

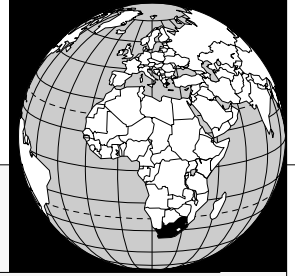


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# 7. Tanzania



## Statistics

### GENERAL

#### Population

- The total population of Tanzania is approximately 29 million,<sup>1</sup> of which slightly over half are women.<sup>2</sup>
- In 1996, the proportion of the population residing in urban areas was 21%.<sup>3</sup> However, the urban growth rate of over 6% per year is one of the highest in the world, and it is estimated that in the next 15 years “86 percent of the total population growth [will] occur in urban areas, causing the urban population to nearly double its size.”<sup>4</sup>
- The median age is 15.4 years, with 49% of the population below the age of 15.<sup>5</sup>

#### Economy

- In 1993, the World Bank estimated the gross national product (“GNP”) per capita to be U.S.\$90, a per capita decrease of U.S.\$210 since 1983.<sup>6</sup> From 1980 to 1993, the average annual growth rate of the GNP per capita was 0.1%, while the annual average rate of inflation was 24.3%.<sup>7</sup>
- In the late 1980s the average annual growth rate of the gross domestic product (“GDP”) was 3.8%, a significant recovery from the early 1980s when the GDP grew at an estimated 1%.<sup>8</sup>
- In 1993, agriculture made up 56% of the GDP.<sup>9</sup> However, this figure does not take into account subsistence farming, where agricultural output is either not exchanged or not exchanged for money.<sup>10</sup>

#### Employment

- About 90% of the able-bodied population is engaged in agriculture, of which 54%<sup>11</sup> to 75%<sup>12</sup> are women. Women make up less than 25% of the total number of workers in paid wage employment.<sup>13</sup>
- In 1993, the labor force was estimated to be 13.7 million people, of which 47.2% were women.<sup>14</sup> In 1995 the labor force participation rate for girls aged 10 to 19 was 46%.<sup>15</sup>
- The average annual income in Tanzania is U.S.\$110.<sup>16</sup>

### WOMEN'S STATUS

- The average life expectancy for women is 53, while for men it is 50.<sup>17</sup>
- A 1990 survey showed that 90% of women in Tanzania are battered or have experienced violence in some form.<sup>18</sup>
- 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.<sup>19</sup>
- As students progress toward higher education, the percentage of women drastically decreases. While in 1992 females made up about 48% of the primary school population, they only comprised about 18% of the undergraduate university population.<sup>20</sup>

### ADOLESCENTS

- In 1990, there were an estimated 96 girls per 100 boys in primary school; this number significantly declined to 77 girls per 100 boys in secondary school. It is estimated that while 68% of all children attend primary school, only 5% attend secondary school, with the numbers for girls only slightly lower.<sup>21</sup>
- An estimated 10% of Tanzanian women and girls have undergone FGM, with clitoridectomy reported only among the Christian Chagga groups near Mt. Kilimanjaro.<sup>22</sup>
- 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.<sup>23</sup>

### MATERNAL HEALTH

- In 1995 the total fertility rate was 5.8 children per woman.<sup>24</sup>

- The infant mortality rate is estimated to be between 84.22<sup>5</sup> and 104.32<sup>6</sup> per 1,000 live births. The under-5 mortality rate for 1993 was 167 deaths per 1,000 live births.<sup>27</sup> Malnutrition is the primary cause in more than 50% of deaths of children aged 1-4.<sup>28</sup>
- The U.N. Population Division estimates that in 1993 17% of all births were to women under 20; 69% of the births were to women between the ages of 20 and 35.<sup>29</sup>
- 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.<sup>30</sup> It is estimated that 40% to 60% of all pregnant women are malnourished.<sup>31</sup>
- An estimated 40% of deliveries in rural areas and 20% of deliveries in urban areas are attended by traditional birth attendants or midwives.<sup>32</sup>
- About 80% of expecting mothers attend antenatal clinics at least once during their pregnancies.<sup>33</sup>

### CONTRACEPTION AND ABORTION

- In 1994, nearly 18% of all women aged 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.<sup>34</sup>
- 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.<sup>35</sup>

### HIV/AIDS AND STDs

- The number of estimated AIDS cases by December 1994 was 250,000. Estimated HIV infection rates based on blood donor prevalence show that 1 to 1.5 million Tanzanians were infected by 1995.<sup>36</sup> Heterosexual intercourse accounts for 80% of the transmission of HIV.<sup>37</sup>
- Women are disproportionately at risk for HIV infection. The infection rate is 5.4% for males and 7.0% for females.<sup>38</sup> In addition, the peak infection age for women is from 20 to 24, while for men it is from 25 to 35.<sup>39</sup>
- 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.<sup>40</sup>

### ENDNOTES

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4. POPULATION TRENDS:TANZANIA, *supra* note 2, at 3.
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8. PRESIDENT'S OFFICE PLANNING COMMISSION, NATIONAL POPULATION POLICY iv (United Republic of Tanzania, 1992) [hereinafter NATIONAL POPULATION POLICY].
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11. MINISTRY OF COMMUNITY DEVELOPMENT, WOMEN AFFAIRS AND CHILDREN, TANZANIAN WOMEN: COUNTRY REPORT TO 4TH WORLD CONFERENCE ON WOMEN BEIJING 51 (UNITED REPUBLIC OF TANZANIA, 1995) [hereinafter TANZANIAN WOMEN: COUNTRY REPORT].
12. MINISTRY OF COMMUNITY DEVELOPMENT, WOMEN AFFAIRS AND CHILDREN, POLICY ON WOMEN IN DEVELOPMENT IN TANZANIA 2 (United Republic of Tanzania, 1992).
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14. WORLD TABLES 1995, *supra* note 6, at 659.
15. WORLD DEVELOPMENT REPORT 1995, *supra* note 7, at 146.
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17. WORLD DEVELOPMENT REPORT 1995, *supra* note 7, at 218.

18. TANZANIAN WOMEN: COUNTRY REPORT, *supra* note 11, at 15.
19. *Id.* at 16.
20. *Id.* at 22, 23.
21. WORLD DEVELOPMENT REPORT 1995, *supra* note 7, at 218.
22. NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 25 (Rainb9 1995).
23. NATIONAL POPULATION POLICY, *supra* note 8, at 2.
24. POPULATION TRENDS:TANZANIA, *supra* note 2, at 4.
25. WORLD TABLES 1995, *supra* note 6, at 659.
26. POPULATION TRENDS:TANZANIA, *supra* note 2, at 4.
27. WORLD DEVELOPMENT REPORT 1995, *supra* note 7, at 214.
28. NATIONAL POPULATION POLICY, *supra* note 8, at 7.
29. WORLD DEVELOPMENT REPORT 1995, *supra* note 7, at 212.
30. Report by Dr. Janet Kabeberi-Macharia, Women and Law in East Africa, Nairobi, Kenya (1996) at p. 4 (on file with The Center for Reproductive Law and Policy) (*citing* BUREAU OF STATISTICS, WOMEN AND MEN OF TANZANIA, DAR-ES-SALAAM 23 (1992)).
31. TANZANIA/UNFPA, *supra* note 5, at 57.
32. *Id.* at 57.
33. MINISTRY OF HEALTH, NATIONAL HEALTH POLICY 4 (United Republic of Tanzania, 1990).
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35. 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).
36. Ministry of Health, National Policy on HIV/AIDS/STD 1 (United Republic of Tanzania, 1995).
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40. *Id.* at 33.

In 1964, the United Republic of Tanzania (“Tanzania”) was established pursuant to the union of two countries — Tanganyika and Zanzibar<sup>1</sup> — that had recently gained independence from Britain.<sup>2</sup> Tanganyika became independent in 1961; Zanzibar attained independence in 1963.<sup>3</sup> The former nation of Tanganyika that is now a part of Tanzania is hereinafter referred to as Mainland Tanzania; the Island of Zanzibar is referred to as Zanzibar. In 1965, an interim Constitution was established for Tanzania. On April 25, 1977, the permanent Constitution of Tanzania (the “Constitution”) came into effect.<sup>4</sup> Although Mainland Tanzania and Zanzibar are united as one nation, each maintains separate executive, legislative, and judicial institutions. As will be explained below, the Constitution specifies the laws that are applicable to both regions. It is noteworthy that the health and population policies of the country apply to both Mainland Tanzania and Zanzibar.<sup>5</sup>

The total population of Tanzania is estimated to be 29,058,470.<sup>6</sup> Women make up 51% of the population.<sup>7</sup> Approximately 45% of the population is Christian; another 35% are Muslim and located primarily in Zanzibar; and 20% adhere to traditional beliefs.<sup>8</sup> Tanzania has approximately 120 ethnic groups. Although many languages are spoken in Tanzania, the principal and official languages are Swahili and English.<sup>9</sup>

## I. Setting the Stage: The Legal and Political Framework

To understand the various laws and policies affecting women’s reproductive rights in Tanzania, it is necessary to consider the legal and political systems of the country. Without this background, it is difficult to determine the manner in which laws and policies are enacted, interpreted, modified, and challenged. The passage and enforcement of law often involves specific formal procedures. Policy enactments, however, are not subject to such a process.

### A. THE STRUCTURE OF GOVERNMENT

From 1977 until 1992, Tanzania was a one-party state in which all political and governmental activity in the country was carried out, directed, and supervised by one party — the Chama Cha Mapinduzi (“CCM”).<sup>10</sup> In 1990, the CCM reconsidered its one-party policy, and in 1991 President Mwinyi appointed a 22-member commission to study the feasibility of introducing a multiparty system in Tanzania and its possible impact on the “unity, peace and concord amongst all Tanzanians regardless of tribe, creed, race or gender.”<sup>11</sup> In the midst of the debate regarding the impact of a multiparty system, the CCM loosened its monopoly over the exercise of

state power. In 1992, this commission recommended the introduction of multiparty politics; this view was affirmed by the National Executive Committee of the CCM.<sup>12</sup> Hence, in 1992 an amendment was made to the Constitution permitting multiple-party politics.

Although Tanzania has several features of a federal state, it does not follow a complete federal model. The country is divided into 25 regions, of which five are on the islands of Zanzibar and Pemba. Most regions are further divided into four or five districts. But Mainland Tanzania and Zanzibar have separate legislative, executive, and judicial institutions; however, there are certain specified “union” institutions that exercise jurisdiction over matters relating to both Mainland Tanzania and Zanzibar. Union matters are defined under the first addendum to the Constitution to include, *inter alia*: foreign affairs; defense and security; police; authority on matters related to a state of emergency; citizenship; immigration; loans and international business; all matters related to coins and money for the purpose of all legal payments; banks and all activities of the banks; foreign currency and the administration of the Department of Customs; communications; higher education; and some issues related to natural resources.

The highest executive function in the nation lies with the president of the United Republic of Tanzania. The president is the head of state, head of government, and commander-in-chief of the armed forces.<sup>13</sup> The president selects a prime minister, who has the responsibility of “controlling, and supervising the day to day functions of all matters and activities of the Union Republic.”<sup>14</sup> The person chosen to be prime minister is also to serve as one of the two vice-presidents called for in the Constitution.<sup>15</sup> The head of the government of Zanzibar acts in a dual capacity as both president of Zanzibar and as the other vice-president of the United Republic of Tanzania.<sup>16</sup> Each one of the vice-presidents is “chief assistant” to the president on all “Union matters.”<sup>17</sup>

The two primary legislative bodies in Tanzania are the Parliament of Tanzania, situated in Mainland Tanzania, and the Council of Representatives located in Zanzibar.<sup>18</sup> The responsibilities of the Parliament include legislating on “Union matters” of Tanzania and on all matters relating to Mainland Tanzania.<sup>19</sup> The Council of Representatives, on the other hand, legislates for Zanzibar on “non-Union” matters.<sup>20</sup> As a result of the 1992 constitutional changes, women must occupy 37 seats in Parliament, which has a membership of 275 members.<sup>21</sup>

Courts both create and interpret laws. The judicial system can have a significant impact on legislation, including that affecting reproductive rights, because it is able to enforce law and deal with complaints from individuals challenging the

constitutionality of specific laws. The present Tanzanian court system, established in 1963 by the Magistrates Courts Act,<sup>22</sup> ended a dual system of courts (previously one system administered common law and the other customary law), and created a hierarchy of courts. There are lower courts (referred to as Primary Courts) in each of the 25 administrative regions.<sup>23</sup> Primary Courts have jurisdiction in all procedures of a civil nature: where the law applicable is customary and Islamic law (except in matter relating to the Land Registration Ordinance) for the recovery of civil debts (with a monetary restriction); for the recovery of debts arising out of a contract; in all matrimonial proceedings related to civil and Christian marriages; and in all other proceedings in which jurisdiction is granted to primary courts by the Magistrates' Court Act or any other law.<sup>24</sup> The second level of courts are the District Courts, followed by the Resident Magistrates Court and the High Court. The Court of Appeal is the supreme court of Tanzania. The chief justice of the Court of Appeal is the head of the judiciary. Zanzibar also has a High Court. The chief justice of the High Court of Zanzibar is the head of the judiciary of Zanzibar.

## **B. SOURCES OF LAW**

### *Domestic Sources of Law*

Laws that affect women's legal status — including their reproductive rights — derive from a variety of sources. These sources are: the Constitution of Tanzania, which declares itself the supreme law of the land;<sup>25</sup> written laws, which are based on English legislation from the last half of the nineteenth century; a number of codes and acts developed by British drafters and legislators for India that were revised by local Tanganyikan legislators to conform to local needs; numerous customary laws; and Islamic law.<sup>26</sup>

Article 9(1)(g) of the Constitution states that the authority of the state must ensure that “the Government and all its instruments of the people offer equal opportunities for all citizens, men and women, regardless of color, tribe, religion, or creed.” Furthermore, the Bill of Rights also prohibits discrimination; however, it fails to list gender as one of the grounds of unacceptable discrimination.<sup>27</sup> All rights and freedoms guaranteed by the Bill of Rights are subject to restrictions on the grounds of “interests of the public,”<sup>28</sup> as well as “to ensure that justice and freedom of others”<sup>29</sup> and the “interests of the nation.”<sup>30</sup> Violation of these rights and freedoms are not illegal during an emergency or in ordinary times when the security of the nation is in danger.<sup>31</sup>

Customary law is effective primarily in the realm of personal relations. Although Tanzania has about 120 ethnic groups, each with its own laws and customs, an attempt was

made through the passage of the Local Customary Laws Declaration Order No. 4 to codify customary laws to bring some unity and predictability to existing laws. This declaration attempts to eliminate outdated customs in a number of family matters, including succession, payment of bridewealth, divorce, child custody, and maintenance. It is estimated that this law applies to approximately 80% of all communities in Tanzania.<sup>32</sup>

### *International Sources of Law*

A number of international human rights treaties recognize and promote specific reproductive rights. Because international instruments are legally binding, they create an obligation on the part of the government to undertake numerous actions, including those at national levels. The government of Tanzania has ratified various human rights instruments, including: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the African Charter on Human and People's Rights.<sup>33</sup>

## **II. Examining Reproductive Health and Rights**

Issues of reproductive health and rights are dealt with in Tanzania within the context of its health and population policies, which apply to both Mainland Tanzania and Zanzibar. Thus, an understanding of reproductive rights in Tanzania must be based on an examination of those policies.

### **A. HEALTH LAWS AND POLICIES**

#### *Objectives of the Health Policy*

In 1990, the Ministry of Health (“MOH”) released a National Health Policy<sup>34</sup> (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.”<sup>35</sup> The policy defines good health as physical, mental, and social well-being.<sup>36</sup> The overall objective of the Health Policy is to improve the health and well-being of all Tanzanians, with a focus on those who are most at risk, and to encourage the health system to be more responsive to the needs of people.<sup>37</sup> 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 to common preventable health problems and improving the capabilities at all levels of society to assess and analyze problems and to "design appropriate action through genuine community involvement."<sup>38</sup>

The provision of Primary Health Care ("PHC") services is a primary strategy for realizing the government's Health Policy.<sup>39</sup> The Health Policy also sets forth basic requirements for PHC services, including community involvement, cooperation with other sectors, and decentralization of regions and districts.<sup>40</sup> The Health Policy identifies maternal and child health, including family planning, as being a necessary element of PHC services.<sup>41</sup>

### ***Infrastructure of Health Services***

Between 1972 and 1987, the government of Tanzania established a comprehensive health infrastructure system<sup>42</sup> such that, in 1987, approximately 70% of the population lived within five kilometers of a health facility.<sup>43</sup> Health care facilities within this system include village health services, dispensary services, health center services, district hospitals, regional hospitals, and referral/consultant hospitals.<sup>44</sup> This system is currently comprised of 152 hospitals, 250 health centers, and over 2,600 dispensaries.<sup>45</sup> The village health service is the "lowest level of Health Care delivery in the country."<sup>46</sup> The Health Policy calls for the establishment of a village health post in all villages by the year 2000.<sup>47</sup> A village health service center is only required to have an office for storage of medicines and equipment.<sup>48</sup> They are not located in permanent buildings; instead, village health service centers provide essentially preventive services that can be offered in the homes of individuals.<sup>49</sup> Two village health workers are required for each village, one of them to deal with maternal-child problems and the other with environmental sanitation.<sup>50</sup>

The dispensary services center is the second level of health services.<sup>51</sup> The long-term objective of the Health Policy is to have one dispensary for each village,<sup>52</sup> and for each dispensary to cater to 6,000 to 10,000 people and supervise all the village health posts in its ward.<sup>53</sup> Each dispensary is to have facilities for out-patients, a maternity room with at least two beds, bathrooms for women and men, and rooms for the dispensary staff.<sup>54</sup> Each health center, the next level of health care, is expected to cater to 50,000 people, approximately the population of one administrative division.<sup>55</sup> The services offered by the health centers are similar to those offered by the dispensary, except that the health centers offer more specialized services<sup>56</sup> and serve as supervisors of the dispensaries.<sup>57</sup>

Hospitals are expected to provide the highest levels of health care. The Health Policy calls for each district to have a district hospital,<sup>58</sup> which, on average, has between 60 and 150

beds.<sup>59</sup> For those districts that do not have such hospitals, the government is to negotiate with religious organizations to designate voluntary hospitals as district hospitals.<sup>60</sup> The next level of hospital care is provided for at the regional hospitals. These hospitals are to have specialists in various fields, and offer additional services not provided at district hospitals,<sup>61</sup> as well as to have on average between 200 and 400 beds.<sup>62</sup> There is one regional hospital in each of Tanzania's 25 regions.<sup>63</sup> The highest level of hospital service in the country is provided by the referral/consultant hospitals.<sup>64</sup> These hospitals are supposed to be equipped with sophisticated modern medical equipment in order to handle cases that are now referred abroad.<sup>65</sup> Each referral hospital is to have between 400 and 600 beds. In 1990, they had between 423 and 1,423 beds.<sup>66</sup> As of 1990, there were four referral hospitals in Tanzania.<sup>67</sup> The Health Policy aims to establish six such referral hospitals.<sup>68</sup>

The MOH oversees the delivery of health care at the national level.<sup>69</sup> To decentralize health care, the policy at the regional and district levels will be supervised by the regional and district authorities according to guidelines issued by the MOH.<sup>70</sup> The policy further provides that implementation of the policy will be coordinated by the MOH in conjunction with the ministries responsible for water, agriculture, and education, non-governmental organizations ("NGOs"), international organizations, political parties, and the private sector.<sup>71</sup>

### ***Cost of Health Services***

Tanzania has a comprehensive health coverage system in which services are available free of charge.<sup>72</sup> The only exceptions are for patients in special or private wards at referral and regional hospitals, for dental appointments, and for travel-related immunization.<sup>73</sup> Health services are financed by the government in two ways.<sup>74</sup> First, the MOH provides funds to the referral hospitals, medical schools,<sup>75</sup> "parastatals" such as the Muhimbili Medical Centre and the National Institute for Medical Research,<sup>76</sup> and hospitals that belong to religious organizations.<sup>77</sup> Second, the prime minister's office provides funds to administer the regional and district hospitals.<sup>78</sup> Similarly, the government gives subsidies to the local councils for the salaries of personnel at the health centers and dispensaries.<sup>79</sup> Local governments are responsible for running the dispensaries and health centers in the rural areas,<sup>80</sup> and obtain their funds from government subsidies and local taxes.<sup>81</sup>

### ***Regulation of Health Providers***

Who is legally permitted to provide what type of care? Are there meaningful guarantees of quality control? Because the Tanzanian government regulates these issues, reviewing such laws is important. Health professionals in Tanzania are regulated by three statutes: the Medical Practitioners and Dentists Ordinance<sup>82</sup> (the "Medical Practitioners Ordinance"); the

Nurses and Midwives Registration Ordinance<sup>83</sup> (the “Nurses Ordinance”); and the Pharmacy and Poisons Ordinance<sup>84</sup> (the “Pharmacy Ordinance”).

The Medical Practitioners Ordinance provides for the establishment of a medical board called the Tanganyika Medical Council (the “Medical Council”). The Medical Practitioners Ordinance requires all medical practitioners to be registered. A medical practitioner is defined in the ordinance as “any person professing to practise medicine or surgery, or holding himself out as ready and willing to give medical or surgical treatment to patients for gain.”<sup>85</sup> A dentist is defined as “any person professing to practise dentistry or holding himself out as ready and willing to give dental treatment to patients for gain.”<sup>86</sup> A person is entitled to register under the Medical Practitioners Ordinance if he or she is the holder of a diploma that is recognized for the “time being” by the Council as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of medicine, surgery, or midwifery, and if he or she has compiled the additional requirements relating to the acquisition of practical experience in medicine, surgery, midwifery, or in any one or more such disciplines as the Minister of Health may by rule prescribe.<sup>87</sup> If an unregistered person provides medical treatment or holds himself or herself out as a medical practitioner, that person is guilty of an offense and will be liable upon conviction to a fine not exceeding S 10,000 (U.S.\$17)<sup>88</sup> or to imprisonment for a term not exceeding five years, or both.<sup>89</sup> The Medical Practitioners Ordinance also states that nothing in the ordinance is to be construed as prohibiting or preventing the “bona fide practice of systems of therapeutics” according to “native methods” by persons recognized by the community to which they belong, as long as such practice is not or is not likely to be dangerous to life.<sup>90</sup>

The other general functions of the Medical Council are to carry out the provisions of the Medical Practitioners Ordinance. In particular, the Medical Council maintains the register of medical practitioners and dentists; publishes in the official gazette the name, address, and registered qualifications of each medical practitioner and dentist duly registered; cautions, censures, or orders the suspension from practice, or directs the erasure from the register of the name of any medical practitioner or dentist convicted of any felony or misdemeanor, or who after due inquiry by the Medical Council is deemed to have been guilty of “infamous conduct” in any professional respect; decides which medical diplomas and which diplomas in dentistry may be recognized as furnishing a sufficient guarantee that the holder possesses the requisite knowledge and skill for medical practice; and approves hospitals or other institutions and posts therein for the purpose of

enabling persons provisionally registered under the Medical Practitioners Ordinance to obtain the experience necessary to enable them to register.<sup>91</sup>

The Nurses Ordinance establishes the Nurses and Midwives Council (the “Nurses Council”),<sup>92</sup> which undertakes functions similar to the Medical Council. The activities of the Nurses Council include: keeping and maintaining a register of nurses and midwives; prescribing and regulating syllabi of instruction and courses of training for nurses and midwives; prescribing and conducting examinations for nurses and midwives; and cautioning, censuring, ordering the suspension from practice, or the removal from the register the name of any registered nurse or registered midwife for malpractice, negligence, or misconduct; deciding upon the termination of any period of suspension; and the restoration to the register of any name removed.<sup>93</sup> To be entitled to register under the Nurses Ordinance, a person must fulfill one of four requirements, all of which seek to ascertain that a person has been trained as a nurse.<sup>94</sup> The requirements for midwives are almost the same.<sup>95</sup> Any person who is not a registered nurse or midwife, or has been suspended from practice, who habitually or for gain practices as a nurse or attends women in childbirth, shall be guilty of an offense and shall be liable upon conviction to a fine not exceeding S 1,000 (U.S.\$1.70).<sup>96</sup>

Pharmacists are regulated by the Pharmacy and Poisons Ordinance, which makes provisions for the establishment of a Pharmacy and Poisons Board (the “Pharmacy Board”),<sup>97</sup> and for the appointment of a registrar with the responsibility of keeping a register of pharmacists.<sup>98</sup> All persons who satisfy the requirements set forth in the Pharmacy Ordinance are entitled to registration.<sup>99</sup> It is a criminal offense for any person who is not registered to carry on the business of a pharmacist or, in the course of business, to prepare or dispense a drug, except under the immediate supervision of a pharmacist.<sup>100</sup> There are two exceptions to this rule. First, it is lawful for qualified medical practitioners, dentists, and veterinary surgeons to supply medicine in the course of medical, dental, or animal treatment, respectively. Second, persons who are not registered as pharmacists may sell “non-poisonous” drugs, provided that they are sold in their original condition as received by the seller.<sup>101</sup> The Pharmacy Ordinance does not define “non-poisonous,” but it calls for the Pharmacy Board to create a list of substances that are to be treated as poisons for the purpose of the ordinance.<sup>102</sup>

#### *Patients’ Rights*

Some laws also seek to ensure quality health services by protecting the rights of patients. Tanzanian law requires medical practitioners to render treatment with “reasonable care” and skill and with the informed consent of the person under-

going the procedure.<sup>103</sup> The Penal Code provides that a person is not criminally liable for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his or her benefit if the performance of the operation is reasonable, having regard to the patient's state at the time and to all circumstances of the case.<sup>104</sup> In addition, Section 233(e) of the Penal Code provides that any person who, "in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person," renders medical or surgical treatment to any person whom he or she has undertaken to treat, is guilty of a misdemeanor.

## **B. POPULATION AND FAMILY PLANNING**

### *The Population and Family Planning Policy*

Tanzania's population policy provides the framework within which its family planning services are provided. The main goal of the National Population Policy (the "Population Policy"),<sup>105</sup> adopted in 1992, is "to extend the horizon of the country's development plans whose principal objective is to move Tanzanians away from poverty and extend their horizon of standard of living."<sup>106</sup> The policy sets forth as its primary concerns safeguarding, as much as possible, the satisfaction of the basic needs of "vulnerable groups" in the population, and developing human resources for current and future national socioeconomic progress.<sup>107</sup> The Population Policy sets forth the following objectives:

- improving the demographic knowledge database (i.e., data collection, processing, analysis, and projections and research on population and development);
- enhancing the desire of leaders and the public at large to be aware of various problems related to population and development;
- establishing information, education, and communication ("IEC") systems, which, among other things, will encourage the provision and use of services related to family planning and responsible parenthood, such as directing a significant part of family planning programs to include men so that eventually couples are able to decide and plan the size of their family;
- making family planning means and services easily accessible, so as to reduce maternal and child mortality;
- preparing young people, before marriage, to become responsible parents through proper upbringing and the provision of family life education;
- educating the public on the benefits of women marrying and bearing children after the age of 18 years; and
- improving the status of women in society by reviewing existing laws in areas where their rights and those of children are undermined.<sup>108</sup>

Other goals of the Population Policy include: providing women with adequate education and appropriate technology to lessen their daily workload and assuring them equal opportunity; developing the labor force and emphasizing its proper use by reviewing the existing employment policies; preparing and implementing coordinated development plans to reduce the rate of rural to urban migration; and preventing further degradation of the environment.<sup>109</sup> The Population Policy makes specific reference to the role of women in the implementation of development programs.<sup>110</sup> Activities include increasing employment opportunities for women at all levels, reviewing and amending laws — especially those relating to marriage, family, property, and employment — that inherently discriminate on the basis of gender, 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.<sup>111</sup>

To attain its goals, the Population Policy sets forth the roles of different agencies in the implementation of the integrated maternal and child health/family planning programs ("MCH/FP"). All agencies are to be involved in strengthening the capacity to deliver maternal and child health services through appropriate training of personnel, upgrading and equipping health facilities for the delivery of MCH/FP services, utilizing 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 will 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; encouraging and assisting NGOs to continue 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.<sup>112</sup>

### *Implementing Agencies*

The Population Policy states that the implementation of the MCH/FP program will be carried out by the MOH, the Tanzania Food and Nutrition Center, and the Attorney General's office.<sup>113</sup> The Women in Development program is to be carried out by numerous agencies, which include: the Planning Commission; the Zanzibar Planning Commission; the Ministry responsible for Education and Culture; the Institute of Adult Education; and the Ministry responsible for Community Development, Women's Affairs, and Children.<sup>114</sup>

### *Government Delivery of Family Planning Services*

In 1994, the MOH published the National Policy Guidelines and Standards for Family Planning Services Delivery and Training (the "Family Planning Guidelines").<sup>115</sup> These



guidelines reiterate the government's commitment to family planning, as well as to providing comprehensive health services equitably to all citizens.<sup>116</sup> They also 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.”<sup>117</sup> Furthermore, it provides that any woman or man shall be provided with a family planning method of her or his choice after appropriate and adequate counseling without requiring the consent of a spouse.<sup>118</sup> 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 programs.<sup>119</sup>

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 are to be available at each site<sup>120</sup> for the following contraceptive methods: “hormonal method” (oral contraceptives, injectables, and implants);<sup>121</sup> intrauterine devices (“IUDs”);<sup>122</sup> “voluntary surgical contraception” (tubal ligations<sup>123</sup> and vasectomies<sup>124</sup>); “barrier methods” (condoms and diaphragms);<sup>125</sup> lactational amenorrhoea method;<sup>126</sup> and natural family planning methods.<sup>127</sup>

### C. CONTRACEPTION

The current contraceptive prevalence rate in Tanzania is estimated to be below 10% among women aged 15 to 49.<sup>128</sup> In 1990-91, the most prevalent contraceptives were pills (49.6%), female sterilization (26.3%), condoms (13.4%), IUDs (5.9%), injections (4.4%), diaphragms (0.2%), and male sterilization (0.2%).<sup>129</sup>

#### *Legal Status of Contraceptives*

Only contraceptive products registered and approved by the MOH are made available for use.<sup>130</sup> The Family Planning Guidelines indicate that the MOH is to ensure the availability and accessibility of a wide range of family planning methods to facilitate wider choice for the user. Furthermore, the methods available should include those that offer temporary, long-term, and permanent contraception.<sup>131</sup>

#### *Regulation of Information on Contraception*

There are no laws that explicitly regulate information on contraception in Tanzania.

### D. ABORTION

#### *Legal Status of Abortion*

Tanzanian law severely restricts women's ability to obtain abortions. The only circumstance under which an abortion is legal is when it is necessary to preserve a woman's life. Tanzania's criminal law punishes both the pregnant woman as well as any other individual who may assist her in the termination of her pregnancy. A pregnant woman “who with intent to procure her own miscarriage unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever” is guilty of a felony.<sup>132</sup> Similarly, “[a]ny person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means” is guilty of a felony.<sup>133</sup> Furthermore, any person who unlawfully supplies “any thing whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman,” is guilty of a felony.<sup>134</sup>

The Penal Code provides for limited circumstances in which a pregnancy may be lawfully terminated. Section 230 of the Penal Code states that a “person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical procedure upon... an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all circumstances of the case.”

#### *Requirements for Obtaining Legal Abortion*

An abortion is only legal if it is performed to preserve the life of the mother. This law, however, is subject to “reasonable” interpretation.<sup>135</sup> In *Rev v. Baurul*,<sup>136</sup> a 14-year-old girl was pregnant as a result of a 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.<sup>137</sup>

#### *Penalties*

A woman convicted pursuant to Section 151 of the Penal Code of using any means to “procure her own miscarriage” is liable to imprisonment for seven years. Any person who contravenes Section 150 of the Penal Code by using “any means” with the intent to unlawfully “procure the miscarriage” of a woman is liable to imprisonment for 14 years. Furthermore, a person convicted of unlawfully supplying “anything whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman,” may be sentenced to three years of imprisonment pursuant to Section 152 of the Penal Code. All these penalties apply irrespective of whether or not the woman was in fact pregnant.

### ***Regulation on Abortion Information***

Section 38 of the Pharmacy Ordinance makes it an offense for any person to take part in the publication of any advertisement referring to any drug, appliance, or article in terms that are calculated to lead to the use of the drug, appliance, or article for “procuring the miscarriage of women.”<sup>138</sup> However, such advertisement may legally appear in a publication of a technical character intended for circulation among: medical practitioners, dentists, and veterinary surgeons or students of these professions; pharmacists or student pharmacists and authorized sellers of “poisons”; or persons “carrying on a business which includes the sale or supply of surgical appliances.”<sup>139</sup>

### **E. STERILIZATION**

Women and men are eligible for sterilization if they have attained their desired family size.<sup>140</sup> “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.”<sup>141</sup> A number of tests are required prior to the performance of a female sterilization.<sup>142</sup> No special tests are required for vasectomies.<sup>143</sup> According to the Family Planning Guidelines, sterilization need not be available at dispensaries.<sup>144</sup> Sterilizations are to be available at health centers so long as the health provider is properly trained and the facility has the required equipment and supplies.<sup>145</sup> Hospitals are to offer sterilization.<sup>146</sup>

### **F. FEMALE GENITAL MUTILATION/ FEMALE CIRCUMCISION**

Female genital mutilation (“FGM”) — also referred to as female circumcision — is practiced by communities in several regions of Tanzania and by Somali immigrants.<sup>147</sup> It is estimated that 10% of Tanzanian women undergo FGM.<sup>148</sup> Although there is no law that specifically mentions FGM, in 1990 a National Committee on Traditional Practices was created to work toward creating awareness about FGM and improving the status of women in general.<sup>149</sup> For further discussion regarding FGM and adolescents, see section on adolescents below.

### **G. HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES**

Examining HIV/AIDS issues within the reproductive health framework is essential insofar as the two are interrelated from both a medical and public health standpoint. Hence, a full evaluation of laws and policies affecting reproductive rights in Tanzania must examine HIV/AIDS and sexually transmitted diseases (“STDs”). In December of 1994 the total number of estimated AIDS cases in Tanzania was approximately

250,000.<sup>150</sup> Estimates based on blood donors indicate that, by 1995, about 1 to 1.5 million Tanzanians may have been infected with HIV.<sup>151</sup> In 1995, the MOH estimated that if current trends continue, the number of people infected with HIV might rise to 2.4 million by the year 2000.<sup>152</sup>

#### ***Laws Affecting HIV/AIDS and STDs***

Although there are no laws that specifically address HIV/AIDS or STDs, the Penal Code contains a provision that could be used to penalize the behavior of people who are infected with HIV/AIDS. Section 179 of the Penal Code makes it an offense for any person to unlawfully or negligently undertake any act that is, and that the person knows or has reason to believe to be, likely to spread the infection of any disease “dangerous to life.”<sup>153</sup>

#### ***Policies Affecting Prevention and Treatment of HIV/AIDS and STDs***

In September 1995, the MOH released a National Policy on HIV/AIDS and STDs (the “National AIDS Policy”). The National AIDS Control Programme was charged with the control and prevention of HIV/AIDS and STDs in the country.<sup>154</sup> 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.”<sup>155</sup> The specific objectives of the National AIDS Policy are:

- increasing the community’s awareness of HIV/AIDS and its consequences;
- preventing further transmission of HIV/AIDS through use of preventive measures such as safer sex, testing, and counseling;
- providing infected persons and those who care for them with appropriate support through the existing health care system and home-based care;
- safeguarding the rights and interests of infected persons by preventing discrimination in employment, housing, treatment, education, and other social services;
- safeguarding the rights of the community as a whole against infection with HIV/AIDS and STDs;
- supporting and promoting activities geared to strengthening national efforts toward control and prevention of HIV/AIDS and STDs; and
- creating a national institutional framework that will coordinate the mobilization of financial, human, and material resources for AIDS prevention and control.<sup>156</sup>

The national strategy for AIDS control and prevention focuses on the following areas: education and information; prevention; treatment, care and counseling; access and participation (i.e. maintaining quality of life for infected persons by preventing discrimination); and research.

The National AIDS Policy also sets forth policies for HIV testing.<sup>157</sup> Individuals requesting HIV testing in voluntary counseling and testing sites may be required to pay for 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.<sup>158</sup> Testing is not to be mandatory for any marriage, or for travelers or migrants into or out of the country.<sup>159</sup>

The National Policy addresses the issue of care for people with HIV/AIDS and STDs.<sup>160</sup> The stated goal is “to provide optimal humane and supportive care for the patients and their dependants.”<sup>161</sup> This care is to preserve confidentiality, avoid discrimination, and allow a patient to live as normal and productive a life as possible.<sup>162</sup> Addressed under the section on care for people with HIV/AIDS and STDs are the issues of: institutional care; management of STDs (including that provision shall be made for STD patients to have free treatment); community-based support services; protection of health care workers; and the plight of widows and orphans due to AIDS.<sup>163</sup> Prevention of sexual transmission, as well as prevention of transmission through blood transfusion, invasive skin piercing, and prenatal transmission are also dealt with in the National AIDS Policy.<sup>164</sup> In addition, the policy states that HIV testing shall not be allowed as a pre-employment condition<sup>165</sup> and that HIV infection shall not be a cause for termination of employment.<sup>166</sup>

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.”<sup>167</sup> Furthermore, “persons receiving advice, counseling, and treatment for AIDS will be assured of the same rights to privacy and confidentiality as persons receiving treatment for any other disease.”<sup>168</sup> HIV-infected persons shall also have, according to the policy, the right to insurance.<sup>169</sup> However, the policy stresses the importance of confidentiality in testing, as well as the need for pre- and post-test counseling.<sup>170</sup> 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 [sic] informed consent).”<sup>171</sup> In addition, the policy encourages the criminalization of the willful spread of HIV/AIDS and STDs.<sup>172</sup>

Finally, the National AIDS Policy focuses on issues of gender.<sup>173</sup> 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.”<sup>174</sup> STD services are to be made accessible to women through the MCH/FP clinics, and HIV-transmission protective devices for women are to be promoted and provided.<sup>175</sup>

### III. Understanding the Exercise of Reproductive Rights: Women’s Legal Status

Women’s reproductive health and rights cannot be fully evaluated without investigating women’s legal status within the society in which they live. Not only do laws relating to women’s legal status reflect societal attitudes that will affect reproductive rights, but such laws often have a direct impact on women’s ability to exercise reproductive rights. The legal context of family life, a woman’s access to education, and laws and policies affecting her economic status can contribute to the promotion or the prohibition of a woman’s access to reproductive health care and her ability to make voluntary, informed decisions about such care. Laws regarding age of first marriage can have a significant impact on a young woman’s reproductive health. Furthermore, rape and other laws prohibiting sexual assault or domestic violence present significant rights issues and can also have direct consequences for women’s health.

#### A. RIGHTS WITHING MARRIAGE

##### *Marriage Laws*

Marriage in Mainland Tanzania is governed by the Law of Marriage Act (the “Marriage Act”) of 1971.<sup>176</sup> The Marriage Act recognizes marriages contracted in a civil form in accordance with the rites of religion (Christian, Hindu, or Islamic) to which both parties belong, as well as marriages contracted under customary law when both parties belong to a community that follows customary law. 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.<sup>177</sup> The Marriage Act regulates numerous activities relating to marriages, including the forms and registration of marriages, the procedures for marriage and divorce (including custody issues), and relations between the spouses. Provisions included in the Marriage Act are rules regarding the consent of both parties to a marriage,<sup>178</sup> minimum age at the time of marriage,<sup>179</sup> property rights between spouses,<sup>180</sup> and the duties of each spouse to maintain the other.<sup>181</sup> Consent by both parties must be given “freely and

voluntarily,” which is defined as not being influenced by coercion or fraud, or mistaken 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 thus could not fully understand the nature of the ceremony.<sup>182</sup> The minimum age of marriage is 18 for males and 15 for females.<sup>183</sup> During the marriage, a husband has a duty to maintain his wife or wives and to provide them with such accommodation, clothing, and food as may be reasonable with regard to his means.<sup>184</sup> Women have a similar duty to provide for their husbands, but this duty occurs only if the husband is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill health.<sup>185</sup>

The Marriage Act contains many provisions that seek to protect women’s rights within marriage. For example, the Marriage Act reinforces the capacity of married women to enter into contracts<sup>186</sup> and enables women to continue to own their own property by stating that, subject to any agreement to the contrary, a marriage shall not operate to change the ownership of any property previously owned by either husband or wife.<sup>187</sup> Furthermore, where the matrimonial house is owned by one of the parties, neither party may alienate it while the marriage continues.<sup>188</sup> 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 can marry at the age of 18; however, the minimum age of first marriage for a woman is 15.<sup>189</sup> For further information regarding marriage and adolescents, see section on adolescents below.

#### ***Divorce and Custody Law***

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.”<sup>190</sup> However, no decree will be granted unless the court is satisfied that the breakdown is “irreparable.”<sup>191</sup> 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.<sup>192</sup> 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.<sup>193</sup> In deciding whether or not a marriage has “broken down,” a court is to consider all relevant evidence regarding the conduct and circumstances of the parties. The court may accept

one or more of a number of specified situations as evidence that a marriage has “broken down,” but proof of any such matter shall not automatically entitle a party to a divorce decree. 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.<sup>194</sup> The Marriage Act also revokes the right of a Muslim husband to repudiate his marriage unilaterally.<sup>195</sup>

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<sup>196</sup> of the marriage.<sup>197</sup> 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.<sup>198</sup> 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 period<sup>199</sup> following the date on which the divorce occurs.<sup>200</sup> 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.<sup>201</sup>

The Marriage Act governs matters regarding the custody and guardianship of infant children. The governing principle in matters of custody and guardianship is that the welfare of the infant is of first and paramount consideration.<sup>202</sup> The Marriage Act provides that in making a determination concerning the custody of an infant, a court shall consider the wishes of the parents, the wishes of the infant if he or she is in a position to give an independent opinion, and the customs of the community to which the parents belong.<sup>203</sup> Furthermore, a court is to take into consideration criteria such as the economic situation of the parents, the housing possibilities of each parent, and the behavior of the mother in terms of whether she has contributed to the termination of the marriage. There is a rebuttable presumption that an infant under the age of seven should be cared for by the mother.<sup>204</sup> If there is more than one child from a marriage, a court is not bound to place all the children with one parent; the court is to consider the welfare of each child independently.<sup>205</sup>

## B. ECONOMIC AND SOCIAL RIGHTS

### *Property Rights*

The Tanzanian Constitution states that “[w]ithout jeopardising 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.”<sup>206</sup>

### *Succession Laws*

Succession laws in Mainland Tanzania are governed by the four competing legal systems under which an estate may be administered.<sup>207</sup> These systems of law are statutory law, customary law, Islamic law, and Hindu law. A person’s “ethnicity, religious affinity or race” determines which of these regimes apply.<sup>208</sup> However, the existence of such diverse legal systems does raise the issue of which legal regime would apply in a particular situation. Two different tests are employed to determine the choice of law to be applied — the “mode of life test” and the “intention of the deceased.”<sup>209</sup> 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.”<sup>210</sup> The “intention of the deceased test” is to be applied when an African is also Muslim and there is a question as to whether to apply either customary law or Islamic law. To apply this test, a court will examine the intentions of the deceased by reviewing either written or oral declarations.<sup>211</sup>

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.<sup>212</sup> 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.<sup>213</sup> 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. Probate and administration of estates are also dealt with differently under all four systems.

### *Labor Rights*

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.<sup>214</sup> 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.<sup>215</sup> In addition, the Employment Ordinance of 1956 (the “Employment Ordinance”),<sup>216</sup> the 1975 amendments to the ordinance, and the Security of Employment Act of 1964<sup>217</sup> all regulate employment in Tanzania. The Employment Ordinance, however, contains certain provisions that 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 goods that would perish if left overnight, or if the women are holding responsible positions in management and are not engaged in manual work,<sup>218</sup> or if the Labour Commissioner has suspended this restriction.<sup>219</sup> A woman may also not be employed in underground work in any mine except in limited circumstances.<sup>220</sup> After considering the advice of the Labour Advisory Board, the president may make regulations that further prohibit the employment of women.<sup>221</sup>

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.”<sup>222</sup> Furthermore, women are entitled to 42 days leave commencing from the day of delivery.<sup>223</sup> Maternity leave is to be with full pay and at the expense of the employer.<sup>224</sup> 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.<sup>225</sup> If any of the allotted time has been taken, the entire leave is deemed to have been taken.<sup>226</sup> 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.<sup>227</sup>

### *Access to Credit*

Credit reform, initiated in 1981 in conjunction with a series of three-year-recovery programs, has hardly affected women.<sup>228</sup> Women continue to lack collateral, information, and knowledge on how to process and obtain loans.<sup>229</sup>

### *Access to Education*

Tanzanian law does not explicitly restrict women’s access to education. However, women have had less access to educational facilities, particularly at higher levels of education.<sup>230</sup> Completion and enrollment rates at all levels are lower for women than for men, and dropout rates for women are high-

er at all levels.<sup>231</sup> For further discussion regarding education, see the section on adolescents below.

#### **Women's Bureaus**

The Population Policy states that its plans relating to the promotion of women's rights will be implemented by the following institutions: the Ministry of Community Development, Women Affairs and Children; the Ministry of Labour and Youth Development; the Department of Women's Affairs in the Chief Minister's Office; Women's Organizations; Parents' Organizations; and the Attorney General's Office.<sup>232</sup> The Ministry of Community Development, Women Affairs and Children issued a "Policy on Women in Development in Tanzania."<sup>233</sup> The purposes of the Policy on Women in Development include: providing a "correct interpretation of the concept of women in development," so as to assist in overcoming "customs and traditional practices that militate against women"; "to ensure that society recognizes and appreciates the various activities performed by women"; "to establish concrete gender sensitive plans with equitable distribution of resources"; and to ensure the full participation and involvement of women in national development programs.<sup>234</sup>

### **C. RIGHT TO PHYSICAL INTEGRITY**

#### **Rape**

The Penal Code states that a person is guilty of rape if he "has unlawful carnal knowledge of a woman or a girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by impersonating [sic] her husband."<sup>235</sup> In addition, any person "who attempts to commit rape is guilty of a felony."<sup>236</sup> Rape and attempted rape are punishable by imprisonment for life, with or without corporal punishment.<sup>237</sup>

Various other sexual offenses are recognized by the Penal Code. They include the "abduction" of a woman of any age against her will for the purpose of marriage or sexual relations,<sup>238</sup> the "indecent assault" of any woman or girl,<sup>239</sup> the "procurement" of women or girls for the purpose of prostitution,<sup>240</sup> the inducement of sexual intercourse through duress, fraud, or the administration of overpowering drugs,<sup>241</sup> and the detention of any woman against her will for the purpose of sexual relations.<sup>242</sup> For a discussion of sexual offenses against minors, see the section on adolescents below.

#### **Domestic Violence**

Wife battering is common in Tanzania.<sup>243</sup> A 1990 survey showed that 90% of women are battered or have experienced violence in some form.<sup>244</sup> The Marriage Act prohibits violence against the spouse. Section 66 of the Marriage Act states:

"For the avoidance of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse."<sup>245</sup> Although the Penal Code does not address specifically violence between spouses, criminal penalties for "unlawful assault,"<sup>246</sup> "assault occasioning actual bodily harm,"<sup>247</sup> "unlawful wounding,"<sup>248</sup> and "grievous harm"<sup>249</sup> are available. Under the Criminal Procedure Act, all the above offenses, except the crime of "common assault," do not require an arrest warrant.<sup>250</sup> Any person convicted of assault is liable to imprisonment for one year,<sup>251</sup> "assault occasioning actual bodily harm" is punishable by imprisonment for five years,<sup>252</sup> and any person convicted of "unlawfully wounding another" is liable to imprisonment for three years.<sup>253</sup> Once an act of violence has been reported, the police are responsible for the arrest of the accused<sup>254</sup> and for the prosecution of the case.<sup>255</sup> The woman only remains as the complainant and may assist in the prosecution as a witness.<sup>256</sup> 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.<sup>257</sup> 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.<sup>258</sup>

#### **Sexual Harassment**

Some protection against sexual harassment in the workplace can be found in the Security of Employment Act.<sup>259</sup> Generally, this statute seeks to prevent the arbitrary dismissal of employees. However, it does not provide a definition of harassment.

## **iv. Focusing on the Rights of a Special Group: Adolescents**

The needs of adolescents are often unrecognized or neglected. Given that approximately 45% of the population is below the age of 15<sup>260</sup> and that for every six people in the country one is a youth between the ages of 15 and 24,<sup>261</sup> it is particularly important to meet the reproductive health needs of this group. The effort to address issues of adolescent rights, including those related to reproductive health, are important for women's right to self-determination as well as for their health.

### **A. REPRODUCTIVE HEALTH AND ADOLESCENTS**

The Family Planning Guidelines state that all males and females of reproductive age, including adolescents, are entitled

to family planning information, education, and services. In addition, the guidelines provide that adolescents are entitled to counseling on family planning information and that those who are sexually active are to be counseled on access to methods that are suitable to them.<sup>262</sup>

### **B. FEMALE GENITAL MUTILATION AND ADOLESCENTS**

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.<sup>263</sup> No laws specifically address FGM, which is practiced in a number of regions in Tanzania, including Dodoma, Singida, Arusha, Kilimanjaro, and Mara.<sup>264</sup> In 1990, a National Committee on Traditional Practices was created to work toward creating awareness about FGM and improving the status of women in general.<sup>265</sup>

### **C. MARRIAGE AND ADOLESCENTS**

There appear to be a number of conflicting laws regarding the age of first marriage and majority. A minor is defined by the Age of Majority Ordinance as a person of either sex who is not yet 18 years old.<sup>266</sup> Yet, pursuant to the Marriage Act, a man can marry upon attaining 18 years of age, and a woman may marry upon attaining 15 years of age.<sup>267</sup> The Penal Code also states that “any person of African or Asiatic descent” may “marry or permit the marriage of a girl under the age of twelve years in accordance with the custom of the tribe or religion” as long as it is not intended that the marriage be consummated before the girl is 12 years old.<sup>268</sup> In addition, a court may grant leave for a marriage to occur when the future spouses are younger than the minimum age, so long as they are not younger than 14 years old and the court is satisfied that there are special circumstances which make the proposed marriage desirable.<sup>269</sup> Furthermore, it is not an offense to give or receive money or presents in consideration or on the occasion of such a marriage.<sup>270</sup>

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.”<sup>271</sup> 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.”<sup>272</sup>

Tanzania’s criminal laws also discourage early marriage. 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 misdemeanour, and is liable to imprisonment for two years.”<sup>273</sup>

### **D. EDUCATION AND ADOLESCENTS**

Although primary education in Tanzania is both universal and compulsory,<sup>274</sup> Tanzania’s education system provides few education and training opportunities to youth beyond that level.<sup>275</sup> For example, in 1988 only 10.5% of students leaving primary school entered a secondary school.<sup>276</sup> In addition, “female access to higher education in Tanzania is extremely marginal.”<sup>277</sup> From 1980 to 1981, female students constituted approximately 26% of all undergraduate university students. Since then, this proportion has been declining.<sup>278</sup> 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.”<sup>279</sup>

### **E. SEX EDUCATION FOR ADOLESCENTS**

No law specifically regulates sex education. The IEC component of the National Family Planning Program has introduced family planning education into nonschool/information programs.<sup>280</sup>

### **F. SEXUAL OFFENSES AGAINST MINORS**

The Penal Code recognizes several offenses relating to unlawful sexual intercourse with minors. Any person who “carnally knows any girl under the age of fourteen years is guilty of a felony and is liable to imprisonment for life, with or without corporal punishment.”<sup>281</sup> “Any person who attempts to have carnal knowledge of a girl under the age of fourteen years is liable to imprisonment for fourteen years, with or without corporal punishment.”<sup>282</sup> 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.<sup>283</sup> Furthermore, this provision of the Penal Code does not apply when the accused is married to the girl.<sup>284</sup>

## ENDNOTES

1. Union of Tanganyika and Zanzibar, Cap. 557, Supp. 64 (1967).
2. THE WORLD ALMANAC AND BOOK OF FACTS 1997 824 (1996).
3. *Id.*
4. CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, reprinted in 29 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 6 (Albert P. Blaustein & Gisbert H. Flanz eds., 1986) [hereinafter TANZ. CONST.]. Although amendments have been made to the constitution since 1986, such amendments are currently only available in Swahili.
5. Telephone interview with "Information," Tanzanian Embassy in Washington, D.C. (Feb. 12, 1997).
6. THE WORLD ALMANAC AND BOOK OF FACTS, *supra* note 2, at 824.
7. WOMEN AND MEN IN TANZANIA 3 (Bureau of Statistics, Dar es Salaam, 1992).
8. THE WORLD ALMANAC AND BOOK OF FACTS, *supra* note 2, at 824.
9. *Id.*
10. TANZ. CONST., preamble, ¶¶ 3(3), 10.
11. John Quigley, *Perestroika African Style: One-Party Government and Human Rights in Tanzania*, 13 MICH. J. INT'L L. VOL. 611, 635 (1992).
12. *Id.* at 651.
13. TANZ. CONST., ¶ 33.
14. *Id.* ¶¶ 51, 52.
15. *Id.* ¶ 47(4).
16. *Id.* ¶ 47(3).
17. *Id.* ¶ 47(2).
18. *Id.* ¶ 4(2).
19. *Id.* ¶ 64(1).
20. *Id.* ¶ 64(2).
21. Colin Darch, *Introduction to Tanzania*, 54 WORLD BIBLIOGRAPHICAL SERIES 4 (1996). The number increased from 15. TANZ. CONST., ¶ 66(1)(c); Telephone interview with "Information," Tanzanian Embassy in Washington, D.C. (Feb. 28, 1997), *citing Speaker's Inauguration Speech*, BUNGE NEWS, Apr. 1996, at 9.
22. The Magistrates' Courts Act of 1963 was later repealed and re-enacted with some modifications. Magistrate Courts Act, Gazette of the United Republic of Tanzania, Apr. 13, 1984, Act Supp. No. 2.
23. THOMAS M. REYNOLDS & ARTURO A. FLORES, TANZANIA IN FOREIGN LAW: CURRENT SOURCES OF CODES AND LEGISLATION IN JURISDICTIONS OF THE WORLD 2-3 (1993).
24. Magistrate Courts Act, Gazette of the United Republic of Tanzania, Apr. 13, 1984, Act Supp. No. 2.
25. TANZ. CONST., ¶ 64(5).
26. REYNOLDS & FLORES, *supra* note 23, at 2-3.
27. TANZ. CONST., ¶¶ 13(4), 13(5).
28. *Id.* ¶ 30(1).
29. *Id.* ¶ 30(2)(a).
30. *Id.* ¶ 30(2)(f).
31. TANZ. CONST., ¶ 31.
32. Report from Janet Kabeberi-Macharia, Women & Law in East Africa 1 (1996) (on file with The Center for Reproductive Law and Policy) (citing M. Rwebangira & C. Mukoyogo, THE LAW OF INHERITANCE IN TANZANIA: A STATUS REPORT, NAIROBI 5 (1995)).
33. International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171 (entry into force Mar. 23, 1976) (ratified by Tanzania on June 11, 1976); International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, 993 U.N.T.S. 3 (entry into force Sept. 3, 1976) (ratified by Tanzania on June 11, 1976); International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195 (entry into force Jan. 4, 1969) (ratified by Tanzania on Oct. 27, 1972); Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 (entry into force Sept. 3, 1981) (signed by Tanzania on July 17, 1980 and ratified on Aug. 20, 1985); Convention on the Rights of the Child, opened for signature Nov. 20, 1989, G.A. Res. 44/25, U.N.G.A.O.R., 44th Sess., Supp. No. 49, art. 9, at 165, U.N. Doc. A/44/49, reprinted in 28 I.L.M. 1448 (1989) (entry into force Sept. 2, 1990) (ratified by Tanzania on June 10, 1991); and African Charter on Human and Peoples' Rights, adopted June 26, 1981, OAU Doc. CAB/LEG/67/13/Rev. 5 (1981), reprinted in 21 I.L.M. 58 (1982) (entry into force Oct. 21, 1986) (ratified by Tanzania on Mar. 9, 1984).
34. UNITED REPUBLIC OF TANZ. MINISTRY OF HEALTH, NATIONAL HEALTH POLICY (1990) [hereinafter 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. *See id.* at 1-5.
35. *Id.* at 1.
36. *Id.*
37. *Id.*
38. *Id.* at 5-6.
39. *Id.* at 7.
40. *Id.* at 7-9.
41. *Id.* at 12-13.
42. UNITED REPUBLIC OF TANZANIA, NATIONAL POPULATION POLICY, PRESIDENT'S OFFICE, THE PLANNING COMM'N 13 (1992) [hereinafter POP. POL.].
43. *Id.* at 13-14.
44. HEALTH POL., *supra* note 34, at 21-30.
45. POP. POL., *supra* note 42, at 13-14.
46. HEALTH POL., *supra* note 34, at 21.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* at 22.
52. *Id.*
53. *Id.*
54. *Id.* at 22-23.
55. *Id.* at 24-25.
56. *Id.* at 25.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 27.
62. *Id.* at 27-28.
63. *Id.* at 27.
64. *Id.* at 29.
65. *Id.* The Health Policy states that when certain diseases and cases require special treatment that cannot be provided in Tanzania, subject to financial constraints, some patients must be sent for treatment abroad.
66. *Id.* at 29-30.
67. *Id.* at 29. These were: Muhimbili Medical Centre (serving the eastern zone), Kilimanjaro Christian Medical Centre (serving the northern zone), Bugando Hospital (serving the western zone), and Mbeya Hospital (serving the Southern Highlands).
68. *Id.*
69. *See* 1 MILTON ROEMER, *Comprehensive Health Systems in Very Poor Countries*, NATIONAL HEALTH SYSTEMS OF THE WORLD: THE COUNTRIES 555, 561 (1991).
70. HEALTH POL., *supra* note 34, at 38.
71. *Id.* at 38-39.
72. Brian Abel-Smith & Pankaj Rawal, *Can the Poor Afford "Free" Health Services? A Case Study of Tanzania, Health Policy and Planning* 7 HEALTH POLICY & PLANNING 329 (1992).
73. *Id.*
74. HEALTH POL., *supra* note 34, at 36.
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at 37.
81. *Id.*
82. Medical Practitioners and Dentists Ordinance, Cap. 409, Supp. 59 (1960).
83. Nurses and Midwives Registration Ordinance, Cap. 325 (1956).
84. Pharmacy and Poisons Ordinance, Cap. 416, Supp. 59 (1960).
85. Medical Practitioners and Dentists Ordinance, Cap. 409, Supp. 59 (1960).
86. *Id.*
87. *Id.* ¶ 7.
88. One U.S. dollar is worth approximately 589 Tanzanian Shillings. *See U.N. Operational Rates of Exchange* [visited Feb. 27, 1997] <gopher://gopher.undp.org./00/uncurr/exch\_rates>.
89. Medical Practitioners and Dentists Ordinance, Cap. 409, Supp. 59, ¶ 36 (1960).
90. *Id.* ¶ 37.



91. *Id.* ¶ 9.
92. Nurses and Midwives Registration Ordinance, Cap. 325, ¶ 3 (1956).
93. *Id.* ¶ 5.
94. *Id.* ¶ 7 (1). A person must (i) pass the final nursing examination conducted by the Nurses Council; or (ii) produce evidence to the satisfaction of the Nurses Council that he or she is certified or registered or is entitled to be certified or registered as a nurse in any country; or, (iii) produce evidence to the council's satisfaction that she or he is entitled to be certified or registered as a nurse in any country which is not prescribed in the regulations; or (iv) if he or she produces evidence to the satisfaction of the Nurses Council that he or she is a person of "good character" and that he or she has successfully completed a course of training as a nurse of not less than three years duration in a country in which there was, at the material time, no law for certification or registration of nurses. *Id.*
95. *Id.* ¶ 7 (2). Training in another country need only last one year.
96. *Id.* ¶ 16.
97. Pharmacy and Poisons Ordinance, Cap. 416, Supp. 59, ¶ 3 (1960).
98. *Id.* ¶¶ 5-6.
99. *Id.* ¶ 8.
100. *Id.* ¶¶ 18 (1), (2).
101. *Id.* ¶¶ 18 (4), (5).
102. *See id.* ¶ 24.
103. *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).
104. PENAL CODE, Cap. 16, Supp. 66-74, § 230 [hereinafter PEN. CODE].
105. POP. POL., *supra* note 42.
106. *Id.* at iii.
107. *Id.* at 10.
108. *Id.* at 27-30.
109. *Id.*
110. *Id.* at 34-35.
111. *Id.* at 35-36.
112. *Id.* at 31-32.
113. *Id.* at 32.
114. *Id.* at 34.
115. NATIONAL POLICY GUIDELINES AND STANDARDS FOR FAMILY PLANNING SERVICES DELIVERY AND TRAINING (Ministry of Health [Tanz.], 1994) [hereinafter POL. GUIDELINES].
116. *Id.* at 2.
117. *Id.*
118. *Id.*
119. *Id.* at 3.
120. *Id.* at 7.
121. *Id.* at 10.
122. *Id.* at 11.
123. *Id.* at 12.
124. *Id.* at 13.
125. *Id.* at 15.
126. *Id.* at 16.
127. *Id.*
128. POP. POL., *supra* note 42, at 4-5.
129. KATHLEEN BEEGLE, THE QUALITY AND AVAILABILITY OF FAMILY PLANNING SERVICES AND CONTRACEPTIVE USE IN TANZANIA 6 tbl. 3 (1995).
130. POL. GUIDELINES, *supra* note 115, at 3.
131. *Id.*
132. PEN. CODE, Cap. 16 § 151.
133. *Id.* § 150.
134. *Id.* § 152.
135. MASSAWE, *supra* note 103, at 18.
136. (1939) I.K.B. 687, *cited in id.* at 18-19.
137. MASSAWE, *supra* note 103, 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." *Id.*
138. Pharmacy and Poisons Ordinance, Cap. 416, Supp. 59 ¶ 38 (1960).
139. *Id.* ¶ 40 (4)(a).
140. POL. GUIDELINES, *supra* note 115, at 19.
141. *Id.* at 2.
142. *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. *Id.*
143. *Id.* at 13.
144. *Id.* at 17.
145. *Id.*
146. *Id.*
147. JACQUELINE SMITH, VISIONS AND DISCUSSION ON GENITAL MUTILATION OF GIRLS: AN INTERNATIONAL SURVEY 134 (1995).
148. NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 25 (Rainbø 1995).
149. Smith, *supra* note 147 at 134.
150. THE UNITED REPUBLIC OF TANZANIA MINISTRY OF HEALTH, NATIONAL AIDS CONTROL PROGRAMME TANZANIA MAINLAND: NATIONAL POLICY ON HIV/AIDS/STD 1 (1995) [hereinafter AIDS POLICY]. In 1994, only a total of 53,247 cases of AIDS had been reported to the MOH for both mainland Tanzania and Zanzibar. However, it is estimated that only one out of four to six AIDS cases are reported. *Id.*
151. *Id.* at 1.
152. *Id.*
153. PEN. CODE, Cap. 16, § 179.
154. AIDS POLICY, *supra* note 150, at 4.
155. *Id.* at 3.
156. *Id.* at 3-4.
157. *See id.* at 6-9.
158. *Id.* at 8.
159. *Id.*
160. *See id.* at 10-13.
161. *Id.* at 10.
162. *Id.*
163. *Id.* at 10-13.
164. *See id.* at 14-18.
165. *Id.* at 20.
166. *Id.*
167. *Id.* at 9.
168. *Id.*
169. *Id.*
170. *Id.* at 7.
171. *Id.* at 8.
172. *Id.*
173. *Id.* at 21.
174. *Id.*
175. *Id.*
176. Law of Marriage Act, No. 5 (1971). As with other non-union matters, the Marriage Act is not in effect in Zanzibar.
177. B.A. Rwezaura, *Tanzania*, 8 ANNUAL SURVEY OF FAMILY LAW 1983-1984, at 193 (M.D.A. Freeman ed., 1985).
178. Marriage Act, No. 5 ¶ 16 (1971).
179. *Id.* ¶ 13.
180. *Id.* ¶¶ 59-62.
181. *Id.* ¶ 63.
182. *Id.* ¶ 16.
183. *Id.* ¶ 13.
184. *Id.* ¶ 63(a).
185. *Id.* ¶ 63(b).
186. *Id.* ¶ 56.
187. *Id.* ¶ 58.
188. *Id.* ¶ 59.
189. *Id.* ¶ 13.
190. *Id.* ¶ 99.
191. *Id.*
192. *Id.* ¶ 100.
193. *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. *Id.*
194. *Id.* ¶ 107(2).
195. *Id.* ¶ 107(3).
196. The Marriage Act defines infant child to be any child who has not attained the age of 18 years. *Id.* ¶ 2 (1).
197. *Id.* ¶ 114.
198. Kabeberi-Macharia, *supra* note 32, 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.*

199. 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.

200. Marriage Act, No. 5 ¶ 115 (1971).

201. *Id.*

202. *Id.* ¶ 125.

203. *Id.*

204. *Id.* ¶ 125(3).

205. *Id.* ¶ 125(4).

206. TANZ. CONST., ¶ 24.

207. THE LAW REFORM COMM'N OF TANZ., REPORT OF THE COMMISSION ON THE LAW OF SUCCESSION INHERITANCE 25 (1995).

208. *Id.*

209. For a discussion of the application of these tests, see THE LAW REFORM COMM'N OF TANZ., DISCUSSION PAPER ON LAW OF SUCCESSION 5-9 (1992).

210. *Id.* at 5-6.

211. *Id.* at 7-8.

212. *Id.* at 14.

213. 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.

214. Kabeberi-Macharia, *supra* note 32, at 12 (*citing* Population Census for 1988).

215. TANZ. CONST., ¶¶ 22, 23.

216. Employment Ordinance, Cap. 366, Supp. 56 (1957).

217. An Act to amend certain Labour Laws, Gazette of the United Republic of Tanzania, Apr. 4, 1975, Acts Supp. No. 1, Pt. II (amending The Security of Employment Act, Cap. 574 (1964)).

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

219. *Id.* § 84.

220. *Id.* § 86.

221. *Id.* § 95.

222. 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)).

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

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

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

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

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

228. TANZANIA WOMEN: COUNTRY REPORT TO 4TH WORLD CONFERENCE ON WOMEN, BEIJING, SEPTEMBER 1995, at 39-41 (United Republic of Tanz. 1995) [hereinafter TANZANIA WOMEN].

229. *Id.* at 41.

230. *Id.* at 21-22.

231. *Id.* at 22.

232. POP. POL., *supra* note 42, at 35-36.

233. MINISTRY OF COMMUNITY DEV., WOMEN AFFAIRS AND CHILDREN [Tanz.], POLICY ON WOMEN IN DEVELOPMENT IN TANZANIA (1992).

234. *Id.* at 4-5.

235. PEN. CODE, Cap. 16, § 130.

236. *Id.* § 132.

237. *Id.* §§ 131, 132.

238. *Id.* § 133.

239. *Id.* § 135.

240. *Id.* § 139.

241. *Id.* § 140.

242. *Id.* § 143.

243. TANZANIA WOMEN, *supra* note 228, at 15.

244. *Id.*

245. The Marriage Act does not impose any penalties for the violation of this section of the act.

246. Pen. Code, Cap. 16, § 240.

247. *Id.* § 241.

248. *Id.* § 228.

249. *Id.* § 225.

250. Criminal Procedure Act, First Schedule (1985), *cited in* SHERBANU KASSIM, LEGAL PROVISIONS AGAINST DOMESTIC VIOLENCE IN MAINLAND TANZANIA WITH SPECIAL REFERENCE TO CRIMINAL LAW: A CRITIQUE 60 (1993).

251. PEN. CODE, Cap. 16 § 240.

252. *Id.* § 241.

253. *Id.* § 228.

254. KASSIM, *supra* note 250, at 61.

255. *Id.*

256. *Id.*

257. *Id.*

258. See PEN. CODE, Cap. 16, § 3(1), *cited in id.* at 61.

259. Kabeberi-Macharia, *supra* note 32, at 11.

260. POP. POL., *supra* note 42, at 2.

261. *Id.*

262. Kabeberi-Macharia, *supra* note 32, at 5.

263. EFUA DORKENOO, CUTTING THE ROSE: FEMALE GENITAL MUTILATION, THE PRACTICE AND ITS PREVENTION 113 (1995).

264. SMITH, *supra* note 147, at 134.

265. *Id.*

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

267. Marriage Act, No. 5, ¶ 13 (1971).

268. PEN. CODE, Cap. 16, § 138(6).

269. Marriage Act, No. 5 ¶ 13(2) (1971).

270. PEN. CODE, Cap. 16, § 138(6).

271. *Id.* ¶ 148(1).

272. *Id.* ¶ 148(2).

273. PEN. CODE, Cap. 16, § 138(2).

274. TANZANIA WOMEN, *supra* note 228, at 23.

275. POP. POL., *supra* note 42, at 21.

276. *Id.*

277. TANZANIA WOMEN, *supra* note 228, at 23.

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

279. POP. POL., *supra* note 42, at 22.

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

281. PEN. CODE, Cap. 16 § 136 (1).

282. *Id.* § 136 (2).

283. *Id.*

284. *Id.* § 136 (3)