systemic gender inequality, worsening GBV in the form of domestic violence, sexual abuse, and coercion. Studies indicate that married girls are often subject to increased vulnerability to intimate partner violence due to their limited agency and financial dependence.<sup>11</sup> Moreover, the lack of effective enforcement mechanisms and the coexistence of statutory and customary laws further entrench these practices, undermining progress toward achieving gender equality and Sustainable Development Goal (SDG).<sup>12</sup>

Early marriage has been a longstanding social and cultural practice in Tanzania, deeply deep-rooted in traditions, poverty, and gender inequality. Historically, many communities have viewed early marriage as a means of securing economic and social stability for families. Parents often marry off their daughters to reduce the financial burden of providing for them or to secure dowries. However, these practices disproportionately affect young girls, denying them access to education, exposing them to health risks, and perpetuating cycles of poverty and gender-based violence.<sup>13</sup> Although Tanzania has committed to addressing GBV through various policies and programs, significant gaps remain in the implementation and enforcement of laws protecting girls from early marriage and related abuses. This study

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8 CAP 29 R.E 2023

9 The Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC)

10 FIRELIGHT: Ending Child Marriage in Tanzania, available at <https://www.firelightfoundation.org/child-marriage>, accessed on 25th December, 2024

11 HUMAN RIGHTS WATCH: No Way Out: Child Marriage and Human Rights Abuses in Tanzania 2014, available at <https://www.hrw.org/report/2014>, accessed on 2<sup>nd</sup> January, 2025

12 African Promise: "The Global Goals for the Sustainable Development" available at <https://www.africanpromise.org.uk/charity-work/supporting-the-sustainable-development-goals>, accessed 25<sup>th</sup> December, 2024

13 FIRELIGHT: Community Action to Child Marriage in Shinyanga- Tanzania, available at <https://childprotectionforum.org/wp-content/uploads/2023/07/ShinyangaImpactReport.pdf>, accessed on 25<sup>th</sup> December, 2024

seeks to critically examine the nexus between early marriage and GBV in Tanzania, exploring the effectiveness of legal frameworks and policy interventions in mitigating this pervasive issue.

This study will be guided to answer the following legal questions;

- i. What are the key legal and social factors contributing to early marriages and linked gender-based violence in Tanzania?
- ii. How effective are Tanzania's existing legal frameworks in addressing early marriages?
- iii. What are the enforcement challenges faced by Tanzanian courts and law enforcement agencies in combating early marriages?
- iv. How has judicial interpretation of cases like *Rebeca Z. Gyumi v Attorney General* influenced legal reforms related to early marriages?

In answering the posed legal questions, the study employed doctrinal legal methodology, a form of desk research that focuses on the analysis of legal frameworks and principles using primary and secondary data sources. Doctrinal research examines primary legal materials, such as statutes, case law, and international treaties, to evaluate their effectiveness and identify gaps in enforcement and interpretation. This included:

**Legal Text Analysis:** The study reviews key Tanzanian laws, including the Law of Marriage Act, SOSPA, and other relevant legislation. It also examines Tanzania's obligations under international treaties, such as the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC).

**Case Law Analysis:** Judicial decisions, including landmark cases like *Rebeca Z. Gyumi v Attorney General*, are analyzed to understand how courts have addressed early marriages and GBV, as well as to evaluate the judicial interpretation of statutory and constitutional provisions.

## **2.0 International conventions on early marriages**

The issue of early marriage is addressed in a number of international conventions and agreements which covers the right to protection from child

marriage. Article 16<sup>14</sup> which provide that “*The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage....*” Also the right to ‘free and full’ consent to marriage is recognized under article 18 which provides that consent cannot be ‘free and full’ when one of the parties involved is not sufficiently mature to make an informed decision about a life partner.<sup>15</sup> Although marriage is not mentioned directly in the Convention on the Rights of the Child, child marriage is linked to other rights such as the right to freedom of expression, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices, and is frequently addressed by the Committee on the rights of the child.

### 3.0 Criticisms of the Tanzania legal framework

The legislative framework in Tanzania, such as the *Law of Marriage Act*<sup>16</sup>, has faced criticism for its discriminatory provisions. While the law sets the minimum marriage age at 18 for boys, it allows girls to marry at 15 with parental consent and at 14 with court approval. This legal disparity reflects and reinforces societal norms that undervalue girls, subjecting them to early marriages and the associated risks of GBV, including physical abuse, sexual violence, and psychological harm.<sup>17</sup>

At the international level, Tanzania is a signatory to several treaties and conventions, including the CRC and the ACRWC. These instruments obligate the government to eliminate harmful practices, including early marriage, that undermine children’s rights to health, education, and protection from violence. Despite these commitments, the coexistence of statutory and customary laws complicates enforcement efforts and allows harmful practices to persist.

### 4.0 Early marriages among boys globally

While boys and girls who marry in childhood do not face the same risks

14 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979

15 Universal Declaration of Human Rights of 1948

16 Law of Marriage Act, Cap 29 R.E 2023

17 Ministry of Health, Community Development, Gender, Elderly and Children 2017: “**Child Marriage in Tanzania at a Glance**” available at [https://books.google.co.tz/books/about/Child\\_Marriage\\_in\\_Tanzania\\_at\\_a\\_Glance](https://books.google.co.tz/books/about/Child_Marriage_in_Tanzania_at_a_Glance), accessed on 26<sup>th</sup> December, 2024

and consequences due to biological and social differences, the practice is nonetheless a rights violation for children of both sexes. Similar to child brides, child grooms are forced to take on adult responsibilities for which they may not be prepared. The union may bring early fatherhood and result in additional economic pressure in the form of providing for the household; it may also constrain the boy's access to education and opportunities for career advancement. Globally, 115 million boys and men were married before age 18. The countries in which child marriage among boys is most common are geographically diverse and differ from the countries in which the practice is most common among girls. While child grooms are less numerous than child brides, they similarly have experienced a rights violation that cuts short their childhood. Further research is needed on the drivers of the practice and its effect on child grooms.<sup>18</sup>

## 5.0 The position in Tanzania

Early marriage in Tanzania predominantly affects girls, but boys are also impacted, though to a lesser extent. While the statistics and discourse often center on girls, studies show that early marriage for boys also presents significant challenges, even if with fewer documented cases. The practice generally arises from similar cultural, economic, and social factors that contribute to early marriage for girls, such as poverty, the expectation to conform to traditional customs, and the notion of securing the future of children through marriage.<sup>19</sup> Boys who marry early may be pushed into adult responsibilities at an age when they are unprepared. Early marriages can restrict boys' educational opportunities and subject them to economic pressures, as they may have to financially support a family. Additionally, they may face similar psychological and emotional difficulties as girls, including social isolation, increased vulnerability to domestic violence, and a reduced ability to pursue career or vocational advancement.<sup>20</sup>

However, the lack of comprehensive research and data on the prevalence and impact of early marriages on boys in Tanzania presents a challenge in addressing this issue effectively. Boys may also experience violence and coercion within these unions, but this is often overshadowed by the

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18 UNICEF: Child Marriages: Latest Trends and Challenges in Tanzania, available at <https://data.unicef.org/topic/child-protection/child-marriage>, accessed on 2<sup>nd</sup> January, 2025

19 Twaweza: *Child Marriage in Tanzania: An Issue of Girls and Boys* (2021) available at <https://twaweza.org/wp-content/uploads/2021/05/13.-ChildMarriageFactsheet-EN-FINAL-web.pdf>, accessed on 2<sup>nd</sup> January, 2025

20 Ibid

more visible gender-based violence experienced by girls. The impacts on boys have not been extensively explored in legal frameworks, though some child protection efforts implicitly include boys in their wider objectives of preventing child marriage and promoting gender equality.<sup>21</sup> Recent surveys and studies continue to underscore that while early marriage is more commonly recognized as a girl-focused issue, both boys and girls face detrimental effects from such unions, and addressing the issue in a comprehensive, gender-inclusive manner is crucial for improving the social, economic, and psychological well-being of all children affected by early marriage in Tanzania. Given the limited data, further research and intervention programs are needed to address the effects of early marriage on boys and to ensure that both genders are adequately supported in efforts to end child marriage.<sup>22</sup>

## 6.0 Early marriages prevalence in Tanzania

Recent data indicates that child marriage remains a significant issue in Tanzania, with 29.1% of women aged 20-24 reporting they were married before the age of 18.<sup>23</sup> This prevalence is higher in rural areas (37.9%) compared to urban areas (14.3%), and among women with no schooling (54.8%) versus those with secondary or higher education (8.2%). GBV also remains prevalent. In 2018, 24.3% of women aged 15-49 reported experiencing physical and/or sexual violence by a current or former intimate partner in the previous 12 months.<sup>24</sup> These statistics highlight the ongoing challenges in addressing early marriages and GBV in Tanzania, underscoring the need for continued efforts to protect and empower women and girls.

## 7.0 Tanzania's courts interventions on early marriages

Early marriage remains a significant issue in Tanzania, with several landmark legal cases addressing its constitutionality and the protection of children's

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21 United Nations Population Fund (UNFPA): *The State of the World Population 2020: Against the Odds: Adolescent Boys and Child Marriage* (2020) available at <https://www.unfpa.org/resources/state-world-population-2020>, accessed on 27th December, 2024

22 Ibid

23 United Republic of Tanzania: The Child Marriage Data Portal available at <https://childmarriedata.org>, accessed on 2<sup>nd</sup> January, 2025

24 United Republic of Tanzania: UN Women Data Hub available at <https://data.unwomen.org/country/united-republic-of-tanzania>, accessed on 2<sup>nd</sup> January 2025

rights. Notable cases include: *Rebeca Z. Gyumi v. Attorney General*.<sup>25</sup> In this pivotal case, child rights activist Rebeca Gyumi challenged the constitutionality of Sections 13 and 17 of the LMA, which permitted girls to marry at 14 with court approval and at 15 with parental consent, while setting the minimum age for boys at 18. The High Court ruled in favor of Gyumi, declaring these provisions discriminatory and unconstitutional, and directed the government to amend the law to set the minimum marriage age at 18 for both genders.

The AG was aggrieved with the judgment and appealed to the Court of Appeal in *Attorney General v. Rebeca Z. Gyumi*<sup>26</sup> however, the Court of Appeal upheld the original decision, reinforcing the mandate to amend the Law of Marriage Act to establish 18 as the minimum marriage age for both boys and girls. Despite these legal victories, challenges persist in fully eradicating early marriages due to deeply entrenched cultural practices and socio-economic factors. Recent reports indicate that child marriage remains prevalent in certain regions, with ongoing efforts by civil society organizations and government agencies to enforce the law and protect children's rights.<sup>27</sup>

## 8.0 Legal and social implications of early marriages

Early marriages in Tanzania present a significant challenge to the enforcement of national and international legal standards. LMA, which allows girls to marry at 15 with parental consent, has been widely criticized for contravening international commitments under the CRC and the ACRWC. The landmark case *Rebeca Z. Gyumi v Attorney General* challenged the constitutionality of these provisions, with the High Court ruling in favor of setting 18 as the minimum marriage age. However, enforcement remains problematic due to cultural resistance and limited resources.<sup>28</sup>

GBV is intrinsically linked to early marriage, exposing married girls to domestic violence, sexual abuse, and exploitation. Despite the enactment

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25 [2016] TZHC 5

26 [2019] TZCA 348

27 **World Bank:** *Tanzania: Can Do More to Protect Women and Girls by Urgently Addressing Gaps in Efforts to Combat Gender-Based Violence* (2020), available at <https://www.worldbank.org/en/country/tanzania/publication/tanzania-can-do-more-to-protect-women-and-girls-by-urgently-addressing-gaps-in-efforts-to-combat-gender-based-violence>, accessed on 2<sup>nd</sup> January, 2025

28 Kisembo, E., *Child Marriage in Tanzania: A Socio-Legal Perspective*, Tanzania Law Society, 2015

of the SOSPA<sup>29</sup>, enforcement mechanisms are weak, and societal stigma prevents many victims from reporting abuse. Legal remedies are often inaccessible due to gaps in institutional frameworks and the coexistence of statutory and customary laws.<sup>30</sup>

The social consequences of early marriage and GBV are profound. Early marriages disrupt girls' education, limiting their future opportunities for economic independence and perpetuating cycles of poverty. Girls who marry early are often forced into early pregnancies, which increase the risk of maternal and infant mortality.<sup>31</sup> The cultural practice of dowries worsens this issue, as families see early marriage as a financial necessity rather than a violation of children's rights.

GBV, deeply rooted in patriarchal norms, affects both physical and psychological health. Survivors, especially in rural areas, often lack access to shelters, healthcare, and legal support. Stigma and fear of retribution discourage victims from seeking help, perpetuating a culture of silence.<sup>32</sup> Community sensitization and education programs remain inadequate, further hindering progress toward societal change.<sup>33</sup>

The societal impact of early marriage and GBV is far-reaching, affecting not only the victims but also their families and communities. Early marriage undermines the economic and social potential of girls, leading to reduced national development outcomes. Moreover, the lack of comprehensive data and coordinated interventions hinders efforts to address the root causes and effects of this issue. As Tanzania strives to meet SDG number 5 on achieving gender equality, addressing the nexus between early marriage and GBV remains a critical challenge.

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29 The Act was firstly enacted in 1998 making special provisions with regard to sexual and other offences to further safeguard the personal integrity, dignity, liberty and security of women and children

30 Kessy F, *Gender Equality and Child Marriage in Tanzania: Challenges and Legal Reforms*, Mkuki na Nyota Publishers, 2017

31 Makalla A, 'The Role of Customary Laws in Perpetuating Child Marriage in Tanzania' (2016) 12(1) *Tanzania Journal of Law and Social Sciences*, p. 32

32 Ibid

33 Makalla, A, (n. 31)

## 9.0 The hurdles to the prevention of early marriages and linked GBVS in Tanzania

Early marriages and gender-based violence in Tanzania face a myriad of challenges that hinder prevention efforts. Cultural norms and traditions remain a significant barrier, as early marriage is deeply rooted in traditional beliefs and practices. In many communities, it is viewed as a rite of passage or a way to secure a girl's future, often tied to the economic benefits of dowry payments. Families struggling with poverty see early marriage as a financial solution, where the bride price alleviates economic pressures. However, these traditions conflict with statutory law and international obligations, creating tension between cultural practices and human rights.<sup>34</sup>

Legal frameworks in Tanzania, while existing, are inconsistent and poorly enforced. For instance, the Law of Marriage Act permits girls to marry at 15 with parental consent, a provision that contradicts the constitutional guarantee of equal rights and Tanzania's commitments under international human rights treaties. Although the High Court ruling in *Rebeca Z. Gyumi v Attorney General* declared such provisions unconstitutional, enforcement of this judgment remains weak. Customary laws, which often condone early marriages, dominate in rural areas, overshadowing statutory laws. Additionally, institutional weaknesses, such as understaffed and underfunded law enforcement agencies, further exacerbate the problem by limiting the capacity to address cases of early marriage and GBV effectively.<sup>35</sup>

Awareness and education also play a crucial role in the persistence of these issues. Many communities lack adequate knowledge of the legal, social, and health implications of early marriages and GBV. Girls who marry young are frequently forced to abandon their education, perpetuating cycles of poverty and ignorance. This lack of education not only undermines their ability to understand and assert their rights but also reduces the likelihood of breaking free from the systemic barriers that sustain early marriage and GBV. The absence of sufficient support systems compounds the problem. Victims of GBV and early marriage, particularly in rural areas, often have limited access to shelters, counseling, and legal aid. Cultural stigma and fear of retribution discourage victims from reporting abuse, leaving many

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34 Ibid

35 Kisembo, E (n. 28)

cases unresolved.<sup>36</sup>

Efforts to prevent early marriages and GBV are further hindered by limited community engagement. Many interventions adopt a top-down approach, focusing on legal reforms without addressing underlying community-level attitudes. The exclusion of community leaders and elders, who hold significant influence, limits the effectiveness of such programs. These challenges are compounded by entrenched gender inequality and patriarchal norms that perpetuate the belief in female subordination. This systemic bias normalizes violence against women and girls, while limiting their access to education, economic opportunities, and healthcare, thereby reinforcing their vulnerability.<sup>37</sup>

## **10.0 Conclusion**

The legal and social implication of early marriages and GBV in Tanzania highlight systemic challenges that demand comprehensive solutions. While legal reforms such as the Gyumi decision mark progress, their impact is limited without robust enforcement and societal transformation. Addressing these issues requires harmonizing statutory and customary laws, empowering girls through education and economic opportunities, and strengthening support systems for survivors. The combined effects of cultural, legal, and social challenges highlight the complexity of addressing early marriages and GBV in Tanzania. While progress has been made through legal reforms and advocacy, a holistic and integrated approach is required to create lasting change. Such an approach must harmonize statutory and customary laws, empower communities through education and economic opportunities, and strengthen support systems for victims. Without these comprehensive measures, the persistence of early marriages and GBV will continue to undermine the rights and well-being of Tanzania's women and girls

## **11.0 Recommendations**

Potential solutions to address early marriages and GBV in Tanzania require a multifaceted approach that targets the root causes and mitigates the consequences of these issues.

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<sup>36</sup> Ibid

<sup>37</sup> Kessy, E, (n. 30)

One critical solution is the harmonization of Tanzania's legal framework with international human rights standards. The Law of Marriage Act, which allows girls to marry at 15 with parental consent, must be amended to ensure the minimum marriage age is uniformly set at 18, as affirmed by the High Court in *Rebeca Z. Gyumi v Attorney General*. Legal reforms should also strengthen penalties for those who facilitate or condone child marriages and GBV. However, merely amending the law is insufficient. Effective enforcement mechanisms, including adequately resourced law enforcement agencies and judiciary systems, are essential to ensure compliance and protect victims.

Community sensitization and engagement are also vital in addressing the cultural norms that perpetuate early marriages and GBV. Educational campaigns targeting parents, community leaders, and young people should emphasize the long-term benefits of delaying marriage, such as improved health, education, and economic opportunities. Partnering with influential community leaders, including traditional elders and religious figures, can help bridge the gap between statutory law and cultural practices, fostering broader acceptance of change.

Expanding access to education is another crucial strategy. Keeping girls in school has been shown to delay marriage and reduce vulnerability to GBV. Initiatives such as scholarships, provision of school materials, and community-based programs aimed at addressing economic barriers to education can significantly reduce dropout rates. Furthermore, integrating topics on gender equality, reproductive health, and human rights into school curriculums can empower young girls to understand and assert their rights.

Strengthening support systems for victims of early marriage and GBV is essential. This includes establishing shelters, legal aid centers, and counseling services, especially in rural and underserved areas. Mobile outreach programs could bridge the gap in access to services for communities that are geographically isolated. Additionally, training healthcare providers, teachers, and law enforcement officers to identify and respond to cases of GBV and early marriage can improve the support offered to victims.

Economic empowerment initiatives targeting families and girls are also essential to addressing the economic drivers of early marriages. Programs that provide vocational training, microloans, and income-generating

opportunities for women and families can reduce dependency on dowries and mitigate the financial pressures that contribute to child marriages. Efforts should also focus on creating economic opportunities for married girls and survivors of GBV to promote their independence and resilience.

Finally, effective monitoring and evaluation systems must be implemented to track the progress of interventions aimed at reducing early marriages and GBV. Data collection and analysis can help policymakers identify gaps, measure impact, and refine strategies to ensure lasting change. International and local non-governmental organizations should collaborate with the government to ensure these interventions are sustainable and adapted to the specific needs of different regions in Tanzania.

# PROGRESS AND CHALLENGES IN COMBATING CHILD MARRIAGES IN TANZANIA: NAVIGATING LEGAL REFORMS, ENFORCEMENT HURDLES, AND SOCIAL REALITIES

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Mwajabu Mvungi\*

## Abstract

Child marriage remains a persistent challenge in Tanzania, posing significant threats to the well-being and prospects of numerous young girls. This article offers an overview of the advancements made and the obstacles encountered in combating child marriages through legal reforms in Tanzania. Landmark cases, such as *Rebeca Gyumi vs. Attorney General*, have catalyzed progress, yet implementation remains fraught with difficulties. The article contends that effectively addressing child marriage demands holistic strategies, encompassing community involvement and the empowerment of girls. Child marriage exacts grave consequences, ranging from curtailed opportunities to health hazards and abuse, underscoring the necessity for a comprehensive approach that integrates legal reforms with sociocultural shifts. The article further emphasizes the imperative of rejecting, customary laws perpetuating such practices. Ultimately, it is posited that eradicating child marriage necessitates a multifaceted strategy, blending legal reforms with sociocultural transformations and robust interventions to ensure a childhood devoid of coercion.

**Key words:** *Child marriage, customary law, women rights*

## 1.0 Introduction

I flinch this article with a quote: “*Every child deserves the chance to dream, not to be forced into marriage*”.<sup>1</sup> In the realm of combating child marriages,

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1 Malala Yousafzai during Girls’ Summit inaugurations co-hosted by the UK Government and the UN’s children’s rights agency UNICEF 2014

this sentiment encapsulates the fervent advocacy and tireless efforts of activists worldwide. Figures like Malala Yousafzai, along with countless others, have tirelessly campaigned for the rights and protection of children, particularly girls, against the scourge of early and forced marriages. Yet, despite the progress made in recent years, significant challenges persist in navigating the complex landscape of legal reforms aimed at eradicating this harmful practice.

Transforming family law poses a formidable challenge, primarily because it involves confronting deep-seated notions that consider women and children as possessions. The legal landscape regarding child marriage in Africa varies, ranging from criminalization to non-criminalization. There is a pressing call in Tanzania to amend the Marriage Act<sup>2</sup> to increase the legally approved marriage age to 18 years. This article explores legal efforts to eliminate child marriages in Tanzania and maintains that while legal reform is vital, it is not the sole solution.

## 2.0 A Bird's Eye View on Child Marriage

Child marriage, is defined as any marriage passed out involving a girl below the age of 18 years before the girl is physically, emotionally, and mentally ready to shoulder the responsibilities of marriage and childbirth<sup>3</sup>.

Tanzania has one of the highest child marriage prevalence rates in the world<sup>4</sup>, with nearly 40% of girls getting married before they turn 18. This practice is particularly prevalent in rural areas, though it also occurs in urban regions, primarily among economically disadvantaged groups with strong religious and cultural traditions. Child marriage severely impacts the human rights of those involved, prompting international human rights laws to advocate for its eradication<sup>5</sup>.

### 2.1 International Legal Framework and Child Marriages

Child marriage remains a pressing global issue that undermines fundamental human rights and contradicts established international legal standards. Various international treaties and conventions set 18 years as

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2 [Cap. 29 R.E 2019]

3 Cappa C., Wardlaw T., Langevin-Falcon C., Diers J. Progress for children: a report card on adolescents. The Lancet. 2012 and (UNICEF 2018)

4 Ministry of Health, Community Development, Gender, Elderly and Children 2017

5 Ibid

the minimum legal age for marriage, emphasizing the necessity of free and informed consent. Despite these legal provisions, child marriage persists, infringing upon critical rights such as health, education, gender equality, and freedom from violence and exploitation. The international human rights framework unequivocally condemns child marriage and calls for urgent measures to eradicate its harmful effects.

Key instruments addressing this issue, include the UN Convention on the Rights of the Child (CRC)<sup>6</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>7</sup> which mandate that states enact and enforce legislation establishing a minimum marriage age of 18. State parties must take immediate action if such laws are absent.<sup>8</sup> The prevalence of child marriage gained significant attention in many African countries following their obligation under the Beijing Declaration and Platform of Action in 1995, which directed states to implement and uphold laws setting a firm minimum marriage age<sup>9</sup>.

The African Charter on Human and People's Rights Protocol on the Rights of Women<sup>10</sup> articulates that men and women should be equal partners in a marriage and both parties must have given informed consent. Consent can only be provided by adults, that is, adults over the age of 18 years.<sup>11</sup> Therefore, the Protocol requires that the minimum age for marriage be set by legislation in each State at 18 years of age. The SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage of 2016 declares that legislation should prohibit marriage where one of the parties is under the age of 18 years.<sup>12</sup>

The Maputo Protocol mandates State parties to eradicate all discrimination against women.<sup>13</sup> It also obligates them to eliminate harmful practices, such as prohibiting, through laws supported by penalties, all harmful acts that infringe upon women's human rights

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6 United Nations, 1989, Article 1 & 24

7 United Nations, 1979, Article 16

8 Beijing Declaration and Platform for Action of 1995, Chapter IV, 274 (e)

9 Ibid

10 Maputo Protocol (2003)

11 African Union, 2003, Article 6

12 Southern African Development Community, 2016, and Article 5 of Form

13 Article 2

and violate established international norms<sup>14</sup>.

The Human Rights Council<sup>15</sup> passed a significant resolution acknowledging child marriage as a harmful practice that violates human rights and perpetuates other forms of harm and violations. It emphasizes that these violations particularly affect women and girls disproportionately. The resolution highlights the obligation and dedication of States to uphold and defend the human rights and basic freedoms of women and girls and to prevent and eradicate child marriage. It also acknowledges child marriage as a hindrance to societal development as a whole. Furthermore, it emphasizes that empowering and investing in women and girls, ensuring their meaningful participation in decisions that impact them, and enabling women's full and equal involvement at all levels of decision-making are crucial in breaking the cycle of gender inequality, discrimination, violence, and poverty.

Throughout the world, families and societies treat girls and boys differently, with girls disproportionately facing lower levels of investment in their health, nutrition, and education.<sup>16</sup> Gender-based discrimination continues in adolescence and is often a constant feature of adulthood. Prevailing gender norms also inhibit adolescent girls' access to schooling and employment opportunities. Faced with no schooling and employment opportunities, girls become vulnerable to child marriages.<sup>17</sup> This is especially so when poverty intersects with gender dynamics in the family which in turn affects choices about education and marriage.<sup>18</sup>

Therefore, economics alone does not explain why poverty leads to child labor in factories or the informal economies of the street for both boys and girls in some cultures, while poverty leads to early marriage for girls and teens in other cultural contexts<sup>19</sup>. Factors such as the social shame

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14 Article 5

15 15<sup>th</sup> June to 3<sup>rd</sup> July 2015

16 UNICEF 2008

17 Ibid

18 Bunting, A. (2005) 'Stages of development: marriage of girls and teens as an international human rights issue', *Social and Legal Studies*, 14(1): 29

19 Ibid

associated with pregnancy out of wedlock, cultural traditions, and the status and roles of girls and women in society, therefore, overlap with poverty and economic class considerations to encourage the marriage of minor girls.

Gender stereotypes about women's roles in society manifest themselves in legal provisions along with cultural norms.<sup>20</sup> In many countries, the disparity between women and men is reflected and codified in law. It is common to find that the eligible age for girls is less than that for boys.<sup>21</sup>

International and regional human rights strongly denounce child marriage as a violation of human rights that adversely affects the health, education, and freedom from violence of girls and women. While there is an increasing body of literature detailing the detrimental effects of child marriage, with studies such as the Economic impacts of child marriage<sup>22</sup>, there is a relatively limited understanding of the processes that lead to the reform of laws addressing child marriage<sup>23</sup>.

### **3.0 A Legal Continuum on Child Marriage in Tanzania**

#### **3.1 Domestic Legal Framework and Child Marriages**

The legal framework surrounding child marriage in Tanzania is a dynamic intersection of domestic laws and international commitments, reflecting the country's dedication to upholding children's rights and combating harmful practices. While some progress has been made in aligning national legislation with international standards, inconsistencies remain within the legal framework. The key domestic laws addressing child marriage include the Constitution of the United Republic of Tanzania, 1977, which guarantees equality before the law (Articles 12 and 13) and nullifies laws inconsistent with constitutional principles (Article 64(4)). However, the Law of Marriage Act, sets the minimum marriage age at 15 for girls and 18 for boys, with exceptions allowing marriage at 14 with court approval.

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20 Ibid

21 Ibid

22 Parsons et al. (2015: A review of the literature, Review of Faith & International Affairs),

23 Prettitore, P. S. (2015) 'Family law reform, gender equality, and underage marriage: A view from Morocco and Jordan', Review of Faith & International Affairs

The Judicature and Application of Laws Act (JALA)<sup>24</sup>, prioritizes statutory law over customary and Islamic laws, besides customary laws, as outlined in the Local Customary Law (Declaration) Order, 1963, still allows marriage based on puberty, contributing to child marriage, especially in rural areas. The Penal Code, (Cap 16. R.E 2022) criminalizes sexual relations with a girl under 18, except legally recognized marriages, indirectly legitimizing child marriage.

### 3.2 Minimum Age for Marriage and Marriage Laws

Tanzania's approach to marriage age deviates from international legal norms, which typically set the minimum age for marriage at 18, with rare exceptions allowing it at 16. The Law of Marriage Act (LMA)<sup>25</sup>, stipulates the legal minimum age for marriage as 15 for girls and 18 for boys, as outlined in Section 13. However, the law permits a reduction of the minimum marriage age to 14 in special circumstances, provided court approval is obtained.

While the Constitution and the Law of the Child Act (LCA) align with Tanzania's International commitments on children's rights, they do not specify a minimum age for marriage. Although the LCA defines a child as anyone under the age of 18, it notably does not explicitly prohibit child marriage<sup>26</sup>. During the public hearings leading to the passage of the LCA, civil society organizations, legal experts, and child advocacy groups advocated for an outright ban on child marriage, but conservative factions thwarted these endeavors<sup>27</sup>.

Tanzania also practices normative legal pluralism, where state law coexists with various non-state legal systems<sup>28</sup>. These systems often play a significant role in shaping legal outcomes. Under the Local Customary Law (Declaration) Order of 1963, puberty is recognized as the threshold for marriage for girls. Islamic law, similarly, does not set a specific minimum marriage age, operating alongside statutory law<sup>29</sup>.

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24 [Cap 358 R.E 2019]

25 [Cap 29 R.E 2019]

26 Avalos L. and others, 'Ending Female Genital Mutilation & Child Marriage in Tanzania' 2015: 678

27 Ibid

28 G. Corradi 2014: 785

29 'Van Der Zweep, E. (2005). *The application of Islamic family law and human rights: A case study*

In line with its international commitments, CEDAW's Article 2 stipulates that when non-state legal systems conflict with state law, they must be invalidated. Tanzania adheres to this principle through the Judicature and Application of Laws Act,<sup>30</sup> which ensures that statutory law prevails over customary or Islamic law in case of any conflict. This was also upheld in the case of *Elizabeth Stephen & Another v AG*<sup>31</sup>. Furthermore, any conflicting laws are rendered invalid under Article 64(4) of the Constitution if they contradict constitutional provisions.

Despite these legal frameworks, customary and religious legal practices continue to be enforced and adhered to, especially in rural areas, due to limited awareness of statutory provisions. This persistent reliance on informal legal directives, rather than statutory law, contributes to the continuation of practices like child marriage.

### 3.3 Rebeca Gyumi's Legal Battle: A Landmark Decision

In the rhythm of justice, Rebeca Gyumi orchestrated a powerful symphony of change through the case of *Rebeca Gyumi vs. The Attorney General*.<sup>32</sup> Like a conductor guiding her orchestra, she represented the voices of countless girl children vulnerable to the injustice of child marriage in Tanzania. With each note of her argument, she challenged the discriminatory chords woven into sections 13 and 17 of the Law of Marriage Act, until finally, the crescendo of the court's decision declared them unconstitutional. It was a triumph composed in the key of equality, a melody of progress echoing across the nation.

Additionally, the Court acknowledged the significant health hazards faced by young girls if they are married at an early age. This ruling marked a crucial advancement in the campaign to eradicate child marriage in the country. The Court further took note of the serious health risks the girl child is exposed to if married at a young age.

The High Court said that it subscribed to the Zimbabwe Constitutional Court's analysis in the *Loveness Mudzuru & Ruvimbo Tsopodz vs. Minister of Justice Legal & Parliamentary Affairs and Others*, case

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*of Tanzania Mainland* (Master's thesis, Utrecht University). Utrecht University, Netherlands

30 [Cap.358 R.E 2019]

31 Miscellaneous Civil Case number 82/2005, High Court of Tanzania at Dar es Salaam (unreported)

32 Miscellaneous Civil Case No.5 of 2016

that:<sup>33</sup>

“In light of the overwhelming empirical evidence on the harmful effects of early marriage on girl children, no law which authorizes such marriage can be said to do so to protect ‘the best interests of the child’. The best interests of the child would be served, in the circumstances, by legislation which repealed [the section which allows child marriage]. By exposing girl children to the horrific consequences of early marriage in clear violation of their fundamental rights as children, [the Act] is contrary to the public interest in the welfare of children. Failure by the State to take such legislative measures to protect the rights of the girl-child when it was under a duty to act denied the girl children subjected to child marriages the right to equal protection of the law.

Girl children are entitled to effective protection by the Court which is the upper guardian of the rights of children and whose duty it is to enforce the fundamental rights designed for their protection.”

The case of Rebeca Gyumi underscored the importance of Constitutional rights to equality and freedom from discrimination in Tanzania, as enshrined in Articles 12 and 13. It brought attention to two instances of gender-based differentiation. Firstly, there was a difference in the allowable age for marriage between men and women. Secondly, females under 18 were required to have parental consent for marriage, while males did not face the same requirement.

Treating girls and boys differently according to sections 13 and 17 of the Law of Marriage Act amounts to discrimination and violates Articles 12 and 13 of the Constitution. Equality between men and women is widely recognised, so laws at both national and regional levels should reflect and uphold this principle.

Despite Tanzania’s ratification of multiple international treaties, gaps in domestic laws continue to enable child marriage, particularly through

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33 Constitutional Application No. 79 of 2014, Judgment 20<sup>th</sup> January 2016 (‘Loveness Mudzuru’)

exceptions in the Law of Marriage Act and customary law provisions. The 2016 High Court ruling in *Rebeca Z. Gyumi v. Attorney General (Supra)* was a significant step toward reform as the court directed the legislature to amend the law to align with constitutional principles and international human rights obligations. However, despite this landmark judgment, the legislature has yet to amend the law, leaving legal loopholes that continue to permit child marriage. This inaction underscores the disconnect between judicial rulings and legislative reforms, delaying the full protection of children's rights in Tanzania.

## 4.0 Challenges in Eradicating Child Marriage

Child marriage, a practice deeply rooted in cultural, economic, and social norms, persists as a significant global challenge despite widespread recognition of its harmful impacts. Child marriage predominantly affects girls, robbing them of their childhood, education, health, and potential. While efforts to eradicate this practice have gained momentum in recent years, numerous challenges hinder progress towards its elimination.

### 4.1 Entrenched cultural norms

One of the primary obstacles to ending child marriage is entrenched cultural traditions and societal norms that perpetuate the practice. In many communities, marrying off daughters at a young age is considered a customary practice, often driven by factors such as poverty, gender inequality, and the desire to preserve family honor. These deeply ingrained beliefs can be difficult to change, requiring sustained efforts in community engagement, education, and advocacy.<sup>34</sup>

### 4.2 Poverty

Poverty is another significant contributor to child marriage, particularly in low income and rural areas. Families facing economic hardship may see marrying off their daughters as a way to reduce financial strain or secure resources through dowries.<sup>35</sup> Addressing the root causes of poverty, improving access to education and economic opportunities, and providing social safety nets are essential strategies for combating this aspect of child marriage.

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34 Ending child marriage in Tanzania: Available at <https://www.firelightfoundation.org/child-marriage> [accessed on 24th May 2024]

35 Causes of child marriage: Available at <https://www.plan.org.au/news/stories/causes-of-child-marriage/> [accessed on 24<sup>th</sup> May 2024]

### **4.3 Limited Access to Education**

Limited access to education exacerbates the prevalence of child marriage, as girls who are not in school are at higher risk of being married off early. Education not only empowers girls to make informed choices about their lives but also serves as a protective factor against child marriage by delaying marriage and childbearing. However, barriers such as gender discrimination, lack of schools, distance to schools, and safety concerns often prevent girls, especially in rural areas, from accessing quality education.<sup>36</sup>

### **4.4 Gender inequality**

Gender inequality lies at the heart of child marriage, with girls disproportionately affected by this harmful practice. Deeply entrenched gender norms that devalue girls and prioritize their roles as wives and mothers perpetuate the cycle of child marriage. Empowering girls and women, promoting gender-equitable attitudes, and engaging men and boys as allies in the fight against child marriage are critical for challenging and transforming these ingrained beliefs and practices.<sup>37</sup>

## **5.0 Twists and Turns in Child Marriage**

Legal frameworks play a crucial role in addressing child marriage by setting a minimum age for marriage and establishing mechanisms for enforcement and protection. However, several countries lack adequate legal protections or fail to enforce existing laws effectively. Even where laws exist, cultural and social norms may undermine their implementation. Strengthening legal frameworks, raising awareness about legal rights, and building capacity within justice systems are essential for creating an enabling environment for ending child marriage.

Ending child marriage, a long-standing traditional practice within families, communities, and societies, presents a formidable challenge. Tanzania recognizes that amending marriage age laws has been difficult over the years due to entrenched traditional and religious customs. However, ending child

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36 Ibid

37 Ibid

marriage remains essential, as traditional and cultural norms have evolved<sup>38</sup>. This is exemplified through other harmful traditional practices that were once widespread and are now abolished or moving toward significant decreases, such as slavery, female genital mutilation, and exploitation<sup>39</sup>.

The law often proves inadequate in these situations, as it struggles to persuade a traditional community of the flaws in its practices<sup>40</sup>. Despite numerous efforts over many years to enact laws prohibiting or limiting it, marrying before the age of 18 remains prevalent in sub-Saharan Africa. Projections suggest that by 2050, Africa will have the highest proportion of child brides worldwide<sup>41</sup>. It's contended that solely relying on the legal prohibition of marriage under 18 might not effectively eradicate child marriage. Instead, there's a need to delve into and tackle the socio-economic contexts influencing girls, adolescents, and young women who marry early. Crafting culturally suitable international strategies entails examining and addressing the prevailing conditions, especially in nations with minimal socio-economic progress where early marriage rates are notably high.

Thus, socio-economic development is a determining factor in age at first marriage.<sup>42</sup> The United Nations Population Fund highlights those fistulae, a documented health consequence of child marriage, is a condition that is both preventable and treatable. It is observed to be rare in regions where early pregnancy is discouraged, young women receive education, family planning services are readily available, and skilled medical care is provided during childbirth.<sup>43</sup>

In simpler terms, the negative outcomes of early childbirth, such as fistulae and reproductive health issues, may not occur everywhere. Young women are less likely to face these consequences in areas with greater economic development and improved healthcare services.<sup>44</sup>. Essentially, the author

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38 Rivera, E. (2011). *The Implementation of the Rights of the Child: Transcending the Traditional Practice of Child Marriage in Niger, Yemen, and Thailand*

39 Keck, M. E., & Sikkink, K. (2018). Transnational advocacy networks in international and regional politics, *International Social Science Journal*, 68(227–228), 65–76

40 Ibid

41 UNICEF (2015). A profile of Child Marriage in Africa page 3

42 Bunting, A. (2005) Op. cit. 14(1): 17–38 28

43 Ibid

44 Ibid

contends that the minimum age for marriage isn't the crux of the matter. In favorable socio-economic circumstances, the adverse effects of early marriage are either minimized or absent.

Instead of fixating on legislation establishing a minimum marriage age, the emphasis should shift towards socio-economic progress. Addressing the welfare of children in developing regions requires nuanced solutions, not merely blanket bans on child labor that mimic Western models, potentially trapping these children in social, economic, and physical dependency. Neglecting the socially constructed nature of childhood and advocating for a culturally biased perspective can lead to harmful outcomes for children.<sup>45</sup> James contends that enforcing a ban on child labor may worsen rather than alleviate children's poverty, as indicated by data showing the number of children heading households. Similarly, prohibiting early marriage could compound the socioeconomic challenges confronting girls and adolescents in developing nations, rather than mitigating them.<sup>46</sup>

In addition to impoverished regions, child marriage can also arise as a result of poverty, with community members sometimes seeing it as a form of charity. In such cases, simply passing laws may not address the issue.<sup>47</sup> Understanding the specific cultural and socio-economic factors influencing marriage for young women is crucial for devising effective strategies to combat child marriage.<sup>48</sup> It's important to recognize that what works in one location may not be suitable in another due to contextual differences.<sup>49</sup> Research indicates that the most effective methods for preventing child marriage involve increasing girls' visibility and standing within their families and communities, enhancing their skills and knowledge, and implementing cost-effective approaches. A study carried out in Burkina Faso, Ethiopia, and Tanzania, notably by the Population Council,<sup>50</sup> successfully devised and assessed economical, enduring methods to postpone marriage in regions

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45 James, A. (1998) 'From the child's point of view: issues in the social construction of childhood', in Panter-Brick, C., ed. *Biosocial perspectives on children*, Cambridge: Cambridge University Press: 45– 65

46 Ibid

47 Hutchison, R. and Mcnall, M. (1994) 'Early marriage in a Hmong cohort', *Journal of Marriage and the Family*, 56(3): 588

48 Ibid

49 Ibid

50 Erulkar, A., Medhin, G., & Weissman, E. (2018). *The impact and cost of child marriage prevention in three African settings*

where child marriage is prevalent in sub-Saharan Africa. The research highlighted that child marriage isn't an insurmountable tradition. Instead, when families and communities acknowledge the adverse effects of child marriage and have viable economic options, they tend to postpone the age at which their daughters marry.

As a result, initiatives that not only advocate for legislative reform but also adopt a comprehensive, community-cantered strategy by prioritizing the empowerment of girls or launching outreach programs and awareness campaigns aimed at encouraging parents, relatives, and community figures to refrain from gender-based violence practices, including child marriages, have proven to be effective in the regions where they have been implemented.<sup>51</sup> This is in line with the Human Rights Council Resolution (2015) which recognizes the need for national action plans on child marriage and encourages States to work with civil society to develop and implement a holistic, comprehensive, and coordinated response to address child marriage and support married girls.

The National Survey on the Drivers and Consequences of Child Marriages in Tanzania (2017) emphasized that ending child marriages in Tanzania requires aligning laws to ensure the minimum marriage age is universally set at 18, without exceptions. However, this alone is insufficient. Complementary strategies are essential to empower girls within their families and communities. Primarily, extending girls' education, possibly through compulsory schooling, is crucial. Additionally, enhancing girls' economic prospects, such as by equipping them with entrepreneurial skills, can reduce their vulnerability to forced marriages for financial security. This fosters independence. Moreover, educating children, parents, and community members is imperative for effective outcomes.

## **6.0 Conclusion**

It is pertinent that eradicating child marriage requires a multifaceted approach that addresses the complex interplay of cultural, economic, social, and legal factors driving this harmful practice. Efforts must focus on challenging entrenched norms, addressing root causes such as poverty and gender inequality, strengthening legal protections, and prioritizing the needs of vulnerable girls, particularly in humanitarian settings. Only through coordinated action and sustained commitment can we hope to

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51 Avalos, L., et al. (2015) 'Ending female genital mutilation & child marriage in Tanzania', Pg 693

create a world where every girl child can enjoy their right to a childhood free from the shackles of early marriage.

## **7.0 Recommendations**

Eradicating child marriage requires a comprehensive and multilayered slant that addresses the legal, social, cultural, and economic drivers of the practice. Based on the analysis, the following recommendations are proposed:

Firstly, legal reforms must be prioritized to ensure that the legal age of marriage is unequivocally defined and enforced. The Law of Marriage Act, which allows for exceptions to the legal marriage age, needs to be amended to align with the Constitutional protection of children's rights. A clear, consistent definition of the legal age of marriage, set at 18 years for both genders, will eliminate loopholes and strengthen the legal stance against child marriage.

Secondly, Awareness and Education campaigns are essential to shift society's attitudes about child marriage, particularly in rural and marginalized areas where the practice remains prevalent. Governmental and non-governmental organizations (NGOs) should collaborate to educate communities on the harmful consequences of child marriage and promote the value of girls' education. By highlighting how education can delay marriage and improve future opportunities, these campaigns can help communities understand the long-term benefits of allowing girls to stay in school. Schools should be empowered to serve as safe spaces, where children are taught about their rights, the importance of education, and how to access support services when needed.

Thirdly, in addressing the deeply entrenched cultural norms that perpetuate child marriage, community engagement is critical. Local leaders, including religious and traditional leaders, village elders, and community influencers, must be actively involved in the dialogue surrounding the dangers of child marriage. These leaders play a pivotal role in influencing cultural attitudes and can help shift the narrative by advocating for education over early marriage. By engaging communities at the grassroots level, it becomes possible to challenge longstanding practices and encourage families to prioritize their children's education and well-being.

Fourthly, providing support services for victims of child marriage is another vital step in addressing this issue. Access to legal, psychological, and social support services must be expanded to ensure that child brides have the resources they need to escape marriage and reintegrate into society. This should include establishing more shelters, counselling services, and legal aid to assist victims in overcoming the trauma of early marriage and rebuilding their lives. Ensuring that support services are available to all those affected, especially in remote areas, will help mitigate the long-term consequences of child marriage.

Fifthly, Regional and International Collaboration is key in tackling child marriage on a broader scale. Tanzania can benefit from initiatives such as the African Union's Campaign to End Child Marriage, which provides technical and financial support to countries committed to eliminating the practice. By learning from best practices in other countries and aligning efforts with international frameworks, Tanzania can enhance its response to child marriage and ensure that its efforts are part of a global movement.

# ADDRESSING GENDER JUSTICE BARRIERS THROUGH E-JUDICIARY IN TANZANIA

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## Abstract

Despite constitutional guarantees of equality and non-discrimination, gender justice in Tanzania remains an unfinished promise. Structural, social, institutional, and individual barriers continue to obstruct women and vulnerable groups from accessing justice on equal terms. This Article examines how the adoption of *e-Judiciary* has begun to dismantle these barriers, transforming justice delivery from a system bound by paper and physical presence into one that is digital, inclusive, and citizen-centred.

Drawing on gender jurisprudence and practical experiences from family courts, integrated justice centres, and Zanzibar's special courts for sexual offences, the paper demonstrates how innovations such as the Judiciary of Tanzania Electronic Case Management System (JoT-eCMS), piloted AI-driven Transcription and Translation Services Virtual Courts, the Primary Court App, the Data Hub, digitization of records, the Complaints Management System, and the Advocates Management System (*e-Wakili*) expand coverage, accelerate case resolution, strengthen transparency, and enhance accountability.

It further highlights the indispensable role of the Tanzania Women Judges Association (TAWJA) in ensuring that reforms are not merely technological upgrades but substantive interventions for gender justice. Ultimately, the paper argues that *e-Judiciary*, when deliberately designed through a gender-responsive lens, is a transformative instrument for equality, dignity, and access to justice for all.

**Key words:** *Gender justice, Barriers, e-judiciary, Access to justice, gender-based violence*

## **1.0 Introduction: From Equality on Paper to Justice in Practice**

Access to justice is the cornerstone of the rule of law and a prerequisite for the realization of human rights. Tanzania’s Constitution enshrines equality before the law and prohibits discrimination. Yet, in practice, gender justice remains unevenly realized.

For decades, women have faced systemic barriers: long distances to courts, prohibitive costs, procedural delays, and social stigma. Survivors of gender-based violence often abandon cases due to fear of retaliation or lack of confidentiality. Formal equality has too often failed to translate into substantive justice.

Recognizing these challenges, the Judiciary of Tanzania has embarked on a bold reform agenda. At its heart lies e-Judiciary — the strategic use of ICT to modernize court administration, case management, and service delivery. This is not simply about digitization; it is about reimagining justice delivery to meet the lived realities of women and marginalized groups.

This modernization is mirrored in Zanzibar, where the Government is working to ensure that the isles’ unique legal dualism does not become a digital divide. By prioritizing the digitalization of both systems, the judiciary is moving toward a “citizen-centric” model. This isn’t just about computers; it’s about making sure a woman seeking her rights in a Kadhi’s court has the same transparency and speed as someone in the High court<sup>1</sup>.

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1 (World Bank, Zanzibar Judicial Modernization Project (Zi-JUMP): Technical Mission Report (May 2025) <https://www.judiciaryzanzibar.go.tz>

## 2.0 Gender Justice Barriers in Tanzania

Gender justice in Tanzania cannot be fully grasped without situating it within the complex back-and-forth of socio-cultural norms, institutional structures, economic conditions, and political dynamics that shape how women and other marginalized groups experience the justice system. Despite constitutional guarantees of equality and numerous statutory protections aimed at eliminating discrimination and promoting human rights, women encounter ingrained societal expectations that dictate gender roles and expectations that often prioritize male authority and female submissiveness in both public and private spheres.

### 2.1 Social Cultural Barriers

In Zanzibar, the barriers are often intertwined with the dual legal system. While the Kadhi's courts are vital for resolving Muslim personal law matters, the traditional, face-to-face nature of these proceedings can sometimes feel intimidating for women seeking inheritance<sup>2</sup>. For many years, the lack of digital tracking meant that a woman in a remote village in Pemba might wait months for an update on her case, only to find it had stalled. This "justice gap" is finally being closed by data-driven reforms that ensure no case and no person is forgotten in a manual ledger<sup>3</sup>.

These norms greatly influence women's willingness and ability to pursue legal remedies in matters such as divorce, child custody, inheritance, maintenance, and gender-based violence, with many women discouraged from reporting abuses due to fear of stigma, retaliation, or social ostracism. Such socio-cultural barriers are well documented as central impediments to accessing justice, with research indicating that illiteracy, poverty, traditions, and customs that marginalize women persistently hinder the utilization of formal legal mechanisms by vulnerable groups in Tanzania.<sup>4</sup>

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2 (UNDP Tanzania, Project Implementation Plan (PIP) for Access to Justice Zanzibar (LEAP) (2018-2024), p.12

3 (Mohammed Nassor Omar, "An Exploitation of National Laws Governing Prosecutions of Sexual Offences in Zanzibar", *SUJ*, Vol.10, No. 1 (2025)

4 *Gender Bench Book on Women's Rights*. Tanzania Women Judges Association (2022) [https://media.tanzlii.org/media/generic\\_document/176921/source\\_file/gender-bench-book-on-womens-rights.pdf](https://media.tanzlii.org/media/generic_document/176921/source_file/gender-bench-book-on-womens-rights.pdf)

## 2.2 Institutional Barriers

Manual filing systems, dependence on physical appearances in court, prolonged adjournments, and procedural complexities have historically slowed case progression, thereby disproportionately disadvantageous women who often shoulder caregiving responsibilities and cannot afford repeated court attendance. These systemic inefficiencies contribute to continued delays in delivering justice, undermining confidence in the judiciary, especially for cases where timely intervention is critical, such as in matters of protection from violence or urgent maintenance orders. Research shows that traditional court procedures, coupled with limited resources and a shortage of gender-sensitive judicial personnel, have impeded effective enforcement of women's rights, underscoring the importance of institutional reform<sup>5</sup>.

## 2.3 Structural and Political Barriers

Access to courts is heavily influenced by geographic location, with marginalized communities often lacking adequate court infrastructure and legal aid services, thus amplifying the practical barriers women face when seeking legal redress. Economic dependency on male family members further complicates women's capacity to pursue litigation, as legal costs, transportation, and loss of productive time serve as significant deterrents. These barriers are not merely procedural but reflect deeper dimensions of inequality, where socioeconomic status and power imbalances intersect to restrict women's agency within the justice system<sup>6</sup>.

## 2.4 Individual-Level Barriers

Low levels of legal awareness remain significant obstacles. Many women are unaware of their rights under laws concerning marriage, divorce, property, and protection from violence, and even when they have some knowledge, the perceived complexity and intimidating nature of legal processes often discourage them from initiating or pursuing cases. Survivors of domestic violence, for example, may

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5 *Evaluating the Women's Barriers in Accessing Justice: A Review Study of Tanzania*. International Journal of Research in Interdisciplinary Studies Volume 3, Issue 3, March 2025 <https://www.ijris.com> | ISSN (Online): 2584-1017 <https://journal.ijris.com/index.php/ijris/article/download/105/115/212>

6 Ibid

hesitate to engage formal courts out of fear that their cases will not be treated with confidentiality or seriousness, particularly in environments where community and family pressures encourage resolution through informal or customary mechanisms that may not safeguard their rights. These individual fears and limitations highlight the need for justice systems to be not only accessible in theory but responsive in practice to the lived realities of women and vulnerable groups.<sup>7</sup>

## 2.5 ICT Innovations in Tanzania's Judiciary

In response to these complex barriers, the Tanzanian Judiciary's move towards e-Judiciary represents a deliberate effort to modernize court processes and enhance efficiency, accessibility, and transparency, particularly for gender-related cases. JoT introduced:

- i) **Electronic Case Management System (JoT-eCMS):** The family window has expedited custody and maintenance disputes. For example, the Temeke One-Stop Centre, Integrated Justice Centre has employed online e-filing systems and coordinated services to better serve women litigants, including prioritizing cases involving children, persons with disabilities, and mothers who are pregnant or breastfeeding, this demonstrates how targeted reforms can address specific gender-related barriers in practice<sup>8</sup>. For instance, for the year 2025, through online e-filing systems, the centre admitted a total number of 8,654 cases, including Probates and family related cases, in which the determination of rights of women and children were directly involved. A total of 9,222 cases were decided out of 10,539 cases which were subject to determination before the court for the very year.

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7 *Gender Bench Book on Women's Rights*. Tanzania Women Judges Association (2022). [https://media.tanzlii.org/media/generic\\_document/176921/source\\_file/gender-bench-book-on-womens-rights.pdf](https://media.tanzlii.org/media/generic_document/176921/source_file/gender-bench-book-on-womens-rights.pdf)

8 World Bank, "Bringing Justice within the Grasp of Ordinary Women and Men: Integrated Justice Centers in Tanzania," 2024, <https://www.worldbank.org/en/news/feature/2024/07/16/bringing-justice-within-the-grasp-of-ordinary-afe-men-and-women>

SN	Court Level	Pending Case by 31 <sup>st</sup> December 2024	Filed cases 2025	Decided cases 2025	Pending cases by 31 December 2025	Clearance Rate (%)	Disposal rate (%)
1	High Court	152	673	696	129	103%	84%
2	Juvenile Court	109	889	900	98	101%	90%
3	District Court	1233	2790	3314	709	119%	82%
4	Primary court	391	4302	4312	381	100%	92%
	<b>Total</b>	<b>1885</b>	<b>8654</b>	<b>9,222</b>	<b>1317</b>	<b>101%</b>	<b>88%</b>

In most cases women are the ones who approaches the centre for various legal services. For instance, for the year 2025, a total of 2,207 clients out of 3,607 clients who approached the centre for legal Aid services were women which is equivalent to 61% of the total clients. The rest 49% were men.

- i) The Judiciary has piloted the automation of transcription and translation services using Artificial Intelligence (AI) across eleven (11) court registries, namely: Temeke IJC, Kinondoni IJC, Commercial Court, Dar es Salaam Zone, Crime and Corruption Court, Bukoba, Morogoro, Mwanza, and Musoma. For instance, in 2024 about 118 cases filed at Temeke IJC were heard through of Transcription and Translation System (TTS). Building on this experience, the Judiciary is progressively leveraging its internal technical capacity to develop an advanced AI-enabled solution that extends beyond transcription and translation to support additional court processes, including the analysis and drafting of various court documents. This advancement is being implemented with a strong emphasis on the responsible and ethical use of AI, positioning the technology as an enabler for fast-tracking case disposition, particularly in Gender-Based Violence (GBV) cases. Through AI-supported transcription and evidence handling, survivors will no longer be required to repeatedly give testimonies, thereby reducing trauma, re-victimization, and psychological distress, while simultaneously enhancing judicial efficiency and access to justice.

- ii) Virtual Courts: In 2024, 85,415 virtual sessions were held, connecting witnesses from across Tanzania and abroad. Survivors testified from safe spaces, avoiding direct confrontation with perpetrators<sup>9</sup>.
- iii) Primary Court App: Parallel with the innovation of the JoT-eCMS, the Judiciary developed a special Primary Court App for statistical purposes. The App connected to the JoT-eCMS is used by all primary courts across the country, ensuring transparency in grassroots justice. With the App, the primary court statistics are generated and accessible in real time for monitoring and evaluation, and decision making.
- iv) Data Hub: The Data Hub is a business intelligence and analytical tool that retrieves, analyses, and visualizes different sets of information on demand basis, enabling real-time monitoring of GBV case timelines. The hub is a centralized access to case-related data and other information systems, which offer a seamless experience for internal and external stakeholders to enhance efficiency in information sharing.
- v) Digitization of Records: Over 10,000 historical files digitized in Dar es Salaam, reducing retrieval time from weeks to minutes<sup>10</sup>.
- vi) Complaints Management System *Sema na Mahakama*: The system features multi-channel accessibility, allowing feedback via web or mobile devices, and categorizes submissions for efficient resolution. Each entry is assigned a unique tracking number, ensuring users can monitor progress while automated routing directs concerns to the appropriate judicial officers.
- vii) By aggregating and analysing feedback data, the Judiciary identifies systemic issues such as case delays or misconduct and implements targeted reforms. The System reduces reliance on informal complaints and fosters greater confidence in judicial accountability. The initiative not only streamlines grievance

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9 The Judiciary of Tanzania, “Annual Performance Report of the Judiciary of Tanzania 2023-2024”, ANNUAL\_PERFORMANCE\_REPORT\_OF\_2023-24.pdf

10 Ibid

resolution but also serves as a model for how ICT can democratize access to justice and strengthen institutional integrity.

Despite these advances, persistent challenges remain in ensuring that digital reforms do not unintentionally duplicate or deepen existing inequalities. Technological disparities such as lack of full integration across justice sector institutions, absence of a centralized system to track GBV cases from reporting to determination, segregated data collection and management, limiting accountability and evidence-based reforms.

There is also a problem of limited internet connectivity, low ICT literacy, and the absence of supportive infrastructure in rural regions can marginalize those who lack access to digital tools, thereby sparking concerns about equitable implementation of e-justice systems.

Moreover, data protection and confidentiality issues in digital environments present additional hurdles, particularly for survivors of gender-based violence who require secure and discreet avenues to pursue justice. These ongoing limitations emphasize the continuing need for a gender-responsive and inclusive approach to judicial reform, one that pairs technological innovation with targeted capacity building, legal awareness campaigns, and institutional accountability mechanisms<sup>11</sup>.

### **3.0 Benefits of e-Judiciary for Gender Justice**

#### **3.1 Expanded Coverage: Justice Beyond Court Walls**

The introduction of e-Judiciary in Tanzania has fundamentally altered the reach of judicial services. Traditionally, access to courts has been conditioned by physical proximity, financial ability to travel, and time availability factors that disproportionately disadvantage women, particularly those living in marginalized areas. Through online case registration, electronic cause lists, virtual mentions, and SMS-based case tracking, e-Judiciary has begun to dismantle these barriers by extending judicial services beyond court premises.

For women who are primary caregivers, pregnant, elderly, or living with disabilities, repeated physical attendance at court can be both economically and socially prohibitive. Survivors of domestic violence

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<sup>11</sup> *The Effectiveness of Judicial Service Commission in Tanzania*

face additional risks, including intimidation by perpetrators and social stigma associated with being seen repeatedly at court premises. By enabling virtual appearances and remote follow-ups, e-Judiciary reduces exposure to these risks while preserving access to justice. In this sense, digitalization is not merely an administrative reform but a gender-responsive intervention that reconfigures access around lived realities of women litigants rather than institutional convenience<sup>12</sup>.

### **3.2 Speed and Efficiency: Time as a Safeguard Against Harm**

Judicial delay has long been recognized as a form of injustice, but in gender-related disputes particularly family law and gender-based violence cases delay can have immediate and irreversible consequences. Maintenance disputes, custody applications, and protection orders often involve urgent needs such as shelter, healthcare, and child welfare. Manual file handling, misplaced records, and congested registries historically prolonged these cases, exposing women and children to continued vulnerability.

Perhaps the most profound impact is seen in the Zanzibar Special Court for sexual offences. This court uses technology not just for efficiency, but for empathy. Under the Zanzibar Evidence Act of 2016, the court can now accept digital evidence, which is vital in a world where harassment often happens via mobile phone<sup>13</sup>. More importantly, the use of video links allows survivors, especially children, to testify from a private space. This “digital shield” protects them from the trauma of facing their abuser in open court, making the pursuit of justice a path to healing rather than a source of further pain<sup>14</sup>.

E-Judiciary addresses these inefficiencies through electronic case management systems that streamline filing, automate scheduling, and enhance judicial oversight of timelines. Digital alerts and standardized workflows reduce unnecessary adjournments and improve compliance

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12 Elson, D., and A. Seth (Eds.). 2019. *Gender Equality and Inclusive Growth: Economic Policies to Achieve Sustainable Development*. New York: UN Women

13 The Zanzibar Evidence Act No. 9 of 2016, sections 71 & 85

14 The Sexual Offences (Special Provisions) Act, 1998 (as supplemented by the Zanzibar Criminal Procedure Act, 2018)

with statutory timelines. The ability to issue interim orders promptly especially in maintenance and protection matters demonstrates how efficiency directly translates into protection. As scholars of gender justice have noted, procedural speed in such cases is not a neutral value but a substantive safeguard against harm<sup>15</sup>.

### **3.3 Access to Reliable Data: Evidence-Based Gender Justice**

One of the most transformative yet underappreciated benefits of e-Judiciary lie in its capacity to generate accurate, real-time, and disaggregated data. Historically, the absence of reliable statistics on gender-related cases made it difficult to identify systemic discrimination or evaluate the effectiveness of judicial interventions. E-Judiciary enables the collection of gender-disaggregated data on case types, duration, outcomes, and compliance with orders. These data provide evidence] based foundation for informed policy and interventions. For instance, in 2025, out of 37447 litigants in family cases filed before the courts, 58% of those who filed cases were women, while 42% were men. The Judiciary of Zanzibar is also advancing away from guesswork and toward evidence-based decision making, supported by an electronic system whose development is at an advanced stage and nearing completion.

### **3.4 Transparency and Accountability**

By using gender-disaggregated data within its new systems, the judiciary can now track exactly how long it takes to resolve SGBV cases. This transparency ensures that the special court for sexual offences stays true to its mission, making sure that gender-based crimes are prioritized and never buried under a mountain of general paperwork<sup>16</sup>.

Such data empowers the judiciary to identify patterns of discrimination for example, prolonged resolution of maintenance cases or inconsistent outcomes in custody disputes. It also facilitates targeted judicial training, policy reform, and resource allocation. Importantly, data shifts gender justice from anecdotal concern to evidence-based governance,

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15 Zanita E. Fenton, Rebecca J. Cook & Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* BOOK REVIEW, 33 *Human Rights. Qlty* 243 (2011)

16 Judiciary of Zanzibar, *system & Digital E-services Portal: Overview of Z-CMS and ZanWakili* (2026) <https://www.judiciaryzanzibar.go.tz/services> & <https://portal.zanajira.go.tz>

aligning judicial reform with international best practices on gender mainstreaming<sup>17</sup>.

## 4.0 The Role of the TAWJA in Advancing Gender Justice

The Tanzania Women Judges Association (TAWJA) has been pivotal in ensuring that judicial reform in Tanzania is not only technologically progressive but substantively responsive to gender justice. By bridging the gap between formal institutional change and the lived realities of women court users, TAWJA has positioned itself as a transformative force. Through jurisprudential engagement, judicial capacity building, policy advocacy, and community outreach, TAWJA has ensured that e-Judiciary reforms are anchored in principles of equality, dignity, and inclusiveness.

### 4.1 Highlighting Patterns of Gender Discrimination through Jurisprudence

One of TAWJA's most significant contributions lies in its systematic engagement with case law to identify, document, and challenge patterns of gender discrimination within judicial decision-making. Through conferences, discussions, and reviews of judgments, TAWJA has highlighted recurring issues such as unequal distribution of matrimonial property, inconsistent application of maintenance laws, and reliance on harmful gender stereotypes in credibility assessments particularly in sexual and gender-based violence cases.<sup>18</sup>

The availability of electronic judgments and digital legal databases has strengthened this work by enabling TAWJA members to access, compare, and analyse decisions across different regions and court levels. E-Judiciary has therefore enhanced jurisprudential accountability, allowing discriminatory patterns that were previously obscured by fragmented record-keeping to be identified and addressed through judicial dialogue and training.

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17 Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendation No. 33 on Women's Access to Justice* (2015)

18 *Gender Bench Book on Women's Rights*. Tanzania Women Judges Association (2022) [https://media.tanzlii.org/media/generic\\_document/176921/source\\_file/gender-bench-book-on-womens-rights.pdf](https://media.tanzlii.org/media/generic_document/176921/source_file/gender-bench-book-on-womens-rights.pdf)

## **4.2 Capacity Building for Judicial Officers**

TAWJA has been at the forefront of judicial capacity building aimed at promoting gender-sensitive adjudication in the digital era. In collaboration with the Judiciary of Tanzania, the Institute of Judicial Administration (IJA), and development partners, TAWJA has facilitated trainings for judges and magistrates on gender justice, international human rights standards, and ethical adjudication in technology-enabled courts.

These trainings emphasize the use of e-Judiciary tools to enhance fairness, transparency, and efficiency while cautioning against the risk of digital systems reproducing existing gender biases. Judicial officers are trained to appreciate how procedural delays, poorly managed virtual hearings, or inadequate confidentiality safeguards can disproportionately harm women litigants. This approach situates technology as a tool for justice rather than an end in itself.

## **4.3 Public Legal Education and Community Outreach**

Beyond the bench, TAWJA has played a crucial role in strengthening legal awareness among women and communities. Through legal aid clinics, community dialogues, and public education initiatives, the Association has explained court processes, including emerging digital procedures such as online case registration and electronic tracking.

These efforts are particularly significant in rural and marginalized communities, where digital illiteracy and mistrust of formal justice institutions remain predominant. By linking legal education with e-Judiciary awareness, TAWJA contributes to reducing individual-level barriers to access to justice, ensuring that technological reforms do not inadvertently exclude the very groups they aim to empower.

## **4.4 Promotion for Gender-Responsive Judicial Reform**

TAWJA has consistently engaged in policy reforms to ensure that judicial reforms incorporate gender perspectives. Through position papers, consultative forums, and engagement with judicial leadership, TAWJA has stimulated the integration of gender considerations in court digitalization strategies, including data protection, user-friendly interfaces, and hybrid systems that accommodate digitally excluded

users.

TAWJA emphasises that e-Judiciary must be designed with sensitivity to confidentiality concerns in GBV and family cases, as well as the socio-economic realities of women litigants. This approach aligns national reform efforts with international obligations under CEDAW and regional human rights instruments.<sup>19</sup>

#### **4.5 Building Regional and International Judicial Solidarity**

As part of the International Association of Women Judges (IAWJ), TAWJA benefits from and contributes to transnational judicial discourse on gender justice and judicial innovation. Participation in regional and international forums enables TAWJA to share Tanzania's experiences with e-Judiciary while drawing lessons from comparative jurisdictions on best practices in gender-responsive digital justice systems.

This engagement strengthens the legitimacy of TAWJA's domestic promotion and situates Tanzania's e-Judiciary reforms within broader global efforts to leverage technology for substantive equality before the law.<sup>20</sup>

### **5.0 Recommendations**

- i) TAWJA urges for the continued strengthening and digital integration of Integrated Justice Centres. E-Judiciary platforms should support coordinated service delivery among courts, legal aid providers, social welfare officers, and law enforcement agencies. Enhanced digital integration reduces procedural fragmentation, shortens case timelines, and minimizes secondary victimization of survivors of gender-based violence.
- ii) TAWJA recommends the formal institutionalization of its engagement in judicial reform and e-Judiciary governance processes. Structured collaboration between TAWJA, judicial leadership, and reform committees will ensure that women judges' perspectives and gender justice expertise are consistently integrated

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19 Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendation No. 33 on Women's Access to Justice* (2015)

20 UN Women, *Women's Access to Justice: Transformative Approaches* (New York: UN Women, 2018)

into policy formulation, system design, and implementation. Such engagement strengthens the legitimacy, inclusiveness, and sustainability of e-Judiciary reforms in Tanzania.

- iii) TAWJA recommends that gender justice be institutionalized as a core principle in all e-Judiciary reforms. Digital court systems should be designed, implemented, and evaluated through a gender lens to ensure that technological efficiency does not undermine substantive equality. Regular gender impact assessments should be conducted to evaluate how e-Judiciary platforms affect women litigants, particularly in family, maintenance, and gender-based violence cases, and to ensure that digital reforms actively promote equitable access to justice.
- iv) TAWJA emphasizes the need to strengthen gender-sensitive judicial decision-making within digital court environments. As courts increasingly rely on electronic records, virtual hearings, and automated processes, judges and magistrates must remain vigilant against unconscious bias, procedural rigidity, and the replication of harmful gender stereotypes. Continuous judicial training should integrate gender jurisprudence, international human rights standards, and ethical guidance on confidentiality and trauma-informed adjudication in technology-enabled courts.
- v) TAWJA strongly recommends the maintenance of hybrid justice delivery models that combine digital and physical court processes. While e-Judiciary has expanded access for many users, it should not become an exclusionary gatekeeper for women with limited digital literacy, access to devices, or reliable internet connectivity. Hybrid systems ensure that technological advancement complements, rather than replaces, human-centered justice, particularly for rural women, elderly litigants, and persons with disabilities.
- vi) TAWJA calls for strengthened confidentiality and safety safeguards within e-Judiciary systems, especially in cases involving family disputes and gender-based violence. Digital platforms must incorporate strong data protection measures, clear access controls, and ethical protocols to prevent unauthorized

disclosure and secondary victimization. Building trust in digital justice processes requires assurance that technology will protect, rather than expose, vulnerable litigants.

- vii) TAWJA recommends the expansion of public legal education and digital literacy programmes aimed at empowering women to effectively use e-Judiciary systems. Legal awareness initiatives should integrate information on women's rights with practical guidance on navigating digital court procedures. Targeted community outreach, particularly in rural and marginalized areas, is essential to ensure that e-Judiciary serves as a tool of empowerment rather than a new barrier to justice.

## **6.0 Conclusion: Technology as a Tool for Equality**

E-Judiciary offers Tanzania a historic opportunity to transform justice delivery. ICT innovations — from JoT-eCMS and Transcription and Translation Services to e-Wakili and *Sema na Mahakama* — are dismantling entrenched barriers and opening pathways to equality.

Yet, technology alone is not enough. Success depends on deliberate, gender-responsive design, hybrid models that integrate and combine innovation with human-centered practice, and sustained engagement from all key Stakeholders, including Non-Governmental Organizations (NGOs), such as, TAWJA.

When aligned with gender justice principles, institutional accountability, and inclusive leadership, e-Judiciary becomes more than a digital upgrade. It becomes a transformative instrument for equality, dignity, and access to justice for all Tanzanians.

# CYBERBULLYING AND CHILD SAFETY IN TANZANIA: AN EXAMINATION OF LEGAL FRAMEWORK AND PRACTICAL CHALLENGES

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Edith Yesaya Mbangula\*

## **Abstract**

Advancement in digital technology has both positive and negative impacts on children. When properly utilized, it can be a catalyst for the children's cognitive and social development as it fosters learning, creativity and social connection opportunities. However, its improper use comes with risks such as privacy violation, online child sexual exploitation and abuse. These challenges therefore necessitate putting in place a special legal protection mechanism and parental guidance for children. The objective of this article, therefore; is to educate the society on current legal framework and practice on child online protection and to raise awareness and commitment of all stakeholders to ensure child online safety.

Tanzania has various laws and regulations which create framework for protecting children from harmful online content by criminalizing and penalizing offences related to computer systems and information technology. Children, however, continue to be the victim due to lack of digital literacy and awareness on laws, policies and institution which provide protection from abuse.

Different literature on legal framework reveals that children who interacts with technology have often been associated or witnessed cyberbullying. Girls in particular, have been subjected to cyberbullying in many occasions compared to boys. Literature revealed also that children demonstrated lack of awareness on their legal rights, lack of awareness on reporting mechanism of crimes and lack of awareness on how to access justice in case their rights are violated.

Key challenges faced by children when interacting with technology will be highlighted in this article. Furthermore, there will be an examination of legal and institutional framework for protecting children from cyberbullying and practical solutions to ensure an online comprehensive child safety. The article will also set out initiatives to create awareness to the general public on the issue of cyberbullying. Lastly, recommendation to address the noted challenges will be proposed. This will help to widen children's knowledge on their rights, hence ensure children's rights are fully protected.

**Key words:** *Cyberbullying, cybercrime, digital technology, child safety*

## 1.0 Introduction

Digital technology is expanding across almost all aspects of life. Children being part of the society are not spared.; It is estimated that worldwide one out of three internet users are children Reports also show that more than 175,000 children go online for the first time every day<sup>1</sup>. Unfortunately, most of them do so while lacking the necessary knowledge mechanisms to safeguard themselves

Without these mechanisms children's online access risks of exposing them to harmful contents which may affect them physically, emotionally, and psychologically. The proximity from the abused and the opportunity to remain anonymous that internet offers, may also turn some of the children into abusers themselves. For instance, like any other group in the society, children may use internet to bully others by sharing insidious videos and insults in order to harass, and embarrass others. This may be a result of sheer hate, anger or an act of rebellion but sometimes, they may also do so out of pure innocence or mistake.

It is therefore important to prioritize child protection by setting clear rules and boundaries on children's use of online contents. This can be done by utilizing parental controls, enhancing children's digital literacy, and understanding the laws related to online child protection. Various

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1 Accessed on African Union Website, reported on 23May 2024 <https://au.int>, accessed on November,2024

organizations should provide guidance on legislative and policy measures to promote, protect and support children's safe engagement in the digital environment<sup>2</sup>.

### **1.1 Forms of Cyberbullying**

Cyberbullying may involve posting hurtful, abusive or threatening words, nonconsensual distribution of intimate image, derogatory comments, fake information, or threats to harm the victim. It may also include the use of photos or videos intended to embarrass the victim.

Children may be targeted by bullies because of their vulnerability. Sexual abusive materials which are used to solicit or display pornography contents, may be sent through computer systems for the purpose of soliciting a child to engage in sexual activities<sup>3</sup>.

Other forms of cyberbullying include online grooming whereby adults build a relationship with a child online to facilitate online sexual activities, and the use of deepfakes which involves impersonating someone and sending messages to others on their behalf or through fake account to manipulate image, videos or text to blackmail victim to engage in sexual harassment.

### **1.2 Why Children are more Vulnerable to Cyberbullying**

Children are more exposed to risks. With online contents children are more susceptible than adults due to their immature brains, limited experience and lack of knowledge, which makes them prime targets for cyberbullying. Children may be involved in endangering behaviors like sharing personal pictures, downloading harmful contents, chatting with strangers or sharing pornographic materials.

Unaware of privacy rights often oversharing personal information may open doors for criminals to mentally exploit them. In Tanzania, the report prepared by the Legal and Human Rights Centre (LHRC) revealed that:

1. 3% of surveyed children are sharing naked pictures or videos of themselves online.

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2 General comment No.25(2021) on Children's rights in relation to the digital environment

3 Section 13 Child Protection Laws (Miscellaneous Amendment) Bill,2024

2. 25% encountered sexual images or videos online unexpectedly at least once in the past year, and 17% actively searched for such material.
3. 3% were offered money or gifts to meet in person for sexual activities.
4. 2% were offered money or gifts in exchange for sexual images or videos.
5. 2% were threatened or blackmailed into engaging in sexual activities through social media platforms such as Facebook and TikTok, as well as online games.

The report discloses further that more than 80 percent of girls are rape victims, while boys represent 80 percent of sodomy victims<sup>4</sup>. Due to their vulnerability, protection of children online requires the involvement of parents, policy makers and educators as children need to be aware of risks. Legislation and enforcement are also crucial in making sure perpetrators are held accountable.

### **1.3 Impact of Cyberbullying on Children**

A child who is a victim of cyberbullying may suffer different forms of psychological and emotional trauma such as depression, anxiety, and low self-esteem which often involve suicidal thoughts and emotional swings. A child victim may also suffer from frequent headaches, sleep disturbance, a weakened immune system, poor concentration and loss of interests in schools which may negatively impact his/her education and child welfare.

The only leeway therefore is to curb the negative impacts that comes with the use of technology through online safety education, establishing a strong legal system to fight against cybercrimes and creating awareness on the laws and ensure compliance on users, especially children.

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4 Legal and Human Rights Centre (LHRC) “Disrupting Harm in Tanzania report” [www.thechanzo.com](http://www.thechanzo.com) accessed on 9 March, 2025

## 2.0 Legal and Institutional Framework on Cyberbullying Prevention

To ensure online activities are protected against risks and potential harm and children are empowered to benefit from online opportunities, several conventions and specific laws have been put in place.

### 2.1 International Legal Framework

International efforts to secure children's digital rights focus on ensuring children's rights are respected, guaranteed and protected from abuse, manipulation, and dangers of harmful content. This therefore, enables them to explore the digital space and fulfil their potentials through accessing quality digital education, without endangering their rights to privacy. Some of these conventions have been highlighted hereunder.

#### (1) Convention on the Rights of the Child<sup>5</sup>

This is the most universally accepted human rights instrument, outlining child fundamental rights. Furthermore, it recognizes that children as vulnerable group, should benefit from special protection mechanism while enjoying, among other things, their rights to get information from internet and other sources. For the purposes of guaranteeing and promoting these rights, the Convention recognizes parent's primary responsibilities to promote and protect children's rights.

#### (2) The African Charter on the rights and the welfare of the child<sup>6</sup>

This instrument outlines the rights of the child and sets out principles and norms which are important for the children physical and mental development. The charter urges parties to ensure children enjoy special protection measures due to their vulnerability. It further prohibits sexual exploitations and abuse against children such as children prostitution, pornographic activities or allowing children to engage in any sexual activity.<sup>7</sup> Taking into account the children's vulnerability, the convention also provide for parent's supervisory rights and the requirement to observe the best interests of the child. Furthermore, the

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5 The United Nations, Convention on the rights of the Child

6 Article 27, African Charter on the rights and welfare of the child,1990

7 Ibid

Convention ensures a protection of children's rights to privacy.<sup>8</sup>

### **(3) The African Union Convention on Cyber and Personal Data Protection<sup>9</sup>**

This Convention sets out cyber security structure aimed at harmonizing legislation in the area of cyber security and personal data protection. The convention provides the need for appropriate criminal legislation measures for the promotion and combating cyber-crime, with the aim of strengthening existing legislation on information and communication technologies. It also recommends state parties to adopt and nationalize measures to combat cybercrimes. Although, the United Republic of Tanzania is yet to ratify the convention, it has already enacted the Personal Data Protection Act<sup>10</sup> to regulate matters relating to data protection and address cyberbullying.

As among its notable child protection features, the Convention defines child pornography<sup>11</sup> to mean any visual depiction, including any photograph, film, video, image, whether made or produced by electronic, mechanical, or other means, of sexually explicit, where:

- i. The production of such visual depiction involves a minor;
- ii. Such visual depiction is a digital image, computer image, or computer-generated image where a minor is engaging in sexually explicit conduct or when images of their sexual organs are produced or used for primarily sexual purposes and exploited with or without the child's knowledge.
- iii. Such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexually explicit conduct.

## **2.2 National Law in Addressing Cyber bullying**

As a way of recognizing the need to domesticate international conventions in addressing online abuse, Tanzania enacted various laws

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8 Ibid

9 African Union Convention on cyber security and personal data protection,2014

10 Person Data Protection Acts,2022

11 Ibid

to ensure the rights, welfare and security of children is guaranteed in line with the constitution<sup>12</sup>. Some of the relevant legislations have been highlighted herein below.

### **2.2.1 The law of the child act** <sup>13</sup>

The Law of the Child Act, incorporates international standards to provide children's rights. It recognizes fundamental human rights of children and provides mechanism for their protection. In addition, this law provides for parental responsibilities in children upbringing aiming at protecting and maintain welfare of the child. Apart from that, it establishes the fundamental principle of the best interest of the child which serve as guiding principles on all matters concerning children by prioritizing wellbeing of the child and sets out penalties for child rights violators.

### **2.2.2 Cybercrimes Act** <sup>14</sup>

The cybercrimes Act was enacted as way to ensure online safety. The act criminalizes offences relating to computer system and information communication technology including those impacting children. In general, this law prohibits sharing, publication of contents with pornographic contents through distribution, transmission, delivery, exchange, sell or making it available to other people or to children, all with a view of improving children online safety.

Section 23 of Cybercrime Act stands a more dedicated provision against cyberbullying.<sup>15</sup> In verbatim, the said provision states as follows:

*“No person shall initiate or send any electronic communications using a computer system to another person with intent to coerce, intimidate, harass, or cause emotional distress.”*

Further, the law also prohibits and makes an offence the use of computer system in production or making available or distribute or procure or compel or invite or allow a child to view pornography or child sexual

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12 The Constitution of United Republic of Tanzania,1977

13 The law of the Child Act, (CAP.13 RE 2019)

14 The Cyber Crime Act,2015

15 Section 23(1) The cybercrime Act,2015

abuse materials or child sexual exploitation materials.<sup>16</sup>

Based on the Act:

*“a person shall not, through computer system-*

- (a) produce child sexual abuse material or child sexual exploitation material;*
  - (b) offer or make available child sexual abuse material or child sexual exploitation material;*
  - (c) distribute or transmit sexual child abuse material or child sexual exploitation material;*
  - (d) procure any child sexual abuse material or child sexual exploitation material oneself or for another person;*
  - (e) compel, invite or allow a child to view pornography, child sexual abuse material or child sexual exploitation material; (f) knowingly possess sexual child abuse material or child sexual exploitation material in computer a data storage medium.*
- (2) A person shall not propose, groom or solicit, through computer system, to meet a child, followed by material acts leading to such meeting for the purpose of-*
- (a) engaging in sexual acts with a child by any means including:*
    - i. use of coercion, inducement, force or threat;*
    - ii. abuse of a recognized position of trust authority;*
    - iii. influence over the child*
    - iv. taking advantage of a particularly vulnerable situation of the child;*
    - v. taking advantage of mental or physical disability or a*

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16 Section 5, The Child Protection Laws (Miscellaneous Amendments) Act,2024

*situation of dependency;*

*or*

*(b) recruiting, inducing, coercing, or causing a child to participate in pornographic performances or profiting from or otherwise exploiting a child for such purposes.”*

An amendment to cybercrimes Act through a bill<sup>17</sup> expanded the definition of the offence child pornography by replacing the existing definition with two broader terms pornography and child sexual abuse material or child sexual exploitation material, to effectively capture the sharing of all types of sexually abusive content. To include any representation, through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person primarily for sexual purposes<sup>18</sup>.

Further the amendment introduced offence of unlawfully publishing content related to child pornography, publication of false information or content by imposing duties on providers, banning indecent material and requiring content filtering Laws.<sup>19</sup>

The law provides penal deterrence penalties and compensation for the victims aimed at punishing offenders hence discourage general public from committing cybercrimes.

“(3) A person who contravenes this section commits an offence and on conviction shall be liable to a fine of not less than fifty million shillings or three times the value of undue advantage received, whichever is greater, or to imprisonment for a term of not less than seven years or to both.

(4) A person who is convicted of an offence under this section may, in addition to any other punishment, be ordered to compensate the victim of the offence”<sup>20</sup>

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17 The Child Protections Laws (Miscellaneous Amendments) Bill,2024

18 The Child Protections Laws (Miscellaneous Amendments) Bill,2024

19 Child Protection Laws (Miscellaneous Amendment) Bill,2024

20 Section 5, Ibid

## The personal data protection Act<sup>21</sup>

The protection of personal information is the foundation of online safety; personal data may be used in unlawful manner to inflict harm to another person, Personal Data Protection Act<sup>22</sup> were enacted to provides effective framework for data protection, The Act outlines how to safely handle and process personal data through collection, processing, storage, share and use of personal data.

The act provides principles for processing personal data that data must be processed lawfully, fairly in transparency manner by identifying the minimum amount of personal data required and organization who collect personal data must take responsibility to protect data to ensure its security.

The law and its regulation provide specific provision for children's personal data protection recognizing their vulnerability requiring parental consent <sup>23</sup>provide that if data subject is a child, then data controller or processor shall ensure parents or guardian informed on the risks of processing and protection in place to ensure children rights to privacy and personal security as children personal information shared online can be collected and misused by malicious actors without their knowledge or consent.

## Electronics and Postal Communications Act <sup>24</sup>

Provides comprehensive legal framework for regulating electronic communications service providers and postal communications service providers, the law establishes licensing for providers of online content, setting rules for identification and registration of Sim card.

Trough amendment <sup>25</sup>the law provides new application requirement and obligation for internet service provider and social media platform

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21 The Personal Data Protection Act (CAP 44,2023)

22 Ibid

23 The Personal Data Protection (Personal Data Collection and Processing Regulations,2023)

24 The Ecteronic and postal communications Act, (CAP 306 R.E 2022)

25 The electronical postal communications (online content) Amendment Regulations, 2025

owners to regulate online content and expanded categories of prohibited content to prohibit any unethical, fabricated and artificial intelligent generated content.

It provides offence relating to electronics communication and set out penalties in addressing unauthorized content. The legislation provides offences and penalties in relation to electronic and postal communications; the law prohibits transmission by posting anything indecent.

The Tanzania Communication Regulatory Authority<sup>26</sup> was established to regulate the postal, electronic communication and broadcasting industries. The law provides Protection of child online when using social networks by regulating content to block access to pornography and exploitative material enforcing compliance through penalties mandating licensees to safeguard children from harmful content like pornography and educating parents and children on safe internet use, protect personal information. Established procedures for reporting harmful content and online abuse, use of parental control and encourage children to report problems to parents and authority.

The Tanzania Communication Regulatory Authority has child protection initiatives, by working with the consumer Consultative council <sup>27</sup> focuses in securing good digital environment, conduct campaign to educate children and parents online safety, privacy and responsible social media use. enforcing regulations against online dangers Established to safeguard rights and interest of consumers of services in the communication sectors, broadcasting and postal services, conduct various awareness campaign aiming equipping Children with proper knowledge on responsible use of internet and how to avoid challenges associated with online activity including cyberbullying <sup>28</sup>

### **3.0 The underlying Principles of Best Interest of the Child in Addressing Cyberbullying**

Cyberbullying potentially impacts children's physical and mental

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26 Tanzania Communications Regulatory Authority Act, no 12 of 2003

27 Section 37, Tanzania Communications Regulatory Authority Act No 12 of 2003

28 <https://www.tcra-ccc.go.tz/pages/online-child-protection>

development, leading to increased anxiety, depression, low self-esteem and isolation. The bullying can quickly reach a vast audience and remain online indefinitely, which has the effect of prolonging trauma especially for the vulnerable children. hence Protecting children against cyberbullying should be prioritized by all stakeholders involved in the protection taking into account what is the best for child protection.

Protecting children by prioritizing best interest of children should be taken into account to ensure their digital rights and safety, there is no unified principle that ensures the best interest of child is a primary consideration in decision and all action concerning children while children voices are absent about what is their best interests in a digital world.

This fundamental interconnected principles from the UN Convention on the rights of the child's<sup>29</sup> acknowledges children's inherent vulnerability and need for the special support and the government should act in the best interest of the child by prioritizing a child's well-being in all decisions affecting them, the convention highlights the importance of balancing actions and measures the rights to protection, participation and privacy.

The principle of the best interest of the child is widely recognized in decision making as it requires wellbeing and rights of the child to be taken into consideration. Further when making decisions either in courts, parliament or in local councils they must consider what best for child, the principle should guide policy, laws and regulation under, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

The convention of the rights of the child extends the principle of the best interest of child to cover all decisions affecting the child hence the principle of the best interest of child shall be a primary consideration in all action concerning children.

### **3.1 The principle of best interest of child in Tanzania**

With a view to give effect to International and regional convention, the law of child was enacted and incorporates the principle of best

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29 UN Convention on the Rights of the Child (1989)

interest of child to promote and protect rights of the child<sup>30</sup> The law explains clearly that “best interest of the child shall be the primary consideration in all actions concerning children whether undertaken by public or private social institution, courts or administrative bodies.” hence when considering children rights to privacy, confidentiality, and access to information the best interest of child should be basic concern to ensure children’s rights are protected. The same in digital sphere when addressing cybersecurity for children their best interest should be taken into account.

The law of child does not establish what constitutes best interest of child, court lay down some rules to be considered when determining best interest of the child, in the case of *Alice Mbekenga versus Respectious P Mtumbala*.<sup>31</sup> Courts laid down principles to be taken into account when considering the best interest of the child, one should look at children’s physical, emotional, and educational needs. This principle is the key concept on the protection of children’s rights. Hence, whenever policies, laws, and decisions are made, (which directly or indirectly affect children’s welfare), one should primarily consider the best interest of the child.

### **3.2 The principle of Best Interest of child and its Applicability in decision making**

As discussed above the principle of best interest shall be the primary consideration in all actions, including decisions affecting child. With the main goals to ensure children safety in an online context, in resolving disputes where child involved the principle of best interest of child should be taken into consideration, cases discussed below, shows the need to strengthen capacities to judiciary officers to adjudicate cyber related cases while incorporating the principle of best interest of child to avoid offenders getting off on technicalities,

In the case of *NSK oil and Gas Limited versus M/S Grace Mhango Filing Station*<sup>32</sup> it was ruled that an era of technicality in adjudication in lieu of substantive justice was buried hence one should consider

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30 The Law of the Child (Cap 13 RE 2019)

31 Civil Appeal 68 of 2020, High Court of Tanzania, At Dar es Salaam <http://tanzilii.org>

32 Civil Revision no 1/2021 High court at Kigoma <http://tanzilii.org>

substantive justice, In the case of *Petro Amsi versus the DPP*<sup>33</sup> The accused was charged and convicted with the offence of grave sexual abuse, on appeal it was alleged by the appellant advocate, that the trial court did not write a judgement as per Section 312(4) of the penal code, The appellate judge admits that the judgement under review was short of concrete analysis but the error is not fatal as the first appellate court has duty to reevaluate evidence on records and if necessary, reach a conclusion different from that of the trial court. The trial judge expunges the trial courts conclusion that the victim could not remember everything due to her age as he finds the trial magistrate was biased having made that statement and continued to uphold the conviction and sentence.

From the case the appellate Judge consider substantive justice and accused were held accountable despite trial Magistrate fault which could not lead miscarriage of justice.

But there are some reported cases where criminals' escapes liability on a technicality,

In the case of *Omary Nzobalakila Versus the Republic*<sup>34</sup> Accused was charged with the offence of cyberbullying and was convicted based on his own plea of guilty. However, on appeal, he escaped liability due to the faulty procedure followed by the magistrate. It was found that the magistrate did not adhere to the proper procedures outlined in the Criminal Procedure Act regarding plea-taking.

In the case of *Mohamed Hussein@ Muddy Best versus The Republic*<sup>35</sup>, accused was charged with the offence of cyberbullying. He was accused of sending naked photograph via a computer system with the intent to cause emotional distress. He was therefore, convicted by the trial court. However, its appeal was allowed due to a procedural error, a key witness was examined without taking the required oath or affirmation, which was against the established legal procedures and the accused was released from prison.

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33 Criminal Appeal no 109/2023, The High Court of Tanzania.in Sub Registry, Manyara Above

34 Criminal Appeal no 56/2022, The High Court of Tanzania.at Morogoro

35 Criminal Appeal No 58/2022, At Dar es salaam. <http://tanzilii.org>

### 3.3 Institutional Framework

There are several institutions created to address children's protection against online harm.

The main enforcement institution in Tanzania is the Police force, which has a Cybercrime Unit with specialized personnel for cyber investigation. Hence, the victim of cyberbullying may report to the police and criminal prosecution may be taken against a person who commits an offence.

The National Prosecutions Services coordinate investigation and prosecution of cybercrimes and related offences. Responsible for reviews of proposed policies, law, regulations and laid down standard operating on the management of cybercrimes.

The Tanzania Communications Regulatory Authority controls and regulates communication networks. It also ensures online harm reduction by educating general public about online safety and the institution is responsible for handling complaint hence victim of cyberbullying may report online bullying.

The personal data protection Act<sup>36</sup> establish independent commission, with the function of receiving, investigating and dealing with complaints about alleged violations on personal data protection. The commission may hear complaint from any person who considers his privacy has been infringed, recently the commission issues its decision on protection of children's data where it was ruled that children's image qualify as sensitive personal data and their commercial use without parental consent amounts to unlawfully processing<sup>37</sup>.

The Judiciary of Tanzania is responsible for interpreting and applying the law, both the penal code<sup>38</sup> and Cybercrimes Act<sup>39</sup> empower courts to hear and determine cyber related cases, law provide deterrence sentence to prevent general public from committing cybercrime.

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36 The Personal Data Protection Act chapter 44,2023

37 Complaint No PDPC/CMP/002/2025

38 Section 7, Penal code (Cap 16 RE 2019)

39 Section 30 (1) The cybercrime Act,2015

## **4.0 Conclusion and Recommendations**

### **4.1 Conclusion**

Digital technology has, on one side; a positive impact on children's development; on the other side, however; excessive or improper use of the same has negative impact. Therefore, children should be guided and protected by being equipped with knowledge and skills to navigate safely on technological advancement, in turn this will minimize cyberbullying behavior.

Based on the above discussion, it is noted that there is a lot to be done in addressing cyberbullying. Moreover, emphasis should be placed on education to highlight the dangers associated with cyberbullying among children, this will finally prevent cyberbullying as illiteracy of technology are among the causes of cyberbullying. there is a need to promote digital literacy and use of technology for development.

As the article examine legal framework on cyberbullying, creating legal awareness will help to prevents child bullying by access to justice and will promote consciousness report mechanism is a cornerstone towards preventing, laws contain provision for prohibition penalties children, parents will be better equipped to protect children interacting with digital technology.

There is a need to enhance skills of judiciary officer's trough training do due to rapid technological advancement and the complexities of cybercrimes, for child protection adjudicating while consider best interest of children. The government should therefore strengthen social institutional capacities and counselling centers as most of the victims of cyber bullying are affected psychologically.

### **4.2 Recommendations**

As mentioned earlier, digital technology has both positive and negative impacts on children's wellbeing. Abstaining from technology is not a solution in the modern technological world where technology is a powerful tool for transforming learning outcomes, the online risks necessitate relevant Child protection mechanism to keep them safe online without being left behind by technology.

Child awareness on the safe use of digital technology, risks and opportunities associated with, children should understand the harm caused by cyber bullying and its legal consequences. will allow them to make independent and informed decisions. as noted, children deserve to be less aware of risks and their rights due to their vulnerability need to be equipped with proper knowledge on the responsible use of digital technology and how to avoid challenges. It is therefore important to sensitize the public through television, radio, brochures on positive and negative impacts of cyberbullying on children's development.

Educating children on the relevant institution in which complaint and disputes in relation to cyberbullying are initiated and reported, prosecution and punishing offenders. This will ensure that crimes will not go unreported and offenders held accountable, Children should always inform parents, teachers if they are targeted or witness others being bullied, other online platforms provide rooms for reporting, activities considered as crime should be reported to law enforcement.

The Law of Child Act place parental duty and responsibility in protecting the rights of child <sup>40</sup> It is the responsibility of parents to provide good guidance and protect children from discrimination, abuse, and violence, ensure children's safety and well-being are protected while observing the rights to privacy and confidentiality. Parental control should be implemented to oversee and manage children's digital technology usage by restricting what their children are doing and children should be prohibited from using internet for bullying purposes. Sometimes, it is difficult to supervise children due to lack of parental skills on digital technology on the part of parents, hence there should be expressly guidelines for parental control, shielding contents deemed inappropriate for children.

Capacity building and professional advancement on cybercrimes to all actors on investigation, prosecution and adjudication cyber related crimes, due to complexity they need necessary skills and mechanisms to effectively detect, manage, and adjudicate cyber-related incidents, training should cover the latest developments in cyber-related offences, investigative techniques, the use of technology in detect abuser to be held legal accountable. Continuous education ensures that professionals stay

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40 Section 9. The law of The Child Act (CAP.13 R.E 2019)

updated and equipped to effectively handle and address cybercrimes in an evolving digital landscape.

Create environment for international cooperation, exchange of information sharing good practice and experience, cybercrimes is a global concern and should be addressed globally, it is necessary for Countries to ratified various treaties and convention for cyber security, Tanzania is yet to ratify African Union Convention on cyber security and personal data protection.

Bullying affect child emotionally and psychological hence children victims require further avenues for redress other than prosecution such as access to recovery centers, that offer free psychological support to address the psychological harm caused. Counsellors should be trained skills to observe privacy and confidentiality of the victims.



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