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Gender inclusivity and the law: Protecting the right to education for girls in Tanzania amidst harmful cultural practices

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Summary: *Education is essential not only for girls but also for society at large. Yet, entrenched harmful cultural practices in Tanzanian society continue to impede girls' access to education. These obstacles are rooted in the patrilineal structure of Tanzanian society, which fosters an environment that undervalues girls' rights to education. This article contends that the existing legal framework in Tanzania is insufficient to safeguard girls' educational rights. Accordingly, the article explores the influence of cultural norms on girls' education, highlighting harmful practices such as child marriage and related customs, societal attitudes towards girls with albinism and son preference, all of which perpetuate gender inequality in education. It further interrogates the effectiveness of the legal framework governing the right to education within the context of these cultural practices. The analysis argues that the pluralistic and contradictory nature of Tanzanian laws, coupled with existing loopholes,*

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exacerbates the violation of girls' educational rights. The article concludes that girls' rights to education in Tanzania remain hindered by harmful cultural practices and weak legal protections. Ensuring progress requires legal reform, cultural change and inclusive policies, making education a cornerstone for gender equality, social justice and sustainable development.

Key words: *right to education; girls; culture; laws; Tanzania*

1 Introduction

Education plays a pivotal role in shaping individual lives and communities, and it is particularly crucial for empowering girls by fostering personal growth, informed decision making and economic independence through improved employment prospects and self-employment, thereby contributing to poverty reduction.[1] It also serves as a safeguard against child marriages, early pregnancies and gender-based violence by equipping girls with knowledge of their rights and the confidence to assert these. Despite these benefits, gender inclusivity in education remains fraught with challenges, as cultural, religious and traditional barriers undermine girls' access, retention and transition within the educational system. In Tanzania, these obstacles are deeply embedded in patrilineal societal structures that elevate male superiority on the basis of biological differences and cultural constructions of gender,[2] thereby relegating women to subordinate roles centred on childbirth, family care, household responsibilities and obedience to men.[3] Such patriarchal norms perpetuate the perception that education is non-essential for girls, reinforcing the belief that investment in their schooling is wasteful since its benefits are assumed to accrue primarily to their marital families rather than to their families of birth.

In Tanzania, as in many parts of sub-Saharan Africa, girls encounter numerous gender-based barriers that greatly affect their education. Cultural practices such as child marriages and early pregnancies

1 World Bank 'Girls' education: Unlocking girls' and women's economic potential with education', https://www.worldbank.org/en/topic/girlseducation (accessed 1 September 2025).

2 C Mudgway 'Can international human rights law smash the patriarchy? A review of "patriarchy" according to United Nations treaty bodies and special procedures' (2021) 29 *Feminist Legal Studies* 67, 70.

3 Government of Tanzania National Bureau of Statistics 'Social Institutions and Gender Index SIGI Tanzania Qualitative Report May 2021', https://www.nbs.go.tz/uploads/statistics/documents/en-1705486734-SIGI_Tanzania_Qualitative_Report.pdf (accessed 1 September 2025).

linked to such marriages, female genital mutilation (FGM), along with societal preferences for males, form significant obstacles that often lead to school drop-outs.[4] These practices originate from deep-rooted stereotypes that restrict perceptions of girls to roles as homemakers and caregivers, creating an environment where their education is undervalued.[5]

Tanzania has ratified several international and regional human rights instruments that address the right to education and aspects relating to gender-related cultural practices.[6] Having ratified these instruments, Tanzania bears the responsibility to uphold the obligations contained therein. It has an obligation to protect the right to education and to eradicate all forms of discrimination.[7] It is further required to take progressive measures towards the realisation of this right, acting individually or through international cooperation, and employing the maximum of its available resources. Such measures must be pursued by all appropriate means, including the enactment of legislative reforms, in order to ensure the progressive and full enjoyment of the right to education. To meet these obligations, Tanzania must not only respect and protect the right to education, but must also address key aspects such as availability, accessibility, acceptability and adaptability of education.[8] This requires collective efforts to address harmful social and cultural practices that sustain gender inequality. The state has a responsibility to actively prohibit and condemn customs that undermine women's rights,[9] thereby implementing both legislative and non-legislative measures in alignment with international human rights standards.

Achieving the broader global agenda of tackling poverty, combating inequality and promoting social inclusion requires a

4 UNESCO *Right to education handbook* (2019), https://unesdoc.unesco.org/ark:/48223/pf0000366556 (accessed 1 September 2025).

5 As above.

6 Such as the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (CRC); the African Charter on Human and Peoples' Rights (African Charter); the African Charter on the Rights and Welfare of the Child (African Children's Charter); and the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (African Women's Protocol).

7 Art 13(1) ICESCR; art 28(1) CRC; arts 1(a) & (b) UNESCO Convention Against Discrimination in Education 1960; art 2 Universal Declaration; art 2(2) ICESCR; art 2(2) ICCPR; art 2(1) CRC; arts 1-5 CEDAW; art 2 African Charter; art 24 Convention on the Rights of Persons with Disabilities, (2006) (CRPD).

8 Committee on Economic Social and Cultural Rights General Comment 13 The Right to Education (Art 13 of the Covenant), CESCR (8 December 1999) UN Doc E/C 12/1999/10 para 50; Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights paras 5-12.

9 Art 5(a) CEDAW; art 24(3) CRC; art 21(1) African Children's Charter; and art 5 African Women's Protocol.

focus on inclusive and equitable quality education. This objective requires empowering women and girls through the eradication of harmful practices such as child marriage and FGM.[10] Laws and policies are crucial in this process. Furthermore, aligning with Africa's Agenda 2063[11] and Tanzania's Development Vision 2050,[12] which envisage a high quality of life and well-being for all through access to quality education, involves removing barriers and harmful practices that restrict educational access for women and girls. It is essential to eliminate such obstacles to foster a more inclusive educational environment that promotes lifelong learning opportunities for everyone in society.

Consequently, acknowledging the significance of the right to education and the detrimental impact of harmful cultural practices on girls in Tanzania, this article endeavours to first explore the influence of cultural norms on girls' education. Second, it aims to identify harmful cultural practices that obstruct girls' educational access, notably child marriage and related practices, societal perceptions regarding individuals with albinism, and gender-based preferences for sons that perpetuate unequal gender roles. Furthermore, the article examines the adequacy (or otherwise) of Tanzania's legal framework in addressing these issues, arguing that the pluralistic and contradictory nature of the laws, as well as the existing loopholes, contribute to violation of the right to education for girls. This study is founded on the hypothesis that the Tanzanian legal framework is inadequate in protecting girls' rights to education from harmful cultural practices. Consequently, the absence of a strong legal framework that addresses both the right to education and the eradication of these harmful practices creates a barrier to fulfilling global, regional and national goals, while also breaching Tanzania's international and regional human rights commitments. The article is structured into four parts. The first part examines the influence of culture on education; the second investigates harmful cultural practices; the third evaluates the adequacy of the Tanzanian legal framework; and the fourth provides concluding remarks and recommendations.

10 United Nations Sustainable Development Goals 4 & 5 in United Nations General Assembly 'Transforming our world: the 2030 Agenda for Sustainable Development' adopted 25 September 2015, A/RES/70/1.

11 African Union 'Agenda 2063: The Africa we want' adopted by the AU Assembly of Heads of State and Government in January 2015, https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (accessed 2 September 2025).

12 Goal 2 of Tanzania Development Vision 2050, https://www.planning.go.tz/uploads/documents/en-1752762713-THE%20TANZANIA%20DEVELOPMENT%20VISION%202050.pdf (accessed 2 September 2025).

2 Influence of culture on the right to education for girls in the Tanzanian context

Culture encompasses the values and customs embraced by a particular community. Tanzania is home to over 120 ethnic groups,[13] resulting in a rich diversity of cultural practices that give rise to a variety of values, beliefs and norms. Each community observes its own norms and prohibitions, which may vary considerably across different groups. These cultural practices vary among tribes based on social and economic factors and are reflected in their differing perspectives on issues such as gender, education, marriage, family dynamics, respect and upbringing.[14]

Culture plays a crucial role in shaping education by influencing the content, extent and nature of the education individuals receive. It shapes societal attitudes toward education, which helps explain the variations in educational systems across different countries.[15] Additionally, culture significantly impacts curriculum development, as it is grounded in the ideals, norms and values of a society. While subjects such as science and mathematics may be universally taught, the approaches to, understanding and quality of education may differ based on cultural context.[16] For instance, after gaining independence in 1967, Tanzania embraced the ideology of socialism, which emphasises community and the pursuit of common social goals. This ideology was integrated into the curriculum to promote cohesion among students.

Cultural beliefs further complicate the educational landscape for women. A prevalent notion is that a well-educated woman may face difficulties in securing a marriage partner, as higher education in women may be perceived as a threat to male counterparts, particularly where they have lower levels of education.[17] This belief can foster an environment where men feel inferior, especially if a woman's success leads to financial independence or challenges traditional marital dynamics. Consequently, cultural norms may prioritise marriage over women's educational pursuits.

13 Tanzania Development Vision 2050 (n 12) 1.
14 SE Sæbjørnsen & MJ Makuu (eds) *The relations between Tanzanian cultural practices and understanding of the terms respect and human rights* (2023) 131.
15 M Maji & S Das 'Influences of culture on education in modern India' (2023) 11 *International Journal of Creative Research Thoughts* (*IJCRT*) 344, 354.
16 PB Bisong & SA Ekanem 'The impact of culture on education in Africa: A resolution from the Aristotelian perspective' (2020) 4 *RAIS Journal for Social Sciences* 57, 58.
17 Bisong & Ekanem (n 16) 60.

Moreover, education serves as a vehicle for transmitting cultural values, norms and practices across generations. This cultural transmission occurs through both formal and informal educational channels, such as storytelling and community traditions. While informal education can perpetuate harmful practices, formal education has the potential to empower individuals, particularly girls, by promoting values that ensure their development. Therefore, education can act as a transformative force in society, challenging and reshaping perceptions of gender roles and familial structures.[18] As cultural dynamics evolve, the necessity for change becomes evident, particularly when traditional structures fail to address contemporary community needs. The role of education in this context is vital; it provides a framework for re-examining outdated norms and fostering new practices that align with progressive societal values.[19] Thus, education emerges as a crucial tool in the pursuit of equity and social change, helping to redefine cultural patterns in ways that promote well-being and inclusivity for all.

3 Harmful cultural practices that violate girls' rights to education in Tanzania

In light of the foregoing discussion on cultural influences on education, this part examines cultural practices that undermine girls' right to education, including child marriage, bride price, *nyumba ntobhu* (ghost marriages), discriminatory beliefs concerning girls with albinism, and the privileging of sons in household roles, highlighting their collective impact on educational access and equality.

3.1 Child marriage and related cultural practices

Despite being prohibited by international and regional human rights instruments,[20] and condemned worldwide for its psychological, physical and developmental impacts on minors, child marriage remains prevalent in many parts of the world, including in several African countries. Recent data from the United Nations Children's Fund (UNICEF) estimates that approximately 650 million girls and women alive today were married before reaching the age of

18 CM Pramanik & B Chaudhary 'Education impact on culture of the society' (2016) *International Journal of Advanced Research in Innovative Ideas in Education* 1352, 1353.

19 As above.

20 See, eg, arts 23(1) & (2) ICCPR; art 10(2) ICESCR; art 3 CRC; arts 6(b) & (c) African Women's Protocol; art 21(2) African Children's Charter; and arts 8(2)(a) & (b) SADC Protocol on Gender and Development.

18 years.[21] More than 50 million of these girls live in Eastern and Southern Africa, with Ethiopia reporting the highest number of child marriages at an estimated 17,3 million cases, followed by Tanzania at around 5,7 million.[22] In Tanzania, there are nearly 6 million child brides, with statistics indicating that 30 per cent of young women having been married or entered into a union before adulthood.[23] Given that the minimum legal marriage age for girls in Tanzania is 15 years, estimates suggest that approximately 1,2 million girls marry or enter into unions at that age, while 5,7 million do so before turning 18 years of age.[24] These figures highlight the commonality of child marriages in Tanzania, which are particularly prevalent in regions such as Shinyanga, Manyara and coastal areas.[25] The numbers may actually be higher due to inconsistent marriage record keeping, despite legal requirements mandating the registration of marriages.

Related to child marriage are various harmful traditions that adversely affect the lives of girls. One of the most significant of these is bride price or dowry, which involves the payment of stock, goods, money or other forms of property from the groom's family to the bride's family as a precondition for marriage.[26] This practice spans across various tribes and communities in Tanzania, manifesting in both rural and urban settings. The bride price is often perceived as a gesture of appreciation from the groom's family to the bride's family for raising a daughter. Many men in Tanzania view this payment as a duty, which contributes to a sense of pride. Additionally, bride price serves as a symbol of a woman's value.[27] However, in some communities, bride price is tied to notions of virginity, giving rise to harmful practices such as virginity testing, which violate girls' dignity, perpetuate gender inequality and stigmatise non-virgins, especially survivors of sexual violence, thereby compounding their trauma.

The pressure surrounding virginity can drive girls to adopt harmful practices, such as anal sex, in misguided attempts to preserve their virginity, exposing them to serious health risks.[28] Societal emphasis on

21 UNICEF 'Child marriage in Eastern and Southern Africa: A statistical overview and reflections on ending the practice' (June 2022), https://data.unicef.org/resources/child-marriage-in-eastern-and-southern-africa-a-statistical-overview-and-reflections-on-ending-the-practice/ (accessed 3 September 2025).
22 As above.
23 As above.
24 As above.
25 As above.
26 Sec 2 The Law of Marriage Act CAP 29 [R.E 2019].
27 BO Eniola & JI Aremo 'Bride price and sexual and reproductive rights of women: A case study of South Africa and Nigeria' (2020) 96 *Journal of Law, Policy and Globalization* 26, 28.
28 N Msuya 'Harmful cultural and traditional practices: A roadblock in the implementation of the Convention on the Elimination of Discrimination against

virginity also contributes to child marriage, as families may marry off daughters early to avoid premarital sex and unwanted pregnancies. Bride price is further influenced by factors such as skin colour and family background. Among the Sukuma, lighter skin can elevate bride price, while daughters engaged in agricultural or livestock labour increase familial value, complicating negotiations.

Despite its cultural legitimacy, bride price has negative implications. It fosters perceptions of women as property, reinforcing male entitlement and abuse. Older men who can afford higher payments often marry much younger girls, deepening power imbalances. These dynamics feed into domestic violence, where failure to meet reproductive expectations, particularly the birth of male children, can justify abuse.[29] Addressing these issues requires a multifaceted approach that accounts for socio-cultural norms while safeguarding the dignity and rights of women and girls.

Child marriage also intersects with practices such as *nyumba ntobhu* (ghost marriage), particularly in Tanzania and Kenya. In Tanzania, it is common among the Kurya and Luo in the Mara region,[30] while in Kenya it appears among the Luo, Nandi and Kikuyu.[31] Legally unrecognised, *nyumba ntobhu* involves same-sex unions where a woman, termed a 'female husband', pays dowry and follows customary marriage rituals to marry a younger girl. Although non-sexual, the relationship is socially acknowledged as marriage, with the female husband arranging for a man to impregnate the girl. Children from this arrangement are deemed the female husband's offspring, and she assumes all parental responsibilities.[32] This structure is not framed as romantic or lesbian, but as a culturally recognised institution of lineage continuity.

The rationale often lies in wealth and societal expectations. Female husbands, typically older and financially stable, may be childless or desire male children for purposes of inheritance. Marriage to a younger girl ensures offspring while securing household

Women and the Maputo Protocol on women's rights in Tanzania' unpublished PhD thesis, University of Kwa-Zulu Natal, 2017 140.

29 JM Mbaku 'The rule of law and the exploitation of children in Africa' (2019) 42 *Hastings International and Comparative Law Review* 287.

30 Legal and Human Rights Centre (LHRC) 'Annual Report Book 2012', https://humanrights.or.tz/en/post/resources-center/AnnualReport_2012 (accessed 4 September 2025).

31 M Kareithi & F Viljoen 'An argument for the continued validity of woman-to-woman marriages in post-2010 Kenya' (2019) 63 *Journal of African Law* 303, 305; GB Nyamongo 'Woman to woman marriage: The case of female husbands among the Akamba of Kenya' (2020) 7 *The Strategic Journal of Business & Change Management* 1462,1464.

32 As above.

management. Although lacking sexual intimacy, the relationship imposes spousal roles akin to conventional marriage.

Poverty intensifies both child marriage and *nyumba ntobhu*. Families facing financial hardship may view daughters as economic assets, marrying them off for survival. Data shows that 46 per cent of women from poor households marry as children, compared to 16 per cent from wealthier families.[33] Environmental crises such as droughts and floods further exacerbate the problem. For instance, drought-stricken Shinyanga saw a rise in child marriages in 2022 compared to the prior year due to the severe drought of 2021-2022.[34]

Cultural perceptions also drive the persistence of child marriage. In many societies, girls are viewed mainly as wives and mothers, expected to bear children at puberty. Rites such as *unyago*[35] reinforce these norms.[36] At puberty, girls are taken to initiation camps to learn about womanhood, domestic duties, sexual relations and respect for elders. Such training often encourages practical application with boys or men, leading to early marriages and pregnancies that interrupt education.

Parental illiteracy compounds the issue. Many parents undervalue schooling and prioritise marriage, in some instances, deliberately undermining girls' academic performance to facilitate their early marriage. Others see child marriage as protection from premarital pregnancies or poverty, offering daughters perceived economic security. Where quality of education is considered poor, parents may conclude that marriage is more beneficial than continued schooling. In such contexts, even the ability to meet basic needs without education weakens parental commitment to their daughters' studies.

The consequences of child marriage are profound. Girls suffer psychological distress, and their emotional, sexual and social development is disrupted. Diala argues that marriage erodes young brides' sense of identity, denying them childhood experiences.[37]

33 Twaweza 'Child marriage in Tanzania', https://twaweza.org/wp-content/uploads/2021/05/13.-ChildMarriageFactsheet-EN-FINAL-web.pdf (accessed 5 September 2025).

34 K Makoye 'Child marriages on the rise in Tanzania' 26 August 2022 , https://www.aa.com.tr/en/africa/child-marriages-on-the-rise-in-tanzania/2669850 (accessed 6 September 2025).

35 Rite of passage for girls that involves seclusion and education by older women on the importance of sex and conjugal life, often accompanied by music and dance.

36 J Diala 'Child marriage and lost identity in Southern Africa' (2019) 35 *Pravni Vjesnik Journal of Law, Social Sciences and Humanities* 53, 58.

37 Diala (n 36) 59.

Their immaturity heightens vulnerability to spousal violence, with conflicts arising from behaviours deemed childish.

Educational exclusion is particularly prevalent. In Tanzania, 99 per cent of married girls aged 15 to 19 years are out of school, with only 1 per cent continuing education post-marriage.[38] This curtails the acquisition of skills vital for adulthood, trapping them in cycles of dependency and poverty. Education equips girls for economic activity, enabling them to support families and contribute to national development. By denying girls education, child marriages not only violate their rights but also deprives society of essential human capital.[39]

3.2 Albinism and related cultural practices

Albinism is a 'rare, non-contagious, genetically inherited condition characterised by a deficit in the production of melanin and a lack of pigmentation in the skin, hair, and/or eyes'.[40] Tanzania has the highest prevalence of albinism in Africa, with an estimated one in every 2 000 persons affected, and Tanzania also records the highest levels of discrimination and violence against persons with albinism on the continent.[41]

In Tanzania, harmful myths and superstitions continue to shape the experiences of persons with albinism (PWA), who are often perceived as not fully human but as manifestations of bad spirits, believed to vanish rather than die naturally.[42] Albinism is widely misattributed to witchcraft, maternal infidelity or ancestral displeasure, reinforcing its stigma. In pursuit of wealth and power, many communities believe that the body parts of PWA possess magical properties capable of ensuring prosperity or political success. This belief fuels violence, including murder and mutilation, under the guise of witchcraft practices. The derogatory language used to describe PWA, such as *zeru zeru* (denoting their condition) and *dili* (implying their exploitation for profit), compounds their marginalisation. These

38 Twaweza (n 33).
39 Mbaku (n 29) 221.
40 United Nations 'Harmful practices and hate crimes targeting persons with albinism: Report of the independent expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond (4 January 2022)', https://docs.un.org/en/A/HRC/49/56 (accessed 7 September 2025).
41 I Kajiru & JC Mubangizi 'Human rights violations of persons with albinism in Tanzania: The case of children in temporary holding shelters' (2019) 19 *African Human Rights Law Journal* 246-266.
42 Adventist Development and Relief Agency (ADRA) 'Persons with albinism in Tanzania: Situational analysis', https://adratanzania.org/wp-content/uploads/2023/03/The-Plight-of-People-with-Albinism-in-Tanzania.pdf (accessed 7 September 2025).

labels not only dehumanise them but also legitimise discrimination, thereby perpetuating grave human rights violations.

Girls with albinism face heightened risks due to the intersection of age, gender and disability.[43] Their physical vulnerability makes them easier targets for violence,[44] while societal beliefs that the innocence of young girls enhances the potency of witchcraft charms render them particularly desirable victims. Such intersecting disadvantages create profound barriers to education.[45] Fearful of violence ranging from mutilation to murder, parents often withdraw their daughters from school or prevent them from enrolling altogether. The stigma attached to albinism also leads to neglect and abandonment within families, further undermining educational opportunities. Even when girls with albinism attend school, they frequently encounter bullying, insults and name-calling from peers, which erode their confidence and academic performance, increasing the likelihood of drop-out.[46]

The educational exclusion of children with albinism is well documented. A 2019 study found that only 45,3 per cent of children with albinism attend school, with only 33,6 per cent completing primary education, while many either never enrol or withdraw prematurely.[47] This denial of the right to education reflects not only parental fears, but also the broader discriminatory environment in which children with albinism grow up. For girls in particular, the intersection of cultural myths, gendered vulnerability and structural barriers compounds their marginalisation, reinforcing cycles of poverty and dependence.[48] Urgent interventions are therefore required to dismantle the myths surrounding albinism, protect the rights of girls with albinism, and create inclusive educational

43 Mbaku (n 29) 237.
44 United Nations, Division for Social Policy Development and Department of Economic and Social Affairs 'Toolkit on disability for Africa: Culture, beliefs and disability', https://desapublications.un.org/sites/default/files/publications/2022-03/Cultures-Beliefs-Disability.pdf (accessed 8 September 2025).
45 Mbaku (n 29) 237.
46 A Ojilere, K Adekilekun & S Umeh 'Violation of dignity of vulnerable women in African customary law and socio-religious mythology' (2021) 2 *African Customary and Religious Law Review* 44, 51.
47 United Republic of Tanzania, Office of the Prime Minister, Labour, Youth, Employment and Persons with Disability 'Mpango Kazi wa Taifa wa Haki na Ustawi kwa Watu wente Ualbino' (translated as National Action Plan for Persons with Albinism 2024/2025-2028/2029), November 2024 https://www.kazi.go.tz/uploads/documents/en-1735281794-MTHUWWU%20.pdf (accessed 8 September 2025).
48 Africa Albinism Network 'Joint alternative report on the human rights situation of children with albinism in Tanzania submitted to the Committee on the Rights of the Child (CRC Committee)', https://africaalbinismnetwork.org/wp-content/uploads/2025/03/Joint-Alternative-Report-on-the-Human-Rights-Situation-of-Children-with-Albinism-in-Tanzania.pdf (accessed 8 September 2025).

environments that ensure their safety, dignity and equal access to opportunity.

3.3 Son preference and related cultural practices

Son preference is 'a strong partiality for boys over girls by parents and communities, which results in the neglect of basic rights for girls, including their health, nutrition and education'.[49] It is a prevalent tradition in Tanzanian society based on the widespread culture of male dominance. It stems from various socio-cultural factors, notably the perception that male children are expected to uphold the family name and legacy. For many families, having sons is often seen as a means of securing their familial reputation and support, as daughters are frequently viewed as transferring their loyalty and name to their husbands upon marriage.[50]

The pressures surrounding son preference can lead to significant consequences, including divorce when women bear only daughters. It is not uncommon for women in this situation to be labelled as childless, highlighting the stigmatisation of female birth in some communities. Moreover, the belief that raising daughters constitutes a burden, as they are perceived as 'watering the neighbour's garden' rather than yielding benefits to their own.[51] It is this culture, among others, that encourages the related cultural practice of polygamous marriages. It encourages men to marry multiple wives in the expectation of having sons.[52] The practice of polygamy often leads to larger family sizes, which can place a significant strain on parents and hinder their capacity to provide adequate education for all children. This situation frequently results in unequal educational opportunities, particularly for girls, as families may prioritise the schooling of male children over that of female children,[53] believing that the sons will provide better support in the future.[54] Although primary and secondary education are free in Tanzania, the associated costs can still pose a significant barrier. In resource-constrained environments, girls are often the first to be taken from school to make room for their brothers' education, reinforcing cycles of gender inequality.

49 Mbaku (n 29) 229.
50 OHCHR 'Fact Sheet No 23, Harmful Traditional Practices Affecting the Health of Women and Children', https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet23en.pdf (accessed 8 September 2025).
51 As above.
52 Msuya (n 28) 145.
53 A Onuora-Oguno 'Commentary on the right to education: An expository of article 12 of the Maputo Protocol' (2023) 8 *Public Governance, Administration and Finances Law Review* 43, 47.
54 Mbaku (n 29) 306.

Another related practice is the unequal distribution of labour within the household, which further hinders girls' educational opportunities. While boys enjoy freedom for their studies and play, girls are typically assigned domestic responsibilities, such as fetching water and caring for younger siblings.[55] This imbalance often leads to school absenteeism and poor academic performance among girls, as their attention is diverted to household duties. As a result, the societal narrative positions girls primarily as future mothers, diminishing the emphasis on their education and potential. The overwhelming responsibilities at home foster an environment where girls struggle to balance educational aspirations with domestic expectations, ultimately contributing to higher drop-out rates and perpetuating gender inequality in education.[56]

4 The adequacy of legal mechanisms governing girls' rights to education and cultural practices in Tanzania

4.1 Constitutional protection of the right to education

The Constitution of the United Republic of Tanzania (CURT) establishes the right to access education under article 11(2), providing that 'every person has the right to access education, and every citizen shall be free to pursue education in a field of his choice up to the highest level according to his merits and ability'. Additionally, article 11(3) specifies the government's obligations to 'make efforts to ensure that all persons are afforded equal and sufficient opportunity to pursue education and vocational training in all levels of schools and other institutions of learning'. This recognition of the right to education is enshrined in the Directive Principles of State Policy, which aim to guide governmental actions and policies toward educational equity.[57] These 'Principles' are by their nature not justiciable and cannot be enforced by the courts.

Consequently, the constitutional framework does not recognise the right to education as a fundamental right, a dynamic that has deep historical roots. Since Tanzania's independence, all its Constitutions have omitted socio-economic rights, with the exception of the right

55 Msuya (n 28) 146.
56 L Cosmas & DJ Marwa 'The impacts of cultural practices on children's access to formal education in Tanzania: A case of Sukuma community in Meatu District, Tanzania' (2022) 34 *International Journal of Education Reform* 243.
57 Art 7(1) CURT.

to work. This exclusion is largely attributed to the historical context of British colonial rule, wherein the Bill of Rights did not include socio-economic rights, resulting in the mirroring of British legal principles in Tanzania.[58] Additionally, a fear among political leaders that including socio-economic rights might impede economic progress contributed to the reluctance to embed these rights in the Bill of Rights.[59]

The consequences of excluding the right to education as a fundamental right are profound, as it renders the right to education unenforceable by the judiciary, hindering individuals from holding state authorities accountable for any violations of this right. Justiciability of the right to education would empower victims to seek redress through legal avenues, such as injunctions, policy changes, repeals and amendments of laws, criminal punishment or administrative penalties.[60] Key issues justifying the need for justiciability encompass discrimination in education, accessibility, quality of education, and the adequacy of educational funding.[61]

Critics may contend that justiciability of the right to education in Tanzania is unnecessary, given the country's ratification of regional and international instruments such as the African Charter on Human and Peoples' Rights (African Charter), which provides for complaints before judicial and quasi-judicial bodies.[62] Article 50 of the African Charter permits the African Commission on Human and Peoples' Rights (African Commission) to act only after domestic remedies have been exhausted, thereby offering a potential channel for redress beyond national courts. However, this mechanism is limited by the non-binding nature of the Commission's decisions and further weakened by Tanzania's withdrawal, in 2019, from the Protocol Establishing the African Court on Human and Peoples' Rights. These constraints significantly undermine the practical enforceability of the right to education at the international level, leaving domestic justiciability crucial.

58 JK Mwaikusa 'Genesis of the Bill of Rights in Tanzania' (1991) 3 *African Journal of International and Comparative Law* 680, 681; CP Maina *Human rights in Tanzania: Selected cases and materials* (1997) 11.

59 FH Mtulya 'The influence of the Universal Declaration of Human Rights in Tanzania: An assessment through judicial interpretation on fundamental rights and freedoms' (2016) 1 *The Law School of Tanzania Law Review Journal* 81, 88; Legal and Human Rights Centre 'Tanzania human rights report 2022: The journey of criminal justice reforms to safeguard human rights', https://humanrights.or.tz/en/post/resources-center/TZHumanRightsReport2022 (accessed 15 September 2025).

60 FK Korankye-Sakyi, S Faakye & PA Atupare 'Critical reflections on the justiciability of the right to education in Ghana' (2022) 22 *African Human Rights Law Journal* 161, 170.

61 Korankye-Sakyi and others (n 60) 172.

62 Korankye-Sakyi and others (n 60) 184-185.

Proponents of judicial activism argue that Tanzanian courts should interpret the right to education in conjunction with other fundamental rights, given the interdependence of human rights.[63] This approach was underscored in *Julius Ishengoma Francis Ndyanabo v The Attorney General*,[64] where the Court of Appeal affirmed that provisions on fundamental rights must be broadly and liberally construed to safeguard human rights. Nevertheless, the courts have been hesitant to extend this reasoning to socio-economic rights such as the right to education. In *Alexander J Baranguza v The Higher Education Students' Loan Board and the Attorney General*,[65] the petitioner urged the Court to interpret the right to education under article 11 of the Tanzanian Constitution in the context of the right to life, highlighting education's indispensable role in human existence. The Court, however, declined to recognise this interconnectedness, demonstrating judicial reluctance to elevate education to the status of a fundamental right. This gap underscores the urgent need for Tanzania to align its constitutional framework with international human rights norms to guarantee meaningful enforcement of the right to education.

4.2 Conflicting nature of laws

The state's obligation to enact appropriate legislation requires clarity and consistency within the legal framework to enable effective judicial implementation. Conflicting laws undermine this objective and can directly violate the right to education for girls, particularly in the context of harmful cultural practices. A critical example lies in Tanzania's contradictory legal provisions on the age of marriage. The Penal Code criminalises sexual intercourse with a girl under 18 years of age, including within marriage,[66] thereby affirming the principle that minors cannot consent to sexual acts. It further stipulates criminal liability for husbands who engage in sexual relations with wives under 18 and prohibits the procurement of a married girl below this age for purposes of sexual intercourse.[67] However, the

63 The Preamble to the African Charter proclaims: '[I]t is henceforth essential to pay particular attention to the right to development, and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.' It is further stated under art 5 of the Vienna Declaration and Programme of Action (1993) that '[a]ll human rights are universal, indivisible and interdependent and interrelated'.

64 Court of Appeal of Tanzania Civil Appeal 64 of 2001.

65 High Court of the United Republic of Tanzania at Dar es Salaam, Misc Civil Application 16 of 2021 (unreported).

66 Sec 138 Penal Code.

67 Sec 138(2).

Law of Marriage Act[68] sets the minimum marriageable age for girls at 15,[69] creating a paradox whereby girls deemed minors under one statute are permitted to marry under another. This inconsistency raises fundamental questions about the meaning of marriage, the protection of minors, and the broader impact of early marriage on girls' education and well-being.

The Education Act[70] further complicates this landscape by imposing penalties on those who facilitate marriage or impregnate schoolgirls,[71] thereby aiming to safeguard educational retention. Yet, this provision conflicts with the Law of Marriage Act, which legitimises early marriage. Cultural practices exacerbate this contradiction, as early marriage is sometimes promoted by families as a safeguard against premarital sexual relations and unwanted pregnancies, ostensibly in the best interests of the child. However, such norms starkly conflict with statutory protections designed to shield girls from exploitation and uphold their right to education. Judicial decisions underscore this tension. In *Rebeca Gyumi v Attorney General*,[72] the Court affirmed that consent cannot constitute a defence for a husband in marital relations involving underage wives, reflecting judicial prioritisation of child protection over custom. Similarly, in *Lemindea Lesiria and Kulasa Mandeu v Republic*,[73] the Court stressed that customary marriages with minors cannot override statutory protections. Nevertheless, the unresolved status of girls married between the ages of 15 and 17 highlights the inadequacies of protection under the current legal framework.

The contradictions extend to education-specific laws. A 15 year-old girl considered of marriageable age under the Law of Marriage Act would, in most cases, still be in school, whether in late primary or early secondary school. Yet, the Education (Expulsion and Exclusion of Pupils from Schools) Regulations, 2002 provide for the expulsion of married girls, directly undermining their right to education. The government has defended this measure, arguing before the African Court on Human and Peoples' Rights (African Court) in *Tanzanian girls*[74] that it serves to uphold African morals and values. This justification was linked to article 11(2)(c) of the African

68 CAP 29 [RE 2019].
69 Sec 13.
70 CAP 353 [Revised Edition: 2002].
71 Secs 60A(1) & (2) of the Act.
72 Miscellaneous Civil Cause 5 of 2016, High Court of Tanzania at Dar es Salaam.
73 Criminal Appeal 8 of 2023, High Court of the United Republic of Tanzania, Arusha District Registry.
74 *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v Tanzania*, No 12/Com/001/2019, decided March/April 2022 (*Tanzanian Girls*).

Charter on the Rights and Welfare of the Child (African Children's Charter), which promotes the strengthening of African morals and values through education.[75] Nevertheless, this approach effectively punishes girls, rather than protecting them, and denies them access to formal education at a critical stage of their development.

In response to the limitations of the Education (Expulsion and Exclusion of Pupils from Schools) Regulations, the Ministry of Education, Science and Technology issued an Education Circular in 2021 which permits the re-entry of pupils into primary and secondary school after dropping out, including on account of pregnancy.[76] While this measure represents progress, it has been criticised for excluding married girls and for failing to repeal or amend the expulsion regulation, which remains in force.[77] Moreover, the Circular lacks detailed implementation guidelines, leaving individual schools to adopt disparate approaches. Some institutions place pregnant girls or young mothers in separate classrooms, while others divert them to development colleges, often restricting meaningful reintegration into mainstream education. The absence of a coherent framework, therefore, weakens the protective intent of the Circular and perpetuates systemic barriers to girls' educational continuity.[78]

It is evident that Tanzania's legal framework governing marriage, sexual consent and education embodies both protections and contradictions that undermine the rights of girls. The divergence between the Penal Code, the Law of Marriage Act, the Education Act and associated Regulations generates a cycle of vulnerability in which girls may be legally married at 15, denied access to education if they become wives or mothers, and inadequately reintegrated under piecemeal re-entry policies. These inconsistencies expose girls to exploitation while purporting to uphold their rights, revealing an urgent need for comprehensive legislative reform. Harmonisation of these statutes is essential to secure the best interests of the child, ensure consistent protection from early marriage, and guarantee the full enjoyment of the right to education.

75 *Tanzanian Girls* (n 74) paras 27 & 42.
76 Education Circular 2 of the Year 2021 on School Re-Entry for Primary and Secondary School Students' Drop Out for Various Reasons.
77 *Tanzanian Girls* (n 74).
78 Haki Elimu 'Annual Report 2023', https://www.hakielimu.or.tz/publications/annual-report.html?start=12 (accessed 15 September 2025).

4.3 Pluralistic nature of laws

The coexistence of multiple legal orders in Tanzania illustrates how legal pluralism can perpetuate violations of girls' rights.[79] Tanzania's legal system integrates state, customary and religious laws, which often intersect in complex ways. While statutory law is recognised as superior, the Judicature and Application of Laws Act (JALA)[80] permits the application of customary law in civil matters when parties consent to its use or when justice is better served within a community framework.[81] JALA further institutionalises customary law by mandating district councils, under the supervision of the Minister of Legal Affairs, to formalise and amend local declarations of customary laws which, once published, carry the force of law within the relevant districts.[82]

One prominent example is the Local Customary Law (Declaration) Order,[83] which codifies practices such as the payment of bride price or dowry, typically from the groom and his family to the bride's father.[84] The Order specifies acceptable forms of dowry, including livestock and other gifts, thereby embedding such customs within the legal order.[85] Although Tanzania has pledged at both international and regional levels to eliminate harmful cultural practices, the tradition of bride price persists with little challenge. This practice fuels early and forced marriages, often driven by poverty and property aspirations. Girls married under such arrangements are frequently subjected to domestic violence, with limited recourse, as families may reject them once dowries are paid. Thus, addressing the institution of bride price is critical to mitigating child marriage and gender-based violence, as the practice functions less as a cultural rite than as a transactional mechanism rooted in patriarchy.

The broader patriarchal structure of Tanzanian society compounds these challenges, relegating women to positions of secondary citizenship. Social norms and legal declarations alike reinforce female marginalisation by limiting women's roles in decision making and entrenching male dominance. Customary laws, when given legal

79 G Corradi & E Desmet 'Children and young people in legally plural worlds' (2015) 47 *The Journal of Legal Pluralism and Unofficial Law* 170-174.
80 CAP 385 [Revised Edition 2019].
81 Sec 11(1)(a) JALA (n 80).
82 Secs 12(1)-(3) JALA (n 80).
83 Government Notice 279 CAP 358, 1 August 1963, RE 2002 (Local Customary Law (Declaration) Order issued under sec 12 of JALA). Applicable to the jurisdictions of Handeni, Kahama, Kondoa, Lushoto, Ngara, Nzega and Pangani districts.
84 GN 279 (n 83) Rules 1, 6, 7 & 9.
85 GN 279 (n 83) Rules 10, 11 & 12.

effect through declaratory orders, legitimise discriminatory practices that diminish women's status and perpetuate systemic inequality. A critical assessment of these laws exposes an inherent bias privileging men, thereby undermining constitutional and international commitments to gender equality.

In this context, legal pluralism, rather than protecting cultural diversity, risks legitimising practices that entrench patriarchal norms and deny girls their fundamental rights. Meaningful reform must therefore interrogate not only the coexistence of multiple legal systems, but also the ways in which state recognition of customary practices perpetuates discrimination against women and girls.

4.4 Discriminatory nature of the law and practices

Tanzania, as a party to relevant international and regional human rights instruments, bears a binding obligation to eliminate all forms of discrimination and to secure equal enjoyment of the right to education. Yet, despite constitutional guarantees of equality, discriminatory practices persist, particularly with regard to the legal age of marriage. The law permits girls to marry at 15 while requiring men to be 18, a disparity that constitutes direct discrimination on the basis of sex and age. This legal framework not only legitimises harmful practices, but also facilitates child marriage, which exposes girls to exploitation, undermines their autonomy, and compels many to abandon education, thereby violating their right to equality and to be educated on equal terms.

The Law of Marriage Act (LMA) aggravates these violations through its provisions on consent. Section 17 requires that any female under 18 to obtain parental, guardian or judicial consent before marriage – a burden imposed solely on girls, not on boys. By enabling parental or judicial approval of early marriages, the LMA entrenches systemic discrimination and legitimises coercion. In practice, this provision allows parents, often influenced by poverty or social pressures, to facilitate early marriages that strip girls of their right to education, health and protection. International human rights jurisprudence recognises that such laws are incompatible with the best interests of the child principle and with the obligation to eradicate harmful cultural practices.

While raising the marriageable age to 18 cannot by itself eliminate child marriage, evidence shows that countries with such provisions

report significantly lower rates.[86] Similarly, removing parental consent requirements reduces parental complicity in perpetuating child marriage. However, in Tanzania, the entrenchment of patriarchal norms, cultural traditions and religious practices continues to obstruct legal reform, perpetuating violations of girls' rights.

These challenges are compounded by discriminatory cultural practices that burden girls with disproportionate domestic responsibilities. Household labour, caregiving and seasonal agricultural work systematically reduce their time for study, impair performance, and push many to drop out. Such gendered expectations, usually justified as preparation for future marital roles, undermine the principle of substantive equality and perpetuate indirect discrimination. Reports further show that some mothers, internalising these patriarchal norms, encourage daughters to neglect schooling in favour of domestic duties, thereby reproducing cycles of inequality.

The persistence of such laws and practices highlights a profound human rights crisis. To comply with its obligations, Tanzania must harmonise domestic law with international standards by setting 18 as the minimum marriage age without exceptions, prohibiting parental consent for child marriages, and addressing discriminatory socio-cultural practices. Only through comprehensive reforms can Tanzania guarantee the right to education and the equal dignity of all children.

Lastly, the African Children's Charter outlines the responsibilities of African children towards their family, including the duty 'to work for the cohesion of the family',[87] as well as 'to preserve and strengthen African cultural values'.[88] This framework recognises the significance of children participating in family duties and chores, which is viewed as an integral aspect of their upbringing in many African cultures. However, it is imperative to ensure that these responsibilities do not infringe upon the child's right to education or lead to discriminatory practices based on gender. The principle of the best interests of the child must remain paramount, guiding how family obligations are assigned and ensuring that all children have equitable opportunities for their personal development and education. This balance is crucial in promoting a supportive family environment that respects both cultural values and children's rights.

86 I Warioba 'The formal vis-à-vis the substantive approach towards the elimination of child marriages for girls in Tanzania' (2019) 1 *The Tanzania Lawyer* 1, 9.
87 Art 31(a) African Children's Charter.
88 Art 31(d) African Children's Charter.

5 Conclusion and recommendations

This article has provided a comprehensive analysis of the right to education for girls in Tanzania, underscoring the persistent tension between legal guarantees and harmful cultural practices. While international and regional instruments affirm the right to education, and domestic law gestures toward its protection, entrenched cultural practices continue to undermine girls' access to, and enjoyment of, education. Practices such as child marriage, the payment of bride price, *nyumba ntobhu* arrangements, the marginalisation of girls with albinism, and pervasive son preference illustrate how culture both shapes and constrains educational opportunities. These dynamics not only compromise the quality, content and accessibility of education, but also perpetuate deeply rooted gender inequalities.

The study highlights the inadequacy of Tanzania's pluralistic legal system – comprising statutory, customary and religious laws – to address these challenges. The constitutional recognition of education merely as a directive principle of state policy renders the right non-justiciable, leaving individuals without effective remedies. Furthermore, contradictions between laws, notably the Law of Marriage Act, the Education Act and the Law of the Child Act, create legal ambiguities that facilitate rights violations. The Law of the Child defines all persons under 18 as children, yet the Law of Marriage permits girls to marry at 15, effectively sanctioning early marriage and interrupting their education. The inconsistency is exacerbated by the Education Act, which penalises the marriage or impregnation of school girls, yet fails to reconcile with the Marriage Act. Such contradictions reflect the broader shortcomings of Tanzania's plural legal framework, which entrenches patriarchal norms through instruments such as the Local Customary Law (Declaration) Order.

These contradictions have profound consequences. Early marriage, son preference and disproportionate domestic responsibilities impose structural and cultural barriers to girls' education, resulting in higher truancy, school drop-outs and diminished academic achievement. The combined effects of discriminatory laws and cultural practices perpetuate cycles of poverty and gender inequality, undermining Tanzania's compliance with international and regional obligations to uphold girls' rights.

In response, the study emphasises the importance of constitutional and legal reform. Recognising education as a fundamental right – akin to socio-economic rights in Kenya and South Africa – would render the right enforceable and empower courts to protect it.

Moreover, constitutional reform must balance cultural rights with protections against harmful practices.[89] Explicit prohibitions, such as those enshrined in Uganda's Constitution, could serve as a model, ensuring that no law, custom or practice may undermine the dignity or welfare of women and vulnerable groups.[90] Expanding such provisions to cover all marginalised groups including children, women and persons with disabilities, would more comprehensively align Tanzania with its human rights commitments.

Legal reform is equally essential. Harmonising Tanzania's marriage laws with international standards by raising the minimum marriageable age to 18 for both sexes, without exceptions, is a necessary step.[91] Such reform would resolve contradictions between the Marriage Act, the Penal Code and the Education Act, and would more effectively safeguard girls from early marriage. Establishing this threshold also reflects the reality that individuals under 18 are typically still engaged in formal education, thereby reinforcing the right to uninterrupted schooling.

The study also draws attention to harmful practices such as female genital mutilation (FGM) and forced marriage, which persist despite legislative penalties. While punitive measures remain necessary, their effectiveness is limited in contexts where family members are the perpetrators. The imprisonment of parents or guardians, as illustrated in *Lowema Thadei and Thaseus Porokwa v Republic*,[92] may fracture families, stigmatise victims and reduce the likelihood of reporting. Harsh penalties risk driving such practices underground, further endangering children. Thus, a balanced approach is required: maintaining penalties while strengthening awareness-raising campaigns that expose the harms of these practices and promote education as a positive alternative.

Raising awareness is indispensable for addressing harmful customs such as son preference, which indirectly undermine girls' education by overburdening them with domestic work. Public campaigns should utilise accessible platforms, including rural radio; market auctions

89 The current Tanzanian Constitution was enacted in 1977 and is now 48 years old. In 2010, a constitutional law process was initiated, which ultimately led to the drafting of the proposed Constitution of 2014. However, more than a decade has passed, and there still is no new Constitution, largely due to the lack of political will.

90 Sec 33(6) of the Constitution of Uganda of 1995, which provides that '[l]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution'.

91 Mbaku (n 29) 149-150.

92 Criminal Appeal 89 of 2022, High Court of the United Republic of Tanzania, Arusha Registry.

(known as *minada*); village community banks (VICOBA); religious gatherings; and telecommunications networks. These initiatives should be led jointly by government, civil society and community actors, ensuring that messages reach grassroots communities where harmful practices are mostly entrenched. Awareness efforts must highlight not only the dangers of harmful practices but also the social and economic benefits of girls' education.

Practical reforms are also necessary to address challenges faced by pregnant and nursing students. Current provisions under the Education Act empower the Minister of Education to make regulations, and this authority should be used to adopt guidelines that prohibit mandatory pregnancy testing, protect against bullying and harassment, and simplify school transfers for expectant or nursing students. Voluntary disclosure, stigma reduction and structural support would ensure that such students continue their education rather than being excluded from it.

Finally, the study recommends embracing innovative educational modalities, including online learning. The disruptions caused by the COVID-19 pandemic worldwide highlighted the need to build resilience into education systems. By developing blended learning approaches that combine physical and online teaching, Tanzania could provide flexible educational opportunities for vulnerable groups, including pregnant girls and nursing mothers, whose attendance may otherwise be irregular. While infrastructural challenges exist, especially in rural areas, long-term investment in online education represents a progressive step toward inclusivity and equality.

In conclusion, the study demonstrates that the right to education for girls in Tanzania remains undermined by the interplay of harmful cultural practices and inadequate legal protections. Addressing these challenges requires a holistic strategy: the constitutional recognition of education as an enforceable right; the harmonisation of contradictory laws; the adoption of culturally sensitive yet firm prohibitions against harmful practices; the promotion of public awareness; and the implementation of practical reforms to ensure inclusivity in education. By adopting these measures, Tanzania can move towards dismantling entrenched cultural barriers, strengthening its legal framework, and fulfilling its obligations under international and regional human rights law. This would go a long way towards achieving gender equality, social justice and sustainable development.