

REPROHEALTHLAW BLOG Jan. 13, 2017.

Tanzanian Court: Third party consent to marriage of girls under 18 is unconstitutional

<https://reprohealthlaw.wordpress.com/2017/01/13/tanzanian-court-third-party-consent-to-marriage-of-girls-under-18-is-unconstitutional/>

Many thanks to Godfrey Kangaude, LL.M. (UFS), LL.M. (UCLA), an LL.D. candidate at the University of Pretoria and Executive Director of Nyale Institute for Sexual and Reproductive Health Governance in Malawi, for summarizing this decision for REPROHEALTHLAW subscribers. He is also Chief Editor of *Legal Grounds III: Reproductive and Sexual Rights in Sub-Saharan African Courts*, published in 2017.

Rebeca Z. Gyumi v. Attorney General, Miscellaneous Civil Cause No 5 of 2016 decided on July 8, 2016. (High Court of Tanzania) [Decision online.](#)

Abstract: The Court considered whether by permitting girls under the age of 18 to marry by third party consent, Sections 13 and 17 of the Marriage Act CAP R.E. 2002 (Marriage Act) violate the right to equality, the right to expression and receipt of information as provided for under Articles 12, 13, 18 and 21 of the Constitution of the United Republic of Tanzania 1977 (Constitution). The Court held that the differential treatment of girls and boys by the impugned provisions, which permitted the girl-child to marry underage with the consent of a third party (such as a parent or guardian) was discriminatory and infringed the right to equality. The Court therefore declared the impugned provisions unconstitutional and ordered the government to review the law in accordance with its obligations under Article 6 of the Maputo Protocol and Article 21 the African Charter on the Rights and Welfare of the Child, with a view to setting the age of marriage at 18, the age of consent, with full consent from the girl, and without exceptions.

The Court could not agree that the provisions infringed on the right to expression and information, because the petitioner did not present any evidence to substantiate those claims.

Comment: The Court did not address the aspect of human dignity, also raised by the petitioner, which is central to the practice of child marriage and the attitudes surrounding the sexuality of the girl-child. By treating the girl-child as the means to some material or non-material end, the practice of child-marriage is first and foremost a violation of the dignity of the girl-child. Her body and sexuality are regarded as property that families can exchange for economic gain or honor or both. Further, maintaining virginity before marriage is a powerful motivation behind practices such as denying the girl-child comprehensive sexuality information and education, and restricting her freedom to make decisions

regarding sexual relationships. The practice of child marriage therefore sustains the violation a host of other human rights of the girl-child, such as rights to sexual and reproductive health, sexuality information and education.

UPDATE: CONFIRMED BY COURT OF APPEALS IN 2019!

Attorney General vs Rebeca Z. Gyumi (Civil Appeal No.204 of 2017) [2019] TZCA 348; (23 October 2019) High Court of Appeals upheld 2016 decision [52-page Decision online](#). [Article about 2016 decision](#).

Related Resources:

Msuya, Norah Hashim — “The analysis of child marriage and third party consent in the case of *Rebeca Z. Gyumi v Attorney General Miscellaneous Civil Case no 5 of 2016 Tanzania High Court at Dar es Salaam*” *De Jure Law Journal* 52 (2019): 295-315. [Article online](#).

Constitutional Court of Zimbabwe outlawed child marriage under 18 years old: *Mudzuru & Another v Ministry of Justice, Legal & Parliamentary Affairs (N.O.) & Others* (Const. Application No. 79/14) [2015] ZWCC 12 (20 January 2016); [Decision online](#). [Detailed case summary by Godfrey Kangaude](#). [Legal Grounds III: Reproductive and Sexual Rights in Sub-Saharan African Courts \(2017\)](#)

Forced Out: Mandatory Pregnancy Testing and the Expulsion of Pregnant Students in Tanzanian Schools (Center for Reproductive Rights, 2013). [Fact-Finding Report](#).

Child Marriage in South Asia: Stop the Impunity (Center for Reproductive Rights, 2013) [Fact-Finding Report](#).

United Nations General Assembly Adopts Resolution to end Child, Early, and Forced Marriage Worldwide (Dec. 19, 2016) [CRR Press release](#).

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