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ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING THE PREVENTION OF SCHOOLS GIRLS IMPREGNATION ABOVE 18 YEARS OLD IN TANZANIA

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Abstract

This paper explores the legal and institutional framework governing the prevention of primary and secondary school girls above 18 years from impregnation in Tanzania. Although these learners have legally attained adulthood, they often remain socially and economically vulnerable, particularly within the educational environment. Tanzania's commitment to protecting schoolgirls from sexual exploitation and early pregnancies is reflected in several key statutes and policy instruments. The study assesses how these legal provisions, when read together, address the rights to education, safety, and bodily autonomy for schoolgirls who are legally adults yet still enrolled in basic education institutions. Furthermore, the paper examines the institutional roles of the Ministry of Education, Science and Technology, the Commission for Human Rights and Good Governance (CHRAAG), the Tanzania Police Force, and local government authorities in enforcing existing protections and promoting gender equity in education. Despite the presence of robust legal foundations, enforcement remains inconsistent, and legal ambiguities often exclude schoolgirls above 18 from protective measures traditionally designed for minors. The paper concludes that there is an urgent need to harmonize Tanzania's legal framework, clarify age-related protections, and strengthen institutional coordination to ensure comprehensive safeguarding of all schoolgirls regardless of age from impregnation and related violations of their educational and human rights.

1.1 General Introduction

This paper examines the legal and institutional framework governing the protection of primary and secondary school girls against early pregnancy in Tanzania. It focuses on laws, cases policies, and institutional arrangements at the domestic levels that aim to prevent sexual exploitation and ensure the welfare of schoolgirls. The chapter also identifies gaps, weaknesses, and limitations within these frameworks, particularly in relation to girls who are 18 years and above attending primary and secondary schools. The legal framework encompasses laws and policies enacted at international, regional, and domestic levels to protect children and adolescent girls from sexual abuse, exploitation, and early pregnancy. Understanding these frameworks is essential for assessing their effectiveness and identifying gaps in law enforcement and practice.

1.2 The Constitution of the United Republic of Tanzania, 1977 (as amended)

Article 11 of the Constitution states that all citizens have the right to education and training ensures this right. This includes the state's duty to ensure that all children have access to basic and secondary education. Equality before the law and protection from discrimination are highlighted in the Constitution of United Republic of Tanzania.ⁱ Expelling or punishing girls for getting pregnant is a violation of their constitutional right to an education and is considered gender discrimination. Although girls over the age of eighteen who are still enrolled in secondary school are not directly addressed by the Constitution, it does offer a general framework for protection. Furthermore, the Constitution guarantees the protection of human dignity and security of the personⁱⁱ. Sexual exploitation and impregnating schoolchildren violate these rights. While the Constitution establishes broad principles, enforcement mechanisms are weak, particularly in ensuring that schools provide alternatives or reintegration for pregnant students.



1.3 Education Act Cap 353 R.E 2023

Tanzanian school administration is governed by the Education Act. Section 60A of the Written Laws (Miscellaneous Amendments) Act, 2016 criminalizes the act of impregnating primary or secondary school girls under the age of 18 in an effort to prevent sexual abuse in schools. Section 60A (3) imposes penalties on individuals who have sexual relations with schoolgirls, providing a legal deterrent. The Act also requires schools to protect students' welfare, but it is unclear whether having sex with girls who are 18 or older is illegal.ⁱⁱⁱ The Act also mandates that school administrators keep an eye on pupils and create secure learning environments. Incidents of school pregnancies and dropouts continue despite these provisions, suggesting lax enforcement and inadequate coverage for girls over the age of 18 attending secondary institutions.

1.4 Penal Code, Cap 16 R.E 2023

The Penal Code criminalizes sexual offenses, including defilement (Section 130) and indecent assault (Section 138). Section 130 protects girls under 18, while Section 131 imposes harsher penalties when the victim is a student.^{iv} Because the Penal Code imposes legal penalties on those who impregnate schoolgirls, it is pertinent to the study. Secondary school females who are 18 years of age and older are not clearly protected by the Code, despite the fact that they are still enrolled in school and are susceptible to sexual exploitation. The Code requires law enforcement to look into sexual offences and bring charges against those who commit them. There is a gap in protection since enforcement is uneven in practice and many incidents involving schoolgirls over the age of 18 do not result in prosecution.

1.5 Law of Marriage Act Cap 29 R.E 2023

The Law of Marriage Act^v protects girls from forced or early marriages and sets the lawful marriage age. In addition to forbidding marriage before the age of 18, the law attempts to lower the number of teenage pregnancies by restricting sexual interactions through marriage^{vi}. By limiting early sexual activity that could result in pregnancy, it indirectly protects girls in schools despite being essentially a marriage regulation. The Act and the study are related because school-age pregnancies frequently stem from relationships that may otherwise culminate in early marriage. However, girls over the age of eighteen are not protected if they are sexually exploited while still enrolled in secondary school because the Act does not forbid them from having extramarital affairs.

1.6 Child Development Policy, 2008

This policy offers a framework for safeguarding children and adolescents from abuse, neglect, and exploitation; it places a strong emphasis on education, health, and welfare; it encourages the state to implement preventive and remedial measures for early pregnancy among schoolgirls; it promotes awareness campaigns, school-based sexual education, and counselling programs to reduce teenage pregnancy; it is relevant to the study because it supports interventions aimed at protecting girls and keeping them in school; older secondary schoolgirls are left unprotected.

1.7 Education and Training (Pregnancy and Reintegration) Regulations, 2012

These regulations provide guidance on how schools should handle pregnant students, including reintegration programs after childbirth. They emphasize that pregnancy should not automatically lead to permanent expulsion and promote continuation of education. Regulations require schools to provide counseling and alternative learning arrangements, supporting girls to continue their studies. This is directly relevant to the study because it highlights institutional practices designed to mitigate school dropout due to pregnancy. However, in practice, enforcement is uneven, and girls over 18 often face stricter social stigma, making it difficult for them to benefit from reintegration programs. This creates a gap between legal provisions and actual practice

2 Case Analysis

2.1.1 *Mwambipile and another v. United Republic of Tanzania (Application No. 042/2020)*

In this case, the applicants challenged Tanzania's policy of excluding pregnant schoolgirls from attending and being readmitted to public primary and secondary schools. They argued that this policy violated the right to education and the right to non-discrimination, as enshrined in the African Charter on Human and Peoples' Rights. The African Court on Human and Peoples' Rights found the application inadmissible due to a prior decision by the African Children's Rights Committee on the same matter.^{vii}

This case underscores the importance of aligning national policies with international human rights obligations. While the court did not address the merits of the case, the decision highlights the need for domestic laws to reflect the rights guaranteed under international instruments. The policy in question has been a subject of debate, with critics arguing that it perpetuates discrimination and hinders the educational advancement of young mothers. For the study, this case serves as a critical reference point in examining the legal landscape surrounding the expulsion of pregnant schoolgirls. It provides insight into the challenges of seeking redress through regional human rights mechanisms and the complexities of enforcing international human rights standards at the national level.

2.1.2 *Inclusive Development for Citizens and Another v. Attorney General of the United Republic of Tanzania (Reference No. 10 of 2020)*

This case was filed before the East African Court of Justice by the Center for Strategic Litigation and Inclusive Development for Citizens. The applicants challenged the Tanzanian government's policy, as articulated by the then District Commissioner of Dodoma Urban, which mandated mandatory pregnancy tests for schoolgirls every three months and the expulsion of pregnant students from schools. The applicants argued that this policy violated the East African Community (EAC) Treaty and the African Charter on Human and Peoples' Rights.

The East African Court of Justice dismissed the case as time-barred, citing the strict two-month limitation period under the EAC Treaty. While the court did not address the substantive issues, the case highlights the procedural challenges in seeking legal redress

through regional courts. The policy in question has been criticized for violating students' rights to privacy and education. This case is pertinent to the study as it provides insight into the legal challenges against discriminatory educational policies and their implications for schoolgirls' rights. The dismissal based on procedural grounds underscores the complexities involved in addressing such issues through litigation and the importance of timely legal action.

2.1.3 *Joshua So Malendeja v. Republic (2013) TZCA 325*

In this case, the Court of Appeal of Tanzania dealt with the issue of a schoolgirls being expelled due to pregnancy. The appellant, Joshua So Malendeja, challenged the decision of the school authorities to expel his daughter, arguing that it violated her rights. The court emphasized the importance of protecting the rights of children and ensuring that they are not discriminated against based on pregnancy.^{viii}

The court's decision underscored the need for educational institutions to adhere to constitutional provisions that protect the rights of children. The case highlights the application of domestic laws in safeguarding students' rights and the role of the judiciary in enforcing these protections. The ruling has implications for how schools handle cases of pregnancy among students and the legal recourse available to affected individuals. This case is pertinent to the study as it reflects the judicial approach to cases involving the expulsion of schoolgirls due to pregnancy. The study can analyze how domestic legal frameworks are applied in such cases and their effectiveness in protecting students' rights.

3.1 Institutional Framework

3.1.1 Ministry of Education, Science, and Technology (MoEST)

The Presidential Circular established the Ministry of Education, Science, and Technology, which is governed by the Education Act, Cap. 353. Its legislative responsibilities include creating national education policies, supervising educational institutions, and guaranteeing adherence to laws protecting students, such as those prohibiting sexual exploitation. The Pregnancy and Reintegration Regulations, 2012, which permit pregnant students to complete their education under specific circumstances, can be implemented by the Ministry.

The Ministry is capable of creating programs for sexual and reproductive health education in schools, organizing training for teachers on child protection, and providing safe learning environments for all children. It also monitors schools to prevent infractions of education rules and regulations. The Ministry can facilitate the reintegration of pregnant students into schools and minimize early pregnancies by influencing parents, communities, and school officials through nationwide initiatives.

Nevertheless, the Ministry's enforcement is constrained. Its supervisory capacity is frequently undermined by its legally restricted resources, insufficient staff, and subpar monitoring systems, particularly in rural areas. Due to the lack of stringent legal protections, pregnant girls in secondary schools who are older than 18 are more likely to drop out of school. The Ministry is

nevertheless a key component of the institutional structure in spite of its flaws. It plays a crucial part in connecting the creation of policies with their actual application. Its effect on reducing early pregnancy among secondary school girls can be strengthened by ongoing enforcement improvements combined with community involvement.

3.1.2 Tanzania Commission for Education (TCE)

The Tanzania Commission for Universities Act of 2005 and the Education Act established the TCE, which is tasked with overseeing, inspecting, and accrediting Tanzanian educational establishments. Its legislative authority includes advising the government on education policies, keeping an eye on schools' adherence to national standards, and putting regulations in place to safeguard the welfare of students. Additionally, the Commission offers recommendations on how to stop prejudice based on gender in schools.

The TCE is capable of auditing schools to ensure compliance with the Pregnancy and Reintegration Regulations, conducting investigations into school practices, and recommending remedial measures. It also provides training and capacity building for school leaders to handle issues such as early pregnancy. The Commission can enforce standards that ensure schools maintain inclusive and safe environments for all students, including those at risk of dropping out due to pregnancy.

However, schools' voluntary cooperation is crucial to the TCE's enforcement. Although it has the authority to suggest penalties, it is not directly able to bring charges against violators or force schools to prevent the expulsion of pregnant girls who are older than eighteen. The Commission's capacity to efficiently oversee schools around the nation is hampered by its small staffing and funding. Notwithstanding these difficulties, the TCE is crucial for guaranteeing that educational establishments follow national laws. Its ability to create policies, keep an eye on adherence, and assist in enforcing them offers a vital institutional safeguard against early pregnancy and exclusion for schoolgirls, especially older secondary students.

3.1.3 Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC)

The MoHCDGEC was created by the Executive Agencies Act of 1997 and is tasked with managing child welfare, gender equality, and public health in Tanzania. It is officially in charge of organising initiatives to shield kids and teenagers from harm, such as early pregnancy and sexual exploitation. The Ministry can offer health services, counselling, and preventive education in schools thanks to its legal authority. The Ministry can organize community awareness campaigns, carry out sexual and reproductive health programs, and assist schools in preventing early pregnancy. Additionally, it can offer parents and educators specialized advice on reproductive health and child safety. It can identify at-risk pupils and offer interventions prior to pregnancies by working with local authorities.

Despite these strengths, the Ministry nonetheless has to deal with operational issues such a lack of financing, little outreach in rural

areas, and a shortage of qualified staff. Adolescent health programs may not fully include older secondary school females, which puts them at risk. Sometimes there is insufficient coordination with schools, which lowers the efficacy of preventive efforts. However, the Ministry continues to play a significant role in Tanzania's institutional structure. When combined with policy coordination and community participation, its capacity to address the social and health elements of early pregnancy offers crucial support for safeguarding schoolgirls and encouraging their further education.

3.1.4 Tanzania Police Force – Gender and Children Desk

The Police Force Act,^{ix} and associated regulations establish the Gender and Children Desk. Its legislative duties include protecting minors from abuse and looking into sexual offences, including defilement under the Penal Code.^x The Desk offers channels for reporting, looking into, and prosecuting instances of sexual exploitation, especially those involving schoolgirls.

The Desk is capable of taking immediate action against perpetrators, ensuring the safety of victims, and coordinating with schools, local authorities, and social welfare agencies. It also provides counseling referrals, works with communities to raise awareness on child protection, and ensures that legal provisions are applied effectively. This role is crucial in deterring individuals from impregnating secondary school girls.^{xi} However, the Desk focuses largely on minors under 18 years. Girls over 18 in secondary schools often fall outside the strictest legal protections, limiting the Desk's effectiveness in preventing sexual exploitation of older students. Inadequate staffing and resources also lower the effectiveness of investigations, especially in rural locations. The Desk is a crucial organization in Tanzania's child protection system despite its flaws. It is a key tool in combating early pregnancy and sexual abuse among adolescents because of its legal authority, investigative capabilities, and cooperative approach with communities and schools

3.1.5 The Judiciary

The Judiciary is established under the Constitution^{xii} and is responsible for interpreting and enforcing laws, including the Penal Code^{xiii}, and Education Act^{xiv}. Courts have the power to hear cases related to defilement, sexual abuse, and violations of education laws affecting schoolgirls. The Judiciary ensures that perpetrators are held accountable and that victims' rights are protected.

The judiciary has the power to render rulings that uphold schoolgirls' legal rights, establish precedents, and guarantee adherence to both domestic and international human rights commitments. The courts have the power to change institutional procedures and school rules through their rulings, preventing sexual exploitation and facilitating the reintegration of pregnant students. But access to the courts is sometimes restricted, especially for girls living in remote areas. Many victims are deterred from seeking justice by the long, expensive, and threatening nature of legal proceedings. Girls above the age of 18

may also experience societal stigma, which would limit their access to legal recourse.^{xv} Despite these challenges, the Judiciary remains a cornerstone in Tanzania's institutional framework. Its role in enforcing laws, protecting rights, and providing legal remedies is critical for safeguarding schoolgirls and promoting accountability for sexual offenses that lead to early pregnancy

3.1.6. Commission for Human Rights and Good Governance (CHRAGG)

The CHRAGG is established under the Tanzania grand norm^{xvi}. Its legal mandate is to protect and promote human rights, including the rights of children and women in Tanzania. The Commission monitors human rights violations, investigates complaints, and recommends remedial measures to relevant authorities. CHRAGG is capable of investigating cases of discrimination, abuse, or violation of educational rights, including instances where pregnant schoolgirls are expelled. It can issue recommendations, provide advocacy, and engage with schools, government ministries, and communities to uphold the rights of students. This aligns with the study's focus on evaluating institutional effectiveness in protecting girls.^{xvii}

Nevertheless, the Commission's authority is primarily consultative, and its recommendations cannot be directly enforced. Its capacity to monitor schools across the country is hampered by a lack of manpower, resources, and coverage. Investigations may not give priority to older secondary school females, especially those over the age of 18, making them susceptible. CHRAGG is an important part of Tanzania's institutional system, notwithstanding its shortcomings. Its supervisory role, human rights advocacy, and cooperation with other organizations support efforts to prevent early pregnancy and school dropout by ensuring that government agencies and schools respect girls' rights.

Recommendations to Tanzania Legal framework on the prevention of schoolgirls pregnancies in Tanzania

i. To amend the Education Act to incorporate schoolgirls above 18 years

The law should be amended in order to cure the lacuna in law, which does not recognize schoolgirls above 18 years. The same law should be very clear in providing a clear meaning of schoolgirls by including any girl above 18 years under secondary school education system. By giving a clear meaning of a schoolgirl will have cured the prospect of the lacuna that has left many students in limbo whose life and education endeavors have been tampered with. Therefore it is paramount the law to ascertain the clear meaning in order to avoid inconsistencies and provide enough protections to the schoolgirls for the better society and generation at large.

ii. Enforce and Expand Policies that Keep Pregnant Girls and Young Mothers in School, Backed by Statutory Protection

The Education Act, as amended by the Written Laws (Miscellaneous Amendments) Act, and the Law of the Child Act emphasise the right to education, but a clear statutory prohibition

on expulsion for pregnancy and a guaranteed right to re-enroll must be introduced to ensure uniform protection. This legal guarantee should state that no girl may be denied education because of pregnancy or motherhood and that schools must make reasonable accommodations for re-entry.

In order to put this into effect, Parliament should change the Education Act to include a clear provision that prohibits expulsion due to pregnancy and imposes an obligation on headteachers and education authorities to support safe re-entry. The procedures that schools must follow when a student becomes pregnant must be outlined in regulations. These procedures should include private counselling, a written re-entry plan, a referral to health services, and designated contact individuals to oversee the process. Parents' meetings and community forums should be required to facilitate reintegration, and inspectorates should have the authority to punish schools that wrongfully expel or stigmatize students. Remedial classes to help returning students catch up and maternity leave policies in schools should be funded.

Criminal and child protection systems will be enhanced by statutorily safeguarding the right to continue and resume education. Girls are more likely to disclose sexual assault early when they are assured that school systems will not punish them for being pregnant, which facilitates the efficient operation of criminal and child protection procedures. This setting breaks a societal loop that encourages childhood pregnancies and early marriage by lowering the incentives for families to set up forced marriages or informal settlements to conceal pregnancies.

iii. **Incorporating non-expulsion of schoolgirls pregnancies within Tanzania Education legislations**

This sends a clear normative message that the state values students' rights and welfare. It harmonizes local legislation with international obligations under the CRC and ACRWC to ensure that pregnant adolescents and child mothers can continue their education. With proper enforcement, girls will have actual opportunity to complete their education, receive vocational training, and avoid the intergenerational poverty that often follows early pregnancy and marriage. Closing loopholes, standardizing age-of-marriage rules, and reforming and enforcing legislative prohibitions against child marriage are the third set of recommendations.

iv. **Tanzania's marriage laws need to be strengthened and harmonized in order to eliminate any legal uncertainty that would allow child marriage.**

When minor partnerships take place through parental approval, traditional ceremonies, or a misreading of the Law of Marriage Act, existing rules and customs create loopholes. If necessary, the Law of Marriage Act should be changed to make it clear that 18 is the minimum age of marriage for both sexes, eliminate any exceptions, and make it illegal for adults to arrange or force child weddings. To guarantee uniform standards throughout all legal documents, this reform must be harmonized with the Constitution and the Law of the Child Act.

As the expense of organizing underage unions increases and the social acceptability of child marriage decreases, child marriage rates should decrease when these legislative reforms and enforcement mechanisms are in place. Strong registration procedures will lessen opportunities to disguise age, and clear criminal penalties will discourage adults who organize such unions. Crucially, harmonized legislation would eliminate the legal ambiguity that occasionally allows criminals to avoid punishment, enabling judges and prosecutors to act with confidence and consistency.

v. **Strengthened age-of-marriage rules must be paired with measures addressing root causes, including poverty and school dropout.**

Legal prohibition alone is insufficient; communities must be offered alternatives such as cash transfers, scholarships for girls, and livelihood support that remove the economic incentives for child marriage. Combining legal enforcement with socio-economic support will make compliance realistic for vulnerable families. By eliminating statutory loopholes that allow child marriage, Tanzania will better comply with international standards under the CRC and ACRWC and will improve the protection framework for girls. Legal clarity will foster prevention, support prosecution of violations, and enable coordination between child protection services, education authorities, and health providers to prevent early marriage and the pregnancies that follow.

vi. **Integrate Data Systems and Monitoring Frameworks to Track Incidence, Service Uptake and Legal Outcomes for Childhood Pregnancies and Marriage**

Reliable information about the locations, mechanisms, and causes of childhood pregnancies and marriages as well as the effectiveness of interventions are necessary for effective prevention. Targeting and assessment are challenging in the fields of education, health, social protection, and justice due to fragmented information systems. In order to facilitate prompt analysis and policy response, the state should create an integrated national monitoring framework and data platform that links anonymized records from schools, health clinics, social services, law enforcement, and courts while rigorously protecting privacy and adhering to data protection standards for minors.

Institutional cooperation and unambiguous legislative authority for data exchange that upholds confidentiality are necessary for implementation. A memorandum of understanding outlining what information would be shared, under what conditions, and for what purposes should be signed by the Ministries of Education, Health, Home Affairs, Social Welfare, and the Judiciary. Regular reports on indicators like teenage pregnancy rates, school re-enrollment following pregnancy, child marriage prosecutions, and the results of child-protection interventions should be generated by a central analytical unit inside the Ministry in charge of children's welfare. Frontline employees who record data must receive training, and data gathering tools must be consistent.

In terms of operations, use interoperable digital systems when feasible and straightforward paper-to-digital procedures when not,

making sure that distinct IDs safeguard children's privacy while permitting case tracking. Provide district managers with dashboards that highlight hotspots, monitor service uptake, and establish quick response systems for unexpected spikes in cases. Develop the statistical ability to separate data by geography, age, sex, and socioeconomic status in order to facilitate focused interventions. Incorporate community feedback systems to enable local actors to validate data and offer qualitative context.

Policymakers and practitioners will be able to see patterns, direct resources where they are most needed, assess the effectiveness of programs, and make real-time strategy adjustments with integrated data systems. This allows for targeted engagement in impacted communities and early detection of new pregnancy or marriage trends. Additionally, improved data enables researchers and civil society assess the efficacy of preventative actions and supports accountability to To ensure that sensitive information about minors is never revealed, data integration must be backed by robust privacy protections and restricted access controls. Retention terms, anonymization requirements, and allowed users should all be specified in legal frameworks, and oversight organisations should check compliance. This equilibrium guarantees that children's safety and dignity are not jeopardized by data-driven prevention.

ⁱ Article 13 of the Constitution of United Republic of Tanzania 1977 as amended

ⁱⁱ Article 18 of the Constitution of the United Republic of Tanzania 1977

ⁱⁱⁱE section 60 A Education Act Cap 353 R.E 2023

^{iv}Section 130 of the Penal Code Cap 16 R.E 2023

^v Cap 29 R.E 2023

^{vi} Section 13 of the Marriage Act Cap 29 R.E 2023

^{vii}*Mwambipile and another v. United Republic of Tanzania (Application No. 042/202).*

^{viii}*Joshua So Malendeja v. Republic (2013) TZCA 325.*

^{ix} Cap 322 R.E 2023

^x Cap 16 R.E 2023

^{xi}Peter. C. M (2017). Human Right in Tanzania: Selected Cases and Material, Koln:RudigerKoppe Verlag.

^{xii} Article 107 of the Constitution of the United Republic of Tanzania 1977 as amended

^{xiii} Cap 16 R.E 2023

^{xiv} Cap 353 2023

^{xv}Durkheim.E (1976), The Role of Universities of the Country, Minerva, Vol. 14, No. 3; Published by Springer, URL.

^{xvi} Article Cap 2 of 1977

^{xvii}Rugumyamheto, A. K.(2022). Pregnancy is not the End of Education, In M.K Rwebangira, and R. Liljestrom, HarakaHaraka: Look Before You Leap: Nordic African Institute, Uppsala