



Women in Law and Development in Africa (WiLDAF)

The Law of Marriage Act, Cap 29, 1971 RE 2002

A need for Legal Reforms

Policy Brief

Key Highlights

- Due to the inequitable division of property that is permitted through Sections 105 and 114 of the LMA, a law that governs asset division upon polygamous divorce is needed
- Section 63 of LMA states that a husband has a responsibility to care for his wife by giving her all the necessary needs in life such as clothing, food and bedding according to his abilities. The law should define clearly the role of both husband and wife in Marriage.
- There is a legal practice during the division of matrimonial property that only women are the ones who are supposed to prove contributions to the property. Women in most cases fail to prove contribution and hence denied their rights in matrimonial properties
- Section 66 prohibits any spouse from beating another for any reason, and spouse beating is one of the reasons for filing a divorce under section 97 and 107 (1). However, the law is silent what happens when one spouse beat another. The law needs to provide sanctions to that effect
- The legal age of marriage is set at 15 years for girls with parental Consent and 14 with consent from the Court. Yet, without criminalizing the perpetrators, girls are still getting married every day in Tanzania.

Introductions

The Law of Marriage Act, Chapter 29 of Tanzania's Law as amended in 2002 is the main legal instrument which governs marriages in Tanzania. However, it has undergone lots of challenges which include among others; it permits certain gender discriminatory practices. For example, it discriminates against boys and girls in the capacity to enter into marriages. Second, the LMA is ambiguous in terms of distribution of matrimonial property, divorce, duty of the husband to provide for the family and domestic violence.

This policy brief highlights existing gaps and challenges in administering marriage cases in Tanzania. Moreover, the brief addresses the need for review and amendment of the Law of Marriage Act Chapter 29 of 1971. The brief further provides recommendations focused on the current status of affairs of marriages in the modern times. It is further advocates for the protection of women to accelerate change in line with generation equality.

Law of Marriage in Tanzania: Contextual Analysis

In 1971, Tanzania enacted the LMA to provide women with several basic civil rights upon marriage and divorce. However, this law is among one of the oldest laws in Tanzania, and thus, faces lots of challenges in terms of interpretation. As a result, it brings lots of confusion and conflicts with other laws such as the Law of the Child Act 2009, Penal Code and other Government Guidelines and Plans as well as increases factors that contribute to violence against women and children in Tanzania.

In 2019, The Court of Appeal of Tanzania affirmed the ruling of the high court decisions that sections 13 and 17 of the Marriage Act (with its exceptions) were unconstitutional and should be amended within the period of 12 month, Moreover the Law of Marriage Act, challenges go beyond the only two provisions which allow child marriage. The law of marriage in Tanzania is now out of date, inconsistent and overly restrictive. Our modern society deserves a clearer set of rules that gives all couples greater choice and certainty, while providing protection from the abuses involved within Marriages.

Why Tanzania Needs Marriage Policy Reforms?

a) Inadequate legal protections of Co-wives in Polygamous Marriages.

The Law of Marriage Act, allow polygamous marriage. Due to the inequitable division of property that is permitted through Sections 105 and 114 of the LMA, a law that governs asset division upon polygamous divorce is needed. Such a law would better protect the property interests of both divorcing and non-divorcing co-wives. This protection would then incentivize un-official co-wives to seek legal marriages and empower women to leave unhealthy and abusive polygamous marriages. The Assumption marriage provided under section 160 can be challenged in court. Negligence or confirming this assumption is a matter of evidence that has denied many women' rights. There is a lack of clarity that has led to uncertainty and to some people unexpectedly finding that their marriage is not legally recognised, often at a point of crisis such as separation or Divorce. The law of marriage Act needs to be reformed to regulate polygamous divorce and empower women to leave unhealthy marriages.

b) Failure of the law to define equal role between Wife and Husband in marriage

Section 63 of LMA imposes a duty to a husband to care for his wife by giving her all the necessary needs in life such as clothing, food and bedding according to his abilities. The wife will also have that responsibility only if the husband cannot carry out/care for the family. The world now is moving towards generational equality. This section has promoted violence against women as men think they own women as their property. This has also created economic dependency among married women. The law should define clearly the role of both husband and wife in Marriage.

c) The concept of proving contribution during the division of matrimonial properties upon divorce.

The law of the Marriage Act provides the right to distribute marriage assets upon divorce. Any property that has been achieved during marriage and individual or a joint contribution of the couple is required to be divided upon marriage. Whether the property obtained by one couple before or by own strengths but has been taken care of by another couple. There is a legal practice during the division of matrimonial property that only women are the ones who are supposed to prove contributions to

the property. Sometimes they are required to provide receipts of their contributions which is sometimes very hard to prove contributions. The law needs to clearly define the distribution of matrimonial property as well as introduce the pre and ante nuptial agreements among spouses.

d) Existence of Contradiction laws defining the age of marriage and promoting the Best Interest of a Child

As stated earlier, LMA is a law that administers all the matrimonial relationships in Tanzania. LMA contradicts other laws that define the minimum age marriage for both Girls and Boys. While the Law of the Child Act, 2009, defines a child as a person below the age of 18 years, LMA still permits a child around 14 to 15 years to be married by parental and court permission respectively. The definition of a child under LCA does not nullify S.13 of the Law of Marriage Act that sets the minimum age for marriage below the age of 18 years. The government has from time to time admitted that the retention of the minimum age of marriage is due to the cultural and religious sensitivity of the matter.

The Sexual Offences Special Provisions Act, which is now part of the Penal Code sets the age of sexual consent at 18 years. The issue of sexual consent does not apply if a girl is married under the LMA disregarding her age. This leaves loopholes for many to escape punishment and cannot even be sentenced for statutory rape.

The synchronicity of these laws is necessary when it comes to defining the age of marriage. Leaving these laws unsynchronized makes it difficult for the government to implement its National Plan of Action to End Violence Against Women and Children (NPA-VAWC) 2016/17=2021/22), which calls for the government in collaboration with stakeholders to reduce the prevalence of child marriage by 50% by 2022.

e) The increased Incidences of domestic Violence

The law of marriage Act, is silent on issues concerning domestic violence, there are evidence that majority of women and children in Tanzania are abused and denied their rights. LMA only prohibit physical abuse between spouses, it leaves out other kind of abuse which includes Emotional, Psychological, Sexual and Economic abuse for both spouses.

f) Absence of provisions that criminalize Child Marriage.

Child marriage is a major violation of girls' human rights. The National Education Act criminalizes the marriage of a school girl; however, it fails to include the number of girls who are not attending school; the number has recently increased due to school dropouts. Tanzania has not yet developed the Domestic Violence Act to criminalize early and forced marriage as an offence. The Law of Marriage Act, needs to be amended to criminalize child marriage.

a) Tanzania's commitment to its international treaty body obligations

Article 5 of the Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights (known as 'The Maputo Protocol') prohibits and condemns all forms of harmful practices which negatively affect the human rights of women. The African Charter on the Rights and the Welfare of the Child mandate the protection of the girl child from harmful cultural practices such as child marriage.

Child marriage is a violation of Article 16(2) of the Universal Declaration of Human Rights, which states that: "Marriage shall be entered into only with the free and full consent of the intending spouses."

Article 16 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) states that women should have the same right as men to "freely choose a spouse and to enter into marriage only with their free and full consent", and that the "betrothal and marriage of a child shall have no legal effect". By signing the Convention on the Rights of the Child (CRC), the United Republic of Tanzania has committed to take "all effective and appropriate measures with Article 5 of the Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights. The UN's Sustainable Development Goals call for Gender Equality, with Target 5.3 specifically calling for the elimination of all harmful practices by 2030, including a child, early and forced marriage. i.e., to abolish traditional practices prejudicial to the health of the children," which includes, among other practices, child marriage.

On 22nd, March 2021 when the president of the united republic of Tanzania addressed the Parliament, she said that the government is committed and has set as its priority to reduce maternal death. If young women below the age of twenty

years make up nearly 20% of maternal deaths, achieving that will need to take appropriate measures in addressing child marriage and teenage pregnancies

b) Lack of provisions that Protect the out-school girls from being married early

The education Act in Tanzania protects the school girls from being married and impregnated. The law doesn't protect the out-school girls from child marriage or pregnancy. There are less efforts to protect girls at risk of child and forced marriage particularly the girls who do not attend school. Furthermore, assisting survivors with much-needed psychological, social, or economic support is left to parents after they are expelled from schools. Survivors often struggle alone with the severe mental health consequences of the abuses they endured. Additionally, they get little support to make up for their lost education or to help them develop economic opportunities to provide for themselves and their children. The law of Marriage needs to protect girls out of schools by defining the minimum age of marriage to be 18 years.

Best Practices to Address Child Marriage from Other African Countries.

Rwanda: *Rwanda has succeeded to harmonize the laws concerning child marriage. The Organic Law relating to matrimonial regimes, liberalities, and successions recognizes the right of a girl to the succession of her family property. Moreover, the Family Code provides for consent as one of the requirements for the validity of marriage, which can be contracted only at 21 complete years of age. The harmonization of laws regarding marriage matters has played a significant role to reduce child marriage in Rwanda. This is evidenced by UNICEF's study (2017) entitled "Achieving a Future without Child Marriage. A Focus on West and Central Africa" . The study shows that the prevalence of marriage in Rwanda before the age of 15 is 0% and the prevalence of marriage before the age of 18 is 7%. They further pointed out that from 1990 to 2019 there is a decrease in child marriage by 62% from 18% to 7%.*

Ghana: *Ghana has made potential efforts to improve the legal marriage framework to reduce child marriages. Child marriage in Ghana is prohibited under the Constitution and By Law. According to the Ghanaian Constitution of 1992, any person under the age of 18 is a child and can therefore not marry or be married off.*

This is underlined by the 1998 Children's Act, which sets the legal age of marriage at 18 for both boys and girls. The initiatives taken to address child marriage in Ghana are promising and testify to how law reforms related to marriage can be a vital tool to help address a detrimental practice of child marriage. Findings from UNICEF 2017, show that there is a decrease of 40% in child marriage in Ghana from 35% in 1990 to 21% in 2015.

Malawi: *Malawi has one of the highest rates of child marriage in the world with one of two girls marrying before the age of 18 (UNFPA 2012). On February 12, 2015, the Malawian Parliament passed the Marriage, Divorce and Family Relations Bill (Marriage Act). The act was signed into law in April 2015 by President Peter Mutharika. The passage of the Marriage Act has been an important milestone in securing women and girls' rights in a country where patriarchal norms are deeply entrenched, poverty is widespread and women and girls generally score low on development indicators and lag in many areas of life. The new Marriage Act consolidates multiple marriage regimes and addresses some of the discriminatory provisions in previous laws governing marriage and family relations. The provision that has received the most domestic and international attention sets the age of marriage at 18 and demands formal government registration of all marriages.*

Policy Recommendations

Call for Action for Policy Makers and Legal Practitioners:

- ❖ Review and Amendment of Law of Marriage Act, Cap 29 of 1971
- ❖ Government should provide an effective system of marriage registration, ensuring the timely and accurate reporting of all marriages. Cases of child marriage should be identified and intervened upon. Programs of marriage registration through community leaders and religious leaders should be made available and strongly promoted.
- ❖ The government should establish a special court system (Family court) to deal with matrimonial cases to fasten access to justice for women during divorce or separations.
- ❖ Criminalize child marriage and strengthening legal enforcement: Without effective enforcement, laws prohibiting child marriage will not be able to

restrict this practice. Legal reform and law enforcement on the criminalization of perpetrators can also influence changing gender and cultural norms. Strong enforcement of legal provisions is needed to effectively move towards ending child marriage

- ❖ Increase investments in education: There is a pressing need to increase investment in education and to use the school facilities to empower girls, thereby ending child marriage and other harmful practices.

Call for Action for Government, Civil Society Organizations (CSOs), and Media:

- ❖ Government in collaboration with CSOs to improve the economic status of girls and women to play equal roles in providing for the Family
- ❖ The Government through the Ministry of Health, Community Development, Gender, Elderly, and Children (MoHCDCGEC) should pioneer a nationwide campaign to reduce and eventually end child marriage as was recommended in the National Survey on Child Marriage (2017).
- ❖ The Local Government Authorities (LGA), the lower ward and village levels should also take part through committees for the National Plan of Action to end Violence against Women and Children (NPA VAWC 2017/18 -2021/22) since that is where it takes place.
- ❖ Develop holistic programs on empowering girls and women or initiating community outreach and awareness attempting to incentivize parents, households, and other community leaders to avoid practices that constrain the welfare of women in marriage and the impact of polygamous marriages.
- ❖ Mentor male change agents should be strongly given a priority in the community to advocate for women's rights

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