

**DOMESTIC LAWS AND REGULATORY FRAMEWORK FOR THE PROTECTION AND ADVANCEMENT OF THE FEMALE CHILD'S RIGHT TO EDUCATION IN MAINLAND TANZANIA.**

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**Abstract.** *The importance of the right to education reaches far beyond education itself. The female child's right to education is protected and advanced at all levels from local to global. The concept of each female child's right to education constitutes a dual perception-personified and there are particular duty-bearers, most often the State, which have certain obligations to protect and advance the female child's right to education. The local/domestic laws and regulations are important because they concretely define the framework of the right to education in the country. The constitution is the highest legislative norm; it sets out general principles to which all other local/domestic laws and regulations have to adhere. It is usually the text where the protection and advancement of the female child's the right to education is or should be defined. This article summarizes local/domestic laws foreseen, corresponding to the protection and advancement of the female child's right to education in its entirety.*

### 1.0 Introduction

Mainland Tanzania has ratified the most important regional and international treaties aimed for protecting and advancing the female child's right to education but it has not yet incorporated them into local/domestic laws.

Hitherto, Tanzania has adopted a number of local/domestic laws and regulations for protecting and advancing the female child's right to education, however, there are still numbers of issues that infringe the female child's right to education, i.e the prevalence of child marriage and pregnancy prevents a female child from attending school. The current minimum age for marriage is 15 for a female child. The Local/domestic laws and regulations that are related to the protection and advancement of the female child's right to education form a complex nexus that is useful to review in order to: (1) identify to what extent local/domestic laws are in line with regional and international standards, and (2) to measure whether local/domestic laws are in the contextual framework for protecting and advancing the female child's right to education in a country. The list of local/domestic laws and regulations presented below is not exhaustive; it gives an indication of relevant existing local/domestic laws and regulations and their relation to the protection and advancement of the female child's right to education.

*The Constitution of the United Republic of Tanzania*, adopted in 1977, recognises the right to education in Article 11 as a fundamental objective and directive principle of State policy (under Part II),<sup>1</sup> not as a basic right (Part III).<sup>2</sup> This Article 11 is contained in the unenforceable part of the Constitution in terms of Article 7(2) of the Constitution of Tanzania.<sup>3</sup>

According to Article 11, “every person has the right to access education and every citizen shall be free to pursue education in a field of his choice up to his merit and ability.” The Constitution provides for one’s right to access education<sup>4</sup> and obligates the government to make appropriate provisions for the realisation this right to education.<sup>5</sup>

Frankly speaking, the protection and advancement of the female child’s right to primary education is not enforceable in the court of law as enshrined under the Basic Rights and Duties Enforcement Act, 1994<sup>6</sup> which provides for the procedures for enforcement of the Constitutional Basic Rights under Section 1 (2) of the said Rules shall apply to the country.

The legal challenge is that; the Constitution of Tanzania, 1977 treats right to education as a privilege and not as a right to be protected by the State.<sup>7</sup>

Article 11 of the Constitution of Tanzania specifically requires members of the community to strive on their own for better education. This provision of the Constitution does not obligate the government to compulsory offer education to female child as a right.<sup>8</sup> The government exonerates itself from protecting and advancing the female child’s right to primary education. The wording of the Constitution poses an obligation for a citizen to seek quality education up to any level, depending on their financial ability.<sup>9</sup>

### **1.2 General local/domestic laws indicating the protection and advancement of the female child’s right to education**

The Law of Marriage (LMA) Act, 1971 has been in existence since 1971 (45 years); but has never been substantially amended to reflect for the protection and advancement of the female child’s right to primary education in Mainland Tanzania. This study has ascertained that, Section 13 (1) of the Law of Marriage Act 1971 contains several shortfalls which demand urgent attention in terms of reform. Such shortfalls include issues relating to minimum age for marriage which always deprive female child’s right to primary education. Regarding to the age for marriage, the Law of Marriage Act, 1971 still permits early marriage for a female child which conflict with other laws. For example the Law of Marriage allows

<sup>1</sup>The unenforceable part of the Constitution- i.e Part Two (Article 11) of the Constitution of United Republic of Tanzania 1977

<sup>2</sup> Ibid,- i.e Part Three (Article 12-29) - inter alia, comprises of the Bill of Rights.

<sup>3</sup> Mashamba, C.J.(2007) ‘Enforcing Social Justice in Tanzania: The Case of Economic and Social Rights’, LL.M.Thesis, Open University of Tanzania, ;Mashamba,C.J.(2007)‘Are Economic, Social and Cultural Rights Judicial Enforceable?’ Open University Law Journal Vol.1 No.1; Mashamba,C.J.(2008) ‘Casting the Net Wide: Litigating Socio-Economic Rights beyond the Bill of Rights in Tanzania’ Justice Review Vol.1 August 2008; Mashamba, C.J.(2009) ‘Using Directive Principles of State Policy to Interpret Socio-Economic Rights into the Tanzania Bill of Rights’ The Law Reformer Journal Vol.II No.1, and Machibya, E.M.(2009) Realising the right to education in Tanzania in the Context of the Convention on the Rights of the Child’ The Justice Review Vol.VIII No.2, PP.2020-248 at P.227

<sup>4</sup> Article 11(2) of the Constitution of the United Republic of Tanzania, 1977,

<sup>5</sup> Ibid, Article 11(3)

<sup>6</sup> Section 2 of the Basic Rights And Duties Enforcement Act, 1994

<sup>7</sup> The current Tanzanian Constitution only recognises the right to education as a fundamental objective and directive principle of State policy rather than as a human right, which means that it is not enforceable by any court.

<sup>8</sup> Legal and Human Rights Centre ( LHRC) (2012) Tanzania Human Rights Report, PP. 114

<sup>9</sup> Article 11 of the Constitution of United Republic of Tanzania, 1977

female child to be married off at the age of 15 or 14. Section 13.-(1) of the Law of Marriage Act Cap.29 R.E. 2002; No person shall marry who, being male, has not attained Minimum the apparent age of eighteen years or, being female, has not attained age the apparent age of fifteen years. (2) Notwithstanding the provisions of subsection (1), the court shall, in its discretion, have power, on application, to give leave for a marriage where the parties are, or either of them is, below the ages prescribed in subsection (1) if(a) each party has attained the age of fourteen years; and (b) the court is satisfied that there are special circumstances which make the proposed marriage desirable. (3) A person who has not attained the apparent age of eighteen years or fifteen years, as the case may be, and in respect of whom the leave of the court has not been obtained under subsection (2), shall be said to be below the minimum age for marriage.<sup>10</sup> The Law of Marriage Act, 1971 permits child marriage for female child. It sets the minimum marriage age for girls at 15 with parental consent.<sup>11</sup> It also permits the marriage of 14-year-old children when a court is satisfied that special circumstances exist, but court fails to define what constitutes special circumstances.<sup>12</sup>

The Tanzanian Law of Marriage Act (1971) allows a girl as young as 14 to be married, thereby causing marriages to be one of the main reasons for female drop-out and exclusion from education which is contrary to Article 11 of the African Charter on the Rights and Welfare of the Child, 1990 explicitly recognizes the right of pregnant girls to an education.<sup>13</sup>

*The Law of the Child Act, 2009*, while this Act saw the domestication of many aspects of the regional and international legal treaties protecting and advancing of the female child's right to education. At the same time Tanzania has not incorporated those provisions of the right to education enshrined under the regional and international legal in its legal system. The Law of the Child Act, 2009 in its effect fails expressly to protect and advance the female child's right to primary education while hardly defining it; "basic education" is defined as "formal education provided to a child to the level that may be prescribed from time to time." The Law of Child Act, 2009 has shortcomings as it does not address the legal age of marriage, which remains at 15 years for female child being in existence for decades hence violating her right to education.

The Employment and Labour Relations Act, 2004) (Part Two, Sub Part A Section 5) defines a child to mean a person under the age of 14 years; provided that for the employment in hazardous sectors, child means a person under the age 18 years. The Act expressly prohibits employment of a child under the age of 14 years but allows a child of 14 years to be employed to do light work. The Act expressly prohibits employment of a child under the age of 14 years but allows a child of 14 years to be employed to do light work.

In this study the researcher has observed that Part VII under Section 77(2) and 77(3) of the Law of Child Act (LCA) 2009<sup>14</sup> and Section 5 (2) of the Employment and Labour Relation Act (ELRA) 2004 are silent on the meaning of "light work" of which these sections violate the female child's right to primary

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<sup>10</sup>Goonsekere.S.(2004).Violence, Law and Women's Rights in South Asia, United Nations Development Fund For Women, Saga Publications, New Delhi/ Thousand Oaks/ London, PP.195 &196

<sup>11</sup> Section 13(1) of the Law of the Marriage Act, 1971

<sup>12</sup>Ibid, Section 13(1)

<sup>13</sup>Elaine, U.E. and Nussey, C.(2011) "Scoping Paper for PLAN Because I am a Girl 2012 Report" Institute of Education, University of London, P.45

<sup>14</sup> Articles 77(2) of the Law of Child Act 2009 clarifies child employment laws, setting the minimum age of employment at fourteen (for 'light work') and Section 77 (3) of the said Act provides subject to subsection (1), "light work" shall constitute work which is not likely to be harmful to the health or development of the child and does not prevent or effect the child's attendance at school, participation in vocational orientation or training programmes or the capacity of the child to benefit from school work."

education. The study shows that female child is employed in hazardous works in mines in the Lake Victoria Gold Belt and in fisheries seaweed farming in Lake Zones in Mainland Tanzania. Hence her right to primary education is violated because she is employed in the hazardous work in the country.

The *Education Act*, originally established in 1978, Amended in 1995 and 2002, and currently under review.<sup>15</sup> In order to make sure that education is freely and protected to a female child, the government has undertaken concrete legislative measures to make primary education free and compulsory in the context of Article 28(1)(a) of the CRC and Article 11 of the ACRWC.<sup>16</sup> The government of Tanzania has undertaken number of policies,<sup>17</sup> legislative<sup>18</sup> and administrative measures<sup>19</sup> to ensure that it effectively implements the provisions of Article 28 of the Convention, which obliges States Parties to ensure that a female child in her jurisdictions has the right to education. The State Party has made primary school enrolment and attendance compulsory for children aged between 7 and 13.<sup>20</sup> Therefore, the State Party continued to make primary education compulsory<sup>21</sup> and available free to all children. Under Rule 6 of the Primary School (Compulsory Enrolment and Attendance) Rules (1979) the Ward Executive Officer or the Village Executive Officer is obliged to ensure that every child in his or her area of jurisdiction is enrolled and attends school regularly.<sup>22</sup> In addition, this rule obliges the Ward Executive Officer or the Village Executive Officer initiate legal action against any parent, any person other than the parent, or any child who contravenes the requirement to enrol or ensure that a child regularly attends school.<sup>23</sup>

The import of the principal legislation and the subsidiary legislation is that right to education to female child is premised on the criminal justice system in the country. It requires a person under Section 7 of the Criminal Procedure Act, 1985,<sup>24</sup> who is or becomes aware of the commission of or the intention of any other person to commit any offence punishable under the Penal Code 1985<sup>25</sup> to report the same to the nearest police station. The Criminal Justice provides further another avenue under the Ward Tribunal Act,<sup>26</sup> under Section 11(2), that any person who reasonably believes that any person has committed an offence may make a complaint about the same to the Ward Tribunal.

It is argued that while the Criminal Procedure Act makes it compulsory for a person who apprehends and gets knowledge of the commission of the offence to report to the nearest police

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<sup>15</sup> Please be aware that according to Action Aid Tanzania, who monitors the implementation of the right to education using Right to Education Project's Promoting Rights in Schools Framework, some laws and policies are unenforced.

<sup>16</sup> Section 35 of the Education Act, 1978, Cap.353 R.E 2002

<sup>17</sup> The Education and Training Policy of 1995 and the New Education and Vocational Training Policy 2014 under the Education Circular No.5 of 2015 the Government decided to provide Basic Education from Pre-Primary, Primary school up to Form Four Free.

<sup>18</sup> The Constitution of United Republic of Tanzania 1977 and The Education Act, 1978 and its Regulations and Rules, The Criminal Procedure Act, 1985 and the Ward Tribunal Act, Cap 206 R.E 2002

<sup>19</sup> The Education (Compulsory Enrolment and Attendance) Rules, 2002, G.N. No.280 Published on 28/6/2002

<sup>20</sup> Section 35 of the Education Act, 1978

<sup>21</sup> In particular, Rule 3 of the Primary School (Compulsory Enrolment and Attendance) Rules (1979) [G.N. No. 280 of 2002] provides that: 'The enrolment and regular attendance of every child in primary school shall be compulsory as from the effective date and every child enrolled at any primary school shall, attend school until the completion of primary education.'

<sup>22</sup> Ibid, Rule 6(1).

<sup>23</sup> Ibid, Rule 6(2).

<sup>24</sup> the Criminal Procedure Act, Cap 20 RE 2002

<sup>25</sup> The Penal Code, Cap 16 R.E.2002

<sup>26</sup> The Ward Tribunal Act, Cap 206 R.E.2002

station, where one lives, the Ward Tribunal Act does not make it compulsory but voluntary to report. The issue is whether contravention of the Education Laws falls under the Criminal Procedure Act or under the Ward Tribunal Act for enforcement on the female child's right to primary education.

In this regard, Section 35 of the Education Act (1978)<sup>27</sup> provides for compulsory enrolment and attendance of pupils at school. It makes it mandatory for every child who has the age of seven years to be enrolled for primary education.<sup>28</sup>

The foregoing obligations are carried out through a number of regulations, rules and orders made by the Ministry responsible for education under the powers vested on him or her under Part V(c) Section 35(4) of the Education Act, 1978 which provides that;

“the Minister shall make rules, which shall be published in the Gazette, for the better carrying out of the purpose of this section and may, in those rules, prescribed acts or things which shall be done by any person and penalties for contravention of those rules.”<sup>29</sup>

Of particular importance to this study are the Primary School (Compulsory Enrolment and Attendance) Rules (1979)<sup>30</sup> and the Public Primary School (Compulsory Enrolment and Attendance) order (1977).<sup>31</sup> In particular, Rule 3 of the Primary school (Compulsory Enrolment and Attendance) Rules provides that;

“the enrolment and regular attendance of every child in primary school shall be compulsory as from the effective date and every child enrolled at any primary school shall, attend school until the completion of primary education.”

On its part, the Public Primary School (Compulsory Enrolment and Attendance) Order (1977) requires that ‘enrolment and regular attendance of every child in a public school shall be compulsory.’<sup>32</sup>

Therefore, Mainland Tanzania has made primary school enrolment and attendance compulsory for children aged between 7 and 13 years,<sup>33</sup> must be enrolled for primary school.<sup>34</sup> While dealing mostly with structural and managerial matters, the Act does outline some fundamental aspects of the right to education: Under Section 35 (1) reads;

“It shall be compulsory for every child who has reached the age of seven years to be enrolled for primary education. (a) Without prejudice to Subsection (1), no child of the age of seven or above shall be refused enrolment in a school. Whereas under Section 35(2) stipulates that; “ the parent or parents of every child compulsorily enrolled for primary education shall ensure that the child regularly attends the primary school at which he is enrolled until he completes primary education.”

Moreover, Section 35 (3) provides that;

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<sup>27</sup> Ibid

<sup>28</sup> Ibid, Section 35(1)

<sup>29</sup> Ibid, Section 35(4) of the Education Act, R.E.2002

<sup>30</sup> G.N.No.280 of 2002

<sup>31</sup> G.N.No.150 of 1 November, 1977

<sup>32</sup> Clause 3 of the Public Primary Schools (Compulsory Enrolment and Attendance) Order (1978)

<sup>33</sup> United Republic of Tanzania, Tanzania 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Reports on the Implementation of the Convention on the Rights of the Child (CRC) 2005-2011', submitted to the CROC by the Ministry of Community Development, Gender and Children ( Tanzania Mainland) and the Ministry of Social Welfare, Youth, Women and Children Development (Zanzibar) , 9 January 2012, Para 206.

<sup>34</sup> Section 35 of the National Education Act, According to the Primary School Compulsory Enrolment and Attendance Rules, 2001 it is an offence for a parent to fail to enrol his/her child and this attracts a fine or imprisonment. It is also a criminal offence for a parent or any person who causes a child not to attend school regularly until the completion of primary education. See Government Notice No. 280 published on 28/06/2002.

“every pupil enrolled at any national school shall regularly attend the school at which he is enrolled until he completes the period of instruction specified in respect of the level of national education for the attainment of which he is enrolled at the school.”<sup>35</sup>

Whereas Section 57 (1) of the Education Act provides that;

“ Subject to the national policy on national education and to other national plans and priorities appropriately specified from time to time, every citizen of the United Republic shall be entitled to receive such of category, nature and level of national education as his ability may permit him and Section 57(2) of the same Education Act provides that; “ No person may, within the United Republic, be denied opportunity to obtain any category, nature or level of national education for the reason only of his race, religion or political or ideological beliefs: Provided that any school may, in its admission procedures, afford preference to citizens of the United Republic.”<sup>36</sup>

In ensuring that primary education is compulsory<sup>37</sup> and free to all children, Rule 6 of Primary School (Compulsory Enrolment and Attendance) Rules (1979) obligates the Ward Executive Officer (WEO) or the Village Executive Officer (VEO) to ensure that every child in his or her area of jurisdiction is enrolled and attends schools regularly.<sup>38</sup> In addition, this rule obligates the WEO or the VEO to initiate legal action against parent, any person other than the parent, or any child who contravenes the requirement to enroll or ensure that a child regularly attends school.<sup>39</sup>

The research in this study singles out that there is non adherence to the provision of Rule 7 of Primary School (Compulsory Enrolment and Attendance) Rules,<sup>40</sup> which provides that;

“Before the end of July of each year the Ward Executive Officer (WEO) shall submit to the Ward Education Co-ordinator and all head teachers in his area of jurisdiction a list of children who shall attain seven years by the 31<sup>st</sup> March of the following year.”

However, according to the researcher this legal requirement has two problems; first there is no directly responsible person or authority to enforce this law for it provides either the Village Executive Officer (VEO) or Ward Executive Officer (WEO) to submit the list of children. Second, although the list of children ( who shall attain seven years by 31<sup>st</sup> March of the following years) are submitted to the Ward Education Co-ordinator and to all head teachers in his jurisdiction, the latter have no any obligation to follow up the effectiveness of the enrolment.<sup>41</sup>

This is because the Rules do not vest on the Ward Executive Officer (WEO), Village Executive Officer (VEO), Ward Education Co-ordinator Officer or teachers any obligation to anyhow act on the lists. It is argued that the Rules would have provided specific obligation and sanctions on these officials to act on the lists of children submitted by the Ward Executive Officer (WEO) or Village Executive Officer (VEO) as well as the timeframe within which to discharge this obligation.

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<sup>35</sup> Section 35 (1 (a), 2 & 3 of the Education Act Cap 353.R.E. 2002

<sup>36</sup> Ibid, Section 56(1,2 & 3)

<sup>37</sup> In particular, Rule 3 of the Primary School ( Compulsory Enrolment and Attendance) Rules (1979) [G.N.No 280 of 2002] provides that; “ the enrolment and regular attendance of every child in primary school shall be compulsory as from the effective date and every child enrolled of every child in primary school shall, attend school until the completion of primary education.

<sup>38</sup> Ibid. Rule 6(1)

<sup>39</sup> Ibid, Rule 6 (2)

<sup>40</sup> G.N.No.280 of 2002

<sup>41</sup> Ibid.



### 1.3 Regulations Analyzing the Protection and Advancement of the Female Child's Right to Education in Mainland Tanzania

*The Education (Expulsion and Exclusion of Pupils from Schools) Regulations 2002*,<sup>42</sup> expelling and suspending students from primary and secondary schools, such students include those with persistent disciplinary cases and those who have committed criminal wrongs such as theft, drug trafficking, prostitution amongst others. Students falling under this category are supposed to be expelled from school by either the School Board if it's a secondary school or school committee if it involves a primary school. According to Regulation 2 "exclusion" of a pupils means refusal of admission or re-admission of pupils to school.<sup>43</sup> "Expulsion" means permanent removal of a pupil from school.

With regard to expulsion or exclusion of a pupil from a school, the authority responsible in the case of Primary School the body responsible for expulsion and exclusion of pupils is the School Committee. The circumstances, under which the expulsion or exclusion of a pupil from school may be ordered, are provided under Regulation 4. The circumstances provided are the following:

- (i) Where persistent and deliberate misbehavior of the pupil is such that it will endanger the general discipline or the good name of the school, or
- (ii) The pupil has committed a criminal offence such as theft, malicious injury to property, prostitution, drug abuse or an offence against morality whether or not the pupil is being or has been prosecuted for that offence.
- (iii) a pupil has entered into wedlock

On the other hand, the Head of School may order the suspension of a pupil from school for a specified period not exceeding twenty-one days prior to making recommendations to the school Board or School Committee regarding the misconduct of the pupil and punishment recommended.<sup>44</sup>

Where a Head of School makes any recommendation to a School Committee or School Board as to expulsion or exclusion of a pupil from the school, such recommendation shall be contained in a written report setting out the full circumstances in which the recommendation is made and the report shall be accompanied by a copy of all relevant extract from the record.<sup>45</sup>

In Mainland Tanzania the practice of expelling pregnant female child has existed for decades, but many also point at the current expulsion regulation found in the 2002 amendment to the Education Act, 1978. Government Notice No. 295 states under Section 4(b) provides that;

"the expulsion of a pupil from a school may be ordered where provides that; "the pupil has committed a criminal offence such as theft, malicious injury to property, prostitution, drug abuse or an offence against morality whether or not the pupil is being or has been prosecuted for that offence."<sup>46</sup>

The term "Offence against Morality" as grounds for expulsion has been popularly and loosely interpreted. The logic is that if a female child is pregnant, she has had sex out of wedlock, has thus clearly and undeniably committed an "offence against morality," and therefore should be expelled from school. And for a female child who has sex within wedlock, she is expelled anyway due to the following provision under Section 4(c) of the Education (Expulsion and Exclusion of Pupils from Schools) Regulations, 2002 which provides entering into wedlock as grounds for expulsion.<sup>47</sup>

<sup>42</sup> G.N, No. 295 of 2002

<sup>43</sup> Ibid, Interpretation Provisions.

<sup>44</sup> Ibid, Regulation 5

<sup>45</sup> Ibid, Regulation 8

<sup>46</sup> Section 4(b) of the Education (Expulsion and Exclusion of Pupils from Schools) Regulations G.N, No. 295 of 2002

<sup>47</sup> Ibid, Section 4(c) of the Education (Expulsion and Exclusion of Pupils from Schools) Regulations, 2002

In reality, "Offences against Morality" is a specific category of crimes as found in the Tanzanian Penal Code.<sup>48</sup> No conversion of "pregnancy" of any type is listed as an Offence against Morality in the Penal Code of Tanzania.

However, Chapter XV of Tanzania's Penal Code, sets out all "Offences Against Morality," does not list pregnancy female child activity as an offence. In fact, under the Penal Code, a female child is not criminally liable for any sexual activity or sexual intercourse that she engages in prior to turning 18.<sup>49</sup>

The status of "being pregnant" is certainly not a criminal offence under the Penal Code, 1985. As a result, justifying the expulsion of pregnant female child on this ground is unfounded and deprives the female child's right to primary education. Female child expulsion from school, on supposedly moral grounds, is a violation of her right to education that grossly discriminates and stigmatizes, and condemns her to a cycle of poverty.

The Education Act points at further grounds for expulsion under Section 7(b) that; "the expulsion of a pupil from a school may be ordered where the physical or mental health of the pupil is such as to make it undesirable for the pupil to be admitted to the school."<sup>50</sup>

The attitude of excluding pregnant female child is contrary to the right to education that many global and regional agreements speak against it directly. Tanzania seems to have been doing exactly the opposite of what it has agreed to the international and regional legal instruments as discussed in chapter three and four.<sup>51</sup> The Education Act itself also provides for key protection of the right to education, under Section 60(1) (j) stating that;

"any person who denies any child access to pursue formal education due to sex or socio-economic status" commits an offence."<sup>52</sup>

The Education Act, 1978 makes no mention of the grounds for expelling students from school. It states simply that the Minister for Education "may make regulations . . . to prescribe the conditions of expulsion or exclusion from schools of pupils on the grounds of age, discipline or health."<sup>53</sup> The Education (Expulsion and Exclusion of Pupils from Schools) Regulations prescribe these conditions, laying out the circumstances in which a student may be excluded or expelled under the law.<sup>54</sup>

Expulsion of the female child from school, therefore, is at the discretion of the school and cannot be said to be mandated by the legislations made in Mainland Tanzania. Instead, the question is whether school-specific decisions to expel a female child for pregnancy is authorised under the aforementioned grounds found in the legislations. The absence of a specific mention of pregnancy in these legislations and regulations strongly indicates that expulsion of female child from school is the violation of her right to education which is contrary to Section 35(3) of the Education Act, 1978 which enshrines that; "every pupil enrolled at any school shall regularly attend the school at which he is enrolled until he completes the period of instruction specified in respect of the level of education for the attainment of which he is enrolled at the school."<sup>55</sup>

In addition to expounding on grounds for expulsion, the regulations address the circumstances warranting exclusion from school. They specify that a student "may" be excluded, or refused admission

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<sup>48</sup> Sections 130 to 162 of the Penal Code Cap.16 R.E.2002

<sup>49</sup> Penal Code Act, Cap. 16, Ch. XV: Offences Against Morality, Section. 130(1)(e) (Tanz.). See also sections. 130, 131, 138 (as Amended by the Law of the Child Act (2009), Section, 178), 132, 160.

<sup>50</sup> Section 7(b) of the Education (Expulsion and Exclusion of Pupils from Schools) Regulations G.N, No. 295 of 2002

<sup>51</sup> See Chapter four at PP.128- 173 & Chapter three at P.174- 188

<sup>52</sup> Section, 60 (1) (j) of the Education Act,1978

<sup>53</sup> Ibid, Section, 61(o).

<sup>54</sup> Supra note, 50

<sup>55</sup> Section 35(3) of the Education Act, 1978 Cap.353.R.E 2002



or readmission to school,<sup>56</sup> where “the delay in the pupil reporting for admission to the school is inexcusable” or “the physical or mental health of the pupil is such as to make it undesirable for the pupil to be admitted to the school.”<sup>57</sup> These are the only two grounds for exclusion specified in the regulations.

The exclusion rules provide no grounds for prohibiting students who have dropped out or been expelled due to pregnancy from re-admission to school.<sup>58</sup> The regulation on exclusion makes no mention of denying re-admission to students who have been previously expelled on any grounds.<sup>59</sup> Consequently, the argument that the law does not permit pregnant adolescents to return to a government school after giving birth is without foundation. Consistent with this understanding, Tanzanian government officials have acknowledged that there is no official policy preventing female child from returning to school after giving birth which always plague the female child’s right to primary education in Mainland Tanzania.

*The Education (Expulsion and Exclusion of Pupils from Schools) Regulation, 2002,*<sup>60</sup> under section 4 provides that; a pupil can be expelled from school for misbehavior, but pregnant is not mentioned in the regulation as it is an offence of a pupil contracting pregnancy. This regulation could be used to justify the expulsion of pregnant school female child on the grounds that getting pregnant is a type of misbehavior.<sup>61</sup> But rather this regulation is silent on incorporating pregnant in the Act as an offence which may lead pregnant female child to be expelled from accessing her right to education. The expulsion of pregnant female child and the prevention of young mother from resuming her education after giving birth impede her right to education.

This law allows the denial to the right to education. Indeed no right without a duty but under a circumstance involving a child one wonders whether it is in the child’s best interest to expel him/her from education. Even though discipline must be maintained but denying one education completely has far reaching effects especially to the future of the child and the society which will have to carry the burden of illiterates and unemployable members.

*The Education (Imposition of Penalties Against Persons who Marry or Impregnate School Girls) Rules*<sup>62</sup> This rule provides for punishment for people who impregnate and marry school girls. There are penalties for the offences as established in the Education (Imposition of penalties to Persons who marry or impregnate school girls) Rules of 2003.

Besides, The Education (Imposition of Penalties Against Persons who Marry or Impregnate School Girls) Rules,<sup>63</sup> under this Regulation the police office<sup>64</sup> violate the female child’s right to education by the way of arrest, detention, or imprisonment of pregnant female child for the sole purpose of determining who impregnated her although the right to education provided under Section 9(1) of the Law of Child Act 2009.

Despite the national laws provide for the right to education, there are no special law and institutional strategies set solely for the protection and advancement of the female child’s right to education hence these laws violate female child’s right to education in the country.

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<sup>56</sup> Supra Note, 54, Section 2

<sup>57</sup> Ibid, Section 7.

<sup>58</sup> Section 7 of the Education (Expulsion and Exclusion of Pupils from Schools) Regulations, G.N.No.295 of 2002

<sup>59</sup> Ibid

<sup>60</sup> G.N. No. 295 of 2002,

<sup>61</sup> LHRC (2008) Tanzania Human Rights Report, Dar es Salaam, Tanzania, P.69

<sup>62</sup> G.N No. 265 of 2003

<sup>63</sup> G.N No. 265 of 2003,

<sup>64</sup> Interview Response with the Ward Executive Office (WEOS) and Village Executive Officer (VEOs) From Njombe and Makambako City Council in Njombe Region on 18<sup>th</sup> & 19<sup>th</sup> February 2016.

*The Education (Corporal Punishment) Regulation*<sup>65</sup>In Mainland Tanzania, Corporal punishment is still administered despite the fact that there are negative sentiments and official pronouncements against corporal punishment.<sup>66</sup> It is recently that the ministry of education and Vocational training has introduced new provisions against corporal punishment. However, it is still to be revealed how effective the introduced changes really are.

The government did not amend the *Education (Corporal punishment) Regulation*,<sup>67</sup> made under Part VII, Section 61(o) of the Education Act of the Laws of Tanzania which authorises the Minister to make regulations “to provide for and control the administration of corporal punishment in schools.” The said law defines “Corporal punishment” to mean punishment by striking a pupil on his hand or his clothed buttocks with a light, or flexible stick,<sup>68</sup> but excludes striking a child with any other instrument or on any other part of the body. It can be administered for serious breaches of school discipline or for grave offences committed which bring school into disrepute;<sup>69</sup> it must “be reasonable having regard to the gravity of the offence, age, sex and health of the pupils and shall not exceed four strokes on any occasion.” Regulation 6 says that, the refusal to accept this punishment either by pupil or by a parent on pupil’s behalf may lead to exclusion of the pupil from school.

Clearly there is a problem here, namely, despite having ratified several regional and global agreements to ensure corporal punishment is not used in schools, Mainland Tanzania, both through its laws and leaders, actually enforces such punishment which always violate female child’s right to education. While the strict prohibition of corporal punishment is derived from the ICESCR, CRC, ACHPR and ACRWC, Tanzania’s Education Act, 1978 and the Ministry of Education and Vocational Training have legally institutionalized it and advocate for its use.<sup>70</sup> Corporal punishment just does not incidentally happen in Tanzanian schools; it is a thoroughly developed system which impedes female child’s right to education.<sup>71</sup> Among other things it states, under Regulation 4 (1) reads that; the head of the school in his discretion may administer corporal punishment or may delegate his authority in writing to a carefully selected member of his teaching staff provided that the authorized member of staff may act only with approval of the head of the school on each occasion when corporal punishment is administered. Regulation 4(2) provides that;

“A female pupil may only receive corporal punishment from a female teacher except where there is no female teacher at the school in which case the head of school may himself administer corporal punishment or authorize in writing a male teacher to administer corporal punishment.”<sup>72</sup>

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<sup>65</sup> The Education (Corporal Punishment) Regulation G.N No. 295 of 2002

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> Ibid, Regulation 2

<sup>69</sup> Ibid Regulation 3

<sup>70</sup> Section 61(o) of the Education Act, 1978

<sup>71</sup> Regulation 3 of the Education (Corporal Punishment) Regulation, G.N No. 294 of R.E 2002 states that; “corporal punishment “may be administered for serious breaches of school discipline or for grave offences committed whether inside or outside the school which are deemed by the school authority to have brought or are capable of bringing the school into disrepute”; it must “be reasonable having regard to the gravity of the offence, age, sex and health of the pupils and shall not exceed four strokes on any occasion.”

<sup>72</sup> The Education Act, 1978

Nonetheless Regulation 2 of *the Education (Corporal Punishment) Regulation*,<sup>73</sup> provides every occasion when corporal punishment is administered it shall be recorded in writing in a book kept for this purpose and such record shall state in each instance the name of the pupil, the offence or breach of discipline, the number of strokes and the name of the teacher who administer the punishment.<sup>74</sup> Furthermore, it states that; “every entry in the book shall be made and assigned by the head of the school.”<sup>75</sup>

In reality, these Regulations are often broken and violated because female child is beaten for almost by any mistake or misbehavior, by any teacher, with a variety of objects, sometimes to severe measures, without any recordkeeping which impedes the female child’s right to education. Typically it is accepted as the norm, but there are times when its unacceptability boils over undermining a female child’s right to education. The perpetrators of such violence are violating and ignoring the directives principles and regulations set by the Ministry of Education, traumatising female child to the point of causing her to drop out of school.<sup>76</sup>

#### 1.4 Conclusion

In Mainland Tanzania, the female child’s right to education is commonly identified as an economic, social and cultural right in the country. This right to education is often enough deemed to be lacking remedies and it is accordingly treated as not as a right but as a need or privilege. The difficulty of protection and advancement of the female child’s right to education is influenced by failure of legal system of Tanzania fails to incorporate the provisions of right to education enshrined in regional and international legal documents into domestic laws, as a consequence, denials and violations of the female child’s right to education in the country.

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<sup>74</sup> Regulation 2 of the Education (Corporal Punishment) Regulation, G.N No. 294 of R.E 2002

<sup>75</sup> Ibid, Regulation 3

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