

**ISLAMIC MARRIAGES: EARLY MARRIAGES  
AND  
HIV/AIDS IN TABORA-TANZANIA**

**Abstract**

**This dissertation focuses on the high risk to HIV/AIDS infection of young Muslim girls who, as a result of a combination of factors, are forced into early polygynous (or polygamous) marriages. Invoking a combination of modern methodologies, in particular the Women's Law, Grounded Theory and Human Rights based Approaches, the writer conducts a detailed investigation into the problem relying on material information collected from a variety of relevant people and sources. She highlights not only legal reform which is long overdue in this area (including legislation to provide for a universal minimum marriageable age of 18 years for both men and women), but also accompanying education policies and gender awareness programmes, the implementation of which it is hoped will, over time, eradicate this harmful practice.**

**BY**

**FATUMA ADAM MGOMBA  
Supervisor: Professor Julie Stewart**

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## **DECLARATION**

I, FATUMA ADAM MGOMBA declare that this is my original work and has not been present for any study programmed in any university or college. The ideas and views expect where expressly indicated are strictly my own and I take responsibility for them.

Signature.....

Date.....

**DEDICATION**

**To**

**My Beloved Husband**

**WILBERT MARTIN CHUMA**

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- The Universal Declaration of Human Rights (1948)
- The African Charter on Human and People's Rights (1981)
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- The Committee Monitoring the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979
- The Convention on the Rights of the Child, 1990
- The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)
- The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- The United Nations International Covenant on Civil and Political Rights (1966)
- The United Nations International Covenant on Economic, Social and Cultural Rights (1966)

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## **ABBREVIATIONS AND ACRONYMS**

ABC	Abstinence, Be Faithful, and Use Condoms
ACHPR	African Charter on Human and People's Rights
AIDS	Acquired Immunodeficiency Syndrome
BAKWATA	Baraza Kuu la Waislamu Tanzania (The Muslim National Council)
BPFA	Beijing Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
FGM	Female Genital Mutilation
LMA	Law of Marriage Act
HIV	Human Immuno-deficiency Virus
HRs	Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LHRC	Legal and Human Rights Centre.
NGO	Non-Governmental Organization
SOSPA	Sexual Offences Special Provisions Act
STI	Sexually Transmitted Infection
TACAIDS	Tanzania Commission for AIDS
TAMWA	Tanzania Media Women's Association
UDHR	Universal Declaration of Human Rights
UNFPA	United Nations Population Fund
WLSA	Women and Law in Southern Africa Research Trust
UNAIDS	United Nations Programme on HIV and AIDS
VCT	Voluntary Counseling and Testing

## CHAPTER SUMMARIES

This research study was undertaken from a women's rights perspective. It aims to explore the impact of the early marriage contracted under Islamic law in the era of HIV/AIDS in Tabora district, Tanzania. Specifically the researcher tried to investigate how early marriages under Islamic law increases girls vulnerability to HIV/AIDS. This dissertation is presented in six chapters.

**The first chapter** of the dissertation consists of a general review of marriage under Islamic law, background of research problem, statement of the problem and justification for the study.

**The second chapter** of the dissertation consists of review of the literature on the early marriages. It includes International Human Rights Instrument, national laws and national policies on early marriage as well as HIV/AIDS.

**The third chapter** of the dissertation describes the methodologies and the methods that were used in conducting the research. It further discusses how the choice of the research methodology was made, and explains the theoretical frame work, the tools for data collection and the limitations of the techniques used. In addition, it includes methodological challenges which aimed at showing the strengths, weaknesses, opportunities and threats to this research.

**The fourth chapter** of the dissertation presents research findings, various views and opinions raised by the respondents during research. The analysis and discussion of findings on the other hand is presented.

**The fifth chapter** of the dissertation provides grounded factors which hinder the right fo adolescents to information. Here, the right to information was examined so as to unveil the extent to which young unmarried Muslim girls are exposed to HIV/AIDS due to lack of appropriate HIV/AIDS information. It also highlights how lack of appropriate



information on HIV/AIDS exposes young unmarried Muslim girls to HIV/ AIDS infection.

**The sixth chapter** six gives conclusions on the work presented in the previous chapters. It presents recommendations which could be of importance to policy makers, NGOs, individuals and religious institutions.

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## CHAPTER ONE

### INTRODUCTION

#### 1.0 General Overview

“When a man has got married he has made his religion half way perfect.”  
(A hadith reported by Anas) ( Siddiqi 1998 )

Marriage is an important institution of human life. Islam recognizes this institution and accepts it as the basis of human society after purging it of all those evils which had penetrated it (Siddiq, 1998).

Islam regards marriage as a most sacred institution and makes it incumbent on every Muslim man and woman, unless prevented by valid physical and economic incapacity to lead a married life (Siddiqi 1998). This is evident in the traditions of the messenger. He said:

It is necessary for you to marry, because marriage is the most powerful shield against the allurements of sight and the protection of your private parts; if one of you cannot afford it, let him fast because fasting weakens.

The above means that marriage under Islam is part and parcel of Islamic religion and human life. The marriage institution is regulated and governed by private law. The law governing relations within the family, the law of marriage, is an area that has an immense impact on the status and welfare of women. The welfare and the rights of women need to be maintained in any country. The need to maintain such right is based on many reasons, some of them being the following: Firstly, women are more vulnerable biologically, economically and culturally than men. Secondly, given the procreation roles of women as wives and mothers, as well as the economic importance of having an adult male provider, marriage is highly valued, yet marriage is not a protection against HIV infection.

Under Islamic law marriage (*nikah*) recognized as a contract which has for its object the procreation and legalizing of children. (Mannan, 995). *Nikah* or marriage implies a particular contract used for the purpose of legitimating children (Hamilton, 1995). The

wife is responsible for all household chores and for bearing and raising children. Since having children is valued within marriage there is a very strong pressure for women to submit to unprotected sex, even if they know their husbands are polygynous or has extra marital affairs (Patteson, (ed) 2005)

Furthermore, socialization plays an important role in shaping our expectations about how a man and woman should treat each other in the marriage. Muslim female children are socialized from a very early age that the man is the head of the household, and are advised by their mothers to remain in complete subjugation to their husbands. Prior to marriage, girls are taught to be ready for sex with their husbands at all times and never to refuse their husband's advances. However, the way Tabora Muslim female are socialized is not according to Islamic religion rather it is based on their customs and culture.

As a result it is important to keep in mind that marriage in the Islamic community is the backbone of society on which the whole definition of society relies. It is believed that the desire to get married and stay married often overrides the risks of HIV/AIDS a woman faces in the marriage institution. For she is instructed to stay married, be obedient to her husband and never say no to his sexual demands regardless of his behaviour.

This research examines how early Islamic marriage increases the spread of HIV/AIDS and to ascertain to what extent early marriage facilitates the spread of HIV/AIDS to young women. This study is principally limited to the Islamic community women living in Tabora district, in Tabora region.

## **1.1 Background of the Research**

Tanzania like other many former colonial states inherited a "legal stew" of European laws superimposed upon or existing concurrently with indigenous systems of customary and religious law. (Rakstad et al., 2000) This phenomenon, which is known as "legal pluralism," has given rise to a field of academic inquiry devoted to the study of how multiple sets of norms, both formal and informal, interact with each other and affect their subjects (Grant, 1996).

General Law is made up of legislation and British common law and since it is documented, there is generally little difficulty in determining its content. Moreover the law is open to amendment from time to time. Religious law (Islamic law) on the other hand is “divine law” and composed of the *Quraan, Sunnah Ijma and Qiyas*. (Quraan verse 45:18).

*Quraan* is the divine communication and revelation from the prophet to Islam. It may be said to be the first and the greatest legislative code of Islam.<sup>1</sup> To the writers of Islamic law, Quraan is the first source of law both in terms of supremacy and importance. If the Quraan is silent, it is supplemented by or in the length of the precepts of the prophet. Quraan is also documented and its text is static, and therefore is not fluid and not open to amendment.

*Sunnah* is the sayings and doings of the prophet. It takes the second place as the source of law. *Sunnah* comprises all the words, counsels, and the precepts of the prophet (*Sunnah – atqawl*). His actions, works, daily practice (*Sunnat-al-fail*), silence implying tacit approbation on the part of any individual act committed by his disciple (*Sunnal –at-tagrir*).

*Ijma* is another source of Islamic law. This is a consensus opinion of scholars of Muslim community in any period after the death of prophet. This helps a Muslim. In the absence of any solution from quraan or Sunnah then the scholars have the right to meet and give their opinion in a certain matter. After their agreement it becomes the source of law.

*Qiyas* is the fourth source of Islamic law, this is analogical deduction. Here, in order to solve a problem, one looks at a situation similar to the problem.

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<sup>1</sup> To the writes of Islamic law Quraan is the first source of law both in terms of supremacy and importance. If the quraan is silent, it is supplemented by or in the length of the precepts of the prophet.

Moslems are divided into two main sects i.e. Sunnis and Shias and each of the Principle sects is divided into schools (Saksana, 1963). The chief cause of the division was the death of Prophet Mohammad. Sunnis are those Moslems who recognize Abu Bakar, Umar, Usman, and Ali as a true *Halifa* (leader) after death of Prophet (Saksana, 1963). Sunni sects are divided into three schools among them being *Hanafi*, *Shafei* and *malik*.. The majority of Muslims in Tanzania belong to the *shafei* sect.

*Hanafi* School is a school founded by Abu Hanifa, who accepted only a number of traditions because of the severity of the test he applied to find out their genesis (Cuson (1971). This resulted in excluding many traditions people had generally accepted as genuine.

*Shafei* is a school founded by Iman Shafei as a reaction to what was done by Abu Halifa. Shafei School assigned a moderate position to traditions (Saksana, 1963).

The word *Shia* signifies an adherent, that has become a distinctive appellation of those Moslems who assert that Ali, the son of Abu – Talib and, son – in – law of Muhammad, are the Lawful successors of the Prophet and true Halifa (Cuson (1971).

In Tanzania all matters relating to marriage are governed and regulated by the Law of Marriage Act of 1971(LMA). LMA recognises various kinds of union as valid marriage. S.2 of LMA defines marriage as the `voluntary union of a man and woman, intended to last for the duration of their joint lives.’ Marriage shall be of two kinds, monogamy and polygynous (or potentially polygynous). In addition, s.25 of the LMA recognises marriages contracted in a civil form; or in a civil form in accordance with the rites of religion to which both parties belong (Islamic marriage and Christian marriage).

Islamic marriage which is contracted according to Islamic Law and confirms conditions provided under the LMA is legally recognized as a valid marriage. Islamic marriage is a union of a man who may or may not be married and a woman who must be unmarried at the time of entering into marriage. The essence of the union is that it permits a man to



have up to four wives. To emphasise this point, the idea is that marriage is an exclusive sexual partnership.<sup>2</sup> Polygamy is more common among older men, and those living in rural areas than among, urban men who marry young girls (Erulka and Ayuka, 2007).

In Tanzania, the system of law of marriage contains loopholes that create ambiguity on the issue of the child marriage. On the other hand, S.13 of LMA purports to raise the age of marriage. It sets the minimum legal age at marriage as 18 for boys and 15 years for girls. On the other hand, it allows parents to give their consent to and direct the marriage process. In addition, under s.13 (2) the court may grant leave for marriage when a girl is below 15 if the court is satisfied that there are special circumstances which make the proposed marriage desirable. The disparity between the age at which women and men marry is reflected in the LMA, 1971.

The younger a girl is when she marries, the larger the age difference between her and her spouse is likely to be. Muslim girls who married at age 14 or 15 were, on average, 5-14 years younger than their spouses. Girls who married at 16 or 17 were likely to be nine years younger. Age differences between spouses have important implications for the division of power and decision making in the household, especially when the wife is very young and her spouse is considerably older.

As a result there is a direct relationship between the incidence of early marriage and levels of HIV/ AIDS transmissions (IRIN 2006). It is reported that in Tanzania HIV/AIDS is commonly transmitted through heterosexual relations and the incidence of HIV infection among young women is rising (IRIN 2006).

## **1.2 Statement of Problem**

Marriage, as a fundamental religious institution and the most common milieu for bearing and rearing children, profoundly shapes sexual behaviors and practices (Caraël, Michel. 1995). In countries where HIV is predominantly transmitted via heterosexual intercourse,

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<sup>2</sup> “Exclusive” refers only to woman who is not permitted to have other sexual partner but the man can have as many other sexual partners as he wishes.

these differences in sexual practices associated with marriage may substantially affect the likelihood of acquiring HIV infection by either increasing or decreasing certain HIV risk factors. Yet, surprisingly, the relationship between marriage, particularly the decision to marry at a younger age, and several key HIV risk factors has remained largely uninvestigated. (Bruce J and Clark, S. 2004)

One reason why potential HIV risks associated with early marriage have remained largely unexplored is the widespread perception that marriage is relatively “safe.” Although marriage marks the sexual debut of many, and, in some countries, most, adolescent girls, sex within marriage is generally considered safer than sex outside of marriage, which is implicitly assumed to be the only alternative. Some parents and religious leaders may even actively encourage early marriage as a protective strategy to avoid the perceived dangers of premarital sex, including pregnancy and sexually transmitted infections (STIs). (Bracher et al. 2003)

The widespread child marriage phenomenon and the religious background of polygamy provide a supportive context for multiple partnering which must be seen as a very important driving force behind the HIV/AIDS epidemic in Tabora. Infidelity among married men is still assumed to be high and therefore poses a high risk of infection in marriages. For instance, under Islamic law, age in years does not normally determine a girl’s capacity to marry. Rather puberty, which is evidenced by her capacity to procreate, is treated as the relevant factor (Fateh-al-Bari Vol.13 p.143).

This explains the existence of early marriages in Tabora district and other areas in Tanzania where this practice is widespread. Many girls are forced into early marriage in different parts of Tanzania, by the time they attain their teens. Young married women are unable to exert control over their own sexual lives mainly due to the subordinate position to men in marital unions.

In the Muslim community socialization of women encourages them to be submissive in marriage and be faithful while men still indulge in extra marital affairs and this is

condoned. Condom use in marriages to prevent the spread of HIV/AIDS is not socially acceptable (Muhwava, vol. 19 No.1). This makes it difficult for married women to control HIV/AIDS and as a result they are at a high risk of being infected by their husbands. The fact that girls are married off to older men is likely to expose them to abuse and power dynamics in decision making in the home. The girls are likely to be exposed to HIV & AIDS from their older husbands who are likely to have multiple sexual partners.

Early marriage has profound effect on self development for the girl child. It has been argued that early marriage deprives girls of the opportunity to grow and develop physically, socially, intellectually and economically. Early marriage is a harmful traditional practice which should be abolished. This was stated by Banda:

The issue of early marriage is particularly problematic throughout the continent. There have been several international attempts to tackle the problem, including the 1956 Slavery Convention, the UN Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages 1962 and CEDAW 1979, and on the continent the African Charter on the Rights and Welfare of the Child 1990, Prohibits early marriage and specifies 18 as the legal age of marriage (Banda, 2005).

Despite all the above efforts by regional and international groupings very little change has been seen on the ground.

This study presents an examination of how marriage before the age of 18 facilitates the risks of becoming infected with HIV for adolescent girls in Tabora. Its focus is limited to adolescent girls for two reasons: First, in a growing number of places in Tanzania, adolescent girls bear the greatest burden of HIV infections. Second, in contrast with adolescent boys, who are rarely married, girls are commonly married early in the Islamic community. In rural areas, 40–60 percent of girls are married before the age of 18 (IRIN 2006). Consequently, marriage greatly increases their potential exposure to the virus, because marriage results in a transition from virginity to frequent unprotected sex. Even among adolescents who are already sexually active, marriage generally leads to a dramatic rise in the frequency of unprotected intercourse, especially when pregnancy is desired. Also, the partners of married female adolescents are typically older and, by

virtue of their age, more likely to be HIV positive than the boyfriends of unmarried female adolescents (Clark, at el 2006)

### **1.3 Justification for the Study**

The main justification of this research is the issue of HIV/AIDS which requires collective efforts in order to eradicate it, especially among the marginalized groups who are vulnerable to HIV/AIDS infection. Marginalized groups include young women/girl children in marriages because in most cases they are not empowered and as a result they lack education, right to knowledge, information and freedom of choice. It is hoped that the empowerment of young women would to a greater extent reduce their high vulnerability to HIV/AIDS infection.

### **1.4 Assumptions**

This study is guided by the following assumptions: -

1. There is early marriage of girls in the Tabora Islamic community.
2. That early marriage increases the girl child's vulnerability to HIV/AIDS infection.
3. Early marriage dis-empowers girls/women from negotiating safe sex.
4. Unsafe sex increases girls'/women's vulnerability to HIV/AIDS.
5. That typically a young girl marries an older man who has multiple partners.
6. Such polygynous/multi partner unions increase young girl's vulnerability to HIV/AIDS.
7. The pressure on these young married girls/women to have children precludes them from having safe sex and increases their vulnerability to HIV/AIDS.

### **1.5 Research Questions.**

Based on the above assumptions, below are the research questions that guided my research

1. Is there early marriage of girls in Tabora Islamic community?
2. Does early marriage increase the girl child's vulnerability to HIV/AIDS?
3. Does early marriage dis-empower young married girls/women from negotiating safe sex?
4. Does unsafe sex increasing young married women vulnerability to HIV/AIDS?

5. Are there young girls married to older men who have multiple partners?
6. Do polygynous marriages/multiple partner unions increase the vulnerability of young married women to HIV/AIDS?
7. Does the pressure to have children preclude young married women from having safe sex and increase their vulnerability to HIV/AIDS?

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.0 Introduction.**

To augment the methodological consideration that underpinned this study, a literature review although very limited was also carried out. This was carried out with the realization that when using the grounded theory approach, the researcher needs to enter the field with an awareness of the need to maintain a flexible and open mind approach to the data collection process (Glaser and Strauss (1967). However, because the researcher had personal experience with Islamic law and early marriages, it was considered unnecessary to pretend otherwise but to acknowledge this fact.

#### **2.1 Literature Review on Early Marriages**

There is a considerable amount of literature critically analyzing the law on early marriage and its impact on the status of women. However, there still is very little literature that relates to Islamic early marriage as increasing girl child vulnerability to HIV/AIDS.

Under Islamic law, age in years did not normally determine a girl's capacity to marry. Rather puberty, which is evidenced by her capacity to procreate, was treated as the relevant factor.<sup>3</sup> This explains the existence of early marriages in the Tabora Islamic community and other developing countries where this practice is widespread. Many girls are forced into early marriage in different parts of Tabora- Tanzania, by the time they attain their teens. Early marriage has profound effects on self development for the girl child. It has been argued that early marriage deprives girls of the opportunity to grow and develop physically, socially, intellectually and economically. Starting with (Banda, 2005) she dwells at length on the concept family and marriage in the African context. She emphasises that the fact that early marriage is particularly problematic throughout the continent and discusses the women's disadvantaged position in marriage.

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<sup>3</sup>Shamoun. S, The Age of Marriage: Quraan Contradiction. <http://answering-islam.org/Shamoun/prepubescent.htm>

The fact that girls are married off to older men is likely to expose them to abuse and power dynamics in decision making in the home. The girls are more likely to be exposed to HIV/AIDS as older men are more likely to be infected since they would have had more sexual partners. She also recommended that since early marriage is a harmful practice it should be abolished. However she does not address the issue of what is the impact of early marriage on the issue of HIV/AIDS and whether Islamic early marriage increases the vulnerability of young married woman to HIV/AIDS infection. It is this reason which has motivated me to carry a research on this topic.

Tumbo Masabo and Liljestrom, 1994 and Omari and Mbilinyi, 1997 explain the girl child's early marriage problems and the role of customs. They examine the early marriage practice and some of its impact on girls, but do not consider the absence of the minimum age of marriage on Islamic law, or whether it leads girls into early marriage which increases vulnerability to HIV/AIDS infection.

Mhoja in her book among other things discusses early marriage. She revealed that legal and social studies have emphasized the significance of marriage in Tanzania and have examined the sociology of the family in marriage relations in empirical terms. She pointed out that a girl-child is a social actor in early marriage, but a passive one from an adult's perspective. Her work however, focuses on participation rights of the girl-child in matters that affect her life during an early marriage (Mhoja 2006).

Teemba pointed out that, early marriages and prostitution expose girls to risks of contracting HIV/AIDS. Added to this, she noted that girl-children in Tanzania are not protected, as international provisions require. The cultural practices such as early marriages are still rampant while the rate of school dropouts is still high in Tanzania (Teemba, 2005).

A recent study by the Tanzania Media Women Association shows a strong correlation between HIV/AIDS, early school dropout rates, teenage marriages and pregnancy. The association blamed the law that allows under-age girls to marry with parental consent.

The study revealed that the girls' husbands characteristically have had multiple-partners, which puts the girls at the risk of being infected with HIV/AIDS. Immature and financially dependent, the adolescent brides are unlikely to be able to negotiate for safe sex (IRIN, 2006).

A report on a faith-based meeting on child marriage, revealed that in developing countries, most sexually active adolescent girls are married, and have higher rates of HIV infection than sexually active girls who are not married. Among 15- to 19-year-old girls in Kisumu, Kenya, 32.9% of married girls were HIV positive, compared to 22.3% of their sexually active, unmarried peers (Bruce and Clark, 2005).

## **2.2 Multiple Factors Configuring Female Child Marriage.**

There are various factors which lead to early marriages which have been put forward by different scholars. Some of these factors are discussed below.

### **2.2.1 Economic Reason: Poverty and Dowry**

According to Bunting, the economics of raising children motivates high rates of child marriages in Tanzania, as in many other countries (Bunting, 999). Many child marriages were created as a result of famine. For many families a girl-child was simply an extra mouth to feed. Poverty and famine prompts parents to marry off girls and sometimes the situation is exacerbated by the practices of *mahari*<sup>4</sup>. The *Mahari* sometimes envisaged as an economic gain tends to fuel the desire of parents or guardians to marry off girls.

### **2.2.2 Social Forces: Sexuality and HIV/AIDS**

Sicard (1999) pointed out that one important impetus for girls marrying at an early age is that it helps prevent pre-marital sex. According to Sicard, parents frequently mentioned fear of early pregnancy as one of the factors which leads to child marriage. This is caused by the fear of dishonour and humiliation that would be brought on to a household should

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<sup>4</sup> Mahari is the Arabic term which means a free given to a woman (bride) by a man (groom) when they are getting married. In Islam the woman is the only person who has the power to decide how much she wants (or she can decide to have a car or a house besides money)



a girl become pregnant out of wedlock. The honour of girl children is very important; hence there is a strong link between arranged marriages and social goal of maintaining the reputation of their daughters. Virginity is a necessary prerequisite to marriage; and this can manifest itself in a number of practices designed to protect a girl from unsanctioned sexual activity. In effect, they amount to strict controls imposed upon girls (Sicard, 1999)

A new trend recently emerged whereby marrying of girl-children to avoid contracting HIV/AIDS is becoming a growing phenomenon. Men believe girls are virgin, hence are HIV negative and so are potentially suitable partners for marriage.

### **2.2.3 Attitudes to Education**

Since girls are viewed as potential wives and mothers, it gives rise to the attitude especially among the rural Muslim community, that early marriage for their girls is preferable to sending them to school or encouraging them to continue to further their education. Mhoja listed early marriage and *mahari* as factors that create gaps in education (Mhoja 2006). However, gender imbalances in education are rooted in both colonial and Muslim legacies which create a gap between men and women. Religiously women were not expected to go for formal education. Hence most Muslim families do not value education as they take the view that the essential women's role are mothering and being housewives. Nonetheless, the law also contributed to the early marriages, as discussed below.

## **2.3 Laws on Early Marriage(s)**

Several laws have been advanced on early marriages. Some of these are discussed in the paragraphs which follow:

### **2.3.1 International Human Rights Instruments and Early Marriage**

Human rights standards and principles provide the context within which the protection of women's rights can be measured and demanded. The Government of Tanzania is a signatory to a number of human rights instruments some of which specifically call for the

treatment of women's rights as human rights, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which constitutes the international bill of rights for women.

In developing a human rights compliance paradigm, the study analyzes the law on marriage within the human rights frame work in order to measure national compliance with human rights standards. Basically women's rights are human rights which are fundamental, inalienable, indivisible and inviolable and they should be guaranteed and protected. Some of these women's rights are the rights related to issues of marriage<sup>5</sup> and self protection and to be protected against sexually transmitted infections-including HIV/AIDS<sup>6</sup>. Various Human Rights Instruments lay down norms to be applied in marriage, covering issues of age, consent, equality within marriage, and the personal and property rights of women. The key instruments and articles are as follows (paraphrased for clarity in some cases):

Starting with the Convention on the Rights of the Child (CRC), it does not set a fixed minimum legal age of marriage. However, other treaties do specify a minimum legal age for marriage. The African Charter on the Rights and Welfare of the Child (1990) states that "child marriage and the betrothal of girls and boys shall be prohibited" and sets the minimum age for marriage at 18.<sup>7</sup>

Articles 1, 2, and 3 of the 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages state: (2) States Parties to the present Convention shall ... specify a minimum age for marriage ("not less than 15 years" according to the non-binding recommendation accompanying this Convention). No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses.

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<sup>6</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW ) and Article 14(1)a-f of Women's Protocol.

<sup>7</sup> Article 21 of The African Charter on the Rights and Welfare of the Child (1990).

Article 16(2) of the 1979 CEDAW prescribes equality for men and women. It states: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage. Also the Committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) has also recommended that the minimum age for marriage of both men and women should be 18, commenting that, "When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act."<sup>8</sup>

The Universal Declaration on Human Rights provides for men and women of full age, without any limitations due to race nationality or religion have the right to marry and to found a family.<sup>9</sup> Similar provision is included in the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights (ICCPR).<sup>10</sup> Also the international agencies such as the United Nations Population Fund (UNFPA) make clear the risks of marriage below the age of 18.

### **2.3.2 National Laws**

The Tanzanian legal system is divided into general laws and Islamic laws. It should be note that according to the national laws in Tanzania, the system of law contains loopholes that creates ambiguity on the issue of child marriage. On the other hand it purports to increase the age of marriage, while on the other it allows early marriage on certain conditions or allows parents to give their consent to and direct the marriage process.

#### **2.3.2.1 General laws**

Tanzania has made efforts to respond to the international obligations as enshrined in its constitution. Article 12 of the Constitution of the United Republic of Tanzania, 1977

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<sup>8</sup> The Committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Committee)

<sup>9</sup> Article 16(1) of the Universal Declaration on Human Rights

<sup>10</sup> Article 9 of the International Covenant on Civil and Political Rights of 1966

recognizes all human beings as equal and born free. Also, it sets the age of majority to be 18 years.<sup>11</sup>

The Law of Marriage Act, 1971 is among the legal instruments regulating the welfare of girl child, Section 13 of the LMA, provides for the marriageable age. It sets the minimum legal age of marriage at 18 for boys and 15 for girls.<sup>12</sup> On the other hand, it allows parents to give their consent to and direct the marriage process. Additionally, under S.13 (2) the court may grant leave to marriages when a girl is below 15 if the court is satisfied that there are special circumstances which make the proposed marriage desirable.<sup>13</sup>

Added to this, Section 138 (6) of the Penal Code provides that any person of African or Asiatic descent may marry or permit the marriage of a girl under the age of fifteen years old in accordance with the custom of the tribe or religion, so long as it is not intended that the marriage be consummated before the girl is 15 years old.

The Sexual Offences Special Provisions Act (SOSPA) was enacted to safeguard the personal integrity, dignity, liberty and security of women and girls. According to s.130 SOSPA, a male person commits the offence of rape if he has sexual intercourse with a girl with or without her consent when she is less than 18 years of age.<sup>14</sup> In this case the law does not recognize consensual sex with a girl of less than 18 years.

However, it is surprising to note that under s.130 (2) while an adult male who has sex with a girl of less than 18 years outside marriage is regarded as a rapist as consent to such act by the girl is not recognized by the law; the same act is condoned within marriage.<sup>15</sup> This is because LMA allows girls to get married at the age of 15 years hence a man who has sexual intercourse with a girl of less than 18 years can not be accused of rape if the girl is his wife.

The HIV and AIDS (Prevention and Control) Act, 2007, part two, four and seven provides for public education and programme on HIV/AIDS, testing and counselling,

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<sup>11</sup> Article 12 of the Constitution of the United Republic of Tanzania, 1977

<sup>12</sup> S13(2) (a) Law of Marriage Act of 1971

<sup>13</sup> S.13(3) of Law of Marriage Act of 1971

<sup>14</sup> Section 130 of the Tanzanian Penal Code of 1966 ( R.E)of 2002

<sup>15</sup> Section 130 (2) (e) of the Tanzanian Penal Code ( R.E)of 2002

prohibition of discriminatory laws, policies and practice.<sup>16</sup> Surprisingly, the Act does not prohibit acts or practices which expose girls to HIV/AIDS such as early marriage and FGM.

Furthermore, the Primary School (Compulsory Enrolment and Attendance) Rule of 2001<sup>17</sup> provides that parents who fail to enroll their child commit an offence attracting a fine or imprisonment. It is also a criminal offence for a parent or any person who causes a child not to attend school regularly until the completion of primary education. Meaning that, law states that it is compulsory for all children between 7-13 years to be enrolled at primary level education.

Also, it is an offence under the National Education Act, 1978 to cause a child between seven and thirteen years of age who is enrolled in primary school to drop out before completion of the education for which she is enrolled. Moreover, the Education (Imposition of Penalties to Persons who marry or Impregnated a School Girl)<sup>18</sup> provides any parents who aids, abets or solicits a school girl to marry while pursuing primary and secondary education is guilty of an offence.

Despite the clarity of these legislations, the practise on ground is different. It is evident that female drop outs from schools are caused by unwanted pregnancies or early marriage but the government has not seriously indicated ways to curb the situation especially in this HIV/AIDS era. In term of the national laws reviewed above it is clear that there are incredible contradictions between each other.

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<sup>16</sup> Part ii, iv and vii of The HIV and AIDS (Prevention and Control) Act, 2007

<sup>17</sup> The primary school (compulsory enrolment and attendance) rule 2001 GN NO 280 published on 28/06/2002

<sup>18</sup> G.N. No. 265 Published on 5/9/2003.

### 2.3.2.2 Islamic Law

Marriage in Islamic law is considered to be of the utmost importance. There are numerous hadith lauding the importance of marriage and family. In Islamic law, marriage is a legal bond and social contract between a man and a woman as prompted by the Shari'a.<sup>19</sup>

There are two types of marriages mentioned in the quraan, the *nikah* in verse 4:4 and the *nikah muta`h* in verse 4:24. The first is more common; it aims to be permanent, but can be terminated by the husband in the *talaq* process or by the wife seeking divorce.

*Nikah muta`h* it means "marriage for pleasure". This is the second form of marriage recognized in the Quraan. It is a *fixed term marriage*, which is a marriage with a preset duration, after which the marriage is automatically dissolved.

The Quraan does not categorically state what the marriageable age is but in at least one passage it presupposes that there is an age which a girl must attain before she can be considered marriageable. (Quraan verse 4:6)

“And try orphans (as reads their intelligence) until they reach the age of marriage; if then you find sound judgment in them, release their property to them”.

No age limits have been fixed by Islam for marriage. An engagement may be arranged between families for their children. More so but Islamic requirements for a legal marriage include the requirement that both parties are able to give informed legal consent (*ijab-o-qubul*) when their children reach the age of puberty.<sup>20</sup> A marriage without parties consent or performed under coercion is considered void and may be annulled on those grounds.

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<sup>19</sup> <http://en.wikipedia.org/wiki/Islamic-marital-jurisprudence>.

<sup>20</sup> <http://en.wikipedia.org/wiki/Islamic-marital-jurisprudence>.

It is Islamic tradition that a marriage does not commence until both parties are fit for sexual relations.<sup>21</sup> However, some Islamic jurists contended that a girl may be married before puberty subject to the following conditions – that she does not consummate the marriage until she attains puberty and she may repudiate the marriage when she attains puberty. Some sources relate that Muhammad became engaged to Aisha, six years of age at the time and waited to officiate the wedding until after receiving evidence of menarche.<sup>22</sup>

### **2.3.3 National Policy**

Responding to the International Human Right Instruments, the Government of Tanzania has enacted a number of laws and initiated administrative and policy measures to safeguard the rights of the girl child. These include:

Firstly, the National Policy on Child Development states that a child is anyone who is below 18 years of age as stipulated in the United Nations Convention on Children's Rights. Initially the Child Development Policy of 1996 did not include HIV/AIDS issues. It was revised to address the emerging issues including child participation in all issues concerning their lives; effects of the HIV/AIDS pandemic; non-discrimination of children; and the protection of most vulnerable children<sup>23</sup>.

Secondly, the National Policy on Child Development states that a child is anyone who is below 18 years of age as stipulated in the United Nations Convention on Children's Rights. Initially the Child Development Policy of 1996 did not include HIV/AIDS issues. It was revised<sup>24</sup> to address the emerging issues including child participation in all issues concerning their lives; effects of the HIV/AIDS pandemic; non-discrimination of children; and the protection of most vulnerable children.

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<sup>21</sup> <http://en.wikipedia.org/wiki/Islamic-marital-jurisprudence>.

<sup>22</sup> <http://en.wikipedia.org/wiki/Islamic-marital-jurisprudence>.

<sup>23</sup> The revision was awaiting for the approval of the Cabinet-The report by Ministry of Community Development, Gender and Children, August 2004

<sup>24</sup> The revision was awaiting for the approval of the Cabinet-The report by Ministry of Community Development, Gender and Children, August 2004

Thirdly, the National Policy on HIV/AIDS was adopted in November 2001 with the objective of providing a framework for leadership and co-ordination of the national multi-sectoral response to the HIV/AIDS epidemic. In February 2003 a National Multi-Sectoral Strategic Framework on HIV/AIDS for 2003-2007 was initiated and is being implemented by various sectors and institutions

Fourthly, the Health Policy of 1990 was revised in 2002 with a focus on people at risk, and to encourage health centres to be more responsive to HIV/AIDS.

Last but not list, the Women in Development Policy of 1992 was revised in 2000 and designated as the “Women and Gender Development Policy” to accommodate gender concerns and to promote the responsibilities of both parents in the care and development of children.<sup>25</sup> None of the above reviewed policies directly address the issue of child marriage in connection with the HIV/AIDS. It is for this reason that my study intends to lobby policy makers to introduce policies to prevent the issue of early child marriages.

## **2.4 Conclusion**

In considering the literature reviewed on international instruments, Islamic law, national laws and policies I am convinced that it is of importance for this research to be conducted or undertaken. It is evident that there is no specific study which covers Islamic and marriage as factors increasing young women’s vulnerability to HIV/AIDS with reference to Tabora District. Therefore, my study seeks to evaluate the extent to which early Islamic marriage expose young married women to the risks of HIV/AIDS.

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<sup>25</sup> The country second periodic report on the implementation of the Convention on the Rights of the Child (CRC), 1998-2003, Ministry of Community Development, Gender and Children, August, 2004



## **CHAPTER THREE**

### **RESEARCH METHODOLOGY AND METHODS**

#### **3.1 Introduction**

Before embarking on a study, the researcher needs to have a theoretical framework to provide direction to the work. Decisions have to be made about which method to use in order to establish relevance and meaningfulness of operational procedures to the topic under study. The framework chosen needs to be further translated into concrete data gathering techniques and instruments (Patton, 1980). This chapter discusses the study area, methodologies and the methods that were used in conducting the research. It further discusses how the choice of the research methodology was made, and explains the theoretical framework, tools for data collection and limitations of the techniques used. Finally methodological challenges are discussed in this chapter so as to show strengths, weaknesses, opportunities and threats to this research.

#### **3.2. Study Area**

The study was conducted in Tanzania in Tabora district. Tabora district falls within the center part of Tabora Region. The region is located in the central-western part of the Tanzania country. The area of Tabora is 76,151 km<sup>2</sup> (approximately 9% of Tanzania). A total of 34,698 km<sup>2</sup> (46%) is forest reserve, and 17,122 km<sup>2</sup> (22%) is game reserve. Most economic activity in the region is agricultural. According to the 2002 Tanzania National Census, the population of Tabora Region was 1,717,908<sup>26</sup>. Tabora Region comprises six districts: Tabora Urban in the center, Urambo to the West, Nzega and Igunga to the North, Uyui to the East, and Sikonge to the South. The area has primary schools, secondary and tertiary colleges.

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<sup>26</sup> <http://www.tanzania.go.tz./census/tabora.htm>

BAKWATA (BARAZA KUU LA WAISLAM TANZANIA) is local Muslims organization in Tanzania

### **3.3. Sampling**

24 Muslim married women, 15 married men and 10 unmarried women were part of the research sample. It also included key informants made up of 2 health professionals, 4 government officials, 2 voluntary counseling and testing workers, 3 officials from NGOs, 2 officials from BAKWATA and 10 young women. The sample process included only 3 HIV positive women who voluntarily disclosed their status. It was difficult to get information on the HIV status of the women due to the sensitive nature of the disease and the confidentiality principle that governs it.

### **3.4. Methodology and methods**

#### **3.4.1 Theoretical Frame Work**

The main methodology used in this research is the women's law approach and grounded theory was one of the research tools.

##### **3.4.1.1 Women's Law Approach and Grounded Theories**

The overall methodological framework used in this research was women's law methodology. As explained by Tove Stang Dahl (1987)

The methodology of women's law is cross disciplinary and pluralistic and calls for a free use of the available material whenever it can be found.

The women's law is a discipline that takes women's lived experiences as a starting point in determining what are women's legal needs and aspirations, proceeds essentially from a grounded basis (Stewart J. et al 1997). Women's law takes a perspective from the day to day lived realities of women with whatever phenomenon being investigated. It also describes and evaluates the law from a feminist perspective. The women 's law approach can also be described as a legal discipline which seeks, and aims at, an understanding of the role of law in the social subordination of women, their labour, their qualitative characteristics and activities (Dengu – Zvogbo et al , 1994).

Women's law approach was used as a research methodology because the actual lived realities of women and girls were taken as a starting point in the investigation of the impact of early marriage. The women's law approach was deemed appropriate in

conducting this study because it allowed for the exploration of the position of girls and women and their legal position on society with regard to early marriages. This approach enables researcher to look at the realities of women by looking from below to the top. It also enables to see the law, religion, reality and moral issues in the problem as seen from the women's point of view as law is generally constructed on male norms; yet men and women are affected differently by the law.

I used the methodology to determine ways in which women's lives can be improved in law and in society and so that they are treated as subjects of the law and not objects of the law. The laws governing marriages (Islamic law and statutory law) were explored in order to understand women's lived realities on how marriage is experienced by young married girls.

To achieve this holistic understanding, women's law uses the grounded theory approach as a research tool; which by definition is an interactive process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it (Benzton, et al, 1998).

In using the grounded theory approach my aim was to engage with what the perceived religious beliefs and practices regarding early marriage dictate for women and what the reality is on the ground as well as engaging in theoretical knowledge about early marriage and its effects on women in the era of HIV/AIDS in Tabora. The grounded approach also allowed me to be able to analyse the effects of Islamic law and practices on early marriage. The intention of using the women's law approach was to also establish if there are any new trends/ emerging issues that can be drawn upon to inform the Islamic marriage laws of Tabora on the issue of minimum age of marriage. The methodology also helped me to identify gaps that exist in the Islamic law which contribute to the vulnerability of young married women. This methodology allowed me to go into the field with the assumption that early marriage contracted under Islamic law rendered them vulnerable to HIV/AIDS.

The women's law approach, because it is holistic, allowed me to measure my findings against human rights norms. I was able to criticise practices, religious beliefs and customs to see whether they are in compliance with human rights standards and norms as well as to see if there are any underpinning elements which can inform the development of human rights of women/girls or to be able to modify these rights to be more compliant with what it is acceptable to women on the issue of early marriage. The law was also measured on its compliance to human rights and women's rights in particular. Adopting this approach, helped me to uncover norms, rules and religious practices that prevented young married women from negotiating for safe sex in marriage to help them prevent HIV/AIDS transmission.

#### **3.4.1.2 Legal Pluralism and Semi – Autonomous Social Fields**

Tanzania has a plural system of law, which is the co- existence of Islamic law, customary law side by side with the general law of Tanzania. This methodology is also used in order to understand how norms and expectations which inform the position of women and gender relationships are generated in the intersection between general law and religious law (Islamic) and practices. The methodology was used to explore both the Islamic law and general law to uncover how they influence and dictate women's choices in life and to explore early marriage as an Islamic law issue and examine how it affects women and girls lives everyday (Benzton, et al, 1998).

Concepts such as legal pluralism and the associated tool of the semi-autonomous social fields open up new and crucial ways within which the interaction of law and life can be explored, thereby making it possible to obtain a more holistic picture of the factors that affect women's lived realities and the choices they make, or the decisions and directions that are forced upon them.

The marriage laws of Tanzania were explored in order to uncover the irregularities and anomalies in the two systems of law and how they affect the lives of women and girls. The approach was also used to investigate how effective and important the "semi autonomous social fields" such as the family beliefs and cultural expectations regarding marriage, are determining when girls enter into marriage. The approach was used to establish the forms of marriage the Tabora Muslim communities employ in concluding early marriage. This

approach was also used to establish the negative impacts that legal pluralism has on women and girls when it comes to marriage. The family's role as a semi-autonomous social field, in influencing girls to enter into early marriage was also explored.

### **3.4.1.3 Human Rights Approach**

The human rights frame-work gives a standard for the protection of fundamental human entitlements. It provides standards and principles in which every individual should be respected, be it a woman or a man. English and Stapleton observe that:

A human right is an entitlement or legal claim (which a person has)-by virtue of being human ...Human rights are protected by the many treaties or agreements that governments have signed which oblige them to ensure these rights and freedoms (English, K. and Stapleton, A. 1997).

In addition, human rights oblige governments to take certain actions to ensure the realization of the.... universally guaranteed rights. They also provide enforcement mechanisms in cases of violation of these rights by states or non-state actors. But they are not very effective.

In the present study the issue of early marriage as a increasing HIV/AIDS infection are analyzed from a human rights perspective. The human rights approach assisted me to note that early marriage is a religious and cultural practice which contradicts women's human rights. I developed a sub-assumption and sub-question to deal with the issue of whether early marriage increases the girl child vulnerability to HIV/AIDS or not. I was able to assess the level of local government's effort in prohibiting early marriage and as one way of preventing HIV/AIDS transmission. I then engaged with the human rights and policy framework and the reality on the ground to make a case against early marriage.

The empirical research from the field, engaged with the Human Rights approach helped me to formulate appropriate strategies aimed at improving the position of young married women. It was from this basis that my proposed strategy for legal redress was formulated.

#### **3.4.1.4. Actors and Structures**

This methodology was used in recognition of the fact that research on early marriage is people centered and people structured. The study looked at how the young women, girls and women reacted to the religious, social and economic dynamics of marriage and demands of the wider system as well as those of the other immediate actors. In looking at the position of the majority of women interviewed who married early, they were of the view that early marriage is not the best option for several reasons and they would have opted for other ways out of this structure.

This approach was worth using because different actors and structures impact on early marriages. I interviewed actors in the different structures early marriages these included religious leaders, parents, government officials, NGO officials and Community Health Workers. This methodology helped me to assess the role played by these actors and structures in facilitating early marriage in the era of HIV/AIDS.

#### **3.4.1.5 Religious Approach and Personal Experiential Data**

The approach was used to interact and interview the key informants from the BAKWATA.<sup>27</sup> This was used hand in hand with the grounded theory. As I had attending *madrasat* for seven years, I was able to interact and interview the *Shekhes* from BAKWATA in Tabora. I knew the Islamic protocol, values and norms so as not to create a bad impression in dealing with religious dogma and doctrines during interviews or discussions.

Using that approach I was even able to discuss Islamic/ *quraan* verses and hadith. Being a Muslim I reviewed the Islamic documents such as *quraan* and various *hadith* in relation to early marriages. Therefore the information obtained from the BAKWATA combined with my personal knowledge on the religious beliefs on the early marriages and HIV/AIDS.

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<sup>27</sup> Baraza Kuu la Waislamu Tanzania(BAKWATA) (The local Muslim Council)

### **3.4.1.6 Multi-Sectoral Approach**

The multi-sectoral approach emphasizes working with lay people and other professionals such as social workers, administrators, religious leaders, paralegals, psychologists and all sectors. (Tsanga, 2004) In employing this approach the study collected and analysed data from various sectors and areas traditionally covered by other disciplines rather than restricting it to lawyers and law enforcement officers.

### **3.4.2 Data Collection Methods.**

Keeping in mind the principles of the methodological perspective discussed above, different research methods were applied. Qualitative research methods and random sampling was utilized to identify women in urban, rural and peri-urban settings. They comprised in-depth individual interviews, Individual face to face interviews, general group discussions and observation.

#### **3.4.2.1 Qualitative Research Methods**

Qualitative research methods were used in conjunction with the different methodological approaches described above in the study in order to get a deeper understanding of the issues associated with early marriage and the lack of a minimum age of marriage in Islamic marriages and how this affects women's vulnerability to HIV & AIDS. Data was collected based on life histories using in depth interviews with respondents and key informants. The qualitative methods enabled me to reveal the current position of the Islamic laws. This method was helpful in understanding the perceptions on the Tabora Muslim community about early marriage. Glaser and Strauss observed that:

Qualitative data can be used systematically and... they can give rise to reliable, precise and valid social research...qualitative methods of data uniquely captures the unfolding nature of the meanings, interpretations and process that the researcher is studying (Glaser, and Strauss, 1967).

#### **3.4.2.2 The Interviews**

The interview as a research tool has been variously described as a tool for gathering information having direct bearing on the research objective; it allowed me to obtain the kind of confidential information only possible in face to face situations. As a tool it provides

access to what is inside a person’s mind. Interviews make it possible to measure what a person knows (knowledge and information), what a person likes and dislikes (values and preferences), and what a person thinks (attitudes and beliefs). (Cohen and Manion, 1980). According to Ncube,

...a powerful instrument of social research by which individuals’ past and present experiences and future behaviours can be obtained. Perceptions, attitudes and options which cannot be inferred by observation are accessible through interviews (Ncube W, 1986).

Interviews can also be applied in a number of ways: the structured or unstructured interview or the focused but non- directive interview, face to face interviews and group discussion (Kidder, *et al* 1986). For the purpose of this study only two methods were adopted, that is face to face.

### 3.4.2.3 In-depth Interviews

Most of the data collected in the field was through in-depth interviews conducted with women, men, young mothers and girls. A total of 138, respondents were interviewed, 31 men and 107 women respondents among of them 30 were married girls of ages between 12 and 17 years. Interviews were conducted with and young mothers and women who married between the ages 12 and 17 years. This enabled me to gather the actual lived experiences and the respondent’s views on early marriage and the effects on the lack of a minimum age of marriage in the era of HIV/AIDS. It brought out the views of women on early marriage and how it affects their ability of negotiating safe sex or empowerment on condom use within marriage.

**The Table Below Shows the Location and Number of Respondents interviewed.**

Place/ Institutions	In depth Interview	
	Men	Women
Urban Community	16	55
Rural Community	13	52
Government Officials	2	3
NGOs officials	3	6
<b>Grand total</b>	<b>34</b>	<b>117</b>



A total of 151 respondents were interviewed, out of them 117 were women (including child wives) and 34 were men. The interviews were conducted in the respondent's environment. Women were interviewed in market places where they were conducting their business and the process also helped them to get more customers as people tended to come to the market stalls to find out what was happening and in the process they bought merchandise from the stalls. Young mothers were interviewed at the hospital where they were caring for their sick children in the children's ward. Interviewing women at hospitals allowed me to interview those that were already vulnerable to HIV/AIDS, as their children were already being treated for HIV related illnesses. The rural women were interviewed at their homes, farms and the hospital.

An interview guideline was used to guide the discussion and to probe the women on their experiences. The guide was used only after the women had given an account of their experiences without much interruption from me. Issues that were canvassed are the reasons for entering into marriage early, the effects of religious beliefs regarding a married woman's capacity to negotiate condom use and the extent to which they can exercise their sexuality.

#### **3.4.2.4 Group Discussions.**

In the study group discussions were held with women and men in relation to early marriages and HIV/AIDS. An unstructured interview method was used. This consisted of an open conversation approach with a broad general focus which gradually narrowed to specific problems and needs. It was very useful to conduct unstructured interviews because once a topic was introduced, it was left to the respondent to determine what issues were relevant.

A total number of 120 women and 33 men were interviewed. In addition only one focus group discussion was held. It was made up of three women in polygynous marriages (co wives).

One participant was 56 years old and the other two's ages ranged between thirties to forties. Marriage, sex and sexuality is a sensitive subject, thus a focus group discussion is not an

ideal way of allowing solicitation of opinions on the subject, as it is difficult for people to feel less inhibited about it. During the research I confirmed the view that people do not feel free to discuss sex, let alone with a stranger or in a group.

In spite of the above, this data collection instrument yielded valuable results once a friendly atmosphere was created and the participants opened up. The advantage of the focus group discussion is that I was able to get collective view points on an issue there and then. It is a method which enables participants to help each other where, for example, group members forget details or give incorrect information. Hence, I was, able to elicit the community's collective views on the topic. The usefulness of group discussions can be summed up in the following statement by Lofland:

Group interviewing allows people more time to reflect and to recall experiences, also something that one person mentions can spur memories and opinions in others. Moreover, by allowing moments of not having to talk of being able to listen to others, group interviewing allows each person to rethink and amend any initial account that upon reflection seems in need of amplification, qualification, amendment or contradiction. Finally people may not agree with one another on matters of opinion, providing instances of interchange between contrasting perspectives (Lofland and Lofland, 1984).

Group interviews help the researcher to collect different opinions on the same subject. The researcher was able to observe the respondents' bodily expressions that some of them were hiding their feelings on the issues raised about early child marriages. Eye contact especially was able to reveal the respondents' reservations on the topic of discussion. Details on the respondents who participated in the group discussions are given in the table below.

**The Table Shows the Location and Number of Respondents interviewed.**

Place/ Institutions	In depth Interview	
	Men	Women
Urban Community	17	61
Rural Community	16	56
Government Officials	-	3
NGOs officials	-	-
<b>Grand total</b>	<b>33</b>	<b>120</b>

### **3.4.2.5 Observation**

Non-verbal cues or body gestures were observed as a means of determining the congruity between what the respondents were saying verbally and what their body language was saying non-verbally. Any indications of variances between the two messages were then at times followed up later during the interviews. And where it became clear to me that the respondent perhaps looked uneasy talking about something, this prompted me to desist from pursuing that issue any longer than was necessary. Active listening and observing for non-verbal cues also forms the basis for using the next question technique as suggested by Glaser and Strauss 1967. However, there are limits working alone to be able to ask questions, listen for innuendoes and observe non-verbal cues at the same time. I found the process a bit taxing.

Rural respondents were observed to be more open and willing to tell their life stories. The urban dwellers were willing to discuss general opinions of others and not their own lived reality. Much probing and persuasion was employed in order to get them to discuss their realities. The urban audience revealed similar opinions to those of their rural counterparts on early marriage and the reasons.

### **3.4.2.6 Secondary Methods**

This involves using the library and the internet as sources to locate and analyse previous studies, Human Rights Instruments, the policy and legal framework and newspapers. The newspapers helped me to develop my research assumptions. However the preliminary bibliography, which forms the foundation for background reading was only done after the field research. I conducted fieldwork without an insight into the current debates on early marriages as increases HIV/AIDS and I could not easily place my research findings within that context.

## **3.5 Key Informants**

The decision to interview key informants arose from the need to interview people who were somehow enlightened on the subject of the institution of early marriage. While it is expected that such people make decisions based on an objective assessment of the real situation and

are guided by current existing situations, Tove Stang Dahl argues that one cannot rule out the subjective nature of the presiding individual as they are expected to rely more or less on their own discretion (Stang Dahl, 1987). In this study a total of 60 key informants were interviewed. Some of the key informants were chosen for their link with families where there were early marriages, Muslims or HIV positive young wives. Others were chosen for their involvement with religious issues (*shekhes*). To get the idea of the religious view on child marriages, *sheikhs* and *sheikhas* from BAKWATA was interviewed.

**The Table Below Shows the Location and Number Key Informants Who Have Been Interviewed.**

Key Informants	Place	Name of organization	Social Status	Economic	Marital Status	Age Groups	Sex	Total of Respond.
Unmarried young mothers	Urban Rural	-	Unemployed Unemployed		Married Married	12-17	26 Female	26
Child wives	Urban Rural	-	1 hairdresser Unemployed		Married Married	12-17	30 Female	30
Government Officials		National Aids Council	UNAIDS-employee		Married	30-35	1 Male	1
- Do-	Urban	Min.of Wom. Gen.&Comm. Dvpt	Civil servants		Married	27-30	5 female	5
VCT-Angaza	Urban	VCT- ANGAZA	Social workers		Married	30-35	2 male 2 Female	4
Religious leaders	Urban	BAKWATA and Others					5 female 9 male	14
Doctors	Urban Rural	Min. of Health	Civil Servants		Unknown	35-50	1 male 5 Female	6
NGOs	Urban	TAMWA WLAC,LHR C	Employed		Unknown	35-45	4 Male 5 Female	9

The following are Key informants in this study:-

1. Rural and urban Women.

2. Rural and urban Women who were married before they turned 18 years old.
3. Religious leaders.
4. Women who are infected with HIV/AIDS who were married before 18 years or not.

### **3.6 Methodological Challenges**

This study attempted to address women's lived experiences in early marriages and HIV/AIDS pandemic. I encountered a number of challenges during the research. Perhaps the greatest challenge was that it was difficult to identify women married before 18 years of age in the urban and urban areas. I had to pay ward/ village executive officers to direct me to the houses where there were young married mothers.

The second limitation encountered during the interviews was the level of informativeness of the interviewees especially on the subject such as sexuality and HIV/AIDS and the level of sensitivity to the subject under discussion. This meant that I had to spend more time interviewing the respondents than I had anticipated. I had to probe and encourage them to answer while they spent more time pondering the question and finding the best way to answer it without embarrassing me.

Some respondents' expectations were higher than I could meet. People were not ready to spend their time with someone who could not offer them something in turn. Most of them expected to get some money even before being interviewed. I had to offer each urban respondent 2000 Tanzania shillings and each rural respondent 500 Tanzania shillings as consideration.

Another limitation was the ethical and methodological considerations due to HIV/AIDS. With the study looking into the aspect of HIV/AIDS, challenges were faced concerning the ethical consideration on the interviewees' right to privacy. One organization offering

voluntary counseling and testing denied clearance for interviews with some of their HIV positive clients for reasons of confidentiality.

The mention of HIV/AIDS as an issue of specific concern in the research was only done where the researcher perceived the respondent would be open and receptive to that line of questioning and discussion without concealment that HIV/AIDS was a component of the research in matters relating to early marriages.

**The Table below Shows the Location and Number of Respondents and Data Collection Methods Used.**

Place/ Institutions	Data Collection Methods				Total of Respondents
	In depth Interview		Group Discussion		
	Men	Women	Men	Women	
<b>Urban Community</b>					
Tabora Market Place	3	7	6	10	26
Isevya Market	5	9	3	6	23
Kitete District Hospital	1	10	4	13	28
Sukuma Street	2	7	-	10	19
Kamna Street	2	6	4	9	21
Mbugani Street	-	4	-	8	12
Women Saloon	-	3	-	5	8
BAKWATA	3	2			
<b>Rural Community</b>					
Ipuli	3	21	8	21	53
Uledi Village	5	14	3	17	39
Mile Tano	2	15	5	18	40
<b>Government Officials</b>					
Dep.Women's Gender &Com. Dvlop.	1	1	-	-	2
Department of health	1	2	-	3	6
<b>NGOs</b>					
TAMW A	-	1	-	-	1
WLAC	-	2	-	-	2
LHRC	1	1	-	-	2
VCT- ANGAZA	1	2	-	-	3
MSAP	1	-	-	-	1
<b>Grand Total</b>	<b>31</b>	<b>114</b>	<b>33</b>	<b>120</b>	<b>291</b>

**List of Child Wives Interviewed In Tabora Urban and Rural Areas.**

S/N	Name	Age at Marriage	Now	Religion	Educ level	Type of Marriage	Circumstance For Early Marriage
1.	Amina Athumani	14	17	Muslim	P 7	forced Monogamy	Poverty /drop out/fear of pregnancy
2.	Asha Kipapu	16	18	Muslim	P 7	Consented Monogamy	Parent separated/father neglect/ poverty
3.	Chiku Salumu	15	20	Muslim	P 6	Forced Polygynous	Puberty ready for marriage.
4.	Dalila Kamna	16	22	Muslim	P 6	Arranged monogamy	Family problem/mother died/ puberty ready for marriage
5.	Evata Chuwa	13	17	Muslim	P 5	Forced – monogamy	Orphan/poverty/no school fees
6.	Fatuma Rajabu	15	19	Muslim	P 7	Forced polygamy	Poverty/status/ fear for pregnancy
7.	Halima Said	14	18	Muslim	P 7	Arranged in polygamy	Drop out/family problem/
8.	Kalunde Amani	12	16	Muslim	P 3	Forced monogamy	Drop out /lack of school fees/fear of pregnancy / puberty ready for marriage.
9.	Maimuna Rashid	16	20	Muslim	P 7	Forced monogamy	Fear of pregnancy / puberty ready for marriage.
10.	Makejina Sudi	15	18	Muslim	P 7	Arranged in polygamy	Mother died/ take care of her young sister and brother/drop out
11.	Masesa Saidi	17	20	Muslim	For m 2	Arranged in polygamy	Drop out/education not priority/puberty ready for marriage.
12.	Mjaka Masese	16	21	Muslim	P 7	Forced monogamy	Education not priority/ lack of school fees/ father neglect/poverty
13.	Mkasiwa Jafali	15	18	Muslim	form 1	Forced polygamy	Lack of school fees/ fear for pregnancy/puberty ready for marriage
14.	Mwajuma Hassan	14	17	Muslim	P 7	Arranged in polygamy	Family problem / education not valued
15.	Suna Shabani	15	19	Muslim	P 7	Arranged in polygamy	Puberty / family problem
16.	Pili Omari	16	17	Muslim	P 7	Forced monogamy	Father wanted cattle for prestige

17.	Rehema Saidi	15	16	Muslim	P 7	Arranged monogamy	Fear of pregnancy / puberty ready for marriage.
18.	Rehema Suwedi	15	18	Muslim	P 6	Forced in polygamy	Status/traditional role of women/father wanted money in order to re marry second wife.
19.	Saada Abdalah	15	19	Muslim	P 7	Arranged monogamy	Fear of pregnancy / puberty ready for marriage.
20.	Safia Juma	14	16	Muslim	P 7	Consented monogamy	Education not valued /fears of pregnancy / puberty ready for marriage.
21.	Salima Ramadhan i	16	21	Muslim	P 7	Forced in monogamy	poverty / fear for pregnancy/puberty ready for marriage
22.	Sauda Mashanuo	15	17	Muslim	P 7	Forced monogamy	Mother died/ father become alcoholic /drop out
23.	Semen Abdul	13	15	Muslim	P 6	Forced monogamy	lack of school fees/fear of pregnancy
24.	Sheila Iddi	12	16	Muslim	P 5	Forced in polygamy	Education not valued/father need money for capital
25.	Siti Salimu	15	17	Muslim	P 7	Forced in monogamy	Parent died for HIV/AIDS
26.	Siwema Amiri	15	24	Muslim	P 7	Forced in monogamy	Puberty ready for marriage.
27.	Tatu Musa	17	16	Muslim	P 7	Arranged in monogamy	Fear of pregnancy / puberty ready for marriage.
28.	Tausi Masudi	15	23	Muslim	P 7	Forced in polygamy	Drop out / puberty ready for marriage.
29.	Warid Zuberi	14	29	Muslim	P 6	Arranged in	Poverty /orphan
30.	Zawadi Maganga	14	18	Muslim	P 5	Forced in polygamy	Status/traditional role of women/puberty ready for marriage



## **CHAPTER FOUR**

### **FINDINGS AND ANALYSIS**

#### **4.0 Introduction**

This chapter presents research findings, various views and opinions raised by the respondents during research and discussion of the findings. Findings are presented and discussed under seven themes; these themes are adopted as the analytical framework for presenting and discussing the field data from key informants.

#### **4.1 Findings**

##### **4.1.1 Early Marriage in the Islam Community**

There is conflict between Islamic law and the Human Rights definition of early marriage. Under Islamic law early marriage is marriage contracted by a person before puberty while according to the various Human Rights conventions early marriage defined as the marriage of a person who is below the age of 18, the age under which a person is still a child. For the purpose of this study the Human Rights definition is adopted.

Under this theme a total of sixty three (63) respondents were interviewed. Out of 63 respondents 49 of respondents reveal that there is early marriage in the Islamic community especially in rural areas where by a girl child after puberty is prepared for marriage. For example the BAKWATA secretary told me that there was a marriage contracted in Tabora between a girl of six years and a man of 40 years. Throughout the district field data revealed that the average age for a woman's first marriage is between 12 and 17. In practice, these marriageable ages vary by custom and religion, with Muslim girls often marrying younger than their contemporaries. For example, in Tabora, the minimum marriage age for those entering Islamic unions, is after entering puberty, which is usually around 9 to 15 years. There are exceptions to this which fall on either side of this band.

Similarly, in rural areas particularly among the poor, girls are of marriageable age shortly after reaching puberty and after primary education. Alhaji Juma Maganga Tabora BAKWATA Chairman said:

It is Islamic tradition that a marriage does not commence until both parties are fit for sexual relations, that is, until they have become eligible for it through puberty or [legal] age, which, according to al-Shafi'i, is the completion of fifteen years; No age limits have been fixed by Islam for marriage.

That is to say a man or woman who has not attained puberty is unable to exercise his or her choice in sexual matters and is unable to decide whether he or she will like or dislike a certain woman or man as wife or husband.

Under Islamic law girls are normally married after entering puberty, which is usually around 9 to 15 years (even earlier for some and later for others). Sometimes a girl may be married before puberty subject to the following conditions – that she does not consummate the marriage until she attains puberty and she may repudiate the marriage when she attains puberty. This is supported by from the hadith by Saheeh which clearly states that ‘Aishah narrated that the Prophet (P) was married to her when she was six years old and he consummated his marriage when she was nine years old (Siddiqi 1998).

The holy Quraan does not categorically state what the marriageable age is but in at least one passage it presupposes that there is an age which a girl must attain before she can be considered marriageable. The quraan notes, “And try orphans (as reads their intelligence) until they reach the age of marriage; if then you find sound judgment in them, release their property to them” (Quraan verse 4:6).

The expression that “until they reach the age of marriage” takes it for granted that there is an age that girls have to reach before a man can marry them. Presumably, that age would be puberty.

It will be seen that the age of marriage and the age of maturity of intellect are identified with full age or the age of majority. Marriage is a contract, the consent to which depends

upon the parties being capable of liking each other in a sexual sense. This is only possible if they have attained the age of puberty. It is clear, therefore, that the age of marriage is the age of majority, when a person is capable of exercising his/her choice in sexual liking or disliking another. A man or woman who has not attained puberty is unable to exercise his or her choice in sexual matters and unable to decide whether he or she will like or dislike a certain woman or man as wife or husband ( Siddiqi 1998 p.28). In Tanzania, the minimum marriage age for girls is 15 and 18 for boys, though, under Islamic law, the majority of girls are married at 15 years which according to the Tanzanian Law of Marriage is a legal and valid marriage.

#### **4.1.2 Early Marriage and HIV/AIDS.**

Marriage before the age of 18 is common in Tabora. There are various reasons for this practice. Interviews were carried out with women who were married between the ages of 12 and 17 years. Interviews were done with both urban and rural child wives to establish whether early marriage increases the vulnerability of women to HIV/AIDS. Out of 30 respondents 28 of the respondents interviewed were of the view that early marriage increases vulnerability of young women to HIV/AIDS. Most of these marriages are Islamic marriages, both monogamous and polygynous marriages.

In all I managed to interview a total of 48 out of 56 of women respondents who revealed that the majority of girls who are married before 18 years were in polygynous marriages and those in monogamous marriages said their husbands had extra marital affairs *nyumba ndogo* (small houses). Furthermore, all women who were in monogamous and polygynous marriages were against early marriages. The main reason for this view was that in this era of HIV/AIDS early marriages increases the chances of women being infected as demonstrated by Sofia story:

At 14, Sofia has completed her primary education. She is a Nyamwezi by tribe, in which some families do not encourage education for girls after puberty. Having done well in school, she wished to continue with her secondary education but her parents decided to marry her off instead to someone they considered devout. They are convinced that

because of his age (he is middle aged); he is serious about settling down. They are happy over the fact that he has a modest business and feel confident he will provide adequately for their daughter.

Sofia eventually became pregnant but the pregnancy was not easy and accompanied by frequent illness. Worried about her health, the antenatal clinic decided to test her blood and found that she is HIV positive. How did she catch the virus when she was a virgin and had no history of surgical procedure or blood transfusion? It became clear that while everyone was concerned about her being delivered “intact” to the groom; there was little regard as to the state of his health. Her life is ruined and what’s more, she has been divorced by her husband after he learned about her situation.

The VCT project Coordinator in Tabora VCT-Angaza Mr. Nathan Maganga said that there is a strong correlation between HIV/AIDS and early marriage. This is due to the fact that upon marriage, a girl’s religious expectation is to satisfy her husband’s sexual desires and to bear children for him. Marriage exposes young married women to unprotected sex. In relation to this Tausi Iddy (22 years) said; “I got married when I was 16 years old. At that time I was a virgin, and to date I have not slept with any man other than my late husband.”

Also young married women lack awareness/ information about HIV/AIDS and the courage to convince their partners to know their sero-status. Dr. Zubeda of Kitete District Hospital remarked as follows, “The girls are too young and ignorant about the importance of knowing their HIV/AIDS status, and lack the courage to convince their partners to know their sero-status.”<sup>28</sup>

Her sentiments were to be echoed by the VCT project coordinator Mr. Nathan Maganga who also indicated that that the practice is among the causes which speed up HIV

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<sup>28</sup> Data from Kitete Hospital VCT shows that girls are more affected by HIV than boys of same age.

transmission in rural areas and perhaps in the urban areas the practices would still be in existence albeit to a very limited extent.<sup>29</sup>

### **4.1.3 Early Marriage and Power to Negotiate Safe Sex.**

According to women respondents child wives lack power within marriages due to the fact that quraan dictates that it is the men who control all the matters in marriage (including sexual and intimate relationships). Verse 4:34 provide that,

Men are in charge of women, because Allah hath made the one of them to excel the other, and because they spend of their property (support of women). So good women are the obedient, guardian in secret that which Allah hath guarded.

Women respondents also revealed that there are religious obligations and parental pressure to obey one's husband. As a result most girls are not in a position to negotiate with their husbands as to how they can protect themselves against HIV & AIDS in marriage.

Women's limited power means that, although basic information on HIV/AIDS is available, this knowledge does not assist them in making the decision to avoid risky sexual behaviour. One sheikh said during the interview quoting a hhadith by *talq bin Ali* who reported that the messenger of Allah said that, "When a man calls his wife to satisfy his desire let her come to him even if she is occupied at the oven" (Siddiq 1998).

Abu Huraira is reported that the messenger of Allah said; "Whenever a man calls his wife to his bed and she refuses, and then he spends the night in angry mood, the angels curse her till she gets ay dawn" (Siddiq 1998).

It is evident from the above explanations that early marriage exposes girls to unsafe sex. This seems to be a cultural as well as a religious issue. Because under their religion and socialization a woman cannot deny her husband sexual advances or suggest the use of a condom. One woman respondent said during an interview; "...the woman also is not

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<sup>29</sup>Data from Tabora VCT- ANGAZA

allowed to refuse the husband's sex". "It is a taboo for a woman to refuse her husbands sex advances."

It is also evident that female sexuality is under the control of men (fathers and husbands). All respondents were in agreement as to who made decisions in the home. If a husband initiates sex, a woman may not refuse him. This makes it difficult for girls to protect themselves from HIV/AIDS by initiating the use of condoms. In essence a married woman generally has no control over her sexuality regardless of age in patriarchal societies. Patriarchal societies dictate that it is the men who control all the sexual matters in marriage and in intimate relationships. In this connection Clark and Lewis (1977) state: "Women learn first that their sexuality is under the control of their fathers who are duty bound to ensure that it is kept intact for their daughters' future husbands."

Married women may be aware of their husbands' extra-marital relationships but feel helpless to act. Because of fear of reprisals, even when the woman knows the specific relationship, there are limits on what she can do to control her husband. Although women in marriage fear being infected by their husbands, whom they know are promiscuous, they feel they have no right to refuse sex or take preventative measures.

#### **4.1.4 Unsafe Sex Increases Vulnerability to HIV/AIDS.**

Use of condoms faces substantial obstacles in the African contexts in general and particularly within marriage. First of all socially and culturally, the balance of control obviously lies with the man, and the women's bargaining power is weak. Married women cannot negotiate the use of condoms, because asking their husband to use condoms is either interpreted as an accusation that he is promiscuous and/ or has AIDS or is tantamount to a confession that the wife is promiscuous or has AIDS. One of respondents, 16-year-old Rahima Masudi speaks loud and clear about how powerless a woman is in negotiating safer sex within a marriage. She said: "It is difficult to negotiate the use of condom or contraceptive methods within marriage. If a woman suggests the use of condoms a man always thinks that his wife is not faithful."

In this regard I found that in (Islamic) societies, men determine whether sex is safe or unsafe, forced or consensual, pleasurable or painful and offer the possibility of procreation or not.<sup>30</sup> Even if a woman is interested in the use of a condom (safe sex) she is still not able to initiate safe sex with her husband. A wife who asks her husband to use a condom may be subjected to physical violence and charges of unfaithfulness. This has resulted from socialization and cultural aspects of the society which views women as having a lower status than men in decision making within marriages.

Out of 30 respondents, 22 were child wives who were of the view that condom use within marriage is not acceptable to men. This seems to be a religious as well as a cultural issue. The religious influence of non condom use emanates from the fact that a Muslim woman is expected to be faithful to her husband, and, as a result, the man assumes that there is no risk of infection from his wife. One respondent, Mkasiwa Jafari of Isevyva marketplace said that Islam has provided ways and means of preserving the sexual pleasures of married couples. He quoted Quraan verse 7:189 which provides that a wife should hold her husband in comparatively higher esteem, she should be faithful and obedient to him, and she should dedicate herself for his well-being and in seeking his love. The local Muslim council (BAKWATA) Secretary said that:

Islamic law dictates that couples do not to use condoms as they are seen as contradict reproductive aspect. Couples should be faithful to each other. Our teachings do not allow the use of condoms.

Much as the statement is true, most married women do not have the liberty to say no to unsafe sex, and this has serious repercussions for the women's physical health, and self esteem.

#### **4.1.5 Young Girls Married in Polygynous Marriages**

Out of 30 child wives interviewed 18 girls were married by older men as a second wife due to her family's poverty and economic hardship. The fact that a girl is married to an older partner diminishes her bargaining power, when it comes to sexual matters. This is so as

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<sup>30</sup> Aids, Sex and Reproduction, <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?>

religious, tradition and cultural semi autonomous social fields dictate that men have the right to make all decisions regarding sexual relations.

Polygamy is the practice of one man having more than one wife at one time. Polygamy is a form of marriage practised in the Muslim community. Male respondents said that under Islamic law polygamy is regarded as a religious practice which controls men's promiscuous behaviour. Quoting a hadith they said: "Polygamy in Islam came into practice to serve the interest of the weaker sex, and it will continue to serve in this capacity whenever the situation demanded."

Islam has allowed men to marry more than one woman but has put serious restrictions on this. It requires the agreement of the new wife, his ability to maintain more than one wife, equality among the wives, etc as quraan provides: "...do not incline towards one so exclusively as to leave the other in a state of suspension" (Quraan verse 4:3).

However, the verse which permits up to four wives also contains a clear order that if men cannot do justice, they should keep one wife only. According to Siddiq (1998) it is for this reason that very few Muslim men marry more than one woman. Islam has allowed this to help curb illicit sex. Islamic law regarding marriage is easy, practical, rational and in keeping with human nature. Humanity can only benefit by following these regulations in their true spirit.

In practice polygamy is a marriage form which puts women in such a low bargaining position, that they have little control over decisions which affect their bodily integrity. Most of the interviewees said that instead of removing the pain or risk of going through life unmarried, households with several wives are characterized by rivalry and friction. The idea that the 'shared' husband equitably shares cohabitation between and/or among the wives is a utopia never realized, as the husband seems to encourage and enjoy the sometimes tense and dysfunctional competition between or among the wives as they struggle to please the men sexually or otherwise at the expense of their own sexuality (Mgomba 2007). To this end



women are denied a fundamental right to sexual pleasure and protection against venereal diseases including HIV/AIDS infection.

#### **4.1.6 Polygynous marriage and HIV & AIDS**

I found that polygynous marriages still prevail more in rural areas than in urban ones, because in urban areas polygamy, marriages have taken another form: that of “small houses.” My male respondents on polygamy said that provided God allows it, they did not see anything wrong in keeping such practice. Out of 30 respondents, 26 male respondents asserted that polygamy in the era of HIV/AIDS plays a role controlling HIV/AIDS infection because the husband is likely to be satisfied with his wives, so it is unlikely for him to find another woman beyond his circle of wives. However, they said that in this era of HIV/AIDS what is important is faithfulness among co-wives.

However, some women in a group discussion at the mosque in urban Tabora were quite cynical about the practice. They are definitely not in an agreement that polygamy is a good practice in this HIV/AIDS pandemic.

Female respondents had different a perception of polygamy especially in this HIV/AIDS era. Their contradictory views are that polygamy or multi-partner relationships is/are increasing the vulnerability of women to HIV/AIDS. They contended further that a polygynous marriage is a religious practice that is advantageous to men only; unsatisfactory sexual relationships force these young married women to find other men. They said further that these young women’s decisions to marry men who are already married or old men are largely due to economic reasons and not “true love”. As a result they have other permanent partners or boyfriends outside their marriages. Their contentions are based on the fact that although polygamy is provided under Holy *Quraan*,t in this era of HIV/ AIDS it no longer holds social rewards. Polygamy acts as a vehicle which accelerates women’s risk of being infected with HIV/AIDS.

#### **4.1.7 Pressure to have Children Increases Vulnerability to HIV & AIDS.**

Islam does not regard marriage as an institution for procreation and the gratification of sexual lust, but a social contract with wide and varied responsibility and duties. Quraan has in so many verses pointed out the different purposes of marriage. It states:

And among His sign is this, which he has created for you mates from among yourselves, which you might find quite of mind in them, and he has put love and mercy between your hearts (Quraan verse 30:21).

Quraan does not contain even a single verse which describes marriage as an institution of procreation. It only insists on love and kindness in marriage.

However, in practice respondents stated that marriage is regarded as an institution of procreation so the use of condoms is unacceptable because of their contraceptive effect. Upon marriage, a girl's cultural and religious expectation is to satisfy her husband's sexual desires and to bear many children for him. Out of 30 respondents, 17 of respondents of the young married women interviewed said that they were not given a chance to negotiate with their husbands as to when they should have children or who they could protect themselves against HIV/AIDS in marriage. One respondent, Chiku Salum 20 years from the Kalunde rural area said that:

After we got married I wanted to delay having children but I fell pregnant immediately because my husband used to refuse to use condoms saying that they contradict Islamic faith and he would not talk to me for days if I brought up the issue of using condoms.

Many women are not independent decision makers in marriage. They cannot decide on their own. Their life is in the hands of the men and the family at large. The family expects couples to produce some children.

When men were asked about their views on the use of condoms and the pressure of having children, one said condoms directly conflict with the goal of fertility and that the use of them is opposed by both traditional norms and religious provisions. Marriage is regarded as an institution of procreation, so the uses of condom are unacceptable because of their contraceptive effect. He pointed out that it is impossible to speak of any

relationship between the use of condoms and reproduction. He said: “How would you relate the use of condoms and reproduction?”

My male respondents regarded marriage as a union for the purposes of procreation. The basis for their perception that marriage is institution of procreation is to be found in the following Quraanic verses:

“And Allah has made for you wives of your own kind, and has made for you from your wives, sons and grandsons...” (Quraan verse 16:72)

“And indeed we sent messengers before you and made for them wives and offspring” (Quraan verse 13:38)

and “Your wives are a tilth for you so go to your tilth...” (Quraan verse 2:223)

## **4.2 Discussion of Findings**

From the findings it was apparent that there was a time when early marriage was a prevalent practice in the past but in present day urban society the prevalence of the practice had subsided but remains common practice in rural areas. The reasons for this I gathered were initially due to the legal literacy on marriage laws and the rights of the girl child. More recently the advent of the HIV/AIDS pandemic with the highest prevalence being recorded in sub-Saharan Africa, which invariably includes Tanzania, has become the most significant reason for the condemnation of the practice. The prevalence of the pandemic has led to the questioning of certain behaviours that are potentially capable of transmitting the virus and this has included an interrogation of the practice of early marriage. Below is a detail discussion of the findings under four subheadings.

### **4.2.1 Age of Marriage**

The Protocol on the Rights of Women in Africa clearly specifies 18 years as the minimum age of marriage<sup>31</sup>, affirming a girls’ right to be protected from child marriage. Apart from the Protocol, the only other Human Rights Instrument which specifies a minimum age of marriage is the African Charter on the Rights and Welfare of the Child,

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<sup>31</sup> Article 6 (b) of The Women Protocol

which provides that child marriage “shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years ...”<sup>32</sup> and there are a lot of human rights instruments which in one way or another cover the issue of marriageable age.

The fact that the legal age of marriage is not defined under Islamic law means that a majority of girls will continue to be married off at a young age, as most women in Tanzania are married in terms of this marriage type. However the minimum age for marriage in Tanzania is specified under Section 13 of the Law of Marriage Act<sup>33</sup>. The Law of Marriage Act legalizes marriage of a girl at the age of 14 or 15 years<sup>34</sup>. This is contrary to the provisions of the Human Rights Instruments which require state parties to specify the minimum age for marriage to be 18 years.<sup>35</sup> Added to this, Section 138 (6) of the Penal Code provides that any person of African or Asiatic descent may marry or permit the marriage of a girl under the age of fifteen years old in accordance with the custom of the tribe or religion, so long as it is not intended that the marriage be consummated before the girl is 15 years old.

Furthermore, section 13 (1) of the Law of Marriage Act (‘LMA’) which puts the minimum age of marriage for boys as 18 years, while for girls is 15 years, discriminates against girls. The section does not conform with the provision of CEDAW which prohibits discrimination against women in all matters relating to marriage and family

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<sup>32</sup> Article 21 (2) of ACRWC

<sup>33</sup> “Minimum age(1) No person shall marry who, being male, has not attained the apparent age of eighteen years or, being female, has not attained the apparent age of fifteen years.

<sup>34</sup> S.13(2) of the Law of Marriage Act which provide Notwithstanding the provisions of subsection (1), the court shall, in its discretion, have power, on application, to give leave for a marriage where the parties are, or either of them is, below the ages prescribed in subsection (1) if–(a) each party has attained the age of fourteen years; and(b)the court is satisfied that there are special circumstances which make the proposed marriage desirable.”

<sup>35</sup> Art 21 (2) of the African charter on the Rights and Welfare of the Child and Art 6 (b) of the Protocol on the Rights of Women in Africa

relations and ensures equality between men and women regarding their rights to enter into marriage.<sup>36</sup>

Since the LMA provision does not extend to girls the same protection it gives boys (in breach of the equal protection of the law provision), it does not conform with Art 26 of the United Nations International Covenant on Civil and Political Rights<sup>37</sup> and Art 7 of the UDHR.<sup>38</sup>

The minimum legal age of marriage in Tanzania should be made the same, regardless of the form of marriage if girls are to be protected against early marriages. In order to achieve equality between men and women in marriage there is a need to set one minimum age of marriage for men and women. Currently legal age of marriage is set at 15 for women and 18 for men, and in terms of the penal code, it is even lower. Enforcement of the requirement that all marriages should be registered will assist in the monitoring of those breaking the law in this regard. The Beijing Platform for Action recommends that:

Governments should enact laws and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses, in addition, enact and strictly enforce laws concerning the minimum age legal age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary.

It should be noted that it is not the setting of the minimum age of marriage alone that will reduce the incidences of early marriages. There is a need to put mechanisms in place that will enhance girls' economic capacities and reduce poverty. Poverty was one of the reasons cited for entering into early marriage. The issues of traditional and cultural semi

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<sup>36</sup> Art 16 (1) (b) of CEDAW

<sup>37</sup> Art 26 of the United Nations International Covenant on Civil and Political Rights which provides:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, ....”

<sup>38</sup> Art 7 of the UDHR which provides that: “All are equal before the law and are entitled without any discrimination to equal protection of the law...”

autonomous social fields require that there be put in place awareness strategies that will make families and communities aware of the burden of early marriage and the fact that it is no longer compatible with modernization.

#### **4.2.2 Early Marriage and HIV/AIDS**

Early marriage increases child wives' vulnerability to HIV/AIDS because marriage marks the transition from no sexual exposure to regular sexual relations. Even for those who have engaged in premarital sex, marriage may result in a dramatic increase in the frequency of unprotected sexual activity. These changes may be driven in part by the desire for pregnancy.

Secondly, the husbands of adolescent wives tend to be much older than their spouses. Because of their older age, these men are generally more sexually experienced than their wives (the child wives) and, as a result; husbands are more likely to be HIV-positive.

Another potentially important research finding is that the age difference between spouses tends to be larger when women marry before age 18. In general, the evidence linking large spousal age differences and greater power imbalances within marriage is weak and sometimes conflicting. Nonetheless, a recent National Academy of Science panel on adolescents in developing countries concluded that "there is reason to believe that marriages of young women and older men are less equitable" than other marriages.<sup>39</sup>

If young women married to much older husbands have less power in the relationship, they are also likely to have less power to negotiate to protect themselves against HIV, to influence their husband's behaviour, e.g., to use condoms and/or to engage in extra marital sex. In addition, in Tabora Islamic community, young brides are more likely than older brides to enter into polygynous unions and hence share their sexual risks with their husbands' other wives.

Thirdly, adolescent wives have less access to social and public sources of information and support. Findings suggest that married young women spend less time in school—the

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<sup>39</sup> <http://www.gutmacher.org/pubs/journals/3027906.html> visited on 12/08/07.

primary setting for HIV programs. Similarly, married adolescents are less likely to be exposed to the mass media, another important source of messages designed to curb the spread of HIV. Eliminating these gaps in access to HIV prevention messages is of vital importance. Moreover, in patrilocal Muslim societies, where females leave their natal villages to live with their husbands, adolescent wives' contact with former friends and family members may be severely curtailed. This lack of social contact may be important, as emerging research suggests that the advice and experiences of friends and family can have strong, positive effects on the adoption of reliable HIV prevention strategies. (Teemba 2005)

Finally, young married women who are cognizant of HIV risks often rely on remaining faithful to their husbands—and hoping that their husbands remain faithful to them—as their only viable protection strategy. Moreover, there appear to be few protective strategies available and accessible to adolescent wives. Married adolescents are either doing nothing or limiting their sexual activity to one partner (their husband) as their primary strategy for avoiding HIV infection. Neither of these strategies offers an effective means of reducing the degree of risk.

Currently, recommended strategies for protection and risk reduction are to abstain from sexual activity, to reduce the frequency of sexual activity, to change to a safer partner, to use a condom, to know one's own and one's partner's HIV status and to maintain a mutually monogamous relationship with an uninfected partner. Younger brides may be willing and indeed anxious to know their own and their partner's HIV status, but they may face substantial difficulties obtaining their partner's compliance with testing and mutual disclosure of results. In addition, although they may be highly motivated to remain faithful, their ability to influence their husband's sexual behavior might be minimal (Clark, et al 2006).

### **4.2.3 Violation of Human Rights**

Child marriage is the marriage of a person who is below the age of 18, the age under which a person is still a child according to the Children Rights Convention. Child

marriage is a violation of human rights.<sup>40</sup> Child marriage nullifies a woman's right to consent to marriage. A young girl or adolescent may be pressured by her family to marry a man who is chosen for her. Even a child who willingly enters into marriage may lack the knowledge or understanding to make an informed decision about a matter which has lifelong consequences. It also forces children to assume responsibilities and handle situations for which they are often physically and psychologically unprepared.

In places where child marriage is practised, girls rarely have any say in when and whom they marry. Once married, these young girls have little power and limited autonomy. Girls are frequently much younger than their spouses. In fact, in most cases, the younger the girl upon marriage, the greater the age difference between her and her husband. Most girls enter marriage with little or no information about their reproductive health, including contraception, safe motherhood, and sexually transmitted diseases, including HIV/AIDS.<sup>41</sup> They often face a greater risk of gender-based violence (Erulka A and Ayuka F, 2007).

For girls worldwide, child marriage can even be fatal. Child brides typically become sexually active as soon as they are married, and they face enormous pressure to bear children as soon as possible. Because their bodies are not fully developed, they are at greater risk of complications in pregnancy and childbirth. These complications can result in death—in many developing countries, pregnancy is the leading cause of death for adolescent girls—or ongoing health problems, such as obstetric fistula. Fistula is a debilitating condition that causes chronic incontinence and discomfort, and often results in extreme social isolation (Clark, at el (2006)).<sup>42</sup>

Married girls are stuck in limbo between childhood and adulthood, and health services often fail to reach them. Research has also shown that married girls are more socially

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<sup>40</sup> Article 16.2 of the 1979 CEDAW states: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.

<sup>41</sup> Article 14 of The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa gives state parties the mandate of ensuring that the right to health of women, including sexual and reproductive health is respected and promoted

<sup>42</sup> For discussion on fistula see Mulat, Y.B (2001), Repercussions of the Practice of the Early Marriage Girl Child : the Study of f Gojjam, Ethiopia. Postgraduate Diploma Dissertation in Women's law, University OF Zimbabwe, unpublished.



isolated than their unmarried peers. This isolation further limits their exposure to modern communications and their ability to acquire accurate information about things like sexual and reproductive health and HIV/AIDS. Child marriage also removes girls from any continuing schooling opportunities, and so they lose out on the benefits of education: better health, lower fertility, and increased economic productivity. They also lose out on any form of sex education, which is rarely taught before secondary school.

In contrast, marriage during adolescence is not common among young men in Tabora Tanzania, mainly because a man's marriage ability is often dependent upon his being able to support a family. Women are therefore likely to marry men who are older than they are. The resulting inequality in economic and social status may lead to unequal decision-making power within marriage, with significant repercussions for women's health and development.

In many countries including Tanzania, this disparity in marital age for first marriages is often lower for females than it is for males, violating a women's right not to be discriminated against on the basis of sex in the formation of marriage<sup>43</sup>. For example in Tanzania the Law of Marriage Act provides the minimum age for girls is 15 and 18 for boys<sup>44</sup>.

For all these reasons, married girls are highly vulnerable to HIV infection. They are almost always married to an older partner with more sexual experience and history who may not be faithful once married. Sex in marriage is more frequent and often unprotected. In fact, the vast majority of unprotected sexual encounters among adolescent girls occurs within marriage. Young girls often cannot negotiate with their husbands for safe sex practices such as condom use, even if they are aware of the need for such protection. In this context, the "ABC" (Abstinence, Be Faithful, and Use Condoms) approach to HIV/AIDS prevention offers no real options for married girls (Clark, at el (2006).

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<sup>43</sup> Article 1 CEDAW

<sup>44</sup> S.13 of Law of Marriage Act of Tanzania of 1971 as reversed 2002

#### **4.2.4 Human Rights and Legal Implications for Polygynous Marriages in the era of HIV/AIDS.**

In Islam polygamy has been accepted as a perfectly legitimate practice.<sup>45</sup> Even the law recognizes polygamy since the LMA gives the husband the liberty to have more than one wife as long as the marriages are contracted in terms of the Islamic Law or Customary Law.<sup>46</sup> This provision supports the provision of the Women's Protocol which places an obligation on state parties to enact appropriate laws to guarantee that monogamy is encouraged as the preferred form of marriage and that the right of women in marriage and family, including those in polygynous marital relationships, are promoted and protected.<sup>47</sup>

According to the provisions above, the existence of polygamy in Islamic Law is recognized by both national laws and international laws. Yet the Women Protocol provides for women's right to health. This includes; the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS.<sup>48</sup> Article 14 (1) (d) places an obligation on state parties to ensure that the right to health of women be protected and promoted.<sup>49</sup> In an effort to effectively transform the provisions of these regional Human Rights Instruments to the practical level the Government has enacted the HIV and AIDS (Prevention and Control) Act, 2007. The Act seeks to educate women, men, girls and boys about male and female sexuality, HIV/AIDS and other sexually transmitted infections and the consequences of high-risk behavior.<sup>50</sup>

What is worrying is that there is a major disparity between the contents of these Conventions, Islamic law and statutory laws and what is happening on the ground. It appears to me that one of the major reasons why women are particularly vulnerable to

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<sup>45</sup> Quraan verse 4:3 provides "And if ye fear that ye will not deal with the orphans, marry of the woman, who seem good to you, two, or three, or four, and if ye fear that ye can not do justice (to so many) then one (only) or the (captives) that your right hand possess. Thus it is more likely that ye will not do injustice."

<sup>46</sup> S.10 of the Law of Marriage Act of 1971

<sup>47</sup> Article 6 of the Protocol to the African Charter on Human Rights and Peoples Rights on the Rights of Women in Africa.

<sup>48</sup> Article 14 (1) (d) the Protocol to the African Charter on Human Rights and Peoples Rights on the Rights of Women in Africa.

<sup>49</sup> *ibid*

<sup>50</sup> S.8 of the HIV and AIDS (Prevention and Control) Act, 2007

HIV is due to the lack of a clear international legal commitment to women's health. This flows directly from the fact that the provisions of the Women Protocol are in conflict with one another. In one breath they recognize polygamy (an institution universally acknowledged to be inimical to women's welfare) and, in the very next, they purport to protect women's health. In other words, the recognition of polygamy under Islamic, national and international laws seems to be fomenting the very sex and gender discrimination which international laws and the Tanzania seek to outlaw!<sup>51</sup> This is a perverse situation and should not be allowed to subsist.

Gender equality and principles of non-discrimination are universally recognized human rights, and, as such, they are protected by various United Nations Human Rights Instruments.<sup>52</sup> Indeed, the principle of non discrimination is *res cogens*, an established legal concept in international law.<sup>53</sup> Freedom from all kind of discrimination is a central theme in customary international law.<sup>54</sup> The Tanzania constitution supports gender equality and non-discriminatory principles and it contains provisions that support the principle of gender equality and non-discrimination. Article 13 (5) lays down gender or sex as a specific ground upon which no law is permitted to discriminate.<sup>55</sup> This clause or article incorporates into Tanzanian domestic law the obligations imposed upon it International Human Rights Instruments.

### 4.3 Emerging Themes

In the course of the research there are issues that emerged that needed to be addressed. The first emerging issue is that there are many girls between the ages of 12-17 who have children before marriage. This means those girls are sexually active and engage in unsafe sex (To be discussed under chapter five).

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<sup>51</sup> Article 1 of CEDAW and Article 12 of the URT Constitution of 1977(as amended from time to time) provide that All human being are born free, and are all equal

<sup>52</sup> International Human Right's law exists chiefly as Conventional Law such as in the form of International Legal Instruments Convention Treaties etc.

<sup>53</sup>Mhoja.M, (2006). Silenced and Unheard; Human Rights Sufferers in Tanzania p

<sup>54</sup> Article 3 of the Universal Declaration Human Rights of 1948.

<sup>55</sup> The Constitution of Tanzania of 1977 (as amended from time to time )

Secondly, Tabora local government does not involve Muslim institutions in sensitization and dissemination of information on HIV/AIDS. Due to problems beyond my control I could not look it into this further.

Lastly, there is a conflict between views on polygamy and the problem of HIV/AIDS. The majority of women respondents are in complete agreement that polygamy is increasing the vulnerability of women to HIV/AIDS infection. Due to an unsatisfactory sexual relationship within the marriage they seek other partners. On the other hand male respondents noted that polygamy in the era of HIV/AIDS plays a role in controlling HIV/AIDS infection because they believe husbands are satisfied with their wives, so they do not seek extra marital sex. The first emerging issue is discussed under chapter five.

#### **4.4 Conclusion**

Based on my analysis, the reason why early marriages have been proliferating formally or informally is because of the absence of minimum age of marriage in quraan, incredible contradictions in statutory laws on marriageable age and the decampaigning of early marriages was not taken in a holistic fashion.<sup>56</sup> Certain underlying circumstances that propel women into early marriage ought to have been considered as part of the campaign process. The issue of law reform is imperative.

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<sup>56</sup> Section 13 of the Law of Marriage Act, Section 138 (6) of the Penal Code and S.130(2) (e) ) of the Sexual Offences Special Provisions Act (SOSPA) 1998

## **CHAPTER FIVE**

### **RIGHT TO INFORMATION**

#### **5.0 Introduction**

The key assumption that I had made at the beginning of the research was that early marriage would be a prevalent practice in the Islamic community in Tabora's urban and rural areas and that this practice exposes young married women to HIV/AIDS infection. After a few days of the field research, I discovered that there a lot of unmarried young mothers who are exposed HIV/AIDS infection. The HIV status of most unmarried adolescents in Tabora is unknown, although a handful of my findings reveal that the prevalence of HIV among unmarried adolescent females is probably relatively high. This chapter therefore aims to examine the extent to which young unmarried Muslim girls are exposed to HIV/AIDS due to lack of appropriate HIV/AIDS information. The study highlights how lack of appropriate information on HIV/AIDS exposes young unmarried Muslim girls to HIV/AIDS infection.

#### **5.1 Why Unmarried Girls**

Unmarried adolescent girls are outside the conventionally defined research interests, policy diagnosis, and basic interventions (family life education, youth centre, peer education, and youth-friendly health services) that have underpinned adolescent reproductive health programming and many HIV/AIDS prevention activities. They are an isolated, often numerically large, and extremely vulnerable segment of the population, largely untouched by current intervention strategies.

From the statistics obtained from the VCT it is clear that by the time girls are 16 years old they are more likely to be HIV positive than boys and this may be as a result of the abuse of girls from an early age.

Below are the HIV & AIDS statistics for the 16 to 19 year age group, according to ANGAZA VCT-TABORA<sup>57</sup>:

Duration	Age Group	Female		Male	
		Number tested	Number that tested positive	Number tested	Number that tested positive
<b>July-September 2007</b>	16-19	972	156	1093	67

The statistics show that the rate of infection is higher among females than among males of the same age group, meaning that girls are twice as likely to be exposed to HIV positive as boys.

## 5.2 Availability of Appropriate HIV/AIDS Information

Appropriate information implies that the information given should be adequate, of high standard and of substantial quantity to enable the girls understand and make informed decisions on the advice given. In Islam, the teenagers were taught on how their bodies function immediate after puberty. This was done through their grand mothers or aunts. Girls are taught that they are grown-ups and that sexual intercourse can result in pregnancy. They are also told that the main way of avoiding pregnancy is abstinence. No HIV/AIDS information is associated with this teaching. Furthermore, they are taught how to cleanse themselves after menstruation. The youth reach puberty when they are students (especially in boarding school) and at times far away from their family members (grandmothers and aunts) who are responsible for socialising them. The teenagers learn from their friends information which at times is not correct. To this end they indulge in unsafe sexual intercourse and in turn find themselves with greater problems (Teemba, 1995)

<sup>57</sup> Tabora VCT-Angaza From July to September 2007

### **5.3 Delivery of HIV/AIDS Information**

In my research I established the Tanzania Commission for AIDS's (TACAIDS) role is to coordinate a multi-sectoral approach to HIV/AIDS activities in Tanzania. It works together with Non-Governmental Organizations, the local government and religious institutions. Dissemination of information is done through the media, community leaders, and peer educators and by distribution of pamphlets and brochures.

According to the TACAIDS Monitoring and Evaluation Officer the organisation has set up organs to enable its effective dissemination of information to the general public through local governments, schools, health centres, various forms of media and community centres. However, in reality there are few HIV/AIDS posters in Tabora. Posters are only posted in the pharmacy and hospital. This is not insufficient dissemination because it does not reach enough people. To be effective, a lot more needs to be done in this area.

#### **5.3.1 The BAKWATA**

The research established through respondents interviewed that the BAKWATA has indeed played a role in disseminating information on HIV/AIDS. Some of the women interviewed said that they heard information on HIV from their Friday prayer sermons. The *madrasat*<sup>58</sup> girl's students said their teachers did not teach them about HIV/AIDS. However, the BAKWATA complained that the local government does not engage them in dissemination of information regardless of their numerous requests.

### **5.4 Lack of HIV/AIDS information**

Out of 40 respondents 28 of Muslim unmarried young mothers interviewed have scant knowledge on HIV/AIDS. HIV/AIDS information was obtained either from friends or

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<sup>58</sup> Muslim school for learning Quraan and other issues relating to muslim.

media since HIV/AIDS information is not available for *madrasat* girls. *Madrasat* are not teaching on HIV/AIDS because there is a perception that HIV/AIDS only affects immoral individual, adulterers and fornicators. As a result, this is considered to be not important for the Muslim girls. The little information the Muslim girls have is likely to have been gleaned from conversations among married friends, parents or from the media. This information tends to be incomplete because teenage girls do not get a chance to inquire about the advantages and disadvantages of unprotected sex. At the end of the day, girls are left with unreliable information and when they indulge in unsafe sex they become victims of HIV/AIDS.

There was another group of unmarried young mothers who could not state in which ways HIV/AIDS is either transmitted or protected, and this was probably because they were not aware of any HIV/AIDS information. Unfortunately these young mothers can easily be deceived into accepting unprotected sex which will place them at the risk of HIV infection because of being misinformed. Although there is data showing that some young mothers know that unsafe sex could lead to HIV infection, it remains doubtful that the information they have is appropriate and sufficient to prevent them from contracting HIV/AIDS.

As evidenced by indepth interviews, one unmarried mother learnt that one act of unsafe sexual intercourse can result in HIV/AIDS infection. This is dangerous especially when it is considered that one can be infected before attaining puberty. The only way in which girls can successfully avoid HIV/AIDS at their age is through the provision of appropriate HIV/AIDS knowledge on sex education and where necessary provision of free male and female condoms.

#### **5.4.1 Multiple Factors Preventing Young Unmarried Muslim Mothers From Obtaining Appropriate HIV/AIDS Information**

The HIV/ AIDS epidemic in Tabora Islamic community has added to many existing problems for girl children. Factors such as poverty, immaturity and poor access to education, health services and information, make girls more vulnerable to infection. Girl



children are not only more vulnerable to infection but are also the targets of sexual activity in this era of HIV/AIDS as men believe that they are safe. There are several factors given for non-provision of appropriate HIV/AIDS information. The following are various factors that hinder adolescents in obtaining appropriate HIV/ AIDS information.

#### **5.4.1.1 Cultural and Religious Factors**

Culture is one of the normative orders that operate in society and affects women's lives in different ways. The research revealed that cultural factors, though to a limited extent, impacted on HIV/AIDS information.

In many societies there is a culture of silence that surrounds sex and culture dictates that "good" women are expected to be ignorant about sex and passive in sexual relations. This makes it difficult for them to be informed about risk reduction or, even when informed, makes it difficult for them to be proactive in negotiating safer sex.

Religious factors also have an impact on young unmarried women's access to information on HIV/AIDS. The religious influence of non condom use emanates from the fact that sex is lawful after marriage. A married woman is expected to be faithful to her husband; as a result there should be no risk of infection. This attitude makes me wonder whether information on HIV/AIDS transmission is taken seriously by religious leaders, and whether they are aware of the devastating effects of HIV/AIDS.

Religious norms requiring that women be virgins when they marry mean that girls may be especially afraid to ask for information about sexual matters, as the impression could be created that they are sexually active. The Holy Quraan exhorts the followers of Islam to enter into marriage with chaste women. "(Then) marry of the women, who seem good to you" (Quraan verse 4:3). The term "good women" is interpreted to mean chaste, virgin women and religious women. This means that sexual intercourse for spinsters is not allowed no matter how old they may be. It is also understood that every normal human

being is sexually active. As a result, marriage is allowed for a girl of nine years old, even if she is still at school.

According to my interview with Muslim leaders any girl who is sexually active in a Muslim society is advised to marry. They contended that to allow the use of condom is to invite prostitution in society while avoiding pregnancies and STDs. The youth are taught in *madrassa* (Muslim school) that they are responsible for any sin committed after puberty, unlike those committed before puberty. Therefore married couples are blessed by having sex although they are cursed if they commit any form of adultery.

#### **5.4.1.2 Communication between Parents and Children**

Most parents interviewed stated that cultural proscriptions prevented them from talking about AIDS with their children. In their culture grandmothers and aunts were authorised to speak about sex with young people, but these relatives are not always available in urban household. Moreover, they may not be well informed about AIDS.

Although parents find it difficult and uncomfortable to talk to their teenagers about sex, studies have indicated that youth who receive sex education from their parents or primary carers are more likely to delay their first sexual experience, to use contraceptives when they do have sex, and to have fewer sexual partners.

Parents still thought that the way they were brought up should be the way their children should grow up, not appreciating the fact that there are socio-economic changes which affect society as years go by. Parents often have an unrealistic perception of their own teenager's sexual practices and teenage sexuality in general.

#### **5.4.1.3 Gender Power Imbalance**

The power imbalance that defines gender relations and sexual interactions also affects women's access to appropriate HIV/AIDS information. For example, the study conducted by Mama, Mbwambo and colleagues in 1999 found that there were gender differences in

the decision-making process that led to the use of HIV voluntary counseling and testing services. While men made the decision to seek voluntary counseling and testing independent of others, women felt compelled to discuss testing with their partners before accessing the service, thereby creating a potential barrier to accessing VCT services.

#### **5.4.1.4 Unavailability of Media Services**

Media is one of the available means used for dissemination of information. Most HIV/AIDS information in Tabora is through media such as radio, newspapers and television. The research revealed that media coverage in the rural area is still inadequate: out of 20 young women interviewed at Kalunde village only 3 girls' parents had radios and none had a television. These young women who mainly live in the rural area have no access to information through the radio, newspaper and television.

An interview carried out with the Kalunde ward chairman revealed that they do not have access to HIV/AIDS information on a daily basis except during the week of International Aids day. He pointed out that they are usually called to cover events on HIV/AIDS by organizations such as TACAIDS and other non government organization deal with dissemination of information but all the workshops are in the urban areas.

From these interviews it was revealed that disseminations of HIV/AIDS information is still ineffective as most people in the rural areas lack access to televisions, radios and newspapers. Those interviewed in the urban areas and who had access to televisions were able to confirm that they have heard information on HIV/AIDS through advertisements on television and radio and it was ineffective.

Adolescents' social and economic vulnerability and gender inequality also lie at the root of their inability to access information about HIV/AIDS. The research revealed that a primary means of getting information out to young people about HIV/AIDS is through school, but the existing gender gap in education in many rural and urban areas means that girls have less access to this knowledge. The fact that rural adolescent women live far away from school means that they do not have access to information on HIV/AIDS.

Furthermore, as more and more girl-children are removed from school to provide support in AIDS-affected families and production activities, even fewer girls will be able to learn about the disease. Also research reveals that most girls leave primary school when they are 14-15 years old. At this age girls are too young and ignorant about the importance of knowing their HIV/AIDS status, and lack the courage to convince their partners to know their sero-status. On other hand, detailed HIV/AIDS information is provided at secondary school where only a few girls can access the information. This is due to fact that most of girls end school at the level of primary seven (Sauti ya Siti, No. 31, 2007). Although some had heard about it on radio and television in the urban area, only one woman out of the ten interviewees from the rural area indicated that she owned a radio.

## **5.5 Discussion of Grounded Findings**

### **5.5.1 Muslim Attitudes to HIV/AIDS**

There is an over-whelming perception among the Muslim community that HIV/AIDS affects sexually permissive, immoral individuals, adulterers and fornicators. Most sheiks spend much energy on aspects that touch minimally on the central issues that cause HIV/AIDS infection and how it is spread. Very little is being done in terms of instituting measures that will help check the scourge in the community, posing a real threat to Muslim women.

Accurate information about the disease is not available to believers to help them protect themselves from the scourge. The sole defence offered by the *ulamaa* (clerics) has been *la trakrabu zinaa* which admonishes against committing adultery. They have also been adamant against the distribution of condoms and against life-skills education in school (Sauti ya Siti, No. 31, 2007). Little attention is given to practices that encourage the spread of the virus. Such attitudes have had devastating effects on the community. Young brides are particularly affected.

Yet, despite this reality the Islamic community is impervious to calls for positive action to protect women from the harm of HIV/AIDS. Human rights and gender activists have identified weaknesses in current Islamic institution (such as BAKWATA) that allow the situation to go unchecked. Some want a one-man-one woman rule, believing it will help each partner to monitor the other's sexual habits. However, it is not a sound solution by itself. Apart from the phenomenon of the cheating partner, one cannot be sure of the history of the current partner even in a legal union.

### **5.5.2 Muslim Institutions and HIV/AIDS Information**

Women and girls are not yet receiving the information they need to protect themselves from infection. Information, education and training on HIV/AIDS prevention is still too often not made available, or is not made available in ways that are accessible and can be put to practical use. Discriminatory and stereotyped gender roles and norms about sexuality are deeply implicated in this failure.

In many Muslim societies there are cultural dictates for women to play a passive role in sexual interactions, and strong social pressures for women and girls to remain ignorant about sexual matters. Consequently, there is a frequent reluctance to provide education about issues relating to sexuality to girls and women, and they may be hesitant to pursue the information themselves.

Social norms requiring that women be virgins when they marry mean that girls may be especially afraid to ask for information about sexual matters, as the impression could be created that they are sexually active. In practice, girls' ignorance about protecting their sexual health has led them to engage in high risk behaviour – for example, by opting for unprotected anal sex as a means of avoiding pregnancy (Bowman and Kuenyehia, 2000)

A primary means of getting information out to Muslim young people about HIV/AIDS is through school based education. Government has introduced life skills training and HIV/AIDS subjects which targeted pupils from standard four through to standard seven.

But the existing gender gap in education in many rural and urban areas means that girls will have less access to this knowledge. This is the case as more girl-children are removed from school to provide support in production and AIDS-affected families. Therefore, even fewer girls will be able to learn about the disease (Sauti ya Siti, No. 31, 2007).

Under Islam, religious leaders are reluctant to provide HIV/AIDS information, religious education and teachings to the Muslims especially women. At least now Islamic knowledge is among subjects taught in schools and college. But this is not enough because it does not cater for the girl's or women's HIV/AIDS information needs. There is a need to have a special way of providing it.

The National Muslim Council of Tanzania (BAKWATA) has a lot to do with the right of these young women to receive HIV/AIDS information. BAKWATA as an institution dealing with Muslim welfare and development is duty bound to make sure that young girls access appropriate HIV/AIDS information. This can only be possible if the HIV/AIDS information is provided in *Madrasa* (Muslim school), during Friday prayer sermons and in Islamic books, brochures, television and radio programmes etc. But BAKWATA and other Muslim institutions do not disseminate HIV/AIDS information for the main patriarchal reason that women are supposed to be ignorant about sexual matters. This is contrary to what Islam provides. Islam emphasises equal education for males and females. Muslims are told to find education wherever it can be found. Prophet Muhammad said that education is the right of any Muslim. (Hadith by Al Bukhari)

### **5.5.3 Human Rights Implications For The Right to Information**

A girl's capacity to protect herself from unwanted pregnancy and HIV is closely connected to the right to education and right to information. There is established evidence that comprehensive sex education delays the onset of sexual activity and provides the life skills needed for responsible and safe sexual behaviour.<sup>59</sup> Whether and to what extent

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<sup>59</sup> Helling, A. *et al.*, (2007) Human Rights, plural legalities and gendered realities: Paths are made by walking, SEARCWL and Weaver Press, Harare p350

Tanzania is obliged to include sex education in school curricular is a critical issue. Article 13 (1) International Covenant on Economic, Social and Cultural Rights states that:

The state parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society.

In this provision the content of the right to education is interpreted in the light of the Convention on the Rights of the Child, The Covenant on Economic, Social and Cultural Rights and CEDAW.

The United Nations Convention on the Rights of the Child provides for, among others, the right to life, right to the highest attainable standard of health and, in dealing with children, the commitment to ensure that the best interest of the child takes precedence over other issues. This is commendable but the teenagers' right to life and to a high standard of health has not been given the attention it deserves. As a result, teenagers worldwide, and in Tanzania, in particular, do not enjoy fully their right to information rights as very often their needs are not taken into consideration. The Convention on the Rights of the Child provides that: "State parties should ensure that there is accessibility to children of information and materials from a diversity of sources."<sup>60</sup>

According to Article 17, the state party shall:

Encourage the mass media to disseminate information which is of social and cultural benefit to the children and take steps to protect them from harmful materials. The information and materials and especially those aimed at the promotion of children's social, spiritual and moral wellbeing and physical and mental health.<sup>61</sup>

The convention spells out the importance of contraceptive information access by teenagers with special focus on teenage girls. The committee on the rights of the child goes further in promoting teenagers' rights not only to information but to services and specifically indicates this under Article 13(1) which gives state parties obligations in

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<sup>60</sup> Article 17 of The Convention on the Rights of the Child

<sup>61</sup> Ibid

relation to health and information. Articles 13 and 17 articulate how: “Children should have adequate information related to HIV/AIDS prevention and care through formal channels.”<sup>62</sup>

This is crucial in the era of HIV/AIDS as it means that if children are not properly catered for the concept of promoting future generations will not, in effect, be achieved.

Young girls especially need services and information because as adolescents they need information about general sexuality and reproduction and STDs so they can safeguard themselves. Both girls and boys benefit from health education programmes that include vital sexual health information. It is important to say that despite this, programmes for teenagers are not sensitive to the needs of this age group. Sometimes hard-pressed health systems and administrators feel they have done what they can to cater for needs of teenagers by establishing a link from the existing health care system. More often than not this results in teenagers not accessing appropriate information that is vital to their development.

The Convention on the Elimination of All Forms of Discrimination against Women (Women’s Convention) addresses the need to ensure that women and girls receive the education and information about sexual health they so urgently require through, in particular, its articles on education, health and the elimination of discriminatory cultural practices and stereotypes. Among the steps state parties may need to take in order to meet their obligations under the Convention are those that ensure: that prevention education programmes are specifically designed to reach women and girls; that these programmes take into account the barriers posed to accessing information by stereotyped gender roles for both men and women; that cultural norms about gendered sexuality are targeted in schooling and in public awareness-raising campaigns; that information is provided in youth friendly forms; and that greater efforts are made to increase girls’ participation in formal education and to improve women’s literacy.<sup>63</sup>

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<sup>62</sup> Ibid

<sup>63</sup> Article 10 and 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW ) 979



Many girls and women know very little about their bodies, their sexual and reproductive health or HIV/AIDS. In many societies both the discussion of and education about sexual matters is frowned upon. As a result, millions of people, especially girls and women, remain ignorant about HIV/AIDS, with potentially deadly consequences. Although many adults in both the rural and urban areas disapprove of sexual and reproduction health education for young people because they believe it encourages promiscuity, long experiential studies show that just the opposite is true.

A view of VCT- ANGAZA shows that young people were more likely to delay sexual activity when they have the correct information to make informed decisions. Although HIV prevention programmes are expanding, they are not keeping pace with the pandemic. Greater efforts are needed to ensure that initiatives promote female empowerment, gender equality and male responsibility. Breaking the silence on these sensitive issues builds awareness and effective action. Greater dialogue and partnerships are needed that can result in gender responsive policies and programmes.

These brief insights demonstrate the need for improved education on sexual and reproductive matter in primary and secondary schools. According to the wording of article 13 of International Covenant on Economic, Social and Cultural Right, education shall be directed to the full development of the human personality, the sense of its dignity and shall strengthen the respect for human rights and fundamental freedom.<sup>64</sup>

The Economic, Social and Cultural Right Committee holds education as an empowerment right, the primary vehicle through which economically and socially marginalized children can obtain the means to participate in their society.<sup>65</sup> The significance of reproductive education in girls' human development is substantiated by the Convention on the Rights of Child Committee which emphasizes, in particular, that

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<sup>64</sup> Universal Declaration on Human Rights Article 26(2); International Covenant on Economic, Social and Cultural Right Article 13(1); Convention on the Rights of the Child Article 29(1)(A); Cairo Declaration, Guiding Principle 10.

<sup>65</sup> Ibid paragraph 1

adequate measure to address HIV/AIDS can be provided to children and adolescents only if their rights are fully respected.

According to the committee, the most relevant rights in this regard are the rights to preventive healthcare, sex education and family planning education and services, the right to health and right to education. The CEDAW committee suggests that family life education should be part of the school curriculum.<sup>66</sup> This view is in accordance with the Cairo Declaration and Beijing Declarations which recommend that in order for sex education to be most effective, it should be provided to teenagers through formal education and school curricula.

## **5.6 Emerging Theme**

In the course of the research there is an issue that emerged that needed to be addressed includes the rural/urban dichotomy in relation to the accessibility and availability of information. Rural women are disadvantaged in terms of the distance they cover to access HIV/AIDS information. Of the 25 young unmarried mothers interviewed at Kitete clinic, the nearest had walked for about 2 kilometers; the majority live 15 to 20 kilometers away from the clinic. The reasons for walking range from lack of transport to lack of bus fare.

Although state parties have an obligation to take all appropriate measures to ensure elimination of discrimination against women in the rural areas in order to ensure that such women enjoy the right to adequate health care facilities including information, counseling and services in family planning (CEDAW), there still remains the issue of rural women being disadvantaged in terms of accessing health facilities.<sup>67</sup>

## **5.7 Conclusion**

Teenagers are a group within one generation which cannot be ignored. They need to be put on today and tomorrow's agenda. They are sexually active and they need protection

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<sup>66</sup> United Nations doc.A/50/38,paragraph278-344, paragraph 343

<sup>67</sup> Article 14(2)(b) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW ) 979

and education as well as information that will empower them to take care of their reproductive and sexual needs. There is a saying that “information is power.” When it is delivered properly and timeously, information is the means by which women/girls secure their own protection and liberation. Since teenage sexual activity is often unintended and sporadic, much of the sexual activity occurs in the absence of sexual information and knowledge of contraceptive use.

## **CHAPTER SIX**

### **CONCLUSION AND RECOMMENDATIONS**

#### **6.0 Introduction**

The conclusion is a summary of the results of the study. In this chapter there are also recommendations for the various actors involved in the early marriages, polygynous marriages and the girl child's right to HIV/AIDS information. The chapter includes salient measures that will protect women/girls from early marriage and HIV/AIDS transmission within marriage. It discusses how to empower women to assert themselves in marriage, negotiate safe sex and save their lives as well as sensitize them on human rights issues such as equality within marriage and the right to information for their own welfare and that of their families.

#### **6.1 Conclusion**

Early marriage makes girls/women extremely vulnerable to HIV because they risk infection, not so much through their own improper behaviour, rather as a result of being 'faithful' to their husbands by being forced to have unprotected sex with their husbands who often have unprotected sex outside of marriage.

These women are vulnerable regardless of their age or marital status. Young women may be at risk before and during marriage when their husbands wander outside their marriage and engage in extra marital sex.

Young married women are particularly vulnerable to HIV infection because they tend to have children early in their marriages when they are little more than children themselves and, as a consequence, endanger their own health. Husbands of young married women also tend to have more wives and are more likely to engage in extra marital sex, especially during and immediately following pregnancy. As a result, it is generally husbands who bring HIV into a marriage.

On the issue of lack of appropriate HIV/AIDS information, I concur with the remarks of Holden that education has a great impact on reducing pupils' and teenagers' susceptibility and vulnerability as it helps them to learn important life skills: not only the ability to read and write but also to reflect on problems, find solutions, and make decisions, and acquire practical skills to earn a living.<sup>68</sup>

## **6.2 Recommendations**

The laws and policy in place in Tanzania are not in compliance with the international human rights frameworks as regards the ban on the harmful practice of early marriage which has been proven to expose the girl-child to HIV/AIDS infection. The contradiction in the legal provisions on early marriage (marriageable age) turns the law into a toothless defender of these young vulnerable human rights victims. The vulnerability and susceptibility of girls remain unprotected in this deplorable legal situation: the law essentially frees men of their duty to behave responsibly within marriage while at the same time fails to protect young married women from the harmful risks of early marriage. In my opinion what is required is legal reform and other interventions I consider prudent in the circumstances. Failure to provide appropriate HIV/AIDS information to young mothers is contrary to International Human Right and constitutional rights on child rights and women rights.

### **6.2.1 Changing Legislation**

The legal situation on early marriage in Tanzania is complex. Marriage is legally regulated by the Law of Marriage Act, but this national legislation bears no relation to the ages at which parents can and do marry off their children in practice. Changing legislation is, nevertheless, an important strategy.

Legislation on its own may have only limited impact, but the very process of legislative examination and reform, together with related advocacy efforts, is an essential step towards lasting change. It is important, for example, that governments revise or enforce

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<sup>68</sup> Holden, S: 2004 at p88

legislation regarding a minimum age of marriage. This includes a serious examination of Islamic law, customary laws and other national laws that overrides existing legislation. Too often, for example, harmful traditional practices are allowed to continue in spite of laws that forbid them.

Legislation needs to be reassessed and enforced in the interest of the rights and health of young people. The international precedent comes from two key human rights treaties: the Convention on the Rights of the Child, ratified by Tanzania Government and the Convention on the Elimination of All Forms of Discrimination against Women. Therefore Tanzania is obliged to modify their laws accordingly.

### **6.2.2 Policy Prioritization of girl child's Vulnerability.**

In the longer term, programmes should be put in place that specifically target empowering girl-children and focusing on the areas in which they are particularly vulnerable. Whilst a gender policy exists in Tanzania it does not distinguish between women on the basis of their vulnerability such as young married/unmarried women. International laws should be followed in this respect as they categorize women according to their vulnerability, such as the girl child, the disabled, widows and elderly women. Evidence shows that 'the married girl-child' requires specific interventions considering their uniquely vulnerable circumstances.

### **6.2.3 Changing Attitudes**

Changing attitudes is the strategy that underpins all other efforts to end early marriage. Real progress will come from introducing and promoting initiatives to change attitudes towards the gender roles of girls and boys in general and towards the practice of early marriage in particular. This means that societies must re-examine traditional gender roles. Marriage is a sensitive issue, but action on other sensitive issues, such as education for HIV/AIDS prevention, provide models for action and indicate strategies for successfully raising the age of marriage.

It is important, for example, to work with the ‘social gatekeepers’, such as religious leaders, policy makers, parents and those who actually make the decisions in attitudinal change. Programme designers need to respect and work with these influential adults, whose concerns and the reasons for them should be understood and evaluated in a search for areas of consensus around the overall goals.

#### **6.2.4 Promoting Education**

In every region girls who receive less schooling are more likely to marry young. In rural areas, for example, most girl children who were aged between 14-17 and had married before the age of 18 had only completed primary school. In comparison, the majority of girls in urban areas had married at the age of 18 or older. It is clear that the promotion of education is a strategy which has much potential for far reaching changes to the harmful practice of early marriage. Girls who attend school become educated women and, in turn, contribute in human and economic terms to society in a way that goes far beyond their capacity for child bearing and domestic work. School systems can and should be adapted to be more sensitive to girls’ needs and more responsive to family concerns about the safety of their girls. (Clark, at el 2006)

The Muslim National Council (BAKWATA) and other stakeholders at all levels are called upon to initiate specific HIV/AIDS education programmes as the main long term strategy. Education as a basic human right classically plays a key role in promoting change. Education should start within the family as life skills should not be taught in school alone. Learning life skills at school should be reinforced in homes.

Experience shows that it is possible to introduce some of the most important concepts surrounding sexuality and reproduction into education without arousing controversy. These include respect for others; self-esteem; the importance of postponing the first pregnancy; HIV/AIDS and the ability to withstand peer pressure (Erulka A and Ayuka F, 2007).

In a number of Tanzania cultures, there is reticence about, or an actual taboo surrounding, the discussion of sex. This feeds fears that sex education will encourage early sexual relations and pregnancy. The work of UNAIDS has demonstrated such fears to be unfounded, and that sex education does not lead to promiscuity. All the same, such misconceptions take time to be dispelled.

Evidence shows that silence about sex does not inhibit teenage pregnancy in countries where old-style sexual protection systems are breaking down and HIV now poses a serious threat to the lives of girls. More than half of new HIV infections occur in 15-24 year olds, and girls become infected at twice the rate of boys. The long-term impact of such 'population education' has not been studied, but there are indications that it has an impact on behaviour.

### **6.2.5 Disseminate Information**

Information should be disseminated to young women about the link between early marriage and HIV/AIDS because they have the right to such information. This information should target girls in all areas especially rural areas where such information has been found to be at its sparsest. Sex education and imparting knowledge should not only be done through but should also target parents and, in fact, all adults. Government and societal views at large were found to be barriers affecting access to contraceptives and HIV/AIDS information by teenagers. It is not correct to say that decrees by circulars or policies can guide the process of service delivery very well or that a policy will be easy to implement. The issue of enacting law or emending existing laws is also necessary.

### **6.2.6 Socialization**

Gender education and awareness must be created within Muslim communities. This will empower women to strive to break through the barriers that confine them to the gender stereotyped roles and realize their own potential as breadwinners and leaders. This in my view would reduce the urge by women or girls to marry when they are young as they will be confident of their potential.



### **6.2.7. Empowerment of women**

Women`s empowerment describes a process through which women increase their ability to shape their own lives and environment. It includes an evolution of women`s self-awareness, status and efficiency in social interactions. Empowered women are better equipped to control their environment and make decisions that lead to improved quality of life, particularly in HIV/AIDS information and reproductive health. This empowerment process will include sensitizing women on the importance of HIV/AIDS information Benzton, A.W. et al, (1998) Pursuing Grounded Theory in Law South North.

## BIBLIOGRAPHY

Aids, Sex and Reproduction, <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?>

Banda, F., (2005), *Women, Law and Human Rights: an African Perspective*, Portland, Oregon: Hart Publishers.

Benzton, A.W. et al., (1998), *Pursuing Grounded Theory in Law: South North Experiences in Developing Women's Law*. Harare, Mond Books and Oslo, Tano-Aschehoug.

Bowman, C. G. and Kuenyehia, A., (2000), *Women and Law in Sub Sahara Africa*, SEDCO.

Bracher, M. et al., (2003), "Moving and Marrying." *Demographic Research Special Collection 1: Article 7*.

Bruce, J. and Clark, S., (2005), *Report on a Faith-Based Meeting on Child Marriage, Co-Sponsored by the Population Council and the All-African Conference of Churches*", Nairobi Kenya, The Population Council.

Bunting, A., (1999), *Child Marriage, International Courts, Instruments, and Organization and Selected Regional Issues Affecting Women*, *The Journal of Women and International Human Rights*, Vol. 2.

Caraël, M., (1995), "Sexual behavior." In: Cleland, F and Ferry, B. (eds.) *Sexual Behavior and AIDS in the Developing World*, London: World Health Organization, Taylor & Francis.

Clark, L. and Lewis, D., (1977), *Rape, the Price of Coercive Sexuality*, London, Women's Press.

Clark, S., (2004), *Early Marriage and HIV Risks in Sub-Saharan Africa*, *Studies in Family Planning*.

Clark, S. et al., (2006), Protecting Young Women from HIV/AIDS: The Case against Child and Adolescent Marriage International Family Planning Perspectives, Vol. 32, No. 2. <http://www.guttmacher.org/pubs/journals/3027906.html> visited on 12/08/07.

Cohen, L. and Manion, L., (1980), "Research Methods". In Nurse Education to day 7(1):  
Dahl T.S (1987), Women's Law. An Introduction to Feminist Jurisprudence, Oslo, Norwegian University Press.

Dengu, Z. et al., (1994), Inheritance in Zimbabwe: Law, Customs and Practice, Harare, Weaver Press and Women's Law Centre.

English, K. and Stapleton, A., (1997), The Human Rights Handbook: A Practical Guide to Monitoring Human rights, Cape Town, Juta and Co. Ltd.

Erulka, A. and Ayuka, F., (2007), Addressing Early Marriage in Areas of High HIV Prevalence: A Program to Delay Marriage and Support Married Girls in Rural Nyanza, Kenya.

.  
Fateh-al-Bari page 143, Vol.13 <http://altafsir.com>- Tafsir Al-Jalalayn, visited on 11/08/07.

Glaser, B. G. and Strauss, A. L., (1967), The Discovery of Grounded Theory: Strategies for Qualitative Research, Chicago, Aldine de Gruyter.

Grant, R. W., (1996), Legal Pluralism and the Search for Justice, 40 J. Afr. L. 152, 157-158.

Hamilton, C., (1995), The Hedaya (Hedaya), Lahore, Premaier Book House.

Hellum, A. *et al.*, (2007), Human Rights, plural legalities and gendered realities: Paths are made by walking, Harare, SEARCWL and Weaver Press.

<http://www.tanzania.go.tz./census/tabora.htm>, visited on 11/09/07.

<http://en.wikipedia.org/wiki/Islamic-marital-jurisprudence>, visited on 10/08/07.

Kidder, L. H. *et al.*, (1986), *Research Method in Social Relation*, (5th ed.), New York, C.B.S College Publisher.

Lofland and Lofland L. H., (1984), *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*, Belmont, CA. Wadsworth.

Mulla D. F., (1995), *Principles of Mohamadan Law*, Lahore, PLD Publishers.

Mhoja, M., (2006), *Silenced and Unheard; Human Rights Sufferers in Tanzania*, Dar es salaam, University Press.

Muhammad, I. S. (1998), *The Family of Islam*, Delhi - INDIA, International Islamic Publisher.

Muhwava, W., ( ), *Condom Use within Marriage and Consensual Unions in the Era of HIV/AIDS in Zimbabwe*, *African Population Studies*, Vol. 19, No. 1.

Ncube, W., (1986), *The Matrimonial Property Rights of Women in Zimbabwe*, MPhil. Thesis, University of Zimbabwe, (Unpublished).

Omari, C. K. and Mbilinyi, D. A. S., (1997). *African Values and Child Rights: Some Cases from Tanzania*, Dar-es-salaam DUP.

Patteson, A. S. (ed.), (2005) *The African state and the AIDS Crisis*, U.K, Ashgate, Aldershot.

Patton, M. G., (1980), *Qualitative Evaluation Methods*, Sage Publications, Beverly Hills.

Rakstad, J. L. et al., (2000), The Progress of Tanzanian Women in the Law: Women in Legal Education, Legal Employment and Legal Reform, 10 S. Cal. Rev. L. & Women's Stud. 35, 92.

Sahih Al-Bukhari, Volume 8, and Book 73 <http://altafsir.com>- Tafsir Al-Jalalayn, visted 12/08/07.

Shamoun. S, the Age of Marriage: Quraan Contradiction. <http://answering-islam.org/Shamoun/prepubescent.htm>, visited on 07/07/07.

Stewart, J. E. et al., (1997), Paving a way forward, A Review and Research Primer of WLSA Research Methodologies, Harare, Women and Law in Southern Africa Research Project.

TAMWA, (2007), Sauti Ya Siti-The Spaecial Issue On The African Child Day, Dar-es-Salaam, The Print Factory Ltd.

Teemba, R., (2005), Protecting Teenage Girls From HIV/AIDS: The Role of The State and Society in Tanzania, Long Essay, Submitted to the University of Zimbabwe in partial fulfillment as a requirement for award of the Masters in Women's Law, (Unpublished).

The Integrated Regional Information networks (IRIN) 21 September 2006.Tanzania: Early marriage puts girls at risk of HIV. <http://www.IRINnews.org>., visited on 10/09/07.

Tove Stang Dahl, T., (1987), Women's Law: an Introduction to Feminist Jurisprudence, Oslo, Norwegian University Press.

Tsanga, A. S., (2004), Taking Law to the People: Gender, Law Reform and Community Legal Education in Zimbabwe Harare, Weaver Press and Women's Law Centre, University of Zimbabwe.

Tumbo Masabo, Z. and Liljestrom, R, (eds.), (1994), Chelewa Chelewa: The Dilemma of Teenage Girls, Scanndinavia Institute of African studies.