

# CHALLENGES FACING PROTECTION OF FEMALE-CHILD FROM EARLY MARRIAGES IN TANZANIA

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## Abstract

For the longest time there has been a battle towards the elimination of harmful practices against women, such battles have been fought domestically within individual countries and at the regional and international levels. In the United Republic of Tanzania some of the practices includes denial of right to inheritance to women, whereby women were denied the right to inherit clan land. Women were also subjected to female genital mutilation, on the other hand domestic wives were denied division of matrimonial properties after divorce. Later on the aforementioned challenges were dealt with through judicial decisions and parliamentary enactments. Currently, the soul breaking challenge in Tanzania is statutorily permissible female-child early marriages, whereby domestic laws in particular the Law of Marriage Act does legalize female-child marriages. This paper therefore analyzes the current situation, the challenges and solutions as against female-child marriages in Tanzania.

**Key Words;** Early Marriage, Female Child, Adolescent Mothers, Law of Marriage, Equality.

## A. Introduction

Marriage is a contract of civic nature just like any other contracts protected under the law. Since marriage is a contract, it is required that the basic elements for any enforceable contract to exist as between the two contracting parties, some of the key factors for other contracts and marriages includes but not limited to consent and capacity of the parties to enter in such a marriage. The challenge comes when one or all of the two love birds who intends or have already contracted a marriage is underage, and the problem intensifies when such a marriage of an adult and a minor is legally protected and backed-up with a statutory legislation as the case is in Tanzania.

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### *I. Who is a Child in Tanzania?*

In defining legally who is an individual child one must visit the legal system for the protection and promotion of the rights of children in a respective jurisdiction. It is a well settled norm that both at the international and national level a question as to who is a child, is to be answered differently according to context. In the Tanzanian context a child means a male or female individual, who without taking into consideration his or her social, cultural or economic background, parentage as well as guardianship is below the age of majority, i.e. below eighteen years.<sup>1</sup> A clear statutory definition as to who is a child in Tanzania is provided for under Section 4(1) of the Law of the Child Act,<sup>2</sup> which says to the effect that a child is any person who is below the age of eighteen years. The meaning is backed up with Section 2 of the Age of Majority Act,<sup>3</sup> which states to the effect that the age of majority is attained at 18 years, to mean that any person below eighteen years is a minor. Therefore, any person below age of majority i.e. eighteen years is a minor regardless of his or her physique, upbringing, ability to make rational decisions, adolescence, etc.

### *II. Meaning of a Marriage*

Marriage in the Tanzanian context is a union and a bond between a man and a woman or a man and women who have consented to live as husband and wife in a jointly and lasting union, with the exception to a lasting relationship being death, divorce, annulment, and other legally accepted grounds.<sup>4</sup> The Law of Marriage Act defines what marriage is under Section 9(1) of the Act,<sup>5</sup> which says a marriage refers to a voluntary union of a man and a woman, intended to last for their joint lives, and may either be monogamous or polygamous.

### **B. The Law of Marriage Act as the Main Problem**

The Law of Marriage Act,<sup>6</sup> was enacted by the Parliament of the United Republic of Tanzania the year 1971, as the principal legislation to govern marriages and marital relations in Tanzania. The Act recognizes both marriages contracted after following all the required formal arrangements and marriages which are created out of presumptions due to spouses' mode of life, which creates a rebuttable presumption that a man and a woman are married. Ever since the enactment of the Act, that is from 1971 you and vulnerable female-children have been subjected to marriages, due to the fact that the Law of Marriage

1 Robert Vincent Makaramba, *Children Rights in Tanzania*, Dar es Salaam, 1998.

2 Law of the Child Act, [CAP. 13 R.E. 2019], s. 4(1).

3 Age of Majority Act, [CAP 431 R.E. 2002], s. 2.

4 Clemence Julius Mashamba, *Introduction to Family Law in Tanzania*, Dar es Salaam, 2010.

5 Law of Marriage Act, [CAP. 29 R.E. 2019], s. 9(1).

6 Law of Marriage Act, [CAP. 29 R.E. 2019].

Act,<sup>7</sup> discriminatorily distinguishes between the age for a male and a female person to contract marriage. Section 13 of the Law of Marriage Act,<sup>8</sup> provides for the minimum age as to which a male and a female individual can be allowed to marry, by stating 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. The law therefore, discriminate minor females who have reached the age of fifteen year by allowing them to get married to adult males.*

*Consent is a crucial element for one to enter into a legally binding agreement, i.e. a contract. According to the Law of Contract Act, Section 11(1),<sup>9</sup> it is required that for a person to enter into a valid contract they must be of the age of majority. The drafters of the Law of Marriage Act were aware of the crucial requirement of the age of majority as a prerequisite for a person to be allowed to enter into a contract, and that is why to uplift the requirement they unjustly placed the requirement of third party consent in allowing minor girls to get married. This can be seen under Section 17(1) of the Law of Marriage Act,<sup>10</sup> provides that female below the age of eighteen years shall be required, to obtain the consent of her father; or of her mother, in case her father has passed away; or of her guardian oif both her parents have passed away. Section 17(2) of the Law of Marriage Act,<sup>11</sup> goes further to allow the Court of law to give consent for a female child to get married once the Court of law is satisfied that the consent of any person mentioned earlier is withheld unreasonably or when it appears that it is impracticable to obtain such consent. Once an application is lodged, then Court of Law may give consent, and such consent shall have the same effect as if it had been given by the person whose consent is required under the law.*

### C. Other Factors Backing-up the Problem

There are several other factors aside from the permit under the Law of Marriage Act, for minor children to get married in Tanzania, there are other associating factors, towards the prevalence of female child marriage in Tanzania, such factors includes but not limited to;

#### I. Negative Cultural Perceptions

There are some communities in the African setting which tend to distinguish between males and females by creating more favorable environments to harness opportunities between males and females. Most African communities are patriarchal and masculine in nature as such women only exists as inferior class in the community, for instance there are some

<sup>7</sup> *Ibid.*

<sup>8</sup> Law of Marriage Act, [CAP. 29 R.E. 2019], s. 13.

<sup>9</sup> Law of Contract Act, [CAP. 345 R.E. 2019], s. 11(1).

<sup>10</sup> Law of Marriage Act, [CAP. 29 R.E. 2019], s. 17(1).

<sup>11</sup> Law of Marriage Act, [CAP. 29 R.E. 2019], s. 17(2).

communities where a male child becomes superior then his mother and female relatives. This is evidence since in some communities women are not allowed to inherit clan land, women are subjected to FGM, women are subjected to inheritance once their husbands have passed away etc.<sup>12</sup> Therefore, it is in this line of negative cultural perceptions as against women where the practice of subjecting tender girls to marriages is being drawn. Many tribes perceive early marriage as a way of protecting the girl, with a belief that when a girl becomes a wife and placed firmly under male control then her future becomes secured. Also that when a girl is married she becomes safe from becoming a single mother before marriage, as such some communities genuinely believe that a husband of girl-child has no difference from a regular male guardian.<sup>13</sup> Therefore, despite there being numerous laws and declarations speaks that men and women are equal since they are all human beings, however negative cultural perceptions tend to bring inequality hence allowing males to get marry while of majority age when it is not the case with females.<sup>14</sup>

## II. Religious Perceptions

One amongst the factors for incorporation of age distinction as between males and females under in the Law of Marriage Act, Section 13,<sup>15</sup> is the need to accommodate religious diversity in the Tanzanian community, whereby Christianity and Islam are the most practiced religions. It can be seen under Government Paper No. 1 of 1969,<sup>16</sup> also known as “the White Paper” in which the Government of Tanzania collected the views of the nationals and different stakeholders towards the framing of the uniform law of marriage, therein it suggested that the law of marriage should include religious opinions. There's no specific age range for boys and girls to get married in Islam, as long as a boy or a girl has reached puberty, they become eligible for marriage.<sup>17</sup> As such setting the minimum age of marriage by aligning it with the age of majority was and is still seen as “un-Islam” because it goes against the practice of the Prophet Muhammad SAW, who married Aishah when she was

12 *Norah Hashim Msuya*, Harmful Cultural and Traditional Practices: A Roadblock in the Implementation of the Convention on The Elimination of Discrimination Against Women And the Maputo Protocol on women's rights in Tanzania, Kwa Zulu Natal, 2017.

13 *African Union*, The Effects of Traditional and Religious Practices of Child Marriage on Africa's Socio-Economic Development: A Review of Research, Reports and Toolkits from Africa, Addis Ababa, 2015, p. 10.

14 *Joar Svanemyr*, et al; The contribution of laws to change the practice of child marriage in Africa, Geneva, 2013, p. 11.

15 Law of Marriage Act, [CAP. 29 R.E. 2019], s. 13.

16 *The Government of Tanzania*, Government Paper No. 1 of 1969-Government Proposals on Uniform law of Marriage, Dar Es Salaam, 1968, p. 16.

17 *African Union*, The Effects of Traditional and Religious Practices of Child Marriage on Africa's Socio-Economic Development: A Review of Research, Reports and Toolkits from Africa, p. 13.

six years old, and consummated the marriage when she reached puberty at the age of nine.<sup>18</sup> In incorporating the Islam school of thought in the Law of Marriage Act, the Government of Tanzania decided to create the imbalance on the age for marriage. There have been different motions by human rights activists in changing the age for marriage and in most cases there have been objections from the side of Islam scholars, arguing that doing so will be an act of excluding their religious practice taking into account that the Section 10(2)(a) of the Law of Marriage Act,<sup>19</sup> recognizes Islamic marriages as one of the lawful marriages.

### *III. Illiteracy*

Despite several moves from the government, Civil Society Organizations (CSOs), Non-Governmental Organizations (NGOs), and several human rights activists to provide education of the effects of early marriages, still there are some people are unaware of the effects of early marriages. There are some people who believe that maturity is when a female person has reached puberty. As such people tend to disregard other key factors such as mental capacity and maturity of reproductive organs of the female child who is advised or forced to become a bride.<sup>20</sup> One should not be surprised as to why in the 21<sup>st</sup> Century there are people who are illiterate when it comes to human rights and reproductive health of a female child, due to the fact that there are some people who have never gone to school and have not been exposed to education concerning human rights and reproductive health.<sup>21</sup>

### *IV. Poverty in the Families*

Poverty is another factor that pushes female children into early marriages. Poverty is considered as a upfront driver of female-child marriage in Tanzania. Marriage is perceived as a source of income to the family of a female-child through bride price well known as “Mahari” in Swahili. In most cases Mahari involves the giving of money, cattle or clothing to a bride’s family, this has been a pushing factor for parents and guardians to permit child marriage. For instance it is a common belief in the pastoral communities that the many female children a family have, the many cattle that a family is going to get. As such male children are conceived as the pride of the family while female children as source of wealth. Also, some girls from poor families who have little or no opportunities to earn an income for themselves, often see marriage as their only salvage due to the belief that

18 Alexander David Russell, and Abdullah Al-Ma’Mun Suhrawardy, *Muslim Law: An Historical Introduction to the Law of Inheritance*, London, 2008, p. 20.

19 Law of Marriage Act, [CAP. 29 R.E. 2019], s. 10(2)(a).

20 *Legal and Human Rights Centre*, Tanzania Human Rights Report 2020, Dar es Salaam, 2020, p. 205.

21 *Human Rights Watch*, No Way Out: Child Marriage and Human Rights Abuses in Tanzania’ Human Rights Watch Short Reports, <https://www.hrw.org/report/2014/10/29/no-way-out/child-marriage-and-human-rights-abuses-tanzania>, (accessed on 10 July 2023).

a husband as a man of the house will provide for them.<sup>22</sup> This can be evidenced through records which shows that the rate of early marriage affecting female children is high in poor families in comparisons with middle income and rich families.<sup>23</sup>

### V. Adolescent Pregnancy

Unfortunately adolescent pregnancy is perceived as a shame in the family of the impregnated girl, with the society seeing the parents and mostly especially a mother of an impregnated girl as a careless for failing to take care of their daughter. Adolescent pregnancy has in most cases ended up with marriage, due to the reluctance of families to take care of their daughter during pregnancy and after delivery, some families sees marriage as a way of cleansing their impregnated daughter and saving the newly born child from being regarded as an “illegitimate child or bastard” by the society tainted with stigmatization.<sup>24</sup> Figures shows that as of 2016 one in four Tanzanian adolescents aged between 15–19 had begun childbearing and were already married.<sup>25</sup> The Government of Tanzania has made steps to prevent adolescent pregnancy by criminalizing sexual relations with minor girls whereby Section 130 of the Penal Code,<sup>26</sup> speaks to the effect that consensual or non-consensual sex with a girl below eighteen years amounts to the crime of rape. Surprisingly enough reports indicates that once a man who impregnated a girl enters into negotiations with the girl’s family into marrying her, most families tend not to report the incidence to the authorities.

### D. Effects of Marriage to an Underage Female-Child

The major effect that exist with the absence of uniform legal age for marriage in alignment with the age of majority for males and females in Tanzania is the violation of the right to equality between men and women. The Constitution of the United Republic of Tanzania, provides for equality between men and women under Article 12,<sup>27</sup> which speaks to the effect that all human beings are equal regardless of their gender. The absence of uniform

22 *Girls Not Brides*, What Drives Child Marriage in Tanzania, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/tanzania/#:~:text=In%20Tanzania%2C%20child%20marriage%20is,cl%20to%20a%20bride's%20family>, (accessed on 8 July 2023).

23 *Laura Stark*, Poverty, Consent, and Choice in Early Marriage: Ethnographic Perspectives from Urban Tanzania, *Marriage & Family Review*, Vol. 54(6), 2018, p. 16.

24 *Ruth Michael*, Factors which Contribute to Early Marriage Among Teenagers in Rural Areas a Case Study Kasulu District in Kigoma Region, Dar es Salaam, 2024, p. 37.

25 *Girls Not Brides*, What Drives Child Marriage in Tanzania, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/tanzania/#:~:text=In%20Tanzania%2C%20child%20marriage%20is,cl%20to%20a%20bride's%20family>, (accessed on 8 July 2023).

26 Penal Code [CAP. 16 R.E. 2022], s. 130(2)(e).

27 Constitution of the United Republic of Tanzania of 1977 [CAP. 2], as amended from time to time, art. 12.

age for males and females under the Law of Marriage Act, is creation of inequality.<sup>28</sup> *The violation of constitutional right to equality between men and women was also pointed out* by the High Court of Tanzania in the case of *Rebeca Z. Gyumi v. Attorney General*,<sup>29</sup> whereby, it was declared that Section 13 of the Law of Marriage Act,<sup>30</sup> is unconstitutional.<sup>31</sup> Apart from violation of constitutional right to equality there are several other effects that exists with presence of statutory female-child early marriages.

### *I. Maternal Mortality and Infant Mortality*

Early marriage is cause for maternal mortality due to complications during pregnancy and childbirth, as a result maternal mortality rates (MMRs) are high in a community with high number of adolescent mothers. Adolescent mothers aged 15 to 19 in Tanzania and in other developing countries, tend to fight a tough battle during pregnancy and childbirth since the majority of them have reproductive organs which do not guarantee safe pregnancy and child bearing. A large number of adolescent mothers die each year because they have children before they are physically ready for parenthood, MMRs in Tanzania have remained high over the last decade, at around 500 per 100,000 recorded live births.<sup>32</sup> On the other hand official reports from the World Bank indicates that infant mortality rate in Tanzania is still a challenge despite several attempts by the Government of Tanzania to develop health systems in the Country.<sup>33</sup> The recent data indicates that infant mortality rate for Tanzania in 2023 is 34.168 deaths per 1000 live births, a 3.96 % decline from 2022. The infant mortality rate for Tanzania in 2022 was 35.576 deaths per 1000 live births, a 3.8 % decline from 2021.<sup>34</sup> Early marriage causes infant mortality, due to immaturity of reproductive organs of young mothers, which brings about complications during the time of pregnancy up to the time delivery.<sup>35</sup> Children born from young mothers usually suffers from abnormal birth weight, preterm birth and severe neonatal condition.

28 *Balthazar Aloys Rwezaura*, The law Reform Commission's Background Paper on the Law of marriage Act, 1971 (Issues for Reform): A comment" (Unpublished).

29 *Rebeca Z. Gyumi v. Attorney General*, Misc. Civil Case No. 5 of 2016 HCT at Dar es Salaam.

30 Law of Marriage Act, [CAP. 29 R.E. 2019], s. 13.

31 Msuya, N.H., "The Analysis of Child Marriage and Third-Party Consent to Child Marriage in the Case of *Rebeca Z. Gyumi v Attorney General* Miscellaneous Civil Case no 5 of 2016 Tanzania High Court at Dar es Salaam" *De Jure Law Journal*, 2019, pp. 295–315.

32 Nassoro, M.M., et al, "Maternal Mortality in Dodoma Regional Referral Hospital, Tanzania," 2020 *International Journal of Reproductive Medicine*, 2020, pp. 3–4.

33 World Bank, World Development Indicators: Adolescent Fertility Rate (Births per 1,000 of Women Aged 15–19), <http://data.worldbank.org/indicator/SP.ADO.TFRT/countries?display=default>, (accessed on 9 June 2023).

34 *Ministry of Health (Tanzania Mainland)*, et al, Tanzania Demographic and Health Survey and Malaria Indicator Survey 2022 Key Indicators Report, Dodoma, 2023, pp. 21–22.

35 *Navideh Noori*, The Effect of Adolescent Pregnancy on Child Mortality in 46 Low- and Middle-Income Countries, *BMJ Global Health*, Vol. 7(5), 2021, p. 7–8.

## II. Reproductive System Diseases

It is reported that most of adolescent mothers between the age of 10 to 19 years are prone to high risk of reproductive system diseases such as fistula, eclampsia, puerperal endometritis and systemic infections in comparison with adult mothers aged 20 to 24 years.<sup>36</sup> The variation between adolescent and adult mothers is caused by immaturity of reproductive, also due to low level of awareness by adolescent mothers who in most cases have failed to acquire proper education to fail to have the required reproductive health.

## III. Increase of Development Gap Between Males and Females

There is a gap that exists in the Tanzanian communities as between men and women, in terms of higher education qualification, ownership of profitable business undertakings, engagement in formal sectors, etc. Such a gap is associated with early marriages to female-children due to the fact that the Section 13 of the Law of Marriage Act,<sup>37</sup> permits a female-child to get married in a tender age without taking into consideration the fact such a tender age is the appropriate age for a female-child to be either in primary or secondary school. It is reported that in most communities where child marriage is rampant there is a constant increase of cases of school dropouts by female students and it is even argued that some parents or guardians convince their daughters not to pass their primary school education examinations so that they do not get a chance to join secondary school education and thereafter children tend to get married. Having policies and affirmative programs that advocate for equality between men and women in the pursuit of education is insufficient unless and until the legal framework governing marriages do away with the provision that allows a female-child who is supposed to be in school to get married.

## IV. Gender-Based Violence to Married Girls

Gender-based violence (GBV) is another challenge mostly encountered by married girls. It has been reported that most of married girls are exposed to physical, mental and psychological harassment in the domestic settings. Figures from the World Bank indicates GBV prevalence as against married girls is high in rural areas as against averaging 52 % while the prevalence in urban areas averages 45 %. GBV to married girls is associated with the failure to effectively play the wife and motherly roles as it is to mature women, as such many married girls are subjected to harsh treatment due to failure of honoring their roles.<sup>38</sup> Also, the majority of married girls are exposed to GBV because on their own they fail to

36 World Health Organisation (WHO), Adolescent Pregnancy, <https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>, (accessed on 10 July 2023).

37 Law of Marriage Act, [CAP. 29 R.E. 2019], s. 13.

38 *M Yaa Oppong*, et al, Tanzania Gender-Based Violence Assessment: Scope, Programming, Gaps and Entry Points, Washington, D.C., 2022, p. 23.



stand up for their rights due to lack of awareness of their rights, at the same time some of girls who are married to older men tend to become highly submissive.<sup>39</sup>

### E. Attempts to Remedy the Situation

There have been several attempts to do away with female-child marriages in Tanzania, the main focus being to amend the Law of Marriage Act, specifically Section 13 and Section 17,<sup>40</sup> which tend to provide the age and consent of parents or guardians and in some instances of the Courts of Law for a female-child to get married. The race to end the problem of legalized early marriage as against a female-child begun in early 1980s with various stakeholders being worried that the aforementioned provisions promotes discrimination as against women. In the year 1986 the Law Reforms Commission of Tanzania (LRCT) released its report titled *Inquiry and Report on the Law of Marriage Act, 1971*,<sup>41</sup> Chapter Four of the report speaks about the minimum age within the Law of Marriage Act.<sup>42</sup> The report analyses inter alia that there are legal, medical, and social reasons as to why the Government of Tanzania should rectify the problem of legalized female-child marriage. The report points out that allowing a female child to enter into marriage life at the age of fifteen years is a violation of rights of children taking into account that Tanzania has vowed to international obligations on protection of rights and welfare of children. Furthermore, it is pointed out that generally the distinction on the age for marriage between males and females is promotion of inequality between the two genders. After the Government of Tanzania failure to remedy the situation by adopting and implementing recommendations posed by the LRCT in 1986, the LRCT continued with the battle to fight against uneven minimum age for marriage in Tanzania.

In the year 1994, the LRCT released its other report after conducting an inquiry on the Law of Marriage Act,<sup>43</sup> the report is titled *Report of the Commission on Law of Marriage Act, 1971 (No. 5 of 1971)*,<sup>44</sup> the report enlists various challenges with the Law of Marriage Act.<sup>45</sup> Chapter Four of the report dealt with the problem of minimum age of marriage, the report discusses legal problems as well as medical and social problems due to the existence of minimum age of marriage that allows a female child to get married. Generally, in the 1986 and 1994 reports, the LRCT proposed the Government of Tanzania to amend Section

39 *M Yaa Oppong*, et al *Tanzania Gender Assessment*, Washington, D.C., 2022, p. 26.

40 Law of Marriage Act, [CAP. 29 R.E. 2019], ss. 13 and 17.

41 *The Law Reform Commission of Tanzania*, *Inquiry and Report on the Law of Marriage Act, 1971*, Dar es Salaam, 1986, pp. 18–20.

42 Law of Marriage Act, [CAP. 29 R.E. 2019].

43 Law of Marriage Act, [CAP. 29 R.E. 2019].

44 *The Law Reform Commission of Tanzania*, *Report of the Commission on Law of Marriage Act, 1971 (No. 5 of 1971)*, Dar es Salaam, 1994, pp. 16–17.

45 Law of Marriage Act, [CAP. 29 R.E. 2019].

13 of the Law of Marriage Act,<sup>46</sup> which speaks of 18 years as the minimum age for boys to marry and fifteen years for girls to marry, by adopting twenty one years as the minimum age for both men and women. The LRCT also proposed that Section 17 of the Law of Marriage Act,<sup>47</sup> which speaks of parental or guardianship consent to be deleted. There have been recent legal battles by human rights activists in ending child marriage for Tanzania girls as it can be seen in the following case-laws.

*I. Rebecca Gyumi v. Attorney General*<sup>48</sup>

In the year 2016, a Tanzanian national Rebeca Z. Gyumi, who is the director and founder of the Msichana Initiative, an NGO that deals with the promotion and protection of the rights of women and girls in Tanzania, knocked the doors of the High Court of Tanzania, to turn the tables around by challenging the constitutionality of Sections 13 and 17 of the Law of Marriage Act.<sup>49</sup> One of the prayers sought in the petition is for the court declare the provisions of sections 13 and 17 of the Law of Marriage Act null and void. And as a consequence the court to issues an order of deleting them from the statute and declare the legally accepted age of majority i.e. eighteen years as the minimum age for marriage. The move came with an intention of protecting a girl child and placing both girls and boys on an equal footing in their entrance to marriage without any exceptions.

The arguments by the Petitioner were that Section 13 of the Law of Marriage Act, goes contrary to Articles 12 and 13 of the Constitution of the United Republic of Tanzania,<sup>50</sup> whereby, Article 13 guarantees the right to equality for men and women while Article 13 issues legal guarantee of equality before the law. The Petitioner argues that the cited provision of the Law of Marriage Act directly create discrimination between boys and girls. The Petitioner also argued that Section 17 of the Law of Marriage Act grants permission for parents or guardians of a girl child to issue consent for a girl child to marry, while the consent for one to marry should come from the bride and the bride groom not otherwise. Section 17 of the Law of Marriage Act, steals the right of the girl child to make decisions that affects her individuality. The Petitioner invited international instruments to which Tanzania is part to that provides for the protection of the girl child. Such as Article 1 of the Universal Declaration of Human Rights,<sup>51</sup> Article 26 of the International Covenant on Civil and Political Rights, Article 2 of the Convention on the Elimination of All Forms of

46 Law of Marriage Act, [CAP. 29 R.E. 2019], s. 13.

47 Law of Marriage Act, [CAP. 29 R.E. 2019], s. 17.

48 *Rebeca Z. Gyumi v. Attorney General*, Misc. Civ. Case No. 5 of 2016 HCT at Dar es Salaam.

49 *UN Women*, Tanzania Scores Big in Efforts to End Child Marriage <https://africa.unwomen.org/en/news-and-events/stories/2019/11/tanzania-scores-big-in-efforts-to-end-child-marriage>, (accessed on 9 July 2023).

50 Constitution of the United Republic of Tanzania of 1977 [CAP. 2], as amended from time to time, arts. 12 and 13.

51 Universal Declaration of Human Rights, 1948, art. 1.

Discrimination against Women,<sup>52</sup> Articles 1 and 2 of the Convention on the Rights of the Child,<sup>53</sup> Article 3 of the African Charter on the Rights and Welfare of the Child,<sup>54</sup> as well as Article 2 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol).<sup>55</sup>

*On the 8 day of July 2016, the High Court of Tanzania made a landmark decision in ending child marriage for Tanzanian girls. The High Court of Tanzania ruled that Sections 13 and 17 of the Law of Marriage Act were unconstitutional, the High Court went further directing the Government of Tanzania to change the law within one year, by amending Section 13 of the Law of Marriage Act placing the minimum age of marriage for girls to be eighteen years as it is with their male counterparts. Also, the High Court directed the Government of Tanzania to expunge Section 17 of the Law of Marriage Act from the Statute Book. In summary, the High of Tanzania observed that the challenged provisions of the Law of Marriage Act creates differential treatment between girls and boys as far as the eligible age of marriage is concerned. The High Court also invited Article 16 of the Universal Declaration of Human Rights,<sup>56</sup> which speaks of marriage by stating that marriage shall be entered into only with the free and full consent of the men and women of full age.*

## *II. Attorney General v. Rebeca Z. Gyumi*<sup>57</sup>

As earlier pointed out that the Government of Tanzania has since 1980s, been reluctant to do away with early marriage to Tanzanian girls through amending the Law of Marriage Act. This made the Attorney General of Tanzania to file for an appeal challenging the decision of the High Court of Tanzania before the Court of Appeal of Tanzania. The arguments of the Attorney General were inter alia that the High court of Tanzania erred in law in holding that Sections 13 and 17 of the Law of Marriage Act are discriminatory for giving preferential treatment regarding the eligible ages of marriage between girls and boys; that the High Court erred in law in equating the age of the child with the age of marriage; also that the High Court erred in law when it declared that Sections 13 and 17 of the Law of Marriage Act have lost their usefulness hence they were declared null and void.

The appeal against the ruling filed by the Attorney General was dismissed by the Court of Appeal in October 2019. The Court Appeal of Tanzania ruled inter alia that Article 1 of the Convention on the Rights of the Child,<sup>58</sup> and Article 2 of the African Charter

52 Convention on the Elimination of All Forms of Discrimination against Women, 1979. Art. 2.

53 Convention on the Rights of the Child, 1986, arts. 1 and 2.

54 African Charter on the Rights and Welfare of the Child, 1990, art. 3.

55 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, 2003, art. 2.

56 Universal Declaration of Human Rights of 1948, art. 16.

57 *Attorney General v. Rebeca Z. Gyumi*, Civil Appeal No. 204 of 2017.

58 Convention on the Rights of the Child, 1989, art. 1.

on the Rights and Welfare of the Child,<sup>59</sup> altogether define a child to mean every human being below the age of 18 years as it is provided under Section 4(1) of the Law of the Child Act,<sup>60</sup> as such marriage to girls below eighteen years is a direct violation of the rights of the female child. The Court of Appeal also cited Article 6 of Maputo Protocol,<sup>61</sup> which says States Parties are obliged to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They are also required to enact appropriate national legislation to guarantee that marriage takes place with the consent of both parties, while taking into account that the minimum age of marriage for women shall be 18 years. Through this the court of Appeal was of the view that the Section 3 Law of Marriage Act do not equate men and women due to variation of age for marriage. Furthermore, the Court of Appeal invoked Article 16 of Universal Declaration of Human Rights,<sup>62</sup> which provides to the effect that, men and women of full age, have the right to marry and that marriage shall be entered into only with the free and full consent of the intending spouses, thus Section 17 of the Law of Marriage Act which requires parental and guardian's and sometimes court's consent for a girl child to marry was unlawful since it is an individual being who should accept to marry, not otherwise. Therefore, the Court of Appeal upheld the entire foundation that was laid down by the High Court in the case of *Rebecca Gyumi v. Attorney General*.<sup>63</sup>

### III. Implementation of Courts' Decisions by the Government of Tanzania

The Government of Tanzania upon receipt of the judgment of the Court of Appeal on the above case decided to conduct further public consultation in the move to obtain further opinions from the public. A series of consultations have been conducted involving religious scholars, traditional leaders, human rights activists, higher learning institutions, human rights activists and other members of the community. This move has been criticized since it is the views same community that proposed for the age of marriage to have variations between males and females and this led to legalization of early marriage to Tanzanian girls.<sup>64</sup> Also the move has been criticized as a disrespect by one arm of the state as against the other that is the Government as against the Judiciary. This is because the Government ought to have amended the Law of Marriage Act, within one year period as directed by the Court. The Consultation of the public on their views before implementing a dully declared decree of the Court is dangerous especially where the opinions of the various persons and stakeholders involved will be contrary to the will of the Court. This brings a further

59 African Charter on the Rights and Welfare of the Child, 1990, art. 2.

60 Law of the Child Act, [CAP. 13 R.E. 2019], s. 4(1).

61 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women of 2003, art. 6.

62 Universal Declaration of Human Rights of 1948, art. 16.

63 *Rebecca Z. Gyumi v. Attorney General*, Misc. Civ. Case No. 5 of 2016, HCT at Dar es Salaam.

64 *The Government of Tanzania*, Government Paper No. 1 of 1969-Government Proposals on Uniform law of Marriage, Dar Es Salaam, 1968.

question on whose decision the Government will choose to implement once the public opinion goes contrary to the legitimate will of the Court. The Government of Tanzania needs to implement the decision of the High Court and that of the Court of Appeal by rectifying the existing inequality crafted by the legislation contrary to Article 12 and Article 13(1) of the Constitution of the United Republic Tanzania,<sup>65</sup> which altogether *creates and guarantees equality of men and women before the law*.

## **F. Conclusive Remarks on the Way Forward**

The main and primary solution towards ending early marriage to female-children in Tanzania is the amendment of the Law of Marriage. The Constitution of the United Republic of Tanzania, which is the supreme law of the land, should prevail over religious and cultural beliefs as well as other wants of the individuals, this is because in a law lead community like that of Tanzania, the law should strike a balance between religious and cultural practices with the common good of the community. There is a need for creation of legal literacy among the population through translation of different laws and policies. The Government of Tanzania should co-operate with NGOs and CSOs in spreading education to different members of the community especially in rural areas on the effects of early marriage as well as on the importance of placing males and females on an equal footing.

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