



PREFERENCE FOR SONS

A Principal Form of Gender Discrimination and Violation of Women's Rights in Tanzania

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Abstract

Preference for male children is a powerful traditional belief, prevailing in numerous tribes in Tanzania. It is tied to inheritance and has remained inviolable because of the desire for a son to carry on the family name and guarantee its lineage. Females are generally viewed as inferior and subordinate to males. The huge pressure on women to produce a son not only directly affects their reproductive decisions, with implications for their health and survival, but it also puts them in the position of perpetuating the lower

status of girls through the preference for sons. It is also women who have to bear the consequences of giving birth to an unwanted girl child, which include violence, abandonment, divorce or even death in some case. It perpetuates the lower status accorded to girls by the family, community and society. This article examines the issue of preference for sons as a pernicious violence inflicted on women in Tanzania. It highlights how preference for sons reflects and fuels a culture of discrimination and violence, and should be addressed as a matter of human rights.

Key words: Gender, discrimination, women's human rights harmful cultural practices.

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1. Introduction

The tendency of parents to prefer sons to daughters is referred to as preference for sons.² It exists in many societies and cultures in the world, making it an issue with local and global dimensions.³ Preferring sons does not necessarily mean that daughters are completely unwanted or disliked, although it can mean this of course. But there is a range of psychological, social and material outcomes of preferring sons, such as double standards are applied to schools and daughters, who are treated differently in terms of restrictions, freedom and taboos. Boys and girls are expected to, and indeed do, behave differently, undertake different physical and emotional tasks, and participate in and perform different practical and ritual activities within families and kinship groups.

While the culture of preference for male children is not a new phenomenon but has existed in many parts of Africa and Asia for hundreds of years, its contemporary expression is seen in the gendered outcomes of social power relations as they interact and intersect with the economy, culture and technology.⁴ It is considered an important component of patriarchal marriages and the patrilineal kinship system.⁵ It emanates from the broader system of norms governing family formation, practices and attitudes in a given cultural setting.⁶ The underlying workings of female discrimination are indisputably complex.⁷ There is no doubt

that, as a result of the prejudice against women, their social and legal status over the ages has been a cause of grave concern in every culture, and in some areas the move has been from merely showing sympathy for this issue to engaging in aggressive feminism.⁸ Though families in urban areas of Tanzania have in many ways become westernised, they have not accepted the concept of equality.⁹ Traditional marriage customs vary according to the ethnic group, but the tradition of preferring sons is common in many tribes. It is more prevalent in tribes around the lake zone, and in north, south and central Tanzania.¹⁰ The preference for sons also prevails in North Africa (Morocco, Tunisia, Egypt, Mali and Senegal), as well as in the Great Lakes region (Burundi, Kenya and Uganda). However, Southern Africa (Namibia and South Africa) is characterized by a preference for variety, and Central Africa (Cameroon, Chad, the DRC, Gabon and Central African Republic) by the absence of gender preference¹¹.

The culture manifests itself in deprivation, neglect and discriminatory treatment of daughters to the detriment of their mental and physical health.¹² The preference for sons is a most pernicious violation of women's human rights. It comprises economic, physical, psychological and sexual abuse, and cuts across the strata of age, status, culture,

2 Douglas, A., Lena, E., Kevin, M., *Son Preference and the Persistence of Culture: Evidence from South and East Asian Immigrants to Canada*, Population and Development Review, 2013, Vol.39, No. 1, pp.75-95.

3 Rossi, P., Rouanet, L., *Gender Preferences in Africa: A Comparative Analysis of Fertility Choices Display the resource*, World Development, Elsevier, 2015, Vol. 72, pp. 326-345.

4 Purewal, N. K., *Son Preference Sex Selection, Gender and Culture in South Asia*, 2012, Retrieved from <http://www.bergpublishers.com/?TabId=11824>

5 *Ibid*

6 *Ibid*

7 Maloney, M., *Male Preference*. Retrieved November, Berg, New York,

2010, p. 17.

8 Oputa, C., *Women and children as disempowered groups*. In *Women and children under Nigerian law*. Lagos: Federal Ministry of Justice 1989, p. 27.

9 Ross, H., *What It's Like to Be a Woman in Tanzania*, Pink Pangea: The Community of women who love to Travel, 2015, p.2.

10 Mulema, J., *Son preference, childbearing behavior and respondent socio-demographic characteristics in Morogoro, Tanzania*, ABC Journal of Advanced Research, 2014, Vol. 3 No. 1, pp. 9-13. Amor, A., *Study on freedom of religion or belief and the status of women in the light of religion and traditions*, Addendum submitted to the Special Rapporteur in accordance with Commission on Human Rights resolution 2001/42, p.12.

11 Save the Children, *Children's situation in Tanzania 2003*, p.2 Available at <http://resourcecentre.savethechildren.se/start/countries/tanzania> accessed on August 2018; Amor, A., *Study on freedom of religion or belief and the status of women in the light of religion and traditions*, Addendum submitted to the Special Rapporteur in accordance with Commission on Human Rights resolution 2001/42, p.12.

12 *Ibid*.

wealth and educational background.¹³ The practices that expose women to degradation, indignity and oppression on account of their sex need to be independently identified, condemned, compensated for and, preferably, prevented. This article seeks to provide a brief but comprehensive overview of the practice in Tanzania of preferring sons, and its impact on women and young girls. It aims both to identify and address the ways in which human rights are violated through the preference for sons. It seeks to answer the following questions. What underlies the practice of preferring sons? How does this impact women and children in Tanzania? What human rights are breached by this practice? The study adopted the doctrinal research approach to investigate legal propositions, and in so doing literature on the subject as well as primary sources such as domestic statutes and international human rights instruments were reviewed.

2. An overview of preference for sons

The preference for sons is a powerful tradition which begins at the first signs of pregnancy, when a woman receives unsolicited prayers from her husband and the husband's family for the safe delivery of a baby boy.¹⁴ Usually the birth of a son is welcomed with celebration as an asset, whereas that of a girl is seen as a liability and an impending economic drain. It is commonly said that *bringing up girls is like watering a neighbour's garden*, meaning that eventually a girl will be married and considered a member of another family, so investing in her is like working hard for others.¹⁵ Therefore, investing in a daughter is considered an investment in another family's daughter-in-law. A girl child is made to accept that

the purpose of her life is to get married and raise children.¹⁶

Thus, in response to the attitudes and behaviours that reinforce women's subordination, an expectant mother would also wish that her first born would be a boy.¹⁷ Women are likely to keep on bearing more children than initially planned hoping to have a son, with the attendant consequence of the mother and female siblings feeling inferior.¹⁸ A considerable number of men look outside their matrimonial home so as to father a male child.¹⁹ As a result, many marriages become shaky simply because the woman is unable to bear a son.²⁰ The Ilorin culture believes a woman is just an extra to humanity.²¹ It is the traditional structure of family systems that men are the fixed point in the social order.²² A sterile wife is liable to be divorced and returned to her father's homestead in disgrace.²³ In some tribes, a bride price is paid to the wife's family, which ensures the legitimacy of the offspring as members of the husband's lineage. This is why the bride price is sometimes not paid in full until after the birth of one, or even two children.²⁴ If the wife is sterile, her father would have to repay all of the bride price upon her return. The culture of preferring sons has prompted some men to marry a second or third wife so that they can have a male child.²⁵

¹³ Osarenren (note 15 above) p.2.

¹⁴ Mulema, (note 9 above) p.10.

¹⁵ Save the Children (note 10 above) p.1.

¹⁶ Mulema, (note 9 above) p.10.

¹⁷ *Ibid*

¹⁸ Osarenren, L., *Tradition at the heart of violence against women and girls in Africa* Inter-African Committee on Traditional Practices (IAC) Issue 331, 2008, p. 3

¹⁹ Dickens, B.M., Serour, G. I., Cook, R.J., and Qiu, R. Z., *Sex selection: Treating different cases differently*, International Journal of Gynaecology and Obstetrics, 2005, Vol. 90 No. 2, p. 17

²⁰ United Nations. Selected factors affecting fertility and fertility preferences in developing countries, World Fertility Survey Conference 1980: Record of Proceedings, New York: United Nations 1982, Vol. 2, pp.141-227.

²¹ Repetto, R., *Son preference and fertility behaviour in developing countries*, Studies in Family Planning, 1972, Vol. 3 No. 4, p.70-76.

²² Mwageni E.A., Ankomah, A., Powell, R.A., *Attitudes of men towards family planning in Mbeya region, Tanzania: a rural-urban comparison of qualitative data*, Journal of Biosocial Science 1998 Vol. 30 pp. 381-392.

²³ *Ibid*

²⁴ Mulema (note 9 above) p.10.

²⁵ *Ibid*

Some general factors have been identified, which together create a situation where sons are preferred, and daughters suffer discrimination and neglect. They have been analysed along with different social, economic, political and cultural reasons that significantly determined couples' desire for a male child. Most of these factors are deeply rooted in cultural assumptions about gender identity and relations. The underlying patriarchal attitudes and behaviour, as well as discriminatory gender norms and structures, are the root cause of preference for sons in many societies. Many tribes in Tanzania are patriarchal, whereby men control and dominate all spheres of women's lives.²⁶ The belief that husbands are the head of the family and their decisions are final pervades in Tanzania.²⁷ Women are required to is unable to bear a son.²⁸ The Ilorin culture believes a woman is just an extra to Women are in a subordinate position, particularly at the community and household level.²⁹ The impact of the mother and father is particularly powerful on the way in which patriarchy is shaped and sustained. The mother is the role model for daughters, while the father shows his sons what it means to be a man.³⁰ Ideas about manhood are deeply embedded. From an early age, male children may be socialized into gender roles aimed at keeping men in power and maintaining control.³¹ Most men grow

26 Arnold, F., Gender Preferences for Children, DHS Comparative Studies No.23. Calverton, Maryland: Macro International Inc., 1997, p. 12; Pande R.P., *Selective Gender Differences in Childhood Nutrition and Immunization in Rural India: The Role of Siblings* Demography Vol. 40, No. 3 2003, pp. 395-418.

27 Msuya, N. H., *Tradition and Culture in Africa: Practices that Facilitate Trafficking of Women and Children*, 2017, Dignity: A Journal on Sexual Exploitation and Violence: Vol. 2, No. 1. Pp.1-36.

28 United Nations, *Selected factors affecting fertility and fertility preferences in developing countries*, World Fertility Survey Conference 1980: Record of Proceedings, New York: United Nations 1982, Vol. 2, pp.141-227.

29 Fuse K. *Variations in attitudinal gender preferences for children across 50 less-developed countries*, 2010, Vol. 23, No.36, pp. 1031-1048.

30 Leaper, C., *Parents' Socialization of Gender in Children*, Encyclopedia on early child wood development 2014, p.3.

31 Msuya, N. H., *Harmful cultural and traditional practices: a roadblock in the implementation of the Convention On The Elimination of Discrimination Against Women And the Maputo Protocol on women's rights in Tanzania*, 2017, PhD Thesis, University of KwaZulu Natal, p.114.

up believing that dominating girls and women is what makes them a man, and so they regard their wives as dependent and inferior partners, who need to listen to them and follow their instructions.³² Wives are not supposed to question what their husbands choose to tell them and to do so is to show disrespect.³³ Most societies have constructed what role is feminine or masculine, and so have apportioned different roles to men and women. In most cases, a girl or woman is seen but not heard. She knows her place, which means doing all the domestic chores, such as fetching water, cooking, scrubbing, cleaning and looking after the children and other family members.³⁴

Other factors that determine couples' preference for sons are family and peer pressure and the need for a successor.³⁵ Sons are preferred because they perpetuate the family name, while girls lose their identity upon marriage by adopting their husbands' name. Many families want a son so that they will not lose their family name, which gives them a sense of prestige.³⁶ The fear that one's family will become extinct if they give birth to female children only is widespread.³⁷ The tradition which forbids women from bearing their father's name after marrying also exists.³⁸ Some traditions maintain that only sons can perform certain religious and cultural functions, such as rituals for the death of parents. For instance, the Kurya from Mara have a custom whereby, when a man dies without a male heir, the family selects one of his daughters to remain in his house and choose a lover with whom she cohabits to raise a male successor.³⁹

32 Msuya (note 26 above) p. 27.

33 Msuya (note 30 above) p. 115.

34 Msuya (note 26 above) p. 26.

35 Save the Children (note 10 above) 2.

36 Ibid.

37 Msuya (note 30 above) p. 114.

38 Bussey K., Bandura A., *Social cognitive theory of gender development and differentiation*. Psychological Review. 1999 Vol. 106 pp. 676-713.

39 UNICEF, *Son preference perpetuates discrimination and violations of*

Likewise, sons are usually responsible for caring for aging parents and performing their burial rites.⁴⁰ The economic obligation of a son to look after his parents is greater, because he is considered to be the pillar of the family, ensuring the continuity and protection of its property. He has to provide the workforce and bring a bride to the family as an extra pair of hands. Children are valued as economic assets in rural areas.⁴¹ In the subsistence rural economy, children are an important source of labour, especially in assisting their mother with farm and household work. Parents expect their children, particularly the boys, to provide for them in their old age.⁴² Families in Tanzania also consider that the burden of grandchildren born to unmarried daughters is one of the reasons for preferring sons. Many daughters who become mothers without stable partners continue to live with their parents.⁴³ Unable to achieve economic independence, they become a financial burden. Therefore, not having a son is viewed as a source of vulnerability for parents in Tanzania, and those having only daughters are stigmatized.

Furthermore, sons are also preferred because they are expected to inherit their fathers' property, unlike daughters who do not. In most traditional societies, women are not allowed to inherit property, and so male members retain the right to own and use the property. Female children are often denied the right to inherit from their family as they are regarded as belonging to their husbands, and so they get less than male children.⁴⁴

women's rights: It must and can end, UNICEF, Press Release, Geneva, 14 June 2011.

40 Osarenren (note 15 above) 4.

41 Mbilinyi, M.J., *The state of women in Tanzania*, Canadian Journal of African Studies Vol.6 No.2 Special Issue: The role of African Women Past Present and Future 1972, pp. 371-377.

42 *Ibid*

43 Mwangini (note 21 above) p.383.

44 Alan Guttmacher Institute, *Hopes and Realities: Closing the Gap between*

A male child serves as insurance for his widowed mother, because her claim on her deceased husband's property is regarded by society as more legitimate if she has a son. This traditional practice is recognised and enforced under Tanzania Customary Law, which stipulates that a widow cannot inherit the property of her deceased husband.⁴⁵ This existing law of succession openly limits women from inheriting property due to their gender. This discrimination impoverishes women by limiting their access to land, a major economic resource, leaving them at the mercy of men with regard to their survival. Women have been kept in a state of perpetual dependence by this law.

The preference for a male rather than a female child is also connected to religion. Almost all the major religions of the world appear to be controlled by men in the form of clergy and religious authorities. Most religions have a male-dominated imagery and language relating to God.⁴⁶ It is asserted that an understanding of certain portions of holy books has fuelled the notion of women's submission to men.⁴⁷ Although recently some of these religious texts and doctrines have been highly disputed, the continuation of patriarchy, mostly through religious conservatism, still significantly influences the persistence of unequal gender relations and the preference for sons.⁴⁸ The teachings of religious leaders, especially Christian and Islamic, have often espoused dogma that reinforces women as minors in

Women's Aspirations and Their Reproductive Experiences. New York, NY: The Institute (1995) p. 127.

45 The Statement of Islamic Law Order No. 121 of 1962 (GN No. 222).

46 Onwutuebe, J. C., *Religious Interpretations, Gender Discrimination and Politics in Africa: Case Study of Nigeria*, 2013; Cooley, P. M., *Religious Imagination and the Body, A Feminist Analysis*, 1994, New York: Oxford University Press p.8.

47 Lukale, N., *Harmful Traditional Practices: A Great Barrier to Women's Empowerment* 1994 Girls Globe, p. 3.

48 Clark, S., *Son Preference and Sex Composition of Children: Evidence from India*. 2000, Demography Vol. 37 No. 1 pp. 95-108.

the sphere of religion,⁴⁹ and have emphasized some religious texts while disregarding others in a bid to sustain patriarchy, which is the main reason why sons are preferred.

3. Impacts of preference for sons

The practice of preferring sons is one of the principal forms of discrimination, which has far-reaching implications for women. It is a symptom of the pervasive social, cultural, political and economic injustice experienced by women, and a manifest violation of their human rights. It denies the girl child good health, recreation, economic opportunities and the right to choose her partner.⁵⁰ A female child is disadvantaged from birth due to the lack of the quality and frequency of parental care and the limited investment made in her development.⁵¹ The preference for sons also affects girls' nutrition and education. In most homes, sons are given bigger portions of food than daughters and are more likely to be enrolled in better schools and encouraged to complete their studies.⁵² When funds are short, daughters are normally withdrawn from school to allow the sons to be educated, irrespective of whether the daughters are naturally intelligent and the sons are dull.⁵³ The preference for sons has thus led to acute discrimination, particularly in resource-constrained societies. In extreme cases, it results in selective abortion and female infanticide in these days with access to technology.⁵⁴ The educational and economic impacts of

preference for sons are huge.⁵⁵ There are far fewer females than males enrolled in secondary schools in Tanzania, despite a substantial increase in the number of women who have attained at least seven years' primary education.⁵⁶

The inequality between the opportunities for males and females to access education causes women to experience lifelong economic and social disadvantage.⁵⁷ However, access to education by itself is not enough to eliminate the unfavourable values held by society, because some of these values seem to have been incorporated in educational curricula and textbooks.⁵⁸ Women are portrayed as passive and domestically oriented, whereas men are portrayed as dominant and the breadwinners of families.⁵⁹ Girls of a young age in rural and poor urban homes are burdened with domestic tasks and child care, which leaves them no time to play, while young boys have fewer demands made on them and are allowed to engage in activities outside the home.⁶⁰

The status of girls is linked to that of women, and a woman's work is never done, especially in rural areas and poor urban households.⁶¹ Women have fewer livelihood options in Tanzania, particularly as they are less likely to own land and capital.⁶² Childhood experiences of discrimination have a strong bearing on adult men and women's attitudes and behaviour with regard to masculinity and control. The preference for sons thus reinforces a girl's low self-worth, low self-esteem, depression and eventually low productivity in adulthood.

49 Jayachandran, S. & Rohini, P. *Why Are Indian Children So Short? The Role of Birth Order and Son Preference* American Economic Review 2017, Vol. 107 No. 9, 2600–2629.

50 The culture of preference for sons violates Articles 3, 4, 10 and 12 of CEDAW, Articles 2, 3, 12, 13, 14 and 15 of the Maputo Protocol, and Articles 2, 6, 12, 19, 24, 27 and 28 of the Convention on the Rights of the Child.

51 UNICEF (note 39 above) p. 12.

52 *Ibid*

53 Save the Children (note 10 above).

54 UNICEF (note 39 above) p. 10.

55 *Ibid*

56 Mulema J (note 9 above) p.10.

57 *Ibid*

58 Osarenren (note15 above) p. 2.

59 *Ibid*

60 Mwangeni (note 21) above).p. 382.

61 UNICEF (note 39 above) p. 7.

62 Mulema J (note 9 above) p.10.

Moreover, this culture has a negative impact on women's social development in societies where it is strong, as their security and status depend on their producing sons.⁶³ The more sons a woman produces, the greater her security and the higher the status accorded by her in-laws and her community. This culture not only affects women's potential for benefiting her immediate family and community, but also the nation. Fewer women than men are found in high status occupations, or top managerial and administrative positions in Tanzania.⁶⁴ Because childbearing directly affects women, men's preference for sons may be deleterious to women's reproductive health.⁶⁵ In an effort to fulfil her husband's desire for sons a woman may be compelled to bear more children. Constant child bearing may not only affect a woman's physiological well-being, but may also increase the risk of morbidity and mortality.⁶⁶ This culture that puts enormous pressure on women to produce sons not only directly affects their reproductive decisions with implications for their health and survival, but also puts them in a position of perpetuating the lower status of girls.⁶⁷ Some women have borne the consequences of giving birth to an unwanted girl child, which include abandonment, divorce, violence and even death.⁶⁸ Men continue to be the primary decision-makers, both in public and at home, as well as being the income earners, and so their attitude to reproductive matters is substantially influenced by their preference.⁶⁹

63 Mulema (note 9) above 4.

64 Osarenren (note 15 above).

65 Alan Guttmacher Institute. *Hopes and Realities: Closing the Gap between Women's Aspirations and Their Reproductive Experiences*. New York, NY: The Institute (1995) 127.

66 *Ibid*

67 Mwangeni (note 21 above) p. 382.

68 *Ibid*

69 Save the Children (note 10 above) p. 2.

4. Preference for sons and infringement of human rights.

Non-discrimination is a fundamental principle of international law. Human rights law prohibits discrimination on the basis of a wide range of prohibited grounds, and Tanzania has ratified all the main human rights instruments.⁷⁰ Equality and non-discrimination are foundational principles of the international human rights legal framework.⁷¹ This was first set out in the Universal Declaration of Human Rights (UDHR), and all the core human rights instruments adopted since the UDHR contain legal obligations relating to equality and non-discrimination.⁷² The preference for sons is a pervasive social, cultural, political and economic injustice affecting girls and women. It is a violation of the right of women not to be discriminated against. The UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibit discrimination on the grounds of sex, religion, property, birth or other status.⁷³ The ICCPR and ICESCR include further an undertaking to *ensure the equal right of men and women to the enjoyment of all rights* in their respective covenants.⁷⁴ The international human rights instruments which specifically provide for children's rights require children to be protected from discrimination on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal

70 Africa for Women's Rights, Ratify and Respect Report of Women's rights protection instruments ratified by Tanzania. Available at <http://www.africanforwomensrights.org> accessed on 11 February 2019; Peter, C. M., *Human Rights in Tanzania: Selected Cases and Materials*, Rudiger Verlag, Köln, 1997, p. 8.

71 *Ibid*.

72 De Albuquerque, C., Report to the General Assembly. 2010 UN Doc. No. A/65/254. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/477/84/PDF/N1047784.pdf?O...> Accessed on 8 January 2019.

73 Article 2 of Universal Declaration of Human Rights (UDHR) of 1948; Article 1 and 2 of International Covenant on Economic, Social and Cultural Rights (ICESCR), of 1966; Article 2,3 and 26 International Covenant on Civil and Political Rights (ICCPR) of 1966

74 Article 2 and 3 of the ICESCR; Article 2 and 3 of the ICCPR.

guardians, or family members.⁷⁵

While the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child of 1990 acknowledge the rights and duties of the family to nurture, socialise and develop their children in a manner consistent with local values, customs and traditions,⁷⁶ Article 24(3) of the CRC obliges state parties to take all effective and appropriate measures to abolish traditional practices prejudicial to children. Likewise, the first article of the African Charter on the Rights and Welfare of the Child obliges state parties to discourage any custom, tradition, cultural or religious practice that is inconsistent with the rights provided therein. Similarly, Article 21 insists that Governments should do what they can to stop harmful social and cultural practices which affect children.

It should be noted that the preference for sons is a form of violence against women, which is defined by Article 1 of the UN Declaration on the Elimination of Violence Against Women of 1993 as *any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women*. The definition focuses on violence which happens to women because of their being women, like the preference for sons. Violence against women is a manifestation of historically unequal power relations between men and women that has led to domination over and discrimination against women by men and has prevented the full advancement of women.⁷⁷ This legal instrument declares that violence

against women is one of the crucial social mechanisms by which women are forced to be subordinate to men.

State parties also have an obligation under international human rights law to respect, protect and fulfil the human rights of girls, as elaborated in the ICCPR, ICESCR, CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷⁸ Therefore, state parties have an obligation to take active steps to counter discrimination and to uphold women's rights. The major international and regional women's rights instruments, CEDAW and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) guarantee equality for all and condemn all forms of discrimination.⁷⁹ More relevant is Article 5(a) of CEDAW that requires states parties to modify social and cultural patterns of conduct with a view to achieving the elimination of prejudices and customary practices based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles of men and women.

Although the Constitution of the United Republic of Tanzania is clear on the right to equality for all human beings, the culture of male preference is still prevalent.⁸⁰ However the Article of the Constitution which bars discrimination on the basis of sex addresses only the *de jure* (letter of the law) and not the *de facto*, i.e. the practical effect of the law on the intended population.⁸¹ This

⁷⁸ This was clearly recognized at the International Conference on Population and Development (ICPD) in 1994 and in the associated Programme of Action that enjoined governments to: . . . eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices regarding female infanticide and prenatal sex selection. United Nations (1994); paragraph 4.16

⁷⁹ Article 3 of CEDAW and Article 2 of the Maputo Protocol.

⁸⁰ Article 12(1) & (2) of the Constitution; Legal and Human Rights Centre, Tanzania Human Rights Report 2012 LHRC 2013, pp. 107.

⁸¹ Tanzania Women Lawyers Association (TAWLA), Gender Equality and Women Empowerment (GEWE II) Review of Laws and Policies related to

⁷⁵ Convention on the Rights of the Child (CRC) of 1989

⁷⁶ Article 5, 18(1) & 27(2) of the CRC and Article 18 of the African Charter on the Rights and Welfare of the Child of 1990.

⁷⁷ Preamble of that declaration of the UN Declaration on the Elimination of Violence Against Women of 1993

falls short of the definition of CEDAW, which requires state parties to address both the law and practice.⁸² Finding out the sex of a child before birth is not illegal in Tanzania and there is no law that criminalizes the abortion of a female child due to gender preference.⁸³ However, some laws have been passed in Tanzania to address gender equality and to promote and protect women's interests, such as the SOSPA (1998),⁸⁴ the Law of the Child Act, 2009,⁸⁵ the Employment and Labour Relations Act 2004,⁸⁶ the Land Act (1999)⁸⁷ 1 girls' essential right to equality, dignity, and access to education, and contravened Tanzania's Law of the Child Act. The High Court pointed out that while the Law of Marriages Act might have been enacted with good intentions in 1971, this intention was no longer relevant because the effects of the Act now discriminated against girls by depriving them of opportunities that are vital for all Tanzanians. The Attorney General was given one year from the date of the decision to make arrangements for amendments of that law, and to put 18 years as the minimum age for one to contract a marriage. However, the Attorney general filed a notice of intention to appeal against this decision

by the High Court on 20 July 2016.⁸⁸

Additionally, the preference for having more sons than daughters influences fertility and contraceptive behaviour as articulated above, which means that women are valued when they are able to produce a male child. Women's sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the right not to be discriminated against. Both ESCR and CEDAW Committees have clearly indicated that women's right to health includes their sexual and reproductive health. This means that state parties are obliged to respect, protect and fulfil the rights relating to women's sexual and reproductive health.⁸⁹ Women's reproduction decisions are advanced by CEDAW under article 16, which guarantees women equal rights in deciding freely and responsibly on the number and spacing of their children. The human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, and freedom from coercion, discrimination and violence.⁹⁰

The foremost effect of the preference for sons is the denial of the inheritance rights of the girl child. It is the traditional practice of many tribes in Tanzania that only a son can inherit, but if the deceased father had no son, then his brothers or their sons would inherit. It is sad that the law continues to enforce the culture of

gender based violence of Tanzania mainland, 2014, TAWLA, p. 3.

82 Article of CEDAW.

83 UNICEF (note 39 above) p. 12.

84 The miscellaneous amendment baptized as Sexual Offences Special Provisions Act (SOSPA) of 1998 amended the Penal Code, Criminal Procedure Act, Cap. 20; Evidence Act, Cap. 6 and Children and Young Persons Ordinance, Cap. 13.

85 Law of the Child Act No. 21 of 2009 incorporated most of the child rights enshrine in CRC and African Charter on the Rights and Welfare of the Child. It integrated the principles of the permanent best interests of the child as elaborated in the Convention of the Rights of the Child of 1989 and African Charter on the Rights and Welfare of the Child of 1990.

86 Employment and Labour Relations Act No. 6 of 2004 prohibits discrimination on the basis of one's sex or gender role in Sections 7(1), (4) and (5), 20 and 33. Also, Section 7 of the law prohibits direct and indirect discrimination in the workplace including discrimination on the basis of sex, gender, pregnancy, marital status. Other gender-related issues addressed in this law include; i) prohibition of harassment which is regarded as part of the discrimination in Section 7(5).

87 Section 22(1) of the Village Land Act no. 5 1999 provides for group registration of a family unit in the village. It is a good opportunity for women to acquire legal rights concerning village land which would put them on par with male family members and save them from the requirement to be inherited by a male relative of the deceased husband in order to maintain their interest in land.

88 Mhagama H 'Tanzania: Network Asks Government to Rethink Decision on Early Child Marriages' *AllAfrica Report* 5 August 2016. Available at <http://allafrica.com/stories/201608050234.html>.

89 UN Human Rights, *Sexual and reproductive health and rights*, 2015 UN Human Rights <https://www.ohchr.org/en/issues/women/wrgs/pages/healthrights.aspx> Accessed on 27 March 2019.

90 UN Human Rights (note 95 above)

denying women the right to inherit in Tanzania. The Local Customary Law of succession, which governs the day-to-day lives of the majority of rural women and children in the country, denies women access to land and property upon divorce or the death of the husband.⁹¹ The law and the culture of preventing women from inheriting because of their gender impoverishes them by limiting their access to economic resources and leaving them at the mercy of men for their survival. Women have been kept in a state of perpetual dependence by this practice. Further, the Customary Law of Succession grades women at the lowest level, and children are graded according to their birth line and their mother's position in a polygamous marriage. The existence of the gender discriminatory provision in the law is evidence of how deeply rooted is the preference for sons in the country.

5. Recommendations for action

Tanzania is required to take every possible measure to eliminate all forms of discrimination against women such as that of the preference for sons. To successfully address such a hugely challenging issue will require a multifaceted approach. The impact of laws and policies on gender equality need to be analysed and modified to ensure that they are consistent with human rights commitments. Some domestic laws, such as the Customary Law Order, which endorses preference for male children, need to be revised. As a matter of priority, Tanzania should domesticate the CEDAW, Maputo protocol and other relevant international instruments dealing with discrimination against women.

91 The Local Customary Law (Declaration No. 4) Order [CAP 35 R.E. 2002], (GN No. 436 of 20 September 1963).

Challenging an entrenched mindset and traditional beliefs cannot be achieved easily. If change is to effectively take place, it must be done gradually. Vigorous and concerted efforts are needed by all concerned. The government and civil society should join hands to address the deeply rooted issue of gender discrimination which lies at the heart of preference for sons. It is also suggested that the government should develop and promote pragmatic policies that will reform the inheritance laws and take other measures to protect women, which will reflect its commitment to protecting human rights and promoting gender equality. Continuing advocacy and awareness-raising activities and campaigns that stimulate discussion on the equal value of boys and girls should be intensified. This is supported by what is happening in South Korea, where the preference for sons has largely been overcome through a combination of strategies, such as enshrining gender equality in laws and policies, advocacy, media campaigns and economic growth.⁹²

Programmes which challenge men's attitudes towards having a one-sex family need to be initiated. Men should be taught and persuaded that male and female children are equally important, which would help to reduce men's bias against girls, minimise marital problems, and improve women's status. Measures that support girls and women and other legal and awareness-raising actions are also needed. State parties should support advocacy and awareness-raising activities that stimulate discussion on the equal value of boys and girls. These

92 Cai, Y. P., *Isis International. Feminist Approach to Sex Birth Ratio in China*. 2012, http://www.isiswomen.org/index.php?option=com_content&view=article&id=1287:feminist-approach-to-sex-birth-ratio-in-china&catid=22:movements-within&Itemid=229 Accessed on 27 February 2019.

measures should focus on ensuring the self-determination of girls and women by improving their access to information, health care services and nutrition, education and personal security, including protection from coercion.

Additional measures may also need to be taken in the form of policies that are implemented and monitored to ensure that no matter whether girls are born second, third or fourth in a family they have equal access to education and health services. For instance, short-term measures, such as providing incentives for families with daughters only, may help to increase the perceived value of girls, while longer-term efforts to change deep-rooted thinking and attitudes take effect. Addressing the imbalanced sex ratios at birth is a key opportunity for state parties to examine their current legislative framework and the extent to which laws and policies are in line with their human rights commitments.

Advocacy to change attitudes towards girls and women needs to take place to address men's preference for sons. It would therefore be very important to give maximum publicity to leaders and other personalities and influential groups that support the fact that human rights should be enjoyed by girls and boys equally, and who therefore oppose the pre-natal selection of gender. With the aid of other agencies, governments should give their full support to the development of innovative activities that stimulate discussion that will bring about a consensus on the equal value of girls and boys. As with all programmes that aim to encourage behaviour change, it would be essential to complement national-level activities with mutually reinforcing activities at the local level in

order to fully engage communities.

Particular attention would also need to be given to engaging health care professionals to ensure that they are fully aware of the issues concerning sex selection, and are in a position to act responsibly in accordance with the guidelines. Measures would also need to be put in place to ensure that more girls have access to higher education, so that gender equity is achieved in education and thereby when it comes to employment. The last measure would ensure the independence and self-reliance of women, and help ensure that girls are regarded as an asset rather than a liability. It should be borne in mind that, although Tanzania has developmental goals, if they do not address the issue of discrimination, they will surely fail to achieve their objective. The social norms that govern the preference for sons will ultimately need to change within families as well as social networks.

6. Conclusion

The preference for sons is one of those stubborn cultural norms that are in conflict with implementation of the provisions of the Constitution and some national legislation, and which undermine international human rights standards. Although it is important and legitimate to celebrate and respect the diversity of cultures, it cannot be allowed to undermine the fundamental human rights principle of non-discrimination that upholds human dignity, wellbeing and integrity in the context of human rights protocols that Tanzania has ratified. Discriminatory and inhumane harmful practices, such as preferring sons and the ongoing oppression of girls and women, are tolerated and

explained away by the fact that they are culturally determined, which makes such behaviour and even gender-based violence totally acceptable. As a result, female children are not protected from harm, and are denied their human rights, especially their right to a life free from violence.

It is apparent that patriarchy is at the heart of the violence inflicted on females, which is often compounded by different cultural, economic and other factors. Safeguarding human rights and gender equality will require a more informed analysis of the root causes of violence and discrimination against girls, particularly in relation to equity, deeply-rooted patriarchal attitudes, and the perception

that males are superior and females are vulnerable and weak. Greater efforts are needed to ensure that those whose work brings them into contact with children embrace human rights principles. However, because laws alone cannot stop this practice, the mind-set that boys are more important than girls needs to be gradually but rigorously challenged in strategic ways. It is anticipated that, by removing the reasons for preferring sons and exposing their negative effect on women, the importance and value of women will be endorsed by society.