

Gender Equality and Labour Law: Protecting Working Mothers, Girls and Female Persons with Disabilities in Tanzania

*Tulia Ackson**

Abstract

Labour law in Tanzania, deriving their legitimacy from the Constitution of the United Republic of Tanzania 1977 which prohibits gender based discrimination and guarantees equality between men and women, provides for well lettered women's rights. These rights include the right to paid maternity leave, the right to breast feeding break, the right to flexible working hours, and the right not to work in hazardous environment when expecting. As one would wish these rights to be availed to all female workers in Tanzania, these rights are inaccessible to most female workers in the unregulated informal establishments, currently accounting for more than 70 per cent of all women employed. Unsurprisingly, this precariousness is caused by, among other things, the interplay between discriminatory laws such as customary laws, traditions and customs subjecting female to male domination leading to husbands' reluctance to allow their wives or girl children to advance their careers and the ultimate, competing domestic responsibilities. Since access to the protected formal sector, currently accommodating female at less than 30 per cent of all workers, is tied to one's education and mastery skills, women have been on the periphery. This article argues that in order to realize the Millennium Development Goal Number three geared to promoting gender equality and empowering women by elimination of gender disparity at all levels of education, and realize the Tanzania Vision 2025 which aims at reforming all social relations and processes perpetuating inequality and have a well-educated society, gender equality must be embraced and prioritized in all areas, including protection of women by labour law.

A. Introduction

The concept of gender has received considerable attention by different fields ranging from sociology, history, feminism, and law, to mention a few. It is widely accepted that gender refers to one's state of being male or female while equally many scholars have argued that gender refers to social and cultural constructs of what constitutes masculinities and femininities thereby aligning gender to social and cultural differences and not biological differences.¹ This article considers gender as a concept referring to social and cultural differentia-

* Senior Lecturer, University of Dar es Salaam School of Law. E-mail: tuliaj@gmail.com.

1 For a glimpse on the concept of gender, see *Griselda Pollock*, *Encounters in the Virtual Feminist Museum: Time, Space and the Archive*, London, 2007; *Elizabeth Wright*, *Lacan and Post Feminism*

tion of the roles of men and women in their different facets as people living with disabilities (PWD) and as children in a particular society, in this case, Tanzania. This stems from the disadvantageous position women have held in Tanzania and how gender inequality has disproportionately affected the girl child, more so for a disabled girl child.

On account of the foregoing, this article looks at how gender roles are protected by labour laws in Tanzania. Although in most cases the examples used in the article would refer to differences between men and women in the labour market, reference to children and PWD who are socially, and at times historically, placed in disadvantageous positions, is used in the context of women as mothers, children and as PWD. The labour related rights of women, girls and female PWD are analysed in the light of three things: First, Tanzania's international and domestic obligations to protect the vulnerable groups; secondly, realization of Tanzania's Vision 2025 (Vision 2025) and lastly, achievement of the Millennium Development Goal Numbers 1 and 3 (MGD Nos. 1 and 3) in Tanzania.

B. Gender Equality in Tanzania

Gender equality in Tanzania, as evidenced below, is guided by the Constitution of the United Republic of Tanzania of 1977 (Constitution), international and regional legal instruments, and national policies and laws. This means that all persons in Tanzania are equal and discrimination of any kind is prohibited, including discrimination on the ground of gender.

The Constitution, while committing the Government and all its agencies to provide equal opportunities to all citizens, men and women alike, guarantees the right to equality and prohibits all forms of discrimination.² Related to labour is the right to work, which is categorically guaranteed and protected by the Constitution in that every person has the right to work, albeit under the fundamental objectives and directive principles of state policy, again, irrespective of their gender.³ The Constitution also guarantees and protects the right of every person, without discrimination of any kind, including gender, to remuneration

(Postmodern Encounters), United Kingdom, 1996; *Elizabeth Grosz*, Jacques Lacan: A Feminist Introduction, London 1990; *Joseph F. Healey*, Race, Ethnicity, Gender and Class: the Sociology of Group Conflict and Change, California, third edition, 2003; *Mark J. Blechner*, Sex Changes: Transformations in Society and Psychoanalysis, New York and London, 2009; *Mark J. Blechner*, The shaping of psychoanalytic theory and practice by cultural and personal biases about sexuality, in *T. Domenici and R. Lesser* (eds.), *Disorienting Sexuality*, New York, 1995, pp. 265-288; *Mica Howe & Sarah Appleton Aguiar* (eds.), *He said, She Says...: An RSVP to the Male Text*, New Jersey, 2001; *Nina Cornietz*, *Dangerous Women, Deadly Words*, California, 1999; *Margret Grebowicz*, *Gender After Lyotard*, New York, 2007; *Warren. Farrell and James Sterba*, *Does Feminism Discriminate Against Men*, New York, 2008; and *Maggie Humm*, *Modernist Women and Visual Cultures: Virginia Woolf, Vanessa Bell, Photography, and Cinema*, New Jersey, 2003.

2 See Articles 9(h), 9(g), 12 and 13 of the Constitution. See also *United Republic of Tanzania, A National Gender Diagnostic Study in Tanzania*, Final Report, Ministry of Community Development, Gender and Children, 2012, p. 17.

3 See Article 22 of the Constitution.

commensurate with his/her work.⁴ This means that all persons in Tanzania are entitled to equal remuneration for work of equal value. The question is, do all the people in Tanzania, irrespective of their gender, enjoy these labour related rights and protections guaranteed by the Constitution? This is one of the questions this article addresses.

The constitutional prohibition of discrimination is grounded on Tanzania's zeal to protect her people and also in response to obligations emanating from the commitments made at international and regional levels to protect women, PWD and children, as vulnerable groups. On the basis of Article 63(3)(d) and (e) Tanzania is party to a number of international and regional legal instruments including those with a bearing on gender equality and protection of vulnerable groups. Examples of gender related legal instruments ratified by Tanzania include Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979, Convention on the Rights of the Child (CRC) of 1989, International Convention on Civil and Political Rights (ICCPR) of 1976, International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976, Convention on the Rights of Persons with Disabilities (CRPD) of 2007, Worst Forms of Child Labour Convention of 1999, Minimum Age Convention of 1973, African Charter on Human and Peoples Rights (ACHPR) of 1981 and its Additional Protocol to the African Charter on Human Rights on the Rights of Women in Africa of 2003, SADC Protocol on Gender Equality of 2008 and the upcoming East African Community Protocol on Gender Equality.

Tanzania has also shown its commitment to gender equality through adoption of the 1995 Beijing Declaration and Platform of Action, SADC Gender Equality Strategy of 1997 and the Millennium Development Declaration of 1999 culminating into pledging to achieve the Millennium Development Goals particularly MDG Number 3 which aims at promoting gender equality and empowering women. Ratification and at times domestication of these regional and international legal instruments indicate that Tanzania is committed to promote gender equality in all spheres of life of people in the Country, including the labour market. The issue is whether these commitments by Tanzania to protect women, children and PWD are reflected in the labour laws.

Gender equality in Tanzania is equally promoted through various policies and laws. Policies related to gender equality in the labour market include the National Strategy for Gender Equality of 2005 (NSGE) and the National Strategy for Growth and Reduction of Poverty 2005-2010 (NSGRP I) and National Strategy for Growth and Reduction of Poverty 2010-2015 (NSGRP II). These policies essentially strategize how Tanzania's Vision 2025, MDGs, and other international, regional and national commitments will be realised.

Specifying gender equality in the labour market, the NSGE aims at eliminating all forms of discrimination against women at workplace and provide conducive environment for promoting equal opportunities in accessing employment.⁵ Recognising that education promotes access to paid employment for men and women, NSGE aims at ensuring that

⁴ See Article 23 of the Constitution.

⁵ *United Republic of Tanzania*, National Strategy for Gender Equality of 2005, Dar es Salaam, p. 9.

boys and girls have equal access to education and increasing enrolment rate and retention of girls in the institutions of higher learning.⁶ This aim takes into account the fact that “[d]espite the provision in the Constitution that provide equal opportunities for both female and male citizens in employment, women still find it difficult to compete with men due to some women’s low academic qualifications and stereotyped male domination.”⁷

On stereotype mind-set, the NSGE aims at ensuring that employers recognize the value of triple roles of women, thus reproductive, productive and executive roles through awareness creation to promote gender equality.⁸ The NSGE further recognizes the importance of training in skills development and acknowledges that most vocational training institutions were designed and established to cater for men and boys thereby making these institutions inaccessible for women and girls, which affects their skills development and employability.⁹ On this the NSGE aims at enhancing training opportunities for women so as to improve their ability to effectively participate in socio-economic development, which includes employability.¹⁰

Gender equality in Tanzania also prominently features in the NSGRP I and NSGRP II. Under the NSGRP I the Government aimed at, among other things, improving the quality of life and social wellbeing of vulnerable groups in the society and reduce gender inequalities in education.¹¹ Set in line with these goals, NSGRP was to address discriminatory laws, customs and practices retarding employment of vulnerable groups, among other things; reduce gender disparities in enrolment at secondary and tertiary levels by ensuring equitable access to quality education; eliminate gender biases in favour of male in terms of accessing higher education thereby reducing the employability and prospective earnings of females; and to develop affirmative actions to create employment for women and PWD.¹² Having recorded relatively significant progress on the goals set under NSGRP I, the Government sets NSGRP II along similar lines, to enhance growth productivity through wealth creation for poverty reduction, a challenge which NSGRP I did not adequately address.¹³

NSGRP II acknowledges gender imbalance in tertiary education and that “[l]ow participation rate of women in tertiary education does deprive women in terms of level and nature

6 *United Republic of Tanzania*, note 5, pp. 9-10.

7 *United Republic of Tanzania*, note 5, p. 11.

8 *United Republic of Tanzania*, note 5, p. 11. See also *Tanzania Gender Networking Programme and SARSC-WIDSAA*, *Beyond Inequalities: Women in Tanzania*, Dar es Salaam and Harare, 1997, p. 8.

9 *United Republic of Tanzania*, note 5, p. 10.

10 *United Republic of Tanzania*, note 5, p. 10.

11 *United Republic of Tanzania*, National Strategy for Growth and Reduction of Poverty 2005, Dar es Salaam, 2005.

12 See *United Republic of Tanzania*, note 11, pp. 15, 36, 47 and 83.

13 See *United Republic of Tanzania*, National Strategy for Growth and Reduction of Poverty 2010, Ministry of Finance, 2010 and *United Republic of Tanzania*, MKUKUTA Annual Implementation Report 2010/11, Dar es Salaam, 2011.

of their participation in decision making processes.”¹⁴ Deprivation of higher education to women is directly linked to their limited access to employment opportunities which in turn, aggravates their poverty levels as “[g]rowth and reduction of income poverty are mainly linked through employment.”¹⁵ As such, in ensuring that MDG No. 1 on poverty eradication and No. 3 on gender equality and empowerment of women are realized in Tanzania, NSGRP II is set to, among other things, ensuring equitable access to quality education for all and enhancing sustainable and decent employment for all, including women and PWD.¹⁶ This goal would be realized through imparting skills needed by the labour market in women and PWD and ensuring effective enforcement of labour laws and observance of standards in the labour market.¹⁷ In ensuring that information on employment opportunities is availed to all people including women and PWD, NSGRP II aims at improving labour market information system.¹⁸ Additionally, in ensuring that women and PWD are not side-lined in employment opportunities, NSGRP II is geared at “[i]mplementing affirmative action in employment creation for youth, women, people with disabilities as well as other disadvantaged sections of the society.”¹⁹ In addition to the previous question on whether labour laws *de jure* protect women, children and PWD, one may ask, how effective is enforcement of labour laws and standards?

Irrespective of the efforts towards implementation of the commitments and goals set to realize the regional and international obligations, as admitted by the Ministry of Community Development, Gender and Children, “gender imbalances still exist in various aspects.”²⁰ These imbalances are caused by, among other things, discriminatory patriarchal customs and traditions which place women in subservient position and perpetuate gender inequalities.²¹ Efforts by the Government to redress the gender imbalances have been marred by insurmountable challenges such as empowerment of both women and men equally on the basis of merit; ensuring that macro and micro policies are gender sensitive; ensuring that the legal framework is gender sensitive; strengthening institutional mechanisms for gender development; ensuring sustainable partnerships and collaboration; ensuring that adequate resources are available to address gender inequalities; and inadequate capacities for coordination, monitoring, evaluation, advocacy and follow-up of implementation of policies, strategies, plans and programmes.²² Consideration of labour related policies and laws gives a

14 *United Republic of Tanzania*, note 13, p. 12.

15 *United Republic of Tanzania*, note 13, p. 56.

16 See *United Republic of Tanzania*, note 13, pp. 105 and 166.

17 *United Republic of Tanzania*, note 13, p. 56.

18 *United Republic of Tanzania*, note 13, p. 57.

19 *United Republic of Tanzania*, note 13, p. 57.

20 *United Republic of Tanzania*, note 5, p. 2.

21 *United Republic of Tanzania*, note 5, p. 2.

22 *United Republic of Tanzania*, note 5, p. 2.

sense of how challenging it is to protect women, girls and female PWD against discrimination in Tanzania.

C. Labour Law and the Protection of Vulnerable Groups

The National Employment Policy of 2008 (NEP) sets the floor for all employment relations in the labour market in Tanzania. In line with the MDGs and Vision 2025, among other things, NEP aims to “enhance gender equality, improve the access to employment opportunities by all, and generate more decent employment [for] poverty eradication.”²³ NEP considers women, youth and PWD as vulnerable groups in favour of who promotion of equal access to employment opportunities is pledged.²⁴ NEP acknowledges the difficult for PWD to access employment opportunities on account of their condition and pledges to undertake affirmative actions to enhance their employability.²⁵ In view of protecting children, NEP pledges effective elimination of child labour and the worst forms of child labour country-wide through compliance with labour laws.²⁶ As for women, NEP states that “due to their multiple roles as producers, reproducers and providers of family care, women are severely limited in preparing for, and accessing formal employment opportunities.”²⁷ In this respect NEP pledges to ensure fair and equal treatments for both men and women in accessing employment opportunities and to have in place affirmative action for women to access wage employment, among other things. NEP envisages actors in the labour market, particularly employers, to comply with labour laws and international and regional standards including those on non-discrimination and social protection of the employees.²⁸ The questions whether labour laws protect women, children and PWD, and whether the laws are effectively enforced for the cause are considered next.

1. *The Employment and Labour Relations Act of 2004*

The *Employment and Labour Relations Act* of 2004 (ELRA) aims at giving effect to all ratified conventions with a bearing on labour issues, particularly the International Labour Organisation’s (ILO) core conventions.²⁹ The core conventions are mainly concerned with

23 *United Republic of Tanzania*, National Employment Policy of 2008, Dar es Salaam, 2008, p. 3.

24 See *United Republic of Tanzania*, note 23, para 2.5.1(d) and pp. 11, 13 and 14.

25 See *United Republic of Tanzania*, note 23, para 3.15 and p. 28.

26 See *United Republic of Tanzania*, note 23, para 3.22 and p. 34.

27 See *United Republic of Tanzania*, note 23, para 3.24 and pp. 35-36.

28 See *United Republic of Tanzania*, note 23, paras 3.21 and 3.13 and pp. 33 and 35. See also the *National Employment Services Act* 1999, which prohibits discrimination through guaranteeing equal access to employment for men and women.

29 See section 3(g) of the ELRA. The core conventions are eight, namely, Forced Labour Convention, 1930 No. 29; Freedom of Association and Protection of the Right to Organize Convention, 1948 No. 87; Right to Organize and Collective Bargaining Convention, 1949 No. 98; Equal Remuneration Convention, 1951 No. 100; Abolition of Forced Labour Convention, 1957 No. 105; Dis-

provision of freedom of association and effective recognition of the right to collective bargaining, elimination of all forms of forced and compulsory labour, the effective abolition of child labour and elimination of discrimination in respect of employment and occupation.³⁰ Flowing from the foregoing, the ELRA prohibits child labour, forced labour, and discrimination in workplaces, guarantees freedom of association and the right to collective bargaining.

1. Protection of Children

Specifying gender related principles, the ELRA prohibits child labour in that no person is allowed to employ a child below the age of 14.³¹ Section 4 of the ELRA defines a child as a person under the age of 14 years except in case of employment in hazardous sectors where a child would mean a person under the age of 18. As such, children below 18 but above 14 years may be employed except in hazardous sectors such as mines, factories, ship (being employed as a crew), non-formal settings and agriculture.³² The only exception is where employment in hazardous establishments relates to training and therefore contributing to child's development.³³

Noteworthy, although children aged 14 may be employed there are conditions precedent: work for which a child is employed must be light work in the context that work should not be harmful to the child's health and development physically, mentally, spiritually, morally, socially and educational development including attendance to school, and participation in vocational orientation or training.³⁴ Irrespectively, it is strictly prohibited to employ children in slavery, trafficking, debt bondage, prostitution and pornography, and forced recruitment of children for military purposes as these are considered as worst forms of child labour.³⁵ The *Law of the Child Act of 2009* (LCA) cementing on the ELRA, prohibits exploitative labour which is defined to be labour exceeding six hours a day, inappropriate for his/her age or inadequately remunerated;³⁶ prohibits night work which is defined as work between twenty hours in the evening and six o'clock in the morning;³⁷ and pro-

crimination (Employment and Occupation) Convention, 1958 No. 111; Minimum Age Convention, 1973 No. 138; and the Worst Forms of Child Labour Convention, 1999 No. 182.

30 See *Clean Clothes Campaign*, What are ILO conventions and core labour standards?, <http://www.leanclothes.org/issues/faq/ilo> accessed on 31 October 2013.

31 See section 5(1) of ELRA.

32 See section 5(3) of the ELRA. See also section 82 of the LCA.

33 See section 5(5) of the ELRA. See also section 82(4) of the LCA. Children may also be involved in apprenticeship after completing their primary education as stated under sections 87, 88, 89, 90, 91, 92, and 93 of the LCA.

34 See section 5(2) and 5(4) of the ELRA. See also sections 12 and 77 of the LCA.

35 See Worst Forms of Child Labour Convention, 1999. See also section 83 of the LCA.

36 See section 78 of the LCA.

37 See section 20(1) and 20(2)(c) of the ELRA. See also 79 of the LCA.

hibits forced labour which is defined as bonded labour or any other work exacted from a person under the threat of a penalty.³⁸ Employment of children outside the stated limitations under the ELRA is an offence punishable by a fine not exceeding five million Tanzanian Shillings or imprisonment for one year or both.³⁹ Are children protected in the labour market as the law states?

Irrespective of labour laws protecting children against labour that interferes with their wellbeing, child labour is still rampant in Tanzania. It is argued that children, coupled with other forms of abuse such as physical violence and sexual exploitation, are economically exploited and subjected to work in hazardous establishment such as mining and agriculture as employees and not as trainees as the law requires.⁴⁰ These children are subjected to conditions which essentially interfere with their development in all aspects of life. For instance, the Legal and Human Rights Centre is reported to have rescued at least 61,000 children involved in mining in Geita Region, not to mention other mining areas such as Mererani in Arusha, Chunya in Mbeya, Mara and Shinyanga and tobacco farms in Tabora and Kigoma Regions.⁴¹ NEP also acknowledges the prevalence of child labour particularly in rural areas; it is stated that by 2006 “child labour involved 2,468,488 children, and out of that 591,846 were engaged in hazardous conditions. The worst forms of child labour are in four major areas: commercial agriculture; mining [and] quarrying; domestic services and commercial sex.”⁴² Admittedly, NEP states that “[t]his fundamentally deprives children of their rights to education and recreation in violation of international conventions” which essentially the ELRA and LCA pledged to fulfil.⁴³ As such, children in Tanzania are at the mercy of unscrupulous and exploitative employers who disregard the conditions set in the law. There are reasons for the plight of children:

Firstly, labour inspection is very limited in Tanzania on account of shortage of qualified labour inspectors and logistical support.⁴⁴ Although this is the case for other categories of workers working under deplorable working conditions, it is submitted that children are disproportionately disadvantaged as lack of inspection affects not only their working conditions but also their development in all spheres of life such as physical, mental and educational development which, as earlier indicated, the ELRA seeks to guarantee. As the ILO rightly notes, “[t]he number of labour inspectors has not increased past 70 in the last 4 years, and labour inspection density remains inadequate at 0.04 labour inspectors for every

38 See section 80 of the LCA.

39 See section 102(2) of the ELRA. See also section 13 of the LCA.

40 See *Legal and Human Rights Center*, Tanzania Human Rights Report 2012, Dar es Salaam, pp. 148, 168 and 169.

41 See *Legal and Human Rights Center*, note 40, pp. 148, 168 and 169.

42 See *United Republic of Tanzania*, note 23, para 3.22.

43 See *United Republic of Tanzania*, note 23, para 3.22.

44 See *United Republic of Tanzania*, note 23, para 3.22. See also *International Labour Office*, Decent Work in Tanzania: What do the Decent Work Indicators tell us? Tanzania, Undated, p. 10.

10,000 employed people (or 0.33 labour inspectors for every 10,000 paid employees).⁴⁵ Under such circumstances, one can safely state that the well lettered ELRA may not yield useful results in protecting children if the labour inspectorate is not strengthened and well-funded. Strengthening the labour inspectorate, it is submitted, should include training of the existing labour inspectors, recruiting more inspectors, and raising awareness among the employers on the requirement of the law if one wants to employ children.⁴⁶

Secondly, there are high levels of poverty at family level currently affecting about 12 million Tanzanians, to the extent that children are circumstantially forced to get employed, at times, in hazardous work just to assist the families to make ends meet.⁴⁷ Admittedly, the Government of Tanzania states that about 60 per cent of women live in absolute poverty.⁴⁸ More worrisome is where girls as young as 15 years are forced into marriage by their families because essentially there is nothing for them to do at home, unsurprisingly, supported by the *Law of Marriage Act* of 1971 which allows girl children of 15 years to get married. As the *Child Dignity Forum* notes, this is partly perpetuated by poverty at family level.⁴⁹ Upon marriage, the girl's family gets bride price which is expected to relieve the family, albeit limitedly, out of poverty.⁵⁰ For inadequate labour inspection services, children are not protected as the ELRA and LCA envisages.

Thirdly, delinquency and school drop outs due to pregnancy, marriage or truancy have caused some children, mostly from rural areas, to be employed in dangerous establishments

45 *International Labour Office*, note 44, p. 10.

46 See *International Labour Office*, note 44, p. 10.

47 See *World Bank*, Tanzania Likely to Grow at Seven Percent in 2014 While Targeted Safety Net Cash Transfers Could Help Reduce Extreme Poverty, <http://www.worldbank.org/en/news/press-release/2013/12/13/tanzania-likely-to-grow-at-seven-percent-in-2014-while-targeted-safety-net-cash-transfers-could-help-reduce-extreme-poverty>, accessed on 17 March 2015, where it is stated that the about 12 million Tanzanians are trapped in poverty to the extent that some poor families would keep their children out of school to help in economic activities like working on a farm.

48 See *Ministry of Gender and Community Development*, Economic Empowerment of Women and Poverty Eradication,

http://www.mcdgc.go.tz/index.php/issues/economic_empowerment_of_women_and_poverty_eradication, accessed on 26 March 2015. See also *UNDP, URT and ESRF*, Tanzania Human Development Report 2014, Economic Transformation for Human Development Concept Note, http://www.thdr.or.tz/docs/Concept_Note_Final.pdf, accessed on 17 March 2015, where it is noted that economic growth has not only failed to reduce poverty but also inequality.

49 See *Child Dignity Forum*, Preventing and Eliminating of Child, Early and Forced Marriage in Tanzania, Dar es Salaam, 2013.

50 *Children's Dignity Forum and Foundation for Women's Health Research and Development*, *Voices of Child Brides and Child Mothers in Tanzania*, <http://www.forwarduk.org.uk/resources/publications> accessed on 26 March 2015. See also *Mike Blanchfield*, Canada Quietly Pushing Tanzania On Kid's Rights, Forced Marriage, http://www.huffingtonpost.ca/2014/11/16/ottawa-child-marriages-tanzania_n_6167786.html, accessed on 26 March 2015, where it is noted that girl children are sold and forced into marriage for as low as USD 50.

as they leave the villages in search for better life.⁵¹ Additionally, even those who complete their primary education at age 13 or 14, find themselves with no option except to look for the available jobs such as domestic work, mining, and in agricultural sectors, which may not necessarily be safe for them. It is submitted that the law cannot operate as a panacea or in vacuum, in real terms, what would a standard seven pupil aged between 13 and 14 be doing at home after completing primary education? Since employment may be inevitable for them, it is advised that, as NEP states, the employers should be sensitized on the conditions of employing children legally.⁵² This is particularly important because labour inspection, as earlier indicated, is weak and children employees may be in dangerous establishments and the labour inspectorate may not know. It is better therefore to raise awareness of the employers so that they follow the law and assist in protecting the rights of children.

Fourthly, because employment of children is essentially illegal, most of the children are employed in sectors that rarely attract the attention of labour inspectors, not reachable to inspectors or simply uninspected establishments.⁵³ For instance, there is no inspection in people's households where children are employed as domestic workers, there is rare inspection in agricultural establishment in the rural areas for lack of resources and logistical support for the inspectors, and in mining areas where even if an inspector had found a child working, they may not necessarily find a child's employer. In this case, the child may state that they are working as own-account workers.

Children therefore, as one of the vulnerable groups which Tanzania has committed to protect through pledging to implement national, regional and international obligations is still susceptible to abuses in the labour market. In this case the Government has to increase the efforts in ensuring that the labour inspectorate is well resourced in terms of increasing the number of labour inspectors and funding for frequent inspection in the workplaces.

2. People with Disabilities

The ELRA prohibits direct or indirect discrimination in employment relations on the ground of one's disability.⁵⁴ Specifying discrimination of PWD, the *Persons with Disabilities Act* of 2010 (PWD Act) indicates that discrimination include using words and gestures which demean, scandalize or embarrass PWD; treating a PWD less favourably and failing to effect affirmative action.⁵⁵ The ELRA prohibits discrimination of any form at the workplace either in form of policy or practice and considers harassment based on disability as

51 See *IRIN, TANZANIA: Concern over school drop-out rate*, <http://www.irinnews.org/report/72628/tanzania-concern-over-school-drop-out-rate>, accessed on 26 March 2015. See also *Legal and Human Rights Center*, note 40, p. 117.

52 See *United Republic of Tanzania*, note 23, para 3.22.

53 The LCA requires labour inspectors to inspect all places where the children may be working, see sections 84, 85 and 86 of the LCA.

54 See section 7(4)(l) of the ELRA.

55 See sections 3, 5 and 6 of the PWD Act.

discrimination.⁵⁶ To ensure that there is equality of treatment at the workplaces, the ELRA requires the employers to promote equal opportunities in employment and prepare plans for promotion of equal opportunity and eliminate discrimination.⁵⁷ The ELRA, however, provides that affirmative action, distinction, exclusion or preference on account of inherent job requirements and promotion of employment of citizens form the only exceptions to discrimination.⁵⁸ As is the case with child labour, discrimination is an offence punishable by fine not more than five million Tanzanian Shillings.⁵⁹

Recognising education as an important enabling tool towards one's employment, the PWD Act provides for equal rights for all PWD of all ages and gender in respect of education, training and research. Children with disabilities have equal rights to access public or private schools and to attend ordinary schools except where special communication is required in which case such a child is entitled to appropriate support services.⁶⁰ In this case, learning institutions, including higher learning institutions have an obligation not to discriminate against PWD.⁶¹ Additionally, the Government is obliged to ensure that PWD above the age of sixteen are employable through provision of industrial rehabilitation courses.⁶²

Having guaranteed access to education for the disabled, the law guarantees equality of treatment in accessing employment opportunities and prohibits discrimination in advertising, recruitment, terms of employment, abolition of jobs or posts, remuneration, training and provision of facilities of employment.⁶³ The law requires employers to ensure that they take deliberate efforts to employ PWD including affirmative action in favour of qualified PWD and report the status of PWD at the workplace annually to the Commissioner for Social Welfare.⁶⁴ Section 31(1) of the PWD Act provides that “[e]very employer, public or private, shall, where there is a vacant post fit for a person with disability and the person applies for the vacancy, give the employment to the persons with disabilities who meet the minimum qualification for such an employment.”

56 See section 7(5) of the ELRA. See also section 7(6)(c) of the ELRA which defines policies and practices to mean “any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion transfer, demotion, termination of employment and disciplinary measures.”

57 See section 7(2) of the ELRA.

58 See section 7(6) of the ELRA.

59 See section 102(3) of the ELRA.

60 See section 27 of the PWD Act. See also section 4(1)(g) of the *Vocational Education and Training Act* Cap 82.

61 See section 28 of the PWD Act.

62 See section 30 of the PWD Act.

63 See section 33 of the PWD Act.

64 See sections 31 and 34 of the PWD Act.

Ensuring that the employer do comply with the requirement of employing PWD in their establishments, the law requires the employers of more than 20 employees to have at least three per cent of their workers are PWD.⁶⁵ Irrespectively, there are a number of exceptions which the employer may use not to comply with the stated requirements: failure to find a qualified, skilled or experienced PWD for the post, nature of work or circumstances of the workplace not being able to employ a PWD, and that the PWD's condition would not enable them to perform the work adequately as required.⁶⁶ The sanction on the employer for discriminating against a PWD is two million Tanzanian Shillings or imprisonment for a term of two years or both.⁶⁷

Further, the law protects PWD against unfair termination as termination of employment for reasons related to one's disability is considered by the ELRA as unfair.⁶⁸ Along similar lines section 32 of the PWD Act provides that "every employer shall endeavour to maintain employment of the persons with disabilities on his working place." The Government is obliged, among other things, to ensure job retention and return to work for any employee who has obtained disability in a workplace and reasonable changes is provided at the work place to accommodate PWD.⁶⁹

Having seen how *de jure* PWD are protected in terms of their access to education which is a decisive factor for employment, access to employment, and protection of their positions, one gets an impression that PWD in Tanzania are well protected. What is the practice? Do PWD have access to education and training opportunities? Do they have unfettered access to employment? Do they have secured employment positions?

One of the issues is whether PWD, particularly girls, in practice do have access to education opportunities. As a matter of law they do, but there are a number of limitations, particularly in rural areas where such children are hidden from the public, let alone being enrolled in a school.⁷⁰ These limitations include social stigma placed on disability by the society mainly caused by religious and cultural beliefs; negative parental attitudes towards disability and their "resistance to inclusive education for special groups"; poverty related barriers such as costs of uniforms, transport especially where schools are located kilometres away from home; insufficient budget allocations to acquire appropriate facilities for PWD, have qualified teachers and limited awareness on disability on the part of the teachers.⁷¹ In the words of ADD International,

65 See section 31(2) of the PWD Act.

66 See section 31(3) of the PWD Act.

67 See section 33(3) of the PWD Act.

68 See section 35(3)(b)(ii) of the ELRA.

69 See section 34(2) of the PWD Act.

70 See *DFID and UKaid, Guidance Note, A DFID practice paper: Education for children with disabilities – improving access and quality*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67664/edu-chi-disabil-guid-note.pdf accessed on 26 March 2015.

71 See *DFID and UKaid*, note 70.

“[f]ewer than 5% of disabled children in Tanzania go to school. Even if they can get there, sustaining that vital education isn't easy: inaccessible buildings, a lack of suitable teaching materials, and a shortage of teachers make for a very difficult learning environment. They especially need teachers who know sign language and understand Braille. All of this is compounded by the negative attitudes of education authorities and society in general.”⁷²

As such, although the law guarantees access to education and training, there are still challenges in realizing this right which in turn limits PWD's access to employment opportunities. More worrisome is the “common belief that once a child with a disability has completed his or her education, it will be difficult for him or her to find employment in adulthood.”⁷³ It is submitted that education and training for PWD should be commensurate to the needs of the labour market. This is based on the fact that “[a]s a consequence of lower rates of education for children with disabilities than for the general population of children ... and of inadequate or inappropriate education for children with disabilities even if they are provided access to education, people with disabilities may well be at a disadvantage in a competitive work environment... [I]t is of as much importance to ensure that children and youth with disabilities are provided with equal access and preparation in elementary school, high school, and universities in order to ensure an appropriate level of aptitude for employment as an adult.”⁷⁴ Evidently, in developing countries, which include Tanzania, 80 to 90 per cent of persons with disabilities of working age are unemployed.

Depending on one's education and skills, as earlier stated, the law guarantees access to employment of PWD. However, PWD face a number of challenges in accessing employment: Firstly, although the law establishes the quota system to ensure PWD access employment, it has a number of exceptions which may be used as excuses by employers to hedge themselves against employing PWD.⁷⁵ For instance, the employer who has less than three per cent PWD at the workplace may argue that they were unable to find qualified PWD for the posts available. How then, will the employer fulfil the requirements of the law of employing PWD if they can defend themselves on such flimsy reasons? It has been reported

72 See *ADD International*, School for All Project, <http://www.add.org.uk/inclusive-education> accessed on 26 March 2015.

73 *Heather Aldersey*, Disability and Work: The United Republic of Tanzania's Workplace Policies in the Persons with Disabilities Act of 2010, *Disability Studies Quarterly*, Vol. 32, No 3 (2012), p. 15. Also available at *Heather Aldersey*, Disability and Work: The United Republic of Tanzania's Workplace Policies in the Persons with Disabilities Act of 2010, <http://dsq-sds.org/article/view/3279/3111>, accessed on 24 March 2015.

74 *Heather Aldersey*, note 73, p. 19. See also *Kitila Mkumbo*, Do children with disabilities have equal access to education? A research report on accessibility to education for children with disabilities in Tanzanian schools, http://www.hakielimu.org/hakielimu/documents/document131Children_disabilities.pdf, accessed on 26 March 2015.

75 For more details on the quota system and its flaws see *Heather Aldersey*, note 73.

that even in cases where the PWD qualify and have abilities to perform the duties required by the job, the prospective employer would always pick the other able-bodied person.⁷⁶

Secondly, besides the accommodative exceptions, the law imposes a relatively low fine on the employer for non-compliance with the quota requirements. Where an employer is a body corporate, a fine of not less than two million but not exceeding twenty million shillings is imposed while for an employer who is a natural person a fine of not less than five hundred thousand shillings and not more than seven million is prescribed or imprisonment for a term not exceeding one year or both.⁷⁷ The employers find it less costly to pay the fine than to employ a PWD since there is negative perception of what involves making the workplace disabled-friendly.⁷⁸ This takes us to the third argument on why PWD are not significantly represented at workplaces:

Employment of PWD is surrounded by negative perceptions and prejudice to the extent that even when education and skills are abound, employers would employ able-bodied in preference to a disabled. It is argued that employers perceive that PWD are unable to work and therefore such an employee would be a burden to the employer for cashing income not worked for.⁷⁹ Reporting on the short-sightedness of some employers *Aldersey* notes that “some employers worried that if they were to hire people with disabilities, those employees would not be as productive in the workplace as employees without disabilities. They also worried that, unlike nondisabled employees, employees with disabilities would need on-going workplace supervision and support.”⁸⁰ There is also a belief among the employers that accommodating a PWD at the workplace adds to the cost of running business since the workplace would have to be adjusted to suit the needs of a PWD. In the words of *Aldersey*, “[e]mployers believed that an additional financial burden would occur when they employed people with disabilities because employers would have to make physical adjustments to buildings and equipment in order to accommodate employees with disabilities.”⁸¹ There is also a myth that “hiring people with disabilities [is] time consuming” as employers lack information on how and where they can find PWD and that even if they were to advertise the

76 *Heather Aldersey*, note 73, p. 16.

77 See section 62 of the PWD Act.

78 *Heather Aldersey*, note 73, p. 9.

79 For more details see *Heather Aldersey*, note 73, p. 12. See also *United Nations enable*, Employment of Persons with Disabilities, Fact Sheet, New York, <http://www.un.org/disabilities/documents/toolaction/employmentfs.pdf>, accessed on 20 March 2015, p. 6.

80 *Heather Aldersey*, note 73, p. 12. See also *D. Edwards, R. Rentschler, Y. Fujimoto, and H. Le*, Why has the rising economic tide failed to float the disability employment boat? A call to action: business, community, government and people power, *International Journal of Diversity in Organizations, Communities, and Nations*, 10(1), 2010, p. 123, as quoted in *Heather Aldersey*, note 73, p. 17, where it is stated “stereotypes and urban myths surrounding absenteeism, productivity rates, learning ability, workplace injury rates, and the added costs of employing someone with a disability create false barriers to employment.”

81 *Heather Aldersey*, note 73, p. 12.

posts, it would take long to get PWD to apply, let alone finding a suitably qualified person for the post.⁸²

On account of the foregoing, employment of PWD has been very low compounded with low enrolment rate in education institution. As such, there is a mismatch between the number of PWD in Tanzania, those who have education, and those employed in the formal sector, which is protected by labour laws. One study has concluded that:

*Notwithstanding the Act's provisions for workplace quotas and mandatory employer reporting procedures, there continues to be a disconnect between policy on paper (the Act) and practice on the street. People with disabilities are still clearly underrepresented in the national workforce... [out] of 126 companies with a combined total of 25,446 employees, only 186 (0.7%) of the employees were persons with disabilities ... Additionally, only seven companies had more than 3% employees with disabilities, in conformity with the Act's requirements.*⁸³

Irrespective of the fact that the ELRA protects a PWD who has secured employment from termination in that termination for reasons related to disability is unfair, PWD still find it difficult to keep their jobs. Aldersey summarises the PWD predicament:

*In sum, people with disabilities are not adequately represented in the workplace; they continue to experience what they believe to be discrimination in the workplace; and, a number of individuals not unjustifiably conclude that it is more difficult for a person with a disability to find and keep employment than it is for a person without a disability.*⁸⁴

This being the case, it is proposed that the employers should be sensitized on the potential of PWD performing in their jobs.⁸⁵ Raising awareness is believed to be a tool which will do away with the negative and unfounded stereotypes discussed earlier on PWD. It is also submitted that better understanding of PWD will assist the employers to consider employing PWD as a matter of law and public policy or social responsibility, and not something which can be dealt with by opting to pay relatively low fines. Awareness raising, however, should also be directed towards PWD so that they are aware of their rights and the possible avenue of enforcing such rights.⁸⁶ Additionally, it is proposed that apart from the law providing for quota system of employment of PWD, there should be incentives for employers who comply with law, as the idiom goes, carrot and stick, both rewards and punishments should go together.⁸⁷ The employers who employ PWD in compliance with the law may be rewarded,

82 Heather Aldersey, note 73, p. 12. See also *United Nations enable*, note 79, p. 7.

83 Heather Aldersey, note 73, p. 12.

84 Heather Aldersey, note 73, p. 16.

85 *United Nations enable*, note 79, p. 8.

86 Heather Aldersey, note 73, p. 20.

87 Heather Aldersey, note 73, p. 2.

for instance, through tax cuts/reliefs. Another example of incentives to the employers may be through special budget allocations in which case the re-organisation or provision of accommodative facilities at the workplaces may be funded by the Government.⁸⁸

Having looked at how the law protects women in vulnerable groups of children and PWD, let us consider the protection of women in their reproductive roles and as mothers at the workplace.

3. Protection of Working Mothers

The ELRA, which is applicable in all workplaces in Tanzania, protects women in the workplaces. This is through prohibition of discrimination, favourable working conditions and protection against unfair termination. As is the case with PWD, the ELRA prohibits discrimination on account of gender and pregnancy.⁸⁹ On account of section 7(9) of the ELRA, it is prohibited to discriminate a woman or pregnant woman during recruitment for a job, job classification and grading, remuneration, employment benefits and terms and conditions of employment, training and development, performance evaluation systems and termination of employment, among other things. Also, section 7(10) requires every employer to take positive steps to guarantee equal remuneration for men and women for work of equal value. This means the ELRA guarantees equality of treatment between all employees in the workplace irrespective of their gender or pregnancy status.

In ensuring that women in the workplace do not relinquish their reproductive roles, the law guarantees them flexibility in working conditions without affecting their security of tenure. To begin with flexible working hours, the law prohibits night work to a pregnant employee at least two months before the expected date of confinement or when she is medically certified unfit to perform night work.⁹⁰ Similarly, a woman who has a young child is not allowed to work at night and the employer is prohibited from permitting, let alone requesting, such a woman to work at night for two months after the date of birth, or even after two months if the mother is medically certified yet to be fit to perform night work or that the health of a baby does not permit the mother to work at night.⁹¹ This means that pregnant women and mothers are guaranteed flexibility in working hours thereby ensuring that women are not disadvantaged on account of their reproductive role.

Relatedly, in fulfilling their reproductive roles, women are guaranteed paid maternity leave and two hours breast feeding. As for maternity leave, a female employee is entitled to either 84 or 100 days paid maternity leave if one child is born or more than one child is

88 See *Jacqueline Kweka*, Employment of persons with disabilities in Dar es Salaam Tanzania: An assessment of the proportion of persons with disabilities in the workplace, http://www.radardevelopment.com/fileadmin/downloads/CCBRT_Disability_Employment_Survey.pdf, accessed on 2 November 2013. See also *Heather Aldersey*, note 73, p. 2.

89 See section 7(4)(i) and (j) of the ELRA.

90 See section 20(2)(a) of the ELRA.

91 See section 20(2)(b) of the ELRA.

born respectively, in a leave cycle of three years.⁹² In order to accommodate the fact that a pregnant woman may not be able to work until her confinement date, the ELRA flexibilises maternity leave in that it may be taken anytime from four weeks before delivery or even earlier if the it is medically certified to be necessary for the health of a mother or that of her unborn child.⁹³ Correspondingly, after the birth of a child, a female employee is protected from working within the first six weeks of birth of her child except where there is medical evidence that she is fit to work.⁹⁴

In encouraging working mothers to continue with their motherly roles, the law provides for a two hours paid breast feeding break during working hours.⁹⁵ This means that a female employee who decides to breast feed can continue to breast feed her baby for a maximum of two hours in a day and the employer is required to oblige to this requirement. A challenge, however, looms on breast feeding women in that commuting between the workplaces and their residences is commonly known to be impractical for most of the residents in major towns where there is heavy traffic jams particularly in Dar es Salaam.⁹⁶ As such, nursing mothers leave their workplaces two hours earlier before the end of the working hours instead of commuting.

Additionally, in protecting the health of mothers and their children, the employer is required to ensure that a mother does not perform work which is considered hazardous for her health or that of her child. The ELRA prohibits an employer from requiring or permitting a pregnant employee or one that is nursing her child to perform hazardous work endangering the health of the mother or the child.⁹⁷ In the event that a pregnant or nursing mother is employed to perform work which is hazardous, the ELRA obliges the employer to offer such an employee alternative employment.⁹⁸ Although one wishes that this obligation was absolute, the law couches this requirement in lesser compelling terms: “[w]here an employee performs work that is hazardous to her health or that of her child, her employer shall offer her suitable alternative employment, if practicable, on terms and conditions that are no less favourable than her terms and conditions.”⁹⁹ As such, the employer, using the “if prac-

92 See sections 30(1)(b)(ii) and 33(6) of the ELRA. However, an employee is entitled to an additional 84 days paid maternity leave within the leave cycle if the child dies within a year of birth, as per section 33(7) of the ELRA.

93 See section 33(2) of the ELRA.

94 See section 33(3) of the ELRA.

95 See section 33(10) of the ELRA.

96 *M. Tambwe*, Tanzania: Increase in Divorce Cases Attributed to Traffic Jams, Tanzania Daily News, 27 October 2013. See also *TANROADS*, President Kikwete Promises to Ease Congestion and Traffic Jams in Dar es Salaam, http://tanroads.org/index.php?option=com_content&view=article&id=195:president-kikwete-promises-to-ease-congestion-and-traffic-jams-in-dar-es-salaam&catid=39:tanroads-news (accessed on 2 November 2013) and *A. Robi*, Tanzania: Aviation Firm Decries City Traffic Jams, Tanzania Daily News, 24 October 2013.

97 See section 33(5) of the ELRA.

98 See section 33(9) of the ELRA.

99 See section 33(9) of the ELRA.

ticable” statement, may give the pregnant or nursing mother a position with lesser favourable terms and conditions on account that it is impractical to provide an alternative with equally favourable work conditions. Under such circumstances, one may not rule out the possibility of termination for the reasons of lack of suitable job for such a female employee.

Similarly, section 33(4) on resumption of work after maternity leave partly provides that “the employee may resume employment on the same terms and conditions of employment at the end of her maternity leave.” The use of “may resume” connotes that the employer can actually give the position of the employee on maternity leave to somebody else and when a mother returns to work, may be given different terms and conditions of employment. On this, it is advised that if female employees are to be protected in workplaces, the employers should be compelled to keep their terms and conditions similar to those they had prior to maternity leave.

Equally important is the fact that the ELRA protects female employees fulfilling their reproductive roles from termination. Section 37(3)(i) of the ELRA provides that termination for reasons related to pregnancy is unfair. On proof of unfairness of termination, the employer may be compelled to re-instate or re-engage the employee, or pay compensation of not less than twelve months’ remuneration.¹⁰⁰ The employer is essentially prohibited from terminating an employee on account of pregnancy or reasons related to motherly duties.

Irrespectively, female workers in Tanzania who enjoy the protective provisions of the ELRA are only a few. Women employed in the formal sector account only for about 29 per cent of the total employed labour force.¹⁰¹ The percentage is even lower in the manufacturing sector which is the highest waged sector, women are only 18.6 per cent of the total number of employees.¹⁰² This precariousness of female wage labour stems from the fact that, as earlier indicated, they have limited access to education compared to their male counterparts as they are susceptible to high rates of school drop outs on account of early marriages, social roles and poverty in which case parents prefer paying for a boy’s education than that of a girl child. As such, the majority of women, more than 70 per cent engage in the informal sector which “can be reconciled with their domestic obligations” and is on the periphery of the labour law protection.¹⁰³ The fact that the well worded ELRA protects only a few women workers in Tanzania forms the first challenge of protecting the majority working mothers.

100 See section 40 of the ELRA.

101 *Amanda Ellis, Mark Blackden, Josephine Cutura, Fiona MacCulloch, Holger Seebens*, Gender and Economic Growth in Tanzania: Creating Opportunities for Women. Washington, DC, <https://openknowledge.worldbank.org/handle/10986/6829>, accessed on 13 November 2013, p. 4.

102 *Amanda Ellis, Mark Blackden, Josephine Cutura, Fiona MacCulloch, Holger Seebens*, note 101, p. 4.

103 *Amanda Ellis, Mark Blackden, Josephine Cutura, Fiona MacCulloch, Holger Seebens*, note 101, p. 3.

Connectedly, the ELRA, although it claims to protect all the workers in Tanzania, this is not the case in practice. The reality in the labour market is that the ELRA applies mainly to those in the formal sector, where an employer and employee relationship can be determined. Considering that the informal sector accommodates more than 90 per cent of the workers, and the difficulties in establishing the employment relationship, women working in this sector therefore may not benefit from the protection of the ELRA.¹⁰⁴

Evidently, apart from the fact that the law affords protection to all employees without discrimination, the practice shows that Tanzania has fallen short of the implementation of its national, regional and international obligations. Taking the example of the Beijing Platform of Action of 1995, to which Tanzania signified commitment to implement, sets four priority areas: “women’s economic empowerment and poverty eradication, and women’s education, training, and employment.”¹⁰⁵ As earlier indicated, irrespective of the good policies and laws in place, including the Constitution, NSGRP I, NSGRP II, Vision 2015, NEP, and the ELRA, women’s economic empowerment is still a big challenge thereby affecting their efforts to get out of poverty as they have limited access to education, training and employment. Although it may be argued that these limitations are not embedded in policies and laws, women are still affected by customs and traditions which place them in an inferior position to that of men in which case they are always entangled between fulfilling their societal defined roles such as taking care of young children, the sick and the elderly, and accessing the protected formal labour market. Words by *Amanda Ellis, Mark Blackden, Josephine Cutura, Fiona MacCulloch, Holger Seebens* summarise women’s predicament:

“In addition to their prominence in agriculture, women bear the brunt of domestic tasks that are often arduous, time-intensive, and energy consuming. These include processing food crops, providing water and firewood, and caring for the elderly and the sick. This last task has assumed particular importance since the HIV/AIDS pandemic in Tanzania. The time and effort required for these duties, in the almost total absence of even rudimentary domestic technology, is very high.”¹⁰⁶

Undeniably, the Government also acknowledges women’s challenging precarious position in the following words:

- 104 For more information on the coverage of the formal sector see *International Labour Conference, Social Security: Issues, Challenges and Prospects*, 89th Session, Report VI, Sixth Item on the Agenda, Geneva, 2001; *Mridula Ghai, The Coverage Gap: Informal Labour Markets in the Developing World with Special Reference to India*, Paper presented at the 5th International Research Conference on Social Security: Warsaw, 5-7 March 2007; Conference theme: Social security and the labour market: A mismatch?; *John-Jean Barya, Social Security and Social Protection in the East African Community*, Kampala, 2011; and *International Labour Office*, note 44, p. 4.
- 105 *Amanda Ellis, Mark Blackden, Josephine Cutura, Fiona MacCulloch, Holger Seebens*, note 101, p. 91. See also *Milena Pacchiotti, Gender (in)equality in the Tanzanian labour market: showing the gap between the legal framework and the evidence provided by labour statistics*, Turin, 2012.
- 106 *Amanda Ellis, Mark Blackden, Josephine Cutura, Fiona MacCulloch, Holger Seebens*, note 10, p. 28. See also *Tanzania Gender Networking Programme and SARSC-WIDSAA*, note 8.

“Certain kinds of work have been stereotyped as being ‘male’ or ‘female’, because of the socialization process on the division of labour which stipulates different roles for men and women. Most rural women carry water, firewood and farm produce on their heads, take care of children, cook and farm. Gendered assumptions, however, contribute to a process whereby most women are allocated low paying, unskilled or lesser skilled work in both the formal and the informal sectors of the money economy. The terms upon which women and men compete for employment are set by wider social relations, including cultural, economic and political arenas. These include the assumption that a woman’s primary commitment is to care for a family at home, in the ‘reproductive’ sphere of life; and that each woman depends on a male provider for cash needs. The skills label itself is usually arbitrary, and culturally defined. Skills associated with women tend to be undervalued, and defined as unskilled, even when they entail complex actions and thought processes, such as child care, subsistence farming, agro-processing and the like.”¹⁰⁷

This being the case, women have been trapped into poverty and the issue remains, how then can women have the envisaged high quality livelihood by Vision 2025? It is proposed that since the current efforts through the NSGRP I and NSGRP II have barely resulted in bettering the life of women, more efforts should be directed to educating the communities on the depressive and discriminatory traditions and practices which stagnate women from advancing from their disadvantaged economic position. It is believed that once the communities are aware of the rights of girls, they will be able to respect them and support them to advance in their education instead of blocking them for instance, through early marriages or preference of paying for the education and training of boys. Education, as earlier indicated, would increase the chances of women to access the labour market and employment in formal sector which the ELRA protects thereby realizing MDG No. 3 and Vision 2025 on ensuring gender equality in all spheres of life.

II. Social Protection Laws and the Plight of Women

Considering that “social security is an important tool to prevent and reduce poverty, inequality, social exclusion and social insecurity, to promote equal opportunity and gender and racial equality...” and in line the labour laws and policies discussed above, social protection laws serve the purpose of ensuring that the working population is protected against social risks which may affect their ability to earn a living. These laws include the *Local Authorities Pensions Fund Act 2006*, *Public Service Retirement Benefits Act 1999*, *Parastatal Pensions Act 1978*, *Political Service Retirements Benefits Act 1999*, *National Social Security Fund Act 1997*, *GEPF-Retirement Benefits Act 2013*, *Workmen’s Compensation Act 1949*, *National Health Insurance Fund Act 1999*, *Judges (Remuneration and Terminal*

107 *United Republic of Tanzania*, Gender and Employment, <http://www.tanzania.go.tz/gender.html>, accessed on 2 November 2013.

Benefits Act of 2007, *Defence Forces (Pension and Gratuities) Regulations* 1966 and *Community Health Fund Act* 2001.¹⁰⁸ These laws essentially cover the categories of workers specified under each of the laws as reflected in the nomenclature of the laws. Apart from specifying the sectors covered, all these laws do not discriminate workers on any ground in that all workers in a particular sector will be covered irrespective whether they are working mothers, children or PWD. For instance, the *National Social Security Fund Act* 1997 covers mainly the private sector employees irrespective of whether they are children, PWD, working mothers or men.

Nevertheless, there are exceptions to the foregoing general proposition on social protection laws on account that some of the social security benefits offered by these schemes may be considered as discriminatory, particularly the Public Service Pensions Fund (PSPF) established by the *Public Service Retirement Benefits Act* 1999 and the Local Authorities Pensions Fund (LAPF) established by the *Local Authorities Pensions Fund Act* 2006. PSPF and LAPF offer withdrawal benefits, among other factors, on maternity and marriage of a member.¹⁰⁹

In respect of maternity factors, a female member of PSPF or LAPF is entitled to withdrawal benefits if she proves that in consequence of her marriage she has permanently given up employment in the public service or employment generally, respectively.¹¹⁰ This means that this reason for accessing withdrawal benefits may only be used by female members, while even men can actually decide to give up employment on account of marriage. In a way, this provision perpetuates the discriminatory traditional and cultural practices which negatively affect female in that it is a wife who will give up employment on account of marriage but not the husband. It is proposed that this provision should be amended so that it covers men as well and eliminates the connotation that only female may give up employment on being married.

PSPF and LAPF also offer withdrawal benefits in the event a male or female member permanently gives up employment in the public sector or employment generally, as the case may be, when a child born.¹¹¹ Comparatively, this is a rather balanced approach which given both male and females equal rights in accessing social security rights when they give up employment when their child is born.

As is the case with the limited application of the ELRA on account of difficulties in establishing employment relationship in the largesse informal sector, coverage of social protection law is equally limited. The ILO notes that “the share of the population covered by the schemes is very low (3.6% of the economically active...2006). The largest differ-

108 Act No. 9 of 2006, Act No. 2 of 1999, Act No. 14 of 1978, Act No. 3 of 1999, Act No. 28 of 1997, Act No. 8 of 2013, Cap 263, Act No. 8 of 1999, Act No. 16 of 2007, Government Notice No. 52 of 1966, and Act No. 1 of 2001, respectively.

109 See sections 14(a, b, c) of Act No. 2 of 1999 and 31(a, b) of Act No. 9 of 2006.

110 See sections 14(a) of Act No. 2 of 1999 and 31(a) of Act No. 9 of 2006.

111 See sections 14(b,c) of Act No. 9 of 2006 and 31(b) of Act No. 9 of 2006.

ence is between those in formal, and those in informal employment. Most Tanzanians work in the informal economy (93.3%, 2006) none of whom are reported as covered by social security, and still, many of those few in formal employment do not have coverage (36.8%). Coverage is particularly low for women (2%) and those living in rural areas (1.4%).¹¹² Although it is true that social protection laws do cover all the employees, but the fact that women are underrepresented in the formal sector which is covered remains. In this case, social protection is considered skewed to the disadvantage of women who are very few in the covered sector thereby making them susceptible to poverty when they face social risks and they have no social security scheme to provide in their time of need.

Flowing from the foregoing, Vision 2025 and MDG No. 1 both aiming at eradicating poverty, may not be realized for most of the people in Tanzania who are not covered by social security schemes, more so for women, children and PWD. This is based on the fact that those outside the formal sector and therefore not covered by social security schemes slide into poverty every time they face social risks affecting their ability to work.

D. Conclusion

This article describes gender equality in the context of non-discrimination in the workplaces in respect of women in their childhood, women as people with disabilities and as mothers. It has been noted that the Constitution and other laws in Tanzania such as the ELRA, PWD Act, LCA, and social protection laws reflect the national, regional and international commitments which Tanzania has made towards implementing gender equality in all spheres of life in Tanzania.

Respectively, policy documents such as the NSGRP I and NSGRP II and labour related laws provide for protection of children against exploitative and hazardous work and that no child can be subjected to work before they are aged 14 years. Working women are also afforded protection in terms of paid maternity leave, prohibition of termination of employment for pregnancy related reasons and provision of two hours breast feeding time for their young children. As for female PWD, apart from being entitled to the rights that the laws enumerate for all the women, the law prohibits discrimination on account of disability, guarantees employment of PWD by setting a three per cent quota for a workplace with at least 20 employees and prohibits termination of employment for disability related reasons.

However, it has been noted that good as the laws are, the practice is different in that gender inequalities are apparent in various aspects of people's lives in Tanzania. In particular, there is low participation of women in formal sector of the economy, especially in establishments with high wages such as manufacturing. This in essence translates to the overrepresentation of women in the informal sector as well as comparatively high poverty levels. The low representation of women in the formal sector literally means that the protection and guarantees which labour laws provides to women is accessed only by a few, consider-

112 *International Labour Office*, note 44, p. 4.

ing that the informal sector, where most women are, is unregulated and therefore application of laws limited. A similar situation is reflected by the low number of women covered by social security schemes which are equally biased towards those working in the formal sector.

As such, it has been argued that the precariousness of women's situation in the workplace is caused by the fact that a girl child has limited access to education which affects their access to the well protected formal labour market, much more for those with disabilities. PWD, apart from the prejudice that they have to endure in their own families and the society, formal employment, irrespective of the protection labour related laws, is inaccessible to many. This is based on the fact that the law affords loose exceptions to the protections and guarantees afforded to PWD in accessing and staying in employment. These exceptions include inability to find a suitable PWD for the post, inappropriateness of the nature of work or workplace for a PWD, and the disability being a barrier to adequately perform the work under consideration. Moreover, even in cases where the exceptions are inapplicable, the employer finds it "cheaper" to pay the low fines imposed for failure to observe the protection and guarantees under the law than employ a disabled person on account that, as is the case with other prejudices against PWD, they are unable to perform their duties, it is expensive to accommodate them at the workplace and that it is time consuming to locate qualified PWD.

On account of the foregoing, it has been suggested that there should be efforts towards awareness creation on the importance of educating girls and PWD which would involve educating the society on discriminatory traditions and customs which affect women and trap them into abject poverty. It is believed that the MDG No. 1 and No. 3 and Vision 2025 may not be realized if the majority of women in the unregulated labour market are on the periphery of labour laws protection and social security laws coverage. It has been suggested that social security laws should be amended so as to comply with the non-discrimination principles in the Constitution.