The Journal of
Law, Social Justice
& Global Development

Child Marriage in Tanzania: A Human Rights Perspective

Isabela Warioba

Article Information

Issue 23: 2019: *General Issue*, ed. Rajnaara Akhtar
This article was published on: 10 April 2019
Keywords: child, child marriage, human rights, minimum age for marriage, consent
Journal ISSN: 1467-0437

Abstract

Child marriage persists in Tanzania despite Tanzania being party to and ratifying international and regional human rights instruments, which call for the abolition of harmful traditional practices such as child marriage. According to the United Nations Children's Fund (UNICEF), urgent action is needed to take solutions to scale and prevent the thousands of girl children in Tanzania today from being married in the next decade(s). This paper aims to critically analyse the law and measures taken by the government to deal with child marriage in Tanzania in light of the obligations accrued from international human rights instruments that Tanzania is a party to. Secondary data has been utilised to analyse Tanzania's response to its international human rights obligations on child marriage, and to make appropriate recommendations for reform.

Author

Isabela Warioba is an Assistant Lecturer at Mzumbe University, Tanzania. She is currently a PhD in Law candidate at the University of Antwerp, Belgium: belawarioba@gmail.com and imwarioba@mzumbe.ac.tz

Introduction

Child marriage, also known as 'early marriage', is defined as any marriage carried out involving a girl below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing (UNICEF 2018). Tanzania has one of the highest child marriage prevalence rates in the world (Ministry of Health, Community Development, Gender, Elderly and Children 2017). On average, almost two out of five girls will be married before their 18th birthday (ibid.). Child marriage is more prevalent among the rural population, although it is also found among the urban population but mainly limited to those with poor economic conditions and strong religious and cultural ties (ibid.). Child marriage has significant effects in the human rights of the children subjected to the practice which is why international human rights law calls for its elimination.

This paper starts with a discussion on the international human rights instruments relevant to child marriage, followed by a critical analysis of law and measures taken by the government to deal with child marriage in Tanzania in light of the obligations accrued from international human rights instruments that Tanzania is a party to. This is followed by a brief discussion on whether using the law per se is enough to eliminate child marriage in Tanzania and thereafter a conclusion and recommendations.

International Human Rights Law and Child Marriages

Child marriage in itself can be said to be a violation of human rights because it contradicts international law recommending the age of 18 years to be set as the minimum age for marriage. Furthermore, child marriage interferes with many other rights including the right to health, education, equality, right to live free from violence and exploitation and the right to give free and personal consent. International human rights law treaties have covered child marriage and the rights it impacts upon widely, as follows:

(i): *Minimum age for marriage and minimum age laws*

Minimum age for marriage refers to the specific age where persons are allowed under the law to enter into a contract of marriage. Different human rights instruments have in one way or the other talked about the minimum age for marriage. Some are vague whereas others are clear by requiring a specific minimum age be set by the State parties.

The Universal Declaration for Human Rights (UDHR) has provided that only men and women of 'full age' can marry. The Declaration uses the words 'full age' without specifying what this full age is. The Convention on the Rights of the Child (CRC) also has not stipulated the minimum age for marriage. The CRC does however define a child to mean any person below the age of 18 unless majority is reached earlier under the law applicable. There was a need for clarification, which was provided by the Committee on the Rights of the Child (CRC Committee 2003) and also by the CRC Committee together with the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) in their joint recommendation (2014). The Committees clearly explained that child marriages are marriages in which one of the spouses is below the age of 18 and obligated states to eliminate child marriage.

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) also requires child marriage to have no legal effect and state parties to set the minimum age for marriage at 18 years as elaborated by the CEDAW Committee (1994). The minimum age of 18 for marriage is also required by the African Charter on the Rights and Welfare of the Child (ACRWC) under article 21(2), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) under Article 6(c) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as elaborated by the ICESCR Committee (2001).

To promote compliance by State parties regarding setting the minimum age for marriage at 18, the CEDAW Committee (1994) has called for States

parties to require the registration of all marriages. The CRC under article 7 also requires States to register all births, also as a tool for states to identify under-age marriages.

Some states have complied and set by law, the minimum age for marriage at 18 years. Less than ten per cent of countries had laws setting the minimum age of marriage at 18 years prior to the adoption of CEDAW, whereas almost 30 years later, nearly 50 per cent of countries had adopted them (Boyle 2013: 590). Among these countries however, some allow exceptions to this minimum age of 18 on grounds such as pregnancy, with parental consent, marriages celebrated under customary law or when a court determines that a girl is capable of assuming marriage responsibilities (ibid: 593).

Research shows that the nature of the law when it comes to setting the minimum age of marriage matters. States which have set the minimum age of 18 for marriage and adhere strictly to it are more effective at reducing child marriage rates over time compared to those states which allow exceptions and those which have not set minimum age for marriage at all (Kaufman 2015).

(ii): *Right to consent to marriage*
The choice of whether, and whom, to marry, is so intimately connected to individual self-determination that it has been acknowledged in several key international instruments as a fundamental human right. Article 16(2) of the UDHR provides for the requirement that marriage be only undertaken with the free and full consent of both parties. CEDAW (article 16) also requires that parties to a marriage have the right to freely choose their spouse and to enter the marriage with free and full consent. The CEDAW Committee (1994) has noted that there are many countries that on the basis of some grounds such as custom and religious beliefs permit forced marriages. The committee recommends that such marriages cannot be legally enforceable and that it is imperative that countries enact and enforce laws which protect young girls from such marriages.

The CEDAW Committee (1994) further discourages marriages which are arranged by payment or preferment. This payment or preferment refers to transactions in which cash, goods or livestock are given to the bride or her family by the groom or his family or payment is made by the bride or her family to the groom or his family. The Committee stated that these marriages are a violation of women's right to freely choose a spouse and that they should not be recognised by the State parties to CEDAW as enforceable (CEDAW Committee 2013: para 33).

Furthermore, article 10 of the ICESCR also provides that marriage should be entered with free and full consent of the parties. The ICESCR Committee has added that the difference in marriageable age between males and females violates this provision (The ICESCR Committee 1995: para 159). The International Covenant on Civil and Political Rights (ICCPR) under article 23(3) also places an obligation on State parties to ensure equal rights in marriage and prohibit marriage without consent. The Human Rights Committee (HRC 1990) has also insisted on free and full personal consent during marriage. It has stated that marriages contracted under customary or statutory law that allow a guardian, who is generally male, to consent to the marriage instead of the woman herself, thereby preventing women from exercising a free choice should not be recognised (HRC 2000).

Therefore, the right to consent to marriage under international human rights law requires free and personal consent of the parties and cannot be interpreted to encompass the consent of the girls' parents or family members who consent on the girls' behalf (Mutyaba 2011: 341).

(iii): *The right to education*
The right to education is an empowerment right (ICESCR Committee 1999). Education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities (ibid.). Education can play a role in safeguarding children from exploitative and hazardous labour as well as sexual exploitation (ibid.).

Statistics show an inverse relationship between education and marriage such that where school enrolment especially in secondary school is very

low, incidence of early marriage is high (Bunting 2005: 25). Also, as noted by the CEDAW Committee and the CRC Committee (2014), early marriages also contribute to higher rates of school dropout, particularly among girls. This is because being a wife and a mother at an early age prevents these girls from continuing with their education (Mutyaba 2011: 347).

International human rights law explicitly provides for the right to education for children. The CRC recognises that all children have the right to education on equal basis and places an obligation to State parties to realise the right progressively (article 28). Under the same provision, this obligation includes making primary education compulsory and available free to all while encouraging the development of different forms of secondary education. CEDAW has focused more on promoting equal access of girls to education opportunities (article 10).

The ICESCR also provides for the right to receive education (article 13(2)). This right means that education must be accessible and affordable to all especially to the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (ICESCR Committee 1999: para 6). Whereas primary education is required to be made available and free for all immediately, secondary and higher education are subject to progressive realisation (ibid.). Free education means eliminating direct costs in the form of school fees but also indirect costs such as compulsory levies on parents or the obligation to wear a relatively expensive school uniform. Apart from making primary education free and available, State parties to the ICESCR also have an obligation of making primary education compulsory.

States parties also have an immediate obligation to guarantee that the right will be exercised without discrimination of any kind. Therefore, State parties are in violation when the direct action of States parties or through their failure to take steps result in the discrimination of any group to access education. The ICESCR Committee (1999) has given an example of these violations including the introduction of or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds in the field of education and the failure to take measures which address de facto educational discrimination. Therefore, for example by State parties having laws which allow the minimum age for marriage for girls to be below 18, an age where they are required to have access to some form of education, this amounts to a violation of the right to education of the girl child.

The Maputo Protocol under Article 12 also calls for States to ensure that women and girls have full access to education and training opportunities.

(iv): *The right to health*

Health is a fundamental human right indispensable for the exercise of other human rights (ICESCR Committee 2000: para 1). The right to health is recognised by various human rights instruments. The UDHR recognises the right to health under article 25(1). The same is also provided for under article 12 of the ICESCR. State parties are required to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights (ibid: para 21). Therefore, States are obligated to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage (ibid: para 22).

The CRC also recognises the right of children to enjoy the highest attainable standard of health and gives an obligation to State parties to abolish traditional practices specifically those which are prejudicial to the health of children (article 24). Therefore, this provision requires the abolition of child marriage as well since child marriage is considered a harmful traditional practice (CEDAW and CRC Committees 2014). The CRC Committee (2003) is concerned that early marriage and pregnancy are significant factors giving rise to problems related to sexual and reproductive health, including HIV/AIDS. Explicitly, the CRC Committee together with the CEDAW Committee (2014) have stated that early marriages have negative impact on the health of girls including early and frequent pregnancies and childbirth, resulting in higher than average maternal morbidity and mortality rates. Women's risk of

reproductive ill health and death increases dramatically when women are under the age of 18 (DHSP 1994). Young women between the ages of 15 and 19 years are twice as likely as women in their 20s to die in childbirth (ibid.). Studies on harmful effects of early marriage on girls' health also reveal that girls who are below the age of 18 years, lose more children to neonatal and childhood diseases (Walker 2012: 234). Furthermore, women who are married before or soon after puberty are also susceptible to vesico-vaginal fistulae (VVF) which is a mis-communication between the bladder and the vagina resulting in continuous, involuntary leakage of urine through the vagina (Bunting 2005: 31). Therefore, child marriage has a significant impact on the health of girls.

(v): *Non-discrimination*
Gender inequality is both a cause and an effect of child marriage. Discrimination against girls in decision-making in the family, education, employment, access to health care information and services, matters of sexuality and the law creates and perpetuates the conditions in which early marriage of girls occurs (Bunting 2005: 28). And thereafter, child marriage denies children of school age their right to education. This in turn hinders their potential to earn an income. Consequently, child marriages contribute to the feminisation of poverty (UNICEF 2001: 11).

Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights (HRC 1981: para 1). Non-discrimination is a non-derogable right (HRC 1989: para 4). Most human rights treaties have a non-discrimination provision. The ACRWC provides for the right to non-discrimination under article 2. The ICCPR also provides the same under article 3. The HRC (1989) has elaborated article 3 of the ICCPR by stating that the provision imposes a positive obligation on states to remedy sex discrimination. This positive obligation requires not only that states take measures to protect women, such as the enactment of laws, but also to take measures of affirmative action designed to ensure the positive enjoyment of rights.

CEDAW also imposes a positive obligation on State parties to correct cultural customs and practices which perpetuate discrimination of women. States parties are required to guarantee equality between women and men in their constitutions and to eliminate any constitutional exemptions that would serve to protect or preserve discriminatory laws and practices (CEDAW Committee 2013: para 11). State parties are also required to prevent discrimination by private actors (CEDAW Committee 2010). Measures to be implemented by State parties are not restricted to legislation. Furthermore, the CEDAW Committee (1994) has pointed out that it is wrong that some countries have laws which provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial and that these provisions should be abolished.

The Maputo Protocol also gives an obligation to State parties to eliminate all discrimination against women (Article 2). The Protocol requires State parties to eliminate harmful practices, including the prohibition, through legislative measures backed by sanctions, of all forms of harmful practices that negatively affect the human rights of women and which are contrary to recognised international standards (Article 5).

The Human Rights Council (2015) in its 'historic' resolution on child marriage recognises that child marriage is a harmful practice that violates human rights and perpetuates other harmful practices and human rights violations. Such violations have a disproportionately negative impact on women and girls. The resolution underscores obligation and commitment of States to promote and protect the human rights and fundamental freedoms of women and girls and to prevent and eliminate child marriage. It also recognises child marriage as a barrier to the development of a society as a whole, and that the empowerment of and investment in women and girls, the meaningful participation of girls in all decisions that affect them, and women's full, equal and effective participation at all levels of decision-making are a key factor in breaking the cycle of

gender inequality and discrimination, violence and poverty.

Throughout the world, families and societies treat girls and boys differently, with girls disproportionately facing lower levels of investment in their health, nutrition and education (UNICEF 2008). Gender based discrimination continues in adolescence and is often a constant feature of adulthood. Prevailing gender norms also inhibit adolescent girls' access to schooling and employment opportunities. Faced with no schooling and employment opportunities, girls become vulnerable to child marriages (ibid.). This is especially so when poverty intersects with gender dynamics in the family which in turn affects choices about education and marriage (Bunting 2005: 29). Therefore, economics alone does not explain why poverty leads to child labour in factories or in the informal economies of the street for both boys and girls in some cultures, while poverty leads to early marriage for girls and teens in other cultural contexts (ibid: 26). Factors such as the social shame associated with pregnancy out of wedlock, cultural traditions, and the status and roles of girls and women in society, therefore, overlap with poverty and economic class considerations to encourage the marriage of minor girls (ibid.).

Gender stereotypes about women's roles in society manifest themselves in legal provisions along with cultural norms (ibid: 29). In many countries the disparity between women and men is reflected and codified in law. It is common to find that the marriageable age for girls is less than that for boys.

(vi): *Freedom from violence*
Violence means all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse as listed in article 19, paragraph 1 of the CRC (CRC Committee 2011). The CRC gives an obligation to State parties to take all appropriate measures, legislative and others, to protect children from all forms of violence and exploitation, including sexual abuse (article 34). The provision insists on the obligation to State parties to protect children from sexual exploitation and abuse including the inducement or coercion of a child to engage in unlawful sexual activity.

Child marriage is a form of gender-based violence (CEDAW Committee 1992). Also, children who get married experience violence that violates their physical integrity (Mutyaba 2011: 343). The vulnerability of children in marriages to violence has also been identified by the CRC Committee (GC No. 13) and the CEDAW Committee (GC No. 29). The Committees acknowledge that women in early marriages occupy a subordinate role to their husbands which makes them susceptible to domestic violence.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) among other things, places an obligation on State parties to criminalise the sale or purchase of children (Article 3). The Optional Protocol defines sale of children as any act in which a child is exchanged for money or any other consideration (Article 2). The provisions of the Optional Protocol become relevant to child marriage on the issue of dowry. In countries with extremely high rates of poverty, the availability of a dowry creates a huge incentive for parents to marry their daughters off at a young age. Given that these dowry payments essentially involve the exchange of money for a person, child marriages realised through dowry payments are at odds with the provisions of the Optional Protocol to the CRC (Verner 2015: 775). The CEDAW and the CRC Committees (2014) have also emphasised that State parties who recognise marriages preceded by dowry payments are in violation of the Optional Protocol. The Committees have also stated that dowry may increase the vulnerability of women and girls to violence. The husband or his family members may engage in acts of physical or psychological violence, including murder, burning and acid attacks, for failure to fulfil expectations regarding the payment of dowry or its size (Verner 2015: 775).

Article 27 of the ACRWC also provides for protection against sexual exploitation and sexual abuse. State parties are required in particular to take measures to prevent the inducement, coercion or encouragement of a child to engage in any sexual activity (Sloth- Nielsen 2014).

An analysis of Tanzania's compliance with international human rights law on child marriage

Tanzania is party to many human rights treaties which are relevant to the issue of child marriage. These include the CRC (ratified on 10th June 1991); the Optional Protocol to the CRC on the Sale of Children; Child Prostitution and Child Pornography (ratified on 24th April, 2003); CEDAW (ratified in 1985); ICESCR (acceded in 1976); ICCPR (acceded on 11th June, 1976); ACRWC; ACHPR (ratified on 31st May, 1982) and the Maputo Protocol (ratified on 3rd March, 2007). Tanzania has correlative obligations in relation to child marriage from these instruments. This paper now turns to assessing whether or not Tanzania is complying with these obligations.

(i): *Minimum age for marriage and minimum age laws*

Contrary to international law which demands the minimum age of marriage be set at 18 years and under exceptional circumstances to be lowered to 16 years, under the Law of Marriage Act (LMA) Tanzania sets the minimum age for marriage for girls at the age of 15 whereas the age is set at 18 years for boys (Section 13). The provision also states that the minimum age for marriage can be lowered to 14 years, with leave of the court under special circumstances.

Minimum age for marriage is neither provided in the Constitution nor in the Law of the Child Act (LCA) which was enacted in 2009 to domesticate Tanzania's international obligations regarding children. Even though the LCA defines a child as a person below the age of 18 years, the banning of child marriages was left out the Act purposely (Avalos 2015: 678). Civil society organisations, legal experts, academics, and children advocated to include a ban on child marriage in the LCA during public hearings before passage of the Bill, but conservative forces blocked these efforts (Cameron 2009).

Furthermore, Tanzania exercises normative legal pluralism whereby legal pluralism is embodied in legislation stipulating how different non-state legal orders are accommodated within the state and interact with each other (Corradi 2014: 785). Customary law which provides for puberty as the minimum age for marriage for girls (Local Customary Law (Declaration) Order 1963) and Islamic law which has no minimum age for marriage set (Van Der Zweep 2005: 18) co-exist parallel with statutory law. Article 2 of CEDAW requires that in situations where non-state legal orders co-exist with State legal orders, then under circumstances where the non-state legal orders contravene the formal orders, they should be declared null and void (Byrnes 2012: 91). Tanzania has complied with this requirement whereby it is provided in the Judicature and Application of Laws Act that in the case where customary law or Islamic law contradict statutory law, then statutory law will take precedence. This was also stated in the case of Elizabeth Stephen & Another v AG (2005). Furthermore, if these laws also contradict the Constitution, then they also become null and void as per article 64(4) of the Constitution. However, these non-official legal orders usually still operate and are followed more widely than statutory law due to ignorance of statutory legal provisions, especially in rural areas.

The CRC Committee (2015) has expressed concern that the minimum age for marriage is set at 18 for boys and 15 for girls and that exceptions allowing marriage at even younger ages for boys and girls are possible in Tanzania. In response, while presenting its periodic report to the Committee, Tanzania has stated that the reason for failure to amend the LMA and retain the same minimum age for marriage is that the question of minimum age of marriage touches on certain religious beliefs. Therefore, public consultation is imperative to reach a consensus. In recognition of this reality, it has initiated a consultative process through which members of the public are being consulted to provide their inputs so as to enable the establishment of one legal minimum age for marriage, at an internationally acceptable level, for both boys and girls, as was recommended by the Committee (CRC 2012).

After giving the response to the CRC Committee that a process has been initiated to change the minimum age for marriage, the CEDAW Committee (2014) also brought up the same issue. The Committee was concerned that the age of marriage for girls as articulated in the LMA still

discriminates against girls in fulfilling the opportunities that are presented to them as it allows marriage at age 15. In response, Tanzania reiterated that reviewing the age of marriage has been a challenge for years due to some traditional and religious practices.

The Tanzania delegation added that they were hopeful that the proposed constitution (which was in the process of being adopted) provides room for revision as it defines a child to be any person under 18 and other protection measures for children are stipulated. Following the adoption of the new Constitution, much legislation, including the legislation on marriage, would have to be amended to take the dispositions of the new Constitution into account (UN OHCHR 2015). The delegation was of the view that the new Constitution would have come into force by 2014. The Committee however urged Tanzania to revise its legislation in order to ensure that the minimum age of marriage is established as 18 years for both girls and boys, regardless of the outcome of the constitutional review process. This was an appropriate recommendation by the Committee because the process of adopting the new Constitution in Tanzania has since then been shelved.

Therefore, Tanzania has failed to amend the LMA which provides for a lower minimum age of marriage for girls compared to boys. This has been further held to be discriminatory against girls by the High Court of Tanzania in the case of Rebecca Gyumi v. Attorney General (2016). The court in this landmark decision ruled that the provision was unconstitutional as it contravenes articles 12, 13 and 18 of the Constitution of the United Republic of Tanzania, which give people equal rights before the law and the right not to be discriminated against. The court stated that it was unfair to subject a girl aged 15 to marriage and that such a child has no wide understanding and could hardly comprehend her responsibilities and obligations as a married person. And that, the law was discriminatory and unfair as it subjected a girl child to be married at 15 years old, while the same law stated that a male person could only marry when he was aged 18 years.

The Court as required by law ordered the Parliament to amend the law as required by the Constitution since 2016 but Parliament has yet to do that. When a State Party to CEDAW fails to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, they are in violation of CEDAW (Article 2). This position was also taken by the CEDAW Committee (2013) in E.S and C.S versus United Republic of Tanzania whereby Tanzania was found in violation of CEDAW for failure to take measures to abolish customary inheritance laws which are discriminatory against women.

The CRC also requires the registration of all births for among other things, to be used as a tool to identify child marriages. Tanzania has complied with this requirement by incorporating in the LCA (Article 6) the obligation upon parents to register the birth of a child. However, the registration is still very slow and a concern over this has been expressed by the CRC Committee (2012). The Committee stated that it is concerned by the low level of births registered, especially in rural areas. Particularly, they were alarmed that financial resources allocated to carry out birth registration initiatives have remained insufficient and the high costs related to obtaining birth certificates, particularly in rural areas, remain obstacles for many families. In response, the Tanzania delegation explained that the provision of free certificates is still a challenge due to rising costs of production of the certificates and the distribution costs, particularly in rural areas. But it is carrying out awareness-raising campaigns to make sure that more births are being registered.

Tanzania has also complied with the CRC and CEDAW regarding registration of marriages. Registration of marriages is also considered to be a tool to monitor early marriages. The LMA establishes a duty to register marriages (section 43). All marriages, despite the manner of celebration, be it civil, customary or religious marriages are required to be registered. In the case of Mahundya Mburumatare v. Mugendi Nyakangara (1969) it was held that even the validity of a customary marriage depends on a marriage certificate. That section 86 of the

Customary Law Declaration Order provides that a marriage must be legalised by the issuance of a marriage certificate.

(ii): *The right to consent to marriage*
International human rights law recognises the right to enter into a marriage with free, full and personal consent as discussed above. States are under an obligation to ensure that they do not recognise marriages entered without free, full and personal consent.

Tanzania still recognises marriages which have been entered without free, full and personal consent. Section 17 of the LMA allows a girl of 15 years to be married with the consent of either a parent or a guardian. This is contrary to and in violation of the human rights treaties. The same was also held in the Rebecca Gyumi case, whereby the High Court of Tanzania declared that the legal provisions, which permit girls below the age of 18 to marry with the consent of a parent or guardian, were discriminatory and that they infringe the right to equality. The Court therefore declared the impugned provisions unconstitutional and ordered, in accordance with the Constitution, parliament to review the law in accordance with its obligations under Article 6 of the Maputo Protocol and Article 21 of the ACRWC. However, despite being ordered in 2016, this has yet to be undertaken.

Other legal orders also recognise marriages entered without full consent. Under customary law, a girl below the age of 21, needs her father's consent or the consent of her father's representative to get married (Local Customary Law (Declaration) Order, 1963). Under Islamic law, the bride must be accompanied by a male guardian, and according to Van Der Zweep the bride's consent for the marriage is not needed in the case of being a virgin and the guardian is her father or grandfather (2005: 27). Although more broadly under Islamic law, there is a requirement for consent for a valid marriage, so there is a difference in practice here.

Furthermore, in Tanzania, the age of consent for sex is 18 under the Penal Code (section 130). So girls under the age of 18 are considered to be incapable of consenting to sex under the law unless they are of the age of 15 and above and married as provided for by the LMA. The CRC Committee (2012) has also noted with concern that despite Tanzania criminalising all sexual activity with girls below the age of 18, child marriage is allowed at age 15 and marital rape is not prohibited. Furthermore, the differences in marriageable age between males and females violate Article 10 of the ICESCR (1995: para 159).

The CEDAW Committee (1994) has stated that States parties should not allow dowry payment practices as a requirement for marriage and allowing them is a violation of women's right to freely choose a spouse. Further, marriages that have been entered with dowry payment formalities, should not be recognised. Tanzania has complied with one part of this obligation, whereby under statutory law, customary law as well as Islamic law, dowry is recognised but it is not a requirement for a valid marriage as stated in the case of Daniel Masalu v. Musa Shadrack (1987). However, the second part, which requires that such agreements not be enforceable, has not been complied with because all laws recognise and allow dowry formalities and marriages preceded with dowry formalities are considered valid (Van Der Zweep 2005: 27).

(iii): *The right to education*
In Tanzania, the right to education and other socio-economic rights are provided in Part Two of Chapter One of the Constitution of the United Republic of Tanzania (CURT). This is where the Fundamental Objectives and Directive Principles of State Policy are found, and not in the Bill of Rights. Unfortunately, these rights are neither enforceable, nor justiciable due to the fact that the CURT under article 7(2) clearly stipulates that the provisions of the Fundamental objectives and directive principles of state policy are not enforceable by any court and no court shall be competent to determine whether or not any action or omission by any person, court or any law or judgment complies with the provisions of this part.

As required by the ICESCR and elaborated by the ICSECR Committee (1994), education should be free of charge, requiring the States to eliminate direct charges in the form of school fees but also

the indirect costs, such as compulsory levies on parents or the obligation to wear a relatively expensive school uniform. Tanzania has complied with this provision to the extent of abolishing direct costs in the form of fees for both primary and secondary studies. However, there are still a lot of indirect costs, for example students are expected to contribute money for their meals while in school, salaries of cooks as well as part time teachers for subjects the schools do not have teachers for, school materials and to appear in proper school uniform (Davén 2008: 12). Failure to pay contributions and to appear in proper school uniform may result into children being sent back home from school (ibid.).

On 17th January, 2018, the President of Tanzania, H.E John Magufuli banned all costs charged to parents, guardians and relatives of students in public primary and secondary schools (Kolumbia 2018). This ban also involved an order to return to students the contributions which have already been collected. This ban was received with mixed feelings from parents, who wondered for example how their children are going to spend the whole day in school without eating as the ban was not accompanied with additional funding for the schools to replace the parents' contributions. In response, the Minister in charge of education, Prof Joyce Ndalichako said the government has not banned parents from making contributions to schools if they voluntarily wanted to (Azania post reporter 2018).

Furthermore, the ICESCR as well as CEDAW obligate State parties to eliminate gender discrimination in the provision of education, with the ICESCR imposing an immediate obligation on the State parties. The ICESCR Committee (1999) has given examples of possible violations including the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds in the field of education and the failure to take measures which address de facto educational discrimination. Tanzania is in violation of this provision firstly by setting a minimum age for marriage at 15 for girls while it is 18 for boys. In Tanzania, children are supposed to start primary school by age 7 and primary school is for 7 years (UNESCO, 2010/11). After that, they have 4 years of lower secondary school and then two years of advanced secondary school before joining higher education. Therefore, by setting the minimum age for marriage for girls at 15, it means that girls may only be afforded a chance to attend primary school, whereas boys can also attend the lower secondary school.

Furthermore, Tanzania further violates this provision for non-discrimination by expelling pregnant schoolgirls. This concern was also identified by the CEDAW Committee (2006), who found that girls falling victim to early pregnancies were expelled from Tanzanian schools. The CRC Committee (2012) also expressed regret on Tanzania's reservation on continuing education for pregnant girls in the African Youth Charter (2006) and noted with concern that Tanzania has not repealed the provisions of the Education Act of Tanzania to explicitly prohibit the expulsion of pregnant girls from school.

The Committee also noted with concern that the practices of mandatory pregnancy testing and expulsion of pregnant girls remain prevalent, in particular from secondary education or as a pre-requirement for admission to school.

In response, the Tanzania Education and Training Policy was revised in 2014. This policy contained a component on enabling schoolgirls to continue with their studies after delivery of the baby. Furthermore, important steps were taken in 2015 to develop the guidelines explaining how pregnant girls will be supported in returning to school, by reviewing draft guidelines which were formulated in 2009 (Rutgers International 2015). However, President H.E John Magufuli in 2017 banned pregnant girls from being allowed back in schools. He stated that; "as long as I am president ... no pregnant student will be allowed to return to school, we cannot allow this immoral behaviour to permeate our primary and secondary schools" (Makoye 2017).

The President also criticised rights organisations which have been pushing the government to reverse the law. He stated that "…these NGOs should go out and open schools for parents. But they should not force the government… I'm giving out free education for students who have really

decided to go and study, and now you want me to educate parents?" (BBC 2017).

The Centre for Reproductive Rights reported in 2013 that more than 55,000 Tanzanian school girls have been expelled from school in the previous decade for being pregnant. Some wealthier families are able to send their daughters to private schools but the majority end up at home. Expelling pregnant school girls is a violation of the right to education based on gender discrimination because at a marriageable age of 15, it eliminates the possibility of these married girls going back to school while married and completing their lower secondary education.

However, it is important to note that the Education Act (2002) has attempted to protect the right to education by criminalising anyone who causes a primary school or secondary school student to become pregnant. The Act previously provided a penalty of Tanzanian Shillings (TSh) 500,000 or a three-year jail term for offenders. However, the law was revised in 2016, to provide stiffer penalties. The amendment imposes a jail sentence of 30 years to persons who will marry or impregnate primary and secondary school pupils and students and a five-year jail term or a TSh five million fine to be imposed to persons who facilitate, persuade or take part in a move to marry off a primary or secondary school pupil or student.

This law only protects children who are in school against child marriage and cannot be used to protect the ones who are not in school. According to UNICEF Tanzania (2018), an estimated two million children between the ages of 7 and 13 years are out of school and almost 70 per cent of children aged 14–17 years are not enrolled in secondary education while a mere 3.2 per cent are enrolled for the final two years of schooling (UNICEF 2018). Therefore, many children are not covered by the protection of this law. The correlation between the number of years of a girl's schooling and the postponement of marriage is firmly established by demographic and fertility studies (UNICEF 2001: 11). On average, women with seven or more years of education marry four years later and have fewer children than those with no education (ibid.). Therefore, children who do not get an opportunity to receive education, miss the empowering advantages of education.

(iv): *The right to health*

States are obligated to adopt legislative measures to realise the right to health progressively. Tanzania however has not included socio-economic rights including the right to health in the Bill of Rights. Therefore, the right to health is not justiciable in Tanzania as per article 7(2) of the CURT.

State parties are also required to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights. Therefore, States are obligated to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage (The ICESCR Committee 1999). The CRC also imposes an obligation on states parties to abolish harmful traditional practices prejudicial to the health of children. Effects of child marriages as one of the harmful traditional practices are well documented.

Unfortunately, Tanzania has not adopted legislation on harmful traditional practices in general. More efforts have been placed towards the elimination of female genital mutilation which has been criminalised in the Penal Code but other harmful traditional practices like early marriage have not been criminalised. As a result, there is still a high prevalence of harmful practices in Tanzania. The CEDAW Committee (2006) has recommended that Tanzania prohibit harmful traditional practices by law. These legal provisions prohibiting harmful practices should be ensuring that all harmful practices are investigated, prosecuted and adequately punished and victims of harmful practices have access to effective remedies and adequate protection mechanisms.

Furthermore, the CEDAW Committee (2006) has expressed concern about the unmet demand for family planning services and the low level of contraceptive use. Tanzania has stated that it has procured and widely distributed contraceptive commodities at all levels of health care, a measure

that has resulted in the increase in accessibility by women and men to facilities and the commodities. It has also been carrying out sensitisation meetings that involve influential people and religious leaders on reproductive issues including family planning (CEDAW Committee 2014).

However, Tanzania has admitted that there is still low use of family planning methods especially in rural areas. It has specifically expressed concern for child brides by stating that only twelve percent of married girls aged 15-19 are using modern methods of contraception compared to 24 percent of married women aged 20-24 years which highlights the vulnerabilities of child brides (ibid.). This increases chances of teen pregnancies as well as maternal mortality and morbidity. This also makes them susceptible to HIV/AIDS and other sexually transmitted diseases.

(v): *Non-discrimination*

As discussed above, gender discrimination is both a cause and a consequence of child marriage. Human rights treaties place an obligation on States parties to eliminate discrimination on the basis of gender. States are required to enact laws that promote gender equality. States parties are required to guarantee equality between women and men in their constitutions and to eliminate any constitutional exemptions that would serve to protect or preserve discriminatory laws and practices (CEDAW Committee 2013). Tanzania has complied with this obligation by having a constitutional provision which requires equality before the law and prohibits discrimination on the basis of various grounds including gender (Article 13). This position of the Constitution was cemented in the case of Ephraim v Pastory (1990: 757) wherein a Haya customary law which allowed women to only inherit clan land for use during their lifetime and restricted them from selling, was held to be unconstitutional on grounds of being discriminatory on the basis of gender. The judgment relied on the Constitution and heavily on human rights treaties. Furthermore, in 2009, Tanzania enacted the Law of the Child Act which among other things provides for the protection of female children against gender discrimination under section 5(2).

States parties are also required to adopt gender-neutral laws and policies, which on their face treat women and men equally (CEDAW Committee 2013). Tanzania is in violation of this obligation because it still has discriminatory laws which favour men and disadvantage women for example inheritance laws. Having discriminatory inheritance laws was held to amount to gender discrimination and hence a violation of CEDAW in the E.S and C.S versus United Republic of Tanzania by the CEDAW Committee (2013).

State parties are also obligated to correct cultural customs and practices, in addition to cultural patterns of conduct between men and women, which promote any type of discrimination or stereotyped roles for men and women as well as harmful traditional practices. They are required to do this by taking necessary legislative and other measures to address these, including public awareness campaigns in all sectors of the society and the provision of comprehensive support for victims. Tanzania has not complied with this obligation. It has not adopted comprehensive measures to make sure that it eliminates harmful traditional practices. The only harmful traditional practice that has been made illegal is female genital mutilation.

Measures to be implemented by State parties are not restricted to legislation. Article 2 of CEDAW urges states parties to implement other measures to eliminate gender discrimination such as the implementation of programmes, public policies and other institutional frameworks that would play an important role in eliminating discrimination against women. In compliance, Tanzania in collaboration with non-state actors, particularly Civil Society Organisations has been undertaking public awareness-raising campaigns to combat and eliminate discrimination and violence against women through the Sixteen Days of Activism, International Women's Day, the Day of the Girl Child, Uhuru Torch Rally and Gender Festivals (CEDAW Committee 2014). Through the celebrations of the International Day of Women, state and non-state actors raise public awareness on CEDAW and the rights of women (ibid.). It has also adopted policies which aim to eliminate discrimination against women such as the

National Plan of Action to Prevent and Eradicate Violence against Women and Children (2001-2015), National Strategy for Gender Development (2005) and Child Development Policy (UN Secretary General 2009). The policies acknowledge the negative effects of discrimination against women and include measures that should be taken to eliminate it.

Even though Tanzania is said to have achieved progress towards gender equality over the last decade, key challenges remain such as inequitable access to and ownership of land and resources, the low participation of women at all levels of decision making, gender-based violence and women's exclusion from the economy (http://tz.undp.org). This is reflected in the 2016 Gender Equality Index, where Tanzania ranks 151 out of 188 countries (UNDP 2016).

On gender discrimination in Tanzania, the CRC Committee (2015) has noted with concern that almost no systematic measures have been undertaken, including with religious leaders, opinion makers and the mass media to combat and change the discriminatory laws, attitudes and practices. The CEDAW Committee (2008) has urged Tanzania to put in place without delay a comprehensive strategy, including legislation, to modify or eliminate cultural practices and stereotypes that discriminate against women, in conformity with articles 2 (f) and 5 (a) of the Convention. Such measures should include efforts to raise awareness of this subject, targeting women and men at all levels of society, including traditional leaders, which should be undertaken in collaboration with civil society. The Committee also urged Tanzania to address harmful cultural and traditional practices, such as female genital mutilation, polygamy and dowry more vigorously. Also, Tanzania has been urged to use innovative measures to strengthen the understanding of the equality of women and men and to work with the media to enhance a positive and non-stereotypical portrayal of women.

(vi): *Freedom from violence*

The CRC obligates states parties to eliminate all violence against children (CRC Committee 2011). Early marriages make girls vulnerable to violence and also early marriages are considered to be a form of violence against women (CEDAW Committee 1992). Therefore, by Tanzania allowing child marriages, they are in direct violation of the CRC as well as CEDAW provisions which demand the elimination of violence against women.

Furthermore, States are obligated to eliminate dowry practices because they make women more vulnerable to violence (CEDAW Committee 2013). Marriages which include dowry payment formalities violate the provisions of the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. This Optional Protocol imposes explicit obligations regarding the elimination of child marriage which include dowry payments as this could constitute a sale of children. Tanzania is in violation of the Optional Protocol because even though dowry payment arrangements are not a prerequisite to a valid marriage in Tanzania, dowry is recognised under statutory law, Customary Law and Islamic Law. Marriages which have been preceded by dowry payment arrangements are considered valid and enforceable despite the CEDAW requirement that they should not be (CEDAW Committee 2013). Furthermore, Tanzania lacks a comprehensive law on domestic violence and marital rape is not criminalised (Human Rights Watch 2014).

However, Tanzania has taken several other measures to curb violence against women. These include the establishment of a National Multi-sectoral Committee to Prevent and Respond to Violence against Women. This committee plans the government strategy and response to cases of abuse faced by children and women; the training of police officers on human rights and specifically on the rights of women and children; the establishment of gender and children desks in major police stations as well as the establishment of one stop centres in 3 districts as pilots (CRC Committee 2012).

The Tanzania Police Force has established Gender and Children's Desks in the mainland and Zanzibar in order to improve the way in which the police handle cases to encourage reporting of gender based violence and child abuse incidences (ibid.). However, even the State itself agrees that the functioning of gender and children desks is limited by factors like insufficient facilities which limit

privacy, limited knowledge of police officers on the rights of women and children and lack of awareness of the public on the issue of violence against women which results in women and children not reporting incidences of violence against them (ibid.). This shows that, the visibility of the CRC and CEDAW has not yet been achieved.

In 2001 Tanzania also adopted the National Plan of Action to combat violence against women and children (2001-2015) and in May 2008 launched a national campaign: "Say No to Violence against Women". However, there is still high prevalence of violence against women and girls, such as widespread domestic violence and sexual violence, including rape (CEDAW Committee 2014). The Committee is concerned that such violence appears to be socially legitimised and accompanied by a culture of silence and impunity, that cases of violence are thus underreported and that those that are reported are settled out of court. The Committee is further concerned at the inadequate funding for the implementation of the National Action Plan. Furthermore, it has noted with concern that marital rape is not recognised as a criminal offence, the lack of specific legal provisions on domestic violence as well as Tanzania's statement that the provision of shelters for victims of violence is not a viable option for the country (ibid.).

The CEDAW Committee (2014) hasurged Tanzania to ensure that violence against women and girls, including domestic violence, marital rape, and all forms of sexual abuse, constitute a criminal offence and that perpetrators are prosecuted, punished and rehabilitated. Also, women and girls who are victims of violence have access to immediate means of redress and protection.

Using the law to address child marriage in Tanzania

As a traditional practice that has taken place among families, communities and societies for generations, ending child marriage proves to be a challenge. As discussed above, Tanzania has also acknowledged that reviewing the age of marriage by law has been a challenge for years due to some traditional and religious practices in the country.

Even though child marriage has been a prevalent custom for many years, traditional and cultural practices are constantly changing with time (Rivera 2011: 91). This is exemplified through other harmful traditional practices that were once widespread and now are abolished or moving toward significant decrease such as slavery and female genital mutilation (Keck and Sikkink 1998: 25).

However, the law usually falls short in these circumstances. It fails to convince a traditional group that their practices are wrong (ibid). For example, despite decades of campaigns to restrict or forbid it through legislation, marriage under the age of 18 years is still common in sub-Saharan Africa and the continent is predicted to have the largest global share of child brides by the year 2050 (UNICEF 2015: 6).

Bunting (2005: 18) argues that using law to categorically prohibit marriage below the age of 18 might not be a good strategy to end child marriage. She adds that the socio-economic conditions in which girls, adolescents and young women live and marry need to be examined and addressed in order to develop relevant and culturally appropriate international strategies. In particular, countries with very low levels of socio-economic development have very high incidence of early marriage or median age at first marriage. Thus, socio-economic development is a determining factor in age at first marriage.

She elaborates her stand point by giving an example of a documented health consequence of child marriage which is fistulae. She argues that the United Nations Populations Fund has noted that fistulae is both preventable and treatable and is virtually unknown in places where early pregnancy is discouraged, young women are educated, family planning is accessible and skilled medical care is provided at childbirth (ibid). In other words, not in every place will the consequences of early childbearing include fistulae and other reproductive ill health; in places with higher levels of economic development, in particular with better health care services, young women will not experience such consequences (ibid: 20). In essence, what the author is arguing is that, it is not really about the minimum age for marriage. Under good socio-economic conditions,

there will be no or fewer negative consequences of early marriage. Therefore, the focus should not be on a law that sets the minimum age for marriage but rather on socio-economic development.

She adds that, the problem of children's welfare in developing contexts cannot simply be solved by simplistic solutions, such as banning all child labour and placing these children, like their western counterparts, in a position of social, economic and physical dependency. In ignoring the socially constructed character of childhood, through promoting a culturally specific version, such an approach can have potentially devastating consequences for children (James 1998). James, citing data on the number of children who are heads of households, argues that banning child labour would only deepen children's poverty, not alleviate it. Similarly, to ban early marriage risks exacerbating, not alleviating, the underlying socio-economic problems facing girls and adolescents in developing countries (ibid).

Boyle (2013: 596) adds that in in areas characterised by poverty, child marriage can be a response to poverty and be viewed by community members as a charitable act. Under such circumstances, enactment of law only may not be enough. Hutchison and McNall (1994: 588) also opine that one has to be aware of the actual causes and consequences of marriage for a young woman in a particular cultural and socio-economic context, if one is to come up with a strategy to eliminate child marriages (ibid). Therefore strategies which work in one place, might not work in another due to a difference in context (ibid).

Research shows that the best approaches to delay child marriages are those that elevate girls' visibility and status in their families and communities, build their skills and knowledge, and are cost-conscious and economical. Research which was conducted in Burkina Faso, Ethiopia and Tanzania particularly by Population Council (2014), managed to develop and evaluate cost-effective, sustainable approaches to delaying marriage in child marriage 'hotspots' in sub-Saharan Africa based on the above principle. The research also noted that child marriage is not an intractable tradition. That, when families and communities recognise the harms of child marriage, and have economic alternatives, they will delay the age at which their daughters get married.

Therefore, programmes which apart from lobbying for change of laws, also provide a holistic, community-based approach by focusing efforts on empowering girls or initiating community outreach and awareness attempting to incentivise parents, relatives and other community leaders to avoid practices of gender based violence including child marriages have enjoyed success in the areas they have been implemented (Avalos 2015: 693).

This is in line with the Human Rights Council resolution (2015) which recognises the need for national action plans on child marriage, and encourages States to work with civil society to develop and implement a holistic, comprehensive and coordinated response to address child marriage and support married girls.

The National Survey on the Drivers and Consequences of Child Marriages in Tanzania (2017) also concluded that eliminating child marriages in Tanzania will take harmonisation of the laws to make sure that the minimum age for marriage is set at 18 with no exceptions but this will not work alone. It has to be accompanied by implementing strategies that will elevate the position of girls within their families as well as the community. This can be done by first keeping girls in school longer preferably by mandatory education. Also, there is a need to improve the economic status of girls for example through the provision of entrepreneurial skills that will give them an opportunity to engage themselves in income generating activities. This will provide an opportunity for girls to be independent and to not run or be forced into marriage as a means of financial security. Furthermore, education should be provided to the children themselves, parents, as well as community members for better results.

Conclusion

The current framework on child marriages in Tanzania falls short of international legal obligations and is not in line with international

standards. The framework provides for a lower minimum age for marriage for girls compared to that prescribed by human rights law. It further allows for this age to be lowered again under exceptional circumstances. It seemingly fails to require free, full and personal consent of persons about to get married; does not fulfil obligations in relation to the rights to education and health of girls and also has not done away with discrimination and violence against women. All these factors foster the prevalence of child marriages in Tanzania.

In that regard, it is imperative that the existing laws be amended to raise the minimum age for marriage to 18 years for girls to match that of boys; to require free, full and personal consent of spouses during marriage; to eliminate indirect costs for education; to criminalise all harmful traditional practices; to promote equality and to eliminate violence against girls. Amendments of the law only even though effective to some extent, is insufficient and should be accompanied with proper enforcement of the laws and other non-legal measures that will elevate the position of girls within their families as well as the community.

Acknowledgement

This paper is part of the author's ongoing PhD research entitled 'The localisation of human rights: the case study of child marriages in Shinyanga Tanzania'. The author is a PhD in Law candidate at the University of Antwerp in Belgium.

References

Avalos, L., et al. (2015) 'Ending female genital mutilation & child marriage in Tanzania', *Fordham International Law Journal*, 38(3): 678.
Azania Post Reporter (2018) 'Parents concerned about ban on school contributions'. Available at: http://www.azaniapost.com/education/parents-concerned-about-ban-on-school-contributions-h12674.html [accessed on 13 February 2018].
BBC (2017) 'John Magufuli's pregnant schoolgirl ban angers Tanzanian women'. Available at: http://www.bbc.com/news/world-africa-40379113 [accessed 6th March, 2018].
Boyle, E.H. (2013) 'When do laws matter: national minimum-age-of-marriage laws, child rights, and adolescent fertility (1989-2007)', *Law and Society Review*, 47(3): 590.
Bunting, A. (2005) 'Stages of development: marriage of girls and teens as an international human rights issue', *Social and Legal Studies*, 14(1): 17–38 28.
Byrnes, A. (2012) 'Article 2 in the UN convention on the elimination of all forms of discrimination against women: a commentary', in Chinkin, C. et al., eds. *The UN convention on the elimination of all forms of discrimination against women*, Oxford: Oxford University Press: 91.
Cameron, S. (2009) 'Tanzania passes landmark law of the child'. Available at https://www.unicef.org/tanzania/education.html [accessed 29 November 2017].
UNICEF(quoting UNICEF Representative in Tanzania Heimo Laakkonen the day the Law of the Child Act was enacted). Available at: http://www.unicef.org/infobycountry/tanzania 51662.html [accessed 30th August, 2018].
Corradi, G. (2014) 'Can legal pluralism advance human rights? How international development actors can contribute', *European Journal of Development Research*, 26(5): 785.
Dauvergne, C. and Millbank, J. (2010) 'Forced marriage as a harm in domestic and international law', *Modern Law Review*, 73(1): 58.
Davén, J. (2008) 'Free Primary Education in Tanzania? – A Case Study on Costs and Accessibility of Primary Education in Babati Town', School of Life Sciences Bachelor's Thesis , School of Life Sciences Bachelor's Thesis, Södertörn University College, Stockholm, Sweden: 12.
Demographic and Health Surveys Program (DHSP) (1994) Women's Lives and Experiences, Calverton MD: DHSP: 30-31.
Green, M., Malhotra, A. and Sanyukta, M. (2003) 'Too Young to Wed: The Lives, Rights, and Health of Young Married Girls', Washington, DC: International Center for Research on Women (ICRW) as quoted by Walker, J.A. (2012) 'Early Marriage in Africa — trends, harmful effects and interventions', *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive*, 16(2): 234.
Human Rights Watch (2014) 'No way out: child marriage and human rights abuses Tanzania'. Available at: https://www.hrw.org/report/2014/10/29/no-way-out/child-marriage-and-human-rights-abuses-tanzania [accessed on 13th February, 2018].
Hutchison, R. and Mcnall, M. (1994) 'Early marriage in a Hmong cohort', *Journal of Marriage and the Family*, 56(3): 588.
ICESCR Committee (2001) Concluding Comments France (E/C.122002.22), Geneva: United Nations: para 876.
James, A. (1998) 'From the child's point of view: issues in the social construction of childhood', in Panter-Brick, C., ed. *Biosocial perspectives on children*, Cambridge: Cambridge University Press: 45 – 65.
Juynboll, T.W. (1943) *Handleiding tot de kennis van de Mohammedaansche Wet. Volgens de leer der sjafi'itische school*, New York: Querido: 184-189 as quoted by Van Der Zweep, E. (2005) 'The Application of Islamic Family Law and Human Rights: A Case Study of Tanzania Mainland', Master Thesis Religion Studies, Utrecht University, Utrecht, Netherlands: 18.
Kaufman, J., et al. (2015) 'Minimum marriage age laws and the prevalence of child marriage and adolescent birth: evidence from sub-saharan Africa', *International Perspectives on Sexual and Reproductive Health*, 21(2): 58 – 68. Available at https://www.guttmacher.org/journals/ipsrh/2015/07/minimum-marriage-age-laws-and-prevalence-child-marriage-and-adolescent-birth [accessed 16th February, 2018].
Keck, M. and Sikkink, K. (1998) *Activists Beyond Borders*, New York: Cornell University.
Kolumbia, L. (2018) 'Magufuli bans all forms of contributions in public schools'. Available at: http://www.thecitizen.co.tz/News/Magufuli-bans-all-forms-of-contributions-in-public-schools/1840340-4266942-jahuftz/index.html [accessed 13th February, 2018].
Makoye, K. (2017) 'Tanzania's ban on pregnant girls violates basic rights : campaigners'. Available at: https://www.reuters.com/article/us-tanzania-girls/tanzanias-ban-on-pregnant-girls-in-school-violates-basic-rights-campaigners-idUSKBN19H1FE [accessed 6th March, 2018].
Ministry of Health, Community Development. Gender, Elderly and Children (2017) 'National Survey on the Drivers and Consequences of Child Marriages in Tanzania'. Available at:

http://www.mcdgc.go.tz/data/national_survey_[accessed 8th March, 2018].
Mutyaba, R. (2011) 'Early marriage: a violation of girls' fundamental human rights in Africa', *International Journal of Children's Rights*, 19(2): 341.
Rebecca Gyumi v. Attorney General, Misc. Civil Cause no. 05 of 2016.
Rutgers Tanzania 'The right to education of pregnant girls and young mothers'. Available at: https://www.rutgers.international/sites/rutgersorg/files/PDF/Advocacy_Tanzania_0.pdf [accessed 6th March, 2018].
Sloth- Nielsen, J. (2014) 'Regional frameworks for safeguarding children: the role of the African Committee of Experts on the Rights and Welfare of the Child', *Social Science Open Access Journal* , 3(4): 948–961.
The ICESCR Committee (1995) 'Concluding Comments on Suriname' (E/1996/22), Geneva: United Nations: para 159.
The Law of the Child Act (2009).
The UN CEDAW Committee (2008) 'Concluding Observations of the Committee on the Elimination of Discrimination against Women on the United Republic of Tanzania' (CEDAW/C/TZA/CO/6), Geneva: United Nations: para 118.
The UN CEDAW Committee (2013) Communication No. 48/2013 (CEDAW/C/60/D/48/2013), Geneva: United Nations.
The UN Committee on Economic, Social and Cultural Rights (1999) General Comment 13 on article 13 of the International Covenant on Economic, Social and Cultural Rights on the Right to Education (E/C.12/1999/10), Geneva: United Nations.
The UN Committee on Economic, Social and Cultural Rights (1999) General Comment 11 on Plans of Action for Primary Education on Article 14 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/1999/4), Geneva: United Nations: Para 9.
The UN Committee on Economic, Social and Cultural Rights (2000) General Comment No. 14 on the Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant) (E/C.12/2000/4), Geneva: United Nations: para 1. Available at: http://www.refworld.org/docid/4538838d0.html [accessed 8th February, 2018].
The UN Committee on the Rights of the Child (2011) General comment No. 13 on the Right of the Child to Freedom from all Forms of Violence (CRC/C/GC/13), Geneva: United Nations: para 4. Available at: http://www.refworld.org/docid/4e6da4922.html [accessed 30th August ,2018].
The UN Human Rights Committee (1981) CCPR General Comment No. 4 on Article 3 on Equal Right of Men and Women to the Enjoyment of All Civil and Political Rights.
The UN Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child (2014) Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices (CEDAW/C/GC/31-CRC/C/GC/18), Geneva: United Nations : Para 36.
The UN Committee on the Elimination of Discrimination Against Women (1992) CEDAW General Recommendation No. 19 on Violence against Women (11th Session), Geneva: United Nations. Available at: http://www.refworld.org/docid/52d920c54.html [accessed 30th August, 2018].
The UN Committee on the Elimination of Discrimination against Women (1994) General Recommendation 21on Equality in Marriage and Family Relations (A/49/38), Geneva: United Nations.
The UN Committee on the Elimination of Discrimination against Women (2010) General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GC/28),Geneva: United Nations. Available at: http://www.refworld.org/docid/4d467ea72.html [accessed 9th February, 2018].
The UN Committee on the Elimination of Discrimination Against Women (2006) Concluding Observations on the Combined Seventh and Eighth Periodic Reports of the United Republic of Tanzania (CEDAW/C/TZA/CO/7-8), Geneva: United Nations: 15.
The UN Committee on the Elimination of Discrimination against Women (2013) General Recommendation No. 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women on Economic Consequences of Marriage, Family Relations and their Dissolution (CEDAW/C/GC/29), Geneva: United Nations: para 33.
The UN Committee on the Elimination of Discrimination against Women (2013) Communication No. 48/2013 (CEDAW/C/60/D/48/2013), Geneva: United Nations
The UN Committee on the Elimination of Discrimination Against Women (2014) Consideration of Reports Submitted by States Parties under Article 18 of the Convention, Seventh and Eighth Periodic Reports of States Parties due in 2014 : United Republic of Tanzania (CEDAW/C/TZA/7-8), Geneva: United Nations: para 14. Available at: http://www.refworld.org/docid/56a88e944.html [accessed 6th March, 2018].
The UN Committee on the Rights of a Child (2012) Report of the United Republic of Tanzania to the CRC Committee (CRC/C/TZA/3-5), Geneva: United Nations: 17.
The UN Committee on the Rights of a Child (2015) Concluding Observations for 68th's Tanzania Combined Third To Fifth Periodic Report (CRC/C/TZA/CO/3-5), Geneva: United Nations: para 23.
The UN Committee on the Rights of the Child (2003) General Comment No.4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child (CRC/GC/2003/4), Geneva: United Nations.
The UN Human Rights Committee (1990) CCPR General Comment No. 19 on Article 23 on the Protection of the Family, the Right to Marriage and Equality of the Spouses(HRI/GEN/1/Rev.9 (Vol. I) p.195), Geneva: United Nations: Para 4. Available at http://www.refworld.org/docid/45139bd74.html [accessed 7th February, 2018].
The United Republic of Tanzania (1963) Local Customary Law (Declaration) Order, Government Notice (GN) 279/1963, Schedule 1, Laws of Persons [Sheria Zinazohusu Hali ya Watu], in Judicature and Application of Laws Act, Tanz. Laws Subsidiary Legis. [CAP 358 R.E. 2002].
The Written Laws Miscellaneous Act (No. 2) Act of 2016.
The UN Committee on Economic, Social and Cultural Rights (1999) General Comment No. 11: Plans of Action for Primary Education on Article 14 of the Covenant (E/1992/23), Geneva: United Nations. Available at: http://www.refworld.org/docid/4538838c0.html [accessed 30th August, 2018].
The UN Committee on the Elimination of Discrimination against Women (2010) General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GC/28),Geneva: United Nations. Available at: http://www.refworld.org/docid/4d467ea72.html [accessed 9th February, 2018].
The UN Committee on the Elimination of Discrimination Against Women (1992) CEDAW General Recommendation No. 19 on Violence against Women (11th Session), Geneva: United Nations. Available at: http://www.refworld.org/docid/52d920c54.html [accessed 30th August, 2018].
The UN Committee on the Elimination of Discrimination Against Women (2014) Consideration of Reports Submitted by States Parties under Article 18 of the Convention, Seventh and Eighth Periodic Reports of States Parties due in 2014 : United Republic of Tanzania (CEDAW/C/TZA/7-8), Geneva: United Nations: para 14. Available at: http://www.refworld.org/docid/56a88e944.html [accessed 6th March, 2018].
The UN Committee on the Elimination of Discrimination Against Women (2006) Concluding Observations on the Combined Seventh and Eighth Periodic Reports of the United Republic of Tanzania (CEDAW/C/TZA/CO/7-8), Geneva: United Nations: 15.

The UN Committee on the Rights of the Child (2011) General comment No. 13 on the Right of the Child to Freedom from all Forms of Violence (CRC/C/GC/13), Geneva: United Nations: para 4. Available at: http://www.refworld.org/docid/4e6da4922.html [accessed 30th August ,2018].
The UN Human Rights Committee (1981) CCPR General Comment No. 4 on Article 3 on Equal Right of Men and Women to the Enjoyment of All Civil and Political Rights (U.N. Doc. A/36/40), Geneva: United Nations: para 1. Available at: http://www.refworld.org/docid/453883ffa.html [accessed 31st October, 2017].
The UN Human Rights Committee (1989) CCPR General Comment No. 18 on Non-discrimination, Geneva: United Nations: para 4. Available at: http://www.refworld.org/docid/453883fa8.html [accessed 30th August, 2018].
The UN Human Rights Committee (2000) CCPR General Comment No. 28 on Article 3 on the Equality of Rights Between Men and Women) (CCPR/C/21/Rev.1/Add.10), Geneva: United Nations. Available at: http://www.refworld.org/docid/45139c9b4.html [accessed 7th February, 2018].
UNICEF (United Nations Children's Fund) (2015) A profile of child marriage in Africa, New York: UNICEF.
The UN OHCHR (2015) 'Committee on the Rights of the Child reviews report of Tanzania'. Available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15492&LangID=E [accessed 6 March 2018].
The UN Secretary General (2009) 'UN Secretary General database'. Available at: http://webapps01.un.org/vawdatabase/searchOetail [accessed 13th February, 2018].
UNDP (2016) 'Gender inequality index'. Available at: http://hdr.undp.org/en/composite/GII [accessed 16 February 2018].
UNESCO (2010/1) World data on education. Available at: http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/United_Republic_of_Tanzania.pdf [accessed 14 March 2018].
UNICEF (2001) 'Early marriage: child spouses', *Innocenti Digest*, 7: 11.
UNICEF(2008) 'Child marriage and the law legislative reform initiative paper series'. Available at: https://www.un.org/ruleoflaw/blog/document/child-marriage-and-the-law-legislative-reform-initiative-paper-series/ [accessed 20th August, 2018]: 33.
UNICEF(2018) 'Child protection from violence, exploitation and abuse: child marriage'. Available at: https://www.unicef.org/protection/57929_58008.html [accessed 6th January, 2017].
The United Nations Human Rights Council (2015) United Nations Human Rights Council Resolution on Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage (A/HRC/29/L.15), Geneva: United Nations.
Verner, E. (2015) 'Child marriage in Yemen: a violation of international law', *GA Journal of International and Comparative Law*, 43(759)[ii]: 775.