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A human rights perspective

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▶ Research to Action (RTA) Report

June 2022

Child marriage as a form of human trafficking in Tanzania: A human rights perspective

Isabela Warioba *

Key points

- ▶ This research aimed to study child marriage as a form of human trafficking in Tanzania from a human rights perspective.
- ▶ Even though Tanzania has one of the highest prevalence rates of child marriage in the world, the correlation between child marriage and human trafficking is not well documented.
- ▶ To achieve the objective, the convergent parallel mixed methods research design was used for this research. It entailed analysing both quantitative and qualitative datasets separately, comparing the results from the analysis of both datasets, and making an interpretation to find out whether the results support or contradict each other.
- ▶ Data was collected through interviews, focus group discussions, questionnaire survey and documentary review.
- ▶ The key finding of the research is that child marriage is a form of human trafficking because it fulfils all the three elements of human trafficking which are the act, the means and the purpose.
- ▶ The research further revealed the challenges in eliminating child marriage in Tanzania and gave recommendations on how they can be addressed.
- ▶ Keywords: **Child, child marriage, human trafficking, human rights**

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1 Introduction

Child marriage, also known as early marriage, is defined as any marriage carried out below the age of 18 years, before the child is physically, physiologically and psychologically ready to shoulder the responsibilities of marriage and childbearing.¹ Drawing on information from international conventions, treaties and declarations, Parson *et al* also define child marriage as any legal or customary union involving a boy or girl below the age of 18.² This research, however, will focus on girl children only due to the fact that statistics show that girl children experience child marriage and less protection from the law than their counterparts, boys.³

The main research question of this research was whether child marriage is a form of human trafficking in Tanzania. This question was explored from a human rights perspective. In responding to the research question, this paper firstly covers the methodology that was employed to respond to the question. Thereafter, an overview of how child marriage is covered by human rights law and the laws in Tanzania is given. This is followed by a discussion which analyses whether child marriage is a form of human trafficking in Tanzania. This is followed by challenges which keep fuelling the practice of child marriage and finally, recommendations for addressing the practice.

2 Methodology

The study used the purposive sampling method to obtain five regions from Tanzania mainland based on the predominance rates of child marriage. While child marriage is

¹United Nations International Children's Emergency Fund (UNICEF), https://www.unicef.org/protection/57929_58008.html (last accessed at 6 January 2017).

²ADDANEY, M. & AZUBIKE, O.O., "Education as a Contrivance to ending Child Marriage in Africa: Perspectives from Nigeria and Uganda". *Amsterdam Law Forum* 9 (2017) 110, 111.

³United Nations International Children's Emergency Fund, "Ending Child Marriage: Progress and prospects" UNICEF, New York, 2014; UNFPA, "Top 10 Myths about Child Marriage", <https://www.unfpa.org/news/top-10-myths-about-child-marriage#:~:text=It%20is%20true%20that%20the%20vast%20majority%20of%20child%20marriages%20involve%20girls.&text=Estimates%20from%20UNICEF%20suggest%20that,82%20per%20cent%20are%20girls> (last accessed 19 January 2022).

common in Tanzania, prevalence is highest in the following regions: Shinyanga (59 per cent), followed by Tabora (58 per cent), Mara (55 per cent), Dodoma (51 per cent) and Lindi (48 per cent).⁴ Empirical data for this study was collected in these five regions.

One rural district was selected from each region. A two-stage probability sampling technique was used to obtain a representative sample for the survey. The first stage involved the selection of homogeneous strata of villages proportional to the size of the districts or wards. The second stage was the selection of 20 households in each selected village. Purposive sampling and snowballing techniques were employed to obtain key informants for interviews.

Empirical data was collected through key informant interviews, focus group discussions (FGDs) and questionnaire survey. Key informant interviews were conducted to examine the nexus between child marriage and human trafficking in Tanzania and the causes thereof, and also the best practices to address child marriage as a form of human trafficking. Key informants included local government authorities in study regions, Non-Governmental Organisations (NGOs), social welfare officers, community development officers and lawyers. FGDs were utilised due to their ability to generate communal perspectives of the issues under investigation. Five FGDs were conducted in each region in the following distribution: boys (13 to 17 years); girls (13 to 18 years); male parents; female parents and community leaders. Each FGD had 6 to 10 participants.

The questionnaire survey was employed to understand the root causes of child marriage in Tanzania, the correlation between child marriage and human trafficking and the best practices to address child marriage as a form of human trafficking in Tanzania. A fixed number of 20 households were selected in each district within each region of study. Questionnaires were administered to eligible members of the selected households. An

⁴ UNICEF Press Release, 11 October 2012.

eligible member of the selected household was the head of the household. In absence of the head of the household, any adult member of the household who had the knowledge to respond to the questions was allowed to participate. The study also utilised data collected by documentary review. This involved a desk review of all relevant documents including international instruments, domestic laws, policies and guidelines, literature and relevant reports to analyse child marriage as a form of human trafficking in Tanzania, from a human rights perspective.

Qualitative data was analysed by thematic and content analysis. Thematic analysis was done to describe common themes arising from the interviews and FGDs. This was accompanied by content analysis to describe the information from the documents. Multiple reviews of the transcripts were done to cross-check the accuracy and completeness of the data. Quantitative data which was collected by using KOBO tool was transferred into excel and then to STATA for coding and data cleaning. The STATA syntax file was developed for data cleaning and data analysis. The preliminary data analysis produced descriptive statistics on child marriage as a form of human trafficking in Tanzania. Further, statistical inferences such as chi-square were used to determine the role of child marriage in facilitating human trafficking in Tanzania. The convergent parallel mixed methods research design was used for this study. It entailed analysing both quantitative and qualitative datasets separately, comparing the results from the analysis of both datasets, and making an interpretation to find out whether the results support or contradict each other.

Ethical considerations guided the researcher throughout the study. The researcher obtained the required research clearance and permits from relevant government organs required for conducting this study. The researcher was granted a research permit from the President's Office-Regional Administrative and Local Government (PO-RALG). This

permit was presented to the Regional Administrative Secretary (RAS) of the five regions of the study. Then RAS, in turn, issued a research permit for each of the targeted districts to be presented to the specific District Executive Director (DED). The DEDs endorsed the research permits and introduced the researcher to social welfare officials and community development officers, who worked with the researcher to identify and recruit participants, in particular, the children, parents and community leaders.

Furthermore, ethical and safeguarding considerations were taken into account during all stages of review of documents, recruitment of research assistants and respondents, data collection, analysis and writing. Due to the fact that some respondents of the research were children, the researcher ensured that the rights of the child were not compromised during the whole process of this research. In general, participation in this study was voluntary and the researcher asked for prior and informed consent from each participant. In particular, in the case of child participants, consent was sought from the children and also their parents/ guardians/ caretakers. Special ethical and safeguarding considerations were taken to make sure that child participants of this study were not harmed. The researcher also ensured that information was offered in child-friendly ways and also informed the participants of this study especially children that participation is voluntary and that they are allowed to withdraw at any time during their participation with no consequences whatsoever. A safe research environment that fostered confidentiality and privacy of the participants was also provided.

The confidentiality of the data and the privacy of the participants were also ensured. An encryption method was used to preserve the privacy of participants. The metadata was collected in separate sheets. A key was prepared whereby names only appeared on the consent forms, but for metadata and data, numbers were used to identify participants for

example AP1, AP2... for adult participants, CP1, CP 2... for child participants and KI 1, KI 2... for key informants. Data, metadata and the key have been stored separately.

3 The legal framework on child marriage

Regarding age for marriage, the Universal Declaration for Human Rights (UDHR)⁵ states that men and women of 'full' age are entitled to equal rights as to marriage, during marriage and at its dissolution...⁶ The declaration uses the word 'full' without specifically specifying what the full age for marriage is. The Convention on the Rights of the Child⁷ does not have a specific provision specifying the minimum age for marriage but defines a child to mean a person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.⁸ This provision gives a leeway for State parties to set their own definitions of a child which can affect the minimum age of marriage to be set by the State parties. The Committee on the Rights of the Child in its General Comment (GC) on the adolescent health and development in the context of the CRC has pronounced that adolescents up to eighteen years old are holders of all the rights enshrined in the CRC, however, the Committee in this GC upholds the definition of a child provided in the CRC.⁹

The position on what the minimum age for marriage ought to be was clarified by the Committee on the Rights of the Child (CRC Committee) and the Committee on the Elimination of Discrimination against Women (The CEDAW Committee) in their revised joint General Recommendation/General Comment on harmful practices of 2019¹⁰ by specifically stating that child marriage is any marriage where at least one of the parties is

⁵1948.

⁶ UDHR, Article 16.

⁷1989.

⁸ CRC, Article 1.

⁹ General Comment No.4 (2003) of the Committee on the Rights of the Child on Adolescent Health and Development in the Context of the Convention on the Rights of the Child, CRC/GC/2003/4.

¹⁰ Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18.

less than 18 years of age with no exceptions.¹¹ The joint recommendation was revised only on this point of the minimum age of marriage where the Committees specifically stated that it was revised to remove the elements of the document condoning marriage of a child of 16 years of age or older which was an exception under extenuating circumstances allowed by their joint recommendation of 2014. Therefore, State parties to both, the CRC and CEDAW, have an obligation to implement measures to eliminate harmful practices in their jurisdiction, including child marriage.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) obligates State parties to make the betrothal and the marriage of a child have no legal effect, and to take all necessary action, including legislation, to specify a minimum age for marriage.¹² The CEDAW Committee, bearing in mind the Vienna Declaration and Programme of Action,¹³ has also stipulated that notwithstanding the definition of a child given by the CRC, the minimum age for marriage should be 18 years for both men and women.¹⁴

This minimum age of 18 has also been set by the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁵ through its Committee,¹⁶ the African Charter on the Rights and Welfare of the Child (ACRWC)¹⁷ under article 21(2), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),¹⁸ under Article 6(b & c). The binding obligations set out in Article 6(b) of the Maputo Protocol and Article 21(2) of the ACRWC require States Parties to take legislative measures to prohibit child marriage and to specify that the minimum age of marriage

¹¹ Para 6.2.

¹² CEDAW, Article 16.

¹³ 1993.

¹⁴ Para 36, Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations (1994).

¹⁵ 1966.

¹⁶ ICESCR Concluding Comments, France, E/C.12/2002.22 (2001) para 876; See also ICESCR, the concluding observations of the Committee on Economic, Social and Cultural Rights, on Mexico (E/C.12/MEX/CO/4)

¹⁷ 1990.

¹⁸ 2003, OAU Doc. CAB/LEG/24.9/49 and 11 July 2003.

shall be 18 years.¹⁹ They further demand that States Parties should enact, amend, repeal or supplement legislation as appropriate to ensure that the betrothal and marriage of children under the age of 18 years is prohibited.²⁰ This prohibition should be without exception and should apply to all forms of marriage.²¹

The African Court on Human and Peoples Rights cemented this position in the case of *Association Pour le Progrès et la Défense Des Droits Des Femmes Maltennes (APDF) and The Institute for Human Rights and Development in Africa (IHRDA) v Republic Of Mali*,²² where it held that having the minimum age for marriage below the age of 18 for girls is a violation of Article 6(b) of the Maputo Protocol and Articles 2, 4(1) and 21 of the ACRWC.

The Human Rights Committee (HRC) has also called upon State parties to ensure that the minimum age complies with international standards and to adopt active measures to prevent the early marriage of girls.²³ The Committee against Torture has recognised as well that child marriage may constitute cruel, inhuman or degrading treatment, particularly where governments have failed to establish a minimum age of marriage that complies with international standards.²⁴

18 years as the minimum age for marriage is a core element of the international human rights norm prohibiting child marriage because, under International Human Rights Law (IHRL), child marriage is defined only on the basis of age.²⁵ Any marriage where one of the

¹⁹ The African Commission on Human and Peoples Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Joint General Comment of the African Commission on Human and Peoples Rights (ACHPR) and the African Committee of Experts on The Rights and Welfare of the Child (ACERWC) On Ending Child Marriage, ACHPR-ACERWC 2017, para 18.

²⁰ Ibid.

²¹ Ibid.

²² Application No 046/2016.

²³ Concluding observations of the Human Rights Council on Uruguay (CCPR/C/URY/CO/5), Kuwait (CCPR/C/KWT/CO/2), Yemen (CCPR/CO/75/YEM), United Republic of Tanzania (CCPR/C/TZA/CO/4/Add.1), Islamic Republic of Iran (CCPR/C/IRN/CO/3).

²⁴ See the concluding observations of the Committee against Torture on Bulgaria (CAT/C/BGR/CO/4-5) and on Yemen (CAT/C/YEM/CO/2/Rev.1).

²⁵ Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18; ICESCR Concluding Comments, France, E/C.12/2002.22 (2001)

parties is below the age of 18 years is considered to be child marriage and is prohibited. Additionally, anyone below the age of 18 years also does not have the ability to consent to marriage as per IHRL.²⁶ Only persons above the age of 18 years can consent to marriage.

Concerns about early marriage centre on the patriarchal values pervading this custom;²⁷ the relative powerlessness of the girls involved, that early marriages involving bride price payments are akin to commoditising females, and that young girls cannot give meaningful informed consent (and indeed are often not even consulted) and are especially vulnerable to manipulation or control.²⁸ Other concerns on child marriage are the known adverse health consequences, particularly the dangers of early pregnancy and childbirth, maternal mortality and morbidity (including obstetric fistulae, difficult labour), and infant mortality.²⁹ Early marriage is also linked with a raised incidence of violence,³⁰ abuse of women and isolation from family and community.³¹ Additionally, early childbearing correlates with lower levels of female education.³²

In Tanzania however, the minimum age for marriage has been provided in legislation which is the Law of Marriage Act (LMA).³³ The LMA under section 13 sets the minimum age for marriage as follows:

para 876; See also ICESCR, the concluding observations of the Committee on Economic, Social and Cultural Rights, on Mexico (E/C.12/MEX/CO/4); the African Charter on the Rights and Welfare of the Child (1990); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) 2003, OAU Doc. CAB/LEG/24.9/49 and 11 July 2003.

Association Pour le Progrès et la Défense Des Droits Des Femmes Maltennes (APDF) and The Institute for Human Rights and Development in Africa (IHRDA) v Republic Of Mali Application No 046/2016.

²⁶ Ibid.

²⁷ BOYDEN, J., PANKHURST, A. & TAFERE, Y., "Child Protection and Harmful Traditional Practices: Female Early Marriage and Genital Modification in Ethiopia", *Development in Practice*, (2012) 510, 512.

²⁸ JENSEN, R., & THORNTON, R., "Early Female Marriage in the Developing World", *Gender and Development*, (2003) 9–19 as quoted by UNICEF, *Early Marriage A Harmful Traditional Practice: A Statistical Exploration* (2005) 14.

²⁹ MATHUR, S., GREENE, M., & MALHOTRA, A., *supra* n.257.

³⁰ JAIN, S. & KURZ, K., "New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs", International Centre for Research on Women: (2007) 8.

³¹ MATHUR, S., GREENE, M., & MALHOTRA, A., *supra* n.29.

³² JENSEN, R. & THORNTON, R, *supra* no 28 at 14.

³³ 1971 [Cap 29 R.E 2019].

(1) No person shall marry who, being male, has not attained the apparent age of eighteen years or, being female, has not attained 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, 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.

Therefore, the minimum age for marriage in Tanzania is 18 for boys and 15 for girls. The minimum age for marriage is neither provided in the Constitution nor in the Law of the Child Act (LCA),³⁴ which was enacted in 2009 to domesticate Tanzania's international obligations regarding children. Even though the LCA defines a child as a person below the age of 18, the banning of child marriages was left out of the Act purposely.³⁵ Civil Society Organisations, legal experts, academics, and children advocated to include a ban on child marriage in the Act during public hearings before the passage of the Bill, but a consensus could not be reached on the aspect.³⁶

Contrary to international law which demands the minimum age of marriage to be set at 18 with no exceptions, Tanzania under the Law of Marriage Act sets the minimum age for marriage for girls at the age of 15 whereas the age is set at 18 for boys.³⁷ The provision goes further to state that the minimum age for marriage can be lowered to 14, with the leave of the court.

³⁴ Act No. 21 of 2009.

³⁵ AVALOS, L., FARRELL, N., STELLATO, R. & WERNER, M., "Ending Female Genital Mutilation & Child Marriage in Tanzania", *Fordham International Law Journal* (2015) 678.

³⁶ CAMERON, S., "Tanzania Passes Landmark Law of the Child", UNICEF (6 Nov. 2009), available at <http://www.unicef.org/infobycountry/tanzania/51662.html> (quoting UNICEF Representative in Tanzania, Heimo Laakkonen, on the day the Law of the Child Act was enacted).

³⁷ Sec. 13 of the LMA 1971 [Cap 29 R.E 2002].

Furthermore, Tanzania exercises normative legal pluralism whereby legal pluralism is embodied in legislation stipulating how different non-state legal orders are accommodated within the state and interact with each other.³⁸ This means that in personal matters like marriage and inheritance, statutory laws run parallel to customary law and Islamic law.³⁹ The Local Customary Law (Declaration) Order⁴⁰ provides for puberty as the minimum age for marriage with the consent of the father, and 21 as the minimum age for marriage for girls without the consent of the father.⁴¹ As for Islamic law, there is no minimum age requirement for a valid marriage considering Muhammad himself married the daughter of Abu Bakr, who was allegedly six years old.⁴²

On 5 January 2016, the minimum age for marriage provision was challenged in the case of *Rebecca Gyumi v. Attorney General*.⁴³ The Court was petitioned to strike out all provisions in the Law of Marriage Act⁴⁴, which allow a girl under 18 years old to get married with her parent's consent specifically sections 13 and 17. That, the two sections contravened Articles 12, 13 and 18 of the Constitution of the United Republic of Tanzania,⁴⁵ which give people equal rights before the law and the right not to be discriminated against. The Court in this landmark decision, ruled that the two sections were unconstitutional, hence they did not qualify to be part of the Law of Marriage Act. The Court taking into consideration the principle of evolving capacities of a child vis-à-vis thick and thin agency, further ruled that, it was unfair to subject a girl aged 15 years to marriage and that such a

³⁸ CORRADI, G., "Can Legal Pluralism Advance Human Rights? How International Development Actors Can Contribute", *European Journal of Development Research*, (2014) 783, 785.

³⁹ S.11 of the Judicature and Application of Laws Act [Cap 358 R.E 2002].

⁴⁰ Local Customary Law (Declaration) Order, Government Notice (GN) 279/1963, Schedule 1, Laws of Persons [Sheria Zinazohusu Hali ya Watu], in Judicature and Application of Laws Act, TANZ. LAWS SUBSIDIARY LEGIS. [CAP 358 R.E. 2002].

⁴¹ Ibid.

⁴² JUYNBOLL, T.W., *Handleiding tot de kennis van de Mohammedaansche Wet. Volgens de leer der sjaffitische school*, New York: Querido, 1943, 184-189 as quoted by VAN DER ZWEEP, E., *The Application of Islamic Family Law and Human Rights: A Case Study of Tanzania Mainland*, Master Thesis Religion Studies, Universiteit Utrecht, Religion Studies and Theology Department, Faculty of Humanities, Utrecht University (2005)18.

⁴³ Misc. Civil Cause no. 05 of 2016.

⁴⁴ 1971, [Cap 29 R.E 2002].

⁴⁵ 1977, as amended from time to time.

child has no wide understanding and could hardly comprehend her responsibilities and obligations as a married person. The Court added that the law was discriminatory and unfair as it subjected a girl child to be married at 15 years old, while the same law stated that a male person could only marry when he was aged 18 years.

Therefore, the Court ordered that the Law of Marriage Act be revised to eliminate the inequality between the minimum age for marriage for boys and girls. However, the government through the Attorney General appealed against the High Court decision at the Court of Appeal. The Court of Appeal of Tanzania, which is Tanzania's Supreme Court, upheld the decision of the High Court in October 2019.⁴⁶ However, the law remains as is.

4 The nexus between child marriage and human trafficking in Tanzania

Trafficking in persons is defined to mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴⁷

Trafficking in persons has three elements which are; **the act**, what is done it includes the whole process of recruitment, transportation, transfer, harbouring or receipt of persons. Secondly, **the means** that is how it is done and it can be done through threat or use of force, coercion, abduction, fraud, and deception, abuse of power or vulnerability, or giving

⁴⁶ Attorney General v. Rebeca Gyumi (Civil Appeal No. 204 of 2017).

⁴⁷ See Article 3 (a) of The United Nations (UN) (2003) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

payments or benefits to a person in control of the victim. Lastly, **the purpose**, why it is done trafficking of persons could be for the purpose of exploitation, which includes sexual exploitation, child prostitution, child pornography and other forms of sexual exploitation, child forced bonded labour, slavery or practices similar to slavery, illegal adoption, child marriage and participation in armed conflict.⁴⁸

The Trafficking Protocol establishes the standard that any person under 18 years old who is moved from one location to another by any means for the purpose of exploitation is considered to have been trafficked. The UNICEF Implementation Handbook for the Optional Protocol on the Sale of Children explains that the movement need not be across borders; any movement of the child for the purpose of exploitation is trafficking, even within the victim's own home village, town or city.⁴⁹ This would then include the relocation of a child bride to her husband's home or vice versa.⁵⁰ It is child trafficking even if the child has agreed to the movement and/or the exploitation, because, legally, a child cannot consent to be exploited.⁵¹ Furthermore, legally, a child cannot consent to child marriage. Therefore, what matters in determining if a case of child marriage is child trafficking is whether or not the purpose was for exploitation.⁵²

The nexus between child marriage and human trafficking is firstly established by the act of relocation. Findings of this study revealed that most girls who are married early, get relocated from the places where they used to reside after being married as shown in Table 1 below.

Table 1: Relocation of girls after marriage

⁴⁸See, Article 3 (a) of The United Nations (UN), (2003) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

⁴⁹ United Nations Children's Fund, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, 2009, p. 4.

⁵⁰ BOENDER, C., *The Relationship between Child Labour and Child Marriage: A Discourse Analysis*, UNICEF, Kathmandu, 2021, 25

⁵¹ Ibid

⁵² Ibid.

Did he relocate you to another village/town/country?						
	Yes		No		Total	
	Freq.	Percentage	Freq.	Percentage	Freq.	Percentage
Yes	9	64.29	1	7.14	10	71.43
No	2	14.29	2	14.29	4	28.57
Total	11	78.57	3	21.43	14	100.00

It was revealed that sometimes the relocation is simply because the groom lives in another village, district, region or country and hence has to relocate the girl to his place of residence. However, it was also revealed that relocation is sometimes done to escape the consequences of the Education Act.⁵³ In support of these findings, a social welfare officer in Mara stated that relocation of girls who are married early is done by design to evade the law, especially if the girl child was a student.

Girls who try to resist marriage can be subjected to physical assault and verbal abuse by their families.⁵⁴ Furthermore, in some cases, families threaten to disown girls or chase them away from home.⁵⁵ This is how these marriages are secured. This is coercion and it has serious implications for girls for example it can lead to self-harm as shown below:

In the year 2000, one girl was forced to be married by her parents. She resisted for a long time but her parents kept pushing and forcing her to marry. The girl ended up committing suicide.

Mother FGD, Shinyanga.

Child marriages are also secured through the exchange of cash, goods or livestock in form of bride price. This study showed that the practice of bride price payment is widely practised as shown in table 2 below. The bride price phenomenon influences child

⁵³ Cap 353 R.E 2002. The Education Act provides a penalty against anyone who impregnates or marries a primary school pupil or secondary school student. Therefore, in Tanzania, the minimum age for marriage of 15 is applicable to girls who are out of school.

⁵⁴ Human Rights Watch, *supra* note 109, at pg 52

⁵⁵ *Ibid.*

marriage due to poverty. In places with extremely high rates of poverty, the availability of a bride price creates a huge incentive for parents to agree to marry their daughters off at a young age.⁵⁶ This is because in most cases, the amount of bride price decreases with the age of the girl as in the younger the girl, the higher the bride price that a family receives.⁵⁷

Many parents especially male parents see bride price as a means to get rich. In that sense dowry for them is very important. Even if they get children out of wedlock they may abandon the sons but not the daughters because they view them as wealth in a near future. So dowry is a major factor in child marriage.

Mother FGD, Mara.

Table 2: Association between early marriage and bride price

Are there any girls under 18 from your village or neighbouring village married	Is bride price payment practiced in your community?					
	Yes		No		Total	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Yes	32	57.14	3	5.36	35	62.50
No	20	35.71	1	1.79	21	37.50
Total	52	92.86	4	7.14	56	100.00

Sometimes girls are even abducted by men. In his study of *kupula*⁵⁸ in northern Tanzania, Ellison⁵⁹ determined that the practice is so prevalent in the region that when a girl disappears, her parents will suspect what has happened, but rather than calling the police, they will seek the man out. Their action is not prompted by wanting to rescue their child,

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Kupula is the name of marriage by abduction in Shinyanga region in Tanzania.

⁵⁹ ELLISON, M., "Tales of a Child Bride: 'My Father Sold Me for 12 cows'", ALJAZEERA, July 12, 2016, available at <https://www.aljazeera.com/indepth/features/2016/07/taleschild-bride-father-sold-12-cows160711100933281.html>, (last accessed at 7 January 2022).

but to negotiate the bride price, preferably in the form of cattle or cash.⁶⁰ Therefore, the means of securing child marriages are also in line with the trafficking in persons.

The nexus between child marriage and human trafficking is further established by the fact that child marriage exposes girls to various risks of exploitation including sexual violence. The author adds that girls are far more exposed to higher levels of vulnerability through physical, psychological and sexual violence when they marry early.⁶¹ A report by the Human Rights Watch⁶² adds on the exploitation that many girls married young go through. It states that girls married early experience difficulties in their marriages including violence.⁶³ They undergo a forceful life of bondage, sexual abuse and violence.

Empirical findings support the findings of documentary review because they revealed that girls who are married early experience different types of abuse especially domestic and sexual violence as shown in table 2 and figure 1 below.

Table 2: Type of abuse encountered by women married before 18yrs

What form of abuse did you experience?	Did he decide to take you and live with you in another village/town/country?					
	yes		no		Total	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Domestic and sexual violence	7	63.64	1	9.09	8	72.73
Social isolation	1	9.09	0	0.00	1	9.09
Reduced freedom	1	9.09	0	0.00	1	9.09
Forced to sexual business	0	0.00	1	9.09	1	9.09
Total	9	81.82	2	18.18	11	100.00

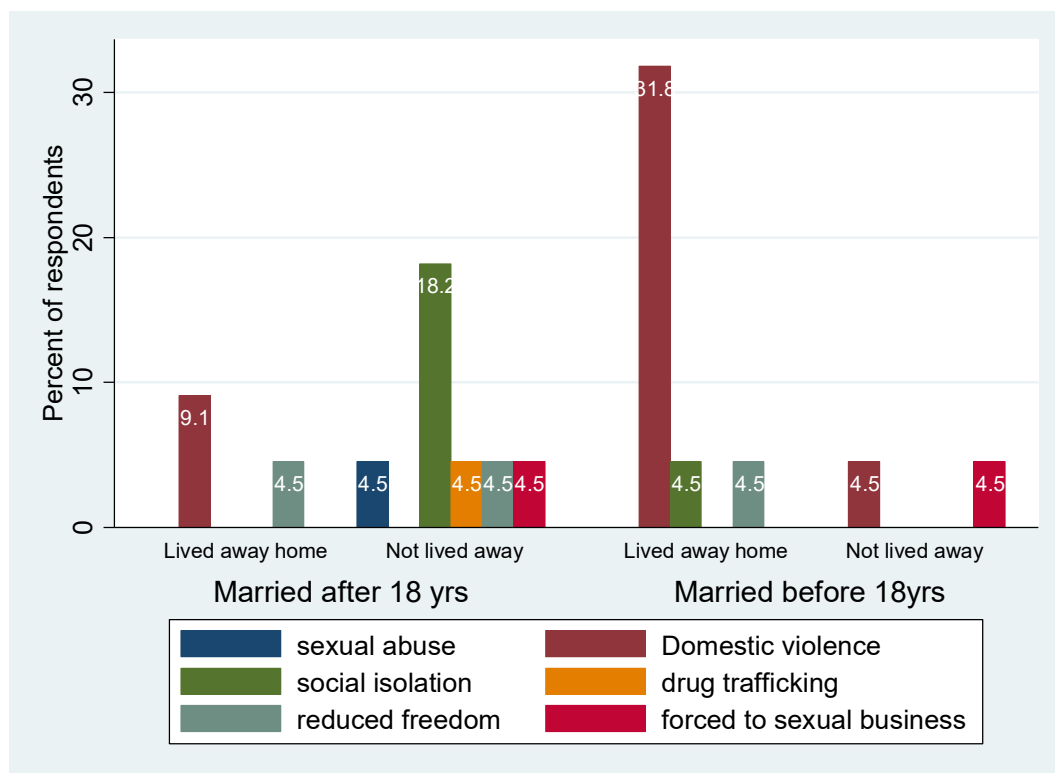
⁶⁰ Ibid.

⁶¹ WARRIA, A., (2017), *Forced Child Marriages as a Form of Child Trafficking*, Children and Youth Services Review 79, pg 274-279.

⁶² Human Rights Watch, (2014), *No Way Out: Child Marriage and Human Rights Abuses in Tanzania, USA*.

⁶³ Ibid at pg 48

Figure 1: The association between early marriage as human trafficking and forms of abuse



Source: Field data, 2022.

A social welfare officer in Lindi corroborated the findings by stating that girls who are married early experience cruelty of all kinds for example rape, and other forms of sexual violence, psychological violence, economic dependence, and deprivation of opportunities. Similarly, a mother in Shinyanga stated that child marriage increases domestic and sexual violence. Often when a man is an adult and has married a young girl, the girl will normally be subjected to sexual abuse and regular beatings and the girl is unable to defend herself, she added.

Additionally, girls who are married early also are exploited in terms of forced labour. The case of one of the participants in the previous research⁶⁴ conducted by the researcher can inform this aspect. The participant was a fifteen-year-old girl then who, according to her, was forced to be married by her father when she was 13 years old. She was married as a third wife by a 45 years old man and was taken to live with her in-laws in Meatu, which is a different region from the one she was living with her parents.⁶⁵ According to her, she was required to do a great deal of work, including domestic chores, herding livestock and farming. Unfortunately, she became very tired and started refusing to work. Due to her refusal to work, but also due to being unable to get pregnant, she was being beaten over and over again by the whole family of her husband. She decided to run away and had to walk for many kilometres to get to her village. By the time she got there, she had to be taken to get medical care immediately because she was seriously injured and also dehydrated.

This study also confirmed that many young girls who are married, are expected to provide labour, especially in farming including livestock keeping and rearing as shown in table 3 below.

Table 3: The association between type of activity and early marriage

What activity did you do during life with your husband/partner?	Early marriage					
	Yes		No		Total	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Farming including livestock keeping	35	43.75	7	8.75	42	52.50
Business	12	15.00	5	6.25	17	21.25
Mining	1	1.25	0	0.00	1	1.25

⁶⁴ WARIOBA, I, Vernacularisation of Human Rights: A case study of child marriage in Shinyanga region in Tanzania," PhD Thesis, University of Antwerp, 2021.

⁶⁵ Meatu is a district within Simiyu region, which is a neighbour to the Shinyanga region to the East.

Sex work	2	2.50	0	0.00	2	2.50
Hard labour	1	1.25	0	0.00	1	1.25
Other	17	21.25	0	0.00	17	21.25
Total	68	85.00	12	15.00	80	100.00

Therefore, the findings of this study show that child marriage is a form of human trafficking because it fulfils all the three elements of human trafficking which are the act, the means and the purpose. The findings support the assertions made by the Anti-Slavery International and the Special Rapporteur on Contemporary Forms of Slavery, in her 2012 thematic report on servile marriage, the levels of abuse, exploitation and control experienced by children as a result of child and early marriage can often meet international legal definitions of slavery and slavery-like practices, such as human trafficking.⁶⁶

5 Persistence of child marriage as a form of human trafficking in Tanzania

Child marriage persists in Tanzania due to various factors including the following:

5.1 Different perception of who a child is

This research revealed that there is no consensus on the definition of a child. Not everyone in believes that a child is any person who is below the age of 18 years. Different criteria are used to determine when one attains adulthood. Age is irrelevant. For example, some believe that primary education is the determining factor for the attainment of adulthood. This perspective could be traced back to the laws on education. Primary education was made free and compulsory in Tanzania in 2002⁶⁷ and the government has enforced this law vigorously with serious enforcement measures, including arresting parents who did not send their children to school. Also, a great deal of advocacy had been

⁶⁶ BORRELL, R., *Behind Closed Doors: Child and early marriage as slavery*, Anti-Slavery International, n.p., n.d., 7

⁶⁷ DAVÉN, J. "Free Primary Education in Tanzania? – A Case Study on Costs and Accessibility of Primary Education in Babati Town", Södertörn University College, School of Life Sciences Bachelor's Thesis, (2008) 11.

done on this law to the extent that this law was very well known, even at the grassroots level.

Secondary education was only made free in 2015. This law was not known as well at the grassroots level, compared to the one on primary education. As a result, when one completed primary school, they were considered to be free of their “contract with the government” and hence no longer children, so were free to marry. The law on secondary education cannot easily attain the status of the law on primary education as it is not possible to make secondary education compulsory because one needs to pass an exam which is administered to all pupils at the end of primary school known as the Primary School Leaving Examination (PSLE).⁶⁸ The government only allows students who pass this exam to proceed to secondary school and this exam cannot be re-taken, meaning children who fail it cannot continue with formal schooling in government schools. Children can continue with studies in private schools, which are expensive and cannot be afforded by low-income families.⁶⁹ As a result, if a child from a low income fails this examination, it becomes the end of their school journey.

Other criteria used to determine whether a person is a child or not include looking at the physical appearance whereby a person starting to develop physical traits attributed to puberty, is considered to be an adult and no longer a child. The fact that a person is still under the care of parents was also used to determine that the person is still a child. Religion was also an aspect that was referred to in the interpretation of who a child is, in particular in Islam where one is considered to be an adult after puberty.

⁶⁸ HUMAN RIGHTS WATCH, “I Had a Dream to Finish School” Barriers to Secondary Education in Tanzania, (2017) Available at <https://www.hrw.org/report/2017/02/14/i-had-dream-finish-school/barriers-secondary-education-tanzania> (last accessed at 13 February 2018).

⁶⁹ Ibid.

Other circumstances revealed in this study which are considered to mark the cessation of childhood include a person who has started engaging in sexual relationships, either with their consent or not; a person who is in a marital relationship, no matter how it has been celebrated, either with their consent or not and also persons with children. Some considered only breastfeeding babies as children, others considered only their own biological children as children. Further, there were some people who viewed specific rituals as signalling the start of adulthood, for example, female genital mutilation and *unyago*.

5.2 Patriarchy

This was a theme that came up in all findings of this study. The institution of patriarchy lies in the socialisation of the child practice, where the boy child is taught how to be in control and the girl child how to be submissive. Studies have also shown that child marriage persists because of the low value given to women and girls. In some study regions for example Shinyanga and Mara, girls are raised to be completely submissive to men. They are not allowed to question anything said by a man, and they are not allowed to say no to them. It is argued that in the aforementioned regions, livestock such as cows have a higher value than girls. Girls are considered a commodity to be exchanged for a bride price. As stated earlier, on average, the bride price for a girl is 15 cows. If the girl is light-skinned, it can even range from 60 – 100 cows.

They also believe that if a girl is unmarried at the age of 15 years, then they are cursed. As a result, they are willing to do anything to make sure that a girl marries before that age, including taking the girl to traditional healers to do some rituals and get some “medicine” to attract suitors.

They also start creating an environment of exposing the girl child to potential suitors, for example, by sending the girl to fetch water or firewood far from home so that men can

see and approach her. When a man is interested, he will just pick a girl up and take her to his house, even without her consent: this is a practice known as *kupula* in Shinyanga and parents will not object. The people of the accept the practice as part of their traditions and culture. In his study of *kupula* in Northern Tanzania, Ellison determined that the practice is so prevalent in the region that when a girl disappears, her parents will suspect what has happened, but rather than calling the police, they will seek the man out. Their action is not prompted by wanting to rescue their child, but to negotiate the bride price, preferably in the form of cattle or cash.⁷⁰

5.3 Poverty

Studies have shown that child marriage is linked to poverty and families' economic status, which strongly indicates whether their daughters will be married early or not.⁷¹ The countries with the lowest average age at first marriage for girls and adolescents have extremely low levels of socio-economic development. The social indicators such as maternal and infant mortality, literacy, life expectancy for women and average income are very low in these countries.⁷²

Where there is acute poverty, a young girl may be seen as an economic burden, who when purchased will relieve the family financially and socially.⁷³ Hence, marriage is considered a transaction and a significant economic activity. This transaction involves the exchange of a girl with a certain sum of money or goods such as livestock or both, which is termed a bride price, bridewealth or dowry. In most African communities including Tanzania, bride price is a precondition of marriage.⁷⁴ In the context of poverty, this practice may encourage child marriage because it is a source of wealth and prestige when given in the form of livestock such as cattle, goats and sheep, among others. The more livestock one

⁷⁰ ELLISON, M., "Tales of a Child Bride: 'My Father Sold Me for 12 cows'", ALJAZEERA, July 12, 2016, available at <https://www.aljazeera.com/indepth/features/2016/07/taleschild-bride-father-sold-12-cows160711100933281.html>, (last accessed at 7 June 2022).

⁷¹ BIRECH, J., "Child Marriage: A Cultural Health Phenomenon", *International Journal of Humanities and Social Science*, (2013) 97, 101.

⁷² BUNTING, A., "Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue" *Social & Legal Studies*, 14(2005) 25.

⁷³ INTERNATIONAL CENTRE FOR RESEARCH ON WOMEN (ICRW), "How to End Child Marriage Action Strategies for Prevention and Protection," ICRW (2007).

⁷⁴ BIRECH, J., *supra* n. 71, at 99.

has, the wealthier one is, hence, the greater the respect that is earned.⁷⁵ Moreover, grooms have unspoken, but well-established rates for a bride price.⁷⁶ Mostly, the bride price decreases as the girl gets older.⁷⁷ This implies that parents would want to marry off the daughters as early and as fast as possible.⁷⁸

5.4 Loopholes in the Legal Framework

The fact that the Law of Marriage Act, 2019, still allows the marriage of a girl child of 15 years, which can be lowered to 14 years by special request, is a loophole that is used even in communities that sometimes show the willingness to change, and that loophole fuels child marriages.⁷⁹ This was also confirmed by the findings in this study. As shown above, this is especially so for girls who are not engaged in the formal education system due to the amendment of section 60A of the Education Act that was passed in 2016, which protects girls who are still schooling. The law amendment stipulates that if you marry or impregnate a girl who is in school, you can be liable to 30 years imprisonment. This law creates a loophole that is being used by parents in association with the Law of Marriage Act. They now have realised that for them to marry off their girl children below the age of 18 years, they only have to keep them out of the formal school system. Even though the Court of Appeal of Tanzania pronounced this law as unconstitutional,⁸⁰ this law has not been revised by the government, to date.⁸¹

A social welfare officer in Dodoma confirmed this driver of child marriages in Tanzania by stating that:

⁷⁵ United Nations International Children's Emergency Fund, "Ending Child Marriage: Progress and prospects" UNICEF, New York, 2014; UNFPA, "Top 10 Myths about Child Marriage", <https://www.unfpa.org/news/top-10-myths-about-child-marriage#:~:text=It%20is%20true%20that%20the%20vast%20majority%20of%20child%20marriages%20involve%20girls.&text=Estimates%20from%20UNICEF%20suggest%20that,82%20per%20cent%20are%20girls> (last accessed 19 January 2022)..

⁷⁶ BIRECH, J., *supra* n. 71, at 98.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ See Chapter III on the Tanzania Legal and Policy Framework on Child Marriage.

⁸⁰ (Civil Appeal No.204 of 2017) [2019] TZCA 348; (23 October 2019).

⁸¹ See also Chapter III on the Tanzania Legal and Policy Framework on Child Marriage.

The Marriage Act of 1971 which gives the parent the freedom to give consent for the child to marry is very problematic. This is because sometimes we in collaboration with the police arrest parents for marrying children but they meet *bush lawyers* who tell them that the marriage law protects them.

Social welfare officer, Dodoma.

6 Conclusion and recommendations

This study has shown that there is a connection between child marriage and the trafficking in persons. This is because all the elements of trafficking in persons can be found when analysing child marriage. Firstly girls are transferred from their households to the households of their husbands and this is done through coercion, abduction, abuse of power and vulnerability and also making of payments in form of bride price. Thereafter, children undergo experiences in such marriages which amount to exploitation for example all forms of violence and forced labour. The study has further revealed that child marriage is being fuelled by different factors such as different perceptions on the definition of a child, poverty, patriarchy and loopholes in the legal framework among others.

Considering that child marriage amounts to human trafficking, it is recommended that measures are taken to address the different drivers which fuel child marriage in Tanzania. Therefore, it is imperative to reconcile child protection laws in Tanzania to eliminate the loopholes which allow a girl below the age of 18 years to get married. Further, awareness creation should be done by all stakeholders to educate communities on who a child is and their respective rights. Children should also be empowered through different programmes so that they can be able to advocate for themselves. It is also recommended that the government establishes safe houses in each region so that children who do not want to be forced to get married can have a safe haven. Tanzania has good laws on child

forced labour and human trafficking. Therefore, it is recommended that effective enforcement of these laws should be done.

It is also recommended that there should be translation of human rights in accordance with the model that was developed by Sally Engle Merry to respond to the different perceptions of who a child is at the community level. The translation of human rights framework puts forward that in order to make human rights that have been developed in global settings relevant at the local level, they have to undergo a transformation process to resonate with the local context of the place in which they are to be applied so that they can be accepted. It allows local actors to utilise their knowledge of the local conditions to frame human rights norms in a way that will make them appealing to the locality. It also allows local actors to use communication channels and technologies which are more likely to appeal to local communities. However, this is to be done without compromising core foundations such as autonomy, choice, equality, secularism and protection of the body - ideas embedded in legal documents that constitute human rights law.

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