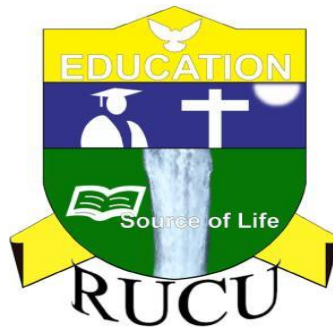


**RUAHA CATHOLIC UNIVERSITY**



**FACULTY OF LAW**

**LEGAL ASSESSMENT OF PATERNITY BENEFIT IN TANZANIA MAINLAND:**

**CASE STUDY OF SOCIAL SECURITY SCHEMES**

**A Research Paper Submitted In Partial Fulfilment Of The Requirements For  
The Award Of The Degree Of Bachelor Of Laws (LL.B) Of Ruaha Catholic  
University, Iringa, Tanzania.**

**By**

**GLADNESS BAPTISTA MTANDI**

**RU/LLB/2019/008**

**Prepared under supervision of  
Ms. ANGELINA MPINDA**

**At the faculty of law**

**July, 2023**

**CERTIFICATION**

The undersigned certifies that she has read and hereby is recommended for Acceptance by the Ruaha Catholic University a research paper titled: **LEGAL ASSESSMENT OF PATERNITY BENEFIT IN TANZANIA MAINLAND: CASE STUDY OF SOCIAL SECURITY SCHEMES**, in partial fulfillment of the requirements for the Award of the bachelor degree of laws (LL.B) of the Ruaha Catholic University.

.....

**Ms. ANGELINA MPINDA**

**(SUPERVISOR)**

**DATE.....**

## DECLARATION

I, **GLADNESS BAPTISTA MTANDI**, do hereby declare that this is my own original work and it has not been submitted and is not being submitted for a similar course or any other degree here at **RUAHA CATHOLIC UNIVERSITY** or in any other University.

.....

GLADNESS MTANDI (RESEARCHER)

Signed on this .....day of .....2023.

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Lastly, my thanks go to my friends and classmates for encouragement and advice. I have nothing to say than "thank you all".

## DEDICATION

I dedicate this research entirely to all human rights activist and all members of social security schemes both public and private servants.

## **LIST OF LEGISLATIONS**

### **DOMESTIC LEGISLATION**

The Constitution of United Republic of Tanzania of 1977 [CAP 2, R.E. 2002]

The Public Service Social Security Fund Act, 2018

The National Social Security Fund Act,[CAP 50 R.E. 2018]

The National Health Insurance Fund Act of 1999

The Community Fund Act, of 2002

The Workers Compensation Act of 2000

### **REGIONAL INSTRUMENTS**

The African Charter on Human and Peoples Right,

The Protocol to the African Court on Human and Peoples Right, 1998

### **INTERNATIONAL INSTRUMENTS**

The Universal Declaration of Human Rights, 1948

International Covenant on Civil and Political Rights of 1966

## ABBREVIATIONS

NSSF	National Social Security Fund
PSSSF	Public Service Social Security Fund
UDHR	Universal Declaration of Human Rights
NHIF	National Health Insurance Fund
NHIS	National Health Insurance schemes
CHF	Community Health Fund
UHC	Universal Health Coverage
R.E.	Revised Edition of the Law
TASAF	Tanzania Social Action Fund
SDGs	Sustainable Development Goals
EPRC	Economic Policy Research Centre
NGO	Non-Governmental Organization
SAPs	Structural Adjustment Programmes
ACHPR	African Charter on Human and Peoples Right
ISSA	International Social Security Association
ILO	International Labour Organization



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## ABSTRACT

The development of the employment and labor relations law introduced the maternity and paternity leaves in Tanzania mainland as a way to implement the international fundamental principles rights in labor market, in order to achieve that the social security schemes were introduced as a way to finance and support most social protection problems like medical care and fund for expenses for delivery during leaves, But the law of social security schemes of Tanzania mainland are said to be discriminatory in labour market in fact that the laws only provides for maternity benefits in labour market excluding paternity benefit. Therefore, women in labor are said to benefits and gets more access to social security scheme services than men, Due to discrimination of the laws. For example, The National Social Security Fund Act under section 44 and 45 provide for maternity benefits, the same to the Public Services Social Security Fund Act, 2018 under section 32 provide for maternity benefits, but the law left men or paternity benefits who working as employees and employer in same labour market.

The researcher intends to provide education and awareness on social protection and make development of law on social protection particularly paternity benefits. The research analyzes how the laws governing social security schemes and practices of Tanzania mainland protect their people and how it fails to comply with equity principle and universal access. From findings that researcher involved, the researcher found that there is need for the laws to ensure that all members of the scheme access paternity benefit and maternity benefit.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1. Introduction.

The research aimed at assessing a relatively effective of the legislation and practice on social security protection of the people of Tanzania mainland. The research aimed to make development of law on social protection on paternity leaves and determine the levels of coverage, adequacy and principle of equity on the existing laws and practices<sup>1</sup>.

In analyzing the social security schemes, the research aimed to investigate the needs of paternity benefits in relation maternity benefits as a way to bring equality men and women in labor market. The equity principle is the key terms of analyzing the implementation of maternity and paternity benefits in case study of the research, the term equity may be analyzed in various contexts in identifying discrimination between women and men in social protection<sup>2</sup>.

In relation to the law of both International and national law, the equity is determined as the way to promote equality of all people and to remove unequal treatment in particular circumstances<sup>3</sup>. For example, under Article 26, of the International Covenant on Civil and Political Rights, stipulates that, all persons are equal before the law are entitled to protection

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<sup>1</sup> M. Shaw, International law , The Press Syndicate of the University of Cambridge University Press,5(2003) P.99-100

<sup>2</sup>P. Zweifel , The Theory of Social Health Insurance, Now Publishers Inc, (2007)

<sup>3</sup> M. Shaw, International law , The Press Syndicate of the University of Cambridge University Press,5(2003) P.99-100

by law without any kind of discrimination<sup>4</sup>. It reads together with Article, 2 and 7 of the Universal Declaration of Human Rights<sup>5</sup>, which need the protection to all people and protection of laws itself. Also, the social protection patterning to maternity and paternity benefit, is an international recognized health services, adopted by the General Assembly resolution 217 A (III) held on 10 December 1948, through the Universal Declaration of Human Rights<sup>6</sup>, which stipulated social protection. Under Article 25,<sup>7</sup> which requires that, every person has the right to standard of health and well-being of him and his relatives, including medical care and social services.

Therefore, a maternity and paternity benefit recognizes it as fundamental human rights in employment contract. So, in achieving that many African countries have ratified the treaty as way of protecting their people from economic hardship when paid for them<sup>8</sup>. In attaining that, the legislation and policy of each State differs from one to another in implementation of the principle of equity on health services.

However, the principle of equity is intended to remove unequal treatment in all circumstance<sup>9</sup>.

In Tanzania the Constitution stipulates equality under Chapter one particularly Part III, that determine that all person is equal and all are entitled without any kind of discrimination and no law enacted in the United Republic

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<sup>4</sup> The Universal Declaration of Human Rights of 1948.

<sup>5</sup> *Ibid*,Article2

<sup>6</sup> *Idem*

<sup>7</sup> *Ibid*,Article 25

<sup>8</sup> [www.nhif.organization](http://www.nhif.organization) (Accessed on 20 July, 2022)

<sup>9</sup> M. Shaw, International law , The Press Syndicate of the University of Cambridge University Press,5(2003) P.99-100

of Tanzania shall make any provision that is discriminatory in itself or in its effect<sup>10</sup>.

## 1.2 Background of the Problem

Every human being is vulnerable to risks and uncertainties with respect to income as a means of life sustenance. To contain these risks, everyone needs some form of social security guaranteed by the family, community and the society as a whole. Such socio- economic risks and uncertainties in human life form the basis for the need of social security<sup>11</sup>. Social security is rooted in the need for solidarity and risk pooling by the society given that no individual can guarantee his or her own security<sup>12</sup>. Social security is defined in its broadest meaning by the International Labour Organization (ILO) as: -

"The protection measures which society provides for its members, through a series of public measures against economic and social distress that would otherwise be caused by the stoppages or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, disability, old age, death, the provision of medical care subsidies for families with children<sup>13</sup>."

The social security schemes were officially introduced for all persons after independence during the ruling of Late President Benjamin William Mkapa around 1995 to 2005 whereby there were many social security schemes introduced such as LAPF pensions fund Act, GEPP retirement benefits fund Act and the PPF pensions fund Act.

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<sup>10</sup> Ibid, Article 13.

<sup>11</sup> C.M.Hood & A.Gross," *The Right to Health at Public / Private Divide, A Global Comparative Study* ", Cambridge University Press, New York, 2014.

<sup>12</sup> B.S. Ferdacker & M. Hayes, *Labor Guide to Labor Law, The press ILR press, (2019) p. 76 - 89*

<sup>13</sup> International Labour Office, Report Of International Labour Conference • 2019- page 8



In 2018 The Act was centralized the social security schemes by merging several existing public schemes into one scheme (PSSSF). The merged schemes are LAPF, GEPP, Public Service Pension Scheme (PSPF) and PPF. The National Social Security Fund (NSSF) remains to cater specifically for employees in the private sector, self-employed, foreigners employed in Mainland Tanzania, employees in international organization based in Mainland Tanzania, and any other category of persons that the Minister responsible for social security matters may specify upon recommendation by the Social Security Regulatory Authority (the Authority)<sup>14</sup>. Thus up to now there are only two schemes that is PSSSF and NSSF.

The Public Service Social Security Fund Act, 2018 (PSSSF)<sup>15</sup>, the Act is Now operational. This law was assented by the President of Tanzania on 8th February 2018 and published on 9th February, 2018<sup>16</sup>. The Act applies in Mainland Tanzania in respect of all employers and employees in the Public Service. Public Service is defined under the Act by reference to the meaning described to it under the Public Service Act and which definition includes judicial service, parliamentary service, police force and prisons service and service in the specified corporations. The main purpose is to collect contributions and payment of terminal benefits to employees of public service. The National Social Security Fund Act of 2018 is also now operational in Tanzania Mainland for private servants.

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<sup>14</sup> The National Social Security Fund Act 2018

<sup>15</sup> The Public Service Social Security Fund Act (No. 2), 2018

<sup>16</sup> *Idem*

### 1.3 Statement of the Problem

Despite many efforts made by the social security schemes to secure and maintain benefits to its members (employees and employers) in Tanzania still there is inequality in the provision of benefits between men and women to both public and private servants where by the social security schemes provides maternity benefit to the qualified employed woman<sup>17</sup>, while discriminate the men as there is no paternity benefit given to them once their wives gave birth.

The Public Service Social Security Act (PSSSF) under section 29 it provides on the benefits offered by the scheme to its members including maternity benefit which is offered to women members only. Also, section 32 of The Public Service Social Security Act provides on the maternity benefits and the qualities of a member to be given such benefit something which men servants do not enjoy such benefit and the law itself does not provide the paternity benefits. The same position is reflected under section 21 of the National Social Security Fund Act of 2018<sup>18</sup>, which provides on the benefits offered by the scheme and section 44 of the same Act which provides on maternity benefit, both position do not cover paternity benefit to men who are members of the schemes so both Act undermines the human rights as provided under Article 13 (1) (2) of the Constitution of the United Republic of Tanzania<sup>19</sup>, which requires every person or any human being to be treated equally.

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<sup>17</sup> section 32 of the Public Service Social Security Fund Act [R.E. 2019]

<sup>18</sup> section 21 of the National Social Security Fund Act of 2018

<sup>19</sup>Article 13 (1) (2) of the Constitution of the United Republic of Tanzania

Generally, the laws governing social security schemes in Tanzania does not provide the paternity benefit to the employees because both laws provided that the woman who is employed in both public and private sector has a right to get maternity benefit and not to man But in fact both men and women employees contribute similar amount to the scheme but still there is discrimination on the provision of benefits. Thus, there is maternity benefit and no paternity benefit<sup>20</sup>.

## 1.4 Literature Review

The following are critical evaluation of other literatures in showing the gap between what other authors have provided in relation to the research, the researcher used the following books and articles;-

Rwegoshora<sup>21</sup>, This author of the book focuses specifically on Tanzania, analyzing in detail the policy and legal frameworks for social security provision. The author has dealt much on analyzing the social security policy and legal framework for social security provision in Tanzania whereby under that part he done it well, but he didn't provide the challenges facing social security schemes and also the problems facing members of the scheme such as delaying of benefits and unfair provision of benefits, also the problem of absence of gender equality in the provision of benefits to its members for instance absence of paternity benefit while maternity benefit is provided.

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<sup>20</sup> A.Blackett, *Everyday Transgressions to international labour law, The press ILR press, (2019)*  
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<sup>21</sup> H.Rwegoshora, *The Policy And Legal Frameworks For Social Security Provision*,2011

Ferdacker<sup>22</sup>, he argues that the woman who employed in public sector or private sector has a right to get the maternity benefit and not a man even if both men and women employees contribute similar amount to the scheme. This research shows ways to cover on how man can be given the right to paternity benefit.

This literature is useful in this study as it shows that the man had not given a right to get the paternity benefit in both private and public sectors.

Blackett<sup>23</sup>, in his book he discussed various rights which maternity benefit must get like maternity leave and maternity payment, also author argues that the woman has a right of getting maternity benefit, the author did not show how men are denied from their rights also for instance absence of paternity benefit which is not provided by social security schemes.

This research shows that the man has a right of getting paternity benefit relevance to woman in both private sectors and public sectors also it shows how the law discriminate man on the matter of paternity benefit.

Pitt<sup>24</sup>. the Author in this book elaborated more on basic rights related to maternity rights of which he mentioned various rights such as right to maternity pay, right to maternity leave, also he talked about family rights where there is maternity right, parental rights, paternity rights and leave for dependent based much on England, . But in this research the researcher has

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<sup>22</sup> B. Ferdacker & M. Hayes, *Labor Guide to Labor Law, The press ILR press, (2019) p. 76 - 89*

<sup>23</sup> A. Blackett,, *Everyday Transgressions to international labour law, The press ILR press, (2019) 45*

<sup>24</sup> G.Pitt, *Employment law* , Thomson Sweet & Maxwell, London 2007,

looked at Tanzania mainland on the issue of paternity benefit. However, the research elaborates more on the issue of equality and non-discrimination in work places in relation to absence paternity benefit.

Drake<sup>25</sup>. The Author explains on different places concerning maternity leave whereby he wrote on the right not to be unfairly dismissed because of pregnant as one of maternity rights. However, the author did not explain on the social security schemes in aspect of equality that even men has the same right to paternity benefit as maternity benefits offered to women the researcher dealt much on this aspect. In this research the researcher has looked on the right of paternity benefit in Tanzania mainland.

Mwakisiki<sup>26</sup>, the writer in his book wrote on the maternity issue of getting maternity paid leave with other benefits from the Social Security Schemes where he stated that the scheme is responsible of paying the benefits. However, the writer did not write on the existing situation in Tanzania particularly on paternity benefit whereby the researcher in this work covered the area.

Wolters<sup>27</sup>. when speaking on the issue of requirement of paternity benefit in the country the social security law must be flexible with the current development of science and technology, further the writer argue that the social security laws must be have the positive result to the society.

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<sup>25</sup> C. Drake, *Labour Law*, Sweet & Maxwell, U.S.A, 1981, 62

<sup>26</sup> M, Mwakisiki. E, *The law on employment and labour relation in Tanzania*, 2019, 67

<sup>27</sup> W. Kluwer. *Labor law, the press Aspen casebook Series, seventh Edition*, 2020,

This literature is useful in this study as it shows that even man has a right of getting the paternity benefit and researcher in this work covered the area to some extent.

Davidor<sup>28</sup>. Had this to say “the court may influence law marker on the enactment of the social security laws which determine even the man to get the paternity benefit if there were laws which has paternity benefit this will reduce gender discrimination to the members (labours).

The author succeeded to show that in many countries there is no right of paternity benefit hence this is the gap even in Tanzania.

Collins, *et al*<sup>29</sup>, in this book they wrote on the issue of getting maternity paid leave with other benefits from the Social Security Schemes where they stated that the scheme is responsible of paying the benefits. However, the authors didn't cover on how man can be given the right to paternity benefit and hence research show on the existing situation in Tanzania particularly on paternity benefit whereby the researcher in this work covered the area.

Sharma<sup>30</sup>, in his book Author provide that the baby’s positive and meaningful interaction of both father and mother as parents so as to facilitate a healthy environment for growth and development in the later stage of their lives. So, the public and private sectors must provide the paternity benefit to the employees.

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<sup>28</sup> G. Davidor & B. Langille, *The idea of labour law*, press oxford university, London, 2021, 78- 89.

<sup>29</sup> H.Collins et al, *Labour Law Text & Materials* , Hart Publisher,U.S.A 2002,431.

<sup>30</sup> J. sharma, *simplified approach to labour law*, 5<sup>th</sup> Edition, bharat publisher, 2018, 301

This research has covered the ways to solve the problem of the lack of paternity benefit in Tanzania.

Aksa<sup>31</sup>, in his journal provided that the paternity benefit is bound to benefit men, women as well as children in the long run. It is likely to break gender stereotypes and gender roles, level out the playing field with regard to recruitment, reduce the number of women who are forced to give up their careers post – pregnancy, create a lifelong bond between the father and child, the paternity benefit is still needed in order to remove the discrimination.

Also, author said that “paternity leave is also not legally guaranteed in approximately 92 countries around the world even today” this literature is useful to the study because shows that the man needs paternity benefit like the woman in both public sectors and private sectors.<sup>32</sup>

Mair<sup>33</sup>. in his journey he discussed on the hardship on previous England legal provisions where the woman had neither the right to maternity leave nor the right to return to work unless she satisfied with the notice requirements generally he looked at the current situation on how maternity rights is taken. However, the writer didn't talk on men on the same issue to assess on the legal aspects in Social Security Schemes specifically in the issue of equality basing on paternity benefit where the researcher is going to cover dealing in Tanzania mainland.

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<sup>31</sup> N. Aksa, partenity leave policies journal of law 2, 2021, 54 - 55

<sup>32</sup> *idem*

<sup>33</sup> J.Mair,Maternity Leave: Improved and Simplified ,Modern Law Review,(2018),56

## **1.5 Hypothesis**

It appears that the laws governing social security schemes in Tanzania does not provide the paternity benefit to its members.

## **1.6 Objectives of the Research**

This research has both specific and general objectives which elaborated as follows.

### **1.6.1 General Objective**

To make legal assessment of paternity benefit in Tanzania mainland with focus to social security schemes.

### **1.6.2 Specific Objectives**

The research carried to achieve the following objectives:

To examine the Public Service Social Security Fund Act and National Social Security Fund Act in regarding to provision of paternity benefit.

To examine whether there is equality in the provision of benefits to the members under social security schemes.

## **1.7 Significance of the Research**

**To the courts**

This research is beneficial to the Court because it helps court to declare that law governing social security schemes has gap and take it to the Parliament



for it to be reviewed and finally such law governing social security schemes can be amended.

### **To the Employees**

This research helps the Employees because it brings awareness to the employees so that there could be equal distribution of social security benefit regardless sex if it is a male whose wife gave birth then there could also be paternity benefit to them because they are also members of the scheme not only women who have to get maternity benefit also This research provides awareness to all social security schemes institutions on the problem of paternity benefit so that it could be added as another benefit offered by the scheme and hence ensures equality in the provision of benefits and service to its members of the scheme.

### **To the Parliament**

This research is useful to the Parliament because the Parliament will make efforts in amendment of the law relating to social security schemes by providing paternity benefit

### **To the Learning Institutions**

The research helps the learning institutions because students and lectures who teach especially labor law and laws governing social security schemes subjects to make reference on it.

### **To researcher**

It helps the researcher to increase knowledge, also help researcher in  
 Partial Fulfillment of Requirements for the Award of the Bachelor  
 of Laws Degree (LL.B) of Ruaha Catholic University

### **To the General Public**

The research is important to the general public because whole public may use it either as a reference or studying material so as to get awareness.

## **1.8 Research Methodology**

This study involves both doctrinal research approach which are documents such as laws and non-doctrinal research which is library-based research containing documents and field research. Data was obtained by using both primary and secondary methods of data collection in order to ensure availability and reliability of data. It is through these sources of data the research problem is addressed and approached.

### **1.8.1 Data collection methods**

The researcher used both primary data and secondary data. Primary data refers to the laws and legal instruments while secondary data refers all materials that support the work including journals, articles, books, reports documents, dissertation and magazines which are related to paternity benefit and human rights as well.

### **1.8.2 Primary Source**

The researcher visited on various law relating to paternity benefit in Tanzania, those laws were national and international instruments, such as The Constitution of United Republic of Tanzania of 1977 as amended time to time, laws enacted by parliament both principle and subsidiary legislation, like The Public service social security fund Act of 2018 and The National social

security fund Act Revised of 2018, and administrative policies, the researcher also consulted the International, and Regional laws found in the library. Therefore, it's through above stated law first-hand information was collected.

### **1.8.3 Sample size**

The researcher selected 50 respondents from various working places in Tanzania because 50 respondents have enough knowledge on the matter relating to the social security schemes in Tanzania also another reason is that the data provided by respondent are relevant to the topic.

### **1.8.4 Interview**

In order to supplement the primary sources as to the study, the primary data was collected through interview as a tool of data collection of which unstructured interview was used in allowing respondents to freely provide their views relating to the problem.

The researcher interviewed 50 respondents to includes experts like people working in social security schemes, such as The Public Service Social Security Scheme (PSSSF), The National Social Security Fund (NSSF), The National Health Insurance Fund (NHIF), also officials like, lawyer and advocates, people working in private sectors or institutions, such as lecturers, teachers, doctors and other employees, nurse and patients, self-employed persons like contractor, and also the peasant and unemployed persons participated. The interview was done face to face between interviewee and interviewer and through telephone communication where it was difficult to meet directly with respondent.

The researcher through interview collected data directly from respondents that assisted to get more information on research scope, the method is useful because the method promotes communication and, in another way, it is faster and easier to get answers, for example interview encouraged participation as the respondents were familiar with researcher needs. Also, this method of data collection via interview was employed because it was simple and cheapest method of data collection with regard of the time of conducting the research.

### **1.8.5 Secondary Source**

These data were collected from the available documentation depending on the nature of the research topic, the researcher passed through different documents and Internet sources such as text books, research papers, dissertations and journals, law reviews, legislation, and reports relating to paternity benefit and social security schemes as whole. The researcher also used Ruaha Catholic University library, online libraries such as Google books and Google scholars as a source of secondary data.

### **1.8.6 Research design**

This study used qualitative approach in the collection and analysis of data. Whereby in qualitative approach the researcher used words to explain terms, and as well as to explain the relationship between the concept and terms that are used in this research. This research involved library research and field research. The library research involved were documentary review of several books, articles, law reports, Principal Act and Subsidiary legislation.

## **1.9 The Scope**

The scope of the study was the assessment of laws enacted relating to paternity benefit. In particular by determining the lacuna in Tanzania existing laws against paternity benefit where there should be provision of paternity benefit to the qualified male members of the social security scheme both PSSSF and NSSF members so as to promote gender equality in the working places. Thus, the study focused on legal framework on Tanzanian laws relating to paternity benefit. The research was conducted in Tanzania mainland specifically at Iringa Region, because it was easier and flexible for the researcher to collect data while continuing with studies.

## **1.10 Limitation of the Study**

The completion of this research was not easy since researcher faced some of the challenges that are out of control and authority to enforce implementation.

First, some of the respondents during the collection of data they were not willing to give full participation, especially the disclosure of some information's based on fact that some data are confidential to officer only.

Also, the researcher faced with lack of sufficient time to participate in data collection because at the same time the class session was taking place and sometimes made researcher to use night time to research more on secondary data.

## CHAPTER TWO

### 2.1 CONCEPTUAL FRAME WORK RELATING TO PATERNITY BENEFIT AND SOCIAL SECURITY SCHEMES IN TANZANIA.

#### 2.1.1 Introduction

In this chapter the researcher explained the meaning of some legal concept relating to paternity benefits, maternity benefit and leave, social security theories social security schemes and other concept applied in the research, also legal concept were explained in order to make sure that the research is clear and clarified to the leaders.

#### 2.1.2.1 Concept of Paternity Benefit

Paternity benefit is a benefit or payments granted to the qualified male member of the social security scheme. Such as husbands, partners of pregnant women, fathers, or a person matched with a child for adoption.

Paternity leave refers to the leave that is exclusively granted to the fathers to enable them in spending time with their new born child. This leave ensures a period of weeks or months to stay home and bond with his partner and new child<sup>34</sup>.

#### 2.1.2.2 Maternity benefit and maternity leave

Also, this is used to means the period of time at which a new mother takes off from work following the birth of her baby. The maternity leave is usually

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<sup>34</sup> <https://www.betterup.com.>(Acccesed on 02 may 2023 on 12:07 to 1300pm)

created from a Variety of benefits that includes sick leave, vacation, holiday time, personal days, short term disability and unpaid family leave time<sup>35</sup>. The maternity leave in some country's organization are leave that are granted equal men and women. As it from the argument of the author that maternity leaves and paternity consideration must be aware to take a reasonable care or plan shall be taken by a person in a work place or business to ensure that he or she must not suffer from financial during the maternity or paternity leave since this leave are considered as unpaid leave.

### 2.1.2.3 Social security Schemes

Social security Schemes refers to the scheme which provides a safety net for the employed. Social security scheme exist in many countries in all over the world and the concept is similar in all countries of the world. For example in Tanzania there is only two schemes such as National Social Security Fund (NSSF) and Public Servant Social Security Fund (PSSSF). However social security scheme are designed to benefit those who are in employment and their dependents by providing a degree of protection against the effect of loss of income or ill health, they are normally not social assistance programs but programs that provides contributions based benefits according to a pre-determined formula to those who qualify for those benefit.<sup>36</sup>

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<sup>35</sup> <https://www.americanpregnancy.org/healthy-pregnancy/maternity> leave-leave(Accessed on 02 may 2023 on 12:07 to 1300pm)

<sup>36</sup>[Ibid, supranote 15](#)

### 2.1.3 Social Security Scheme theories

Narrative theories, some theories of social security have been frequently discussed but not analyzed systematically in the literature since there are not mathematical models in the literature for us to derive implications and the narrative theories are obviously not political or efficiency.

Social Security as chain letter ,according to this theory some people argues that social security is like a Ponzi-type chain letter by which the first generation of elderly takes a pension from a young and promises that the future generation will pay the money back with some positive rate of return.

Lamp of labour theory, this was a popular European theory of social security whereby the theory argues that jobs needs to be redistributed from the old to the young in a world where there is a lot of un employment. The story may run as follows; suppose there is involuntary unemployment due to some imperfections in the labour market or to excessive regulation or to the existence of powerful unions. Under this aspect the Government may wish to take some of the jobs currently done by citizens of near retirement age in exchange for a Social Security pension and give them to the young<sup>37</sup>.

Monopoly capitalism theory; according to this principle Government transfers occurs in order to specify beneficiaries, preventing them from revolting against the state. This argument has been applied to social security in the neo-Marxist literature on monopoly capitalism for example Piven and Cloward 1971,Olson 1982;Pampel and Williamson 1989 survey the literature

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<sup>37</sup> Ibid,*Supra* note 33



on their page 29 - 34, where they argue that capitalists want to force old workers out of their jobs because the old workers are less productive than young workers<sup>38</sup>.

#### **2.1.4 Policy principles**

The principle offers paid ordinary paternity leave for all grades of employees' subject to eligibility<sup>39</sup>.

##### **2.1.4.1 A Theory of optimal paid parental leave policies**

According to this theory a worker on leave cannot commit to returning to work after the leave period ends, therefore the optimal policy has to give a worker on leave an incentive to return to work. According to this theory at the end of each period a worker gets pregnant with a certain probability and she then has to decide whether to take a temporary leave or not if such a shock does not hit a worker, she will normally continue to work. A worker on leave derives utility from consumption and enjoying time with her child. Therefore, an optimal paid parental leave policy is a process by which a worker hit by a shock voluntarily chooses to take leave and a worker on leave voluntarily chooses to return to work after the leave period ends<sup>40</sup>.

##### **2.1.4.2 Theory of Mandated Benefit**

According to this theory the government is supposed to give the mandate to the employees that they must receive from their employers as a matter of

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<sup>38</sup> [www.google.com/searchq](http://www.google.com/searchq) (accessed on August 2022)

<sup>39</sup> <https://mpira.ub.uni-muenchen.de/> (accessed on August 2022)

<sup>40</sup> K. Miyazaki, *School of Economics*, Hiroshima University, August, 2021

law. Mandated benefit might make health insurances more comprehensive but it also makes them more and more expensive. Therefore, these mandated benefits might use preventive services such as screening of the employee to detect any problem which might get severe in the future and costly to treat. The theory is to the effect that the employer is required to provide maternity leave to women but not to men<sup>41</sup>.

### **2.1.4.3 Theory of Equality and non-discrimination**

According to Aristotelian View in theory of equality he explained that justice requires that equals should be treated equally and unequal unequally, and therefore men can be treated equally only if they can be already equal in some relevant respect. However, equality sounds a simple concept but in reality, it is very complicated it is about where you start with equal opportunities or where you end up with equal outcomes.

This is a principle which appears in legal, political, and moral aspect, in it is very complicated it is about where you start with equal opportunities or where you end up with equal outcomes legal sphere the principle was very prominent in the Declaration of the United States in the year 1776, therefore the principle prohibits discrimination on the ground of sex, age and race. The principle of equality was agreed by the groups of experts in the conference known as “principles on equality and the development of legal standards on Equality”. During this conference participants from various countries participated, including legal practitioners, Human Rights activists and

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<sup>41</sup> [www.jstor.org](http://www.jstor.org) accessed on July 2022

academicians where they agreed together to introduce these principles on equality for the purpose to protect all persons before courts of law by treating them equally in all aspects of life<sup>42</sup>.

### **2.1.5 Various definitions and Concept of Maternity and paternity benefits**

A number of researchers, scholars, writers and theorists have come up with different meaning and concepts of Maternity leave and paternity benefit. There are various definitions of the term maternity leave, paternity leave and paternity benefit, these are as follows;

Paternity benefit refers to the payment or medical care made to employed or self-employed parental who are on paternity leave from work and covered by social insurance.<sup>43</sup> It is a payment that is made to a person who is on paternity leave from work and covered by the social insurance. For a person to benefit from maternity or paternity benefit he or she must pay premium, according to the social security schemes payment. For example, an insured person may receive maternity benefit if she has contributed to the fund at least for thirty-six monthly contributions<sup>44</sup>.

Maternity leave it is also called family or parental leave it refers to the time a mother takes off from work for the birth or adoption of a child. Also,

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<sup>42</sup>C.Sumner,*Equality before the law protected by National Statute*, Massachusetts publishers,Washingtoon,1872

<sup>43</sup> [www.citizensinformation.ie](http://www.citizensinformation.ie) (accessed on 02 August 2022)

<sup>44</sup> Ibid,section 44(a)

Maternity leave refers to a period of time that a new mother takes off from work for the birth or adoption following the birth of her baby.

#### **2.1.5.1 Paternity leave**

Paternity leave is integral to transition to parenting and father-children bonding, providing father the necessary time to take part in an equal share of house hold labor. Generally paternity leave gives new parents the chance to spend time with their families, if their partner is expecting a child or adopting a child. There are two types of paternity leave such as;

Ordinary Statutory paternity leave this is an allowance to help you care for your child and the child's mother, here one can choose to take either one or two consecutive weeks of paternity leave but not an odd number of days. The qualification is that in order for a person to be eligible for ordinary statutory paternity leave, he has to be employed for at least 26 weeks ending with the 15<sup>th</sup> week before the expected week of birth or ending with the week in which the adopter is notified of having been matched with the child

Additional paternity leaves under this type the mother of a child can return to work before the end of her maternity leave allowing the father or mother's partner to take up to 26 weeks additional paternity leave.

#### **2.1.5.2 Importance of paternity leave benefits**

1. Paternity leave reduces the gender wage gap within households.

2. Paternity leave benefit allows father to set the foundation for a more equal distribution of responsibilities in the future and influences the parents' decisions about how to allocate resources to childcare.<sup>45</sup>
3. Scheduling paternity leave to coincide with maternity leave also allows a father to help out in the days and weeks following a birth especially if the birth was difficult<sup>46</sup>.
4. Paternity leave can also be very important, new parents usually want to spend time getting to know their child and establishing a bond with them. It can be difficult and unpleasant to be trapped at work all day while a new child is making developmental leaps and bounds at home.
5. Paternity leave can be scheduled both before and after a birth for varying amount of time, in some Nations, parents are specifically entitled to parental leaves and they cannot be penalized in any way for requesting leave in a timely fashion. Since birth can be unpredictable, parents usually try to schedule leave with some wiggle room so that they will be at home at the right time. In some region people are entitled to full or partial pay during their parental leave and benefit such as health care continue through the leave<sup>47</sup>.
6. It also helps to cover financial difficulties to men who marry unemployed women<sup>48</sup>.
7. It facilitates gender equality between men and women in work places.

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<sup>45</sup>L.Addati&K.Gilchrist,maternity and paternity at work:law and practice across the world.switzerland,international labour office,2014

<sup>46</sup> <http://www.wisegeek.com/what-is-paternity-leave.htm> (accessed on July 13 2022)

<sup>47</sup><http://life.familyeducation.com/working-parents/father-day/36483>(accssed on 14 July 2022)

<sup>48</sup><http://www.guardian.co.uk/society/jeopublic/2011/apr/04/parternity-dads-shared>(accssed on August 2022)

8. It is worth the requirement of both regional and domestic laws.

### **2.1.5.3 Maternity leave**

This means a period of absence from work granted to a mother before and after the birth of her child maternity leave also refers to a period in which a woman is legally allowed to be absent from work in the weeks before and after she gives birth<sup>49</sup>.

### **2.1.5.4 Importance of maternity leave**

1. Women will no longer needs to choose between a career and having a family.
2. Women will be able to enjoy time with their newborn baby without financial concerns.
3. Parents will be better able to afford the necessary medical care for both father and baby.

### **2.1.5.5 General Importance of Family in relation to maternity leave**

Family is very important part of our everyday, it helps us in improving our personality, and it also helps us in shaping our lives. It teaches us the value of love affection, care, truthfulness and self-confidence and provides us tools and suggestions which are more useful in family life as whole .

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<sup>49</sup> <https://www.cambridge.dictionary>meaning>of>maternity>leave> (accessed 20<sup>th</sup> july,2022)

### **2.1.5.6 Importance of social security schemes**

1. Social security schemes improve education health and income of individuals while increasing tax revenues to the government in which is used to improve social needs.
2. The funds improve lives of people in the society, this means that the beneficiaries of this schemes will get improved since they get some amount in form of money.

### **2.1.6 Conclusion**

The conceptual framework has been able to provide the concept as to paternity leave benefit, maternity benefit, social security schemes meaning and its advantages also the advantages of having the paternity benefits in Tanzania, and it has laid foundation now to have an approach to the legal and institution framework governing the paternity benefits in Tanzania.

## **2.2 LEGAL AND INSTITUTIONAL FRAME WORK GOVERNING PATERNITY BENEFIT AND SOCIAL SECURITY SCHEMES IN TANZANIA.**

### **2.2.1 Introduction**

In analyzing the paternity benefit as the social protection to men, the most important things to consider is that the lawmaker must treat all people equally, there is tendency of making the law that does not apply equally to

all, while they perform the same activities. For example, a law will be enacted specifically targeting a certain group of people, but leaving the rest while performing the same activities. This may either be for the advantage or disadvantage of the targeted group<sup>50</sup>. Therefore, at this stage the research will assess the legal framework of law from international to national level in the implementation of equality on social security schemes.

## 2.2.2 International Instruments on Paternity Benefit

This instrument provides for protection of social protection of an individual as the security of a person. This includes the Universal Declaration of Human Rights 1948, The African (Banjul) Charter on Human and Peoples' Rights of 1981. Both this instrument discusses the provision of social protection to all individuals and discourages any form of discrimination in implementation of social protection as a human right<sup>51</sup>.

### 2.2.2.1 The Universal Declaration of Human Rights 1948<sup>52</sup>

After the World War II 1945, the United Nations agreed to form Regulation that provided social security and social protection to their people. The Universal Declaration of Human Rights introduced at first time by UN General Assembly resolution 217 A (III) on 10 December 1948, as an International instrument to protect Human Rights<sup>53</sup>. The charter is not binding

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<sup>50</sup>H. Bisimba & C. Peter, *Justice and Rule of Law in Tanzania*,323

<sup>51</sup>M. Rose, "Legal Development on Women's Right to Inherit Land under Customary Law in Tanzania," 24, *Verfassung und Recht in Übersee*, 4,1991, p.362

<sup>52</sup> Ibid, Article 25

<sup>53</sup>J. Barya, *Social Security and Social protection in the East African Community*, Fountain Publisher, Kampala, (2011),P.23



to the member state, but the persuasive law on the implantation of Human Rights.

The paternity benefit as social protection is enshrined under article 25. That states that;

“(1) everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

Therefore, the law requires all people to social protection through medical care that is financed by government or private sector or individual himself or herself.

Also, the law requires that the state should ensure that all the people are being recognized by state law and the institution that offering social security, as it is stipulated under article 22 which states that

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

#### **2.2.2.2 International Covenant on Civil and Political Rights 1996**

This covenant was adopted by the General Assembly of the United Nations on 19 December 1996 and come into force on 23 March 1976. The law was ratified by both Tanzania, Kenya and Uganda. The aim of the

covenant is to protect civil and political rights, the same applies the law emphasizes the equal treatment of all people in different aspect including the right to health that go together with rights to life. The law emphasizes equality to all people; it provided under Article 26<sup>54</sup>,

“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 people equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, politics or the other opinion, national or social origin, property birth or other status.”

### 2.2.3 Regional Instruments

At regional level, there were various instruments on the promotion and protection of the right to equality and paternity benefit as a social protection. Some of the most instrument applied to them were;

#### 2.2.3.1 The African (Banjul) Charter on Human and Peoples’ Rights of 1983

The charter was adopted on 27 June, 1981, and entered into force on 21 October 1986. The charter come as a result of African Heads of the state and Government who met in Monrovia<sup>55</sup>, Liberia, From 17 to 20 July 1976 during their sixteenth Ordinary session. Tanzania signed the charter on 31 May, 1982, and ratified it on 18 February 1984 have signed the treaty<sup>56</sup>.

The main objective was to establish organs that will perform the responsibility of promoting and protecting human and people’s Rights in

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<sup>54</sup> International Covenant on Civil and Political Rights 1996

<sup>55</sup> idem

<sup>56</sup><http://Hrlibrary.umn.edu/ratification-tanzania.html> accessed on 28 July 2022

Africa. The law provides equality for all people as it stipulated under article 3 that stipulated that;

“Every individual shall be equal before the law and all are entitled to equal protection of the law.”

The law stipulates further that, all persons have a right to equal access to public services and property of his country, it provided for under article 13(2) &(3). The right to access public services it includes health services. As it provided for under article 16, which provide that<sup>57</sup>;

1. “Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. State parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”

The Law goes further that, the government must not end only to provide health services, also shall ensure that there is no domination of a people by another and all people shall enjoy the same respect and shall have the same rights<sup>58</sup>, like satisfactory environment that is favorable to the development of all people<sup>59</sup>.

With regard to health the law does not leave each thing to government, but allow every person to do some duties. For example, under article 27(1). Provide that;

“Every individual shall have duties towards his family and society, the state and other legally recognized communities and the international communities<sup>60</sup>”

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<sup>57</sup> article 13(2) &(3) of the African (Banjul) Charter on Human and Peoples’ Rights of 1983

<sup>58</sup>article 19 of the African (Banjul) Charter on Human and Peoples’ Rights of 1983.

<sup>59</sup>Ibid, Article 24.

<sup>60</sup> Article 27(1) of the African (Banjul) Charter on Human and Peoples’ Rights of 1983

Those duties it may include the duties to pay for paternity benefit like insurance, as a measure taken by the State to protect their people from physical and mental health.

## **2.2.4 Domestic Legal Framework on the Paternity benefit in Tanzania Mainland**

### **2.2.4.1 Introduction**

These are the laws, regulation and policies that provided for equality in the administration of justice and the law regulating social protection including the Public Service Social Security Fund Act, The National Social Security Fund Act, and The Employment and Labor Relations Act, and The National Health Insurance Fund Act.

In Tanzania, there are different laws that, govern the social security schemes that is different from other country that have a single major law regulating scheme. The first law on regulation of paternity and maternity benefits is the Constitution of the United Republic of Tanzania 1977, which is a source of all laws, and the laws of social security schemes such as, the Employment and Labor Relations Act, The Public Service Social Security Fund Act, 2018, The National Social Security Fund Act 2018 and the National Health Insurance Fund Act.

### **2.2.4.2 The Constitution of the United Republic of Tanzania, 1977**

This is the supreme law of the land in which all other law, it supposed to conformity with its provision. Any law that violates or conflict with the

constitution become void for the ground of inconsistency Under article, 63(3) (d) and (e)<sup>61</sup>. Constitution give power to the parliament to ratify the treaty and enact the law when implementation need the legislation, health insurance law like the National Health Insurance Fund Act of 1999, is good example of the law result from international treaty and enactment that made under the power of parliament in Tanzania<sup>62</sup>.

In the enactment of any law, the constitution, require any enactment to take into consideration the protection of human right like equality to all people in any law enacted by the parliament. Under article 13 provide that<sup>63</sup>.

“1. All people are equal before the law and are entitled, without any discrimination, to protection and equality before the law.

2. No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect.”

Things for emphasis is that law discourages any kind of discrimination in regard to protection, for that regard the government set up various protection in the fundamental principle of the state policy<sup>64</sup>.

In achieving international requirement for paternity benefit, the Constitution does not direct provide for paternity benefit as a human right incorporated in bill of rights, but the right to paternity benefit read together with the right to life and equality before the law.

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<sup>61</sup> Article, 63(3) (d) and (e) of the Constitution of the United Republic of Tanzania of 1977

<sup>62</sup> *ibid*, Article 64(5)

<sup>63</sup> *Ibid*, Article 13

<sup>64</sup> *Ibid* article 11(1).

### 2.2.4.3 The Public Service Social Security Fund Act, 2018

The Act was introduced on 9<sup>th</sup> February 2018, by the Gazette of the United Republic of Tanzania No.6 volume 99. The law introduced to protect the employers and employees in the public services like central Government and member of local government<sup>65</sup>. The law provides for maternity benefit under section 29(1) (d) as one of the benefits payables by the Act. The law under section 32 provides for maternity benefit. That stipulate that;

“A member shall be entitled to the following types of maternity benefits, namely:

- (a) Cash benefit at the rate prescribed by the Board upon the consultation with the authority; and
- (b) Medical care during pre-natal and post-natal period by an accredited medical practitioner or midwife:

Provided that, such medical care is not covered by the national Health Insurance Fund<sup>66</sup>.

(2) Maternity benefit shall be payable-

- a) to a member who has made at least thirty-six months contributions;
- b) upon receipt by the Director General of the medical
  - i. Certificate from an accredited medical provider certifying that the woman expects delivery of a child; and
- c) To a member who has still-birth at a rate to be prescribed by the Board upon consultation with the Authority.

(3) Notwithstanding the provision of this section, a member shall not be paid maternity benefits for more than four times in the member's employment cycle”

However, this law does not provide for paternity benefit things which leads to discrimination in work places since the law protect only women.

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<sup>65</sup> section 32 of the Public Service Social Security Fund Act [ R.E 2018]

<sup>66</sup> section 32 (2) of the Public Service Social Security Fund Act [ R.E 2018]

#### 2.2.4.4 The National Social Security Fund Act [CAP. 50. R.E. 2018]

This another law established to provide social protection for employers and employees of private sector. As the same to the Public Services Social Security Fund Act 2018, the National Social Security Fund Act provide maternity benefit as one of the social security schemes in Tanzania mainland, as it is stipulated under section 21(1)(e) which proved for maternity as one of the benefit payables by the law. Under section 44 of the Act, stipulated that<sup>67</sup>;

“Maternity benefit shall be payable to an insured person who has made at least thirty-six monthly contributions of which twelve contributions are made in the thirty-six months prior to date of confinement; and

- (a) Upon the receipt by the Director-General of a medical certificate from an accredited medical provider, certifying that the woman expects delivery of a child
- (b) After three years from the day when the last payment was made to the insured person unless the child dies within a period of twelve months; and
- (c) To an insured person, for one monthly only, in the case of still-birth.”

Also, the provided for the kinds of maternity benefit that are being provided for by the National Social Security Act which stipulated under section 45, which provided that<sup>68</sup>;

“The following types of benefits are payable under the maternity benefit, namely-

- (a) cash benefits at the rate of 100 *per centum* of the average daily earnings for a period of twelve weeks;
- (b) medical care during the pre-natal and post-natal period by an accredited medical practitioner or midwife:  
Provide that where prolonged medical care is requiring after delivery, the post-natal medical care shall be limited to twelve weeks.”

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<sup>67</sup> Ibid, section 44

<sup>68</sup> Ibid, section 45

These are the laws that govern the social security schemes provide for maternity benefit excluding paternity benefit contrary to the rule of law granted for by the constitution. Therefore, the laws create gap by lifting the men benefiting from social protection of social security schemes as it's for women in labour market.

### **2.2.5 Conclusion**

Generally, this chapter try to analyses the analysis of law from International level to National level, and through that it provides for the explanations on the paternity benefit in Tanzania mainland as how it fails to comply with international law equality principle. Thus, all this law needs the national to make laws that discourage discrimination of any kind, therefore it time for Tanzania to introduce paternity benefit as way to bring gender equality between men and women in labour market. The next chapter will be assessing more on what have been obtained in relation to the problem



## CHAPTER THREE

### RESEARCH FINDINGS AND ANALYSIS ON PATERNITY BENEFIT IN TANZANIA MAINLAND: CASE STUDY OF SOCIAL SECURITY SCHEMES.

#### 3.1. Introduction

This chapter assesses the research findings and the discussion of the findings on how the laws governing social security schemes in Tanzania mainland, implement the maternity benefits and how it recognizes the paternity benefit also how fails to comply with the requirement of the rule of law, which granted by the Constitution of the United Republic of Tanzania of 1977 as amended time to time. And International instrument like the Universal Declaration of Human Rights of 1948. Whereby the regulation is not self-explanatory to cover all people in work place, though it targets to cover specific group of people like woman (maternity), while men left behind the paternity benefit, although both having same lordship and rights of protection.

This creates a loophole on employment right. At that juncture, the researcher provides the relation of paternity benefit and maternity benefit.

## **3.2. Analysis of the law**

This chapter contains a brief analysis of the law covering the area of study that is the Tanzania mainland. As per the scope the researcher assesses on paternity benefit in Tanzania mainland case study of social security schemes.

### **3.2.1. The National service social security fund Act Cap 50.R.E.**

**2018**

The researcher assess the national social security fund act which is the law established to provide social protection for employees and employers of private sector, under section 21(1) (e) it provides on maternity benefits offered to qualified women members of the scheme also section 44 and 45 states on the qualifications of the insured person to get maternity benefits payments also the types of benefits offered under the maternity benefit, these maternity benefits are offered to only women members, it is discriminatory simply because men members are excluded from such payments offered by the scheme regardless they both contribute equally to the scheme.

### **3.2.2. The public Service Social Security Fund Act of 2018**

The researcher assesses the public Service social security fund act whereby the law under section 29(1) (d) provides on the benefits offered by the schemes to its members including section 32 which provides maternity benefit which is offered by women only<sup>69</sup>. Also, the same section provides for

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<sup>69</sup> section 29 of The public Service Social Security Fund Act of 2018

the types of maternity benefits offered and the qualifications of the members who are supposed to be considered in providing the benefit<sup>70</sup>. The law covers only the women and it is silent to men this leads to discrimination in terms of rights. It is well known that both men and women employees contribute similar amount to the schemes but still there is discrimination on the provision of benefits whereby there is maternity benefits but there are no paternity benefits. Also, the same position is provided for under section 21 of the National security fund act of 2018 which provides on the maternity benefit whereby there is no paternity benefit to men who are qualified members of the schemes<sup>71</sup>.

### **3.2.3.The United Republic of Tanzania Constitution of 1977**

The law under Article 13(1) where equality before the law is reflected by providing equality to all people under the law mean while performing right to equality in the issue of maternity benefit the same have to be provided to paternity benefit without any distinctions at the work place.<sup>72</sup> Therefore section 29 of the public service social security fund act is discriminatory to the male employees and it undermines the human right as provided for by the constitution by excluding men right to paternity benefits.

### **3.2.4.The paternity leave policies journal of law 2, 2021, 54 - 55**

The author of the journal showed that the paternity benefit is bound to benefit men, women as well as children in the long run. It is likely to break

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<sup>70</sup>Ibid, section 32

<sup>71</sup> section 21 of The public Service Social Security Fund Act of 2018

<sup>72</sup> Article 13(1) of the constitution of United Republic of Tanzania

gender stereotypes and gender roles, level out the playing field with regard to recruitment, reduce the number of women who are forced to give up their careers post – pregnancy, create a lifelong bond between the father and child, the paternity benefit is still needed in order to remove the discrimination<sup>73</sup>.

The paternity benefit in Tanzania legal system does not exist due to the various reasons like lack of good and clear social security policy and schemes, also these leads to gender discrimination in order to remove that discrimination there must be the paternity benefit in our legal system.

### **3.3. Testing of Hypothesis**

In this part the researcher provides the assumptions used to approve the research hypothesis that the law governing social security schemes in Tanzania does not provides paternity benefits to male employers and employees compared to women which have the right to maternity benefit. The law under article 13(1) of the United Republic of Tanzania Constitution is inconsistency with section 32 of the Public Service Social Security Fund act whereby the provision within the constitution is to the effect that every citizen is equal before the law, hence status of the person under this law has no place to exist. Therefore, it is evident that there is no equality in the provision of rights in the social security schemes in Tanzania since the law covers only the women.

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<sup>73</sup> N. Aksa, parternity leave policies journal of law 2, 2021,

### 3.3.1. Findings on the Research Objectives

This research had general objective of assessing paternity benefit in Tanzania mainland focusing on social security Schemes. Due to these observations reached by the researcher it is evident that the social security schemes are discriminatory since there are no provisions which govern the paternity benefit in Tanzania mainland.

The respondents were asked various questions, and among of the question is whether the paternity benefit should be granted to men employees as maternity benefits granted to women, Among 50 respondents 45, argued that it's better to have paternity and maternity benefits, denial of paternity benefits it is discrimination in work place, in fact that, restriction of paternity benefits bring gender inequality in labor market.

Respondent use example that, some people believe that maternity benefit is believed to be granted to women only because women are weak in labor. This believes are said to promote gender discrimination at work place.

Among sample size 5 respondents argued that there is no need of paternity benefit since no any direct medical care needed to be provided to men as a woman who needs medical care at pre-natal and post-natal or during deliver.

This view is criticized by various people and writer that, men may need medical care and financial support indirect during paternity leave through his dependent like his wife who is unemployed. Therefore, the lack of paternity

benefit affects parental benefit indirect at labor market and it is direct discriminating man employer or employees in working place.

Therefore, the paternity benefit in Tanzania mainland will promote the development of gender equality in Tanzania mainland.

### **3.3.2. International Labour Office report of 2019.<sup>74</sup>**

it Consisting of resolutions and conclusions drawn from the International Labour Conference, 89th Session, this book contains the report to the conference <sup>75</sup>- prepared for the general discussion on social security and sets out the key where by the author of the report offers an in depth overview of the important, and sometimes controversial issues surrounding social security in a global context such as its relationship to employment and development, its extension in terms of personal coverage, its contribution to gender equality as well as its financing. But the report has the weakness although it provides about gender equality matter under the scheme, but still there is problems of absence of paternity benefit which the report does not mention such thing so as to ensure gender equality to the social security schemes<sup>76</sup>.

### **3.3.3 Mchomvu,**

in his report has wrote about many problems facing social schemes, for example small rate of interest awarded annually to members in distress, lack

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<sup>74</sup> <https://www.guardian.co.uk/society/jeopublic/2011/apr/04/paternity-dads-shared>. (accessed on 22nd February 2023)

<sup>75</sup> International Labour Office, Report Of International Labour Conference • 2019- page 8

<sup>76</sup> Mchomvu, Tanzania report: Security System In Tanzania, 2007 page 12,

of transparency,<sup>77</sup> the delaying of benefits and disparities in risks covered and many other problems he farther more said that “these systems operates in both urban and rural areas, A number of studies about informal social security schemes have shown that they have failed to promote equitable economic growth and thus the program is bias in terms of rich” although the author provided those challenges but he did not provide another problem regarding on the fairness and equality of social security benefits to its members where by the scheme provides maternity benefits without considering whether could be also paternity benefit so as to ensure equality on the provision of benefits to its members

### **3.4. Expert opinion from Medical Personnel**

The intensive study on reading was supported by some answers from few medical experts who they did not wanted to expose their names both males and females who was participated they both had the following to say, for the male respondents they widely shown ignorance on paternity benefit they even responded that they even do not know if there is existence of paternity benefit for workers, they said the benefit was designed to cover only women<sup>78</sup>.

Furthermore, they argue that the leave is not clearly explained especially to the side of employer, to the employee especially in the private

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<sup>77</sup> Social Security Protection and Coverage of the Vulnerable Groups in Tanzania: Analysis of the Law and Practice , Ruaha University College, 2012.

<sup>78</sup> The Department on Laboratory Technicians at Sumbawanga District Hospital, 29 July at Sumbawanga

sector hence employees especially males are denied their right to paternity benefit the reason behind this was the tendency of some employers not to disclose all the rights to their employees.

### **3.5. Conclusion**

The findings presented in this chapter boils down that it is the time for the government to revise the social security schemes. From the observation of field data and library research both show that the social security schemes are not only unequal treatment contrary to the rule of law, but also the law does not protect the right to equality as a constitutional right.



## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

#### 4.1. Introduction

This chapter presents the general conclusion and recommendations where international instruments, regional instruments, domestic laws and policies and case study are assessed. The way forward on what ought to be done are suggested at the recommendations party. Through analysis of different laws, its worthy submit that international instruments do influence the equality before the law, which includes equal protection of law in access to social protection. Therefore, the domestic law should enforce equal to all people in the country and in term of payment for those who have the same laborship.

#### 4.2. Conclusion.

Under this caption the researcher, determine that the failure of social security schemes to give equal benefit in social protection to the employees is discrimination contrary to the Constitution of the United Republic of Tanzania.

Since the establishment of maternity leave by the social security scheme in the 19th Century particularly in Germany by Chancellor Otto Von Bismarck many changes have been occurred so as to keep the status of a woman indeed. This has also increased the recognition of maternity leave in many countries and therefore included in their National Laws .However it seems

that the law governing Social Security Scheme was made for the purposes to target women that is why some countries like ours (Tanzania mainland) the issue of paternity benefit is difficult to be seen implemented in work places and the law is still silence.

Generally paternity leave should go together with paternity benefit that men should get some amount of payments during the maternity leave as it is done to their wives.

#### **4.3. Recommendations.**

The following are the suggestions as far as this research is concerned, whereby these comments might be helpfully in making improvements on the laws governing the protection of members under social security schemes hence there will be promotion of gender equality at the working places. Such recommendations are as follows;

There is a need to have paternity benefit in social security schemes in Tanzania mainland, as a way to achieve great gender equality in labour market. This means that both men and women may have same remuneration when it comes to parental care during pre-natal or post-natal both may have funded or receive medical care. For example, for a family that depend on employed man are the one who affected with the gender inequality when unemployed mother got delivery. Thus, the introduction of paternity benefit will bring development of gender equality at market.

Provision of Education on Social Security Schemes and all its Rights to the Members, the government have to make sure that all the employers and employees have to be aware of the social security Schemes basing on their rights of paternity benefits as it is well known in maternity benefit in work places, this affects male members since they do not get the rights to paternity benefit as workers so this will helps them to know well their rights in work places.

The Government have to know the requirements imposed by the international organs concerning paternity and maternity benefit especially WHO and UNICEF. All male and female employees are obliged to be aware of the recommendation from WHO and UNICEF these can helps them when dealing with the amendments of laws.

The legislature should amend Labour laws of which the maternity benefit and paternity benefit are found within, as the law in Tanzania dealing with Social Security Schemes does not comply with the International Standards, there is need of amending our labour laws and other laws related to work or employment contract this will helps to give parents of a born child to get money while taking a short break of work and more time to care their child in self-way and for their betterment of child's health.in the process of amendment there must be involvement of medical expert when making whom will assist in advising a proper time to be taken for the protection of social security schemes especially paternity benefit in Tanzania mainland.

The government should make sure that the Constitution is well protected in all areas without any delay, this means that the Right to equality as provided for by the

United Republic of Tanzania Constitution of 1977 have to be protected and applied to all people without any distinction therefore the provision has to be in line with international standards and International Human Rights Law by considering of the needs of having equal protection in the social security Schemes in Tanzania Mainland that what is done to women have to be done the same to men.

Any new Regulation and legislation in this area must be subject to broad public consultations involving all stakeholders including civil society Organizations and non-Governmental Human Rights Centre and the Tanzania Human Right Center, Defenders coalition and other Human rights defenders should stand strong to empower the public, protect, promote, reinforce and safe guard rule of law, human rights and Good government in Tanzania Mainland, mean while doing so there will equality in work.

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