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WOMEN'S REPRODUCTIVE RIGHTS IN TANZANIA:

A Shadow Report

The Center for Reproductive Law & Policy (CRLP)
Women's Legal Aid Center, Tanzania

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WOMEN’S REPRODUCTIVE RIGHTS IN TANZANIA: A SHADOW REPORT

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INTRODUCTION

This report is intended to supplement, or “shadow,” the report of the government of Tanzania to the Human Rights Committee (“the Committee”). As has been expressed by Committee members, NGOs can play an essential role in providing credible and reliable independent information regarding the legal status and the real-life situation of reporting countries and the efforts made by the ratifying governments to comply with the provisions of the International Covenant on Civil and Political Rights (“ICCPR”). The Committee’s recommendations thus can focus on the most pressing issues for the population of a given country, providing NGOs with valuable tools with which to pressure their governments to enact or implement legal and policy changes.

Discrimination against women permeates all societies and all facets of women’s lives. Clearly, this discrimination requires urgent action. This report is focused particularly on laws and policies on reproductive rights. In a series of international conferences during the 1990s, including the 1994 International Conference on Population and Development held in Cairo, and the 1995 Fourth World Conference on Women held in Beijing, the fundamental nature of reproductive rights was affirmed and further elaborated. As stated in the Cairo Programme of Action, reproductive rights “embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents,” including the ICCPR. These include the right to life, liberty, and security of the person; the right to be free from torture or other cruel, inhuman, or degrading treatment or punishment; the right to privacy; the right to autonomy in decision-making, including freedom of thought, expression, religion, conscience, and belief; the right to decide whether to marry and to found a family; the right to be free from gender discrimination; and the right to modify customs that discriminate against women. In sum, as stated in the Cairo and Beijing documents, reproductive rights include each individual’s right “to make decisions concerning reproduction free of discrimination, coercion and violence.”

This report seeks to follow up on the December 1996 “Roundtable of Human Rights Treaty Bodies on the Human Rights Approaches to Women’s Health with a Focus on Reproductive and Sexual Health Rights” held in Glen Cove, New York, by bringing to the attention of treaty-monitoring bodies the human rights dimensions of women’s reproductive and sexual health. Because of serious shortfalls in the realization of women’s reproductive rights, States Parties’ commitment to ensuring them should receive serious attention.

In addition, this report links various fundamental reproductive rights issues to the relevant provision(s) of the ICCPR. The information in this report is mainly obtained from the Tanzania chapter of *Women of the World: Laws and Policies Affecting Their Reproductive Lives — Anglophone Africa*, one of a series of reports on each region of the world being compiled by the Center for Reproductive Law and Policy (CRLP) in collaboration with national-level NGOs. CRLP worked with the Women’s Legal Aid Center in Tanzania on the Tanzania chapter.

This report was edited by Katherine Hall Martinez, International Program Staff Attorney at CRLP, and coordinated by Cynthia Eyakuze, program associate, with assistance in production from Alison-Maria Bartolone, program assistant. Megan Knight, legal intern at CRLP, drafted the report. Helen Kijo-Bisimba of Women’s Legal Aid Center reviewed this report and provided invaluable comments and input. In addition, some information was obtained from the Commentary on the Report submitted by the United Republic of Tanzania to the United Nations Human Rights Commission, Geneva, June 1998, by Tanzanian NGOs, which was compiled by Professor Chris Maina Peter and Marie M. Shaba.

July 1998

A. Right to Reproductive Health Care and Family Planning, Including Access to Safe and Legal Abortion (Articles 3, 6, 23, and 26 of ICCPR)

1. Introduction

Articles 3 and 26 outline the equal right of men and women to enjoy the civil and political rights in the Covenant, and equality before the law, respectively. Article 6 provides for the individual's right to life. These provisions clearly encompass the government's obligation to ensure equal rights to reproductive health care and safe contraceptive methods. In a similar vein, Article 23 requires states to ensure the equality of both parties in marriage.

The Human Rights Committee (hereinafter "the Committee") recognized in its general comment 19(39) the right to "procreate and live together," which by inference includes the right to reproductive health care and to all safe and appropriate forms of contraception.¹ The Committee has also stated that States should take measures "to ensure that women do not risk life because of restrictive legal provisions on abortion," i.e. being forced to seek abortions under clandestine, unsafe conditions.² The Committee also considers there to be possible violation of the Covenant when contraceptive methods to prevent unwanted pregnancies are difficult to obtain.³

2. Family Planning and Reproductive Health Care

STATISTICS

- In 1995, the total fertility rate was 5.8 children per woman.
- The infant mortality rate is estimated to be between 84.2 and 104.3 per 1,000 live births. The under-five mortality rate for 1993 was 167 deaths per 1,000 live births.⁴ Malnutrition is the primary cause of more than 50% of the deaths of children aged 1–4.⁵
- According to hospital records from 1992, which cover about half of all births, maternal mortality is estimated at 200–400 per 100,000 births per year.⁶ It is estimated that 40% to 60% of all pregnant women are malnourished.⁷
- The U.N. Population Division estimates that in 1993 17% of all births were to women under 20, 69% of births were to women between the ages of 20 and 35.⁸
- An estimated 40% of deliveries in rural areas and 20% of deliveries in urban areas are attended by traditional birth attendants or midwives.⁹
- About 80% of expecting mothers attend antenatal clinics at least once during their pregnancies.¹⁰
- In 1994, nearly 18% of all women ages 15 to 49 used contraception of any kind. Of these women, 26% used the pill, 12% relied on injections, 14% used condoms with their partners, 9% were sterilized, and 4% used an IUD; traditional methods were used by 36% of women, with 14% of women choosing the calendar rhythm/safe period method.¹¹

LAWS AND POLICIES

In 1990, the Ministry of Health (“MOH”) released a National Health Policy¹² (the “Health Policy”) which aims at “improving the health status of all people wherever they are, in urban and rural areas, by reducing morbidity and mortality and raising life expectancy.”¹³ The specific objectives of this health policy include: reducing infant and maternal morbidity and mortality; increasing life expectancy through the provision of “adequate and equitable maternal and child health services;” promotion of adequate nutrition, control of communicable diseases, and treatment of common conditions, ensuring that health services are accessible to all; and sensitizing the community on common preventable health problems and improving the capabilities at all levels of society to assess and analyze problems to “design appropriate action through genuine community involvement.”¹⁴

The provision of Primary Health Care (“PHC”) services is a principal strategy for realizing the government’s Health Policy.¹⁵ The Health Policy identifies maternal and child health, including family planning, as being a necessary element of PHC services.¹⁶

Between 1972 and 1987, the government of Tanzania established a comprehensive health infrastructure system such that, in 1987, approximately 70% of the population lived within five kilometers of a health facility.¹⁷ The Health Policy calls for the establishment of a village health post in all villages which do not have facilities by the year 2000. Two village health workers are required for each village, one of them is to deal with maternal-child problems and the other with environmental sanitation.¹⁸

Recently, the government introduced user charges for health services. This development has affected the most vulnerable segments of society, particularly women and those in rural areas. There have been accounts of women giving birth just outside hospitals because they lack the funds to be admitted.¹⁹

In 1992, Tanzania adopted a Population Policy which has, among its goals, the following:

1. Establishing information, education, and communication systems to encourage provision of family planning and responsible parenthood, such as directing a significant part of family planning programs to include men so that couples are able to decide and plan the size of their family;
2. making family planning means and services easily accessible so as to reduce maternal and child mortality;
3. preparing young people, before marriage, to become responsible parents through proper upbringing and the provision of family life education;
4. educating the public on the benefits of women marrying and bearing children after the age of 18 years;
5. improving the status of women and children by reviewing existing laws which discriminate based on gender.²⁰

Activities included as part of the Population Policy are increasing employment opportunities for women at all levels, reviewing and amending laws — especially those relating to marriage, family, property, and employment — that discriminate against women, raising the minimum age of marriage for girls to 18 years, promoting women’s

education at the post-primary level, and increasing the number of women in decision-making positions.²¹

Under the Population Policy, all agencies are to be involved in strengthening the capacity to deliver maternal and child health/family planning (“MCH/FP”) services through appropriate training of personnel, upgrading and equipping health facilities for the delivery of such services, utilizing Information, Education and Communication (“IEC”) programs to promote various family planning methods, and establishing an MCH/FP service statistics system for monitoring and evaluation purposes. Other issues that the program is to focus on are: taking appropriate measures in the spheres of law, education, and social services to protect and promote the goals of the MCH/FP program; assisting NGOs with their contribution in this area; and reducing the incidence of pregnancies of women below the age of 18 years and over the age of 35 years as well as reducing the number of pregnancies at intervals of less than two years.²²

In 1994, the MOH published the National Policy Guidelines and Standards for Family Planning Services Delivery and Training (the “Family Planning Guidelines”).²³ These guidelines reiterate the government’s commitment to family planning and to providing comprehensive health services to all citizens equitably.²⁴ They set forth the eligibility requirements for government family planning services. The Family Planning Guidelines state that “[a]ll males and females of reproductive age, including adolescents irrespective of their parity and marital status, shall have the right of access to family planning information, education and services.”²⁵ Furthermore, it provides that any woman or man shall be provided with a family planning method of her/his choice after appropriate and adequate counseling without requiring the consent of a spouse.²⁶ The guidelines also state that family planning services are to be provided through government, non-government and private health facilities, such as Maternal and Child Health (“MCH”) clinics, family planning clinics, and community-based and commercial social-marketing program outlets.²⁷

The Family Planning Guidelines set forth standards for family planning services. This policy addresses issues of counseling and screening of clients, instructions and follow-up schedules for contraceptive use, family planning methods to be provided at various delivery points, and eligibility by type of method. IEC materials on the various contraceptive methods offered²⁸ are to be available at each site.²⁹

The Family Planning Guidelines indicate that the MOH is to ensure the availability and accessibility of a wide range of family planning methods — including temporary, long-term, and permanent contraception — to facilitate wider choice for the user.³⁰

3. *Abortion*

STATISTICS

- In a 1983 national study, abortion accounted for an estimated 17% of all maternal deaths. In a 1990 study in one hospital in the capital of Dar-es-Salaam, 47% of admittances for abortion complications were due to induced abortions.³¹

LAWS AND POLICIES

Tanzanian law severely restricts a woman's ability to obtain an abortion. The only circumstances under which it is legal is to preserve the mother's life. Any woman convicted under Section 151 of the Penal Code can be imprisoned for up to seven years; those performing the procedure, for up to 14 years; and anyone who otherwise assists, for up to 3 years.³² This law, however, is subject to "reasonable" interpretation.³³ In *Rev v. Baurul*,³⁴ a 14-year-old girl was pregnant as a result of the rape, and the surgeon performed an abortion on the grounds that allowing the infant to be born would be seriously detrimental to the girl's health. The court acquitted the surgeon of the criminal charge of having caused a termination of pregnancy.³⁵

4. *Sterilization*

Women and men are eligible for sterilization if they have attained their desired family size.³⁶ "Any woman or man shall be provided with a family planning method of her/his choice after appropriate and adequate counseling without requiring the consent of the spouse."³⁷ A number of tests are required before female sterilization,³⁸ but no special tests are required for vasectomies.

5. *HIV/AIDS and Sexually Transmissible Infections (STIs)*

STATISTICS

- The number of estimated AIDS cases by December 1994 was 250,000. Estimated HIV-infection rates based on blood-donor prevalence show that one to 1.5 million Tanzanians were infected by 1995.³⁹
- Heterosexual intercourse accounts for 80% of the transmission of HIV.⁴⁰ In 1995, the MOH estimated that if current trends continue, the number of people infected by HIV might rise to 2.4 million by the year 2000.⁴¹
- Women are disproportionately at risk for HIV infection. The infection rate is 5.4% for males and 7.0% for females.⁴² In addition, the peak infection age for women is from 20 to 24, while for men it is from 25 to 35.⁴³
- HIV infection among pregnant women ranges from 2.3% in rural areas to more than 30% in urban clinics. About 30% of HIV-infected pregnant women will vertically transmit HIV to their babies, who will die in infancy or early childhood.⁴⁴

LAWS AND POLICIES

In September 1995, the MOH released a National Policy on HIV/AIDS and STDs (the "National AIDS Policy"). The National AIDS Control Program was charged with the control and prevention of HIV/AIDS and STIs in the country.⁴⁵ The overall goal of the policy is to "mobilize and sensitize the community to become actively involved in preventing further transmission of HIV and to cope with the social and economic consequences of AIDS."⁴⁶ The specific objectives of the National AIDS Policy are:

1. increasing the community's awareness of HIV/AIDS and its consequences;
2. preventing further transmission of HIV/AIDS through use of preventive measures such as safer sex, testing, and counseling;
3. providing infected persons and those who care for them with appropriate support through the existing health care system and home-based care;
4. safeguarding the rights and interests of infected persons by preventing discrimination in employment, housing, treatment, education, and other social services.

The National AIDS Policy also sets forth policies for HIV testing.⁴⁷ Individuals requesting HIV testing at voluntary counseling and testing sites may be required to pay the full or part of the cost of counseling and testing. However, the cost of HIV testing in hospitals and other treatment centers for sick patients will depend on the policy of the facility.⁴⁸ Testing is not to be mandatory for any marriage, or for travelers or migrants into or out of the country.⁴⁹

The National Policy addresses the issue of care for people with HIV/AIDS and STIs.⁵⁰ The stated goal is "to provide optimal humane and supportive care for the patients and their dependants."⁵¹ This care is to preserve confidentiality, avoid discrimination, and allow patients to live as normal and productive a life as possible.⁵² Addressed under the section on care for people with HIV/AIDS and STIs are the issues of: institutional care, management of STIs (including that provision shall be made for STI patients to have free treatment), community-based support services, protection of health care workers, and the plight of widows and orphans due to AIDS.⁵³ Prevention of sexual and other means of transmission and prenatal transmission are also dealt with in the National AIDS Policy.⁵⁴ In addition, the policy states that HIV testing shall not be allowed as a pre-employment condition⁵⁵ and that HIV infection shall not be a cause for termination of employment.⁵⁶

The National AIDS Policy also sets forth the rights of persons with HIV and AIDS. "Persons with HIV infection with or without AIDS shall be guaranteed all basic rights, such as the right to protection of privacy, to employment, to education in schools, to have use of public transport and housing."⁵⁷ The policy also calls for the punishment of HIV-infected individuals "aware of their being infected who indulge in unprotected sex with other(s) thus putting their partners at risk of HIV infection (without their partners informed consent)."⁵⁸ In addition, the policy encourages the criminalization of the willful spread of HIV/AIDS and STIs.⁵⁹

Finally, the National AIDS Policy focuses on issues of gender.⁶⁰ The policy calls for the community to be educated on the consequences of multiple partners and high-risk sexual behavior. Specifically, it calls for women of all ages to be "provided with basic education about their own bodies and about human sexuality, as well as specific information about HIV/AIDS/STDs."⁶¹ STI services are to be made accessible to women through the MCH/FP clinics, and devices for women that protect against HIV transmission are to be promoted and provided.⁶²

B. Sexual Violence against Women (Articles 3, 6, and 7 of ICCPR)

1. Introduction

Article 7 of the ICCPR states that no one shall be subjected to torture, inhuman or degrading treatment, or punishment and Article 6 covers the individual's right to life, both of which are potentially violated when women are subjected to rape, domestic violence, and female genital mutilation/female circumcision ("FGM/FC"). Article 3, which provides for the equal enjoyment by both sexes of the ICCPR's rights, is violated if women are not protected from these practices by law and the government's diligent enforcement of such law.

The Committee has urged States to promulgate laws relating to rape, sex abuse, and violence against women which provide effective protection, and to take the necessary measures "to ensure that women do not risk life because of the existence of restrictive legal provisions on abortion."⁶³ It has also said that making rape a privately prosecutable crime (so that victims, rather than the state, must file an action), and making abortion subject to criminal penalties even in the case of rape, are incompatible with Articles 3, 6, and 7 of the Covenant.⁶⁴ In the same vein, the Committee holds a negative view of legal provisions which exempt a rapist from punishment if he marries his victim,⁶⁵ and has criticized States which hold that rape in marriage is not an offense.⁶⁶ Moreover, the Committee recommended that steps be taken ". . . to overcome certain traditions and customs, such as FGM . . . which are incompatible with the equal rights of women."⁶⁷ It has further commented that acts of discrimination, such as sexual harassment in the workplace, "be established as punishable crimes."⁶⁸

2. Rape and Sexual Crimes

STATISTICS

- According to the Ministry of Community Development, in 1991 there were 1,525 assaults and 497 rapes reported; in 1992 there were 1,541 assaults and 736 rapes reported; and in 1993 there were 2,094 assaults and 721 rapes reported.⁶⁹

LAWS AND POLICIES

Rape is defined in the Penal Code as having "unlawful carnal knowledge of a woman or girl without her consent," or if such consent was procured by threat, intimidation, or false representation.⁷⁰ Other sexual assault crimes include: abduction of a woman for sexual relations, procurement of women for prostitution, and the use of overpowering drugs to coerce a woman into sexual intercourse.

According to the Penal Code, it is a felony for any person to have or attempt to have carnal knowledge of a girl under the age of 14. Any person who attempts to have carnal knowledge of a girl under the age of 14 years is liable to imprisonment for 14 years, with or without corporal punishment.⁷¹ It is, however, a sufficient defense to such a charge if the accused had reason to believe, and did in fact believe, that the girl was 14 years old or older.⁷²

The Parliament has recently passed an Act of Parliament known as the Sexual Offences Special Provision Act, which will enter into effect on July 1, 1998. This law amends the Penal Code by extending the definition of rape to encompass cases where a couple is legally separated and the husband has intercourse with his wife without her consent. However, marital rape where there is no legal separation is not included.⁷³ Punishment for rape has also been increased to life imprisonment with corporal punishment and a fine, and a person convicted of rape will also be liable to pay compensation to the victim for injuries caused. Gang rape has also been added to the definition of rape and is punishable with life imprisonment.⁷⁴

3. *Female Genital Mutilation / Female Circumcision (FGM/FC)*

STATISTICS

- Partial removal of the labia minora is practiced by some tribes in the Morogoro and Iringa regions, and infibulation is practiced by Somali ethnic groups who live in the Arusha region.⁷⁵
- It is estimated that 10% of Tanzanian women undergo FGM, with clitoridectomy reported only among the Christian Chagga groups near Mt. Kilimanjaro.⁷⁶

LAWS AND POLICIES

Until very recently there was no law that specifically mentioned FGM in Tanzania. In 1990 a National Committee on Traditional Practices was formed to work toward creating awareness about FGM and improving the status of women in general.⁷⁷ In addition, under the Sexual Offences Special Provision Act, a new section is to be added to the Penal Code known as cruelty to children. In this section, any person who has the "custody, charge or care of any person under eighteen years" and who "causes female circumcision" is guilty of the offense of cruelty to children. The offense is punishable by imprisonment for between five and 15 years or a fine not exceeding three hundred thousand shillings; or both the fine and imprisonment. The person convicted may also have to pay compensation for injuries caused.

4. *Domestic Violence*

STATISTICS

- According to a 1990 survey, 90% of all Tanzanian women are battered or have experienced some form of violence.⁷⁸

LAWS AND POLICIES

Section 66 of the Marriage Act declares that no person has any right to inflict corporal punishment on a spouse, regardless of custom. However, the act imposes no penalties for violation of this provision. The Penal Code does not specifically address spousal abuse, but does define crimes such as unlawful assault and unlawful wounding.⁷⁹ Once an act of violence has been reported, the police are responsible for arresting the accused and prosecuting the case, the woman participating only as a complainant and possible witness. This is true despite the fact that the criminal provisions under which domestic violence may be prosecuted are under the jurisdiction of the Primary Courts,

where it is the complainant who is supposed to prosecute the case.⁸⁰ Also, when the court imposes a sentence in cases of domestic violence, it may take into account a number of factors including the age of the defendant, character, previous history, and the health or mental condition of the accused.⁸¹

5. *Sexual Harassment*

The Security of Employment Act provides some protection against sexual harassment by preventing arbitrary dismissal of employees, but does not define sexual harassment.⁸² However, the Sexual Offences Special Provision Act, 1998, adds the offense of sexual harassment to the Penal Code.⁸³ The newly-passed legislation broadly defines sexual harassment as when a person uses assault, criminal force, or “words or actions” to “cause [] sexual annoyance or harassment” or intentionally insults “the modesty of any woman” by word, sound, gesture, or the exhibition of objects or any organ of the body. The new law also provides that “[f]or the avoidance of doubt, unwelcome sexual advances by words or actions used by a person in authority, in a working place or any other place” constitutes sexual harassment.⁸⁴ Sexual harassment is punishable by imprisonment for up to five years, or a fine, or both, and the convicted person may be ordered to compensate the victim for injuries caused. The crime may not be prosecuted if the victim does not file a complaint within 60 days of the incident.

C. Family Relations Including Equality of Spouses in Marriage (Articles 23, 24, and 26 of ICCPR)

1. *Introduction*

Article 26 of the ICCPR defines the family as the basic unit of society, and proclaims that the family unit is entitled to protection by law. This provision includes the right to marry and affirms the duty of States to ensure equality of rights and responsibilities of both parties to marriage. Thus, early marriage in which the parties may be too young to appreciate and exercise their rights would clearly be contravened. Exposing children to the rigors of early marriage also violates Article 24, which states that children are to have the right to such measures of protection as are required for minors.

The Committee has criticized laws in some States which instruct judges in divorce cases to take into account the education, habits, and conduct of both spouses, since these considerations may lead to discrimination against women.⁸⁵ It has also asserted that “any discriminatory treatment in regard to the grounds and procedures for divorce, child custody, maintenance or alimony or the loss of recovery of parental authority must be prohibited.”⁸⁶ Further, the Committee has expressed its concern about the situation of women in countries whose laws still permit polygamy.⁸⁷ While the Covenant does not specify any particular age for marriage, the Committee has noted that the age chosen by a State “should be such as to enable each of the intending spouses to give his or her consent in a form and under conditions prescribed by law.”⁸⁸ It has also expressed its opposition to forced marriages.⁸⁹

2. *Marriage and Customary Marriage*

Marriage in Tanzania is governed by the 1971 Marriage Act, which recognizes marriages contracted in a civil form in accordance with the rights of religion (Christian, Hindu, or Muslim) to which both parties belong, as well as marriages contracted under customary law when both parties belong to a community which follows customary law.⁹⁰ However, except where the Marriage Act specifically permits the application of customary law or Islamic law, it deems such laws inapplicable in all the matters it covers.⁹¹ Husbands have a duty to provide for their wives. Women can continue to own property after marriage, and only have a duty to provide for their husbands if the latter are incapacitated by mental or physical injury or by ill-health. Provisions included in the Marriage Act are rules regarding the consent of both parties to a marriage,⁹² minimum age at the time of marriage,⁹³ property rights between spouses,⁹⁴ and the duties of each spouse to maintain the other.⁹⁵ Consent by both parties must be given “freely and voluntarily,” which is defined as not being influenced by coercion or fraud, or mistake as to the nature of the ceremony. Furthermore, consent is not valid if either party is suffering from any mental disorder, or was intoxicated, and could not fully understand the nature of the ceremony.⁹⁶

The Marriage Act, however, also maintains certain gender-discriminatory practices. For example, Section 15(3) of the Marriage Act prohibits a woman who is married from contracting another marriage during the period that she is married. A man, on the other hand, is allowed under the law to contract more than one marriage at a time. The Marriage Act also states that a man cannot marry until the age of 18; however, the age of first marriage for a woman is 15.⁹⁷

3. *Divorce and Child Custody*

The law of divorce and custody is also governed by the Marriage Act. Any married person may petition the court for a decree of separation or divorce on the ground that his or her marriage has “broken down.”⁹⁸ However, no decree will be granted unless the court is satisfied that the breakdown is “irreparable.”⁹⁹ Furthermore, no person can petition for divorce until he or she has been married for a period of two years, unless it is shown that exceptional hardship is being suffered by the person applying for the divorce.¹⁰⁰ Also, before petitioning for divorce, a person must first refer the matrimonial difficulty to a Marriage Conciliatory Board and this board must certify that it has failed to reconcile the parties.¹⁰¹ Relevant evidence of the “breakdown” of a marriage includes: mental or physical cruelty, willful neglect, desertion, voluntary separation, and change of religion where both parties had followed the same faith at the time of the marriage and where, according to the laws of the faith, a change of religion dissolves the marriage.¹⁰² The Marriage Act also revokes the right of a Muslim husband to repudiate his marriage unilaterally.¹⁰³

The Marriage Act provides for the division of matrimonial property and the payment of maintenance. It states that in exercising its powers, a court shall have regard to: the customs of the community to which the parties belong; the contributions made by each party in the form of money, property, or work towards the acquisition of such property; any debts owed by either party which were incurred for their joint benefit; and

the needs of any infant children of the marriage.¹⁰⁴ The intent of the Marriage Act was to ensure that women who did not contribute to the purchase of the matrimonial property were not denied a share of that property.¹⁰⁵ A court may order a man to pay maintenance to his wife or former wife in a limited number of circumstances. Such situations include those in which a man has refused or neglected to provide for his wife, deserted his wife, or married his wife pursuant to Islamic law which requires maintenance for a customary period¹⁰⁶ following the date on which the divorce occurs.¹⁰⁷ A woman may also be required to pay maintenance to her husband in a situation where he is incapacitated and is not able to earn a living.¹⁰⁸

In determining custody of children, Tanzanian courts take into consideration: the economic situation of the parents, the housing possibilities of each parent, and the behavior of the mother in terms of whether she contributed to the termination of the marriage. There is a rebuttable presumption that an infant under seven years should be cared for by the mother.¹⁰⁹

4. *Early Marriage*

STATISTICS

- The median age at first marriage for women is 17 years, and by the age of 20 years over 95% have been married at least once.¹¹⁰

LAWS AND POLICIES

A minor is defined by the Age of Majority Ordinance as a person of either sex who is not yet 18 years old.¹¹¹ Yet, pursuant to the Marriage Act, a woman may marry upon attaining 15 years of age, whereas males may only do so at age 18.¹¹² There are other examples of inconsistencies and inadequacies in the law's protections against early marriage.

On the one hand, laws do seek to ensure that provisions regarding the age of first marriage are enforced. The Marriage Act provides that "any person who is party to a ceremony purporting to be a marriage knowing or having reason to believe that the other party is below the minimum age for marriage [is] guilty of an offense and [is] liable upon conviction to imprisonment for three years."¹¹³ Furthermore, it also states that "any person who participates in any such ceremony knowing or having reason to believe that either party is below the minimum age for marriage [is] guilty of an offense and [is] liable upon conviction to imprisonment for a term not exceeding two years."¹¹⁴

On the other hand, according to the Penal Code, any person of African or Asiatic descent may marry or permit the marriage of a girl under the age of 12 in accordance with custom, as long as it is not intended that the marriage be consummated before the girl is 12 years old. Section 138 of the Penal Code provides that any person married to a girl under the age of 12 years who has or attempts to have "carnal knowledge" of the girl, with or without her consent, before she has attained the age of 12 years is guilty of a misdemeanor punishable by five years imprisonment. Similarly, if the parent of the girl "parts with the possession, or otherwise disposes, of the girl with the intention that the girl shall, while still under the age of twelve years and whether with or without her consent, be carnally known by her husband or knowing it to be likely that the girl will,

while under the age of twelve years, be so carnally known, is guilty of a misdemeanor, and is liable to imprisonment for two years.”¹¹⁵

If a court is satisfied that special circumstances exist, the Marriage Act permits the court to grant leave for a couple under the minimum age to marry as long as neither party is under 14 years old.¹¹⁶ Furthermore, it is not an offense to give or receive money or presents in consideration or on the occasion of such a marriage.¹¹⁷

D. Right to Education (Articles 2, 3, 19, 24, and 26 of ICCPR)

1. Introduction

Education is necessary so that all other rights can be exercised, including those related to making informed decisions about reproductive health and one's reproductive capacity. Articles 2, 3, and 26 deal with equal enjoyment of rights and equality under the law, which imply that males and females should have equal access to education, including sexual education. Article 19 provides for freedom of expression and opinions. Education is an integral part of an individual's ability to exercise this right, since it provides the knowledge one needs to form opinions and beliefs, as well as the consciousness of one's rights. Article 24 states that children are entitled to special protection. Education equips female children to participate on an equal footing with males in the public and private spheres and, in the reproductive context, to protect themselves against unwanted pregnancies and sexually transmitted diseases.

The Committee has encouraged measures, including affirmative action, to remedy discrimination, “as identified in articles 2 and 26,” that still exists against women in areas such as education.¹¹⁸ It has suggested “education and information campaigns” as means that can be used to prevent and eliminate persisting discriminatory attitudes and prejudices against women.”¹¹⁹ Further indicating its focus on education, the Committee has suggested that steps be taken to publish educational material in the most-used vernacular languages in States where there are multiple dialects.¹²⁰

2. Access to Education and Sexual Education

Although primary education in Tanzania is both universal and compulsory,¹²¹ Tanzania's education system provides few education and training opportunities to youth beyond that level.¹²² For example, in 1988 only 10.5% of students leaving primary school entered a secondary school.¹²³ In addition, “female access to higher education in Tanzania is extremely marginal.”¹²⁴ From 1980 to 1981, female students constituted approximately 26% of all undergraduate university students. Since then, this proportion has been declining.¹²⁵ The Education Act attempts to “protect students, particularly girls, who are prevented from going to school by their parents or guardians or who are treated in a way which obliges them to leave school.”¹²⁶

However, in practice girls are often expelled from school due to pregnancy. Many girls suffer violations of their rights by being denied the opportunity to continue their education after giving birth. There is no specific law or policy that has been enacted to combat this practice. The Minister of Education has said in one of his speeches that it

is not proper to expel girls from school due to pregnancy but the government has failed to issue a binding pronouncement to schools to stop this practice.¹²⁷

No law specifically regulates sex education. The IEC component of the National Family Planning Program has introduced family planning education into non-school/information programs.¹²⁸

E. Women's Economic and Social Rights (Articles 3 and 26 of ICCPR)

1. Introduction

Women's reproductive health and rights cannot be fully evaluated without investigating their economic and social standing in the societies in which they live. Not only does women's socioeconomic status reflect societal attitudes that affect reproductive rights, it also often has a direct impact on women's ability to exercise reproductive rights. For example, laws affecting a woman's economic status can contribute to the promotion or prohibition of her access to reproductive health care and her ability to make voluntary, informed decisions about such care.

The Committee has voiced its concern about "the application of customary laws in matters of personal status . . . and inheritance rights which reinforce attitudes concerning the role and status of women."¹²⁹

2. Property Rights and Succession

The Tanzanian Constitution states that "[w]ithout jeopardizing applicable laws of the land, every one has the right to own property and the right to keep his property in accordance with the law."¹³⁰

Succession laws in Mainland Tanzania are governed by the four competing legal systems under which an estate may be administered.¹³¹ These systems of law are statutory law, customary law, Islamic law, and Hindu law. When the question is whether to choose between the application of statutory law or customary law, courts employ "the mode of life test." Under this test, courts use the reasoning that, generally, customary law is applicable to a person who is or was a member of a community in which rules of customary law relevant to the matter are established and accepted. To determine if customary law should be applied to an individual case, the court must examine whether the deceased's manner of life indicates that the estate should be regulated "otherwise than by customary law."

The law to be applied can have a significant impact on the distribution of an estate. For example, under customary law a widow whose spouse dies intestate does not obtain a share of her husband's estate if there are children from the marriage.¹³² Meanwhile, under the "statute law," when a person dies intestate, the widow or widower receives one third of the estate's property, and the remaining two thirds goes to lineal descendants.¹³³ Thus, the four legal systems in force in Mainland Tanzania can produce divergent results when a person dies intestate, or even if a person dies with a will.

3. *Labor Laws*

Only a fraction of women in Tanzania (3%) are employed in the formal sector. The vast majority of Tanzanian women are engaged in either domestic work or in the informal sector.¹³⁴ Hence, many of the labor laws described below are generally not applicable to the majority of the female work force.

The Constitution grants all persons in Tanzania the right to work, as well as the right to equal pay for equal work.¹³⁵ The Employment Ordinance, however, contains certain provisions that seriously restrict employment opportunities for women. Women are prohibited from working between the hours of 6 p.m. and 6 a.m. in any industrial undertaking unless there is an unforeseeable emergency or the work involves perishable goods that would deteriorate if left overnight, or if the women are holding responsible positions in management and are not engaged in manual work,¹³⁶ or if the Labour Commissioner has suspended this restriction.¹³⁷ A woman may also not be employed in underground work in any mine except in limited circumstances.¹³⁸ After considering the advice of the Labour Advisory Board, the president may make regulations that further prohibit the employment of women.¹³⁹

Laws do provide women with some maternity benefits. Pursuant to the Amended Employment Ordinance, women are "entitled to prenatal maternity leave of 42 days, which may be taken at any time after the completion of the seventh month of pregnancy and before delivery," or "before the completion of the seventh month of pregnancy if a medical officer recommends that such leave is necessary or desirable in the interest of the employee's health."¹⁴⁰ Furthermore women are entitled to 42 days leave commencing from the day of delivery.¹⁴¹ Maternity leave is to be with full pay and at the expense of the employer.¹⁴² However, a female employee is not entitled to any maternity leave under this provision if she has taken maternity leave within the previous three years.¹⁴³ If any of the allotted time has been taken, the entire leave is deemed to have been taken.¹⁴⁴ Furthermore, in any calendar year in which a female employee has taken maternity leave, she forfeits her annual leave; if she has already taken her annual leave, she forfeits the next year's annual leave.¹⁴⁵

Credit reform, initiated in 1981 in conjunction with a series of three-year-recovery programs, have hardly affected women.¹⁴⁶ Women continue to lack collateral, information, and knowledge on how to process and obtain loans.¹⁴⁷

ENDNOTES

¹ UNITED NATIONS CENTER FOR HUMAN RIGHTS, MANUAL ON HUMAN RIGHTS REPORTING 120, U.N. Doc. HR/PUB/91/1 (1991) [hereinafter MANUAL ON HUMAN RIGHTS REPORTING] at 113.

² *Report of the Human Rights Committee*, ¶ 167, 52nd Session., U.N. Doc. A/52/40 [hereinafter U.N. Doc. A/52/40].

³ *Id.* ¶ 239.

⁴ WORLD BANK, WORLD DEVELOPMENT REPORT 1995: WORKERS IN AN INTEGRATING WORLD 162 (1995) [hereinafter WORLD DEVELOPMENT REPORT 1995].

⁵ PRESIDENT'S PLANNING COMMISSION, NATIONAL POPULATION POLICY iv (United Republic of Tanzania, 1992) [hereinafter POP. POL.].

⁶ Report by Dr. Janet Kabeberi-Macharia, *Women and Law in East Africa*, Nairobi, Kenya (1996) at 4 (citing BUREAU OF STATISTICS, WOMEN AND MEN OF TANZANIA, DAR-ES-SALAAM 23 (1992)) (on file with the Center for Reproductive Law and Policy).

⁷ U.N. POPULATION FUND (UNFPA), PROGRAMME REVIEW AND STRATEGY DEVELOPMENT REPORT: UNITED REPUBLIC OF TANZANIA VII U.N. DOC. E/850/1994 (1991) [hereinafter TANZANIA/UNFPA].

⁸ WORLD DEVELOPMENT REPORT 1995, *supra* note 4, at 212.

⁹ *Id.* at 57.

¹⁰ UNITED REPUBLIC OF TANZANIA MINISTRY OF HEALTH: NATIONAL HEALTH POLICY at 4 (1990) [hereinafter HEALTH POL.].

¹¹ ARJUN ADLAKHA, U.S DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, BUREAU OF THE CENSUS, INTERNATIONAL BRIEF: POPULATION TRENDS: TANZANIA 4 (SEPT. 1995) [hereinafter POPULATION TRENDS: TANZANIA].

¹² HEALTH POL. Before the implementation of the 1990 National Health Policy, health services planning in Tanzania was considered part of broader national development, which had generally been articulated in a series of five year plans.

¹³ *Id.* at 1.

¹⁴ *Id.* at 5–6.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 12–13.

¹⁷ POP. POL. *supra* note 5, at 13.

¹⁸ HEALTH POL. *supra* note 10, at 21.

¹⁹ Professor Chris Maina Peter and Marie M. Shaba, commentary by Tanzanian NGOs on the Report submitted by the United Republic of Tanzania to the United Nations Human Rights Commission, Geneva (June 1998).

²⁰ POP. POL. *supra* note 5, at 27–30.

²¹ *Id.* at 35–36.

²² POP. POL. *supra* note 5, at 31–32.

²³ TANZANIA: NATIONAL POLICY GUIDELINES AND STANDARDS FOR FAMILY PLANNING SERVICES DELIVERY AND TRAINING (Ministry of Health, 1994) [hereinafter POL. GUIDELINES].

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ *Id.* at 3–12.

²⁹ *Id.* at 7.

³⁰ *Id.* at 3.

³¹ WORLD HEALTH ORGANIZATION, MATERNAL HEALTH AND SAFE MOTHERHOOD PROGRAMME, ABORTION: A TABULATION OF AVAILABLE DATA ON THE FREQUENCY AND MORTALITY OF UNSAFE ABORTION 28 (2d ed. 1994).

³² PENAL CODE, Cap. 16, Supp. 66–74, § 230 [hereinafter PEN. CODE].

³³ See A.A.F. MASSAWE, LEGAL ASPECTS OF HOSPITAL ADMINISTRATION 1–5, 12–15 (1992) (discussing law of torts, including issues of consent in the administration of hospitals).

³⁴ I.K.B. 687 (1939), *cited in id.* at 18–19.

³⁵ MASSAWE, *supra* note 33, at 18–19. The author of the book suggests: “In such cases it is eminently desirable that the surgeon should safeguard himself by taking a second opinion.”

³⁶ POL. GUIDELINES, *supra* note 23, at 19.

³⁷ *Id.* at 2.

³⁸ *Id.* at 12. These tests are inspection of the gums to exclude anemia, palpation of the lower abdomen for tenderness, pelvic tenderness, blood pressure, and weight.

³⁹ Ministry of Health, National Policy on HIV/AIDS/STDs 1 (United Republic of Tanzania, 1995) [hereinafter AIDS POLICY].

⁴⁰ TANZANIAN WOMEN: COUNTRY REPORT TO FOURTH WORLD CONFERENCE ON WOMEN, BEIJING, SEPTEMBER 1995, AT 32 (United Republic of Tanz. 1995), [hereinafter TANZANIA WOMEN].

⁴¹ *Id.*

⁴² *Id.* at 33.

⁴³ *Id.* at 32.

⁴⁴ *Id.* at 33.

⁴⁵ AIDS POLICY, *supra* note 39, at 4.

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- ⁴⁶ *Id.* at 3.
- ⁴⁷ *Id.* at 6-9.
- ⁴⁸ *Id.* at 8.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.* at 10-13.
- ⁵¹ *Id.* at 10.
- ⁵² *Id.*
- ⁵³ *Id.* at 10-13.
- ⁵⁴ *Id.* at 14-18.
- ⁵⁵ *Id.* at 20.
- ⁵⁶ *Id.*
- ⁵⁷ *Id.* at 9.
- ⁵⁸ *Id.* at 8.
- ⁵⁹ *Id.*
- ⁶⁰ *Id.* at 21.
- ⁶¹ *Id.*
- ⁶² *Id.*
- ⁶³ U.N. Doc. A/52/40, ¶ 167.
- ⁶⁴ *Id.*
- ⁶⁵ *Id.* ¶ 431.
- ⁶⁶ *Id.*
- ⁶⁷ *Report of the Human Rights Committee, 51st Sess., U.N. Doc. A/51/40* [hereinafter U.N. Doc. A/51/40].
- ⁶⁸ *Id.* ¶ 249.
- ⁶⁹ TANZANIAN WOMEN: COUNTRY REPORT, *supra* note 40, at 15.
- ⁷⁰ PEN. CODE, Cap. 16, § 240.
- ⁷¹ *Id.* § 136 (2).
- ⁷² *Id.*
- ⁷³ The Sexual Offences Special Provision Act, 1998, § 5 (amending § 130 (2) (a)).
- ⁷⁴ *Id.* § 131.
- ⁷⁵ EFUA DORKENOO, CUTTING THE ROSE: FEMALE GENITAL MUTILATION, THE PRACTISE AND ITS PREVENTION 113 (1995).
- ⁷⁶ NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 25 (Rainbo 1995).
- ⁷⁷ JACQUELINE SMITH, VISIONS AND DISCUSSION ON GENITAL MUTILATION OF GIRLS: AN INTERNATIONAL SURVEY 134 (1995).
- ⁷⁸ TANZANIA WOMEN: COUNTRY, *supra* note 40, at 15.
- ⁷⁹ PEN. CODE, Cap. 16, § 240.
- ⁸⁰ *Id.*
- ⁸¹ *See* PEN. CODE, Cap. 16, § 3(1), *cited in* SHERBANU KASSIM, LEGAL PROVISIONS AGAINST DOMESTIC VIOLENCE IN MAINLAND TANZANIA WITH SPECIAL REFERENCE TO CRIMINAL LAW: A CRITIQUE 61 (1993).
- ⁸² Kabeberi-Macharia, *supra* note 6, at 15.
- ⁸³ The Sexual Offences Special Provision Act, 1998.
- ⁸⁴ *Id.*
- ⁸⁵ U.N. Doc A/52/40, at ¶ 161.
- ⁸⁶ MANUAL ON HUMAN RIGHTS REPORTING at 113.
- ⁸⁷ U.N. Doc. A/51/40, ¶ 291.
- ⁸⁸ MANUAL ON HUMAN RIGHTS REPORTING at 113.
- ⁸⁹ U.N. Doc. A/51/40, ¶ 291.
- ⁹⁰ Law of Marriage Act, No. 5 (1971) [hereinafter Marriage Act]. Not in effect in Zanzibar.
- ⁹¹ B.A. Rwezaura, *Tanzania*, 8 ANNUAL SURVEY OF FAMILY LAW 1983-1984, at 193 (M.D.A. Freeman ed., 1985).
- ⁹² Marriage Act, ¶ 16.
- ⁹³ *Id.* ¶ 13.
- ⁹⁴ *Id.* ¶¶ 59-62.
- ⁹⁵ *Id.* ¶ 63.
- ⁹⁶ *Id.* ¶ 16.

⁹⁷ *Id.* ¶ 13.

⁹⁸ *Id.* ¶ 9.

⁹⁹ *Id.*

¹⁰⁰ *Id.* ¶ 100.

¹⁰¹ *Id.* ¶ 101. Some exceptions exist in which the parties are not required to go to the Marriage Conciliatory Board, such as when the petitioner alleges that he or she has been deserted by, and does not know the whereabouts of, his or her spouse.

¹⁰² *Id.* ¶ 107(2).

¹⁰³ *Id.* ¶ 107(3).

¹⁰⁴ *Id.* ¶ 114.

¹⁰⁵ Kabeberi-Macharia, *supra* note 6, at 7–8 (citing *Hawa Mohammed v. Ally Sefa*, Civil Appeal No. 9 (1983). The Court of Appeal ruled that joint marital efforts as used in Section 114 must be “construed as embracing the domestic efforts of husband and wife.” *Id.*

¹⁰⁶ This customary period is known as the *iddat*. *Iddat* is the period a woman who has been divorced has to wait before she is allowed to remarry. During the period of *iddat*, which usually lasts three menstrual cycles, a woman is forbidden to marry.

¹⁰⁷ Marriage Act, ¶ 115.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* ¶ 125(3).

¹¹⁰ POP. POL., *supra* note 5, at 2.

¹¹¹ JANE ROSE KIKOPA, LAW AND THE STATUS OF WOMEN IN TANZANIA 15 (1981).

¹¹² Marriage Act, No. 5, ¶ 13 (1971).

¹¹³ *Id.* ¶ 148(1).

¹¹⁴ *Id.* ¶ 148(2).

¹¹⁵ PEN. CODE, Cap. 16, § 138(2).

¹¹⁶ Marriage Act, ¶ 13(2).

¹¹⁷ PEN. CODE, Cap. 16, § 138(6).

¹¹⁸ U.N. Doc. A/51/40, ¶ 158.

¹¹⁹ U.N. Doc. A/52/40, ¶ 300.

¹²⁰ U.N. Doc. A/51/40, ¶ 166.

¹²¹ TANZANIA WOMEN, *supra* note 40, at 23.

¹²² POP. POL., *supra* note 5, at 21.

¹²³ *Id.*

¹²⁴ TANZANIA WOMEN, *supra* note 40, at 23.

¹²⁵ *Id.* In 1985, only 16% of the student population was female, in 1987 only 15.2% and then a small increase to 18.47% occurred in 1992–93.

¹²⁶ POP. POL., *supra* note 5, at 22.

¹²⁷ Memorandum from Helen Kijo-Bisimba, Women’s Legal Aid Centre, Tanzania (June 18, 1998) (on file with the Center for Reproductive Law and Policy).

¹²⁸ EDMUND H. KELLOGG ET AL., THE WORLD’S LAWS AND PRACTICES ON POPULATION AND SEXUALITY EDUCATION 121 (1975).

¹²⁹ U.N. Doc. A/51/40, ¶ 195.

¹³⁰ CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, *reprinted in* 29 CONSTITUTIONS OF THE WORLD ¶ 24 (Albert P. L. Blaustein and Gisbert H. Flanz eds., 1986) [hereinafter TANZ. CONST.].

¹³¹ THE LAW REFORM COMMISSION OF TANZANIA, REPORT OF THE COMMISSION ON THE LAW OF SUCCESSION INHERITANCE 25 (1995).

¹³² *Id.* at 14.

¹³³ If the deceased had no lineal descendants, then one half of the property goes to the descendant’s spouse and the other half goes to kindred of the deceased. If the deceased has no kindred, then the entire estate goes to the surviving spouse. *Id.* at 17–18.

¹³⁴ Kabeberi-Macharia, *supra* note 6, at 12 (citing Population Census for 1988).

¹³⁵ TANZ. CONST., ¶¶ 22 and 23.

¹³⁶ Employment Ordinance Cap. 366, Supp. 56, § 83 (1957).

¹³⁷ *Id.* § 84.

¹³⁸ *Id.* § 86.

¹³⁹ *Id.* § 95.

¹⁴⁰ An Act to amend certain Labour Laws, Gazette of the United Republic of Tanzania, Apr. 4, 1975, Acts Supp. No. 1, § 4 (replacing Employment Ordinance, Cap. 366 § 25B(1)(a)).

¹⁴¹ *Id.* (replacing Employment Ordinance, Cap. 366 § 25B(1)(b)).

¹⁴² *Id.* (replacing Employment Ordinance, Cap. 366 § 25B(2)).

¹⁴³ *Id.* (replacing Employment Ordinance, Cap. 366 § 25B(a)).

¹⁴⁴ *Id.* (replacing Employment Ordinance, Cap. 366 § 25B(b)).

¹⁴⁵ *Id.* (replacing Employment Ordinance, Cap. 366 § 25B(c)).

¹⁴⁶ TANZANIA WOMEN, *supra* note 40, at 39–41.

¹⁴⁷ *Id.* at 41.