

Fordham International Law Journal

Volume 38, Issue 3

2015

Article 1

Ending Female Genital Mutilation & Child Marriage in Tanzania

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Lisa Avalos, Naima Farrell, Rebecca Stellato, and Marc Werner

Abstract

This Article analyzes the current practices of FGM and child marriage in Tanzania and makes a number of recommendations for eliminating these severe human rights violations. Part I identifies the relevant forms of gender-based violence and discusses how they are practiced and related. Part II addresses applicable international and domestic legal authority, identifying potential gaps in domestic legal protection for young girls. Part III proposes several promising legal and policy strategies, both international and domestic, to reduce the practices of child marriage and FGM in Tanzania. Ultimately, some or all of these measures must be implemented to help bring an end to these practices and their harmful effects on girls, as well as on their communities. Implementing these measures is not a complex task, because we know how to protect the human rights of girls. What is needed, however, is political will. Policymakers must demonstrate commitment that they are ready and willing to prioritize the needs and human rights of girl children over the desires of the adult men who want sexual access to such girls, and the fathers, and sometimes mothers, who desire the financial reward of handing a daughter over to a man willing to pay.

KEYWORDS: Female Genital Mutilation, Child Marriage, Tanzania, Human Rights, Domestic Violence, International Law

ARTICLE

ENDING FEMALE GENITAL MUTILATION & CHILD MARRIAGE IN TANZANIA

Lisa Avalos, Naima Farrell, Rebecca Stellato & Marc Werner*

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INTRODUCTION

In September of 1999, three young sisters, aged thirteen and fourteen, made a desperate effort to save themselves from female genital mutilation (“FGM”).¹ They ran away from their home in the Morogoro region of Tanzania and sought refuge at a local church. The church pastors appealed to the local police for help protecting the girls, but the police returned the girls to their father, who forced them to undergo FGM the next day. The girls were married within a month, one as a third wife.² FGM was illegal in Tanzania when these events occurred.³

Fifteen years later, many girls still have no state protection from FGM and must run away from their families and communities if they are to avoid being cut. The Daughters of Charity began a Termination

1. *Tanzania: Failing to Enforce the Law Against Female Genital Mutilation*, EQUALITY NOW (June 1, 2001), <http://www.equalitynow.org/node/236>.

2. *Id.*

3. See Sexual Offenses Special Provisions Act, § 21 (1998) (Tanz.) [hereinafter SOSPA].

of Female Genital Mutilation (“TFGM”) Program in 2008 when fifty-three girls sought refuge from being cut in Masanga Village in the Mara region.⁴ The number of girls seeking protection at the refuge has risen steadily each year, with 300 coming in 2012, and 420 in 2013.⁵ But not all girls can be protected, particularly when the cutting season ends and girls return to their communities. Some girls are cut upon their return home, sometimes more harshly as a punishment for running away.⁶ In one case, the refuge entrusted a girl to the police at the end of the 2012 cutting season, and the police returned her to her family.⁷ She was then cut so severely that she became permanently disabled.⁸ At least three of the 300 girls who sought refuge in 2012 were beaten and mutilated when they returned home.⁹

These accounts demonstrate a failure on the part of the state to protect, respect, and fulfill the human rights of girls at risk of FGM in Tanzania. Although a private sector organization is doing its best to step in and fill the void in protection for some girls, their actions are only necessary because the Tanzania government has failed to enforce the law against FGM and to protect girls from the families and communities that subject them to FGM.

In Tanzania, the related practices of child marriage and female genital mutilation violate the human rights of these girls and perpetuate violence, gender inequality, and other social ills. Poverty, tribal institutions, cultural norms, and social pressures all facilitate these forms of gender-based violence (“GBV”). Shortly after reaching puberty, in order to prepare them for marriage, many young girls are subjected to FGM at the hands of their relatives or a tribal “healer.” Afterwards, their families will usually find an older man and offer them as wives for a bride price. In these marriages, child brides are typically unable to refuse sex and face severe health risks and significant developmental impediments. Both domestic and

4. *2013 Camp to Protect Girls from Female Genital Mutilation & Education of Girls*, DAUGHTERS OF CHARITY OF ST. VINCENT DE PAUL, <http://www.daughtersips.org/project-details/?projectId=9072-12&frmCategory=-1&frmCountry=TANZANIA&frmProjectStatus=-1> (last visited Nov. 7, 2014).

5. *Female Genital Mutilation: A Change on the Horizon*, STAND, <http://www.stand.ie/female-genital-mutilation-a-change-on-the-horizon/> (last visited Mar. 19, 2015).

6. Interview with Koshuma Mtengeti, Exec. Dir., Children’s Dignity Forum, in Dar es Salaam, Tanz. (Mar. 6, 2013).

7. *Id.*

8. *Id.*; see Interview with Naana Otoo-Oyortey, Exec. Dir., FORWARD, in London, U.K. (June 13, 2014).

9. Interview with Koshuma Mtengeti, *supra* note 6.

international law, as of yet, have been unsuccessful in eradicating these practices.

This Article analyzes the current practices of FGM and child marriage in Tanzania and makes a number of recommendations for eliminating these severe human rights violations. Part I identifies the relevant forms of gender-based violence and discusses how they are practiced and related. Part II addresses applicable international and domestic legal authority, identifying potential gaps in domestic legal protection for young girls. Part III proposes several promising legal and policy strategies, both international and domestic, to reduce the practices of child marriage and FGM in Tanzania. Ultimately, some or all of these measures must be implemented to help bring an end to these practices and their harmful effects on girls, as well as on their communities. Implementing these measures is not a complex task, because we know how to protect the human rights of girls. What is needed, however, is political will. Policymakers must demonstrate commitment that they are ready and willing to prioritize the needs and human rights of girl children over the desires of the adult men who want sexual access to such girls, and the fathers, and sometimes mothers, who desire the financial reward of handing a daughter over to a man willing to pay.

I. GENDER-BASED VIOLENCE IN TANZANIA

Acts of gender-based violence cause many girls in Tanzania to experience physical abuse and insurmountable hardships at a young age. Together, these acts comprise a larger pattern of exploitation and discriminatory treatment targeted at girls because of their sex. Two forms of GBV are central to this problem: child marriage and FGM. This Part of the Article discusses each of these practices and then addresses how they are carried out in Tanzania.

A. *The Practice of Female Genital Mutilation*

The World Health Organization (“WHO”) defines “female genital mutilation” as comprising “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.”¹⁰ The WHO

10. *Female Genital Mutilation: Fact Sheet N°241*, WORLD HEALTH ORG. (February 2014), <http://www.who.int/mediacentre/factsheets/fs241/en/>.

classifies FGM into four general types. The first, Type 1, is clitoridectomy: partial or total removal of the clitoris and/or the prepuce (the foreskin of the clitoris). Type 2 is excision: partial or total removal of the clitoris and the labia minora and/or the labia majora. Type 3 is infibulation: cutting away the inner or outer labia and sewing them together to create a seal of scar tissue that narrows the vaginal opening. Infibulation may also include removal of the clitoris. Type 4 encompasses all other non-medical and harmful procedures to the female genitalia, such as pricking, incising, piercing, scraping, and cauterizing the genital area.¹¹

No form of FGM has health benefits; all forms are damaging and can result in physical complications and even death. FGM causes acute pain, post-operative shock, possible hemorrhaging, cysts, and infections. It may cause infertility and childbirth complications, jeopardize the lives of newborns, and damage the urination and menstruation pathways.¹² Sometimes, women who undergo infibulation are unable to pass menses and their bellies may become swollen with menstrual fluid. In some such cases, these girls may die of toxic shock syndrome; in other cases, the girl's family may believe she is pregnant and kill her for damaging the family's honor.¹³ Undergoing FGM has psychological consequences as well. Anxiety and terror, humiliation, unbearable pain, feelings of violation, and a sense of betrayal by parents, especially the mother, are common effects of FGM.¹⁴

The reasons for FGM vary from one society to the next, but they often have to do with controlling women's sexuality, preventing premarital sexual activity, and ensuring that girls are marriageable.¹⁵ In the Tarime region of Tanzania, FGM is practiced to reduce sexual desire in girls and to ensure that girls are marriageable in that uncut girls can typically not find a husband.¹⁶ In addition, FGM is practiced

11. *Id.*

12. See UNITED NATIONS POPULATION FUND ("UNFPA"), GLOBAL CONSULTATION ON FEMALE GENITAL MUTILATION/CUTTING 13 (2008), available at https://www.unfpa.org/webdav/site/global/shared/documents/publications/2008/fgm_2008.pdf.

13. Fitnat N-A. Adjetey, *Female Genital Mutilation: Tradition or Torture?*, in VOICES OF AFRICAN WOMEN: WOMEN'S RIGHTS IN GHANA, UGANDA, AND TANZANIA 166–69 (Johanna Bond ed., 2005).

14. *Id.* at 169.

15. See *Female Genital Mutilation: Fact Sheet N°241*, supra note 10.

16. FORWARD, VOICES OF CHILD BRIDES AND CHILD MOTHERS IN TANZANIA: A PEER REPORT ON CHILD MARRIAGE 12–13 (2010), available at <http://www.forwarduk.org.uk/download/194> [hereinafter VOICES OF CHILD BRIDES].

in order to prevent girls from being stigmatized, isolated, and abused by their peers.¹⁷

Globally, an estimated 100 million to 140 million women and girls live with the effects of FGM—and up to three million girls are at risk annually in sub-Saharan Africa, Egypt, and former Sudan alone.¹⁸ FGM is also practiced in Yemen and in some other regions in the Middle East. Child marriage is also a problem in some of these areas and is often closely linked to the practice of FGM.

B. *The Practice of Child Marriage*

Child marriages involve the marriage of any individual younger than eighteen years old.¹⁹ Children are unable to make fully informed choices about whether or not to marry, so they cannot consent meaningfully to such marriages.²⁰ Accordingly, because of their coercive nature, child marriages also constitute forced marriages.²¹ Although children of both sexes can be subject to this practice, it disproportionately affects young girls,²² who are often forced marry men many years older than they are, sometimes as second, third, or fourth wives.²³ The prevalence of child marriage is astounding. In

17. *Id.* at 13.

18. UNITED NATIONS CHILDREN'S FUND ("UNICEF"), FEMALE GENITAL MUTILATION/CUTTING: A STATISTICAL EXPLORATION 4 (2005), available at http://www.unicef.org/publications/files/FGM-C_final_10_October.pdf [hereinafter FGM Statistical Exploration].

19. *Child Marriage*, FORWARD, <http://www.forwarduk.org.uk/key-issues/child-marriage> (last visited Oct. 26, 2014) [hereinafter *Child Marriage*]. Most international instruments affording human rights protections to children designate eighteen as the age of adulthood. See, e.g., Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 (defining a child as a "human being below the age of eighteen years"). Additionally, it is worth noting that this Article distinguishes "child marriages" from "early marriages," in which a young adult decides to enter a marriage at a relatively young age—usually not much older than eighteen.

20. UNFPA, MARRYING TOO YOUNG 11 (2012), available at <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> [hereinafter MARRYING TOO YOUNG].

21. See *Child Marriage*, *supra* note 19.

22. *About Child Marriage*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/about-child-marriage/> (last visited Nov. 7, 2014); see, e.g., MARRYING TOO YOUNG, *supra* note 20, at 10–11; see also KOSHUMA S. MTENGETI ET AL., REPORT ON CHILD MARRIAGE SURVEY CONDUCTED IN DAR ES SALAAM, COASTAL, MWANZA AND MARA REGIONS vii (2008), available at <http://cdfz.org/files/Child%20Marriage%20Baseline%20Survey%20-%20Dar%20es%20Salaam,%20Coastal,%20Mwanza%20and%20Mara%20region.pdf> ("As shown in this report, girls are more affected by child marriage than boys.").

23. SARANGA JAIN & KATHLEEN KURZ, INT'L CTR. FOR RESEARCH ON WOMEN, NEW INSIGHTS ON PREVENTING CHILD MARRIAGE 10–11 (2007), available at <http://www.icrw.org/>

2010, over sixty-seven million women ages twenty to twenty-four years old had been married as children.²⁴ Under current trends, it is estimated that 142 million girls will be married as children by the end of the decade.²⁵ In the developing world, one in three girls probably will be married before they are eighteen, and one in nine probably will be married before fifteen.²⁶ In some African countries, such as Niger and Chad, recent figures report that over 70% of young women were married as children.²⁷

1. The Causes of Child Marriage

Child marriage occurs throughout the world in many ways and for various reasons, but there are generally two main sources of motivation for the practice: poverty and cultural or social pressure. First, there is usually an undeniably economic dimension to the practice of child marriage.²⁸ In parts of the developing world where resources are scarce, young girls are sometimes viewed as an economic burden without commensurate benefits.²⁹ As such, their marriage to older men may sometimes even be considered mutually beneficial to both the girl and her family by relieving economic strain and meeting her basic subsistence needs.³⁰ Additionally, child brides are often commoditized through bride prices; older men will effectively purchase them from their families for their labor or

files/publications/New-Insights-on-Preventing-Child-Marriage.pdf [hereinafter NEW INSIGHTS ON PREVENTING CHILD MARRIAGE].

24. MARRYING TOO YOUNG, *supra* note 20, at 6.

25. *Id.*; see *Child Marriage*, *supra* note 19.

26. MARRYING TOO YOUNG, *supra* note 20, at 6; see Alexandra Hervish & Charlotte Feldman-Jacobs, *Who Speaks For Me? Ending Child Marriage Fact Sheet*, in POPULATION REFERENCE BUREAU 1 (2011), available at <http://www.prb.org/pdf/11/child-marriage-fact-sheet.pdf>. [hereinafter POLICY BRIEF]

27. POLICY BRIEF, *supra* note 26, at 2 (surveying women ages twenty to twenty-four between 2000 and 2010 finding that 74.5% and 71.5% of girls had been married before the age of eighteen in Niger and Chad, respectively).

28. NEW INSIGHTS ON PREVENTING CHILD MARRIAGE, *supra* note 23, at 8, 24; see *Child Marriage Fact Sheet*, UNITED NATIONS POPULATION FUND (2005), http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm (noting that the link between high poverty rates, greater incidence of conflict, and lower levels of development and child marriage is clear).

29. NEW INSIGHTS ON PREVENTING CHILD MARRIAGE, *supra* note 23, at 8; see MARRYING TOO YOUNG, *supra* note 20, at 6; CARE, CHILD MARRIAGE: A PROMISE OF POVERTY (2009), available at <http://www.care.org/campaigns/childmarriage/downloads/CAREAnti-ChildMarriageAdvocacy.pdf>.

30. POLICY BRIEF, *supra* note 26, at 2.

fertility.³¹ If a child marriage does not provide such benefits, or if a child bride attempts to flee, a husband may return the bride to her family and demand back his payment.³² In this way, the bride price can trap child brides whose families have already spent it and/or cannot afford to repay it.

Second, notions of morality and honor also often influence families to force their daughters to marry as children. In many communities, marrying girls off at a young age can be a way of maintaining the family's honor.³³ A high value is usually placed on a girl's virginity, and child marriages can reduce the risk that girls will lose their purity by engaging in pre-marital sex or otherwise shaming their families.³⁴ Older husbands can also sometimes be seen as a way of ensuring that young brides comply with cultural norms, because they can guard against supposedly immoral behavior.³⁵ Should girls be regarded as impure, their family may receive a lower bride price, or may never be able to marry them off and be forced to support them.³⁶

A major force behind the perpetuation of these notions of morality and honor is often older men who have attained some status in tribal or local communities. These men are the primary

31. *See id.*; *see, e.g.*, HUMAN RIGHTS WATCH, THIS OLD MAN CAN FEED US, YOU WILL MARRY HIM (2013), available at http://www.hrw.org/sites/default/files/reports/southSudan0313_forinsertWebVersion_0.pdf (telling the stories of many girls in South Sudan forced into marriage with older men so that their relatives could collect bride prices, usually in the form of cattle).

32. *See* VOICES OF CHILD BRIDES, *supra* note 16, at 18; *see also* CHILDREN'S DIGNITY FORUM, REPORT ON CHILD MARRIAGE SURVEY CONDUCTED IN DAR ES SALAAM, COASTAL, MWANZA AND MARA REGIONS 47 (2008), available at <http://www.cdfz.org/files/Child%20Marriage%20Baseline%20Survey%20-%20Dar%20es%20Salaam,%20Coastal,%20Mwanza%20and%20Mara%20region.pdf>.

33. INT'L CTR. FOR RESEARCH ON WOMEN, TOO YOUNG TO WED: EDUCATION AND ACTION TOWARD ENDING CHILD MARRIAGE (2005), available at <http://www.icrw.org/files/publications/Too-Young-to-Wed-Education-and-Action-Toward-Ending-Child-Marriage.pdf>.

34. *Child Marriage*, *supra* note 19; *see* Cynthia Gorney, *Too Young to Wed: The Secret World of Child Brides*, NATIONAL GEOGRAPHIC (June 2011), available at <http://ngm.nationalgeographic.com/2011/06/child-brides/gorney-text/1> (discussing how child marriage is prevalent in communities "where nonvirgins are considered ruined for marriage and generations of ancestors have proceeded in exactly this fashion"). Note that engaging in this behavior may be consensual or otherwise, so protecting a girl from becoming "impure" may also mean protecting her from rape by older men.

35. IPPF & THE FORUM ON MARRIAGE AND THE RIGHTS OF WOMEN AND GIRLS, ENDING CHILD MARRIAGE: A GUIDE FOR GLOBAL POLICY ACTION (2006), available at <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2006/endingchildmarriage.pdf>; POLICY BRIEF, *supra* note 26, at 2.

36. POLICY BRIEF, *supra* note 26, at 2.

beneficiaries of the practice of child marriages, and young brides are often seen as symbols of accomplishment, success, or masculinity.³⁷ As a result, prominent tribal members will often continue to marry younger girls into their old age, typically leaving the wives with no source of income after the husband's death.³⁸

2. The Consequences of Child Marriage

The consequences of child marriage for young girls are devastating. First, child marriage is tantamount to both statutory and forcible rape. It is statutory rape because children below the age of consent cannot meaningfully consent to sex. It is forcible rape because young girls generally cannot refuse the sexual advances of their older husbands who control familial resources.³⁹ Second, the unequal power dynamic between the husband and the child bride sharply constrains girls' ability to make and negotiate other sexual decisions, such as whether or not to use contraception and whether or not to demand fidelity from their husbands. Third, these sexual relationships also often entail significant health risks for girls married as children. Childbirth complications are the leading cause of death for girls ages fifteen to nineteen in developing countries,⁴⁰ and young brides face a statistically higher chance of contracting sexually-transmitted diseases from their more experienced husbands.⁴¹ Fourth, child marriages have a higher likelihood of domestic abuse,⁴² as well

37. *Id.*; MARRYING TOO YOUNG, *supra* note 20, at 6.

38. POLICY BRIEF, *supra* note 26, at 2, 14; MARRYING TOO YOUNG, *supra* note 20, at 6.

39. MARRYING TOO YOUNG, *supra* note 20, at 11 (“Once married, girls are likely to feel, and in many cases are, powerless to refuse sex.”). If they are over age fifteen, they also do not have the legal power to refuse consent. *See infra* Part II.B.3.ii (explaining that there is no such thing as “marital rape” in Tanzania); NUJOOD ALI, I AM NUJOOD, AGED 10 AND DIVORCED (2010).

40. POLICY BRIEF, *supra* note 26, at 2; *see also Child Marriage, supra* note 19 (“[T]here is a strong correlation between the age of a mother and maternal mortality. Girls ages 10-14 are five times more likely to die in pregnancy or childbirth than women aged 20-24 and girls aged 15-19 are twice as likely to die”) (citing *Child Marriage Fact Sheet, supra* note 28); U.N. Secretary-General, *We the Children: End-Decade Review of the Follow-up to the World Summit for Children: Rep. of the Secretary-General*, ¶ 181, U.N. Doc. A/S-27/3 (May 1, 2001), available at <http://www.unicef.org/specialsession/documentation/documents/a-s-27-3e.pdf>.

41. MARRYING TOO YOUNG, *supra* note 20, at 13; *see Child Marriage Fact Sheet, supra* note 28 (married adolescents are typified by “[i]ncreased vulnerability to HIV and other STIs.”).

42. SUNITA KISHOR & KIERSTEN JOHNSON, MEASURE DHS+, PROFILING DOMESTIC VIOLENCE—A MULTI-COUNTRY STUDY 28–30 (2004), available at <http://dhsprogram.com/pubs/pdf/OD31/OD31.pdf>.

as divorce or separation.⁴³ Finally, child marriage prematurely and unnaturally ends a girl's childhood and adolescence, imposing adult roles and responsibilities before she is physically, psychologically, and emotionally prepared.⁴⁴ Because it entails the imposition of significant domestic duties at a very young age, child marriage usually brings an end to a girl's chance of continued education.⁴⁵ It is also not uncommon for such domestic duties to interfere with relationships with friends and family, relegating girls to social isolation.⁴⁶

3. The Role of Bride Price in Perpetuating Child Marriage and Violent Relationships

"I bought you. Your father has taken my wealth so I own you. Do you think you can go anywhere?"⁴⁷

Bride price plays a key role in perpetuating child marriage and the cycle of domestic violence in such relationships. First, it serves as an incentive for parents to marry off their daughters so that they can collect the bride price.⁴⁸ A Human Rights Watch Report found that many girls stated that they were forced to marry because their parents wanted to receive bride price from the girl's proposed husband.⁴⁹ Once married, many reported being forced by their husbands to have sex and endure other forms of violence.⁵⁰

Once they are married, bride price prevents girls and women from leaving their marriages.⁵¹ Typically, if a wife wants to leave a marriage, the husband will demand that her family repay the bride price to him in full, regardless of how long the couple has been

43. MARRYING TOO YOUNG, *supra* note 20, at 10–12.

44. *Id.* at 11.

45. *Id.* (citing EUNICE KAREI & ANNABEL ERULKER, POPULATION COUNCIL, BUILDING PROGRAMS TO ADDRESS CHILD MARRIAGE: THE BERHANE HEWAN EXPERIENCE IN ETHIOPIA (2004)); *see* THE FORUM ON MARRIAGE AND THE RIGHTS OF WOMEN AND GIRLS & THE INTERNATIONAL PLANNED PARENTHOOD FEDERATION, EARLY MARRIAGE AND POVERTY: EXPLORING LINKS FOR POLICY AND PROGRAMME DEVELOPMENT 8–15 (2003), *available at* <http://www.swaasthya.net/pdf/early%20marriage%20&%20poverty%20-%20publication.pdf>.

46. MARRYING TOO YOUNG, *supra* note 20, at 10–12.

47. HUMAN RIGHTS WATCH, NO WAY OUT: CHILD MARRIAGE AND HUMAN RIGHTS ABUSES IN TANZANIA 38 (2014), *available at* http://www.hrw.org/sites/default/files/reports/tanzania1014_forinsert_ForUpload.pdf [hereinafter NO WAY OUT].

48. *Id.* at 38.

49. *Id.* at 38, 52–53, 57–58.

50. *Id.* at 54–56.

51. *Id.* at 59.

married.⁵² Ordinarily, repayment is either impossible or extremely difficult because the wife's family has already spent the funds,⁵³ so the woman is essentially locked into a marriage, and her husband is free to inflict violence upon her with impunity.⁵⁴ As a result, the payment of bride price is a key factor in perpetuating child marriage—it is a key mechanism through which adults conspire together to force girls into marriages the girls do not want, usually at the cost of the girls' continued education.⁵⁵

C. School Expulsion of Female Students Results from Child Marriage, Pregnancy, and Sexual Violence

Tanzania has one of the highest adolescent birth rates in the world, with 44% of adolescent girls giving birth or becoming pregnant before age nineteen.⁵⁶ Adolescent girls in Tanzania who marry or become pregnant are subject to forced expulsion from school without the possibility of returning to school once they give birth.⁵⁷ Although there is no law in Tanzania that explicitly requires those who marry or become pregnant to be expelled from school, such a policy is in effect across the country,⁵⁸ and it does not take into account the fact that many pregnancies are the result of rape or other sexual violence.⁵⁹ Moreover, some schools carry out mandatory pregnancy testing on female students—tests that are unannounced and conducted without the consent of the students involved.⁶⁰

These policies of school expulsion and mandatory pregnancy testing are a violation of girls' fundamental human rights, including the right to equality and nondiscrimination, the right to dignity, the right to education, and the right to privacy.⁶¹ As a result of these policies, parents who choose education for their daughters rather than FGM and early marriage are taking a gamble. If their daughter

52. *Id.* at 58–59.

53. *Id.* at 39.

54. *Id.* at 59.

55. *Id.* at 49.

56. CENTER FOR REPRODUCTIVE RIGHTS, FORCED OUT: MANDATORY PREGNANCY TESTING AND THE EXPULSION OF PREGNANT STUDENTS IN TANZANIAN SCHOOLS 26 (2013), available at <http://reproductiverights.org/en/press-room/new-report-tanzania-forces-girls-to-undergo-invasive-pregnancy-tests-expels-pregnant-stud> [hereinafter FORCED OUT].

57. *Id.* at 101; see NO WAY OUT, *supra* note 47, at 49.

58. FORCED OUT, *supra* note 56, at 13, 101.

59. *Id.* at 33–34.

60. *Id.* at 11, 15.

61. *Id.* at 11, 19.

becomes pregnant for any reason, she can be expelled from school with no possibility of returning—even if the pregnancy is a result of rape. The fact that pregnancy can have such severe consequences on a girl's educational prospects can make FGM and early marriage appear to be a better and more secure option to many parents. This state of affairs in turn reinforces the trap of gender-based violence, because these policies effectively prevent girls from using education as a stepping-stone to a better and more self-sufficient future.

*D. The Adverse Effect of FGM, Child Marriage, and School
Expulsion on the Millennium Development Goals and the Sustainable
Development Goals*

The practices of FGM and child marriage interfere with many international initiatives to end poverty or improve living conditions in the developing world, particularly the United Nations' Millennium Development Goals ("MDGs"). The MDGs are eight international development goals officially established by the United Nations, and assented to by all 193 of its Member States and over twenty-three international organizations.⁶² They are set to be accomplished by 2015 and were developed out of the eight chapters of the Millennium Declaration, an international resolution initially adopted by 189 world leaders that stresses the observance of international human rights law, as well as the importance of supporting sustainable development.⁶³ The MDGs direct the international community to:

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria, and other diseases

62. *UN Partners on MDGs*, UNITED NATIONS, <http://www.un.org/millenniumgoals/partners.shtml> (last visited Oct. 27, 2014).

63. See United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 18, 2000), available at <http://www.un.org/millennium/declaration/ares552e.htm> [hereinafter United Nations Millennium Declaration]; see also *Background*, UNITED NATIONS, <http://www.un.org/millenniumgoals/bkgd.shtml> (last visited Oct. 27, 2014).

7. Ensure environmental sustainability
8. Establish a global partnership for development.⁶⁴

The perpetuation of FGM and child marriage in Tanzania have had an adverse effect on the country's ability to reach *most* of these goals.⁶⁵ First, it is immediately apparent, for the reasons discussed above, that these forms of GBV frustrate, rather than promote, gender equality and the empowerment of women, contravening the third goal.⁶⁶ Second, the fourth and fifth goals, which call for a two-thirds reduction in the under-five mortality rate, and a three-fourths reduction in the maternal death rate by 2015, have been undermined by the practice of child marriage because it is almost always characterized by frequent, early pregnancies that entail considerable health risks.⁶⁷ In addition, FGM has contributed to unnecessary deaths among children and to unnecessary complications during childbirth, some of which lead to death.⁶⁸

Third, the sixth goal of combatting HIV/AIDS and other diseases has been jeopardized by child marriage because the older husbands of most child brides are more sexually experienced than their wives, and because young brides are rarely able to refuse sex or insist on contraception. In addition to the fact that girls need access to contraception and autonomy over their own bodies to further this goal, there are higher rates of HIV and other sexually transmitted diseases in child marriages.⁶⁹ FGM has also hindered achievement of this goal because HIV can be transmitted during FGM ceremonies when the same instruments are used on multiple girls.⁷⁰

64. See United Nations Millennium Declaration, *supra* note 63.

65. MARRYING TOO YOUNG, *supra* note 20, at 13 (“[G]overnments and development partners are recognizing talking the issue of child marriage will help many countries to close the gap in progress towards the Goals.”).

66. See United Nations Millennium Declaration, *supra* note 63; see also *Background*, UNITED NATIONS, *supra* note 63.

67. See *Child Marriages: 39,000 Every Day*, WORLD HEALTH ORGANIZATION (Mar. 7, 2013), http://www.who.int/mediacentre/news/releases/2013/child_marriage_20130307/en/ (“By using the rate of child marriage as an indicator to monitor progress against new goals, we can make sure that governments address the practice and focus on ensuring the welfare of their girls.”). Likewise, as discussed *infra*, FGM adds considerable risks to maternal health that would impede realization of this goal.

68. EQUALITY NOW, PROTECTING GIRLS FROM UNDERGOING FEMALE GENITAL MUTILATION 13 (2011), available at http://www.equalitynow.org/sites/default/files/Protecting%20Girls_FGM_Kenya_Tanzania.pdf.

69. MARRYING TOO YOUNG, *supra* note 20, at 11.

70. *Id.*

Fourth, the first goal—eradicating extreme poverty and hunger—has been hindered by FGM and child marriage. Poverty and hunger can be alleviated in part through greater opportunities for girls to delay childbirth, become educated, and to develop new skills and generate income.⁷¹ These outcomes are threatened by FGM, which harms girls' health, and child marriage, which pushes girls into early childbearing and cuts them off from educational opportunities.

Finally, child marriage has hindered achievement of universal primary education (the second goal), because it abruptly halts the educational development of young girls, reducing their chances of acquiring skills and economic opportunities.⁷² Furthermore, mothers with little education are less likely to keep their own children in school, further perpetuating poverty and hunger.⁷³ Accordingly, the interconnected practices of FGM and child marriage have held Tanzania back from achieving the MDGs.

With the completion date for the MDGs approaching at the end of 2015, world leaders have now proposed a set of seventeen sustainable development goals (“SDGs”) to be achieved by 2030.⁷⁴ The proposed goals cover the same broad themes of the MDGs—reducing poverty and hunger, and improving health, education, and gender equality—as well as others.⁷⁵ Notably, the SDGs are proposed as universal goals, such that all societies, and not just developing ones, will be required to take them into account in designing their national policies.⁷⁶

While the exact form and specific targets of the SDGs are still subject to revision, it is clear that they will continue to obligate Tanzania to end harmful practices that disempower and discriminate against girls. For example, the fifth SDG—achieving gender equality and empowering all women and girls—includes the specific target of ending female genital mutilations and all child, early, and forced

71. *Id.* at 13.

72. *Id.*

73. *Id.*

74. Liz Ford, *UN Begins Talks on SDGs, “Carrying the Hopes of Millions and Millions”*, THE GUARDIAN (Sept. 24, 2014), <http://www.theguardian.com/global-development/2014/sep/24/un-begins-talks-sdgs-battle-looms-over-goals>.

75. *Id.*

76. *Id.*

marriages.⁷⁷ The third SDG focuses on health and well-being and includes specific targets for reducing maternal mortality and the newborn and under-five mortality rates, and ensuring universal access to sexual and reproductive health care services.⁷⁸ Accordingly, Tanzania must work to end FGM and child marriage in order to achieve the SDGs.

E. A Three-Stranded Cord: FGM, Child Marriage, and Domestic Violence

A cord of three strands is not quickly broken.—Ecclesiastes 4:12

Gender-based violence in parts of Tanzania is like a three-stranded cord. It is comprised of female genital mutilation, child marriage, and ongoing domestic violence throughout a girl's adult life. FGM is the beginning of the cycle, positioning girls to be delivered into marriages as children and before they have reached the age of consent. Once in these marriages, young girls are subjected to the control of their much older husbands. In addition to rape, the husbands of child brides regularly use other forms of abuse and violence against the girls in an effort to control their behavior. The "cord" of gender-based violence is easily maintained because these different types of violence reinforce each other. This Section of the Article analyzes each of these forms of violence—FGM, child marriage, and sexual/domestic violence within the marriage—and demonstrates how they are linked and mutually reinforcing.

1. How Female Genital Mutilation is Practiced in Tanzania

i. The open practice of FGM in the Mara region

These girls were seated under the shade with fresh blood dripping down their legs. It was shocking to notice that there was a police station a few meters from where the actual FGM was taking place but the police went on working like nothing was happening.⁷⁹

77. Rep. of the Open Working Group Proposal for Sustainable Development Goals, U.N. Doc. A/68/970 (Aug. 12, 2014), available at <http://sustainabledevelopment.un.org/focussdgs.html>.

78. *Id.*

79. Camilla Yusuf & Yonatan Fessha, *Female Genital Mutilation as a Human Rights Issue: Examining the Effectiveness of the Law Against Female Genital Mutilation in Tanzania*, 13 AFR. HUMAN RIGHTS L. J. 356, 381 (2013).

Despite the fact that FGM is prohibited by law, it is practiced openly in parts of Tanzania and in ceremonies that involve months of careful preparation and the participation of large numbers of girls.⁸⁰ For instance, in the Tarime district in the Mara region of Tanzania, FGM is practiced openly, with impunity, and affects about 85% of females in the region.⁸¹ In the Mara region, “FGM season” runs for about five weeks, from late November until early January, at least every two years.⁸² This timing is chosen because it gives the girls time to recover over the school holidays.⁸³ Months in advance, the traditional leaders announce the coming FGM season and they decide which clans will be invited to participate.⁸⁴ In 2013, it was thought that up to 5000 girls were at risk of FGM in the Tarime district alone.⁸⁵ Traditional leaders have been able to carry out these extraordinary activities openly and publicly, without fear of reprisals from law enforcement.

For example, in a report to the UN Human Rights Council, Equality Now noted that press reports in November 2010 “gave an early warning” that over 5000 girls would be mutilated during the

80. LEGAL AND HUMAN RIGHTS CTR., TANZANIA HUMAN RIGHTS REPORT 2012, at 155 (2012), available at http://www.humanrights.or.tz/downloads/tanzania_human_rights_report_2012.pdf [hereinafter TANZANIA REPORT 2012] (noting that FGM is practiced in ceremonies in many parts of Tanzania and that FGM ceremonies occurred in 2012 in almost all districts in the Mara region).

81. EQUALITY NOW, TANZANIA: SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 2 (2011), available at <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TZ/EN-EqualityNow-eng.pdf>.

82. Interview with Koshuma Mtengeti, *supra* note 6; Interview with Naana Otoo-Oyortey, Executive Director, FORWARD, in London, U.K. (July 5, 2012); CHILDREN’S DIGNITY FORUM AND FORWARD, VOICES OF TARIME GIRLS: VIEWS ON CHILD MARRIAGE, HEALTH AND RIGHTS 18 (2011), available at <http://www.cdfz.org/files/Tarime%20Photo%20Voice.pdf> [hereinafter VOICES OF TARIME GIRLS].

83. Nderingo Ngowi, *Noble Efforts to Combat FGM in Tarime*, TANZANIA DAILY NEWS (Feb. 10, 2014), available at <http://allafrica.com/stories/201402101104.html>.

84. Interview with Naana Otoo-Oyortey, Executive Director, FORWARD, in London, U.K. (Sept. 21, 2012); see LEGAL AND HUMAN RIGHTS CENTRE, TANZANIA HUMAN RIGHTS REPORT 2010, at 172 (2010), available at <http://www.humanrights.or.tz/downloads2010%20Tanzania%20Human%20Rights%20Report%20final.pdf> [hereinafter TANZANIA REPORT 2010] (stating that traditional elders are the ones who declare the mutilating season); see also JOHANNA WARITAY & ANN-MARIE WILSON, WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA: THE ROLE AND RESPONSE OF THE CHURCH 17 (2013), available at http://www.intact-network.net/intact/cp/files/1387186594_Tanzania-FGM-Report-FINAL-VERSION-Low-Res.pdf [hereinafter WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA].

85. Press Release, FORWARD, *400 Girls in Northern Tanzania Seek Refuge as Thousands Face FGM* (Dec. 16, 2013) (on file with author).

FGM season that year in the Tarime district, Mara region.⁸⁶ Following these reports, Equality Now sent an urgent alert to the Tanzanian government, asking it to “take immediate action to stop the mutilation of girls and arrest the perpetrators.”⁸⁷ But law enforcement, despite its awareness of the scheduled mass mutilations, did nothing to intervene—they made no arrests, nor did they make any efforts to protect the girls.⁸⁸ Although it is unknown exactly how many of the 5000 at-risk girls were mutilated that year, Equality Now notes that over 700 girls were mutilated during one eight-day period alone (November 28–December 6, 2010).⁸⁹

Although the police have failed to enforce the law against FGM in the Mara region, private sector organizations have taken action, and their actions have enabled girls and their parents to express opposition to FGM. In December 2008, the Daughters of Charity of St. Vincent de Paul initiated a Termination of Female Genital Mutilation program.⁹⁰ The program involves sheltering girls at St. Catherine’s School—known locally as the Masanga Shelter—during the FGM season so that they are not mutilated.⁹¹ That program provided protection for fifty-three girls in 2008; it has grown each year since then, and provided protection for close to 500 girls in 2013.⁹² The girls typically stay at the shelter for the entire duration of the FGM season. While there, they receive food and education.

Many of the girls who seek shelter refuge from FGM do so with the approval of their parents,⁹³ who do not necessarily condone FGM but who are unable to protect their daughters in light of the strong community pressure to participate and the lack of protection from law enforcement. Before returning girls to their parents, personnel at the Masanga Shelter make every effort to enlist the cooperation of the parents in rejecting FGM by having the parents sign a statement pledging not to carry out FGM on their daughters in the future.⁹⁴ However, not all parents have accepted this pledge, and there have

86. EQUALITY NOW, *supra* note 81, at 2.

87. *Id.*

88. *Id.*

89. *Id.* at 3.

90. 2013 *Camp to Protect Girls From Female Genital Mutilation & Education of Girls*, *supra* note 4.

91. *Id.*

92. *Id.*

93. FORWARD, *supra* note 85.

94. Interview with Koshuma Mtengeti, *supra* note 6.

been instances of girls being severely mutilated after returning home from Masanga Shelter.⁹⁵ At the end of the 2013 FGM season, twenty-six girls refused to leave the shelter and return to their homes.⁹⁶ This resulted in further community engagement work being done by the Children's Dignity Forum in collaboration with the Masanga Centre to aid the process of girls reintegrating with their families.⁹⁷

Some girls who have fled to the Masanga Shelter are in danger of becoming victims of FGM after they return home. According to the Executive Director of Children's Dignity Forum, who has worked extensively with girls fleeing FGM in Tarime district, some parents severely punish girls for seeking refuge at the shelter and perform FGM on them afterwards.⁹⁸ He noted that those who are trying to protect girls from FGM are very distraught when girls are mutilated despite their best efforts to provide protection.⁹⁹

In addition, a study documented that in the Tarime district in December 2011, groups of armed men and boys used force to compel girls to undergo FGM.¹⁰⁰ This study involved focus group interviews with uncircumcised girls, several of whom reported that some girls who had run away from FGM had been chased and caught by special armed forces of boys, had been beaten or tortured, and then forced to undergo FGM.¹⁰¹ In addition, in 2012 the Daughters of Charity were compelled to construct a brick wall around the shelter used to protect girls fleeing FGM after a group of men and boys broke into the shelter in an attempt to remove some of the girls and force them to undergo FGM.¹⁰² This state of affairs demonstrates that girls desperately need the protection not only of a shelter, but of law enforcement.

95. *Id.*

96. *Id.*

97. *Id.*; Email Communication with Koshuma Mtengeti, Executive Director, Children's Dignity Forum (Nov. 12, 2014) (on file with the author).

98. Email Communication with Koshuma Mtengeti, *supra* note 97

99. Interview with Koshuma Mtengeti, Executive Director, *supra* note 6.

100. Joseph Pesambili, *Consequences of Female Genital Mutilation on Girls' Schooling in Tarime, Tanzania: Voices of the Uncircumcised Girls on the Experiences, Problems and Coping Strategies*, 4 J. EDUC. & PRACTICE 109, 113–14 (2013).

101. *Id.*

102. *Construct a Wall Around St. Catherine School to Protect Girls in the TFGM Program*, DAUGHTERS OF CHARITY OF ST. VINCENT DE PAUL, <http://www.daughtersips.org/project-details/?projectId=10044-13&frmCategory=-1&frmCountry=TANZANIA&frmProjectStatus=-1> (last visited Nov. 7, 2014); *see* Interview with Koshuma Mtengeti, *supra* note 6; *see also* Interview with Naana Otoo-Oyortey, *supra* note 8 (FORWARD contributed funding for the wall).

In short, FGM in the Mara region is practiced openly and without sanction from law enforcement. Although open opposition to FGM is growing, organized groups of men and boys have used force to compel girls to undergo FGM. Because police have not enforced the law, this serious breach of girls' human rights continues with impunity.

ii. Why FGM continues: traditional leaders, politicians, and police as enablers of FGM

In order to understand why FGM continues and why more is not done to stop it, it is essential to understand that traditional leaders have a key social and economic role in perpetuating the cycle of FGM. In addition to deciding when the FGM season will take place and which clans will participate, the traditional leaders also select the circumcisers.¹⁰³ Traditional leaders and circumcisers then *share* the fees that parents pay to have their daughters cut, and therefore both leaders and circumcisers have a direct economic incentive to perpetuate FGM.¹⁰⁴ A study done by the Christian Council of Tanzania found that FGM was the main source of income for most circumcisers in the Mara region;¹⁰⁵ likewise, it is one of the main sources of income for traditional leaders as well.¹⁰⁶ According to one expert, traditional leaders spend the money they receive from FGM on indulging themselves through smoking, drinking, and the purchase of additional wives.¹⁰⁷ Accordingly, both the circumcisers and the traditional leaders have a vested interest in seeing the practice continue because both groups receive financial gains from FGM.

Politicians appear to be afraid to oppose FGM out of fear that traditional leaders will turn against them. One expert noted that during the FGM season in 2013, very little was done by the government to oppose FGM in the Mara region because with the 2015 elections approaching, there was "little appetite to antagonize the

103. Interview with Naana Otoo-Oyorley, *supra* note 82; Interview with Koshuma Mtengeti, *supra* note 6.

104. WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA, *supra* note 84, at 19; Interview with Koshuma Mtengeti, *supra* note 6; *see* Interview with Naana Otoo-Oyorley, *supra* note 82.

105. WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA, *supra* note 84, at 19.

106. Interview with Koshuma Mtengeti, *supra* note 6; Interview with Koshuma Mtengeti, Executive Director, Children's Dignity Forum, in London, U.K. (July 23, 2014).

107. Interview with Koshuma Mtengeti, *supra* note 6.

traditional leaders.”¹⁰⁸ In addition, in Kiteto district in the Manyara region in 2012, an FGM ceremony took place with a government official as the guest of honor.¹⁰⁹ A human rights report commented on this, noting that it was absurd to see an informed government official condoning “outdated traditional practices.”¹¹⁰

Similarly, police do not take action against FGM in order to avoid antagonizing FGM perpetrators.¹¹¹ They may be afraid that enforcing the law against FGM could spark violence in light of the way that men and boys are organized to enforce the FGM season. A human rights report has noted that during FGM ceremonies, members of the community armed with traditional weapons are normally present to protect the area and that these groups are a significant obstacle to police intervention.¹¹² A human rights fact-finding team visiting the Tarime district in 2010 found that “the area was surrounded by men armed with machetes as girls were helpless with blood flowing after they had undergone the rite of passage, very sad that even [the] police force failed to take any action.”¹¹³ Given the high status and tremendous influence that traditional leaders have in their communities, police may also be reluctant to antagonize these leaders for fear of losing their assistance in other matters, such as in identifying perpetrators of other crimes.

iii. Adapting the practice of FGM to work around enforcement of the law

In other parts of Tanzania, publicity about the law has driven the practice of FGM underground, with many communities practicing FGM in secret in order avoid detection.¹¹⁴ The law has also resulted in some communities mutilating infants and toddlers because they are too young to resist.¹¹⁵ Informants in the Manyara region have stated

108. See FORWARD, *supra* note 85; see also Interview with Naana Otoo-Oyortey, Executive Director, FORWARD, in London, U.K. (Jan. 20, 2014).

109. TANZANIA REPORT 2012, *supra* note 80, at 155.

110. *Id.*

111. TANZANIA REPORT 2010, *supra* note 84, at 172.

112. TANZANIA REPORT 2012, *supra* note 80, at 156.

113. TANZANIA REPORT 2010, *supra* note 84, at 172.

114. WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA, *supra* note 84, at 8–9.

115. LEGAL AND HUMAN RIGHTS CENTRE, TANZANIA HUMAN RIGHTS REPORT 2013, at 175 (2013), available at <http://www.humanrights.or.tz/downloads/tanzania-human-rights-report-2013.pdf> [hereinafter TANZANIA REPORT 2013]; see 28 TOO MANY, COUNTRY

that FGM is being performed on infants because it is easier to conceal the practice from those campaigning against FGM.¹¹⁶ The cutting of infants has also been reported in the Singida and Dodoma regions; in the Singida region, concerned health workers check for FGM during routine infant health check-ups.¹¹⁷ In addition, traditional midwives have performed FGM on women who have just given birth and who have not consented to the procedure.¹¹⁸ This practice has been documented in the Dodoma region¹¹⁹ and may occur in others.

2. FGM's Staying Power: FGM as a Prerequisite to Child Marriage

In FGM-affected communities, the procedure is a rite of passage marking the transition from childhood to adulthood. It is an essential prerequisite both to marriage and to adulthood more generally.¹²⁰ As a prerequisite to adulthood, girls face social exclusion if they refuse FGM.¹²¹ Circumcised girls will use name-calling and insults to stigmatize uncut girls, and they will refuse to associate with such girls.¹²² Uncut women are treated like perpetual children and are prohibited from participating in community life in important ways.¹²³ For instance, an uncut woman cannot collect firewood, cook food for community celebrations, or draw water from the same wells as

PROFILE: FGM IN TANZANIA 5 (2013) (noting an increase in the practice of FGM on girls less than one year old, from 28.4% to 31.7%).

116. LEGAL AND HUMAN RIGHTS CENTRE, TANZANIA HUMAN RIGHTS REPORT 2009, at 78 (2009), available at <http://www.humanrights.or.tz/downloads/tanzania-human-rights-report-2009.pdf> [hereinafter TANZANIA REPORT 2009].

117. LEGAL AND HUMAN RIGHTS CENTRE, TANZANIA HUMAN RIGHTS REPORT 2008, at 79–80 (2008), available at http://www.humanrights.or.tz/downloads/tanzania_human_rights_report_2008.pdf; see WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA, *supra* note 84, at 12–13.

118. TANZANIA REPORT 2009, *supra* note 116, at 80; see also TANZANIA REPORT 2013, *supra* note 115, at 175.

119. TANZANIA REPORT 2009, *supra* note 116, at 80.

120. WORLD VISION INTERNATIONAL, PROTECTING THE GIRL CHILD FROM FEMALE GENITAL MUTILATION 3 (2011), available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/HarmfulPractices/WorldVisionInternational.pdf> (citing DARA CARR, FEMALE GENITAL CUTTING: FINDINGS FROM THE DEMOGRAPHIC AND HEALTH SURVEYS PROGRAM (1997)).

121. WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA, *supra* note 84, at 18.

122. Nderingo Ngowi, *Noble Efforts to Combat FGM in Tarime*, TANZANIA DAILY NEWS (Feb. 10, 2014), available at <http://allafrica.com/stories/201402101104.html>; VOICES OF TARIME GIRLS, *supra* note 82, at 19.

123. WORKING TO END FEMALE GENITAL MUTILATION AND CUTTING IN TANZANIA, *supra* note 84, at 18.

circumcised women.¹²⁴ Such women are treated with disrespect and regularly experience verbal abuse and insults.¹²⁵ In some communities, they also have to be on the lookout for people who might grab them and force them to undergo FGM.¹²⁶

In contrast to this treatment, circumcised girls are celebrated and are considered ready for marriage. Female genital mutilation typically occurs around puberty, and once healed, girls are paraded to the community as “women” and eligible for marriage.¹²⁷ Girls are expected to be married off shortly after undergoing FGM—those not married within one to two years, generally, of undergoing FGM are thought to be undesirable or unlucky.¹²⁸ Men often refuse to marry women who have not undergone FGM.¹²⁹ Furthermore, this creates a feedback effect, further entrenching girls in a cycle of violence, poverty, and disempowerment, amplified by other harmful traditions such as polygyny and bride price, furthering the perception of women as property.¹³⁰ Men in communities that practice both FGM and child marriage often demand that a girl be circumcised before he marries her and will refuse to marry a girl that has not been cut.¹³¹

Given the deeply entrenched ties between FGM, child marriage, and post-marriage gender-based violence, it should be evident that measures to eradicate these practices must consider the interlinked nature of the practices and to eliminate them together. Interventions will be unsuccessful if they do not address these forms of gender-based violence in a holistic manner.

124. *Id.*

125. *Id.*

126. Ngowi, *supra* note 122.

127. See WORLD VISION INTERNATIONAL, *supra* note 120, at 3.

128. VOICES OF CHILD BRIDES, *supra* note 16, at 12–13, 18; UNICEF, TECHNICAL NOTE: COORDINATED STRATEGY TO ABANDON FEMALE GENITAL MUTILATION/CUTTING IN ONE GENERATION 13 (2007); see Gerry Mackie, *Female Genital Cutting: The Beginning of the End*, in FEMALE CIRCUMCISION IN AFRICA: CULTURE, CONTROVERSY, AND CHANGE 253 (Bettina Shell Duncan & Yiva Hernlund eds., 2001) (explaining the compounding relationships between social pressure, FGM, and child marriage).

129. *Child Marriage*, *supra* note 19.

130. Adjetei, *supra* note 13, at 167.

131. Tanya Barron, *FGM in Africa: Achieving Zero Tolerance*, PLAN (Feb. 2, 2013), <http://www.plan-uk.org/news/blogs/chief-executive/female-genital-mutilation-africa-zero-tolerance> (based on interviews with women and girls in Tanzania).

3. The Prevalence of Gender-Based Violence in Tanzania

The prevalence of child marriage (under age eighteen) in Tanzania is 37%, and 7% of girls in Tanzania are married before age fifteen.¹³² Tanzania has an estimated 782,000 women ages twenty to twenty-four who were first married before their eighteenth birthday.¹³³ In most parts of Tanzania, girls are expected to marry within two years of undergoing FGM, or they are considered bad luck.¹³⁴ Seeking to avoid this, parents often accept the first marriage proposal on behalf of their daughter, even to a much older man or for a low bride price.¹³⁵ Such an exchange may imbalance the power in the marriage; if the girl's family sends her to her in-laws with a small dowry, she may be treated as unwanted and essentially a slave. Generally, girls forced into child marriages experience higher rates of domestic abuse and oppression than their female counterparts who married with consent.¹³⁶

In Tanzania in the late 1990s, the prevalence of FGM was approximately 18%; over half of these girls experienced Type I (clitoridectomy), over a third experienced Type II (excision), and the remainder—5.2%—underwent Type III mutilation (infibulation).¹³⁷ A 2005 survey showed that the total number had moved closer to 14.6%, and that 9.1% of girls ages fifteen to nineteen were circumcised, in contrast to 16% of women ages thirty to forty.¹³⁸ The prevalence of FGM varies by region; in some regions, particularly urban areas, the prevalence is under 0.5%, such as in Mtwara,¹³⁹ Kagera, and Zanzibar.¹⁴⁰ In other regions, especially rural areas with

132. UNICEF, EVERY CHILD COUNTS: REVEALING DISPARITIES, ADVANCING CHILDREN'S RIGHTS 82 (2014), available at http://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014_In%20Numbers_28%20Jan.pdf.

133. *Id.*

134. VOICES OF CHILD BRIDES, *supra* note 16, at 13.

135. *Id.* at 17.

136. *Id.* at 18.

137. FGM Statistical Exploration, *supra* note 18, at 4, 40.

138. 28 TOO MANY, COUNTRY PROFILE: FGM IN TANZANIA 19 (2013), available at http://www.28toomany.org/media/uploads/tanzania_final_final_final.pdf.

139. *Female Genital Mutilation in Tanzania*, GERMAN SOC'Y FOR INT'L COOPERATION 1 (September 2011), <http://www.giz.de/fachexpertise/downloads/giz2011-en-fgm-tanzania.pdf>. [hereinafter FGM Tanzania]. Mtwara is in the Southern-most coastal corner, and Kagera is in the Northern-most inland corner, while Zanzibar and Pemba are off the Northern coast.

140. *Id.*

ethnic populations that practice FGM, the prevalence is as high as 81% in Manyara, 68% in Dodoma, and 55% in Arusha.¹⁴¹

Today, in Tanzania, approximately 18% of women ages fifteen to forty-nine are living with the consequences of FGM, although the prevalence is higher among older generations.¹⁴² Of females aged eighteen to twenty-four, 9.6% reported being circumcised, whereas 5.2% of females aged thirteen to seventeen reported being circumcised, suggesting that the practice is decreasing somewhat.¹⁴³

Certain factors make a girl more likely to become a victim of FGM in Tanzania. A mother's education level may be the most determinative factor in whether her daughter will undergo FGM. This is true in many African countries, but especially in Tanzania, where mothers with no education are almost 3.5 times as likely to have circumcised daughters as mothers with some education.¹⁴⁴ Globally, women who have a secondary education are 92% less likely to be married before eighteen than their counterparts who attended only primary school.¹⁴⁵ However, other forms of violence against women—aside from the pressure to marry early, punctuated by FGM—prevent women from going to school; girls may even fear being attacked on their way to school.¹⁴⁶ The resulting drop-out rates, in turn, also have a cyclical and detrimental effect on the low status of women in communities that practice child marriage and FGM.

Women living in rural areas in Tanzania are almost twice as likely to have circumcised daughters as women living in urban areas of Tanzania; in fact, this disparity may be understated, obscured by migration of circumcised girls from rural areas into cities.¹⁴⁷ The prevalence is greater among Christian groups,¹⁴⁸ even though Muslim

141. *Id.*

142. FGM Statistical Exploration, *supra* note 18, at 6–8.

143. UNICEF, VIOLENCE AGAINST CHILDREN IN TANZANIA: FINDINGS FROM A NATIONAL SURVEY 2009, at 87 (2011), available at http://www.unicef.org/media/files/VIOLENCE_AGAINST_CHILDREN_IN_TANZANIA_REPORT.pdf.

144. FGM Statistical Exploration, *supra* note 18, at 9.

145. UNICEF, EARLY MARRIAGE A HARMFUL TRADITIONAL PRACTICE: A STATISTICAL EXPLORATION 6 (2005), available at http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf.

146. Barron, *supra* note 131.

147. FGM Statistical Exploration, *supra* note 18, at 10. The ratio is one or higher in most countries where FGM is prevalent; only in Yemen and Nigeria is the rate of FGM higher in urban areas.

148. *Id.* at 10. The prevalence is also higher among Christian groups in Niger and especially Nigeria.

population groups are more likely to practice FGM in most other countries. This, however, is not necessarily a religious distinction but likely related to the distribution of ethnic groups across religions within the country, as the practice is based on ethno-cultural tradition rather than religion.¹⁴⁹ The age at which girls are cut also varies in Tanzania more than in other countries: of girls who undergo FGM, 28% are cut by the age of one year (this figure is 35% for girls in urban areas and 28% in rural areas), and 29% are not cut until they are at least thirteen years old (this figure is 19% for girls in urban areas, and 31% in rural areas).¹⁵⁰ Over 80% of girls who undergo FGM were cut by a traditional practitioner¹⁵¹ and 14% were cut by traditional midwives.¹⁵² Only in around 1% of all cases does the cutting involve a medical practitioner.¹⁵³

II. *THE STATE OF THE LAW*

Although Tanzania has long been a party to a range of international human rights treaties and agreements that explicitly or implicitly proscribe or discourage child marriage and FGM, Tanzania has not fully measured up to its obligations to curtail these practices through domestic law, policy, and enforcement. Discriminatory provisions remain on the books, policymakers refuse to enact measures of reform, and judicial and law enforcement officers are unable to protect victims from these practices even when the law is on their side. This Part of the Article identifies Tanzania's international commitments, addresses applicable domestic law, and provides an analysis of how neither adequately responds to the relevant practices of GBV.

A. *International Law*

1. *Treaties*

Child marriage and FGM contravene multiple human rights treaties and agreements to which Tanzania is a party. Among others,

149. *Id.* at 10–11.

150. FGM Tanzania, *supra* note 139, at 1 (based on data from 2008–2011).

151. POPULATION REFERENCE BUREAU, FEMALE GENITAL MUTILATION/CUTTING: DATA AND TRENDS 8 (2005), available at <http://www.prb.org/pdf10/fgm-wallchart2010.pdf>.

152. FGM Tanzania, *supra* note 139, at 2.

153. FGM STATISTICAL EXPLORATION, *supra* note 18; see also FGM Tanzania, *supra* note 139, at 2.

Tanzania is a party to the International Covenant on Civil and Political Rights (“ICCPR”),¹⁵⁴ the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”),¹⁵⁵ the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”),¹⁵⁶ the Convention of the Rights of the Child (“CRC”),¹⁵⁷ and the African Charter¹⁵⁸ and its Maputo Protocol.¹⁵⁹ Additionally, although Tanzania has not ratified the Convention Against Torture (“CAT”),¹⁶⁰ the widespread global acceptance of CAT makes its provisions noteworthy here. The following is a list of some applicable provisions of these treaties that are systematically violated by Tanzania’s allowance of child marriage and female genital mutilation:

ICCPR

- ICCPR Art. 23, ¶ 3 (no marriage shall be entered without consent);
- ICCPR Art. 24 ¶ 1 (children’s right to protection as minors);

ICESCR

- ICESCR Art. 1, ¶ 1 (right to freely pursue economic, social, and cultural development);
- ICESCR Art. 3 (equal rights for men and women in economic matters);
- ICESCR Art. 13, ¶ 1-4 (rights to education);

154. International Covenant on Civil and Political Rights (“ICCPR”), Dec. 16, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171. Tanzania acceded to the ICCPR in 1976.

155. International Covenant on Economic, Social and Cultural Rights (“ICESCR”), Dec. 16, 1966, 6 I.L.M. 360, 993 U.N.T.S. 3. Tanzania acceded to the ICESCR in 1976.

156. Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), Dec. 18, 1979, 1249 U.N.T.S. 13. Tanzania ratified CEDAW in 1985.

157. Convention on the Rights of the Child (“CRC”), Nov. 20, 1989, 1577 U.N.T.S. 3. Tanzania ratified the CRC in 1991.

158. African Charter on Human and Peoples’ Rights, Oct. 21, 1986, 21 I.L.M. 58 [hereinafter Banjul Charter]. Tanzania ratified the Banjul Charter in 1984.

159. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, July 11, 2003, *available at* http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf [hereinafter Maputo Protocol]. Tanzania ratified the Maputo Protocol in 2007.

160. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), Dec. 10, 1984, 1465 U.N.T.S. 85. One hundred fifty-seven countries are parties to the CAT.

- ICESCR Art. 15, ¶ 1 (right to take part in cultural life);

CEDAW

- CEDAW Art. 5 (State duty to modify social and cultural patterns of conduct that subjugate one sex);
- CEDAW Art. 16 (State duty to eliminate discrimination in marriage; the marriage of a child shall have no legal effect);

CRC

- CRC Art. 6(2) (State duty to ensure survival and development of the child);
- CRC Art. 19(1) (State duty to eliminate violence to children);
- CRC Art. 32(1) (right of children to be free from economic exploitation);

CAT

- CAT Art. 16 (State obligation to prevent cruel, inhuman, or degrading treatment);

The African Charter

- African Charter Art. 6 (right to liberty and security of person);
- African Charter Art. 17, ¶ 1 (right to education);
- African Charter Art. 29 (right to harmonious development of family);

The Maputo Protocol

- African Charter Maputo Protocol Art. 2 (State commitment to modify harmful traditional practices);
- African Charter Maputo Protocol Art. 5 (prohibition of all practices that negatively affect the human rights of women); and
- African Charter Maputo Protocol Art. 6 (prohibition on non-consensual marriage, the minimum age of marriage for women is eighteen years).

2. The Cotonou Agreement: Conditioning Economic Aid on the Protection of Human Rights

The Cotonou Agreement, a development partnership between the European Union and the African, Caribbean, and Pacific (“ACP”) countries, aims to reduce and eradicate poverty, promote sustainable development, and integrate the ACP countries into the world economy.¹⁶¹ Specifically, several provisions specify financial, trade, and technical cooperation in order to achieve goals such as ending female genital mutilation and generally improving the status of women and girls:

Cotonou Agreement Art. 25(1)(c) (cooperation aimed at improving reproductive health, primary health care, family planning, and prevention of female genital mutilation);

Cotonou Agreement Art. 26(a) (cooperation aimed at protecting rights of children, particularly girls); and

Cotonou Agreement Art. 31 (cooperation to help improve equal participation of men and women in all spheres of life).

Although it appears that the government of Tanzania has not taken advantage of potential cooperation through the Cotonou Agreement to support enforcement efforts on ending child marriage and female genital mutilation, it is possible that stronger incentives—or rather, disincentives—might have an impact on the government’s policy decisions. For example, if the World Bank or USAID were to condition grants on some measure of progress towards elevating women’s status, this may galvanize progressive efforts in recipient countries. Indeed, as will be discussed in the next part, Tanzania’s domestic law already contains many protections for women and provisions designed to prevent child marriage and FGM—it is the *actual prevalence* of these forms of violence that remains far below international standards.

161. Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part, June 23, 2000 O.J. 317/3, 5 [hereinafter Cotonou Agreement].

B. Domestic Law

1. The Tanzanian Legal System

Tanzania has a plural legal system in which constitutional, statutory, customary, and Islamic law all operate simultaneously.¹⁶² This multi-faceted structure reflects Tanzania's complex colonial history, particularly its occupation by Great Britain following World War I.¹⁶³ While Great Britain imported British common law to govern many areas of law, it retained African customary and religious law for certain areas of law, most notably family law disputes between African litigants.¹⁶⁴ After Tanzania gained independence in 1961, it maintained this bifurcated system, permitting customary and religious law to govern areas like family law except where specifically overridden by statutory law.¹⁶⁵ As a result, customary and religious law—which often afford women fewer rights and protections than statutory law¹⁶⁶—remain important and entrenched in Tanzania, and may render statutory provisions promoting women's rights ineffective in practice.

2. Constitutional Provisions

Many of Tanzania's constitutional provisions compel Tanzania to take steps to eliminate child marriage and FGM. Because the “object of th[e] Constitution is to facilitate the building of [Tanzania] as a nation of equal and free individuals,” it *obligates* the state authority to direct its policies and programs towards ensuring that “human dignity and other human rights are respected and cherished,” and that the government “accord equal opportunities to . . . men and women alike without regard to their colour, tribe, religion, or station in life.”¹⁶⁷ It also asserts that all humans are born free and entitled to

162. Anne Daugherty Leiter, *Overview of History and Legal Systems: Ghana, Tanzania, and Uganda*, in *VOICES OF AFRICAN WOMEN: WOMEN'S RIGHTS IN GHANA, UGANDA, AND TANZANIA* xv, xv (Johanna Bond ed., 2005).

163. *Id.*; see Bart Rwezaura, *Tanzania: Building a New Family Law Out of a Plural Legal System*, 33 U. LOUISVILLE J. FAM. L. 523, 523–24 (1995).

164. Leiter, *supra* note 162, at xv.

165. *Id.*

166. *Id.* at xvi.

167. CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA 1977, art. 9(a), 9(g), available at <http://www.judiciary.go.tz/downloads/constitution.pdf>. Notably the government must also similarly ensure that “the laws of the land are upheld and enforced,” *id.* art. 9(b), that “human dignity is preserved and upheld in accordance with the spirit of the Universal

recognition, respect, and equal protection before the law.¹⁶⁸ Significantly, the constitution's article ensuring equality before the law originally did not mention gender discrimination, but it was amended in 2000 to explicitly prohibit discrimination on the basis of sex.¹⁶⁹ These provisions all require the Tanzanian government to take appropriate measures to end practices of GBV and fulfill their international commitments to protect human rights. However, as a result of statutory loopholes and poor enforcement, as discussed below, the government rarely makes good on these promises.

3. Legislative Provisions and Policy Responses

A complex web of legislative provisions governs marriage, the family, and children in Tanzania. Reflecting the legacy of colonial rule, discussed in Part II.B.1, the current legal landscape includes statutory, religious, and customary law. Although some of these laws are consistent with Tanzania's international and constitutional obligations to women and children, others are not. Where these laws overlap and occasionally conflict, choice of law rules leave much discretion to local judges to determine which law governs. As a result, sophisticated parties—usually men—may be able to use these ambiguities to the disadvantage of women and children, frustrating the operation of those laws designed to protect women and children and to promote equality before the law.¹⁷⁰

i. The law of marriage act

The primary instrument governing marriage and the family is the Law of Marriage Act (“Marriage Act”).¹⁷¹ Enacted in 1971, six years before the constitution and amidst dramatically changing political and

Declaration of Human Rights,” *id.* art. 9(f), and that “all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism are eradicated.” *Id.* art. 9(h). The Constitution also ensures all citizens their “fundamental human rights.” *Id.* art. 29(1).

168. *Id.* art. 12(1)–12(2), 13(1).

169. Ernest T. Mallya, *The State of Constitutional Development in Tanzania–2000*, in CONSTITUTIONALISM IN EAST AFRICA: PROGRESS, CHALLENGES AND PROSPECTS IN 2010 (Issa G. Shivji ed., 2000), available at <http://www.kituoachakatiba.org/sites/default/files/publications/Constitutionalism%20in%20East%20Africa%202000.pdf>.

170. Rwezaura, *supra* note 163, at 525 (citing the example of men who use overlapping legal systems to shield them from their obligations to their customary law wives by claiming their customary law marriages were invalid).

171. Law of Marriage Act (1971) (Tanz.).

economic circumstances,¹⁷² the Marriage Act aimed to standardize the rights accorded to married couples across Tanzania's legal systems and to rectify inequalities in marriage.¹⁷³ However, the Marriage Act has largely failed to live up to its dual purposes because it both permits the continued application of customary and Islamic law, and retains facially discriminatory provisions regarding such issues as the age of and consent to marriage.¹⁷⁴

First, with respect to the age of marriage, the Marriage Act explicitly differentiates between males and females, setting the minimum age of marriage for males at eighteen years and females at fifteen years.¹⁷⁵ Additionally, the Marriage Act allows the court to grant permission for children of both genders to marry as young as fourteen years where "there are special circumstances that make the marriage desirable."¹⁷⁶ Furthermore, where the parties subscribe to particular religious or customary traditions, the Marriage Act permits marriage to be conducted in religious or customary form, allowing some children to be married at even younger ages.¹⁷⁷ As discussed in Part II.B.4., these rules usually permit girls to marry younger than boys.

Second, with respect to consent to marriage, although the Marriage Act defines marriage as a "voluntary union of a man and a woman,"¹⁷⁸ requiring consent that is "freely and voluntarily given by each of the parties thereto,"¹⁷⁹ the Marriage Act requires a female child to obtain the consent of her father, or, if he is dead, her mother or her guardian, to marry.¹⁸⁰ The Marriage Act does not provide that a

172. Salma Maulidi, *Rethinking Property: Women and Matrimonial Property Rights in Tanzania*, in *VOICES OF AFRICAN WOMEN: WOMEN'S RIGHTS IN GHANA, UGANDA, AND TANZANIA* 232, 232 (Johanna Bond ed., 2005). Newly-independent Tanzania was in the process of adopting post-colonial African socialism and creating a new government.

173. Tamar Ezer et al., *Child Marriage and Guardianship in Tanzania: Robbing Girls of Their Childhood and Infantilizing Women*, 7 *GEO. J. GENDER & L.* 357, 360–61 (2006) (citing UNITED REPUBLIC OF TANZANIA, GOVERNMENT'S PROPOSALS ON UNIFORM LAW OF MARRIAGE (GOVERNMENT PAPER NO. 1 OF 1969), para. 28 (1969)); Leiter, *supra* note 162, at xv, xxvi.

174. See Ezer et al., *supra* note 173, at 360–61.

175. Law of Marriage Act, *supra* note 171, § 13(1).

176. *Id.* § 13(2).

177. *Id.* § 25(1).

178. *Id.* § 9(1).

179. *Id.* § 16(1).

180. *Id.* § 17(1). Prior to the passage of the Law of the Child Act in 2009, discussed in Part II.C. *infra*, this provision stated that "in any other case, or if all persons are dead, [the marriage of a female under age 18] shall not require consent," suggesting that the female

parent or guardian's consent may substitute for a male child's consent.¹⁸¹

Violations of the age of marriage and consent requirements of the Marriage Act may render the purported marriage void or voidable. Under section 38 of the Marriage Act, a ceremony purporting to be a marriage is *void* if either party is under the minimum age of marriage or if the consent of either party was not freely and voluntarily given.¹⁸² By contrast, under section 39 of the Marriage Act, a marriage is merely *voidable*—rather than void—if the wife had not attained the age of eighteen years at the time of marriage and consent by her father or guardian had not been given.¹⁸³ In other words, if a woman is married between ages fifteen and eighteen without consent, the marriage stands unless it is annulled by the court.

The cumulative effect of these provisions permits widespread and systematic discrimination against female children. It allows girls to marry younger than age eighteen—the age at which persons in Tanzania can vote, enter a contract, and generally undertake the obligations of adulthood—and instead permits their parents' or the court's consent to substitute for a girl's own freely-given consent.¹⁸⁴ Furthermore, it subjects those who violate even these permissive standards to escape with minimal consequences in cases where the requisite age or consent has not been obtained—but only in the case of girl children. It also allows some communities to practice marriage without these requirements based on their religious or customary traditions. Thus, although the Marriage Act purported to reform and equalize the laws of marriage for women and men, it achieved neither of its goals.¹⁸⁵

child's consent itself was not required. *Id.*; see The Law of the Child Act, pmb. (2009) (Tanz.) [hereinafter Law of the Child].

181. Law of Marriage Act, *supra* note 171, § 13(2).

182. *Id.* § 38(1). The ceremony is also void if one or both of the parties is not present, unless the witnesses before whom the party gave consent are present at the ceremony. *Id.* §§ 13(1)(f), 13(2).

183. *Id.* § 39(c). A voidable marriage is valid unless annulled by court order. *Id.* § 40. However, the court only has power to annul a voidable marriage because the intended wife's age was below eighteen and the requisite consent was not obtained if the wife is still eighteen when proceedings are filed. *Id.* § 96. In addition to the underage wife, a parent of wife under eighteen can file suit for annulment on the basis that the requisite consent was not obtained. *Id.* § 97.

184. Ezer et al., *supra* note 173, at 442.

185. *Id.* at 361.

ii. The sexual offenses special provisions act (“SOSPA”)

The Tanzanian Parliament enacted the *Sexual Offences Special Provisions Act* in 1998 to fulfill Tanzania’s obligations under international law and the Tanzanian Constitution to guarantee equality for women and to protect women and children from sexual and other violence.¹⁸⁶ However, like the Marriage Act, SOSPA has not lived up to expectations: it fails to criminalize certain serious acts of sexual violence, and poor enforcement hinders its implementation with respect to proscribed conduct.¹⁸⁷

For example, SOSPA’s narrow definition of rape leaves married women and girls largely unprotected from sexual violence by their husbands.¹⁸⁸ Under SOSPA, a girl is a female under age eighteen, and a woman is a female above age eighteen; likewise, a boy is a male under age eighteen and a man is a male above age eighteen.¹⁸⁹ SOSPA defines rape as sexual intercourse between a male of any age and (a) a girl or woman who is not his wife without her consent, or (b) a girl, with or without her consent, unless she is his wife who is age fifteen or older.¹⁹⁰ By this definition, a married girl or woman of age fifteen or older cannot be raped by her husband; intercourse between them without consent is not considered rape.¹⁹¹ Furthermore, intercourse between a man and a girl, which would otherwise be considered statutory rape and illegal with or without the girl’s consent, is legalized with respect to child brides ages fifteen to eighteen.¹⁹²

186. SOSPA, *supra* note 3, at pmb1.; Scolastica Jullu, *Sexual Violence Against Women in Tanzania: A Case Study on the 1998 Sexual Offences (Special Provision) Act No. 4*, in *VOICES OF AFRICAN WOMEN: WOMEN’S RIGHTS IN GHANA, UGANDA, AND TANZANIA* 117, 117 (Johanna Bond ed., 2005).

187. USAID, *GENDER-BASED VIOLENCE IN TANZANIA: AN ASSESSMENT OF POLICIES, SERVICES, AND PROMISING INTERVENTIONS* 13 (2008), available at http://pdf.usaid.gov/pdf_docs/PNADN851.pdf [hereinafter *GENDER-BASED VIOLENCE*]; Jullu, *supra*, note 186, at 117.

188. *GENDER-BASED VIOLENCE*, *supra* note 187, at 13–14.

189. SOSPA, *supra* note 3, § 3.

190. *Id.* §§ 5(a), 5(e). Furthermore, this provision defines rape as exclusively perpetrated by males against females, leaving potential male rape victims entirely unprotected and potential female perpetrators unpunished.

191. Indeed, when Parliament debated SOSPA, a provision prohibiting marital rape was included initially, but it was eliminated following a contentious debate. Jullu, *supra* note 186, at 123 n.42.

192. SOSPA does not state explicitly that a man who is permitted to marry a girl younger than age fifteen must wait to have intercourse with her until she reaches age eighteen, but that is the implication of the statute. *See generally* SOSPA, *supra* note 3.

Read in combination with the Marriage Act, in a stunning incursion upon a girl's autonomy, when a girl's parents, her guardian, or the court consents to her marriage, their consent also substitutes for the girl's consent to sex with her husband at an age where she is not otherwise considered able to consent to sex.

Although SOSPA has many shortcomings, it takes some important steps towards protecting women from sexual violence. For example, SOSPA explicitly criminalizes FGM performed on girls under age eighteen as "cruelty to children."¹⁹³ A person who has the custody, charge, or care of a person under eighteen who causes her to experience FGM is liable to imprisonment for five to fifteen years or to a fine not exceeding 300,000 shillings or both, and may be ordered to pay compensation to the victim of an amount ordered by the court.¹⁹⁴ This leaves open the possibility of FGM for women over age eighteen—which is problematic in communities where women found to have "skipped" FGM in their early years might later be forced to undergo the practice¹⁹⁵—but at the very least proscribes the performance of FGM upon children. However, an important limitation on SOSPA's effectiveness is the fact that, as indicated above, only persons having custody, charge, or care of a person under eighteen can be prosecuted under its anti-FGM provision. This means that SOSPA can essentially hold only parents and guardians accountable for FGM. Remarkably, it provides no mechanism to prosecute those who carry out FGM or the traditional leaders who promote it.

In addition, poor enforcement limits SOSPA's effectiveness, even with respect to proscribed conduct. First, in spite of recent efforts to improve the police's response to GBV, police in general lack sufficient knowledge of SOSPA and have not received adequate training about how to deal with victims.¹⁹⁶ Many police have a discriminatory attitude towards victims of sexual violence or tend to identify with the perpetrator.¹⁹⁷ To combat this problem, since 2005, women's rights organizations like the Tanzanian Women Lawyers'

193. *Id.* § 21.

194. *Id.* §§ 21(1)–(2).

195. HUMAN DEV. TRUST, GAPS IN POLICIES AND LAWS THAT PERPETUATE GENDER BASED VIOLENCE IN TANZANIA 6–79 (2011), available at http://www.humandevtrust.org/hdt/resources/doc_download/112-gaps-in-policies-and-laws-that-perpetuate-gbv-in-tanzania.html [hereinafter GAPS IN POLICIES AND LAWS].

196. GENDER-BASED VIOLENCE, *supra* note 187, at 20; Jullu, *supra* note 186, at 125–26.

197. Jullu, *supra* note 186, at 125–26.

Association and the Tanzania Police Female Network have advocated for the implementation of gender units in police stations and specialized GBV training for police officers.¹⁹⁸ In September 2008, gender units began operating in all eighteen police stations in Dar es Salaam, and as of November 2008, 180 police officers had been specially trained in responses to GBV.¹⁹⁹ Although this is by no means a small feat, as of 2011, gender units had not yet been established in the remaining 365 police stations throughout the country, and it remains to be seen whether these units will be expanded and whether they will have a significant effect on the response to GBV beyond Dar es Salaam.²⁰⁰

Second, victims lack access to vital services.²⁰¹ There is a shortage of medical, legal aid, and protective services available, and many victims of sexual violence lack the requisite power and mobility to take advantage of those services that exist.²⁰²

Third, victims lack access to justice.²⁰³ SOSPA is available only in English. Consequently, magistrates not conversant in English may be unable to apply its provisions.²⁰⁴ As a result, these judges—who have the power to adjudicate rape and other cases—continue to apply customary law, which, as discussed in Part II.B.4., considerably disadvantages women.²⁰⁵ Similarly, women who cannot access the formal justice system may turn to customary dispute resolution, which also disfavors women.²⁰⁶

iii. Child development policy

The Tanzanian government recognized the need to reform its laws affecting children as early as 1996, when the Ministry of Community Development, Women's Affairs, and Children adopted the Child Development Policy.²⁰⁷ The policy acknowledges that

198. *Id.*

199. *Id.*

200. GAPS IN POLICIES AND LAWS, *supra* note 195, at 8–9.

201. GENDER-BASED VIOLENCE, *supra* note 187, at 16–20; Jullu, *supra* note 186, at 125.

202. GENDER-BASED VIOLENCE, *supra* note 187, at 16–20; Jullu, *supra* note 186, at 125.

203. GENDER-BASED VIOLENCE, *supra* note 187, at 19; Jullu, *supra* note 186, at 124.

204. Jullu, *supra* note 186, at 124. Language is a major barrier for victims as well, particularly those who are undereducated or illiterate, as all court documents are prepared in English. GENDER-BASED VIOLENCE, *supra* note 187, at 19.

205. Jullu, *supra* note 186, at 124.

206. *Id.* at 125.

207. *See, e.g.*, UNITED REPUBLIC OF TANZANIA, MINISTRY OF COMMUNITY DEVELOPMENT, WOMEN'S AFFAIRS, AND CHILDREN (1996), *available* at <http://>

inconsistencies in laws concerning the status of children lead to the treatment of children as adults and the deprivation of those children's rights.²⁰⁸ It cites as an example the Marriage Act's provisions allowing girls to marry as young as age fifteen, in contrast with the UN Convention on the Rights of the Child, which Tanzania ratified in 1992 and which stipulates that persons below age eighteen are children.²⁰⁹ It also recognizes that a lack of community awareness of children's rights, as well as weak enforcement of laws protecting children, contributes to the denial of children's rights.²¹⁰

The policy acknowledges that gender discrimination disproportionately harms girl children in Tanzania, stating explicitly that "[s]ociety values boys more than girls."²¹¹ The policy cites several issues that threaten girls' survival, protection, and development: the expectation that a girl will become responsible for reproduction and family care at a young age; gender discrimination in education; a heavier domestic workload as compared to a boy child; and "female genital mutilation, which endangers her health, and even causes her to be infected by HIV/AIDS, early pregnancy, and mistreatment such as rape, defilement, harassment, molestation, and abuse."²¹²

Recognizing Tanzania's obligation to protect children's rights under the Convention on the Rights of the Child, the policy outlines several steps Tanzania should take to guarantee children's rights, including to educate and mobilize the community about children's rights, to properly enforce the laws protecting children, and "[t]o revisit, review, and abandon outdated laws . . . pass appropriate laws, and take strong action against violators of children's rights."²¹³ More specifically, the policy calls for measures to protect children from acts aimed at curtailing their studies, and proposes that legal measures should be taken against anyone responsible for a child dropping out of school.²¹⁴ It also urges efforts to encourage communities to abandon

www.tzonline.org/pdf/childdevelopmentpolicy.pdf [hereinafter CHILD DEVELOPMENT POLICY]. Note that this Ministry has since been renamed the Ministry of Community Development, Gender, and Children.

208. *See id.* § 12.

209. *Id.*

210. *Id.*

211. *Id.* §§ 15–16.

212. *Id.* §§ 15, 16.

213. *Id.* §§ 20, 233–25, 89.

214. *See id.* §§ 23(v), 72.

harmful traditional practices.²¹⁵ It states that children need protection from “gender abuse and cruelty,” including female genital mutilation and “forced early marriage.”²¹⁶ However, the policy does not include specific plans for implementation, and harmful practices continue today, nearly twenty years later.

The Child Development Policy was revised in 2008, and the revision advocates a position against early marriage.²¹⁷ Specifically, it recommends that the government and NGOs undertake an education campaign warning the public about the dangers of early marriage, including the human rights violations it entails.²¹⁸ In addition, the revised Policy recommends that the government amend the age of marriage in the 1971 Law of Marriage Act, in light of the international conventions that consider children’s rights.²¹⁹ Although the policy itself does not provide more specific guidance, the clear implication is that the age of marriage should be eighteen. This is because the Convention on the Rights of the Child defines a child as anyone below the age of eighteen,²²⁰ the Maputo Protocol states that the minimum age of marriage for women should be eighteen years,²²¹ and CEDAW states that the marriage of a child shall have no legal effect.²²²

iv. Law of the child act

The Tanzanian Parliament enacted the *Law of the Child Act* (“the Child Act”) in 2009 in order to reform and consolidate laws relating to children, to set out the rights of the child, and to promote children’s welfare “with a view to giving effect to international and regional conventions on the rights of the child.”²²³ Children’s rights advocates

215. *See id.* §§ 23(x), 75.

216. *Id.* § 86.

217. UNITED REPUBLIC OF TANZANIA, MINISTRY OF COMMUNITY DEVELOPMENT, GENDER, AND CHILDREN, CHILD DEVELOPMENT POLICY TANZANIA 19 (2d ed. 2008) (on file with the author).

218. *See id.*

219. *See id.*

220. Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3.

221. Maputo Protocol, *supra* note 159, art. 6(b).

222. Convention on the Elimination of All Forms of Discrimination Against Women art. 16(2), Dec. 18, 1979, 1249 U.N.T.S. 13.

223. Law of the Child, *supra* note 180, at pmbl.

praised the law as “a huge step forward” for children in Tanzania.²²⁴ However, the Child Act failed to remedy several important problems, and it remains to be seen what practical effects this law will achieve.

The Child Act identifies and expands the range of children’s rights. The act defines a child as a person under age eighteen and mandates that the “best interest of the child” be “the primary consideration in all actions concerning a child” undertaken by public or private institutions.²²⁵ It declares that “[e]very child shall have the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents,”²²⁶ and imposes a series of duties on a child’s parents or guardians, including ensuring the child’s right to “food; shelter; clothing; medical care including immunization; education and guidance; liberty; and [a] right to play and leisure.”²²⁷ Furthermore, it prohibits any person from “depriv[ing] a child access to education, immunisation, food, clothing, shelter, health and medical care, or any other thing required for his development.”²²⁸

The Child Act aims specifically to protect children from violence and other abuse. It requires parents or guardians to protect children “from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression.”²²⁹ It forbids any person from “subject[ing] a child to torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child,”²³⁰ and prohibits sexual exploitation of children.²³¹ The act obliges local governments to monitor and safeguard the well-being of vulnerable children,²³² and it creates a general duty for community members to report the infringement of children’s rights.²³³

The Child Act also includes specific measures to protect female children. It prohibits discrimination against a child on the basis of gender and other characteristics, ensuring that the aforementioned

224. Sara Cameron, *Tanzania Passes Landmark Law of the Child*, UNICEF (Nov. 6, 2009), http://www.unicef.org/infobycountry/tanzania_51662.html (quoting UNICEF Representative in Tanzania Heimo Laakkonen the day the Law of the Child Act was enacted).

225. Law of the Child, *supra* note 180, §§ 4(1–2).

226. *Id.* § 9(1).

227. *Id.* § 8(1).

228. *Id.* § 8(2).

229. *Id.* § 9(3)(a).

230. *Id.* § 13(1).

231. *Id.* § 83.

232. *Id.* § 94.

233. *Id.* § 95.

duties apply to parents of daughters as well as parents of sons.²³⁴ The act criminalizes FGM, declaring that a person who “perform[s] or cause[s] to be performed female genital mutilation to a child,” is liable to a fine of not less than 500,000 Tanzanian shillings, or imprisonment of six months, or both.²³⁵ The Child Act also amends the *National Education Act* to proscribe “any person” from “impregnat[ing] a pupil of primary or secondary school,” punishable by fines or imprisonment.²³⁶ It furthers protection of all children by imposing an obligation on “every teacher, craftsman, or trainer . . . to report evidence or concerns of abuse perpetrated on [a] child . . . to the appropriate social welfare officer.”²³⁷ These provisions are particularly important because of the strong correlation between early pregnancy, early marriage, and low levels of education.²³⁸

However, although the Child Act also amends certain provisions of the Marriage Act, it purposely fails to address the inherent contradiction between the Child Act’s protections for all children and the Marriage Act’s provisions allowing child marriage. Civil society organizations, legal experts, academics, and children advocated to include a ban on child marriage in the Child Act during public hearings before passage of the bill, but conservative forces blocked these efforts.²³⁹ This failure represents a dearly missed opportunity to address inequality for girls, and may render other elements of the act, such as the prohibition of FGM or required educational opportunities for girls, ineffective.

234. *Id.* § 5(2).

235. *Id.* § 158. Note that this financial penalty is lower than the punishment imposed for cruel, inhuman, or degrading treatment of children, which may result in five million shillings penalty. *See id.* § 14.

236. *Id.* § 170 (amending National Education Act of 1978, as amended in 1995, § 59–60).

237. *Id.* § 169 (amending National Education Act of 1978, as amended in 1995, § 59A).

238. NEW INSIGHTS ON PREVENTING CHILD MARRIAGE, *supra* note 23, at 8, 10 (Studies “strongly show that higher levels of schooling for girls decrease[s] their risk of child marriage.” The longer girls can stay in school, the less likely it is that they will be married before eighteen, and as soon as girls do get married, they are more likely to drop out of school. In a study that surveyed forty-two countries with high rates of child marriage, researchers found women in Tanzania who attended secondary school were 92% less likely to be married before the age of eighteen).

239. Cameron, *supra* note 224.

4. Customary and Islamic Law

In spite of their many shortcomings, the statutes and policies described above represent a marked improvement of the status of women and girls in Tanzania over the past few decades. The continued application of customary and Islamic law in certain circumstances, particularly those related to family law, however, perpetuates longstanding gender inequality and harmful practices like child marriage and FGM.

i. Customary law

Tanzanian customary law derives from two sources. First, there is the set of customary law rules codified in 1963 in Local Customary Law Declaration Orders.²⁴⁰ Created by the British colonizers and adopted post-independence through the Unification of Customary Law Project, these orders constitute “a kind of synthesized restatement of the law for patrilineal peoples . . .” and apply to the communities specified therein, which constitute about 80% of the Tanzanian population.²⁴¹ Second, unwritten customary laws address areas not covered by written rules.²⁴² “Judges and community leaders ascertain these rules through expert and oral opinions, scholarly works, and other authoritative sources,” including local elders and lay assessors.²⁴³ These unwritten rules govern the remaining 20% of the population not governed by the codified rules.²⁴⁴

Both codified and unwritten customary law incorporate rules that disadvantage women and permit harmful practices like child marriage to continue.²⁴⁵ For example, the codified customary Law of Persons, which governed matrimonial affairs before the enactment of the Marriage Act,²⁴⁶ permitted girls to marry as young as puberty with the consent of her father or her father’s representative.²⁴⁷ The girl’s own consent is not mentioned.²⁴⁸ The Law of Persons also provides for the payment of bride price, or “payment in the form of cattle or other

240. Maulidi, *supra* note 172, at 235.

241. *Id.*

242. *Id.*

243. *Id.* at 235 n.21.

244. *Id.* at 235–36.

245. See Leiter, *supra* note 162, at xvi.

246. Maulidi, *supra* note 172, at 235 n.19.

247. Local Customary Law (Declaration) Order, Government Notice (GN) 279/1963, Laws of Persons [hereinafter GN 279], rules 2–4; Ezer et al., *supra* note 173, at 360 n.4.

248. GN 279, *supra* note 247, at rules 2–4.

property from the bridegroom to the bride's father or his representatives . . . given so that the bridegroom can marry a daughter of the family."²⁴⁹ Such payments enable families to commodify girls and women, effectively trading them for livestock or other property. Although payment of bride price is not required to establish a marriage under customary law,²⁵⁰ the Law of Persons details extensively the rules for such payments and the requirements for their return if a marriage breaks down or ends in divorce.²⁵¹ If a family has accepted bride price payments, these refund requirements can serve to lock a girl or woman into a marriage if her family cannot afford to repay her bride price. Codified customary law does not mention FGM,²⁵² but such law gives a husband considerable power over his wife's sexuality—for example, regular refusal by a wife to have sex with her husband for a reason unrelated to her body is a grounds for divorce, although the same is not true of a husband's refusal to have sex with his wife.²⁵³

Furthermore, application of customary law is subjective and inconsistent.²⁵⁴ Courts rely on lay people from the community, usually men who do not have progressive attitudes towards women, to discern the law.²⁵⁵ Women had no right to speak in traditional courts,²⁵⁶ and women continue to lack a strong voice in these proceedings.

ii. Islamic law

Islamic law in Tanzania is codified in the 1967 *Islamic Law (Restatement) Act* ("the Islamic Restatement Act").²⁵⁷ Like the Customary Law Declaration Orders, the Islamic Restatement Act

249. *Id.* at rule 1.

250. *Id.* at rule 5.

251. *Id.* at rules 37–46, 52–61.

252. *See generally id.*

253. *Compare id.* at rule 153 (titled "Denials of Rights of a Husband and Wife"), *with id.* at rule 168, (titled "*Ignoring the Responsibilities of a Husband and Wife*") and stating that "[I]f a husband refuses to have sex with his wife for a long time, the court shall investigate all that is relevant to the case and if the court finds that his refusal was intentional, then the court shall grant a decree of divorce.").

254. Maulidi, *supra* note 172, at 236.

255. *Id.*

256. Jullu, *supra* note 186, at 119.

257. Statements of Islamic Law, Government Notice (GN) 222/1967 [hereinafter Islamic Restatement Act].

serves to synthesize Islamic laws related to marriage and the family and apply to persons who follow those religious practices.²⁵⁸

Roughly 36% of the Tanzanian population identifies as Muslim.²⁵⁹ Tanzanian Muslims, like the global Muslim population, are divided into distinct branches, or “schools,” that follow different theologies and practices.²⁶⁰ The two main branches are Sunni and Shiah, which are further sub-divided into many smaller schools.²⁶¹ Approximately 41% of Tanzanian Muslims are Sunni, which includes the Shafi’i and Hanafi schools; 20% are Shiah, which includes the Ithna’ Asheri and Ismaili schools; and 15% are Ahmadiyyah, a smaller branch of Islam which is neither Sunni nor Shiah.²⁶² Roughly 20% of Tanzanian Muslims identify as “just Muslim,” and a small percentage follow other minority schools.²⁶³ The provisions of the Islamic Restatement Act generally are common to the Sunni Shafi’i and Hanafi schools and the Shiah schools,²⁶⁴ which comprise a majority of Tanzanian Muslims. Where those schools or other schools follow different practices, additional rules or exceptions are noted.²⁶⁵

The Islamic Restatement Act codifies a myriad of provisions shared across these schools that discriminate against women in marriage and family matters. For example, it permits all persons who have attained puberty to marry, presumes all persons to have reached puberty by age fifteen, and allows a finding that a male as young as twelve years and a female as young as nine years has reached puberty.²⁶⁶ Furthermore, persons who are not competent to consent to marriage—such as persons who have not attained puberty, and, in the Sunni Shafi’i and Shiah Ithna’ Asheri schools, women of all ages—

258. *See id.*

259. PEW FORUM ON RELIGION AND PUBLIC LIFE, PEW RESEARCH CENTER, TOLERANCE AND TENSION: ISLAM AND CHRISTIANITY IN SUB-SAHARAN AFRICA 20 (2010), available at <http://www.pewforum.org/files/2010/04/sub-saharan-africa-full-report.pdf>. Sixty percent identify as Christian, and 2% follow traditional religions. *Id.*

260. *Id.* at 21, 60–61.

261. *Id.* at 60–61. Please note that the spellings used in this Section reflect the spelling used in the Islamic Restatement Act, rather than the Pew Forum report. For example, in this Section we refer to the “Shiah” branch of Islam as referred to in the Islamic Restatement Act rather than the “Shia” branch, as written in the Pew report.

262. *See id.* at 21.

263. *Id.*

264. Islamic Restatement Act, *supra* note 257, § 2.

265. *See, e.g., id.* § 5(1)(b) (listing different requirements for competence to marry for the Shiah Ithna’ Asheri school).

266. *Id.* §§ 5(1), 6. The Shiah Ithna’ Asheri school presumes that males reach puberty at age fifteen and females at age nine. *See id.* § 6 (describing exceptions).

may be contracted in marriage by their respective guardians without their consent.²⁶⁷ A guardian is required to seek the consent of a competent ward, but the Sunni Shafi'i school does not require this consent where a father or paternal grandfather contracts for the marriage of a virgin daughter.²⁶⁸ An incompetent person contracted in marriage by a guardian is not entitled to repudiate the marriage unless the guardian acted fraudulently, negligently, or to the person's "manifest disadvantage;" even in this case, if the person is female, she must challenge the marriage "without unreasonable delay" after reaching puberty or recovering her reason.²⁶⁹

Once married, the Islamic Restatement Act continues to discriminate against women. For example, a valid marriage confers the right upon a husband to "restrain his wife's movements in a reasonable manner and to exercise marital authority."²⁷⁰ It also renders sexual intercourse within a marriage legitimate, although, where the wife is a minor, it is unlawful for a man to have intercourse with her until she has attained puberty.²⁷¹ Like the codified customary laws, the Islamic Restatement Act does not mention FGM, but it grants a husband considerable control over his wife's sexuality. For example, the husband's duty to maintain his wife, if she has attained puberty, is conditioned upon whether she "(i) places, or offers to place, herself in his power, so as to allow him free access to herself at all lawful times; and (ii) obeys all his lawful and reasonable commands."²⁷²

These provisions are only the tip of the iceberg. The Islamic Restatement Act further discriminates against women with respect to polygamy, divorce, inheritance, widowhood, guardianship, and custody, among other things. For example, a man is permitted to have up to four wives at one time; a woman is permitted to have only one husband.²⁷³ Polygamy has ramifications for maintenance and inheritance. For instance, under Islamic law, a widow with children is entitled to receive one-eighth of her husband's estate, as compared with a widower with children, who is entitled to one-fourth of his wife's estate; in a polygamous marriage with four wives, a wife's

267. *Id.* §§ 5(2), 7, 37(1).

268. *See id.* § 37(2).

269. *Id.* §§ 38(1), (3)(a).

270. *Id.* § 48(1)(g).

271. *Id.* §§ 48(1)(a), 50. Note that these provisions leave no room for marital rape.

272. *Id.* § 52(a).

273. *Id.* § 18(1).

one-eighth share of inheritance would be divided by four, such that each wife receives only one-thirty-second of her husband's estate.²⁷⁴ In short, the Act codifies a system that is fully unequal for women, stripping them of power to enter into, or to refuse to enter into, a marriage, denying them power within the marriage once it occurs, and discriminating against them in all matters related to the family.

iii. Choice of law

Because Tanzania maintains a plural legal system, it is not always apparent which law applies in a particular case. The *Judicature and Application of Laws Act* (“the Application of Laws Act”) sets out the general framework for determining whether to apply customary or Islamic law.²⁷⁵ Customary law applies in civil matters between members of a community in which relevant customary law rules are established, or in matters relating to a customary law status, right, or obligation.²⁷⁶ Islamic law applies in certain family matters—like marriage, divorce, and inheritance—among members of a community that follow that law.²⁷⁷ Courts will not apply a customary law rule or practice that has been “abolished, prohibited, punishable, declared unlawful or expressly or impliedly disappplied or superseded by any written law.”²⁷⁸ Specifically, customary and Islamic law rules do not apply in regard to any matter provided for in the Marriage Act discussed above.²⁷⁹

Although this delineation seems clear enough, in reality it is anything but. First, many statutes, including the Marriage Act, contain express provisions allowing for application of customary or Islamic law in particular circumstances.²⁸⁰ In consequence, although provisions of customary or Islamic law that directly or indirectly contravene statutory law would normally be superseded per the Application of Laws Act, these provisions permit continued

274. Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Women and Daughters*, 7 GEO. J. GENDER & L. 599, 615 (2006).

275. See *Judicature and Application of Laws Act*, § 11, CAP 258 (2002) (Tanz.).

276. *Id.* §§ 11(1)(a)–(c).

277. *Id.* § 11(1)(c)(ii).

278. *Id.* § 11(3).

279. *Id.* § 11(4).

280. *E.g.*, Law of Marriage Act, *supra* note 171, § 116(b) (instructing the court to consider “the customs of the community to which the parties belongs” when determining maintenance for former spouses in divorce); see Ezer et al., *supra* note 173, at 361.

application of contrary customary or Islamic laws.²⁸¹ Second, these choice of law rules leave much to a judge's discretion to determine which law to apply in a particular case. In each case, the judge—usually male—must consider a variety of factors, including the type of dispute, whether there is relevant customary or Islamic law on point, the identity of the parties, and whether the parties adhere to customary or Islamic law and practice.²⁸² This imposes a heavy burden on trial judges, and may allow the more sophisticated party in a case—also usually male—to lobby for application of the law most favorable to him (or her). Finally, merely permitting gender discriminatory customary and Islamic laws to remain on the books lends legitimacy to the underlying stereotypes and norms they reflect.

C. How the Law Facilitates, or Fails to Prevent, Gender-Based Violence

As the foregoing discussion demonstrates, although Tanzania has committed itself to gender equality and the eradication of gender-based violence through its international agreements and its own constitutional provisions, read together, Tanzania's overlapping and sometimes contradictory domestic laws permit many forms of gender discrimination and violence to continue with impunity.

First and most relevantly here, domestic law fails to outlaw child marriage. The Marriage Act, on its face, sets the age of marriage for girls at age fifteen and permits girls as young as age fourteen to marry with the court's permission.²⁸³ Although the Marriage Act purports to trump Islamic and customary law where their provisions overlap, in fact the Marriage Act, read alongside the Application of Laws Act, permits these laws to govern the marital relationships of members of communities that follow Islamic or customary practices.²⁸⁴ As a result, some girls may marry when they reach puberty, which is presumed to be as young as age nine in some communities.²⁸⁵ The Tanzanian Parliament, though aware of this problem, explicitly refused to remedy it when enacting the Child Act in 2009 despite strong pressure from international and domestic advocacy

281. Ezer et al., *supra* note 173, at 361.

282. See Leiter, *supra* note 162, at xvi.

283. Law of Marriage Act, *supra* note 171, § 13(1)–(2).

284. Judicature and Application of Laws Act, *supra* note 275, § 11(c)(ii).

285. GN 279, *supra* note 247, rules 2–4; Islamic Restatement Act, *supra* note 257, §§ 5(1), 6.

organizations to do so.²⁸⁶ Tanzania's failure to prohibit child marriage contravenes its explicit obligation under article 6 of the Maputo Protocol to raise the age of marriage to eighteen, as well as its general obligation to ensure gender equality under several international treaties and its Constitution.

Second, Tanzanian law fails to require full and free consent to marriage by all parties, as required under article 23 of the ICCPR and article 6 of the Maputo Protocol. Although the Marriage Act defines marriage as a voluntary union between a man and a woman, it permits a parent's consent to substitute for the consent of a girl under eighteen to marry.²⁸⁷ Likewise, codified customary law and the Islamic Restatement Act permit a father, father's representative, or guardian (usually a male relative) to consent to marriage on a girl's behalf.²⁸⁸ Read in combination with SOSPA, which does not recognize rape within marriage,²⁸⁹ and the Islamic Restatement Act, which requires that a wife be sexually available to her husband in order to receive maintenance,²⁹⁰ these provisions allow a parent or guardian to unilaterally strip a child bride of her ability to refuse consent to marriage and to sex with her husband. As a result, these provisions of the law violate the right to dignity that is recognized by every international human rights instrument to which Tanzania is a party.

Third, by permitting discriminatory customary and Islamic laws to remain on the books—even if they do not apply to the entire population of Tanzania—the Tanzanian government allows those laws' perceptions of women as inferior, second-class citizens to live on. As outlined above, these laws contain myriad provisions that discriminate against women in all aspects of family life and perpetuate permissive attitudes towards GBV. Such laws undermine Tanzania's international and domestic commitments to equality and prevent the Tanzania's people from reaching their full potential.

Finally, although FGM has been outlawed in Tanzania since SOSPA's enactment in 1998,²⁹¹ and the Child Act of 2009 increased penalties for perpetrators,²⁹² FGM in Tanzania persists. This suggests

286. Cameron, *supra* note 224.

287. Law of Marriage Act, *supra* note 171, §§ 9(1), 17(1).

288. GN 279, *supra* note 247, rules 2–4; Islamic Restatement Act, *supra* note 257, §§ 5(2), 7, 37(1).

289. SOSPA, *supra* note 3, §§ 5(a), 5(e).

290. Islamic Restatement Act, *supra* note 257, § 52(a).

291. SOSPA, *supra* note 3, § 21.

292. Law of the Child, *supra* note 180, § 158.

that more is needed beyond legislation to eliminate FGM in practice. Accordingly, both legislative and alternative mechanisms for achieving practical change are proposed in Part III below.

III. *PROPOSALS FOR ELIMINATING GENDER-BASED VIOLENCE IN TANZANIA*

The foregoing discussion described the intractable and continuing human rights violations of child marriage and FGM in Tanzania. This Part proposes several promising legal and policy strategies, both international and domestic, to reduce or eradicate these harmful practices.

A. *Constitutional Reforms*

Eradicating FGM and child marriage in Tanzania requires statutory and constitutional law reform. As described below, certain existing statutes must be amended, new statutes must be enacted, and Tanzania's constitution must be amended. Notably, Tanzania began a constitutional reform process in 2012.²⁹³ The process has produced a new draft constitution which will be the subject of a referendum on April 30, 2015.²⁹⁴ Although much of the process has focused on issues of presidential power, the division of the federal government, and the independence of Zanzibar from Tanzania's mainland, this time of change presents a key opportunity to include some reforms aimed at eradicating gender-based violence.²⁹⁵

The draft constitution includes several provisions that move Tanzania closer to gender equality.²⁹⁶ Importantly, it defines a child

293. Deodatus Balile, *Tanzania Constitutional Reform Process Begins*, SABAHI (Mar. 26, 2012), http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/03/26/feature-02.

294. Fumbuka Ng'wanakilala, *Tanzania to Hold Referendum on New Constitution in April 2015*, YAHOO NEWS, (Oct. 22, 2014), <http://news.yahoo.com/tanzania-hold-referendum-constitution-april-2015-105713257.html>.

295. Deodatus Balile, *Debate Continues Over Role of Union Government in Tanzania*, SABAHI (Dec. 26, 2012), http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/12/26/feature-02; *Tanzanian Vice President, Speaker Address Constitutional Review*, SABAHI (Jan. 15, 2013), http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2013/01/15/newsbrief-04; Deus Kibamba, *Road Towards a New Constitution Dispensation*, DAILYNEWS: TANZANIA'S LEADING ONLINE NEWS EDITION (Jan. 21, 2013), available at <http://archive.dailynews.co.tz/index.php/features/13875-road-towards-a-new-constitution-dispensation>.

296. See generally Deogratias Mushi, *Tanzania: New Constitution Moves Tanzania Closer to Gender Parity*, TANZANIA DAILY NEWS (Oct. 1, 2014), <http://allafrica.com/stories/201410010443.html>.

as anyone under the age of eighteen.²⁹⁷ In addition, it recognizes the rights of women to protection against “discrimination, abuse, injustice, bullying, gender violence and harmful traditions,”²⁹⁸ and it also recognizes women’s equal right to own property, access employment opportunities equally with men, and access the best possible medical care, including during labor and delivery.²⁹⁹

B. *Additional Legal Reforms*

The Tanzanian government must take significant steps towards ending FGM, child marriage and other forms of GBV. The following reforms provide a roadmap to this goal. They include ensuring that marriage is limited to unions involving the full and informed consent of adult participants; abolishing the practices of FGM and bride price; removing exculpatory provisions that allow perpetrators of GBV to act with impunity; and providing better information on the practice of GBV in Tanzania.

1. Set the Age of Marriage at Eighteen and Require the Free and Full Consent of Both Parties

First, the age of marriage must be raised to eighteen for both men and women, and the law must ensure that no marriage takes place without the full, free, and informed consent of both parties to the marriage. This goal is essential to ensuring that Tanzania is in compliance with its international obligations. The Draft Constitution is one step in the right direction because it defines a child as anyone under the age of eighteen. The next step is for the law to abolish child marriage by restricting marriage to those over the age of eighteen. This could be accomplished through a constitutional amendment stating that the minimum age of marriage is eighteen. In the absence of such an amendment, the Marriage Act must be amended in order to eliminate the discriminatory provision allowing the marriage of girls from the age of fifteen. The provision which allows a girl’s parents, male relatives, or the court, to grant their or its consent for the consent of the young bride is also discriminatory and must be eliminated.³⁰⁰

297. UNITED REPUBLIC OF TANZANIA, SPECIAL PARLIAMENT, FINAL DRAFT OF THE PROPOSED CONSTITUTION art. 53(3) (2014) [hereinafter DRAFT CONSTITUTION] (on file with the author).

298. *Id.* art. 57(b).

299. *Id.* art. 57.

300. *See supra* Part II.B.3.i.

Any amendment to the Marriage Act should also indicate that such amendment supersedes any contrary domestic statutory, customary, or religious law, and that any such contrary law is null and void. Additionally, the Act could be amended so that all marriages that do not comply with its requirements are automatically void, rather than simply voidable, freeing brides subjected to coercive marriages of the need to have such marriages formally annulled in court.³⁰¹

The current state of affairs, which allows parents—particularly fathers—to substitute their consent for the bride’s consent essentially treats women like property that is exchanged between men. This substitution of consent is a violation of the dignity of the girl or woman involved. Allowing such transactions does little more than ensure that adult men have sexual access to girls if they simply pay a fee to the man who “owns” the girl. The child brides suffer by being forced into sexual activity regardless of their wishes, being forced into early childbearing for which their bodies are not ready, being exposed to sexually transmitted diseases when their more experienced partners are already infected, and being forced to curtail their educations.

Making the changes enumerated here will alter the fundamental nature of marriage in some regions of Tanzania such that it will be no longer be a transaction arranged between men who are essentially exercising property rights over women. Instead, these changes will ensure that marriage is always a voluntary arrangement entered into by two freely consenting partners. Accordingly, by delaying marriage until they are ready and elect it, girls will be empowered to continue their educations, postpone childbearing until they are fully mature, become sexually active only when they choose to do so, and be better positioned to avoid sexually transmitted diseases. These changes will also benefit children, as fewer children will be born to mothers who are still children themselves.

Tamar Ezer et al. have already proposed an amendment to the Marriage Act and have included detailed explanations for each of its suggested provisions.³⁰² Their proposed amendment states that the age of marriage should be eighteen for both sexes and that “no customary, traditional or religious practices may confer legal capacity on those

301. *See supra* Part II.B.3.i.

302. *See Ezer et al., supra* note 173, at 357–450

other than the intended parties to contract marriage or on those parties who do not meet the minimum age of marriage.³⁰³ The proposed amendment provides a remedy for underage parties to a marriage, whereby the underage party may petition a court for an annulment at any time before he or she turns twenty-one years old.³⁰⁴ In the event of annulment, the proposed amendment stipulates that the status of any children shall not be affected and that the father will remain obligated to provide for his children.³⁰⁵ The proposed amendment also provides that a person married as a child may seek damages from her parents or the adult party to the marriage any time before her twenty-first birthday.³⁰⁶ Damages for pain and suffering would be presumed, because child marriage always violates a child's dignity, but it would be in the court's additional discretion to determine additional damages for loss of education or employment, or injury to health, as a result of child marriage.³⁰⁷

The proposed amendment also establishes criminal penalties for perpetrators who take children as wives as well as for individuals who officiate at marriage ceremonies involving child brides.³⁰⁸ Ezer's proposal was put forth in 2005, but its points and recommendations remain very relevant today, and Tanzania would do well to give it very serious consideration.

2. Outlaw Bride Price

The Law of Marriage Act, currently silent on the issue of bride price,³⁰⁹ must be amended to prohibit the practice of exchanging brides for bride prices. Because bride price is often closely linked to FGM and child marriage, abolishing bride price is critical. Eliminating bride price removes much of the economic incentive that drives FGM and child marriage. The Marriage Act could be amended by the addition of a provision indicating that any transfer of funds or property to the bride's family will be considered by courts to be a gift and is not subject to return to the groom upon divorce. An alternative,

303. *Id.* at 427–28.

304. *Id.*

305. *Id.* at 428–29.

306. *Id.* at 429.

307. *Id.*

308. *Id.* at 430.

309. Law of Marriage Act, *supra* note 171, § 41. The Marriage Act is silent on the issue of bride price except for one provision indicating that a marriage is valid even if the parties have not complied with customs related to the exchange of gifts before or after marriage.

more stringent approach could involve an amendment stating that any payment of a bride price will automatically void the marriage.

In addition, the law should be amended to clarify that marriage does not require the consent of anyone besides the adult bride and groom. This will ensure that other parties, such as the bride's parents, cannot block a marriage by insisting on bride price before they give their consent. Each of these proposed changes to the Marriage Act is consistent with the Act's own aspirational declaration that a marriage is a "voluntary union of a man and a woman,"³¹⁰ requiring consent that is "freely and voluntarily given by each of the parties thereto."³¹¹

3. Strengthen Legal Protection Against FGM

Tanzania can substantially strengthen its legal protection against FGM. SOSPA provides only very basic protection against FGM, and Tanzania would benefit from a much more robust statute giving a more comprehensive treatment of the problem. In crafting a stronger approach to FGM, Tanzania should consider the anti-FGM laws recently enacted in Ireland (2012), Kenya (2011), and Uganda (2010), all of which are more robust and comprehensive than SOSPA.³¹² Elsewhere I have published a Model FGM Act that can also be adapted for use in Tanzania,³¹³ and I have highlighted below some of the provisions suggested by this Model FGM Act, as well as the Ugandan and Kenyan approaches, that could strengthen Tanzania's legal framework for eliminating FGM.

First, a stronger anti-FGM law should provide that anyone who carries out FGM can be prosecuted, not just parents or guardians. The law should also define FGM, preferably using the widely accepted definition from the World Health Organization, in order to ensure that all possible forms of FGM are criminalized and that there is no ambiguity on this point.

310. *Id.* § 9(1).

311. *Id.* § 16(1).

312. *See generally* Criminal Justice (Female Genital Mutilation) Act 2012 (Act No. 11/2012) (Ir.), *available at* <http://www.irishstatutebook.ie/2012/en/act/pub/0011/>; The Prohibition of Female Genital Mutilation Act, CAP 62B (2011) (Kenya), *available at* <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2062B>; The Prohibition of Female Genital Mutilation Act (Act No. 5/2010) (Uganda), *available at* <http://www.ulii.org/content/prohibition-female-genital-mutilation-act-2010>.

313. Lisa Avalos, *Female Genital Mutilation and Designer Vaginas in Britain: Crafting an Effective Legal and Policy Framework*, 48 *VAND. J. TRANSNAT'L LAW* __ (forthcoming May 2015).

A stronger law might incorporate an offence of aggravated FGM for cases where FGM results in death, disability, HIV infection, or for cases where the offender is a health care professional, parent, or other person with authority or control over the victim. Such a provision is currently in effect in Uganda.³¹⁴ A stronger law could also expand the range of charging options available to law enforcement by, for example, criminalizing the possession of tools or the use of specific premises for FGM—an approach now in effect in Kenya.³¹⁵

It would also be beneficial to criminalize discrimination or harassment of any kind when it is directed at a person who resists or refuses FGM, or her close family members. This type of provision is currently in effect in both Kenya and Uganda.³¹⁶ It creates a remedy for those who face harsh treatment for rejecting FGM and simultaneously sends the message that harassment and discrimination against those who reject FGM will not be tolerated. Uganda goes even farther and also criminalizes the participation in events, such as coming of age ceremonies, that lead to FGM.³¹⁷ Such a provision could go a long way to helping to curtail the FGM season in the Mara region, as described in Part I of this Article. The proposals here would go a long way towards strengthening Tanzania's legal framework and giving it a much more effective tool for eliminating this harmful traditional practice.

4. Legal and Policy Reform to Eliminate the Expulsion of Girls from School Due to Pregnancy or Marriage

Tanzania must change the policies followed by school officials of expelling pregnant and married girls from school and of administering mandatory pregnancy tests. The Center for Reproductive Rights has recently issued extensive policy recommendations on this issue, which include: (a) clarifying the existing legal and policy framework governing expulsion and exclusion from school in order to ensure that teachers and school officials are aware that expulsion and exclusion based on pregnancy

314. The Prohibition of Female Genital Mutilation Act (Uganda), *supra* note 312, § 3.

315. The Prohibition of Female Genital Mutilation Act (Kenya), *supra* note 312, §§ 22–23.

316. *Id.* § 25; The Prohibition of Female Genital Mutilation Act (Uganda), *supra* note 312, §§ 11 (“Protection of females who have not undergone female genital mutilation”), 12 (“Protection of persons whose wives, daughters or relatives have not undergone female genital mutilation”).

317. The Prohibition of Female Genital Mutilation Act (Uganda), *supra* note 312, § 7.

violates international human rights and is prohibited; (b) developing a clear policy framework that supports the continued enrollment in school of pregnant or married students; and (c) taking measures to ensure that adolescent girls are not subjected to sexual violence and coercion in and around schools.³¹⁸

5. Eliminating Conflicts Between Newer Laws Ensuring Equality and Older Discriminatory Provisions

The legal system must be further amended to ensure that the provisions discussed above, which protect girls and women from forced marriage, child marriage, and bride price, will prevail over Islamic and customary laws to the extent that such laws conflict. This goal can be accomplished through a constitutional amendment that nullifies any Islamic or customary law or rule—whether past, present, or future—that conflicts with the new provisions that ensure marriage equality. Additional statutory reform can further eliminate conflicts between the new protective provisions and older discriminatory laws. In particular, discriminatory provisions in the codified Islamic and customary law should be repealed. These measures will give Tanzanian trial judges a clear standard that unconditionally protects human rights.

6. Mandatory Registration of Births and Marriages

A statute should be passed requiring mandatory registration of all births and marriages. Mandatory birth and marriage registration would provide the government and NGOs working within Tanzania with a more accurate picture of the nature and prevalence of gender-based violence. This is because birth certificates would provide a mechanism for verifying that a bride has reached the legal age of marriage, and marriage certificates would provide a similar function. Registration of births and marriages would also help with enforcement of the laws already in place against FGM and other forms of gender-based violence, in particular because they provide a way to track children for child welfare purposes.

Ezer's proposal for amending the Marriage Act calls for the Administrator General to establish mobile registration units to be deployed in the rural areas to record births, marriages, and divorces

318. FORCED OUT, *supra* note 56, at 136–37.

and to educate the public about the benefits of such registration.³¹⁹ Ezer points out that the Committee on the Rights of the Child recommended that Tanzania utilize mobile registration units to improve registration.³²⁰

C. Model Programs that Supplement Reform by Empowering Girls and Raising Awareness

A second approach to ending FGM and child marriage in Tanzania is to focus efforts on empowering girls or initiating community outreach and awareness—attempting to incentivize parents, relatives, and other community leaders to avoid practices of GBV. This Section analyzes certain key programs that have been implemented elsewhere and that can serve as compelling models for use in Tanzania. These programs provide a holistic, community-based approach to ending harmful traditional practices and have enjoyed success in their respective regions.

Model programs can typically be categorized by their approach to problems of GBV: (1) Education programs: educational efforts attempt to delay child marriage and perhaps FGM by keeping girls in school or educating them about their rights; (2) Outreach programs: outreach that is based on public health concerns raises awareness about the negative health consequences of FGM and child marriage; (3) Empowerment programs: these involve attempts to empower girls themselves or their communities usually offering vocational training to give girls and their families a financial alternative to child marriage or mobilize the community to resist harmful traditional practices; (4) Financial incentives: conditional cash transfers provide incentives to girls or their families to refrain from participating in FGM or child marriage; (5) Legal change: pressuring legislative or law enforcement bodies for changes in, or enforcement of, legislation against child marriage and FGM; and (6) Empowering already-married girls: these programs target girls who are already married and offer reproductive and sexual health information and promote economic independence for girls subjected to child marriage.

319. See Ezer et al., *supra* note 173, at 437

320. *Id.*; see Committee on the Rights of the Child, Consideration of Reports Submitted by State Parties: United Republic of Tanzania, U.N. Doc. CRC/C/15/Add.156; GAOR, 27th Sess., Supp. No. 156, ¶ 35 (2001).

Most programs involve a combination of two or more of these strategies. The following are a few examples of programs based on one or more of the above strategies.

1. Mobilizing Actions to Safeguard the Rights of Girls in Tanzania

This project, a collaboration between the Tanzania-based Children's Dignity Forum, FORWARD UK, and UMATI (a Tanzanian NGO that addresses sexual and reproductive health), works for change by empowering girls directly.³²¹ It forms girls' clubs to provide support for girls who have already experienced child marriage, FGM, and/or early pregnancy, and it also forms prevention-focused clubs to support girls who have avoided FGM, pregnancy and child marriage.³²² It also helps to sponsor a shelter that provides safe housing and education during the annual FGM season to newly empowered girls that want to avoid FGM.³²³

The program has seen a number of positive developments in the time that it has been in operation. The number of girls taking advantage of safe shelter during FGM season has increased from fifty-three in 2008 to 450 in 2013,³²⁴ and there are anecdotal reports that elders' attitude are changing and that mothers are doing more to protect their daughters.³²⁵ In addition, the police gender desk in Musoma has reported that they have received an increasing number of reports of forced marriage as a result of girls' rising awareness of their rights since the program began.³²⁶

2. Conditional Cash Transfers: "Our Daughters, Our Wealth," India

In India, 47%³²⁷ of girls are married before the legal age of eighteen (the minimum age of marriage is twenty-one for boys), and approximately 14%³²⁸ to 18%³²⁹ are married before age fifteen, although this prevalence is concentrated in some states, which have

321. Case Study on FORWARD (on file with the author).

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

327. MARRYING TOO YOUNG, *supra* note 20, at 123.

328. POLICY BRIEF, *supra* note 26, at 162.

329. *India Statistics*, UNICEF, http://www.unicef.org/infobycountry/india_statistics.html (last updated Dec. 27, 2013).

much higher rates.³³⁰ Like the FGM ceremonies in Tanzania, child marriages are celebrated in public festivals, and the tradition of child marriage is widely culturally accepted.³³¹ However, age at first marriage has risen overall in India, with child marriages dropping by 30.3% over the past twenty years.³³²

The government of India has taken several steps to enforce the minimum age law and prevent child marriage. In 2000, India required married couples to register their age and consent, and some states began campaigns to promote awareness of the minimum legal age and to change attitudes about child marriage, denying government employment to people who went ahead with underage marriages.³³³ In 2006, India passed the Prohibition of Child Marriage Act, which increased the penalties for conducting a child marriage, made such a marriage voidable by either party, and granted courts authority to issue stay orders to protect children from those that would pressure or force them into marriage.³³⁴ But laws alone cannot be expected to change a longstanding practice that also often seen as an economic necessity. The government consequently sought to affect the incentives surrounding child marriage.

Many states in India have instituted conditional cash transfer programs to reduce the incentive for families to marry off their underage daughters.³³⁵ For example, *Apni Beti Apna Dhan* (“Our Daughters, our Wealth” in Hindi) is among the first of these programs. It was started in 1994 in the state of Haryana. *Apni Beti* has

330. In the states Andhra Pradesh, Jharkhand, and Rajasthan, approximately 20% of girls are married before fifteen, and in Uttar Pradesh, Andhra Pradesh, and Bihar, the under-eighteen prevalence is between 53% and 60%. POLICY BRIEF, *supra* note 26, at 216; see MARRYING TOO YOUNG, *supra* note 20, at 132.

331. UNICEF, *Early Marriage: Child Spouses*, INNOCENTI DIGEST, No. 7, March 2001, at 2; see UNICEF, *Child Marriage and the Law*, CHILD MARRIAGE AND THE LAW (Legislative Reform Initiative Paper Series January 2008) at 23.

332. MARRYING TOO YOUNG, *supra* note 20, at 134.

333. ICRW, CHILD MARRIAGE, LAWS & CIVIL SOCIETY ACTION FACT SHEET 2 (2006), available at <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Laws.pdf> (citing DEPARTMENT OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF UTTAR PRADESH, POPULATION POLICY OF UTTAR PRADESH (2000), available at <http://www.hsph.harvard.edu/population/policies/indiauttar.pop.pdf>).

334. UNICEF, HANDBOOK ON THE PROHIBITION OF CHILD MARRIAGE ACT 2006 (2009), available at http://www.unicef.org/india/Child_Marriage_handbook.pdf.

335. See NEW AMERICA FOUNDATION, INVESTING IN GIRLS: OPPORTUNITIES FOR INNOVATION IN GIRL-CENTERED CASH TRANSFERS 16 (2012), available at http://gap.newamerica.net/sites/newamerica.net/files/policydocs/Investing%20in%20Girls_final.pdf (listing fourteen states’ conditional payment programs).

three components. First, a family receives US\$11 upon the birth of a daughter, to help cover her birth costs. Second, the government sets up a savings account starting with US\$53, and accruing interest. Third, if the girl is unmarried and has completed certain educational milestones by the time she turns eighteen, she may withdraw the money, which will be worth approximately US\$540. If she waits two more years, she may receive a bonus. To a degree, this amount of money offsets an incentive to obtain a bride price from the daughter's marriage in communities where bride price is a prevalent practice. And in areas where dowry is a prevalent practice, the daughter or family may use this money toward her dowry; because husbands require lower dowries of younger brides, the money that a girl will receive from *Apni Beti* may counteract the dowry-based incentive that her family might have for marrying her off at a younger age.³³⁶ The first cohort of girls "graduating" from *Apni Beti* began turning eighteen in 2012, and a study concluded that the girls who were beneficiaries attained higher levels of schooling, were more likely to continue their education, and less likely to drop out than non-beneficiary girls, controlling for all other factors.³³⁷

3. Community Empowerment: Tostan In Senegal

In Senegal, as in Tanzania, FGM and child marriage are closely related. Although the situation is beginning to improve, 33% of girls in Senegal are still married under the age of eighteen, and 12% are married under fifteen.³³⁸ In Senegal, the minimum legal age of marriage is eighteen, but with parental consent, parties may marry at sixteen, and with a court order, they may be married at thirteen. However, loopholes in customary law allow children to be married off under the age of thirteen.³³⁹ In some areas, especially the south and southeast of Senegal, over 30% of girls are married by age

336. *Id.* at 10.

337. PRIYA NANDA ET AL., IMPACT OF CONDITIONAL CASH TRANSFERS ON GIRLS' EDUCATION, ICRW 8 (2014), available at http://www.icrw.org/files/publications/IMPACCT_Hires_FINAL_3_20.pdf.

338. *Senegal Statistics*, UNICEF, http://www.unicef.org/infobycountry/senegal_statistics.html (last updated Dec. 27, 2013).

339. *Senegal: Out of School and into Marriage*, IRIN (July 5, 2010), <http://www.irinnews.org/report/89740/senegal-out-of-school-into-marriage>; see U.N. CEDAW, 13th Sess., U.N. Doc. CEDAW/C/SR.247 (Mar. 11, 1994).

sixteen.³⁴⁰ It is from a context deeply entrenched in tradition that the NGO Tostan and its community empowerment programs have resisted child marriage and FGM in Senegal.

Thanks to Tostan, the age of first marriage in Senegal is slowly rising. Tostan has made considerable progress in fostering community refutation of harmful traditional practices. Since 1991, Tostan has engaged 3791 Senegalese communities in programs about child marriage and FGM.³⁴¹ Though Tostan began in the 1990s primarily as a hygiene and basic medical care organization, it now provides community empowerment programs that educate participants about the health consequences of child marriage and female genital mutilation in Senegal.³⁴² As recently as January 2013, 427 additional Senegalese villages made public declarations against child marriage and FGM, and in participating villages, the proportion of girls married before age fifteen decreased by 49%.³⁴³ Additionally, the already low popularity of FGM is declining. Of all female respondents who are aware of the practice, 90% agreed that it should be abolished. Even in Dodoma, where 68% of girls are circumcised, only 5% of females support the practice, and in Manyara, where 81% of girls are circumcised, 17% of females surveyed supported the practice.³⁴⁴

4. Other Noteworthy Programs

Kenya, which is economically situated similarly to Tanzania,³⁴⁵ is home to Kenya's Cash Transfer for Orphans and Vulnerable

340. USAID, GENDER ASSESSMENT 2010, USAID/SENEGAL, 13, 16 (2010), *available at* http://pdf.usaid.gov/pdf_docs/Pdacr976.pdf (citing 2008 field work by Deborah Rubin (Director, Cultural Practice, LLC) and Oumoul Kharyi Niang-Mbodj (Réseau Africain pour le Développement Intégré)).

341. US DEP'T OF STATE, SENEGAL (2010), *available at* <http://m.state.gov/md135973.htm>

342. POPULATION COUNCIL, EVALUATION OF THE LONG-TERM IMPACT OF THE TOSTAN PROGRAMME ON THE ABANDONMENT OF FGM/C AND EARLY MARRIAGE: RESULTS FROM A QUALITATIVE STUDY IN SENEGAL 22, 29 (2008), *available at* http://www.unicef.org/wcaro/wcaro_SEN_TOSTAN_EarlyMarriage.pdf.

343. *427 Communities Abandon FGC and Child/Forced Marriage at Senegal's First Regional Public Declaration*, TOSTAN (Jan. 22, 2013), <http://www.tostan.org/news/427-communities-abandon-fgc-and-childforced-marriage-senegals-first-regional-public-declaration>.

344. FGM Tanzania, *supra* note 139, at 1, 22.

345. Kenya and Tanzania rank 147 and 159, respectively, out of 187 countries on the UN's Human Development Index. *Table 1: Human Development Index and its components*, UNDP, <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components> (last visited Nov. 7, 2014). They rank 787 and ninety-three, respectively, in GDP. *Gross*

Children Program, which pays guardian and foster families to make sure that their orphans and vulnerable children remain in school. This has significantly reduced the rate of HIV among children benefitting from this program.³⁴⁶ This program is not specific to child marriage or FGM but reveals how a similarly situated government has utilized conditional cash transfers to impact families' incentives. Likewise, Uganda and Nigeria have created Child Development Accounts, which match grants to reward savings and other certain behaviors.³⁴⁷ The Tap and Reposition Youth Program in Kenya includes group mentorship programs, financial literacy, and health education to support women and girls.³⁴⁸

CONCLUSION

The problem is clear. Many girls in Tanzania are victims of FGM, child marriage, and ongoing violence once trapped in child marriages. These practices of GBV have dire consequences for girls, hinder Tanzania's social progress and economic development, and conflict with Tanzania's constitutional and statutory law as well as its commitments to uphold fundamental human rights. For far too long, the political will to change this state of affairs has been missing, as stakeholders have repeatedly chosen to favor the desires of adult men over the needs and human rights of girls who are not old enough to vote or to have a meaningful voice in the political process. The time has come for change. If Tanzania is to continue to move forward, it

Domestic Product 2013, THE WORLD BANK, <http://data.worldbank.org/data-catalog/GDP-ranking-table> (last visited Nov. 7, 2014). Both are incredibly ethno-linguistically diverse and share overlapping ethnic groups. EDWARD MIGUEL, *TRIBE OR NATION? NATION-BUILDING AND PUBLIC GOODS IN KENYA VERSUS TANZANIA* (2002), available at http://cega.berkeley.edu/assets/miscellaneous_files/wgape/1_Miguel.pdf.

346. S. Handa et al., *Effect Of A National Social Cash Transfer Program On HIV Risk Behavior In Kenya*, Abstract (2012), available at <http://pag.aids2012.org/Abstracts.aspx?SID=15&AID=21323>.

347. See generally Jami Curley et al., *Assets and Educational Outcomes: Child Development Accounts (CDAs) for Orphaned Children in Uganda*, 32 *CHILD. & YOUTH SERVICES REV.* 1585 (2010). For a discussion of child development accounts in Nigeria, see Fred M. Ssewamala et al., *Strengthening Universal Primary Education in Uganda: The Potential Role of an Asset-Based Development Policy*, 31 *INT'L J. EDUC. DEV.* 472, 476 (2011).

348. See generally ANNABEL ERULKAR ET AL., POPULATION COUNCIL, *TAP AND REPOSITION YOUTH (TRY): PROVIDING SOCIAL SUPPPORT, SAVINGS, AND MICROCREDIT OPPORTUNITIES FOR YOUNG WOMEN IN AREAS WITH HIGH HIV PREVALENCE* (2006), available at <http://www.popcouncil.org/uploads/pdfs/seeds/SEEDS23.pdf>.

must respect, protect, and fulfill the rights of its most vulnerable citizens.

The statutory law reforms set out in this Article—raising the age of marriage to eighteen, abolishing bride price, strengthening legal protections against FGM, eliminating discriminatory laws and customs that force girls to drop out of school upon pregnancy or marriage, eliminating conflicts between laws, and registering all births—are all essential to ending gender-based violence. In addition to these strategies, programs that empower girls can simultaneously promote further positive change at the grassroots level. Taken together, these proposed reforms can go a long way towards dismantling the system of gender-based violence that prevents girls from reaching their full potential and holds back Tanzania's development.

